



## Scope and Remit of the Procurement Compliance Service (PCS)

### What is the service?

The purpose of the Procurement Compliance Service (PCS) is to improve the capability and practices of contracting authorities for the benefit of all involved in public procurement by ensuring compliance with the new procurement rules, including trade agreements.

The PCS is one of the services provided by the Cabinet Office, which was established following the passing of the Procurement Act 2023 (the “Act”). The Act enables the PCS (acting on behalf of an appropriate authority) to conduct investigations into a contracting authority's compliance with the requirements of the Act and where appropriate, to issue recommendations or publish guidance to assist with ensuring compliance with the Act.

To understand more about the role of the PCS, please refer to the [Procurement Act guidance on procurement oversight](#).

#### A. Section 108 Procurement investigations

- (1) An appropriate authority may investigate a relevant contracting authority's compliance with requirements of this Act.

### What will the PCS investigate

The PCS may learn of potential non-compliance through referrals and other information sources, including from the Public Procurement Review Service (PPRS) and the Central Digital Platform.

Whilst the Act does not set out any limits or parameters for a PCS investigation, the PCS will consider, but not be limited to, investigating systemic and institutional breaches of the Act:

**Systemic:** actual or potential breaches common across multiple contracting authorities;

**Institutional:** breaches that are regularly being made (or are anticipated to be made) by one particular contracting authority.

### When can the PCS investigate?

The PCS may investigate any procurements subject to the requirements of the Act.

Upon receiving a referral or becoming aware of potential non-compliance, the PCS will review the information and details provided or gathered. This will be assessed against the following acceptance criteria:

- Does the issue concern a procurement process under the Procurement Act 2023, carried out by an in-scope contracting authority?

- Does the issue raise matters of systemic or institutional non-compliance with requirements of the Act?
- Are there any other reasons to support a PCS investigation?

Generally, only cases that meet these criteria will be investigated, and if necessary, prioritised. The PCS will undertake a risk-based triage of the referral to prioritise cases to investigate and manage its resources effectively. That triage assessment will consider financial impact, scale of public procurement exposure (e.g. how many suppliers impacted), public impact and the area of compliance (e.g. minor procedural lapse with negligible impact on outcomes through to major compliance issues potentially causing significant operational disruption and legal implications). If a case is not investigated at that time, the details will be logged. Should any further information or additional referrals be received, a case may be reconsidered.

### **Which contracting authorities are in scope?**

The PCS has the authority to look into referrals in regard to in-scope [contracting authorities](#) subject to the requirements of the Act. This includes most public sector bodies including local authorities, the emergency services and health bodies, as well as central government bodies including government departments, executive agencies and non-departmental public bodies.

Investigations will be carried out (and recommendations made) on both a statutory (covered by powers in the Act) and non-statutory basis (covered by existing oversight powers held by Ministers to oversee the contracting activities of government departments).

### **Which contracting authorities are out of scope?**

Some contracting authorities are not subject to investigation (whether statutory or non-statutory) by the PCS:

- a) [Excluded authorities under the Act](#) (whose procurements are not subject to the requirements of the Act, see section 2(5)), including
  - i) Security and Intelligence Services, including GCHQ;
  - ii) Advanced Research and Invention Agency.
- b) Contracting authorities that are not a “relevant contracting authority” under section 108<sup>1</sup> (see text box B. Section 108 Procurement Investigations below).

#### **B. Section 108 Procurement investigations**

(5) In this section—

“procurement investigation” means an investigation under subsection (1);

“relevant contracting authority” means a contracting authority other than—

- (a) Minister of the Crown or a government department;

<sup>1</sup>Note, that whilst the Minister of the Crown and government departments are not relevant contracting authorities for the purpose of section 108, they are still within scope of the PCS’s investigatory powers on a non-statutory basis as detailed above.

- (b) the Welsh Ministers;
- (c) a Northern Ireland department;
- (d) the Corporate Officer of the House of Commons;
- (e) the Corporate Officer of the House of Lords;
- (f) the Senedd Commission;
- (g) the Northern Ireland Assembly Commission;
- (h) a private utility;

## **When can the PCS not investigate?**

Investigations by the PCS will typically not be conducted under the following circumstances:

- a) Where 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.
- b) If 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).
- c) The query is either expressed in abusive terms, or appears to be malicious or vexatious in nature.
- d) It concerns an unsubstantiated or generalised suspicion of poor practice that lacks sufficient evidence for us to take up with a contracting authority.
- e) It concerns procurements undertaken by authorities who are either excluded authorities under section 2(5) of the Act or not relevant contracting authorities under section 108(5) of the Act (see 'Which contracting authorities are out of scope?' above).
- f) Procurements subject to other legislation, such as:
  - i) Public Contracts Regulations 2015;
  - ii) National Health Service Act 2006;
  - iii) Health Care Services (Provider Selection Regime) Regulations 2023;
  - iv) Public service obligations covered by the Railways Act 1993.
- g) If a [contract is exempt under Schedule 2 to the Act](#), the PCS can investigate whether the exemption has been correctly applied by a contracting authority, but once established that an exemption applies the PCS can only investigate compliance with those provisions of the Act applying to non-covered procurement. .

If, as a supplier, you have concerns about a procurement conducted under the Public Contracts Regulations 2015 and/or an individual procurement issue, we encourage you to consider the [Public Procurement Review Service](#).

## **What the PCS cannot provide**

### Contracting Authorities

The PCS is unable to review or comment on contracting authorities' potential or live sourcing strategies. The PCS does not provide assurance that active procurement processes or decisions are compliant.

### Suppliers or Individuals

The PCS is not a first step towards legal action or a way to seek compensation. If you are thinking about pursuing legal redress, we recommend that you consult your legal advisors to determine the best course of action.

In order to preserve the autonomy of contracting authorities in making policy aligned and context specific decisions, section 109(3) of the Act limits the PCS from making statutory recommendations to a contracting authority in relation to:

- a) compliance with the procurement objectives (section 12 of the Act);
- b) having regard to the national procurement policy statement or the Wales procurement policy statement (sections 13 and 14 of the Act);
- c) compliance with the duty to consider SMEs (Small and Medium-sized Enterprises) in regulated below-threshold contracts (section 86 of the Act);
- d) exercising its discretion in relation to a particular procurement.

### **What happens during a PCS investigation?**

An investigation may involve reviewing information and/or speaking with individuals in the contracting authority to understand the cause of compliance issues.

To aid in the investigation, resources from other parts of the Government Commercial Function (GCF), and Senior Civil Service (SCS) personnel, may be asked to assist or inform investigations or recommendations.

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

Contracting authorities have an obligation under the Act to assist the PCS with its investigations, including providing relevant documents and giving reasonable assistance. Where a contracting authority fails to comply with these obligations the investigation may proceed regardless.

#### **C. Section 108 Procurement investigations**

(2) An appropriate authority conducting a procurement investigation may by notice require a relevant contracting authority—

- (a) to provide such relevant documents as the appropriate authority may reasonably require for the purposes of the procurement investigation, in the form or manner specified in the notice;
- (b) to give such other assistance in connection with the procurement investigation as is reasonable in the circumstances and is specified in the notice.

(3) The relevant contracting authority must comply with a notice under subsection (2) before the end of—

- (a) the period specified in the notice (which must be at least 30 days beginning with the day on which the notice is given), or
- (b) such longer period as the appropriate authority may agree to.

## What happens after an investigation

Following an investigation, the PCS will set out its findings and recommendations to the contracting authority via a report. Reports and recommendations may be published on [GOV.UK](https://www.gov.uk).

If recommendations are made the Act obliges the contracting authority to have regard to those recommendations when considering how to comply with the requirements of the Act.

The PCS can track how recommendations are implemented and can require progress reports from the contracting authority, detailing any action taken as a result of the recommendation.

### **D. Section 109 Recommendations following procurement investigations**

- (1) This section applies where an appropriate authority—
- (a) has conducted a procurement investigation under section 108, and
  - (b) considers, in light of the results of that procurement investigation (whether alone or in conjunction with the results of other such investigations), that a relevant contracting authority is engaging in action giving rise, or that is likely to give rise, to a breach of any requirement of this Act.
- (2) The appropriate authority may issue a recommendation (a “section 109 recommendation”) to the relevant contracting authority as to—
- (a) the action the relevant contracting authority should take with a view to ensuring that it complies with the requirements of this Act specified in the recommendation;
  - (b) the timing of such action.

Section 109(8) allows the PCS to publish these reports on [GOV.UK](https://www.gov.uk). Where a contracting authority fails to submit a progress report, section 109(8) also allows the PCS to publish notice of this failure.

### **E. Section 109 Recommendations following procurement investigations**

- (8) The appropriate authority may publish a progress report or, where the relevant contracting authority fails to submit one, notice of that fact.

Following an investigation under section 110 of the Act, statutory guidance under section 110 of the Act may be issued and published on [GOV.UK](https://www.gov.uk) ensuring all relevant contracting authorities can benefit from the lessons learnt from the investigation.

### **F. Section 110 Guidance following procurement investigations**

(1) Where an appropriate authority has conducted a procurement investigation under section 108, the authority may publish guidance setting out what the authority considers to be the lessons of the matters considered in the procurement investigation for compliance with the requirements of this Act by contracting authorities generally.

(2) In considering how to comply with the requirements of this Act, a contracting authority must have regard to relevant guidance published under subsection (1).

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

In accordance with the obligations placed upon public authorities by the Freedom of Information Act 2000 (FoIA), all information submitted may be subject to disclosure by the Cabinet Office in response to a request made pursuant to FoIA.

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, and
- c) provide an estimate of the period of time during which the party believes that such information will remain commercially sensitive.

Where information is identified as commercially sensitive by a party, we will endeavour to maintain confidentiality, subject to our legal obligations under 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 FoIA. Accordingly, while the PCS will always seek to respect confidentiality, if information is required to be disclosed under FoIA then we cannot guarantee that any information provided by either party will not be disclosed even where it is marked as "confidential".

We will handle your personal information in line with the Data Protection Act 2018.

## **How to contact the service and make a referral.**

All referrals should be made via the [Procurement Compliance and Oversight](#) Gov.UK page

[PCS Privacy Notice](#)