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Parkingeye Ltd v Velindre University NHS Trust & Anor [2026] EWHC 1019 (TCC): The Procurement Act 2023 Puts the Brakes on Automatic Suspension Applications

***Parkingeye Ltd v Velindre University NHS Trust & Anor* [2026] EWHC 1019 (TCC)**

HHJ Keyser KC (sitting as a Judge of the High Court), 1 May 2026

Key Words

Procurement Act 2023, Section 102(2), automatic suspension, interim remedies, public interest, adequacy of damages, public contracts, standstill period, American Cyanamid test, NHS parking management.

1. **Headnote**
    1. This was an application by a contracting authority to lift an automatic suspension imposed under section 101(1) of the Procurement Act 2023 following the commencement of procurement proceedings during the standstill period. [1–2, 17–18]
    2. The court considered, for the first time, the statutory test in section 102(2) of the Procurement Act 2023 governing interim remedies in procurement disputes. [25–26]
    3. The court held that section 102(2) replaced the American Cyanamid test formerly applicable under the Public Contracts Regulations 2015, and required a single evaluative exercise balancing the public interest, the interests of suppliers, and any other relevant matters. [24–31, 36]
    4. The court held that the public interest in ensuring that public contracts were awarded lawfully generally weighed in favour of maintaining an automatic suspension pending resolution of a substantive challenge. [31, 61–62, 85]
    5. The court further held that the public interest in avoiding disruption to public services under section 102(2)(a)(ii) was directed to actual interruption of essential services rather than delay in achieving improved contractual benefits. [31, 64]
    6. On the facts, where incumbent parking services continued uninterrupted and the benefits of the new contract were modest, the balance favoured maintaining the suspension. [64–66, 85]
    7. Accordingly, the application to lift the suspension was refused, subject to a standard cross-undertaking in damages by the claimant. [84–85].

2. **Facts**
    1. The claimant was the incumbent provider of car park management services to Cardiff and Vale University Health Board across five NHS sites in Wales. [37]
    2. The first defendant, acting through NHS Wales Shared Services Partnership, conducted a competitive procurement for a new car park management contract on behalf of the second defendant. [38–39]
    3. Five bidders participated in the procurement, and National Parking Control Group Limited achieved the highest overall evaluation score. [45–46]
    4. Following publication of a contract award notice, the claimant commenced proceedings during the standstill period alleging numerous breaches of the Procurement Act 2023. [2, 48, 54–55]
    5. The commencement of those proceedings triggered an automatic suspension preventing conclusion of the contract. [17–18]
    6. The defendants applied under section 102(2) of the 2023 Act for the suspension to be lifted. [1–2, 52]
3. **Issue**
    1. The issue for the court was whether, applying section 102(2) of the Procurement Act 2023, the automatic suspension should be lifted pending determination of the substantive procurement challenge. [25–29]
4. **Decision**
    1. The court refused the defendants' applications and ordered that the suspension remain in place, subject to a standard cross-undertaking in damages by the claimant. [85]
5. **Reasoning**
    1. **The statutory test**
        1. Section 102(2) introduced a procurement-specific test requiring the court to have regard to the public interest, the interests of suppliers, and any other relevant matters when considering interim remedies. [28–29]
        2. The new test was substantively different from the American Cyanamid approach previously applied under the 2015 Regulations. [24, 30]
        3. Under the former regime, a finding that damages were an adequate remedy for the claimant would ordinarily lead to the suspension being lifted. [30]
        4. Under the 2023 Act, the adequacy of damages was only one relevant factor and was no longer determinative. [30–31]
    2. **Public interest**
        1. The public interest under section 102(2)(a)(i) encompassed the principle that public contracts should be awarded in accordance with the law. [31, 61]
        2. That principle was directed to preventing disputed contract awards from proceeding before determination, rather than to post-contract sanctions for unlawfulness. [31, 61–62]
        3. The court rejected the submission that the availability of post-contract damages sufficiently protected the public interest in lawful procurement. [31, 62]
        4. Section 102(2)(a)(ii) concerned the public interest in avoiding delay or interruption in the supply of public services. [31]
        5. That provision was directed to serious cases such as interruption of defence, security, or essential public services rather than to delays in achieving improved commercial terms. [31, 64]
        6. As the incumbent parking services continued without interruption, there was no risk

of disruption to public services. [64–66]

7. The additional benefits of the proposed new contract were assessed as modest and insufficient to outweigh the public interest in maintaining the suspension. [66]

3. **Interests of suppliers**
    1. The claimant's interests were commercial and financial in nature. [69–70]
    2. Although the claimant preferred performance of the contract to damages, it would in principle be just to confine it to a remedy in damages if the suspension were lifted. [72]
    3. The court rejected arguments that damages would be inadequate due to difficulties of quantification. [74]
    4. The court further rejected assertions of irreparable reputational damage, there being no cogent evidence of such harm. [75–76]
    5. The interests of the successful bidder were adverse to delay but were inherent in the statutory suspension regime and did not constitute an overriding factor. [78]

6. ***Held***
    1. *Applying section 102(2) of the Procurement Act 2023, the court held that the public interest in ensuring that public contracts were awarded lawfully outweighed the interests of the defendants and the successful bidder in proceeding immediately with contract conclusion. [31, 61–62, 85]*
    2. *The court further held that, in the absence of any real risk of interruption to essential public services, the public interest did not justify lifting the automatic suspension. [64–66, 85]*
    3. *The court therefore refused the applications to lift the suspension and ordered that it remain in place pending resolution of the substantive proceedings, subject to a standard cross-undertaking in damages. [84–85]*

7. **Disposition**
    1. Application refused; automatic suspension under s.101 Procurement Act 2023 maintained; claimant to give standard cross-undertaking in damages.

8. **Ratio Decidendi**
    1. Under section 102(2) of the Procurement Act 2023, the court must conduct a single evaluative balance between the public interest and the interests of suppliers when considering whether to lift an automatic suspension. [28–29, 36][1]
    2. The public interest in ensuring that public contracts are awarded lawfully will generally weigh in favour of maintaining the suspension pending determination of a substantive challenge. [31, 61–62][2]
    3. The adequacy of damages for the claimant is no longer determinative and does not, of itself, justify lifting a suspension. [30–31, 72][3]
    4. Absent a serious risk of interruption to essential public services or an overriding countervailing interest, the suspension should ordinarily remain in place. [31, 64–66, 85][4], [5]

Comment

Parkingeye *is an early and important warning shot under the Procurement Act 2023. The automatic suspension is no longer a flimsy procedural speed bump to be flattened by the familiar machinery of* ***American Cyanamid****. Section 102(2) has brought its own engine, its own gearbox, and, crucially, its own priorities.*

HHJ Keyser KC's judgment makes clear that the court is not simply asking whether damages will do. That question remains relevant but it has been demoted from monarch to committee member. The real exercise is now a broader statutory balance between the public interest, the interests of suppliers, and any other relevant matters. The court expressly held that adequacy of damages no longer has the significance it had under the former regime and that the public interest is now at the heart of the analysis.

The most striking feature of the decision is its treatment of legality. The public interest in lawful procurement is not satisfied by letting the contract go ahead and dealing with the wreckage later by damages. That, as the judgment recognises, would make the statutory reference to lawful award almost ornamental: a procurement-themed air freshener hanging from the mirror while the vehicle heads into a ditch. The court instead read section 102(2)(a)(i) as recognising a real public interest in preventing the award of a disputed contract until the lawfulness of that award has been resolved.

Nor was the NHS context enough to rescue the application. This was not a case where patients were about to be deprived of treatment, defence capability was imperilled, or a vital public service was grinding to a halt. Parking enforcement would continue. The incumbent was still in place. The supposed benefits of the new arrangement were real but modest. A helpdesk, revenue-sharing and improved permit systems may be useful but they were not the procurement equivalent of oxygen. The court was unimpressed by the attempt to inflate contractual improvements into urgent public necessity.

For contracting authorities, the lesson is blunt. An application to lift an automatic suspension under the 2023 Act must now do more than point to delay, inconvenience, a preferred bidder, or the ordinary desire to get on with the contract. There must be a persuasive countervailing public interest, or some genuinely overriding private interest. The mere fact that the authority has chosen a winner is not enough. The statute has decided that lawful procurement matters before the contract is signed, not merely after the cheque for damages is written.

For challengers, the decision is equally significant but not a free pass. The court did not create a presumption that every suspension must remain. Nor did it require a merits mini-trial. It recognised that damages may still be adequate in many commercial cases and that a cross-undertaking in damages may be required. But where services continue, urgency is modest, and the challenge raises serious questions about the legality of the award, the suspension now has real statutory grip.

The result is a marked recalibration of procurement litigation. Under the old regime, the automatic suspension often arrived with a loud statutory fanfare and then disappeared at the first serious application. Under the 2023 Act, it has acquired teeth. Not enormous sabre-toothed litigation teeth, perhaps, but enough to discourage casual biting.

The practical message is simple: if a contracting authority wants the court to lift the suspension, it must bring evidence of actual public harm, not merely disappointment, administrative irritation, or a better parking permit portal. In ***Parkingeye****, that was not enough. The handbrake stayed on.*

#ProcurementAct2023 #PublicProcurement #ProcurementLaw #AutomaticSuspension #InterimRemedies #PublicInterest #NHSProcurement #Parkingeye #Section102 #UKLaw #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Statutory interpretation and the nature of the new Procurement Act 2023 test

1. ***R (O) v Secretary of State for the Home Department*** [2022] UKSC 3, [2023] AC 255 – *Cited for orthodox principles of statutory interpretation, including contextual reading, purposive construction, and the objective meaning of Parliament's language rather than subjective legislative intent. [26]*
2. ***Wright v Chief Constable of Cumbria*** [2006] EWHC 3574 (Admin), [2007] 1 WLR 1407 – *Relied upon for the limited but permissible persuasive value of government guidance lacking statutory force. [35]*

Replacement of the American Cyanamid test in procurement suspension cases

1. ***American Cyanamid Co v Ethicon Ltd*** [1975] AC 396 – *Identified as the former test governing interim injunctions, whose adequacy-of-damages analysis had previously made it difficult for claimants to resist lifting of automatic suspensions. [24, 30]*
2. ***Camelot UK Lotteries Ltd v Gambling Commission*** [2022] EWHC 1644 (TCC) – *Cited as a summary of the American Cyanamid approach as applied to procurement cases under the Public Contracts Regulations 2015. [24]*
3. ***Alstom Transport v Eurostar International Ltd*** [2010] EWHC 2747 (Ch) – *Authorities recognising that public interest may be relevant within the balance of convenience under the former regime. [24]*
4. ***OpenView Security Solutions Ltd v London Borough of Merton*** [2015] EWHC 2694 (TCC) – *Cited for consideration of the interests of the successful bidder within interim relief applications. [24, 30]*
5. ***Circle Nottingham Ltd v NHS Rushcliffe CCG*** [2019] EWHC 1315 (TCC) – *Authority reflecting the former inclination to preserve the status quo by lifting the suspension where damages were adequate. [24]*

Public interest in lawful procurement and service continuity

1. ***InHealth Intelligence Ltd v NHS England*** [2022] EWHC 2471 (TCC) – *Relied upon for the proposition that awarding damages for unlawful procurement diverts public funds and may result in public bodies paying twice. [62]*
2. ***International SOS Assistance Ltd v Secretary of State for Defence*** [2025] EWHC 2634 (TCC) – *Cited for balancing the public interest in lawful procurement against the public interest in obtaining perceived benefits from a new contract. [66]*
3. ***Draeger Safety UK Ltd v London Underground Ltd*** [2021] EWHC 2221 (TCC) – *Referred to (via International SOS) concerning respect for public authorities' assessment of contractual benefit, while not treating it as determinative. [66]*
4. ***Medequip Assistive Technology Ltd v Royal Borough of Kensington and Chelsea*** [2022] EWHC 3293 (TCC) – *Cited for limits on reliance upon asserted difficulty in quantifying damages. [73]*
5. ***The New Lottery Company Ltd v Gambling Commission*** [2026] EWHC 891 (TCC) – *Authority for the proposition that extensions granted to maintain continuity of public services during litigation are unlikely to be unlawful. [67]*

Adequacy of damages and loss-of-chance analysis

1. ***Braceurself Ltd v NHS England*** [2019] EWHC 3873 (TCC) – *Cited in support of the proposition that claimants may legitimately prefer performance over damages, without that alone rendering damages inadequate. [69]*

2. ***Evans Marshall & Co Ltd v Bertola SA*** [1973] 1 WLR 349 – *Relied upon for reformulating the damages test as whether it is just to confine a party to damages. [71]*
3. ***Cavendish Square Holding BV v Makdessi*** [2015] UKSC 67, [2016] AC 1172 – *Cited for principles governing when damages are an adequate remedy and when specific performance may be justified. [71]*
4. ***Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd*** [1998] AC 1 – *Authority for the contractual principle that the purpose of remedies is to satisfy expectations rather than punish breach. [71]*
5. ***Lettings International Ltd v London Borough of Newham*** [2007] EWCA Civ 1522 – *Cited as an example of circumstances where damages assessment may be highly problematic. [73]*
6. ***Morrison Facilities Services Ltd v Norwich City Council*** [2010] EWHC 487 (Ch) – *Authority illustrating cases where damages may be virtually impossible to quantify due to evaluation irregularities. [73]*
7. ***NATS (Services) Ltd v Gatwick Airport Ltd*** [2014] EWHC 3133 (TCC), [2015] PTSR 566 – *Applied for the proposition that complexity alone in damages assessment does not normally render damages inadequate. [73]*
8. ***Covanta Energy Ltd v Merseyside Waste Disposal Authority (No 2)*** [2013] EWHC 2922 (TCC) – *Authority addressing difficulties in quantifying damages where tenderers were materially misled. [73]*

Reputational damage and procurement litigation

1. ***Bombardier Transportation UK Ltd v London Underground Ltd*** [2018] EWHC 2926 (TCC) – *Cited for the requirement of cogent evidence to establish reputational damage as rendering damages inadequate. [75]*
2. ***MAK Systems Group Ltd v Velindre University NHS Trust*** [2026] EWHC 8 (TCC) – *Applied as recent authority rejecting unsubstantiated claims of reputational harm in procurement disputes. [75–76]*
3. ***One Medicare Ltd v NHS Northamptonshire ICB*** [2025] EWHC 63 (TCC) – *Authority summarising principles governing reputational damage claims by unsuccessful bidders. [75]*

Legislation:

Public procurement remedies and interim relief under the Procurement Act 2023

1. ***Procurement Act 2023*** – *The central statutory framework governing the procurement, enforcement of duties, and interim remedies in issue in the proceedings. [1–21, 25–36, 60–85]*
2. ***Section 102(2)*** – *Established the new procurement-specific test for interim remedies, requiring the court to balance the public interest, the interests of suppliers (including adequacy of damages), and any other relevant matters. [18, 25–31, 36, 61–66, 68–79, 85]*
3. ***Section 101(1)*** – *Imposed the automatic suspension preventing a contracting authority from entering into a public contract once proceedings were commenced during the standstill period. [17–18, 48]*
4. ***Section 100(1)*** – *Created the enforceable statutory duty to comply with Parts 1 to 5, 7 and 8 of the Act, breach of which grounded the claimant's procurement challenge. [16, 54–57]*
5. ***Section 103*** – *Provided for pre-contractual remedies, including setting aside decisions and requiring corrective action, where a breach was established before contract conclusion. [19]*
6. ***Section 104*** – *Provided for post-contractual remedies and identified "overriding public interest" exceptions, used by analogy to interpret the meaning and weight of public interest*

under section 102(2). [20, 31]

7. ***Section 106*** *– Established limitation periods for procurement proceedings, which formed part of the defendants' substantive defence and was considered as background context to the interim application. [21, 58–59, 80]*

Principles, objectives, and procedures governing lawful procurement under the 2023 Act

1. ***Section 11*** *– Required contracting authorities to conduct covered procurements in accordance with the Act and to award contracts by competitive procedure. [8–9, 55]*
2. ***Section 12*** *– Set out procurement principles, including value for money, public benefit, transparency, and integrity, which informed the contextual interpretation of section 102(2). [7, 27]*
3. ***Sections 19 and 23*** *– Governed assessment of tenders and specification of award criteria and methodology, forming part of the alleged breaches underlying the substantive claim. [10, 13, 55]*
4. ***Sections 21 and 22*** *– Regulated tender notices and conditions of participation, relied upon in allegations of misdescription of contracting authority and failure properly to apply conditions of participation. [11–12, 55]*
5. ***Sections 50 and 51*** *– Governed publication of contract award notices, assessment summaries, and the mandatory standstill period triggering the automatic suspension. [14–15, 47–48]*

Special regime and concession contracts

1. ***Section 8*** *– Defined concession contracts and operating risk, relied upon in the claimant's allegation that the contract ought to have been classified as a concession contract. [55(iv), 74]*

Former procurement regime for comparative context

1. ***Public Contracts Regulations 2015*** *– Provided the prior statutory framework under which automatic suspensions were governed by an injunction-based test. [22–24, 30]*
2. ***Regulations 95 and 96*** *– Imposed the former automatic suspension and adopted the American Cyanamid test for lifting it, cited to demonstrate the substantive change effected by the 2023 Act. [23–24, 30]*

Procedural rules

1. ***Civil Procedure Rules rr.7.1A and 7.1B*** *– Governing the proper venue for procurement proceedings, relevant to the procedural history and timing of the applications. [82]*

Legal Texts & Commentary:

Interpretation and purpose of the Procurement Act 2023 (primary importance)

1. ***Explanatory Notes to the Procurement Act 2023*** *– Relied upon as secondary interpretative material to explain the purpose, structure, and intended operation of the Procurement Act 2023, including the introduction of a single, procurement-specific regime replacing EU-derived regulations. [7, 34]*
2. ***Bennion, Bailey and Norbury on Statutory Interpretation (8th ed, 2020)*** *– Cited for orthodox principles of statutory interpretation, including the use of statutory context and secondary materials to ascertain legislative meaning, while maintaining primacy of the enacted*

text. [26]

Policy rationale for reforming interim remedies and automatic suspensions

1. ***Transforming Public Procurement – Green Paper (CP 353, December 2020)*** *– Relied upon to demonstrate the policy mischief addressed by the 2023 Act, namely that the American Cyanamid test was not procurement-specific and was perceived as skewed in favour of contracting authorities by over-emphasising adequacy of damages. [32]*
2. ***Transforming Public Procurement: Government Response to Consultation (CP 556, December 2021)****– Used to confirm the government's settled intention to introduce a new, single-limb, procurement-specific test balancing public interest, supplier interests, and urgency, and to move away from adequacy of damages as a decisive factor. [33]*

Guidance on remedies and operation of automatic suspension

1. ***Guidance: Remedies (updated 20 November 2025)*** *– Relied upon as persuasive but non-binding guidance explaining the intended operation of the automatic suspension, the purpose of resolving disputes pre-contract, and the circumstances in which lifting a suspension may be appropriate, particularly where delay would have unacceptable public service impacts. [35]*

Comparative context and interpretative aids (limited weight)

1. ***Explanatory Notes and Guidance (collectively)*** *– Treated as confirmatory rather than determinative aids, capable of assisting interpretation but not displacing the clear meaning and structure of section 102(2) of the 2023 Act. [26, 34–36]*

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[1] *Single evaluative balance.*

The requirement that the court undertake a single evaluative balance between the public interest and the interests of suppliers derived from **Procurement Act 2023, s.102(2)**, construed contextually by reference to the Act's procurement objectives, and contrasted with the displaced injunction-based regime under the Public Contracts Regulations 2015 (regs 95–96). [18, 23–24, 28–30, 36]

[2] *Public interest in lawful award generally favours maintaining the suspension.*

The principle that the public interest will usually favour maintaining the suspension pending determination of a lawfulness dispute followed from **s.102(2)(a)(i)**, read with **s.11(1)** (lawful conduct of covered procurements) and **s.100(1)** (enforceable duty), which together emphasised pre-award compliance rather than post-award redress. [8–9, 16, 31, 55, 61–62]

[3] *Adequacy of damages no longer determinative.*

The reduced weight of damages as a deciding factor reflected the express formulation of **s.102(2)(b)**, supported by the statutory availability of **pre-contractual remedies under s.103** and the contextual role of **post-contractual remedies under s.104**, demonstrating that damages were only one consideration within the broader balance. [18–20, 30–31, 69–74]

[4] *Absence of compelling countervailing public interest absent service interruption.*

The threshold for lifting the suspension required more than loss of incremental contractual benefits, deriving from **s.102(2)(a)(ii)**, interpreted as being directed to serious disruption or interruption of essential public services, rather than delay in achieving improved terms. [31, 64–66]

[5] *Statutory suspensions not to be lifted lightly.*

The conclusion that suspensions should not be lightly displaced reflected the structure and purpose of **Part 9 of the Procurement Act 2023**, including the interaction of **ss.101(1), 102(2), and 51**, evidencing Parliament's intention to prioritise lawful, pre-award resolution of procurement disputes. [15, 17–18, 31, 85]

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