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Which way is the wind blowing on Automatic Suspension following Parkingeye [2026]— in favour of suppliers or contracting authorities — and will the new approach survive appeal?

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The answer to the question…

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1. The wind in *Parkingeye* was blowing ***strongly*** in favour of suppliers
2. ***But***, the reasoning was obviously wrong/went to far in certain respects and would not have survived appeal
3. In any event, no CA appeal was pursued by D
4. There has only been one further case to date (*Verity*) addressing interim relief under the Procurement Act 2023. The reasoning (of Jefford J) supports the view that *Parkingeye* is unlikely to be followed/adopted by other High Court Judges – a fair to moderate breeze in favour of contracting authorities
5. *Parkingeye* and *Verity* are both examples, in different respects, of parties failing properly to evidence/advance their cases. The real practical lesson from both cases is that it is ***quality*** of witness evidence/legal expertise which usually makes the difference between success and failure in these applications.

Section 102 of the Procurement Act 2023

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"(1) In proceedings under this Part, the court may make one or more of the following orders—

(a) an order lifting or modifying the restriction in section 101(1)

…

(2) In considering whether to make an order under subsection (1), the court must have regard to—

(a) the public interest in, among other things—

(i) upholding the principle that public contracts should be awarded, and contracts should be modified, in accordance with the law;

(ii) avoiding delay in the supply of the goods, services or works provided for in the contract or modification (for example, in respect of defence or security interests or the continuing provision of public services);

(b) the interests of suppliers, including whether damages are an adequate remedy for the claimant;

(c) any other matters that the court considers appropriate.

…

(4) An order under subsection (1) may provide for undertakings or conditions."

Parkingeye – facts and decision

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- Wholly **un**exceptional contract for car park management services – nothing unique, exceptional or unusual about it.
- Grounds of claim wide-ranging and scattergun. May also have been a serious limitation problem, but the point was not taken by D at the suspension stage.
- Damages obviously an adequate remedy for C on conventional *Cyanamid* principles. C ran some arguments to the contrary, but these were weak/hopeless.
- Notwithstanding lack of obvious merit in claim, the adequacy of damages as a remedy and the quotidian nature of the contract, the Judge (HHJ Keyser KC) held that the suspension should be maintained for two key reasons:

  (1) A new, and materially different, legal test was to be applied under the Act: even if damages is an adequate remedy for C, the suspension should not be lifted unless there is convincing evidence that doing so is necessary to give effect to an overriding public interest and this is likely only to be the case where the new services are needed to secure some compelling public interest.
  (2) D's evidence regarding the alleged benefits/public interest need for the new contract was vague and unpersuasive and did not establish that the suspension needed to be lifted

- *Remarkably*, no order for expedited trial – suspension simply left to continue until matter disposed of at trial in the ordinary course

The Judge's new test

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- [25] *"In general terms the new test speaks for itself."*
- [27] *"the most important textual context is perhaps section 12, which identifies the objectives of covered procurement."*
- [28] *"The balance between the public interest and the private interests of suppliers is thus at the heart of the new test."*
- *[29] "Section 102 does not in terms explain how the balance is to be struck or create any default position or presumption. It does not provide that any of the matters mentioned in paragraphs (a) to (c) have priority over others.* ***This would lead naturally to the conclusion, which I do reach, that the weight to be afforded to each of the matters will be for the court to decide on the facts of each particular case****."* (emphasis added) *but cf.* the Judge's [25] *"the new test speaks for itself"…*

The Judge's new test

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- [30] *However, several matters would seem to provide a clear indication that* ***the new test is intended to be*** *substantively and not merely formally* ***very different, in both its method and its effect****…First, and most obviously, the test for an interim injunction is no longer in operation. Under that test the conclusion that damages would be an adequate remedy for the claimant would result in the suspension being lifted; this was a major reason why it was relatively difficult for a claimant to successfully resist an application to lift the stay. Now, however, adequacy of damages is only one matter to be taken into consideration. Second, this change is emphasised by the ordering of matters (a) and (b) in section 102(2)…"* (emphasis added)

- Judge here starts to fall into error. He makes two points: (i) new, different, test; and (ii) ordering of the statutory relevant considerations is of significance to content of the new test
- However:
  - (i) is fine as far as it goes, in that the statutory words make clear that there is a new test and AoD is not *by itself* determinative. However, this does not really support the Judge's *"****very*** *different in…method and effect proposition"*
  - (ii) is a bad point. There is no principle of statutory interpretation that the order of a series of relevant statutory considerations connotes a hierarchy or an indication of relative importance/weight. Indeed, the opposite is true.

The Judge's new test

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- [31] *"…To put the matter very shortly, the text seems to me to show that **the public interest will generally tend in favour of keeping the suspension in place**, although on the facts of particular cases it may weigh differently…I read [s. 102(2)(a) [public interest in lawfulness of procurement] **as recognising a public interest that, where the lawfulness of an award of a contract is disputed, the contract should not be awarded until that dispute has been determined**…The second example of public interest (delay in supply) **focuses precisely on delay in achieving the supply of goods and services, not on the desirability of alternative sources of supply**…this indicates that **they are both intended to represent serious and maybe exceptional cases**….Especially when read in the context of section 102(2)(a)(i), section 102(2)(a)(ii) directs **the primary focus to the substantial deprivation of services**."* (emphasis added)

- Judge makes two points: (i) s. 102(2)(a)(i) indicates the public interest in lawful procurement should weigh in favour of maintaining suspension; and (ii) s. 102(a)(ii) is concerned with serious/maybe exceptional cases and/or substantial deprivation of services, i.e. the delay/loss of public benefits provided by new contracts are unlikely to be sufficient to justify lifting the suspension.
- However:
- (i) – I would tend to agree though ***nb.*** this is contrary to the view previously reached by a ***long*** list of distinguished High Court and Court of Appeal Judges (because a damages award will also vindicate the public interest in lawful procurement)
- (ii) is a bad one. The statutory words of s. 102(2)(a)(ii) do not support the proposition that the statutory relevant consideration is confined to serious/maybe exceptional cases and/or substantial deprivation of services – it merely provides some non-exhaustive examples
- Further, neither of the Judge's two points – individually or cumulatively – goes so far as to make good his proposition that *"the public interest will **generally** tend in favour of keeping the suspension in place"*

The Judge's new test

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- [32] *"…I am confirmed in the views that I would form as to the interpretation of section 102(2) by the secondary materials to which I was referred…."*

- Judge then refers to a range of statements in the Green Paper, consultation papers etc. as supporting his proposed approach e.g. GP §206: *"We propose amending the test to be applied by the Courts when determining whether to lift the automatic suspension so that it is no longer based on the test applied when granting an injunction, but is a more appropriate, procurement-specific test. We would aim for this test to balance public interest, urgency, the upholding of the regulations and the impact on the winning bidder against the right for the claimant to be able to participate in the contract and the alternative available remedies. The introduction of a fast track procedure where required should reduce the need to rely on this test as the reduction in Court timescales will allow more contracts to remain suspended while the case is heard."*

- ***However***:
  - ***First***, all of these pre-legislative statements were made at time when the intended legislative package: (i) removed the right to claim damages for loss of net profit (so that by definition damages would be a wholly inadequate remedy in any serious commercial procurement challenge), and (ii) contemplated the introduction of a *"fast track"* procedure for the rapid, expedited substantive determination of procurement challenges (so that the prejudice to public authorities of suspensions being maintained would be significant reduced/mitigated). In the event, neither of those measures has been introduced -> the earlier statements cannot, in that context, necessarily be taken as a reliable guide to Parliament ultimate intent when making the Act.
  - ***Second***, even taken at their highest, none of the pre-legislative materials support the Judge's *"the public interest will **generally** tend in favour of keeping the suspension in place"* proposition

Implications

- If correct, the consequences of the Judge's approach for procurement litigation would be significant
- Large swathes of the UK's public contracts (likely the significant majority) would likely not meet the Judge's definition of being *"serious/maybe exceptional cases"* or threaten *"substantial deprivation of services"*
- On the Judge's approach it would follow that the suspension should generally be maintained in all of these cases even if: (i) damages is a wholly adequate remedy for C, (ii) the new contract would deliver real, non-de minimis public benefits, and (iii) there is no order for expedited trial
- That would comprise a very attractive position for incumbent providers of services, who can use the additional revenue from the extension of their public contract to the date of trial to fund the costs of their procurement litigation
- Conversely, it is an unattractive position for contracting authorities

Implications

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- These observations reflect practical experience since *Parkingeye* was handed down: a steady stream of strident pre-action letters in which (optimistic) claimants demand that contracting authorities abandon contract award decisions because they will obviously fail to lift the suspension post-*Parkingeye*

- However, we now have a recent judicial indication that the grounds for reservation regarding the *Parkingeye* judgment are well-founded: *Verity Healthcare Ltd v Cambridgeshire County Council* [2026] EWHC 2830 (TCC) per Jefford J

Verity: decision and implications

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- Challenge to substantial LA contract for homecare services. C was legally represented, but conduct of the proceedings was shambolic/raised serious concerns (and allegations of contempt).

- Court dismissed application principally on basis of time-bar, but Jefford J went out of her way to record her disagreement with significant elements of the *Parkingeye* reasoning:

- [104] – It was wrong to suggest that s. 102(2) gives greater weight to some factors on basis of order in which they're listed, or that the public interest in lawful procurement should be given greatest weight: *"If the public interest in lawfulness took some kind of precedence, it would have the effect that, in almost every case where there was an arguable case on breach, interim relief would be granted and that cannot have been the intention of Parliament."*

- *[111]* – It was wrong to suggest that 'overriding' reasons should be required to lift the suspension: *"It seems to me that the observations at [31] and the articulation of the test at sub-paragraph 36(4) come close to elevating the public interest in lawful procurement to a factor that takes priority by requiring not merely a balancing exercise with a countervailing public or private interest but some very persuasive countervailing public interest or some overriding matter of private interest. If that is the intention, I doubt that it properly reflects section 102 and it is inconsistent with the absence of any hierarchy of factors in section 102."*

Verity: decision and implications

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- [118]-[120]:

- *"Ms Ellis' evidence is that CCC is…that any delay will impact the proposed transition to the new placements by the end of October 2027. If CCC is unable to complete the transition by that date, it anticipates that any new placements will have to be obtained by individual spot contracts.* ***Ms Ellis sets out the disadvantages of that approach in terms of diversion of resources, expense, market distortion and delay in the provision of services…the impact of delay on how they would be provided and financed goes beyond a simple preference for a provider****…Dr Ofori-Kyereh's evidence makes it clear that* ***damages would be an adequate remedy****…Accordingly, as I have said, had I reached this point, and giving consideration to all the statutory factors, I would not have granted the interim relief sought."*

- Jefford J's analytical framework thus: (i) rejects a number of the key planks of the *Parkingeye* reasoning, (ii) effectively (at least where damages is an adequate remedy) ***reverses*** the 'presumption' suggested by *Parkingeye*, and (ii) appears likely, in many cases, to lead to very similar outcomes to conventional *Cyanamid* principles

Where are we now/where are we going?

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1. The more extravagant parts of the *Parkingeye* reasoning are unlikely to be followed by other High Court Judges

1. Undoubtedly correct that AoD should no longer be treated as entirely dispositive. However, likely to be a very significant factor in most cases

2. In substance, the "new test" may be old wine in new bottles. As long ago as 2015, the High Court (Coulson J, as he then was) had suggested that in the context of procurement disputes Cyanamid principles should be somewhat modified so that AoD was considered as one element within the overall balance of convenience test (*Bristol Missing Link Ltd v Bristol City Council* [2015] EWHC 876 (TCC)):

> *5. The Balance of Convenience*
> *In my view, there are four elements of the balance of convenience that need to be considered on an application of this kind. They are:*
> *(a) The adequacy of damages;*
> *(b) The importance of the remedy of review;*
> *(c) The advantages and disadvantages to the parties if the suspension is not lifted; and*
> *(d) The advantage and disadvantages to the parties if the suspension is lifted."*

1. The reality, and real lesson of *Parkingeye* and *Verity*, is that the success/failure of these applications are usually principally determined by the ***quality*** of the witness evidence/expertise of the legal advisers available to each party. These are factors which are within the client's control

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