

Judicial Review of direct award of PPE contracts by Secretary of State for Health and Social Care

The Ayanda PPE contract was subject to judicial scrutiny as part of the Judicial Review into PPE Procurement bought by the Good Law Project. This Judicial Review focused primarily upon the behaviour of DHSC in directly awarding contracts under the emergency PPE procurement provisions. Ayanda Capital was joined as an "interested party" to this review. While the judgement was extensive and primarily related to DHSC, to the extent that it discussed the Ayanda contract highlighted below are extracts from the Judgement:

At para 403 the judge stated:

“the offer made by Ayanda justified priority treatment on its merits. It was a unique opportunity to acquire very high volumes of PPE, through exclusive access to the full manufacturing output of a plant in the PRC. The DIT was entitled to have regard to Mr Mills’ previous position as an advisor to the Board of Trade as an indication that he had the relevant knowledge and experience to ascertain whether the proposal was credible. The nature of the opportunity, and the concern that the offer would disappear if not pursued with alacrity, justified priority consideration of the same. Regardless whether made through the Portal and assessed by the Opportunities Team, or assessed by the High Priority Lane Team, it is very likely that the offer would have resulted in the award of the Ayanda Contract”

Also, at paras 500(i) and 515(a):

“...the Defendant did not place any reliance on their referral to the High Priority Lane when awarding the contracts to... Ayanda”

The Judge made no criticism whatsoever with regards to type of face masks purchased (and finding of fact at para 217):

“The IIR masks and FFP2 masks were delivered as required by the Ayanda Contract. The FFP2 masks delivered have not been distributed into the NHS as they have ear-loops rather than head-loops. No commercial dispute has arisen with Ayanda”

and at para 492:

“given that the masks complied with the specified standard BS EN149+A1:2001. In that regard, it is significant that the masks did not fail testing on the grounds that they had ear loops rather than head straps, indicating that this error [by DHSC] was not material”

The Judge rejected entirely GLP’s allegations that Ayanda were not fit and proper etc (para 439 (iv) a-e criticisms levelled at it) see 453 and 454 in particular:

“Unlike a regular procurement exercise, there were two overriding questions when considering each potential supplier: (i) did the supplier have a credible and reliable offer to supply substantial amounts of PPE; and (ii) how pressing was the need for that PPE” (para 453)

“There was objective justification for treating the offers from PestFix and Ayanda as high priority offers and the court is satisfied that they would have been identified as such if triaged from a Portal submission.” (para 457)

“It identified a unique opportunity for the Defendant to obtain access to a factory that could produce PPE, using existing contacts.” (para 495)

Attached are:

- 1) The Approved Judgement of the Judicial Review dated 12 January 2022
- 2) The Refusal of the Good Law Project’s Appeal by the Court of Appeal dated 29 April 2022

Notes for Editors

Ayanda supplied 50m FFP2 masks and 167m Type IIR masks to DHSC. The FFP2 masks (less than 25% of the number supplied by Ayanda) were not used by NHS because of a "preference" by NHS to use masks with head straps rather than ear loops, despite the fact that 1) FFP2 ear loop masks were approved for use against Covid 19 by the World Health Organisation 2) were of the type ordered, paid for and delivered under the Ayanda contract and 3) were tested and approved by the British Standards Institute (BSI) and 4) have been used by other European healthcare systems during the pandemic.