Neutral Citation Number: [2026] EWHC 2998 (TCC)

Case No: HT-2026-000002

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: 19th November 2026

Before :

THE HONOURABLE MR JUSTICE COPPEL

- -

Between :

Bouygues (U.K.) Limited **Claimant**

- and -

Secretary of State for Education **Defendant**

- -
- -

Sarah Hannaford KC and Simon Taylor (instructed by Watson Farley & Williams LLP) for the Claimant
Joseph Barrett KC and Barney McCay (instructed by Bevan Brittan LLP) for the Defendant

Hearing dates: 20-21 October 2026

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Approved Judgment

This judgment was handed down remotely at 10.00am on 19th November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Coppel:

The issues

1. In these proceedings, the Claimant claims that the Defendant conducted an unlawful tender evaluation during the procurement of Lot 2 of a framework agreement for (primarily) the construction of new and refurbished schools and other educational buildings, entitled Construction Framework 25 ("the Procurement", "the Framework", "CF25", "the Claim"). The Procurement was conducted pursuant to the Procurement Act 2023 ("the Act").

2. The claim form in the proceedings bears the issue date 5 January 2026, which was a Monday. The Defendant has pleaded a limitation defence, to the effect that the time limit for commencing proceedings expired on 3 January, a Saturday, which the Defendant argues was the last day of the 30-day period for commencing proceedings which is prescribed by s. 106(2) of the Act. The Claimant maintains that the proceedings were commenced within time and, in the alternative, seeks an extension of time. There is a further issue between the parties as to whether certain claims contained in the Re-Amended Particulars of Claim ("RAPOC") are subject to a later limitation period and are, in any event, within time.

3. By Order dated 4 September 2026, Eyre J directed a trial of three preliminary issues, as follows:

> "1. Whether any of the Claimant's claims are time-barred under section 106(2) of the Procurement Act 2023 and if so which claims?
>
> 2. If the answer to question 1 is yes, whether the allegations pleaded at paragraphs 17, 18, 22, 23, 34(3)A, 37-37C, 43, 48, 59, 60, 65, 72, 73, 75A and 76 of the Amended Particulars of Claim comprise different causes of action which were subject to a different limitation period such that they are not time-barred?
>
> 3. In respect of any claims found to be time-barred, should an extension of time be granted under section 106(3) of the Procurement Act 2023 for the reasons pleaded by the Claimant?"

4. For the reasons set out in this Judgment, I answer these preliminary issues as follows:

   Issue 1: No. The Claimant's claims are not time-barred. The limitation period in s. 106(2) of the Act started to run on 5 December 2025 and expired on 5 January 2026, which is the date of issue of the claim form.

   Issue 3: Yes. If proceedings had been commenced after the expiry of the s. 106(2) limitation period, I would have granted the Claimant an extension of time.

   Issue 2: If the answer to Issue 1 is yes and the answer to Issue 3 is no, I would have found that the Claimant's claims of breach of record-keeping and disclosure obligations and of invalidity of the Assessment Summary which rely upon alleged deficiencies in the Defendant's moderation process are subject to different limitation periods and are not time-barred. Those claims, which are summarised in §107 below, are pleaded at

paragraphs §§17, 17A, 23, 34(3)(A), 37A to 37C, 43, 48, 48A, 58A, 60A, 65, 72-73 and 75A of the RAPOC.

Factual background

5. In this section of the Judgment, I set out relevant matters of factual background which were either agreed between the parties or were uncontroversial on the evidence. I shall examine the principal factual issues which were canvassed in oral evidence in my analysis of issues 1a and 3, to which they were directed.

6. The Framework was advertised in a Notice dated 27 March 2025 to be for 6 years from 16 January 2026 with an option to extend for a further 2 years and to have an overall estimated initial total value of £15.4bn. The tender documents provided that: (i) there would be 10 Lots, and (ii) the Defendant intended to appoint the highest 10 ranked tenderers to Lot 2. The Claimant submitted a tender response in respect of Lot 2 only.

7. On Friday 5 December 2025, pursuant to s. 50(3) of the Act, the Defendant issued an assessment summary to the Claimant which informed the Claimant that it had been unsuccessful in the Procurement (the "Assessment Summary"). The Assessment Summary explained that the Claimant's tender was ranked in 11th place for Lot 2 with a score of 74.67. The lowest-placed, that is, 10th placed, successful supplier in respect of Lot 2 was awarded a score of 74.8. The Assessment Summary provided information on the scores awarded and explanations of those scores for the tenders of the Claimant, of the highest ranked preferred supplier and of McLaren Construction Limited, the 10th placed supplier for Lot 2. The Assessment Summary was sent by the Defendant to the Claimant via its procurement portal at 10:59am on 5 December 2025. A Contract Award Notice was published on 5 December 2025 at 11:21am, pursuant to s. 50(1) of the Act, which stated that the standstill period for the Procurement – that is, the period during which the Defendant would not enter into the Framework with the successful tenderers - would end on 16 December 2025.

8. On Friday 12 December 2025, the Claimant (via its solicitors ("WFW")) notified the Defendant of its concerns regarding the Defendant's assessment of Questions 7, 8, 9 and 18 and the outcome of the Procurement generally. The letter invited the Defendant to confirm that it would issue a replacement Contract Award Notice with a standstill period which ended after the Christmas holiday period, so that appropriate disclosure could be provided and considered and the Defendant could consider the points made in the letter. Absent that confirmation the Claimant reserved the right to issue proceedings.

9. On Monday 15 December 2025, the Defendant wrote to WFW stating that it was willing to extend the standstill period for at least a further eight working days. On Tuesday 16 December 2025, the Defendant (via its solicitors, Bevan Brittan) informed the Claimant that it had taken steps to extend the standstill period to 5 January 2026 by amendment to the Contract Award Notice.

10. On Friday 19 December 2025, Bevan Brittan responded to WFW's letter of 12 December 2025 and also provided disclosure of various documents, stating that these comprised (a) the Defendant's Evaluation Report, (b) the evaluation and moderation records for the Claimant's tender response to Questions ("Qs") 7, 8, 9 and 18 and (c) an evaluation and moderation training slide deck used in respect of the Procurement. On Tuesday 23 December 2025, WFW sent a further letter to Bevan Brittan which stated that the letter

of 19 December 2025 did not fully respond to or alleviate its concerns. WFW requested confirmation that responses would be re-evaluated, the procurement would be abandoned, or the Claimant would be added to the Lot 2 panel and required a response by 2 January 2026. The letter stated that the Claimant remained minded to issue proceedings and had instructed WFW to prepare proceedings, and to issue on 5 January 2026 (which, I interpolate, was the date of expiry of the extended standstill period) if the confirmations sought were not provided. The Claimant's offices were closed between midday on 24 December 2025 and 5 January 2026.

11. On Tuesday 30 December 2025, Bevan Brittan responded to WFW's letter of 23 December 2025. They did not provide any of the confirmations requested in the letter of 23 December 2025 and stated that the Defendant intended to enter into the Lot 2 contracts following expiry of the extended standstill period on 5 January 2026.

12. On Monday 5 January 2026 at 16.18, WFW submitted the claim form using the electronic filing system employed in the Technology and Construction Court (CE-File). On 6 January 2026, WFW notified Bevan Brittan that the Claimant had issued proceedings on 5 January 2026 – by which it meant that it had requested the issue of a claim form via CE-File - and asserted that an automatic suspension was now in place (pursuant to s. 101 of the Act). An automatic suspension would have prevented the Defendant from entering into the Framework with the successful suppliers. In fact, no automatic suspension was triggered if only because the Claimant's notification to the Defendant was after the expiry of the standstill period, contrary to a requirement of s. 101(1). Also on 6 January 2026, there was correspondence between WFW and the court office regarding the payment of the fee for the claim. WFW pointed out that the Court had deducted from its account a fee of £10,000 when the claim form had specified that the correct fee was £10,646 and asked how the remainder of the fee should be paid. WFW also stated that it considered that 5 January 2026 had been the last day of the limitation period. A chasing email was sent to the Court on the morning of 7 January. The remainder of the fee was deducted later that morning. On 7 January 2026 at 11.20, the claim form was issued by the Court.

13. As originally pleaded, the Particulars of Claim challenged the Defendant's evaluation of (a) the Claimant's tender responses to Q7 concerning "Nature Based Solutions", for which the Claimant had been awarded 2 marks out of an available 10, corresponding to "Poor – not confident" in the table of scoring criteria published by the Defendant, (b) Q8, concerning "Building Fabric Details", for which the Claimant had been scored 8/10 ("Good – Confident"), (c) Q9, concerning "Technology", for the Claimant had been scored 5/10 ("Satisfactory – have some concerns"), (d) Q18, concerning "Diverse Supply Chain", for which the Claimant was also scored 5/10 and (e) Q19, concerning "Tackling Inequality", for which the Claimant was also scored 5/10. Allegations were made that the Claimant had been treated unequally as compared with McLaren. The original Particulars of Claim also pleaded certain criticisms of the moderation process for questions 7, 8 and 9 (that is, the process by which individual evaluators agreed a single score for each question having initially marked the tenders individually). The basis of the argument was, in each case, that one of the evaluators had scored the Claimant's tender response for these questions more highly than the others, but had been persuaded following discussions to agree to a lower moderated score. A further claim was pleaded that the Defendant had either failed to consider its discretion conferred by the procurement documents to add the Claimant to the Lot 2 Framework panel as an 11th

member or had exercised that discretion unlawfully by refusing to add the Claimant ("the discretion claim").

14. Further disclosure was provided by the Defendant on 18 February 2026, comprising certain evaluation and moderation records for the Claimant's response to Q9 and for McLaren's response to Qs 7, 9 and 19; and on 27 February 2026, comprising some moderator notes for McLaren's Q9 response. The Particulars of Claim were amended on 6 March 2026 to expand upon the originally pleaded complaint regarding the moderation of the Claimant's mark for Q7, to complain that the moderation of the Claimant's mark for Q19 had been unlawful, to complain that McLaren should have been awarded a lower score for Q7 and that the moderation of McLaren's score for Q7 was unlawful. It was also claimed that the Defendant had failed to document its moderation process as required by law. Further, the discretion claim was amended so that it was now alleged that the Defendant had failed to consider exercising its discretion "and/or", if it had done, that discretion was exercised unlawfully, in part by failing to keep any proper documentary record.

15. On 28 August and 17 September 2026, the Defendant provided further information on the conduct of the moderation process and, on the latter date, disclosed the contemporaneous record of the meetings when certain of the scores in issue in the claim were decided. The Claimant was also informed that the Defendant had not considered the exercise of discretion to add the Claimant to the panel for Lot 2, it being argued that the procurement documents did not permit this at the times when the Claimant maintained that it should have been done. The RAPOC, dated 5 October 2026, added a complaint that the moderation records had been altered subsequent to the relevant meetings and were unreliable, and refined the discretion claim so that it was alleged only that the Defendant had unlawfully failed to exercise her discretion.

Issue 1(a): when did time start to run?

16. Section 106(2) 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."

17. Issue 1 breaks down into two sub-issues: on what date did time start to run for the purposes of s. 106(2) (Issue 1(a)) and on what date did the 30-day period expire (Issue 1(b))? Under Issue 1(a), I shall answer only the question as to when time first started to run for any of the claims made by the Claimant, without prejudice to the question whether time started to run for other claims at a later point, which is covered by Issue 2.

18. The question raised by Issue 1(a) is what was the date on which the Claimant first knew or ought to have known about the circumstances giving rise to the claim? The Defendant argues that this was Friday 5 December 2025, the date on which the Assessment Summary was sent to the Claimant. The Claimant argues that the date was no earlier than Monday 8 December or Tuesday 9 December, on account of the need for it to consider and digest the Assessment Summary and consult with external consultants who had assisted it with the preparation of its tender. The Defendant's case was put in the alternative: either the Claimant knew enough on 5 December 2025, or it ought to have known enough on that date.

The evidence

19. I heard evidence from three witnesses on behalf of the Claimant concerning the process of internal consideration of the Assessment Summary in the period immediately after it was received: Mark Cesenek (Managing Director), Carol Heneghan (Senior Framework Manager) and Hemendra Kothari (Principal Design Manager, until the end of September 2026). I found their oral evidence to be, overall, truthful but of little assistance in resolving issue 1a. Each witness was clearly well-acquainted with the legal case which the Claimant was pursuing, and each was overly concerned with arguing that case, often at the expense of answering the questions which were put to them. Much of the debate which then ensued between the witnesses and Mr Barrett KC was directed towards legal submissions pursued by the Claimant – for example, the submission that time should not start to run until the Claimant had in fact taken a decision to pursue a challenge to the Defendant's decision on the Procurement or might reasonably have done so – which I have rejected. I also found that the witnesses, in particular Ms Heneghan and Mr Kothari, again in pursuit of the Claimant's legal case, were unduly reluctant to acknowledge their own expertise in procurement matters and in the formulation of this particular tender. I find that they are both experienced professionals working at a senior level in a business for which tendering for public contracts is a highly significant part of its operations. They will have had a good knowledge of the contents of the Claimant's tender and the skills and expertise to form a view about the Defendant's reasons on the aspects of the tender for which they were responsible.

20. The Claimant held a framework contract under the predecessor to CF25, known as CF21. CF25 was a valuable opportunity for it; the Defendant was proposing to spend approximately £2bn per year over eight years across ten lots. Accordingly, the Claimant put considerable effort into preparing its tender, employing internal expertise, external consultants on technical and design matters and an external bid-writer called WhiteRock Services Ltd ("WhiteRock"). Internal responsibility for the tender was divided between Ms Heneghan and Mr Kothari.

21. The Assessment Summary was opened almost immediately by Ms Heneghan after being received around 11am on 5 December and was quickly forwarded to others, including Mr Kothari. Around an hour later, Ms Heneghan, Mr Kothari and Mr Cesenek held a MS Teams call to discuss their initial reactions to the Assessment Summary and what further steps should be taken. Ms Heneghan and Mr Kothari had by then spent at least an hour reading and digesting the Assessment Summary; Mr Cesenek did so later in the afternoon. It was agreed on the call that the Claimant would seek the views of certain of its external technical/design consultants and of WhiteRock on the Assessment Summary. Following the call, at 12.49, Ms Heneghan sent the Assessment Summary to WhiteRock, who had been responsible for ensuring that the contents of the Claimant's tender met the essential requirements stipulated by the Defendant. Later in the afternoon, Mr Kothari sought the views of Peter Baker of NVB Studios on Q7 (at 15.56) and Alex Wood of Novatia Services Ltd on Q9 (at 16.40).

22. The Assessment Summary revealed that the scoring gap between the Claimant's tender and that of the 10th placed successful bidder was very small, only 0.13 marks. In practice this meant that if the Claimant had been scored one mark higher for any question, or McLaren had been marked one score lower for any question, that would have been sufficient to change the outcome of the Procurement in the Claimant's favour (subject to movement in any other scores).

23. The biggest surprise to the Claimant was Q7, where it had been scored 2/10. An internal scoring exercise had predicted that the Claimant would receive 8/10 for this question, consonant with most of the other scores which the Claimant in fact received. The reasons for the Claimant's 2/10 score for Q7 were stated in the Assessment Summary in terms which ran to 529 words and which referred extensively to the requirements of the Pattern Book and Technical Manual, which were part of the procurement documents. Understanding whether the criticisms made by the Defendant were fair or not required, firstly, a comparison between the reasons, the Claimant's tender proposals under Q7 and the specifications and requirements set out in the Pattern Book and Technical Manual (all of which documents were within the possession of the Claimant). That comparison was done by Mr Baker and provided to Mr Kothari, with a copy to Mr Cesenek and Ms Heneghan, in the form of a spreadsheet setting out each of the Defendant's criticisms and Mr Baker's response, at 17.53 on 5 December. The Claimant had internal expertise on the design matters which were relevant to Q7, Antonio Saez, but he was not consulted about the Defendant's reasons.

24. On Saturday morning 6 December, Mr Cesenek spoke with a contact at the Defendant. In reporting that call to Philippe Bernard, the Claimant's Chair and CEO, at 12.21 on 6 December, Mr Cesenek expressed an intention to gather information from the design team on Monday 8 December and then make a formal challenge to the Defendant on Tuesday 9 December. In a report by WhatsApp to the Claimant's senior management team on 8 December at 9.33am, Mr Cesenek informed them that "*we are challenging but just getting all of the information together so we can go back firmly*". Mr Cesenek was keen to emphasise in his oral evidence that this did not amount to a decision to issue a legal claim against the Defendant. However, since no further information had been received by the Claimant since the evening of 5 December, his WhatsApp did indicate that the Claimant had received sufficient information on 5 December to form the view that it had been unfairly treated and that it would write to the Defendant to say so.

25. On 8 December at 11.45, Ms Heneghan sent an updated spreadsheet to Mr Baker containing various comments and also RAG ratings for each of the Defendant's criticisms. There was a call involving Mr Baker on the afternoon of 8 December and he provided an updated response to the Claimant at 17.36 on 8 December. There was a further exchange with Mr Baker on the afternoon of 9 December, with further comments being provided by Mr Kothari at 15.06 and a response within the hour from Mr Baker.

26. What transpired in relation to the other scores which are challenged in the claim – Qs 8, 9, 18 and 19 - was a variation on the theme of Q7. One or other of Ms Heneghan or Mr Kothari contacted one or more advisors to ask for their comments on the Defendant's reasons, with greater or lesser urgency, on 5, 8 or 9 December. In the case of Q18, Ms Heneghan consulted the Claimant's Head of Procurement and Supply Chain, Andrew Rainbow. She informed him that "*having carefully reviewed the results, we have identified a 0.13-point difference that cost us a higher ranking. On this basis, we have decided to formally challenge the outcome*" (email sent at 23.27 on 8 December). The advisors responded, with greater or lesser urgency, on 8 or 9 December, with written comments of greater or lesser detail, and/or by providing comments on a telephone or video call. This was all pursuant to a strategy stated by Mr Kothari in an email of 9 December 2025 at 09.17 that "*we throw the kitchen sink at it*".

27. Mr Kothari's evidence, supported by Mr Cesenek, was that the decision to "formally challenge" the outcome of the Procurement – by which they meant the decision to write

to the Defendant complaining about the outcome - was not made until around 09.30 on 9 December 2025. The contemporaneous documentation suggests that it had been taken earlier than that (see §§24 and 26 above) and I find that it had been taken in the course of 5 December. Mr Cesenek informed his senior colleagues of that decision early on 6 December and there was no evidence of any communications between Mr Cesenek and the other witnesses on 6 December prior to that WhatsApp or on the evening of 5 December (when it was the Claimant's office Christmas party).

28. The Claimant had more than sufficient internal expertise to reach a view as to whether the Defendant's reasons for its scores were fair or unfounded. Mr Kothari was unconvincing in disputing in cross-examination that he could have carried out the necessary examination of the Defendant's reasons as against the Claimant's tender response for Q7. He stated that "I didn't feel clear in my mind that I agreed or not" with the Defendant's reasons and had wished to consult external advisors who were the "subject matter experts". Mr Saez, the Claimant's internal expert on Q7 was not consulted. It is clear to me that the reason why the Claimant consulted its external advisors is that it wished to obtain the best and most comprehensive advice possible on the Assessment Summary, and the best points to make in its proposed correspondence with the Defendant, rather than because it required external input in order to understand whether or not it had grounds for complaint. The same can be said at least for Q9, where Mr Kothari was the internal subject matter expert, and for Qs 18 and 19 where Ms Heneghan had the necessary expertise and the Defendant's reasons were significantly shorter. That the Claimant had the expertise in-house to form a view about the legitimacy of the Defendant's criticisms of its tender is supported by my finding that it had decided to write to the Defendant to challenge its decision relatively early in the process of gathering views from its external advisors (only Mr Baker had provided an initial reply by the morning of 6 December, when a decision to challenge the outcome of the Procurement first appears in internal correspondence).

29. On 12 December 2025 at 17.49, the Claimant's solicitors sent a pre-action letter to the Defendant which contained point by point criticisms of the reasons contained in the Assessment Summary for the Claimant's scores in respect of Qs 7, 8 9 and 18. The Defendant's solicitor's letter of 19 December contained a lengthy rebuttal of those criticisms, which the Claimant does not contend contained any new facts which were not already known to it. Some early disclosure was provided (see §10 above).

Basic legal principles

30. It was common ground that the leading case on when time starts to run for the purposes of a procurement claim remains *SITA UK Limited v Greater Manchester Waste Disposal Authority* [2011] EWCA Civ 156, [2012] PTSR 645. At the time of *SITA*, the relevant domestic law time limit provided – in common with the time limit for judicial review proceedings – that a claim had to be brought promptly and in any event within 3 months from the date when grounds for the bringing of the proceedings first arose unless the Court considers that there is good reason for extending the period within which proceedings may be brought. The CJEU had held in C-406/08 *Uniplex v NHS Business Services Authority* [2010] 2 CMLR 47 that the "promptly" requirement infringed the principle of legal certainty and the 3-month requirement could infringe the principle of effectiveness inasmuch as limitation could expire before a claimant even knew of its grounds for claiming. In the Court's view (§35), time should start to run from the date when the claimant knew or ought to have known of the infringement complained of. This

could be given effect in English law by the Court exercising its discretion to extend time, as a minimum up to the point three months from the date of actual or constructive knowledge.

31. The issue for the Court of Appeal in *SITA* was what degree of knowledge or constructive knowledge is required before time begins to run. In answering this question, Elias LJ (with whom Rimer LJ agreed) drew assistance from *Uniplex* itself, where the CJEU had stated (§31) that "*[i]t is only once a concerned candidate or tenderer has been informed of the reasons for its elimination from the public procurement procedure that it may come to an informed view as to whether there has been an infringement of the applicable provisions and as to the appropriateness of bringing proceedings*". Advocate General Kokott had advised (in §§43-44 of her Opinion) that it should generally be presumed that there would be sufficient knowledge and time would run from the date when an unsuccessful bidder had been told the "essential reasons" why their bid had failed, which would normally be from the date when the tenderer was sent a summary of the relevant reasons (in what the Act now describes as an assessment summary). Elias LJ summarised the guidance to be drawn from *Uniplex* as to the requisite degree of knowledge as follows (§22): "*Once the prospective claimant has sufficient knowledge to put him in a position to take an informed view as to whether there has been an infringement in the way the process has been conducted, and concludes that there has, time starts to run*".

32. Elias LJ proceeded to adopt the formulation for degree of knowledge adopted by Mann J at first instance: "*the standard ought to be a knowledge of the facts which apparently clearly indicate, though they need not absolutely prove, an infringement*" (§26). This was a slightly higher degree of knowledge than would justify a claimant in embarking on the preliminaries to the bringing of proceedings, such as writing a letter of complaint to the defendant (§27) but was lower than the degree of knowledge which would be required to enable legal advisors to draft full particulars of claim (§25).

33. Elias LJ rejected the submission for SITA that the need for a claimant to be able to take an informed view of "*the appropriateness of bringing proceedings*" would only be satisfied where the claimant knew facts which indicated that a claim would have a real likelihood of success (§30). Having regard to the CJEU's *dispositif*, quoted in §12 of SITA, Elias LJ held that the "*appropriateness of bringing proceedings*" was "*not intended to be a distinct element in the test. Deciding what steps are appropriate is simply part and parcel of taking an informed view of the case*" (§29). He also rejected the submission that time should not start to run until the claimant knows that he has a real likelihood of success on the grounds that this confused the detailed facts which might be deployed in support of the claim with the essential facts sufficient to constitute a cause of action, the latter being what was required (§30). The position for which SITA contended would also undermine "*the principle of rapidity which lies at the core of these provisions*" (§30).

34. In order to answer the question whether the facts of which a potential claimant was aware were such as to "*apparently clearly indicate*" a breach of duty by the contracting authority, the Court should consider "*the nature of the procurement exercise; .. the nature of the particular breach alleged; and .. the nature and extent of the particular factual material [available to the Claimant]*" (*Bromcom Computers Plc v United Learning Trust* [2021] EWHC 18 (TCC), §16).

35. The test under s. 106(2) of the Act focuses on "*the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim*". Mr Barrett KC submitted that s. 106(2) provides for a lower threshold for triggering the running of time than its predecessor in reg. 92(2) of the Public Contracts Regulations 2015 (SI 2015/102, "PCR") and earlier, post-*Uniplex* forms of the time limit, which referred to the date on which the grounds for starting the proceedings were first known or ought to have been known. That submission does not cause me to adopt any different approach to the interpretation of s. 106(2) than has been adopted to reg. 92(2) PCR. There is no indication in any of the pre-legislative materials that the different language in s. 106(2) was intended to bring about a substantive change to the longstanding approach under the PCR. Guidance on the application of the Act issued by the Cabinet Office, although of limited legal weight, serves to confirm that no substantive change was intended (*Guidance: Remedies* (November 2024), §5). Beyond the general submission that s. 106(2) provides for a lower threshold, Mr Barrett KC did not suggest any particular way in which the principles laid down in *SITA* and subsequent cases ought to be modified in light of that threshold. To the contrary, he relied upon *SITA* as the leading case and *New Lottery Company Ltd v Gambling Commission* [2026] EWHC 891 (TCC) as containing the most recent distillation of *SITA* principles (§796) without submitting that those principles ought to be viewed differently when applying the Act. In any event, once knowledge of the grounds for starting proceedings is understood to mean knowledge of facts which clearly indicate that an infringement has occurred, there is, in my judgment, no difference in substance between knowledge of the grounds for starting proceedings and knowledge of the circumstances giving rise to the claim. What are the circumstances giving rise to the claim if not the facts which clearly indicate that an infringement has occurred?

Submissions

36. Mr Barrett KC for the Defendant submitted that, save in an exceptional case, such as where an assessment summary is unintelligible or otherwise does not convey the reasons of the contracting authority, time for a scoring challenge will start to run from when that document is received. Here, the Claimant knew enough to start time running when the assessment summary was received or, at the latest, from the point on 5 December at which Mr Baker returned his initial comments. It is not the case that time only started to run in this case from the point, on either 8 or 9 December, at which the Claimant had received advice from its external advisors and (on the Claimant's case) had decided to challenge the Defendant's decision. The running of time is not delayed for the period that it takes, or should reasonably take, a claimant to consider and take a view on the information provided in an assessment summary. Mr Barrett KC relied upon *Lowry Bros v Northern Ireland Water (No. 2)* [2013] NIQB 23 in which the plaintiff had received the defendant's statement of reasons on Friday 31 August 2012 and argued, unsuccessfully, that it should be permitted "*a very short period of grace, of some few days duration .. to facilitate absorption of the impugned decision*" before time would start to run. He also relied upon *Traffic Signs and Equipment Ltd v Department for Regional Development* [2010] NIQB 138, where limitation was held to run from a date when the plaintiff had downloaded tender documents albeit that they had not been read by the responsible director until two days later (§21). The Defendant also disputed the Claimant's factual case as to when it had taken the decision to challenge, and as to whether it was necessary for the Claimant to consult external advisors before taking a view about the Assessment Summary, which was not lengthy or overly technical.

37. Ms Hannaford KC for the Claimant submitted that time did not start to run under s. 106(2) until it been able to take an informed view of whether there had been an infringement and of the appropriateness of bringing proceedings. She relied upon §58 of *Bromcom*, in which HHJ Eyre KC stated that: "*An informed view is one which is a considered one and potentially one formed with the benefit of advice*". The Claimant was not able to take a considered view, informed by advice, until 8 or 9 December, after it had had time properly to consider the Assessment Summary and had consulted its external advisors, who had been primarily responsible for preparing its tender. Only then could the Claimant form a view of the Defendant's reasons in the round, including on all of the question scores which were subsequently challenged. What was required for actual knowledge for the purposes of s. 106(2) was actual knowledge of the breach of the Act which had occurred, not actual knowledge of the Assessment Summary. The Claimant did not have constructive knowledge at any earlier time as a reasonably well-informed and normally diligent ("RWIND") supplier would not have acted any more quickly than it had done.

Discussion

38. I accept the Defendant's submission that where, as here, a claim is founded upon the scores and reasons for those scores given by a contracting authority in its assessment summary, it will be an unusual case in which time does not start to run from the date of receipt of that summary. That is notwithstanding that it may in fact take the claimant some time to digest the assessment summary and consider its implications and whether or not to mount a challenge to the authority's decision. Absent special circumstances, the time necessary for a claimant to consider and reach a view on the facts provided in an assessment summary is, in general, time falling within the 30-day limitation period rather than time which delays the start of that period. That analysis is consistent with *Uniplex*, where the expectation of the CJEU, and its Advocate General, was that the provision of a statement of reasons as to why the prospective claimant lost would normally be sufficient to start time running (see, for example, §31 of the CJEU's judgment in *Uniplex*) and also with §42 of *Lowry*, with which I respectfully agree. Special circumstances where time may not start to run upon provision of an assessment summary would include where an assessment summary is unintelligible or ambiguous on a critical point (and there may be other such circumstances as well). I make no comment on whether the same approach will necessarily apply where essential information is provided to a claimant in another form, for example, as part of a large amount of disclosure.

39. I have referred in §34 above to the factors identified in §16 of *Bromcom* for the purposes of deciding in a particular case the point at which there were facts known to a claimant which were sufficient to start time running based on actual knowledge. On that objective approach to the "*apparently clearly indicate*" test, it is not necessary for actual knowledge sufficient to start time running that the claimant has in fact formed the (subjective) view that the facts available to it indicate that an infringement has occurred. Although if it has in fact done so, as in *SITA* itself, then that will provide support for time having started to run on an objective analysis (see §33 of *SITA*).

40. In §22 of *SITA*, Elias LJ summarised the principle as to the running of time which was established by *Uniplex* as follows:

"Once the prospective claimant has sufficient knowledge to put him in a position to take an informed view as to whether there has been an infringement in the way the process has been conducted, and concludes that there has, time starts to run." (my emphasis)

I do not understand this paragraph to suggest that time cannot start to run until a claimant has itself reached a conclusion that an infringement is clearly indicated. As Elias LJ explained in §23 of *SITA*, what was being elucidated by the Court of Appeal was what degree of knowledge was sufficient to enable a claimant to take the informed view referred to in *Uniplex* (and see also the reference in §30 of his judgment to the need for knowledge of the "*essential facts sufficient to constitute a cause of action*"). Hence, for example, in *SRCL Limited v NHS Commissioning Board* [2018] EWHC 1985 (TCC); [2019] PTSR 383, Fraser J (as he then was) summarised the relevant principle as that "*[t]ime starts running from the date when a party has all the necessary information to know that it has a claim*" (§140). Similarly, in *Riverside Truck Rental Ltd v Lancashire County Council* [2020] EWHC 1018 (TCC), HHJ Eyre KC (as he then was) stated (§66): "*What is necessary applying the test formulated by Mann J [in SITA] is knowledge of 'the facts' which indicate an infringement. A party will know such facts even if he does not know their legal significance*". He cited in support of that proposition §33 of *Jobsin.co.uk v Department of Health* [2001] EWCA Civ 1241, [2002] 1 CMLR 44 in which Dyson LJ had refused an extension of time on the grounds that the claimant had not immediately appreciated the legal significance of the facts of which it had been aware.

41. In my judgment, contrary to the Claimant's submissions, once a prospective claimant has knowledge of facts which, on an objective analysis, apparently clearly indicate that an infringement has occurred, the running of time should not be delayed until the point at which a collective view is reached within the claimant's organisation that the facts known to it clearly indicate an infringement. That would be to place the focus, wrongly, on the point at which the claimant appreciated the legal significance of the facts which were known to it.

42. As to §58 of *Bromcom*, which was at the heart of the Claimant's submissions (see §37 above), the point being made there was not that time could not start to run until the necessary consideration had been given and the necessary advice had been taken (or at least until a reasonable time had been allowed for those steps to occur). Rather, the focus was, correctly, on when the claimant had sufficient information to enable an informed view to be taken, the question in that case being whether time could start to run on the basis of information some of which had been communicated orally at a heated MS Teams meeting. The Judge concluded in that case (see §§61, 63) that time could not start to run until the later point at which the claimant had received letters from the defendant which set out the reasons for its decision in considerably more detail and in a structured and organised way. Only at that point could advice be taken and proper consideration given to the Claimant's legal position. "*It was not until then that the facts in the Claimant's possession clearly indicated an infringement such that an informed view could be reached*" (§63) (emphasis added).

43. To be clear, this analysis is based on the actual rather than constructive knowledge of a claimant. The paradigm case of constructive knowledge is where a claimant does not have the essential facts which are necessary to indicate an infringement of the procurement legislation but could, with reasonable enquiries, have acquired them. What enquiries are reasonable and when they should have been made is to be judged from the point of view of the RWIND tenderer (see *Siemens v HS2 Ltd* [2022] EWHC 2451, §§64-

66). Contrary to the submissions of Ms Hannaford KC, that analysis does not apply on the facts of the present case, where the Claimant had all of the necessary information once the Assessment Summary was provided, but argued that it needed time to assess, in conjunction with its advisors, whether that information provided good grounds for challenge. In this situation, there were no enquiries needed to elicit further necessary information from the contracting authority or elsewhere. The fact that the Claimant chose to take external advice on the information that it had rather than simply considering the matter in-house does not mean that it was making "reasonable enquiries" to elicit additional information, the duration of which must then be assessed against the standard of the RWIND tenderer.

44. This characterisation of the point at which time starts to run promotes both the principle of rapidity and that of legal certainty. It would be undesirable if, in anything other than an exceptional case, the running of time was to depend upon the time actually taken by a claimant to consider its response to an assessment summary, which will be unknown to a defendant authority or – with reference to constructive knowledge - on debate as to what a reasonable amount of time to take would be. Defendant authorities should be able, in the great majority of cases, to predict with accuracy the date on which limitation expires, and so the date on which their procurement is effectively safe from legal challenge. That prediction will often be critical to the balance of risk involved in signing a contract at the conclusion of a procurement to which a challenge has been mooted. The winning supplier or suppliers will also have important steps to take once they are confident that the outcome of a procurement will stand. Yet if the Claimant's submission were correct, it will very often be the case that the date of knowledge for the purposes of s. 106(2) of the Act would be delayed for a period of time after an assessment summary or other decision is sent to a supplier, whilst that supplier considers it and consults its advisors. That period of time may be relatively short in most cases, but it will not be susceptible to prediction by the defendant authority or by other suppliers.

45. Ms Hannaford KC also relied upon *Mermec UK Ltd v Network Rail Infrastructure Ltd* [2011] EWHC 1847 (TCC), in which a standstill letter containing reasons for the defendant's decision not to award the contract to the claimant had been received on 23 September 2010 and Akenhead J had held that the date of knowledge for the purposes of the then limitation period was on that day "*or possibly within one or two days at the outside*" (§22(g)). However, those words do not fairly reflect what Akenhead J actually decided in that case. The relevant issue in *Mermec* was whether time had started to run only following a meeting between the parties on 14 October 2010. The time limit in question stipulated that proceedings must be started within three months of the date of knowledge and that they would only be started once they had been validly served, which had been on 30 December 2010. Akenhead J held that the facts which were necessary to support the claimant's claim had been clear on the date on which the standstill letter was received (§§22(a)-(b)) and nothing sufficiently material had been added at the 14 October meeting (§22(d)). Hence the claim had been commenced outside the limitation period. It could have made no difference to that position for time to start to run a few days after 23 September 2010, on the basis that the claimant did not have the requisite knowledge of the facts until it had had time to consider the standstill letter. In any event, Akenhead J made clear in §22(g) that the running of time would not be deferred if the claimant had not looked at the standstill letter immediately or to allow for the taking of legal advice.

46. *Mermec* was relied upon by Andrew Mitchell KC (sitting as a Deputy Judge of the High Court) in *Oracle Security Services Ltd v Barts Health NHS Trust* [2024] EWHC 1201 (TCC) as illustrating the point that "*mere receipt of information in a letter does not, necessarily, equate to the recipient having knowledge on the date of receipt that grounds for a claim had arisen. In some cases, depending on the facts, a recipient may need some further time to assimilate the information provided before it can be said to have the necessary knowledge*" (§133). That may be overstating somewhat the significance of *Mermec* on this issue but I would not disagree that there may be cases where some further time will need to be allowed (albeit that these cases would have to fall within the category of special circumstances where the letter in question contains an assessment summary which then forms the basis for a challenge to the scoring of a tender). *Oracle* did not concern an assessment summary. The factual position was that the relevant letter was not sent to the claimant directly but to its solicitor and had only been "skim-read" by the solicitor on that day and not read by one of the claimant's directors until the following day, for reasons which seemed to the Judge to be arguably reasonable and understandable. However, no final decision was reached on those facts: the Judge held merely that the position was not sufficiently clear as to justify a strike-out or summary judgment on limitation grounds (§140), whilst acknowledging that the facts might look less favourable to the claimant at the trial (§138).

47. Applying the factors set out in §16 of *Bromcom* (see §34 above):

    i) This was not a hugely complex procurement, and it was well within the normal range of expertise of a sophisticated supplier such as the Claimant.

    ii) The breaches alleged by the Claimant are challenges to the scoring of its tender, which will depend first and foremost on the adequacy of the reasons given by the Defendant for those scores.

    iii) The factual material available to the Claimant as of 5 December included its own tender, the Defendant's specifications and requirements and, critically, the Defendant's reasons for the scores as set out in the Assessment Summary.

    iv) The contents of the Assessment Summary were not particularly long or complex or difficult to understand. The Claimant had the in-house expertise necessary to form a view upon the adequacy of the Defendant's reasons, albeit that it wished to receive advice on the best points to make in challenging the Defendant.

    v) The circumstances were that the Claimant had lost out by a very small margin, such that the addition of any one mark to its score for any question would have made a difference to the outcome, and it had received what it regarded as a surprisingly low mark for Q7. It had also received, on the same day as the Assessment Summary, comments from Mr Baker criticising the Defendant's reasons for the score awarded for Q7. The conclusion that it should challenge the Defendant was a relatively straightforward one to make in those circumstances. It would not have been necessary for the Claimant to wait until it was able to consider the merits of its position with respect to all of the other scores which it regarded as suspect before being able to take an informed view as to whether or not to challenge the Defendant's decision.

vi) The Claimant did in fact take a decision to pursue a challenge to the Defendant's decision quickly: at the latest, by the morning of the day after receiving the Assessment Summary, and at a stage when it had received initial external comments only on Q7.

48. Having regard to those factors, the facts known to the Claimant on 5 December were sufficient to clearly indicate to the Claimant that an infringement or infringements of the Act had occurred. That was the case when it received the Assessment Summary on the morning of 5 December and, in any event, the position is made yet clearer by the receipt of Mr Baker's comments later that day. Accordingly, I conclude that the time limit in s. 106(2) of the Act first started to run against the Claimant on 5 December 2025.

Issue 1(b): was the Claim commenced within the limitation period?

49. On that footing, the last day of the 30-day period stipulated by s. 106(2) was Saturday 3 January 2026. (No argument was made to me, as it could make no difference in this case, that the 30-day period should be counted from 6 December, and therefore expire on Sunday 4 January: see the discussion in *Oracle*, §§149-164)). The Defendant therefore contends that the claim, which bears an issue date of Monday 5 January 2026, is time-barred. The Claimant maintains that due to the last day of the time limit being a non-working day, the limitation period was automatically extended until Monday 5 January which was the next working day, and the Claim was commenced within that time limit.

The relevant statutory provisions

50. Under the PCR, the Claimant would undoubtedly have been correct about the limitation period expiring on Monday 5 January, as there was a specific provision, in reg. 2(4), extending any period which ended on a day which is not a working day until the end of the next working day. There is no analogous provision in the Act, which the Defendant argues is a clear indication that Parliament intended for the position to change. The Claimant submitted that no such provision was necessary because there is a common law rule, known as the *Kaur* principle, after *Pritam Kaur v S Russell & Sons Ltd* [1973] QB 336, whereby a limitation period which ends on a "dies non", on which the Court office is closed, will be extended to the next day that the office is open. That common law rule should apply absent any clear indication that Parliament had intended to exclude it.

51. For its part, the Defendant submitted that the *Kaur* principle did not apply in circumstances where a party could file a claim form using CE-File, which – subject to maintenance - is available for use at all times. As a result of CE-File, the Claimant had been able to take steps on Saturday 3 January to file a claim form, which would bear that issue date, albeit that the Court would not actually issue a claim form filed on Saturday 3 January until Monday 5 January at the earliest and potentially a day or two later.

52. The PCR contained a specific provision that proceedings were to be regarded as "started" for the purposes of the time limit in reg. 92(2) when the claim form was issued (reg. 92(6)). The Act does not contain a definition of when proceedings are "commenced" for the purposes of the time limits in s. 106. However, neither party suggested that "*commence[d]*" in the Act bore any different meaning from "*started*" in the PCR. Nor was there any dispute that "*commence[d]*" in the Act was to be interpreted in accordance with CPR 7.2, which contains general rules as to when CPR Part 7 proceedings are "started". CPR 7.2 states, so far as material:

"(1) Proceedings are started when the court issues a claim form at the request of the claimant.

(2) A claim form is issued on the date entered on the form by the court."

Issue requires the claim form to be sealed by the Court, which may be done by an officer of the Court (CPR 2.5, 2.6).

53. For completeness, the CPR also contain a rule which reflects the *Kaur* principle, in CPR 2.8(5):

"(5) When the period specified –

(a) by these Rules or a practice direction; or

(b) by any judgment or court order,

for doing any act at the court office ends on a day on which the office is closed, that act shall be in time under these rules if done on the next day on which the court office is open."

This rule does not apply to periods specified in legislation, such as the time limit for commencing proceedings in s. 106(2).

54. The relevant rules governing CE-File are set out in CPR PD 5C. CE-File must be used by a represented party to issue a claim form in the Business and Property Division (§2.1 of PD 5C). Under §3.4, documents, including a claim form, which are submitted using CE-File "*will generate an automated submission confirmation*". A court officer may accept the submission of a claim form, accept it subject to the correction of minor errors, or reject it, for example, because the document is corrupted, has pages missing or a party or its address is not identified. If a claim form is rejected by a court officer, then it has not been issued. §3.5 provides, so far as material:

"(1) Except in cases falling within sub-paragraphs (2), (3) and (4) below, when a document is submitted on CE-File which requires a fee, the date and time of filing is the date and time when the fee is paid and the electronic seal will bear the date of filing and this will be the issue date.

(2) When a document is submitted on CE-File in the Administrative Court which requires a fee, the date and time of filing is the date and time the fee is paid which will be marked on the document and the electronic seal will bear the date on which the electronic seal is applied and this will be the issue date."

55. The effect of these provisions in the present case is as follows:

i) If the Claimant had submitted/filed a claim on Saturday 3 January 2026, it would not have been issued on that day because a claim form must first be accepted by the court office and that would not happen until Monday 5 January 2026 at the earliest, when the court re-opened after the weekend.

ii) It is only when the submitted claim form had been accepted, sealed and issued by the court office that it became a claim form which had the effect of commencing

proceedings within CPR 7.2, and could be served on the Defendant in compliance with the CPR.

iii) However, a claim form submitted on 3 January but not issued until 5 January or later would have had an electronic seal bearing the date 3 January, and that would have been its date of issue and so the date on which proceedings were deemed to have been commenced.

iv) In the event, the Claimant submitted a claim form via CE-File on Monday 5 January. It was accepted by a court officer and then issued on Wednesday 7 January. The claim form bears the issue date 5 January 2026.

56. In light of those events, some of which only came to light after the close of oral submissions, the Defendant submits that, even if the s. 106(2) limitation period is to be extended to Monday 5 January, the claim form was not issued, and proceedings were not commenced, on that day, but only on 7 January 2026. The Claimant submits that for the purposes of limitation, proceedings were commenced on the date of issue stated on the claim form, which – pursuant to the Practice Direction governing use of CE-File - was 5 January, the date on which the claim form was submitted via CE-File.

The case-law

57. Mr Barrett KC for the Defendant relied upon a trio of cases, including *Kaur*, as establishing that it is a necessary pre-condition for the operation of the *Kaur* principle that if time were to expire on a non-working day, the claimant would not have the benefit of the full limitation period as they would have to issue proceedings on the last working day before expiry of the period. He then contrasted that pre-condition with the circumstances of the present case whereby, he said, it had been open to the Claimant to take all necessary steps to issue a claim form on Saturday 3 January and the claim form would have been issued on 3 January had those steps been taken on that day. First, in *Hodgson v Armstrong* [1967] 2 QB 299, a statutory four-month period to apply for a new commercial lease expired on 19 April 1965 which was, in that year, the Easter Monday Bank Holiday. The tenant's solicitors had attended the Preston County Court with a fully completed application on the afternoon of Thursday 15 April, to find that it had already closed for the Easter holidays. The solicitor then posted the application to the court. It would, in ordinary course, have been delivered on Saturday 17 April but for an arrangement between the court and the Royal Mail whereby deliveries were held until Tuesday 20 April when the court re-opened. Sellers LJ, giving one of the majority judgments, stated (at 313A-C):

"It is said that the application could have been made some days before. That is true but that would have deprived the 1966 tenant of some part of the time which the statute has prescribed. I cannot find any such differentiation between one tenant and Armstrong another or between one lease and another depending on the differences of their date in relation to the time of the functioning of the appropriate court. In my view the proper construction of the statute requires that all tenants and all leases should be placed on the same basis as to time. They would be on the same footing if, in a period of months, a Saturday or a Sunday or a bank holiday occurring in the course of the period were to be treated for all alike as part of the month. It is only when the final day falls on a court holiday that a differentiation can arise. If the final day is a Monday and the court is open, the tenant has the complete period. If the final day is a Sunday, when the court is not

open, and the necessary act cannot be done, and if it is to be held that the act must be done the day before, such a decision would deprive the party concerned of one of the days the statute stipulated. That seems to me more a usurpation of the legislature's function than to decree that the tenant should have the full period during which the combined act of the court and of the party can be performed."

Russell LJ dissented. In his view, a claimant who could not issue proceedings on the last day of a limitation period because of the court office being closed has not been deprived of the full measure of the period allowed to him by statute "*because what is the full measure is conditioned by the subject-matter under treatment, and the practice of closure of judicial offices*" (at 323G).

58. Second, in *Kaur* itself, a three-year limitation period for a fatal accident claim ended on Saturday 5 September 1970 and the writ was issued on Monday 7 September 1970, the next day the court offices were open. Lord Denning MR, with whom Karminski LJ agreed stated (at 349A-F):

"The arguments on each side are evenly balanced. The defendants can say: "The plaintiff has three years in which to bring his action. If the last day is a Saturday or Sunday, or other *dies non*, he ought not to leave it till the last day. He ought to make sure and issue it the day before when the offices are open." The defendants can rely for their view on the reasoning of Russell LJ in *Hodgson v Armstrong* [1967] 2 QB 299, 323 et seq., and the cases to which he refers.

The plaintiff can say: "The statute gives me three years in which I can bring my action. If I go into the offices on the last day, and find them closed, I ought not to be defeated on that account. I should be allowed to go next day when the offices are open. Otherwise, I should be deprived of the three years which the statute allows me." The plaintiff can rely for this view on the reasoning of Sellers LJ, in *Hodgson v Armstrong*, at pp. 309 et seq. and the cases to which he refers.

Those arguments are so evenly balanced that we can come down either way. The important thing is to lay down a rule for the future so that people can know how they stand. In laying down a rule, we can look to parallel fields of law to see the rule there. The nearest parallel is the case where a time is prescribed by the Rules of Court for doing any act. The rule prescribed in both the county court and the High Court is this: If the time expires on a Sunday or any other day on which the court office is closed, the act is done in time if it is done on the next day on which the court office is open. I think we should apply a similar rule when the time is prescribed by statute. By so doing, we make the law consistent in itself: and we avoid confusion to practitioners. So I am prepared to hold that when a time is prescribed by statute for doing any act, and that act can only be done if the court office is open on the day when the time expires, then, if it turns out in any particular case that the day is a Sunday or other *dies non*, the time is extended until the next day on which the court office is open.

In support of this conclusion, I would refer to *Hughes v Griffiths* (1862) 13 CBNS 324. It was on a different statute, but the principle was enunciated by Erle C.J, at p. 333: ". . . *Where the act is to be done by the court, and the court refuses to act on that day, the intendment of the law is that the party shall have until the earliest day on which the court will act.*"

It can be seen that Lord Denning resolved what he regarded as a finely balanced issue in favour of achieving consistency with the approach adopted under the Rules of Court, which is now that contained in CPR 2.8.

59. Megarry J, agreeing with Lord Denning, summarised his reasoning as follows (at 356D-F):

"There are a number of cases which support the general rule that a statutory period of time, whether general or special, will, in the absence of any contrary provision, normally be construed as ending at the expiration of the last day of the period. That rule remains; but there is a limited but important exception or qualification to it, which may be derived from a line of authorities which include *Hughes v Griffiths*, *Mumford v Hitchcocks*, the judgment of Sellers LJ in *Hodgson v Armstrong*, and the Scottish cases. If the act to be done by the person concerned is one for which some action by the court is requisite, such as issuing a writ, and it is impossible to do that act on the last day of the period because the offices of the court are closed for the whole of that day, the period will *prima facie* be construed as ending not on that day but at the expiration of the next day upon which the offices of the court are open and it becomes possible to do the act. In this appeal, there is nothing in the facts of the case which ousts the *prima facie* application of this exception, which accordingly applies."

60. Third, in *Aadan v Brent LBC* (2000) 32 HLR 848 the time limit in question provided that an appeal to the County Court against the refusal of an application for housing assistance had to be brought, meaning "filed", within 21 days of the applicant being notified of the refusal. The Court of Appeal concluded that an appeal could not be filed unless the court office was open to receive it, and so could not be filed by the appellant on the last day of the 21-day period, which was a Saturday. Chadwick LJ, giving the judgment of the Court, stated (at 853):

"The critical question, therefore, is that identified by Lord Denning MR [in *Kaur*] in the passage to which I have referred (with which Karminski LJ. agreed): is the act one which can only be done if the court office is open. If the answer to that question is "no"- that is to say, if it can be held that the act is one which can be done even though the court office is closed - then the exception identified in *Pritam Kaur v. S. Russell & Sons Ltd* does not apply."

Since the filing of the appeal could not be done on a Saturday, the *Kaur* principle applied and the time limit was extended to the following Monday.

61. The *Kaur* principle has been applied in several subsequent cases, to the point where it has been referred to as setting out "*a general approach to the interpretation of statutory provisions prescribing periods within which proceedings must be brought*" (*Calverton Parish Council v Nottingham City Council* [2015] EWHC 503 (Admin), [2015] PTSR 1130, §33) and as reflecting ""*a general rule" or the "default position"*", subject always to consideration of the particular statutory context (*Yadly Marketing Company v Secretary of State for the Home Department* [2016] EWCA Civ 1143, in which *Calverton Parish Council* was cited, at §24). Both of those authorities proceeded on the basis that the *Kaur* principle would apply where the proceedings in question could not be brought unilaterally and required that the court office be functioning, and the last day of the limitation period fell on a day when the court office was closed.

62. For her part, Ms Hannaford KC submitted that the process for issuing a claim form using CE-File fell squarely within the *Kaur* principle because a claim form cannot be issued without the involvement of the court office, who have to accept or reject a submission and, if it is accepted, seal and issue the claim form. She also pointed out that there are notable examples of the *Kaur* principle being applied where the requisite step could be effected by instantaneous communication, which did not require the relevant office to be open. In *Mucelli v Government of Albania* [2009] UKHL 2, [2009] 1 WLR 276, the House of Lords considered two different time limits for the bringing of extradition appeals, which required a notice of appeal to be filed and served within 7 and 14 days respectively. In the course of discussing the effect of the two time limits, Lord Neuberger (with whom Lords Phillips, Carswell and Brown agreed) stated:

> "83. Another point which arises is what happens if it is impossible to give notice on, or during the final part of, the last day. For instance, in relation to filing, the Court Office may be closed on the last day because it is Christmas Day or another Bank Holiday, and the Court office will be closed at some point in the late afternoon on the last day. Equally, the respondent's office may be closed for the same reasons.
>
> 84. Where the requisite recipient's office is closed during the whole of the last day, I consider that the notice will be validly filed or served if it is given at any time during the first succeeding day on which the office is open (i.e. the next business day). So if the final day for giving a notice of appeal would otherwise be Christmas Day, filing or service can validly be effected on the 27th December (unless it is a weekend, in which case it would be the following Monday). This conclusion accords with that reached in *Pritam Kaur v S Russell & Sons Ltd* [1973] 1 QB 336. As Lord Denning MR said at 349E, "*when a time is prescribed by statute for doing any act, and that act can only be done if the court office is open on the day when time expires, then, if it turns out ... that the day is a Sunday or other dies non, the time is extended until the next day on which the court office is open*". I agree, and I can see no reason not to apply the same principle to service on a respondent in relation to the respondent's office. The fact that fax transmission can be effected at any time does not cause me to reconsider that conclusion."

Lord Neuberger's analysis (a) approved the *Kaur* principle stated in general terms and without reference to any issue as to whether the claimant had had the full benefit of the statutory limitation period, (b) applied the principle to service of proceedings on a respondent rather than merely to the commencement of proceedings through the court office and (c) applied the principle also to a situation where the relevant act can be effected without the participation of the recipient and therefore through use of electronic communication (in that case, fax) without the recipient's office being open for business.

63. Mr Barrett KC made the robust submission that Lord Neuberger's discussion of *Kaur* was *per incuriam* and should be disregarded as the *Kaur* point had not featured in the parties' written cases (which were not provided to me). I would of course be very reluctant to disregard the analysis of a very distinguished senior judge with which three other members of the House of Lords had agreed, even if I were sure – which I am not - that the analysis dealt with a point that had not been argued either in writing or orally. It would be fair to say that the treatment of *Kaur* in *Mucelli* is *obiter*, and not formally binding upon me, as Lord Neuberger was addressing a point which was not raised on the facts of either case. But that submission would have very limited mileage because Lord Neuberger's analysis was subsequently applied by the Court of Appeal in *R (Modaresi)*

v Secretary of State for Health and others [2011] EWCA Civ 1359, [2012] PTSR 999, where it was determinative of one of the issues which arose on the facts of that case.

64. In *Modaresi*, the claimant had been admitted to hospital and detained pursuant to s. 2 of the Mental Health Act 1983. She was entitled, pursuant to s. 66 of that Act, to apply for a review of her admission to the First-Tier tribunal within 14 days beginning with the date of admission. She gave a completed application form to a member of staff of the hospital on 31 December 2010, 11 days into the 14-day period. The hospital did not fax the form to the tribunal until 4 January 2011, the first day that the tribunal was open after the Christmas holidays. The tribunal informed her that the application was invalid because it had been submitted outside the 14-day period, which had expired on 3 January 2011. Before the Administrative Court, the claimant had relied upon the *Kaur* principle, arguing that the time limit did not expire until the first working day after the Christmas holiday period. Edwards-Stuart J rejected that submission, for the reason that "*there is no need to extend the time to the next working day if it would otherwise expire on a weekend or bank holiday because the application can be delivered during the non-working days by fax*" and there was nothing that needed to be done by the tribunal office to validate its delivery ([2011] EWHC 416 (Admin), §§46-47).

65. Black LJ, with whom the other members of the Court of Appeal agreed, noted that the Judge had not been referred to *Mucelli*, that the Court of Appeal had had to bring *Mucelli* to the attention of the parties, and that it was then not disputed by the defendants that "*Lord Neuberger's considered view should be applied to the calculation of time for the claimant's application to the tribunal*" (§15). It was specifically noted that the possibility of transmission of an application to the tribunal by fax without the need for the recipient office to contribute anything to the process made no difference in *Modaresi*, just as it had made no difference in *Mucelli* (§16). *Modaresi* proceeded to the Supreme Court ([2013] UKSC 53, [2013] PTSR 1031), but not on the claimant's claim against the tribunal to which the time limit issue was directly relevant. However, Baroness Hale commented in her concurring judgment (§33) that the claimant had been let down by the tribunal:

"As Mr Gordon pointed out, the House of Lords did not make new law in *Mucelli v Government of Albania* [2009] 1 WLR 276. At para 84, they adopted what had already been decided 40 years ago by the Court of Appeal in *Pritam Kaur v S Russell & Sons Ltd* [1973] QB 336: that when an Act of Parliament prescribes a period for doing an act which can only be done if the court office is open on the day when time expires then, if it expires on a day when the court office is not open, the time is extended to the next day on which it is open. No doubt that message has now been heard loud and clear in the tribunal offices and the same mistake will not be made again. That is another good thing to have come out of these proceedings."

66. Mr Barrett KC invited me to place no weight on *Modaresi* either, because *Mucelli* had been drawn to the attention of the parties by the Court, who then simply agreed, without full consideration or argument, that *Mucelli* was determinative of the time limit issue. I do not accept that that is a legitimate basis upon which I can disregard the unanimous view of the Court of Appeal in *Modaresi*. The time limit issue, which was the basis upon which the Administrative Court had dismissed the claimant's claim against the tribunal, was in dispute between the parties and it was part of the *ratio* of the Court of Appeal's decision that Edwards-Stuart J had erred on this point, because his decision was contrary to the "*considered view*" of Lord Neuberger in *Mucelli*, to which he had not been referred. Even if the weight of the Court of Appeal's decision were diminished by the absence of

full argument on the implications of *Mucelli*, it would remain a highly persuasive authority and certainly stands against Mr Barrett KC's primary submission that *Mucelli* was of no weight whatsoever on the proper application of the *Kaur* principle.

67. Mr Barrett KC also sought to distinguish *Mucelli* and *Modaresi* on the footing that they concerned vulnerable people who are in detention. The sub-text to that submission was that the time limits were generously applied in those cases in order to accommodate the particular circumstances of the appellants. That is wrong: the time limits in extradition cases are, in general, "rigorous" (see §15 of *Modaresi*) and, as is typical, both of the appellants in *Mucelli* were legally represented. It was no part of the relevant reasoning of Lord Neuberger that a generous approach ought to be taken given the circumstances of the appellants.

68. Mr Barrett KC also relied upon *Microsoft Ireland Operations Ltd & Ors v JJH Enterprises Ltd (Re Electronic Filing of Appellant's Notice)* [2022] EWCA Civ 1509, [2023] 1 WLR 1155 as establishing that whatever the position had been in relation to service by fax or email, electronic filing brought in a new, bespoke regime. That case was concerned with electronic filing of an appellant's notice in the Court of Appeal under the Electronic Working Pilot Scheme, which was a predecessor to PD5C. The Court held that a notice which had been filed electronically at 16.52 on the last day for filing had been filed within time, contrasting the former position in relation to filing by email and fax, where the CPR had specified that anything filed after 16.00 was deemed to have been filed on the following business day (§§10-14). This was not surprising because electronic filing was intended to replace existing methods with a wholly new method (§15). None of this assists the Defendant. The treatment of service and application by fax in *Mucelli* and *Modaresi* respectively was not founded upon any particular procedural rules which applied to the use of fax transmission and there is no other reason to think that the logic of that treatment should not apply to other methods of instantaneous electronic transmission.

Does the *Kaur* principle apply to the time limit in s. 106(2) of the Act?

69. In my judgment, the *Kaur* principle is applicable in this case so as to extend the limitation period until Monday 5 January 2026. First, and as the authorities make clear (see, for example, Sir Christopher Staughton's judgment in *Aadan*, *Calverton*, §33 and *Yadly*, §22), whether or not a limitation period for commencing proceedings which ends on a non-working day is complied with where proceedings are commenced on the next working day is a matter of construction of the particular statutory scheme. Different statutory schemes require different steps to be taken in order to commence proceedings, and these requirements will interact with the administrative arrangements which apply, and/or which Parliament should be taken to have assumed would apply, at the relevant court or tribunal. In the present case, the Act did not re-enact a specific statutory provision contained in the PCR which served to ensure that limitation periods for commencing claims which would otherwise have expired on a non-working day would instead expire on the next working day (see §50 above). However, I do not regard this as a strong indication that Parliament intended that time limits for procurement claims could henceforth terminate on a non-working day, when the court office was closed, in the absence of any indication in the pre-legislative materials or the Explanatory Notes accompanying the Act or in extensive post-legislative guidance that this was consciously intended. Further, by the time that the Act was passed, it was established that the *Kaur* principle would normally apply to time limits which expired on a non-working day (see

§§61 and 65 above). Parliament is presumed to have legislated against the background, and with knowledge of, established common law principles, so the intention of Parliament may have been that it was unnecessary to reproduce reg. 2(4) PCR in the Act because the common law had the same effect in any event.

70. On the other hand, it was not the position when the PCR were enacted (in February 2015), but it has been the position since 16 November 2015, when the Electronic Working Pilot Scheme was introduced by CPR PD 51O, that a claimant wishing to commence a procurement claim could take the necessary steps to have a claim form issued on a non-working day, and the claim form when issued would have an issue date of that non-working day (see §5.4(2) of PD 51O and §54 above). It might therefore be inferred that the *Kaur* principle was thought to apply at the time that the PCR were enacted, and – for clarity - this was reflected in the terms of reg. 2, but that the *Kaur* principle was thought to be unnecessary and inapplicable in the course of preparation of the Act, in light of the electronic working provisions then in force.

71. There is a good deal of speculation, and so of artificiality, in all of these points. Consequently, it seems to me that it would be unsafe to attribute to Parliament a specific intention that the Act should alter the position which applied under the PCR *vis-à-vis* limitation periods which expired on a non-working day. I shall therefore proceed to seek to construe the relevant statutory provisions, and apply *Kaur* and subsequent case-law, without any preconception as to Parliament having a specific intention one way or the other.

72. Second, there is force in Mr Barrett KC's submission that the basis for Lord Denning's reasoning in *Kaur,* with which Karminski LJ agreed, was a concern that a plaintiff be afforded the full extent of the limitation period prescribed by statute rather than being required in practice to act a day or more in advance of the expiry of that period when the court office is open. Megarry J also accepted the principle that "*what Parliament must be contemplating is that the plaintiff shall not be shut out until the statutory period has run*" (at 353C). However, the line drawn by Megarry J between the conflicting streams of authority which had been put to the Court in *Kaur* was whether or not the act to be done in order to meet a time limit requires some action by the court, and it is impossible for that action to occur on the last day of the limitation period because the offices of the court are closed (see §59 above). Subsequent expressions of the *Kaur* principle have also focused on that question rather than on what might be thought to be the policy underlying it, as stated by Lord Denning. See, for example, *Aadan*, *Mucelli*, *Yadly* and *Modaresi* in the Supreme Court (§§60-63 and 65 above).

73. If that question is asked in the present case, the answer is clear. The act in question is to "commence .. proceedings". In the absence of any definition of "commence" in the Act, or case-law applying it, that term should be interpreted in accordance with the CPR. The CPR stipulates that proceedings are "started", which I take to have the same meaning as "commenced", when a claim form is issued by the Court (§7.2(1)). On the rules prescribed by PD 5C, a claim form cannot be issued on a non-working day because this requires action by the court office. The court office must check that the document filed by a claimant meets the requirements for a valid claim form, approve that submission and then seal and issue the claim form. Until that happens, the requirements of CPR 7.2 for starting proceedings will not be met. Put another way, what is filed by the claimant on a non-working day is not a claim form within the meaning of the CPR as it has not been sealed (CPR 7.2(1)). §3.5(1) of PD 5C prescribes that the date of the issue of the claim

form will be that of the non-working day, but that is a legal fiction. As a matter of fact, the claim form will only have been issued once the court office has re-opened and the necessary action has been taken by a member of staff.

74. The answer to the question whether an act can only be done if the court office is open may be different where statute requires that proceedings are "brought", which is the usual formulation in time limits prescribed by the Limitation Act 1980. In *Barnes v St Helens MBC* [2006] EWCA Civ 1372, [2007] 1 WLR 879, Tuckey LJ, with whom the other members of the Court of Appeal agreed, held that a claim is "brought" "*when the claimant's request for the issue of a claim form (together with the court fee) is delivered to the court office*" (§16). But the Court contrasted the verb "to bring" with the verb "to start", which would not bear the same interpretation (§16) (and the same would apply to the verb "to commence"). Tuckey LJ also opined that the receipt of a claim form by the court office did not involve any transactional act, such as might delay the point at which proceedings were brought, because "*[t]he court staff who receive the documents are not performing any judicial function and have no power to reject them*" (§19). Again, that is to be contrasted with the position in the present case where PD5C makes clear that court staff do have discretion to reject a submitted claim form, and that a submission via CE-File must be approved before a claim form can be issued (see §54 above).

75. Third, even if one were to ask the question which Mr Barrett KC submitted was the critical question, whether the claimant in a claim under the Act would have the full extent of the limitation period if limitation could expire on a non-working day, the answer is not entirely straightforward. It is, of course, correct that a claimant can submit a claim form on a non-working day, and that day will be the date of issue if the submission is accepted by the court once the court office re-opens. However, precisely because starting proceedings under the Act is not a unilateral act by a claimant, a prudent claimant may in practice feel compelled to submit their claim form on a day when the court office is open so that they are able to correct any issues which the court identifies with the claim form after it has been submitted. As I have explained, the court office may reject a claim form for various reasons, in which case it has not been issued (see §54 above). If limitation can expire on a non-working day, then any errors made in the submission (which may be inadvertent, such as where a document file is corrupted) cannot be corrected within the limitation period. The Claimant did not seek to avail itself of the opportunity to seek to ensure that its submitted claim form would be accepted, submitting its claim form late on the day that it considered to be the last day of the limitation period. But, in general terms, if limitation can expire on a non-working day, then a claimant who wishes to be certain that its claim form is issued within the limitation period must submit the claim form in advance of the last day. That is at least analogous to the vice which Lord Denning in *Kaur* identified with a rule whereby time could expire on a non-working day.

76. Fourth, in the particular context of filing by electronic means, *Mucelli* and *Modaresi* represent clear, and high, authority for the proposition that the application of the *Kaur* principle to extend a limitation period to the next working day will be unaffected by the facility for a claimant to commence proceedings by making a submission electronically, without there being anyone in the court office to receive it. I see no principled basis for distinguishing between filing or service instantaneously by fax, as in those cases, and filing or service by the electronic means which have replaced it - currently, CE-File. It follows that even if, contrary to my analysis above, Mr Barrett KC were correct to

characterise CE-File as permitting a claimant to issue proceedings by electronic means on a non-working day, *Mucelli* and *Modaresi* would strongly suggest that this characterisation should not displace the normal operation of the *Kaur* principle.

77. Fifth, the principal driver for the decision of Lord Denning in *Kaur* that the limitation period should be extended until the next day on which the court office is open was the benefit of consistency with the Rules of Court which made provision to that effect, albeit provision which did not apply to statutory limitation periods. The same holds good today, as the same procedural rule is now contained in CPR 2.8.

78. Finally, in construing s. 106(2) of the Act, I take into account the particular context of procurement litigation. Applying the *Kaur* principle could serve to extend the time limit by a day or two but this is not a significant inroad into rapidity, particularly as the days in question are days when the claim form would not actually be issued in any event and so could not be served on the Defendant. I was also urged by Mr Barrett KC to take into account the provision for extension of the s. 106(2) limitation period in s. 106(3) as a means of addressing any unfairness caused by the expiry of time on a non-working day (although he denied that any such extension would be appropriate in the present case). This again does not have significant weight, notwithstanding that certain of the cases in which the *Kaur* principle has been applied were cases where there was no provision for extension of time (for example, *Calverton Parish Council*). There has been no indication in the case-law that the possibility of an extension of time makes any difference to whether or not the *Kaur* principle is applicable.

79. For those reasons, I conclude that the *Kaur* principle applies to s. 106(2) of the Act such that the limitation period expired on 5 January 2026, the first working day after the end of the 30-day period in s. 106(2), which was on 3 January 2026.

Did the Claimant comply with the limitation period as extended by the *Kaur* principle?

80. It remains to be determined whether the proceedings in the present case were commenced for the purposes of s. 106(2) on 5 January 2026, the date of issue printed on the claim form, or – as the Defendant submits – on 7 January 2026, when the claim form was actually issued, in which case the Claim would have been commenced out of time.

81. On this question, the parties made submissions (in post-hearing correspondence) which were more or less the opposite of the submissions they made with reference to the applicability of the *Kaur* principle. The Defendant relied upon the date that the claim form was in fact issued, which is beyond the expiry of the limitation period, having previously submitted that the significant date was the date of issue stated on the Claim Form which could be the date of a non-working day. The Claimant maintained that the actual date of issue of the claim form, 7 January 2026, is irrelevant and that the significant date for limitation purposes is the date printed on the claim form, pursuant to §3.5(1) of PD 5C, which was the day when the claim form was received by the Court, and the last day of the limitation period.

82. The CPR make specific provision determining this question in the case of Limitation Act 1980 time limits and other "relevant" time limits. PD 7A, §6.1 states:

"Proceedings are started when the court issues a claim form at the request of the claimant (see rule 7.2) but where the claim form as issued was received in the court office on a

date earlier than the date on which it was issued by the court, the claim is "brought" for the purposes of the Limitation Act 1980 and any other relevant statute on that earlier date."

83. As I have noted, a predecessor to this paragraph was held to be correct in law in *Barnes v St Helens MBC* (see §74 above). Given what was said in that case about the difference between proceedings being "brought" and proceedings being "started", I could not conclude that s. 106(2) was a "relevant statute" which, by virtue of §6.1 of PD7A, falls to be interpreted in the same way. However, I reach a similar conclusion – that the date when proceedings under the Act are commenced for the purposes of application of the limitation period in s. 106(2) is the date on which the claim form was submitted and the requisite fee paid (as that term is defined in PD5C) - by application of the provisions of the CPR:

i) A claim is started, or commenced pursuant to s. 106(2), when the claim form is issued (CPR 7.2(1)).

ii) The claim form is issued on the date entered on the form by the court (CPR 7.2(2)).

iii) Pursuant to §3.5(1) of PD5C, that date is the date when the fee for issuing a claim form is paid, which will ordinarily be, and was in this case, the date when a claim form is submitted via CE-File. That is the date which will apply for the purposes of determining when a claim form must be served (see CPR 7.5(1)), notwithstanding that this may shorten the period which would otherwise be available for service by starting the clock for service a day or possibly more before the claim form was in fact issued. Applying the date stipulated by §3.5(1) of PD5C for limitation purposes would have the merit of consistency with the position in regard to service and also of promoting the policy which was significant to the Court of Appeal's analysis in *Barnes*, that a claimant ought not to bear the risk of their claim being issued out of time as a result of delay in issuing the claim form on the part of the court office (see §17 of *Barnes*). This policy is yet more significant in the context of a short time limit such as that in s. 106(2) of the Act, where it is more likely that a claim form will be filed near the end of the limitation period.

iv) In some cases, including the present case, the date of issue stipulated by §3.5(1) of PD5C is a legal fiction because the claim form was in fact issued on a date after the date when the fee for it was paid. However, it is a fiction which has been in force without – so far as I can tell - judicial criticism since the advent of electronic filing in 2015. No doubt this was thought to be an appropriate feature of CE-File which served to facilitate the 24/7 availability of electronic filing. Neither party submitted to me that PD5C was inconsistent with the Act or with the Rules and I note that CPR 5.5 provides for there to be a practice direction governing electronic filing which may, *inter alia*, modify or disapply any provision of the Rules in relation to the use of an electronic filing system (§5.5(2)(d)). Stipulating that the date of issue of a claim form is earlier than the date on which it was actually issued may be better regarded as an application rather than a modification of CPR 7.2(2), but if it is the latter then it is a modification which is contemplated by the Rules themselves.

v) There is no inconsistency between the date of issue for limitation purposes being the date of submission of a claim form via CE-File and my earlier conclusion that

the *Kaur* principle is applicable to extend the limitation period to the next working day. The *Kaur* principle is applicable because it is not sufficient to commence proceedings under the Act to submit a claim form along with the fee; proceedings are only commenced when the claim form is accepted and issued by the court office, which cannot be done on a non-working day. But once that has been done, the effect of the Rules is that the date of commencement is deemed to be the date of submission of the claim form along with the requisite fee (if earlier than the date on which the claim form is actually issued). These conclusions can co-exist and there are good reasons of policy and authority for each.

84. Accordingly, I conclude that proceedings in the present case were commenced within the limitation period, because the date of issue of proceedings was the final day of that period, as extended by the *Kaur* principle.

Issue 3: Extension of time

85. In those circumstances, Issue 3 does not arise. However, it would arise if I am wrong in my answer to Issue 1b, unless I am also wrong in my answer to Issue 1a. In the event that this Judgment were to come to be considered by the Court of Appeal, that Court may find it helpful to have my views on Issue 3 as well. I therefore proceed to consider Issue 3, on the assumption that the Claim was commenced outside the limitation period either because the *Kaur* principle did not apply (in which case the necessary extension is from 3 to 5 January 2026) or because it did apply but required that proceedings were in fact issued by the Court by 5 January (in which case the necessary extension is from 5 to 7 January 2026).

Legal principles

86. Section 106(3) of the Act provides, so far as material:

"The court may make an order extending a time limit referred to in subsection .. (2) if it considers there to be a good reason for doing so."

Pursuant to s. 106(4)(a) of the Act, an extension cannot be granted so as to permit proceedings to be commenced after the date which is 3 months beginning with the date of knowledge within s. 106(2). These provisions are materially identical to their predecessor provisions in reg. 92 PCR.

87. In *SRCL*, Fraser J (as he then was) set out the principles which applied where an extension of time was sought pursuant to reg. 92(4) PCR (§154):

"(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."

88. There are some dicta to the effect that a "*good reason*" should ordinarily relate to some factor which affected the ability of the claimant to issue within time (see §149, referring to §23(b) of *Mermec*, where Akenhead J stated that "*the grounds upon which extensions should be granted .. would include factors which prevent service of the Claim within time which are beyond the control of the claimant; these could include illness or detention of the relevant personnel*"). However, this is not to be understood as a gloss on the "*good reason*" test but simply as a commonplace situation where it has been stated that there would be a good reason to extend time (per Jefford J in *Access for Living v Lewisham LBC* [2021] EWHC 3498 (TCC), §64).

89. In *Access for Living*, having conducted a full survey of the authorities on extension of time in procurement claims, Jefford J noted that they largely illustrate factual scenarios which do not amount to a good reason. She listed the following matters which are "*at the very least unlikely to be considered by the Court to be a good reason*": "*ignorance of the law, commercial considerations, carelessness including by lawyers, lack of urgency and engagement in pre-action investigations or correspondence*". Further, one matter which is very clearly not in itself a "*good reason*" is that the extension sought is a short one.

90. In *Amey Highways v West Sussex CC* [2019] EWHC 1976 (TCC), [2018] PTSR 455, Stuart-Smith J (as he then was) held that the policy that procurement claims should be brought promptly was to be given effect in a strict approach to the power to extend time (§34). He set out a non-exhaustive list of factors which may be brought into consideration when exercising that power: the absence of good reason for not issuing in time was always likely to be an important consideration and other relevant considerations could include the importance of the issues in question, the strength of the claim, whether a challenge at an earlier stage would have been premature, the extent of the claimant's knowledge of the infringement and of the impact of the infringement and the existence of prejudice to the defendant, third parties and good administration (§35).

91. However, applying that strict approach, he granted an extension of time for a claim on grounds that it would be "*sterile and potentially unjust*" not to do so when the progress of that claim would not have been any quicker even if had been brought within the limitation period (§46). The particular facts of *Amey* were that there were two claims, referred to as the "para 33.1" and "para 33.2" claims which had been started out of time. Time was extended for the para 33.2 claim on the "*straightforward*" basis that the delay after the end of the limitation period was covered, or almost entirely covered, by a limitation standstill agreement which had been entered into by the parties. The limitation period for the para 33.1 claim had expired before the standstill agreement came into force but even if the para 33.1 claim had been brought within time, it would have made little or no progress until the para 33.2, and other within time claims, had been issued. Not only had the late issue of the para 33.1 claim caused no prejudice to the defendant or the public interest but "*the delay in relation to para 33.1 has been of no practical consequence at all*" (§43).

Relevant factual matters

92. There are certain factual matters which are relevant to Issue 3 which I have not already addressed:

    i) The Claimant's witnesses, in particular Mr Cesenek, gave evidence that the construction industry "*effectively shuts down over Christmas*". The Claimant's office was closed between 24 December 2025 and 5 January 2026. Its key employees were on leave for differing parts of the period between 18 December and 6 January, as was Mr Baker. The Claimant also adduced evidence of notifications from the Defendant to the suppliers on its existing framework agreements, including the Claimant, to the effect that procurement activity would cease between 19 December and 5 January (on 10 September 2025) and providing them with a single "group" email address for communications during the holiday period (on 19 December 2025). The Defendant's notifications made no representations which could be of relevance to the timing of a legal challenge to the Procurement (although they do indicate that the Claimant's office closure was typical rather than untypical of industry practice).

    ii) I accept that the fact that the 30-day limitation period in this case spanned the Christmas holiday/shut-down period, which was down to the Defendant's decision to notify the result of the Procurement in early December, served to reduce the time available to the Claimant to conduct the necessary investigations and deliberations prior to deciding to commence proceedings against the Defendant. However, it was no part of the Claimant's case that it was in any sense prevented from taking steps to commence proceedings prior to 5 January. It was informed on 30 December that the Defendant refused to concede to its demands. The Claimant held a meeting on 2 January to discuss the prospective challenge to the Procurement which was attended by Ms Heneghan, Mr Kothari and Mr Baker (and, I apprehend, the Claimant's legal advisors). Prior to going on leave for Christmas, Mr Bernard had given his authority for proceedings to be commenced should this be considered appropriate. Mr Cesenek confirmed in cross-examination that a decision to commence proceedings had been reached on 2 January although he clarified in re-examination that a "final decision" was only taken on 5 January after he had consulted Mr Bernard. The evidence therefore suggests that the Claimant knew on 30 December that it was going to have to issue proceedings if it wished to take the matter further, and that even after taking time for further internal consideration it could have filed its claim form with the Court on 2 January, and certainly before 5 January.

    iii) The Claimant did not provide an explanation in evidence as to why it had not submitted its claim form until 5 January. It is relatively clear from WFW's correspondence with the Court on 6 January that the Claimant believed, based on legal advice, that it was not required to do so before 5 January, because that was the first working day after the end of the 30-day period. (I consider that much more likely than that the Claimant proceeded on the basis that time did not start to run until 8 or 9 December, as was also argued before me). The Claimant's reliance upon legal advice was then confirmed in a post-hearing letter dated 23 October 2026, where the Claimant's solicitors stated that "*its decision not to issue a claim until 5 January 2026 was informed by legal advice*".

    iv) The Claimant submitted that if its understanding of when limitation expired had been incorrect then it was a misunderstanding which had been shared by the

Defendant. This submission was based on two letters from Bevan Brittan, which do not, in my judgment, establish that there was any such understanding on the Defendant's part. In the letter of 16 December 2025, Bevan Brittan informed WFW that the standstill period had been extended until 5 January 2026 and that it would, in the circumstances, be "*unnecessary and precipitous*" to issue proceedings before they had had the opportunity to send a substantive response to the letter before claim. This letter did not represent that limitation would expire on 5 January, and it would have been well-known to the very experienced procurement solicitors who were representing the Defendant that the date of expiry of the standstill period is not necessarily the same as the date of expiry of the limitation period. In the letter of 23 December, WFW had threatened to commence proceedings on 5 January if the Defendant did not agree to its demands by noon on 2 January. Bevan Brittan did not reply to WFW disputing that it would still be open to the Claimant to commence proceedings on 5 January but nor did they have any duty to do so, whatever they might have thought the correct position was (see *Riverside Truck Rental*, §87). It was entirely a matter for the Claimant to ensure that proceedings were commenced within time.

Submissions

93. Mr Barrett KC on behalf of the Defendant submitted that the power to extend time for a procurement claim was "*a flexible mechanism which allows the court to do justice in the specific particular circumstances*" but that there was no good reason to extend time in the present case. The Claimant had been able to issue proceedings well in advance of the expiry of the statutory limitation period. The Claim had only been issued outside the limitation period because the Claimant had erroneously calculated the limitation period and then elected to wait until what it had erroneously thought was the last day of that period before submitting its claim form. He relied upon authorities including *Access for Living* (§61) and *Riverside Truck Rental* (§93) in which the courts had declined to extend time where a party had made a mistake as to the applicable time limits.

94. Ms Hannaford KC's submissions on behalf of the Claimant, in their final form, argued that there was a good reason to extend time because (a) if the Claimant had misunderstood the operation of the limitation period, this was only as a result of a novel and complex argument by the Defendant which had not previously been tested by the Courts, (b) there had been no prejudice to the Defendant, indeed no practical consequence to the Defendant at all, as in *Amey*, and (c) the timing of the limitation period, and its expiry immediately after the Christmas shut-down, had made it more difficult for the Claimant to undertake the necessary investigations and take the necessary decisions and had been dictated by the issue of the Assessment Summary by the Defendant on 5 December 2025.

Discussion

95. I adopt the approach that the power to extend time under s. 106(3) should be exercised strictly, given that its effect is to deprive a defendant of a limitation defence, but also that it is a flexible power which allows the court to do justice in the circumstances of the case. On that approach, I have concluded that there is good reason to extend time in this case:

    i) If, contrary to my conclusions on Issue 1, the Claimant misunderstood the operation of the limitation period in s. 106(2) of the Act, I find that that misunderstanding concerned the date on which time would expire, having started to run on 5

December 2025, and that it was a reasonable mistake to have made. The point taken by the Defendant, that the *Kaur* principle does not apply to s. 106(2), in light of the rules governing CE-File, was a novel one and its resolution necessitated extensive legal argument and citation of authority. If the Claimant's view was mistaken then it is a mistake which I have also made. The Claimant bears some degree of culpability for submitting its claim form on what it understood to be the last possible day of the limitation period, when there was, on any view, a degree of uncertainty regarding when limitation expired, and there was no obstacle to the claim form being submitted a few days earlier. However, any error on the part of the Claimant is not in the same category as the mistakes which were held not to amount to a good reason in *Access for Living* (where there was an elementary confusion between the standstill period and the limitation period) and *Riverside Truck Rental* (where there was an even more fundamental mistake made, in identifying what was the appropriate time limit).

ii) The short delay between 3 January, which the Defendant says was the last day that the claim form should have been submitted, and 5 January, when it was submitted, caused no prejudice to the Defendant. Lack of prejudice to a defendant is not determinative but this is a case in the same category as *Amey*, where not only was there was no prejudice but the relevant delay cannot be said to have had any practical consequence at all, save perhaps in a manner which was beneficial to the Defendant. If the claim form had been submitted on 3 January, the earliest date on which it could have been issued, and proceedings in fact commenced, was 5 January and issuing may have taken longer if the same confusion had occurred regarding the payment of the appropriate fee (see §12 above). Even assuming that the effect of the Claimant's delay to 5 January had been to delay the commencement of proceedings by a day or two, there is no suggestion that this had any practical effect on the progress of proceedings or on the Defendant's actions in relation to the conclusion of the Framework (which is perhaps unsurprising given the time of year at which these events occurred).

iii) I have said that the short delay between 3 and 5 January may even have been beneficial to the Defendant because, assuming in the Defendant's favour that a claim form submitted on 3 January would have resulted in the commencement of proceedings (within s. 101(1)(a) of the Act) either on 3 or 5 January, it is much more likely that the Claimant would have notified the commencement of proceedings to the Defendant by the end of 5 January, within the standstill period, and so triggered an automatic suspension under s. 101 of the Act. That would have prevented the Defendant from entering into the Framework, unless and until the court ordered the lifting of the suspension pursuant to s. 102 of the Act. As it was, the Claimant's submission of the claim form late in the day on 5 January at the very least substantially contributed to its failure to notify the Defendant within the standstill period that proceedings had been commenced. That failure meant that no suspension was triggered and the Defendant was free to enter into the Framework (which it has done).

iv) I accept that the Claimant acted with reasonable expedition in investigating and formulating a claim during a period which included the Christmas holidays. I have concluded that the Claimant had the requisite knowledge to trigger the running of time on 5 December, and that it could have commenced proceedings earlier than it

did. However, those findings do not undermine the point that the holiday period created particular difficulties and in practice shortened the time in which the Claimant could undertake meaningful investigation of the Assessment Summary and of the Defendant's correspondence, and consideration of its position. The Claimant acted reasonably in consulting its external advisors and was to some extent at their mercy in terms of their availability and the speed of their responses. The Claimant commenced proceedings immediately after the end of the Christmas shut-down (in contrast with the position referred to in §81 of *Riverside Truck Rental*). These are matters which I regard as supporting the grant of an extension of time in this case, albeit that they do not, in and of themselves, constitute a good reason for extending time.

96. I do not place any weight upon the importance of the claim to the Claimant. This is an important Framework in terms of its value and the Claimant's witnesses provided evidence about the impact upon it of not having won a place on the Framework. However, the Framework has been concluded and – although there remains some dispute between the parties about this, and I of course make no final determination – it is, at best, far from clear that the Claimant will be able to secure relief which requires its appointment to the Framework, and more likely that its remedy will be in damages. Even if the Claimant were to succeed in obtaining a "set-aside" remedy (see s. 104(2)(a) of the Act), the likely outcome would be a re-tender rather than the appointment of the Claimant to the Framework. I am not in a position to assess how valuable a damages claim might be and what impact securing damages might have on the Claimant or indeed the prospects of the Claimant securing appointment on a re-tender.

97. For those reasons, I consider that, as in *Amey*, it would be "*sterile and potentially unjust*" not to grant the short extension of time which would be necessary in this case in the event that I am wrong in my conclusions on Issue 1(b). Depending upon which aspect of my conclusions on Issue 1(b) is incorrect, the extension of time would be from 3 to 5 January 2026, or from 5 to 7 January 2026.

Issue 2: Are any claims subject to any different limitation period

98. In light of my conclusion on Issues 1 and my contingent exercise of discretion to extend time under Issue 3, Issue 2 does not arise for determination. However, as it has been argued before me, albeit briefly, I shall address it but will express my conclusions more shortly than I would have done had it been material to the outcome of the hearing.

99. The legal principle raised by Issue 2 originates in *SITA*. The essence of the claim pursued in *SITA* was that the defendant authority had renegotiated the terms of a proposed large waste disposal contract with the supplier which had finished first in the procurement, invited an updated bid from that supplier and then concluded the revised contract without re-evaluating the updated bid as against SITA's bid and the terms of the contract as revised. The finding at first instance, upheld by the Court of Appeal, was that SITA had had sufficient knowledge to bring that claim in April 2009. However, SITA had also relied upon further information which it had received from the authority in July 2009, in particular the existence of a consultant's report which had compared the preferred bidder's updated bid against SITA's original bid and, it was alleged, found them to be closely matched.

100. Elias LJ rejected an alternative argument that "*even if Sita had enough knowledge to bring its claim sooner, it should have been allowed to pursue a case based on those breaches which did not emerge until July 2009*" (§88). He stated (§89):

> "I am satisfied, as was the judge below, that time does not start afresh where what is being relied upon to start time running again is a further breach of the same duty, whether it in fact occurred before or after the breaches already known. The position may be different if a number of distinct duties can be spelt out of the procurement obligations; it may be said that time runs separately with respect to each duty. But Mr Bowsher properly did not contend that these further breaches could be said to relate to a different duty. They all went to the failure to reopen the bidding process. As I have said, in my judgment the matters being relied on as constituting the fresh breaches are simply further particulars of the infringement which could already be pursued. They do not constitute separate causes of action in their own right."

101. In subsequent cases applying §89 of *SITA*, the courts have adopted a broad approach to the definition of the key criterion "*further breaches of the same duty*". For example, in *Bromcom*, HHJ Eyre KC held that allegations of breaches of the procurement regulations arising at the same stage of the procurement process, in that case the tender evaluation stage, were to be regarded as breaches of the same duty and particulars of the same infringement (§48). Similarly, in *New Lottery Company*, Joanna Smith J considered different allegations of unlawful contract modification, of which the claimant had had knowledge at different points in time. She held that the time ran from the first point in time at which the claimant had had sufficient knowledge of an unlawful contract modification (§1109).

102. Ms Hannaford KC relied upon a different line of authority, outside the procurement field, on the question whether proposed amendments to a claim constitute a new cause of action which must, in principle, comply with a limitation period (subject to the powers of the court under s. 35 of the Limitation Act 1980 and CPR 17.4) or merely constitute particulars of an existing claim which need not do so. In particular (see, for example, *Geo-Minerals GT Ltd v Downing* [2023] EWCA Civ 648, §27):

> "Where a claim is based on a breach of duty, whether arising in contract or tort, the question whether an amendment pleads a new cause of action requires comparison of the unamended and amended pleading to determine (a) whether a different duty is pleaded (b) whether the breaches pleaded differ substantially and (c) where appropriate the nature and extent of the damage of which complaint is made … (Where it is the same duty and same breach, new or different loss will not be new cause of action. But where it is a different duty or a different breach, then it is likely to be a new cause of action)."

She argued that the various paragraphs listed under Issue 2 constituted new causes of action on this test and therefore ought to be subject to a new limitation period.

103. I consider that I should apply the *SITA* line of authority which has developed to meet the particular exigencies of procurement proceedings, in particular the public interest in challenges to a procurement being brought at the first opportunity and determined promptly. The important principle of rapidity could be undermined if there were not a relatively high bar set for claimants who do not challenge a procurement promptly when they have sufficient knowledge to do so, but then seek to mount a related challenge at a later stage. I also take into account the reliance placed by the Court of Appeal in *SITA*

on pre-action correspondence sent by the claimant in that case as sufficient evidence of the claimant's knowledge at the time that the correspondence was sent (§33 of the judgment of Elias LJ).

104. I turn then to the paragraphs of the RAPOC listed under Issue 2, as well as other paragraphs added upon re-amendment, and after the Order of Eyre J identifying the preliminary issues, which the parties are content for me to address at the same time.

105. The vast majority of the paragraphs that I am called upon to consider place reliance upon the records of the moderation of individual evaluators' scores so as to produce the final scores for the bids of the Claimant and McLaren under Qs 7, 8, 9, 18 and 19. Information and records regarding the moderation process were disclosed to the Claimant on 19 December 2025 and in February, August and September 2026 and the Claimant argues that time should not run for complaints regarding the moderation process until the relevant information or records were disclosed which was, on any view, after the date on which time started to run for the Claimant's wider challenge to the scoring of the bids.

106. Applying the approach in *SITA* and *Bromcom*, the Claimant's reliance upon facts arising out of the moderation process should, in general, be regarded as particulars of its challenges to the scoring of the bids, for which time started to run on 5 December. That is how the various paragraphs relying upon moderation appear in the RAPOC, as argument in support of the challenges to the individual scores. These paragraphs attack the same aspect of the Procurement, namely the scoring of tenders, in respect of which time started to run on 5 December as a result of the provision of the Assessment Summary and, in principle, should be subject to the same time limit. That conclusion accords with common sense: it would be odd, and inconsistent with the principle of rapidity, if the Claimant were time-barred from challenging the scoring of its tender and that of McLaren as revealed in the Assessment Summary because it had failed to take action at that stage when it could and should have done but then, weeks or months later, the Claimant were entitled to bring a challenge to exactly the same scoring as a result of later disclosure of evidence of the evaluation process.

107. There are, however, certain aspects of the Claimant's reliance upon the moderation process which, in my judgment, merit different treatment for limitation purposes. The Claimant pleads – in §§17, 17A, 23, 34(3)(A), 37A to 37C, 43, 48, 48A, 58A, 60A, 65, 72-73 and 75A of the RAPOC - various breaches by the Defendant of its duties under (a) s. 98 of the Act to keep records sufficient to explain its decisions and/or (b) s. 12(1)(c) of the Act to have regard to the importance of sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions and/or (c) s. 50 of the Act and/or reg. 31 of the Procurement Regulations 2024 (SI 2024/692) as to the contents of an assessment summary. These are allegations of breach of record-keeping and disclosure duties which are different breaches of duty from the central allegation that the Defendant committed manifest errors and/or unequal treatment when scoring the tenders, in respect of which the moderation process is also relied upon. Insofar as these allegations of breach of record-keeping and disclosure duties concern the conduct and documenting of the moderation process, the s. 106(2) time limit should start to run for these allegations from the date of the disclosure of the relevant moderation records, and they would accordingly be within time even if the main claim is out of time. These allegations, the merits of which I do not comment upon, may be of little or no practical value to the Claimant in circumstances where it is time-barred from challenging the scores themselves but that is not a limitation problem. To be clear,

insofar as any of the paragraphs I have mentioned allege both a breach of a record-keeping or disclosure duty and a criticism of a score awarded and/or of the Assessment Summary which does not depend upon moderation records, it is only the former allegation which could be pursued as having been brought within time.

108. Finally, §76 now alleges that the Defendant failed to consider the exercise of its discretion to add the Claimant to the Framework, based on information provided by the Defendant on 17 September 2026. However, as I have explained, the Claimant's original pleading made this allegation in the alternative to an allegation that the Defendant had exercised its discretion unlawfully. Plainly, the Claimant had sufficient knowledge to make the allegation that the Defendant had failed to exercise its discretion based on information it had in December 2025 when that allegation was in fact made in the original claim. By analogy with §33 of *SITA*, the Claimant cannot deny having had sufficient knowledge of a claim which it did actually make, albeit in the alternative, in the original Particulars of Claim.

109. Accordingly, my answer to Issue 2 is that if the answer to Issue 1 is yes, and the answer to Issue 3 is no, the allegations of breach of record-keeping and disclosure duties and of invalidity of the Assessment Summary summarised in §107 above and pleaded at paragraphs §§17, 17A, 23, 34(3)(A), 37A to 37C, 43, 48, 48A, 58A, 60A, 65, 72-73 and 75A of the RAPOC comprise different causes of action which were subject to a different limitation period such that they are not time-barred.