

Procurement Compliance Service Investigation Process

The Procurement Compliance Service (PCS) aims to improve the capability and practices in public procurement for the benefit of everyone involved. The PCS investigates contracting authorities' compliance with the requirements of the Procurement Act 2023 (the Act).

Rather than specific procurements, the PCS focuses on non-compliance issues that are **systemic** (i.e. common across multiple contracting authorities) and **institutional** (i.e. repeated non-compliance conducted by one particular contracting authority).

Where does the PCS get the authority to undertake investigations?

The PCS carries out both statutory and non-statutory investigations into contracting authorities' compliance with the Act. There is no procedural difference between a statutory and non-statutory investigation.

The basis for the PCS' investigation powers are set out in the summary below, but further information can be found under [Part 10 of the Procurement Act 2023](#) [PDF, 1.6KB] and the PCS [scope and remit](#).

Part 10 of the Act - Procurement Oversight:

- Enables an appropriate authority to investigate a relevant contracting authority's compliance with requirements of the Act. *s.108*
- Contracting authorities must have regard to any recommendations issued to them by an appropriate authority. *s.109*
- Enables an appropriate authority to publish guidance, following investigations, that all contracting authorities must have regard to. *s.110*

Statutory Investigations: The PCS carries out statutory investigations in line with the powers given to an appropriate authority under Part 10 of the Act. The PCS acts on behalf of the Minister (as the appropriate authority) and investigates contracting authorities' potential non-compliance with the requirements of the Act.

- Part 10 gives statutory powers to investigate contracting authorities, with limited exceptions relating to central government and Ministers of the Crown, Welsh Ministers and Northern Ireland departments (amongst others), security and intelligence services and private utilities (s.108(5) and s.2(5)).

Non-Statutory Investigations: The authority for the PCS to investigate central government departments is available through existing oversight powers held by Ministers to oversee the contracting activities of government departments.

How does the PCS investigate?

The PCS reviews information both reactively and proactively. Reactively, the PCS reviews concerns that are received via its [referral form](#). Proactively, the PCS may identify prospective issues via horizon scanning and by analysing data hosted on the Central Digital Platform.

Phase 1 – Pre-Investigation

Anyone can make a referral to the PCS, and can submit anonymously if they choose. When a concern, potentially within the PCS's powers of investigation, is identified in a referral it becomes a case and a step-by-step triage process is followed to decide if a full investigation can be conducted.

The PCS will work with the information that is shared in the referral form, whilst seeking additional information (which may include seeking information from other sources, including the contracting authority and/or requesting further information from the referrer) to ensure that there is sufficient evidence to conduct an informed triage process. This process can take a number of months depending on the complexity of the concerns raised. The PCS will contact the referrer if there is a relevant update on their case.

During the initial stage of the triage process, the PCS must confirm if it **can** consider the referral, by reviewing the concern against its [scope and remit](#). If the concern falls outside of the scope and remit, it cannot be investigated. If the concern does fall within the scope and remit, the next stage of the triage process is undertaken to assess whether the PCS **should** investigate the case and **when** the investigation is to take place. This assessment considers the potential non-compliance and the impact of the potential non-compliance across the four risk areas of financial impact, scale of public procurement exposure, public impact and the area of non-compliance with the Act. The PCS utilises thresholds to standardise the assessment of the four risk areas. These thresholds are 'low', 'medium', 'moderate' and 'high', and can help determine whether an investigation should be launched.

The risk based triage assessment will consider all available information and assess the overall risk and priority of the potential non-compliance against the following:

- **Financial Impact:** How much total spend is involved?
e.g. What is the total spend and pipeline spend (if published) of the procurements and could it have a potential impact on public services and/or national priorities?
- **Scale of the Public Procurement Exposure:** How many suppliers have been impacted by the potential non-compliance?
e.g. Are multiple suppliers impacted? Is there a significant impact on the provision of services to the public?
- **Public Impact:** How much does this issue affect the general public?
e.g. Is there a high level of public and media scrutiny? Does the potential non-compliance significantly undermine trust in public procurement?
- **Non-Compliance with the Act:** Which part(s) or section(s) of the Act have been referenced in the concern?
e.g. Is there critical non-compliance which seriously threatens procurement integrity and necessitates immediate corrective actions?

After an assessment of the “**can, should, when**” factors, the PCS makes a final decision on whether or not to officially launch a full investigation.

Risk-Based Triage System:

In coming to a decision on whether or not to investigate, the PCS will consider and seek to answer the following questions:

Can the PCS investigate?

- Does the PCS have the authority to investigate the concern that has been raised?
- Are the procurements within scope of the Act?
- Are the authorities within the PCS scope and remit?

Should the PCS investigate?

- Is there a potential systemic or institutional compliance issue? This should involve multiple concerns or procurements.
- Does the potential non-compliance impact significantly on one or more of the risk areas?
- Are there compelling reasons¹ TO investigate?
- Are there compelling reasons² NOT to investigate?

When should the PCS investigate?

- High Priority - impact on national priorities.
- Medium Priority - meets or exceeds the threshold for investigation.
- Low Priority - compelling reasons only.

¹ The PCS may decide that there are compelling reasons to proceed, irrespective of whether the referral otherwise meets the threshold for investigation (i.e. impact on supply chain, risk to the public etc).

² Compelling reasons not to investigate could include external factors such as current ongoing/future legal actions or suspected criminal activity, where another authority is better placed (e.g. Serious Fraud Office, Competition and Markets Authority) to take or consider appropriate action, another authority is undertaking an investigation or review (e.g. National Audit Office or another government department or any other commercial or public interest reasons (for example, ongoing significant negotiations; acquisitions and mergers e.g. local government reorganisation).

Please note: Not all referrals will result in an investigation, including those that pass the triage process. If the concern that is raised in a referral is deemed low priority, it may not be progressed to investigation. The PCS will prioritise investigations where the concern exceeds the threshold for investigation (i.e. the assessment has determined the potential non-compliance has a potential high impact on one or more of the four risk areas listed above).

If the PCS also finds instances of potential non-compliance that have not been originally listed in the referral form, it maintains the right to expand the scope of the investigation.

It is worth stating that, if the decision not to investigate is taken by the PCS, this does not prevent that case from being reopened and re-triaged if additional referrals and/or information (via the PCS's proactive horizon scanning or data analysis, for example) is received containing new information.

Advisory Letters

For effectiveness, and to allow for action where non-compliance is discovered but does not meet the threshold for investigation, the PCS may issue an advisory letter to the contracting authority. Advisory letters are not issued in accordance with any legislative powers in the Act and are therefore **non-statutory**.

PCS advisory letters:

- Explain concerns surrounding procurement processes or practices.
- Recommend that contracting authorities carry out a self-assessment of their practices to ensure compliance with the Act.

Acknowledgement from the contracting authority that the advisory letter has been received within **30 days** of it being issued will result in the PCS closing the case (subject to any reopening as set out above).

Phase 2 - Investigation

When the PCS officially launches an investigation, the contracting authority is notified by either a **statutory** or **non-statutory** notice (depending on the type of investigation in question).

The PCS holds **statutory** and **non-statutory** investigation powers. Information regarding the difference between these is set out above.

A formal letter will be sent directly to the contracting authority's senior commercial officer to advise that an investigation has commenced. This letter is a key document and must be read very carefully. It will specify the parts or sections of the Act in respect of which non-compliance is being investigated, as well as a list of documents that are required in the initial stages of the investigation. It may also request other reasonable assistance in connection with the investigation (for example, interviews with relevant staff).

The contracting authority has **10 days** to acknowledge receipt of the letter and **30 days** to provide the requested documentation and/or respond to any requests for reasonable assistance. In some circumstances, additional time may be required by the contracting authority to comply with the request. Any such requests must be formally agreed with the PCS which will be considered on a case-by-case basis.

As the investigation progresses, the PCS may request further documents and/or reasonable assistance to determine whether the contracting authority has been non-compliant.

Phase 3 – Reporting

The format, content and dissemination of PCS investigation reports are dependent on whether the investigation was systemic or institutional non-compliance.

Systemic Investigations: When an investigation concerns systemic issues, contracting authorities will receive an authority-specific report and there will be a consolidated report for publishing. The final published report will draw together findings from across the landscape, using data and evidence from multiple reviews to support sector-wide analysis and recommendations.

Institutional Investigations: When an investigation is institutional in nature, the contracting authority will receive a single report specific to its investigation.

Once the PCS has concluded its investigation phase and has evidenced whether non-compliance has taken place, the final draft report will be shared with contracting authorities prior to publication.

Contracting authorities have **10 working days**, starting on the date the report is sent, to respond to any factual inaccuracies in the report. In exceptional circumstances, a contracting authority may require additional time to respond to inaccuracies. Any such requests must be formally agreed with the PCS which will be considered on a case-by-case basis.

Please note: The final draft report is shared with contracting authorities to provide them with the opportunity to amend factual inaccuracies only. This will *not* be an opportunity to negotiate recommendations but to ensure they are proportionate, achievable and practical to implement within the contracting authorities being investigated. Whilst the specific action required by a recommendation may change, the outcome (compliance with the Act) must remain the same.

The final draft report will often include recommendations that are made to contracting authorities to prevent future instances of non-compliance or improve their processes. Recommendations fall into two categories:

- **Statutory:** When a recommendation is made to contracting authorities, following a statutory investigation, they must have regard to it when considering how to comply with the requirements of the Act in the future and (if specified) respond via a progress report ([see s.109 of the Act](#)) [PDF, 1.6KB].
- **Non-Statutory:** Despite the recommendations being non-statutory, contracting authorities will still be expected to have regard to them when considering how to comply with the requirements of the Act in the future and (if specified) respond via a progress report.

Once the draft has been checked for factual inaccuracies and the report is finalised, the PCS closes the active investigation and will move to monitoring, where appropriate (see “Phase 5 - Publish” below).

Phase 4 – Outcomes

When an investigation concludes, the report is published so that other contracting authorities can learn from the situations that have arisen in PCS investigations.

If a possible need for guidance has been identified during an investigation, the PCS will consider whether issuing guidance is appropriate, and if so, how. This will involve the following:

- Determine how many other instances of non-compliance (in relation to the same part or section of the Act) have been identified by, or referred to, the PCS.
- Reviewing any relevant guidance previously issued on non-compliance with the same (or closely related) parts or sections of the Act. This could include:
 - Guidance from the PCS following earlier investigations.
 - Public Procurement Notices or Notes.
 - Government Guidance on the Act.
 - Other Cabinet Office published guidance on commercial practice.

If previous guidance has been issued by the PCS that has not effectively dealt with the lessons learned, it may be appropriate to update that guidance or withdraw it and issue new guidance.

Guidance may be either:

Statutory: Drafted and published under s.110(1), after a s.108 investigation, setting out lessons learned. Contracting authorities will be under an obligation to have regard to relevant s.110 guidance when considering how to comply with the Act as per s.110(2) and (3). The PCS, acting on behalf of the Minister, is responsible for drafting s.110 guidance and the publication of that guidance.

Non-Statutory: If an investigation has not been carried out in accordance with s.108 (i.e. because the contracting authority being investigated was not covered by the s.108 powers), non-statutory guidance may still be published where it may benefit contracting authorities.

The PCS will ensure all issued guidance updates, whether **statutory** or **non-statutory**, are published on its [GOV.UK](https://gov.uk) page and communicated as appropriate through existing Cabinet Office commercial and/or Government Commercial Agency channels.

Phase 5 - Publish

The PCS may publish all investigation reports on its [GOV.UK](https://gov.uk) page regardless of whether non-compliance is discovered or whether the investigation was **statutory** or **non-statutory**.

Progress Reports: Where required, the contracting authority must send progress reports to the PCS, and these may be published. Progress updates will be requested at agreed intervals (for example 3, 6 and/or 9 months) and will be proportionate to the non-compliance identified.

Progress reporting will continue to be monitored until all recommendations are satisfactorily implemented or the non-compliant behaviour has otherwise been remedied.

Where the contracting authority does not follow the recommendations issued by the PCS, by either taking no action, or a different action than what was recommended, then the progress report should include the authority's reasons for doing so.

If the contracting authority's investigation report and improvement plan has been published, the PCS will publish the authority's progress reports against the improvement plan, once received. Where the authority fails to implement the improvement plan and does not provide a progress report, then the failure to do so may also be published.

The PCS will publish progress report updates on its [GOV.UK](https://gov.uk) page to show progress and outcomes. Once appropriate action has been taken by the contracting authority to remedy the non-compliance, the monitoring phase of the investigation will be closed.

Frequently Asked Questions

Where do I find out more information on the PCS?

A service description for PCS can be found on the Procurement Compliance and Oversight (PCO) [GOV.UK](#) website. Its [scope and remit](#) can be found on the PCO [GOV.UK](#) page. The PCS also has a sister service within the PCO, the Public Procurement Review Service (PPRS). For more information on the PPRS, please find a link to their service description on the PCO [GOV.UK](#) page. PPRS's [scope and remit](#) can also be found on the PCO [GOV.UK](#) page.

How do I engage with the PCS?

The PCS is a small team, made up of case workers. All initial communication with the team must be conducted via the [referral form](#). The team is notified of each new referral form via a shared inbox. Once a case has commenced, the same case worker will liaise with the referrer and/or the contracting authority, where appropriate. Our service operates Monday to Friday during normal business hours.

If the PCO launches an investigation against the contracting authority that has been referred, does that mean that it is non-compliant?

A decision to investigate is **not** confirmation of non-compliance and the information that the contracting authority is subject to a PCO investigation may be commercially sensitive and should be treated accordingly. We therefore recommend that information surrounding the investigation is shared on a 'need-to-know basis'.

Can the PCS investigate breaches under PCR 2015?

The PCS has been set up under the new legislation and will only investigate contracts procured under the Act. The [Public Procurement Review Service](#) will continue to review contracts under both PCR 2015 and the Act.

Does the contracting authority get to know who makes a referral?

Those who submit a referral to the PCS reserve the right to remain anonymous to the contracting authority, although information provided by the referrer is likely to be conveyed to the authority where an investigation is launched. The draft investigation report will be finalised with the contracting authority. Once the investigation report has been finalised, the next point of contact with the referrer will be to notify them of the publication of the report on [GOV.UK](#).

Can the PCS investigate suppliers?

The PCS does not investigate suppliers. The service designed to protect public money from suppliers who pose a risk to public procurement under the Act is the [Debarment Review](#)

[Service \(DRS\)](#). DRS manages debarment for all exclusion grounds, except those relating to national security, which the National Security Unit for Procurement (NSUP) is responsible for. The DRS is part of the Government Commercial Agency. NSUP is part of the Cabinet Office.

Can the PCS provide assurance on a live procurement?

The PCS is unable to review or comment on contracting authorities' potential sourcing strategies. The interpretation of the Act is the role of the contracting authority.

The route to market is deemed by the contracting authority in the sourcing strategy for the required needs. Contracting authorities should always seek their own independent legal advice where appropriate.

When does the PCS get involved with contracting authorities?

It is anticipated that the PCS will only become involved when it appears as though there are repeated instances of non-compliance with the Act within the contracting authority, or a similar breach across a number of authorities.

Does the PCS accept referrals about individual procurements?

Generally the PCS will not investigate the awarding of individual contracts. However, even where PCS cannot commence an investigation, referrals will be recorded to enable identification of patterns for potential investigations in the future.

Can the PCS advise on other agencies or authorities involved in procurement compliance?

The PCS is unable to comment on the scope or remit of other agencies or authorities such as the Government Commercial Agency (GCA), the Competition and Markets Authority (CMA) or the Public Sector Fraud Authority (PSFA).

Any queries about their role in relation to enforcement would need to be directed to those organisations directly.

Can the PCS enforce procurement law following an investigation?

As with most legal obligations upon public bodies, enforcement is generally via the courts, where relevant parties can either utilise remedies provided in legislation (see Part 9 of the Act) or judicial review.

Who will the PCS inform if they decide to launch an investigation?

The PCS will contact the contracting authority's senior commercial officer or the most senior staff member to inform them of a pending investigation. Depending on the investigation this may be via a **statutory** (s.108(2)) notice requesting documents or assistance or a **non-statutory** letter requesting documents or assistance. The referrer will not be advised at the time if an investigation is launched, but will be notified of the publication of any report following the conclusion of the investigation.

What happens if the contracting authority is found to be non-compliant with the Act?

If the PCS conducts an investigation and finds that the contracting authority has not been compliant with the Act, it will set out the action(s) that the contracting authority should take in order to comply and the timing required for recommendations to be implemented.

This will be tracked via an action plan created by the PCS, which will require progress report(s). Both the investigation report and the progress report(s) will be published on [GOV.UK](https://gov.uk).

What happens if the contracting authority is found to be compliant with the Act?

If PCS conducts an investigation and finds that the contracting authority has been compliant with the Act, it may still make recommendations that advise on what can be done to avoid any future doubt over compliance with the Act. Reports will be published on [GOV.UK](https://gov.uk).

Where the PCS has issued recommendations, does the contracting authority have to engage with them?

The contracting authority will have 10 working days, starting on the date the report is sent, to engage with the PCS to discuss recommendations. In exceptional circumstances, a contracting authority may require additional time to respond. Any such requests must be formally agreed with the PCS which will consider them on a case-by-case basis.

This will not be an opportunity to negotiate recommendations but to ensure they are proportionate, achievable and practical to implement within that contracting authority. The specific action required by a recommendation may change, but the compliance outcome must remain the same.

Does PCS provide punitive measures or reparation?

The PCS aims to improve the capability and practices of contracting authorities for the benefit of everyone involved in public procurement by ensuring their compliance with the Procurement Act 2023. The PCS does not provide any punitive measures or reparation, but it may issue recommendations or guidance where appropriate.

What will the PCS publish?

The PCS will publish investigation reports, recommendations (usually as part of the investigation report) progress reports and guidance on [GOV.UK](https://gov.uk). Additionally it intends to produce a combined annual report alongside the [Public Procurement Review Service](https://gov.uk).