

# A new era for automatic suspensions:

## ***Parkingeye v. Velindre University NHS Trust and Anor* – High Court interprets the new automatic suspension test under the Procurement Act 2023 for the first time**

May 2026

### Overview

The High Court handed down the first judgment on the test for lifting an automatic suspension under the Procurement Act 2023. The court refused to lift the suspension and confirmed that Section 102 of the Procurement Act 2023 introduces a substantively different test from the previous *American Cyanamid* approach. The key shift is that adequacy of damages is no longer decisive. Contracting authorities seeking to proceed with contract award will need clear evidence that lifting the suspension serves the public interest, not merely that the new contract is preferred or commercially beneficial.

### Background

Parkingeye was the incumbent provider of car park management services at NHS sites operated by Cardiff and Vale University Health Board. Velindre University NHS Trust provided procurement services for the tender. The procurement began in July 2025 and covered car park management services across 59 car parks at five NHS sites in Wales. The contract was said to be worth between £10 million and £20 million.

The contracting authority decided to award the contract to National Parking Control Group Ltd (NPCG). Parkingeye issued proceedings during the standstill period, which triggered the automatic suspension under Section 101 of the Procurement Act 2023. The contracting authority could not enter into the contract with NPCG unless the court lifted the suspension.

Parkingeye's underlying claim challenges the lawfulness of the procurement and award decision, although those issues were not determined at this stage. The allegations include errors in the tender and award notices, the stated value and classification of the contract, and whether the contract should have been treated as a concession contract. Parkingeye also alleges flaws in the evaluation process, including the use of unclear or undisclosed criteria and a failure to assess bids on a like for like basis. While the authority argues that some of these claims are in any event time-barred, and the court described aspects of the claim as having a "scatter-gun"<sup>1</sup> quality, the merits of the claim are not decisive on the application to lift the suspension.

### The position under the Public Contracts Regulations 2015

Under the Public Contracts Regulations 2015, applications to lift an automatic suspension were considered by reference to the *American Cyanamid* test.<sup>2</sup> In practice, that test focused heavily on whether damages would be an adequate remedy for the claimant if the suspension were lifted and the claimant later succeeded at trial. Since many claimants are commercial operators, courts often found that damages could compensate them for the loss of the contract.

As a result, contracting authorities were often able to lift automatic suspensions that prohibited them from concluding contracts with the successful bidder. The practical effect was that, once the suspension was lifted and the contract was entered into, the challenger's remedy was often limited to damages.

That approach often gave contracting authorities significant tactical leverage. If the suspension was lifted, the authority could enter into the contract with the successful bidder. The challenger's remedy would then often be limited to damages, rather than preserving any realistic prospect of stopping the award or obtaining a rerun, or indeed being awarded the contract itself (all of which are likely to be preferable outcomes for a claimant over the potential award of damages).

1 [80].

2 *American Cyanamid v. Ethicon* [1975] AC 396

## The new position under the Procurement Act 2023

The Procurement Act 2023 has introduced a new statutory test. Section 102 of the Procurement Act 2023 requires the court to consider the public interest, suppliers' interests and any other matters the court considers appropriate.<sup>3</sup>

As part of the assessment of suppliers' interests, the court must consider whether damages would be an adequate remedy for the claimant. The *Parkingeye* judgment confirms that this remains relevant, but it is now only one aspect of the wider statutory balance and no longer operates as a gateway issue.

The court held that that Section 102 test is substantively different from the *American Cyanamid* approach. The judge rejected the argument that the public interest in lawful procurement is adequately protected by damages after the event. The focus is on lawful award, not simply on remedies for unlawful award:

"I read it as recognising a public interest that, where the lawfulness of an award of a contract is disputed, the contract should not be awarded until that dispute has been determined."<sup>4</sup>

Although the court held there was no presumption that suspensions must always remain in place, and lifting of the suspension remains fact-specific, the judgment indicates that the public interest may often support maintaining the suspension unless there is a strong countervailing reason to lift it.<sup>5</sup>

In interpreting Section 102 of the Procurement Act 2023, the court noted that external aids to interpretation, such as government white papers and reports, may assist and may provide context.<sup>6</sup> The same applies to the [Cabinet Office guidance](#) on the Procurement Act 2023, which is intended to assist procurement practitioners in understanding the new regime and its policy intent but remains subordinate to the legislation.

### The *Parkingeye* judgment

The court accepted that damages would, in principle, be an adequate remedy for *Parkingeye* and rejected *Parkingeye*'s arguments on difficulty of quantification of damages and reputational harm.

Under the previous legislative regime, that finding may have pointed strongly towards lifting the suspension. However, under Section 102 of the Procurement Act 2023, it is no longer decisive. The public interest analysis therefore becomes central. The existing car park management services continue under the incumbent arrangements, with no evidence of service interruption or serious harm to users.

Although the new contract offered benefits, including an on-site helpdesk, improved permit management, revenue sharing and an enhanced appeals process, the court treated those benefits as "very modest" in the circumstances.<sup>7</sup>

That conclusion was reinforced by *Parkingeye*'s offer to match certain benefits during the suspension period, and by the lack of evidence that extending the existing arrangements creates any sufficiently serious legal or operational risk. The balance therefore favoured maintaining the suspension in place, and the court refused the application.<sup>8</sup>

### Key takeaways

Contracting authorities will likely need to think about suspension risk much earlier in the procurement life cycle. For high-value procurements, the public interest case for proceeding with award may need to be built before the award decision is made. In practice, that means documenting urgency, service impact, transition risks, extension limits and user consequences in real time, rather than trying to evidence them only after proceedings are issued.

This decision makes the new eight-working-day standstill period more commercially significant. Unsuccessful bidders may use it not only to assess whether there is a legal claim, but also to assess whether the automatic suspension can realistically be maintained. This puts greater pressure on authorities to ensure that award letters, assessment summaries, notices and evaluation records are complete and compliant, accurate and capable of withstanding immediate scrutiny from an unsuccessful bidder and any legal advisers.

The judgment may also strengthen the position of incumbent suppliers. Where the incumbent can continue delivering (and agrees to continue delivering) the service, an authority may find it harder to show that immediate award to a new supplier is required in the public interest. Interim offers by the incumbent to maintain service levels, match certain benefits or hold pricing may further reduce the force of arguments that lifting the suspension is necessary.

At the same time, successful bidders may become more active participants in suspension disputes. If delay affects mobilisation, staffing, subcontracting, pricing or financing assumptions, they may be more likely to provide evidence of commercial prejudice. Contracting authorities may therefore need to coordinate more closely with winning bidders when preparing applications to lift the suspension.

Overall, the automatic suspension may become a more meaningful commercial lever in procurement challenges. Under the previous regime, the application to lift was often the pivotal point in a procurement challenge. Once lifted, the authority could enter into the contract with the successful bidder, and the claimant was usually left with a damages-only claim.

3 [36].

4 [31].

5 [36].

6 [26], *R (O) v. Secretary of State for the Home Department* [2022] UKSC 3 at [30].

7 [66].

8 [85].

From a financial point of view, the prospects of proceeding with a procurement challenge for what might be several years with the only possible outcome being an award of damages (which might in itself be difficult to evidence or quantify) do not tend to be attractive; claimants would therefore have their work cut out before the lifting hearing in the hope of persuading the authority to abandon the award, reevaluate or settle. *Parkingeye* may alter that dynamic. If suspensions are more likely to be maintained, challenges may become more viable beyond the initial application stage, and successful bidders may face greater uncertainty after award.

However, the suspension remains a procedural tool and does not guarantee that the challenger will ultimately be awarded the contract, or indeed that the automatic suspension will not be lifted when the contracting authority makes such an application. The court also found that a cross-undertaking in damages from the challenger remains appropriate, which may have a deterrent effect.

## Practical implications

For suppliers and challengers:

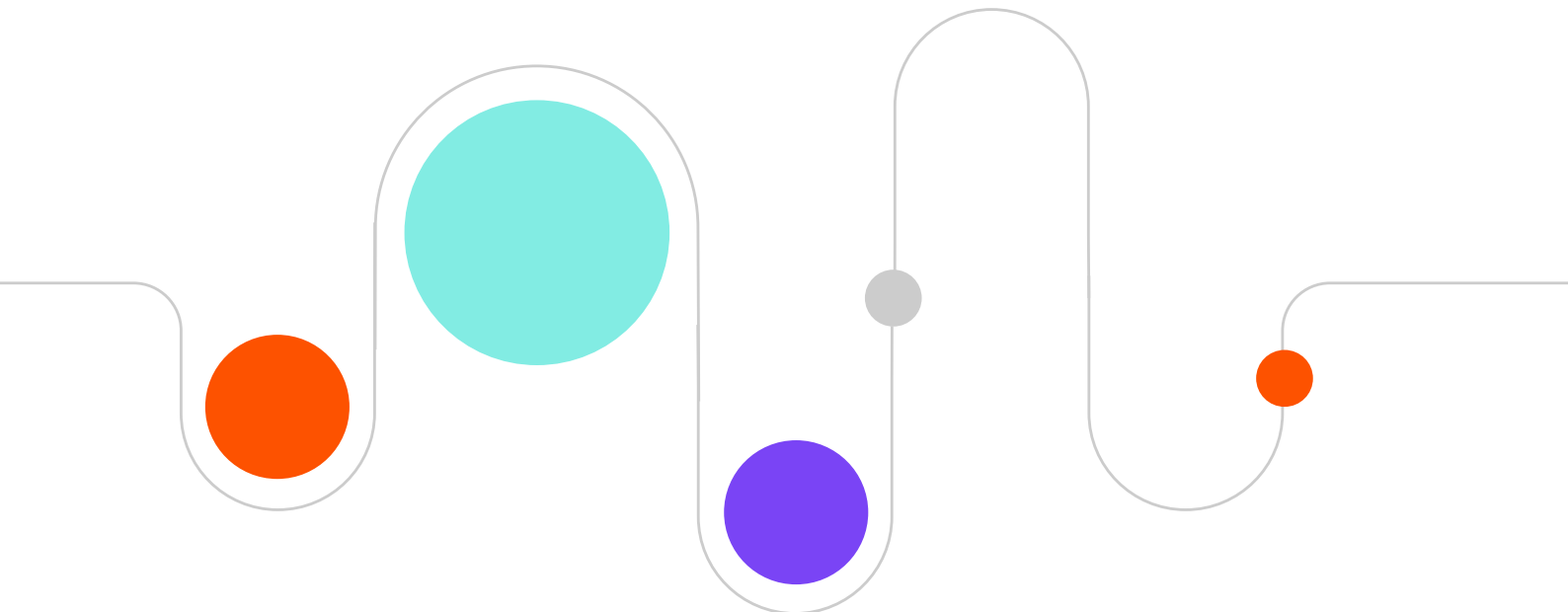
- For bidders (particularly incumbent suppliers), the judgment potentially strengthens the tactical value of issuing proceedings during the standstill period.

- The judgment suggests that:
  - Maintaining a suspension may now be more achievable.
  - Courts may be more receptive to arguments (albeit the merits are not determined at this preliminary stage) on procurement integrity and transparency rather than the blunt tool of adequacy of damages.
  - Contracting authorities may face increased settlement pressure where suspension risks threaten procurement programme timelines.

For contracting authorities:

- Contracting authorities may face:
  - Greater difficulty lifting automatic suspensions
  - Increased risk of challenges and procurement delay following challenges
  - Greater pressure to ensure that evaluation records and moderation documentation are robust
  - Heightened litigation leverage for unsuccessful bidders

The decision is only the first in a developing body of Procurement Act 2023 case law. However, it is clear that the case already underlines the importance of getting procurement strategy correct from the outset.



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