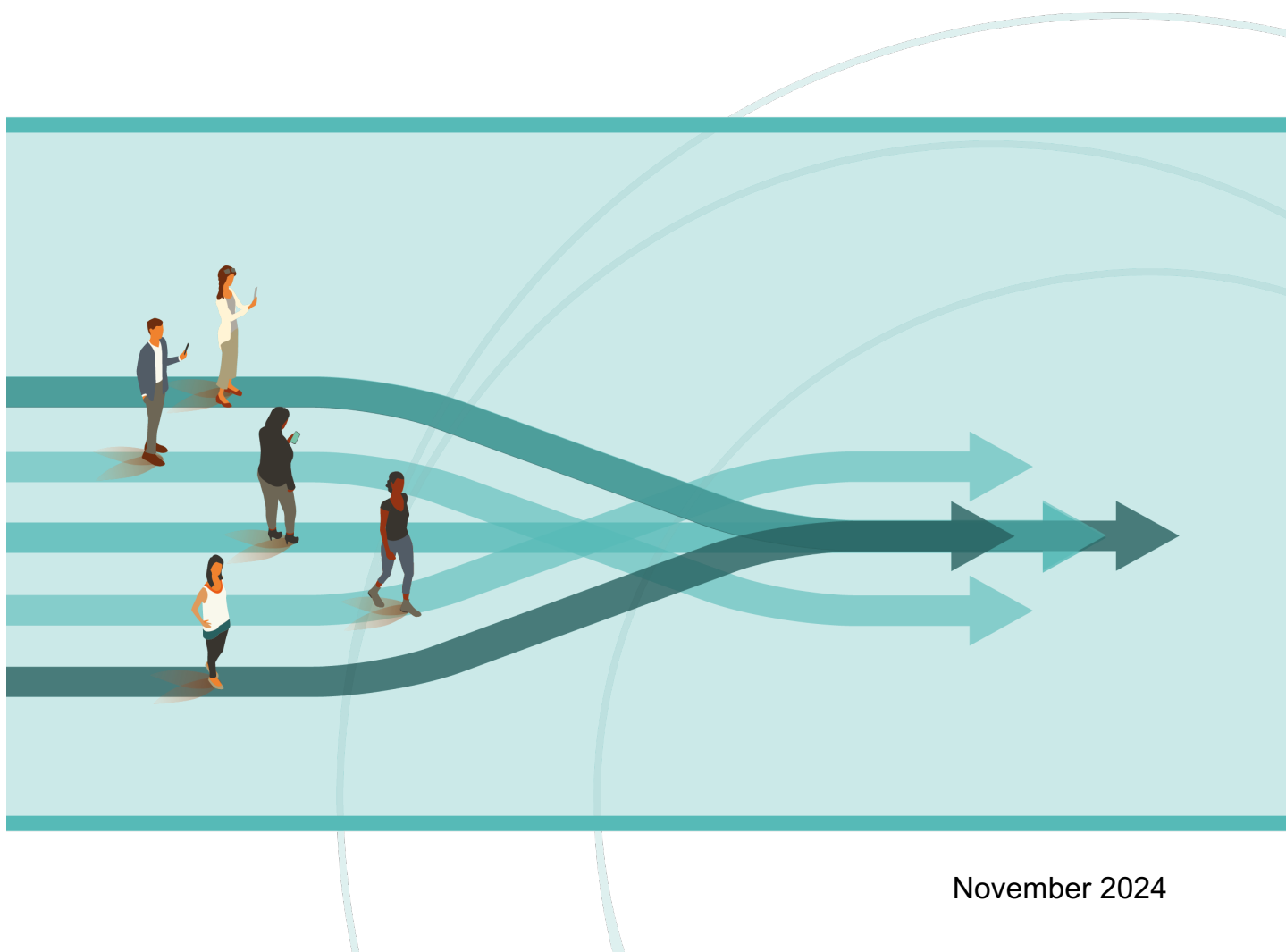




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Procurement Act 2023

# Guidance: Remedies



November 2024

## Guidance on Remedies

### What are remedies?

1. Contracting authorities are under a statutory duty to comply with the Procurement Act 2023 (Act) and the Procurement Regulations 2024 (regulations). A breach of statutory duty may cause loss or damage to a supplier. As such, it is important that contracting authorities can be challenged and that civil remedies are available to compensate suppliers for any loss or damage or remedy the situation and to incentivise contracting authorities to comply with the Act.
2. This guidance focuses on the legal remedies that are available under the Act. It covers the actions or decisions that the Court may take in civil claims against a contracting authority for breach of statutory duty. It does not cover any other remedies which a supplier may seek, such as judicial review.

### What is the legal framework that governs remedies?

3. The remedies provisions are set out in Part 9 of the Act (Remedies for breach of statutory duty):
  - a. Section 100 (Duties under this Act enforceable in civil proceedings): This section sets out the basis and scope for challenge under Part 9 of the Act;
  - b. Section 101 (Automatic suspension of the entry into or modification of contracts): This section provides for an automatic suspension to apply to prevent the contracting authority from entering into or modifying a public contract. The effect is to enable the supplier to seek 'pre-contractual remedies' which are remedies that can only apply where the contract has not been entered into or the modification has not been made;
  - c. Section 102 (Interim remedies): This section sets out the orders that may be made by the court pending the outcome of a legal claim, such as lifting the automatic suspension, and the basis on which the court will consider making such orders;
  - d. Section 103 (Pre-contractual remedies): This section sets out the remedies available to the supplier if its claim is successful and is resolved before the contract is entered into or the modification made;
  - e. Section 104 (Post-contractual remedies): This section sets out the remedies available if the claim is successful and the contract has already been entered into or the modification made;
  - f. Section 105 (Post-contractual remedies: set aside conditions): This section sets out when the post-contractual remedy (set out in section 104(2)) of 'set aside' (of the contract) must be made;
  - g. Section 106 (Time limits on claims): This section sets out how long a supplier has to commence proceedings for breach of statutory duty; and
  - h. Section 107 (Part 9 proceedings and closed material procedure): This section enables sensitive information to be protected during court proceedings.

4. Part 9 of the Act reflects the UK's international obligations on public procurement that require timely, effective, transparent and non-discriminatory review procedures to be in place that allow suppliers to challenge procurement law breaches.

### **What has changed?**

5. The remedies regime under the Act replicates the intent of the provisions in the previous legislation. As with the previous legislation, a standstill period is required under the Act prior to entering into a contract in certain circumstances and the contracting authority is prohibited from entering into the contract if a challenge is brought, the contracting authority is aware of the challenge and the contract has not yet been entered into (automatic suspension). The standstill period differs under the Act as it is 8 working days in all cases. The automatic suspension is also slightly different under the Act in that it only applies if a challenge is brought within the standstill period. Also like the previous legislation, there are a range of interim and pre-contractual and post-contractual remedies, including damages.
6. There are some changes in wording to reflect UK nomenclature; notably 'ineffectiveness' is now 'set aside', but means the same thing. The triggers (conditions) for set aside also look rather different from the ineffectiveness provisions in the previous legislation but they reflect the same intent: that a supplier should have the option of bringing a claim to set aside the contract where it has been denied the opportunity to bring a claim before the contract has been entered into or the modification made. The set aside conditions are different from the grounds for ineffectiveness in the previous legislation because of the increased transparency provisions under the Act which provide more information and at more stages to suppliers before the contract is awarded or entered into.
7. The Act introduces a new, procurement-specific test to be applied by the Court when determining whether to make an order for an interim remedy. This test will be used by the Court, for example, when determining whether to lift an automatic suspension on application by the contracting authority (see paragraph 20 below).

### **Key points and policy intent**

8. Having an effective and well-functioning remedies system is essential to ensure the successful operation of any public procurement regime. It helps to ensure contracting authorities comply with procurement rules and gives suppliers confidence that public contracts will be awarded fairly and transparently. This, in turn, encourages them to tender for public contracts.
9. When challenging a contracting authority under the Act, a supplier must commence proceedings for breach of statutory duty, within the prescribed time limits. Proceedings are commenced when the Court issues a claim form (at the request of the supplier who is bringing the claim). The remedies that the Court may grant to the challenging supplier (the claimant) if its claim is successful and the conditions under which such remedies are available are set out in the Act. The Court may also order that one of the interim remedies set out in the Act applies pending resolution of the claim.
10. However, court proceedings are not the only way for suppliers to resolve concerns about a procurement. The transparency requirements included in the Act support the remedies regime by enabling suppliers to spot and raise any issues related to the procurement at the

earliest opportunity, so that, as much as possible, they can be resolved when they arise and before the contract award decision is made or the contract is entered into (and outside of court). By resolving issues that arise during the procedure at an early stage, the risk of disruptive legal action is reduced.

#### Scope (section 100)

11. Not all suppliers have a right to a remedy under Part 9 of the Act and not every type of breach (failure to comply with the Act) has the potential to give rise to a claim against the contracting authority.
12. Section 100 (Duties under this Act enforceable in civil proceedings) sets out some important principles that underpin the remedies regime and the conditions that a supplier must meet in order to 'have standing' (i.e. the right to bring a claim). These are:
  - a. breaches of the following Parts of the Act (concerned with the award, entering into and management of public contracts) may give rise to a claim for breach of statutory duty:
    - i. Part 1: Key Definitions;
    - ii. Part 2: Principles and Objectives;
    - iii. Part 3: Award of Public Contracts and Procedures;
    - iv. Part 4: Management of Public Contracts;
    - v. Part 5: Conflicts of Interest;
    - vi. Part 7: Implementation of International Obligations; and
    - vii. Part 8: Information and Notices: General Provision.
  - b. Only 'United Kingdom suppliers' and 'treaty state suppliers' (as defined in section 90(7) and 89(1) of the Act, respectively) have a right to bring a claim for breach of statutory duty under the Act, in respect of 'covered procurement' (as defined in section 1(1) of the Act) (see paragraph 13 below).
  - c. A supplier must be able to demonstrate that it has suffered, or is at risk of suffering loss or damage as a result of the breach.
  - d. The claim form must be issued by the Court within the time periods set out in section 106 (Time limits on claims). If the claim form is not issued within the relevant time limit, the supplier may lose its right to claim a remedy; the Court may make an order to extend the time period to commence proceedings but only if it considers there is a good reason for doing so and subject to a maximum period.
13. Contracting authorities should note that section 89(2) of the Act limits a treaty state supplier's rights under the Act to "the extent that it is entitled to the benefits of an international agreement specified in Schedule 9 in relation to the procurement being carried out or challenged". For the purposes of remedies, this means that a treaty state supplier will only have standing to bring a claim for the types of procurement and provisions of the Act

covered by the international agreement between the relevant treaty state and the UK. See guidance on treaty state suppliers for more information.

14. A supplier's claim is often based on the loss of profits that it would have expected to earn if it had won the contract, but 'loss or damage' may also include bid costs or other consequential loss, for example. Whatever the loss or damage relates to, the claimant must be able to demonstrate to the Court's satisfaction that it was caused by the alleged breach.
15. There are a small number of obligations in Parts 1 to 8 of the Act which cannot be challenged under Part 9 if breached. This includes all obligations within Part 6 (Below-threshold contracts) and other obligations set out in section 100(5-6) as follows:
  - a. the duty to comply with section 12(4) (requirement to have regard to barriers facing SMEs);
  - b. the duty to comply with section 13(9) or 14(8) (requirement to have regard to procurement policy statements); and
  - c. the duty to comply with section 90 (treaty state suppliers: non-discrimination) if the procurement is not a covered procurement.

These may, however, be subject to public law remedies, i.e. judicial review.

16. Additionally, under section 100(7) a supplier may not bring a claim against a contracting authority that has excluded it from a procurement on the basis of a Minister of the Crown's decision in relation to the debarment list, namely:
  - a. the Minister's decision to enter a supplier's name on the debarment list;
  - b. the Minister's decision relating to the information included on the debarment list;
  - c. the Minister's decision not to remove a supplier from the debarment list; and
  - d. the Minister's decision not to revise information included on the debarment list.

The Act does, however, give a supplier the right to appeal the Minister's decisions under section 65 (Debarment decisions: appeals). See the guidance on debarment for more information.

#### Automatic suspension (section 101 and 102)

17. If a mandatory or voluntary standstill period applies to the award or modification of a contract and during the standstill period a supplier:
  - a. has commenced proceedings; and
  - b. notifies the contracting authority that it has done so,

the contracting authority's ability to enter into the contract will be automatically (and immediately) suspended. That means that the contract must not be entered into or the modification must not be made.

18. If the claim form is issued and/or notified after the standstill period has ended but before the contract has been entered into, the automatic suspension in section 101 does not apply and the contracting authority is freely able to enter into the contract or make the modification. However, in such circumstances, it is advisable to seek legal advice before continuing. When a contracting authority has agreed to extend a standstill period, for example to respond to a supplier's query about the procurement, the contract award notice should be amended accordingly and re-published in order to ensure suppliers are aware that they have more time to commence proceedings.
19. Usually, a supplier's reason for bringing a claim is to challenge the decision to award a contract to another supplier or to challenge the lawfulness of a modification and to secure the contract (or new contract implementing the modification) for itself. Suspending the ability of the contracting authority to enter into the contract or make the modification allows that possibility. Resolving any dispute prior to entering into a new contract or making a modification is generally in the interests of the contracting authority as well, to ensure successful delivery of the goods, services or works and avoid the disruption and cost associated with post-contractual remedies. The automatic suspension, therefore, serves an important purpose, because once a contract is entered into, only post-contractual remedies are available (and the contracting authority may end up paying twice, i.e. paying the supplier under the contract awarded and paying compensation for loss or damage if a supplier successfully challenges an award or modification).
20. However, in some circumstances, delaying entry into the contract or making the modification is problematic, for example, if the contract is to deliver certain defence or health-related services where delay would have unacceptable operational impacts. To allow for such situations, a contracting authority can ask the Court to lift or modify the automatic suspension i.e. bring the suspension to an end or modify it (for example, provide for a shorter standstill period) and allow the contract to be entered into or the modification to be made immediately (or within a shorter period than would otherwise be the case). The Court will apply the test in section 102(2) to consider whether the suspension should be lifted or modified.
21. If the Court does not lift or modify the automatic suspension (see paragraphs 23-25 below), it will remain in place until the claim has been resolved.

#### Interim remedies (section 102)

22. Interim remedies can apply to any claim, whether the claim form is issued before or after an award decision, or after a contract has been entered into or a modification has been made. They are available to both the contracting authority and the supplier. These interim measures are temporary measures intended to be in place until the Court has considered the claim and delivered its judgment.
23. Following an application to the Court (by either party), the Court has the power to make one or more of the orders set out in section 102(1):
  - a. an order lifting or modifying the automatic suspension;
  - b. an order extending the automatic suspension or imposing another suspension;

- c. an order suspending the effect of any decision made or action taken by the contracting authority in the course of the procurement;
  - d. an order suspending the procurement or any part of it;
  - e. an order suspending the entry into or performance of a contract;
  - f. an order suspending entering into a contract or making a modification or performance of a contract as modified.
24. The Court cannot make an order which allows a contract to be entered into or modified before the end of any standstill period.
25. Before making such an order, the test in section 102(2) requires the Court to consider the merits of the case to ensure that the interests of suppliers, including the claimant, and the supplier to whom the contracting authority has decided to award the contract, are considered alongside the public interest. The Court may also consider any other matter it considers appropriate.
26. Public interest considerations include upholding the principle that the law should be complied with, as well as the implications of delaying the procurement or modification and therefore the goods, services or works the contract or modification is intended to deliver.

#### Pre-contractual remedies (section 103)

27. Pre-contractual remedies are those remedies available to the supplier where the Court has found in its favour i.e. where it has found that the contracting authority has breached its statutory duty (see paragraph 1 above). The pre-contractual remedies available to the Court are set out in section 103(2), but there is a wide discretion as section 103(2) permits the Court to make any order, in addition to those set out at section 103(2)(a-c), that it considers appropriate. Pre-contractual remedies are only available where the contract in relation to which the breach occurred has not yet been entered into or the modification has not yet been made.
28. As set out above, suppliers that bring a claim prior to the contract being entered into or modification being made are often seeking an opportunity to tender for the contract or to deliver it (or the modification) themselves. Pre-contractual remedies reflect this and allow the Court to make an order setting aside a decision or action of the contracting authority; for example, it may set aside a decision to award a contract. The Court can also make an order that an action is taken by the contracting authority, for example that it re-assesses tenders against the award criteria. Other actions ordered could be, for example, to re-commence parts of the procurement procedure (for example, to wind the procurement back to a previous stage in a competitive flexible procedure), or may be to award the contract to the claimant.
29. Section 103(2) also permits the Court to award damages (see paragraph 31).

## Post-contractual remedies (sections 104 and 105)

30. Post-contractual remedies are those remedies available to the supplier where the Court has found the contracting authority to be in breach of its statutory duty where the contract in relation to which the breach occurred has already been entered into or the modification has already been made. In this situation, section 104(2) provides that the Court must set aside the contract where certain conditions are met and may, in any case, make an order for the award of damages.

### Damages

31. An award of damages is effectively a form of compensation to the claimant for the loss or damage it has suffered as a consequence of the breach by the contracting authority of its statutory duty. In all cases, whether this is a pre-contractual remedy or a post-contractual remedy, it is for the Court to decide whether the breach caused the damage or loss suffered by the claimant and therefore whether an award of damages is appropriate in the circumstances. If the Court decides to award damages, it will also decide the amount of the damages. In determining the value, the Court will take into account all the circumstances of the case, including any mitigating factors.

### Set aside

32. Set aside is the most disruptive of the remedies available to suppliers under the Act. It applies when a breach has occurred in the award or modification of a contract but the supplier has been denied the opportunity to seek a pre-contractual remedy (under section 103) for a reason set out in section 105(1) (referred to in the Act as 'set aside conditions') (see paragraph 35 below). Set aside is mandatory in these circumstances, subject to the public interest test at section 104(3) (see paragraphs 36-37 below).
33. An unlawful decision to award a contract would, for example, be where the supplier did not submit the most advantageous tender in a competitive tendering procedure or a direct award was not permissible under section 41(Direct award in special cases) or section 43 (Switching to direct award) of the Act. An unlawful modification to a contract would be where the contract modification was not permitted under section 74 (Modifying a public contract).
34. Setting aside the contract or modification means that the contract has no effect from the date of the order (i.e. it is of no effect from that point onwards, but not retrospectively). Where a contract or modification is set aside or the term or goods, services or works to be supplied is reduced (see paragraph 36 below), the order may include provisions dealing with consequential or supplementary matters, for example, payment to the supplier for performance to date where this is not provided for in the contract or contract as modified. The contracting authority will also have to bear any cost and time impact of carrying out a new procurement for the goods, services or works intended to be provided under the contract or modification.
35. Section 105 sets out the set aside conditions, one of which must apply for the Court to be able to set aside a contract or modification. As set out at paragraph 32 above, where a supplier is denied the opportunity to seek a pre-contractual remedy, the Court must set aside the relevant contract or modification. These set aside conditions set out in section 105(1) are:



- a. a required contract award notice was not published: the Act generally requires that a contract award notice setting out that the contracting authority intends to enter into a contract with a particular supplier must be published before the contracting authority enters into a public contract (section 50). If it is not published, then unsuccessful suppliers may not be aware of the decision and cannot challenge an unlawful decision before the contract is entered into. This set aside condition is not relevant where the Act does not require the publication of a contract award notice. However, it does apply where the contracting authority wrongly concluded that a contract award notice was not required, or an inaccurate notice was published;
- b. the contract was entered into or modified before the end of any applicable standstill period: the standstill period gives suppliers a window of time before the contract is entered into to commence proceedings. If the contracting authority entered into or modified a contract before the end of any standstill period, the ability to commence proceedings before the contract is entered into is reduced or denied altogether and the supplier is not able to bring a claim for a pre-contractual remedy. It applies whether the standstill was required or voluntary and includes where the contracting authority had wrongly determined that a standstill period was not required;
- c. the contract was entered into or modified during a period of automatic suspension or in breach of a court order: as set out at paragraph 17 above, section 101(1) prohibits a contracting authority from entering into or modifying a public contract if, during an applicable standstill period, a supplier commences proceedings and the contracting authority is notified of this. Where a contracting authority fails to comply with this requirement, the supplier is unable to bring a claim for a pre-contractual remedy;
- d. where the contracting authority is not required to implement a standstill period, the breach became apparent only on publication of a contract award notice: this condition addresses the circumstance where the contracting authority did not implement a standstill period because it was not required to do so due to the nature of the contract and the breach became apparent only after the contract was entered into. This could arise, for example, where a contracting authority enters into a contract immediately after publishing its contract award notice and so denies the supplier the opportunity to fully consider the notice and the time to commence proceedings for a pre-contractual remedy. This condition is not met if, despite the fact that the contracting authority was not required to observe a standstill period, the contract award notice nonetheless provided for a voluntary standstill period and the contract modification was not entered into before the end of that standstill period;
- e. the breach became apparent only on publication of a contract change notice: this condition is relevant only where a contract is being modified and would arise (as with paragraph d above) where a contracting authority does not implement a voluntary standstill period after publication of the notice. Again, this condition is not met if, despite the fact that the contracting authority was not required to observe a standstill period, the contract award notice nonetheless provided for a voluntary standstill period and the contract modification was not entered into before the end of that standstill period; or

- f. the breach became apparent only after the contract was entered into or modified: this condition addresses the circumstance where the claimant did not know about the breach prior to the contract being entered into or the modification being made. For example, this could be because the contract award notice or contract change notice does not correspond with the contract that was entered into, or the modification made, which became apparent only after the contract or contract as modified was published. This condition might also be met where a contracting authority does not provide assessment summaries (or full and/or accurate assessment summaries) before publishing the contract award notice and entering into the contract, which denies the supplier the opportunity to identify any potential breaches.
36. Even where a set aside condition is met, the Act allows the Court discretion not to set aside the contract or modification, if it is satisfied that there is an overriding public interest not doing so. This could be, for example, the case of certain health or defence-related contracts where the impact of setting a contract or modification aside could have unacceptable impacts. If a Court is satisfied that there is an overriding public interest, it may, instead of setting aside the contract or modification, reduce the duration of the contract or the goods, services or works to be provided.
37. Section 104(5) sets out certain limitations on what the Court can take into account when considering the public interest in not setting aside the contract or modification. It must not, for example, consider the additional costs to the contracting authority of having to run a new procurement or the financial implications of delaying the provision of the goods, services or works to which the contract or modification relates.
38. Section 106(2) provides that for most claims a supplier must commence proceedings before the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the relevant circumstances giving rise to the claim ('30 day period') (see paragraph 47). This includes in the case of proceedings to set aside a contract, provided the contracting authority published a contract details notice under section 53.
39. However, where a supplier wishes to commence proceedings to set aside a contract where a contracting authority did not publish a contract details notice or to set aside a modification ('specified set-aside proceedings'), section 106(1) potentially provides a longer period. In this case, proceedings must be commenced before the earlier of the end of the 30 day period and the end of the period of six months beginning with the day the contract was entered into or modified ('six month period'). The following examples illustrate how the time limit works:
40. A public contract is entered into on 2nd January. A contract details notice is not published as required by section 53. Applying the six month period, the deadline to commence specified set-aside proceedings is therefore 1st July.
41. Example A: A supplier gains access to information on 22nd June that indicates that a contract may have been awarded to a supplier that did not submit the most advantageous tender and it may have grounds for a claim for breach of statutory duty.
42. The supplier has only ten days (including the day it received the information) to commence proceedings to have the contract set aside because there are only ten days left until the expiry of the six month period (1st July).

43. If the supplier only wants to claim for damages, the standard 30 day period to do so applies.
44. Example B: A public contract is entered into on 2nd January. A contract details notice is not published as required by section 53. Applying the six month period, the deadline to commence specified set-aside proceedings is therefore 1st July.
45. On 19th January a supplier gains access to information that indicates that a contract was awarded to a supplier that may not have submitted the most advantageous tender and it may have grounds for a claim for breach of statutory duty.
46. The supplier has 30 days from 19th January to commence proceedings to have the contract set aside. This is because the supplier now has knowledge of the potential breach and section 106(1) requires the supplier to commence proceedings before the earlier of the 30 day period and the six month period.

#### Time limits (section 106)

47. As set out at paragraph 38 above, generally a supplier has 30 days from when it first knew, or ought to have known, about the relevant circumstances to commence proceedings for breach of statutory duty (the 30 day period). This means that the 30 day period would usually commence when the supplier is provided with or has access to information that enables it to identify a breach.
48. For example, if a supplier considers that the award criteria in a particular procurement breaches the Act, it must issue the claim within 30 days of the award criteria being made available to it. Where a notice identifies a breach, the supplier has 30 days from the publication of the notice to commence proceedings. The onus is on the supplier to review the information in a timely manner to ensure that it can commence proceedings within the relevant timescales.
49. The supplier can apply to the Court to extend the time limit for commencing proceedings. The Court can generally extend the period to allow a maximum of three months in which to commence proceedings, but only where it considers there is good reason to do so. The period for commencing any specified set-aside proceedings (see paragraphs 39-46 above) can be extended up to a maximum of six months.
50. After the Court has issued a claim form, the Civil Procedure Rules (which govern the management of civil claims in England and Wales) will apply. These require the claimant to serve the claim form on the contracting authority within 4 months of the date the claim form is issued. It is also worth noting that the Technology and Construction Court (which deals with public procurement claims) has issued a [guide](#) which contains a protocol for the management of procurement claims. This includes (at paragraph 9 of Appendix H) an expectation that claimant suppliers will serve the claim form on contracting authorities within 7 days of issue. (It is our intention to update this guide to better align it with the Act and its aims.) It is expected that a claimant will serve the claim form on the contracting authority at the same time as notifying it of the commencement of proceedings; notification which is required by section 101 of the Act (see paragraph 17 above) where it wishes the automatic suspension to apply.

51. In any case where the claim form has not been served, and in order to avoid waiting the full 4 months, contracting authorities can serve a notice on the claimant requiring the claimant to serve the claim form within a set deadline (which must be at least 14 days after service of the notice) or discontinue the claim (see Civil Procedure Rule 7.7(1) and (2)). Where the claimant commences proceedings and notifies the contracting authority within the standstill period (and therefore the automatic suspension applies), contracting authorities are advised to serve a notice on the claimant requiring it to serve the claim form immediately after they have been notified.
52. While the claim form is often served along with the Particulars of Claim, this is not mandatory and the Particulars of Claim may be marked as 'to follow'. If this is the case, the claimant will have an additional 14 days to serve the Particulars of Claim on the contracting authority following service of the claim form.

#### Closed proceedings (section 107)

53. The Justice and Security Act 2013 allows a Secretary of State to apply for legal proceedings to be carried out as a closed material procedure. Closed material procedure involves the non-government parties leaving the courtroom while sensitive material is heard by the Court and can be particularly relevant if the case includes matters relating to national security. As the Act gives powers to, and requires some decisions to be made by, the Minister for the Cabinet Office, section 107 of the Act extends this ability to request closed procedures to the Minister for the Cabinet Office.

#### Managing the risk of a claim

54. The risk of legal challenge should be assessed throughout a procurement with decisions and appropriate steps being taken to mitigate the risks as they are identified.
55. Applying a voluntary standstill period (i.e. where the Act does not require it) is an effective way of mitigating the risk of a contract or modification being set aside, as it ensures suppliers have adequate time to commence proceedings seeking a pre-contractual remedy. See the guidance on contract award notices and standstill for more information.
56. By ensuring that those involved in carrying out procurements are aware that public law principles require public bodies to act fairly and rationally when making decisions and that they must have regard to the objectives in section 12 of the Act (to share information and act, and be seen to act, with integrity), contracting authorities can assure suppliers that the procurement is robust and fair and that they can have confidence in the procurement. Contracting authorities should provide suppliers with an explanation of any decisions that affect them as soon as possible and release information to suppliers at the same time, as far as practicable.
57. Being transparent throughout the procurement, particularly during the procedure itself or process for awarding the contract, and providing information as early as possible can mitigate the risk of a claim arising later in the procurement, after the award decision has been announced.

58. Publishing notices earlier than the final deadline in the Act (where possible) and adopting the full transparency regime even where there is no obligation to do so enables the general 30 day period for proceedings to be commenced to be used to greatest effect. For example:

- a. publishing a transparency notice as early as possible means that if a supplier has any concerns with a decision to make a direct award, these will be raised early and can be resolved with minimal disruption to the procurement. This may also avoid the need for a legal claim;
- b. publishing a contract details notice and the contract or modification or the contract as modified as soon as possible after the contract has been entered into or the modification has been made (even if it is not required by the Act) means the risk of a claim for set aside should be reduced once the 30 day period has expired.

59. Engaging with suppliers that raise concerns, with a view to overcoming any issues outside of the legal remedies regime, should avoid the need for the supplier to commence proceedings, and thus the cost and disruption that legal challenges can bring. Contracting authorities should act in a timely manner, so as not to force the supplier to take legal action due to time constraints; where necessary and applicable the standstill period can be extended to provide for such additional time. Contracting authorities could consider the benefits of peers (who are not directly involved in the procurement) providing an independent view of a particular issue, where this is warranted and possible.

#### **What other guidance is of particular relevance to this topic area?**

In order to effectively manage the risk of receiving a legal claim, contracting authorities will need to be familiar with the obligations that can trigger a legal claim if they are not complied with; i.e. those contained in the following Parts of the Act:

- 1 Key Definitions;
- 2 Principles And Objectives;
- 3 Award Of Public Contracts And Procedures;
- 4 Management Of Public Contracts;
- 5 Conflicts Of Interest;
- 7 Implementation Of International Obligations;
- 8 Information And Notices: General Provision.

These obligations and requirements are explained in more detail in the full suite of guidance on the Act. In order to fully understand the options available to suppliers who have concerns about the procurement, it would be beneficial to have an understanding of the procurement oversight regime (including the role of the Procurement Review Unit) and the judicial review process.

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