

TRACK AND TRACE



**IDENTIFYING CORRUPTION RISKS IN UK PUBLIC
PROCUREMENT FOR THE COVID-19 PANDEMIC**

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KEY TERMS

TENDER

An opportunity to compete for a contract, usually published through a tender notice that includes the requirements of the contracting authority.

CONTRACT AWARD NOTICE

A publication providing details of the outcome of the tender process.

CONTRACT

An agreement, usually in writing, setting out the terms and conditions of the engagement.

CONTRACTING AUTHORITY

The public body managing the procurement process.

BUYER

The person paying for and using the goods or services (who may or may not be the contracting authority).

SUPPLIER

Those awarded the contract to provide the goods or services.

PAYMENTS

Actual disbursements of money made to the supplier.

TENDERS ELECTRONIC DAILY (TED)

The electronic version of the Official Journal of the EU, which contains details of all public procurement over certain thresholds¹ across the European Union and the UK.²

The main thresholds that applied for the purpose of this report were those for *Supplies & Services (except subsidised services contracts)*:

- Central government bodies £122,976
- Other public bodies £189,330

KEY FIGURES

Between February and November 2020:

OVER

1,500
public bodies

REPORTED

13,412
contract awards



TOTALLING

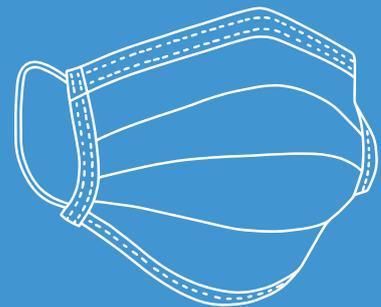
£230
billion

Just under **£18 billion** (7.8 per cent)
related to the COVID-19 pandemic response, involving over 100 public sector
bodies and 998 contract awards.

Over 90% (£16.4 billion)

of COVID-19 contracting by value went through five public
bodies during this period:

- The Department of Health and Social Care (DHSC)
- NHS England
- The Office for National Statistics (ONS)
- NHS National Services Scotland (NSS)
- The Department for Education



We count at least 73 contracts
relating to the COVID-19
response during this period,

worth over

£3.7 billion

whose awards merit further investigation.

65 of these questionable contracts, worth £2.9 billion, were for PPE equipment.

At least **24** of these PPE contracts, worth **£1.6 billion** went to those with known political connections to the party of government in Westminster.

Three contracts, worth **£536 million**, also went to politically connected companies for testing related services, with a further three worth £4.1 million awarded to different politically connected companies for other services.³

72% (711) of identifiable COVID-19 related contract awards, worth £13.3 billion, were reported after the 30 day legal deadline, £7.4 billion of which was reported over 100 days after the contract award.

Details for **93%** (28) of the 30 contracts awarded to politically connected companies⁴ were published late, compared to 70 per cent (688) of the 970 without.

14 companies incorporated in 2020 received contracts worth over £620 million, of which

13 totalling £255 million went to ten firms who were less than 60 days old.

EXECUTIVE SUMMARY

The COVID-19 pandemic has required a rapid public health response on a scale and speed unseen in modern times. Whilst those procuring goods and services have sought to expedite the emergency response, we observe a pattern of behaviour whereby critical safeguards for protecting the public purse have been thrown aside without adequate justification. Emerging evidence from investigative journalists, the National Audit Office (NAO) and public interest litigation highlights these in startling detail.

Using evidence from these reports and analysis of available data, we identify two key issues concerning procurement practices during the pandemic. We also identify a third, more general issue relating to the mechanisms for ensuring integrity in public office.

1. How contractors were chosen

Whilst the absence of competition is permissible in exceptional circumstances, its neglect has been widespread over the past year, and increasingly unjustifiable. Combined with a questionable system for triaging offers of PPE by suppliers, which seemingly benefits those with political connections, there is understandable concern that contracts may have

been awarded improperly. Not only does this invite challenge and costly litigation, it undermines trust in the management of public money and the authority of ministers.

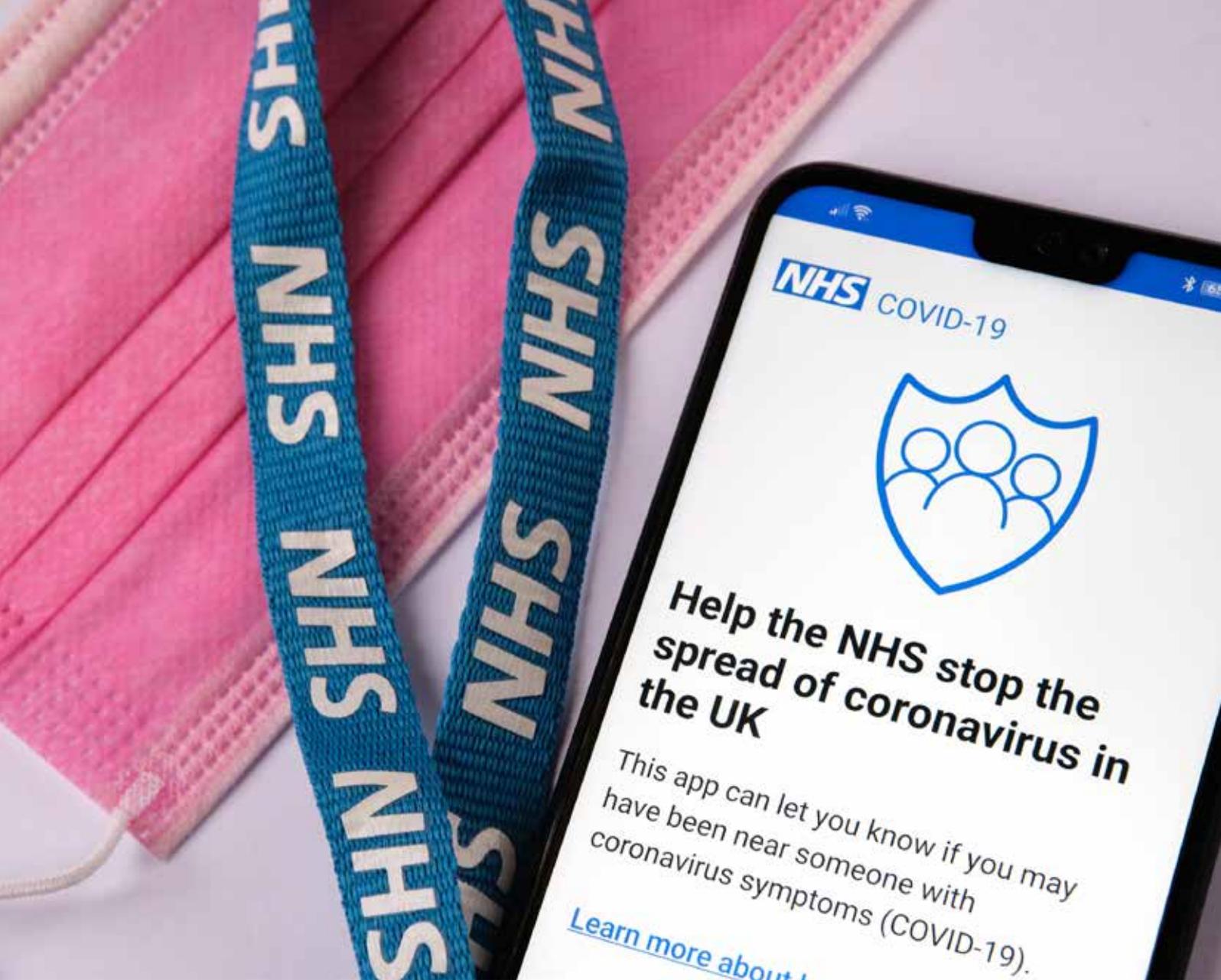
In total, we identify at least 73 contracts relating to the COVID-19 response, worth over £3.7 billion, whose award merits further investigation. In particular, important questions remain about the ‘high priority’ or ‘VIP’ lane for referring Personal Protective Equipment (PPE) suppliers: who knew about the lane, when, why did they know and not others, and who passed through this privileged procurement route? There is also a need for greater scrutiny over the use of uncompetitive procurement practices, particularly after the initial response in March to June 2020.



2. Accounting for public expenditure

To compound the above, the arrangements for enabling scrutiny over the use of taxpayers’ money has been woefully inadequate. Whilst clerical errors and slow publication of information may have derived from understandable resource challenges, it has inhibited accountability. Between February and the end of November 2020, we found that 711 identifiable COVID-19 related contract awards worth £13.3 billion had only been reported after the 30 day legal deadline, £7.4 billion of which was reported more than 100 days after the contract award. In comparison, on average it took Ukraine less than a day to publish information on 103,263 COVID-19 contracts after their award during the same period.⁵

There are also systemic deficiencies in how the state accounts for the use of public funds. Both central and local government publish procurement data in a way that makes it impossible to map the award of contracts through to actual spend and contract delivery with accuracy, raising uncertainty over who they are engaging to provide key goods and services. This echoes our findings from similar research five years ago.⁶



These systemic and performance issues frustrate the public's right to know how their money is being used, prevents the detection of possible wrongdoing, and has the potential to raise suspicions that there is something to hide.

3. Ensuring standards in public office

We find no evidence of ministers breaching either their code of conduct or the common law offence of misconduct in public office, yet allegations of impropriety raised in relation to COVID-19 procurement raise a question we cannot ignore: what would happen if they did? The answers are a cause for concern.

Currently, neither code nor common law provide a robust deterrent against misconduct in government, with enforcement of the former riven with conflicted interests, and the latter poorly defined and difficult to prosecute in

practice. Whilst these issues are well known, they are yet to be resolved.

From these findings we propose ten steps that could address some of the concerns raised over the last year, and help avoid similar mistakes being repeated in the future. None of these are particularly costly, with three either complementing or endorsing proposals already included in the UK Government's Green Paper for reform. If implemented effectively, they have the potential to increase transparency, deliver greater accountability, and reduce the risks associated with contracting, both during a crisis and in normal times.

We hope this provides a critical, yet constructive contribution towards recent debates. Some of what we propose may be uncomfortable for those of which we ask it – subjecting oneself to greater scrutiny is seldom a natural imperative for those in public office – yet these steps are critical to setting the record straight.

RECOMMENDATIONS

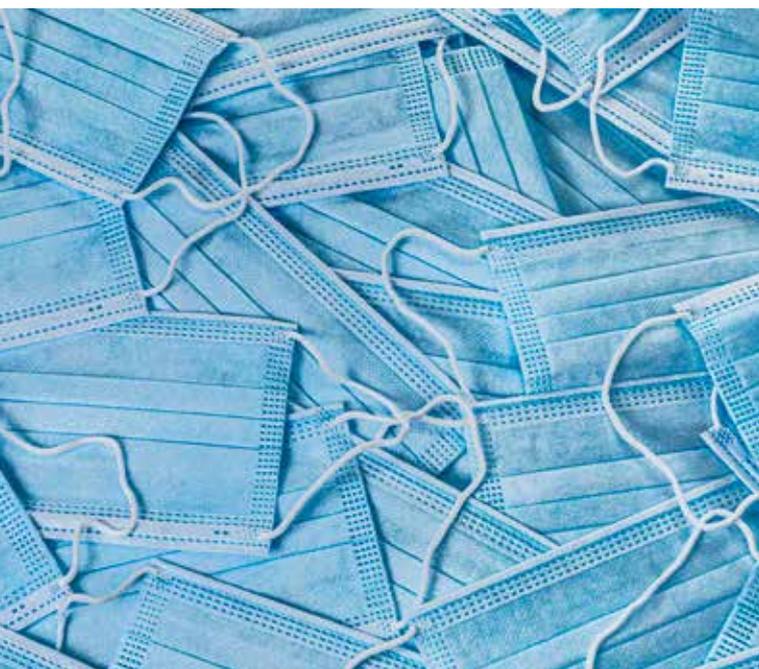
Competitive tendering and crisis contracting

The risks associated with uncompetitive contracting through direct awards are high. Without the rigour of market engagement, public bodies risk securing either sub-standard or unduly expensive products or services. They increase the likelihood of legal challenge by those who did not secure business or by public interest lawyers. Moreover, combined with contextual factors, such as political connections or apparent lack of market experience, it can also damage confidence in the integrity of public administration.

RECOMMENDATION 1

The public sector should now be back to undertaking competitive procurement as a default.

The UK Government's Green Paper on procurement reform proposes new crisis contracting procedures that, following a ministerial order, would enable public bodies to expedite the buying of goods and services in emergency situations. Providing clearer parameters for the use of this new power should help reduce the risk of it being



abused, reduce the risk of costly litigation, and increase clarity about when truncated procurement can take place. Whilst these new powers would be in addition to the current wording under Regulation 32(c) of the Public Contracts Regulations 2015,⁷ we understand that they would be used as the principal legal basis for any crisis response akin to that experienced during the COVID-19 pandemic. Given the role of ministerial discretion, there should be some form of parliamentary oversight and time limitation to these powers. Consideration should also be given to statutory reviews of the use of these powers to ensure they are being used appropriately. Any lessons learnt can then be incorporated into future improvements to the rules.

RECOMMENDATION 2

Truncated procurement processes should be limited only to declared emergencies under a new power that has been proposed by the UK Government. Orders made under this power should be:

- the principal legal basis for truncated procurement during a crisis period
- limited to procurement relating to the immediate requirements of the crisis response
- still require full transparency of any contract awards during the crisis period within the standard publication deadlines

Any order used should be subject to parliamentary oversight. This could involve an order being subject to:

- the made affirmative procedure⁸ in at most two instances within a year, with parliamentary approval of the order within 28 days of the order being laid
- a sunset clause of up to 90 days
- any subsequent renewal requiring the minister to make a statement before the House explaining why it is necessary, and an affirmative procedure
- a statutory review ending no more than 12 months after the end of the last crisis period declared under these powers

Transparency and accountability over the VIP lane

There may well have been noble intentions in the UK Government's approach to triaging offers of PPE. Undoubtedly, there was an urgent need for this equipment during a frenzied period where market demand far exceeded supply. Looking to 'trusted' sources to help filter these out and help the national effort could well have been the rationale, with close political allies seen as a natural first port of call for assistance. Nevertheless, it is still seriously flawed.

It is very surprising that the UK Government prioritised recommendations from politicians given that in most other areas of economic activity this type of association raises red flags and triggers further scrutiny, not the opposite,⁹ and they are not known for their expertise in procuring medical equipment. What is even more surprising is that it did not engage professionals, such as the British Medical Association (BMA) and the Royal College of Nursing (RCN), who had obvious expertise and a ready supply of offers from trusted suppliers that could have helped deliver critical materials during this crisis period.¹⁰

Adopting such an approach adds credence to the view that cronyism determined the award of contracts, rather than suitability for the job. This approach has undoubtedly damaged trust in the integrity of the pandemic response, at least within certain sections of the public, and has exposed government to the risk of expensive legal challenges in the courts.

RECOMMENDATION 3

The award of the 73 contracts we identify in this report should be subject to detailed audits by the relevant authorities. The UK Government should provide clarity over the current status of the VIP lane and end it if it has not done so already. To provide greater assurance and accountability on the matter, the UK Government should also provide transparency of the:

- names of the companies referred to the VIP lane
- source of the referral
- decision for the referral
- status of the referral
- any conflicts of interest identified for these referrals

Managing bribery and corruption risks in crisis procurement

Due to shortages in the UK's stockpile of PPE, public bodies were forced to enter a heated global market where corruption risks were increased. An alternative option would be to ensure there was a better alignment between the UK's stockpile and responsive supply of PPE and potential demand. The UK Government has already committed to reviewing its stockpile preparations for a variety of pandemic responses.¹¹ Implementing the findings of this review should help reduce intense spikes in demand for materials in an environment where corruption risks increase.

It has also worked to screen and approve manufacturers of pandemic-related goods, and develop a 'pre-market supply chain engagement plan' to help ensure the UK's demand can be met at speed in the future.¹² Again, showing progress in implementing these initiatives should help reduce the corruption risks associated with procuring in a hot market.

RECOMMENDATION 4

The UK Government should work to ensure there is a robust stockpile and supply chain of PPE to deal with future pandemic crises, and provide a progress update to Parliament on their implementation by July 2021.

At the moment we do not have enough information about the ultimate source of PPE or other pandemic-related supplies to have a clear view of risks in the supply chain. We know from the NAO report and the UK Government's strategy for PPE procurement that major sources of these goods for the UK include China and Malaysia, but this is not a complete picture of all source countries and companies involved. We also know of reports alleging human rights abuse in the manufacture of PPE imported into Europe,¹³ which suggests contracting authorities did not have full sight of their supply chain, especially during the frantic period of March to June 2020. This suggests there may be more issues with the supply of PPE – for example bribery or other forms of corruption – that remain unknown currently.

In May 2019, the UK Government published a trial set of operational standards for commercial activity within Whitehall, which included a principle that all goods and services are procured legally and guard against

fraud and corruption. In June 2020, this was followed by a complementary set of operational standards for countering fraud, bribery and corruption. Whilst the UK Government has stated it is working to increase the stability and resilience of PPE suppliers, which should reduce this risk, there is currently nothing in this strategy document or either of the recent NAO reports into procurement of PPE goods to suggest that bribery and corruption within the supply chain is a key risk departments were considering when securing goods and services. Given the crisis situation and the pressures likely to give rise to opportunistic corrupt activity, this should have been a factor considered by contracting authorities, either within Whitehall or elsewhere. These risks should be part of any future crisis response plans.

RECOMMENDATION 5

Public bodies should clearly incorporate bribery and corruption risk assessments and mitigation strategies into their procurement practices for crisis responses.

Transparency and access to information

Public bodies across the UK failed to comply with their legal obligations to provide timely access to information on contracts. Though comprehensive data is not as easily obtainable, there is evidence of similar delays to the disclosure of payments information during this period and responses to FOI requests.

To its credit, the UK Government commissioned a review of its procurement practices in September 2020 in order to learn lessons from its procurement of a controversial contract for communications services, and has committed to take forward all 28 recommendations from this exercise.¹⁴ However, its reluctance to admit it failed to comply with its legal obligations has led to costly litigation, and there is no clear indication yet that there will be a government-wide effort to improve the timeliness of proactive disclosures and reactive responses to FOI requests.

RECOMMENDATION 6

The Minister for the Cabinet Office should make a statement to Parliament setting-out:

- where the UK Government has not complied with its legal transparency obligations under the Public Contracts Regulations 2015 and FOIA,
- how these are being rectified, and
- how departments will prevent the same issues reoccurring in the future.

Improve public procurement practice going forward

Providing accurate information on companies is crucial to enabling those inside and outside of government to understand the distribution of public funds. Whilst some public bodies collect and publish this information, far too many do not. Supplier company numbers were included in around only ten per cent of COVID-19 procurement data reported to Tenders Electronic Daily (TED). This is basic information about a company that really should be collected and published as a matter of routine. If implemented according to the Open Contracting Data Standards (OCDS),¹⁵ the UK Government's Green Paper would require this information be made publicly available for all key procurement data.¹⁶

RECOMMENDATION 7

The UK Government should include its proposals to require company identifiers in procurement and spend data as part of its forthcoming reforms of public procurement.

When developing new systems to implement the proposed reforms, it is critical that there are greater controls over data entry than is currently the case. Confidence in the accuracy of public data is undermined when it contains erroneous values, such as contracts decades in the future and confusion between billions and millions of pounds. Similarly, missing values, such as when a contract was awarded, also inhibits meaningful

analysis and reduces the potential of the data. Introducing greater controls over system inputs should be relatively straightforward, yet increase the integrity and utility of public procurement data.

RECOMMENDATION 8

The UK Government should include its measures to improve the quality and consistency of data in its forthcoming reforms of public procurement, including single identities for buyers and suppliers, and controls on data entry by contracting authorities.

Deterrents against potential misconduct

Allegations of impropriety beg the question: what would happen if there was any provable misconduct in public office? In theory, any breach of the ministerial code is subject to investigation by the Independent Advisor on Ministerial Interests who reports to the Prime Minister. In the absence of any potential criminal conduct it would be for the PM to decide on any sanction, which is confined principally to firing them from government or demoting them. Not only does this arrangement provide a relatively limited means of redress, it also presents a significant conflict of interest, with the PM responsible for disciplining those whom they may depend on. This is highly unsatisfactory and gives rise to the possibility that a minister may breach the rules flagrantly yet remain in office. Furthermore, at the time of writing, the post of Independent Advisor remains vacant over four months after the last office-holder resigned.

In 2016, we proposed the Independent Advisor for Ministerial Interests be given greater autonomy and powers to enable greater checks on ministerial impropriety.¹⁷ These proposals are just as necessary now as they were then. In other jurisdictions, such as the US and Canada, oversight of the ministerial code is endowed to an office independent of government.

RECOMMENDATION 9

Responsibility for overseeing and enforcing the ministerial code should be moved to an office independent of government with sufficient powers and resources to undertake their role effectively. The position should be appointed, resourced by, and accountable to Parliament.

In theory, there are possible means of accountability for criminal misconduct by those in public office. Soliciting or accepting a bribe is an offence under the Bribery Act 2010, embezzlement and defrauding the public purse is an offence under the Fraud Act 2006, and there is a common law offence of misconduct in public office for other corrupt practices, such as a serious abuse of the public's trust. Whilst the first two provide robust statutory deterrents against abuse of office, the third is widely regarded as unclear and unsuitable for its intended purpose. After a lengthy and thorough review, the Law Commission for England and Wales published a set of proposals to provide for a clearer corruption in public office offence in statute. Legislating for this at the earliest possible opportunity should help provide a clear signal that the UK Government aspires to high standards in public office.

RECOMMENDATION 10

The UK Government should bring forward legislation for a new statutory offence of corruption in public office at the earliest possible opportunity.

INTRODUCTION

The COVID-19 pandemic has required a public health response unprecedented in recent history. State institutions have spent almost unfathomable amounts of money within a relatively short period, often in a desperate global market for key supplies. For perspective, during 2020, the Government spent more on Personal Protective Equipment (PPE) alone than the usual annual budget of the Home Office. These are not normal times.

Given the amount of public money involved, the speed at which it has been spent, and the lack of normal oversight, there were inevitable risks that those entrusted with these funds abused them for private gain. Embezzlement, cronyism and bribery for preferential treatment are but a few of the kinds of corrupt activity that can occur in the absence of usual safeguards. Though not endemic in the UK, they are not entirely absent.¹⁸

This report seeks to provide an objective and evidence-driven review of the risks of procurement corruption during the pandemic response. By doing so it reflects on the issues experienced to date and how these can be avoided in the future. It covers procurement directly related to the emergency response and is split into four main sections:

Background

This section provides background context to public procurement during the pandemic response, covering:

- an overview of UK COVID-19 procurement
- corruption risks in public procurement

1. High risk contracts

This section reviews three frequently cited issues with procurement during the pandemic, specifically:

- uncompetitive tendering
- politically connected contractors
- new companies, profiteering and unknown risks

2. Losing the money trail

This section reviews more general systemic and performance issues that inhibit the public's access to key information about the use of public money, including during the pandemic.

3. Enforcing standards in high office

This section critically reflects on the available deterrents against misconduct in high office and what can be done to make them more effective.

We then end the report with some concluding thoughts on the experience of the last twelve months and summarise some key lessons for the future.

All data in this report is based on either official procurement data from Tenders Electronic Daily (TED) – the online version of the Official Journal of the EU, Freedom of Information (FOI requests) or other open source material, such as media reports or court documents. All analysis of official procurement data relates to contracts awarded between February and November 2020, with the last extract from TED taken on 30 November 2020. A more detailed note on our research methodology is in Annex I.

BACKGROUND

Overview of UK COVID-19 procurement

Public procurement is where state institutions buy goods and services to deliver their functions.¹⁹ In 2013, OECD countries spent around 12 per cent of their GDP on contractors. In the UK, the scale of this activity has increased modestly over the past decade or so.²⁰ Before the COVID-19 pandemic, the UK public sector was spending £284 billion on contractors, accounting for a third of all public expenditure.²¹ To meet the demands of the pandemic public health response, procurement has ramped-up to an unprecedented scale and speed.

According to official data, during the period February to November 2020 (the sample for this research), over 1,500 public bodies reported 13,412 contract awards totalling £230 billion. Of this, just under £18 billion (7.8 per cent) related to the COVID-19 pandemic response, involving over 100 public sector bodies and 998 contract awards. We note this does not include the details of awards under call-offs from framework agreements, the actual amounts agreed for the vaccines, or procurement either unpublished or under the legal reporting thresholds, so the total is likely to be much higher.

Over 90 per cent (£16.4 billion) of COVID-19 contracting by value went through five public bodies:

- The Department of Health and Social Care (DHSC)
- NHS England²²
- The Office for National Statistics (ONS)
- NHS National Services Scotland (NSS)
- The Department for Education

Graph 1 below provides a summary of their COVID-19 contracts by value between February and November 2020. The overwhelming majority of COVID-19 contracts by value (£13.1 billion) went through the DHSC, accounting for 72.8 per cent of all those related to the pandemic during this period.

Contracting for the COVID-19 response was concentrated on five main categories of goods and services (see Table 1 below), with three of them (PPE, test and trace, and



patient care) accounting for over 90 per cent (£16.7 billion) by value. There were slight changes in demands for goods and services as the pandemic progressed (see Graph 2). Purchases of PPE rose dramatically between March and June, then decreased. As noted by the NAO in its report on PPE procurement, this was a heightened period of international competition for protective equipment, with demand often far outstripping supply. Thereafter, these amounts tapered off, with test and trace increasing slightly in the later months of this period (see Graph 2 below). Patient care contracts spiked in May as NHS England awarded over £1.5 billion to 26 different private hospitals to increase capacity whilst the NHS was under intense pressure.²³ Test and trace contracts increased substantially from March to April, with periodic peaks and troughs through to November.

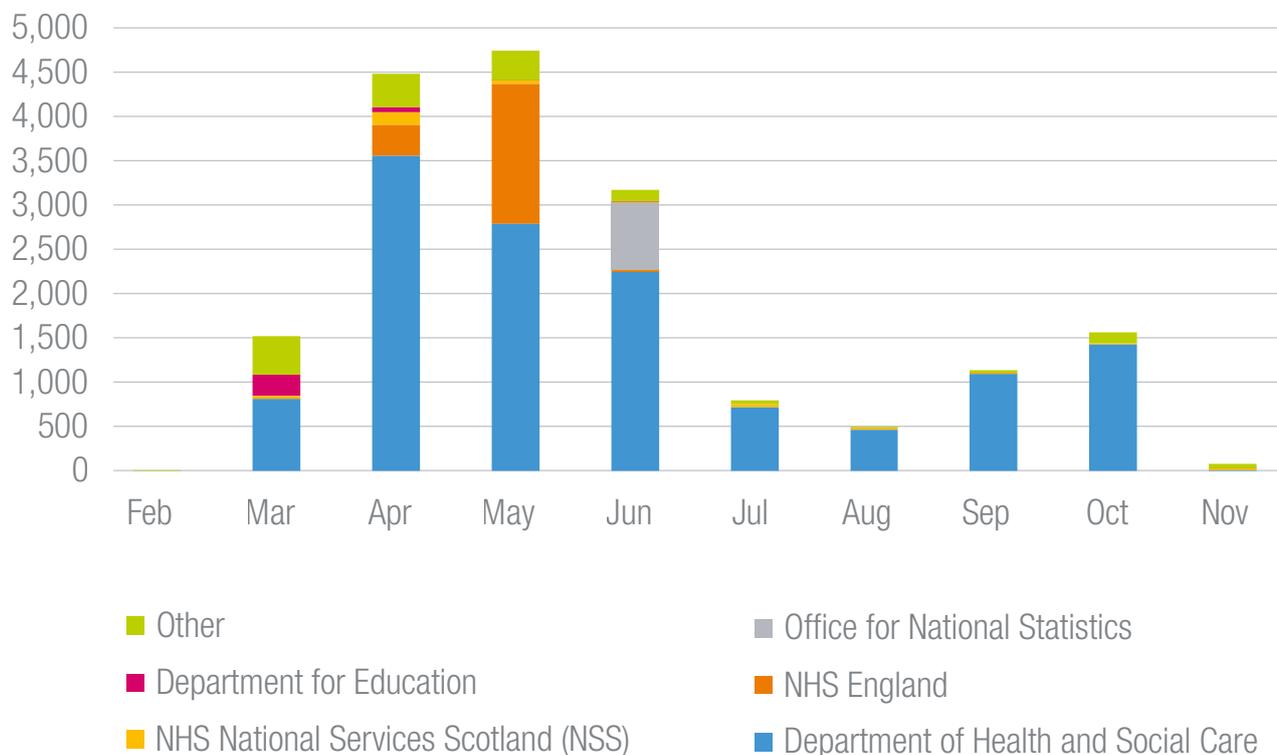
There was a substantial range in contract sizes during our sample period, although the majority of awards by value went to a relatively small number of suppliers. The largest contract awarded was valued at up to £750 million for testing services procured by the ONS. At the top end, the ten largest contracts, valued at just over £5 billion, accounted for over quarter (30 per cent) of all awards. In total, there were 46 contract awards totalling £10.7 billion where the supplier received over £100 million – all of which were through direct awards without competition (see Graph 3).

Table 1: COVID-19 contract values by goods/services between February and November 2020 (Source: TED)

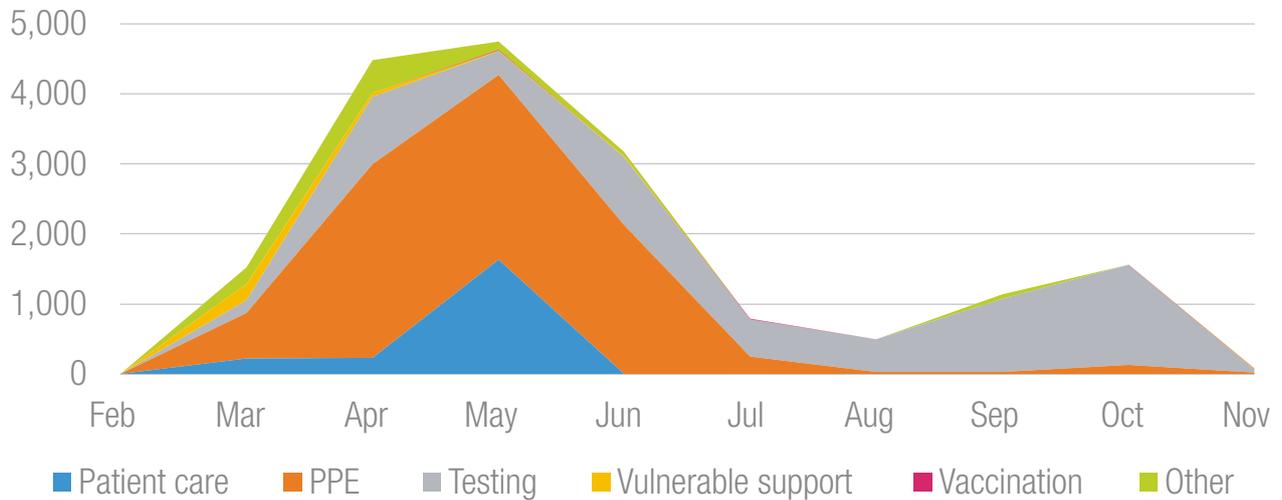
Goods / services	Value (£ millions)	%
PPE	£8,648	48.1
Testing	£5,966	33.2
Patient care	£2,086	11.6
Vulnerable support	£305	1.7
Vaccination ²⁴	£30	0.2
Other	£946	5.3
Grand Total	£17,983	100

Within the sample data are also contract awards where there is currently no information on the amounts given to individual suppliers. Almost all of these are framework agreements. Payments under framework agreements are a known unknown in two respects. Firstly, whilst we know there are COVID-19 specific framework agreements established to deal with the pandemic, we do not know how much each individual supplier received because it was not a requirement to publish this information on TED – our source of official data. As we will discuss later under ‘systemic issues’ in the *Losing the money trail* section, spend on call-off contractors might turn-up elsewhere in payments data, but this does not link back to the original tendering process, so you cannot see how much is being spent against these frameworks. Secondly, it is possible there may be framework agreements entered into before the pandemic that were used for goods and services related to the public health response. Again, we do not have any information on the nature and value of these contracts.

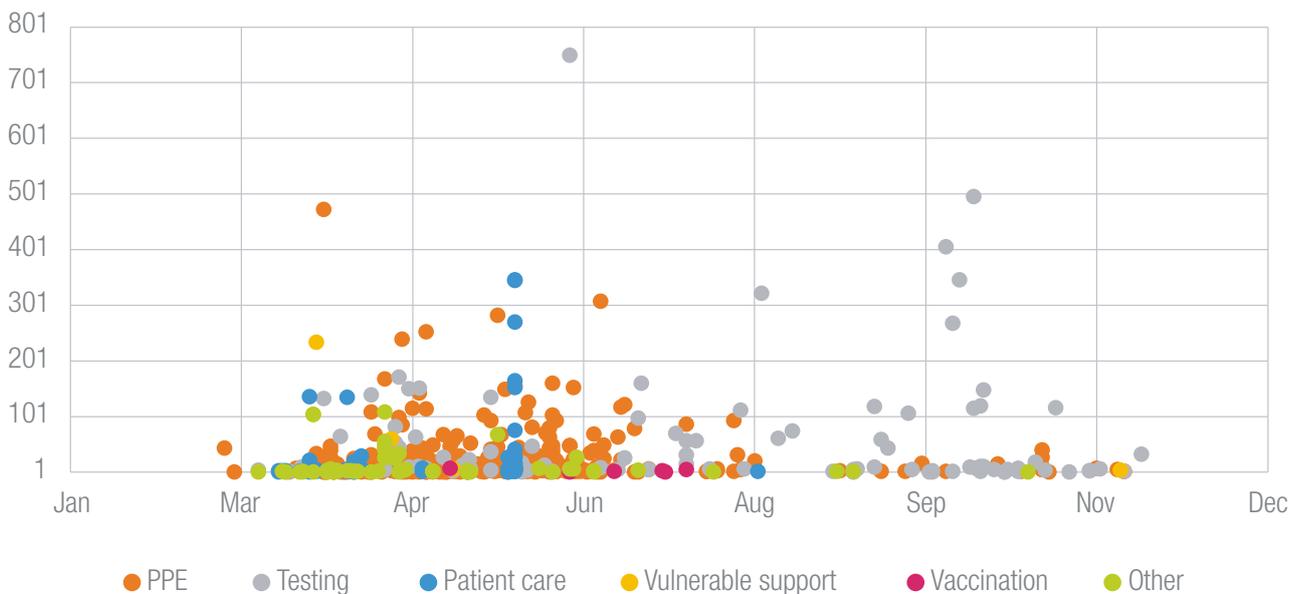
Graph 1: Covid-19 contract award value (£millions) by public body and month from February to November 2020 (Source: TED)



Graph 2: UK contracts by value (£millions) and product/service type from February to November 2020 excl. call-offs from frameworks contracts (Source: TED)



Graph 3: Individual award amounts to suppliers over £1million by type or goods or services from February to November 2020 (Source: TED)



Corruption risks in public procurement

While contracting has become a key part of delivering goods and services, and has formed a critical part of the UK's pandemic response, without adequate safeguards it is vulnerable to corruption.²⁵ Indeed, the UK Government's own anti-corruption strategy recognises public procurement as a high-risk area.²⁶ In a procurement context this can include:

Bribery: The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action to improperly perform their job, role or function. Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations etc.)

Cronyism: A form of favouritism whereby someone in public office exploits his or her power and authority to provide a job or favour to a family member (nepotism), friend or associate (cronyism), even though he or she may not be qualified or deserving.

Embezzlement: an individual dishonestly and illegally appropriating funds and goods that he or she has been entrusted with for personal enrichment or other activities.

These corrupt activities can deprive the state of resources otherwise destined for essential frontline services, disadvantage businesses who do not hold political connections, and result in the delivery of sub-standard or faulty products or services.

In theory, the UK has numerous safeguards that should help reduce the risk of corruption in public procurement, including:

Preventative measures such as legal requirements to undertake open and competitive tendering for contracts,²⁷ identify and manage conflicts of interest,²⁸ and exclude contractors who have been convicted of corruption offences.²⁹

Oversight measures such as clear documentation about the selection process,³⁰ publication of tender,³¹ contract award³² and spend information;³³ access to information laws; and whistleblowing laws,³⁴ guidance³⁵ and procedures to facilitate reports of alleged wrongdoing.

Deterrent measures such as the statutory offences of bribery³⁶ and fraud,³⁷ the common law offence of misconduct in public office, and sanctions for breaches of rules of conduct, such as the civil service management³⁸ and ministerial codes.³⁹





Despite these safeguards, there were signs of undue influence in UK public procurement before the pandemic. Research commissioned by the Ministry of Housing, Communities and Local Government (MHCLG) found that, whilst not endemic, foul play in contracting did still exist in municipal authorities.⁴⁰ Similarly, recent academic research suggests that political considerations may have affected between 5-10 per cent of central government procurement during the last decade.⁴¹

Spotting procurement corruption and assessing risk in public contracting is not an exact science, and as with other forms of financial crime it can be difficult to detect and prove beyond reasonable doubt. However, experts in academia and global institutions have provided red flag indicators to provide some guidance on what might merit closer scrutiny, including:

- **Uncompetitive tendering** i.e. awarding a contract without notifying other potential suppliers of the commercial opportunity.
- **Vague or improper rationale for contact awards** e.g. on criteria other than value for money or another public good.
- **Opaque contracting** e.g. failing to release documents for public inspection.
- **Egregious breach of procedure** e.g. failing to maintain adequate documentation for procurement processes and awarding contracts without a legal basis.

- **Companies seemingly unsuitable for work** e.g. new company with no previous history of supplying services being procured or lacking financial security.
- **Abnormally high pricing** i.e. above and beyond the market rate.

See Annex II for a full list of integrity risks developed by the OECD.

In normal times, identifying these red flags is challenging enough. As we discuss in the *Losing the money trail* chapter below, data analysis is only as good as its availability and quality, on which the UK has significant room for improvement. During a pandemic, the scale and nature of the crisis – including highly competitive market conditions and the use of emergency procurement procedures – makes it more difficult to differentiate between a genuine cause for concern and inadvertent administrative failure.

Nevertheless, there has been a substantial number of allegations questioning the probity of contracts awarded as part of the pandemic response. In particular, the frequency and scale of contracts awarded to those with political connections has caught the spotlight. The following three sections provide a review of the available evidence, and provide proposals to reduce the chances of these issues arising again.

HIGH RISK CONTRACTS

Over the last year, we have sought to catalogue media reports and allegations of impropriety in the UK's COVID-19 pandemic response. In total, we identify 73 contracts worth over £3.7 billion where we think there is merit for closer scrutiny. Collectively, these account for 20 per cent of all reported contracting for the COVID-19 response by value between February and the end of November 2020.

Through a review of these cases we have identified 15 areas of concern (see Annex III) that give rise to the view of improper practices. The most frequently-cited issues are:

- uncompetitive tendering
- politically connected contractors
- contractors with no previous track record of supplying goods or services

These align with existing red flags for corruption risk mentioned in the previous section. Whilst some contracts only contain one or two of these red flags, some include up to four. We explore these issues in more detail below, alongside proposals for reducing the risk of them occurring in the future.

Uncompetitive tendering

Broadly, there are four key types of procurement procedures:⁴²

- **Open Procedure:** all interested suppliers can submit a tender.
- **Selective:** only qualified members are invited to submit a tender.
- **Limited:** the procurement entity contacts a number of suppliers of its choice.
- **Direct:** the contract is awarded to a single supplier without any competition.

In normal circumstances, tenders must run for at least 35 days before a public body can award a contract.⁴³ This gives time to allow interested businesses to make their case for selection and provide public bodies with a range of options. This is followed by a 10 day 'stand still'

period, whereby those failing to secure the contract can challenge the decision. Consequently, this should increase the chances of achieving good value for money and protect against misconduct, such as rigging procurement in favour of politically connected companies.

The Public Contracts Regulations 2015 (PCR 2015) does allow public bodies to reduce this tendering period in particular circumstances. In cases of urgency, open tenders can run for as little as 15 days.⁴⁴ Dynamic purchasing systems allow for mini competitions of only 10 days.⁴⁵ Framework agreements allow for mini-competitions with no minimum period.⁴⁶ Public bodies may also award contracts without tender in instances where it is:

- strictly necessary,
- for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, and
- where the normal time limits for procurement are impossible.⁴⁷

The Cabinet Office published a guidance note on 18 March 2020 outlining the UK Government's current policy on using this exemption to normal procurement rules during the COVID-19 pandemic.⁴⁸ This guidance note emphasises that departments must only use this curtailed approach to tendering in a genuine emergency; caused by unforeseeable circumstances; which prohibits the usual timescales; and the public body itself did not cause the situation.⁴⁹ It also makes clear that departments should ensure they keep proper records of their decisions to award without competitive tenders to reduce the risk of legal challenge, that they keep a written justification outlining why procurement without competition was necessary, and to publish contract award details within the 30-day legal deadline.⁵⁰

Reviewing the data from our sample, we can see how these exemptions were applied by public bodies across

the pandemic response. Graph 4 shows that throughout the ten month period from February to November 2020, the overwhelming majority (98.9 per cent) of contracts by value (£17.8 billion) were awarded without any form of competition.

When viewed alongside Graph 2 above, it is clear that spikes in uncompetitive contract awards relate mostly to those for PPE and testing. The former occurs mostly during the earlier stages of the pandemic. As noted by the National Audit Office in its investigation into PPE procurement, this period saw a frenzied and highly competitive global market 'where demand far exceeded supply'⁵¹ for this product.

Awarding contracts without open competition is legal so long as the context mentioned above applies. Arguably, as the pandemic response has evolved, the rationale supporting direct awards on legal grounds diminishes. Given what we know about the virus and how it is spreading, the needs for equipment, such as PPE, are now entirely foreseeable. Similarly, as global production for these goods increases, the competition and time constraints on securing contracts must have waned. Therefore, the continuation of direct awards does not appear to be justified in most circumstances.

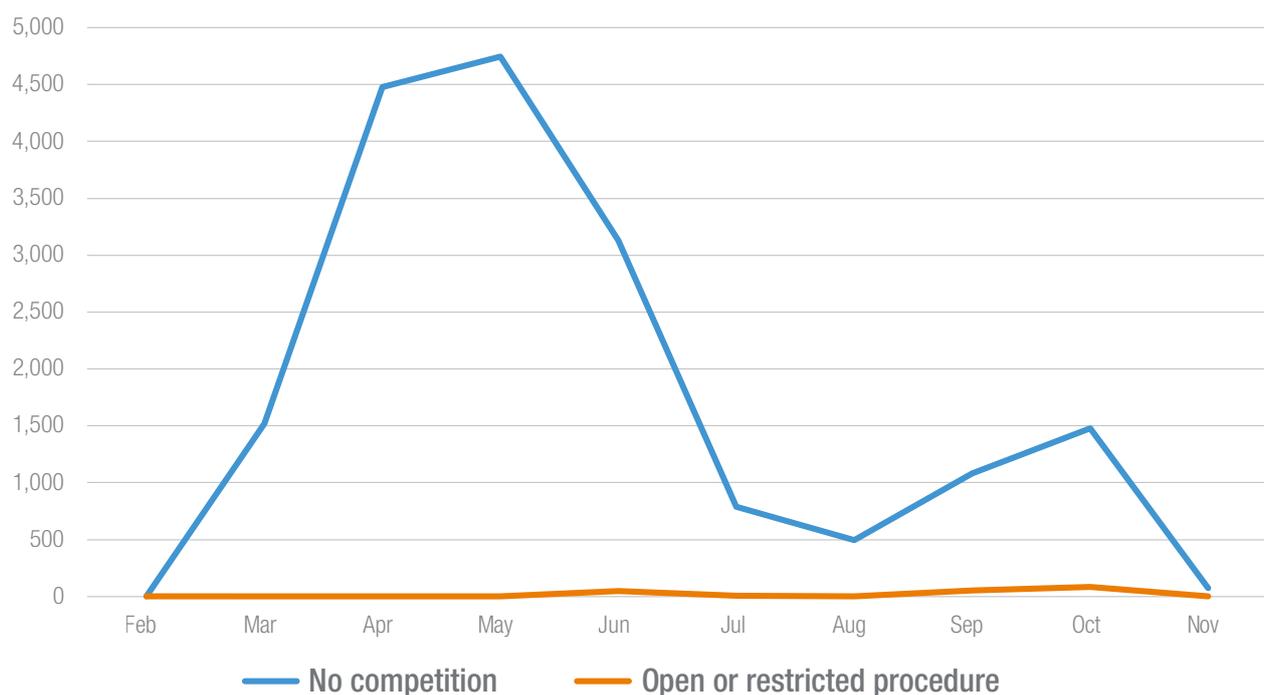
The risks associated with uncompetitive contracting through direct awards are high. Without the rigour of market engagement, public bodies risk securing either sub-standard or unduly expensive products or services. They increase the likelihood of legal challenge by those who did not secure business or by public interest lawyers. Moreover, combined with contextual factors, such as the areas of concern mentioned in Annex III below, it can also reduce confidence in the integrity of public administration.

RECOMMENDATION 1

The public sector should now be back to undertaking competitive procurement as a default.

Ambiguity in the current rules for emergency procurement procedures have not helped to address concerns over impropriety in contract awards. Currently, there is little clarity over the period in which direct awards can be made legally and how they relate to an emerging crisis. Each decision to waive competitive tendering is decided by the contracting body, which can then be challenged in the courts. Whilst this provides flexibility in the application of emergency processes, recent experience suggests

Graph 4: UK Covid-19 contracts by value (£ millions) and tender process from February to November 2020 excl. call-offs from framework contracts (Source: TED)



some public bodies are tempted to adopt a blanket approach to uncompetitive awards when it is neither strictly necessary nor as a result of unforeseeable events. For example, it is unclear why direct contracts awards continued well into late 2020 when the need for pandemic related goods and services, such as testing, was wholly foreseeable by then.

The UK Government's Green Paper proposes that ministers be given the power to declare an emergency, which would provide the legal basis for truncated procurement processes.⁵² Contracting authorities would have to submit reasons for declaring a crisis, and any

RECOMMENDATION 2

Truncated procurement processes should be limited only to declared emergencies under a new power that has been proposed by the UK Government. Orders made under this power should be:

- the principal legal basis for truncated procurement during a crisis period
- limited to procurement relating to the immediate requirements of the crisis response
- still require full transparency over any contract awards during the crisis period within the standard publication deadlines

Any order used should be subject to parliamentary oversight. This could involve an order being subject to:

- the made affirmative procedure⁵³ in at most two instances within a year, with parliamentary approval of the order within 28 days of the order being laid
- a sunset clause of up to 90 days
- any subsequent renewal requiring the minister to make a statement before the House explaining why it is necessary, and an affirmative procedure
- a statutory review ending no more than 12 months after the end of the last crisis period declared under these powers

subsequent declaration by the relevant minister 'would only apply to contracts awarded to deal with the immediate requirement posed by the crisis.' Any contracts awarded under this emergency procedure would still be subject to mandatory transparency standards.

Providing clearer parameters for the use of crisis contracting procedures should help to reduce the risk of these powers being abused, reduce the risk of costly litigation, and increase clarity about when truncated procurement can take place. Whilst these new powers would be in addition to the current wording under Regulation 32(c) of the Public Contracts Regulations 2015, we understand that they would be used as the principal legal basis for any crisis response akin to that experienced during the COVID-19 pandemic. Given the role of ministerial discretion there should be some form of parliamentary oversight and time limitation to these powers. Consideration should also be given to statutory reviews of the use of these powers to ensure they are being used appropriately and any lessons learnt can be incorporated into future improvements to the rules.

Politically connected contractors

Undoubtedly, one of the most contentious and concerning aspects of procurement during the pandemic has been the awarding of UK Government contracts to companies with political connections. Whether rightfully or not, terms like 'chumocracy' and 'cronynism' are now heavily associated with securing materials and services for the public health response. The insinuation being it is not what you know or have to offer that matters, it is who you know.

In total, we count at least 73 contracts relating to the COVID-19 response between February and November 2020, worth over £3.7 billion, whose awards merit further investigation. Mapping all of these contracts against data from TED, we notice that by volume and value, most of the questionable contracts were awarded during the same heightened period of activity between March and June 2020 as mentioned above (see Graph 5). The majority of these by volume (65) and by value (£2.9 billion) were contracts for PPE equipment; 24 of which worth £1.6 billion went to those with known political connections to the party of government in Westminster. A further three contracts worth £536 million also went to politically connected companies for testing related services.⁵⁴ We note there are additional contracts awarded to politically

connected companies relating to communications and research services, although these were published after our last data extraction from TED on 30 November 2020.

Definitions of ‘politically connected’ companies fall into three broad categories:

- **Donors:** either the supplier or an individual controlling the supplier company has donated to the party of government in Westminster within the last two decades.⁵⁵
- **Senior political figures:** the company either is controlled by, has a controlling individual who is related to, or employs a senior figure of the party of government in Westminster.
- **Other party members:** an individual controlling the company is another form of member of the party of government in Westminster not mentioned above; for example, a local councillor.

In some cases, a company has more than one of these connections; for example, it may donate to the party of government in Westminster and also employ a senior figure within its ranks.

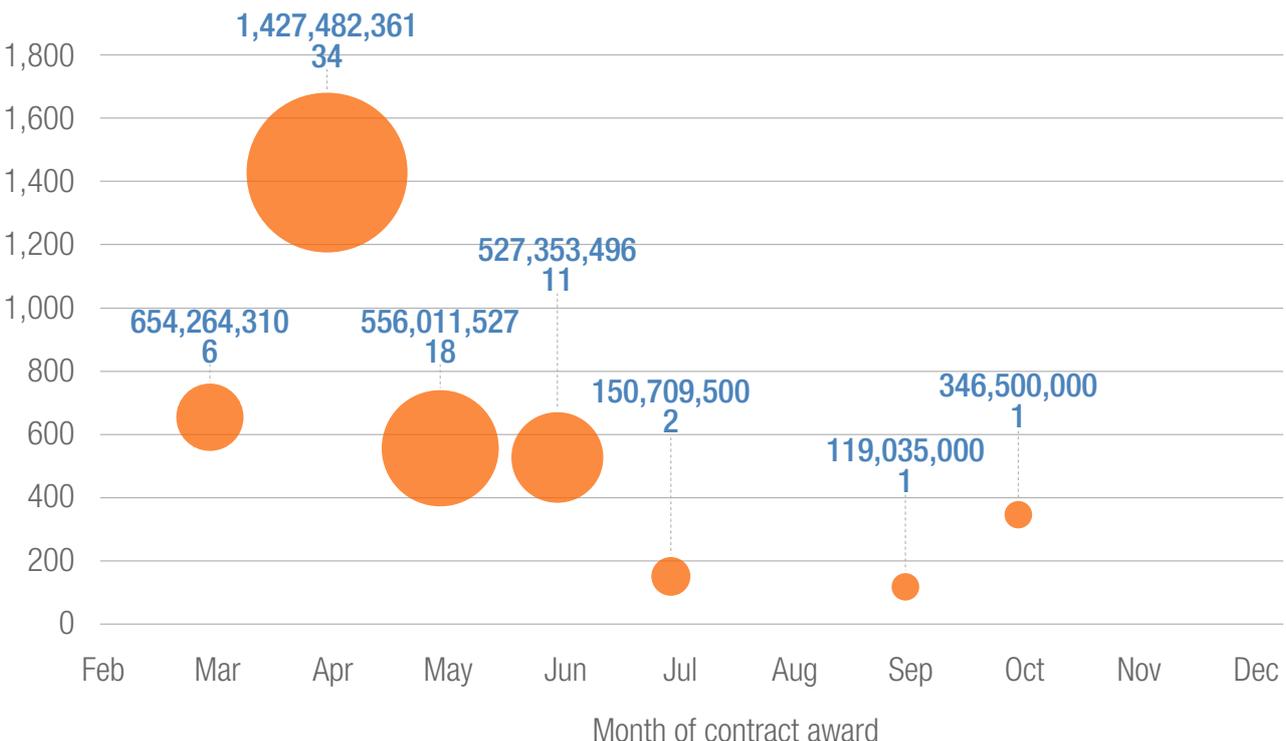
By quantity, these politically connected contracts only constitute two per cent of all those awarded within our sample (998), yet they form over 10 per cent of the total by value. Whilst academic research suggests that around 5-10 per cent of UK central government procurement could be affected by partisan decision-making during normal times,⁵⁶ we consider the COVID-19 figures to be unusually high and very concerning for the following reasons.

Firstly, our method for identifying partisan decision-making in procurement is more conservative than the previous academic study, yet yields similar results.

Secondly, our approach is also only based on publicly available information. Feasibly, there are known unknowns, with more politically-connected companies receiving contracts that we or others are yet to discover.

Thirdly, we have reason to suspect that there are more politically connected companies that have received COVID-19 contracts than have been reported to date. We assert this because there were apparent systemic biases in the award of PPE contracts that favoured those with political connections to the party of government in Westminster.

Graph 5: Alleged improper UK Covid-19 contracts by value (£ millions) and number of contract awards from February to November 2020 (Source: TED and open source)



During the NAO's investigation into COVID-19 procurement, the UK Government acknowledged there was a 'VIP' high-priority lane for triaging potential suppliers of PPE equipment. During the early stages of the pandemic, it received over 15,000 offers of PPE supplies. The purpose of this VIP system was to 'follow up on leads from government officials, ministers' offices, MPs and members of the House of Lords, senior NHS staff and other health professionals, that it considered to be more credible.'⁵⁷ In total, the UK Government accepted ten per cent of offers that passed through the VIP lane (47 out of 493) compared to 0.7 per cent (104 out of 14,892) of those going through the normal channels.⁵⁸

Due to a lack of transparency and poor record keeping by the UK Government, we still do not know basic facts about the VIP lane, including who knew about it, when, who made referrals through the system, and who received contracts as a consequence.

We know of one company referred through the system, PPE Medpro, because this was confirmed by a government spokesperson.⁵⁹ Feasibly, the 24 politically-connected PPE suppliers mentioned above could have made their way through the same route – all were awarded contracts after the 2 April when the VIP lane was established⁶⁰ – yet ministers and their departments⁶¹ have so far refused to disclose this critical information.⁶²

The UK Government claims it drew the details of this route to the attention of relevant individuals and organisations. However, this was not included in the guidance note published by Cabinet Office in March 2020 and there is no other easily identifiable trace of it save for the NAO report. Contributions made by opposition party MPs during the Westminster Hall Debate on 9 December 2020 also strongly suggest knowledge of the VIP lane was not universal across all parts of the House.⁶³

Based on the available evidence and ministers' reluctance to disclose key information, it appears that knowledge of the VIP lane outside a small number of officials within Whitehall could have been confined to only those within the party of government in Westminster. This would be highly problematic. The government's response to allegations of cronyism are twofold. Firstly, that ministers were not responsible for signing-off on individual contracts and therefore no conflicts of interest could arise during the decision-making process. Secondly, that those referred through the VIP lane were subjected to the same eight-step process as other suppliers going through the normal channels.⁶⁴

What both of these arguments fail to address is the possibility that the VIP lane created a systemic and

partisan bias in the award of PPE contracts. If knowledge of the VIP lane was mostly limited to those within the party of government, then the likelihood is that only those with connections to this party and its members would be referred through this route. Regardless of whether ministers were involved in making the decision to award these contracts, the VIP lane afforded preferential treatment not available to others who went through the usual channels. This would explain why there seems to be so many politically-connected companies winning PPE contracts.

There may well have been noble intentions in the UK Government's chosen approach. Undoubtedly, there was an urgent need for this equipment during a frenzied period where market demand far exceeded supply. Looking to 'trusted' sources to help filter these out and help the national effort could well have been the rationale, with close political allies seen as natural first port of call for assistance. Nevertheless, it is still seriously flawed.

It is very surprising that the UK Government prioritised recommendations from politicians given in most other areas of economic activity this type of association raises red flags and triggers further scrutiny, not the opposite,⁶⁵ and they are not known for their expertise in procuring medical equipment. What is even more surprising is that it did not engage professionals, such as the British Medical Association (BMA) and the Royal College of Nursing (RCN), who had obvious expertise and a ready supply of offers from trusted suppliers that could have helped deliver critical materials during this crisis period.⁶⁶



RECOMMENDATION 3

The award of the 73 contracts we identify in this report should be subject to detailed audits by the relevant authorities. The UK Government should provide clarity over the current status of the VIP lane and end it if it has not done so already. To provide greater assurance and accountability on the matter, the UK Government should also provide transparency of the:

- names of the companies referred to the VIP lane
- source of the referral
- decision for the referral
- status of the referral
- any conflicts of interest identified for these referrals

Whilst the form of prioritisation adopted by the UK Government was highly problematic, the concept of prioritisation itself was sound. During an emergency period such as a pandemic, departments must be able to triage in some way the offers of help they receive. Processing over 15,000 approaches must have been logistically extremely challenging, especially when many would have involved new or complex intermediary arrangements involving multiple jurisdictions. Having some form of filter using trusted sources is one way to address a range of other risks, such as external fraud or buying poor quality supplies.

An alternative option, however, would be to ensure there was a better alignment between the UK's stockpile and responsive supply of PPE and potential demand. The UK Government has already committed to reviewing its stockpile preparations for a variety of pandemic responses.⁶⁷ Implementing the findings of this review should help reduce intense spikes in demand for materials in a heated global market where corruption risks increase.

It has also worked to screen and approve manufacturers of pandemic-related goods, and develop a 'pre-market supply chain engagement plan' to help ensure the UK's demand can be met at speed in the future.⁶⁸ Again, showing progress in implementing these initiatives should help reduce the corruption risks associated with procuring in a hot market.



RECOMMENDATION 4

The UK Government should work to ensure there is a robust stockpile and supply chain of PPE to deal with future pandemic crises, and provide a progress update to Parliament on their implementation by July 2021.

New companies, profiteering and unknown risks

The third recurring area of concern regarding COVID-19 procurement are contracts awarded to companies that appear unsuitable or suspicious, which falls broadly into two categories.

The first relates to contracts awarded to those with little or no track record of supplying the goods and services being purchased. This apparent absence of prior knowledge or experience in the field, most notably the supply of PPE,

is often cited in contrast to those with these credentials, yet whose offer of assistance was rejected or ignored by buyers. Combined with uncompetitive awards, some of which went to companies with political connections, provides a compelling picture of impropriety.

Contracts awarded to new companies is not a new red flag for scrutinising procurement decisions. Whilst new entrants to a market are generally welcomed – providing increased competition and a broader range of options to buyers – this is not always the case. In normal circumstances it could indicate a shell company or fictitious business intent on fraudulent activity (either with or without assistance from within the contracting body); for example, winning the contract without any intent to deliver the goods or services. In the current context, where contracts are routinely awarded without the rigour of open competition and involving tens to hundreds of millions of pounds, this risk is compounded.

The most convincing explanation for contracts going to new companies is the context of the market, especially in the early parts of the pandemic. During this heightened period of demand there was a scramble for authorities across the world to source PPE. As the NAO investigation into PPE procurement highlights, almost all of the UK's supplies were imported,⁶⁹ and a large proportion of the globe's manufacture of PPE resides in China, not the UK.⁷⁰ Those contracted were not generally manufacturers of PPE themselves, but mere agents for sourcing supplies, so their track record of producing these goods is to an extent irrelevant – it is their sourcing abilities that matter. Consequently, some of these fresh companies could well be new market entrants who have developed good working relations with PPE manufacturers, or special purpose vehicles established by firms already engaged with manufacturers of similar goods that switched to PPE production during the pandemic.

We found that 14 companies incorporated in 2020 received contracts worth over £620 million, of which 13 totalling £255 million went to ten firms who were less than 60 days old. We make no assessment of the suitability of these suppliers, but note that to the outside observer there may be valid questions as to why these were treated as more qualified for the job, especially given the reported availability of other more established companies. Furthermore, when viewed alongside other contextual factors, such as the absence of competitive tendering and alleged political connections, these concerns are likely to be amplified.

In theory, the UK Government's initiative to stabilise and increase the resilience of PPE supplies should reduce the

need to rely on newly established companies such as these for pandemic-related goods. However, any further detailed review of individual COVID-19 contracts should include a sample of these new companies within its scope.

The second area of concern relates to the conduct of agents and consultants contracted to source PPE, and in particular their fees. Allegations of profiteering form the main thrust of these assertions, with some of those engaged to secure PPE reportedly earning tens of millions for their services.⁷¹ Some also focus on the extent to which those facilitating contracts have sought to withhold their earnings from public scrutiny.⁷² Deficiencies with the products they secured compound these suspicions of impropriety, so do connections to those in high office.

Currently, two of these contractors are engaged in legal disputes. Apart from litigation like this, it is difficult to understand the level of profits made by PPE suppliers during the pandemic because the contracts are heavily redacted and there is little public information on prices paid for these materials. We have tried to systematically collect information that would help to provide a greater understanding of these variables, yet our request was rebuffed on grounds that it would exceed the statutory cost limit (see Annex V below). During its review of UK Government PPE procurement, the NAO also experienced difficulties establishing these facts, and could not make an assessment as to whether departments secured value for money.⁷³ We address this transparency point in more detail in the next section: *Losing the money trail*.

There is a third area of risk that is hypothetical – we have seen no evidence of this yet – and not debated currently, but nonetheless worth mentioning. In high-stakes markets involving large amounts of money, there will inevitably be some temptation to secure a deal, regardless of the cost. For agents seeking supplies from factories experiencing a spike in demand, competition for these goods will be fierce. In a sellers' market such as this, there is an opportunity for manufacturers to demand not only higher prices but other means, for example bribes, from buyers to secure contracts. This risk could be heightened in jurisdictions where the rule of law is weak and bribery is more common.

At the moment we do not have enough information about the ultimate source of PPE or other pandemic-related supplies to have a clear view of risks in the supply chain. We know from the NAO report and the UK Government's strategy for PPE procurement that major sources of these goods for the UK include China and Malaysia, but

this is not a complete picture of all source countries and companies involved. We also know of reports alleging human rights abuse in the manufacture of PPE imported to Europe,⁷⁴ which suggests contracting authorities did not have full sight of their supply chain, especially during the frantic period of March to June 2020. This suggests there may be more issues with the supply of PPE – for example bribery or other forms of corruption – that currently remain unknown.

In May 2019, the UK Government published a trial set of operational standards for commercial activity within Whitehall, which included a principle that all goods and services are procured legally and guard against fraud and corruption. In June 2020, this was followed by a complementary set of operational standards for countering fraud, bribery and corruption. Whilst the UK Government has stated it is working to increase the stability and resilience of PPE suppliers, which should reduce this risk, there is currently nothing in this strategy document or either of the recent NAO reports into procurement of PPE goods to suggest that bribery within the supply chain is a key risk departments were considering when securing goods and services. Given the crisis situation and the pressures likely to give rise to opportunistic bribe solicitation, this should have been a factor considered by contracting authorities, either within Whitehall or elsewhere. These risks should be part of any crisis response plans going forward.



RECOMMENDATION 5

Public bodies should clearly incorporate bribery and corruption risk assessments and mitigation strategies into their procurement practices for crisis responses.

LOSING THE MONEY TRAIL

Transparency is a cornerstone of public procurement in the UK. It provides a critical safeguard against corruption, helps ensure the integrity of the process, and enables accountability over the use of taxpayers' money. Both the existing⁷⁵ and proposed⁷⁶ contracting rules include transparency as a core principle, and it remains a core tenet of UK Government procurement policy.⁷⁷

In theory, these principles are enshrined in laws, regulations and processes that enable the public to follow the money through each stage of the process from planning through to payments (see Figure 1 below). The UK has also committed to multilateral initiatives to raise the bar through promoting open contracting – the gold standard for public procurement openness. Yet in practice, we found the transparency infrastructure to be highly deficient. As noted elsewhere, data issues like these inhibit the utility of transparency disclosures for identifying potential wrongdoing.⁷⁸

Below we review both systemic and performance issues with the UK's current approach to public procurement transparency, followed by a review of how it could use its current proposals for reform to resolve these for the future.

Systemic issues

Anyone attempting to review public spending during the COVID-19 pandemic faces three major systemic challenges. These are issues inherent in the current design of the UK's procurement transparency regime, which inhibit access to key information about contract delivery and performance.

The first is navigating and extracting data from the relevant procurement portals. Prior to the UK's exit from the EU there were five primary locations you could find tender and contract related data. The only UK-wide portal was Tenders Electronic Daily (TED), otherwise known as the Official Journal of the European Union.⁷⁹ This contained all information on tenders and contracts over a set of financial thresholds defined by the EU.⁸⁰ For any procurement under these thresholds, tender and contract information may be reportable to one of four national-level websites: Contracts Finder (primarily covering England), Public Contracts Scotland, Sell2Wales, and eTendersNI.

Whilst in theory it should be straightforward to link data from all of these systems together to provide a UK-wide

view of public procurement – above and below the EU thresholds – in practice there were significant and sometimes insurmountable challenges, including different data structures, slightly different fields, and in some cases a complete lack of data.⁸¹ Perhaps most importantly, there is no accurate way to identify when tenders or contract information are published across multiple platforms; for example, on TED and Contracts Finder. Because of this risk, combined with the absence of Northern Ireland data under the EU threshold, we had to limit our analysis to TED data only. This provided us with a UK-wide perspective, albeit only for tenders and contracts above the EU thresholds. Consequently, even with a dedicated data specialist it was impossible for us to create a holistic view of contracts under the EU thresholds.

The second issue is perhaps more significant than the first. Though we were able to collect data on tenders, awards and contracts from TED for all parts of the UK, this only covers part of the procurement process. As Figure 1 shows below, ideally there should be a clear, auditable data trail from these steps to project implementation. However, in reality this information is either missing or not identifiable.

Let us take payments information as an example. Knowing how much has been spent against a contract is important because it shows whether a contract is above or below budget. Spending above budget could indicate a range of issues that merit closer scrutiny, including poor administration, fraud and corruption.

The constituent parts of the UK have slightly different rules for publishing payment information, but the UK Government, the biggest buyer for COVID-19 goods and services, publishes the details of departmental spend over £25,000 monthly on the gov.uk website and data.gov.uk portal.⁸² This includes some basic information about the supplier, the date of payment and the amount paid; however, crucially, it does not include details of the contract under which the payment was made. Therefore, anyone wanting to know the level of spend against a particular contract would not be able to do so with publicly available data.

The situation is even worse for other implementation information. There are no systematic updates on contract delivery, so it is impossible for those outside of the contracting bodies to know how much of a product or service, such as PPE supplies, were actually delivered. This leads us to the third major systemic issue: responsive access to information requests.

By failing to provide data and information on procurement proactively, members of the public and media have been left to seek these details through access to information requests under the Freedom of Information Act 2000 (FOIA). Whilst requesting this information may be possible on a contract by contract basis, our experience is that public bodies are likely to invoke cost limits if requests concern multiple contracts. Given the scale of procurement in relation to the pandemic response and the

absence of information published proactively in relation to these contracts, we are left in the dark about key measures of contract performance.

The UK Government's Green Paper *Transforming Public Procurement* recognises these major deficiencies in the current approach to publishing contract information. It proposes introducing a clear, auditable trail from tender through to payments similar to the Open Contracting Data Standard (OCDS), a non-proprietary common data standard, which is used by over 30 governments globally.⁸³ The proposals include payment notices in the list of mandatory reporting requirements,⁸⁴ with performance data included in a list of possible additions during the system's development.⁸⁵ If implemented according to the OCDS, this would help provide a clearer end-to-end picture of the money flow.

JOINED UP CONTRACTING DATA

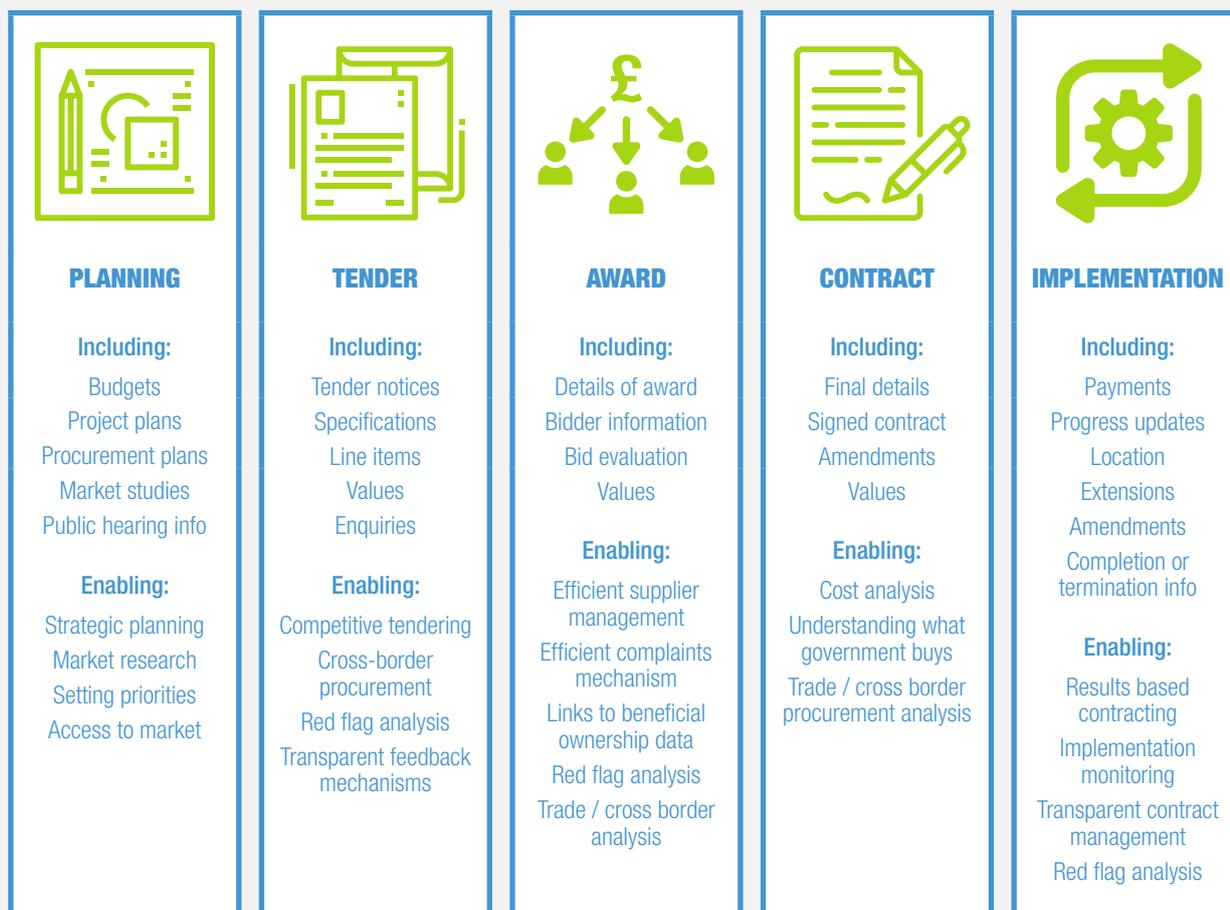


Figure 1. Ideal data flow of public contracting⁸⁶

Performance issues

Combined with the systemic issues mentioned above, there are three broad performance issues that also inhibit access to timely information about contracts related to the pandemic.

The first of these is the timeliness of proactive disclosures through TED and reactive disclosures under the FOIA.

Under the PCR 2015, a public body must inform OJEU/TED of the supplier and award details⁸⁷ within 30 days of the award.⁸⁸ After notifying OJEU/TED it may also publish this information on a local tender portal.⁸⁹ UK Government guidance advises departments to publish contract award details on Contracts Finder within 90 days of a contract award.⁹⁰

The NAO report noted that out of 1,664 COVID-19 related contracts above £25,000 awarded between 1 March and 30 June 2020, only one in four were published on Contracts Finder within the UK Government's own recommended 90 day deadline. Over half (55 per cent) were still unpublished on Contracts Finder as of 10 November 2020.⁹¹

Using data from TED, we reviewed how timely public bodies were at complying with their legal deadlines under Regulation 50 of the PCR 2015.

Of the 998 COVID-19 contracts on TED awarded between February and the end of November 2020, 72 per cent (711) were published after the legal deadline. In total, these late publications account for £13.3 billion of COVID-19 contracts, £7.4 billion of which was reported over 100 days after the contract award. In comparison, on average it took Ukraine less than a day to publish information on 103,263 COVID-19 contracts after their award during the same period.⁹²

Just over 90 per cent (644) of late disclosures in our sample relate to contracts awarded during the first six months of 2020, the most intense phase of procurement for the pandemic response. Just over 60 per cent (393) of the 644 late disclosures during these six months relate to contracts awarded by one public body: the Department for Health and Social Care (DHSC). Forty-nine per cent of these (316) were contracts for emergency PPE supplies.

Yet these issues were not isolated to UK central government. Other public bodies appear to have had similar challenges. NSS, the central procurement body for the NHS in Scotland, published 85 per cent (82) of

their 96 contract award notices late during this same six month period, including 78 per cent (35) of their 45 PPE contracts. Contract award notices for 70 per cent (26) of the 37 procurements by the NHS Wales Shared Services Partnership were published after 30 days later, including all of their 20 PPE contracts.⁹³

Over time, the delay between contract award and publication for public bodies reporting to TED does appear to be decreasing (see Graph 6). Whilst it took just over 100 days on average for them to publish a contract award notice from March 2020 on TED, this had reduced to 26 days on average for those awarded in September 2020. Almost 65 per cent of late publications relate to contracts awarded during the first two quarters of 2020.

Similar to late contract awards, there were issues with the timeliness of payments data and FOI responses.

It is UK Government policy to publish the details of all departmental spend over £25,000 monthly.⁹⁴ According to data collected by the Institute for Government (IfG) as part of its annual Whitehall Monitor, almost all departments failed regularly to publish this data on time even before the pandemic hit in earnest.⁹⁵ From February onwards, the DHSC – the public body contracting the most COVID-19 related goods and services during this period – fell behind even more with its disclosures, and as of 3 December 2020 had failed to publish three consecutive months' worth of payments data.

The Scottish Government also struggled to maintain its disclosure routines during this period, with payments data taking an average of 133 days between the end of the month and publication between February and August. Data for September to November is currently unpublished.⁹⁶ Equivalent data is unavailable for the Welsh Government and Northern Ireland Executive.

The Local Government Transparency Code 2015 requires local authorities across England to publish details of spending over £500 against contracts quarterly, and within a month of the end of the last quarter.⁹⁷ We took a sample of five different authorities across England who reported COVID-19 related contracts to TED between February and November 2020 to review their compliance with the Code. Encouragingly, four⁹⁸ out of the five had data available until at least December 2020; however, the fifth⁹⁹ has only published data up until September 2020.¹⁰⁰

Where information is not published proactively, members of the public and journalists rely principally on authorities' responses to FOI requests. Yet according to the latest Whitehall Monitor report from the Institute for Government

(IfG), Whitehall has become increasingly resistant to these enquiries.¹⁰¹ Furthermore, a recent report by openDemocracy exposed the Cabinet Office still operates a ‘clearing house’ for triaging and managing responses to requests to sensitive information by journalists and non-governmental organisations.¹⁰² Currently we have no evidence of similar arrangements in any of the devolved governments or local authorities across the UK.

From our review of available data there were undoubtedly significant delays across the UK concerning the publication of contract award notices. Whilst media interest and litigation has focused on failures to comply with these obligations in Whitehall, the UK Government is by no means the only public body to do so. Regardless, there is a lesson in recent events for all of them.

As noted by the IfG, during the pandemic there has been a surge in demand for information from parliamentarians and the public. This is perhaps unsurprising. Given the scale of activity and the gravity of the situation at hand, there will be many who want to know what is being done, how and why, which includes the use of public funds.

Understanding why public bodies failed to comply with their legal and policy obligations requires further

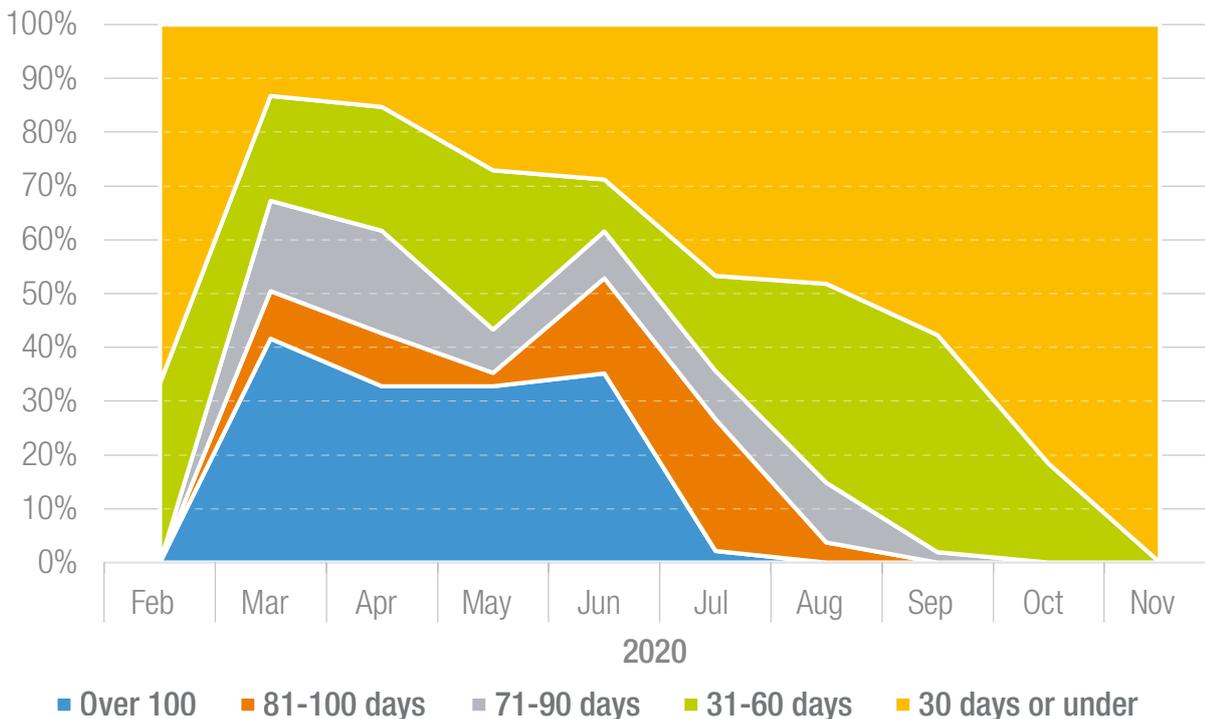
research, though the Good Law Project’s litigation provides some insight into the probable causes of delay. Using multiple systems, poor communication and opaque lines of responsibility is not conducive to timely disclosure.¹⁰³ Without adequate preparation, a combination of high volume activity and an emergency context in which normal business operations are disrupted, non-compliance with these legal obligations becomes almost inevitable.

This does nothing for trust in the integrity of procurement decisions.

Nevertheless, the Secretary of State for Health and Social Care was found to have acted unlawfully by failing to publish contract award notices on time.¹⁰⁴

What is perhaps more damaging is the late publication of contract awards to companies with political connections. Details for ninety-three per cent (26) of the 28 contracts awarded to politically connected companies within our sample were published late, compared to 70 per cent (688) of the 970 without. Seven late contracts awarded to politically connected suppliers went unpublished for over 100 days. Whilst these were by no means the latest contract award disclosures, they were still well past the

Graph 6: Timelines of contract award notice publication by days (range) and month between February and November 2020 as a proportion of all contract award notices (Source: TED)



legal deadline. Given the context of these procurements, significant delays to their disclosure – whether intentionally or otherwise – gives the impression that there is something to hide.

Public bodies across the UK failed to comply with their legal obligations to provide timely access to information on contracts. Though comprehensive data is not as easily obtainable, there is evidence of similar delays to the disclosure of payments information during this period and responses to FOI requests.

To its credit, the UK Government commissioned a review of its procurement practices in September 2020 in order to learn lessons from its procurement of a controversial contract for communications services, and has committed to take forward all 28 recommendations from this exercise.¹⁰⁵ However, its reluctance to admit it failed to comply with its legal obligations has led to costly litigation, and there is no clear indication yet that there will be a government-wide effort to improve the timeliness of proactive disclosures and reactive responses to FOI requests.

The second issue concerns evidence of poor documentation during the procurement process.

The PCR 2015 include a number of provisions that require public bodies to document key parts of the procurement process, including the rationale for why suppliers were selected,¹⁰⁶ how potential conflicts of interest were managed, if they arose,¹⁰⁷ and all related internal and external communications relating.¹⁰⁸ All documentation concerning the progress and decisions relating to a procurement must be kept for at least three years.¹⁰⁹

In its investigation into COVID-19 procurement practices by the UK Government, the NAO found inadequate documentation outlining how the risks of direct awards without competition were mitigated, and no clear audit trail to support key procurement decisions.¹¹⁰ This included no due diligence documents for a large multi-million pound PPE contract that delivered goods which did not comply with the relevant safety standards;¹¹¹ a contract worth £840,000 awarded without any formal contract and adequate documentation to a politically-connected company;¹¹² and threadbare documentation on conflicts of interest for a £253 million consignment of PPE that, whilst compliant with the buyer's order, was not usable because it did not conform to the required safety standard.¹¹³ Not only does poor documentation undermine transparency in decision-making and do nothing for confidence in the integrity of procurement decisions, it takes away a key defence for public bodies against any unfounded allegations of impropriety.

Showing considered and well-documented decisions behind these contract awards could have helped address a central thrust of the criticisms levelled against the buyer – that they had something to hide.

Both the NAO's report¹¹⁴ and the subsequent Boardman Report¹¹⁵ on communications procurement by the Cabinet Office during the pandemic recommend measures to improve compliance with requirements to document key procurement decisions. The Public Accounts Committee has also called for the Cabinet Office to provide an update on implementing the Boardman proposals in July 2021.¹¹⁶ Given these documentation failures, like those concerning the timeliness of disclosures proactive and reactive transparency disclosures, constitute breaches of the law, it would seem suitable that the minister responsible for the UK Government's corporate approach to openness give a statement to the House explaining the mistakes that have been made, how they are being rectified, and what steps are being taken to prevent them in the future.

RECOMMENDATION 6

The Minister for the Cabinet Office should make a statement to Parliament setting-out:

- where the UK Government has not complied with its legal transparency obligations under the Public Contracts Regulations 2015 and FOIA,
- how these are being rectified, and
- how departments will prevent the same issues reoccurring in the future.

The third issue concerns human errors and omissions, many of which could be and should be avoidable. Though these may seem trivial to the outside observer, many of them adversely affect the utility of transparency disclosures. Below we provide a non-exhaustive list of some examples to illustrate the importance of resolving these issues.

A common recurring omission is the absence of company registration numbers in contract and payments data. These are unique identifiers given to companies that allow anyone trying to follow the money trail to understand exactly where it goes. This is particularly important when looking at thousands of contracts and payments, and even more so when there are two or more companies with very similar names.

To take a hypothetical example, Public Body A awards Personal Protective Equipment (PPE) Supplies Limited a contract worth over £500 million for PPE without competitive tender. Public Body A publishes the details of the contract award via the relevant platform but omits the company registration number. Coincidentally, there is a separate and unrelated company called PPE Supplies Limited, which is also awarded a separate PPE contract by Public Body A for a lesser amount, say £10 million. The authority publishes this contract award notice, again without the company registration number.

It is confusing for outside observers if they cannot distinguish between the two companies.

When payments data are published relating to these contracts, again not including company registration numbers, one may easily confuse the two as being the same entity. This confusion would be compounded if an official responsible for publishing payments data, with good intent, decides to shorten the name of the name of the first contractor thinking they are the same company.

Providing accurate information on companies is crucial to enabling those inside and outside of government to understand the distribution of public funds. Whilst some public bodies collect and publish this information, far too many do not. Supplier company numbers were included in around only ten per cent of COVID-19 procurement data reported to TED. This is basic information about a company that really should be collected and published as a matter of routine. If implemented according to OCDS standards, proposals in the UK Government's Green Paper would require this information to be made publicly available for all key procurement data.¹¹⁷

RECOMMENDATION 7

The UK Government should include its proposals to require company identifiers in procurement and spend data as part of its forthcoming reforms of public procurement.

A lesser but nonetheless frustrating error is some public bodies' inability to report their name consistently. Were this an occasional variation in a relatively small dataset then this would not matter as much. However, given that these records could form part of disclosures including potentially tens of thousands of rows of data, it does.

Examples within our sample data include at least seven different names for the Department of Health and Social Care, and over 100 different entries for the Ministry of Defence – both of which cover thousands of procurement notices. Inconsistencies like this require anyone analysing the data to undertake time-consuming data cleansing, yet with some simple controls on data entry this problem could be solved.

The same applies to fields involving monetary and data values. We have noticed a number of mistakes made including a reported £27.6 billion contract award which was actually £27.6 million;¹¹⁸ two £19 million contract awards when only one was awarded; and some contracts awarded in 2027 and 2028. Again, simple controls on data entry – spotting obvious errors and potential duplicates – would greatly increase the integrity of contract and payments data.

Since the UK left the EU, public bodies must report contracts over the old EU thresholds to *Find a Tender*.¹¹⁹ The UK Government's Green Paper proposes buyers and sellers would have a single system identity, meaning they would only have to enter data once.¹²⁰ This would help reduce administrative burdens and increase the consistency of data on the new portal.

When developing new systems to implement the proposed reforms, it is critical that there are greater controls over data entry than is currently the case. Confidence in the accuracy of public data is undermined when it contains erroneous values, such as contracts decades in the future and confusion between billions and millions of pounds. Similarly, missing values, such as when a contract was awarded, also inhibits meaningful analysis and reduces the potential of the data. Introducing greater controls over system inputs should be relatively straightforward, yet increase the integrity and utility of public procurement data.

RECOMMENDATION 8

The UK Government should include its measures to improve the quality and consistency of data in its forthcoming reforms of public procurement, including single identities for buyers and suppliers, and controls on data entry by contracting authorities.

ENFORCING STANDARDS IN HIGH OFFICE

Whilst PPE contracts have proven the most frequently questioned during the pandemic, they are not the only ones subject to heightened scrutiny. Allegations of cronyism also arise in relation to securing suppliers for testing, public opinion research and management of the test and trace system. Alongside these are concerns regarding conflicts of interest held by those with either leadership or advisory roles in the pandemic response. Were these concerns proven with foundation it is worth considering what means of accountability are available.

In theory, any breach of the ministerial code is subject to investigation by the Independent Advisor on Ministerial Interests who reports to the Prime Minister. In the absence of any potential criminal conduct it would be for the PM to decide on any sanction, which is confined principally to firing them from government or demoting them. Not only does this arrangement provide a relatively limited means of redress, it also presents a significant conflict of interest, with the PM responsible for disciplining those whom they may depend on. This is highly unsatisfactory and gives rise to the possibility that a minister may breach the rules flagrantly yet remain in office. Furthermore, at the time of writing, the post of Independent Advisor remains vacant over four months after the last office-holder resigned.

In 2016, we proposed the Independent Advisor be given greater autonomy and powers to enable greater checks on ministerial impropriety.¹²¹ These proposals are just as necessary now as they were then. In other jurisdictions, such as the US and Canada, oversight of the ministerial code is endowed to an office independent of government.

RECOMMENDATION 9

Responsibility for overseeing and enforcing the ministerial code should be moved to an office independent of government with sufficient powers and resources to undertake their role effectively. The position should be appointed, resourced by, and accountable to Parliament.

In theory, there are possible means of accountability for criminal misconduct, too. Soliciting or accepting a bribe is an offence under the Bribery Act 2010, embezzlement and defrauding the public purse is an offence under the Fraud Act 2006, and there is a common law offence of misconduct in public office for other corrupt practices, such as a serious abuse of the public's trust. Whilst the first two provide robust statutory deterrents against abuse of office, the third is widely regarded as unclear and unsuitable for its intended purpose. After a lengthy and thorough review, the Law Commission for England and Wales published a set of proposals to provide for a clearer corruption in public office offence in statute. Legislating for this at the earliest possible opportunity should help provide a clear signal that the UK Government aspires to high standards in public office.

RECOMMENDATION 10

The UK Government should bring legislation for a new statutory offence of corruption in public office at the earliest possible opportunity.

CONCLUSIONS

These have been some of the most challenging times facing our nation since the Second World War, and at the beginning trust in the UK Government's response was high. Yet these figures have since declined, with a majority now viewing leadership of the public health response with scepticism. Though it has not yet been asked in opinion polls explicitly, controversy surrounding public procurement – almost entirely focused on Whitehall – must have contributed to this decline.

Undoubtedly, the strains of the pandemic have weighed heavily on the shoulders of the civil service, which has reduced substantially in size over the past decade.¹²² This and the speed of the public health crisis explains some of the issues of concern we have seen, especially delayed transparency and a poor paper trail for procurement. But a combination of factors – including opaque and uncompetitive contracting, combined with a suspiciously high number of awards to those with political connections – has led to others suggesting foul play, and understandably so.

Based on the available evidence, the system designed to triage offers of PPE supplies appears partisan and riven with systemic bias. Combined with the aforementioned administrative deficiencies, and in some instances a failure of suppliers to deliver, this combination has proven politically incendiary. That the government has sought to defend itself through costly litigation instead of through openness and humility – and failed – has made matters worse.

Though some of these actions may have been unintentional they were certainly counter-productive. Withholding information only increases suspicion of foul play. Pushing the boundaries of the law, and breaking them, does so even more. And in a wider context where ministers openly break the rules without consequence gives a sense that accountability and the rule of law are in danger of vanishing from sight.

Whilst these concepts might seem a luxury in a time of crisis, they are nonetheless crucial. The effectiveness of the pandemic response is dependent on the trust and cooperation of the public. Support for difficult decisions will be far less forthcoming if it appears that there is one rule for the few and another for everyone else. Winning back faith requires candour and a humility that has so far been absent, and decisive action that may go against natural instincts – to subject oneself to greater accountability. The UK Government can take a first big step towards achieving this by showing that there is nothing to hide.



ANNEX I: METHODOLOGY

Our research sought to answer three questions about public procurement during the Covid-19 pandemic:

1. What procurement corruption risks have emerged during the COVID-19 response?
2. How compliant are public bodies with their obligations to publish tender, contract and spend data on the COVID-19 response?
3. What issues are there that prevent following the money spent on the response from tender, through to contract and actual spend?

We sought to answer these questions by using the following methods.

Legislative and policy review

We contextualised our research by undertaking a review of the relevant legislation and policies covering public procurement across the UK, including forthcoming proposals for reform. Due to time constraints and the fact most of the procurement by value took place within Whitehall, we focused our efforts on those rules emanating from the UK Government. We also engaged select material from academia focusing on corruption risks in public procurement; court documents disclosed during litigation relating to COVID-19 contracts; material from the Open Contracting Partnership (OCP) covering good practice procurement practices; reports from the NAO concerning procurement during the pandemic; and publications from other international initiatives and institutions, including the Government Transparency Institute and the OECD, on probity in public contracting.

Open source catalogue of allegations

To understand the nature of corruption risks and issues, we collected all identifiable and reasonable allegations of impropriety concerning COVID-19 contracts covering the period February to November 2020. This included reports from news outlets, public interest lawyers and social media. We included only those where suggestions of misuse of public office were implicit in the reporting. We did not include contracts concerning wider issues, such as human rights abuses within PPE supply chains.

We catalogued these allegations, matched them against procurements on the TED platform, and then developed a

basic typology of the areas of concern arising from these publications. These are outlined in more detail in Annex III.

Procurement data

We sought to try and understand the scale of high-risk activity and the general patterns of COVID-19 procurement during our sample period by using official data. Initially, we had planned to use data from across all five core procurement platforms for the public sector in the UK:

- Tenders Electronic Daily (TED)
- Contracts Finder
- Public Contracts Scotland
- Sell2Wales
- eTendersNI

This would have provided us with a holistic view of contracting above and below the EU publication thresholds. Unfortunately, there were insurmountable, systemic obstacles to adopting this 'all-platforms' approach, which are outlined in more detail in the Losing the money trail section above. Consequently, we compromised the completeness of our sample for accuracy by opting for only data on TED.

To provide a workable scope for the project we only used data from TED covering February to November 2020, with the last data extracted on 30 November 2020. Even then we still needed to go through five often labour-intensive steps to produce the findings in this report:

1. **Identification and collection:** identifying and collecting procurement data for all parts of the UK. Principally, this focused on contract data although we did attempt to collect payments data, too, for the UK Government.
2. **Standardisation:** transforming the schemas for all of these tender portals into the Open Contracting Data Standard (OCDS).
3. **Exploration:** testing the possibilities and limitations of the data given its quality and completeness.

4. **Processing:** this included various processes to improve the analysability of the data, including tagging COVID-19 contracts, reconciling companies against Companies House using the OpenCorporates API, clustering the names of buyers to provide standardised buyer names, and tagging contracts for red flags and the types of goods/services procured.
5. **Querying and analysis:** asking questions of the data and analysing the findings in conjunction with other more qualitative evidence.

Limitations

We note that due to the late publication of contract award notices by public bodies there are key procurements missing from our sample data. For example, the vaccine contract with Pfizer¹²³ was published on 10 December 2020, so not collected during our last data extraction process. Similarly, whilst Public First's controversial contract was published on Contracts Finder on 12 June 2020,¹²⁴ it was not disclosed on TED under 14 December 2020.¹²⁵

We note there are limitations to our approach to cataloguing allegations of impropriety in contract awards. We recognise our sample is biased by the interests and capacity of those investigating COVID-19 procurement. Feasibly there may be more issues across other parts of the UK however media interest has focused almost exclusively on contracting within Whitehall. We also recognise that lessons can be learnt from where procurement has gone well, and that could merit further exploration in any further inquiries into this area, yet these cases have been difficult to identify.

ANNEX II: OECD INTEGRITY RISKS IN THE PROCUREMENT PROCESS¹²⁶

Pre-tendering phase	Needs assessment and market analysis	<ul style="list-style-type: none"> • Lack of adequate needs assessment • Influence of external actors on official decisions • Informal agreement on contract
	Planning and budgeting	<ul style="list-style-type: none"> • Poor procurement planning • Procurement not aligned with overall investment decision-making process • Failure to budget realistically or deficiency in the budget
	Development of specifications/ requirements	<ul style="list-style-type: none"> • Technical specifications are tailored for a specific company • Selection criteria is not objectively defined and not established in advance • Requesting unnecessary samples of goods and services • Buying information on the project specifications
	Choice of procurement procedure	<ul style="list-style-type: none"> • Lack of proper justification for the use of non-competitive procedures • Abuse of non-competitive procedures on the basis of legal exceptions: contract splitting, abuse of extreme urgency, non-supported modifications
Tendering phase	Request for proposal/bid	<ul style="list-style-type: none"> • Absence of public notice for the invitation to bid • Evaluation and award criteria are not announced • Procurement information isn't disclosed and isn't made public
	Bid submission	Lack of competition or cases of collusive bidding (cover bidding, bid suppression, bid rotation, market allocation)
	Bid evaluation	<ul style="list-style-type: none"> • Conflict of interest and corruption in the evaluation process through: <ul style="list-style-type: none"> – Familiarity with bidders over time – Personal interests such as gifts or future/additional employment – No effective implementation of the “four eyes-principle”
	Contract award	<ul style="list-style-type: none"> • Vendors fail to disclose accurate cost or pricing data in their price proposals, resulting in an increased contract price (i.e. invoice mark-ups, channel stuffing) • Conflict of interest and corruption in the approval process (i.e. no effective separation of financial, contractual and project authorities) • Lack of access to records on the procedure
Post-award phase	Contract management/ performance	<ul style="list-style-type: none"> • Abuses of the supplier in performing the contract, in particular in relation to its quality, price and timing: <ul style="list-style-type: none"> – Substantial change in contract conditions to allow more time and/or higher prices for the bidder – Product substitution or sub-standard work or service not meeting contract specifications – Theft of new assets before delivery to end-user or before being recorded – Deficient supervision from public officials and/or collusion between contractors and supervising officials – Subcontractors and partners chosen in an un-transparent way or not kept accountable
	Order and payment	<ul style="list-style-type: none"> • Deficient separation of financial duties and/or lack of supervision of public officials leading to: <ul style="list-style-type: none"> – False accounting and cost misallocation or cost migration between contracts – Late payments of invoices • False or duplicate invoicing for goods and services not supplied and for interim payment in advance entitlement

ANNEX III: AREAS OF CONCERN REGARDING COVID-19 CONTRACTS

Our analysis of COVID-19 contracts subject to heightened public scrutiny identified 15 areas of concern covering three aspects of the procurement process. Some contracts covered multiple areas of concern; for example, a contract awarded with no competitive tender to a politically connected company who subsequently delivers a faulty product. Whilst these areas of concern do not prove wrongdoing, they provide red flags that highlight where there should be scrutiny.

Procurement process

1. No competitive tender
2. Unpublished or late publication of contract award information
3. Alleged breach of tendering rules
4. Administrative error / false information published about the contract

Supplier profile

5. Politically connected
6. Relatively new company
7. Offshore owned
8. No prior experience of delivering product
9. Dormant company
10. Awarded before company formed
11. Low assets
12. Previous contracting failure

Contract outcomes

13. Faulty product
14. Product not delivered
15. Sub-contractor fraud

ANNEX IV: HIGH PRIORITY LANE INFORMATION REQUEST

On 18 November 2020, we submitted a Freedom of Information request to the Department for Health and Social Care (DHSC) for details of the 493 companies referred for consideration under the 'high-priority lane' process for PPE procurement between January and July 2020, including:

1. The names of the companies referred
2. The source of the referral
3. The decision for the referral [i.e. accepted or rejected]
4. The status of the referral [i.e. delivered, cancelled and in-progress]

We also asked for details of all those who were informed of the existence of the high-priority VIP lane process between January and July 2020.

On 16 December 2020, we received a response confirming the DHSC held this information, but that complying with this request would exceed the cost limit under Section 12(1) of the Freedom of Information Act 2000.

On 16 December 2020, we responded by narrowing our request to just the names of the 493 companies referred for consideration under the 'high-priority lane' process for PPE procurement between January and July 2020.

On 12 January 2020, we contacted the DHSC to inform them their response was beyond the statutory timescale and requested a timeline for a response.

On 15 February 2021, we received a response from the DHSC stating it was assessing the public interest in releasing this information under Section 43 of the FOI Act (commercial sensitivity) and that it anticipated a response would be forthcoming by 15 March 2021.

On 16 February 2021, we contacted the DHSC to remind them that they were already over the statutory deadline for a response, and reminded them that delays of this nature should be exceptional and that public bodies need to demonstrate the length of any delay is justified.

On 15 March 2021, we received an update from the DHSC stating that it was still assessing the public interest in releasing this information under Section 43 of the FOI Act (commercial sensitivity) and that it now anticipated a full response would be forthcoming by 14 April 2021.

As of the time of publication, we are yet to receive a final response.

ANNEX V: DHSC FOI REQUEST

Freedom of Information Team
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU

www.gov.uk/dhsc

[name redacted for privacy reasons]

[email redacted for privacy reasons]

2 December 2020

Dear [name redacted for privacy reasons]

Freedom of Information Request Reference FOI-1268591

Thank you for your request dated 4 November in which you asked the Department of Health and Social Care (DHSC):

“Dear Department of Health and Social Care,

I am writing to you under the Freedom of Information Act 2000 to request specific information from your department. We have attached a list of 48 contract award notices and would be grateful if you could provide the following information for each contract:

The actual spend (£) for each individual contract to date

The completed standard selection questionnaires for each contract (unless a standard selection questionnaire was not used)

When a standard selection questionnaire was not used, please explain why the supplier was awarded the contract as opposed to all other potential suppliers

When the contract is for PPE or ventilators: How many items were contracted to be supplied?

How many of these items were successfully delivered to date? How many of these items were substandard, faulty or unsuitable to use?

When the contract is for consulting, research, strategic communications or logistics: What works or services have been met in line with its contract obligations, and what hasn't been met?

For your convenience, I attach an excel table which details each contract award we are asking you to provide this information for. It also clarifies what information we specifically would like for each contract award – which we hope will make our request simple and easy to respond to. Please do provide the requested information in this table.

If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under the Section 16

obligations of the Act, as to how I can refine my request.

Please don't hesitate to contact me if you have any questions or queries about my request. I will be very happy to clarify what we are asking for and discuss it with you further – my details are outlined below.

Thank you so much for your time and assistance. I look forward to your response. Please acknowledge my request is being considered."

Your request has been handled under the Freedom of Information Act (FOIA).

I can confirm that the Department hold information relevant to your request. However, to comply with your request as it is currently framed would exceed the cost limit as set out in Section 12(1) of the Freedom of Information Act. Section 12(1) states that a public authority can refuse a request if complying with it would exceed the appropriate limit of £600 (which represents 24 hours).

This represents the estimated cost of one person spending this time in determining whether the information is held, and locating, retrieving and extracting the information. Where Section 12 applies to one part of a request, we refuse all of the request as being over the cost limit, as advised by the Information Commissioner's Office (ICO).

The contract management process for each of these contracts you have listed in terms of assessing the spend against the individual contract payment mechanism involves the exchange of many emails and correspondence between teams within the Department, with the supplier and often other external bodies.

To establish the precise, accurate position on all these contracts to answer these questions at any one point in time would require us to extract information from many documents for examination to provide the answer. Processing your request would therefore require that individuals in several teams and offices search their records and review a large volume of documentation in order to locate and extract the relevant information, which we have calculated would exceed the Section 12 threshold.

If you were to refine your request for information within more specific margins, for example, to one of the contracts you are most interested in, then we may be able to continue processing your request. However, I cannot guarantee that Section 12 or any other exemptions will not apply to any information requested

Please note that the FOIA provides a right of access to recorded information held by public authorities. Recorded information can typically include physical and electronic information such as emails, letters, documents, reports, policies, datasets, photographs and sound or video recordings. However, it does not require public authorities to generate new information to answer questions, including providing explanations or giving opinions, unless this is recorded information that they already hold.

You may find it helpful to refer to the Information Commissioner's Office (ICO) 'For the public' webpages. They include some advice for requesters on how to word requests to get the best result. They are aimed at the general public and provide guidance on how to use section 1 rights responsibly and effectively. Future requests are less likely to be refused if framed in accordance with these guidelines. You can view the relevant section, 'How should I word my request to get the best result?', on the How to access information from a public body page of their website. <https://ico.org.uk/for-the-public/official-information>

If you are not satisfied with the handling of your request, you have the right to appeal by asking for an internal review. This should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to the address at the top of this letter, or the email address at the end of this letter.

Please remember to quote the reference number above in any future communications. If you are not content with the outcome of your internal review, you may complain directly to the Information Commissioner's Office (ICO). Generally, the ICO cannot make a decision unless you have already appealed our original response and received our internal review decision. You should raise your concerns with the ICO within three months of your last meaningful contact with us.

The ICO can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow SK9 5AF

<https://ico.org.uk/concerns>

Yours sincerely,

[name redacted for privacy reasons]

Freedom of Information Officer

E freedomofinformation@dhsc.gov.uk

ENDNOTES

- 1 Cabinet Office, *Procurement Policy Note – New Thresholds 2020: Information Note PPN 06/19 November 2019*, Annex A https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850566/PPN_for_New_Thresholds_2020_pdf.pdf
- 2 UK public procurement over the relevant thresholds was still reportable to TED until the 31 December 2020.
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- 4 Two of these were published after we collected our sample data so do not appear in our aggregate statistics elsewhere in the report.
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- 14 Hansard, HC debate, volume 685, column 414WH, Wednesday 9 December 2020 <https://hansard.parliament.uk/Commons/2020-12-09/debates/ED6D1DDB-BCC8-4682-B7FD-DCF0B6B5799C/Covid-19NAOReportOnGovernmentProcurement#highlight=%22nigel+boardman%22%22contribution-497B488E-2769-4E1E-9AE5-4CE68B02468>
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- 20 Institute for Government, *Government procurement: The scale and nature of contracting in the UK* (December 2018) p.5
- 21 Institute for Government, *Government procurement* p.2
- 22 NHS England is an executive non-departmental public body that is responsible for authorising and overseeing the commissioning of local healthcare services for the NHS. During the pandemic, Secretary of State for Health has directed NHS England to commission these services centrally instead of through local Clinical Commissioning Groups (CCGs)The Exercise of Functions by the National Health Service Commissioning Board (Coronavirus) Directions 2020 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880230/Exercise_of_Functions_by_the_National_Health_Service_Commissioning_Board_Coronavirus_Directions_2020.pdf and The Exercise of Functions by the National Health Service Commissioning Board (Coronavirus) (No. 2) Directions 2020 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/910188/Exercise_of_Functions_by_the_National_Health_Service_Commissioning_Board_Coronavirus_No._2_Directions_2020.pdf
- 23 <https://ted.europa.eu/udl?uri=TED:NOTICE:492193-2020:TEXT:EN:HTML> (accessed 17 March 2021)
- 24 Note this mostly for infrastructure costs associated with the vaccine programme and not the vaccines themselves, the contracts for which were either unpublished at the time of our data extraction from TED or do not contain the actual value of the contract (the contract value is £1 where it is available in the data).
- 25 See Article 9 of the United Nations Convention Against Corruption (UNCAC) for details on what basic measures this should include https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf
- 26 HM Government, *United Kingdom anti-corruption strategy 2017-2022* (December 2017) p.26 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/667221/6_3323_Anti-Corruption_Strategy_WEB.pdf
- 27 There are several parts of The Public Contracts Regulations 2015 that are intended to ensure open market competition, with these principles made explicit in Regulation 18 <https://www.legislation.gov.uk/uksi/2015/102/regulation/18/made> (accessed 17 March 2021)
- 28 The Public Contracts Regulations 2015, Regulation 24 <https://www.legislation.gov.uk/uksi/2015/102/regulation/24/made> (accessed 17 March 2021)
- 29 The Public Contracts Regulations 2015, Regulation 57 <https://www.legislation.gov.uk/uksi/2015/102/regulation/57/made> (accessed 17 March 2021)
- 30 The Public Contracts Regulations 2015, Regulations 83 and 84 <https://www.legislation.gov.uk/uksi/2015/102/part/2/chapter/4/made> (accessed 17 March 2021)
- 31 The Public Contracts Regulations 2015, Regulation 49 <https://www.legislation.gov.uk/uksi/2015/102/regulation/49/made> (accessed 17 March 2021)
- 32 The Public Contracts Regulations 2015, Regulation 50 <https://www.legislation.gov.uk/uksi/2015/102/regulation/50/made> (accessed 17 March 2021)
- 33 It is UK Government policy for central government departments to publish information on spending over £25,000 <https://www.gov.uk/government/collections/how-to-publish-central-government-transparency-data#central-government-spending-over-%C2%A325,000> whilst it is a legal requirement for local authorities to do so for spend over £500 under The Local Government (Transparency Requirements) (England) Regulations 2015 <https://www.legislation.gov.uk/uksi/2015/480/contents/made> and the Local Government Transparency Code 2015 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf

- 34 <https://www.legislation.gov.uk/ukpga/1998/23/contents> (accessed 17 March 2021)
- 35 <https://www.gov.uk/government/publications/ministry-of-justice-whistleblowing-policy-and-procedures/whistleblowing-advice-questions-for-civil-servants> (accessed 17 March 2021)
- 36 Bribery Act 2010 <https://www.legislation.gov.uk/ukpga/2010/23/contents> (accessed 17 March 2021)
- 37 Fraud Act 2006 <https://www.legislation.gov.uk/ukpga/2006/35/contents> (accessed 17 March 2021)
- 38 <https://www.gov.uk/government/publications/civil-servants-terms-and-conditions> (Accessed 21 January 2021)
- 39 Cabinet Office, *Ministerial code* (August 2019) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf
- 40 MHCLG, *Review into the risks of fraud and corruption in local government procurement* (June 2020) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890748/Fraud_and_corruption_risks_in_local_government_procurement_FINAL.pdf
- 41 Elizabeth David-Barrett & Mihály Fazekas, 'Grand corruption and government change: an analysis of partisan favoritism in public procurement', *European Journal on Criminal Policy and Research* 26, 411–430, December 2020 <https://doi.org/10.1007/s10610-019-09416-4>
- 42 Open Contracting Partnership: https://standard.open-contracting.org/latest/en/getting-started/building_blocks/ (accessed 17 March 2021)
- 43 Public Contracts Regulations 2015, Regulation 27(2)
- 44 Public Contracts Regulations 2015, Regulation 27(5)
- 45 Public Contracts Regulations 2015, Regulation 34(11)
- 46 Public Contracts Regulations 2015, Regulation 33
- 47 Public Contracts Regulations 2015, Regulation 32 (2)(c)
- 48 Cabinet Office, *Procurement Policy Note 01/20: Responding to COVID-19* (March 2020) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873521/PPN_01-20_-_Responding_to_COVID19.v5__1_.pdf
- 49 Cabinet Office, *Procurement Policy Note 01/20* pp.3-4
- 50 Cabinet Office, *Procurement Policy Note 01/20* p.3
- 51 National Audit Office, *Investigation into government procurement during the COVID-19 pandemic*, HC 959 (November 2020) p.1 <https://www.nao.org.uk/wp-content/uploads/2020/11/Investigation-into-government-procurement-during-the-COVID-19-pandemic.pdf>
- 52 Cabinet Office, *Transforming public procurement*, CP 353 (December 2020) p.30 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943946/Transforming_public_procurement.pdf
- 53 <https://www.parliament.uk/site-information/glossary/affirmative-procedure/#:~:text=Affirmative%20procedure%20is%20a%20type,by%20both%20Houses%20of%20Parliament> (accessed 17 March 2021)
- 54 We note the article from the New York Times alleging political connections to \$5 billion worth of COVID-19 contracts; however, we do not have the complete data to verify these assertions <https://www.nytimes.com/interactive/2020/12/17/world/europe/britain-covid-contracts.html> (accessed 17 March 2021)
- 55 This only includes those donations above the relevant reporting thresholds in the Political Parties, Elections and Referendums Act 2000 (PPERA). See the Electoral Commission website for more information on these rules <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/financial-reporting/donations-and-loans> (accessed 17 March 2021)
- 56 Elizabeth David-Barrett & Mihály Fazekas, 'Grand corruption and government change: an analysis of partisan favoritism in public procurement', *European Journal on Criminal Policy and Research* 26, 411–430, December 2020 <https://doi.org/10.1007/s10610-019-09416-4>
- 57 National Audit Office, *Investigation into government procurement during the COVID-19 pandemic* p.27
- 58 National Audit Office, *Investigation into government procurement during the COVID-19 pandemic* p.27
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- 60 National Audit Office, *Investigation into government procurement during the COVID-19 pandemic* p.27
- 61 See Annex IV for more details about our attempts to access this information.
- 62 <https://questions-statements.parliament.uk/written-questions/detail/2020-11-19/HL10548> (accessed 17 March 2021)
- 63 <https://hansard.parliament.uk/Commons/2020-12-09/debates/ED6D1DDB-BCC8-4682-B7FD-DCF0B6B5799C/Covid-19NAOReportOnGovernmentProcurement> (accessed 17 March 2021)
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- 66 Public Accounts Committee, COVID-19: *Government procurement and supply of Personal Protective Equipment* HC 928 (February 2021) p.13 <https://committees.parliament.uk/publications/4607/documents/46709/default/>
- 67 DHSC, *Personal Protective Equipment (PPE) Strategy: Stabilise and build resilience* (September 2020) p. 24 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921787/PPE_strategy_v4.5_FINAL.pdf
- 68 DHSC, *Personal Protective Equipment (PPE) Strategy* p.20
- 69 NAO, *The supply of personal protective equipment (PPE) during the COVID-19 pandemic*, HC 961 (November 2020) p.8 <https://www.nao.org.uk/wp-content/uploads/2020/11/The-supply-of-personal-protective-equipment-PPE-during-the-COVID-19-pandemic.pdf>
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- 71 <https://www.bbc.co.uk/news/uk-54974373> (accessed 17 March 2021)
- 72 <https://www.thetimes.co.uk/article/andrew-mills-adviser-behind-bungled-250m-mask-contract-hides-earnings-0hwgxb0g5> (accessed 17 March 2021)
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- 75 Explanatory Memorandum to the Public Contracts Regulations 2015 2015 No. 102 p.11 https://www.legislation.gov.uk/uksi/2015/102/pdfs/uksem_20150102_en.pdf
- 76 Cabinet Office, *Transforming public procurement*, CP 353 (December 2020) p.7 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943946/Transforming_public_procurement.pdf

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- 79 <https://ted.europa.eu/TED/search/search.do> (accessed 17 March 2021)
- 80 Cabinet Office, *Procurement Policy Note – New Thresholds 2020: Information Note PPN 06/19* (November 2019) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850566/PPN_for_New_Thresholds_2020_pdf.pdf
- 81 eTendersNI does not publish its data via an Application Programming Interface (API) or in bulk downloads. This means it was impossible for us to see and analyse data on all tenders and contracts held on this portal between February and November 2020.
- 82 <https://www.gov.uk/government/collections/spending-over-25-000--2> (accessed 17 March 2021)
- 83 Cabinet Office, *Transforming public procurement*, CP 353 (December 2020) pp.53 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943946/Transforming_public_procurement.pdf
- 84 Cabinet Office, *Transforming public procurement* p.55
- 85 Cabinet Office, *Transforming public procurement* p.56
- 86 This diagram is by Open Contracting Partnership: <https://www.open-contracting.org/> (accessed 17 March 2021)
- 87 Directive 2014/24/EU of the European Parliament and of the Council, Annex V Part D <https://www.legislation.gov.uk/eudr/2014/24/annex/v> (accessed 17 March 2021)
- 88 Public Contracts Regulations 2015, Regulation 50 <https://www.legislation.gov.uk/uksi/2015/102/regulation/32/made> (accessed 17 March 2021) Note those contracts awarded under a dynamic purchasing system can be grouped and published together within 30 days of the end of a quarter.
- 89 Public Contracts Regulations 2015, Regulation 52
- 90 Crown Commercial Service, *Guidance on the new transparency requirements for publishing on Contracts Finder* (March 2015) p.2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/524351/Guidance_on_transparency_requirements_for_Contracts_Finder.pdf
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- 92 <https://bi.prozorro.org/sense/app/fba3f2f2-cf55-40a0-a79f-b74f5ce947c2/sheet/HbXjQep/state/analysis> (accessed 17 March 2021)
- 93 We note that some of these are for contracts that appear to be valued below the mandatory legal reporting threshold.
- 94 <https://www.gov.uk/government/publications/guidance-for-publishing-spend-over-25000> (accessed 17 March 2021)
- 95 Institute for Government, *Whitehall Monitor 2021* (January 2021) p.70 https://www.instituteforgovernment.org.uk/sites/default/files/publications/whitehall-monitor-2021_2.pdf
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- 97 Currently there are no equivalent requirements for local authorities in Scotland, Wales and Northern Ireland.
- 98 Birmingham City Council, Hampshire County Council, Norfolk County Council, and Camden Council
- 99 Liverpool City Council
- 100 <https://liverpool.gov.uk/council/budgets-and-finance/transparency-in-local-government/> (accessed 17 March 2021)
- 101 Institute for Government, *Whitehall Monitor 2021* p.71
- 102 openDemocracy, *Art of darkness: How the government is undermining the freedom of information* (November 2020) p.7 <https://beta.documentcloud.org/documents/20415987-art-of-darkness-opendemocracy>
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- 104 [2021] EWHC 346 (Admin) GLP v DHSC paragraph 135
- 105 Hansard, HC debate, volume 685, column 414WH, Wednesday 9 December 2020 <https://hansard.parliament.uk/Commons/2020-12-09/debates/ED6D1DDB-BCC8-4682-B7FD-DCF0B6B5799C/Covid-19NAOReportOnGovernmentProcurementhighlight=%22nigel+boardman%22#contribution-497B488E-2769-4E1E-9AE5-4CEC68B02468> (accessed 17 March 2021)
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- 116 Public Accounts Committee, *COVID-19: Government procurement and supply of Personal Protective Equipment* HC 928 (February 2021) p.6 <https://committees.parliament.uk/publications/4607/documents/46709/default/>
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- 118 <https://ted.europa.eu/udf?uri=TED:NOTICE:129760-2020:TEXT:EN:HTML> (accessed 17 March 2021)
- 119 <https://www.find-tender.service.gov.uk/Search> (accessed 17 March 2021)
- 120 Cabinet Office, *Transforming public procurement*, CP 353 (December 2020) pp.48-58 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943946/Transforming_public_procurement.pdf
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- 122 <https://www.instituteforgovernment.org.uk/explainers/civil-service-staff-numbers> (accessed 18 March 2021)
- 123 <https://ted.europa.eu/udf?uri=TED:NOTICE:551972-2020:TEXT:EN:HTML&src=0> (accessed 17 March 2021)
- 124 <https://www.contractsfinder.service.gov.uk/notice/191a0d98-feef-46d4-ba9f-20988b7d950c?origin=SearchResults&p=1> (accessed 17 March 2021)
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