Neutral Citation Number: [2026] EWHC 2830 (TCC)

Case No: HT-2026-000275

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 3 November 2026

Before :

MRS JUSTICE JEFFORD

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Between :

Verity Healthcare Limited	**Claimant**
- and -	
Cambridgeshire County Council	**Defendant**

- -
- -

Mr Richard Clayton KC (instructed by **Farani Taylor Solicitors**) for the **Claimant**
Mr Stephen Kosmin (instructed by **Sharpe Pritchard LLP**) for the **Defendant**

Hearing date: 8th September 2026

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Approved Judgment

This judgment was handed down remotely at 2.00 on 3rd November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE JEFFORD

Mrs Justice Jefford :

Introduction

1. The claimant ("Verity") describes itself as a regulated health and social care provider and as a supplier and provider of regulated homecare services amongst other care services. The claim concerns a procurement being conducted by the defendant council ("CCC") for providers under a Homecare Framework through which regulated homecare services will be provided to adults across Cambridgeshire for a contract term of up to 10 years. The total value of the framework is estimated as £928,080,000 (including VAT).

2. The procurement is being conducted as a competitive flexible procedure under section 20(2)(b) of the Procurement Act 2023 and in respect of which section 20(5) applies. That subsection provides that a competitive flexible procedure may provide for the exclusion of suppliers by reference to conditions of participation and cross-refers to section 22.

3. Section 22 then provides:

> *"(1) A contracting authority may set conditions of participation in relation to the award of a public contract under section 19 only if it is satisfied that the conditions are a proportionate means of ensuring that suppliers have—*
>
> *(a) the legal and financial capacity to perform the contract, or*
>
> *(b) the technical ability to perform the contract.*
>
> *(2) A "condition of participation" is a condition that a supplier must satisfy if the supplier is to be awarded the public contract……"*

The applications

4. There are 2 applications before the court. Verity issued a claim form and Particulars of Claim on 17 August 2026 and, at the same time, an application for interim relief. In summary, Verity contends that the procurement is in breach of the Procurement Act in respect of a condition of participation that the supplier must hold a CQC rating of "Good" or above ("the CQC Rating Condition"). Verity is registered with the CQC but does not hold that rating. Verity's case is that the condition is not proportionate and is in breach of section 22. The application sought urgent interim relief and, given the issues that subsequently arose in relation to full and frank disclosure, it is of some relevance that Verity initially sought to have this application determined immediately and without notice.

5. On 21 August 2026, CCC then issued an application to strike out the claim and/or for summary judgment on the grounds that the claim was not commenced within the statutory time limit in section 106.

6. Section 106(1) is concerned with the commencement of set-aside proceedings. Section 106(2) then provides:
"A supplier must commence any other proceedings under this Part before the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim."

7. At paragraph 23 of the Particulars of Claim, Verity stated that it first became aware of the live Procurement and the CQC Rating Condition on 19 July 2026. The Particulars of Claim were verified by a statement of truth of Dr Samuel Ofori-Kyereh, a director of Verity. CCC's application was supported by a witness statement of Clare Ellis, Head of Procurement and Commercial at CCC. Her statement set out evidence on which CCC relied in support of its case that Verity had actual knowledge of the procurement, alternatively constructive knowledge, earlier than 19 July 2026 so that the claim was not issued within the 30 day time limit.

Facts – the starting point

8. For CCC, Ms Ellis made three statements dated 21 August 2026, 26 August 2026 and 2 September 2026. As Ms Ellis set out in her first statement, the procurement is intended to provide the primary mechanism through which CCC fulfils its statutory responsibilities to deliver home and community care. Under the procedure CCC has adopted there is a first stage of the procurement under which all prospective bidders are required to complete a Procurement Specific Questionnaire ("PSQ") which "acts as a compliance gateway and shortlisting mechanism". Prospective bidders are required to self-certify their compliance with certain conditions including a CQC rating of Good or above. In question 3.7(e), the prospective bidder is asked to confirm that its service has a current CQC rating of Outstanding or Good for homecare for adults. The Assessment Guidance states that if not rated Good or above, the application <u>will</u> be excluded.

9. Ms Ellis' evidence is that that condition was set after extensive preliminary market engagement over the course of 2024 to 2026 starting with online information workshops in August and September 2024. Preliminary Engagement Notices were published on the Government's Find A Tender website in 2025. In November 2025 two in person sessions were held with providers in Brampton and Ely using a Powerpoint presentation that addressed the CQC rating of Good or above. These were not attended by Verity.

10. The third Preliminary Market Engagement Notice was published on 3 March 2026; a "Pipeline Notice" was published on Find A Tender on 20 May 2026; and a Fourth Preliminary Market Engagement Notice on 21 May 2026.

11. CCC then held a further online event on 17 June 2026 at which it was advised that the tender notice would be published on 15 July 2026 and that it would be published through the In-Tend procurement portal. There was again reference to the "Good" rating to be required in the PSQ.

12. A Planned Procurement Notice was published on Find a Tender on 25 March 2026. Ms Ellis' evidence gave a date of 16 March 2026 which is not the date on the document but nothing turns on this. This notice stated CCC's intention to issue a tender notice in early July 2026. The notice stated that anticipated provider requirements included a requirement that providers hold a CQC registration for homecare of Good or above and that failure to meet anticipated requirements would result in rejection. It is not in dispute that the requirements set out in this notice were indicative only and subject to change.

13. In his first statement dated 17 August 2026, Dr Ofori-Kyereh said that in March 2026 he was not aware of this potential opportunity on the platform on which it appeared. He explained that Verity had previously participated in CCC opportunities using ProContract/Due North. In a subsequent witness statement), he further referred to the use of SprocNet. The defendant had, however, he said, moved to the In-tend platform. After Dr Ofori-Kyereh had become aware of the procurement in July 2026, he reviewed the March notice and his observations about it were based on that review. This evidence appears to have been intended to meet a case that CCC did not advance that Verity ought to have known about the CQC Rating Condition in March 2026. From this evidence, it also appears that Dr Ofori-Kyereh thought that the Planned Procurement Notice was published on In-tend when it was, in fact, published on Find A Tender.

14. The Tender Notice was published on 15 July 2026 on Find A Tender. It was a little over 20 pages in length. It included a section headed "Participation" and stated *"See tender documents for full conditions of participation"*. The Tender Notice then directed tenderers to the In-Tend supplier portal and provided a link to the portal.

15. Ms Ellis' evidence is that, according to CCC's audit log, the first supplier accessed the In-Tend portal at 2.28pm, that is less than an hour after publication of the Tender Notice. Verity first accessed the portal at 10.50pm on 18 July 2026 and logged an expression of interest at 10.51pm.

16. Completed PSQs were to be submitted by noon on 19 August 2026. 78 responses were received by that deadline.

17. As Ms Ellis says in her evidence, it is possible to register for alerts on Find A Tender or to register for a Google alert. Although Verity places reliance on its lack of knowledge that CCC had changed from the portal it and Verity had previously used, Verity did not need to know what portal CCC intended to use and did not need to register with a particular portal in order to receive notification of the procurement. Further, it is possible to register for alerts for procurements by reference to various search criteria, including, for example, a contract location. Since the Pipeline Notice was published, it was possible to register for alerts for this specific procurement by reference to a unique identifier. Little explanation is given in any of Dr Ofori-Kyereh's statements as to whether or not Verity had registered for alerts and, if so, by reference to what criteria or whether they had not registered and why not. The extent of the evidence was a broad statement that Verity's procurement staff had built their alerts around the systems previously used by CCC. I return to this below.

18. Dr Ofori-Kyereh's evidence was, initially and without qualification, that he (and therefore Verity) first became aware of the procurement and the condition on 19 July 2026. In this first statement, he said:
"27. My evidence is that Verity first became aware of the live Procurement and the challenged condition on 19 July 2026. Before that date Verity had not identified the live competition because it had previously used CCC's ProContract Due North arrangements and was not aware that this opportunity was being conducted through the new portal."

The progress of the claim, applications and evidence

19. In his first statement, Dr Ofori-Kyereh further said that *"formal presentation to challenging the Conditions of Participation was made to CCC on 19 July 2026 with a follow up email seeking clarification and response"*. No documents were exhibited to evidence that but, in any event, by letter dated 21 July, Verity (Dr Ofori-Kyereh) challenged the condition and asked CCC to review its condition and to permit CQC-registered providers to establish technical ability by alternative evidence.

20. By letter dated 11 August 2026, the defendant rejected that challenge and request. Amongst other things CCC said that it considered the published CQC rating of Good or Outstanding to be relevant evidence of technical ability because it was an independent assessment of matters directly connected to safe and effective delivery. It is, said CCC, "an objective, nationally recognised and independently verified regulatory benchmark". CCC asserted that it had applied the test of proportionality in deciding not to undertake a full evaluation of each provider's proposed delivery model at the threshold stage. CCC said that it had considered whether the requirement was no more burdensome than necessary. CCC had also considered whether alternative evidence should be accepted and had concluded that such material was not equivalent as it would not provide a single, consistent and independently assessed benchmark and would increase the risk of inconsistent assessment, local-provider advantage, and dispute at the participation stage.

21. In this first statement, at paragraph 18, Dr Ofori-Kyereh said that having received that letter from CCC, Verity made CCC aware on 11 August 2026 of its decision to present a legal challenge. No documents were exhibited to evidence that notice. If Verity was first aware or ought first to have been aware of the circumstances giving rise to a claim on 19 July 2026, at that point Verity had a further 6 days in which to issue a claim.

22. As I have said, the claim form with Particulars of Claim was issued at the end of that period on 17 August 2026. Although Verity's primary case was that its claim was in time, it anticipated that CCC might rely on 15 July or even 25 March 2026 as the date of relevant knowledge and addressed both those possibilities. As to 15 July, the Particulars of Claim stated that Verity's factual case was set out in the witness statement of Dr Ofori-Kyereh. Paragraph 27 of that statement is set out above. In this statement, Dr Ofori-Kyereh did not explain how Verity <u>did</u> become aware of the live procurement or the use of the In-tend portal.

23. At paragraph 29, Dr Ofori-Kyereh said further:
"29. I appreciate that CCC may contend that the formal documents were publicly available from 15 July 2026. I set out the factual circumstances above so that the Court can determine the limitation issue on the correct evidence. …"

24. The Particulars of Claim, although not the claim form, included an alternative claim for an extension of time under section 106(3) and said:
"The matters relied upon as good reason include the express provisional character of the March notice, the transition of the Defendant's tender portal, the very short period between formal publication and actual discovery, the Claimant's prompt pursuit of clarification once aware, and the fact the challenge concerns a live procurement at an early stage."

25. As I have said, the application for interim relief was issued the same day without notice although Dr Ofori-Kyereh said in the accompanying skeleton argument and in his (first) second witness statement – also made on 17 August 2026 and which dealt solely with the making of the application without notice - that it was intended to give the defendant informal notice. There was no sufficient urgency for the application to be heard without notice and, in any event, any urgency related to the date for the return of the PSQs and was the product of the claimant's failure to issue the application earlier.

26. On 21 August 2026, the defendant then issued its application to strike out the claim, alternatively for summary judgment supported by the first witness statement of Ms Ellis. The defendant asked for this application to be listed together with Verity's application. Ms Ellis' short second statement followed on 26 August 2026 making a minor correction to the number of PSQs submitted.

27. Ms Ellis's evidence led to the service of Dr Ofori-Kyereh's substantive (and second) second witness statement made on 28 August 2026. The repetition in numbering was later corrected and I refer to this as the third witness statement.

28. In that statement, he gave further evidence as to the date on which he/Verity had actual knowledge of the procurement. His evidence was that, historically, Verity had participated in CCC tender opportunities through ProContract/Due North and SprocNet and that *"Verity's procurement staff had therefore built their normal monitoring arrangements, supplier registrations and alerts around the systems previously used by the Council."* That evidence implied that Verity had a number of staff involved in monitoring procurement opportunities and stated that these staff had registered for alerts with systems previously used by CCC. Dr Ofori-Kyereh said that Verity was not made aware that the defendant was using a different portal for this procurement. However:
"On 18 July 2026 Verity was informed by Tender UK (which is a tendering company) who act as our consultant which train Verity in how to obtain and finding successful tenders. On 18 July 2018 (sic) Tender UK told Verity that it has to register with In-tendhost for us to have access to the tender documents. This was the very first time Verity was made aware of that CCC were using In-tend for this particular tender."

29. He added that because Verity did not know about the change of platform, it was not registered on that platform and had, therefore, not received alerts.

30. He then repeated that Verity identified the live procurement and the operative condition on 19 July which was the date on which the condition became, from Verity's perspective, an actual and immediate barrier to participation.

31. I note that Dr Ofori-Kyereh also repeated the alternative claim for an extension of time relying on the short period of delay (if time ran from 15 July, being the date of publication of the Tender Notice), the prompt notice to the defendant of the challenge, the short period from the defendant's response on 11 August 2026 to the issue of proceedings, and the early stage of the procurement process.

32. The balance of the statement was concerned with the substantive case as to the legality of the CQC Rating Condition and the issues that arise on the application for interim relief. The statement included evidence that Verity had successfully tendered for

contracts and provided services, including adult homecare, across a wide geographical area. It did not extend to evidence as to the portals used by other councils or the steps taken by Verity's procurement staff to become aware of opportunities other than in Cambridgeshire.

33. In this statement, Dr Ofori-Kyereh also gave evidence that Verity was a founder member of an organisation called the National Healthcare Association ("NHA"). He gave no further evidence about the nature and membership of this association. Such evidence as there is shows that it is a company with the same registered address as Verity and of which Dr Ofori-Kyereh is a director. Dr Ofori-Kyereh said that through that association and its wider engagement with the provider community, Verity was aware of concerns expressed by smaller providers about barriers to participation and the risk of bringing High Court proceedings against commissioning bodies. He exhibited to this statement what purported to be the minutes of a meeting of National Healthcare Association members in which members had expressed concerns about access to the procurement and conditions.

34. These minutes are headed Members' Meeting Minutes and the subject of the meeting is given as "Cambridgeshire County Council ("CCC") Homecare Procurement – Provider Access, Awareness, Timing and Participation Concerns". They appear to be draft minutes with much detail omitted. For example, they are undated and the meeting format is "[Teams/telephone/email correspondence/members' meeting]". The attendees are identified as representatives of the National Healthcare Association and "member/provider organisations, including representatives associated with FCC, UCL and other member providers". Nothing more is said to identify participants and some identities are redacted. "FCC" is said to have raised concerns about access to and/or awareness of the procurement. "UCL" is said to have raised concerns but they are not identified. Providers A to E are also said to have raised concerns about awareness, identification of the procurement, and similar issues. Under the heading "Conditions of Participation", the following appears:
"Members also discussed concerns regarding eligibility requirement and, in particular, [insert exact condition if this formed part of the meeting].

Some members questioned whether providers capable of demonstrating safe and effective service delivery through other objective evidence should automatically be prevented from participating because of a particular regulatory status or rating."

35. Dr Ofori-Kyereh then made a fourth witness statement on 1 September 2026. This included the following:
    (i) Dr Ofori-Kyereh noted that Ms Ellis said that Verity had attended no engagement events, that all relevant information was available to all providers and that no other provider had challenged or expressed concern about the exclusion criteria. He says, that the accuracy of those propositions depended on the completeness of council records and the information communicated to Ms Ellis by her team but did not suggest any basis for considering the information to be wrong.
    (ii) He said that Verity attended a discussion in 2024 concerning future commissioning. He accepted that Verity did not attend the in person sessions in November 2025. He did not suggest that Verity was in some way excluded from or unable to attend.

(iii) Dr Ofori-Kyereh argued that other councils send information to incumbent providers that keeps them informed even if they have not attended specific events.

36. Then, in light of Ms Ellis's evidence about the log-in to In-tend, Dr Ofori-Kyereh now accepted that "Verity logged in at 22.50 on 18 July 2026 and expressed interest one minute later". He therefore "clarified" his earlier evidence by explaining that he logged in on 18 July but reviewed and appreciated the operative CQC rating Condition on 19 July. He continued:
"That clarification does not alter the substance of my evidence. A late-night portal login and expression of interest is not the same thing as knowledge of the specific factual and legal circumstances giving rise to a challenge to question 3.7(e). After logging in to the tender portal we had problems allocating the tender because there were five different links to be explored in order to access the tender documents. ...."

37. He also said that the "formal presentation" referred to in his first statement as being made on 19 July was, in fact, the "Formal Representation Regarding the Conditions of Participation" dated 21 July 2026.

38. The balance of the statement was again principally concerned with the merits of the claim and included further evidence as to potential damages.

39. Ms Ellis responded to this clarification in her third statement dated 2 September 2026. It was in this statement that she gave the evidence I have referred to as to the ability to set alerts in Google or Find A Tender.

40. Following Dr Ofori-Kyereh's evidence in his third statement about the notification from Tenders UK, Sharpe Pritchard, CCC's solicitors, by letter dated 1 September 2026, requested the copy of that notification. What happened thereafter was the subject matter of a witness statement of George McLellan, a Partner at Sharpe Pritchard, and a schedule produced for the hearing.

41. What was first provided in response to this request was a non-native forwarded copy of the email from Tenders UK which showed it to have been sent at 11.29am on 18 July 2026. The subject line in the forwarding email was "Opportunities out this week 13/7/26" but the subject line in the substantive email was "Opportunities out this week beginning 17/07/26". 17th July was a Friday.

42. Mr McLellan then asked for the original native email. On 2 September, a further non-native version was provided. Mr McLellan noted that it was differently formatted; the forwarding email had the subject line *"Opportunities out this week – 17/07/26"*; the subject line in the substantive email was "Opportunities out this week beginning 17/07/26".

43. Mr McLellan again asked for the native document. He did so in a phone call to Mr Khan of Farani Taylor, Verity's solicitors. Mr McLellan recorded in his file note of that conversation that Mr Khan told him that content had been removed from the table in the Tenders UK notification for reasons of confidentiality.

44. Mr McLellan then emailed Tenders UK directly seeking verification of the documents disclosed. Mr Khan then provided what he said was an original copy of the notification. As set out in his statement Mr McLellan noted the following:

    (i) The date of the notification was recorded as 17 July 2026, being sent or received at 4.41pm that day (not 18 July 2026).
    (ii) The subject line was "Opportunities out this week 13/07/26". 13 July was a Monday.

45. Unsurprisingly in the circumstances, CCC therefore questions whether, in making the application for interim relief on the basis that it would be heard without notice, Verity acted in accordance with its duty of full and frank disclosure, and Mr McLellan put forward various steps that the court might take, although no application to this effect was made at the hearing.

46. A fifth witness statement of Dr Ofori-Kyereh addressed concerns expressed in correspondence by Sharpe Pritchard that his witness statements had been AI-generated and that documents had, therefore, been wrongly released into the AI world. It is not necessary to say any more than that Dr Ofori-Kyereh denied the allegation. The issue does not go to the substance of the applications before the court.

47. Next came Dr Ofori-Kyereh's sixth witness statement dated 2 September 2026 in support of an application made on 2 September 2026 which Dr Ofori-Kyereh described as seeking orders in respect of confidential information contained within redacted documents exhibited to his third witness statement at SOK15 and SOK17. These appear to be the same document and are the minutes of the National Healthcare Association meeting. I refer to this application briefly below.

48. Dr Ofori-Kyereh stated that an unredacted version of the document was exhibited as SOK22 but the statement was electronically filed without any exhibit and no hard copy exhibit was produced. That is only of relevance in so far as it means that the court had before it no more detail as to what persons or organisations had allegedly contributed to the views and concerns expressed in the document.

49. On 4 September 2026, Dr Ofori-Kyereh made a seventh witness statement. In paragraph 2 of this statement, Dr Ofori-Kyereh rejected the suggestion that there was any issue as to the truthfulness or reliability of his evidence. He said that the apparent issue resulted from the distinction between the date on which Verity became aware of the tender through his personal assistant, Seanne Gambled (sic), and the date on which he personally read the relevant e-mail and became aware of the tender.

50. He now accepted that the relevant e-mail from Tenders UK, setting out the relevant tender opportunity, was sent on Friday 17 July 2026. This is the e-mail which had as its subject line "Opportunities out this week 13/07/26". There was no explanation for the prior evidence that notification from Tenders UK was received by Verity on 18 July or the differing subject lines.

51. Dr Ofori-Kyereh explained that he was unwell as a result of a number of chronic medical problems and not in a position to read emails. It is convenient to set out in full the following paragraphs:

"5. On 18 July 2026, I felt a bit better and held a meeting with my PA to discuss matters arising during the week and emails which she could deal with on my behalf. During that meeting, my PA informed me generally that tender alerts had been received. I instructed her to review those alerts and begin considering the opportunities for which Verity might be able to submit bids.

6. My PA had therefore become aware of the relevant tender information on behalf of Verity on 18 July 2026. This is the basis upon which my third/fourth witness statement stated that Verity was informed on 18 July 2026.

7. The relevant emails were also forwarded to me by my PA so that I could access them more easily and advise her in relation to the opportunities discussed during our meeting. However, because of my continuing illness, weakness and pain, I was unable to access or read those emails on 18 July.

8. I was only personally able to access and read the relevant emails on 19 July 2026, at approximately 7.53 pm. It was at that point that I personally identified the particular Cambridgeshire County Council tender and became aware of the relevant procurement and the requirements to access the tender through In-tend.

9. There is therefore an important but straightforward distinction: Verity, through my PA, became aware of the tender information on 18 July 2026; I personally read the relevant e-mail and became aware of the particular CCC tender on 19 July 2026.

10. My earlier evidence (ie 3rd/4th witness statement) was intended to convey that Verity had been alerted to the opportunity on 18 July. I did not appreciate that it would subsequently become necessary to distinguish, in such precise detail, between the company's awareness through a member of staff and the precise time at which I personally opened and read the e-mail…."

52. Further in paragraph 12, he said that the versions of the email previously provided to the defendant had been forwarded to him by his PA and the fact that they might display differently did not alter the underlying chronology.

53. This was the first time the PA had been mentioned and, despite the obvious relevance – at least on the claimant's case – of the date on which Verity knew of the procurement, the first time this particular explanation had been given. In any event, Dr Ofori-Kyereh's evidence accepted that Verity, as a company, had first been aware of the procurement on 18 July and not on 19 July. His evidence, however, appeared to contradict his previous evidence that he personally had logged on to In-tend late on 18 July.

54. On the same date, the claimant also filed a statement of Seanne Gambled (sic). Ms Gambled stated that she is the personal assistant to Dr Ofori-Kyereh, that she had read Dr Ofori-Kyereh's seventh statement and agreed with the statement and, in particular, confirmed that paragraphs 2, 5, 6, 7, and 12 were true.

55. That led Sharpe Pritchard, for the defendant, to request, in correspondence dated 7 September 2026, further information and disclosure.

56. That in turn led, somewhat remarkably, to an eighth witness statement of Dr Ofori-Kyereh handed up at the hearing. The statement began by addressing the defendant's solicitors' criticism that he had already made eight witness statements. He stated that

his PA's surname was Gamble and that the name on the statement was a typographical error as could be seen from her email address. He explained that Ms Gamble was authorised to access his emails so that she could forward an email from his account back to his account to enable him to see a specific email. He exhibited the email. The subject line is "Opportunities out this week 13/07/26" and he said that Ms Gamble had amended the subject line so that the description of the email corresponded to the week in which the tender opportunities in fact fell. It is sufficient to say that this did not explain the various versions of the subject line and was not evidence from Ms Gamble as to what she had done. Dr Ofori-Kyereh's evidence was, further, that Tenders UK routinely issues its weekly alerts under a heading that corresponds to the preceding week, rather than the current week but, he appeared to say, on this occasion, the email had been mis-dated. The email he referred to was at SO-K23 which was sent on 17 July and refers to opportunities in week commencing 13/07/26 and, therefore, seems to follow the same pattern.

Submissions

57. It is convenient to take the defendant's application to strike out or for summary judgment first because, if successful, the issue of interim relief cannot arise – the court will not grant interim relief in support of a claim that is doomed to failure.

58. The defendant relies on the court's power to strike out under Part 3.4(2) and to grant summary judgment under CPR Part 24.3. The tests are essentially the same (see *Begum v Maran (UK) Ltd.* [2021] EWCA Civ 326 at [20]-[22]) and, on a defendant's application, the test is whether the claimant has a realistic, as opposed to fanciful, prospect of success.

59. In this case, and on any view of the facts, CCC submits that the claim is out of time. CCC submits that, if it is open to Verity to rely on the date of actual knowledge, that date can be no later than 18 July 2026 and the claim was, therefore, issued out of time.

60. However, the principal thrust of CCC's submission is that Verity ought to have known about the circumstances giving rise to the claim on the date that the Tender Notice was published, namely 15 July 2026. Proceedings issued on 17 August were issued more than 30 days thereafter.

61. CCC submits that the test for when the supplier ought to have known of the circumstances giving rise to the claim is that of the reasonably well-informed and normally diligent tenderer ("the RWIND tenderer") – see, for example, *Siemens Mobility Ltd v High Speed Two (HS2) Ltd* [2022] EWHC 2451 (TCC) at [64]-[65].

62. In support of the case that the starting point is the date the Tender Notice was issued, as the day on which Verity ought to have had the relevant knowledge, CCC relies on the following:

    (i) The ability of potential tenderers to obtain notifications, the fact that suppliers accessed the portal on 15 July 2026 and the number of suppliers who submitted PSQs in time.

(ii) These matters point to the irrelevance of the portal that was used (and in this case the change from the portal previously used) and are indicative of the ease of access and availability of information.

(iii) The inclusion of the CQC Rating Condition was easily identifiable from the tender documents accessed via the portal which provided the relevant link.

(iv) If necessary, CCC also relies on the level of engagement with potential tenderers prior to the Tender Notice such that Verity ought to have been aware of the CQC Rating Condition prior to the publication of the Tender Notice or, at the least, aware that it was a potential condition and one that it should be alive to identifying.

63. In so far as necessary, CCC submits that these matters should be addressed in the context of the court's repeated emphasis, starting with the decision in *Jobsin v Department of Health* [2001] EWCA Civ 1241, on the importance of strict time limits in procurement cases. The difference between section 106(2) and the predecessor in regulation 92(2) of the Public Contracts Regulations 2015 is that the latter provided that proceedings must be started "*within 30 days beginning with the date when the economic operator first knew or ought to have known that grounds for starting the proceedings had arisen.*" I note simply that there is an argument that the test in section 106(2) is stricter than that in regulation 92(2) but that is not an issue on which I need to express any view, let alone determine, in this case.

64. CCC also prays in aid the Cabinet Office's published "Guidance: Remedies" (updated 17 August 2026) which, it is submitted, should be taken into account when considering when a RWIND tenderer acquires knowledge of the content of a Tender Notice and of hyperlinked documents. CCC refers particularly to paragraph 48 which provides:

"For example, if a supplier considers that the award criteria in a particular procurement breaches (sic) the Act, it must issue the claim within 30 days of the award criteria being made available to it. Where a notice identifies a breach, a supplier has 30 days from the publication of the notice to commence proceedings. The onus is on the supplier to review the information in a timely manner to ensure that it can commence proceedings within the relevant timescales."

65. CCC submits that there is no general principle that a "grace period" of a day or two should be allowed following publication for the potential tenderer to consider the information provided. If authority for that proposition is required it can be found in the decision of Andrew Mitchell KC sitting as a Deputy High Court Judge in *Oracle Security Services Ltd v Barts Health NHS Trust* [2024] EWHC 1201 (TCC). Even if a grace period were allowed in this case, it would not help the claimant as the claim would still be out of time.

66. In the claimant's skeleton argument Mr Clayton KC put Verity's case on the basis that Verity first became aware of "the Procurement and the challenged participation requirement" on 19 July 2026. This took no account of the developments in the evidence and it continued to put Verity's case on the basis that there was no distinction to be drawn between knowledge of the procurement and the challenged condition. In his oral submissions, which took account of the evidence that Dr Ofori-Kyereh was at least aware of the procurement on 18 July, Mr Clayton submitted that on that day, Dr Ofori-Kyereh did no more than open the email – presumably that forwarded

by his PA. There was no evidence to that effect and, as I have observed above, it is not consistent with the log-in to the In-tend portal.

67. It was submitted that the words of section 106 are to be construed as ordinary English words. It was unclear whether that was intended to suggest that the RWIND tenderer test was no longer applicable. The submissions drew no distinction between the date on which Verity knew or ought to have known of the relevant circumstances and treated 19 July as the only material date.

68. Verity relied on the following factual matters:

(i) That when Verity reviewed the 25 March 2026 Notice it did not understand that the final operative condition would exclude it from the tender.
(ii) Verity did not identify the live tender on 15 July 2026 because of the change in portal and it was said that, critically, CCC did not inform Verity of that change so Verity could not register and did not receive alerts from In-tend.
(iii) *"Verity acted immediately on 19 July: (i) on the same day Mr Ofori-Kyereh became aware of the live procurement and its operative condition, Verity raised the issue with CCC and sought clarification and reconsideration."* This reflected the way Verity had put its case but it is factually wrong.
(iv) Verity was not inactive between 19 July and 11 August but was awaiting CCC's response. Once that was received, Verity issued proceedings on 17 August 2026 which was within 30 days of 19 July.

69. In conclusion, it was submitted both in writing and orally that there were genuine issues requiring determination as to when Verity knew or ought to have known of the operative breach; that there were factual issues in this respect which should be investigated and were best dealt with by cross-examination of live evidence; and that the importance of the proportionality dispute was itself a good reason for the claim to go forward - reliance was thus placed on the substantive issues raised by Verity's claim. In any case, and in the alternative, Verity submitted that there was good reason for a short extension to be granted.

Discussion

70. On the evidence before me, it is clear that Verity had actual knowledge of the procurement at latest on 18 July. That does not turn on whether the PA's knowledge is sufficient although, on the evidence, it would seem that she was in a position to identify the tender opportunities to draw to Dr Ofori-Kyereh's attention. Despite all the shifts in the detail of the evidence, it seems to me clear that the procurement was drawn to his attention on 18 July 2026 and that he did more than open an email from his PA in that he logged into the relevant portal and registered interest.

71. Knowledge of the procurement is not necessarily the same thing as actual knowledge of the circumstances giving rise to a claim but certainly when this claim was made Verity drew no distinction between knowledge of the procurement and knowledge of the CQC Rating Condition.

72. On 18 July, Dr Ofori-Kyereh accessed the In-tend portal. His evidence does not set out what he then accessed and, despite his evidence that he did not become aware of the

CQC Rating Condition until the following day, it seems to me highly probable that, having logged in, he would have paid some attention to the tender documents and would have become aware of the CQC Rating Condition. Even if I am wrong about that, this is the latest possible date on which Verity/ Dr Ofori-Kyereh ought to have become aware of the circumstances giving rise to the claim.

73. Despite the numerous witness statements and the obvious relevance of this issue, the claimant's evidence has sought to obfuscate the issue, offered inconsistent or incomplete versions of events, and even now provided no clear description of what Dr Ofori-Kyereh actually read when he logged-in has been given. His latest statement seems to ignore the log-in on 18 July and still seeks to say that he did not read or action his PA's forwarded email until the following day. In the circumstances, the court can form a view as to what probably happened and, in any event, I agree with Mr Kosmin's submission that the court is entitled to draw an adverse inference. Given the volume of evidence thus far, there is no realistic prospect of further evidence which would persuade a court that Dr Ofori-Kyereh and Verity were not aware of that condition until 19 July 2026.

74. Even if that is wrong, it does not assist the claimant's case. Firstly, I can see no reason why the test for "constructive knowledge" under section 106 should not be the RWIND test as it was under the previous Regulations. Applying the RWIND test, I accept CCC's submission that Verity ought to have had knowledge of the relevant circumstances – that is the procurement and the condition – on the date of publication. Verity could have become aware of the procurement by means of registering for notifications and could immediately and reasonably have become aware of the conditions in the tender documents to which the relevant link was given. In the alternative, I repeat paragraph 72 above.

75. Secondly, I do not consider it incumbent on a commissioning body to inform suppliers of the portal it intends to use, even if they are incumbent providers. As the evidence in this case makes clear, obtaining notifications or alerts from Find A Tender or Google is what suppliers should do and do do. It is notable that there is no evidence from Verity as to how it monitors tender opportunities and identifies tender opportunities and who, if anyone, is responsible for accessing and reviewing tender documents. There is no evidence as to what the procurement staff referred to do in this respect.

76. The only evidence is of apparent reliance on information from Tenders UK which, on Dr Ofori-Kyereh's evidence, operates on the basis of notifying opportunities which have arisen during a given week at the end of that week. Verity can, therefore, be taken to know that it is receiving information potentially days after a Tender Notice has been published and there is no reason Verity could expect that period not to count as part of the 30 day period for commencement of proceedings.

77. Further, despite the apparent interest in providing services to CCC, there is no evidence as to steps taken to ensure that Verity was aware of opportunities with CCC, or any reason given for the absence of any engagement in the events about which Ms Ellis gives evidence, or for the lack of awareness of the various notifications of the forthcoming procurement which she also sets out.

78. It is not in dispute that, during the various market engagement events and in the Planned Procurement Notice dated 25 March 2026, the CQC Rating Condition was identified as a potential condition rather than one already writ in stone. But the point is that any potential tenderer who was aware of this would be aware that this was a condition to be looked out for in the tender documents, particularly if it would exclude that tenderer from participation.

79. The relevance of this absence of evidence is, in particular, that it deprives Verity of any explanation for why it did not know of the procurement and the condition in dispute on the date of the Tender Notice. Verity cannot rely on its own inactivity in support of a case that it ought not to have known the circumstances giving rise to a claim until after the Notice had been drawn to its attention by a third party and a specific individual, in this case, Dr Ofori-Kyereh, had had some period of opportunity to review the tender.

80. The simple fact that so many other tenderers were aware of the procurement and the access of the portal on 15 July 2026 lends further support to the conclusion.

81. I should say that in reaching this conclusion I place no particular reliance on the Cabinet Office Guidance. The Guidance includes at paragraph 47:
"*…generally a supplier has 30 days from when it first knew, or ought to have known, about the relevant circumstances to commence proceedings for breach of statutory duty (the 30 day period). This means that the 30 day period would usually commence when the supplier is provided with or has access to information that enables it to identify a breach."*

82. What follows in the paragraph cited by CCC is an example of how that general position works in practice. That Guidance cannot determine as a matter of law or as a matter of fact in a particular case when the supplier ought to have known about the circumstances giving rise to a claim. It can be taken into account as an indication to tenderers as to the approach public bodies may take to section 106(2) and as alerting the RWIND tenderer to the expectation that it will keep itself informed of the publication of notices but no more than that. As Mr Kosmin put it, it frames how an RWIND tenderer should approach the issue of limitation but it does not decide the issue.

83. Finally, as CCC submitted, even if a grace period of a day or two from publication were taken into account for Verity to review the tender documents before Verity ought to have known of the relevant circumstances, that would be counted from the date of publication of the tender notice. There is no basis on which it is arguable that it should be counted from the date on which Verity in fact became aware of the tender notice. The claim would still be out of time.

Extension of time

84. Section 106(3) provides that *"The court may make an order extending a time limit referred to in subsection (1)(a) or (2) if it considers there to be a good reason for doing so"*.

85. The test of *"if it considers there to be a good reason for doing so"* is in essentially the same terms as Regulation 92(4) of the Public Contracts Regulations 2015 and there is

no reason that the court should take a different approach to section 106(3) from the approach which it took under the prior Regulations.

86. As I have said, the claim form did not include a claim for an extension of time but the relief sought in the Particulars of Claim included a claim for an extension of time under section 106(3) if necessary. Dr Ofori-Kyereh's witness statements also indicated that such a claim was pursued and advanced arguments in support of that claim. By the time of the hearing before me, there was, however, still no application as such for an extension of time. Verity's skeleton argument nonetheless identified whether the court should extend time as an issue for determination and included submissions on this issue.

87. At the risk of repetition, those submissions relied on (i) the shortness of the extension that would be required; (ii) the case that Verity discovered the live tender only 4 days after publication (which was factually wrong); (iii) that Verity challenged the condition immediately on 19 July (which was also factually wrong); (iv) that CCC therefore had early notice of the complaint; (v) that Verity attempted to avoid litigation by its letter on 21 July 2026; (vi) that CCC did not respond until 11 August; (vii) that proceedings were issued 6 days later; and (viii) that the procurement had not reached contract award or contract signature. No authority was cited or relied upon.

88. In the absence of a claim in the claim form and any application, in my view, this issue does not arise.

89. For the avoidance of doubt and in case that is seen as an unduly technical approach, if such a claim had been pursued, I would have refused the extension of time.

90. As I observed in *Access for Living v London Borough of Lewisham* [2021] EWHC 3498 (TCC), the relevant principles are set out in *Mermec UK Ltd. v Network Rail Infrastructure* [2011] EWHC 1847 (TCC) and *SRCL Ltd. v National Health Service Commissioning Board* [2018] EWHC 1985 (TCC). Although there is plentiful authority on the meaning of "good reason", further citation of authority will rarely be necessary or helpful. Fraser J (as he then was) summarised the principles in *SRCL* at [154] as follows:

> *"(1) There must be a good reason for extending time.*
>
> *(2) One of the matters that the court will consider is whether there was a good reason for the claimant not issuing within the time required, such as an illness or something out of the claimant's control which prevented the claimant from doing so.*
>
> *(3) It would be unwise to list or seek to limit in advance what factors should be considered to have relative weight to one another in that exercise.*
>
> *(4) The court will take a broad approach in all the circumstances of the particular case.*
>
> *(5) The categories are not closed or exhaustively listed in the cases. Lack of prejudice to the defendant is not a determinative factor."*

91. In my judgment, the putative application can be dealt with shortly. On its own case, Verity was aware of the circumstances giving rise to the claim on 19 July 2026. Two days later, on 21 July 2026, Verity wrote to CCC setting out in detail its case that the

CQC rating condition was not proportionate and was unnecessarily restrictive and excluded providers who could demonstrate their capability by other objective evidence. Verity asked CCC to review its position. As CCC said that would have required a significant re-drafting of the PSQ and Conditions of Participation and, in my view, there was no reason for Verity to expect, let alone assume, that CCC would accept its arguments.

92. There was no response until 11 August 2026 and that response rejected Verity's arguments. Verity's submissions have implicit within them some criticism of CCC for the time taken to respond and/or seek to rely on the timing of this response to excuse or explain the timing of the issue of proceedings. CCC did nothing following the letter of 21 July 2026 or in its response of 11 August 2026 to imply that there would be any change in the tender conditions and I repeat that there was no reason for Verity to think that CCC would do otherwise.

93. Verity has offered no reason why the claim was not or could not have been issued within the 30 day period. Indeed in his evidence, although there is no documentation to support this, Dr Ofori-Kyereh says that, after the letter of 11 August 2026, he immediately notified CCC of his intention to bring proceedings. The claim that was then issued on 17 August 2026 raised the same matters as set out in the letter of 21 July. The claim could easily have been prepared and issued, at the latest, at any time after 21 July. Even if waiting for a response from CCC could offer a good reason to grant an extension of time – which I do not consider it would – the claim could have been issued immediately following receipt of CCC's letter of 11 August 2026 when it would have been in time even if the starting point was 15 July 2026. Instead it was issued 6 days later despite Verity's clear awareness of the potential limitation issue.

94. None of the matters relied on provides a good reason to extend time. They amount to no more than seeking to rely on the alleged date of actual knowledge rather than constructive knowledge and/or the shortness of the extension sought rather than explaining why the claim was not issued in time or offering a good reason why it was not issued in time and an extension ought to be granted. A further matter prayed in aid is that the procurement has not reached contract award. It is difficult to see why that should be a relevant factor. A challenge at any stage of the process is disruptive and may lead to delay which militates in favour of compliance with the short statutory time limits. In this respect, the Act and the authorities draw no distinction between claims made before and after contract award.

Conclusion

95. It follows that, in my judgment, the claim was issued out of time and summary judgment should be entered for the defendant. I deal with this case on the basis of summary judgment rather than striking out of the proceedings but in terms of the limitation issue that is a distinction without a difference.

96. In correspondence and at the hearing, CCC also sought to rely on Part 3.4(2)(b) and (c) as grounds to strike out the claim. In short, the argument advanced was that the court may strike out a claim because of wrongdoing in the conduct of the claim. Whilst I have considerable sympathy with the matters that CCC raises as to conduct and, in particular, the changes in the evidence as to the actual date of knowledge and the

"drip feed" of witness statements, it is not necessary for me to decide whether these matters are sufficiently serious to amount on their own to grounds to strike out the claim. To be clear, I do not accept the submission made on behalf of Verity that its conduct of the litigation and applications was driven by aggressive letters from CCC's solicitors or was litigation by correspondence. This started with Verity's claim and application for interim relief and it was for Verity to get its house in order, give full and frank disclosure when it sought a hearing without notice, and present a coherent case supported by what the evidence was rather than what it would like the evidence to be.

97. For the avoidance of doubt, I would add that in the course of the hearing, Mr Clayton KC placed considerable emphasis on the merits of the claimant's case, submitting that the proportionality issue was itself a good reason for the claim to go forward. This appeared to be a submission that merit alone would afford some other compelling reason why the case should be disposed of at trial and not on a summary basis. If that was the intent of those submissions, I reject the argument as the fact (or in this case assumed fact) that the substance of a case is meritorious does not overcome a limitation defence. It would, therefore, be pointless for the case to proceed to trial.

Interim relief

98. Since I give summary judgment for the defendant, it is not necessary to consider the claimant's application for interim relief. For completeness, however, I should say that had I reached this application, I would not have granted the injunction.

99. The basis for the application is section 102 of the Procurement Act 2023 which provides as follows:

"(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);

(b) an order extending the restriction or imposing a similar restriction;

(c) an order suspending the effect of any decision made or action taken by the contracting authority in carrying out the procurement;

(d) an order suspending the procurement or any part of it;

(e) an order suspending the entry into or performance of a contract;

(f) an order suspending the making of a modification of a contract or performance of a contract as modified.

(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."

100. As set out in the application notice, the interim relief sought was that (i) the claimant should not be excluded from the procurement by reason of the application of the contested CQC Rating Condition; (ii) *"the Defendant shall not determine or complete Stage 1 PSQ shortlisting, or otherwise progress the procurement, so as to prejudice the Claimant's participation, by applying that condition"*; (iii) alternatively to suspend the operation of the condition or the procurement.

101. I doubt whether the court has jurisdiction to make the orders sought that, in effect, would require CCC to proceed with the procurement but to disapply the CQC Rating Condition. That does not seem to me to fall within section 102(1) and is not the suspension of a decision taken in carrying out the procurement. The application would, in effect, be one for a mandatory injunction requiring CCC to proceed with the procurement in a particular way. The operative part of the application, therefore, seems to me to be the application to suspend the procurement.

102. Section 102(2) then sets out the various matters that the court must consider. The first of these, in the order they appear, is the public interest in upholding the principle that contracts should be awarded in accordance with the law.

103. Mr Clayton submitted that section 102 represents a "shift change" from the application of *American Cyanamid* principles to the grant of interim relief, including perhaps most significantly, on applications to lift the automatic suspension. He submitted that the section departs from a balancing exercise and that the public interest in upholding the principle of lawfulness has a decisive impact.

104. In this case, Mr Clayton KC resisted going so far as to argue that the order in which these considerations appeared in section 102 gave precedence to this factor but his submission nonetheless was to the effect that this factor should be given the greatest weight as a matter of law rather than on the facts of a particular case. In my judgment, that cannot be right. As a matter of statutory interpretation, the order in which the factors appear cannot be relevant without any hierarchy prescribed by the statute. The plain words of the statute are that the court must have regard to all of the factors set out and those factors include anything the court considers it appropriate to take into account. 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.

105. The nature of section 102 is not to require the court to address the question of interim relief as a series of questions the answer to one of which might bring the court's consideration to an end but rather to provide that the court considers <u>all</u> the relevant factors. Further, and contrary to Mr Clayton's submission, that must, therefore, involve some kind of balancing exercise.

106. The only case decided and cited to me on the application of section 102 was the decision of HHJ Keyser KC in *Parkingeye Ltd. v Velindre University NHS Trust* [2026] EWHC

1019 (TCC). That case was concerned with an application to lift the automatic suspension and, in the event, the judge refused the application taking into account his understanding of the approach that section 102 now required the court to apply.

107. At [28]-[29], HHJ Keyser KC said this:

> *"28. Taken by itself, the wording of section 102(2) simply requires the court to have regard to the matters mentioned in paragraphs (a) to (c) when considering whether to make an order under subsection (1). The two mandatory considerations in all cases are, therefore, the public interest and the interests of suppliers (including the claimant). 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 that 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 …."*

108. It will be apparent from what I have said above that I agree – no factor has precedence or priority and there is a balancing exercise to be undertaken. That runs contrary to Verity's submissions.

109. So far as section 102(2)(a) is concerned, I further agree with the observation of HHJ Keyser KC at [31] that section 102(2)(a) does not invite a consideration of the merits other than perhaps in a clear case. If a claim was patently unmeritorious, the public interest referred to in section 102(2)(a)(i) would be of little weight and, by the same token, if the claim was particularly strong, the public interest would weight the decision the other way. In most cases, this factor would engage consideration of the general principle of upholding lawfulness and broad consideration of where on the spectrum of merits the claim lay.

110. In [31] the judge also expressed the view that the text of section 102 seemed to show that the public interest would generally tend to favour the keeping of the suspension in place, although on the facts of a particular case it might weigh differently. At [36] he then drew the threads together as follows:

> *"In conclusion, my view as to the statutory test is as set out in paragraphs 28 to 31 above. I may summarise it as follows.*
>
> *1) The test requires the court to balance the public interest and the interests of suppliers, including the claimant, along with any other matters the court thinks appropriate.*
>
> *2) The weight to be afforded to the several factors is a matter for the court in each particular case.*
>
> *3) However: (i) the adequacy of damages for the claimant, though still a relevant matter, no longer has the significance it had under the American Cyanamid test; (ii) the new test recognises the public interest that, where the lawfulness of a proposed contract award is in dispute, the contract should not be awarded until the dispute has been*

resolved; (iii) the public interest in lifting suspension will generally concern the interest in the continuing provision of goods and services rather than merely the contracting authority's judgement as to its preferred provider of the goods and services or the detailed terms on which they will be provided.

4) Accordingly, although there is no statutory presumption and in each case the decision where the balance lies must be decided on the facts, the lifting of the suspension will generally require, on the particular facts of the case, the presence of either a very persuasive countervailing public interest or some overriding matter of private interest.

5) In deciding where the balance lies in a particular case, the court will also be mindful of its power to provide for undertakings or conditions in any order that it makes."

111. 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. The examples given under section 102(2)(a) are the particular examples to which the court must have regard but they are expressly stated to be among other matters of public interest. There is nothing in section 102(2)(b) that expresses the private interests to be taken into account as ones that have some overriding impact or implies that private interest has a lesser status than the public interest in lawful procurement. Section 102(2)(c) maintains a discretion of the court as to matters to be taken into consideration. In short, in my view, there is a balancing exercise for the court to undertake and the weight to be given to any factor will be case specific.

112. Against the background of the decision in *Parkingeye*, and in relation to the general principle of upholding lawfulness, Mr Clayton's skeleton argument focussed on the merits of Verity's case: the requirement of proportionality, the published guidance and CCC's obligation to comply with the same, and the case that the CQC Condition was not proportionate. There is, in my view, nothing in Verity's case that would make it a particularly strong case and the reasoning given by CCC for adopting a CQC rating as a threshold requirement, rather than undertaking a detailed analysis of other evidence at this stage, is, on its face, equally meritorious.

113. Mr Clayton also placed particular reliance on the argument that proportionality was, under the 2023 Act, not a concept of general application but one that was applied or reserved to particular areas – in this case conditions of participation – and should, therefore, have greater significance in those areas. That does not seem to me to be material to section 102(2)(a)(i). Verity's claim is made on the basis that a condition of participation under section 22 is not proportionate. Proportionality is, therefore, the issue that would be considered if the claim proceeded but that does not add to the weight to be given to it as a factor in section 102(2)(a)(i).

114. At the hearing, it was further submitted that CCC had not argued that its acts were proportionate which implied that it accepted that the CQC Rating Condition was not proportionate or that it had no case in support of proportionality. That is plainly not

right and CCC has set out its case and its considerations in its letter of 11 August 2026 and the statements of Ms Ellis. Offering an alternative condition of participation is not itself a condition of establishing proportionality.

115. A further factor relied on in the context of this public interest and also the interests of suppliers was what was alleged to be Verity's awareness, as it was put, through the NHA and engagement with the provider community, of the concerns expressed by smaller providers. For the reasons I have given, the evidence about such concerns and, indeed, whether they even relate to the CQC Rating Condition, is unsatisfactory and self-serving and takes the matter no further.

116. Additionally it was submitted that the CQC Rating Condition applies to all tenderers and that a rating may be based on projects 6 or 7 years ago so that other suppliers might also be affected by this condition. Again this added little or nothing – there was no evidence of any other potential tenderers affected or of complaints to CCC from any other potential tenderer. On the contrary, from the number of tenderers who returned PSQs, there appears to have been interest from numerous suppliers in this procurement and they have a countervailing interest in this procurement progressing. The procurement has been delayed by this claim and would be further delayed if the relief were granted with the consequent impact on other potential bidders.

117. It is sufficient to say that, in this case, I would go no further than to accept that the claimant has an arguable case but I can see no reason to give the alleged breach and the public interest in lawful procurement any greater weight than any other factors.

118. The second factor in section 102(2)(a)(ii) is the avoiding of delay in the supply of goods, services or works. In this case, Ms Ellis' evidence is that CCC is working to a tight timetable to procure a new framework for provision of care services by April 2027 and 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. Those matters fall both within section 102(2)(a)(ii) and 102(2)(c). There would not appear to be a risk that services would not continue to be provided but the impact of delay on how they would be provided and financed goes beyond a simple preference for a provider.

119. Dr Ofori-Kyereh's evidence makes it clear that damages would be an adequate remedy. There is nothing which, in my view, would additionally affect the interests of Verity and that ought to be taken into consideration. As to the interests of suppliers generally, I repeat what I said above.

120. 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.

Further application

121. As referred to above, on 2 September Verity issued a further application supported by a sixth witness statement of Dr Ofori-Kyereh and a statement of Hamidullah Khan of Farani Taylor, Verity's solicitors.

122. This application sought an order under CPR Part 39.2(4) to protect the identity of so-called "Whistleblowers" and anonymise all references to them. This application related to members of the NHA whose identities were redacted in the documents disclosed and relied upon and whom Verity sought to anonymise for the purposes of commercial confidentiality and/or concern about impact on future tenders.

123. It is obvious that this would have been a contentious application and that the time estimate of 30 minutes which was given was wholly inadequate. The defendant responded in as much detail as possible in correspondence but objected to the application being heard on 8 September 2026. At my direction, the application was not listed for hearing and is referred to simply for completeness.