PLA working paper – effectiveness of current review system

Introduction

The current review and remedies regime relating to public procurement decisions in England and Wales was introduced in 2009, implementing the Remedies Directive 2007. This was then updated in 2011 when EU case law made it necessary to provide clarity to limitation periods and there were further legislative updates. While further Directives were enacted in 2014 and transposed into English law in a series of regulations, the main ones being the Public Contracts Regulations 2015, the review and remedies regime was not changed in substance. The PCR 2015 include the entire review regime. The review regime is replicated in the Concession Contracts Regulations 2016 and the Utilities Contracts Regulations 2016. The comments in this paper are in relation to decisions made under the PCR 2015, but the majority of those will also apply to processes under the CCR 2016 and the UCR 2016.

The remedies available under the PCR 2015 to all economic operators (those who have, or believe they should have, been part of the procurement process in question) are:

- Setting aside the decision due to unlawfulness
- Directing what changes should be made to a process or its documents for a procurement process to be conducted lawfully
- Damages to compensate for loss of opportunity
- Automatic suspension where a claim is brought after contract award but before the contract in question has been entered into
- Ineffectiveness, in particular circumstances and where the contract has already been entered into.

In England and Wales, formal proceedings are started in the High Court, usually through the Technology and Construction Court (the TCC). The TCC has become experienced in dealing with procurement challenges and has produced a set of protocols to assist in the smooth running of a claim. These take into account, for example, the short timescales in which a claim must be issued once the breach has become apparent.

There is also the possibility, in certain circumstances, for a claim to be brought by way of Judicial Review or for a private law breach of contract. Neither of these routes to remedy are specific to procurement claims.

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Until now, government policy has been to keep claims relating to procurement law as part of the jurisdiction of the courts, rather than a separate lower tier body, such as we have for employment claims. However, the cost and time that procurement challenges incur mean that it may be appropriate to reconsider that approach as part of the overall review of remedies following the UK's exit from the EU.

This paper has taken some views set out in the paper by the PLA to Cabinet Office in January 2019. This new paper focusses on the elements of the current review process that impact on whether, in our experience, a contracting authority or economic operator will feel that the process and outcome is satisfactory. Except where it is a natural conclusion of an element of the current process, this paper does not look at alternative forums in detail.

The paper gives each element a RAG rating, with green elements being seen as fit for purpose without change, amber being generally workable but some amendments would improve the position, and red elements being in need of change.

Summary of current review process

The group considered the following times when a procurement challenge may be brought:

1. During a PCR-regulated tender process
2. After the contract award decision has been shared with bidders
3. Following a modification or extension of a current contract
4. Following the direct award of an above threshold new contract
5. Where a below threshold contract is awarded
6. Following a decision to award a non-PCR regulated contract

This table provides a high-level summary of the group's findings across all situations set out above, which are expanded upon in the remainder of this paper.

Forum	While the technology and construction court is a high quality forum for allowing claims to be heard it comes at a financial cost and does not deliver a swift conclusion. Particularly for issues arising before contract award there is a disincentive to bidders challenging.

	For procurements that are either below the EU threshold or do not fall under the PCR, Judicial Review or a breach of contract claim are not entirely suited to procurement challenges, particularly those of a lower value.
Limitation	For claims covered by the PCR the 30-day limit on the majority of claims is seen to be reasonable. For non-PCR claims, the time limits may also be linked to those under the PCR but could be longer. This is generally a positive.
Costs	A common observation made across all the different areas of challenge was that the cost of bringing a claim that included a request for damages was sometimes disproportionately large and off putting to many economic operators. It was felt that most economic operators would not object to paying a fee but it may helpful to have something more like a sliding scale depending on the stage of the process or the value of the contract. In addition to this the current system means that the costs of legal fees and expert advisers can easily climb above £50,000 which is also likely to deter many challenges. This is obviously a positive for contracting authorities but not so for economic operators. There is also the issue of costs being awarded against the unsuccessful party which brings a risk from both a contracting authority and an economic operator perspective. This does sometimes encourage realistic settlement offers but a system where both parties bore at least some of their own costs or recovered a fixed costs only may result in more effective remedies being available to lower value procurements.
Interim relief	For PCR regulated claims the use of automatic suspension only at contract award stage is helpful to contracting authorities as they can progress their procurements up to award stage. At the contract award stage, the use of automatic suspension is generally viewed positively by economic operators because they can be confident that some form of a claim will be heard before the contract can be entered into. For non-PCR regulated claims i.e. judicial review it is possible to request an interim injunction that would prevent the contract from being entered into but there are not many cases that demonstrate this successfully and therefore it is not seen to be a suitable remedy in a procurement context.
Disclosure	For claims brought under the PCR the balance between the positive benefit of disclosing key and relevant documents and the time and cost that it takes to do so is not always found. It has been suggested that the parties could agree at the beginning of the tender process a standard set of procurement documents that would be disclosed if there was a challenge

	which would assist in some of the issues around for example setting up confidentiality rings which of themselves can create court applications and take considerable time and expense. For non-PCR regulated challenges mainly through judicial review, the disclosure system for JR does not seem to be suitable as more limited documentation is available.
Procedure	For PCR regulated claims there are a number of different elements to the procedure: witness evidence, statements of case, and oral hearings. The balance between the benefit of receiving information from witnesses and statements of case as well as oral hearings versus the time and cost element to processing that is not always struck. Moving forward, live witness evidence could only be allowed for claims above a certain value .There could be a simpler defence and reply system with shorter timescales. For those claims undertaken by judicial review it was felt that while the procedure is able to be adapted to accommodate procurement claims the overall process is not well suited to speedy and cost effective case management required for procurement claims. In particular, for below threshold claims the costs of following these processes seem to far outweigh the benefits and therefore tend to prevent economic operators from wanting to bring a below threshold challenge.
ADR	ADR is encouraged through the TCC Guidance. Formal ADR such as mediation is not used as frequently as it might be. Informal ADR through negotiation is incredibly common at many different stages of a procurement process however, the timescales for bringing a claim under the PCR mean that it would only really be applicable after a stay of proceedings had been granted by the court. For non-PCR processes, ADR may provide the basis of identifying issues and it is certainly encouraged as part of the general pre-action protocol but usually it is hard to adapt it the way it is generally available or effective for this kind of procurement challenge.
Substantive relief	The fact that judgements are binding and the decisions made public ensure a clear understanding for both parties and provide useful guidance for future procurement. Other remedies available such as set aside or amendments to documents are not used very frequently and in practice could be increased particularly for disputes mid-process to allow for the process to continue with guidance.

	Damages are the prevalent remedy and while this is positive in terms of giving a successful challenger financial compensation, in reality the set aside remedy would often be as beneficial because it would give them another opportunity to bid and would be less financially burdensome for the contracting authority. In relation to a claim for ineffectiveness the current position is the right one, it ensures that there is a strong and clear justification for changing the position by only allowing it in certain circumstances and the fact that a claim must be made within six months of the start date of the contract gives contracting authorities some degree of certainty over when the risk of a claim will reduce or disappear. For those claims not regulated by the PCR then judicial review is seen to be of some help to provide a remedy for non-PCR regulated claims. For low value claims it was not seen to be an effective remedy apart from possibly some form of interim relief to pause the process.

In-tender proceedings challenging alleged unlawful criteria / requirements /decision mid-procedure (i.e. before the contract award decision)

Remedy/process	Strengths	Weaknesses	RAG rating
Forum			
Forum - Technology and Construction Court (TCC) for most procurement challenges brought by economic operators	This is an expert forum for thorough determination of this type of litigation – leading to invaluable precedent and guidance. Public availability of judgements adds to the usefulness of this forum. The disclosure and evidential tools available to parties who litigate through the TCC provide opportunity for thorough interrogation of the dispute The TCC is also open to (and has) procurement specific guidance.	Litigation through the Court process is costly and lengthy - even for expedited claims (e.g. claims taking 6 months or more from date of issue to trial is not uncommon) The Court is however open to innovation and reform, as evidenced by pilots for disclosure and shorter trials, both of which aim to speed up and simplify the litigation process.	The high quality of the current system is positive but this comes at a financial cost. Query whether comparable quality could be achieved with a cheaper and simpler system or process?
Complaints brought by parties (as opposed to ex officio investigatory role)	Procurements are only challenged if they are of sufficient concern (usually) to one or more suppliers	Some flawed procurements may go ahead un-challenged	Suggest no change. An ex-officio role would be a significant change to what the UK is currently used to and is probably not desirable? Experience from other member states who have adopted ex-officio roles suggests that the review process can be significantly delayed as a result by additional work entailed.
Limitation			

Remedy/process	Strengths	Weaknesses	RAG rating
Claims seeking any remedy other than ineffectiveness have to be brought within 30 days of when the challenger knew (or ought to have known) about the grounds for the claim	A short limitation period can assist the contracting authority in taking risk based decisions mid-process (and notifying them to participants) without the threat of a challenge hanging over it indefinitely. This includes allowing contracting authorities to move through a procurement process, with the confidence that issues of concern cannot be left until the contract award decision has been announced. Likewise, bidders cannot hedge their bets until they know they have not been successful. Avoids suppliers waiting to see whether they have won before bringing a challenge (and then seeking to challenge multiple aspects of the process).	Suppliers are often deterred from challenging mid-process as they consider it may harm their prospects of success in the procurement. At the end of the process, a supplier may be time-barred from challenging something that is clearly unlawful meaning that the contracting authority may have failed to identify the most economically advantageous tender.	A period of 30 days in respect of issues arising is probably not unreasonable however in practice challengers frequently do not exercise their rights within that timeframe while they are mid-process. Query whether a simpler, quicker (perhaps paper-based) process could avoid some of the perceived stigma attached to challenges mid-process?
Costs			
Cost of starting proceedings – most procurement challenges carry an issue fee of at least £10,000 as they include a request for damages in excess of	This does not deter suppliers challenging a high value procurement. A fee of some sort deters frivolous / vexatious claims but query whether the lower non-financial remedy fee does that, should all fees be linked	This does deter SMEs / suppliers challenging lower value procurements. The fee is non-refundable and has to be paid at the start of proceedings, often when the merits of the challenge are	Most suppliers would probably not object to paying a fee of some sort, but query whether a fee which is linked to the length and complexity of the review (and possibly to the value of the procurement), or a fee which is payable in stages may be a more proportionate method?

Remedy/process	Strengths	Weaknesses	RAG rating
£200k along with a fee of £528 for non-financial remedies	to the value/complexity of the contract or review?	unclear. Some entities may try to avoid this by limiting their claim to non-financial remedies but if the authority / utility proceeds with the tender process and awards the contract, the claimant would potentially be left without a remedy.	
Costs of taking claims through the Courts are high and a significant proportion of such costs have to be incurred at a relatively early stage in proceedings when the merits of the challenge are often unclear.	Costs reflect the fact that (i) parties often employ expert advisers; and (ii) parties are required to set out their claims in detail and provide detailed disclosure and witness evidence to enable the Court to undertake a very thorough review of the process under challenge.	Costs can often run to hundreds of thousands of pounds, if not millions. This can be seen as a serious deterrent to entities wishing to challenge the outcome of lower value procurements.	The high cost of taking claims through the Courts reflects the fact that expert advisers are engaged to assist with the process and the very thorough review undertaken by the Court. However, the very high costs involved are likely to deter challenges to lower value procurements, particularly by SMEs.
Costs awards - as matters stand the general rule is that the winner recovers its costs from the losing party	The winner is reimbursed for the legal costs it has spent in pursuit of the claim / its defence which has proved well-founded. Encourages realistic settlement offers (including the rules around Part 36 offers etc.).	Legal costs can be very high and the prospect of paying the other side's costs as well as one's own costs can sometimes act as a deterrent in the pursuit of a meritorious claim / defence (particularly in relation to lower value procurements).	Whilst the principle appears sound, query whether, if the process was cheaper, this would be required in all cases. A system which involved lower costs with each party bearing its own costs is likely to address this issue. A two tier system which provided for both parties to bear their own costs (or the

Remedy/process	Strengths	Weaknesses	RAG rating
	Deters pursuit of weak claims / defences	Even if successful, full cost recovery is unlikely. The successful party is still likely to have incurred significant unrecoverable costs. This can also deter potential challengers and is unfair on the party whose position has been vindicated. This may be a deterrent to contracting authorities defending a claim, rather than agreeing to an out of court settlement, even when they have a strong case to make. A perception that the CA might be risk averse can sometimes lead to certain negative tactics by some larger suppliers.	recovery of fixed costs) in relation to lower value challenges may result in more effective remedies being available in relation to such procurements.
Interim Relief			

Remedy/process	Strengths	Weaknesses	RAG rating
No automatic suspension on procurement process	Where a challenge is made to any decision / document other than the contract award decision, there is no automatic suspension. An interim injunction is still available, but suppliers must apply to Court which incurs high cost in a short amount of time and is difficult to achieve. For the contracting authority, they can progress with their procurement with a relatively low practical risk of it being paused/halted mid-process	It is costly and not straightforward for a supplier who feels they have been unfairly treated in a procurement process to put a pause on the procurement process. In practice, there are fewer claims issued mid-process and few applications for injunctions are brought.	The ability for procurements to progress unimpeded is likely to be a positive, but query whether a swifter/cheaper process for resolving disputes mid-process would help to strike the balance between certainty/progress of procurements and challengers being able to raise concerns and have them resolved swiftly?
Disclosure			
Disclosure of documents	Within the existing system, the Civil Procedure Rules ("CPR"), associated case law and Appendix H to the TCC Guide provide extensive tools and methods governing disclosure which often result in the disclosure of a wide range of documents and communications which assist with an in depth review of the relevant issues.	Extensive early disclosure mid-process may give rise to difficulties regarding confidential information concerning other tenderers - can lead to complexity and divergence of approach regarding confidentiality rings "Standard disclosure" can be very costly and also contributes to the length of	Query whether a balance can be found between the benefits of disclosing key and relevant documents on the one hand and cost and time on the other. Query whether an accepted practice regarding maintenance of a standard set of procurement documents (e.g. all tender documents, clarifications, consortium changes, waiving of requirements, evaluation/moderation) would assist?

Remedy/process	Strengths	Weaknesses	RAG rating
	Early disclosure: early disclosure mid-process is possible (but see across). "Standard disclosure": During the litigation, the period for disclosure usually post-dates the Case Management Conference (CMC). Disclosure in procurement cases frequently still takes place on the "standard basis. Whilst there are disadvantages (see across) this often entails a thorough search for documents giving a high degree of confidence that all/most relevant information is before the Court. Confidentiality rings have become common practice and can enable swift review of confidential information by the lawyers instructed. This can sometimes lead to issues being resolved quickly.	time it can take for procurement cases to come to trial. Often this additional time and cost results in only minimal additional documents which are material to the dispute. A lengthy disclosure exercise also has the potential to hamper swift resolution of disputes mid-process.	Query whether the practice around what information from a bid can be shared with a competitor outside of a confidentiality ring can be more standardised (e.g. established at tender submission stage) with a view to reducing uncertainty and satellite litigation regarding confidentiality rings?
Procedure			
Witness evidence	The present system in the TCC offers the ability to prepare written witness evidence and to cross-examine witnesses, enabling the parties properly to understand what may have gone wrong in a tender process and get to the underlying	The process of obtaining written witness evidence can be costly and time consuming. Witnesses do not always perform well under the	Consider whether witness evidence is of sufficient benefit. If so, whether the benefits can be achieved solely through written evidence (or whether written evidence plus oral cross-examination is required)? Another

Remedy/process	Strengths	Weaknesses	RAG rating
	facts of the matter which may be harder to spot on a paper based review. Helps to weed out any inconsistencies / inaccuracies in the written evidence and to explore other issues which may not have been covered in detail in the written statements.	pressure of oral cross-examination. The potential for witnesses to be subject to cross-examination and judicial criticism can deter otherwise competent people from taking key roles in procurement processes (such as evaluators).	possibility would be to only allow live witness evidence if the claim is above a certain value.
Statements of case	Challengers are required to set out their complaints in detail at an early stage. Sequential exchange of statements of case means both parties have the opportunity to consider the other party's position in detail and to respond accordingly. This has the advantage of identifying in detail the material issues in dispute at a relatively early stage.	The sequential exchange of statements of case can be time consuming. It can take well over two months from an award decision to close of pleadings. The cost of preparing detailed pleadings can be high.	Useful to have the opportunity to respond to the other party's claim rather than setting out Defence in a vacuum. However, timing and formality may be particular issues that deter people from making complaints mid-process - can the system be simplified or the time limits for Defence and Reply could be shortened to speed up the process?
Oral hearings (as opposed to paper based review)	The TCC decides cases (and interim applications) predominantly based on an oral hearing of the evidence. This enables the advocate for each party to put the case to the judge and for the judge to ask questions in real time and (often) for decisions to be made on the same day. Good	Delay and cost. A paper based system would likely be significantly cheaper and quicker. Plus there is a reluctance to engage in costly / lengthy disputes mid-process	Whilst having an oral hearing likely contributes to the sense of having a "fair" hearing, query whether this is **always** outweighed by the cost/delay. Could we have a paper-based system for some decisions/applications (particularly mid-process) as is now the case for other forms of

Remedy/process	Strengths	Weaknesses	RAG rating
	opportunity for all evidence to be tested. Greater sense of a “fair” hearing.		investigation into action of public bodies such as judicial review or ombudsman decisions?
ADR			
ADR is possible but not mandatory.	The TCC Guide states that ADR process are encouraged and the Court may exercise its case management powers to order a stay in proceedings to allow the parties to engage in ADR.	The short limitation periods involved in procurement cases means that the opportunity for pre-action ADR is extremely limited. There is also very limited opportunity for ADR in claims seeking a set-aside order, as these are often conducted on an expedited basis. There is greater potential for ADR in claims where the only remedy sought is damages, as there is less urgency in such claims. However, experience suggests that even in such cases, the use of formal ADR is limited.	If the current system is maintained, an increase in the use of ADR (particularly pre-action ADR) such as Expert Neutral Evaluation may enable many disputes to be avoided at a much lower cost and in a much more efficient manner. ADR is possible in the context of procurements – but, mid-process, most suppliers want a fair opportunity to compete.
Substantive Relief			

Remedy/process	Strengths	Weaknesses	RAG rating
Effect of judgments	Judgments are binding on all parties and there is a right of appeal to the Court of Appeal and then the Supreme Court in certain cases. Often very clear reasons given for decisions which can assist contracting authorities to learn from the mistakes of others. Can also help challengers know whether it is worth pursuing challenges in similar circumstances in the future.	Little use of directive judgements as to amendments to documents, which economic operators would find useful to have as a check against any new procurement documents and contracting authorities would have as a baseline as to compliance.	The binding nature of judgments/decisions is positive and it is likely to be positive to have a robust appeals process.
Availability of set-aside remedy / ability of the Court to order documents to be amended	This is an apparent strength for challengers as it allows at least the prospect of getting an unlawful decision mid-process set-aside and/or an unlawful document amended (e.g. to correct an unlawful award criterion). However, it is little used in practice (see across)	As challenges are relatively rarely issued mid-process, these remedies appear rarely used	The availability of these remedies is positive however query whether their availability and use, in practice, could be increased particularly for disputes mid-process?
Availability of damages remedy	Where a set-aside remedy is not possible, damages can at least give some monetary compensation for what is lost	There are difficulties associated with calculating damages in procurement cases (e.g. loss of chance). Can lead to contracting authority (and tax payers) paying twice. Likely to be even more difficult to establish loss of chance mid-process than if a contract	The availability of this remedy is positive however query whether a more satisfactory outcome could be achieved by increasing the prevalence of the set aside remedy?

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Remedy/process	Strengths	Weaknesses	RAG rating
		award decision has been made. So the availability of an effective remedy even less likely?	

In tender proceedings - challenges to contract award decisions

Remedy/process	Strengths	Weaknesses	RAG rating
Forum			
Forum - Technology and Construction Court (TCC) for most procurement challenges brought by economic operators	This is an expert forum for thorough determination of this type of litigation - leading to invaluable precedent and guidance. Public availability of judgements adds to the usefulness of this forum The disclosure and evidential tools available to parties who litigate through the TCC provide opportunity for thorough interrogation of the issues in dispute. The TCC is also open to (and has) procurement specific guidance.	Litigation through the Court process is costly and lengthy – even for expedited claims (e.g. claims taking 6 months or more from date of issue to trial is not uncommon). The Court is however open to innovation and reform, as evidenced by pilots for disclosure and shorter trials, both of which aim to speed up and simplify the litigation process.	The high quality of the current system is positive but this comes at a financial cost. Query whether comparable quality could be achieved with a cheaper and simpler system or process?
Complaints brought by parties (as opposed to ex officio investigatory role)	Procurements are only challenged if they are of sufficient concern (usually) to one or more suppliers	Some flawed procurements may go ahead un-challenged	An ex-officio role would be a significant change to what the UK is currently used to and is probably not desirable? Experience from other member states who have adopted ex-officio roles suggests that the review process can be significantly delayed as a result by additional work entailed.
Limitation			

Remedy/process	Strengths	Weaknesses	RAG rating
Claims seeking any remedy other than ineffectiveness have to be brought within 30 days of when the challenger knew (or ought to have known) that grounds for starting proceedings had arisen.	In respect of the contract award decision, this ensures that any concerns about the process are brought swiftly to the attention of the contracting authority and (if necessary) the Court. It is a short period of time, but not so short as to preclude the opportunity of taking legal advice.	Sometimes means that claims are issued before the position on the merits is fully clear. Sometimes means that challengers who are not sufficiently familiar with the process miss out on bringing a claim (albeit this is rare in practice). The fact that the limitation period is longer than the standstill period means that in certain cases, claimants may be forced to issue a claim within an even shorter time period in order to preserve certain remedies. The short period within which claims should be brought means there is very limited opportunity for the parties to engage in any form of ADR prior to claims being issued.	A period of 30 days in respect of challenges to the contract award decision probably works well in most instances, albeit query whether any reform is desirable?
Costs			

Remedy/process	Strengths	Weaknesses	RAG rating
Cost of starting proceedings – most procurement challenges carry an issue fee of at least £10,000 as they include a request for damages in excess of £200k along with a fee of £528 for non-financial remedies	This does not deter suppliers challenging a high value procurement. The issue fee for claims including damages is likely to deter frivolous / vexatious claims but the lower non-financial remedy fee may not. Should all fees be linked to the value/complexity of the contract or review?	The fee is non-refundable and has to be paid at the start of proceedings, often when the merits of the challenge are unclear. Some entities may try to avoid this by limiting their claim to non-financial remedies but if the suspension is lifted in such cases and the authority / utility proceeds to award the contract, the claimant would be left without a remedy. This, coupled with the size of the fee, may deter SMEs / suppliers from challenging lower value procurements even when they may have a good claim.	Most suppliers would probably not object to paying a fee of some sort, but query whether a fee which is linked to the length and complexity of the review (and possibly to the value of the procurement), or a fee which is payable in stages may be a more proportionate method?
Costs of taking claims through the Courts are high and a significant proportion of such costs have to be incurred at a relatively early stage in proceedings when the merits of	Costs reflect the fact that (i) parties often employ expert advisers; and (ii) parties are required to set out their claims in detail and provide detailed disclosure and witness evidence to enable the Court to undertake a very thorough review of the process under challenge.	Costs can often run to hundreds of thousands of pounds, if not millions. This can be seen as a serious deterrent to entities wishing to challenge the outcome of lower value procurements.	The high cost of taking claims through the Courts reflects the fact that expert advisers are engaged to assist with the process and the very thorough review undertaken by the Court. However, the very high costs involved are likely to deter challenges to lower value procurements, particularly by SMEs.

Remedy/process	Strengths	Weaknesses	RAG rating
the challenge are often unclear.			
Costs awards – the general rule is that the winner recovers its costs from the losing party	The winner is reimbursed for the legal costs it has spent in pursuit of the claim / its defence which has proved well-founded. Encourages realistic settlement offers (including the rules around Part 36 offers etc.). Deters pursuit of weak claims / defences.	Legal costs can be very high and the prospect of paying the other side's costs as well as one's own costs can sometimes act as a deterrent in the pursuit of a meritorious claim / defence (particularly in relation to lower value procurements). Even if successful, full cost recovery is unlikely. The successful party is still likely to have incurred significant unrecoverable costs. This can also deter potential challengers and is unfair on the party whose position has been vindicated. This is often a deterrent to contracting authorities defending a claim, even when they have a strong case to make. A perception that the CA might be risk averse can sometimes lead to certain negative tactics by some larger suppliers.	Whilst the principle appears sound in relation to major challenges to high-value, complex procurements, it is likely to discourage challenges to lower value procurements (especially by SMEs and/or when the merits of a claim are not clear cut). A system which involved lower costs with each party bearing its own costs is likely to address this issue. A two tier system which provided for both parties to bear their own costs (or the recovery of fixed costs) in relation to lower value challenges may result in more effective remedies being available in relation to such procurements.

Remedy/process	Strengths	Weaknesses	RAG rating
Interim Relief			
Suspension of the contract award process	This is an initial strength for challengers as it enables the immediate suspension of the contract award pending further consideration by the Court / agreement between the parties on how to proceed. Even if the suspension is lifted, the presence of a damages claim may discourage the contracting authority from entering into the contract (i.e. reducing the risk of "paying twice").	The current test for lifting the automatic suspension (is there a serious issue to be tried, are damages an adequate remedy, does the balance of convenience favour the lifting/keeping in place of the suspension) means that it is very unusual for the automatic suspension to remain in place if the contracting authority wishes to lift it. From a supplier's perspective, the perception is that this leads to an ineffective remedy as they would prefer, generally to benefit from revenue (and the associated market positioning this brings) than damages. The lifting of the suspension can leave authorities facing a financial claim for damages for loss of profits meaning that (if the damages claim is well-founded) effectively the authority "pays twice" for the contract.	The ability to easily suspend the contract award process is a positive, but query whether the test for lifting the suspension is weighted too heavily in favour of factors extraneous to the lawfulness of the contract award decision itself (e.g. financial position of supplier/balance of convenience) and which favour the lifting of the suspension in the majority of cases?

Remedy/process	Strengths	Weaknesses	RAG rating
		The likelihood of losing an application and the cost consequences which go with it may result in challengers to smaller awards simply conceding this point and consenting to lift the suspension notwithstanding the fact that their preferred remedy would be an order setting aside the contract. Once the suspension is lifted, claimants often look to exit the litigation as damages claims are not seen as justifying the litigation risk.	
Disclosure			
Disclosure of documents	Within the existing system, the Civil Procedure Rules ("CPR"), Appendix H to the TCC Guide and associated case law provide extensive tools and methods governing disclosure which often result in the disclosure of a wide range of documents and communications which assist with an in depth review of the relevant issues.	There is a disparity of practice regarding disclosure of documents leading sometimes to contracting authorities not disclosing certain key documents during the standstill period and/or suppliers having unrealistic expectations as to what information they should	Query whether a balance can be found between the benefits of disclosing key and relevant documents on the one hand and cost and time on the other. Query whether an accepted practice regarding maintenance of a standard set of procurement documents (e.g. all tender documents, clarifications, consortium

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Remedy/process	Strengths	Weaknesses	RAG rating
	Early disclosure: Some contracting authorities are prepared to give full and comprehensive early disclosure of key documents relating to the evaluation of bids. Some authorities are ready to provide a full file during the standstill period. "Standard disclosure": During the litigation, the period for disclosure usually post-dates the Case Management Conference (CMC). Disclosure in procurement cases frequently still takes place on the "standard" basis. Whilst there are disadvantages (see across) this often entails a thorough search for documents giving a high degree of confidence that all/most relevant information is before the Court. Confidentiality rings have become common practice and can enable swift review of confidential information by the lawyers instructed. This can sometimes lead to issues being resolved quickly.	receive. This can lead to delay and sometimes early interim applications with not insignificant costs. Also divergence of practice regarding contracting authorities disclosing one bidder's tender documents to another bidder. An overly cautious approach results in all documents being either withheld or disclosed initially into a lawyers' only confidentiality ring, with ensuing legal battles regarding release of those documents. At the other end of the spectrum too cavalier an approach can result in prejudice to a fair re-run of a procurement process if one bidder is in receipt of genuinely sensitive or advantageous material or in a claim against the authority by the owner of that information. "Standard disclosure" can be very costly and also contributes to the length of time it can take for procurement cases to come to	changes, waiving of requirements, evaluation/moderation) would assist? Query whether the practice around what information from a bid can be shared with a competitor outside of a confidentiality ring can be more standardised (e.g. established at tender submission stage) with a view to reducing uncertainty and satellite litigation regarding confidentiality rings?

Remedy/process	Strengths	Weaknesses	RAG rating
		trial. Often this additional time and cost results in only minimal additional documents which are material to the dispute.	
Procedure			
Witness evidence	The present system in the TCC offers the ability to prepare written witness evidence and to cross-examine witnesses, enabling the parties to understand in detail what may have gone wrong in a tender process and get to the underlying facts of the matter which may be harder to spot on a paper based review. Helps to weed out any inconsistencies / inaccuracies in the written evidence and to explore other issues which may not have been covered in detail in the written statements.	The process of obtaining written witness evidence can be costly and time consuming. Witnesses do not always perform well under the pressure of oral cross-examination. The potential for witnesses to be subject to cross-examination and judicial criticism can deter otherwise competent people from taking key roles in procurement processes (such as evaluators).	Consider whether witness evidence is of sufficient benefit. If so, whether the benefits can be achieved solely through written evidence (or whether written evidence plus oral cross-examination is required)? Another possibility would be to only allow live witness evidence if the claim is above a certain value?
Statements of case	Challengers are required to set out their complaints in detail at an early stage.	The sequential exchange of statements of case can be time consuming. It can take well over two months from an	Useful to have the opportunity to respond to the other party's claim rather than setting out Defence in a vacuum. However, may be scope for speeding up the process (eg

Remedy/process	Strengths	Weaknesses	RAG rating
	Sequential exchange of statements of case means both parties have the opportunity to consider the other party's position in detail and to respond accordingly. This has the advantage of identifying in detail the material issues in dispute at a relatively early stage.	award decision to close of pleadings. The cost of preparing detailed pleadings can be high.	shortening time limits for Defence and Reply).
Oral hearings (as opposed to paper based review)	The TCC decides cases (and interim applications) predominantly based on an oral hearing of the evidence. This enables the advocate for each party to put the case to the judge and for the judge to ask questions in real time and (often) for decisions to be made on the same day. Good opportunity for all evidence to be tested. Greater sense of a "fair" hearing.	Delay and cost. A paper based system would likely be significantly cheaper and quicker.	Whilst having an oral hearing likely contributes to the sense of having a "fair" hearing, query whether this is **always** outweighed by the cost/delay. Could we have a paper-based system for some decisions/applications as is now the case for other forms of investigation into action of public bodies such as judicial review or ombudsman decisions?
ADR			
ADR is possible but not mandatory.	The TCC Guide states that ADR process are encouraged and the Court may exercise its case management powers to order a stay	The short limitation periods involved in procurement cases means that the opportunity for pre-action ADR is extremely limited.	If the current system is maintained, an increase in the use of ADR (particularly pre-action ADR) such as Early Neutral Evaluation may enable many disputes to be avoided at a much lower cost and in a much more efficient manner. It may also avoid authorities

Remedy/process	Strengths	Weaknesses	RAG rating
	in proceedings to allow the parties to engage in ADR.	There is also very limited opportunity for ADR in claims seeking a set-aside order, as these are often conducted on an expedited basis. There is greater potential for ADR in claims where the only remedy sought is damages, as there is less urgency in such claims. However, experience suggests that even in such cases, the use of formal ADR is limited.	adopting an unrealistic position, obtaining an order lifting the suspension and then being exposed to a damages claim which could effectively result in the authority having to pay twice for the same goods / works / services.
Substantive Relief			
Effect of judgments	Judgments are binding on all parties and there is a right of appeal to the Court of Appeal and then to the Supreme Court in certain cases. Often very clear reasons given for decisions which can assist contracting authorities to learn from the mistakes of others. Can also help challengers know whether it is worth pursuing challenges in similar circumstances in the future.	Little direction given in judgements as to amendments to documents/process, which economic operators would find useful to have as a check against any new procurement documents and contracting authorities could use as a baseline for assessing compliance.	The binding nature of judgments/decisions is positive, as is the requirement to provide reasons. The robust appeals process is also a positive, although this can add further delay and cost.

Remedy/process	Strengths	Weaknesses	RAG rating
Availability of set-aside remedy	This is a potential strength for challengers as it allows an unlawful contract award decision to be set-aside. However, its availability in practice is limited (see across).	Where the automatic suspension is lifted, the contracting authority is free to award the contract meaning that the challenger is deprived of the contract even if the challenge is well-founded. This means that the challenger potentially misses out on the market-positioning / reputational impact that winning the contract would entail.	The availability of this remedy (in theory) is positive however query whether its availability, in practice, could be increased?
Availability of damages remedy	Where a set-aside remedy is not possible, damages can at least give some monetary compensation for what is lost.	There are difficulties associated with calculating damages in procurement cases (e.g. loss of chance). Can lead to contracting authority (and tax payers) paying twice.	The availability of this remedy is positive however query whether a more satisfactory outcome could be achieved by increasing the prevalence of the set aside remedy?

Out-of-tender proceedings challenging modifications to existing contracts (extensions / variations)

Remedy/process	Strengths	Weaknesses	RAG rating
Forum			
Forum - Technology and Construction Court (TCC) for most procurement challenges brought by economic operators	This is an expert forum for thorough determination of this type of litigation – leading to invaluable precedent and guidance. Public availability of judgements increases the benefit of this forum. The disclosure and evidential tools available to parties who litigate through the TCC provide opportunity for thorough interrogation of the dispute The TCC is also open to (and has) procurement specific guidance.	Litigation through the Court process is costly and lengthy – even for expedited claims (e.g. claims taking 6 months or more from date of issue to trial is not uncommon) The Court is however open to innovation and reform, as evidenced by pilots for disclosure and shorter trials, both of which aim to speed up and simplify the litigation process.	The high quality of the current system is positive but this comes at a financial cost. Query whether comparable quality could be achieved with a cheaper and simpler system or process?
Complaints brought by parties (as opposed to ex officio investigatory role)	Procurements are only challenged if they are of sufficient concern (usually) to one or more suppliers	Some flawed procurements may go ahead un-challenged	An ex-officio role would be a significant change to what the UK is currently used to and is probably not desirable? Experience from other member states who have adopted ex-officio roles suggests that the review process can be significantly delayed as a result by additional work entailed.
Limitation			

Remedy/process	Strengths	Weaknesses	RAG rating
The remedy in these circumstances will be ineffectiveness, possibly with damages as well. Where a contract modification notice has been published in accordance with Regulation 72 then the prospective claimant has 30 days from the relevant date. Otherwise there is a long stop of 6 months from the date the contract modification was entered into.	Clarity in Regulation 72 as to the test for substantial modification is helpful. Timescales give contracting authorities some confidence that they can proceed with a reduced risk of challenge over time. 6 month timeframe when no publication of award gives providers a better chance of becoming aware of the award and being able to consider whether to bring a challenge or not.	Form of action means it is generally unattractive to third parties to issue proceedings in order have the chance to tender (and any damages claim being unlikely to succeed); no complaint / public enforcement option available. Often difficult to obtain information to support a challenge. In particular it is only a requirement to publish a modification notice in some, but not all, of the circumstances set out in Regulation 72(1). Therefore, on many occasions the information will not be available at any point.	The introduction of a complaint/public enforcement option could make the process more user friendly.
Costs			
Cost of starting proceedings - most procurement challenges carry an issue fee of at least £10,000 as they include a request for	This does not deter suppliers challenging a high value procurement. A fee of some sort deters frivolous / vexatious claims but query whether the lower non-financial remedy fee does that, should all fees be linked	This does deter SMEs / suppliers challenging lower value procurements. The fee is non-refundable and has to be paid at the start of proceedings, often when the	Most suppliers would probably not object to paying a fee of some sort, but query whether a fee which is linked to the length and complexity of the review (and possibly to the value of the procurement), or a fee which is payable in stages may be a more proportionate method?

Remedy/process	Strengths	Weaknesses	RAG rating
damages in excess of £200k along with a fee of £528 for non-financial remedies	to the value/complexity of the contract or review?	merits of the challenge are unclear.	
Costs of taking claims through the Courts are high and a significant proportion of such costs have to be incurred at a relatively early stage in proceedings when the merits of the challenge are often unclear.	Costs reflect the fact that (i) parties often employ expert advisers; and (ii) parties are required to set out their claims in detail and provide detailed disclosure and witness evidence to enable the Court to undertake a very thorough review of the process under challenge.	Costs can often run to hundreds of thousands of pounds, if not millions. This can be seen as a serious deterrent to entities wishing to challenge the outcome of lower value procurements.	The high cost of taking claims through the Courts reflects the fact that expert advisers are engaged to assist with the process and the very thorough review undertaken by the Court. However, the very high costs involved are likely to deter challenges to lower value procurements, particularly by SMEs.
Costs awards - as matters stand the general rule is that the winner recovers its costs from the losing party	The winner is reimbursed for the legal costs it has spent in pursuit of the claim / its defence which has proved well-founded. Encourages realistic settlement offers (including the rules around Part 36 offers etc.). Deters pursuit of weak claims / defences	Legal costs can be very high and the prospect of paying the other side's costs as well as one's own costs can sometimes act as a deterrent in the pursuit of a meritorious claim / defence (particularly in relation to lower value procurements). Even if successful, full cost recovery is unlikely. The successful party is still likely to have incurred significant unrecoverable costs. This can	Whilst the principle appears sound, query whether, if the process was cheaper, this would be required in all cases. A system which involved lower costs with each party bearing its own costs is likely to address this issue. A two tier system which provided for both parties to bear their own costs (or the recovery of fixed costs) in relation to lower value challenges may result in more effective remedies being available in relation to such procurements.

Remedy/process	Strengths	Weaknesses	RAG rating
		also deter potential challengers and is unfair on the party whose position has been vindicated. This is often a deterrent to contracting authorities defending a claim, rather than agreeing to an out of court settlement, even when they have a strong case to make. A perception that the CA might be risk averse can sometimes lead to certain negative tactics by some larger suppliers.	
Interim Relief			
Not applicable for this type of claim			
Disclosure			
Disclosure of documents	Within the existing system, the Civil Procedure Rules ("CPR"), associated case law and Appendix H to the TCC Guide provide extensive tools and methods governing disclosure which often result in the disclosure of a wide range of documents and	There is current disparity of practice regarding disclosure of documents leading sometimes to contracting authorities not being ready to disclose certain key documents during the standstill period	Query whether a balance can be found between the benefits of disclosing key and relevant documents on the one hand and cost and time on the other

Remedy/process	Strengths	Weaknesses	RAG rating
	communications which assist with an in depth review of the relevant issues.. Early disclosure: Some contracting authorities are prepared to give full and comprehensive early disclosure of key documents relating to the evaluation of bids. Some authorities are ready to provide a full file during the standstill period. "Standard disclosure": During the litigation, the period for disclosure usually post-dates the Case Management Conference (CMC). Disclosure in procurement cases frequently still takes place on the "standard basis. Whilst there are disadvantages (see across) this often entails a thorough search for documents giving a high degree of confidence that all/most relevant information is before the Court. Confidentiality rings have become common practice and can enable swift review of confidential information by the lawyers instructed. This can sometimes lead to issues being resolved quickly.	and/or suppliers having unrealistic expectations as to what information they should receive. This can lead to delay and sometimes early interim applications and not insignificant cost. "Standard disclosure" can be very costly and also contributes to the length of time it can take for procurement cases to come to trial. Often this additional time and cost results in only minimal additional documents which are material to the dispute.	

Remedy/process	Strengths	Weaknesses	RAG rating
Procedure			
Witness evidence	The present system in the TCC offers the ability to prepare written witness evidence and to cross-examine witnesses, enabling the parties properly to understand what may have gone wrong in a tender process and get to the underlying facts of the matter which may be harder to spot on a paper based review. Helps to weed out any inconsistencies / inaccuracies in the written evidence and to explore other issues which may not have been covered in detail in the written statements.	The process of obtaining written witness evidence can be costly and time consuming. Witnesses do not always perform well under the pressure of oral cross-examination. The potential for witnesses to be subject to cross-examination and judicial criticism can deter otherwise competent people from taking key roles in procurement processes (such as evaluators).	Consider whether witness evidence is of sufficient benefit. If so, whether the benefits can be achieved solely through written evidence (or whether written evidence plus oral cross-examination is required)? Or only allow live witness evidence if the claim is above a certain value?
Statements of case	Challengers required to set out their complaints in detail at an early stage. Sequential exchange of statements of case means both parties have the opportunity to consider the other party's position in detail and to respond accordingly. This has the advantage of identifying in detail the	The sequential exchange of statements of case can be time consuming. It can take well over two months from an award decision to close of pleadings. The cost of preparing detailed pleadings can be high.	Useful to have the opportunity to respond to the other party's claim rather than setting out Defence in a vacuum. However, may be scope for speeding up the process (eg shortening time limits for Defence and Reply).

Remedy/process	Strengths	Weaknesses	RAG rating
	material issues in dispute at a relatively early stage.		
Oral hearings (as opposed to paper based review)	The TCC decides cases (and interim applications) predominantly based on an oral hearing of the evidence. This enables the advocate for each party to put the case to the judge and for the judge to ask questions in real time and (often) for decisions to be made on the same day. Good opportunity for all evidence to be tested. Greater sense of a "fair" hearing.	Delay and cost. A paper based system would likely be significantly cheaper and quicker.	Whilst having an oral hearing likely contributes to the sense of having a "fair" hearing, query whether this is **always** outweighed by the cost/delay. Could we have a paper-based system for some decisions/applications as is now the case for other forms of investigation into action of public bodies such as judicial review or ombudsman decisions?
ADR			
ADR is possible but not mandatory.	The TCC Guide states that ADR process are encouraged and the Court may exercise its case management powers to order a stay in proceedings to allow the parties to engage in ADR.	The short limitation periods involved in procurement cases means that the opportunity for pre-action ADR is extremely limited. There is greater potential for ADR in claims where the only remedy sought is damages, as there is less urgency in such claims. However, experience suggests that even in such	If the current system is maintained, an increase in the use of ADR (particularly pre-action ADR) such as Expert Neutral Evaluation may enable many disputes to be avoided at a much lower cost and in a much more efficient manner. ADR is possible where a current contract is being challenged for extension or modification but would be alongside the contract continuing.

Remedy/process	Strengths	Weaknesses	RAG rating
		cases, the use of formal ADR is limited.	
Claimant seeking damages alone	Burden and cost of litigation, and potential severity of remedy, may persuade contracting authority to engage in ADR to reach settlement over financial compensation for claimant.		Not procurement-specific - domestic ADR processes available to claimant in any litigation seeking a financial remedy.
Claimant seeking declaration of ineffectiveness		Given severity of remedy (all or nothing), ADR unlikely to be suitable. Due to restrictions on modifications of contracts already awarded, contracting authorities have no flexibility to seek to reach compromise over term or value of a contract already awarded.	More flexible rules overall may allow for settlement to be reached in relation to awards already made.
Substantive Relief			
Effect of judgments	Judgments are binding on all parties and there is a right of appeal to the Court of Appeal and then the Supreme Court in certain cases Often very clear reasons given for decisions which can assist contracting authorities to learn from		The binding nature of judgments/decisions is positive and it is likely to be positive to have a robust appeals process.

Remedy/process	Strengths	Weaknesses	RAG rating
	the mistakes of others. Can also help challengers know whether it is worth pursuing challengers in similar circumstances in the future.		
Availability of ineffectiveness as the main remedy	The potential negative impact on the contracting authority having to re-tender and possibly make early termination payments under the contract, where the drafting doesn't envisage such an event, means that rightly so the test should be stringent, with a high threshold.		While it is right that once a contract has been entered into there must be strong and clear justification for changing the position, judgements reducing the term of the contract could be used more frequently.
Availability of damages remedy	Where a set-aside remedy is not possible, damages can at least give some monetary compensation for what is lost	There are difficulties associated with calculating damages in procurement cases (e.g. loss of chance). Can lead to contracting authority paying twice. If an award of damages is the outcome rather than ineffectiveness then this may not be seen as a satisfactory by the claimant.	The availability of this remedy is positive however query whether a more satisfactory outcome could be achieved by increasing the prevalence of the set aside remedy? The outcome of the Amey litigation may make this remedy more favourable for an economic operator as it weighs in favour of damages even where the contracting authority makes the decision to abandon the process. Obviously the converse is true for contracting authorities who may make a more considered decision to abandon as it will not always offer the protection previously believed to come with abandonment.

Out-of-tender proceedings challenging unlawful direct awards

Remedy/process	Strengths	Weaknesses	RAG rating
Forum			
Forum - Technology and Construction Court (TCC) for most procurement challenges brought by economic operators	This is an expert forum for thorough determination of this type of litigation – leading to invaluable precedent and guidance. Public availability of judgements increases the benefit of this forum. The disclosure and evidential tools available to parties who litigate through the TCC provide opportunity for thorough interrogation of the dispute The TCC is also open to (and has) procurement specific guidance.	Litigation through the Court process is costly and lengthy – even for expedited claims (e.g. claims taking 6 months or more from date of issue to trial is not uncommon) The Court is however open to innovation and reform, as evidenced by pilots for disclosure and shorter trials, both of which aim to speed up and simplify the litigation process.	The high quality of the current system is positive but this comes at a financial cost. Query whether comparable quality could be achieved with a cheaper and simpler system or process?
Complaints brought by parties (as opposed to ex officio investigatory role)	Procurements are only challenged if they are of sufficient concern (usually) to one or more suppliers	Some flawed procurements may go ahead un-challenged	An ex-officio role would be a significant change to what the UK is currently used to and is probably not desirable? Experience from other member states who have adopted ex-officio roles suggests that the review process can be significantly delayed as a result by additional work entailed.
Limitation			

Remedy/process	Strengths	Weaknesses	RAG rating
The remedy in these circumstances will be ineffectiveness, possibly with damages as well. Where information is provided by the contracting authority in accordance with either sub-paragraph (3) or (5) of Regulation 93 then the prospective claimant has 30 days from the relevant date. Otherwise there is a long stop of 6 months from the date the contract was entered into.	Timescales give contracting authorities some confidence that they can proceed with a reduced risk of challenge over time. 6 month timeframe when no publication of award gives providers a better chance of becoming aware of the award and being able to consider whether to bring a challenge or not.	Form of action means it is generally unattractive to third parties to issue proceedings in order have the chance to tender (and any damages claim being unlikely to succeed); no complaint / public enforcement option available. Often difficult to obtain information to support a challenge.	A period of 30 days in respect of challenges to the contract award decision when it has been publicised probably works well in most instances, albeit query whether any reform is desirable? The 6 month long stop date for an ineffectiveness claim gives the contracting authority some confidence that the risk is not open ended.
Costs			
Cost of starting proceedings – most procurement challenges carry an issue fee of at least	This does not deter suppliers challenging a high value procurement.	This does deter SMEs / suppliers challenging lower value procurements.	Most suppliers would probably not object to paying a fee of some sort, but query whether a fee which is linked to the length and complexity of the review (and possibly to the value of the procurement), or a fee

Remedy/process	Strengths	Weaknesses	RAG rating
£10,000 as they include a request for damages in excess of £200k along with a fee of £528 for non-financial remedies	A fee of some sort deters frivolous / vexatious claims but query whether the lower non-financial remedy fee does that, should all fees be linked to the value/complexity of the contract or review?	The fee is non-refundable and has to be paid at the start of proceedings, often when the merits of the challenge are unclear.	which is payable in stages may be a more proportionate method?
Costs of taking claims through the Courts are high and a significant proportion of such costs have to be incurred at a relatively early stage in proceedings when the merits of the challenge are often unclear.	Costs reflect the fact that (i) parties often employ expert advisers; and (ii) parties are required to set out their claims in detail and provide detailed disclosure and witness evidence to enable the Court to undertake a very thorough review of the process under challenge.	Costs can often run to hundreds of thousands of pounds, if not millions. This can be seen as a serious deterrent to entities wishing to challenge the outcome of lower value procurements.	The high cost of taking claims through the Courts reflects the fact that expert advisers are engaged to assist with the process and the very thorough review undertaken by the Court. However, the very high costs involved are likely to deter challenges to lower value procurements, particularly by SMEs.
Costs awards - as matters stand the general rule is that the winner recovers its costs from the losing party	The winner is reimbursed for the legal costs it has spent in pursuit of the claim / its defence which has proved well-founded. Encourages realistic settlement offers (including the rules around Part 36 offers etc.). Deters pursuit of weak claims / defences	Legal costs can be very high and the prospect of paying the other side's costs as well as one's own costs can sometimes act as a deterrent in the pursuit of a meritorious claim / defence (particularly in relation to lower value procurements). Even if successful, full cost recovery is unlikely. The	Whilst the principle appears sound, query whether, if the process was cheaper, this would be required in all cases. A system which involved lower costs with each party bearing its own costs is likely to address this issue. A two tier system which provided for both parties to bear their own costs (or the recovery of fixed costs) in relation to lower value challenges may result in more effective

Remedy/process	Strengths	Weaknesses	RAG rating
		successful party is still likely to have incurred significant unrecoverable costs. This can also deter potential challengers and is unfair on the party whose position has been vindicated. This is often a deterrent to contracting authorities defending a claim, rather than agreeing to an out of court settlement, even when they have a strong case to make. A perception that the CA might be risk averse can sometimes lead to certain negative tactics by some larger suppliers.	remedies being available in relation to such procurements.
Interim Relief			
Not applicable for this type of claim			
Disclosure			
Disclosure of documents	Within the existing system, the Civil Procedure Rules (“CPR”), associated case law and Appendix H to the TCC Guide provide extensive tools and	There is current disparity of practice regarding disclosure of documents leading sometimes to contracting	Query whether a balance can be found between the benefits of disclosing key and

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Remedy/process	Strengths	Weaknesses	RAG rating
	methods governing disclosure which often result in the disclosure of a wide range of documents and communications which assist with an in depth review of the relevant issues. Early disclosure: Some contracting authorities are prepared to give full and comprehensive early disclosure of key documents relating to the evaluation of bids. Some authorities are ready to provide a full file during the standstill period. "Standard disclosure": During the litigation, the period for disclosure usually post-dates the Case Management Conference (CMC). Disclosure in procurement cases frequently still takes place on the "standard basis. Whilst there are disadvantages (see across) this often entails a thorough search for documents giving a high degree of confidence that all/most relevant information is before the Court. Confidentiality rings have become common practice and can enable swift review of confidential information by the lawyers instructed. This can sometimes	authorities not being ready to disclose certain key documents during the standstill period and/or suppliers having unrealistic expectations as to what information they should receive. This can lead to delay and sometimes early interim applications and not insignificant cost. "Standard disclosure" can be very costly and also contributes to the length of time it can take for procurement cases to come to trial. Often this additional time and cost results in only minimal additional documents which are material to the dispute.	relevant documents on the one hand and cost and time on the other

Remedy/process	Strengths	Weaknesses	RAG rating
	lead to issues being resolved quickly.		
Procedure			
Witness evidence	The present system in the TCC offers the ability to prepare written witness evidence and to cross-examine witnesses, enabling the parties properly to understand what may have gone wrong in a tender process and get to the underlying facts of the matter which may be harder to spot on a paper based review. Helps to weed out any inconsistencies / inaccuracies in the written evidence and to explore other issues which may not have been covered in detail in the written statements.	The process of obtaining written witness evidence can be costly and time consuming. Witnesses do not always perform well under the pressure of oral cross-examination. The potential for witnesses to be subject to cross-examination and judicial criticism can deter otherwise competent people from taking key roles in procurement processes (such as evaluators).	Consider whether witness evidence is of sufficient benefit. If so, whether the benefits can be achieved solely through written evidence (or whether written evidence plus oral cross-examination is required)? Another possibility it to only allow live witness evidence if the claim is above a certain value.
Statements of case	Challengers required to set out their complaints in detail at an early stage. Sequential exchange of statements of case means both parties have the opportunity to consider the other party's position in detail and to	The sequential exchange of statements of case can be time consuming. It can take well over two months from an award decision to close of pleadings.	Useful to have the opportunity to respond to the other party's claim rather than setting out Defence in a vacuum. However, may be scope for speeding up the process (eg shortening time limits for Defence and Reply).

Remedy/process	Strengths	Weaknesses	RAG rating
	respond accordingly. This has the advantage of identifying in detail the material issues in dispute at a relatively early stage.	The cost of preparing detailed pleadings can be high.	
Oral hearings (as opposed to paper based review)	The TCC decides cases (and interim applications) predominantly based on an oral hearing of the evidence. This enables the advocate for each party to put the case to the judge and for the judge to ask questions in real time and (often) for decisions to be made on the same day. Good opportunity for all evidence to be tested. Greater sense of a "fair" hearing.	Delay and cost. A paper based system would likely be significantly cheaper and quicker.	Whilst having an oral hearing likely contributes to the sense of having a "fair" hearing, query whether this is **always** outweighed by the cost/delay. Could we have a paper-based system for some decisions/applications as is now the case for other forms of investigation into action of public bodies such as judicial review or ombudsman decisions?
ADR			
ADR is possible but not mandatory.	The TCC Guide states that ADR process are encouraged and the Court may exercise its case management powers to order a stay in proceedings to allow the parties to engage in ADR.	The short limitation periods involved in procurement cases means that the opportunity for pre-action ADR is extremely limited. There is greater potential for ADR in claims where the only remedy sought is damages, as there is less urgency in such claims. However, experience	If the current system is maintained, an increase in the use of ADR (particularly pre-action ADR) such as Early Neutral Evaluation may enable many disputes to be avoided at a much lower cost and in a much more efficient manner. It may also avoid authorities adopting an unrealistic position, obtaining an order lifting the suspension and then being exposed to a damages claim which could effectively result in the

Remedy/process	Strengths	Weaknesses	RAG rating
		suggests that even in such cases, the use of formal ADR is limited. -	authority having to pay twice for the same goods / works / services.
Claimant seeking damages alone	Burden and cost of litigation, and potential severity of remedy, may persuade contracting authority to engage in ADR to reach settlement over financial compensation for claimant.		Not procurement-specific - domestic ADR processes available to claimant in any litigation seeking a financial remedy.
Claimant seeking declaration of ineffectiveness		Given severity of remedy (all or nothing), ADR unlikely to be suitable.	Claimant seeking declaration of ineffectiveness means ADR unsuitable.
Substantive Relief			
Effect of judgments	Judgments are binding on all parties and there is a right of appeal to the Court of Appeal and in some cases the Court of Appeal. Often very clear reasons given for decisions which can assist contracting authorities to learn from the mistakes of others. Can also help challengers know whether it is worth pursuing challengers in similar circumstances in the future.		The binding nature of judgments/decisions is positive and it is likely to be positive to have a robust appeals process.

Remedy/process	Strengths	Weaknesses	RAG rating
Availability of ineffectiveness as the main remedy	The potential negative impact on the contracting authority having to re-tender and possibly make early termination payments under the contract, where the drafting doesn't envisage such an event, means that rightly so the test should be stringent, with a high threshold.		While it is right that once a contract has been entered into there must be strong and clear justification for changing the position, judgements reducing the term of the contract could be used more frequently..
Availability of damages remedy	Where a set-aside remedy is not possible, damages can at least give some monetary compensation for what is lost	There are difficulties associated with calculating damages in procurement cases (e.g. loss of chance). Can lead to contracting authority paying twice. If an award of damages is the outcome rather than ineffectiveness then this may not be seen as a satisfactory by the claimant.	The availability of this remedy is positive however query whether a more satisfactory outcome could be achieved by increasing the prevalence of the set aside remedy?

Procurement challenges for below EU threshold procurement (Part 4 of the PCR - the "Lord Young Reforms")[1]

Remedy/process	Strengths	Weaknesses	RAG rating
Forum			
High Court	Provided there is a sufficient "public law" element to the decision or act being challenged, challenges should be justiciable before the High Court under ordinary judicial review proceedings. Remedies are (at least theoretically) available and include an injunction to prevent an award being made and a declaration that an authority has acted in breach of the law (for example the duty to advertise below EU threshold contracts on the Contracts Finder).	In contrast to above EU threshold procurement, there is no special remedies regime provided for procurements below the EU thresholds subject to the "Lord Young reforms" provisions in Part 4 of the PCR. Ordinary judicial review for below EU threshold contracts is costly and not suited to procurement claims. Remedies are limited: there is no general right to damages for breach of Part 4 PCR duties; and the PCR expressly provide that a material failure to comply with the requirements in relation to below EU threshold contracts does not affect the validity of the contract, meaning there is in effect no post-contract award	Ordinary judicial review proceedings provide no effective recourse for an unsuccessful bidder looking to challenge a below EU threshold contract subject to Part 4 of the PCR.

[1] We have focussed here on the position of below EU threshold contracts subject to the rules contained in Part 4 of the PCR 2015. The domestic remedies regime for those procurements - such as it is - is similar to the position in respect of breach of local authority standing orders pursuant to s.135 of the Local Government Act 1972 and prohibition on non-commercial considerations and rules on approved lists under s.17 of the Local Government Act 1988.

Remedy/process	Strengths	Weaknesses	RAG rating
		remedy available (Reg. 114(1) of the PCR). This is consistent with the provision in the Local Government Act 1972 that a breach of local authority standing orders does not invalidate the subsequent contract (s.135). Such claims have been brought (for example, recently in the case of *Kenson Contractors (Benington) Ltd v Haringey London Borough Council 2019] EWHC 1230 (Admin))* but are in practice very rare (the challenge in that case was unsuccessful). This is the only reported judgment that we are aware of dealing with challenges to contracts subject to Part 4 of the PCR. Judgment in that case also questioned the justiciability of the action in terms of whether the award of the contract had a sufficient public law element to it.	
Limitation			

Remedy/process	Strengths	Weaknesses	RAG rating
	The arguably stricter 30-day limitation period under the PCR does not appear to apply to Part 4 (below EU threshold) PCR claims unless they involve alleged breaches of EU law. This means the general rule is that proceedings must be brought promptly and, in any event, not later than 3 months after the ground(s) to challenge the decision first arose would apply.	As interim relief in the form of an injunction or declaration are likely to be the principal remedies sought, there may be considerable emphasis on any claim being made "promptly" (a point touched on in the *Kenson case*). Limitation tends to be a key issue in procurement claims and the lack of certainty on below EU threshold Part 4 PCR claims is highly unsatisfactory.	The position is unsatisfactory when compared to procurement claims against above EU threshold PCR claims.
Costs			
	As a general rule, costs follow the case and the successful party will be awarded costs (the amount to be determined by assessment if not agreed or fixed by specific court rules). The court will only allow costs that have been reasonably incurred and that are of a reasonable amount.	Costs of judicial proceedings in the High Court are likely to be disproportionate to the value of below EU threshold Part 4 PCR contracts the award of which is being challenged, and therefore very likely to dissuade bidders from pursuing any formal challenge.	In most cases, costs are likely to be a significant disincentive to the bringing of claims.

Remedy/process	Strengths	Weaknesses	RAG rating
Interim Relief			
	It is possible to seek interim injunction as demonstrated in the *Kenson case* (albeit unsuccessful).	There is no provision for automatic suspension for challenges to contract awards subject to Part 4 PCR. The award of interim relief is discretionary and there is no case-law that provides guidance as to whether interim relief is likely to be granted. If an application for interim relief/urgent consideration is deemed manifestly inappropriate the court is entitled to make a wasted costs order against the party making the request.	There is no established basis or precedent for interim relief application to be made in challenges to below EU threshold Part 4 PCR claims.
Disclosure			
Judicial Review	Judicial review proceedings are intended to be more co-operative and less adversarial than ordinary civil litigation. All parties are expected to assist the court as far as possible and to be open and candid in their submissions, with the	That said, there is no developed disclosure regime in judicial review proceedings similar to that under the special regime for above EU threshold contract PCR claims and developed by the TCC for	Not suited for challenges to below EU threshold procurement subject to Part 4 PCR.

Remedy/process	Strengths	Weaknesses	RAG rating
	defendant public authority owing a "duty of candour" to the court to comply with claimant requests for documents.	Part 7 claims. The court will only order disclosure in judicial review proceedings in exceptional cases, relying instead on the authority to comply with its "duty of candour".	
Procedure			
Judicial Review	Judicial review claims are bought under Part 8 of the Civil Procedure Rules as supplemented by Part 54 CPR. There are significant differences in procedure compared to Part 7 claims in the TCC under the special remedies regime as provided for in the PCR for above EU threshold contracts. Possible strengths might be that there are established pre-action protocols to follow, including an established "duty of candour" on public authorities being challenged. Judicial review proceedings are also ordinarily completed significantly faster than most civil litigation proceedings, with the court determining an application for	While perhaps faster than civil litigation, judicial review proceedings with their multiple phases are time-consuming and costly and likely to dissuade any bidder seeking to pursue a challenge to the award of a below EU threshold contract. In practice, any challenge is likely to discontinued if the challenger either does not obtain interim injunction / relief or is refused permission.	Procedure likely to be dissuade any challenges to a below threshold procurement subject to Part 4 PCR, at least in terms of pursuing a challenge through to a final judgment.

Remedy/process	Strengths	Weaknesses	RAG rating
	permission within 4 months of issue and substantive hearings may take place within 9 to 15 months of permission being granted. The rules on standing are also arguably less restrictive than for above threshold EU procurements under the special remedies regime provided for in the PCR.		
ADR			
	Pre-action protocol may provide a basis for identifying any genuine legal concern and allowing for some form of ADR / settlement.	The court can consider the extent to which a party has adhered to the pre-action protocol when determining costs at the conclusion of a case.	Can be used for procurement claims, but not adapted in a way that is generally available and/or effective.
Substantive Relief			
	As above, remedies are (at least theoretically) available and include an injunction to prevent an award being made and a declaration that an authority has acted in breach of the law (for example the duty to	As above, there is no general right to damages for breach of Part 4 PCR duties. Damages will only available if another established cause of action is	Beyond seeking some form of interim relief (interim injunction or declaration) and ultimately substantive relief in the form of a quashing order setting aside an award

Remedy/process	Strengths	Weaknesses	RAG rating
	advertise below EU threshold contracts on the Contracts Finder). If found to have acted unlawfully, the court can grant a “quashing order” a material equivalent to the “set aside” remedy under the PCR remedies regime for above EU threshold contracts.	available for which damages may be sought. As above, the PCR expressly provide that a material failure to comply with the requirements in relation to below EU threshold contracts does not affect the validity of the contract, meaning there is in effect no post-contract award remedy available (Reg. 114(1) of the PCR). This is consistent with the provision in the Local Government Act 1972 that a breach of local authority standing orders does not invalidate the subsequent contract (s.135).	decision as unlawful, the remedies available are very limited.

Other non-PCR regulated procurement challenges (e.g. rail franchise litigation)

Remedy/process	Strengths	Weaknesses	RAG rating
Forum			
Judicial Review	In situations where a procurement is not covered by the PCR, Judicial Review Proceedings before the High Court are generally available where a procurement decision involves a sufficient 'public law' element. This will generally be the case where the authority is exercising a specific statutory function (e.g. *the Camelot case; the Rail Franchising cases*) – breach of statutory duty. A sufficient public law element can also be held to apply in other situations but the public law element will have to be established in each case (e.g. *Legal Aid Board cases*), and the position is less clear. The remedies available broadly align with those available under the PCR. For example, in Judicial Review Proceedings parties can obtain a 'quashing order', similar to a set aside order under the PCR. It is also possible to claim damages in Judicial Review Proceedings. The right to damages depends on the violation of public law and the	Not all decisions made by public bodies are amenable to Judicial Review (e.g. commercial decisions that do not involve a sufficient public law element cannot be judicially reviewed). Only decisions made in pursuit of public functions and that are subject to public law obligations are capable of Judicial Review.	While Judicial Review Proceedings can (and are) used to challenge procurement decisions, they are expensive and not well adapted to procurement. As summarised by Professor Sue Arrowsmith: '*The fact that the UK retains a system of legal remedies that is different from the system put in place to transpose the Remedies Directive, the fact that the system for enforcing EU rules under the Remedies Directive is different from that for enforcing EU rules outside the Remedies Directive, and the fact that there is fragmentation and inconsistency even in the rules applying under different domestic legislation, means that in the UK there is a complex patchwork of enforcement provisions with no underlying coherence*' Arrowsmith, Vol. 2 at 22-314

Remedy/process	Strengths	Weaknesses	RAG rating
	claimant also seeks an injunction or declaration (available for breach of public and private law duties) or a prerogative order (i.e. a quashing order, mandatory order or prohibiting order which are only available for breach of public law duties). Where, post-contract award, it transpires the contract has been concluded unlawfully (e.g. as the result of a defective award procedure) parties can seek a declaration that the contract is ineffective. This broadly aligns with the remedy of ineffectiveness under the PCR. Where a procurement is covered by the PCR, some claimants might find it necessary to bring concurrent Judicial Review Proceedings as well as issuing a claim in the Technology and Construction Court (TCC) under the PCR. This is ordinarily where a claimant's right to bring a claim under the PCR is disputed. In these circumstances, the claim for Judicial Review is usually heard and case managed together with the claim in the TCC before a TCC Judge that is also a designated Judge of the		

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Remedy/process	Strengths	Weaknesses	RAG rating
	Administrative Court. The Judge will notify the Claimant whether both claims should proceed in the TCC or, whether the Judicial Review Proceedings should be transferred back to the Administrative Court.		
Action for breach of contract	In the absence of a public law element/the ability to bring Judicial Review Proceedings, public authority decisions might be challenged in the High Court on a contractual basis. Contractual obligations can be implied in some procurement contexts e.g. if an ITT prescribes the procedure for the submission of a tender, a tenderer that complies with those terms is entitled to have their tender considered and may claim damages where this obligation is breached (*Blackpool and Fylde Aero Club v Blackpool BC [1990] 1 WLR 1195*). Damages are to put the bidder in the position in which it would have been in but for violation of the implied contract. Note that, by contrast, Judicial Review Proceedings cannot be used to seek damages for breach of an implied contract even when also seeking a declaration or injunction	The High Court has been cautious in its development of the doctrine of implied contract in procurement cases, and the extent of any duties on the authority that can be actionable as breaches of implied contract is unclear.	Given the lack of clarity as to the extent of duties owed under the doctrine of implied contract and the expense or pursing such a claim such claims are unattractive, certainly as standalone grounds of challenge.

Remedy/process	Strengths	Weaknesses	RAG rating
	because breach of an implied contract is a purely private law claim that does not depend on a breach of public law that is within the scope of Judicial Review Proceedings. The principle of procedural exclusivity (which generally means it is an abuse of process to challenge the validity of a public law decision other than by judicial review) does not apply in a private law case where a party seeks to establish private law rights, which cannot be determined without an examination of the validity of a public law decision (*Secretary of State for Transport v Arriva Rail East Midlands Ltd and others [2019] EWCA Civ 2259*).		
Limitation			
Judicial review	Ordinarily Judicial Review Proceedings must be brought promptly and, in any event, not later	The requirement for 'promptness' is separate to the requirement to bring an action within the 3 month time limit. The court may refuse	While there is alignment in parallel PCR claims, the position is unsatisfactory as a coherent regime for procurement claims.

Remedy/process	Strengths	Weaknesses	RAG rating
	than 3 months after the ground(s) to challenge the decision first arose[2]. Time-limits are however aligned if the Judicial Review Proceedings relate to an award procedure governed by the PCR. In such cases the time-limits that apply to the Judicial Review Proceedings are the same as those set out in the PCR (i.e. 30 days from the date on which the alleged breach was known/ought to have been known by the Claimant).	permission or relief where there is undue delay[3]. The parties cannot extend limitation time periods.	
Action for breach of contract	A breach of contract claim must be brought within 6 years of the date of breach where damages alone are claimed (*Secretary of State for Transport v Arriva Rail East Midlands Ltd and others [2019] EWCA Civ 2259*). Parties may be able to suspend time or extend time for the purposes of limitation by entering into a standstill agreement.	If the limitation period has expired, the Defendant has a complete defence to the claim. The burden of proof shifts to the Claimant, who must then prove that time has not expired.	Undeveloped and ineffective as any form of remedy regime.

[2] If a party is challenging a public authority decision *on the basis the decision should* have been made under the PCR, but it was not – the 30 day time limit applies.

[3] Unless the claim involves the enforcement of an EU Directive, in these cases the hurdle of promptness is eliminated.

Remedy/process	Strengths	Weaknesses	RAG rating
Costs			
Judicial Review	As a general rule, costs follow the case and the successful party will be awarded costs (the amount to be determined by assessment if not agreed or fixed by specific court rules). The court will only allow costs that have been reasonably incurred and that are of a reasonable amount. Judicial Review Costs Capping Orders (JRCCO) - A claimant can apply for a JRCCO which limits/removes the liability of a claimant to pay another party's costs.	Costs of High Court proceedings are generally high and a deterrent to potential claimants. Traditionally the courts exercise considerable and wide discretion in awarding costs in Judicial Review Proceedings. The court may consider the extent to which a party has been successful, conduct (including failure to follow the Pre-Action Protocol for Judicial Review and pursuing/defending issues that are frivolous) and the position and funding of the parties when determining costs.	Costs are a significant disincentive to the bringing of claims.
Interim Relief			
Judicial Review	Unlike under the PCR, there is no provision for automatic suspension.	The time period in which to apply for an interim injunction/stay is very short	While possible outside the PCR, claimants face significant obstacles seeking interim

Remedy/process	Strengths	Weaknesses	RAG rating
	A claimant can apply for an interim injunction in order to prevent the public authority from actioning the decision and/or entering into the contract and/or operating the terms of the contract. Alternatively, a party might apply for an order staying the relevant decision (this will often serve the same purpose as an injunction). If a matter is extremely urgent the court will ordinarily grant expedition and often there is no need for an injunction/stay.	and can be costly (often a hearing is required). Injunctions and/or an order staying a decision will only be granted where damages will not be an adequate remedy. If an application for interim relief/urgent consideration is deemed manifestly inappropriate the court is entitled to make a wasted costs order against the party making the request.	relief in procurement claims brought under Judicial Review Proceedings.
Disclosure			
Judicial Review	Judicial Review Proceedings are intended to be more co-operative and less adversarial than ordinary civil litigation. All parties are expected to assist the court as far as possible and to be open and candid in their submissions. Duty of Candour - The Defendant/public authority owes a duty to the court and should comply with any requests for documents.	There is however no disclosure regime in Judicial Review Proceedings similar to that under PCR claims. Duty of Candour - Requests must be proportionate and limited to what is properly necessary for the Claimant to understand why the decision being challenged has been	Not suited for procurement claims.

Remedy/process	Strengths	Weaknesses	RAG rating
	Failure to do so may result in cost sanctions.	taken and/or present the claim in a manner that will properly identify the issues.	
Procedure			
Judicial Review	<u>Permission</u> - The hurdle for obtaining permission is low – the Claimant needs to demonstrate it has an arguable case that justifies full investigation of the substantive merits. The Defendant cannot appeal the court's decision to grant permission. <u>Interested Parties/Intervenors</u> - Judicial Review Proceedings allow the intervention of third parties that have a legitimate interest in the outcome of the proceedings and/or are able to assist the court. <u>Timescales</u> - Judicial Review Proceedings are ordinarily completed significantly faster than most civil litigation proceedings. The court might determination an application for permission within 4 months of issue and substantive hearings may take place within 9 to	<u>Standing</u> - Whilst the party pursuing the Judicial Review Proceedings does not need to be an economic operator, they need to have sufficient interest i.e. be affected in some identifiable way by the decision (*R (Chandler) v Secretary of State for Children, Schools and Families*). Whether a party has sufficient interest to enforce a statutory rule is determined by examining the intention of the legislature, the nature of the Claimant's interest and the power or duty in question plus the subject matter of the claim and the nature of an illegality with reference to the specific statute. Sufficient interest is usually considered at both the permission and substantive hearing stages.	Procedure can be adapted to accommodate procurement claims but is not well suited in a way that provides for speedy and cost effective case management as is required in procurement claims.

Remedy/process	Strengths	Weaknesses	RAG rating
	15 months of permission being granted.	The courts have not always been consistent when determining the issue of standing. Permission - A party needs to obtain permission before the court will permit it to proceed to Judicial Review. Interested Parties/Intervenors Interested Parties/Intervenors will not ordinarily recover their costs unless they can demonstrate that they dealt with a separate point in the proceedings not addressed by the Defendant/public authority.	
ADR			
Judicial Review	The Pre-Action Protocol for Judicial Review aims to avoid unnecessary litigation. This protocol recommends that a party send a Letter Before Claim identifying the issues in dispute and attempt to narrow issues with the opposing party/parties before proceedings are issued.	The court can consider the extent to which a party has adhered to the Pre-Action Protocol for Judicial Review when determining costs at the conclusion of a matter.	Can be used for procurement claims, but not adapted in a way that is generally available and/or effective.

Remedy/process	Strengths	Weaknesses	RAG rating
	Due to the strict time limits for issuing Judicial Review Proceedings strict adherence to the Pre-Action Protocol for Judicial Review will not be appropriate in very urgent cases where the claim could be made immediately.		
Substantive Relief			
Judicial Review	The court might grant permission on the basis that different remedies are available under Judicial Review that might not necessarily be available under the PCR (*R(Hossack) v Legal Services Commission [2011] EWCA Civ 788*). Available remedies in Judicial Review: Quashing Order - Sets aside the public authority's decision (ordinarily it is 'sent back' to the public authority to re-make the decision). Mandatory Order - Requires the public authority to carry out its legal	Historically Judicial Review is only available where there is no other remedy available. If an alternative remedy is available (e.g. the right to appeal a decision) Judicial Review should not be permitted and it cannot be used to overcome the fact that the alternative remedy has not been exercised in time.	Judicial Review Proceedings are capable of providing substantive relief in procurement cases but are not well suited for providing remedies specific to public procurement decision making.

Remedy/process	Strengths	Weaknesses	RAG rating
	duties/take action. Failure to comply is contempt of court. Prohibiting Order - Restrains the public authority from acting beyond its powers (it is more usual to seek an injunction). Declaration - Sets out the rights and or legal position of the parties. Stay/Injunction - Prevents the public authority from acting on a decision/taking certain action. Damages - A party may include a claim for damages to avoid parallel proceedings.	Declaration - Generally only available if other remedies are inappropriate or the subject matter affects a large number of people. Stay/Injunction - Often granted as an interim remedy as opposed to substantive relief and only granted where just and reasonable to do so. Damages - Damages awards are extremely unusual in Judicial Review Proceedings. Damages are only available if another established cause of action is available for which damages may be sought.	