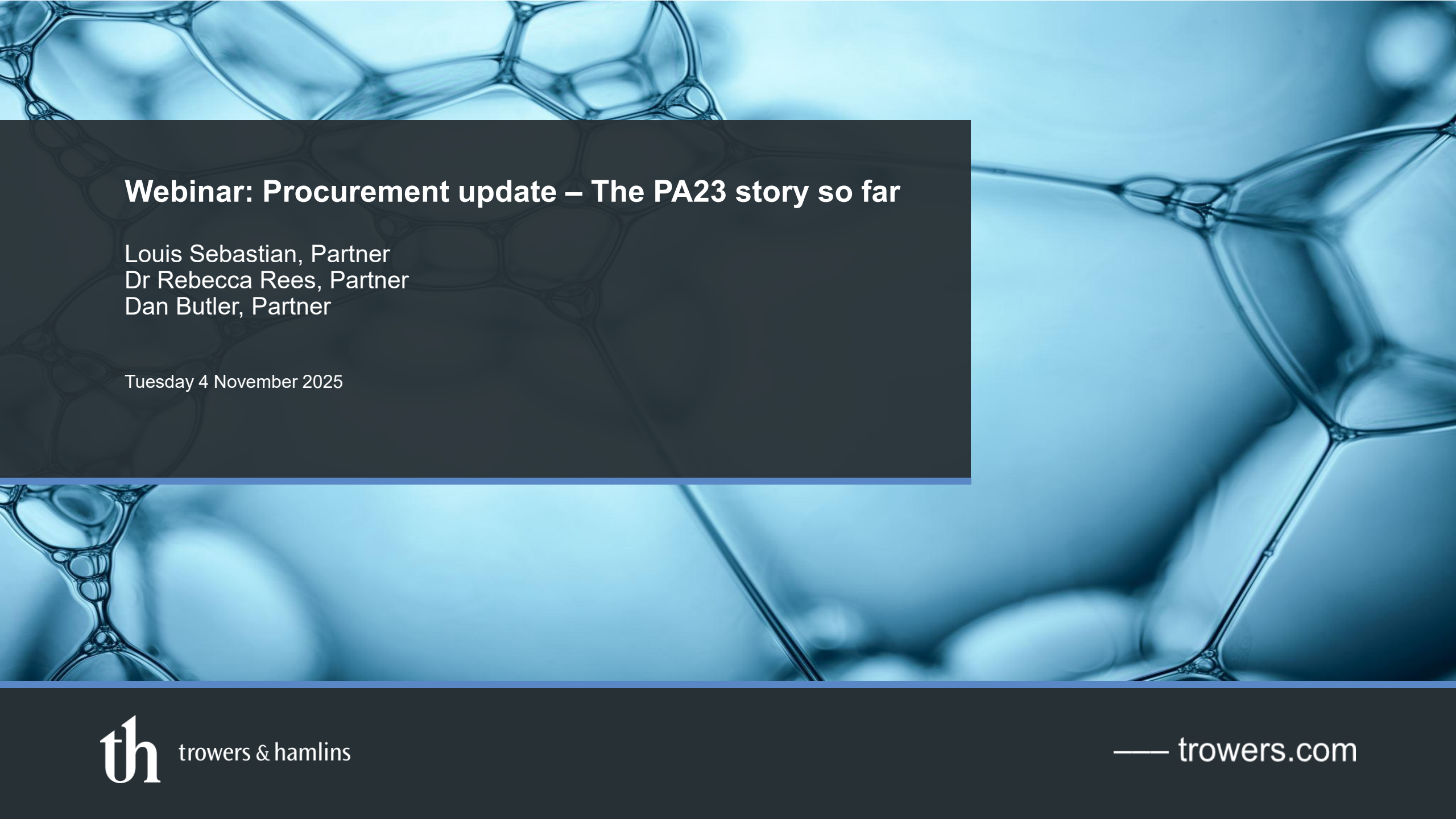




## **Webinar: Procurement update – The PA23 story so far**

Louis Sebastian, Partner  
Dr Rebecca Rees, Partner  
Dan Butler, Partner

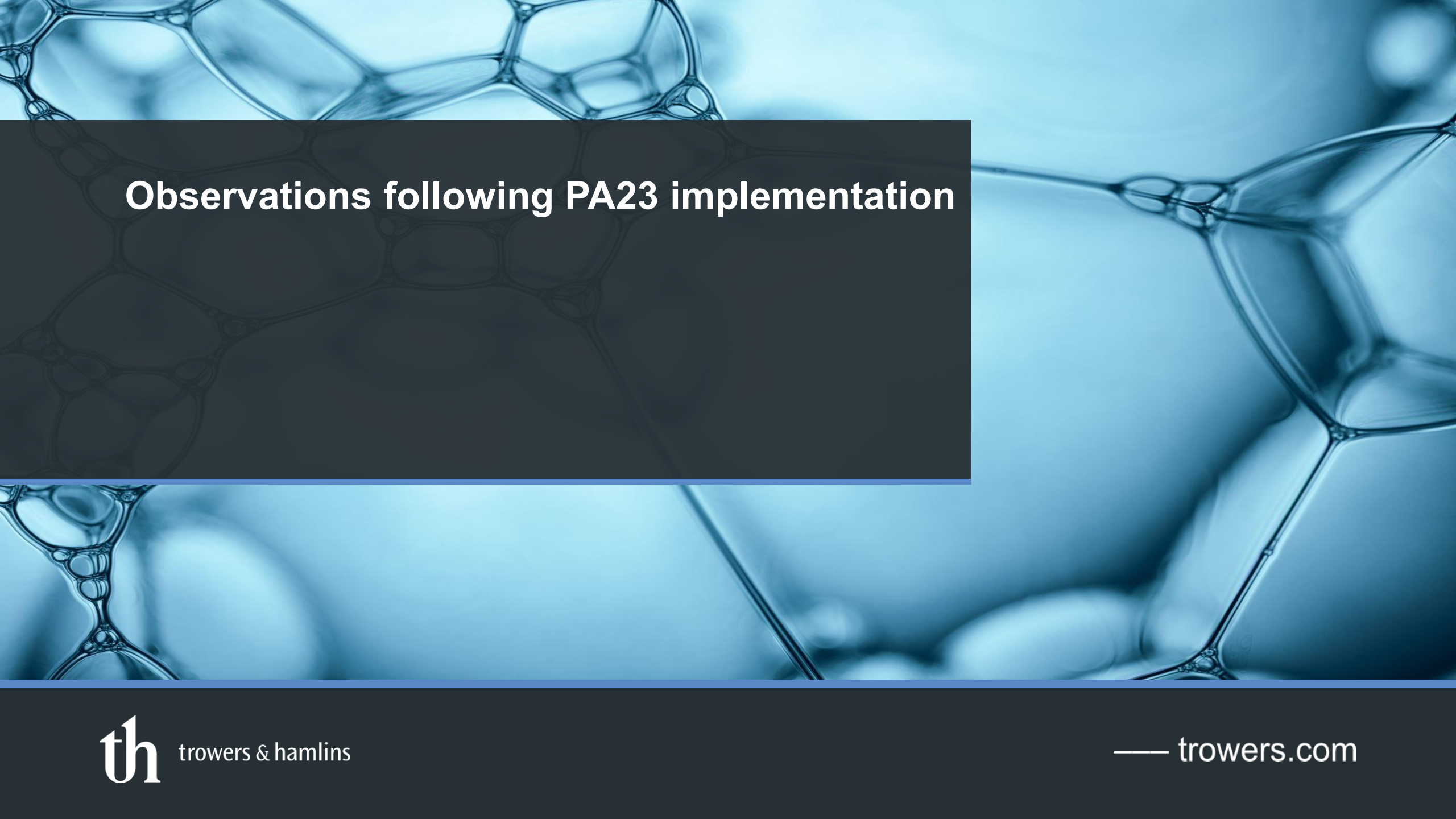
Tuesday 4 November 2025

## The story so far...

- Procurement Act 2023 – received Royal Assent: 26 October 2023
- Procurement Regulations 2024
- National Procurement Policy Statement

*In force from 24 February 2025*

- Drop in procurement activity March-May
- Increase in pre-procurement activity
- Transitional arrangements:
  - Procurement "commenced" prior to go live date
  - PCR applies throughout its commercial lifecycle



## Observations following PA23 implementation

# November 2025: where are we now?!

- Buyers still being cautious
  - Culture and capacity
  - Is absence of case-law a problem?!
- Consultation: Procurement Act 2.0
  - Missed opportunity?
  - Does the setting of targets achieve the required outcome(s)?
  - Social value: are standardised targets desirable?
- Contract management
  - Emphasised throughout the TPP journey
  - Reporting and publication requirements
  - Contractualising tender promises – to deliver the captured value
- Feedback from suppliers

# Sector readiness

- PA 23 Readiness Projects
  - New ITT
  - Refresh template contracts
  - Training staff / culture
  - Opportunity to refresh evaluation approach
  - Update internal rules/constitutions
- Procurement Team Focus
  - Knowledge drops
  - Training
  - Internal reviews/updates
  - Signpost to Procurement
- Update-as-you-go
  - Resource new procurements
  - Knowledge-share
  - Lessons learned

# Valuation of Contracts

- Methodology in Schedule 3 PA23
  - Maximum amount it could expect to pay
  - Include extensions
  - In-kind contributions made by the CA
- Take into account all material facts available at the time it makes the estimate
- Frameworks – value of all call-offs
- Concessions – maximum amount the supplier could "expect to receive"
- Anti-avoidance – aggregation – "reasonably supplied under a single contract"
- Where estimate is not possible, deemed to be above threshold – *catches rolling contracts*

# Central Digital Platform

- Enhanced version of the current "Find a Tender" (FTS)
- Contracting Authority and Supplier Unique Identifier
- Publication of new procurement notices
  - PA23
  - PCR15 (e.g. modification notices)
- Public searching of notices
- Teething problems

*Lots of information to be published*

# Frameworks

- Frameworks
  - Remain popular / essential
  - Largely unchanged in practice
  - Flexible – mini-comps and direct awards
  - Objective mechanisms for direct award
  - Clarity on fees under PA23
  - Insurance – SME-friendly?
  - Watch for transitional provisions
- Centralised Procurement Authorities
  - Forefront of implementing PA23
  - Entity "in the business" of procuring for others
  - Less statute associated with CPA status than under PCR

# Open Frameworks

- Scheme of successive frameworks
- 8 years
- Reopens at least after 3 years
- Replacement for DPS?
- Administrative burden
  - Limited Numbers
  - Unlimited Numbers
- Procedure for re-opening, evaluating and awarding successive frameworks

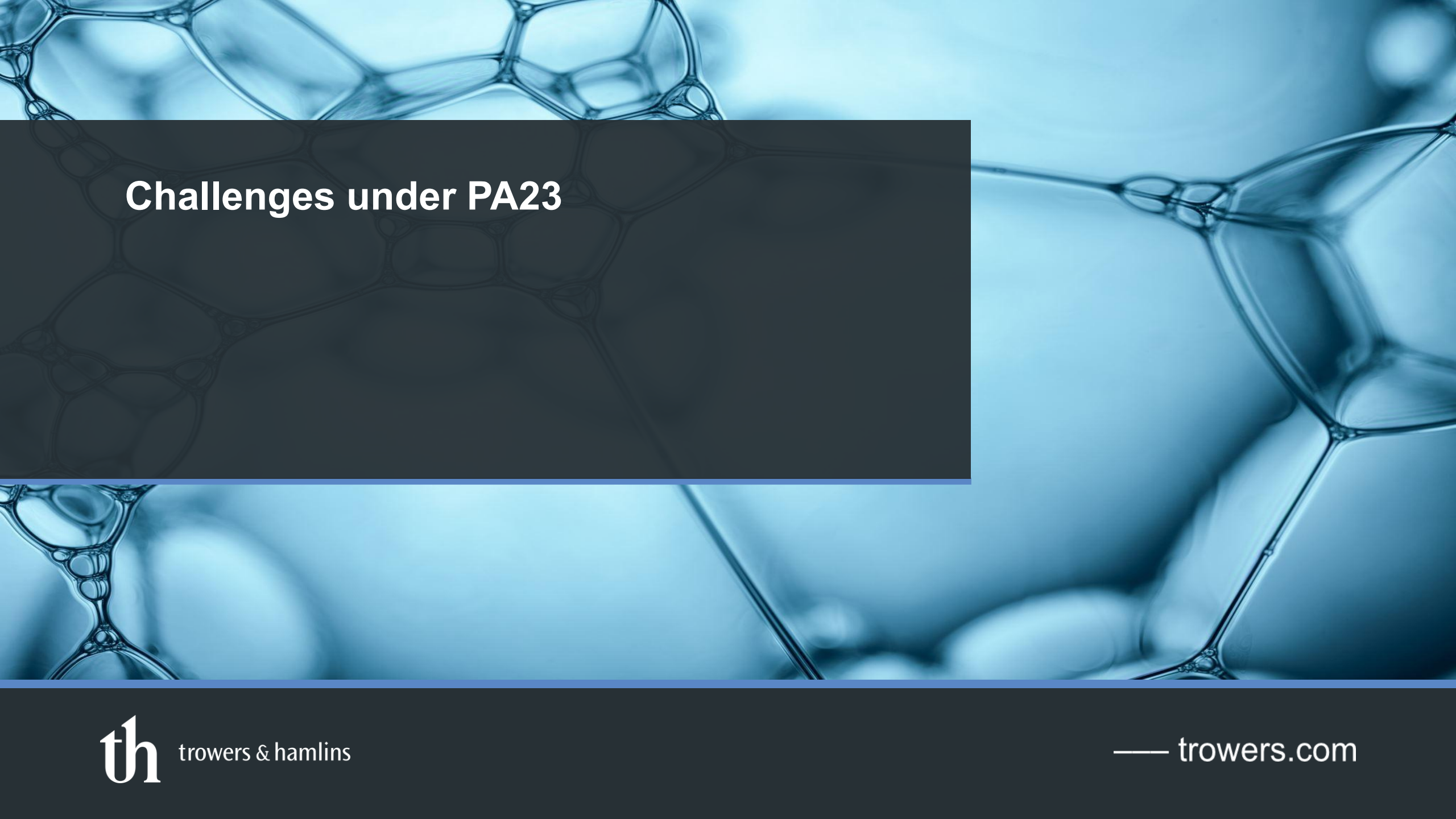
# Dynamic Markets

- Not the same as Dynamic Purchasing Systems
- Above threshold only (for now)
- Limited uptake so far
- DPS – trend to extend – max 23 February 2029

## Notices upon notices...

| Notice                                         | Section | Compulsory / Voluntary                                                                                                                       |
|------------------------------------------------|---------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Pipeline Notice                                | 93      | Compulsory for contracting authorities who consider that they will pay more than £100m under relevant contracts in the coming financial year |
| Planned Procurement Notice                     | 15      | Voluntary                                                                                                                                    |
| Preliminary Market Engagement Notice           | 17      | Compulsory where preliminary market engagement is undertaken unless reasons for not publishing are set out in the tender notice              |
| Tender Notice                                  | 21      | Compulsory where a contracting authority intends to award a public contract under section 19                                                 |
| Contract Award Notice and Assessment Summaries | 50      | Compulsory before entering into a public contract                                                                                            |
| Contract Details Notice                        | 53      | Compulsory                                                                                                                                   |

| Notice                         | Section | Compulsory / Voluntary                                                                                                                                                                                             |
|--------------------------------|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Procurement termination notice | 55      | Compulsory where a procurement exercise is terminated– to be published as soon as reasonably possible after making a decision not to award a contract following the publishing of a tender or transparency notice. |
| Contract Change Notice         | 75      | Compulsory where a public contract is modified (except where exemptions in section 75(2) apply)                                                                                                                    |
| Contract Termination Notice    | 80      | Compulsory                                                                                                                                                                                                         |
| Dynamic Market Notices         | 39      | Compulsory where a dynamic market is to be established                                                                                                                                                             |
| Transparency Notice            | 44      | Compulsory where there is a direct award under section 41 or section 43                                                                                                                                            |
| Payments Compliance Notices    | 69      | Compulsory where the contracting authority makes a payment under a public contract or a sum owed by the contracting authority under a public contract becomes payable                                              |
| Below Threshold Tender Notice  | 87      | Compulsory where a contracting authority intends to advertise for the purpose of inviting tenders for a below threshold procurement                                                                                |



## Challenges under PA23

# Introduction

- Procurement process commenced **prior to** 24 February 2025
  - Public Contracts Regulations 2015 apply
- Procurement process commenced **on or after** 24 February 2025
  - Procurement Act 2023 applies
- **The Procurement Act 2023**
  - Increased transparency obligations?
  - Shift from MEAT to Most Advantageous Tender, but litigation still mainly concerns claims under PCR 2015.

# Procurement Principles

- Section 12 of the Procurement Act 2023:
  - Delivering value for money
  - Maximising public benefit
  - Sharing information for the purpose of allowing suppliers and others to understand the Authority's procurement policies and decision
  - Acting, and being seen to act, with integrity

# Reasons why disputes arise

## Common grounds of challenge

|                                          |                                                                                                                                                                                                                                                                                                                |
|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Lack of transparency and equal treatment | <ul style="list-style-type: none"><li>• Failing to treat all bidders equally and without discrimination</li><li>• Giving an unfair advantage – e.g. allowing changes after submission deadline</li><li>• Designing tender documents to be biased towards certain suppliers or for narrow competition</li></ul> |
| Procedural errors                        | <ul style="list-style-type: none"><li>• Failure to follow procedure in PCR 2015, for example:</li><li>• Contract directly awarded without competitive procurement process where one was required</li><li>• Non-compliant standstill letters</li><li>• Wrongful exclusion of a bidder</li></ul>                 |
| Contract modification issues             | <ul style="list-style-type: none"><li>• Making changes to a contract without justification or procedure, which may have allowed for participation by other bidders</li></ul>                                                                                                                                   |
| Manifest errors                          | <ul style="list-style-type: none"><li>• A clear and obvious mistake in the procurement document or evaluation which could be corrected by the Court</li><li>• Failure to apply the award criteria correctly</li><li>• Required information not provided to all bidders</li></ul>                               |
| Conflicts of interest                    | <ul style="list-style-type: none"><li>• Such as between an evaluator and a bidder</li></ul>                                                                                                                                                                                                                    |
| Scoring challenges                       | <ul style="list-style-type: none"><li>• Based on the differences between the successful and unsuccessful bidder's scores</li></ul>                                                                                                                                                                             |

# Disclosure and litigation strategy

- Importance of early access to evaluation documents, subject to confidentiality
- Key driver of settlement / early resolution
- For Contracting Authorities:
  - Ensure compliance with the new transparency and documentation requirements
  - Maintain comprehensive records to help defend against potential challenges
  - Disclose the reasons for those decisions at an early stage? *TCC Guidance, Roche*
- For Suppliers:
  - Act promptly within the shortened standstill period to preserve rights.
  - Use early disclosure provisions to strengthen claims and ensure transparency.

# Standstill Period

- **Assessment summary – section 50**
  - Contracting Authority must give an assessment summary to each supplier that submitted a tender before entering into contract
  - Not required for call-off contracts under frameworks (although appears best practice)
- No requirement to give direct comparison between the successful and unsuccessful bids
- Instead, the assessment summary given to unsuccessful bidders should contain a copy of the information provided to the successful supplier
- Mandatory **8 working day** standstill period - change from 10 days under previous regime is triggered by publishing a contract award notice

# Remedies under PA 2023

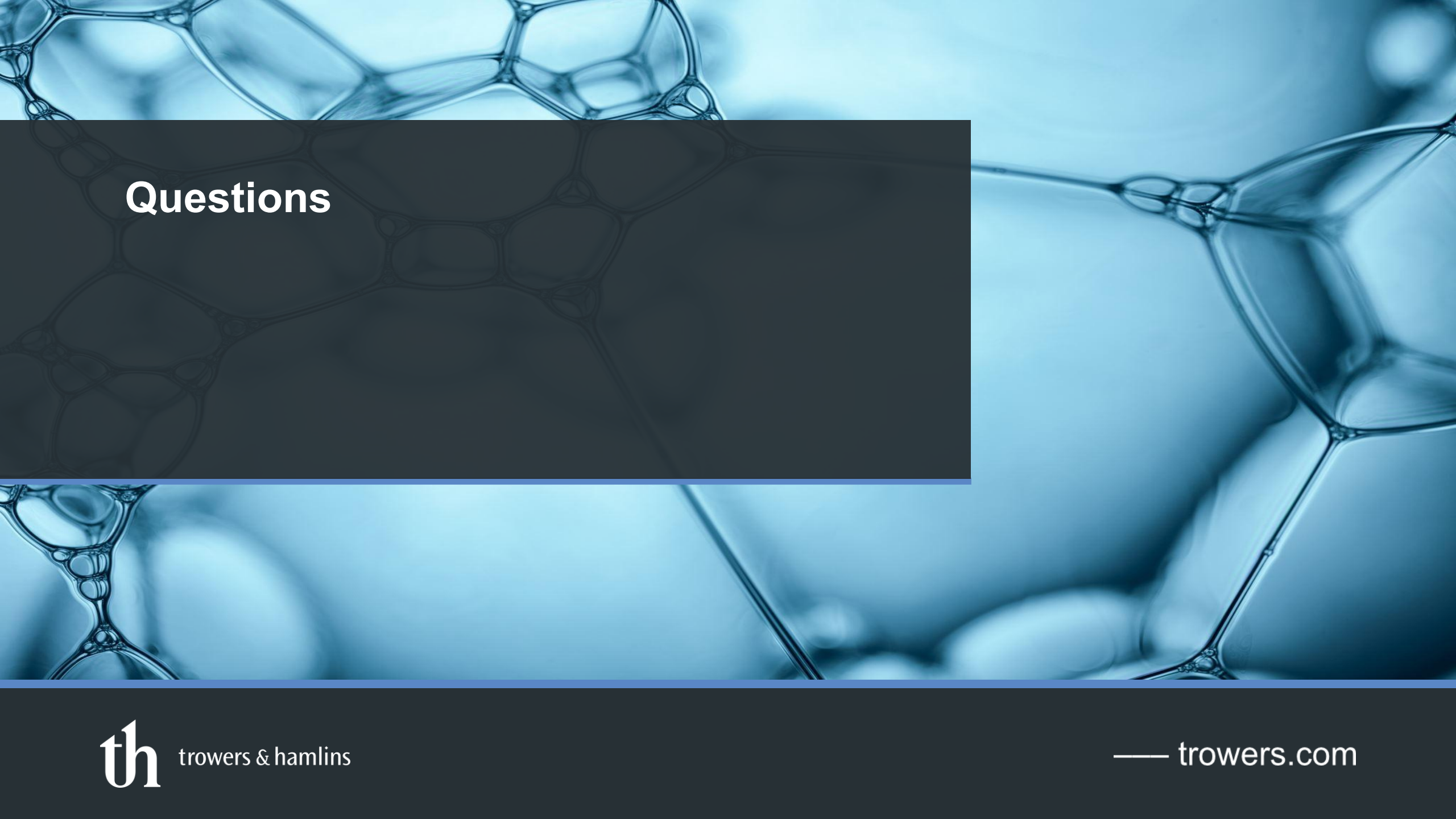
- **Remedies**
  - Part 9 PA 2023 – Sections 100 to 107
- **Automatic suspension – section 101**
  - Will apply (preventing the CA from entering into or modifying the contract) where the:
    - supplier brings proceedings during the standstill period; and
    - supplier notifies the CA of this fact
- Suppliers must now bring proceedings **within the standstill period** if they are to benefit from the automatic suspension, rather than before entry into the contract under PCR 2015

# The New – challenges under PA 2023

- **Interim Remedies – section 102**
  - Broadly replicates regulation 96 PCR 2015
  - Interim orders may lift, extend, modify or remove an automatic suspension.
- **New test** for applications to lift the automatic suspension - section 102 (2).
- The Court must have regard to:
  - The public interest in
    - 1) Upholding the principle that public contracts should be awarded and modified in accordance with the law; and
    - 2) Avoiding delay in the supply of goods, services or works
  - The interests of suppliers, including the adequacy of damages as a remedy
  - Any other matters considered appropriate

## What is next?

- Early decision making required for claimants given 8 working day standstill period
- Potential increase in claims owing to when the automatic suspension is triggered
- New test for interim orders may raise issues of interpretation in the Courts
- Remains to be seen how far judges will deviate from established case law
- PA 2023 silent on the legal consequences of abandonment, so judicial guidance on this and the practical implications is likely
- Existing principles regarding early disclosure are likely to evolve as parties navigate the objective of sharing information
- Judicial guidance likely to be required in respect of the content of assessment summaries to ensure compliance



# Questions

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