

The PPE scandal shines a light on the worrying future of UK procurement law



[Albert Sanchez-Graells](#) reflects on the case of the procurement of personal protective equipment (PPE) for the English NHS during the pandemic. In doing so he lays bare the more general problems in the government's approach to the governance of public procurement and its increasing insularity as a result of Brexit.

The National Audit Office's Report on its '[Investigation into government procurement during the COVID-19 pandemic](#)' found that the relaxation of the standard procurement rules to allow for extremely urgent acquisitions, mainly of PPE, resulted in alarmingly widespread levels of procedural impropriety in the award of up to £18bn in public contracts. Most notably, the NAO report revealed the existence of a 'VIP procurement channel' for those with political connections, which resulted in [much higher chances of obtaining very lucrative contracts](#) than for those retained under the 'normal' pool of potential suppliers. This adds to (and partly explains) earlier reports of very large PPE contracts awarded to companies with no proven track record in the PPE market.

Despite its generally cautious or even conciliatory tone, the picture that the NAO Report paints is simply the opposite of what the rules on procurement integrity demand; the award of massive contracts in these conditions raises all sorts of additional questions, including the ultimate destination of the very substantial profit margins resulting from some of these contracts. In normal times, the NAO report would have triggered several high-level resignations and, very likely, some additional investigations, including of potential criminal activity. However, current times are anything but normal and the impact of the NAO's eye-watering conclusions can be expected to be mild, at best.

It should be stressed that the procedurally improper award of contracts is not the only troubling aspect of the PPE scandal. What is perhaps less widely known is that the NHS supply chain *should have been able* to deal with the need for additional PPE as part of the centralised acquisition system that has been in place since 2018. As part of a 'New Operating Model' for NHS procurement, the Department of Health and Social Care created an arm's-length organisation ([NHS Supply Chain](#)) tasked with managing the sourcing, delivery and supply of healthcare products, services and food for NHS trusts and healthcare organisations across England and Wales. NHS Supply Chain not only was unable to scale up its existing framework agreements for the procurement of PPE, but was also overwhelmed and unable to act as a proactive market agent. This resulted both in the award of [additional consultancy contracts](#) to effectively create a parallel centralised PPE procurement system (at high cost) and the emergence of competition for scarce PPE sources within the NHS, as Trusts took it in their own hands to try to supply the PPE needed at the frontline.

The PPE scandal not only shows that the deactivation of procurement rules and their checks and balances was exploited in dubious ways (and chumocracy is perhaps the kindest label this can be given), but also that the institutional arrangements for centralised commercial procurement for the NHS failed in the face of the challenge. It would be too easy to write all of this off as a 'freak event' due to the unprecedented challenges of a pandemic. The PPE scandal not only shows the inadequacy of the governance of public spending in the context of the COVID-19 pandemic but, more worryingly, shines a light on the dangers of unregulated procurement in the face of the many challenges that are fast approaching, including Brexit and the climate emergency.

Indeed, in a [recent article](#), I argue that the PPE scandal was not the unavoidable consequence of the pandemic and that the UK healthcare procurement system was in a particularly weak position to deal with it as a result of its previous excessive and inadequate centralisation; the inadequate oversight, mismanagement, and underfunding of the outsourced strategic stockpile; and the additional impacts of Brexit. This turned the implementation of 'unregulated procurement' for the extremely urgent purchase of PPE into a governance Hydra that ate NHS Supply Chain up and resulted in the implementation of expensive and largely inadequate stop gap management solutions, and the waste of significant resources in a desperate attempt to scramble PPE supplies. It also created a regulatory vacuum which facilitated the improper award of contracts in an opaque manner. Sadly, in light of the NAO Report, this seems to be a fair reflection of the sorry state of affairs of procurement governance in the UK, as evidenced by the COVID-19 'stress test'. Perhaps the better question is what this means for the future.

To my mind, the existential challenge of climate change should be put at the forefront of policy and legal analysis—together with the also existential challenge of the development of digital technologies and social media, which is closely intertwined with the climate emergency. From that perspective, it seems clear to me that, before too long, the ecological and social breakdown resulting from climate change will pose more and more urgent challenges to all governments. And public procurement will, once again, be an essential part of an adequate response. There are a few things that need to be done to prevent falling on the trap of ‘unregulated procurement’ on the basis that extreme urgent needs become the ‘new normal’. Without attempting to be exhaustive, I would advocate for the following.

First, the procurement capability of the public sector needs to be re-established, which will require insourcing currently outsourced functions and providing substantially more resources. Second, reliance on ‘strategic providers’ and management consultants needs to be severely cut back and the development of more varied and resilient supply chains needs to be actively promoted. Third, there is a clear need for more (and much better) contingency planning, which also needs to be properly resourced. Fourth, we need to reorient procurement to put sustainability at its core. Fifth, we need to harness the potential of digital technologies to achieve higher levels of sustainability and, more generally, to achieve the UN’s sustainable development goals. Sixth, we need to facilitate and support the emergence of transnational and global institutions and governance networks capable of coordinating domestic procurement efforts aimed at tackling cross-border and global challenges.

Of course, the practical obstacles are significant, and the obvious constraint is that all of this would require significant resources and sustained effort to implement and consolidate changes that are not easy fixes of what is, in effect, a rather dysfunctional complex system. However, I hope the COVID-19 story will serve as a cautionary tale. If we fail to fix the system, it will fail when put under significant stress. And the only thing that we should not doubt is that systemic stress is coming our way.

The above is based on the author’s article available [here](#), to be published in D Cowan and Ann Mumford (eds.), *Pandemic Legalities* (Bristol University Press, Forthcoming).

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