



# Crown Commercial Service

## Scope and remit of the Mystery Shopper Service

### What is the Mystery Shopper Service?

The Mystery Shopper Service sits within the Crown Commercial Service and allows government suppliers and potential government suppliers to raise concerns anonymously about potentially poor public sector procurement practice.

The service was launched in February 2011 as part of a range of measures to build the commercial capability of contracting authorities through their adoption of good procurement policy and practice and to ensure that public procurements do not impose unnecessary barriers to small businesses when bidding for public contracts.

In 2015 the [Small Business Enterprise and Employment Act](#) strengthened this service by providing a statutory basis for our procurement investigations. These provisions are in Section 40 of the act and [Procurement Policy Note PPN 09/2015](#) provides more information.

### Acceptance Criteria for Cases

We investigate and aim to resolve enquiries that satisfy certain criteria, which are set out below. We welcome enquiries from suppliers who have concerns about the conduct of a procurement process which they have been part of, or which they wish to participate in. We also accept enquiries from organisations and trade bodies that represent suppliers.

Firstly, your enquiry must relate to a specific procurement that has taken place in the last 2 years and either:

- Concerns an English contracting authority as defined by the Public Contracts Regulations 2015 that is covered by our service (this is defined in greater detail in the next section), or
- Concerns a supply chain issue that relates to a contract let by an English contracting authority as defined by the Public Contracts Regulations 2015 that is covered by our service, or
- Concerns the late payment (i.e. not paid within 30 calendar days or any earlier payment date as stated in the contract terms) of valid and undisputed invoices on a public sector contract. This would also include late payment issues within the supply chain.

Secondly your enquiry should concern procurement practice, and should highlight a potential conflict with best practice or the Public Contract Regulations 2015 (2006 for older contracts). This can be at any stage of the procurement. For example:

- o Pre-procurement activities
- o Advertising of contracts
- o Timescales
- o Formal tendering processes
- o The management of contracts, including payments to suppliers and subcontractors

Our role is to investigate suitable cases referred to us and to highlight improvements that could be made to procurement practices; however, our role is to promote good practice rather than to act on behalf of suppliers that contact us or to promote their objectives.

### **What bodies are covered by Mystery Shopper investigations?**

Apart from the exceptions explained below, Mystery Shopper can in principle investigate any contracting authority. In particular the service covers: All English contracting authorities as listed in [Schedule 1](#) of the Public Contracts Regulations 2015

English Local Authorities.

English Local Education Authorities (excluding academies and maintained schools).

Mystery Shopper cannot investigate an authority that wholly or mainly exercises functions which are Scottish, Welsh or Northern Ireland devolved functions.

Nor can Mystery Shopper investigate academies and maintained schools, or the exercise of functions relating to the procurement of health care services for the purpose of the NHS.

### **What can you expect from the Mystery Shopper Service?**

Our service operates Monday to Friday during normal business hours. We will usually provide an acknowledgement of your first enquiry within two working days. It is at this stage that we will begin looking at your case and whether we believe it is within the scope of our remit. If your case is accepted we will ask whether you wish to remain anonymous when we contact the contracting authority concerned.

Even if a case is accepted, as within our remit we may have to cease investigating if information is later received demonstrating that the case is not within our remit, or for any other reason we later determine that the case is not within our remit.

After acceptance your enquiry will then be passed to your caseworker who will contact you and may ask for additional information and evidence in order to understand your concerns. They may offer initial advice on handling your enquiry and will alert you if they consider that retaining your anonymity may be unhelpful in achieving a resolution for you.

We are a small team and caseworkers will be handling several cases at any one time, so you should expect updates approximately every two to three weeks (or more often if your enquiry relates to a live procurement). We try to investigate all enquiries that meet our criteria; however, at peak times we may have to prioritise the most serious cases.

We will aim to complete our action and seek to provide a reasoned response to you within 2 months of receipt in the case of a referral about a central government body, or within 3 months of receipt for issues relating to the wider public sector (for example in local government). Although if your case proves to be more complex then we may require longer to get a good resolution.

### **What resolution can you expect?**

That would depend on the types of issues you have brought to us and at what stage of the procurement process the authority is at.

If it appears that there are shortcomings with a "live" procurement exercise, then we may make recommendations to the contracting authority as to how those shortcomings might be resolved immediately. For example, if the contract has yet to be awarded, we may recommend that the contracting authority delays, restarts or suspends a procurement exercise in order to resolve the concerns raised. However, please bear in mind that we do not have the power to force a contracting authority to delay or suspend an award.

If the procurement has already been concluded, we usually focus our recommendations on helping the contracting authority to improve their procurement practices for next time.

But if your case relates to non-payment then we can usually help a supplier get paid for work that they have done.

Our overall approach will be to make recommendations to the contracting authority on how to remedy the specific problem. If we consider that the issues raised might have wider applicability to general public procurement practice, then we may work with policy colleagues in the Crown Commercial Service in order to issue general guidance to all public bodies (for example, through a Procurement Policy Note).

We will normally publish the outcome of cases on the Crown Commercial Service website and through social media. Serious or persistent supply chain issues will be raised with the [Crown Representative](#) in addition to our investigations.

In addition, we proactively carry out spot checks to test the compliance of contracting authorities with advice set out in Procurement Policy Notes published by the Crown Commercial Service, particularly the measures designed to open up participation in public procurement to small businesses. We also use spot checks to follow up on actions that contracting authorities have agreed to take in response to recommendations we have made during the course of our investigations.

**We will not normally investigate your enquiry when:**

- You are taking legal action. You must inform us if you start legal proceedings (including by sending a pre-action letter) whilst we are considering your case and we will suspend our involvement until the legal action is concluded
- It involves a dispute that is already subject to formal proceedings whether administrative (e.g. an internal appeal process) or legal (e.g. action in the UK courts or European Infraction proceedings)
- The procurement is currently going through the 10-day (or 15 days as appropriate) mandatory standstill period - we will suspend our involvement until the standstill period is concluded
- It has been (or will be) investigated by an Ombudsman or any statutory body with powers to investigate the activities of public authorities. We will not review or pre-empt any findings of a review by another body with statutory powers concerning public procurement
- If you are a public sector employee concerned about the procurement activity within your own organisation. We do not handle whistleblowing cases of this kind. A guide to whistleblowing can be found [here](#)
- It is either expressed in abusive terms, or appears to be malicious or vexatious in nature
- It concerns an unsubstantiated or generalised suspicion of poor practice that lacks sufficient evidence for us to take up with a contracting authority or where the enquiry does not directly relate to the procurement process
- It concerns a procurement undertaken by a devolved administration (eg Northern Ireland, Scotland and Wales)
- It concerns a procurement undertaken by an academy or maintained school directly
- It concerns procurement of health care services for the purposes of the NHS

## **What happens if the contracting authority refuses to assist in the investigation?**

Most contracting authorities are helpful and co-operate fully with our investigations. Section 40 of the [Small Business Enterprise and Employment Act](#) introduced a statutory framework for certain investigations undertaken by the Mystery Shopper service, which requires certain contracting authorities (including most in England) to give reasonable assistance to our investigations. If Section 40 applies and the authority fails to respond, or fails to assist us with our investigation, we may, at our discretion, issue a notice under Section 40 requiring information and/or documents to be provided within 30 days of the day on which it is given. In such cases we will inform you of our decision whether to use this power.

It is important to note that some public bodies are not covered by Section 40 of the Act and so we cannot exercise this power in relation to such bodies.

### **Other Limitations of the Service**

All recommendations we make to contracting authorities are non-binding. We cannot force a contracting authority to award a contract, or refrain from awarding a contract, to a particular bidder.

We cannot provide legal advice to you or help you to seek compensation. You should not regard the Mystery Shopper Service as a precursor to legal action, or a potential means to obtain redress of a type that would otherwise require legal action. If you are considering whether to seek legal redress, we advise you to consult your own legal advisors to determine the most appropriate course of action.

We cannot form a view as to the extent of any financial or other loss suffered by a supplier, or comment on the accuracy of any statement made by the supplier as to a possible loss.

### **Disclosure pursuant to the Freedom of Information Act 2000**

1. In accordance with the obligations placed upon public authorities by the Freedom of Information Act 2000 (the 'FoIA'), all information submitted may be disclosed by the Crown Commercial Service in response to a request made pursuant to the FoIA.

2. In respect of any information submitted by an enquirer or contracting authority that it considers to be commercially sensitive the party should:

- A. Clearly identify such information as commercially sensitive
- B. Explain the potential implications of disclosure of such information
- C. Provide an estimate of the period of time during which the party believes that such information will remain commercially sensitive.

3. Where information is identified as commercially sensitive by a party, we will endeavour to maintain confidentiality but subject to our legal obligations under the FoIA. You should note, in particular, that even where information is identified as commercially sensitive, we might be required to disclose such information in accordance with the FoIA. Accordingly, we cannot guarantee that any information provided by either party will not be disclosed even where it is marked as "confidential".

Use the Mystery Shopper Service by sending an email to [mysteryshopper@crownccommercial.gov.uk](mailto:mysteryshopper@crownccommercial.gov.uk) or by telephoning our helpdesk on 0345 010 3503