

A decorative graphic in the top left corner consisting of a series of parallel lines forming a triangular shape, with a red line running through it.

FAO Mr Alex Rook
Rook Irwin Sweeney
107-111 Fleet Street
London EC4A 2AB

17 July 2020

Our ref: APC/APC/SSR/66117-1/23610246.1

Your ref:

Dear Mr Rook

Re: Proposed Claim for Judicial Review relating to contracts awarded to Clandeboye Agencies Limited by the Secretary of State for Health and Social Care (the “Secretary of State”) brought by (1) the Good Law Project (2) EveryDoctor Limited (together “your clients”)

We are instructed on behalf of Clandeboye Agencies Limited (“our client”). We refer to your clients’ pre-action protocol letter of 29 June 2020 and the Secretary of State’s response of 14 July 2020.

Our client endorses the arguments of the Secretary of State as set out in the Government Legal Department’s letter in full. Your clients’ legal basis for challenging the award of contracts to our client is entirely without merit. Your clients’ pre-action protocol letter is based on a number of misconceptions, and incorrect assertions, as to our client’s credentials in the supply of PPE and the process leading to the award of the First and Second Contracts. This is set out in the Secretary of State’s letter. We think it useful, briefly, to highlight a number of factual points to supplement the points made on behalf of the Secretary of State.

1. You state our client was “*manifestly ill-suited to delivering [the undertakings], both in financial and technical terms*”. The Good Law Project’s website states “[t]here is no evidence that the company, Clandeboye Agencies Limited, has any experience in supplying PPE”.
2. These statements are wholly misconceived. As a first point, before our client was awarded the First and Second Contracts by the Secretary of State to supply PPE, it concluded a substantial contract with NHS Wales for the supply of PPE with further interest from Health and Social Care Northern Ireland. Our client successfully supplied 200,000 items of PPE to NHS Wales under this contract, before securing the contract awards with the Secretary of State. The Secretary of State’s letter highlights that our client’s experience with NHS Wales secured it priority status when DHSC considered its offer (paragraph 39).
3. Our client has a sister company which has supplied PPE for a number of years. Our client was selected over its sister company to make offers to the Secretary of State for PPE as Clandeboye Agencies Limited is the original family business to which a key Director (to both companies) devotes most of his time.

4. Additionally, our client has extensive experience in international sourcing and as a manufacturer's agent on a commission basis, securing high value sales. It leveraged this by agreeing a supply agreement with a multi-national experienced PPE manufacturer, to make offers to NHS Wales and to DHSC for the First and Second Contracts.
5. Our client's suitability for the contract awards of the First and Second Contracts is best shown, in any event, by its performance (outlined in paragraphs 42-43 of the Secretary of State's letter). The First Contract of 3.4 million PPE units has been performed in full. Millions of PPE gowns have been supplied to DHSC under the Second Contract, with now only two shipments of gowns outstanding, which are on course to be supplied before their contracted date and, in any event, by the end of this month. At no time have concerns been raised as to the quality and timeliness of the PPE our client has supplied.

Our client was awarded, and has performed to date, the First and Second Contracts in good faith and competently. Its procurement of millions of items of PPE has contributed significantly to the efforts of the Secretary of State to equip the NHS for the covid-19 crisis. Your clients' pre-action protocol letter states that their professed aim is to act "*for many frontline NHS staff who are daily exposed to Coronavirus and who are put at risk absent sufficient/or suitable PPE*". Our client fails to see how this aim is met, at all, by the proposed claim, which seeks to challenge competent supplies of PPE by a bona fide operator, and which will inevitably divert DHSC resources.

In conclusion, our client has successfully supplied a huge amount of PPE that, as recognised by the Secretary of State, has been vital for the protection of public health. It is impossible in the circumstances to understand what possible public interest could be served by a challenge to the award of the contracts, let alone a disruption to further supplies by our client, which is what is sought at paragraph 48 of your clients' pre-action protocol letter.

In light of the above, please confirm that your clients will not proceed with the proposed claim.

Yours sincerely

Adam Chapman
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