

**IN THE MATTER OF THE INQUIRIES ACT 2005 AND IN THE MATTER OF THE INQUIRY**  
**RULES 2006**

**THE UK COVID-19 INQUIRY**

**CLOSING STATEMENT ON BEHALF OF THE CABINET OFFICE FOR MODULE 5**  
**(PROCUREMENT)**

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## **A. INTRODUCTION**

### **A1 This Closing Statement**

1. In this module the Cabinet Office including No.10 (though we will abbreviate to the Cabinet Office throughout) has served three corporate witness statements and supported 16 witnesses in setting out their personal experiences of procurement during the pandemic. Of these witnesses, nine gave oral evidence. In addition, the Inquiry has received significant document disclosure from the Cabinet Office.
2. The Cabinet Office welcomes the opportunity to provide a closing statement in order to support the Inquiry's assessment of the evidence it has heard, highlighting key themes that have emerged during the hearings and clarifying certain factual details to support the Chair's important work in this module.
3. The Cabinet Office continues to assist both ministers from the previous administration and current and former civil servants, to ensure that the Inquiry is provided with the best evidence on which to reach its conclusions and to support any lessons to be learned for the future. Where mention in this written closing statement is made of evidence given by individual witnesses, this should not be regarded as an endorsement by Cabinet Office ministers. The evidence that witnesses have given will of course be evaluated by the Chair.
4. As was set out in the Cabinet Office's opening statement in this module, the Cabinet Office recognises that there has been significant public interest in procurement during the pandemic, including allegations of fraud and cronyism. The Cabinet Office takes these allegations seriously and is keen to receive the Inquiry's findings.
5. We would encourage the Inquiry to consider the changes the Government is already making when formulating its recommendations, both in this module and Module 9 which will consider related topics, in particular fraud.

### **A2 The Background and Prevailing Environment**

6. As the Inquiry has heard through other modules, the scale of the challenge posed by the pandemic was unique in peacetime. This included the need for the Government to source very significant volumes of key goods and services with extreme urgency in an environment of considerable international market disruption and competition. As one example, up to twenty times the normal volume of PPE was needed.

7. In this environment, third party speculators entered the market, buyers for other national healthcare systems gazumped pre-existing orders, and just-in-time contracts with overseas suppliers put in place for an emergency situation were not honoured [INQ000497031\_0009]. PPE was bought by other countries whilst waiting on an airfield to be loaded onto a freight plane [INQ000536351\_0036].
8. The pressure on those working in procurement was enormous [Andy Wood/ 4/157/22; Darren Blackburn/4/67/1; and INQ000536359\_0004] and reflected in working days, isolated at home, of between 16-18 hours each day [Andy Wood/4/50/12; Max Cairnduff/4/26/17; and INQ000536351\_0034]. Some team members had to be moved to other work as they could not sustain working with the pressure and uncertainty [INQ000536369\_0023].
9. Witnesses explained how as a result of these pressures there was little time at the very beginning of the operation for planning for anything other than how to meet immediate needs [Andy Wood/4/161/7-22]. Decisions had to be made very quickly [Darren Blackburn/4/80/7-12]. Max Cairnduff stated that “it was chaotic. The system was rapidly changing and we were doing our best to react. It is hard to dispassionately dissect now decisions which were taken in the heat of the moment with the intention of managing the chaos” [INQ000536351\_0038].

**B. STRUCTURES AND ORGANISATION OF PROCUREMENT - FUNCTIONAL MODEL**

10. The Government Commercial Function (GCF) was created in 2014 in order to improve the commercial competence of government commercial teams [INQ000536361\_0004-5; INQ000497031\_0026]. The organisation of the GCF is covered at length in Section B of the Cabinet Office's Corporate Witness Statement submitted to the Inquiry and dated 5 July 2024 [INQ000497031]. The GCF remained a work in progress in 2020 [INQ000536361\_0007]. One of the distinctive features of the GCF is that senior commercial professionals are centrally employed by the Cabinet Office but most are then deployed on a long term basis to departments [INQ000497031\_0030]. The effect of this in the pandemic was that when help was sought there was a resource of expert commercial specialists – each accredited as having received enhanced training [INQ000497031\_0030] – who could be deployed from various government departments including Cabinet Office, the Ministry of Defence, the Ministry of Justice and the Department for Education [INQ000497031\_0148] to assist in implementing the procurement decisions of DHSC, its arm's length bodies (ALBs) and other departments where necessary. These redeployed staff were specialists in procurement, but not always experienced in procuring the goods and services that were needed in their new pandemic roles: the department to which they were deployed would instruct them on what to buy and how much.

## **C. THE LEGAL BACKGROUND**

11. In the context of the pandemic, those working in procurement had to act in compliance with procurement law and manage the risk of challenge, actionable in the civil court. The emergency provisions of the regulations allowed, as set out below, for so-called “direct awards” to be made. These emergency provisions had rarely been used and it was not clear at the outset of the pandemic how they applied in its particular circumstances. As the Inquiry is likely to want to consider the procurement regulations in detail, further background is provided below.

### **C1 Procurement Regulations**

12. At the time of the pandemic, the procurement laws (derived from EU law) were the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016, with different versions of those Regulations for Scotland and separate Defence and Security Public Contracts Regulations 2011 which applied to defence and security procurements UK-wide.
13. The different regulations applied to procurements of goods and services for different purposes. The most commonly applicable regulations, and those which applied to the procurement of healthcare equipment by DHSC, UKHSA and the Cabinet Office during the pandemic, were the Public Contracts Regulations 2015.
14. The Public Contracts Regulations are “designed to provide a complete code governing the procurement of public contracts by public bodies, referred to as “contracting authorities”” ([2022] EWCA Civ 21, Court of Appeal in *Public First*, at [30]<sup>1</sup>).
15. The Public Contracts Regulations 2015 required contracting authorities to comply with the following principles: (a) non-discrimination, (b) transparency, (c) equal treatment and (d) proportionality. These general principles of procurement are set out in Regulation 18.
16. The Public Contracts Regulations 2015 contained five competitive procurement options [INQ000497031\_0036-7], and set out rules for the design and conduct of each. Each option had compulsory minimum time periods [INQ000497031\_0037-38], plus further time required for the practical steps of running a competition [INQ000497031\_0038-39]. The Inquiry’s expert witness, Professor Sanchez-Graells,

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<sup>1</sup> <https://www.bailii.org/ew/cases/EWCA/Civ/2022/21.html>

gave evidence that an average procurement exercise took over 90 days [Albert Sanchez-Graells/2/18/7].

## **C2 Regulation 32**

17. Regulation 32 of the Public Contracts Regulations 2015 also permitted the award of contracts without a competitive procedure in specified circumstances. This is formally known as the negotiated procedure without prior publication, but is often referred to as a “direct award”.
18. One circumstance in which a direct award is permitted is “insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with”. A direct award is a flexible method of procurement. Unlike the competitive procedures, there are no mandated processes or minimum time periods which must be followed. At the beginning of the pandemic there was very little case law pertaining to Regulation 32 (or its equivalent in other legal codes) either in the UK or in other jurisdictions. This meant that there was no settled view regarding how the regulations applied in the particular circumstances of the pandemic. Two matters concerning the use of Regulation 32 were considered in judicial reviews in 2021. These are relevant to the Inquiry’s consideration of the High Priority Lane (HPL) and are discussed in paragraph 67 below.

## **C3 Use of direct awards**

19. The legal background for the use of direct awards is set out at paragraphs 17-18 above. The widespread use of the procedures described in Regulation 32 (2)(c) was unprecedented for caseworkers. The Regulations did not and could not set out the details of *how* offers should be appraised, negotiated and contracted for [INQ000536420\_0005].
20. It has been asserted [INQ000474994\_009 and INQ000527634\_0141] that the UK used direct awards more and for much longer than other European countries. In his fourth witness statement, Chris Hall set out an analysis as to why such assertions are not supported by reliable data [INQ000587257\_0005-6].
21. Gareth Rhys Williams provided evidence of the GCF’s concern to avoid over-lengthy and indefensible reliance on Regulation 32(2)(c) (see for example

INQ000535017\_0033). He also accepted and regretted that the UK published contracts late [INQ000497031\_0013; INQ000497031\_0046; INQ000536362\_0032].

#### **C4 Guidance**

22. The Cabinet Office develops and publishes policy in relation to procurement. There was no detailed guidance on the use of Regulation 32(2)(c) before the pandemic. Professor Sanchez-Graells stated that he would not have expected this guidance to exist and is not aware of it existing in any jurisdiction because *“we had not been engaging in extremely urgent procurement at this scale.”* [Albert Sanchez-Graells/2/31/22 - 2/32/2]. Regulation 32 was rarely used.
23. On 18 March 2020, the Cabinet Office issued Procurement Policy Note (PPN) 01/20 which gave guidance on the use of direct awards under Regulation 32(2)(c). This guidance is explained in INQ000497031\_0048-51, paragraphs 3.41 to 3.49 and INQ000528389\_0131 paragraphs 6.78 to 6.80. Professor Sanchez-Graells explained that this *“guidance was produced relatively early on in the pandemic”* and *“the guidance was helpful and implementable”* [Albert Sanchez-Graells/2/46/7 - 2/46/16].

#### **C5 Conflicts of Interest**

24. Regulation 24 of the Public Contracts Regulations 2015 dealt with conflicts of interest. The nature and scope of this duty is explained in INQ000528389\_0064 paragraphs 3.120 to 3.122:
- (i) It applies where those “involved in the conduct of the procurement procedure or [who] may influence the outcome of that procedure” (being relevant staff members) have a direct or indirect “financial, economic or other personal interest which might be perceived to compromise their impartiality and independence” in the procurement procedure.
  - (ii) The duty is to “take appropriate measures to effectively prevent, identify and mitigate conflicts of interests so as to avoid any distortion of competition and to ensure equal treatment of all economic operators” (emphasis added).
25. The duty is not strictly to remove any conflict of interest. Further, the proviso underlined above is important to consider when it comes to alleged conflicts of interest in the case of a direct award under Regulation 32. In *Public First*, the Court of Appeal stated at [49] that “We can readily accept that if the strict criteria of Regulation 32 are met it is not likely that Regulation 24 (whatever its scope) will have been breached



independently. But we do not accept that there are no circumstances in which it might have some application.”

26. The Cabinet Office issued guidance in 2019 on managing conflicts of interest, in the form of PPN 01/19 which was explained in INQ000497031\_0057. Professor Sanchez-Graells explained that this was “very recent before the pandemic”, “good guidance” and “quite comprehensive and it also referred back to further materials that could be taken into account” [Albert Sanchez-Graells/2/44/8 - 2/44/23].
27. Regulation 24 guarded against the specific risk that those making the decisions in a procurement exercise have a conflict of interest: i.e. relevant staff members “involved in the conduct of the procurement procedure or [who] may influence the outcome of that procedure” (Regulation 24(2) and (3)). The importance of this is also clear from *Siemens v HS2* [2023] EWHC 2768 (TCC) , where Siemens’s allegation was that two evaluators had a conflict of interest (due to their pensions). The judge, however, said that although they participated in the procurement assessment and reviews, they were not decision makers (paragraph 766). Conflicts of interest considerations would not apply to suppliers or employees of the contracting authority who are not directly involved in the decision-making process [INQ000535017\_0027 and INQ000535017\_0029].
28. The duty in Regulation 24 is not strictly to remove any conflict of interest but rather it is to “take appropriate measures to effectively prevent, identify and mitigate conflicts”.

## **C6 Procurement Act 2023**

29. The Procurement Act 2023 came into force on 24 February 2025, replacing the regulations set out above.
30. Key changes made in the Procurement Act 2023 are explained in INQ000497031\_0233-243, Section G. These include:
  - a. Replacing multiple different competitive procedures in the Public Contracts Regulations (2015) with a single “competitive flexible procedure” - which offers even greater flexibility.
  - b. The greater obligations on authorities in respect of conflicts of interests [INQ000497031\_0241]. This includes:
    - i. The obligation to produce a conflicts of interest assessment specific to each procurement before publishing a tender or transparency notice, and then

keep it under review (Section 83). This obligation applies to direct awards too.

- ii. The extension of the scope of conflicts of interests to include a Minister acting in relation to the procurement (Section 81(2)(b)).
- c. An additional ground in the new Act (a provision equivalent to Regulation 32 direct award is retained in Section 41) to make direct awards where a Minister makes regulations providing that specified contracts or class of contract can be made by way of direct award. Such regulations would negate the need for contracting authorities to consider the justification for a direct award on a case-by-case basis thereby reducing the burden of, for example, publication. The Minister's power to make such regulations is limited to circumstances where the Minister considers such regulations to be necessary to protect human, animal or plant life or health, or protect public order or safety.
- d. Significantly greater obligations on authorities in respect of transparency. Under Section 44 of the Procurement Act 2023 there is now an obligation on a contracting authority to, before it makes any direct award, issue a transparency notice stating its intent to do so. Under the Public Contracts Regulations 2015 such a notice was voluntary. The transparency notice required under the Procurement Act 2023 must also be preceded and followed by the same other notices required for any other procedure where applicable (for example, but not limited to, a procurement termination notice if the direct award is ultimately not made, or a contract award and contract details notice if it is).

## **D. OPERATIONAL RESPONSE**

### **D1 Background**

31. By way of initial background, there were few pre-prepared buying strategies in the departments to which GCF staff were deployed for buying the required goods in an emergency such as the pandemic. The situation that GCF staff faced upon deployment in mid-March 2020 was already very severe. Witnesses supported by the Cabinet Office noted that procurement had not commenced promptly once it was thought likely that there would be a deficit of key items (see on ventilators, Gareth Rhys Williams/3/117/7; and PPE, Andy Wood/4/161/2).
32. In response to the emergency situation, the buying of key commodities was centralised rather than left to distributed buying teams. This reduced internal competition for the same goods, which remained a concern [Andy Wood/4/180/14], and centralised intelligence on the market and on demand.

### **D2 PPE - the Buy Cell**

33. A key focus of the hearings has been on the procurement of PPE during the pandemic and specifically what has become known as the High Priority Lane (HPL). The formation and operation of the HPL is described in detail in the Cabinet Office's corporate witness statements. Given the Inquiry's keen interest in this area, this statement summarises evidence that has been heard about its formation and operation. This section gives an overview of evidence related to the PPE Buy Cell. It introduces the HPL and explains its position within the PPE Buy Cell, although the evidence directly concerning the nature and performance of the HPL is set out in a subsequent section.

### **D3 Why the Parallel Supply Chain (and the PPE Buy Cell) was set up**

34. The Cabinet Office had no role in procurement of PPE for the NHS pre-pandemic. Instead, procurement was managed by Supply Chain Coordination Ltd (SCCL), a company wholly owned by DHSC, buying on behalf of (but not exclusively for] NHS Trusts and other health and social care bodies directly [see for example INQ000497031\_0140].
35. In mid-March 2020, SCCL informed the Cabinet Office that procuring and distributing the quantities of PPE required for the pandemic would exceed the capacity of its buying team, its warehouses and its distribution channels [INQ000497031\_0142]. As a result of the structure of procurement teams within government departments set out above, members of the GCF could be deployed to help form the parallel supply chain in DHSC. Cabinet

Office staff from the Complex Transaction Team took particular responsibility for forming and leading the buying activity within the Parallel Supply Chain, under the leadership of Andy Wood [INQ000540488\_0002]. The organisation that they set up, under DHSC governance, became known as the PPE Buy Cell.

#### **D4 How the PPE Buy Cell was staffed initially**

36. As well as Cabinet Office officials, the PPE Buy Cell staff included many volunteers [INQ000497031\_0148] from commercial departments all over government (and from some other public sector organisations). The time taken to assemble this team affected the ability of the Cell at first to deal with the sheer volume of offers received [INQ000497031\_0165]. Most team members did not have expertise in purchasing PPE, however, although PPE needs to be manufactured to exacting standards [Andy Wood/4/165/6], PPE as a commodity is not in itself a complex good to procure [Chris Hall/4/152/17], and those who did have experience in procuring PPE (through SCCL) all worked within the PPE Buy Cell [Chris Hall/4/152/24].
37. Professor Sanchez-Graells observed that there was no loaning of procurement staff from NHS organisations to the PPE Buy Cell [INQ000539153\_0089]. Andy Wood set out that individuals were in fact deployed from the NHS: for example Michael Pace (from NHS London), who initially led China Buy [INQ000497031\_0160], and Preeya Baillie [Director of Procurement Transformation and Commercial Delivery, NHSI/E], and further NHS staff joined the PPE Buy Cell later [INQ000540488\_011]. SCCL also needed to keep resources to continue to buy and supply items other than PPE, because the healthcare system needed other goods to continue to treat patients [Andy Wood/4/159/11].
38. The Inquiry's expert witness, Professor Sanchez-Graells, raised a concern that "not fully trained consultants could have represented a significant proportion of the staff working in the PPE Buy Cell" [INQ000539153\_0090]. The PPE Buy Cell personnel were predominantly civil servants: by 23 June 2020, only 34 of the 793 staff who had worked in the PPE Buy Cell were consultants, or approximately 4% [INQ000528389\_0021]. More than 80% of the staff were commercially trained and experienced [Chris Hall/4/153/10].

#### **D5 Initial processes and structure**

39. The demand for PPE was already such that by mid-March 2020, when the PPE Buy Cell was being set up, the procurers needed to purchase PPE at the same time as the organisation was being created. The structures that were set up at this time were therefore shaped by the pressures that the PPE Buy Cell were under: particularly the limited

understanding of the rapidly changing PPE market and the fact that many individuals came from disparate organisations, working from home on different IT systems [Jonathan Marron/3/158/1; Max Cairnduff/4/26/14; Chris Hall/4/116/22]. In particular:

- (i) Professor Sanchez-Graells' concern was that "it would be extremely difficult to adequately train staff without prior experience of healthcare sector procurement at speed" [INQ000539153\_0090]. The initial structure of the Buy Cell (with separate teams each dedicated to just one part of the process) mitigated for the lack of expertise of many of the staff in purchasing PPE, as it allowed procurers to be taught their role in a few hours [INQ000497031\_0161]. Further, the opportunities caseworkers did not need to know the detail of the products to the same level as those in Technical Assurance, whilst Technical Assurance was carried out by a large team of quality assurance specialists from the Ministry of Defence who were trained by the Clinical and Product Assurance unit (CaPA) from SCCL [INQ000497031\_0178].
  - (ii) The Buy Cell involved various buying streams, leading into Technical Assurance and Closing teams, which reflected different routes by which leads for PPE were being identified. As the team expanded in the last week of March and early April 2020 these were formally recognised as SCCL, UK Buy, and China Buy. At this stage, the strategy was to maintain a number of different buying routes - as one witness put it, 'to keep many hooks out and over the boat' [INQ000540488\_0030].
40. It was acknowledged at the time that, while robust and simple, this was not the most efficient structure, as reflected in Chris Hall's email of 13 April 2020 [INQ00052754; Chris Hall/4/115/25]. As discussed in INQ000497031\_0031 paragraph 4.363 this structure evolved over the few weeks of the PPE Buy Cell's operation to increase its efficiency and effectiveness. By 9 April 2020 work was underway to try to develop a product-based category structure [Andy Wood/4/162/2; 4/163/25], and by 24 April 2020 (just over a fortnight later), the first Rapid Response Team [INQ000497031\_0186] took its first case [INQ000536369\_0026].

#### **D6 Processes applied after the initial contact**

41. The Technical Assurance team and process, and all subsequent steps – the Closing Team, the due diligence, the Clearance Board and the Accounting Officer approval – were independent of the HPL and other Opportunities Teams and, apart from offers processed by the former SCCL team, once an offer reached Technical Assurance all were processed

in a very similar way [INQ000497031\_0174; INQ000528389\_0066; and the findings of the Government Internal Audit Agency (GIAA) [INQ000497031\_0221]).

42. The Technical Assurance team restructured itself in mid-April 2020, allocating team members to interface with China Buy, Make, and general opportunities cases as well the HPL [INQ000536351\_0019-20, Max Cairnduff/4/48/16]. This meant that caseworkers could copy in a named individual when raising queries.

#### **D7 Issues encountered in PPE buying**

43. It has been asserted in evidence [INQ000539153\_0092, INQ000539153\_0117] that the PPE Buy Cell was deficient in that it bought too much PPE, more than could be used by the health and social care system, and that too high a proportion of the PPE purchased turned out to be not fit for purpose.
44. The PPE Buy Cell (including SCCL and together with UK Make) bought 38 billion items of PPE in 2020 and 2021. The way in which the 'demand signal' (as given to the Cabinet Office procurers) evolved is set out at INQ000528389\_0044-49. The PPE Buy Cell bought in accordance with the instructions of DHSC: initially as much as could be obtained from the market, and later in accordance with a demand model constructed by McKinsey. This model was based on the number of cases forecast by the Reasonable Worst Case Scenario ("RWCS"), and usage of PPE specified by infection prevention and control specialists [INQ000571763\_0026].
45. In addition, these demand figures were inflated by approximately 20% to allow for assumed levels of failed contracts and non-conformant quality of product. In the event, 90% of product was delivered and deemed fit for use (as evidenced by Jonathan Marron of DHSC [INQ000528391\_0007, paragraph 21]) and explained in more detail below see paragraph 48), only half the cases forecast by the RWCS materialised and usage patterns differed from those recommended. Jonathan Marron's evidence [INQ000528391\_0018, paragraph 18] states that in using the RWCS as a basis for estimating demand, the DHSC recognised that it was "more likely to overbuy than underbuy. The Department accepted this risk, prioritising securing enough PPE for the RWCS."
46. The Inquiry's expert witness suggested that non-participation in the EU's Joint Procurement Agreement (JPA) contributed to overbuying [INQ000539153\_0010]. The Cabinet Office's first corporate statement explained the difficulties faced by this

collaborative buying effort [INQ000497031\_0217], and as was raised with Professor Sanchez-Graells in commentary on his draft report, and with regard to the JPA<sup>2</sup>:

“according to the Commission, between the middle of April and the end of August 2020, only six contracting parties had placed orders for approximately seven million PPE units.... The Netherlands ordered two million FFP3 masks on 30 June 2020 with delivery due to begin in the end of July; Bulgaria ordered 55 ventilators on 28 May delivered by 31 July; Austria ordered 500,000 FFP2 masks on 25 May and their delivery started on 15 June; Estonia ordered 450,000 FFP2 masks on 18 May; Latvia ordered 25,000 goggles and 100,000 surgical masks on 7 May with their delivery due to start on 8 June; Belgium ordered 2.6 million FFP2 masks on 28 April; and Luxembourg ordered one million gloves on 15 April”.

47. The vast majority of EU procurement was not therefore through the JPA, and the deliveries via the JPA were much smaller and much later than were needed for the UK.
48. Not all PPE bought was immediately suitable for deployment into the health and social care system. Each purchase was subject to a ‘technical assurance’ process where product documentation was checked against specifications drawn up by IPC specialists. While some inspection was done at the point of production, this was impossible in many cases due to travel restrictions and lack of personnel [INQ000497031\_0167]. Physical inspection was conducted at the earliest practicable moment, usually in the distribution centre in the UK. On arrival, 10% of stock (by volume) was found to be not immediately suitable for distribution, and thus marked “Do Not Supply” (DNS). This figure of 10% includes product that was conformant with specification but not in the format preferred by the NHS (for example aprons in flatpacks rather than on rolls). The conclusion is that Technical Assurance and other prior assessments of product quality were more effective than expected when including a ‘shrinkage’ target in buying targets. A fuller explanation of ‘DNS’ was given by Jonathan Marron of DHSC in his oral evidence [3/130/21].

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<sup>2</sup> ‘Public Procurement Regulation in (a) Crisis?’, Arrowsmith et al, page 185

## **E. THE HIGH PRIORITY LANE**

49. The Chair said “plainly [the HPL] was a mistake, everyone seems to agree that now” [3/183/16-17]. Witnesses supported by the Cabinet Office said that this mechanism should not be used again in any pandemic [Max Cairnduff/4/33/15 and INQ000536351\_0040; Chris Hall/4/114/14] and that it has caused damage to the Government’s reputation for probity in the eyes of the public, as has the failure to publish contract award notices promptly [INQ000536362\_0034]. As set out below (paragraphs 68-71), it was found to be unlawful. The section relating to recommendations below considers how it can be avoided in future.
50. This section summarises evidence that has been heard (and in particular the evidence from those witnesses supported by the Cabinet Office who worked most closely on the HPL: Max Cairnduff, Chris Hall, Andy Wood and Dawn Matthias) regarding the origins of the HPL, its leadership and staffing, evidence given about its purpose, changing perceptions of its purpose, and its performance in practice. It then goes on to discuss a number of areas where contradictory evidence has been advanced.

### **E1 The origins of the High Priority Lane**

51. The corporate witness statement of Clare Gibbs said at 3.91 [INQ000528389\_0056] that “there were various impetuses which shaped the formation of the HPL. One factor was the disruption that ... referrals were causing to the wider system. Another was that offers made to the HPL (including through links such as Lord Feldman or Lord Bethell) were generally expected to be credible, larger offers. Individuals who were involved in the HPL will be able to speak themselves to which of these factors were of greater importance for them in the way that the HPL operated.”
52. It was noted in the corporate witness statement of Clare Gibbs and other individual witness statements that even before the PPE Buy Cell was created, offers to supply PPE were received by the UK government via SCCL, DHSC or NHS and GCF, including to the email address GCFcovid19enquiries@cabinetoffice.gov.uk. Although the PPE Buy Cell set up an online questionnaire (later replaced by a webform), some 400 offers had already been received by the date the questionnaire was set up on 20 March 2020 [INQ000528389\_0052]. Many offers continued to come in through email [INQ000528389\_0053], and into April 2020 some suppliers offering large quantities of goods were unwilling to complete the survey, a point picked up in the morning meeting notes on 3 April 2020 [INQ000540488\_29-30]. Other offers were being directly sourced by Lord Feldman, appointed by Lord Bethell to be a senior DHSC envoy to engage with



offers of support. Those who were referring offers in were typically unhappy with a lack of communication from the PPE Buy Cell [INQ000540488\_0027]. There were therefore two routes for new suppliers (direct email and via the webform) which had developed organically [INQ000540488\_0026 and INQ000540488\_0062, Andy Wood/4/173/19; Max Cairnduff/4/4/13]. The direct email route became what is now known as the HPL.

53. Further detail was set out in Emily Lawson's witness statement for this inquiry. On 22 March 2020, Emily Lawson tasked Hannah Bolton of the consultancy firm Baringa to be a point of contact for 'good-looking' leads via ministers and industry [INQ000528389\_0053-54]. Emily Lawson explained in her witness statement that it was her view with regard to the website that "the sheer volume of offers was so high that it became impossible to sift and locate the more credible ones with any speed" [INQ000531295\_0018]. She tasked Hannah Bolton to start to identify those which had the greatest possibility of coming to fruition [INQ000531295\_0018]. One factor that might be relevant was whether the offer was from a known or reliable supplier of PPE or from a known/reliable referrer [INQ000531295\_0020]. She explained that she was also concerned to minimise 'noise' from senior referrers in order to give the NHS as much confidence as possible [Emily Lawson INQ000531295\_0019]. By 28 March 2020, Hannah Bolton was referred to as being High Priority and VIP Assessment and Closing Lead. For context, by this time the total number of caseworkers dealing with offers that were coming through the webform had been increased to around 20 [INQ000528389\_0054]. Hannah Bolton was receiving any offers referred by ministers, MPs and senior officials, while high volume and readily available offers coming through the portal were being prioritised for a swift response [INQ000528389\_0054-55; INQ000533248].
54. It was recorded at the time that some significant suppliers had decided to approach the Government directly rather than filling out the webform. The minutes of the 8:30 morning meetings with Emily Lawson recorded that the risk of missing out on offers from suppliers offering large quantities who were unwilling to complete the survey was known at the time [Andy Wood, INQ000540488\_0030, see also Dawn Matthias at INQ000475069\_0013]. In the circumstances of a frenetic market and the desperate need for PPE it was difficult to turn a blind eye to such offers [Dawn Matthias at INQ000475069\_0013; INQ000536362\_0030], or to introduce delay by requiring them to fill out further forms. Max Cairnduff stated that it was not realistic to ask an international global corporation who had contacted a Minister of State in such circumstances to fill in a webform [4/42/14]. A witness supported by the Cabinet Office noted that the suggestion of Professor Sanchez-Graells of an 'electronic catalogue' for PPE would have been impractical to introduce at the time in the circumstances of the Covid pandemic in 2020 [Chris Hall/4/115/1-25]. Quite

apart from the time and effort to build such a catalogue, the use of automated tools to reject offers was beyond the technology available to the GCF in 2020 and had not been tested in the courts.

## **E2 Leadership and staffing of the High Priority Lane**

55. On 1 April 2020, Max Cairnduff was appointed to lead the team which had been set up by Hannah Bolton. In his evidence he noted that the role of the HPL expanded and narrowed over time, in part due to its resourcing and the amount of offers it received. In particular:
- (i) the numbers of staff allocated to the HPL increased over time. Until mid-April 2020 there were four core caseworkers on the HPL [INQ000536351\_0003], in comparison by 9 April 2020 there were 55 caseworkers allocated to the general route [INQ000536351\_0015]. This increased on 16 April 2020 [INQ000536351\_0030] but in late April 2020 only 7 of the 14 positions that were judged to be needed for the HPL team to cope with the volume of offers it was receiving had been filled [INQ000536351\_0033];
  - (ii) backlogs also increased on the HPL throughout April 2020 (described at paragraph 62, see also for example Andy Wood [INQ000540488\_0038]).

## **E3 Evidence given about role and purpose of High Priority Lane**

56. As set out at paragraph 53, the reduction of 'noise' was a central role of the High Priority team before Max Cairnduff was appointed. This reflected in turn views from ministers that it was necessary to receive feedback on referrals [INQ000531295\_0026]. On 27 March 2020 the office of Gareth Rhys Williams circulated a note to the Chancellor of the Duchy of Lancaster and No.10 which stated that "the newly stood up [Buy] team needs space to operate" [INQ000528389\_0054]. However the 'noise' created by enquiries regarding progress continued, and was for example raised at the 8:30 meetings led by Emily Lawson where it was described as a distraction [INQ000540488\_0028-29].
57. Witnesses supported by the Cabinet Office noted that the disruption caused by the noise was significant [INQ000536351\_0005]. Max Cairnduff gave examples of the number of PPE Buy Cell staff involved in responding to deals in which senior referrers had become involved and how it was slowing the system down (as described in the emails set out at [INQ000536351\_0016]). An email exhibited to that statement, sent at the very beginning of April 2020, when the HPL was being established, showed Max Cairnduff, Jo Newman, Richard James, Darren Blackburn, Andy Wood and the office of Gareth Rhys Williams all

involved in responding to the chasing of one offer, which did not lead to a contract [INQ000534941].

58. Witnesses supported by the Cabinet Office explained that the context for this chasing was a lack of confidence by ministers in the system at the time as to how long it was taking to progress offers, with PPE shortages being a prominent media story [INQ000540488\_0028]. Max Cairnduff described a peer raising a case with Lord Bethell where she enquired whether the team had 'dropped the ball' and if so whether it was a systemic issue. Max Cairnduff considered it to be legitimate for ministers to investigate whether officials were doing their job properly [Max Cairnduff/4/16/8-25, see also Michael Gove/5/162/21] - despite such chasing placing very much additional stress on his team [Max Cairnduff/4/17/3].
59. It was the view of Gareth Rhys Williams that it would be unrealistic to try to stop ministers and other public figures from seeking information about the status of an offer [INQ000536362\_0031]. This was also the position of those ministers who were in place during the pandemic - Michael Gove, who was asked "Would it not be beneficial to have a system in the future that protected civil servants from that sort of ministerial interference?", responded: "Absolutely not. I think that would be totally counterproductive. And I think it misunderstands democratic accountability." [Michael Gove/5/154/1; and see also Matt Hancock/11/128/12].
60. The Inquiry raised questions about pressure placed on officials and will want to consider the evidence of PPE Buy Cell witnesses. For example:
- (i) Andy Wood said: "It is true that cases on the HPL were expected to come under greater pressure from senior people. We resourced the team with experienced staff to handle this (because we believed - rightly - that some of these offers would be good ones). It is normal work for commercial professionals to remain objective and to absorb pressure from more senior members of the government, and we are trained to put this out of our minds when it came to buying decisions. It was never my view that a deal on the HPL should go quicker because of where it came from, but only that it should go quicker because it was the right kind of deal to go quicker" [INQ000540488\_0033].
  - (ii) Max Cairnduff said: "I should note that although the Inquiry is clearly interested as to whether there was pressure placed on HPL caseworkers, we were in a crisis and of course it was a high-pressure situation. There was pressure from ministers and others to ensure that the process was working properly. This was

however not, in my understanding, pressure to get a particular outcome for any individual supplier" [INQ000536351\_0002]. He added that the "most difficult" issue for referrers was "the limbo of not knowing what was happening to an offer" [INQ000536351\_0023].

#### **E4 Changing perceptions of role and purpose**

61. The role of the HPL changed over the few weeks of its existence. As an example, on 2 April 2020, it was a live question as to whether the team should be receiving offers which were from large companies and for priority goods regardless of whether or not they had been referred to the PPE Buy Cell by a senior referrer [INQ000536351\_0009]. It was at this stage that Max Cairnduff changed the name to "High Priority Appraisals" on the basis that the team was not about VIP status but more about offers which came through known sources, which "somewhat reduced the risk that they were ill-conceived or fraudulent" [INQ000536351\_0008]. But by 6 April 2020 it had been resolved that the team was not sufficiently resourced to deal with more offers. A reliable high volume source that came through the survey was to be processed on the normal route but with a priority tag to ensure it was picked up [INQ000536351\_0009].
62. By mid-April 2020, however, Max Cairnduff's view was that the HPL had acquired an additional role as a 'failure' route to which anyone would be referred who had escalated to senior referrers a grievance about the way that they had been processed on another route. It was also however receiving some credible high volume offers of current priority items which were not related to senior referrers [INQ000536351\_0028-29]. From 26 April 2020 Max Cairnduff attempted to reduce down its scope to focus only on suppliers referred by ministers directly and major corporate or intergovernmental offers and donations so that it could deal with its backlogs [INQ000536351\_0032] (though in the event the HPL continued to receive and process offers from a wider set of referrers than Max Cairnduff had thought feasible [INQ000536351\_0033]).
63. As the scope of the HPL was not always clear (and varied over time), it was the view of some people at the time that the HPL was for high quality offers even without connection to MPs, ministers or senior officials [INQ000536359\_0013]. Such offers would be processed by the HPL, and prioritised, but in line with the prioritisation criteria which crossed across all routes. This added to the backlog.

#### **E5 Performance in practice of the High Priority Lane**

64. While it was clear that the number of offers coming through the webform caused difficulties for the Opportunities teams processing those offers, it was also said in evidence that the HPL struggled to cope with the number of offers it was expected to process. As well as about 2,200 offers from the 420 companies [INQ000528389\_0056-57] for which case files have been identified, over 800 donations were processed [INQ000528389\_0057] and many other offers were rejected by an initial triage or passed to other teams [INQ000528389\_0058].
65. On 4 April 2020, Max Cairnduff said of the HPL “.... we're not always the fastest route. My team is fairly small and tends to be dealing with the politically sensitive ones so there's not yet huge bandwidth (I'm bringing on extra resource but don't have it yet). I didn't want us to be the source of delay” [INQ000536351\_0015]. On 8 April 2020, Darren Blackburn said that the “VIP route is facing a backlog... if they are new suppliers they should go through [the survey]... If their volumes are such that they are high priority they will be contacted quickly and should fly through the system” [INQ000536351\_0022]. On 18 April 2020, [name redacted], a leader on the non-HPL route, said that the HPL team were “already hard pressed and other parts of the Opps team are better able to progress non-VIP cases” [INQ000536351\_0030].
66. A number of points have arisen in evidence about the performance in practice of the HPL. These next paragraphs provide evidence from witnesses supported by the Cabinet Office regarding these points. These include: legal judgments regarding the HPL; the ‘political’ affiliation of referrers to the HPL; the speed of processing through the HPL; the outcome of pressure from suppliers and referrers; the implications of a higher success rate for companies whose offers were initially processed by the HPL; whether HPL suppliers achieved higher prices for comparable goods; whether contract performance was better or worse; and, a comparison between the HPL and other buying routes.

#### **E5.1 Legal judgements regarding the HPL**

67. As set out by Clare Gibbs in her corporate witness statement at INQ000528389\_0083 “the judgement given by Mrs Justice O’Farrell in the judicial review proceedings brought against DHSC considered equal treatment. The judgement stated that the use of the HPL breached equal treatment rules, although the specific contracts considered during the judicial review would likely have been awarded in any event, based on the merits of the offers. It will obviously be for different witnesses to explain their view of the HPL and for the Inquiry to reach its own conclusions on their evidence. I note that the extent of the advantage in any particular case should be carefully evaluated, as it was in the judicial review.” It was not put to any witness that any specific deal would not have been

concluded were it not on the HPL. Any advantage gained as a result of this unequal treatment should be considered in the light of this evidence.

68. It was acknowledged by witnesses supported by the Cabinet Office that the status of the referrer would not in itself be a good reason for giving the supplier a greater prospect of getting a contract [Max Cairnduff/4/35/1]. Witnesses including Chris Hall, Max Cairnduff and Dawn Matthias each were aware of the potential for the HPL to have at least the appearance of unequal treatment [Max Cairnduff/4/35/9-13; INQ000536369\_0008; INQ000475069\_0015].
69. The question of whether this represented a contravention of the Public Contracts Regulations 2015 has been debated, including by the Inquiry's own expert witness, Professor Sanchez-Graells [INQ000539153\_0078-79].
70. The outcomes of the two relevant judicial reviews, in the opinion of the expert witness, appear to have some points of contradiction. Since the operation of the HPL has not been considered by the Court of Appeal or in any court action since these judgments were handed down, the evidence of Professor Sanchez-Graells shows that there is still some uncertainty over whether equal treatment is mandated in situations of extreme urgency where Regulation 32(2)(c) applies. The Inquiry may choose to reflect on the uncertainty present at the time that the PPE Buy Cell and the HPL were set up.

## **E5.2 Political affiliations of referrers**

71. With regards to the nature of the referrers to the HPL, (as set out at [INQ000528389\_0061 paragraph 3.110]), an analysis was carried out of the spreadsheet showing approximately 420 opportunities where the Mendix case file records that the potential supplier had been referred through the HPL, and where the referrer's name is known it is also exhibited. In 115 of the offers on the spreadsheet the referrers were MPs or members of the House of Lords or their offices. 24 of these referrals were from Matt Hancock MP, and 38 from Lords Agnew, Feldman, Bethell and Deighton (each of whom were publicly connected to PPE procurement, and thus obvious points of contact for aspiring vendors), meaning half of the referrals from MPs or members of the House of Lords which have been identified came from 5 people (or their offices), all of whom had clear roles in relation to PPE. 53 offers were referred by other MPs or Lords or their offices. On the other hand, there were 190 examples of referrals which did not come from MPs or Lords, of which 68 are stated in the spreadsheet to have come from officials working for organisations related to healthcare (NHS, DHSC, SCCL, PHE). A further 40 are stated to have come from officials in FCO/JACT/DIT/DFID or GSSEP (all from an overseas network of some kind), and 5

from the Type II initiative; 41 came from other officials, often within the Cabinet Office (including 7 listed as coming through shared Cabinet Office mailboxes); 36 are named as coming from referrers which do not fit into the above categories. For the cases where a referrer has been identified, therefore the large majority (over 70%) came from the office of Matt Hancock MP or one of the four Lords identified above who had a role in PPE procurement; officials involved in the healthcare response; officials involved in overseas procurement work, or other officials.

72. Cabinet Office caseworkers described receiving referrals from across the political spectrum and set out that they had no intention to benefit any particular demographic of people, including on the basis of political affiliation (for example [INQ000540488\_0062]; [INQ000536369\_0020]; [INQ000536351\_0024-25]).

### **E5.3 Were HPL offers advantaged by quicker processing?**

73. It was the impression of witnesses that HPL offers reached Technical Assurance more quickly than others [INQ000536369\_0009; Chris Hall/4/140/21; INQ000536359\_0020; INQ000475069\_0017]. However, the corporate witness statement of Clare Gibbs [INQ000528389\_0070-71], and the witness statement of Chris Hall [INQ000536369\_0011], included analysis which identified that the speed with which an 'acceptable offer' (an offer which was for priority goods that were in demand) progressed through to contract was comparable for both HPL cases and for non-HPL cases: the average time to reach the issue of a purchase order was around 3.5 weeks.
74. The entry route to the HPL was via email. First contact with the supplier was a phonecall from a caseworker, rather than via the webform. The target for contact by a caseworker was 24 hours. Max Cairnduff set out how this target worked in practice: it was an informal target, which was simply for the first contact, and was important because without it the supplier would not know that their offer had been picked up (as they would have done had they filled in a survey). The target was not policed and Max Cairnduff referred to it only twice in his emails whilst he worked on the HPL. An initial response might state that the Buy Cell had received the offer and was planning to get back to the supplier. In any event, offers that came in to the HPL started off behind others, since the HPL case worker still needed to get some initial information from the supplier which other Opportunities Teams had from the start from the completed questionnaires from the survey [INQ000536351\_0021-22; INQ000475069\_0023].

### **E5.4 Did pressure from suppliers and referrers lead to inappropriate awards?**

75. The role of caseworkers on the HPL was twofold: to obtain information from a supplier and thus either reject an offer or progress it to Technical Assurance; and to provide feedback to a referrer, when requested, of the progress of an offer.
76. There was pressure on the caseworkers on all routes. Dawn Matthias [INQ000475069\_0004; INQ000475069\_0010; INQ000475069\_0017], said she experienced pressure from suppliers more than referrers, and for non-HPL offers in the same way as for HPL offers.
77. Max Cairnduff considered that the HPL was intended to insulate other teams such as Technical Assurance and Closing from such pressures [4/23/19]. Caseworkers flagged offers for prioritisation on the basis that they were urgent deals or for highly sought products [INQ000536351\_0027]. However Max Cairnduff and Dawn Matthias [INQ000536351\_0023; INQ000475069\_0017] acknowledged that on occasion the HPL team raised with Technical Assurance that an offer was causing 'noise' and asked for updates or for it to be progressed [INQ000536351\_0027] - though Max Cairnduff stated that progression meant reaching a decision on acceptability, not insisting that Technical Assurance 'pass' poor quality equipment [Max Cairnduff/4/11/21].
78. In any event, even if 'noise' was relayed to Technical Assurance, the head of Technical assurance, David Moore made it explicit in his emails to Max Cairnduff on 9 April 2020 that his team would not prioritise based on VIP status and wrote "I do not worry about hurting a VIP feelings that is for you guys to manage" [INQ000536351\_0015; INQ000536351\_0024]. Although he did not give evidence in this module, David Moore's evidence in the Ayanda judicial review was that "It is absolutely correct to say that some HPL cases were prioritised through [Technical Assurance], but that was because they were seen as being potentially good offers of priority products in high volumes. Similar offers were prioritised from the other Opportunities Teams as well as the China and Make Teams" (paragraph 382 judgment<sup>3</sup>). Max Cairnduff did not believe that Technical Assurance prioritised based on VIP status [INQ000536351\_0015].

#### **E5.5 Did a higher success rate of the HPL demonstrate bias?**

79. The proportion of offers on the HPL which led to orders being placed was 6%, whilst on the non-HPL it was 1.4% [INQ000497031\_0191]. Approximately 11.86% of suppliers who were processed through the HPL obtained at least one contract, compared to 1.13% of

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<sup>3</sup> <https://www.bailii.org/ew/cases/EWHC/TCC/2022/46.html>



suppliers on the non-HPL [Chris Hall/4/147/7-18]. On both routes, the vast majority of offers that were made did not proceed to contract.

80. It was put, for example, to Chris Hall that the above statistics reflected an advantage that offers on the HPL had over offers on other routes. He contended that the imbalance reflected the nature of the offers in each queue [Chris Hall/4/150/11], on the basis that there were a higher proportion of quality offers in the HPL. There was a qualitative difference between the offer set processed by the non-HPL and the HPL streams [Chris Hall/4/145/16, INQ000497031\_0191].
81. Andy Wood, who had sight of the offers coming through all routes, stated that “the HPL was dealing with significant, credible offers from major companies (such as Amazon, Unilever, Bunnings and others) who had come into contact with the government via ministers and senior officials. It was not only the size of the company that mattered, but the credibility of being able to provide actual PPE in the crisis, and again individuals such as Lords Agnew and Feldman and senior officials (particularly in DHSC and the NHS) had knowledge of credible companies, which were coming through the HPL. Had the HPL not been providing a significant number of good offers we might well not have kept it” [INQ000540488\_0030]. In his statement, Max Cairnduff said that his intention was to wind down the HPL in late April 2020 but the HPL was still providing good offers to closing [INQ000536351\_0031].
82. Witnesses supported by the Cabinet Office gave evidence about the quality of offers on the general route. Andy Wood’s evidence was that “...after the publicised requests for help, by the end of April/early May [2020], we found that most of our resources on this route [the non-HPL route] were being expended working on offers which were not in fact taken up, even though we continued to increase resources and restructure ways of working to try to make the work more effective” [INQ000540488\_0021-22]. Chris Hall’s analysis of the offers on the general route was “that a significant number of the offers made to the general opportunities teams were of poor quality. For example, in many cases the potential supplier failed to provide sufficient or accurate information, they failed to respond when repeated attempts were made to contact them or they failed to offer goods which we were seeking.” [INQ000536369\_0011-12]. A full analysis of the respective reasons for offers being rejected on both the HPL and non-HPL is set out at 4.492 of INQ000497031\_0191 and referred to in oral evidence by Max Cairnduff [Max Cairnduff/4/20/17].

#### **E5.6 Did HPL suppliers achieve higher prices?**

83. The corporate witness statement of Clare Gibbs described the detailed pricing analysis carried out by the GIAA, an executive agency of HMT, the role of which is to provide central government with objective and independent insight and assurance. This covered all buying routes (including SCCL). INQ000528389\_0068-69 reported that the HPL offered the cheapest buying route in three categories, the most expensive in three categories, and in the middle (of three) in the other four categories.
84. The third witness statement of Chris Hall responded to allegations made in the media relating to one specific deal on the HPL, that the goods had been procured for “twice the going rate” [INQ000475196\_0005].
85. The fourth witness statement of Chris Hall responded to assertions made by the Anti-Corruption Coalition that PPE purchased through the HPL was 80% more expensive than it would have been if purchased at average prices. The definitive view on what was bought and what was paid for it should be sought from DHSC.

#### **E5.7 Were contract outcomes worse for HPL suppliers?**

86. Witnesses have also been asked questions about the quality of contract performance on each route once a contract was signed. Whether the contract that was ultimately signed had difficulties or not in practice addresses a different point to the analysis in section E5.5, which is concerned with the proportion of good and bad offers on each route. Although the quality of contract performance was for DHSC and not the Cabinet Office (Cabinet Office not being involved in the receipt or distribution of goods), and contract issues did not necessarily mean that there were product quality issues, evidence given by Jonathan Marron of DHSC was that a proportion of goods were labelled 'do not supply' (DNS) on arrival at the distribution centre in Daventry. This labelling was for a variety of reasons, varying from caution on the part of the inspectors, through to non-compliant product. CTI put to several witnesses that 55% of contracts with HPL suppliers had some DNS stock, compared to 38% of non-HPL contracts (i.e. China Buy, UK Make, UK Buy outside of the HPL) suppliers. The Cabinet Office understands that DHSC has supplied detailed evidence to the Inquiry regarding the final outcome of DNS stock.

#### **E5.8 The High Priority Lane: comparison with other buying routes**

87. As noted at paragraph 39 above, the buying streams of the PPE Buy Cell were SCCL, China Buy and UK Buy, with the latter being split into what came to be called the High Priority Lane and the general, or portal, route. In addition, a separate team titled 'UK Make' engaged companies with the potential to manufacture PPE in the UK.

88. Andy Wood gave evidence as to how the buying streams were resourced throughout the period of the PPE Buy Cell. Particular priority initially was given to China Buy. It was (along with SCCL) treated as a priority target over UK Buy suppliers, and was resourced to work 24 hours a day on fewer cases than the HPL [INQ000540488\_0039]. This prioritisation caused delays to other routes, including the HPL [INQ000536369\_0024; INQ000536351\_0025-26]. Likewise, significant resources were given to the general ('portal') New Buy route, so as to ensure that good offers on that route were swiftly picked up and prioritised [INQ000540488\_0037]. On 30 March 2020, Richard James was working to improve the prioritisation of offers on the general route [INQ000536420\_0020-21]. This continued to improve with the introduction of Mendix for the general route on 9 April 2020 [INQ000536420\_0016-17] (the HPL team was transferred onto Mendix later, on approximately 17 April 2020 [INQ000536351\_0028]).
89. Emails at the time give an indication as to how the different opportunities routes were viewed. There were dedicated caseworkers for each offer on each route. From her personal experience as a caseworker on both the HPL and the non-HPL, Dawn Matthias set out how she was chased by suppliers on both routes, and responded to them and raised issues with Technical Assurance on both routes [INQ000475069\_0015-16]. Chris Hall's evidence was that on both the HPL and the non-HPL following up a single lead might entail dozens of phone calls [Chris Hall/4/105/17-25]. The challenges faced in resourcing the HPL are discussed at paragraph 39. Indeed, by the end of April 2020, Max Cairnduff was describing the HPL as 'swamped' and 'struggling to keep up' [INQ000536351\_0031] and cases were reallocated to the general route as the HPL was so stretched [INQ000536351\_0032]. Meanwhile significant resource continued to be provided to the 'general' route, including an increase in the number of caseworkers and the use of an out-bound call centre to help process thousands of leads from 23 April 2020. (This work was undertaken by a contracted specialist, Arvato [INQ000540488\_0037]).
90. Each of the above buying streams was therefore resourced differently and varied in effectiveness and speed of processing offers over time. As set out above, it was the evidence of witnesses supported by the Cabinet Office that because there were so many opportunities from so many different sources and thus there were different teams grappling with different issues and with different resources at any given time, there was intrinsically the potential for unintentionally unequal treatment [INQ000536351\_0040; INQ000536369\_0009]. Andy Wood's view was that the entry point on all of the lanes was unequal [4/184/23]. Max Cairnduff stated that the existence of different teams dealing with new suppliers led to the possibility of different treatment between the cohorts [INQ000536351\_0040].

## **F. VENTILATORS**

91. In March 2020, DHSC anticipated that up to 90,000 patients might need ventilators while the NHS had stocks of around 7,000 [INQ000497031\_0018]. The GCF were requested to lead on the development of the Ventilator Challenge, to encourage UK-based businesses to design and increase capacity to manufacture mechanical ventilators at scale and with urgency. This involved, for example, the procurement of 40 million components sourced, purchased and shipped from suppliers across the world, often in direct competition with other countries facing similar challenges, in very short timescales [Gareth Rhys Williams/3/75/3-8], with testing equipment and manufacturing lines built from scratch, and with staff trained and rapidly put in place [Gareth Rhys Williams/3/76/7]. The initiative delivered 15,000 ventilators for use in the NHS within 4 months of inception, compared to the 3-7 years typically taken to design and approve new products.

### **F1 Open source versus direct approaches**

92. The objective of the targeted Ventilator Challenge 'call to arms' was to seek support from a group of key manufacturers and suppliers in the medical technology industry [INQ000497031\_0069/70], rather than putting out requests for help to the wider public. Gareth Rhys Williams considered that this focused appeal to industry for help in respect of ventilators worked well [INQ000535017\_0014]. This targeted call to arms, and the proactive approach to suitably qualified companies, contributed to the rapid placing of a production contract for one model, the Penlon ES02, only 13 days after project inception.
93. In addition, a wider public request for help received over 5,300 offers of support. The Ventilator Challenge team processed all of these offers in order to ensure that there was not a 'nugget' which had been missed [Gareth Rhys Williams/3/62/7-20]. Only one offer was deemed to be worth pursuing.

### **F2 Direct award versus competitive processes**

94. The reasons why the Ventilator Challenge could not be run as a competitive dialogue or innovation partnership are set out in Clare Gibbs' corporate witness statement at paragraphs 5.1-5.14 [INQ000528389\_0102-105]. Those paragraphs set out:
- (i) That using a traditional competitive procedure would inevitably lead to delay. Gareth Rhys Williams' evidence was that he was informed at the time that approximately 3,000 people a week would die after the existing stock of ventilators was fully deployed, likely to be in two weeks [Gareth Rhys Williams/3/115/15]. Under the competitive dialogue and innovative partnership procedures, there would have been a minimum time limit for receipt

of requests to participate of 30 days from the date a contract notice was submitted. The competitive dialogue or innovative partnership procedures do not allow for a short period of 15 days in the event of urgency (as is the case for the open procedure). A delay of 30 days before even *engaging* with suppliers would have been too slow [INQ000528389\_0102], and the average time it takes to *conclude* a contract under such procedures is much longer at 415 days [Gareth Rhys Williams/3/115/16-22]. In the event, the first product was obtained from Penlon within less time (33 days) than even the minimum legal requirement to run the complex competitive procedures (35 days) [Gareth Rhys Williams/3/115/22-25].

- (ii) That a competitive dialogue or innovative partnership procedure would not have permitted the Cabinet Office to work with different suppliers to resolve difficulties and establish relationships between them and manufacturers in order to proceed as quickly as possible [INQ000528389\_0103]; nor would it have allowed confidential information to be shared between bidders (despite a key part of the Ventilator Challenge being the co-operation and sharing of ideas between teams) [INQ000528389\_0103].
95. It was Gareth Rhys Williams' evidence that, despite the issue being investigated, it was not possible to licence the designs of existing manufacturers outside the UK in order to scale up production within the UK, though these inquiries did give rise to the contracts with Breas Medical [INQ000536362\_0004-5]. These requests were refused by other manufacturers and Gareth Rhys Williams set out why, without their support, such an option, as proposed by Professor Sanchez-Graells, was unlikely to succeed [INQ000536362\_0004-5].
96. It was Gareth Rhys Williams' evidence that such a situation (where the UK was deemed to be critically short of ventilators) was exactly what the Regulation 32 'emergency' procurement procedure was for [Gareth Rhys Williams/3/116/12-13].

### **F3 Dyson**

97. Both Gareth Rhys Williams and Michael Gove were asked questions about the involvement of Dyson. It was Gareth Rhys Williams' evidence that he had thought of engaging Dyson at the beginning of the Ventilator Challenge process, on 13 March 2020 [Gareth Rhys Williams/3/80/14]. He gave evidence about a series of meetings on 25 March 2020 at which some ministers (including Michael Gove) appeared to be of the view that Dyson had a ventilator 'ready to go' and on that basis wanted to place an order. Had that been the case, then it was Gareth Rhys Williams' evidence that it would have been 'beyond unbelievably brilliant' [Gareth Rhys Williams/3/92/14] and well worth pursuing.

However, having seen the design package including a schematic himself, and received the MHRA's views, Gareth Rhys Williams did not consider that the ventilator was ready for approval or production [Gareth Rhys Williams/3/91/18]. As a result it was agreed that only an order that was contingent on their design and associated manufacturing system being approved by the MHRA by a certain date be given to Dyson. The Cabinet Office's second corporate witness statement sets out that save for the language of a "contingent order", the order letter sent to Dyson was of the same practical effect as the "letters of commitment", which were given to most other suppliers [INQ000528389\_0107].

98. In the event, Dyson's ventilator did not pass technical evaluation and Dyson absorbed its costs.

#### **F4 Demand for ventilators**

99. As above, initial estimates suggested that 90,000 patients might need ventilation in ICU beds at the peak of the RWCS. It was estimated that 7,000 ventilators were available in the NHS. As more became known about the nature of the disease and the best way to treat it, other treatment options (such as CPAP machines) were preferred and ventilation became less used as a treatment option. Fewer ventilators were eventually needed than predicted and stocks obtained from overseas suppliers were largely sufficient for the UK's needs. This however was not reasonably foreseeable in mid March 2020, when a more severe experience of COVID-19 than was actually experienced was forecast.

## **G. TESTING**

100. The task in relation to procurement of testing was to develop capacity from its starting position of 6,000/day notionally and 3,000/day in practice, to 100,000/day by end April 2020 with further expansion to 200,000/day by end May 2020 [INQ000497031\_0020]. These targets were met and by the end of October 2020 testing capacity exceeded 500,000 RT-PCR tests/day and by the end of 2020, capacity existed to undertake 750,000 tests/day [INQ000497031\_0020].
101. Beverley Jandziol gave evidence that the nature of testing procurement was different to PPE because most of the organisations they dealt with were specialists in a relatively narrow field, and often the government procured from them via pre-existing procurement frameworks [8/129/78-14]. Others were well established companies (such as Thermo Fisher, Amazon, and Randox) [Beverley Jandziol/8/129/15-21]. Further, unlike in PPE (where items could be purchased in bulk if they met certain specifications) in order to pursue any specific testing option, a complex mix of a number of ancillary products and consumables had to be in place (so, for PCR tests, there would have to be suitable matching RNA extraction reagents, PCR agents, pipette tips and so on) [8/138/23]. The task therefore required sophisticated assessment of all the potential options.
102. There was significant work aimed at procuring testing technology that seemed promising but which ultimately was not widely deployed (such as antibody tests and LAMP testing) [Beverley Jandziol/8/132/8].
103. Beverley Jandziol gave evidence of occasions where interventions by her team had saved hundreds of millions of pounds [Beverley Jandziol/8/151/23; 8/155/19; £1.5 billion in total 8/165/4], despite pressure and despite being described as 'haggling'.
104. Beverley Jandziol also set out that she was put under scrutiny by Gareth Rhys Williams and Lord Agnew in relation to some deals which had been delayed within Test and Trace before being sent for Spend Control processes: she answered the questions that they had and the deals were approved [Beverley Jandziol/8/163/3].

### **G1 Claims of a fast track lane within testing**

105. Beverley Jandziol gave evidence that there was not a fast track process in testing procurement for anything other than priority goods [Beverley Jandziol/8/142/4-7]. They would not fast track an offer because it came from a certain individual, but only based on technical need or due to shortages [Beverley Jandziol/8/142/7-13]. They did mark when

an offer had come into the process referred through a senior contact, though only did so for a short period, in order to report back [Beverley Jandziol/8/142/18-8/143/1].

**G2    Testing and Lighthouse Labs**

106.    Beverley Jandziol gave evidence with regards to the expansion of the Lighthouse labs, that it was not feasible to scale up the current facilities to the size of testing that was required, without putting too much pressure on the NHS. Further, it was not possible to extend the NHS laboratories physically, as many were based within hospitals [Beverley Jandziol/8/128/1].



## **H. RECOMMENDATIONS**

107. As with previous modules, the Cabinet Office invites the Inquiry to consider work that has been undertaken since the COVID-19 pandemic when formulating recommendations in relation to Module 5, particularly as part of the Boardman recommendations and the recent changes made in the Procurement Act 2023, which is explained in detail in the first Cabinet Office corporate witness statement for Module 5 [INQ000497031].
108. A number of specific recommendations have been made by the two expert witnesses for this Module. The Inquiry will want to consider the work that has been done since the pandemic in these areas. For example, relevant to the evidence of Professor Sanchez-Graells, the continued development of commercial capability in GCF has been explained [INQ000497031\_0031]. And, relevant to the evidence of Professor Manners-Bell, the Cabinet Office has a mature Strategic Relationship Management programme with the largest supplier partners to Government and has invested in supply chain mapping.
109. The recommendations suggested by witnesses supported by the Cabinet Office include the following. This should not be regarded as an endorsement by Cabinet Office ministers. The recommendations that witnesses have given will of course be evaluated by the Chair.
- (i) *The need for a pre-prepared organisational model to enable procurement in a crisis.* The models used by commercial experts in pandemic buying streams were derived from scratch and at extreme pace. They were not supported by integrated IT or any documented Concept of Operations. It would have greatly aided the first few weeks of the buying effort to have tried and tested models “off the shelf” that had at a minimum been used in exercises, and suitable IT systems to support and track purchasing operations, linked to finance, shipping, warehousing and distribution systems. These IT systems would support contact management with CRM-like functionality, and contract management to allow tracking of supplier obligations through to the point of delivery;
  - (ii) *The crisis highlighted the need for timely and accurate data to inform the response.* For procurement this should include data about stocks, usage and demand; buying opportunities, suppliers and supply chains and prices; orders placed, stock in transit and delivery performance; and fraud attempts and other market intelligence. Gathering, analysing and presenting such data requires expert resources to be deployed supported by appropriate tools;

- (iii) *Other more targeted approaches to likely industry players should be considered before using a general 'call to arms' in a crisis.* In a pandemic situation where much normal business activity has been suspended, businesses and individuals have more time to apply for opportunities to apply their skills and resources for the benefit of helping the nation in a crisis. Others see potential business opportunities to replace those lost through lockdown. For whatever cause, thousands of offers were made to 'open source' channels which had to be processed, and considerable resources were diverted to doing so. The length of queues that built up and the delays in processing offers became a political issue. In such circumstances the targeted approach taken by the Ventilator Challenge and aspects of testing procurement was more efficient. Using a set of selection criteria that are objective, fair and reasonable, a narrow approach can be made to suppliers appropriately qualified to meet pressing needs;
- (iv) *Improved information technology.* Virtual working tested the capacity of government 'desktop' IT to an unanticipated extent. Staff in different departments could not videoconference, share files or work collaboratively because their systems did not allow interworking. 'Functional' IT as described in sub-paragraph (i) above will also be needed, possibly using emergency capacity on appropriate departmental systems;
- (v) *There could be further improvement in the processes and protocols* for dealing in a transparent way with direct approaches from suppliers of key goods to government ministers and officials;
- (vi) *There should be sufficient clerical, commercial, policy and communications support* to enable prompt compliance with transparency requirements such as contract publication;
- (vii) *Procurement and other functional professionals were not at the table when strategies were formulated and in particular during crisis exercises in 2014 and earlier, and Exercise Cygnus in 2016.* Witnesses reflected on being drawn into conversations at the highest levels of Government and expected to operationalise strategies that had not previously been tested by procurement professionals.

110. The Cabinet Office is committed to support the work of the Inquiry, looks forward to its findings and recommendations on this important module and would be happy to share further information about current ongoing work where that might be helpful to the work of

the Inquiry in this module or others, for example, the appointment of a Covid Counter-Fraud Commissioner.