SQUIRE PATTON BOGGS

The PPE Medpro Judgment

UK – October 2025

The recent decision of Mrs Justice Cockerill in *The Secretary of State for Health and Social Care v. PPE Medpro Limited [2025] EWHC 2486 (Comm)* has garnered a considerable amount of press interest in recent days.

The reason for this – at least, as far as the press and public perception is concerned – are the actions of Baroness Michelle Mone and her husband, the businessman Doug Barrowman, who are alleged to have profited from the COVID-19 pandemic by supplying the Department of Health and Social Care (DHSC) with circa £122 million of faulty medical gowns, sourced from China and obtained through the "VIP lane" of public procurement.

However, notwithstanding all the political intrigue and tabloid sensationalism, this case is essentially a straightforward contractual dispute that deals with issues that will be very familiar to English litigators and their commercial clients – specifically, what documents actually constituted the contract between the parties? What obligations did that contract impose on them? Did the defendant breach its obligations? Did the claimant's conduct prohibit it from exercising certain remedies? Ultimately, what damages could the claimant recover for any breach of contract by the defendant?

The main issues arising from Mrs Justice Cockerill decision are as outlined below.

Contract, Sterilisation Obligations and Breach

The judgment acknowledges that the contract was a complex document made up of an order form and fuller terms that addressed issues such as sterility standards, quality assurance and inspection rights. PPE Medpro also sought to rely on various precontract and out-of-contract discussions to support its position.

The parties agreed that the contract imposed an obligation on PPE Medpro to supply gowns that met a sterility assurance standard (known as "SAL"). However, PPE Medpro disputed that it had an independent contractual obligation to demonstrate a validated sterilisation process. It argued that documents which it had supplied prior to the date of the contract (alongside other precontract representations) were sufficient evidence of compliance with SAL, even though the usual standards had not been met.

The court disagreed. It held that, on a proper construction, the contract required PPE Medpro to demonstrate a validated sterilisation process and that its failure to do so meant that PPE Medpro was in breach of contract. The court said that the answer to the question of whether there was compliance with validation requirements to SAL in this case was "a clear no".

Estoppel

PPE Medpro had claimed that if it was wrong about the contract then the DHSC was effectively estopped from doing anything about the breach because it had accepted precontract documents from PPE Medpro that showed the gowns would not meet the SAL requirement.

The court rejected this argument as well but, this time, on the basis of a lack of evidence to support PPE Medpro's claim. However, the court did say that, if necessary, it would have been prepared to uphold the nonreliance and entire-understanding clauses in the contract, which precluded the parties from relying on representations made outside of the contract (unless fraudulent).

Rejection

In something of Pyrrhic victory for PPE Medpro, the court did agree with it that the DHSC had lost its right to reject the gowns. The contract required the DHSC to give notice of rejection "within a reasonable time" of the date on which any defect with the gowns was discovered or might reasonably be expected to be discovered. In this case, the court noted that the DHSC had an agent on the ground in China where the gowns were manufactured and shipped who could have inspected and rejected them, but she did not. Instead, the DHSC gave notice of rejection some time after the gowns arrived in the UK, which the Court considered to be too late.

Despite the DHSC having lost the right to reject the gowns, the court held that it could still recover the full value of the gowns (£120 million plus interest) in damages on the grounds that they cannot be used as sterile gowns, which meant that the only alternative option to mitigate its loss were to use them as nonsterile gowns. However, the NHS had no use for such gowns, and the DHSC produced evidence that there was no reasonable resale market for nonsterile grounds outside of the NHS due to regulatory and procurement constraints.

Storage Costs

The court did though reject the DHSC's claim for a further £8 million in storage costs, largely due to lack of any credible evidence to support that figure. The DHSC relied almost exclusively on a spreadsheet that was unsupported by other documents, and on the evidence of a witness who, in the court's opinion, had no personal knowledge of that spreadsheet, which had been prepared by his staff.

Counterclaims

PPE Medpro made various counterclaims during the course of this case but ultimately settled on two, both of which were rejected by the court.

The first counterclaim was that there was a common mistake in the contract. PPE Medpro asserted that, because both parties had intended that it would be up to the DHSC to assess and determine whether the gowns supplied complied with regulatory requirements and to apply a derogation if necessary, the contract should be rectified to provide for that. The court disagreed, noting that "It is a rare case where rectification succeeds. This is not that case." The court held that PPE Medpro had failed to meet the primary criteria for a successful rectification claim, and, in particular, that PPE Medpro had tried to rely on the evidence of the DHSC's witnesses, rather than producing any of its own evidence as to what its subjective intentions were at the time of the contract.

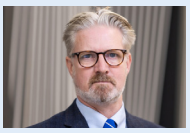
The second counterclaim was based in negligent misstatement and, in particular, that the DHSC had "a duty of care in tort properly to advise [PPE Medpro] and communicate to [PPE Medpro] what was required of it, in relation to obtaining any applicable necessary technical and regulatory approval in respect of the contract". This was, as the court accepted in the context of commercial parties entering into a deal worth £122 million, a "bold submission". It held that, "It is well and long established that, in general the law does not require commercial parties entering into contracts to look out for each other, or advise …"

Conclusion

Perhaps unsurprisingly, Mr Barrowman has issued a statement following the judgment in which he refers to it being a "travesty of justice" and to the "mountain of evidence" against Mrs Justice Cockerill's decision. That description appears to be incorrect, and it is not currently clear if PPE Medpro will appeal this first instance decision.

However, leaving aside the hyperbole of a defeated defendant, this is a reasonably straightforward and predictable decision, based on the facts presented. Ultimately, the court has found that a contractual obligation was breached by a supplier, that precontract and out-of-contract discussions did not alter that obligation, and that, while the customer should have formally rejected the goods within a reasonable time but failed to do so, it can still claim the full cost back due to there being no realistic way to mitigate its loss.

Contacts



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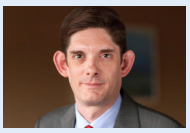

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