

Supreme emergencies and public accountability

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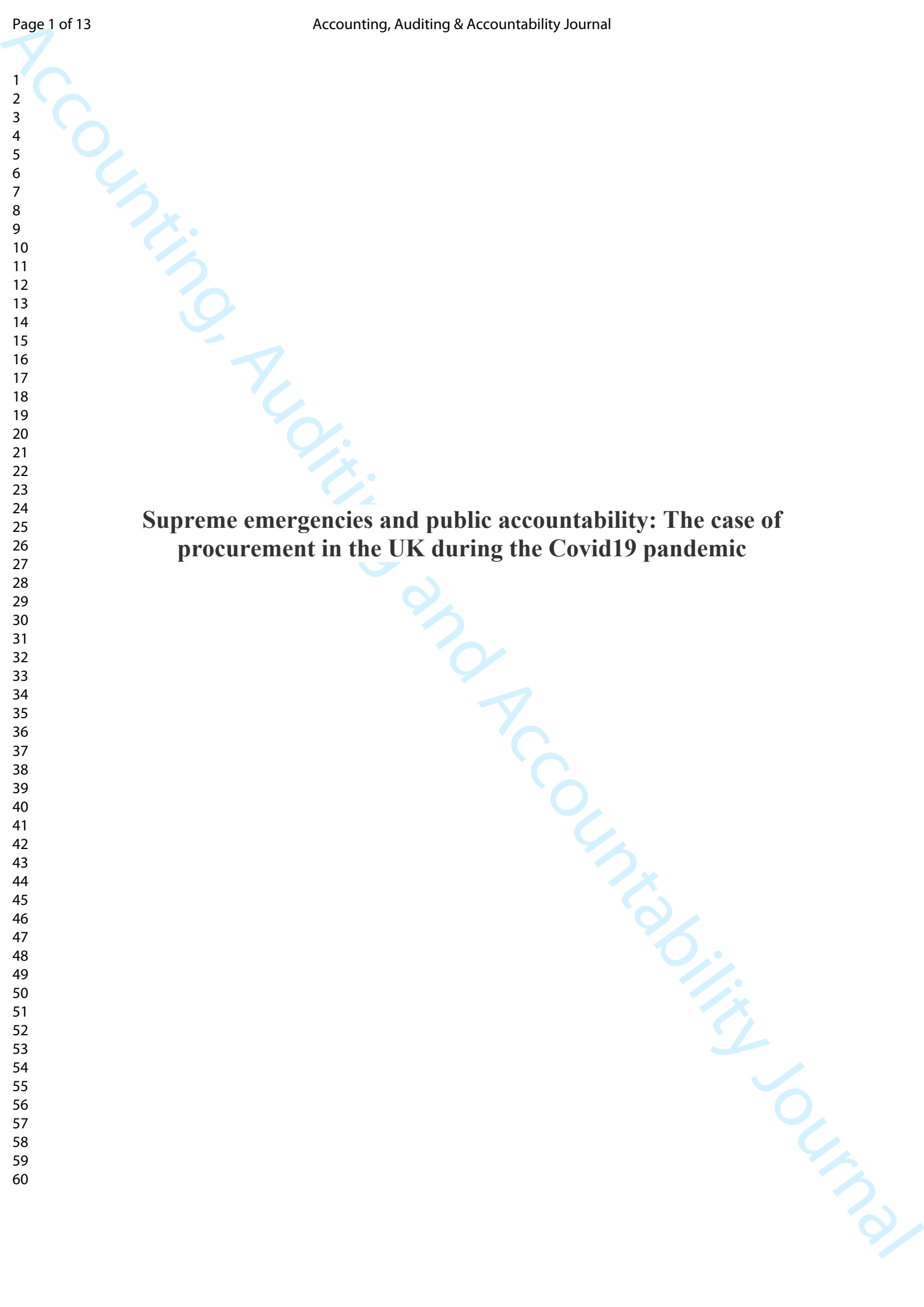


Supreme emergencies and public accountability: The case of procurement in the UK during the Covid19 pandemic

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Supreme emergencies and public accountability: The case of procurement in the UK during the Covid19 pandemic



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Introduction

A supreme emergency exists when a nation or community faces a threat of ‘an unusual and horrifying kind’ that will cause harm and requires an urgent response if the harm is to be averted or minimised (Tanguay-Renaud 2009; John 2009). Unlike many regional/national emergencies in recent times, such as the Australia bushfires in 2019, Hurricane Katrina in 2005, the Japanese earthquake in 2011 and the Indonesian Tsunami in 2004, the Covid19 pandemic is a global health emergency, the scale and geographic reach of which is unprecedented with over 120 million cases worldwide. Covid19 has had a particularly devastating impact in the UK which, despite being a small island, has seen one of the highest mortality rates in the world with 126,000 deaths at the time of writing and the highest excess death rate in Europe.¹

By their very nature, preparation for and responses to supreme emergencies involve issues of ethical significance and accountability (Peterson 2009). Elected governments are ethically obligated to plan for emergencies and respond quickly to them because they affect human life and the well-being of citizens (Zack 2009). Walzer’s discussion of conflicting absolutes argues that in the event of imminent harm, certain sorts of actions which are prohibited or considered unethical in normal situations might become permissible in an emergency.² Supreme emergencies that pose grave threats to law, order, state institutions and collective survival place unique demands on the polity and the assumption of exceptional powers are a common response and a key element of crisis management strategies (Tanguay-Renaud 2009). Although the exceptional powers invoked by governments in such scenarios can be defensible (Sorell 2002), their ability to interfere with fundamental rights and civil liberties needs to be balanced by checks to prevent or minimise the possibility of abuse of that power and to be accountable for the effectiveness of decisions made in an emergency response (Gross and Aoláin 2006; Frowde et al. 2020).

In the UK, the Coronavirus Act, 2020 allowed the Government to assume emergency powers in key areas such as healthcare, food supply, education, travel and ports. Daily press conferences were televised, led by senior ministers and often by the Prime Minister, Boris Johnson, to offer an account of (and basis for) the decisions being made in Government and answer media questions. The Government was required to act quickly in order to preserve life in the face of high death rates caused by Covid19 and this involved the suspension of various conventional accountability mechanisms in the decision-making process. Key elements of the response (as in most nations) included restricting the movement of people other than key workers, asking people to remain at home, the closure of all non-essential businesses and the prohibition of cultural events. The Government response also involved invoking powers to procure goods, services and works through the issue of a Procurement Policy Note (PPN01,

¹ <https://www.ons.gov.uk/releases/internationalcomparisonsofeuropeanmortalitydata2020>

² The term ‘supreme emergency’ was used by Michael Walzer (borrowing from Winston Churchill’s war speeches) to analyse situations where two absolute duties are in conflict. In just war theory, the ‘principle of discrimination’ (to not intentionally target enemy non-combatants or “innocents”) is observed but in a situation of supreme emergency it might be legitimate to attack non-combatants if this is the only feasible pre-emptive strategy (see *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 2000). As applied to Covid19, it is the case that citizens are likely to suffer serious harm/death and the only way in which to avert this harm justifies the democratic government doing what is ordinarily prohibited.

2020). Under these powers, the British Government was able to enter into contracts with private sector organisations without the normal requirements for competitive tender or advertising so long as they were able to demonstrate that they had met four tests specified in PPN01.

Making a contribution to the sparse literature on accounting and public procurement (Sikka and Lehman 2015; Neu et al. 2015)³, our study aims to examine the changed nature of public accountability during this supreme emergency and in the process we explore the role of legal and auditing mechanisms and controls in the appropriation of public monies. In the UK, vast amounts of public monies⁴ were expended during the pandemic without effective parliamentary scrutiny and the hastened award of uncontended contracts to private companies has subsequently raised issues of accountability, transparency and trust because in some cases the services contracted for were exceptionally mismanaged and contributed to obstructing the emergency response.

Given the changing and relatively recent nature of events examined in this paper, we have drawn on a variety of sources of evidence: legal documents; government webpages; statements made by government ministers/MPs; independent reports on government expenditure by civil organisations; media investigations and the National Audit Office Reports (Davies 2020a; Davies 2020b). Where it was not possible to officially substantiate claims we turned to independent sources and attempted to triangulate our information by examining alternative sources where possible.

In the UK, many large contracts were expedited and the outcome was not always positive. For example, the hastened construction of specialist Nightingale Hospitals which remained mostly empty (awarded to KPMG); the early fiasco surrounding testing centres for Covid19 (awarded to Deloitte); the “Test and Track App” that was developed for £11.8 million but never fully deployed and the much derided “Test and Trace Service” which so far has cost the UK taxpayer £22 billion. This study will focus on the procurement of PPE (Personal Protective Equipment) because PPE accounted for 80% of the total number of contracts awarded (6,900 PPE contracts), with a total value of £12.3 billion as at October 2020 (Davies 2020a).⁵ We examine this case within the context of public accountability. When normal accountability mechanisms are suspended, the need for adherence to emergency regulations and transparent decision-making become imperative. Although other researchers (Frowde et al., 2020) have presented evidence that the UK Government failed to “exercise their powers competently”, allowing the virus to spread,⁶ in this paper we examine how government decisions hindered the emergency response and how civil society organisations intervened to hold the state accountable,

³ Although not the subject of this study, PPP procurement and financing long-term public infrastructure has been subject to considerable research (see Andon 2012, for an overview).

⁴ By 31 July 2020, over 8,600 contracts had been awarded, with a value of £18.0 billion (Davies 2020a). For the current financial year the UK Office for Budget Responsibility estimate Covid19 costs at £280bn to £391bn.

⁵ The three main PPE suppliers were: Full Support Healthcare (£1,717 million); Supermax Healthcare (£366 million); and Guardian Surgical (£295 million) (Davies 2020b).

⁶ For example: late implementation of a lockdown; not joining the EU as it secured critical resources leading to shortages of PPE, testing kits and ventilators; not screening international arrivals; late enactment of a quarantine rule for international arrivals; abandoning mass testing and tracing; delayed implementation of physical distancing measures and abandoning community testing permitting the uncontrolled spread of the virus (Frowde et al. 2020).

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3 questioning and challenging the government's original account, and making transparent
4 behaviour that would otherwise have remained concealed (Smyth 2012, 2017).
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6 In the next section we examine the nature of public accountability drawing on literature from
7 accounting, political science and public management. This is followed by an examination of
8 PPE procurement in the UK Government's rapid response to the Covid19 supreme emergency.
9 Finally, we present some concluding comments.
10

11 **The nature of accountability**

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13 Although accountability has been described as "elusive" (Sinclair 1995), there is general
14 agreement that it refers to an obligation or willingness to accept responsibility for actions or
15 decisions taken and provide explanations – the '*giving and demanding of reasons for conduct*'
16 (Roberts and Scapens 1985). Associated with this obligation is the "allocation of praise and
17 blame, reward and sanction" (Gray and Jenkins 1993, p.55). Accountability is a social relation
18 of control, imbued with notions of openness, transparency, the requirement to present an
19 account or report justifying the action taken on behalf of others. It is a means of constraining
20 power (Bovens, 2005).
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24 There is a small but growing literature that addresses the role of accounting and accountability
25 relations in natural disasters. This literature has analysed extreme weather events such as floods
26 and hurricanes (Baker, 2014; Perkiss and Moresman, 2020; Sciulli, 2017); earthquakes
27 (Sargiacomo et al., 2014; Sargiacomo, 2015; Sargiacomo & Walker, 2020); fires (Taylor et al.
28 2014), and very recently the Covid pandemic (Yu, 2020). With the exception of Yu (2020) all
29 these are localised disasters with local government and local organisations being frontline
30 responders, often with national government resources in a support capacity. In contrast, the
31 Covid19 pandemic allows for an analysis at the national level, resulting in our theoretical
32 framing of public accountability to analyse central government actions.
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36 Accountability conceptualisations utilised in this literature focus on the distinction between
37 upward (to funders) and downward (to beneficiaries) accountability or calculative
38 accountability (Taylor et al., 2014; Baker, 2014; Sargiacomo et al., 2014) or understanding
39 accountability in a moral, mourning or socializing framing (Baker, 2014; Lai et al., 2014; Yu,
40 2020). Other conceptualisations are also drawn upon including the sociology of worth (Perkiss
41 and Moerman, 2020) and public risk governance (Sciulli, 2018) to generate deeper insights.
42 However, it is surprising that, given the role of governmental bodies, no studies have so far
43 utilised public accountability concepts to frame a study. We seek to remedy that omission in
44 this study.
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47 The concept of accountability is a central tenet in democratic states in which the government
48 (the agent) is entrusted to execute powers on behalf of citizens (the principal), who ultimately
49 hold the government to account through elections (Lindberg 2009; Broadbent et al. 1996).
50 Public accountability is a particular subset of accountability in which the account-giving is
51 done in public (Bovens 2005). This accountability is executed through the provision of cost
52 information and reports to the public and to parliament, allowing opportunities for scrutiny,
53 audit and ultimately action in the event of poor management and inefficiency (Coy et al. 2001;
54 Steccolini 2004; Christensen and Skærbæk 2007). Traditionally, in western democracies public
55 accountability has been constructed as a chain of relations where public servants are
56 accountable to government ministers, who in turn are accountable to Parliament (Gebreiter and
57 Hidayah 2019; Barton 2006). In the UK, these general requirements are set in the Public
58 Authority (Accountability) Bill 2016-17, which details a requirement on public institutions,
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public servants and officials to act in the public interest. The accountability process is assisted in the UK by retrospective surveillance of government expenditures by an independent audit agency, the National Audit Office.

In this paper, we show how transparency and the content of the account of government actions is a multifaceted, complex and inter-related social relation. Although, forms of public accountability have been captured in various taxonomies (Sinclair 1995; Pollitt 2003), we focus on legal and administrative accountability (audit) (Bovens 2005) to show how these mechanisms play a role in ensuring the transparency and account-giving elements of public accountability.

The literature shows that there are examples where legal mechanisms have been used to frustrate accountability. Murphy and Moerman (2018) discuss the use of Strategic Law Suits Against Public Participation (SLAPPs), where the wealthy and powerful mobilise the legal system to avoid being held to account; in the process stifling and "... slapping accountability out of the public sphere" (Murphy and Moerman 2018, p.1789). Despite this rather atypical use of the notion, legal accountability comes to the fore in the examples that we highlight in the study. In addition, there is a small literature that focuses on the role and activities of government auditors (Radcliffe, 2008, 2011; Smyth and Whitfield, 2017), with a subset exploring the relationship with public accountability (Normanton, 1966; Lovell, 1996). This relationship is outlined by Normanton (1966, p. 410),

It has been our view that the most effective form of public accountability is through the medium of an independent state audit...This is probably the citizen's best defence against misuse (using the word in its broadest sense) of money taken from his pocket.

For the illustrative examples below, the misuse Normanton identifies comes in the form of a lack of transparency, conflicts of interests, awards without apparent due diligence checks and mismanagement of contracts awarded. Our study highlights the dynamic nature of accountability as a form of control within public procurement practices and we advance the notion of deferred accountability by showing how legal mechanisms and public audit were set in motion only after the event.

The award of contracts in a supreme emergency

(Inadequate) Planning

In 2016 the UK Government completed a drill, code-named *Exercise Cygnus*, in which government departments, the NHS and local authorities simulated "a worst case" scenario influenza virus pandemic. The report on *Exercise Cygnus* by Public Health England (PHE 2017) showed that its objective was to review the response of an overwhelmed health service with reduced staff availability (Swindells 2017). The report revealed gaping holes in Britain's Emergency Preparedness, Resilience and Response (EPRR) plan and although the planning exercise could not have anticipated Covid19, it did highlight shortages of PPE, ventilators, critical-care beds and capacity in hospitals/morgues. A key conclusion of the report was that "the UK's preparedness and response, in terms of its plans, policies and capability, is currently not sufficient to cope with the extreme demands of a severe pandemic" (PHE 2017, p.6).

Despite this, ministers and NHS leaders made critical decisions about the extent of accepting and implementing the findings, driven mainly by concerns over cash constraints. Therefore,

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3 when the Covid19 pandemic struck the Government response was reactive rather than planned,
4 culminating in a litany of missed opportunities (Frowde et al. 2020).⁷
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7 *Government (Re)Acts*

8 In the UK, under normal circumstances, the award of government contracts for goods and
9 services is regulated by the Public Contracts Regulations 2015, which states that “contracts
10 may be awarded only if a call for competition has been published in accordance with ...the
11 Public Contracts Directive” (The Public Contracts Regulations 2015). The legislation is
12 designed to secure transparency and value for money, so contracts of more than £10,000 must
13 be publicly advertised and competitive tenders invited. However, under the new emergency
14 procurement regulations within the Coronavirus Act 2020, the UK Government and its
15 agencies were able to assume emergency powers to award contracts directly, without the need
16 for either advertising or competitive tendering. Alternatively, they could have used the existing
17 procurement framework and issued a call-off contract to suppliers already vetted without re-
18 tendering. Retrospectively, it has been shown that to July 2020, 1,301 contracts worth £10.49
19 billion were awarded directly (Davies 2020a)⁸ and of these, contracts with a total value of just
20 over £1 billion were awarded under the fast-track rules. In many cases, the government did not
21 release contract award notices/details within the legally required time, although the guidance
22 note states:
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26 *If you make a direct award, you should publish a contract award notice (regulation 50) within 30 days*
27 *of awarding the contract. (PPN01 2020)*
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29 In November 2020, it was revealed that the National Audit Office received notification of
30 “concerns about the transparency of contracts being awarded during the pandemic, potential
31 bias or conflicts of interest in the procurement process, and that some contracts may have been
32 given to unsuitable suppliers” (Davies 2020a).
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35 *Breakdown of accountability*

36 A key part of the government response to Covid19 was the procurement of PPE for health
37 professionals in hospitals and care-homes. Government guidance stated that those treating
38 Covid19 patients should wear PPE (apron/gown, gloves, surgical mask and eye protection). As
39 the pandemic developed, the Department of Health and Social Care (DHSC) issued instructions
40 to centralise the procurement of PPE along with other high-demand items such as CT scanners,
41 mobile X-ray machines and ultrasounds “rather than individual NHS organisations compete
42 with each other for the same supplies” (C0423 2020). To help support the DHSC’s
43 procurement, a *cross-government PPE team* of around 450 staff was established working with
44 consultants, Deloitte. We now focus on issues of public accountability with regard to PPE
45 contracts arising from three main sources: (i) the non-publication of contract details awarded
46 through the emergency process in accordance with legal requirements; (ii) conflict of interest
47 in the fast-track award of contracts and (iii) inadequate risk assessment and the mismanagement
48 of awards.
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55 ⁷ Inadequate planning meant that the UK was exposed to a dramatic rise in the price of PPE, costing the taxpayer
56 around £10bn as well as delays in purchasing essential equipment and tests. Further, the UK’s focus on Brexit
57 meant that it did not participate in a common EU purchase scheme for critical health supplies (Frowde et al. 2020).

58 ⁸ Independent sources made estimates and revealed amounts spent e.g. Tussell, which is a research organisation
59 monitoring the UK procurement market. Sources include: Contractfinder.gov.uk, UK data from Tenders
60 Electronic Daily (TED) and Public Contracts Scotland (<https://www.tussell.com/products/tussell-research>)

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3 Firstly, under the emergency powers legislation, government agencies awarding contracts were
4 required to publish basic information within 30 days of the award being made (PPN01 2020).
5 Investigations at the time by civil society organisations (such as the Tussell Group,
6 OpenDemocracy and The Good Law Project) revealed that there were many breaches of this
7 requirement. The NAO Report noted that 55% of contracts issued by 31st July 2020, had not
8 had their details published by 10 November. Additionally, it was revealed in the media, and
9 confirmed by the NAO, that some contracts were awarded retrospectively.⁹ Transparency
10 within the emergency process was a key control to ensure accountability for procurement
11 decisions taken and to mitigate risks associated with increased use of the emergency powers
12 (Davies, 2020a). In the absence of a competitive process, the remaining safeguards such as
13 proper documentation and disclosure became an even more important means of assuring public
14 accountability.
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18 Secondly, the cross-government PPE team established a high-priority lane (fast-track) to assess
19 and process applications to supply PPE at a time of scarcity. Firms or individuals with
20 connections to government ministers or officials, MP's, members of the House of Lords or
21 senior NHS staff were fast-tracked. Those without such connections were subjected to an
22 established (slower) process. The justification for this two-lane approach was that those with
23 connections were "known" and therefore more credible. At the time of writing, examples of
24 questionable procurement have come to light. For instance, a £253m deal to provide PPE by
25 Ayanda Capital was mediated by Andrew Mills, then an adviser to the Board of Trade. A £3.2m
26 deal was negotiated with Deloitte for consultancy services in the PPE procurement effort -
27 Minister Chloe Smith was a consultant at Deloitte before going into politics. Another fast-
28 tracked company, Faculty, had connections with PM Boris Johnson's advisors and was
29 awarded three contracts worth almost £3m. Oxford Nanopore, a PR company headed by Lord
30 Feldman, the former Conservative party chairman, agreed two contracts worth £27.9m and
31 £100m, with DHSC, to supply Covid testing kits. In a final example, a Spanish businessman
32 (Gabriel Gonzalez Andersson) was fast-tracked and paid £21m (with an agreement to pay a
33 further \$20m) to act as a "middle-man" to secure PPE from a supplier company established at
34 the start of the pandemic.¹⁰ Public accountability and perceptions of fairness are key tenets of
35 the procurement regulations and the aim was to ensure a "level playing field for suppliers to
36 compete for contracts", while allowing for direct contract awards in circumstances such as
37 extreme urgency. The extent of the preferential treatment was highlighted in the NAO report,
38 which found that one in ten suppliers processed through the high-priority lane obtained
39 contracts compared to less than one in a hundred suppliers that came through the ordinary lane
40 (Davies 2020a, p.9). There are serious questions to answer regarding how
41 companies/individuals came to be on the high-priority list. In the absence of such disclosure,
42 public accountability is compromised as the contracts are seen to be awarded not on merit,
43 competence, technical ability or value for money but because of personal connections and
44 cronyism.
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51 Thirdly, there was inadequate risk assessment in the process of awarding contracts and many
52 examples of mismanagement were highlighted which had catastrophic consequences for the
53 emergency response. One example was the sourcing of PPE during the first few months of the
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56 ⁹ For example: (i) The Cabinet Office approved a £3.2 million contract to assist the PPE team's procurement
57 process on 21 July 2020. The contract was made effective from 14 March 2020; (ii) An £840,000 contract was
58 awarded for focus groups and other communications on 5 June 2020. The contract was made effective from 3
59 March 2020 (<https://www.dentistry.co.uk/2020/11/18/ppe-review/amp/>)

60 ¹⁰ <https://www.bbc.co.uk/news/business-54978460>

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3 pandemic when the UK was competing with other countries for limited supply - prices had
4 risen and supply from manufacturing centres in China was diminishing. The Cabinet Office
5 signed a contract with the accounting firm Deloitte to provide operational support to source
6 stocks from both the UK and abroad. By 30 March 2020, a Deloitte crisis cell had been
7 established in the Cabinet Office (Foster and Neville 2020). The appointment of an accounting
8 firm to coordinate the supply of PPE was outwardly seen by some as inexplicable (Geoghegan
9 and Hoskins 2020), although Deloitte has a specialist consultancy branch that supports
10 healthcare organisations. The media suggested that Deloitte had unsuccessfully pursued
11 manufacturers in China and the international market, rather than approaching British firms to
12 repurpose British factories to produce PPE and opportunities were also lost because many of
13 these firms were not on the “fast track”.

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17 The inability to source adequate PPE had a catastrophic impact at the frontline as evidenced by
18 the number of deaths amongst doctors and nurses and other healthcare workers.¹¹ A major
19 contract was awarded to Pestfix, a small family-run pest control firm (with 16 staff, net assets
20 of just over £18,000) which had no prior expertise in producing or procuring PPE. On 17 April,
21 the company signed a single *direct award* contract with the DHSC for just over £108 million,
22 which amounted to almost a third of the government’s total PPE procurement funding (Wood
23 2020). The terms included the purchase of 25 million FFP2 masks for £59 million. It became
24 apparent after the first delivery that the masks did not meet UK standards and could not be
25 used. Procurement staff had failed to undertake the most basic due diligence procedures, such
26 as checking whether the company had filed accounts, had appropriate assets, or any experience
27 in what it claimed it could do (McKee 2020). In another case, the UK contracted with the
28 Turkish Government for the supply of 400,000 protective gowns. After several delays, the
29 shipment arrived only to be impounded as the DHSC confirmed that the gowns did not comply
30 with British Standards. The NAO report acknowledges that “procurement processes were
31 designed to enable rapid procurement, but this meant that some PPE was procured that did not
32 meet requirements, wasting hundreds of millions of pounds” (Davies 2020b). Faced with a
33 supreme emergency, the UK government did indeed react quickly, although the substance of
34 some decisions remains highly questionable. An effective outcome would have been delivery
35 on time and equipment that contributed to reducing the harm inflicted by the pandemic.

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42 The evidence suggests that public accountability mechanisms were compromised during the
43 pandemic in the UK. In the face of gross mismanagement of PPE (and other) contracts and in
44 the absence of open tendering and parliamentary scrutiny, alternative mechanisms for
45 accountability emerged to fill the hiatus. This included the media, academic research, the
46 mobilisation of the Freedom of Information Act, civil society organisations and (later)
47 government auditor reports and parliamentary procedures. OpenDemocracy, a civil society
48 organisation, served legal papers relating to the Government’s massive (undisclosed) NHS
49 COVID19 data deal with private tech firms. The contracts show that companies involved in
50 the NHS datastore project were allowed to profit from their unprecedented access to NHS data
51 (Fitzgerald and Crider 2020). The UK Anti-Corruption Coalition and Transparency
52 International UK published a joint statement highlighting the need for accountability and
53 transparency: “*we recommend that all Covid19 related procurement be published openly,*

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¹¹ The NAO Report states that “Feedback from care workers, doctors and nurses show that significant numbers of them considered that they were not adequately protected during the height of the first wave of the pandemic...even in high-risk settings” and “Employers have reported 126 deaths and 8,152 diagnosed cases of COVID-19 among health and care workers as being linked to occupational exposure” (Davies 2020b).

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3 tagged specifically as Covid19 and that this information be collected and shared publicly...
4 (and also) apply to direct contracts.” (UK Anti-Corruption Coalition: Covid-19 statement
5 2020). The Good Law Project (GLP), another UK non-profit civil society organisation, has
6 sought to hold the Government accountable through legal proceedings in the High Court over
7 the Pestfix contract. The above actions were taken from March to August 2020, and a public
8 audit report by the NAO was presented to Parliament much later in November.
9

10 11 **Conclusions**

12
13 Our study makes an empirical contribution to the extant accountability literature by showing
14 how an account in the context of public services is given, challenged and amended. Initially
15 the government provided an account of their behaviour through daily press briefings that were
16 televised and answered questions from journalists. However, this account was challenged by
17 reports from civil society organisations which found their way into the media and subsequently
18 by the publication of NAO reports forcing the Government to publicly defend decisions made
19 and explain policy u-turns. On the basis of the changed narrative there are now vocal calls for
20 a public enquiry into how decisions made by the Government contributed to the excessive death
21 rate in the UK.
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25 This study also furthers our understanding of legal accountability relations. Legal
26 accountability through UK court cases brought by civil society organisations have held a light
27 to the behaviour of the government and offered an alternative, more transparent and narrative
28 account. By March 2021, the High Court had confirmed that details of 100 contracts had yet to
29 be revealed. In other court proceedings, in February 2021, the GLP successfully argued that
30 the Health Secretary, Matt Hancock, had acted unlawfully by failing to comply with the rules
31 on transparency in accordance with PPN01 2020. In delivering his judgement, Judge
32 Chamberlain commented:
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35 *The Secretary of State (of Health) spent vast quantities of public money on pandemic-related*
36 *procurements during 2020. The public were entitled to see who this money was going to, what*
37 *it was being spent on and how the relevant contracts were awarded.*
38
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40 Despite this, the resignation of the Health Secretary is not forthcoming, illustrating the limits
41 of legal accountability. Instead accountability will be deferred until either the next election or
42 as more evidence comes to light¹² or there is a Cabinet reshuffle, or criminal proceedings are
43 initiated. We suggest that notions of public accountability, as currently constructed and
44 exercised, are partial and incomplete and that the intersection of political interest and public
45 accountability is an area ripe for future research.
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48 As with legal accountability, public audit has helped challenge the UK Government’s original
49 account of their decision-making. However, when we consider Normanton’s claim of state
50 audit protecting citizens against misuse of public funds, we find little evidence in this case. The
51 fast-track process facilitated the purchase of non-standard PPE at excessive cost, even though
52 officials knew they would be investigated. Further, the tone of the NAO report has also been
53 criticised for being cautionary and conciliatory (Sanchez-Graells, 2020). This charge speaks to
54 a more fundamental debate about the nature of public accountability that is worthy of further
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58 ¹² In March 2021, Dominic Cummings’ submission to a Parliamentary Committee described the Health
59 Department as "a smoking ruin in terms of procurement and PPE" (<https://www.bbc.co.uk/news/amp/uk-politics-56427280>).
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3 investigation in future research. Should reports be designed to establish a legitimate account
4 that, while critical of the government, seeks to maintain the status quo rather than to apportion
5 praise or blame? (see also Smyth and Whitfield 2016; Radcliffe 2008).
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8 Given the evidence presented, one might ask: Was it inevitable that millions of pounds would
9 be wasted? Was the government just trying to do their best in unprecedented times? It is our
10 conclusion based on the above that this mis-use of public funding was not inevitable as rules
11 regarding disclosure and process were emphatic. In the case of the inadequate PPE provision,
12 government decisions actually hampered its attempts to save lives. We submit that this mis-use
13 of public funding was not inevitable, but rather a series of questionable decisions were made:
14 lessons not learnt after *Exercise Cygnus*; slow reactions once the scale of the pandemic was
15 known; new emergency guidance regarding the publication of contracts was not adhered to;
16 awards not scrutinized; the establishment of a fast-track process that not only facilitated
17 inadequate risk assessment of potential suppliers but also created a perception of favouritism,
18 even cronyism. Ultimately this episode will form the basis for deferred public accountability
19 where citizens will hold the government to account, exercising reward or sanction, through the
20 ballot box.
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25 Walzer, (2000) argued that a supreme emergency exists when our deepest values may be
26 compromised in order to secure our collective survival. A key responsibility within a modern
27 democracy is the requirement that government powers are used to protect the lives, health and
28 wellbeing of citizens. During the Covid 19 pandemic, the UK Government assumed powers
29 overriding two core values of a political democracy: public accountability and transparency
30 (Bovens, 2005) in order to fulfil this responsibility. Whilst others have questioned the
31 competence of the UK Government in their exercise of power (Frowde et al., 2020), we have
32 sought to highlight the acute tension that exists between the need to react quickly in a supreme
33 emergency and the potential pitfalls when normal transparency and accountability mechanisms
34 for public spending are replaced by emergency procedures that are not adhered to and go
35 unscrutinised.
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