



# Procurement Bill podcast:

## Episode 5 – Challenges and remedies

### Challenge process and remedies remain substantially the same

Disgruntled bidders can still challenge by issuing proceedings in the High Court.

The timescale to bring a challenge (30 days) will remain.

As to remedies, where a contract has not been entered into, a court can still set aside the contracting authority's decision to award a contract to its preferred bidder, re-do an evaluation process and / or require payment of damages. No damages cap has been included (as suggested by the Green Paper).

If a contract has been signed already, the court can set it aside on similar grounds as already exist for declaring a contract 'ineffective', such as failing to publish a contract award notice or observe a standstill period.

### New procurement oversight body

An oversight body (e.g. government department) can investigate the procurement activities of a contracting authority and issue recommendations and guidance if it considers the contracting authority has not or is likely not to comply - referred to as a 'section 97 recommendation'.

Contracting authorities must have regard to the recommendations and provide progress reports setting out what action, if any, they have taken.

### Changes relating to automatic suspension

The automatic suspension, which comes in when a claim is started, will not apply if the contracting authority was notified of the claim **after** the standstill period has passed.

So, following the standstill period, a contracting authority is **not** prevented from entering into a contract or modifying an existing contract **even if** the contracting authority has been told that a claim form has been issued. This is one to watch as the Bill drafting progresses.

Contracting authorities may, therefore, voluntarily observe a standstill period to shorten the period to which a suspension can apply to the duration of the standstill period.

Bidders will need to challenge before the expiry of standstill.

### Process for applying to lift automatic suspension remains unchanged

When a contracting authority wants to apply to court to lift the automatic suspension, the court must consider the public interest in avoiding delay in the supply of the goods, services or works and the interests of suppliers. There is still the need to assess whether damages is an adequate remedy for the challenger. These are already part of the current case law test for lifting the suspension.

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