



## Procurement Briefing

**22<sup>nd</sup> March 2017**

Carson McDowell hosted a Procurement Breakfast Briefing, with special guest Michael Bowsher QC on 15 March at James Street South.

Over 50 in-house lawyers and procurement professionals attended the event, which focussed on a number of the key issues facing the sector.

Niamh McGuckin, from our Procurement team, opened the event by outlining the implications of Brexit on public procurement, providing a useful insight into the potential options open to the UK as it exits the European Union.

Noting the great deal of uncertainty at present, Niamh outlined that the current options for the UK would appear to be either to (i) continue the procurement regulation in its current form, subject to agreeing a bespoke free trade agreement with the EU (FTA); (ii) rely upon membership of the World Trade Organisation and its participation in the Government Procurement Agreement; or (iii) go it alone and re-write the rules on public procurement. It was noted that agreement of a bespoke FTA is the government's preferred option and that, in the medium term at least, this is likely to result in the continuity of procurement regulation in its current form.

Declan Magee, Joint Head of Litigation and Dispute Resolution, provided an update on the topical issue of "Abnormally Low Tenders". Declan outlined recent case law on the subject, which included the recent case won by FP McCann against the Department of Regional Development in Northern Ireland (Carson McDowell and Michael Bowsher QC acted on behalf of FP McCann in this case). He explained that the court had ruled the Department breached the Public Contracts Regulations 2006, as amended, in rejecting the tender submitted in 2009 as part of a joint venture between FP McCann Limited and Balfour Beatty ("BBMC") for the dualling of the A8 dual carriageway between Belfast and Larne. The contract was to be awarded to the most economically advantageous tender. The joint venture did not secure the contract because it was asserted by the Department that the bid that been submitted was an abnormally low tender and that this carried a risk that BBMC and DRD Roads Service would be unable to agree a target price after the contract had been entered into. The judge found in favour of FP McCann, ruling that there were significant flaws in the process of assessing its tender and that there has been a clear breach of duty in respect of the Department's consideration of the BBMC bid.

This was followed with an update on recent procurement cases by Michael Bowsher QC on tender evaluation, including the recent case of *EnergySolutions EU Limited v Nuclear Decommissioning Authority*, and an engaging Q&A session with the panel.

Carson McDowell regularly runs seminars for both in-house lawyers and procurement advisers. If you would like to be notified of any future events please contact our marketing team on [marketing@carson-mcdowell.com](mailto:marketing@carson-mcdowell.com).

Please click [here](#) to download the PowerPoint presentation.