UK Health Security Agency

Dame Meg Hillier MP
Chair of Public Accounts Committee
House of Commons
London
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Sent via email to: pubaccom@parliament.uk

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Dear Chair

2022 TREASURY MINUTE - MANAGING CROSS-BORDER TRAVEL DURING THE COVID-19 PANDEMIC

Thank you for your letter of the 2 December 2022 to the Department of Health and Social Care (DHSC). The outstanding team and functions of the Managed Quarantine Service moved to UKHSA on 1 April 2022, and I am therefore responding to the queries you have raised.

In your letter you raised some concerns that DHSC had not fully acted on the Competition and Market Authority's (CMA) recommendations on the testing market (Recommendation 5). In summary DHSC's position was, and remains, that the content of the CMA's report had been appropriately considered and acted upon; as outlined in the original response and now in further detail below, a range of actions was taken in response to the report to strengthen the testing market.

I would however wish to acknowledge that whilst regular engagement with the CMA took place after the publication of the report, in which both the report itself and the state of the market were discussed in detail, a formal response in writing should also have been returned to the CMA. The failure to do so was an oversight rather than a deliberate decision, but it remains the case that they should have received a formal reply.

With regard to the recommendations themselves, the CMA's report was used to inform decisions on managing the testing market and to improve travellers' experiences. As you are aware, the CMA's report focussed on the PCR testing market, but within weeks of its publication the travel testing rules were changed to allow Lateral Flow Device (LFD) testing. The markets and customer experience were significantly different from each other, in particular the turnaround times for results, which are of course almost instant for LFDs but can take several days for PCR tests. It therefore felt appropriate to focus time and resource on standing up a stable LFD market and, when considering the CMA's recommendations, prioritise those that were most relevant to LFDs.

Recommendation A: DHSC should enhance the basic rules and requirements to which retail test providers must adhere, as a pre-condition to getting on and remaining on the GOV.UK list. Non-compliance with these rules and requirements (which should include compliance with consumer law) should be grounds for DHSC to remove a test provider.

It is acknowledged that higher entry barriers to the market could have been set at the start of the PCR testing programme. When the rules were first introduced there was a concern that setting barriers too high would restrict the market and place unsustainable pressure on NHS testing capacity. With hindsight we can now be sure that that potential risk did not crystallise, though of course a different approach at that time might have resulted in a different response from stakeholders. All private providers of PCR testing were also required to go through the UKAS (the UK Accreditation Service) accreditation process, and from 28 July 2021 all tests themselves needed to ultimately pass the CTDA test validation process to ensure their accuracy.

This lesson, and the CMA recommendation, was taken forward during the introduction of the LFD market, where a “go slow” approach to adding providers to the list was adopted in order to prioritise those providers considered most likely to be able to provide a full and effective testing service. This entailed some legal risk which needed to be balanced against the need to protect consumers.

Over 340 providers were removed from the list for a range of reasons, including non-compliance with the minimum standards for entry into the market.

Recommendation B: DHSC should ensure a comprehensive monitoring and enforcement programme for retail test providers is set up, with appropriate sanctions.

DHSC and later UKHSA did put in place a comprehensive monitoring and enforcement programme for retail test providers. It is important to note that neither body was a legal enforcement agency: the Secretary of State (acting through DHSC/UKHSA) had broad powers to take steps he considered appropriate to protect public health, but did not have the usual legal powers or resources of a regulator or an enforcement agency, such as clear powers to investigate, make determinations, prosecute, and enforce decisions against private providers. Granting the department such powers would have required new legislation, which given the tight timeframe and expected limited window for travel testing was not prioritised. Nevertheless private providers were removed from the gov.uk list if they were unable to meet the standards expected.

Issues raised by the public were also monitored. In certain circumstances DHSC (subsequently UKHSA) supported regulatory bodies, such as Trading Standards, to undertake further investigation of a provider and support any legal actions or interventions. Legal penalties in the form of fines for non-compliant travel testing private providers were introduced in September 2021, around the same time as the CMA report was published.

Recommendation C: DHSC should ensure that it has robust quality monitoring procedures in place to assure the accuracy of test results.

All private providers of COVID-19 testing services were required by law to go through the UKAS accreditation process. This involved self-declaration that they met the minimum standards and application to UKAS for accreditation (Stage 1), UKAS appraisal against 13 key requirements (Stage 2) and full accreditation against relevant ISO standards (Stage 3). Although testing provision could commence on completion of Stage 1, providers needed to pass the Stage 2 appraisal within 4 weeks of completing Stage 1, and needed to complete full accreditation within another 6 months. In June 2021 we introduced an additional requirement that they receive a positive recommendation from UKAS at the four month mark.

It was a criminal offence for a test provider to supply testing services (sample collection and/or sample testing) without applying for accreditation. The Health Protection (Coronavirus, Testing Requirements and Standards) Regulations 2020 set out the stages and deadlines for obtaining accreditation and stated that test providers must stop selling tests if they did not meet those deadlines. Providers who committed an offence under these regulations faced a penalty.

The accuracy of the test devices themselves is governed by the Coronavirus Test Device Approvals (CTDA) Regulations 2021, which introduced new strict minimum standards that tests needed to meet above and beyond existing EU-based rules. DHSC (and later UKHSA) managed the approval of the devices through a scientific-led approval board process, ensuring only highly accurate test devices are allowed to be sold on the UK market.

Recommendation D: DHSC should develop the NHS Test and Trace PCR travel test currently listed on GOV.UK and use it to establish a 'benchmark' product to drive better market outcomes.

The establishment of the NHS test for private sale to the travel market did indeed set a benchmark for pricing, and the price was reduced on multiple occasions to help stimulate the market. Average test prices came down significantly (by approximately two-thirds between August 21 and February 22). As the CMA noted in its report, this process needed to be delivered carefully to ensure that the NHS test price was not the cheapest available, as this would have taken much-needed capacity away from domestic use cases.

Recommendation E: We do not recommend that DHSC introduces a price cap at this stage. Instead, DHSC should monitor and gather evidence on price levels and costs on an ongoing basis. DHSC should be prepared to re-evaluate this position if other measures it decides to take do not improve market outcomes.

DHSC (and subsequently UKHSA) followed this recommendation and did not introduce a price cap on private providers and gathered detailed information on pricing. Misleading pricing was addressed through enhanced auditing of pricing (on average over 500 audit checks of prices were undertaken per week). At its peak a team of ten staff was dedicated to auditing prices.

A minimum price of £15 was also set before a test could appear on the gov.uk list without additional checks, in order to prevent bait pricing. Anyone seeking to offer testing for below this amount needed to secure confirmation from the UKHSA team that the price was indeed accurate and available. Daily spot checks were carried out on all prices below £15 for accuracy and availability, and spot checks were carried out on a sample of providers above £15 for the same reason. All price change requests were audited before going live, meaning companies were required to ask UKHSA to update the price displayed on gov.uk. This was only approved if the price was confirmed as valid and stock was available. All new providers had their prices audited before being added to the list to confirm they were available to buy within a reasonable timeframe – for instance that they could offer appointments within seven days.

Recommendation F: DHSC should improve the retail test provider listings on GOV.UK so that consumers can more easily search for, obtain and act on the information they need.

The opportunity to improve consumer information was somewhat limited by the functionality of the overall gov.uk website, which was never intended to function as a price comparison site. The cost of developing the gov.uk Find a Provider site into a proper price comparison website would have been prohibitive, disproportionate, and would have delivered too late. Price comparison websites which receive live data on pricing and offer their users a full 'comparison' experience take years to develop and are staffed by hundreds of developers. A review undertaken to better understand the expected time and cost to implement solution such as the 'Find a Provider' site estimated it would take months of extensive development work and a substantial team to maintain it long term. In order to scrape and present data from a vast array of suppliers, necessary data sharing, and collection agreements would also have needed to be implemented for each individual supplier – this in itself would have been a significant feat. This could not have been delivered in time to fulfil what was intended to be a short-term service and would not have been a proportionate use of public money.

However, a number of changes to the gov.uk list were made to improve user experience. A new filter of "delivery method" was added, allowing customers to choose between "click and collect" and "post to your location", as well as improving filter labels for the testing method. Around 75% of the suppliers listing onsite test prices under £15 were estimated to be those where overheads were typically lower. By giving the customer a clearer path to at home testing, the vast majority of inappropriate search results were removed. Additional improvements to the use and consistency of language across the site were also made to improve the ease of the journey.

Recommendation G: Subject to any legal restrictions, DHSC should make data on retail test providers available, for example through an open Application Programming Interface (API).

Recommendation H: DHSC should work with HMRC to provide guidance to retail test providers on how VAT should be applied.

Both of these recommendations were considered in detail but it was ultimately concluded that they should not be prioritised for action. Given the wide range of recommendations and the

significant resource and time pressures at the time, those recommendations that were thought to have the greatest potential positive impact on consumers were prioritised. Regarding Recommendation G, this was a complicated and uncertain data environment. The CMA noted the legal risks around data sharing and whilst some initial discussions were undertaken to clarify whether data could be shared with a price comparison provider, there was relatively limited appetite in the sector and it was not clear that it would be feasible or deliverable in a legally robust way.

Regarding Recommendation H, the CMA were concerned about distortion in the market created by providers adopting inconsistent VAT treatments. It is accepted that clearer guidance could have been issued alongside HMRC to address this. However the immediate issues highlighted above were prioritised in order to maximally improve the consumer experience.

I hope that this letter addresses your concerns. I would like to reassure you that DHSC and UKHSA were, and remain, very grateful to the CMA for their report, and extensive use of it's recommendations has been made to improve the travel testing market.

Yours sincerely

Prof Dame Jenny Harries
Chief Executive, UK Health Security Agency