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Your ref: AIR/AIR/066
Our ref: Z2006669/AHJ/CLGA

1 July 2020

Dear Sirs

Re: Claim No. CO/2144/2020

The Queen on the application of (1) The Good Law Project (2) EveryDoctor Limited v Secretary of State for Health and Social Care and Crisp Websites Limited (trading as Pestfix)

1. We write in response to your letters before action (the “**LBA**s”) dated 10 June 2020 and 15 June 2020. We note that your clients have subsequently proceeded to issue an application for judicial review, though for the purposes of this letter we adopt the nomenclature of the template response to a letter before action set out in the Pre-action Protocol for Judicial Review.
2. For convenience, we consider it is appropriate to provide a combined response to both LBAs.

The proposed Claimants

3. The Good Law Project (“**GLP**”), 3 East Point High Street, Seal, Sevenoaks, Kent, TN15 0EG.
4. EveryDoctor Ltd (“**EDL**”), Suites 1-3, The Hop Exchange, 24 Southwark Street, London, SE1 1TY.

The proposed Defendant

5. The Secretary of State for Health and Social Care (“**the Secretary of State**”), c/o Government Legal Department, Commercial Law Group, 102 Petty France, Westminster, London, SW1H 9GL.

Reference Details

6. Please direct all further correspondence for the attention of Ashlie Whelan-Johnson (ashlie.whelan-johnson@governmentlegal.gov.uk) at the Government Legal Department (address above) with the above reference.

Interested parties

Wendy Hardaker - Head of Division
James Turnill - Deputy Director, Team Leader Commercial Litigation A



7. The Secretary of State agrees that Crisp Websites Limited trading as PestFix (“**PestFix**”) should be joined as an Interested Party. The Secretary of State does not accept the proposition that *“the cohort of potentially interested parties would...be enormous”*. As explained further below, GLP and EDL proceed on the basis of factual misunderstandings concerning the matters under challenge.

Details of the decision under challenge

8. A decision of 13 April 2020 of the Secretary of State to award a public contract for the supply of garments for biological or chemical protection to PestFix (the “**Contract**”).

Factual Background

9. Regrettably your clients’ Claim is premised on a series of fundamental misconceptions and false assertions as to the circumstances surrounding the impugned procurement decision and the Contract itself – all of which serves only to highlight why your clients would not be appropriate persons to challenge a contract award decision of this kind in any event (as to which see further our response on standing below).

PPE procurement in March/April 2020: market conditions

10. Prior to the current crisis, demand for PPE by NHS Trusts was partly serviced by “NHS Supply Chain” (SCCL Ltd, a company owned by the Department of Health & Social Care (“**DHSC**”)) and partly through direct buying by NHS Trusts themselves, usually through wholesalers. Other health and social care organisations were responsible for sourcing their own PPE, for example through wholesalers or directly from suppliers.
11. PPE has hitherto been in plentiful supply, with over 80% historically being manufactured in the Republic of China. That situation started to change dramatically in mid March 2020, as the Covid pandemic unfolded across the world, and developed very rapidly towards the end of March (paragraph 22 of your letter acknowledges that the UK only went into lockdown on 23 March). Existing supply chains were disrupted as prices rose dramatically, transportation links to the main manufacturing bases in the Republic of China were disrupted, and demand increased to unprecedented levels from across the globe.
12. The emerging problems in relation to the procuring of PPE in the UK were widely reported in the press around the middle of March and attracted considerable interest. In response to the emerging crisis, numerous approaches were made by entities offering to assist in sourcing and supplying PPE: to Members of Parliament; NHS Trusts and staff; and to Government departments and officials working within them.
13. By this stage it was already clear that established modes of procuring PPE and other critical supplies were no longer practical. Alternative strategies therefore had to be deployed instead and new sources of supply for PPE had to be identified and utilised. Accordingly, while existing suppliers continued to be handled by SCCL, potential new suppliers who had expressed interest were directed towards a central email address, subsequently replaced by a public portal, through which offers could be logged and evaluated (see further below).
14. As already noted the rapid rise in global infection rates during this period led to a huge surge in demand for PPE. In the NHS, for example, demand for PPE increased between fivefold and two and a half thousand fold, depending on the category of item. The effect of such increased demand, which was being replicated on a global scale, led to a wholesale change in the relevant market dynamics. Market power shifted decisively in favour of the suppliers, such that the competition was no longer between suppliers to satisfy government/buyer demand, but between different national health authorities to secure commitments to supply. Some countries also responded by banning

PPE exports entirely, and some suppliers were induced by more attractive financial offers to renege on existing contractual commitments (this remains an additional risk). A worldwide shortage of some of the necessary raw materials and speculative buying by some commercial purchasers served only to exacerbate the situation.

15. In these circumstances, suppliers were able to demand significant advance payments, and DHSC understands that other countries were offering to pay substantial sums of cash upfront to overseas producers in order to secure immediate commitments. When new sources of supply did come on stream (for example, because existing facilities had been repurposed to manufacture PPE products), these offers would often only be open for 24 hours. If negotiations were not concluded in this time, stocks would simply be lost to another country instead.
16. Against that background, it is wholly fanciful to suggest that DHSC could have run any kind of competitive tendering process or “market-testing exercise”. The rapidly shifting availability of supply on the ground required decisions to be taken in hours, rather than days or months.
17. Critically, once the scale of the pandemic became clear, the market for acquisition of PPE was very much a suppliers’ market. Suppliers who found themselves inundated with highly attractive offers from across the world would simply have had no incentive to respond to a UK call for tenders, or to hold off from committing their product on the favourable terms available elsewhere rather than await the outcome of a UK competition. Indeed, as paragraph 25.b of your own letter acknowledges, the EU’s first attempt at a joint procurement exercise for a very limited number of gloves, gowns and overalls failed precisely because of a lack of suitable suppliers coming forward.
18. The importance of maintaining adequate stocks of PPE should not be underestimated. PPE is essential to keep health services running and to protect front-line workers caring for both Covid patients and others more generally. Any delay to the ordering of PPE that led to the NHS missing out in favour of other countries ran the risk of causing stock outages, which would put the lives of both patients and NHS staff at risk. The critical nature of the items in question was (and had to be) at the forefront of DHSC’s procurement strategy during this period.
19. In short, in a matter of only a few days, the UK moved from a situation where it had to match predictable need with a steady and established supply of PPE to one in which demand had become unpredictable (because the scale and impact of the pandemic was unknown), existing supply chains were clearly and materially insufficient, and new supplies had to be obtained in the face of surging and unprecedented global demand. That required an entirely new approach to procurement.

PPE procurement in March/April 2020: the Government’s response

20. In order to address the crisis in supply of PPE, the UK Government utilised three main buying routes. The first comprised existing suppliers, working through SSCL. The second involved using a strengthened team of staff in the UK Embassy in Beijing to identify potential sources of supply on the ground. The third, of which PestFix was part, comprised new suppliers who did not currently work through SSCL. It is also appropriate to record the substantial voluntary efforts that were made within local communities both in terms of passing over existing PPE (for example, from school science departments) and of manufacturing items.
21. Part of the difficulty faced by the UK Government was that there was no single list of existing known suppliers of PPE given that some NHS Trusts chose to source supplies themselves rather than work through SSCL, while other health and care organisations made their own arrangements in any event. The UK Government also wished to identify not just existing suppliers of PPE (whether or not to the NHS), but also entities with a record of supply to the NHS and/or the public sector and/or who could re-purpose to supply PPE, particularly where they might have established links

to manufacturers in the Republic of China, including those manufacturers who were themselves re-purposing to make PPE.

22. Accordingly, in order to address the challenge of surging demand for PPE within the NHS, a new organisation was set up to focus solely on procuring PPE supplies for the public sector. This prevented undue pressure on NHS Supply Chain's existing administrative capability, allowing it to continue to meet the need for other consumables in the healthcare system more generally and deal with existing PPE suppliers. The new task force adopted an innovative "open-source" approach to procurement, calling for help from across the UK business community to help ensure critical supplies were maintained.
23. The "Coronavirus Support from Business" Scheme was launched on 27 March 2020. This encouraged businesses supplying a range of products and services, including PPE, to register on an online portal, to indicate how they might assist the government's response to the pandemic, and the scheme was widely advertised at the time.
24. Prior to this offers of support had been harvested from various sources across government including via a dedicated central email address, gcfccovid19enquiries@cabinetoffice.gov.uk which was established on 14 March 2020. The request that any offers be directed to that email was widely publicised, including in an answer to a Parliamentary Question given on 24 March 2020. On 18 March 2020, Taiwo Owatemi MP tabled a question for written response in the following terms: *"To ask the Secretary of State for Business, Energy and Industrial Strategy, what steps his Department is taking to encourage relevant manufacturing companies to switch production to the manufacture of (a) personal protective equipment and (b) hand sanitiser or its key ingredients."* In response, the Parliamentary Under-Secretary (Minister for Business and Industry), Nadhim Zahawi MP replied as follows:

"In response to the COVID-19 outbreak, the Chancellor is chairing a regular Economic and Business Response Committee with Ministers from across the Government. The Committee will respond to the impact on businesses, supply chains, and the wider economy caused by the pandemic, and will request advice and support from industry where necessary.

Secretaries of State will also hold sector-specific roundtables, including with the aviation, retail, manufacturing, food, insurance, financial services, sport, entertainment and events, and tourism and hospitality industries.

Any business who is able to help should get in touch at: gcfccovid19enquiries@cabinetoffice.gov.uk."

25. The response to the Parliamentary Question reflected the approach that had been taken, with details of the email address having been circulated by No 10 and Ministerial offices to key external business interests and a mechanism for capturing commercial offers put in place by the Government Commercial Function on 18 March 2020. A webform was subsequently made available for completion, prior to the opening of the online portal on 27 March 2020.
26. Suppliers who registered with offers of PPE were asked to complete a form indicating (inter alia) the products they were offering and details of price, quantity and technical certifications (including evidence thereof). They also had to give details of their business for the purposes of vetting. Many of the suppliers who registered were new to the PPE market but some did have previous valuable experience of international supply-chain management and importing goods. As already indicated, the UK Government was particularly interested in potential suppliers who had existing strong relationships on the ground in the Republic of China with companies which either manufactured PPE or were re-purposing to do so, or had good local knowledge and contacts which might assist in identifying such manufacturers.

27. Given that the entire premise of the scheme was to identify new sources of supply (the established market being no longer able to fulfil demand), it would have been perverse to narrow down the field by imposing artificial pre-qualification requirements such as a minimum turnover requirement or unnecessary prior experience. The whole purpose of the Government's "open-source" approach was to maximise the number of offers to prevent shortages of critical products (and to impose restrictions of the kind suggested would further have entailed substantial procurement law risks).
28. Rather than focusing on the identity of the potential supplier, the validity of the offer was the key focus, thereby allowing smaller suppliers with strong contacts in PPE supply to offer the support the Government urgently needed. Equally, past experience in PPE supply was not considered a prerequisite, as other businesses (of whatever size) might also be able to leverage their manufacturing contacts to engage with foreign enterprises converting existing facilities to PPE production. While it was of course possible for DHSC to continue liaising with existing large-scale suppliers during this period (and indeed it did so, through NHS Supply Chain), the nature of the changed market conditions required the development of alternative sources of supply and it was appropriate not to impose unnecessary hurdles in the way of securing that objectives.
29. In this way over 24,000 offers of support were received from some 16,000 potential suppliers. The information they provided was initially assessed and verified by a cross-governmental team. Once this initial approval had been granted, offers were then passed to buying teams (some 500 staff seconded from a range of departments), who prioritised these offers on the basis of how urgently the particular product was needed, the quantity on offer, value for money (using existing price benchmarks), certainty of supply and lead times. Where appropriate, further financial checks were conducted prior to contracts being concluded.
30. In so far as technical requirements were concerned, specifications were provided by NHS Supply Chain. These were based upon the existing specifications used for SSCL, but appropriately modified so as to make them accessible (without, for the avoidance of doubt, reducing the key requirements to meet the necessary technical standards). The relevant specifications were published online on 30 March 2020: see <https://www.gov.uk/government/publications/technical-specifications-for-personal-protective-equipment-ppe>).
31. When offers were being evaluated, the technical suitability of the products on offer was confirmed with separate teams at NHS Supply Chain. Once the closing team had finalised the commercial terms of the proposed contract, details would be sent to the senior officials at DHSC for a final decision. It should be stressed that this final decision was not a mere formality and, based on HM Treasury criteria, careful assessment was given to whether the proposed purchase would represent value of money in the circumstances (prices recently paid for similar products being a key point of reference).
32. As a result of this enhanced engagement with the market, over 600 contracts for PPE have now been concluded with almost 200 different suppliers; these range in value from under £1 million to over £100 million, amounting to some £5.5 billion in total. Full details of all these awards will be published in due course.
33. However, for present purposes, we would simply note that the very strategy which your clients' Claim seeks to impugn has in fact proved successful. Over 8 billion items of vital PPE have been secured for the NHS and critical shortages have thus far been avoided. Furthermore, on the basis of our client's engagement with the market, it is clear that if such a proactive, open-market approach had not been followed the UK would have been left without PPE at a critical time, with consequent risks to public health and human life. We would also note that the whole process of increasing the supply of PPE has had to take place in wholly exceptional circumstances, not least in which unnecessary travel has been prohibited making it impossible to visit new facilities or suppliers, and

which has required an extraordinary degree of commitment from staff deployed from other responsibilities at very short notice.

34. It should be noted that the pre-contractual quality assurance process did not represent the only safeguard to ensure that PPE supplied into the NHS was of appropriate technical standard. Where PPE was obtained using a new supplier, on arrival in the UK the supplies were immediately quarantined. Thereafter, they were checked and quality assured by the appropriate regulatory bodies to ensure necessary technical specifications and standards were met before being released for use. In the event that any product fails to meet the necessary specifications, the Department can seek a full refund of any sums already paid over.

Contract with PestFix

35. PestFix first registered on the “Support from Business” portal on 30 March 2020 having approached DHSC officials on 27 March 2020. The company did not hold itself out as a manufacturer, but rather as an agent with the ability to source PPE stocks from producers in the Republic of China, where it had good contacts. It offered a range of products in substantial quantities, including isolation suits which could be available in as little as seven days.
36. PestFix is an established private business and as such your clients’ focus solely on a snapshot of the company’s net asset position is apt to mislead. Moreover, PestFix’s existing business and relationships suggested that it might be able to assist in locating new sources of PPE supply.
37. Initially, PestFix offered to supply gowns, isolation suits, gloves and face masks and negotiations commenced on that basis. However, it was eventually decided to limit the scope of the contract to isolation suits only. The final value of the contract was adjusted accordingly from £108,601,069.00 to £32,436,000.00.
38. In respect of the isolation suits, PestFix provided test certificates confirming that the products offered conformed with the relevant Medical Devices Directives (93/42/EEC & 2007/47/EC) and the EN 14126:2003 and EN ISO 13688:2013 technical standards. This evidence was passed to a manager at NHS Supply Chain and approved accordingly.
39. Having passed these initial tests, PestFix’s offer was transferred to the closing team to begin commercial negotiations, and marked as urgent given the volume of supplies on offer. Once the details of the proposed agreement were settled, Accounting Officer approval was given by a senior official on 10 April 2020. The unit price of PestFix’s isolation gowns was significantly lower than the other offers available in the market at this time, and the Accounting Officer was thus satisfied that the deal represented good value for money in the circumstances; contract documentation was signed on 13 April 2020 accordingly.
40. In summary, PestFix agreed to supply and deliver some 2 million isolation suits in a range of sizes, at a total cost of £32,436,000 (including freight). The payment terms required 75% by way of deposit, with further staged payments. PestFix has at all times remained fully willing and able to maintain their original delivery schedule, however, in order to prioritise delivery of other items, DHSC opted to delay the dispatch of some of the consignments so that the air freight capacity PestFix had booked could be used for other PPE products. As matters currently stand, manufacturing of all the suits has been completed by the factory in the Republic of China, and over half the order has been transported so far. As such, the balance of the order will now be transferred by air freight in tranches between now and 14 July. Thus while this was nominally a twelve-month contract in accordance with DHSC’s standard terms, the agreement was and is in substance a much more temporary arrangement, with a new supplier rapidly mobilised to fill a short-term (but acute) critical demand.

41. None of the isolation suits delivered so far has been supplied into the NHS, but instead are currently being stored in DHSC's central logistics facility in Daventry. As explained above, tests will be undertaken on the supplies before they are released for use.
42. Since this contract was concluded, a number of other contracts for the supply of other PPE items from the Republic of China have also been concluded with PestFix. Full details of these will be published in due course.
43. In relation to the present contract, an erroneous Contract Award Notice was published in the OJEU on 18 May owing to an administrative error. The published notice reflected an earlier draft of the agreement which had included additional categories of PPE, but ultimately the Department decided to proceed only with the isolation suits order at this juncture. A notice in the correct terms is now scheduled to be sent for publication this week.

Response to your clients' claims

Ground 1: Irrationality / Error of Law

44. Your client's claim is based upon the erroneous proposition that the Secretary of State imposed no requirements before awarding the Contract to PestFix. That is incorrect. As explained at paragraphs 35 to 38 above, the Cabinet Office performed an appropriate process of due diligence before passing PestFix's offer to the closing team to undertake commercial negotiations. The fact that the Secretary of State could have imposed different requirements upon PestFix does not indicate that it did not have either the necessary financial or technical capability to perform a contract for the acquisition and supply of PPE, particularly in the exceptional circumstances of the pandemic. Furthermore, Regulation 58 PCR 2015 is framed in permissive and not mandatory terms and confers upon the contracting authority considerable discretion as to how to frame any selection criteria.
45. You client further misunderstands and/or misstates (a) the nature of PestFix's prior experience, including in relation to the sourcing of PPE and related supplies (b) the nature of the market at the relevant time and (c) the processes that have been put in place to ensure that any PPE supplied will meet the necessary technical standards. There was and is no question of PestFix supplying PPE which is not appropriate for the use to which it will be put because there is a requirement for the PPE to meet appropriate standards and a rigorous checking process to ensure that it does before it is used.
46. Furthermore, the Contract is not properly to be described or classified as a "*12 month contract*". It is a contract for a defined supply of PPE which may take place over a period of up to 12 months. In fact, as explained above, the relevant amounts have now already been ordered, have been largely paid for, and will be delivered within the next month.

Ground 2: Failure to seek to apply the guidance / provide reasons

47. Your client again fails to appreciate the circumstances under which the procurement of the Contract was undertaken and/or has misstated them.
48. As explained above, the situation of urgency which obtained arises not only out of the unexpected global coronavirus pandemic but also because of the nature of the market. The UK has been forced to compete in a global market in which all of the power lies with the supplier and not with the buyer. Any attempt to rely upon a competitive process of the kind your client appears to envisage would have led to a failure to meet the critical need for supply of PPE.

49. In so far as your client suggests that the Secretary of State was not entitled to rely upon regulation 32(2)(c) PCR 2015, that proposition is rejected and appears to be based, at least in part, on a misreading of that provision. It is the events giving rise to extreme urgency that must be unforeseeable, not the need as at the date of the procurement or contract award. As PPN 01/20 correctly records in this regard *“The events that have led to the need for extreme urgency were unforeseeable, e.g. the COVID-19 situation is so novel that the consequences are not something you should have predicted”*.
50. Accordingly, the fact that Covid 19 may not have been unforeseeable as at 13 April 2020 does not address the basis for extreme urgency, which arises rather out of the nature of the relevant market and how it has changed so dramatically. In so far as it is suggested that the situation could have been addressed by the procuring of *“sufficient levels of PPE in March 2020”*, that proposition is also rejected. As soon as it became apparent in March 2020 that there was to be a global pandemic, the PPE market rapidly transformed into being supplier-led rather than buyer-led.
51. The Secretary of State’s reliance upon regulation 32(2)(c) PCR 2015 was not only properly founded but also entirely in accordance with the *“Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis”* (the **“Commission Guidance”**). As the Commission Guidance correctly recognises, *“for a situation such as the current COVID-19 crisis which presents an extreme and unforeseeable urgency, the EU directives do not contain procedural constraints”*. Nonetheless, despite the flexibility which the Commission Guidance explicitly acknowledges, the Secretary of State adopted an approach which ensured that sufficient volumes of the necessary PPE could be procured in a manner which respected both value for money and adherence to the necessary technical standards to ensure the protection of health.
52. Furthermore, it is wholly misleading to suggest that the Secretary of State has accepted *“a single tender from a single (novice) supplier”* or that it has entered into a *“12 month contract”*. We refer in this regard to the explanations given above. In short, PestFix is one of many suppliers which responded to an open advertisement. It does have relevant experience and expertise, the procurement was set up in a manner which has enabled the Secretary of State to assure himself of Pestfix’ ability to supply the necessary goods and that they are of the required standard, and the contract is for a defined amount of supply, not for a 12-month supply that is open-ended as to volume.

Ground 3: The award is disproportionate

53. Your client’s allegations under this ground are again based on a misconception as to the facts. The Contract is not for a 12-month supply but for a defined volume of product. In all the circumstances of a global pandemic and a market situation of unprecedented supplier power, the size of the contract was appropriate and proportionate.
54. As to the suggestion that PestFix was ill-suited to meet the requirements and that the Secretary of State should instead have run an accelerated procurement, the facts and matters set out above are repeated.

Standing

55. The Secretary of State denies that GLP has sufficient standing to bring judicial review proceedings.
56. First, this is in substance a procurement challenge. GLP accepts as much because it has now issued a claim by reference to the time limits set out in CPR r.54.5(6). However, no challenge has been received from any economic operator. The Court should therefore be very circumspect about

granting permission for a challenge by way of judicial review when there has been no challenge under the relevant legislation by a directly affected party, i.e. under PCR 2015.

57. In so far as GLP may seek to suggest that it is entitled to pursue a public interest challenge, its justification is based upon the erroneous proposition that *“no other undertaking was invited to participate or give the opportunity to submit a tender in relation to the proposed direct award”*. That is incorrect for the reasons set out above.
58. Second, even if a challenge to the award of the Contract by way of judicial review were appropriate, GLP lacks the necessary direct interest. It is merely a campaigning group with no special interest in the health sector, far less the provision of PPE and, in particular, the means by which it is procured. No other more directly affected group has sought to challenge the arrangements put in place by the Secretary of State. There is no basis upon which GLP should be permitted to intervene in arrangements which have not been challenged by any more directly affected party.
59. In so far as EDL has now sought to join GLP’s application, it is also denied that it has the necessary standing. EDL’s interest in the claim is clearly to support GLD. It is, moreover, a self-avowedly campaigning organisation. It is not a trade union or professional body for doctors.
60. Furthermore, any interest that a doctor’s organisation could properly have would be in relation to the provision of adequate quality PPE, not the route by which that PPE has been procured. Otherwise, such an organisation has no greater interest in the securing of value for money for the public purse than anybody else. Any expertise EDL may have will relate only to the use of PPE, but not to the procurement process. Again, in the absence of any challenge (under PCR 2015) from an economic operator in relation to the procurement process, the Court should not grant permission to a body which has no real interest in it.

Limitation

61. The issue of when the Claimants may have had actual knowledge of the Contract is not determinative of when proceedings should have been issued, but rather whether the Claimants ought to have known that grounds for starting proceedings had arisen. Given the Government’s announcements concerning the arrangements it was implementing for the supply of PPE, the deadline for bringing a claim in accordance with the time limits in CPR r.54.5(6) expired at the latest within 30 days of the opening of the Coronavirus Support from Business Scheme on 27 March 2020. . Even though the contract award notice was not published until 18 May 2020, the fact of contracts being awarded for PPE through the process put in place by the Secretary of State was a matter of wide public knowledge and should certainly have been known to the Claimants, given the interest they purportedly express in relation to the procurement of PPE.

ADR proposals

62. The Secretary of State is prepared to engage in further without prejudice discussions once your client has had the opportunity to consider the contents of this letter. We do not consider that any potentially interested parties need be involved in those discussions.

Response to requests for information and documents

63. In Section 10 of the LBA, you have sought various categories of information and documents from the Secretary of State on behalf of your clients.
64. In so far as the LBA from the GLP is concerned, we respond as follows to the requests for information:

- a. See paragraph 23 above. The portal remains open until the end of June 2020.

- b. This request is based upon a mis-reading on regulation 32(2)(c) PCR 2015: see paragraph 49 above.
- c. See paragraphs 35 to 43 above.
- d. See paragraphs 20 to 34 above.
- e. See paragraphs 20 to 34 above.
- f. See paragraphs 20 to 34 above.
- g. See paragraphs 20 to 43 above.
- h. See paragraphs 35 to 43 above. A redacted copy of the Contract will be provided separately.
- i. See paragraph 32.
- j. See paragraph 41 above.

65. In so far as the LBA from EDL is concerned, we respond to the further requests for information as follows:

- a. See paragraph 40 above.
- b. The source of the supplies is a matter which engages PestFix's legitimate confidential commercial interests but is in any event irrelevant given the quality assurance process that has been put in place.
- c. See paragraphs 38 to 43 above.
- d. Technical testing has not yet concluded.
- e. None of the supplies procured under the Contract has yet been delivered to any hospitals.

66. In so far as the requests for documents contained in section 11 of the LBA are concerned, we respond as follows:

- a. The Secretary of State is not required to provide these documents as part of the response to the LBA. We have set out above an account of dealings with PestFix. This provides your clients with sufficient information concerning the events leading up to the entering into of the Contract.
- b. We refer you to the portal for the Coronavirus Support for Business scheme: see paragraph 23 above.
- c. A redacted copy of the Regulation 84 report will be provided separately.
- d. See above.
- e. A redacted copy of the Contract will be provided separately.

Correspondence and service of documents

67. We are instructed to accept service of any proceedings issued against the Secretary of State by your clients. Please note that we are currently accepting service by email.

Conclusion

68. For the reasons set out above, your clients' proposed claim for judicial review is without merit. The Secretary of State will invite the Court to refuse permission and/or to dismiss the claim and to recover his reasonable costs of and occasioned by defending the same.

Yours sincerely

Ashlie Whelan-Johnson
For the Treasury Solicitor

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