

Written evidence submitted by Transparency International UK

EXECUTIVE SUMMARY

Transparency International UK is one of the UK's leading anti-corruption organisations. We carry out research into corruption in the UK, with the goal of upholding integrity in public life and protecting the public's resources. Through this work, we have developed significant concerns regarding the award of government contracts to Randox Laboratories Ltd. Our concerns fall into three categories:

- (1) Uncompetitive tendering of government contracts.
- (2) Randox's employment of Owen Paterson MP.
- (3) Randox's relationship with the then Secretary of State for Health and Social Care.

Our research has identified that contracts were awarded to Randox Laboratories Ltd without competition under emergency procurement procedures, a process which significantly heightens the risk of corruption. Without full transparency over the awarding of contracts through the VIP lane, we also remain unable to rule out whether Randox Laboratories passed through such a route.

Our analysis of publicly available evidence also points to a relationship between Randox Laboratories Ltd and parliamentarians and officials, which suggests undue influence was being exerted – or attempts were being made to exert it – on government decisions. Lobbying is an important part of the democratic process, but it can easily subvert the system should it be conducted in a manner which lacks transparency, involves excessive hospitality, or breaks rules and codes of conduct. Employing a sitting Member of Parliament, who subsequently engages government, risks breaching the rules on paid advocacy and hospitality extended to the former Secretary of State for Health and Social Care created a potential conflict of interest that was not adequately managed.

It is of paramount importance that the British public can trust its elected representatives and officials to ensure that taxpayer money is spent judiciously, that all businesses will receive fair treatment when bidding for public contracts, and that those with more resources or connections will not be given more opportunities than those without. The relationship between the government and Randox Laboratories Ltd risks casting doubts on these principles. To avoid such a situation reoccurring, the government should now provide full transparency over its process for awarding contracts, take steps to ensure there are robust processes in place to ensure fair procurement, and urgently address concerns about ethical standards of conduct in public life.

KEY RECOMMENDATIONS:

To ensure proper relationships between private interests and decision makers:

- 1) The Government should make substantial improvements to the way it provides transparency over lobbying, as recommended by the Boardman review, and legislate for a more comprehensive lobbying register when parliamentary time allows.
- 2) The House of Commons should enact proposals from its Standards Committee to tighten the rules on paid advocacy for MPs.

To provide transparency over contracts awarded during the COVID-19 pandemic, the government should:

- 3) Carry out a full audit by relevant authorities of 73 COVID contracts awarded during the height of the pandemic that we identify with corruption red flags, including those awarded to Randox Laboratories Ltd.
- 4) Provide full transparency over the 'VIP' referral system, including who knew of it and when, who passed through the lane, and by whom they were referred.

To ensure appropriate oversight and ameliorate conflicts of interest in the awarding of public contracts, the government should:

- 5) Ensure that robust parliamentary oversight of emergency procurement procedures is included in upcoming procurement reforms, such as the use of the made affirmative procedure with a sunset clause.
- 6) Ensure that conflicts of interest are adequately addressed in upcoming procurement reforms, including in appointments to independent panels, and that this is facilitated through the creation of a centrally held register of conflicts of interest.

KEY FINDINGS FROM OUR RESEARCH INTO RANDOX LTD:

Contracts were awarded to Randox Laboratories Ltd during a period where there was widespread concern about the probity of public procurement decisions; we note the comment of Gareth Davies', head of the National Audit Office, that there was scant documentation of the decision-making process for large contracts.¹ There are three principal areas of concern regarding the award of contracts to Randox Laboratories Ltd: the lack of competition, the company's close relationship to Owen Paterson former MP, and that the Secretary of State at the time appeared to have a personal and/or political relationship with the founder and owner of Randox. We outline each of these below.

(1) Uncompetitive tendering

Our report, *Track and Trace*, found at least 73 contracts relating to the COVID-19 response worth over £3.7 billion between February and November 2020 that merit further investigation.² This is because they raised two or more red flags for possible corruption. These red flags were adapted from those used by OECD and academic experts and include uncompetitive tendering and the award of contracts to politically connected companies.³ Two of these 73 contracts of concern, amounting to £479.5 million, relate to contracts awarded to Randox Laboratories Ltd for testing services without competition in March and October 2020.

Randox Ltd was awarded an initial contract in March 2020 of £133 million for the supply of testing kits.⁴ This contract was awarded without competition under emergency procurement procedures.⁵ Randox was then awarded a second contract in October 2020 of £346 million⁶ without competition after the government had identified the risk that there was a 'lack of clarity on the value being delivered against big contracts such as Randox' in April 2020.⁷ According to the British Medical Association, during the period in which these contracts were awarded there were significant concerns from the medical community about the bypassing of existing NHS testing labs, which went under-utilised.⁸

¹ National Audit Office, *Investigation into the governments contracts with Randox Laboratories*, (March 2022)

<https://www.nao.org.uk/press-release/investigation-into-the-governments-contracts-with-randox-laboratories-ltd/>

² Transparency International, *Track and Trace*, (April 2021) <https://www.transparency.org.uk/track-and-trace-uk-PPE-procurement-corruption-risk-VIP-lane-research>

³ Further details can be found in our *Track and Trace* report.

⁴ <https://ted.europa.eu/udl?uri=TED:NOTICE:209472-2020:TEXT:EN:HTML&src=0>

⁵ Regulation 32 (c) of the Public Contracts Regulation (2015) states that contracting authorities may award contracts without prior publication but only if the procurement is: strictly necessary, the procurement is a response for reasons of extreme urgency and also the need for the procurement was unforeseen. <https://www.legislation.gov.uk/uksi/2015/102/regulation/32/made>

⁶ <https://ted.europa.eu/udl?uri=TED:NOTICE:525879-2020:TEXT:EN:HTML&src=0>

⁷ <https://drive.google.com/file/d/1xqdB2q6DJ5ylz1GctwAcM3ovHaTllhsW/view>

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. Whilst other countries also resorted to loosening their procurement laws, they were able to secure transparency in the procurement cycle, such as in Ukraine where contracts were published within one day of a signed purchase order.⁹ A higher degree of transparency in the procurement process would have helped to alleviate suspicions in the procurement process and build trust that the government has nothing to hide.

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, 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.

We support the introduction of crisis as a reason for allowing limited tendering. However, while governments need to be able to exercise emergency powers in special circumstances it is essential that there is parliamentary oversight of the use of these powers. These powers should be exercised using the made affirmative procedure and there should be a sunset clause so that these powers can only be extended with additional scrutiny.

One of our greatest concerns regarding procurement during the COVID-19 pandemic was the use of a high priority 'VIP lane' to triage and fast-track offers of supply based on recommendations from Ministers and parliamentarians. Such an approach is highly flawed. In other areas of economic activity, political connections require more due diligence rather than less, and there is nothing to suggest that Ministers or parliamentarians have the requisite expertise to be able to distinguish reliable supplies of medical equipment. In contrast, professionals such as the British Medical Association (BMA) and the Royal College of Nursing (RCN) who had both expertise and existing suppliers were not engaged in emergency procurement processes.

In January 2022, the High Court ruled that the UK Government's use of the VIP lane to award PPE contracts to two companies was unlawful.¹⁰ It stated that these two suppliers were prioritised 'because of who they knew, not what they could deliver'. We note that The Good Law Project claimed there was also a VIP lane for offers from testing companies, too.¹¹ The Government initially rebuffed these claims, although subsequent evidence supports the campaigner's assertions.¹²

Given the evidence we have available it is reasonable to suspect that Randox Laboratories also passed through a VIP lane, yet a lack of basic facts frustrates efforts to scrutinise effectively how public finances were managed. The National Audit Office notes officials claim this is not the case, although assurance of this by the UK Health and Security Agency (UKHSA) does not include Randox's first contract award in March 2020, which was worth £133 million.¹³ Establishing the precise route and decisions that led to the

⁸ CTT0007, Written Evidence submitted by British Medical Association to the Public Accounts Committee <https://committees.parliament.uk/writtenevidence/21092/pdf/>

⁹ Transparency International, *Where do we go from here to stop the pandemic*, (April 2020), <https://www.transparency.org/en/news/where-do-we-go-from-here-to-stop-the-pandemic>

¹⁰ BBC News, *Covid: Government's PPE 'VIP lane' unlawful, court rules*, (January 2022), <https://www.bbc.co.uk/news/uk-59968037>

¹¹ Good Law Project, *New: Documents reveal VIP lane for testing contracts*, (June 2021), <https://goodlawproject.org/news/vip-lane-for-testing-contracts/>

¹² Good Law Project, *Breaking: Government misled public over existence of VIP lane for testing contracts*, (September 2021), <https://goodlawproject.org/update/breaking-government-misled-public-over-existence-of-vip-lane-for-testing-contracts/>

award of this company's contracts is of utmost importance to learning from the pandemic and protecting the public purse going forwards.

Overall, there remain serious, unanswered questions about how contracts were awarded generally during the height of the pandemic response. As a minimum, **there needs to be clarity over who knew about the lanes, when they knew, why they knew and not others, and who passed through these privileged procurement routes.** Full and candid disclosure from the UK Government is now required by the government, As part of this disclosure, **the 73 contracts identified as having corruption red flags in our *Track and Trace* report should be subject to full and independent audit by relevant authorities.**

(2) Randox's employment of Owen Paterson MP

Throughout this period, Randox Laboratories employed Owen Paterson MP as a consultant, a post he had held with them since 2015. For this, he was paid almost £100,000 a year for 16 hours work a month for unspecified services.¹⁴ The Advisory Committee on Business Appointments, the watchdog on post-ministerial positions, advised Owen Paterson that he could take up the consultancy role as long as certain conditions were met, such as not using the privileged information he had gained in government.¹⁵ Owen Paterson also informed the Committee at the time that engagement with Government would "not form part of his role".

In October 2021 Owen Paterson was found by the Parliamentary Commissioner for Standards to have breached the parliamentary rule on paid advocacy by lobbying both the Food Standards Agency and the Department for International Development on behalf of Randox Ltd several times between 2016 and 2018.¹⁶

Correspondence released by the Government also suggests that Owen Paterson lobbied Matt Hancock about the testing contracts awarded to Randox, although this activity was not included in the Parliamentary Commissioner's report to the Standards Committee.¹⁷ The messages from January 2020 show Paterson complaining about the time it was taking for a decision to be made on the contract and the then Secretary of State replying that he had 'chased' Public Health England. The correspondence also reveal emails between Peter Fitzgerald, founder and owner of Randox, and Matt Hancock discussing the particulars of testing.

Official transparency records show that Owen Paterson, Randox and Lord Bethell had a call on the 9th April with the purpose listed as 'To discuss Covid-19 testing'.¹⁸ Due to the lack of information provided in these government disclosures, which are required under the ministerial code, we do not know anything more about the content of this discussion other than it took place just days after the company was awarded their first Covid testing contract.

¹³ National Audit Office, *Investigation into the governments contracts with Randox Laboratories Ltd* (March 2022) p.18 <https://www.nao.org.uk/wp-content/uploads/2022/03/Investigation-into-the-governments-contracts-with-randox-laboratories-ltd.pdf>

¹⁴ Parliament UK, *Register of Members' Interests*, (November 2021) https://publications.parliament.uk/pa/cm/cmregmem/211101/paterson_owen.htm

¹⁵ Gov.uk, *Summary of business appointment applications- Rt Hon Owen Paterson*, (August 2015), <https://www.gov.uk/government/publications/paterson-owen-secretary-of-state-for-environment-food-and-rural-affairs-acoba-recommendation/summary-of-business-appointments-applications-rt-hon-owen-paterson>

¹⁶ UK Parliament, *Committee on Standards publish report on the conduct of Rt Hon Owen Paterson MP*, (October 2021), <https://committees.parliament.uk/committee/290/committee-on-standards/news/158246/committee-on-standards-publish-report-on-the-conduct-of-rt-hon-owen-paterson-mp/>

¹⁷ Byline Times, Government release private messages between Owen Paterson and Matt Hancock over Randox contracts, (February 2022), <https://bylinetimes.com/2022/02/03/government-releases-private-messages-between-owen-paterson-and-matt-hancock-over-randox-contracts/>

¹⁸ Gov.uk, Department of Health and Social Care, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1014210/dhsc-ministers-meetings-april-to-june-2020-updated.csv/preview

Clearly, the events leading to Mr Paterson's suspension from the Commons show there needs to be greater clarity that MPs lobbying in return for payment is not acceptable, regardless as to the nature of the discussions. **We welcome the proposals from the House of Commons' Standards Committee, which would tighten the ban on paid advocacy for MPs, including a prohibition on giving paid advice on parliamentary affairs.**

The opacity of lobbying in Westminster means we are not able to identify easily whether Owen Paterson sought to influence ministers or officials elsewhere in government on behalf of Radox. Whereas other countries, like the US and Canada, have statutory lobbying registers that would make this a matter of public record, our lack of one of similar caliber leaves the public in the dark about such basic facts. **We recommend the UK introduce a more comprehensive statutory register of lobbyists to help provide more clarity about access and potential influence in the UK.**

As part of his review of the engagement between Greensill Capital and government officials, Nigel Boardman recommended that, as a minimum, there should be substantial improvements to how transparency over lobbying is provided via the ministerial code and department disclosures. The Committee on Standards in Public Life (CSPL), the Institute for Government, and ourselves agree. Although both parts of Nigel Boardman's review have now been published, the government is yet to respond beyond a vague commitment to consider the findings from the Prime Minister. **Given well known issues with the current transparency regime, the government should implement the Boardman Review's recommendations to improve the openness of lobbying as a matter of urgency.**

(3) Radox's relationship with the then Secretary of State for Health and Social Care

It is a matter of public record that between 2011 and 2018, Radox donated £160,800 to the Conservative Party.¹⁹ Our Freedom of Information (FOI) requests suggest that prior to the pandemic, there was also a direct 'political' relationship between the founder of Radox and the Secretary of State for Health and Social Care around the time at which Radox was awarded contracts in an uncompetitive process.

On 20 March 2019, Matt Hancock, toured Devenish Foods and Finnebrogue Foods in Northern Ireland, which he reported via departmental disclosures as required under the ministerial code.²⁰ Radox Laboratories Ltd reported he also visited their facilities the following day. This was not disclosed in Mr Hancock's transparency returns, despite the visit taking place in his ministerial capacity.²¹

Emails provided to us in response to our FOI request suggest that Owen Paterson MP was responsible for organising parts of the tour.²² At the time, Mr Paterson MP was employed by the three companies we know Mr Hancock visited during this ministerial trip to Northern Ireland.²³ The FOI request also shows that Matt Hancock was invited by Radox to have dinner and stay at the Country Antrim estate of Peter Fitzgerald, who founded and owns Radox, on the evening of 21 March.²⁴ When approached for

¹⁹ Electoral Commission,

<http://search.electoralcommission.org.uk/?currentPage=1&rows=10&query=radox&sort=AcceptedDate&order=desc&tab=1&et=pp&et=ppm&et=tp&et=perpar&et=rd&isIrishSourceYes=true&isIrishSourceNo=true&prePoll=false&postPoll=true®ister=gb®ister=ni®ister=none&optCols=Register&optCols=CampaigningName&optCols=AccountingUnitsAsCentralParty&optCols=IsSponsorship&optCols=IsIrishSource&optCols=RegulatedDoneeType&optCols=CompanyRegistrationNumber&optCols=Postcode&optCols=NatureOfDonation&optCols=PurposeOfVisit&optCols=DonationAction&optCols=ReportedDate&optCols=IsReportedPrePoll&optCols=ReportingPeriodName&optCols=IsBequest&optCols=IsAggregation>

²⁰ <https://openaccess.transparency.org.uk/?meeting=54827>

²¹ Radox, *Radox Sepsis innovation hailed by Health Secretary Matt Hancock*, (March 2019), <https://www.radox.com/sepsis-health-secretary-matt-hancock/>

²² See Annex 1, email C).

²³ Note Lynn Country Foods Ltd owns Devenish and Finnebrogue Foods <https://publications.parliament.uk/pa/cm/cmregmem/190401/190401.pdf>

comment on this dinner and stay, Matt Hancock's spokesperson said it was a 'political' dinner and therefore not reportable under the ministerial code as hospitality.

The ministerial code requires:

*If a Minister meets an external organisation or individual and finds themselves discussing official business without an official present – for example at a social occasion or on holiday – any significant content should be passed back to the department as soon as possible after the event. Departments will publish quarterly, details of Ministers' external meetings.*²⁵

There are also separate rules for reporting hospitality, which state:

*'Gifts given to Ministers as constituency MPs or members of a political Party fall within the rules relating to the Registers of Members' and Lords' Interests.'*²⁶

Mr Hancock's spokesperson contends the hospitality was 'political' in nature, and therefore unreportable yet the context in which they took place – just after an official visit to Randox's facilities, organised by the minister's private office, but not reported in transparency disclosures – suggests it is unlikely that official business was not discussed. If the Secretary of State did discuss affairs related to his department at this dinner, it should have been reported.

Conversely, even if the dinner was purely political in nature and involved no mention of government business, it is still of utmost public interest to understand the nature of those discussions. These events took place a year before Matt Hancock's department awarded Randox the first testing contract without competition for £133 million. Evidently, if there was a political connection between Randox and the Secretary of State this would pose a potential conflict of interest that should be managed carefully, especially in the context of public procurement under his authority without market engagement.

Yet the NAO found that Mr Hancock's department had no documentation whatsoever on how conflicts of interest were addressed for the first contract, if they were even recognised at all and that the department was unable to supply documentation to the NAO on the contract negotiation with Randox.²⁷ Consequently, what was discussed during the 'political' dinner in March 2019 is highly relevant to the context surrounding the award of the contracts to Randox a year later.

It is important to note that the government has itself recognised that conflicts of interest pose a challenge for procurement processes. In its response to the Transforming Public Procurement consultation, published in December 2021, the government stated that a 'conflict of interest which cannot be appropriately mitigated by other means, which does or could cause unfair advantage' will be a discretionary ground for exclusion under new procurement rules due to be brought forward in this parliamentary session.²⁸ However, it remains unclear how officials will be able to assess this criteria without adequate data on conflicts of interest.

We urge the government to ensure that conflicts of interest are adequately addressed in upcoming procurement reforms, including in appointments to independent panels, and that this is facilitated through the creation of a centrally held register of conflicts of interest. The UK has been advised to implement such a register to ensure that complies with its obligations under the UN Convention Against Corruption.²⁹

²⁴ See Annex 1, emails A) and B).

²⁵ Cabinet Office, *Ministerial code* (August 2019) paragraph 8.14
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf

²⁶ Cabinet Office, *Ministerial code* (August 2019) paragraph 7.23

²⁷ National Audit Office, Investigation into the governments contracts with Randox Laboratories (March 2022),
<https://www.nao.org.uk/press-release/investigation-into-the-governments-contracts-with-randox-laboratories-ltd/>

²⁸
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038516/Transforming_Public_Procurement-Government_response_to_consultation.v3_.pdf p.36

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