

# Mystery Shopper Publication Table July to September 2016

## Contract Management

### Contracting Authority / Prime Contractor complaint against - Kent County Council

**Issue:** A supplier raised concerns over the management of a minor works contract that they had won with the Council. They said that although the work was completed on time and signed off as satisfactory it was over a year before they received payment.

**Outcome:** The Council indicated that their minor works contracts were administered on their behalf by consultants acting as managing agents. Without specific details of the case (withheld to protect supplier anonymity) it was impossible to comment on the particular issues but the Council confirmed that it does take its obligations in respect of prompt payment very seriously and they would encourage any suppliers experiencing difficulties to raise this with them.

### Contracting Authority / Prime Contractor complaint against - Crown Commercial Service (CCS) / Homes and Communities Agency (HCA)

**Issue:** A supplier contacted the Mystery Shopper team to advise that another supplier on the Crown Commercial Service (CCS) G-Cloud framework appeared to have behaved in a way that seemed to lock in the Home and Communities Agency (HCA) into using their services. Further to this, as part of this transaction, HCA had been offered a reduced price, contravening the terms G-Cloud suppliers sign up to.

**Outcome:** CCS and HCA responded quickly to the issues raised. HCA explained that when they had attempted to migrate to another supplier, the number of folder permissions had created unexpected problems with the off-boarding. HCA agreed to ensure that in future the incumbent supplier must assist them with the off-boarding process. CCS have agreed to communicate the issue of migrating file permissions to other G-Cloud customers, to prevent others experiencing similar problems. CCS have also written to the supplier about their behaviour and reminded them that CCS reserve the right to audit.

## Payment

### New

### Contracting Authority / Prime Contractor complaint against - Cabinet Office

**Issue:** A supplier of temporary staff raised concerns that an invoice had not been paid.

**Outcome:** Following the referral Cabinet Office took steps to pay the invoice. They explained that delays had been caused by key staff being away. The Mystery Shopper Team recommended that the Cabinet Office strengthens its arrangements to ensure that staff absences are covered to ensure that invoices are validated within 7 calendar days, in line with statutory guidance. Cabinet Office accepted this recommendation.

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**New**

**Contracting Authority / Prime Contractor complaint against - Stockport NHS Foundation Trust**

**Issue:** A supplier raised concerns that that the Trust had written to them seeking to extend its terms for payment to 60 days.

**Outcome:** The Mystery Shopper Team discussed the referral with the Department for Health and NHS Improvement. We reminded them that 30 day payment terms are established by Regulation 113 of the Public Contracts Regulations 2015 and following this conversation, NHS Improvement issued a reminder to Trusts that they should not exceed 30 day payment terms.

**New**

**Contracting Authority / Prime Contractor complaint against - St George's University Hospitals NHS Foundation Trust**

**Issue:** A supplier raised concerns that that the Trust had written to them seeking to extend its terms for payment to 60 days.

**Outcome:** The Mystery Shopper Team discussed the referral with the Department for Health and NHS Improvement. We reminded them that 30 day payment terms are established by Regulation 113 of the Public Contracts Regulations 2015 and following this conversation, NHS Improvement issued a reminder to Trusts that they should not exceed 30 day payment terms.

**Contracting Authority / Prime Contractor complaint against - London Borough of Lewisham**

**Issue:** A supplier raised concerns that an invoice for translation services had not been paid within 30 days.

**Outcome:** The Mystery Shopper team drew Lewisham's attention to statutory guidance which sets out that invoices should be examined and validated within 7 days of receipt and paid within 30 days. Shortly after this the invoice was paid.

**Procurement Process**

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**New****Contracting Authority / Prime Contractor complaint against - Manchester City Council**

**Issue:** A supplier contacted the Mystery Shopper team about Manchester City Council's procurement of framework agreements for Architectural & Design Services. They pointed to the Council's Social Value (SV) requirements, suggesting that these presented particular difficulties for Small Businesses (SMEs) .

**Outcome:** The Council responded thoroughly to our communication, indicating that the requirements were rooted in the Greater Manchester Combined Authority Social Value Strategy (GMCA SV) which had been developed in a transparent manner and met with a generally favourable response from stakeholders. The Council addresses the Social Value requirements for procurements case by case, based on the circumstances of the specific project. The requirements for the Architectural & Design Services procurement had been produced especially for this framework and the Council pointed to aspects specifically intended to facilitate SME accessibility. We recommended that the Council should continue to target its implementation of the GMCA SV strategy for specific procurements, making clear what the SV priorities are for particular exercises, and as far as possible to trial potential requirements with the supplier community in pre-market engagement. The approach adopted for specific procurements should recognise the characteristics of the relevant supply market. The Council accepted the recommendation.

**New****Contracting Authority / Prime Contractor complaint against - South Yorkshire Fire and Rescue**

**Issue:** A supplier contacted the Mystery Shopper team about a procurement for Boiler and Air Conditioning Maintenance Services undertaken by South Yorkshire Fire & Rescue. They questioned why the opportunity had not been advertised on Contracts Finder and raised issues with the Invitation To Tender (ITT) documentation, pointing to apparent repetition and conflict in some of the content.

**Outcome:** South Yorkshire Fire and Rescue responded very thoroughly, acknowledging that there had been some some problems with the procurement documentation because of the time pressures they were under to carry out the procurement. Since then they have revised and rationalised their standard ITT documents to deal with the issues. The failure to publish on Contracts Finder was an oversight. The notice had been drafted but had inadvertently not been dispatched.

**New****Contracting Authority / Prime Contractor complaint against - Royal Cornwall NHS Hospital Trust**

**Issue:** A supplier contacted the Mystery Shopper team about the Trust's current Pathology Managed Equipment Service procurement. They expressed concerns as to whether the Trust had provided enough information to allow for robust pricing, particularly in relation to the estates element of the requirement. The terms and conditions specified by the Trust were also a cause for concern given that they were non-negotiable within the context of a restricted procedure procurement.

**Outcome:** The Trust considered that they had provided enough information for suppliers to price the required services. The estates element represented a relatively small proportion of the whole, and costs here would be agreed with the successful supplier after award of contract and following detailed examination of the work required. The terms and conditions had been developed in consultation with the Trust's professional advisors and were not unusual for the public sector

**New**

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**Contracting Authority / Prime Contractor complaint against - NHS England**

**Issue:** A supplier contacted the Mystery Shopper team about two recent NHS England Learning & Development contracts let via the Civil Service Learning Wider Public Sector framework with Capita. The supplier considered that the two week timescales for tendering were demanding during the summer leave season, that it was not practical to require suppliers to provide customer references over these timescales, and that a requirement for registration with the NHS leadership Academy or Health Education Coaching Register was anti-competitive.

**Outcome:** NHS England responded in detail to our communication, indicating that the tendering timescales were in line with the framework and that business needs required a quick response from suppliers. Provision of references should not have proven a problem as most suppliers would have customer testimonials on file, and registration with the NHS Leadership Academy or Health Education Register was a desirable but not mandatory requirement. We recommended that in future NHS England should ensure that procurement staff were consulted well in advance on any business delivery timescales, and that procurement staff should be encouraged to challenge excessively tight timescales or restrictive requirements.

**New**

**Contracting Authority / Prime Contractor complaint against - Merseyside Police**

**Issue:** A supplier contacted the Mystery Shopper team regarding a framework further competition for Mobile Telephony Services being undertaken by Merseyside Police. The supplier was concerned at the proposed use of the OpenSignal portal to assess the service capability of the bidders.

**Outcome:** The Force provided a comprehensive response setting out their rationale for using OpenSignal and specifically addressing the points raised by the supplier. The information provided was sufficient for the case to be closed.

**New**

**Contracting Authority / Prime Contractor complaint against - Runnymede Borough Council**

**Issue:** Two suppliers contacted the Mystery Shopper team, separately, raising issues with the Design Contest for Ashdene House being run by the Council. The issues focussed on the structure of the process and clarity on how some aspects sat within the parameters for Design Contests set by the Regulations.

**Outcome :** The Council responded in detail to specifically address the points raised over an extended engagement. Specific clarification was provided to interested suppliers where necessary but overall the Council was satisfied with the structure of the process and the demands it placed upon suppliers.

**New**

**Contracting Authority / Prime Contractor complaint against - Leeds City Council**

**Issue:** A supplier contacted the Mystery Shopper team at the conclusion of a procurement that was not subject to the Public Contract Regulations and hence did not incorporate a standstill period. The supplier had concerns over the evaluation of their tender which they asked us to raise with the Council.

**Outcome:** The Council responded fully to our communications and following the agreement of three recommendations on the mechanics of similar procurements it was possible to close the case.

**New**

**Contracting Authority / Prime Contractor complaint against - Norfolk and Suffolk NHS Foundation Trust**

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**Issue:** A supplier contacted the Mystery Shopper team asking us to examine a) the Trust's requirements in relation to local disposal, and b) the associated evaluation approach in relation to a current tender for Clinical Waste Services.

**Outcome:** The Trust responded in detail to our communications regarding the case. The Mystery Shopper team suggested that more clarity in the Invitation To Tender (ITT) on the application of the evaluation criteria might have been helpful but on the whole the Trust was satisfied that their approach was sound.

**New**

**Contracting Authority / Prime Contractor complaint against - Defra**

**Issue:** A supplier complained that a planned Defra procurement for UniTy hosting and application services was not divided into lots and excluded Small Businesses as a result. The supplier also felt the requirement could be met by G-Cloud and Digital Services framework suppliers.

**Outcome:** Defra explained they had only issued a Prior Information Notice at this stage to enter into early market engagement and no decision on lotting strategy or procurement structure had been taken (including the use of CCS Frameworks or G-Cloud). The feedback from this engagement will be reviewed and inform procurement planning.

**New**

**Contracting Authority / Prime Contractor complaint against - Coventry University**

**Issue:** A supplier complained that after being told they had been unsuccessful with a tender, they found it difficult to communicate with the university for feedback and to see documentation relating to the evaluation.

**Outcome:** The University explained that after the complainant raised the communication issue and questioned the procurement process, they sent the complainant a copy of the evaluation form and an investigation into the procurement was conducted by the Procurement Director. As an issue regarding clarity of wording in the tender documentation was found and an inconsistency in the process was also discovered, the procurement was cancelled and a new procurement was run which the complainant was informed of in advance.

**New**

**Contracting Authority / Prime Contractor complaint against - Norman Rourke Pryme (Properties) LLP**

**Issue:** A complaint was received from a supplier about the Stansted Mountfitchet hub, a construction project involving demolition of a library and erection of a multi purpose building. The supplier was unhappy that after enquiring about an opportunity on Contracts Finder with 2 weeks until closing date, the authority said it was too late to tender and a shortlist had been drawn up.

**Outcome:** The contracting authority explained the opportunity was advertised on Constructionline and when the opportunity closed was removed from the Constructionline site. It was the first time they had used Contracts Finder and they were not aware that they needed to make changes and remove the opportunity from this site themselves. The Mystery Shopper Team provided the supplier with a contact for the opportunity.

**New**

**Contracting Authority / Prime Contractor complaint against - HMRC**

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<p><b>Issue:</b> A supplier noticed that HMRC had switched suppliers for fulfilment of its Microsoft Enterprise Agreement. The supplier had not been aware of any competition taking place and asked the Mystery Shopper Team to investigate which procurement route was used.</p> <p><b>Outcome:</b> HMRC explained the procurement route they had used. Following HMRC &amp; Cabinet Office approval to renew the agreement, a Request For Quote (RFQ) exercise was completed by using the "Microsoft Large Account Reseller (LAR) Framework" (RM1054, Lot 2 - packaged software). The standard templates for the Framework were completed and a RFQ was issued. All fifteen suppliers listed on framework RM1054 were invited to the event, with seven suppliers accepting and providing a response by the deadline.</p>
<p><b>Contracting Authority / Prime Contractor complaint against - London Borough of Hillingdon</b></p> <p><b>Issue:</b> A supplier contacted the Mystery Shopper team about two recent works procurements undertaken by London Borough of Hillingdon. In both cases the requirement was for works/civil engineering-related professional services and the cost/quality evaluation weighting for both procurements was 80:20, which the supplier suggested placed insufficient emphasis on quality.</p> <p><b>Outcome:</b> The Mystery Shopper team approached London Borough of Hillingdon who responded quickly to explain the weighting was standard for their procurements under a mandate set by the Leader of the Council and could only be varied with specific authorisation. They were however willing to look at a recommendation that they consider greater flexibility, looking at each case on its individual merits.</p>
<p><b>Contracting Authority / Prime Contractor complaint against - Walsall Council</b></p> <p><b>Issue:</b> A potential supplier raised concerns that the timescale for bidding on a contract to supply a Schools Management Information System was too short and that the specification required was inconsistent with the National Institute of Standards and Technology (NIST) definition of procuring non Cloud based systems.</p> <p><b>Outcome:</b> The Mystery Shopper team confirmed that, as the procurement was based on an existing framework, the council had set sufficient timescales. The council had the responsibility for identifying the most appropriate solution to meet their requirements. They had considered these and made a commercial decision not to move away from their existing infrastructure.</p>
<p><b>Contracting Authority / Prime Contractor complaint against - Imperial College Healthcare NHS Trust</b></p> <p><b>Issue:</b> A supplier contacted the Mystery Shopper team about the Pathology Managed Services procurement being run by Imperial College Healthcare NHS Trust, asking us to examine whether the procurement was being managed in a fair and transparent manner, with equal treatment to all bidders.</p> <p><b>Outcome:</b> The Trust responded promptly and thoroughly to the questions raised, providing a detailed description of the management arrangements in place to ensure a sound procurement. The details provided sufficient assurance for the case to be closed.</p>
<p><b>Contracting Authority / Prime Contractor complaint against - University of Cambridge</b></p>

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**Issue:** A supplier contacted the Mystery Shopper team about a University of Cambridge procurement for Architectural Design services. They raised concerns over a requirement for lead consultants to have an annual turnover of at least £5M. The supplier suggested that this was too high in view of the likely value of the contract and would rule out of contention many SMEs who would otherwise be competitive.

**Outcome:** The University responded promptly, indicating that as it isn't a public body, it isn't subject to the Public Contract Regulations, and that it advertised in the Official Journal on a voluntary basis. The University emphasised the significant resourcing demands that this complex and long-term project would put on a lead consultant, but was prepared on this occasion to reduce the required minimum turnover to £3.5M and would extend the deadline for responses to its call for competition.

### **Contracting Authority / Prime Contractor complaint against: London Borough of Enfield**

**Issue:** A supplier contacted the Mystery Shopper team in relation to a procurement run by the London Borough of Enfield. The supplier's tender for the refurbishment of Edmonton library had been unsuccessful, they believed, as a result of the interpretation of one word in a highly-weighted quality requirement. The supplier contended that the successful supplier's score for this requirement indicated that an incorrect interpretation of the relevant word had resulted in an unrealistically high score and that the award decision was unsound.

**Outcome:** The Council said that, while one could debate the precise definition of the word at issue, it was open to bidders to seek clarification before submission of tenders, and in any event the Council's fundamental requirement was clear. The Council did not therefore accept that the award decision was flawed. It did however accept a recommendation that in future it should take special care to ensure that the text for high-weighted requirements was clear, and that the meaning of any industry/sector-specific terms used was generally accepted.

### **Contracting Authority / Prime Contractor complaint against - Liverpool Clinical Laboratories (LCL)**

**Issue:** A supplier asked the Mystery Shopper team to investigate the Liverpool Clinical Laboratories Automated Pathology procurement. They were concerned that when the procurement was advertised suppliers were required to bid for all five lots but since the exercise had entered the dialogue phase the position seemed to have shifted such that suppliers were able to bid for a combination of lots.

**Outcome:** The Mystery Shopper team examined the procurement document and contacted Liverpool Clinical Laboratories (LCL), establishing that there had in fact been no change in the treatment of the lots since the beginning of the procurement. Suppliers had always been able to bid for any number of lots. On that basis the team were satisfied that there were no grounds to pursue the case further.

### **Contracting Authority / Prime Contractor complaint against - Department of Health**

**Issue:** A supplier contacted the Mystery Shopper team in relation to a G-Cloud call-off exercise conducted by the Department of Health (DH). They were unhappy that their solution had been screened out of consideration without them having the chance to address the perceived deficiencies, and that there seemed to be a requirement for the successful supplier to be able to demonstrate previous experience with the NHS.

**Outcome:** The Mystery Shopper team examined the process run by DH and established that it was in accordance with G-Cloud Buyer Guidance. Suppliers had been treated on a uniform basis within the context of the shortlisting process and there was in fact no mandatory requirement for suppliers to demonstrate previous NHS experience.

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<b>Procurement Strategy</b>
<p><b>Contracting Authority / Prime Contractor complaint against - East Cheshire and Cheshire West and Chester Council</b></p> <p><b>Issue:</b> A supplier contacted the Mystery Shopper team about the procurement by the Councils of a Business Services Support Solution framework. They wanted to know if the Councils had considered using the GCloud framework as an alternative sourcing route as solutions of the type required can be procured through that route. This would avoid suppliers having to bid once more for another framework.</p> <p><b>Outcome:</b> The Councils responded to confirm that they did examine GCloud as a possible option for meeting their requirement but concluded that they needed to undertake a procurement tailored to their specific needs. The framework will be large and complex with a number of call-offs, overall worth up to £38 million. The Councils indicated that they intend to procure on the basis of supplier dialogue over specific elements of the project and have call-offs up to 12 years in duration. Hence they have chosen to undertake their own procurement.</p>
<p><b>Contracting Authority / Prime Contractor complaint against - NHS Blood and Transplant</b></p> <p><b>Issue:</b> A supplier contacted the Mystery Shopper team regarding some aspects of procurements undertaken by NHS Blood &amp; Transplant (NHSBT). They had questioned the approach to supplier financial assessment; some apparent anomalies in procurement documentation; and the manner in which the GCloud framework had been used.</p> <p><b>Outcome:</b> NHSBT responded promptly to say that they always try to make their financial assessment requirements proportionate to the scale and risk factor associated with procurements. They acknowledged that there may have been some instances of “glitches” in procurement documents in the period immediately after the 2015 Regulations were implemented but that these had been corrected as soon as they had been identified. Their use of GCloud, and the manner in which call-offs were made, was in accordance with CCS guidance.</p>
<p><b>Contracting Authority / Prime Contractor complaint against - Procurement for Housing</b></p> <p><b>Issue:</b> A supplier asked the Mystery Shopper team to examine whether Procurement For Housing were a contracting authority for the purposes of the Public Contract Regulations and thus able to act as a Central Purchasing Body.</p> <p><b>Outcome:</b> Procurement for Housing responded promptly and thoroughly to our communication, providing information on the structure and control of the organisation to substantiate their status as a contracting authority, which allowed us to close the case after consulting the supplier.</p>
<p><b>Contracting Authority / Prime Contractor complaint against - Health Trust Europe (HTE)</b></p> <p><b>Issue:</b> Two suppliers raised concerns about Health Trust Europe's (HTE) approach to supplier selection in a large management consultancy framework.</p> <p><b>Outcome:</b> Further to the Mystery Shopper team's enquiry, Health Trust Europe (HTE) took the decision not to proceed with the management consultancy procurement exercise. They have considered feedback received and will be remodelling their approach to the agreement. As part of this, they will be reviewing their approach to turnover and employee profile scoring with a view to making the procurement fairer for SMEs. They have also tightened their internal processes to ensure that future procurements will be properly scrutinised before being put out to tender.</p>
<p><b>Contracting Authority / Prime Contractor complaint against - Health Trust Europe (HTE)</b></p>

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**Issue:** A supplier raised concerns about Health Trust Europe's (HTE) relationship to its sponsor, University Hospitals of Coventry and Warwickshire NHS Trust (UHCW), in establishing a framework for management consultancy. They were also concerned about the supplier selection process.

**Outcome:** UHCW explained the basis on which HTE operates and the Mystery Shopper team made recommendations to ensure that HTE operations do not stray beyond what is permitted under the current contractual arrangements in respect of the scope of bodies that can access HTE frameworks. With regard to the framework in question, HTE took the decision not to proceed with the procurement exercise.

## **Contracting Authority / Prime Contractor complaint against - Public Health England**

**Issue:** A supplier raised concerns about a pre-market engagement exercise being conducted by Public Health England (PHE) which is the precursor of a procurement using the Digital Outcomes framework. They pointed to a requirement for suppliers to have a turnover not less than £7.5M. This is not in line with current policy guidance which advises against assessing supplier financial condition purely in relation to turnover.

**Outcome:** The Mystery Shopper team contacted PHE who responded very promptly, emphasising that the exercise was very much at a pre-procurement stage, and that the relevant information had been shared with suppliers to give them a chance to comment and to prepare to compete. The requirement is high profile, and high-risk such that PHE will need assurance of supplier financial robustness. However, they accepted that the turnover requirement didn't sit comfortably with Procurement Policy Note PPN 02/13 and were happy to remove it for the procurement and to assess supplier finances in a more holistic fashion.

## **Technology / Systems**

### **Contracting Authority / Prime Contractor complaint against - Crown Commercial Service (CCS)**

**Issue:** A supplier contacted the Mystery Shopper service about the difficulties they had experienced in trying to register for the CCS Esourcing tool and the numbers of click throughs in order to find information.

**Outcome:** CCS recognised the difficulties suppliers have experienced and will be taking steps, which will in time, transform the way suppliers interface with and transact through CCS. In the interim, CCS has identified links to the old and missing information and corrected these in its procurement documents.

## **Transparency**

### **Contracting Authority / Prime Contractor complaint against - Echelon Housing Partnership**

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**Issue:** A supplier raised concerns about a procurement run on behalf of Echelon Housing Partnership (eHP) under which a framework agreement for "Materials Supply & Managed Stores" would be established for use by other contracting authorities. They questioned whether eHP could be considered a contracting authority for the purposes of the Public Contract Regulations, a prerequisite for functioning as a Central Purchasing Body that establishes purchasing agreements for use by other contracting authorities.

**Outcome:** eHP were helpful in replying quickly and fully to the issues raised. They are undergoing registration by HCA as a social landlord which will bring them within the scope of the Regulations. The framework agreement will not be executed and no call-offs permitted until the registration process is completed.