Lessons from the UK's PPE scandals: How to protect public contracts from cronyism and ensure accountability in public procurement

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The Covid-19 Inquiry hearings in March offer a major opportunity for public scrutiny of – and to establish accountability for – the scandals that rocked procurement of emergency medical equipment during the pandemic. The sight of friends of ministers and party donors getting privileged access to emergency contracts resulting in huge fortunes being made seriously eroded public trust in government.

The lessons from these scandals must be learned. Now is a crucial moment to reflect on whether the UK has the powers and structures to prevent such scandals happening again.
This briefing explores three crucial areas where action is needed:

- **Preventing cronyism in contracts**: ambitious upgrade of conflict of interest management.
- **Accountability for wrongdoing by suppliers**: effective use of the new debarment and exclusion regime.
- **Accountability for public office holders**: creating an offence of corruption in public office.

SPOTLIGHT ON CORRUPTION RECOMMENDATIONS:

Preventing cronyism in contracts
The government should:

1. Establish central registers of conflicts of interest declarations in each department which are readily available for procurement decision makers. These databases need to be proactively managed, including through verification and monitoring, with meaningful sanctions for failure to make accurate declarations.
2. Require public bodies to publish their conflicts of interest assessments.

Ensuring accountability for suppliers
The government should:

3. Proactively investigate debarment for any companies or directors of former companies that engaged in profiteering or provided unusable equipment during the pandemic, on the basis of professional misconduct.
4. Ensure authorities can exclude on the basis of credible evidence of fraud, corruption and other economic crime, rather than waiting for a conviction, as is the case in the US.
5. Expand the list of corporate offences for which companies can be debarred to include failure to prevent bribery, failure to prevent fraud and criminal breaches of the Money Laundering Regulations.

Ensuring accountability for public office holders
The government should:

6. Bring forward a new corruption in public office offence.
7. Commit to long-term funding for the new domestic corruption unit in the City of London Police and to making it permanent.

What went wrong in the Pandemic?

In April 2020, the cross-government PPE team set up a VIP lane to process potential PPE leads from officials, ministers, parliamentarians and others. These leads, according to the National Audit Office, were viewed as *"more credible or needed to be treated with more urgency."*

Damaging press reports soon emerged that friends and associates of ministers were receiving preferential treatment. This had seriously negative consequences for public procurement which included that:

1. **Experienced emergency medical equipment providers were squeezed out of emergency procurement with VIP lane suppliers ten times more likely to get contracts than the suppliers going through usual channels.**
   In a November 2020 report, the NAO found that one in ten suppliers processed through the VIP lane (47 out of 493) obtained contracts. By contrast, less than one in a hundred processed through the ordinary lane (104 of 14,892) obtained contracts.

2. **Unusable PPE, with VIP lane suppliers three times more likely to provide PPE that was not fit for purpose.**
   In February 2022, Spotlight on Corruption established, through an FOI request, that 25 of the 50 companies in the VIP lane had provided PPE worth £1 billion that was unusable. With a total of £1.7 billion awarded to VIP lane suppliers, this meant that 59% of the money given to VIP lane suppliers was for unusable PPE. Of the £10.4 billion given to suppliers for PPE through the normal channel, just 17% (£1.8 billion) was for unusable PPE.

3. **Higher costs, with VIP lane suppliers providing PPE that was on average 80% more expensive.**
   In December 2023, the Good Law Project revealed that, on average, VIP lane suppliers were paid 80% more per unit than suppliers through the standard route. In some instances, the Department of Health was paying over four times the average price.

Preventing cronyism in public contracts: conflicts of interest.

Proactive management of conflicts of interest prevents cronyism in procurement decisions, ensuring a level playing field for businesses, and maintaining public trust in government spending.

During the pandemic, while other normal procurement practices such as open competitions were suspended to enable speedy contracting, rules on preventing conflicts of interest were not.

Those making procurement decisions during the emergency were therefore legally bound to:

- take appropriate measures to prevent, identify and remedy conflicts of interest, to avoid any distortion of competition and to ensure equal treatment of all economic operators; and
- document all stages of the procurement process, including steps to identify and manage any potential conflicts of interest.

However, **this did not happen**. The NAO's report in 2020 on the government's handling of emergency procurement found that some departments failed to document why suppliers were chosen, or whether and how potential conflicts were identified and managed.

The VIP lane posed particularly high risks of conflicts. In July 2022, the Public Accounts Committee (PAC) found "*insufficient due diligence checks at the outset of the pandemic to prevent potential profiteering and to identify conflicts of interest,*" and no consideration of potential conflicts of interest between those making referrals through VIP lane and the companies referred. This was despite the fact that conflicts "*were inherently more likely.*"

What's changed?

The new Procurement Act, which came into force at the end of February, introduces some important improvements to managing conflicts of interest including:

- A duty on authorities to prepare a conflicts of interest assessment before publishing a tender or notice and to keep it under review;
- Mandatory exclusion from procurement where a conflict of interest puts a supplier at an unfair advantage and this cannot be managed (previously this was discretionary);
- A broad interpretation of how a conflict may arise, including those who influence a procurement, have a direct or indirect interest, and via a minister.

While these tougher provisions are welcome, weaknesses remain.

1. Centralised departmental conflicts of interests registers

A June 2020 government review of corruption and fraud in local government procurement recommended that conflict of interest declarations be centrally and accessibly collated in an electronic database.

Nigel Boardman's review of Covid procurement also recommended that declarations of interests should be logged centrally alongside the departmental gift register and made available to those responsible for procurement and contract management.

This **does not appear to have happened**. A report by the NAO in November 2024 revealed woeful conflicts of interest management across government which risked "*influencing the objectivity of its operations*." Most public bodies did not have "*a working register of interests that can be used to manage conflicts.*" The NAO found that while some better systems had started to develop for procurement, these required "*a corporate-wide system*" including a well managed standing record of potential conflicts, in order to be effective.

2. Transparency in conflicts of interest management: publication of assessments

Given the poor management of conflicts of interest in government, greater transparency is critical. Publication of conflict of interest declarations alongside major tenders would significantly help external scrutiny and foster a culture of making accurate declarations.

Accountability for suppliers: using the new debarment and exclusion regime

Debarring and excluding suppliers from public procurement – where they pose particular risks to a fair procurement – prevents fraud and corruption and improves corporate behaviour.

Throughout the pandemic, government departments were able to exclude suppliers on a discretionary basis where they engaged in 'grave professional misconduct' or where a conflict of interest could not be effectively remedied. This could have been used as a tool to prevent and sanction profiteering and weed out politically connected firms during the pandemic.

However, there has been little culture of using exclusions in the UK to protect the public purse in contracting, with little relevant case law to guide contracting authorities.

What's changed?

The Procurement Act 2023 creates a central debarment register and an enhanced regime for excluding companies from public contracts.

This applies for conduct up to three years before the Act came into force, where there were similar grounds for excluding firms under the previous legislation. It is open to the government to investigate whether conduct by firms during the pandemic could be deemed 'professional misconduct' and therefore grounds for debarring them.

Going forward, meanwhile, there are several gaps in the Act which need to be addressed if the debarment regime is to work effectively as possible to prevent corruption and wrongdoing going forward. These include:

1. Enabling authorities to act on credible evidence of fraud, corruption or other economic crime rather than waiting for a conviction, as recommended by the 2020 review of fraud and corruption in local government. Investigations can currently take years to result in enforcement action – and fraud prosecutions are at record lows – leaving rogue actors free to get contracts.

2. Crucial economic crime offences were left out of the mandatory exclusion grounds, such as 'failure to prevent bribery' – the main corporate offence under the Bribery Act – and the new 'failure to prevent fraud.' Key criminal money laundering offences are also missing.

Accountability for officials: the need for a new domestic corruption offence

The scandals over Covid procurement created real public anger that friends and associates of ministers were unfairly prioritised in emergency procurement.

Criminalisation of the abuse of office to obtain benefits either for yourself or associates is a key anti-corruption measure under the UN Convention Against Corruption – a treaty the UK has signed up to.

However, in the UK, there is no statutory criminal offence of corruption and prosecutors must rely on the common law "misconduct in public office" offence. This offence has been widely criticised, and has a high bar for prosecution.

Current prosecutions of the offence are heavily skewed towards junior officials, particularly those in the police and prison force, and towards prosecuting inappropriate relations. Research by Spotlight on Corruption has found that of the 191 convictions for misconduct in public office since 2014 for which public information is available, 98% were for junior to mid-level officials.

The government has so far failed to act on recommendations, made in 2020 by the Law Commission, for the misconduct offence to be replaced with a corruption in public office offence and a breach of duty offence. This leaves senior public officials – whether in central or local government – who make decisions that benefit associates, causing large losses to the public purse, largely beyond any accountability.

What's changed?

In December 2024, the government announced the creation of a pilot domestic corruption unit in the City of London Police. This is a very welcome step. Currently the only criminal investigation into PPE procurement is being carried out by the National Crime Agency's International Corruption Unit.

If this unit is to bear fruit in tackling UK corruption it must be moved from a pilot project to a permanent one and given long-term funding.