Neutral Citation Number: **[2026] EWHC 1760 (TCC)**

Case No: HT-2026-000054

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT

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

Date: 13th July 2026

Before :

ADRIAN WILLIAMSON KC
(Sitting as a Deputy Judge of the High Court)

- -

Between :

CYBERFORT LIMITED	**Claimant**
- and –	
THE LORD CHANCELLOR ON BEHALF OF HM COURTS AND TRIBUNALS SERVICE	**Defendant**

- -
- -

James Neill (instructed by **Gately Legal**) for the **Claimant**
Samuel Willis (instructed by **Sharpe Pritchard LLP**) for the **Defendant**

Hearing dates: 8th July 2026

- -

Approved Judgment

This judgment was handed down remotely at 2pm on 13th July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

....

Adrian Williamson KC :

1. By this application, the Defendant, the Lord Chancellor acting through His Majesty's Courts and Tribunals Service ("HMCTS"), applies to lift the automatic suspension ("the Suspension") on contract-making which resulted from commencement of these proceedings by the Claimant ("Cyberfort").

2. The proceedings concern the procurement (the "Procurement") by HMCTS of a contract (the "New Contract") for the provision across the whole of HMCTS of a managed cyber security service. Cyberfort lost the Procurement and started this claim to challenge the award of the New Contract to another bidder, ("Accenture").

3. The effect of the claim was to trigger the automatic suspension under regulation 95 of the Public Contracts Regulations 2015 ("PCR 2015"), prohibiting HMCTS from entering into the New Contract with Accenture.

4. This Judgment is structured as follows:

   a) The background facts;

   b) The legal context;

   c) Are damages an adequate remedy for Cyberfort?

   d) Are damages an adequate remedy for HMCTS?

   e) The balance of convenience;

   f) Conclusions

A. The background facts;

5. HMCTS is an executive agency sponsored by the Ministry of Justice. It is responsible for the administration of criminal, civil and family courts and tribunals in England and Wales, the Probate Service and non-devolved tribunals in Scotland and Northern Ireland.

6. For obvious reasons, cyber security is fundamental to the performance of HMCTS's public functions. Justice is nowadays delivered with considerable and increasing reliance upon digital technology, technology which is notoriously vulnerable to cyber attack. The material with which the courts are concerned is very often highly confidential and sensitive. It is, therefore, very much in the public interest that this material should be kept secure.

7. Cyberfort is a private company limited by shares. It is the sole trading company within the Cyberfort group, generating almost all the group revenues. Cyberfort provides cyber security managed services to a number of organisations, including a range of private and public sector clients. Its most recent audited accounts show revenues of £22.3m for 2024.

8. Cyberfort has been the incumbent provider of cyber security services to HMCTS for almost six years since September 2020. A contract was entered into for these services

in 2024 ("the Existing Contract").

9. In 2025, prior to the award of the New Contract to Accenture, the HMCTS contract generated a significant part of Cyberfort's annual revenues.

10. Cyber security is a fast growing industry. In the public sector, while the HMCTS contract is relatively large in value, it is otherwise a "standard managed security services contract". Beyond the public sector, the overall UK cyber security market is worth £14.7bn per annum in revenues.

11. The New Contract is for the provision of further managed cyber security services.

12. The Procurement for the New Contract was conducted pursuant to a 'dynamic purchasing system' (CCS3). The terms of the Procurement competition were set out in a "Bid Pack" issued to bidders on 2 October 2025.

13. Cyberfort and two other bidders submitted their bids by the deadline of 1pm on 30 October 2025. Contract award decision letters were sent on 23 January 2026, communicating the decision to award the contract to Accenture.

14. On 16 February 2026, the claim form was issued. The proceedings triggered the Suspension under regulation 95 of PCR 2015, preventing HMCTS from entering into the New Contract with the successful bidder.

B. The legal context

15. The overall legal landscape for applications of this kind is well known and was not in dispute.

16. In *Camelot UK v The Gambling Commission* [2022] EWHC 1664 (TCC) O'Farrell, J summarised the issues for consideration as follows:

"*47. The applicable principles for determining such an application are set out in American Cyanamid v Ethicon [1975] AC 396 per Lord Diplock at pp.407G-408H; National Commercial Bank Jamaica Limited v Olint Corporation Limited [2009] UKPC 16 per Lord Hoffmann at [17]-[18]; Covanta Energy Ltd v Merseyside Waste Disposal Authority [2013] EWHC 2922 per Coulson J (as he then was) at [34] and [48]; and summarised in Alstom v Network Rail Infrastructure Ltd [2019] EWHC 3585 (TCC) at [29] .*

48. The relevant questions for the court, when determining an application to lift the automatic suspension in a procurement challenge case, are as follows:

i) Is there a serious issue to be tried?

ii) If so, would damages be an adequate remedy for the claimant(s) if the suspension were lifted and they succeeded at trial; is it just in all the circumstances that the claimant(s) should be confined to a remedy of damages?

iii) If not, would damages be an adequate remedy for the defendant if the suspension remained in place and it succeeded at trial?

iv) Where there is doubt as to the adequacy of damages for either of the parties, which course of action is likely to carry the least risk of injustice if it transpires that it was wrong; that is, where does the balance of convenience lie?"

17. In the present case, Counsel agreed as to these four headings and for the purposes of the present application, that:

i) There is a serious issue to be tried;

ii) The burden lies on Cyberfort;

iii) The burden lies on HMCTS;

iv) The balance of convenience should be approached as set out at paragraph 126 of the same Judgment, i.e.:

"The balance of convenience test requires the court to consider all the circumstances of the case to determine which course of action is likely to carry the least risk of injustice to either party if it is subsequently established to be wrong. When determining where the balance of convenience lies:

i) the court should consider how long the suspension might have to be kept in force if an expedited trial could be ordered: DWF LLP v Secretary of State for Business Innovation and Skills [2014] EWCA Civ 900 per Sir Robin Jacob at [50];

ii) the court may have regard to the public interest: Alstom Transport v Eurostar (above) at [80];

iii) the court should consider the interests of the successful bidder, alongside the interests of the other parties: Openview (above) at [14];

iv) if the factors relevant to the balance of convenience do not point in favour of one side or the other, then the prudent course will usually be to preserve the status quo (or, perhaps more accurately, the status quo ante), that is to say to lift the suspension and allow the contract to be entered into: Circle Nottingham Ltd v NHS Rushcliffe Clinical Commissioning Group [2019] EWHC 1315 (TCC) at [16]."

18. There was, however, some debate as to what a Claimant has to show for the purposes of limb (ii). Mr Neill, who appears for Cyberfort, argued that all that they have to show is that it is *arguable* that damages will not be an adequate remedy if the Suspension were lifted. He referred to the recent *obiter* observations of Constable, J in *Unipart Group Ltd v Supply Chain Coordination Ltd* [2025] EWHC 354 (TCC), where he said this:

"23. In Covanta Energy Ltd v Merseyside Waste Disposal Authority [2013] EWHC 2922 (TCC) , Coulson J (as he then was) summarised the authorities on adequacy of

damages:

"(a) If damages are an adequate remedy, that will normally be sufficient to defeat an application for an interim injunction, but that will not always be so (American Cyanamid, Fellowes [v Fisher [1976] 1 QB 122 (CA)], National Bank [v Olint Corp [2009] 1 WLR 1405]);

(b) In more recent times, the simple concept of the adequacy of damages has been modified at least to an extent, so that the court must assess whether it is just, in all the circumstances, that the claimant be confined to his remedy of damages (as in Evans Marshall [[1973] 1 WLR 349] and the passage from Chitty); ... "

24. When deciding if the claimant should be so confined, the question is whether, if the automatic suspension is lifted, the claimant will arguably or likely suffer a loss for which damages are not an adequate remedy: see Draeger Safety UK Ltd v The London Fire Commissioner [2021] EWHC 2221 at [41] , DHL Supply Chain Ltd v Secretary of State for Health and Social Care [2018] EWHC 2213 at [48] and One Medicare v NHS Northamptonshire ICB [2025] EWHC 63 at [12] and [15] . This is a question which might be answered with a varying degree of certainty (hence the different language used in some of the authorities). Providing the point is arguable – or, put another way – that the risk is a real one, the threshold has been met to avoid the outcome identified at (a) in the quotation above. However, the degree of certainty may be a factor then to weigh in the overall balancing exercise when considering where the least risk of injustice lies."

19. Whilst acknowledging that these observations may well have been apposite on the facts of that case, I do not think that Constable J was intending to say, as a general principle, that mere arguability suffices to satisfy the burden under limb (ii). Almost any proposition can be argued: without some requirement that the point is at least reasonably arguable, the test under limb (ii) would be meaningless.

20. There is, in any event binding Court of Appeal authority on this point, not apparently cited in *Unipart*. It is in the context of the application of the *American Cyanamid* principles to an application for an interim injunction, but it is clear from the authorities already cited that the present jurisdiction runs along the same lines. In *Neurim Pharmaceuticals (1991) Ltd v Generics UK Ltd (T/A Mylan) [2021] R.P.C. 7* the following guidance was offered, which I propose to follow:

"17. Mr Waugh Q.C. drew our attention to National Commercial Bank of Jamaica Ltd v Olint Corpn Ltd [2009] UKPC 16 ; [2009] | WLR 1405 ; [2009] Bus. LR 1110 where Lord Hoffmann observed at [17] that:

"In practice ...it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be."

Mr Waugh suggests that that passage indicates that the court should normally accept that damages are not an adequate remedy for the parties and should instead move on to the consider the balance of convenience. I disagree. Lord Hoffmann's observation *does not throw any doubt on the need to consider stages 1 and 2 of the American Cyanamid approach, as Lord Hoffmann himself recognised at [16].*

18. It is well settled that in deciding stage 1 the court should not attempt a "mini-trial", but confine itself to seeing whether there is a serious question to be tried on the substantive claim. In tackling the questions which arise at stages 2-4, however, the court must do the best it can on the available written evidence. The issues of fact which emerge on the evidence relevant to stages 2-4 are not issues which will in most cases fall to be resolved at a trial. It may, in the end, prove impossible to form a view on certain issues on the available evidence, but the court should not abandon the task at the outset.

The judgment of Marcus Smith J.

19. At [20] and [21] of his judgment the judge considered the question of how he should approach disputed issues of fact when deciding the various issues which arose for decision under the American Cyanamid guidelines at stages 2-4. He directed himself that he should not attempt to resolve such issues. Rather he should approach them all on the basis of whether there was a serious issue to be tried, as at stage 1. For reasons I have just explained, I think he was wrong on this point. It is difficult to see how the judge's approach could work satisfactorily in practice, where both sides contend they have raised a serious question to be tried on a given factual issue. Given that all the evidence was in writing, however, we are in as good a position as the judge to come to conclusions, where possible, on issues which he declined to decide. So the point is not material."

(emphasis added)

C. Are damages an adequate remedy for Cyberfort?

21. In his skeleton argument, Mr Neill puts forward three main points under this heading:

"*In this case, damages would not be an adequate remedy for Cyberfort. The current contract represented approximately 25% of Cyberfort's revenue and is clearly significant, not just in financial terms but also from a strategic perspective…The loss of the new Contract will have a significant and unquantifiable impact on Cyberfort's business and its profitability, which is not remediable via an award of damages, for at least the following reasons:*

a. First, the loss of the Contract will cause future harm to Cyberfort's tendering capability and therefore prospects of securing public contracts of this scale and nature.

b. Second, Cyberfort will suffer harm to its reputation.

c. Third, Cyberfort will incur impacts to its business in terms of workforce, particularly in terms of retention, and capability."

22. I will deal with these points in turn.

23. Cyberfort's essential point under limb (a) is that they will no longer be able to use the HMCTS contract as a "reference contract" to enable them to win new work: see Mr

Wilkinson's witness statement para 23. He is the Chief Operating Officer of Cyberfort.

24. I do not agree:

i) It is apparent from the materials exhibited by Cyberfort that they will still be able to use the HMCTS contract to show its experience in order to attempt to gain new contracts. Typical questionnaires to tenderers seek evidence of relevant experience "within the last 3 years", which means that the HMCTS contract (as a reference contract) is available to Cyberfort for a considerable future period;

ii) Mr Neill submitted that the court at trial could not possibly make an award of damages which reflected the loss of future tenders, because this was so uncertain. I think that this is overly pessimistic. If the court were persuaded that the loss of this reference contract had caused Cyberfort to lose work, then a suitable award could be made. Courts often have to do the best they can to make a fair award of damages, weighing up various imponderables: see *McGregor on Damages* 22nd Ed. para 11-014 and cases there cited.

25. As to (b), loss of reputation, Mr Wilkinson puts the matter thus:

"*24. Reputational harm*

24.1 In addition to the specific detriment caused by the loss of the New Contract in terms of a "reference contract", the loss of the New Contract, in particular where that loss follows a procurement outcome that Cyberfort contends is unlawful, would cause direct and lasting reputational damage in the cyber security managed services sector. The loss of this long term central government, cyber security contract is not a neutral event in that market; it is a conspicuous and adverse signal. This is particularly in circumstances where that loss follows a 5 year long relationship with the particular authority.

24.2 The reputational harm is compounded by the nature of the services involved. Cyber security is an area in which trust, continuity, and demonstrable track record are at a premium. A supplier that has been displaced from a long-standing public sector cyber security engagement, regardless of the legal or procedural circumstances, will face heightened scrutiny from other current and prospective clients regarding the reasons for that displacement. That scrutiny cannot be answered by reference to ongoing litigation; the market effect materialises immediately upon contract loss and cannot be remedied retrospectively, even if Cyberfort is ultimately successful with the claim."

26. This evidence is very vague and does not, in my judgment, satisfy the requirements for reputational damage to be taken into account in this context. In *Openview Security Solutions Ltd v The London Borough of Merton* [2015] EWHC 2694 (TCC), Stuart-Smith, J, as he then was, gave the following guidance in this respect:

"37. With commercial parties, what ultimately matters is whether the loss of the contract in question will reduce their profitability in a way that is not recognised by the normal principles on which damages are awarded. This in turn suggests that what is

generally of concern is whether the aggrieved tenderer will lose out on other contracts which it might have obtained if it had added lustre to its reputation by getting the contract at issue...

38…the loss is speculative and legally too remote. They also provide good reason for restraint on the part of a court which is urged to adopt "loss of reputation" as a reason for holding that the damages that would be awarded are not adequate compensation…

39…(i) Loss of reputation is therefore unlikely to be of consequence unless the Court is left with a reasonable degree of confidence that a failure to impose interim relief will lead to financial losses that would be significant and irrecoverable as damages"

27. I am not persuaded by the evidence adduced by Cyberfort that they will suffer loss of reputation at all. In the normal rough and tumble of commercial life, some tenders are accepted and some are not. The mere failure to win the New Contract is not, on the evidence, likely to impair Cyberfort's reputation. But even were that the case, Cyberfort have not begun to show that this will "lead to financial losses that would be significant". The claimed prejudice is entirely speculative.

28. In relation to staff losses, limb (c), Mr Wilkinson asserts that the loss of the New Contract would have a detrimental effect on Cyberfort's staffing and morale. In particular:

"*26.1 The workforce harm described above has a further and compounding consequence. Cyberfort's ability to win, retain, and deliver future contracts is directly dependent upon its capacity to recruit and retain competent, experienced, and appropriately cleared cyber security professionals. That capacity is in turn dependent upon Cyberfort's market position, its reputation as a stable and growing employer in the sector, and its ability to offer candidates meaningful, high-profile, and secure delivery experiences on projects of this scale and scope (i.e. its attractiveness as a company to work for)."*

29. It is apparent from the authorities that loss of specialist staff could, on the right set of facts, show that damages were not an adequate remedy for a Claimant in a case such as the present. However, these authorities demonstrate that the impact on staff must be demonstrated specifically and analytically: see, for example, *Practice Plus Group Health & Rehabilitation Services Ltd v NHS Commissioning Board* [2022] EWHC 2082 (TCC) at para 22(a) and *Medequip Assistive Technology Ltd v Kensington and Chelsea RBKC* [2022] EWHC 3293 (TCC) at paras 92, 95 and 99.

30. There is no such specific or analytical evidence here, but merely very broad brush assertions which could be put forward in the case of any failed tender. As Mr Halliday, who appears for HMCTS, points out, Cyberfort have had six months from receipt of the decision letter to assemble such evidence. They could have identified particular personnel or teams who were minded to depart because of the award of the New Contract to Accenture, but they have not done so.

31. It follows from the above that Cyberfort have not shown that damages would not be an adequate remedy. I respectfully agree with the observation of Stuart -Smith J (above) that "With commercial parties, what ultimately matters is whether the loss of the

contract in question will reduce their profitability in a way that is not recognised by the normal principles on which damages are awarded". This was stated in the context of loss of reputation but seems to me a useful yardstick with which to approach limb (ii) generally. Cyberfort have not shown that the outcome of the Procurement will impact their profitability in such a way or at all.

32. That is sufficient to dispose of this application, but in case I am wrong about this issue I shall deal with limbs (iii) an (iv) as well.

D. Are damages an adequate remedy for HMCTS?

33. In this context, it is important to begin by recognising that HMCTS is a reputable public body performing difficult and important tasks. The increasing digitisation of the court system renders HMCTS vulnerable to cyber attack, with potentially catastrophic consequences for the proper administration of justice.

34. In *Medequip*, Eyre, J had this to say about the adequacy of damages for a public sector defendant, with emphasis added:

"109. There is no challenge to the evidence from Mr Hughes that the terms of the Agreement are the result of reflection and consideration by the members of the Consortium after a period of consultation. <u>The local councils are the bodies with responsibility for the provision of these services to their citizens. They are best placed to know both whether the services are being delivered in a particular way under the existing framework agreement and whether the changes which have been made from that agreement leading to the terms of the Agreement are likely to be an improvement or not. Certainly it is for the local authorities to decide the way in which they want the services delivered.</u>

110. Almost inevitably there will be scope for debate as to the extent to which the changes which it is said are being made are in truth changes from the current arrangements and also as to the extent to which the changes are an improvement. It may well be that the differences in terms of the practical operation of the system are not as great as the Defendant perceives them to be and also that different persons will have different views as to whether the new arrangements are an improvement. However, I come back to the point that the Consortium has decided that it is beneficial for the CES to be delivered in a particular way and on particular terms. If the suspension is maintained the Consortium will not be able to implement that decision for the period of the suspension and for such time thereafter as is necessary to enable the new arrangements to be put into effect. Provision of services will continue in the interim. The Claimant is willing to continue to supply the services and this is not a case where there will be a gap in provision. <u>Nonetheless the fact remains that the Defendant will not be able to provide the services in the form and on the terms it wishes. That is a loss which cannot adequately be compensated in damages</u>."

35. In the course of his oral submissions, Mr Halliday took me to the following provisions of the New Contract which, he submitted, amounted to significant improvements to the provision of this critical public service:

i) The new KPIs and service level agreements, with prescribed penalties for non-performance, under a "service credit regime": see Order Schedule 14;

ii) A new obligation to "deliver the Services with innovation at the core of their approach…proactively identifying and integrating emerging technologies, methodologies, and tools that enhance the effectiveness, resilience, and adaptability of the Services provided": see Order Schedule 20 (Order Specification) para 6;

iii) Two social value objectives - supporting innovation in the supply chain, and addressing inequality in employment, skills and pay - which are given contractual force: see ibid. para 14.

36. Cyberfort's response to these supposed improvements was effectively to say that they were not improvements at all, and/or were already being delivered to a large extent by Cyberfort. However, for similar reasons to those advanced by Eyre, J in *Medequip* it seems to me that:

i) HMCTS are best placed to judge whether the changes which have been introduced into the New Contract, at their behest, are likely to be an improvement or not;

ii) It is for HMCTS to decide the way in which they want the services delivered;

iii) If the Suspension is not lifted, then HMCTS will not be able to provide the services in the form and on the terms it wishes. That is a loss which cannot adequately be compensated in damages.

37. In this context, it seems to me that the court should give considerable weight to the evidence of Mr Hirst, who is an Associate Commercial Specialist with responsibility for Software, Digital Delivery and Emerging Technology Categories in MoJ Commercial – Digital and Technology and who says as follows in his first witness statement:

"9.6. The principal reason why damages would be an inadequate remedy for HMCTS is that the harm which HMCTS would suffer if the suspension were maintained is not purely financial. Rather, it concerns HMCTS' ability to implement the outcome of the procurement and to obtain the cyber security capability which it has determined best meets the needs of the justice system.

9.7. If the suspension remains in place, HMCTS will be prevented from obtaining the operational and other benefits associated with the new contract. I outline those benefits below."

38. He then goes on at para 9.19 to identify areas in which Accenture "will add value", setting these areas out in considerable detail. Cyberfort have not challenged this evidence effectively or, in some cases, at all, and I think I should give weight to this evidence.

39. HMCTS have, therefore, shown that damages will not be an adequate remedy for them if the Suspension is not lifted.

E. The balance of convenience

40. If relevant, I would have said that the balance of convenience favours lifting the Suspension for the following reasons:

i) the Suspension would probably, based on the Defendant's evidence and enquiries with TCC listing, have to be kept in force until the end of 2027, leaving all three parties (Cyberfort, HMCTS and Accenture) in contractual limbo for a very long time;

ii) the public interest favours lifting the Suspension, so that HMCTS can receive the benefits set out in the previous section;

iii) the successful bidder will be able to proceed with the New Contract (albeit Accenture have not sought to be an Interested Party in these proceedings);

iv) if all other factors were equal, the prudent course would be to preserve the status quo ante, lift the Suspension and allow the New Contract to be entered into.

F. Conclusions

41. For these reasons, I would accede to HMCTS's application so that the Suspension is ended with immediate effect.

42. In summary:

i) There is a serious issue to be tried;

ii) Damages would be an adequate remedy for Cyberfort if the Suspension were lifted and they succeeded at trial, so that it is just in all the circumstances that they should be confined to a remedy of damages;

iii) Damages would not be an adequate remedy for HMCTS if the Suspension remained in place and they succeeded at trial;

iv) The balance of convenience lies in favour of lifting the Suspension.