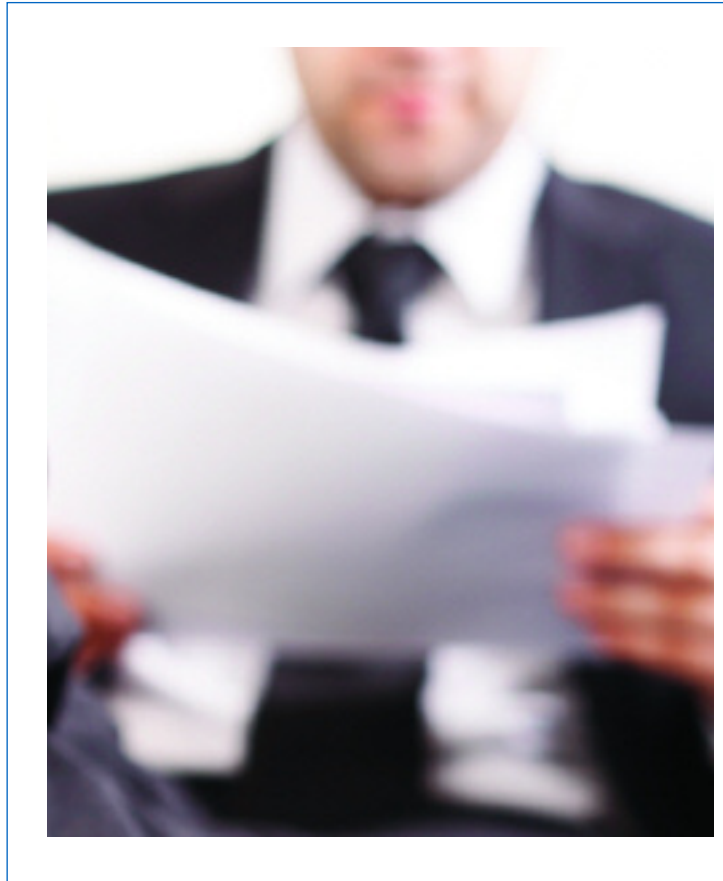


# OGC's INFORMAL COMPLAINTS FUNCTION



**T**he Office of Government Commerce (OGC) Supplier Feedback Service (formerly the Complaints Function) was established in April 2007.

## WHY A SUPPLIER FEEDBACK SERVICE IS NEEDED

*The main aims of the function are:*

- to provide a clear, structured and direct route for suppliers to raise concerns about public procurement practice when attempts at resolving issues with a contracting authority have failed
- to provide reasoned feedback to enquirers on their concerns
- to help OGC identify areas of poor procurement practice so it can work with the contracting authority to put them right and help ensure similar cases do not arise in future
- to take action to reduce the likelihood of similar issues arising in other authorities

## WHAT BODIES ARE COVERED?

OGC will work directly with central civil government departments (for example the Department for Environment, Food and Rural Affairs; Department for International Development; Department for Work and Pensions; Business, Enterprise and Regulatory Reform (BERR); and the Department for Transport) and the Ministry of Defence to address feedback from suppliers about these departments or any other

contracting authorities for which they are responsible. When OGC receives feedback relating to the wider public sector (for example local government, an NHS Trust, or an education establishment) which meets the acceptance criteria outlined below, OGC will contact a designated lead authority who will consider the feedback provided. If the lead authority decides to pursue the concerns raised, it will liaise directly with the relevant contracting authority to investigate the matter. OGC will maintain an oversight role in these instances.

OGC will also continue to work closely with other bodies such as SOLVIT and the Public Procurement Network to ensure that feedback is directed to the most appropriate source of help.

## ACCEPTANCE CRITERIA FOR FEEDBACK

*To be accepted for OGC intervention, feedback must meet one or more of the following criteria:*

- does it concern poor procurement practice highlighting a potential conflict with OGC guidance?
- does it concern a particularly large/complex project, a key area of government policy/spend or a large percentage of a particular market?
- does it form part of a series of enquiries/issues that have been raised about a particular contract, project or government department sufficient for OGC to investigate further?
- does it represent endemic poor practice?

## FEEDBACK FORM

Those wishing to submit feedback to OGC should consider the scope and remit of the service carefully, to ensure the outcomes that OGC may be able to achieve align with the outcomes that a supplier would consider satisfactory (please see below).

Once satisfied that the Supplier Feedback Service is appropriate to the supplier's requirements, they should complete and submit the Feedback form attached at the OGC website: [www.ogc.gov.uk](http://www.ogc.gov.uk) Further guidance notes on completion of the form, and information on how a supplier's matter will be handled, can be found below.

## SCOPE AND REMIT OF OGC'S SUPPLIER FEEDBACK SERVICE

### What outcomes can a supplier expect to achieve?

- OGC will seek to provide a reasoned response to the enquirer in respect of matters relating to central government. In relation to wider public sector matters, OGC will facilitate the provision of a reasoned response by the designated lead authority.
- OGC may issue guidance to the contracting authority on how to remedy the specific problem for central government issues – and may work with the lead authority to do the same for wider public sector issues.
- OGC may issue a set of non-binding recommendations to help the central government body avoid similar issues in the future. For the wider public sector, OGC might work with the lead authority to produce such recommendations for the contracting authority that is the focus of the feedback.
- If OGC considers that the issues raised in a particular matter may have wider applicability to public purchasing practice, OGC may issue general guidance to public bodies (for example, through a Procurement Policy Note), or take other forms of action to help reduce the likelihood of similar issues arising in other authorities.
- OGC may use learning from the function to feed into other areas of OGC activity to improve public procurement practice.
- If it appears that there are shortcomings with a 'live' procurement exercise, OGC may advise the contracting authority on how to rectify those shortcomings. For example, if the contract has yet to be awarded, OGC may recommend that the contracting authority delay, restart or suspend a procurement exercise, if it appears it would be helpful to achieve understanding of, or resolve, the enquirer's concerns. However, OGC does not have the power to require a contracting authority to delay or suspend procurement, nor will OGC's role replace that of a contracting authority's own legal advisors.

#### OGC will not intervene:

- where there is a dispute between a supplier and the contracting authority and it is already subject to formal proceedings (for example in the UK courts or European Infractions proceedings)
- if OGC understands that the enquirer is contemplating legal action (where the enquirer starts legal proceedings whilst OGC is considering a case, OGC will suspend investigation until the legal action is concluded)
- where it is a Prime Contractor/subcontractor dispute
- where the case relates to the ten-day mandatory standstill period – please refer to OGC's *Award of Contracts: Guidance for suppliers* on the OGC website
- where bodies with a statutory right to investigate the activities of certain public authorities – including their procurement functions – have been, or will be, involved (for example, the Audit Commission and District Auditors have certain powers to investigate the activities of local authorities and some other public authorities; OGC will not review or pre-empt any findings of the Audit Commission or other body with statutory powers concerning public procurement)

OGC cannot provide legal advice and is not a legal avenue to resolve complaints, or to obtain compensation. Enquirers should not regard

OGC's Supplier Feedback Service as a precursor to legal action, or a potential means to obtain redress of a type that would otherwise require legal action. We advise suppliers to consult their own legal advisors to determine the most appropriate course of action.

### Other limitations of the function

- OGC cannot require or advise a contracting authority to award a contract, or refrain from awarding a contract, to a particular bidder.
- OGC cannot form a view as to the extent of any financial or other loss suffered by a supplier, or comment on the accuracy of any statement made by the supplier as to a possible loss.
- OGC does not have the resources to undertake a detailed 'forensic' examination of the documents developed, or processes and activities undertaken, by a contracting authority, or by a supplier, during a procurement process; nor does it have any statutory powers to require contracting authorities to provide information or to answer queries.
- When dealing with matters concerning a wider public sector contracting authority, OGC will normally liaise with the designated lead authority with relevant oversight of that particular sector, which will in turn engage with the relevant contracting authority to provide a reasoned response. OGC cannot require further examination of the response, or seek revision or clarification, if the lead authority is satisfied with the final reply.

## GUIDANCE NOTES FOR COMPLETION

It will greatly help OGC to handle a supplier's case if the supplier is concise and ensures that its concerns are logically set out. If a supplier wishes to send any supporting documents, it should indicate clearly how they support the particulars of the request for review. The supplier should then forward these to the OGC Service Desk quoting the reference number, which is provided after submission of the form.

*As part of OGC's acceptance criteria, a supplier will be asked to confirm whether:*

- it has already pursued the supplier's enquiry with the contracting authority concerned\* and the current status of that enquiry
- it has initiated, or is contemplating taking (or is aware of) formal proceedings against the contracting authority in relation to this or a related matter (for example, in the UK courts, or by writing to the European Commission)
- it is a Prime Contractor/subcontractor dispute – such matters fall outside of the scope of this service
- the request for review relates to central government and the MoD or the wider public sector (which includes local authorities, the NHS and education establishments)

The supplier will also be asked to indicate the desired outcome.

Please note that OGC cannot provide legal advice and is not a legal avenue to resolve complaints, or to obtain compensation. We advise the supplier to consult its own legal advisors to determine the most appropriate course of action.

## HOW A SUPPLIER'S FEEDBACK WILL BE HANDLED

### In all cases

OGC will acknowledge receipt of a supplier's form and the supplier will receive a reference number. OGC will review the information provided to ensure that it meets one or more of the acceptance criteria for matters requiring further action. We may contact the supplier for further clarification if required.

### For feedback related to central government and the MoD

- 1 OGC will inform the supplier whether we will be taking forward its concerns, and if not, the reason for this. Please note that, depending on the number of cases under consideration at a given time, there may be occasions when resources available to OGC require it to prioritise enquiries. If OGC is unable to pursue the supplier's matter, or has to postpone involvement, it will notify the supplier and provide an explanation as to why.
- 2 If the supplier's feedback meets acceptance criteria, the OGC will confirm this in writing. It will then pursue the matter with the relevant central government department.

\* There may be some scenarios where concerned individuals are uncomfortable raising issues with the contracting authority directly. OGC occasionally receives such concerns from individuals and, where these warrant further investigation, we will pursue this with the department concerned. There is also specific legislation in relation to whistleblowing, which

is designed to protect members of staff from harm. If a supplier is considering such action it should first refer to its internal procedures for whistleblowing or, alternatively, it can contact Public Concern at Work for free, impartial advice. A guide to whistleblowing can be found on the BERR website.



- 3 OGC aims to provide a reasoned response within three months of receipt of the feedback, stating the outcome of investigations and any remedial action that we will undertake, or that it has recommended.
- 4 OGC will contact the enquirer to assess whether the outcome provided by OGC is satisfactory. OGC may remain on hand if the supplier should require further clarification of the response, or if it believes that some of the supplier's concerns have not been addressed.
- 5 OGC will formally 'close' a matter two months after sending the supplier its considered response.

## FOR FEEDBACK RELATED TO THE WIDER PUBLIC SECTOR

- 1 OGC will contact the designated lead authority for the contracting authority concerned and ask that it considers the feedback a supplier has provided. OGC will inform the supplier of its decision in writing. If accepted, the lead authority will then liaise directly with the contracting authority to investigate the matter. The lead authority will appraise the supplier of ongoing progress. OGC will ensure that it keeps both the supplier and the designated lead authority informed of any correspondence which it has regarding the substantive issues, or handling, of the complaint.
- 2 OGC will maintain oversight of the investigation and work to assist the lead authority in providing a response to the supplier, aimed at addressing its concerns, by advising on any procurement policy issues raised by it and by providing input into any proposed resolution.
- 3 OGC will aim to ensure that the designated lead body sends a reasoned response to the supplier within four months of receipt of feedback. OGC will contact it to assess whether the outcome provided by the lead authority is satisfactory. OGC may remain on hand if the supplier should require further clarification of the response, or if it believes that some of the supplier's concerns have not been addressed. In these cases, OGC will endeavour to pursue the matter further with the lead authority. However, please note, OGC cannot require further examination of the response or seek revision or clarification, if the lead authority is satisfied with the final reply.
- 4 OGC will normally 'close' a matter two months after the provision of a reasoned response.

## DISCLOSURE PURSUANT TO THE FREEDOM OF INFORMATION ACT 2000

- 1 In accordance with the obligations and duties placed upon public authorities by the Freedom of Information Act 2000 (the 'FoIA'), all information submitted to OGC may be disclosed by OGC in response to a request made pursuant to the FoIA.
- 2 *In respect of any information submitted by an enquirer that it considers to be commercially sensitive the enquirer should:*
  - A clearly identify such information as commercially sensitive
  - B explain the potential implications of disclosure of such information
  - C provide an estimate of the period of time during which the enquirer believes that such information will remain commercially sensitive
- 3 Where information is identified as commercially sensitive by an enquirer, OGC will endeavour to maintain confidentiality. Enquirers should note, however, that, even where information is identified as commercially sensitive, OGC might be required to disclose such information in accordance with the FoIA. Accordingly, OGC cannot guarantee that any information provided by an enquirer will not be disclosed even where it is marked as 'confidential'.

## DISCLAIMER

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## PASS – HELPING YOU MEET KEY OBJECTIVES

The key objective of public procurement professionals is to ensure that the most suitable supplier is selected to provide goods and services on terms which are likely to offer the best value for money. The PASS service helps you meet this requirement and deliver contracts that offer best value-for-money terms with suppliers who will execute them efficiently.

## PASS CONSULTANCY

BIP's *Procurement Advice and Support Service (PASS)* provides organisations with access to experts in public procurement practices and procedures, thus helping you to develop and deliver effective and efficient procurement. Our team offers a range of services to meet your specific needs. Whichever area you wish evaluated and improved, we have the experts to help.

*The PASS consultancy's mission is to help you to deliver the best in government procurement through:*

- Practical solutions to improve procurement performance
- Innovative approaches to knowledge transfer within government
- Joined-up government
- Improved performance indicators
- Strategic direction and performance
- Opportunities offered by e-government
- Capacity to deliver change to meet identified needs
- Continuous improvement of services and challenging poor performance
- Sustainable development within decision-making processes and delivery of services
- EU-compliant processes
- Best practice procurement training

## PASS TRAINING

Our consultants can provide you with bespoke training packages to suit your needs. Consultancy and training is available for the following: environmental purchasing, partnering, evaluation, e-government, supplier debriefing, UK legal processes and precedents, contract management, EU-compliant tendering and much more.

## PASS ONLINE GUIDANCE

The PASS service provides online guidances on all aspects of the public procurement process and legal requirements: [www.bipsolutions.com/html/briefing.php](http://www.bipsolutions.com/html/briefing.php)

## PASS – EFFECTIVE DISPUTE MANAGEMENT

Contractual and procurement-related disputes are time-consuming, expensive and unpleasant. They can destroy client/contractor relationships, can add substantially to the cost of the contract, and can nullify some or all of its benefits or advantages. They can also have an impact on value for money. It is therefore in everyone's interest to work at avoiding disputes in the first place. Inevitably, however, disputes do occur and when they do the importance of a fast, efficient and cost-effective Alternative Dispute Resolution (ADR) procedure cannot be overstated. If a dispute arises, it is important to manage it actively and positively and at the right level in order to encourage early and effective settlement. Unnecessary delays and inefficiency can lead to rapid deterioration in relations and entrenchment of opinions. ADR through PADRE mediation involves the use of a trusted expert third party and is an effective alternative to litigation. PADRE mediation is provided by experts in contracting and public procurement. If you would like more details on how PADRE can help your organisation and become your mediation service of choice, telephone the PASS team on **0845 270 7055** or email [pass@bipsolutions.com](mailto:pass@bipsolutions.com).

## PASS HEALTH CHECK

The PASS service can help your organisation examine its current procurement organisational structures, strategies, processes, practices and related strengths and weaknesses. It delivers a detailed *PASS Mark Health Check Outcome Highlight Report (OHR)* that outlines areas of strength as well as those requiring further attention, and provides an outline *Project Initiation Document (PID)* designed to deliver a more effective and efficient tendering process that will help you achieve optimum performance and better value-for-money procurement.

## PASS IN-HOUSE PRESENTATIONS

PASS consultancy can provide you with in-house presentations directed to buyer or supplier. Each presentation will be bespoke to your requirements, whether they be with regards to improving your tendering practices or your procurement strategy or processes. Contact: [pass@bipsolutions.com](mailto:pass@bipsolutions.com)



The *PASS Mark Health Check* is a process-based evaluation technique that helps identify how your company can develop more effective processes when tendering for public sector contracts.

For further information on the **PASS** service, contact our **PASS Team** on **0845 270 7055**, email [pass@bipsolutions.com](mailto:pass@bipsolutions.com) or visit [www.bipsolutions.com/pass/](http://www.bipsolutions.com/pass/)