

Boardman Report on Cabinet Office Communications Procurement

SECTION ONE: Introduction

1. I have been asked by the Cabinet Office Chief Operating Officer to consider the preliminary results of a fact-finding exercise into the award of contracts for COVID-19 communications services made by the Cabinet Office in March 2020, and to identify any areas for improvement and recommend further actions to address any such issues based on these results.
2. The purpose of the fact-finding exercise was to prepare a defence of claims for Judicial Review relating to the award of two contracts, and to inform future actions. The information gathered under the fact-finding exercise includes information subject to legal professional privilege and publication of this report does not waive that privilege. The exercise was commissioned by the Chief Operating Officer, and was undertaken by a small team of officials from the Cabinet Office.
3. Having considered the results of the extended fact-finding exercise, I have observed that there are three main areas where processes and practice could be improved. These are:
 - Existing procurement law and policy for contracting in a time of crisis.
 - Cabinet Office's own process and governance with relation to this law and guidance.
 - The management of actual or perceived conflicts of interest in a procurement context.
4. This report contains some high-level observations, alongside some specific recommendations, summarised in the table below. The Cabinet Office is already undertaking work on proposals for reforms to existing procurement legislation, and I do not wish to duplicate efforts in this area. My specific recommendations are therefore concentrated in the areas of process and governance, and the management of conflicts of interest.
5. I am also aware that the extended fact-finding exercise focussed on one small and specialist business unit within the Cabinet Office, and that different, perhaps better practice will already be embedded elsewhere in the Department. My recommendations are intended to improve process in that particular team, but in implementing these, Cabinet Office should ensure the same principles are being observed throughout the Department.
6. There is a need in Cabinet Office for a **single, clear, user-centred process** to be properly delineated, in the form of flowcharts with links to relevant guidance. The process must be practical, manageable and easy to use, and roles and responsibilities within it **must** be clearly understood. This is particularly important in times of crisis, where there are certain decisions that can and should only be taken by the most senior civil servants. Effective record-keeping should be central to this process.

7. As set out in *Managing Public Money*, it is the responsibility of the Civil Service to manage departmental resources effectively, including the fair and objective procurement of goods and services. Civil servants must advise Ministers about the proper conduct of public business and Ministers should heed that advice.
8. Senior officials with budgetary authority must therefore ensure that sound management arrangements are in place within their area. They should be supported with appropriate guidance and training available for them and their teams. In my view, this means making sure that individuals in their team not only have the skills and resources to carry out their roles, but the knowledge and authority to challenge a suggested action if they feel it is necessary. In doing this, it is essential for these senior officials to lead by example and to create the conditions that enable robust and constructive challenge, even in the most difficult circumstances. A commonly-understood and consistently applied process should go some way towards empowering civil servants in such circumstances, reinforcing their ability to provide this challenge.
9. In the months following the emergence of the COVID-19 pandemic, government departments awarded a significant number of contracts using urgency provisions in procurement regulations to buy goods, services and works to support its response to the pandemic.¹ Although there are certain principles that should apply across the board, all departments operate differently and will have distinct requirements for the way they procure. My observations on the prevailing procurement regulations and applicable guidance should of course be considered on a cross-government basis, and appropriate clearances sought, but my process findings relate to existing Cabinet Office systems.
10. In making these recommendations, I do not refer to individual teams, their structure, or resourcing requirements. As the Cabinet Office's role in the operation of government evolved as the home for functions, including the Government Commercial Function, and the owner of cross-departmental relationships, the department has increased in size and remit and so too have levels of commercial activity and spend. Ministers and senior leaders will want to consider where resources and expertise should be targeted within existing departmental structures. However, it is clear to me that lasting improvements will not be possible without investment in capacity, capability and up-to-date systems through which to manage the procurement process.
11. The National Audit Office and the Government Internal Audit Agency have also recently considered issues relating to government contracting during the early stages of the COVID-19 crisis. The National Audit Office investigated a sample selection of contracts from across government, and its report is critical of the process followed by departments in the award of some of these. It makes recommendations in several areas including; timely publication of contractual information, guidance on management of risks when using regulation 32(2)(c), clearer procedural documentation, and more effective

¹ The NAO report on its investigation into government procurement during the COVID-19 pandemic notes that new contracts worth £17.3 billion were awarded to suppliers, of which: £10.5 billion were awarded directly under urgency provisions; £6.7 billion directly through framework agreements; and contracts worth almost £0.2 billion were awarded using a competitive tender process or using a competitive bidding process from a framework agreement.

record-keeping. My recommendations are broadly consistent with the findings of these reviews.

12. The National Audit Office report does however recognise the scale of the challenge the government was facing at this time. Officials in the Cabinet Office, like other departments, were having to operate at tremendous pace in exceptionally challenging circumstances in order to safeguard the public during a global pandemic, and I agree that we should acknowledge this important context. The recommendations contained in this report are intended to strengthen the existing process for procuring at pace in crisis situations, and the Cabinet Office's ability to apply this process in the future.

Summary of Recommendations

1) Existing procurement policy	
1	When guidance is issued to departments on reliance on extreme urgency provisions (including the definition of 'extreme urgency and the use of different purchasing tools in urgent situations), this guidance should be circulated by departmental commercial teams to each business unit as soon as it is received.
2	Reinforce in Cabinet Office internal guidance the existing policy that the decision-maker with regard to direct award of contracts on grounds of 'extreme urgency' (both in terms of determining 'extreme urgency' and of approving a direct award) is in line with relevant budget delegation letters issued to senior officials.
3	Cabinet Office to work with CCS to ensure business units in Cabinet Office have a clear understanding of the use of subcontracting under tools such as Dynamic Purchasing Systems (DPS) and to apply this consistently across CCS's work with other departments.
2) Cabinet Office process and governance	
4	An immediate assessment of the training needs for staff in business units during crises, and capacity to deliver it.
5	A simple, standardised contract check sheet to ensure that the correct documentation and process has been considered from beginning to end.
6	A programme of training to be available to all staff in business units with procurement responsibilities and teams in business units to embed processes to refresh knowledge regularly.
7	Visualisations of the procurement process for different purchasing routes should be produced.
8	Review of the roles between the different parts of the Cabinet Office business units, Central Commercial Team and Crown Commercial Service.
9	A 'business partnering' approach, with an expert adviser from the Cabinet Office commercial team docking into each business unit, to support, advise, and ensure the right level of Cabinet Office approved assurance is provided for each procurement.
10	As part of the business partnering approach, there should be greater use of the resource within the Central Commercial Team for providing expert procurement advice upon which business units can call for support throughout the process.
11	A single point of contact (the 'business contract owner') to be identified for every contract by the budget holder to manage the end-to-end process.

12	Commercial advice should be sought on undertaking due diligence of the supplier market in situations of extreme urgency, including wherever possible by inviting proposals/presentations from a few suppliers, to establish which suppliers are best placed to provide the services and to verify that any suggested supplier is appropriate for the requirement.
13	Pro bono, no charge and trial contracts should be avoided and only used in exceptional circumstances, in which case they should be treated the same as all other contracts and risk managed accordingly. Guidance should make clear that, in accordance with delegation letters, all contracts, including pro bono, no charge and trial contracts, should be signed off by the Cabinet Office Commercial Director.
14	Government standard Terms and Conditions should be used unless expressly cleared by the Cabinet Office Commercial Director and guidance should make this clear.
15	Accurate and timely record keeping to be central to all procurement processes and reinforced through training and guidance.
16	The Cabinet Office should have a searchable centralised contracts register in line with guidance and best practice. The entry for each contract should record the individual budget holder and give the name and contact details for the business contract owner.
3) Conflicts of interest and bias	
17	Budget delegation letters should include specific reference to the budget holder's responsibility to manage actual and perceived conflicts of interest within their team's budget.
18	Cabinet Office should strengthen its model for the management of actual and perceived conflicts of interest in procurements, following the "identify, prevent, rectify" sequence.
19	Additional guidance for all Government Departments on conflicts of interest in procurements should be produced and issued, and training offered.
20	Declarations of interests should be recorded and logged alongside the departmental gift register and, where appropriate, this and other, relevant information should be made available to those responsible for procurement and contract management.
21	Individuals to whom budget holders delegate operational responsibility for recording and maintaining declarations of interest and manage the data in accordance with data protection requirements must have undertaken the necessary data protection training.
22	Cabinet Office should reinforce the existing requirement that for all procurements, separate records should be kept of any actual or perceived conflicts of interest identified and of steps taken to manage any conflicts of interest related to that contract.
23	All guidance should make it clear that the requirement to declare and record actual or perceived conflicts of interest applies to all officials or those working on behalf of Cabinet Office equally, including civil servants, contractors, consultants, special advisers, and other political appointees.
24	There should be a clear process for managing risk regarding conflicts of interest.

25	Where a recommendation is made for a specific supplier and no competition is to be undertaken, additional disclosure should be required. Guidance should reinforce the requirement in budget delegation letters that there should be automatic escalation of the decision to award a contract to the supplier to the Commercial Director.
26	Policy and guidance to make clear that there will be sanctions for non-compliance with all aspects of the financial and commercial process as set out in budget delegation letters.
27	Further consideration should be given to how to manage the additional risk of actual or perceived conflicts of interest in small and specialised sectors where there is reduced choice in suppliers, and prior connections are to be expected. This could include extra controls and assurance such as ,due diligence of the supplier market and/or more frequent internal auditing.
28	Suppliers should be required to follow similar processes regarding declarations of actual or perceived conflicts of interest at the outset of a procurement, with appropriate sanctions for non-compliance.

SECTION TWO: Areas where processes and practice could be improved

1) Existing procurement law and policy

1. Government must be able to procure services quickly in situations of extreme urgency, and legislation must, and does, allow for this. There must be a smooth, urgent path available; this is not in doubt. However, it is essential to have robust structures in place to ensure that the use of these procedures does not lead to unfairness, impropriety and the misuse of public resources, or give rise to circumstances that might have the appearance of doing so.
2. In balancing these requirements, Government will need to consider both the effectiveness of the legislation itself, and its own preparedness in the form of clear procedures and timely, comprehensive crisis management training (see 'Cabinet Office process and governance' section for more detailed recommendations in respect of Cabinet Office's procedures and training).
3. **The Cabinet Office is already undertaking work to consider reforms to existing procurement legislation**, and I do not wish to duplicate efforts in this area. I suggest that as part of this work, consideration should be given to simplifying and clarifying the circumstances in which contract awards can be made in cases of 'extreme urgency' or other 'crisis' situations. It should be clearer, in legislation and/or accompanying guidance, what the criteria for a situation of 'extreme urgency' are, and consideration should be given to giving relevant Ministers the power to designate situations as a 'crisis', provided certain criteria are met (in effect authorising certain actions in advance). Appropriate safeguards, including addressing potential conflicts of interest, should still be maintained.
4. Notwithstanding the above, **the current legislative framework does allow for contract awards to be made without going through the usual competitive process in times of extreme urgency, and guidance for how to do this is available**. However, in my view some work is needed to make sure this accompanying guidance is universally available and understood.
5. The domestic legislative regime applicable to the procurement of government services is set out in the [Public Contracts Regulations 2015](#) (Regulations). There is also policy guidance in the form of Procurement Policy Notes (PPNs) and internal Cabinet Office policies. General policies, not specific to urgent situations, apply in relation to spending approvals, and they set out what is required in terms of special financial approval for spending on consultation activities relating to marketing, communication strategy, market research and areas.
6. Regulation 32 of the Regulations provides for a 'negotiated procedure without prior publication' in certain circumstances where it is appropriate to award contracts without applying the usual rules requiring advertising and full competition. One of these circumstances, set out in regulation 32(2)(c), is where, *insofar as is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with*.

7. [Procurement Policy Note 01/20: Responding to COVID-19](#) was published on 18 March 2020 and gives advice and guidance on urgent contracting during COVID-19, including direct awards under regulation 32(2)(c) and call offs under existing framework agreements and Dynamic Purchasing Systems (DPS), which are the most commonly used buying tools across government. Framework agreements are competed purchasing arrangements which bind suppliers to consistent sets of government terms and conditions, whereas DPS are lists of suppliers which meet certain selection criteria. More detailed internal guidance was issued by the Cabinet Office to all Commercial Directors within departments at the same time and was updated in July.
8. **I recommend that when guidance is issued to departments on reliance on extreme urgency provisions (including the definition of ‘extreme urgency and the use of different purchasing tools in urgent situations), this guidance should be circulated by departmental commercial teams to each business unit as soon as it is received (Recommendation 1).** Whilst this guidance was available to officials in Central Commercial Team and the Crown Commercial Service (CCS), it is also important for purchasing teams to be clear on what is considered to be ‘extreme urgency’, when it is appropriate to use other purchasing tools in situations of urgency, how these considerations are made and recorded and how and when to obtain legal advice.
9. Departments should have their own policies on who is the decision-maker with regard to contract awards, including those made in urgent circumstances. Cabinet Office’s policy, as set out in budget delegation letters, requires authorisation of contracts of a certain value by the Commercial Director and agreement with the business unit Senior Civil Servant. **Cabinet Office should reinforce in internal guidance the existing policy that the decision-maker with regard to direct award of contracts on grounds of ‘extreme urgency’ (both in terms of determining ‘extreme urgency’ and of approving a direct award) is in line with relevant budget delegation letters issued to senior officials (Recommendation 2).**
10. Requirements to be delivered under contracts awarded on grounds of ‘extreme urgency’ should be limited to what is absolutely necessary both in terms of what is being procured and the value and duration of the contract awarded. Although these procedures must be used for what is absolutely necessary, the budget holder should take account of what is necessary to achieve value for money (for example, a slightly longer contract duration). There are standard principles on additional commercial risks, which should also be taken into account, such as risks of delay in procuring, the conditions under which suppliers are engaged, whether a perceived conflict may exist and whether the basic protection of IPR, security and tangible deliverables with no onward obligation have been fully considered.
11. It seems that purchasing teams are frustrated with the length of time a procurement process can take in ordinary circumstances, even when using platforms such as the Research Marketplace Dynamic Purchasing System. Although I understand that there are benefits to longer procurement processes, my own findings support a view that the framework under which these teams operate may not be sufficiently responsive to meet the demands of an area like central government communications where in urgent situations, priorities can shift very quickly.

12. As above, I am aware that work is already underway in the Cabinet Office regarding potential reform of procurement law and I therefore do not make specific recommendations in relation to this and instead focus on the internal governance controls in place. However, I do suggest closer examination of the adequacy of the tools available to those working in certain specialist areas such as this, to ensure that they are up to date and fit for purpose. The pace of the contracting process needs to keep up with the requirements of modern government. This applies not just to procurement legislation but also to the internal governance and processes. It seems that the time it takes to reach the contract award stage can create difficulty for people trying to find the right route. I understand that work is already underway to address the situation, but I suggest further consideration is given to this underlying issue.
13. There is one further area in which I recommend processes are tightened, and this is with regard to the practice of awarding work to sub-contractors of suppliers on an existing purchasing tool, such as a DPS. While it may be legitimate for suppliers to use sub-contractors to deliver aspects of services, my view is that this must not be used as a method of bypassing the proper process in order to award work to a specific sub-contractor. **I recommend that Cabinet Office works with CCS to ensure business units in Cabinet Office have a clear understanding of the use of subcontracting under tools such as Dynamic Purchasing Systems (DPS) and CCS should apply this consistently across CCS's work with other departments (Recommendation 3).**
14. It is my view that subcontracting under such tools should occur in line with two main principles, which should be reflected in advice provided by CCS to Cabinet Office business units
- subcontractors must be appointed by the primary contractor, not at the direction of the department (although Government must still undertake appropriate due diligence on sub-contractors to ensure they meet relevant legal and policy requirements); and
 - all subcontracted work must be ancillary to the primary contractor's work and should never be standalone.

2) Cabinet Office process and governance

15. The role of the Central Commercial team in the Cabinet Office has historically been one of assurance, advice, requirement development and contract management. There are separate commercial and finance delegation thresholds which must be met in order for a business unit to enter into a contract for goods or services. I understand that the Central Commercial Team currently only covers areas with specific, large or complex spend, such as Civil Service HR, Security, IT and Shared Services, so not all areas receive dedicated commercial support.
16. Procurement transactions are outsourced to CCS. CCS are responsible for executing the purchase requested by the business unit using, wherever possible, one of the many existing CCS purchasing tools, such as framework agreements or DPS. Purchasing tools are arranged by category and contain specific guidelines on how to approach the awarding of a contract.

17. Business units are able to directly access CCS as ‘buyers’ which means that in many cases there is no formal gateway of ensuring adequate assurance and instruction is being issued to CCS. The pandemic has led to larger numbers of staff in business units awarding contracts without seeking advice or assurance from the Central Commercial Team.
18. While the scale of the COVID-19 pandemic was indeed unprecedented, crisis conditions in themselves are not unexpected in national government, and cannot excuse non-compliance with proper processes. The legal framework must facilitate this to an extent, but in addition, the Cabinet Office needs to consider whether its capability in respect of commercial management during crises is sufficient, especially with regard to business units such as the Government Communications Service, whose procurement activity increases significantly in crisis situations. In my view, this preparedness should also include ensuring an adequate choice of supplier is available on any existing frameworks or Dynamic Purchasing System tools. **I recommend an immediate assessment of the commercial training needs of staff in business units during crises, and their capacity to deliver it (Recommendation 4).**
19. Although there is guidance available, the approvals and assurance process is complex and not always understood, and there does not seem to be consistent training or training material for business units. In addition, although Cabinet Office outsources its procurement processes to CCS, CCS’ remit does not include commercial assurance, developing initial requirements, or nuanced commercial advice on issues such as possible bias and conflicts of interest or contract management. The procurement process elements carried out by CCS assume that the business unit is fully familiar with and has properly followed departmental policy and process.
20. There are therefore some gaps in the provision of support, training and advice from within the Cabinet Office, which I recommend are addressed by a combination of the following:
- a. **A simple, standardised contract check sheet to ensure that the correct documentation and process has been considered from beginning to end (Recommendation 5).** This would not replace guidance and processes but rather, (as I understand is the case in other departments), give a prompt to any business unit to ensure all steps are properly followed. This should include procedures for considering and recording how the supplier was chosen and how the decision was reached. It should include express sign off by the budget holder on: (i) the use of an urgent procedure; (ii) where a specific recommendation is being followed; or (iii) where there is any disclosed conflict of interest.
 - b. **A programme of training to be available to all staff in business units with procurement responsibilities and teams in business units to embed processes to refresh knowledge regularly (Recommendation 6).**
 - c. **Visualisations of the procurement process for different purchasing routes (e.g. flow charts, decision trees) (Recommendation 7).**
 - d. **Review of the roles between the different parts of the Cabinet Office business units, the Central Commercial Team and CCS (Recommendation 8).**

8). This should be communicated via the above training materials, and reinforced through the use of standardised documentation. In all cases, the contract terms required by the business unit should be assured and where necessary negotiated, by the appropriate delegate from the Central Commercial Team. In most framework agreements there are a number of “buyer defined” contractual clauses that must take into account the full commercial risks and delivery impacts. This is also of importance where framework agreements are not used.

- e. **A ‘business partnering’ approach, with an expert adviser from the Central Commercial Team docking into each business unit, to support, advise, and ensure the right level of Cabinet Office approved assurance is provided for each procurement (Recommendation 9).**

21. As part of the business partnering approach, **there should be greater use of the central resource within the Central Commercial Team for providing expert commercial advice (Recommendation 10)**. Business units should embed processes to ensure support is sought where appropriate from the Central Commercial Team for expert commercial advice. The Central Commercial Team should work with business units to raise awareness of this service they offer.

22. **Further, I recommend that budget holders identify a single point of contact (the ‘business contract owner’) for each contract issued by their teams (Recommendation 11)**. This person must be responsible for the whole process, end to end, as set out on the check sheet, including ensuring appropriate consideration is given to the risk of actual or perceived conflicts of interest and bias. It should be the responsibility of the budget holder to ensure that each contract has a responsible business contract owner in place, and to ensure continuity and oversight given high turnover of staff in the Cabinet office. A business contract owner can only be appointed if they have undergone contract management training. It is the budget holder's responsibility to ensure that within their team they have sufficient trained personnel to manage contracts in all situations.

23. **Commercial advice should be sought on undertaking due diligence of the supplier market in situations of extreme urgency, including wherever possible and where there is time, by inviting proposals/presentations from a few suppliers, to establish which suppliers are best placed to provide the services and to verify that any suggested supplier is appropriate for the requirement (Recommendation 12)**.

24. This is particularly important if a suggestion has been made to use a particular supplier. This need not be a long or complex process and can be undertaken quickly in situations of extreme urgency. The process should be completed by a member of the commercial team and the conclusions should be recorded before a contract is awarded. Searchable records should be kept in order to evaluate patterns and save time in future. In this scenario, additional controls regarding potential conflicts of interest should be applied (see next section).

25. ‘Pro bono’, ‘no charge’ or trial contracts are often considered lower risk than paid contracts, whereas in fact the commercial and legal risks (including of actual or perceived

conflicts of interest) can often be the same or in some cases, higher. **Pro bono, no charge and trial contracts should be avoided and only used in exceptional circumstances, in which case they should be treated the same as all other contracts and risk managed accordingly. Guidance should make clear that, in accordance with delegation letters, all contracts, including pro bono, no charge and trial contracts, should be signed off by the Cabinet Office Commercial Director (Recommendation 13).**

26. **Terms and conditions should be Government standard or bespoke and supplier terms and conditions should not be used, unless expressly cleared by the relevant Cabinet Office Commercial Director and guidance should make this clear (Recommendation 14).**

27. Even when individuals are working at pace, under considerable pressure in very challenging circumstances, the Civil Service Code has a clear requirement to keep accurate official records. **Cabinet Office should ensure accurate and timely record keeping is central to all procurement processes and reinforced through training and guidance (Recommendation 15).** Business contract owners should not put contracts forward for signature, unless all requisite records are in place.

28. Good decision-making practice should be embedded in commercial processes. This not only ensures decisions are made lawfully, fairly and reasonably in accordance with public law principles, it also mitigates risks of legal challenge. Those involved in procurements should also ensure they undertake regular legal awareness refresher training on good decision-making, and this should be mandatory for business contract owners.

29. It is not currently possible to easily access information about previous or current contracts let by the Cabinet Office to facilitate and inform procurement decisions and allow a more strategic approach to buying in the Department. **The Cabinet Office should develop and implement a searchable, centralised Cabinet Office contracts register in line with best practice (Recommendation 16).** The relevant business contract owner's name should also appear alongside the budget holder's, for every entry on this register. Contact details should also be included.

3) **Conflicts of interest and bias**

30. The Government's approach to conflicts of interest is principles-based, addressing risks through ethical standards and codes of conduct and behaviour. Individual departments develop and set up their own approach and enforce compliance, and the responsibility lies with the individual to declare anything they consider relevant. Ministerial Interests declarations are completed and published in accordance with the requirements of the Ministerial Code.

31. In a procurement context there are regulatory standards for addressing conflicts, as set out in regulation 24 of the Regulations. The procurement report required by regulation 84 for each procurement, including direct awards under regulation 32(2)(c), must include, where applicable, conflicts of interests detected and subsequent measures taken. [Procurement Policy Note 01/19: Applying Exclusions in Public Procurement. Managing Conflicts of Interest and Whistleblowing](#) provides guidance on managing conflicts of

interest in procurements. The process relies on individual declarations and there remains considerable discretion in the way in which these are applied by departments.

32. Cabinet Office policy for declaring and managing conflicts of interest is set out on the departmental intranet. All civil servants with procurement responsibilities should record a standard 'general' declaration of their financial and other interests. This should be reviewed annually, prior to working on a new procurement and immediately following any subsequent new interest arising. I make several recommendations with the intention of clarifying and reinforcing this process, and ensuring greater understanding of the roles and responsibilities involved. It should be the budget holder's overall responsibility to enforce this, and I recommend that in the Cabinet Office, **budget delegation letters should include specific reference to the budget holder's responsibility to manage actual and perceived conflicts of interest within their team's budget (Recommendation 17).**
33. The Cabinet Office should strengthen its model for the management of conflicts of interest in the award of contracts, **by following the "identify, prevent, rectify"² sequence (Recommendation 18).** In addition, Cabinet Office should **produce additional guidance for all Government Departments on conflicts of interest in procurements and offer training (Recommendation 19).** Guidance should include when declarations should be made, how to identify and manage conflicts of interest in contract awards and where to report concerns.
34. Central to this is stronger enforcement of the existing approach to declarations, incorporating both general and targeted disclosures. This should enable the Department's senior leadership to manage both actual and perceived conflicts more effectively, via a combination of regular 'general' declarations of interests, and timely additional consideration of specific connections at the outset of a procurement exercise. The principle should be enforced that **all individuals** should make a general declaration of interest, but for those who are involved in a procurement exercise, either as a key decision maker in the process, or by making a recommendation for a supplier, **additional disclosure should be required.** Purchasing teams should receive training on how to identify what may be perceived as 'apparent bias', to enable a considered and proportionate approach to managing perceived conflicts of interest in a procurement context.
35. Accurate record keeping should be central to all guidance. **General declarations of interests should be recorded and logged alongside the departmental gift register and this and other relevant information made available to those responsible for contracts (Recommendation 20).** The Permanent Secretary should continue (as is the current process) to record declarations for the most senior civil servants and all departmental special advisers. Where possible, information relevant to a decision on a particular contract should be made available to the budget holder on request. If this is not possible (e.g. for confidentiality reasons), the Permanent Secretary should advise.

² This wording is used in regulation 24 of the Regulations. In practice this approach requires processes to be put in place to ensure conflicts of interest are identified and, wherever possible, avoided (for example by removing affected individuals from the decision-making process, or where this is not possible by taking other measures to mitigate the impact of the conflict such that it does not affect the fairness of the process.

36. For all other civil servants, each budget holder may delegate operational responsibility to a named responsible civil servant in their team whose responsibility it is to record, maintain these declarations and manage the data in accordance with data protection requirements. **This person must have undertaken the necessary data protection training (Recommendation 21).**
37. **Cabinet Office should enforce the existing requirement that for all procurements, separate records should be kept of any actual or perceived conflicts of interest identified and of steps taken to manage any conflicts of interest related to that contract (Recommendation 22).** The business contract owner should manage the process, escalating decisions on managing risk where necessary.
38. **All guidance should make it clear that the requirement to declare and record actual or perceived conflicts of interest applies to all officials or those working on behalf of the Department equally, including civil servants, contractors, consultants, special advisers, and other political appointees (Recommendation 23).**
39. **There should be a clear approvals process for managing risk regarding conflicts of interest (Recommendation 24).** It may be the case, for instance, that recommendations are made in respect of specific suppliers. **Where such a recommendation is made for a specific supplier and no competition is to be undertaken, additional disclosure should be required. Budget holders should be responsible for ensuring that the source of any such suggestion is identified, and an escalation process is followed. Guidance should reinforce the requirement in delegation letters that there should be automatic escalation of the decision to procure without competition to the Commercial Director (Recommendation 25).** Where a recommended course of action is novel or contentious (for example due to the risk of perceived conflict of interest), the Commercial Director may decide that the Permanent Secretary's approval should be sought. A process flowchart illustrating this scenario is at **Figure 1**.
40. The process for managing conflicts of interest needs to be set out clearly and embedded in the visualisation of the procurement process which is communicated to all business units with purchasing responsibilities. Training and support should be offered by the Central Commercial Team. **Policy and guidance should make clear that there will be sanctions for non-compliance with all aspects of financial and commercial process as set out in budget delegation letters (Recommendation 26).** Training and guidance should also draw attention to the Cabinet Office whistleblowing policy, for any person who believes that procurement is not following proper process.
41. In small and specialised sectors where prior connections are not unexpected, and where trust and delivery track record are valued, particularly in times of crisis, there also needs to be a practical way of ensuring that regulatory standards are upheld in the procurement process without disadvantaging any particular organisations or creating a barrier to important work being performed quickly. These process recommendations should help teams to protect against conflicts of interest and bias. However it may be necessary for Cabinet Office to **consider additional measures for these teams, which could include enhanced controls and assurance such as due diligence of the supplier market and/or and/or more frequent internal audits (Recommendation 27).**

42. Suppliers are required to identify and manage any actual or perceived conflicts of interest as part of the terms and conditions of contracts, framework agreements and DPS. Failure to comply with this process can result in a supplier being removed from the framework agreement or DPS, or a contract being terminated. In my view this requirement should be repeated at the outset of a specific contract awarded under a framework agreement or DPS, and a record kept of the declarations made by the supplier, to guard against actual or perceived conflicts of interest. This declaration should follow the same principles as above, and include consideration of prior professional or personal relationships with individuals in government. **Suppliers should be required to follow similar processes as described above regarding declarations of actual or perceived conflicts of interest at the outset of a procurement, with appropriate sanctions for non-compliance (Recommendation 28).**

Figure 1: Process for escalation when a recommendation is made for a specific supplier, and a full competition is not possible.

