



Ministry
of Justice

Contract Management Review

Findings and Recommendations Report

December 2013

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Glossary of terms and abbreviations

Term/abbreviation	Description
Business user	MOJ or Authority / Agency user or recipient of the contract service
CIPS	The Chartered Institute of Purchasing and Supply
CCN	Contract Change Notice (also see NOC below)
Collinson Grant review	A review of Electronic Monitoring Contract Management processes issued as a report “Lessons Learnt: Contract management of electronic monitoring” dated October 2013
Contract manager	Contract owner, MOJ staff responsible for the management of the contract. Includes relevant staff within MOJ Procurement
Contractual KPI	Key Performance Indicator specified in Contract
EM	Electronic Monitoring
EM Audit	An external audit of the EM Contracts with G4S and Serco issued as a report “Electronic Monitoring – Report” dated 2 August 2013
Emptoris	NOMS Contract management software application
Finance (and Assurance)	Staff responsible for the financial and assurance support to the contract and operations managers

HMIP	Her Majesty's Inspectorate of Prisons
HMCTS	Her Majesty's Courts and Tribunals Services
ICT	Information and Communications Technology
KPI	Key (specific) Performance Indicator
MI	Management Information
MOJ	The Ministry of Justice
NAO	National Audit Office
NICTS	Follow on service from Quantum
NOC	Notice of change
NOMS	National Offender Management Services (an Executive Agency of MOJ)
Operations manager	MOJ staff responsible for the operational aspects of a contract
PECS	Prisoner Escort and Custody Services
PECS Audit	An external audit of the Prisoner Escort and Custody Service contract with Serco issued as a highly confidential report dated 7 October 2013

Procurement Directorate	Directorate within MOJ that establishes and manages contracts
RACI	Responsible, accountable, consulting and informed. Means of defining/assigning functional responsibilities
SLA	Service Level Agreement
Sponsor	MOJ senior stakeholder responsible for the delivering of the contracted service
Supplier	Organisation providing service under contract with MOJ
Tender / Procurement Teams	Staff responsible for the procurement and tendering of new contracts
TFM	Total Facilities Management
TFM Audit	An audit of Total Facilities Management contracts between MOJ and G4S. Issued as a draft report dated October 2013
Variation Order	A specific term referring to an instruction to a supplier to implement contractual change

1. Foreword

On 11 July 2013, the Secretary of State made a statement in the House of Commons regarding the contracts which the Ministry of Justice holds with G4S and Serco in respect of the electronic monitoring of offenders. He stated that it appeared that the Department had been charged for services which had not in fact been performed. In addition he announced that I would be asked to lead an independent review into contract management across the MoJ.

Given the scale of the problems identified with the electronic monitoring contracts operated by G4S and Serco, the Cabinet Office is leading its own cross-Government reviews into contracts held with these companies. We have worked closely with the Cabinet Office to ensure that our methodology is aligned with this wider review and our findings calibrated and presented in a consistent manner.

By working closely with them and taking into account the findings of a number of other relevant investigations, we were able to draw on the widest possible pool of evidence in order to support our conclusions. I am grateful to Bill Crothers (Director General, Commercial & Government Chief Procurement Office) for his membership of the MoJ Contract Management Steering Group, as well as to Bill Griffiths (non executive board member of MoJ and chairman of the audit committee) and Ann Beasley (Director General, Finance, Assurance and Commercial) who were its other members and to PwC, who conducted the research on which the report and its conclusions are based.

The findings of the review reveal long-standing and significant weaknesses in contract management at the Department. It recommends that swift action be taken in order to secure necessary improvements and to narrow the gap between current and best practice across a wide range of key component activities. However, it must also be recognised that, in conducting this review, a focus has been placed on those high-risk and high-value contracts where the MoJ believed it most likely that issues would be uncovered and therefore the findings of this sample are likely to appear starker than if a full assessment of every contract held by MoJ had been conducted. Equally, the review has uncovered a number of risk areas but this is not to say that these risks would have materialised. Rather, it is important that the Department ensures that enhanced processes are in place to provide assurance and to manage and mitigate these risks.

When done well, outsourcing is capable of delivering high-quality services as well as significant savings. Approximately 40% of the MoJ's budget is spent on services delivered through third parties and, over many years and across a wide range of contracts, the Department has achieved both service improvements and cost reductions as a result.

Outsourcing is also a well-established business tool. Organisations outsource for many reasons – it can give access to wider resources, scale economies and capabilities; provide for a greater internal focus on core business; or move service delivery closer to end users. However, there are also risks – such as loss of core competence and reduced control – which are increased in some circumstances. This is typically the case when contracting out a frontline service which has not previously been delivered in house, when the service being provided is difficult to measure and assess, or when a complex contract is required. The outsourcing of electronic monitoring of offenders is an example of a higher-risk contract as it exhibits all of these characteristics.

Strong contract management can mitigate these risks and is essential if full value is to be extracted from an outsourcing agreement. As well as ensuring services are delivered to the expected standard and that costs are managed throughout the life of the contract, it also provides a basis for a robust, evidence-based evaluation of the contract and for improvements to be made and passed onto future procurements. If these benefits are to be delivered, sufficient high-quality resource and management focus must be put into contract management: this has not always been the case within the Department. Since 2008/09, MoJ has delivered significant savings across its businesses, particularly from the administrative functions. As a result staffing levels in contract management have reduced and, while this is understandable, the Department needs to consider whether it has struck the correct balance in this important, sensitive and growing area of its business.

Taken as a whole, the report has two, overarching messages on contract management in MoJ which require attention and which the Cabinet Office report suggests are common across the public sector. First, the Department's focus on contracts has lessened significantly after the initial procurement and, second, the Department has not fully recognised and understood the different risks attached to different types of contracts.

It is also notable that there is a high degree of variation in the standards of contract management across MoJ and that the same issues do not, in the main, appear consistently across different contracts – for instance, where the management of relationships is rated as red in one area of contracting it is rated as green or amber in all others. The exception to this is the management of key performance indicators and their ability to reflect service delivery accurately. This is a concern in seven of the fifteen areas sampled. It is also striking that there are whole contract areas that seem to be vulnerable. Again, these findings are consistent with the findings of the wider cross-Government review.

This review has identified some immediate and significant risks that require urgent attention. The Department has already taken steps to address the areas of greatest concern, for instance in clarifying overall accountability and oversight for the prisoner escorting contracts, and work is underway to tackle some of the more entrenched issues. A priority will be creating a contract management profession, with senior sponsorship, to grow the right capabilities within the Department and to give leadership to those working in this area. Alongside this, the work already underway to improve commercial awareness across the whole organisation must continue and ensure the importance of good contract management is understood more widely.

However, the findings cannot be addressed through either functional or organisational lines alone. A more formal, systemised approach should be taken to contract management and, at the highest levels, the Department should consider its commercial strategy and the ways of operating required to support this through the lifecycle of a contract. Once a clear action plan is in place, the Executive Team should retain a strong focus on implementation until they are assured that sound contract management principles are embedded across the business.

Tim Breedon

19th December 2013

2. Introduction

- 2.1 This document reports on the outcomes of a review of the management of contracts within MOJ. The review was commissioned in response to issues identified in MOJ's contract management practices for Electronic Monitoring ("EM"). As a result of the severity of some of the issues identified in the EM contract review, this review was structured to identify significant issues within a short timescale.
- 2.2 The review has focussed on how contracts are actually managed and not "if existing systems and processes were applied, would they be fit for purpose". As such, the review has sought to draw-out issues with management of contracts rather than assessing the suitability of MOJ's systems and processes. The review has sought to cover a broad range of contracts to identify issues that are prevalent within MOJ, and the sample of contracts chosen for review were selected based on those contracts deemed to be of higher risk in terms of potential impact to MOJ in case of contract management failings or weaknesses.
- 2.3 The primary aim of this review was to identify key issues within MOJ's management of contracts that are negatively impacting its ability to control: supplier delivery; performance and value; and to understand the extent that contract management practices may be below expected levels. Where relevant, the review identified where MOJ's current practice is regarded as good, and could be considered for more broad application across MOJ, although by its nature, the review has been issue based and has not specifically sought to identify areas of good practice.
- 2.4 Issues have been identified through a series of meetings with MOJ staff to probe the specific weaknesses in management practices that expose MOJ to significant risks. Risks include both the contractual delivery risks and broader service delivery risks for which MOJ are accountable.
- 2.5 The review was carried out concurrently with other studies including the review of supplier performance and supplier charges through sampling for selected G4S and Serco contracts within MOJ. That work also includes the review of some contract management practices, although is limited to specific risks relating to performance and payment. This report draws on their findings where appropriate.
- 2.6 The scope and approach to the review is set out below.

i. Review scope

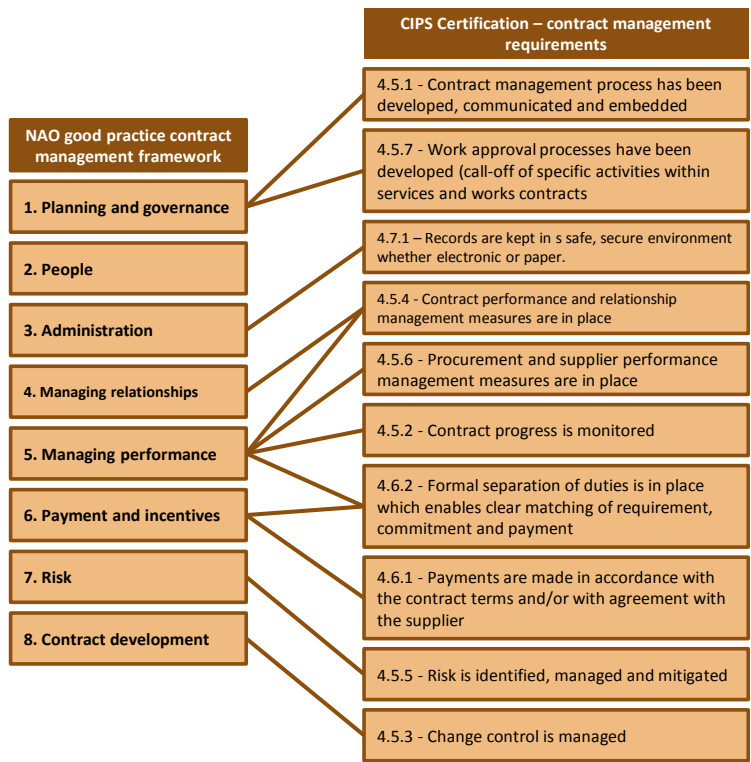
- 2.7 The review has focused on the management of contract delivery for contracts that are operational. It has not directly sought to cover the execution of pre-contract or post-contract activities, although the review has considered the handover process from tendering to contract management. Pre- and post-contract activities have also been referred to where relevant findings have materialised within the operational phase of contracts.
- 2.8 The areas in scope for this review have been shown against a typical contract management life-cycle in Figure 1 below:

Typical Contract Management Life-Cycle



Figure 1: Contract Management life-cycle highlighting the areas in scope for this review

- 2.9 This review has not aimed to cover areas that are outside contract management, and consequently has not examined wider procurement and contract strategy, contract terms, supplier incentivisation, or value for money.
- 2.10 The quality of the MOJ’s contract management processes and systems and associated documentation have been examined in order to inform an assessment of MOJ’s contract management maturity. We note that MOJ has a ‘Corporate’ Certification from the Chartered Institute of Purchasing and Supply (“CIPS”). To achieve certification, every three years MOJ undergoes an independent assessment to establish whether the “...*fundamentals [are] in place to operate an effective procurement and supply function*”, and to review “...*procurement policies, strategies, procedures and processes against the CIPS Corporate Certification Standard*”¹. The assessment includes some areas of contract management; the areas covered have been shown in Figure 2, mapped against the NAO good practice areas.



¹ CIPS Corporate Certification internet page.

Figure 2. Contract management areas reviewed as part of CIPS certification mapped against NAO 'Good practice contract management framework' areas

- 2.11 The CIPS assessment provides MOJ with some high-level assurance that their overarching systems and processes meet good practice. However, it should be noted that the CIPS assessment primarily focuses on review of documented, organisation-wide policies and procedures and performs only limited testing on the operation of these processes at a contracts level. In addition, the majority of the assessment is focused on procurement processes and systems rather than contract management. As such, the assurance provided by the certification is primarily provided over the 'Pre-Contract' and 'Exit/Retender' phases of the contract management life-cycle shown in Figure 1. This review has therefore focused on the 'Management of Contract delivery' and how contracts are actually managed in practice, rather than the quality of the process.
- 2.12 A number of documents have been provided to the review team and have been represented as the centrally held guidance and process for use by contract managers. Where documentation exists and is relevant to the issues it has been noted in the findings.

ii. Approach and methodology

Selection of sample for review

- 2.13 The population of contracts to be sampled was identified from MOJ's contract portfolio. 15 contracts were sampled with a total value of £3.9bn over their lifetimes and a 2012-2013 spend of approximately £425m.
- 2.14 The approach to the selection of the sample had the following objectives:
- i. To focus on contracts that could have a potentially major impact on MOJ should contract management failings be identified;
 - ii. To cover high value contracts;
 - iii. To cover a range of contract types (ICT, Prisons, PECS and Works and construction contracts);
 - iv. To include contracts with known issues or weaknesses;
 - v. To include a low value contract to represent MOJ's contract management of small, low risk contracts; and
 - vi. To sample Major and Minor works contracts as these were understood to have contract management practices markedly different from other types of MOJ contracts.
- 2.15 The sample of 15 was selected for this review as follows:
- i. A population of 75 contracts with an annual spend over £10m (2012-2013) was selected on the basis of a risk profile which included the following considerations: (1) Length of contract; (2) strategic importance; and (3) complexity;
 - ii. Of the 75, 28 were excluded as being internal SLAs (25) or contracts managed by GPS (3), leaving a population of 47 in potentially high risk groups;
 - iii. Of these 47 contracts, a sample of 9 contracts was selected for review to represent a range of contract types;
 - iv. A further 6 contracts were added to the sample: Community payback (1) and Major and Minor Works (5).

- 2.16 Although not part of this review, reference has been made to practices on EM, and information from the audit reviews of TFM, PECS and Prisons has been included.

Strengths and limitations of the sampling approach

- 2.17 To put the findings into context, the following should be noted in relation to the sampling methodology:
- The sample selected has not been random and so extrapolating the findings of this report across all MOJ contracts is not statistically valid; and
 - Some contracts were selected because of known issues. This will skew the number of issues within the sample.
- 2.18 Notwithstanding the two points above, the sample could be representative of wider issues across MOJ contract management on the basis of the following:
- The 9 high risk contracts in the sample represent 19% of the population of 47 in potentially high risk groups with over £10m annual spend, and 12% of the 75 high risk contracts;
 - Staff responsible for management of the 15 sampled contracts are also responsible for managing other contracts within MOJ; and
 - The governance processes within MOJ have allowed the issues identified to occur. Therefore the results could be indicative of contract management standards more broadly within MOJ where similar governance systems and processes are in operation.

Review methodology

- 2.19 The review findings are based on issues raised to, and uncovered by, the review team during interviews with MOJ staff. The review has been focused on issues and therefore has not sought to assess compliance against a set framework of good practice requirements or criteria. Where meetings with MOJ staff have revealed issues, interviews focussed on understanding these issues rather than attempting to explore areas where no issues were apparent. As such, areas of good practice were not specifically sought out and this report cannot provide assurance in areas where no issues were noted.
- 2.20 49 meetings with 57 staff have been conducted for the review. Key contract management individuals were identified and interviewed for all of the sampled contracts, including:
- Contract managers;
 - Operations managers; and
 - Team leaders.
- 2.21 In addition, in response to issues that were identified in meetings with the contract and operations managers, further contract management stakeholders were interviewed. These included:
- Staff from MOJ Finance, Vendor Management and Legal; and
 - Senior managers and business users within specific areas of MOJ.
- 2.22 The review team used their experience and knowledge of good practice contract management to challenge and verify issues as they were identified during the meetings. The review teams sought to confirm their understanding of the issues and directed discussions to further explore issues.

2.23 Analysis of the evidence gathered during interviews took place in order to generate the findings within this report. The analysis took place at three levels as set out below:

- Level 3 (Issues) – Identification of issues within single contracts or in individual meetings.
- Level 2 (Findings) - Identification of common or similar issues between contracts, used to generate findings (findings have not been driven by observations within single contracts).
- Level 1 (Themes) - Common findings have in turn been identified and grouped in order to highlight specific themes within contract management where MOJ appear to have weaknesses.

Validation of findings

2.24 The findings of this review have been validated in four respects:

- Confirmation of the issues as they emerged during the interviews, as set out in the interview methodology described above.
- Validation of issues with multiple staff on each contract. The review team sought to confirm issues identified by MOJ contract management staff for a contract with the operations manager for that contract (and vice versa where applicable).
- Validation of issues across multiple contracts. All the key findings identified in this review have been separately identified by MOJ staff across multiple contracts (see level 2 above). As the review progressed, the review team challenged and tested emerging themes and issues from earlier meetings with staff to validate the existence and extent of these issues across the contract sample.
- Inclusion of relevant audit evidence from separate audit work against each of the findings identified.

3. Executive Summary

- 3.1 Twenty-one (21) key findings have emerged in this review that are grouped into seven common themes. The themes are set out in Table 1 below, together with an overview of the findings mapped to the NAO framework areas.

NAO Area ²	Theme	Overview of findings
Planning and Governance, Risk & Contract Development	<p>Governance, process documentation, decision making and escalation.</p> <p>Issues identified in 15/15 contracts reviewed.</p>	<p>Established governance processes have been identified on some of the reviewed contracts, but this does not appear to be common. Some process documentation is in existence. However, on certain contracts, the lack of use and understanding of a documented governance process is apparent. Escalation and authorisation processes appear not well understood by staff managing contracts and operations. Instances where contractual changes to supplier scope have not used appropriate change procedures are apparent. There is a perception within contract management that changes are slow to process and may compromise MOJ’s contractual position.</p> <p>MOJ has risk management process documentation accessible to its contract managers. However, the processes being undertaken by contract and operations managers to forecast and actively manage risks are not clear.</p> <p>In some cases, there appears to be a lack of appetite for continuous improvement and innovation in contracts reviewed.</p> <p>These issues expose MOJ to significant risks that contract management activities are not being undertaken, issues are not being resolved in a timely manner and that opportunities to mitigate risks and optimise services are being missed.</p> <p>This is a contributing factor to several of the issues identified in this review, including communication and collaboration, stakeholder engagement, confusion over roles and responsibilities, escalation, decision making and issue resolution, risk and opportunity management and validation and assurance.</p> <p>Some examples of more consistent application and definition of governance controls and processes were observed in Major and Minor works.</p>
Planning and	Definition of Roles and	Central guidance within the Procurement Directorate requires contract managers to define roles and responsibilities for staff. However, across the breadth of contracts reviewed, limited

² The areas of the NAO Good practice contract management framework that the theme relates to.

<p>Governance</p>	<p>Responsibilities.</p> <p>Issues identified in 10/15 contracts reviewed.</p>	<p>documented definition of roles and responsibilities is apparent. Examples have been observed where this leads to confusion over the boundaries between different roles.</p> <p>There are significant risks that MOJ responsibilities in managing contract delivery are being missed.</p> <p>In certain instances, the understanding of overall accountability within MOJ for service delivery was not understood by key stakeholders. As a result, issues in respect of escalation routes, speed of issue resolution and decision making are apparent.</p>
<p>Planning and Governance & People</p>	<p>Resource capability and capacity.</p> <p>Issues identified in 10/15 contracts reviewed.</p>	<p>Investigation suggests that insufficient contract management resources within MOJ may be an issue. This observation is common amongst contracts reviewed. There is recognition of the shortfalls by some within the MOJ management team. A high number of vacant posts are currently being advertised.</p> <p>Evidence from some contracts reviewed indicate that staff perceive they are unable to discharge their roles in full due to lack of time. Staff in some areas of MOJ perceive that particular skills, experience and training would make contract management more effective.</p> <p>Management are attempting to mitigate some of these issues with a change programme in procurement to move to “flexible post” recruitment to allow more holistic management of resources.</p> <p>Note that comments in this section in respect of staff’s lack of time to fulfil roles and undertake activities are solely based on the accounts given by staff in meetings.</p>
<p>Administration</p>	<p>Management information, reporting and contract data.</p> <p>Issues identified in 14/15 contracts reviewed.</p>	<p>Procurement Directorate guidance sets high-level requirements for management information. However, on certain contracts, the contract management team highlighted that there is insufficient management information of suitable quality and which is readily available. There is a risk that MOJ senior management has inadequate visibility of contract delivery status. The reporting that does take place is often not standardised or effectively communicated within management teams. It is a common perception within contract management that reporting frequencies mean information is no longer current by the time it is reviewed.</p> <p>Contract and operations managers have inconsistent approaches to collating and reporting information. In some cases there is inadequate access to supplier data with which to produce management information, or information is not requested or analysed.</p>

There is a significant risk that MOJ management is unable to identify or address supplier performance issues or make decisions on end-to-end service delivery. There are risks that MOJ staff are not used efficiently in the reporting process and that there is duplication of effort.

Examples of good management reporting were apparent in Major and Minor Works and some areas of ICT. The operations team in Major and Minor works receive standard supplier KPI reports and produce a standard monthly reporting dashboard highlighting status, costs, issues and change, with trending and forecast analysis of the overall portfolio of contracts.

Managing Relationships

Collaboration and Communication.

Issues identified in 14/15 contracts reviewed.

Insufficient communication and collaboration is a recurring issue across a number of contracts. This may be impacting the capability of contract and operations management teams to manage contracts and suppliers effectively across MOJ.

There is a risk to MOJ that services are not being delivered to the full needs of MOJ, and that risks and issues are not identified and effectively managed by contract and operations managers and other functions within MOJ.

There were several examples of good practice at a management and strategic level, such as the Director “Face to Face” meetings, news bulletins and other evident communications.

There were also some isolated examples of good practice with lessons learnt and strong working relationships between contract management and operations management on some contracts reviewed.

Managing Performance

Performance management, measurement and monitoring of service delivery.

Issues identified in 10/15 contracts reviewed.

MOJ relies on contractual KPIs to monitor supplier performance, but in many cases the KPIs alone are not effective at providing visibility of service outputs. On some of the reviewed contracts, MOJ relies on the accuracy of supplier KPI reporting, and does not provide enough challenge. There are identified examples where KPIs do not measure all of the critical elements of the service, or do not reflect areas of known service deficiency. There are uncertainties over accuracy of some reported KPIs and uncertainties over the suppliers’ interpretations of the intent of some KPIs.

It appears common for MOJ to focus on supplier KPI measures, but examples have been identified where MOJ does not have sufficient understanding of its own duties in delivering end-to-end services (including HMCTS, Police and Probations where relevant), where these are distinct from the suppliers’ obligations.

These issues expose MOJ to risks that the intended end-to-end

services are not being delivered on account of MOJ not carrying out essential activities for which it is responsible.

Examples of end-to-end KPIs and supplier measurement were observed in Major works and Community payback, where a combination of supplier outputs, MOJ activities and overall service measures are monitored.

<p>Payment and Incentives</p>	<p>Validation and assurance of supplier delivery and charges.</p> <p>Issues identified in 10/15 contracts reviewed.</p>	<p>MOJ has issues with assurance and verification of the services being delivered by its suppliers. On some contracts, there is insufficient scrutiny of invoiced services against source supplier data. There are risks that MOJ is incorrectly paying its suppliers, that services are not being delivered, that services are not meeting requirements and that performance penalties are not being applied.</p> <p>Procurement Directorate documentation requires that individual contract managers define procedures for the checking, certifying and processing of invoices.</p> <p>There is inconsistent control over the invoice processes where end-to-end process and roles and responsibilities are not defined or understood. For certain contracts reviewed, inadequate links between payment processes and the services being delivered are apparent. Suppliers are not incentivised to meet minimum service levels in some instances.</p> <p>Where assurance is undertaken, the approach to testing and assurance activities appears to be unstructured in many cases and is not based on the specific complexities and risks of the contract.</p>
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Table 1: Summary of issues

- 3.2 The prevalence of these key issues across the contract groups reviewed is set out in Figure 5 below. Note that where no observation is recorded against a finding in Figure 5 as part of this review, this does not positively confirm that there is no issue present.
- 3.3 A series of recommendations should be considered by MOJ in order to remediate the issues found. Five recommendations should be considered as immediate priorities, and these are aimed at addressing the most common issues and those identified as potentially giving rise to the highest risks for MOJ. The priority actions are to:
- Undertake risk assessments for high risk contracts;
 - Develop contract assurance plans for high risk contracts;
 - Strengthen processes for payment and service verification on high risk contracts;
 - Establish or enforce governance processes for issues, changes, payments and service verification;
- and
- Assess the scale of change required within MOJ contract management.
- 3.4 In addition to these priority actions, each of the 21 findings in this report can be addressed by direct actions taken within MOJ, and these actions are set out in Appendix B.
- 3.5 Some of these recommendations are specific changes that can be implemented in the short term. Some of the recommendations may need to form elements of broader change to the organisation and governance of contract management within MOJ. Such change may require the amendment or embedment of organisation and governance that is already within MOJ, but not being used. It may alternatively require the development of new structures and governance.
- 3.6 Prior to deciding whether the solution is to make better use of what is in place, or to implement a new approach, MOJ should set out its future requirements for contract management over the short and medium term, taking account of any future procurement initiatives across government.
- 3.7 MOJ should then proceed to assess the extent to which new structures may be required in order to achieve the future requirements. The assessment should examine key areas of organisational design including:
- Governance, strategy and organisational operating model;
 - Technology available to support contract management; and
 - Contract management processes and assurance.
- 3.8 The assessment process will identify in each of these four areas whether: a redesign is required; the current process and governance is fit for purpose and should be embedded into MOJ's contract management; or a combination of redesign and embedding current processes is appropriate.
- 3.9 An assessment of MOJ's current contract management maturity against the NAO good practice framework has been carried out as part of this review. Additionally, a minimum 'target' maturity level has been suggested against each framework area. These target maturity levels are considered as being the minimum required to remediate the issues identified in this report.
- 3.10 Figure 3 below indicates that in all eight areas of the NAO good practice framework, MOJ currently falls short of the minimum maturity levels required to address issues. In some of the framework areas a mix of good practice and poor practice has been observed across the different contracts reviewed. On balance, in all framework areas, it is clear that MOJ's practices fall short of being "standardised" Level 3.

3.11 The target levels will need to be reviewed and informed by the overall future requirements for contract management in the form of a more detailed assessment. This should be conducted as part of the ‘next-steps’, as outlined in Figure 4 below.



Planning and governance	●	◆
People	●	◆
Administration	●	◆
Relationships	●	◆
Performance	●	◆
Payment	●	◆
Risk	●	◆
Contract development	●	◆
Supplier development		
Supplier relationships		

KEY

● Assessment of current state ◆ Suggested minimum target maturity*

Figure 3: Current state assessment and target contract management maturity (note: the last two areas of the NAO framework have not been covered in this review (*Future state to be confirmed through separate assessment of business needs and achievability))

3.12 An indicative plan for next steps showing the assessment and design of any required changes is shown in Figure 4.

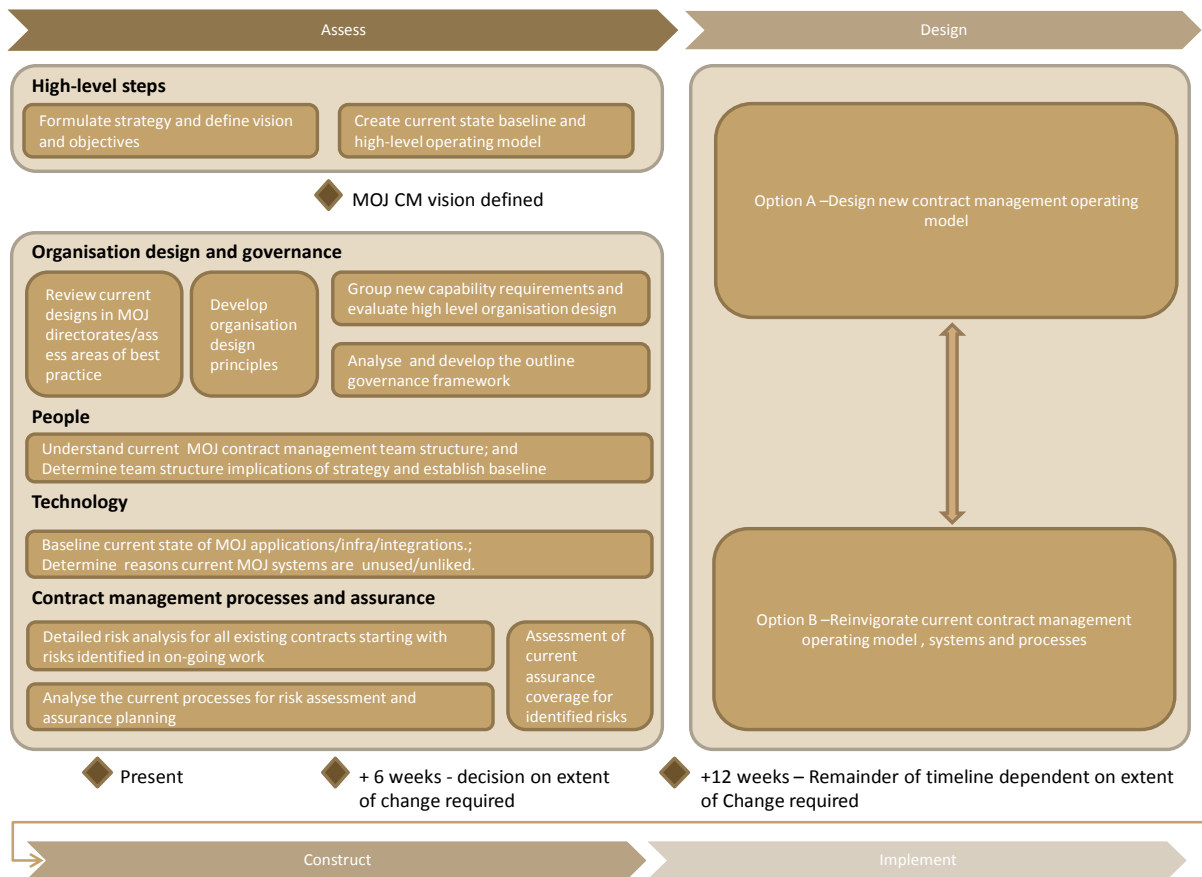


Figure 4: Indicative next steps for organisational assessment and possible redesign

Issue indicators

- Contract Management: There is evidence of gaps or weaknesses in contract management such as to give rise to the risk of material errors or irregularities in charging, or a significant operational failure.
- Contract Management: There is evidence of gaps or weaknesses in contract management which require to be addressed.
- Contract Management: The review has not given rise to findings (either positive or negative) which it is considered necessary to highlight in respect of this aspect of contract management.□
- Contract Management: Practices, processes or controls have been identified which are particularly innovative and/or effective and which could usefully be adopted more widely across contracts or departments.

Notes ¹ In the above definitions, "material" may mean quantitatively significant in terms of aggregate value or qualitatively material because of the circumstances of the error or irregularity.

² Issue indicators have been entered into this matrix on the basis of specific issues recorded in meetings, except for those issue indicators for Electronic Monitoring contracts which have been entered on the basis of other contract review and Audit findings.

Category Definitions

Planning and Governance Clear governance structure, roles and responsibilities and reporting lines; evidence of strategic planning.

People Appropriate level of resource and relevant skills within the contract management team; clear objectives and appropriately delegated authority.

Administration All agreements are appropriately documented; contracts, variations and related documents are well organised; there are established procedures, reporting routines, regular meetings, etc.

Managing Relationships Clarity of responsibilities as between department and contractor; effective communications between the parties; effective issue resolution procedures.

Managing Performance Performance management framework is in place; performance is effectively monitored; feedback to contractors and "fix first" approach to issue resolution; clarity of service levels; audit rights are invoked.

Payment and Incentives Clarity of payment processes; effective validation of charges, service credits, etc.; incentives are properly aligned to desired outcomes.

Risk A formal risk assessment/risk matrix is in place; risk is regularly reviewed; contract management staff are aware of risk management provisions of the contract.

Contract Development There is appropriate governance and authorisation around contract changes; changes are clearly communicated and understood by both parties.

Figure 5: Summary Matrix of Findings

4. Findings

- 4.1 Twenty-one (21) key findings have emerged that are grouped into seven common themes. The themes and the corresponding issues are set out in Table 1 above. The findings represent the most significant issues that have been identified within MOJ's management of contracts.
- 4.2 The remainder of this section details further each of the seven categories and the specific findings as follows:
- Governance, process documentation, decision making and escalation;
 - Definition of roles and responsibilities;
 - Resource capability and capacity;
 - Management information, reporting and contract data;
 - Collaboration and communication;
 - Performance management, measurement and monitoring of service delivery; and
 - Validation and assurance of supplier delivery and charges.

A. Governance, process documentation, decision making and escalation

- 4.3 The application of governance processes and controls are crucial to managing risk, escalating issues and facilitating decision making. Where governance is not established or applied consistently, MOJ is exposed to significant risks that contract management activities are not being undertaken, issues are not being resolved in a timely manner and that opportunities to mitigate risks and optimise services are being missed. Issues were identified in all fifteen (15) contracts sampled in this review, as well as the two (2) EM contracts.
- 4.4 A number of basic contract management guidance and requirement documents exist within the Procurement Directorate and are available to contract managers. Whilst the quality of these documents has not yet been assessed, the following observations have been noted:
- Two documents set out the requirements for contract managers³. In most cases these documents outline guidance rather than specify process. A number of other documents exist relating to specific elements of contract management. The majority of these also outline guidance rather than specific process. As such, there appears to be a reliance on those involved in contract management to have the knowledge and capability to develop detailed processes.
 - Templates and example processes do exist but the location of these is not clearly identified for contract managers as part of a documented contract management framework.
 - The documentation is not centralised and is located on the MOJ Intranet, the Procurement Directorate Intranet and shared drives. There is a reliance on contract managers knowing both where to look and what to look for.
 - The requirements and guidance seen as part of this review do not appear to be mandatory in their application.
- 4.5 The key findings in this theme are detailed below as follows:
- i) MOJ governance procedures appear inconsistent and difficult to identify;
 - ii) Change processes are not always used, are perceived to be slow to process or are inappropriately applied;
 - iii) Issues with continuous improvement; and
 - iv) Unclear risk management.

³ 'Procurement Directorate Relationship Management Guidance' located on the shared drive; and Procurement Directorate 'Managing Contracts – Key Activities' document on the procurement intranet

Contract management good practice related to the issues identified

- i) Contract management processes and procedures are readily available and actively implemented by the contract manager ensuring a consistent approach across the MOJ.
- ii) *Processes are in place that clearly lay out the governance of contractual change ... with a focus on effective and prompt change implementation. Processes are in place to handle commercial (financial) changes to the contract in a fair and structured manner.**
- iii) *The contract is regularly reviewed (with a view to updating where necessary) to ensure it meets evolving business needs.**
- iv) *Risks are formally identified and monitored regularly, with mitigating actions developed and implemented where possible, and 'obsolete' risks removed from consideration where appropriate. Escalation and reporting routes are in place for risk governance.**

**Reference: NAO "Good practice contract management framework"*

i. MOJ governance procedures appear inconsistent and difficult to identify

- 4.6 Issues in relation to this key finding were identified in seven (7) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.7 In some MOJ contracts, there are well established and consistently applied governance processes; for example in ICT and Major Works. For some contract groups some outline governance guidance documentation is in existence. However, the management of several contracts reviewed appeared to lack suitable governance procedures. In most instances contract managers were unable to provide examples of documented processes, controls or refer to governance documentation. Basic guidance regarding the creation and operation of governance processes for contract management exist at a Procurement Directorate level. However, the guidance is not prescriptive and it is apparent that knowledge of the guidance is limited and it is not applied by the contract and operations managers in all cases.
- 4.8 This issue may be a contributing cause to several of the issues identified elsewhere in this report, including problems with communication and collaboration, stakeholder engagement, confusion over roles and responsibilities, escalation, decision making and issue resolution, risk and opportunity management and validation and assurance.
- 4.9 In many of the contracts reviewed it has not been possible to determine if processes are being followed and controls are being applied because in many instances contract and operations managers were not able to articulate or identify what processes and controls exist. Contract managers on many of the reviewed contracts were unable to speak knowledgeably on how, why and where governance processes are applied in their particular contracts. This implies that either processes are not defined at a contract level, not documented or are not applied or understood by contract and operations managers.
- 4.10 On the majority of contracts reviewed, staff were able to describe examples of governance processes and controls to a basic level and some documentation was evident. However, in nearly all instances, at a contract level, the governance processes and controls typically expected on contracts of the size and complexity of those reviewed could not be readily produced.
- 4.11 In instances where processes and controls are not defined, confusion of roles and activity flows was apparent. Where it was identified that processes were defined, better clarity over responsibilities and flows of activity was evident. This may also allow contract and operations managers to understand and agree upon how to make decisions where processes contribute decision making information.
- 4.12 Guidance exists within the Procurement Directorate specifying that ‘first steps’ for management of contracts should include: (1) agreement of roles and responsibilities; (2) creation of a contract management plan setting out responsibilities, escalation routes, payment mechanisms and invoicing responsibilities; and (3) ensuring clarity on authority levels⁴. Despite this central guidance, specific areas of governance that appear lacking, missing or not applied in some contract groups are listed below, which, when considered together, indicate a broader issue in this area:
- In most cases end-to-end processes (and charts) for key management activities (e.g. payment application validation, issue resolution) were not readily available;
 - In most cases documented roles and responsibilities could not be readily provided (e.g. in the form of RACI)(Detailed in Section B of this document);
 - Formalised organisation charts were not readily available in some instances;

⁴ See Procurement Directorate ‘Managing Contracts – Key Activities’ document on the procurement intranet

- Documented decision making and escalation routes were not readily available and not clear to the majority of staff interviewed as part of this review;
- In most instances, terms of reference for meetings and groups could not be readily provided;
- On most contracts reviewed, limited evidence could be provided to show that programmes, schedules or activity plans (appropriate to contracted services) were in place; and
- On most contracts, evidence to show active use of risk and issue logs was not readily available.

4.13 There are differing interpretations of the meaning of governance across the staff that were met for this review. Commonly staff referred only to meetings and board structures, but not broader processes of control and assurance applicable to contracts. This is indicative of issues with the documentation and communication of governance processes.

Relevant evidence from other reviews

The Collinson Grant review and the EM Audit report noted that there is a lack of governance and oversight processes preventing EM problems from being escalated. Processes either failed to work or did not exist. There was a failure to escalate issues or to appropriately follow up on issues. The reviews also identified that there was a complete lack of guidance / standard operating procedures on effective contract management practice.

ii. Change processes are not always used, are perceived to be slow to process or are inappropriately applied

- 4.14 Issues in relation to this key finding were identified in twelve (12) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.15 Some documented guidance surrounding contract changes is available to contract managers across a number of separate documents. The guidance sets out the high-level requirements and responsibilities for implementing changes⁵ and contract variations⁶. Suggested templates are also available to contract managers for recording and managing changes⁷.
- 4.16 Change processes do not appear to be consistently applied across the contracts reviewed. Issues with the clarity of the change control processes exist on some contracts, and uncertainty over who is responsible for documenting, approving and incorporating changes is evident in some cases. This may expose MOJ to the risk of not having accurate records or understanding of contract changes and not having a documented authorisation process incorporating commercial and legal considerations.
- 4.17 From investigations to date, it is not clear how this issue arises, as standard change processes are detailed in MOJ's standard Terms and Conditions. Despite this, there were two examples in which contract managers indicated that their contracts had no defined change process. Contract managers in these instances were consequently required to develop bespoke approaches for individual contracts, therefore, processes may differ across contracts.

⁵ See for example 'Procurement Directorate Relationship Management Guidance' located on the shared drive.

⁶ Suggested contract variation process flow

⁷ For example 'Contract Variations Register' template located on the shared drive.

- 4.18 Examples were identified where contract managers indicated changes are implemented in practice but not documented until several months later, particularly in Prison contracts, where service delivery is complex and rapid operational change may be required in response to circumstances. A lack of timely formal documentation is a risk that may compromise MOJ’s contractual position.
- 4.19 Slow change processes may also stifle opportunities for innovation. In several contracts, the decision making and approvals processes is perceived to be slow or onerous. Specific issues identified in relation to change processes are listed below, which, when considered together, indicate a broader issue in this area:
- Examples exist where contract managers believe it is quicker to commission work under a new contract than to change an existing contract;
 - An example of a business case for savings of £2m per year on facilities management services awaited a decision from the Cabinet Office and Treasury for six weeks;
 - An example was highlighted where an innovative proposal to provide biomass power to nearby prisons was not implemented. The contract manager’s perception is that this resulted because MOJ could not implement policy change;
 - A contract manager highlighted that a recent change on an ICT contract took four months to process. The problem of slow processes for scoping and pricing change was noted more broadly in ICT as a problem and that requirements can change before change is approved.
 - MOJ’s technical design and construction standards are stringent and have been amended over time to mitigate recurrence of specific incidents. This has led to onerous requirements which may prevent innovation in design specifications.
 - A specific issue was noted in ICT and Major and Minor works where some approval processes require signoff from multiple boards, slowing down the change process.
 - It was noted that in some instances approval processes involving multiple parties are unavoidable, including, for example, approval involving the Treasury and Cabinet Offices. In these cases stringent approval processes should be complied with.
 - It was recognised by some staff that change processes could be scaled down for smaller projects using, for example, an abridged business case, and that there is scope for improvement.

Relevant evidence from other reviews

The Collinson Grant review of EM identified that change management process was completely lacking in some instances.

The EM Audit noted that the contractor was allowed to make operational changes for which formal change notices did not follow.

iii. Issues with continuous improvement

- 4.20 Issues in relation to this key finding were identified in eleven (11) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.

- 4.21 Outline guidance on benchmarking, adding value and continuous improvement exists within the Procurement Directorate and is available to contract managers⁸. However, the approach to developing improvements and driving efficiency within contract management varies significantly across contracts reviewed. Innovation and opportunities in some instances may be stifled by slow change processes, as noted above (see paragraph 4.19). On a number of contracts reviewed, there appears to be minimal focus on promoting improvement or innovation. The following observations appear to be contributing factors:
- Investigation to date suggest that contract management resource capacity and/or capability may be an issue; in some cases the effort of contract and operations managers is focused on day-to-day management of the contract potentially limiting the time available for improvement activity;
 - Poor supplier relations have been highlighted as an issue; in some cases interactions have been focused on issue and dispute resolution;
 - A limited flexibility or appetite for innovation within some contracts was highlighted as an issue; and there were implications that a focus on in-year spend may limit long-term savings; and
 - Issues with the transfer of lessons learned between contracts were evident.
- 4.22 Suppliers do not typically originate opportunities and there is a perceived reluctance towards innovation (change) by suppliers, even where gain share mechanisms are in place. Typically, suppliers have service delivery and technological expertise and are better placed than MOJ to identify and propose opportunities and innovation. In some instances, lack of supplier innovation may be due to suppliers having difficulty in meeting minimum service thresholds and having limited time and resource to consider improvements. Even where suppliers appear to be making savings, an example was noted where MOJ is having difficulty in recovering savings through the gain share mechanism. Opportunities often originate from MOJ, driven by cost avoidance.
- 4.23 MOJ budget holders may not be incentivised to seek opportunities in some instances, as a perception exists amongst contract managers that future budgets may be reduced if not fully utilised.
- 4.24 Good practice is however evident in:
- Smaller projects in Major and Minor Works that are grouped into packages of work to make procurement more effective and / or more attractive to bidders; and
 - New technologies and more efficient ways of working that are being considered in some tendering processes.
- 4.25 In some instances, innovation appears to be deferred until a replacement contract is put in place rather than attempting to implement opportunity change in the current contract. There is a perception that businesses cases for implementing opportunities which extend past the current contract life are harder to justify. Potential savings may therefore be lost or delayed.
- 4.26 Within ICT good practice was identified where Vendor Managers have been put in place with specific responsibilities to, amongst other things, identify cross-contract savings and opportunities where suppliers have multiple contracts.

Relevant evidence from other reviews

The Collinson Grant review of EM supported the view that MOJ did not strive to improve contract management performance.

⁸ Contained within 'Procurement Directorate Relationship Management Guidance' located on the shared drive.

iv. Unclear risk management

- 4.27 Issues in relation to this key finding were identified in ten (10) of the fifteen (15) contracts sampled as well as the two (2) EM contracts.
- 4.28 MOJ has processes and guidance available to contract managers relating to assessment and management of risks. These central documents include:
- Outline contract management guidance that defines responsibilities for management of risks on contracts⁹. Responsibilities outlined include: (1) risk assessments for all contracts and development of contingency plans; (2) selection of risk measures; and (3) maintenance of a risk register and reporting routes.
 - Detailed risk management guidance¹⁰ including processes for: (1) identification; (2) assessment; (3) prioritisation; (4) risk scoring; (5) management and monitoring; and (6) reporting.
 - MOJ wide Risk Management Policy.
 - Example risk log templates.
- 4.29 Despite the centrally available guidance, for most of the contracts reviewed, details of the risk management processes applied and activity undertaken were not readily available. This is indicative of a widespread absence of risk management activity and knowledge within contracts. In many cases risk management processes could not be articulated during review meetings with staff and there were few instances of staff identifying up to date risk management documentation.
- 4.30 There are isolated instances of contract managers applying risk management processes. For example, Major Works contract managers have processes for assessing project risks and establishing contingency budgets.

Relevant evidence from other reviews

The Collinson Grant review noted that risk assessments on EM (both operational and process) were only sporadically carried out and the risks poorly assessed. It identified that at times there appeared to be no live meaningful risk registers and that mitigating actions were not implemented effectively.

⁹ 'Procurement Directorate Relationship Management Guidance' located on the shared drive; and Procurement Directorate 'Managing Contracts – Key Activities' document on the procurement intranet

¹⁰ Procurement Directorate Risk Management Guide; and How to manage risks in 5 easy steps – Intranet

B. Definition of Roles and Responsibilities

- 4.31 Defined roles and responsibilities provide clarity of end-to-end management responsibilities, authority levels and interaction with other parties. Where roles and responsibilities are not defined or understood, there are significant risks that MOJ responsibilities in managing contract delivery may be missed. Issues were identified in ten (10) of the fifteen (15) contracts sampled in this review, as well as the two (2) EM contracts.
- 4.32 The key findings in this theme are detailed below as follows:
- i) Issues with definition and understanding of roles and responsibilities; and
 - ii) Issues with the clarity of business ownership and accountability of service.

Contract management good practice related to the issues identified

- i) *Contract managers have accurate job descriptions, roles are positioned at an appropriate level and salary...**
- ii) *Overall ownership of contract management across the organisation is clear, with a 'contract management senior responsible owner' with responsibility for driving organisation-wide contract management performance. Contract managers have clear objectives and reporting lines and their performance is managed through reviews and appraisals.**

**Reference: NAO "Good practice contract management framework"*

i. Issues with definition and understanding of roles and responsibilities

- 4.33 Issues in relation to this key finding were identified in ten (10) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.34 Outline descriptions of contract management roles and responsibilities exist within the Procurement Directorate. However, these are limited to general descriptions of the roles of the contract manager, Procurement Directorate and Supplier¹¹. The Procurement Directorate guidance includes recommendations that roles and responsibilities must be documented in a contract management plan¹². There appears to be no specific process for mapping roles and responsibilities (such as 'RACI').
- 4.35 Issues with individuals' understanding of their own and others' roles and responsibilities were apparent on some contracts. Examples of documented processes and associated roles and responsibilities were not readily available on most contracts reviewed.
- 4.36 Specific issues identified in relation to roles and responsibilities are listed below, which, when considered together, indicate a broader issue in this area:
- Issues with the definition of the boundaries of responsibility between individuals and teams involved in contract management were noted on certain contracts. In these cases there is some uncertainty as to which teams have what responsibilities, leading to unnecessary tensions between operations and contract managers. An example of this was noted where assurance activities were not carried out as a result of confusion in responsibility.
 - Gaps in the understanding of delegated authority, decision making processes and escalation processes were identified as issues in a number of contracts reviewed (also See section A with respect to escalation of issues).
 - On some contracts it appears that MOJ does not consistently present a united management effort towards suppliers. Misalignment between contract and operations managers gives leverage to suppliers in these instances (see Section E.ii).
 - Staff on some contracts indicated that it is possible for key individuals to define their own roles based on personal capacity and experience.
 - On some contracts, mapping of individual roles to end-to-end management processes is obscured by complex organisations and management structures.
- 4.37 These issues contribute to a risk that key management activities and responsibilities may fall through the gaps between roles. Indeed, MOJ have identified issues of this happening in even the most commercially sensitive processes, such as the validation and payment of invoices. These instances have occurred where staff have assumed that someone else in the process is performing checks, creating circular approval processes where invoices are authorised against the suppliers' own summary data with very limited assurance checks. This issue is discussed separately in Section A and Section F.

¹¹ 'Procurement Directorate Relationship Management Guidance' located on the shared drive.

¹² Procurement Directorate 'Managing Contracts – Key Activities' document on the procurement intranet

Relevant evidence from other reviews

The audits of PECS and EM have identified that the roles and responsibilities of each team involved in the management of the contracts are not clearly defined or understood. In EM, for example, it found that it was not clear who was responsible for approving or checking the monthly invoices.

The Collinson Grant review concluded that there is a lack of guidance and definition of roles and responsibilities within contract management.

ii. Issues with the clarity of business ownership and accountability of service

- 4.38 Issues in relation to this key finding were identified in five (5) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.39 On some contracts it is apparent that there are issues with the understanding amongst contract and operations managers as to who within MOJ has overall accountability for the management the contract. Issues with ownership for the delivery of the service are also apparent. This has the potential to obscure escalation routes, slow decision making (refer to section A for further details), prevent issue resolution and in some cases has led to unclear ownership for policy and change.
- 4.40 There is a sponsor assigned to most contracts (a “Senior Responsible Officer” (SRO) in some cases), but instances were identified where there is limited understanding of the role of the sponsor specific to a contract and a lack of engagement from the sponsor in decision making. It is understood that the SRO role should apply throughout the contract lifecycle, but examples from this review suggest it is often focused on procurement, with limited involvement in contract delivery.
- 4.41 Where sponsors have been identified that are senior business users it is understood that the results have been positive. However, efforts to better engage business users have been met with resistance in some areas of MOJ.
- 4.42 There is limited central contract management guidance surrounding the business accountability for services and ownership of contracts. There is no guidance available setting out the suggested role of the SRO and the business, for instance.
- 4.43 A further consequence of unclear ownership and accountability is an apparent lack of connectivity to policy change. There are instances where policy owners are either not in place, or lack engagement and leadership to implement change.

Relevant evidence from other reviews

The PECS Audit has identified that whilst there are a number of teams with responsibility for different elements of the contract, it is not clear who has overall ownership or accountability for ensuring the contract is run as expected and who has oversight for monitoring performance against key performance measures.

The Collinson Grant review noted that there is a lack of accountability that has led to issues identified not being resolved. It also concluded that changes in Senior Management and the absence of effective handovers, long-term sickness absence and other factors all potentially contributed to this issue.

C. Resource capability and capacity

- 4.44 Appropriate staff levels with the capacity and skills to manage work are essential for the success of any contract. Where resource is insufficient or lacks appropriate skills and experience, any aspect of contract management is at risk of being missed. Issues were identified in ten (10) of the fifteen (15) contracts sampled in this review, as well as the two (2) EM contracts.
- 4.45 The key findings in this theme are detailed below as follows:
- i) Possible contract management resource issues
 - ii) Issues with professional skills, experience and training of some staff; and
 - iii) Skills and resources are not always effectively managed in a holistic manner.

Contract management good practice related to the issues identified

- i) *Contract management is adequately resourced, in proportion to the importance of the contract (primarily but not exclusively its cost), and there are enough staff to carry out the required activities.**
- ii) *The contract manager has the appropriate skills (both specific contract management skills and more general commercial awareness and expertise), with access to relevant training and development. Experienced contract managers are utilised on key contracts.**
- iii) *Balanced contract management teams are brought together, with an appropriate range of skills; the teams may vary in composition over the life of the contract to meet specific needs. Contract management is adequately resourced, in proportion to the importance of the contract (primarily but not exclusively its cost), and there are enough staff to carry out the required activities. The organisation has a contract management ‘community’ allowing contract managers to share good practice. The community also plays a role in the wider government contract management/ procurement community.**

**Reference: NAO “Good practice contract management framework”*

i. Possible contract management resource issues

- 4.46 Issues in relation to this key finding were identified in eight (8) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.47 A perception exists within some parts of the MOJ that insufficient contract management resource levels cause issues. Some staff perceive that they lack time to effectively fulfil their roles and are overburdened with responsibilities due, in part, to unfilled vacancies. There is an overall recruitment ban in MOJ, significantly increasing the time and management effort involved in filling specialist roles and securing approval and budget to increase resource. The mandated recruitment process is unavoidably long and may therefore compound this issue. For example, for posts that cannot be filled internally (e.g. specialist procurement posts) this can mean 6-8 months before external recruitment can progress.
- 4.48 Potential issues identified in relation to resource are listed below, which, when considered together, may indicate a broader issue in this area:
- Significant reductions in team sizes are understood to have occurred in some areas, without corresponding changes in governance or systems and no apparent reduction in the services and risks being managed. Whilst there is recognition amongst staff that innovation and management efficiency can be expected to improve over the term of long contracts, there is significant concern over resources available to assure services, monitor performance and manage contracts;
 - In at least one instance, the Finance team feel that they lack the resource to perform effective transaction testing, systems assurance, completeness checks or detailed investigation into errors. Some staff perceive that finance and assurance teams generally lack resource to perform data analysis;
 - Some contract managers identified that they would like more time to liaise with operations (service management in ICT) and review open book data;
 - Some contract managers reported a lack of time to provide contractual and commercial support to operations managers in resolving issues and negotiating change; and
 - Finance and assurance teams feel that in some cases they lack time to perform “supplier audits”, monthly assurance for payment applications and service data analysis (see section F.iv, sections A.i and iii).
- 4.49 Some areas of MOJ feel they are adequately resourced, although in some cases this appears to be due to a reduction in workload without a reduction in staff.

Relevant evidence from other reviews

The EM Audit supported that there had been a significant reduction in the size of the team managing the contract since its outset.

The Collinson Grant review concluded that there are indicators to suggest that the spend on EM contract management by NOMS as a proportion of contract value has been significantly below the historical spend levels on contract management across Central Government service contracts cited by a PAC report in 2008.

ii. Issues with professional skills, experience and training of some staff

- 4.50 Issues in relation to this key finding were identified in four (4) of the fifteen (15) contracts sampled.
- 4.51 Procurement Directorate guidance provides outline capability requirements for contract managers¹³. This includes:
- Outline descriptions of the contract manager training process.
 - Details on specialist procurement qualifications available to contract managers through MOJ.
 - An outline description of the MOJ and Procurement Directorate competence framework.
 - Outline examples of the types of specialist knowledge contract managers require.
- 4.52 Some contract and operations managers perceive that they have insufficient professional experience and skills to effectively fulfil particular responsibilities. Operations managers commonly have operational experience, but may lack professional knowledge to implement good management practice, identify management risks and make decisions with full understanding of contractual, commercial and legal implications.
- 4.53 A number of the senior stakeholders involved in the review noted a shortfall of skills or experience within the teams they manage. It was noted by staff that it is common for managers to be recruited through operational channels, which may lead to gaps in relevant experiences or qualifications in some areas. It was noted that CIPS (The Chartered Institute of Purchasing and Supply) qualification is encouraged for contract management roles, although not required.
- 4.54 Operations managers for prisons considered that the teams may benefit from specific finance, legal and contract management knowledge to better understand the commercial impact of contractual agreements made on site. This was also recognised as an issue by some contract managers.
- 4.55 The existing MOJ professional development framework does not appear to be used by all contract managers or operations managers. There are annual skills and capabilities assessments as part of the annual performance process. However, some staff noted that skills gaps remain in some areas.
- 4.56 There are some examples of good practice within the contracts reviewed, with staff feeling well supported by colleagues, good knowledge sharing from experienced senior managers and a positive approach to professional development. In these cases there is a good, albeit unstructured, approach to seeking knowledge and experience from other staff.

Relevant evidence from other reviews

The Collinson Grant report highlighted the lack of training for EM contract management staff. The report also noted it was not always clear that some of those involved in the contract management had the required in-depth understanding needed of the contract.

¹³ 'Procurement Directorate Relationship Management Guidance' located on the shared drive.

iii. Skills and resources are not always effectively managed in a holistic manner

- 4.57 This key finding is based on an overall observation of practices and not based specifically on instances on the reviewed projects.
- 4.58 There is an acceptance that MOJ's business requires movement of staff between roles, particularly in response to demands in tendering contracts. Teams often need to be temporary, with resource redeployed from other commitments. However, available resources across business functions are not consistently deployed and managed in a holistic manner.
- 4.59 It appears that contract managers and operations managers are often assigned to specific contracts or contract groups. These staff also sit within separately managed functions (such as Procurement \ Tender, Finance, Operations). This structure provides challenges in sharing resources, skills and knowledge within and across contracts and functions.
- 4.60 It was noted that a change programme is underway in procurement to move to "flexible post" recruitment. This should allow a more holistic management of resource but it is unclear if this is adopted across the other functions. Resource numbers may also limit the ability of senior management to redeploy staff efficiently.
- 4.61 Insufficient forward resource planning may have led to a lack of cohesive teams in some instances, and may have led to extensions of contracts in lieu of retendering in some cases.

D. Management information, reporting and contract data

- 4.62 High quality management information and underlying contract data is required to facilitate decision making, manage risk and give visibility of contract status and issues to management. Where high quality management information is not readily available, there is a significant risk that MOJ management is unable to identify or address supplier performance issues or make decisions on end-to-end service delivery. There are risks that MOJ staff are not used efficiently in the reporting process and that there is duplication of effort. Issues were identified in fourteen (14) of the fifteen (15) contracts sampled in this review, as well as the two (2) EM contracts.
- 4.63 The key findings in this theme are detailed below as follows:
- i) Standardised Management Information is not readily available;
 - ii) Frequency of meetings and reporting is inconsistent; and
 - iii) Management of data is inconsistent.

Contract management good practice related to the issues identified

- i) *There is regular and ad hoc reporting of contract management information.* Management information is distributed and made available to all key stakeholders.*
- ii) *Stakeholder engagement is appropriate for the nature of the contract, the customer considers the cost of contract management activities to the supplier, and the cost is proportionate to the contract size and risk.**
- iii) *Contract management software is used for recording key information, to give, for example, search capability; relevant on-going contract management information and documentation is retained and managed.* Management information reporting is aligned across contract groups enabling the aggregation and joint reporting at a senior level.*

**Reference: NAO "Good practice contract management framework"*

i. Standardised Management Information is not readily available

- 4.64 Issues in relation to this key finding were identified in six (6) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.65 Procurement Directorate guidance provides outline management information requirements for contracts^{14 15}. However, the guidance is limited to outline requirements and objectives.
- 4.66 Good quality Management Information (MI) does not appear to be readily available on some contracts reviewed. There is a risk that MOJ senior management has inadequate visibility of contract delivery status on which to make decisions and intervene on issues. Examples of good management reporting were however apparent in Major and Minor Works and some areas of ICT.
- 4.67 For some contracts, issues with a shortage of suitable reporting dashboards or summaries exist. Where reporting does exist it appears inconsistent, meaning that reporting across contracts at a department level to facilitate understanding of service and contract status by management is challenging. In some instances, in response to particular issues, contract status reporting has been introduced, such as in the case of Electronic Monitoring. This demonstrates the benefit of such reporting to provide visibility of service.
- 4.68 On some contracts reviewed, managers were not aware of, or were not receiving, reports or the outcomes of reports.
- 4.69 Commonly, contract management teams do not appear to be analysing raw data to provide insights on business impacts (see also Section F.i & F.iv). Examples were identified where individuals were aware of issues from correspondence or meetings, but information was not summarised at a contract level in a structured way, to provide status updates, highlight issues and facilitate management decisions.
- 4.70 Ad-hoc reporting requests do not make best use of resources and knowledge. It was evident that staff often receive ad-hoc requests for reports and updates on a frequent basis. Some staff perceive this to represent a top-three use of their time. Investment of time in activities such as this may prevent work on other priorities. However, it is recognised that ad-hoc reporting is a core requirement of MOJ, for Freedom of Information Requests, parliamentary questions and other senior and political stakeholder requests. It is inevitable that a proportion of management time will be needed to deal with these requests.
- 4.71 In some cases, for certain reports not contemplated in the contracts, examples exist where staff indicate that supplier assistance is often needed and they must trade goodwill for assistance completing reports.

Relevant evidence from other reviews

The PECS Audit has confirmed that the contractor management information carries a high risk of error and potential for deliberate misstatement. Collinson Grant noted that in a 2010 EM Internal Audit report the issue of a lack of access to source data linked to invoice payment was highlighted as high risk.

¹⁴ Procurement Directorate 'Managing Contracts – Key Activities' document on the procurement intranet

¹⁵ 'Procurement Directorate Relationship Management Guidance' located on the shared drive.

ii. Frequency of meetings and reporting is inconsistent

- 4.72 Issues in relation to this key finding were identified in nine (9) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.73 It was apparent from investigations that the frequency of meetings and reporting is perceived to be insufficiently defined on some contracts and contract groups. Issues with the clarity of terms of reference for particular meetings were also evident. For example quarterly stakeholder meetings are common practice across the operations management teams, however meeting attendees vary between contracts and also vary from meeting to meeting within contracts.
- 4.74 Specific issues identified in respect of meetings and reporting are listed below, which, when considered together, indicate a broader issue in this area:
- The ability to schedule or attend meetings at the required frequencies was identified as an issue on some contracts.
 - Examples have been identified where business users are not involved in the regular meetings. Some contract managers noted that there are no regular stakeholder meetings that include business users and the contract management team is not included in ad-hoc meetings between the business users and operations team.
 - It appears that reporting frequencies are not always defined and reporting is ad-hoc in some cases (see Section D.i above).

Relevant evidence from other reviews

The Collinson Grant review noted that the monthly and quarterly contract meetings did not resolve problems, had poor attendance or did not occur. A lack of evidence of meetings being held was noted in the EM Audit review.

iii. Management of data is inconsistent

- 4.75 Issues in relation to this key finding were identified in eight (8) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.76 Management of data across the MOJ (storage of data, records of data and data systems) appears to be inconsistent. Few instances were identified where relevant data management policies were applied by contract and operations managers. There appears to be a reliance on specific individuals for transferring information and data within contracts.
- 4.77 Procurement Directorate guidance is available to contract managers on the retention and management of contractual records. Procurement Directorate guidance specifies that a documented audit trail must be maintained¹⁶. Specific processes and data requirements are not defined.
- 4.78 Specific issues identified in relation to data management are listed below, which, when considered together, indicate a broader issue in this area:
- Data records and audit trails do not appear to be adequately maintained. For example, courts score supplier's performance for TFM services and have historically provided these directly to the supplier for them to aggregate. Until recently, MOJ did not keep its own record of the scores for future checking.

¹⁶ Procurement Directorate 'Managing Contracts – Key Activities' document on the procurement intranet

- Systems exist within MOJ to facilitate data management and access to information (e.g. Emptoris and shared drives), but these appear to be under-utilised and some issues were identified where staff reported trouble accessing data, in particular when remote.
- Issues were identified where the latest versions (or red-lined copies incorporating variations) of contracts were not available to contract managers and operations managers. In many cases staff were not clear about the protocols for managing contract documentation. Examples were identified where contract and operation managers appeared to be working from different versions of a contract, or recent NOCs/CCNs are not integrated into the contract.
- Data relating to supplier performance is often provided by suppliers. There is an inconsistent approach across the contracts reviewed regarding what data is requested. Examples exist where contract managers do not request appropriate data to enable reasonable production of MI. Staff were not aware of the protocols governing the types of data to be collected.
- MOJ's access to supplier data repositories varies across contracts. Staff perceive that there are supplier data access issues resulting from IT deficiencies rather than a lack of contractual obligation for the supplier to provide information.

4.79 Risks associated with poor data management and storage include:

- Limited protection against data loss due to lack of structure;
- Development of localised and inconsistent practices; and
- Lack of single source data leading to potential discrepancies between data held.

4.80 There are isolated cases of good practice amongst some contracts reviewed, where MOJ contract managers have established their own data management systems. For example, Prisons Contract Management have a shared drive folder structure to facilitate easy access to data. Major and Minor works have a common reporting structure which is accessible by stakeholders.

Relevant evidence from other reviews

The Collinson Grant review identified a lack of direct access to suppliers' data as a major weakness of contract management. The PECS Audit noted that data sharing systems exist, but are not fully operational and that MOJ requires more visibility and access to contractor source data.

E. Communication and Collaboration

- 4.81 Communication and collaboration is important within contract delivery teams responsible for complex contracts and sophisticated suppliers. Where communication and collaboration is ineffective, there is a risk to MOJ that services are not being delivered to the full needs of MOJ, and that risks and issues are not identified and effectively managed by contract and operations managers and other functions within MOJ. Issues were identified in fourteen (14) of the fifteen (15) contracts sampled in this review.
- 4.82 The key findings in this theme are detailed below as follows:
- i) MOJ may lose knowledge between phases of the contract lifecycle; and
 - ii) Differing levels of collaboration between MOJ functions in the management of contracts.

Contract management good practice related to the issues identified

- i) *There is a planned transition from the tendering/contract award phase to the contract management phase, and a handover to contract manager.**
- ii) *MOJ contract management teams provide a coordinated approach to engage suppliers and other stakeholders. Overall ownership of contract management across the organisation is clear, with a 'contract management senior responsible owner' with responsibility for driving organisation-wide contract management performance.**

**Reference: NAO "Good practice contract management framework"*

i. MOJ may lose knowledge between phases of the contract lifecycle

- 4.83 Issues in relation to this key finding were identified in six (6) of the fifteen (15) contracts sampled.
- 4.84 Guidance documentation from the Procurement Directorate highlights the importance of continuity between the tendering/contract award phase and contract administration phase of contract management¹⁷. There are no processes showing how this should be achieved.
- 4.85 A lack of knowledge transfer and lack of staff continuity between phases of the contract lifecycle has been an issue on some contracts. This is evident at the following junctures:
- Between the tender teams and the day-to-day contract management (represented by contract managers and operations managers) in executing the requirements of supplier contracts;
 - Between business users and tender teams in setting business requirements in new procurements, and between business users and contract and operations managers in understanding contracted services; and
 - Between contract managers / operations managers and tender teams in developing specifications and requirements that embed lessons from similar past contracts.
- 4.86 On some contracts, these failings are leading to increased risk that supplier services are not being delivered in line with the full needs of MOJ or the intent of contracts.
- 4.87 Examples of where this lack of knowledge transfer has been observed are detailed below.

Handover from tender to contract management

- 4.88 Our review highlighted examples of inadequate handover of contracts to contract managers and operations managers by the tender teams. The tender teams lead bids and often structure contractual terms. Even where formal transition arrangements have been put in place, examples exist where these have proven to be insufficient.
- 4.89 Staff from tender teams are not often permanently transitioned and embedded within day-to-day contract management teams and as a result the contract management team may have limited knowledge or record of the tendering process available to them. This practice has been cited by the NAO as facilitating good continuity and handover¹⁸. Where staff have been transferred from tender teams to contract management or operations teams, this has allowed knowledge to be embedded in the management of the contracts.
- 4.90 Examples where this issue has been exacerbated by the availability of tender documentation during the handover process are apparent. In the case of one IT contract, very little of the tender documentation appears to have been retained, and contract management have indicated that documents such as the business case are not available for reference.
- 4.91 A good practice example was observed in Major Works. Contract managers manage document transfer through the use of a document repository to ensure information is not lost throughout the contract life and beyond.

¹⁷ Procurement Directorate 'Managing Contracts – Key Activities' document on the procurement intranet

¹⁸ National Audit Office report on 'Central government's management of service contracts', HC 65, Session 2008-09, December 2008.

- 4.92 In respect of Minor Works and TFM contracts, some instances are apparent of business users contracting services without appropriate involvement from procurement. Staff perception is that this has resulted in lost value due to missed opportunities in alternative procurement routes that would have been identified by procurement.

Relevant evidence from other reviews

The Collinson Grant review noted that there *"...appears to have been a lack of formal handovers between those senior managers responsible for EM when responsibilities changed – which meant any concerns may have been lost in the regular transition of responsibilities that occurred and there was little evidence that key issues were passed on and discussed."*

Setting business requirements and understanding contracted services

- 4.93 On some contracts, examples are apparent where business users do not understand or do not agree with the services that have been contracted. Specific issues identified are listed below, which, when considered together, may indicate a broader issue in this area:
- Examples exist where business users criticise the services delivered because they are perceived not to meet business requirements. Business users may not understand that a cost – performance trade-off has been made in some cases, to ensure value for money. There appears to be a persistent issue with managing the TFM contracts and further examples in ICT and major and minor works.
 - Examples exist where business users feel they cannot engage effectively in service discussions because they do not understand or do not agree with the contracted services.
 - It is apparent that business users often do not engage in service development and service management discussions.
- 4.94 In some cases, where business users are responsible for developing business cases (particularly Major and Minor works and TFM), tender teams can be engaged too late in the process. As a result, tender teams may not gain sufficient understanding of the business requirements, therefore reducing the effectiveness of service procurement.

Embedding lessons learnt in future contracts

- 4.95 On many contracts, details of the processes and actions for capturing, sharing and applying lessons learnt were not articulated by contract managers. This is indicative of limited good practice activity in this area. By failing to identify and apply lessons learnt; innovation, experience and insight into issues is lost which exposes MOJ to the risk of repeating failures of the past. This also jeopardises continual improvement and cost efficiencies.
- 4.96 A 'Contract Management Lessons Learnt Checklist' exists within the Procurement Directorate and is available to contract managers. This includes a suggested template for lessons learnt reports.
- 4.97 There were however, examples of lessons learnt activities in procurement but limited application of operational insight appeared to be shared.

ii. Differing levels of collaboration between MOJ functions in the management of contracts

- 4.98 Issues in relation to this key finding were identified in eleven (11) of the fifteen (15) contracts sampled.

4.99 Contracts appear to have differing levels of collaboration between operations managers and contract managers, and with other related functions such as Finance and Legal. In the documentation reviewed there is no definition of the division of responsibility between operation managers, contract managers and other MOJ functions.

4.100 Specific issues identified in relation to collaboration are listed below, which, when considered together may indicate a broader issue in this area:

- On some contracts there appear to be issues with sharing of information that is relevant to contract delivery and necessary for issue resolution. This includes contract changes. In the contracts where this issue applies, inconsistent supplier management may result, where issues and risks are not managed effectively. It is apparent that decisions and changes are sometimes made between operations managers and suppliers without contractual support and an understanding of the contractual implications of changes.
- There is a particularly significant risk to MOJ where operations managers deal with sophisticated suppliers, without the necessary knowledge of contracts to defend and promote MOJ's contractual position and rights. This may leave MOJ exposed to suppliers exploiting better understanding of contracts. Some instances are apparent where operations managers are not familiar with contracts or lack contractual skills or knowledge (see Section C.4.49), yet feel responsible for negotiating contract changes with suppliers without support from contract managers.
- There are examples in prison contracts of operational decisions being made by operations managers without consultation with contract managers. In this case formal contract changes are understood to be processed after supplier agreement on site. In contrast, there are examples of good practice where MOJ maintains a strong contractual position with a coordinated approach towards suppliers.
- There was one example noted where poor confidence between contract managers and operations managers existed.
- In prisons contracts, contract managers and operations managers have achieved improved collaboration through quarterly contract management meetings and dedicated knowledge sharing sessions in which good practice is shared.
- There are examples on some contracts with issues in respect of MOJ legal services:
 - i. On some contracts, legal services have highlighted examples where it would have been beneficial for them to have been engaged prior to contractual dispute;
 - ii. There may be a perception that legal service lack resource to engage on all contracts; and
 - iii. Examples exist where contract teams have engaged external legal services without consulting or informing internal Legal services.

It is understood that Legal services have limited resource and so there is a defined process controlling and guiding when contract teams engage. Some areas of the contract cannot be changed in the contract management system (Emptoris) without legal approval.

Relevant evidence from other reviews

The EM Audit review has concluded that a lack of communication had impacted the ability of the contract management team to deliver a consistent approach to managing two contractors. It identified that the invoice 'checking' process would have been better if there had been a closer relationship between contract management and MOJ Finance. The PECS Audit noted that communication and collaboration between the teams managing the contract needs to be improved.

F. Performance management, measurement and monitoring of service delivery

- 4.101 Appropriate measurement and monitoring of services delivered is one of the most important contract management activities to ensure requirements are met, management of risks and opportunities and to allow challenge and scrutiny of supplier charges. Where measurements and monitoring is ineffective, MOJ is exposed to risks that the intended end-to-end services are not being delivered, or MOJ is not carrying out essential activities for which it is responsible.
- 4.102 Outline guidance on management of performance is available to contract managers. The guidance specifies a number of basic requirements and provides suggested information sources for effective monitoring¹⁹. The guidance does not provide processes for contract managers to follow. Guidance on the supplier performance module of Emptoris is also available to contract managers²⁰.
- 4.103 Issues were identified in ten (10) of the fifteen (15), as well as the two (2) EM contracts sampled in this review.
- 4.104 The key findings in this theme are detailed below as follows:
- i) MOJ does not consistently measure end-to-end service delivery;
 - ii) KPIs are not always accurately reported and may not reflect actual service delivered or known service deficiencies;
 - iii) Examples exist where MOJ does not adequately define and monitor the KPIs to prevent interpretations by suppliers that adversely impact MOJ; and
 - iv) MOJ often relies on supplier self-reporting of performance and does not always validate services or assure supplier systems and processes.

¹⁹ 'Procurement Directorate Relationship Management Guidance' located on the shared drive; and Procurement Directorate 'Managing Contracts – Key Activities' document on the procurement intranet

²⁰ See 'Supplier Performance Management – Overview' document

Contract management good practice related to the issues identified

- i) *Reporting is as far as possible on a focused, 'by exception' basis, with supplier self-measurement and reporting where appropriate but with independent checking mechanisms to alert the customer to performance issues (for example, user feedback).**
- ii) *A performance management framework is in place when the contract is signed. The framework is comprehensive, objective and provides incentives for the supplier to meet or exceed agreed performance standards.* Performance metrics accurately reflect the service provided and deficiencies are effectively escalated.*
- iii) *Supplier performance is assessed using clear, objective and meaningful metrics, linked where appropriate to the Office of Government Commerce's 'Common Assessment Framework' for monitoring suppliers.**

**Reference: NAO "Good practice contract management framework"*

i. MOJ does not consistently measure end-to-end service delivery

- 4.105 Issues in relation to this key finding were identified in five (5) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.106 Examples exist where contractual KPIs are limited to measuring supplier inputs to a service and MOJ does not always measure the end-to-end service outputs. Note that the terms KPIs, KPTs, CDIs and SLAs are used somewhat interchangeably within MOJ and within this report we refer to them as KPIs.
- 4.107 This limitation in KPIs may reduce MOJ's visibility of:
- Overall service performance including the ability to assess the quality and volumes of services delivered; and
 - Where elements of a service or process are not measured.
- 4.108 It was evident in some cases that KPIs measuring inputs in this way have unintentionally created incentives for suppliers to act against MOJ's best interests. For example, a recent contractual dispute demonstrates where the supplier has focussed on the measured activities rather than delivering the services as defined in the contract, even though there were no commercial incentives for focus on the KPI.
- 4.109 The lack of end-to-end service measurement is particularly evident in contracts where interaction with other agencies or Authority bodies forms part of the process. This includes, for example, the interface with Police and courts for PECS, Community Payback and Electronic Monitoring contracts.
- 4.110 Specific issues were identified that inhibit end-to-end service monitoring are listed below, which, when considered together, indicate a broader issue in this area:
- Examples were identified where suppliers are perceived to be resistant or unhelpful;
 - On some contracts, there is limited access to, or understanding of, end-to-end service data including supplier data;
 - There is a perception amongst some contract management teams that they have insufficient time to implement improved KPIs; and
 - Instances exist where there is a lack of understanding of the role of MOJ in the end-to-end service provision, and a consequential lack of measurement of elements of service delivery which are not part of the supplier's responsibility.
- 4.111 Conversely, where contracts have KPIs that measure service outputs, rather than supplier inputs, examples were identified where suppliers complain that they are being penalised for matters out of their control. In one instance, the supplier KPI was changed to measure supplier input, but it was not clear if the service output was still being measured for MOJ's management purposes, which was the original intent of the KPI in the contract.
- 4.112 In order to have visibility of end-to-end service, MOJ need to measure contractual obligations and service elements that are not direct supplier obligations, and measure a combination of inputs and outputs.
- 4.113 In some instances there was a lack of recognition by contract and operations managers that non-contractual KPIs can be effective in influencing the supplier. In the case of Prisons, the "Prisons Rating System" is the primary means of managing supplier behaviour, which is non-contractual.

- 4.114 There is a risk that where KPIs do not influence the supplier behaviour they lose their importance.
- 4.115 Examples of end-to-end KPIs and supplier measurement were observed in Major works and Community payback, where a combination of supplier outputs, MOJ activities and overall service measures are monitored.

ii. KPIs are not always accurately reported and may not reflect actual service delivered or known service deficiencies

- 4.116 Issues in relation to this key finding were identified in seven (7) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.117 On some contracts, KPIs may not accurately measure the service received by the business user. In addition, examples have been identified where KPIs do not measure the intended service benefits. Inaccurate or misrepresentative KPIs undermine the value of the reporting process.
- 4.118 Specific issues identified in relation to KPI accuracy are listed below, which, when considered together, indicate a broader issue in this area:
- An example of KPIs reported as green when no actual services were delivered;
 - Examples where the measurement of the KPI is inconsistent; and
 - Examples where service delivery KPIs do not reflect benefits delivered to MOJ.
- 4.119 In some cases, it is apparent that reported KPIs and performance measures do not reflect the business user views on the quality of service being delivered. One of the issues is the limited knowledge of contracted services by some business users. In TFM for example, business users are responsible for reporting some KPIs, but tend to measure outputs against their current desires rather than the contracted services.
- 4.120 On some contracts, examples exist where KPIs are reported at a regional level and are aggregated to such a level that serious events at a contract level are not visible. A risk therefore exists that penalties in contracts are not applied even for serious incidents and therefore do not incentivise the suppliers in accordance with the contractual intent.

Relevant evidence from other reviews

The PECS Audit has identified instances where a contractor incorrectly reports key KPIs and there is evidence of deliberate misreporting.

The TFM Audit has identified a number of instances where it appears that KPIs were inaccurately reported and these practices had potentially been in place from the beginning of the contract.

iii. Examples exist where MOJ does not adequately define and monitor the KPIs to prevent interpretations by suppliers that adversely impact MOJ

- 4.121 Issues in relation to this key finding were identified in three (3) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.122 On some contracts, instances of KPIs lacking definition were evident. It is possible that suppliers are able to interpret the meaning of KPIs to measure their preferred area of service, for example where the start and end point of the KPI to be measured is not defined in the contract.

- 4.123 This may prevent MOJ from having visibility of the intended area of service delivery, and may also obscure whether the reported KPI is measuring the intended service. For example, on EM, the definition of some KPIs was such as to give the supplier the ability to determine which events to use to measure the start and the end of each KPI. Additionally, the definition of some EM KPIs was never agreed at the outset of the contract, so the supplier simply reported them as green without measuring anything.

Relevant evidence from other reviews

The PECS Audit noted that a supplier adopted practices for recording KPIs that inflated their actual performance. Collinson Grant noted that the EM contract had inadequate KPIs and performance benchmarking requirements.

The TFM Audit found that the number of KPIs required under the contract was a challenge to manage for both supplier and MOJ.

iv. MOJ often relies on supplier self-reporting of performance and does not always validate services or assure supplier systems and processes

- 4.124 Issues in relation to this key finding were identified in seven (7) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.125 For some contracts there appears to be limited MOJ activity to validate, test or assure that suppliers have provided the contracted service. Supplier self-reporting appears to be commonly accepted with limited challenge. This is evident on TFM, PECS, Community Payback and Electronic Monitoring.
- 4.126 There are a number of risks and issues related to unchecked supplier self-reporting:
- Suppliers can become complacent and quality of service can be reduced;
 - Suppliers can become over dominant in negotiations; and
 - Interactions and compliance with payment mechanisms can be reduced.
- 4.127 Long term contracts are most at risk of these issues arising. In some instances, active efforts have been taken to overcome these risks including embedding MOJ staff within suppliers.
- 4.128 There is a Supplier Performance Management module in Emptoris (NOMS contract management system) which is available to the contract management teams, but is generally not used. It requires set-up at the outset of a contract and alignment with the contractual reporting requirements, which does not appear to happen.

Relevant evidence from other reviews

The PECS Audit identified that MOJ has issues with access to and visibility of source data on which the contractor reports and cannot apply sufficient scrutiny to contractor performance figures.

The EM Audit highlighted that an Internal Audit in 2010 by MOJ noted that the checks performed in relation to billing relied on data provided by the supplier.

G. Validation and assurance of supplier delivery and charges

4.129 Verification of services delivered against supplier charges is one of the most important contract management responsibilities in managing MOJ's commercial risk. There are significant commercial and service management implications where verification of services and charges is not effective. Issues were identified in ten (10) of the fifteen (15) contracts sampled in this review, as well as the two (2) EM contracts.

4.130 The key findings in this theme are detailed in this section as follows:

- i) Identified issues with levels of verification of services delivered;
- ii) Inconsistent control over the invoice processes; and
- iii) Limited evidence for use of an effective risk-based assurance strategy.

Contract management good practice related to the issues identified

- i) *Payment processes are well defined and efficient; appropriate checks and authorisation processes are in place for paying invoices.**
- ii) *Stakeholders are aware of the end-to-end invoicing process and understand their roles and responsibilities, and in particular authority levels, in the overall process.*
- iii) *Invoice assurance processes are proportionate to the overall liability and risk of the contract. Incentive structures (financial or non-financial) relate clearly to desired outcomes, and are well managed and governed, with appropriate checks and approval mechanisms.**

**Reference: NAO "Good practice contract management framework"*

i. Identified issues with levels of verification of services delivered

- 4.131 Issues in relation to verification of services delivered were identified in seven (7) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.132 The practice of authorising invoices based on review of data against suppliers’ own service summary data was identified on some contracts. This places reliance on suppliers to:
- Invoice accurately;
 - Invoice only for services provided; and
 - Apply any relevant penalties or performance related adjustments correctly.
- 4.133 MOJ’s reliance on suppliers to self-certify their invoice applications exposes MOJ to risks of supplier overcharging, as evidenced in a number of on-going disputes with suppliers regarding invoicing. Where assurance activities to validate invoices against services received are more active, there were examples where MOJ regularly applies substantial penalties for poor performance and for services not delivered. This demonstrates the importance of challenge and scrutiny by MOJ, and highlights the risk to MOJ on contracts where assurance activities and scrutiny of invoices does not take place.
- 4.134 In cases where it has been identified that suppliers’ invoices are inaccurate and MOJ are required to make corrections, some contract managers consider that suppliers are not correcting deficiencies in their billing practices and ensuring the accuracy of their own invoices in the future. It is apparent from this that MOJ may not in all cases require suppliers to change billing practices where known issues are identified.
- 4.135 In some instances it has been identified that MOJ has minimal visibility of what is being delivered, and what is being paid for. On certain contracts, the differences between services delivered and the amounts invoiced are therefore unknown to MOJ. The risk and potential impact to the business of these issues is demonstrated in the recent commercial disputes with some suppliers that have implications dating back several years.
- 4.136 On some contracts investigations suggest that MOJ uses suppliers’ own volume data to assure the accuracy of payment applications. Instances where there is an absence of robust auditing or assurance of supplier systems, processes or methods have been identified.

Relevant evidence from other reviews

The EM Audit highlighted that contract management staff failed to fully understand and challenge the contractor on billing practices, thus compromising its commercial position.

The PECS Audit noted inadequate dip testing that failed to identify significant invoicing errors.

Collinson Grant identified that checks of billing and monthly invoices for the EM contracts were no more than arithmetical verification with no effective processes for reconciling purchase orders or goods received. It went on to identify that bills were being paid without clarity on volumes or any direct way of reconciling billing with actual volumes.

ii. Inconsistent control over the invoice processes

- 4.137 Issues in relation to verification of services delivered were identified in one (1) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.

- 4.138 Procurement Directorate documentation requires individual contract managers to define procedures for the checking, certifying and processing of invoices. Only outline requirements are set in the Procurement Directorate guidance. No central process is provided.
- 4.139 It is apparent that some contract management staff lack understanding of the end-to-end invoice process. On many of the contracts reviewed, contract managers do not appear to be involved in the invoicing process and are generally unaware of process details. Cases where contract managers are not involved in validation or authorisation have been identified.
- 4.140 Most staff met with in this review were able to articulate the extent to which they were personally involved. However, there appeared to be few instances where the approval and sign-off process was documented or well understood by all team members. In one instance (EM), a documented invoice process was identified, but the contract and operations managers were unaware of it and confirmed that it was not accurate as it included activities that they did not perform.
- 4.141 Where end-to-end invoice approval and validation processes are not mapped or not understood by the appropriate stakeholders, there is a risk that MOJ is paying for services not received or failing to apply payment reductions appropriately.

Relevant evidence from other reviews

The PECS Audit has identified that the tests and checks performed on data from the supplier have been insufficient.

The EM Audit similarly identified that the frequency, extent and rigour of the testing undertaken has been insufficient for the complexity of the contract.

iii. Limited evidence for use of an effective risk-based assurance strategy

- 4.142 Issues in relation to verification of services delivered were identified in nine (9) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.
- 4.143 Use of an integrated assurance strategy or plan by contract and operations managers was not identified for any contracts reviewed. This was generally apparent from the limited understanding by key stakeholders of the current assurance activities taking place on the contracts reviewed.
- 4.144 It was clear that assurance activities do occur on some contracts. These include dip test random sampling and broader assurance across MOJ's business function, including by the NAO. However, these activities do not appear to be coordinated as part of a broader strategy that takes account of the risks across a range of contracts, or that considers specific risks within contracts. If activities are coordinated as part of a strategy, this is not apparent to all key stakeholders.
- 4.145 In some cases, assurance activities that are being undertaken have proven to be ineffective or unsuitable and major issues within some contracts have arisen recently.

Relevant evidence from other reviews

The EM Audit identified that contract managers did not perform any procedures to check that the information provided by the contractors, which formed the basis of the invoices, was accurate. It identified that they did perform procedures to verify the mathematical accuracy of such information, but they did not check that the data itself was reliable. In doing so, they overlooked key risk areas.

5. Recommendations

- 5.1 This section presents a series of priority recommendations which should be considered by MOJ for immediate action as a first step in addressing the highest risk issued identified as part of this review.
- 5.2 These priority actions are set out under the following subheadings:
- Undertake risk assessments for high risk contracts;
 - Develop contract assurance plans for high risk contracts;
 - Strengthen processes for payment and service verification on high risk contracts;
 - Establish or enforce governance processes for issues, changes, payments and service verification;
and
 - Assess the scale of change required within MOJ contract management.
- 5.3 In addition to these priority actions, Appendix B presents a complete set of recommendations in the form of specific and tactical actions and these are aligned to the each of the issues highlighted in the findings. The recommendations in Appendix B are set out under the themes consistent with the findings in this report, and structured as follows:
- Governance, process documentation, decision making and escalation;
 - Definition of Roles and Responsibilities;
 - Resource capability and capacity;
 - Management information, reporting and contract data;
 - Collaboration and Communication;
 - Performance management, measurement and monitoring of service delivery; and
 - Validation and assurance of supplier delivery and charges.
- 5.4 The root causes of some findings are thought to result from issues within MOJ's broader organisation and governance of contract management. Section 5 sets out next steps that MOJ should consider in moving its organisation and governance towards a good practice model.
- 5.5 The remainder of this section sets out the priority recommendations.

Priority Recommendations

i. Undertake risk assessments for high risk contracts

- 5.6 Objective: To ensure that all contract management stakeholders have clarity over contract risk and delivery risk, enabling active risk management and improvements to contract management processes.

5.7 It is recommended that MOJ carry out a risk assessment exercise for all contracts. This should include assessment, understanding and mapping of all individual risks. The following immediate steps should be considered:

- Perform an initial high-level assessment of the risk profile of all MOJ managed contracts;
- In the immediate term, for contracts identified as high risk, conduct risk assessment workshops involving all key contract management stakeholders;
- Rank each identified risk and develop a map providing an immediate snap-shot of key risks; and
- Use the outputs from this process to inform the development of assurance plans and to assess processes (see priority recommendations (ii) and (iii) below).

ii. Develop contract assurance plans for high risk contracts

5.8 Objective: To ensure that MOJ has adequate assurance over risks within its high risk contracts. Assurance for each contract should provide MOJ with appropriate levels of confidence over each relevant risk identified.

5.9 It is recommended that MOJ puts in place a risk-based assurance plan for each of its high risk contracts. For each of these contracts the following immediate steps should be carried out:

- MOJ should undertake a process to understand the sources of assurance available for application to each contract. A 'three lines of defence' model should be considered for this, with sources of assurance being identified at different levels within and outside MOJ. These include:
 - 1st Line - Assurance through design and operation of robust contract control processes and systems;
 - 2nd line - Assurance through operation of management controls and monitoring; and
 - 3rd line - Independent assurance from either within the MOJ, such as from internal audit, or assurance from external sources such as the NAO or external auditors.
- MOJ should develop a written plan for each high risk contract linking assurance levels to each risk. The types and frequency of assurance planned against each risk should be driven by its risk ranking. The plan should show each risk and the planned timing/frequencies of assurance activities.
- The plan will enable MOJ management to quickly identify risks and gain comfort that they are covered by appropriate and planned assurance.

iii. Strengthen processes for payment and service verification on high risk contracts

5.10 Objective: To ensure MOJ has robust processes in place on its high risk contracts with sufficient controls to prevent issues with supplier payments and service delivery.

5.11 As part of the 1st line of defence (as outlined in the contract assurance recommendation above), it is recommended that for each high risk contract, MOJ ensures that adequate and documented processes are in place for payment and service verification. The processes should have sufficient controls embedded so as to mitigate or provide assurance over key risks identified. The following should be carried out:

- Where not already documented, the currently used payment and service verification processes should be fully mapped and documented;

- An assessment of the adequacy of the process should take place to assess whether sufficient controls are embedded to provide assurance over identified risks.
- New controls should be designed into the processes where control gaps are identified;
- Any new process changes should be reconciled against the contract to ensure adequate contractual mechanisms are in place to enable the process to function as planned; and
- Where not already documented, roles and responsibilities associated with payment and service verification processes should be fully documented. A 'RACI' matrix for each process should be documented and communicated to all those involved in management of the contract.

iv. Establish or enforce governance processes for issues, changes, payments and service verification

5.12 Objective: To ensure that accountability, decision making authority levels and escalation for key processes are fully understood and enforced on high-risk contracts.

5.13 It is recommended that for high risk contracts the governance processes (at an individual contract level) for issues, changes, payments and service verification are either identified and documented or existing processes enforced. The following priority actions should be carried out for all high-risk contracts:

- Where not already documented, the current governance processes for issues, changes, payments and service verification should be documented and communicated to all involved in management of the contracts. Gaps in the governance documentation and processes should be identified and remediated. Priority items include the following:
 - Contract specific organisation charts for (1) governance bodies/meetings/forums; and (2) contract specific issues escalation.
 - Terms of reference for all governance meetings to include as a minimum: (1) membership; (2) purpose and role; (3) frequency; and (4) decision making rights and accountabilities.
- If not present already, a documented decision making and escalation process for issues should be defined and communicated to all involved in management of the contract.
- Direction should be issued by MOJ to contract managers and operations managers restating and enforcing the role and accountabilities of the contract owner or SRO.

v. Assess the scale of change required within MOJ contract management

5.14 This priority action requires MOJ to undertake an assessment of MOJ's current contract management organisation in order to identify the scale of any change required. This is outlined in Section 5.

6. *Assessing the scale of change required*

6.1 The recommendations set out in the preceding sections and in Appendix B are aimed at remediating the specific issues identified through this review. This section provides an outline route-map for the assessment of the scale of change required, and subsequent design and implementation of change. It also sets out a target process maturity level for contract management against the NAO framework. The section is structured as follows:

- Establishing future requirements for MOJ contract management capability;
- Process maturity; and
- Initial route-map.

i. Establishing future requirements for MOJ contract management capability

6.2 Before designing the future state of the MOJ procurement and contract management functions, it is important that the leadership team considers and sets out its future requirements. This should consider:

- Government initiatives;
- Future contracting strategies over the short and medium term;
- The balance between people capability and rigorously defined process;
- The target level of process maturity and the balance between affordability and commercial or reputational risk in terms of both the cost of change and long term operating costs; and
- Acceptable timescales to achieve the future requirements.

ii. Process maturity

6.3 Through this review of MOJ contract management practices and process documentation (set out in paragraphs 6.5 to 6.12 below), it has been possible to baseline MOJ's current level of maturity in each of the NAO good practice areas against general maturity levels set out in the maturity framework in Figure 6.



Figure 6. Contract management maturity framework general requirements

6.4 The framework in Figure 6 comprises five maturity levels. More detailed requirements relevant to each area of the NAO framework are shown in Figure 15 below.

Contract management process documentation

6.5 In order to inform the maturity assessment of contract management within MOJ, a review of MOJ contract management process documentation has been carried out. The Procurement Directorate maintains documentation relating to contract management. The documents are organised into three groups:

- Polices;
- Procedures; and
- Toolkits.

6.6 There is some alignment between these three MOJ groups and the three levels of contract management document frameworks that typically represent good practice in other organisations. This alignment is indicated in Figure 7.

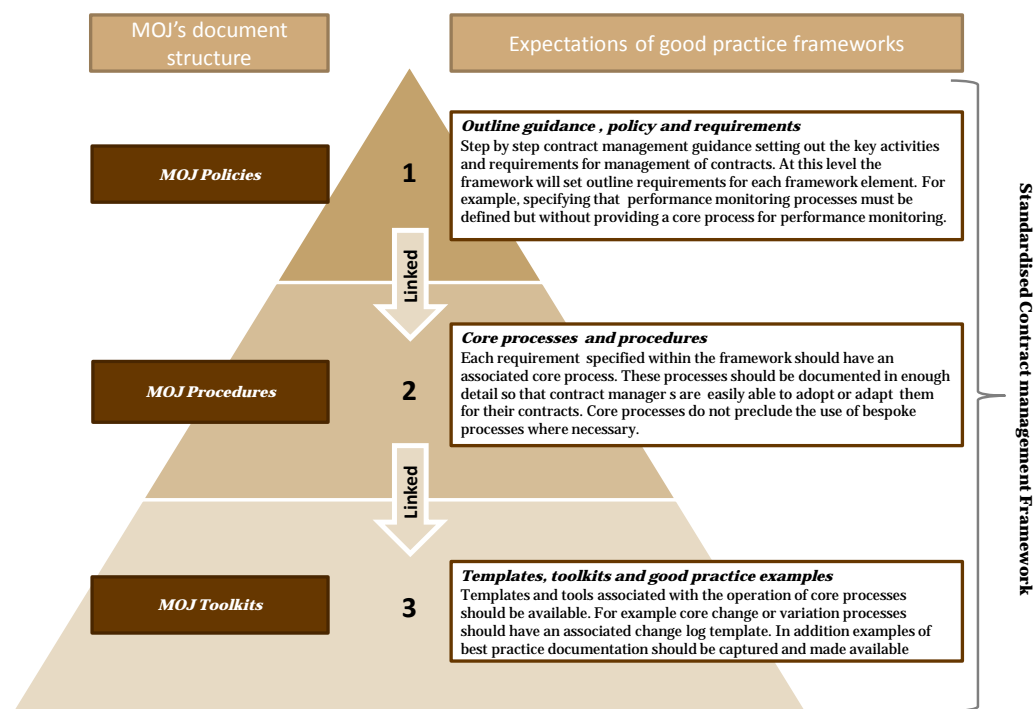


Figure 7. Central elements of good practice document frameworks for contract management

6.7 However, there are significant weaknesses in the content and the structure of the MOJ documentation that means that it does not align with good practice and that have led to the documentation not being adopted by contract managers in most instances. The specific weaknesses are set out in paragraphs 6.8 to 6.12 below.

Coverage of the documentation

6.8 The majority of MOJ documents are evidently at levels 1 and 3 against the levels set out in Figure 7 above. There is a clear absence of process documentation that would be regarded as fulfilling the requirements of good practice at level 2. Those process documents that do exist appear to be ad-hoc, and are only basic. As a consequence there appears to be a reliance on those involved in contract management to have the knowledge and capability to develop their own processes.

6.9 At level 1, a number of documents set out broad requirements for contract management²¹ and, although at a basic level, fulfil most of the expectations of good-practice at this level.

6.10 At level 3, a number of toolkits and templates are available to contract managers. However, the absence of suitable level 2 processes to direct or govern their use means that their application is not standardised across MOJ contract managers. Some key templates and toolkits that would be expected at level 3 do not exist.

6.11 A review of the documentation and its accessibility has highlighted that the current structure of the documentation is not clear, is not communicated to contract managers and is not intuitive. The following observations have been noted:

²¹ 'Procurement Directorate Relationship Management Guidance' located on the shared drive; and Procurement Directorate 'Managing Contracts – Key Activities' document on the procurement intranet

- It is not clear whether there is an overarching contract management policy/framework document to be used as the first 'port of call' for contract managers. Within the two 'requirement' documents²² located within the Policy section of MOJ's document depository, there is duplication and it is unclear whether either or both of these should be being used.
- The documentation structure is difficult to follow, and there is an absence of any cross-referencing within documents. There is a clear absence of any overarching documentation that links the policies, procedures and toolkits. For instance, of those documents that do exist in the policy and procedures sections, there are no references made to relevant Toolkits.
- It is understood that a cross-referenced structure had previously existed in the form of an intranet site and embedded links within documents. However, rationalisation of government intranet sites has led to the intranet site being removed and it is understood that links within documents are not permitted under MOJ policy. MOJ is understood to be working on refreshing the structure.
- Some of the documents provided for review originated from outside the Procurement Directorate and are not available within the Procurement Intranet or Procurement shared drives. For example, a template for lessons learnt originated from the Change Directorate. This lack of centralisation adds to the concerns that contract managers will be unaware of the documents' existence or unable to access them readily.
- There is a lack of clarity as to the organisation of some of the documents, potentially leading to further confusion and lack of confidence in the documents by contract managers.

Content of documentation

6.12 In the course of the document review a number of issues were evident in relation to document content. Examples of these are as follows:

- In some cases, there is a recognition within MOJ that the quality of the documentation is not to a suitable standard. For example, the document referring to roles and responsibilities located in the Toolkits section is recognised by the Procurement Directorate as needing a refresh, as it is not clear how contract managers should use this document or what it was intended to do. As a further example, the role and responsibilities of the SRO or business owner did not appear to be defined in any of the documentation made available for review.
- Instructions for the use of Emptoris contract management software are available on the Procurement Intranet. However, these instructions are not linked to any other guidance or toolkits. Neither of the two key framework documents²³ mentions Emptoris. It is not immediately clear from these documents how Emptoris should be used by contract managers and for what purposes, making its standardised use by contract managers highly unlikely.
- Few of the documents reviewed had standard document control procedures applied. The majority of the documents reviewed were not dated, had no version control and had no defined owner.

²² 'Procurement Directorate Relationship Management Guidance' located on the shared drive; and Procurement Directorate 'Managing Contracts – Key Activities' document on the procurement intranet

²³ 'Procurement Directorate Relationship Management Guidance' located on the shared drive; and Procurement Directorate 'Managing Contracts – Key Activities' document on the procurement intranet

Current state and target process maturity

- 6.13 An assessment of MOJ's current maturity within each of the NAO 'Good practice contract management framework' areas has been made and shown in Figure 8 to Figure 15. These figures show current and target maturity levels for MOJ's contract management organisation set against the characteristics that define each maturity level for the eight NAO framework areas.
- 6.14 The figures have been based on the findings relating to contract management practices and the findings on documentation outlined in this report.
- 6.15 In making assessments of the current state of MOJ's practices, consideration has been given to the variability in practices uncovered. In some of the framework areas a mix of good practice and poor practice has been observed across the different contracts reviewed, as set out in this report. This provides challenges in assessing the current maturity levels within MOJ. However, in all framework areas, it is clear that MOJ's practices fell short of being "standardised" Level 3.
- 6.16 The minimum target maturity levels range between 4 and 5. The target maturity levels shown in the figures are the minimum levels suggested to remediate the specific issues identified in this report. However, the following two considerations should be understood in reference to the minimum targets:
- To achieve all requirements set down in the NAO framework, MOJ should seek to achieve a Level 5 maturity in all areas.
 - The minimum levels that MOJ should target will need to be informed by the overall future requirements for contract management, including assessments of the specific risks associated with its on-going and future contracts.

Planning and Governance





	1 Ad-Hoc	2 Informal	3 Standardised	4 Monitored	5 Optimised
Current and Target maturity					
Planning and governance	<ul style="list-style-type: none"> • No governance processes or systems • Contract managers operate with complete autonomy • No management visibility or control • No clear ownership of contract management • No planned transition between CM phases 	<ul style="list-style-type: none"> • Governance processes or systems in place on some contracts. Unlikely to be standard, consistent or aligned with MOJ governance • Some contracts have a contract management plan but not this is mostly absent • Limited reporting of issues to senior management • Some knowledge is transferred between CM phases but this is not well planned. 	<ul style="list-style-type: none"> • There are standardised CM governance processes in place and used across all contracts. These align in parts to wider MOJ governance. • Contract management plans are used on all contracts with standardised content • Issues and risks are visible at all levels of MOJ management • Improvements in the governance processes are identified • A standardised process is in place for transfer of knowledge between CM phases 	<ul style="list-style-type: none"> • Governance processes generate clear, useful and standardised management information assisting in MOJ decision making • The governance processes are automated, with systems available for reporting and monitoring of issues and risk • Regular and planned assurance activities take place, driven by the requirements of CM governance structures 	<ul style="list-style-type: none"> • Contract management guidance and framework meets best in class standards and is easily accessible by all contract managers • Knowledge management is embedded and key data and lessons learnt are captured within Contract management and across MOJ more widely • Regular improvements are made to governance processes to ensure they remain leading class
Key					
 Assessment of current state		 Suggested minimum target maturity*			

Figure 8. Current state assessment and target contract management maturity for Planning and Governance (*Future state to be confirmed through separate assessment of business needs and achievability)

People







	1 Ad-Hoc	2 Informal	3 Standardised	4 Monitored	5 Optimised
Current and Target maturity					
People	<ul style="list-style-type: none"> • No continuity between contract management roles • Resource issues present • Contract manager has no knowledge of the contract or has not read it • The contract manager does not have the necessary skills or experience • Central job descriptions are not available and objectives are not set • There is no training available 	<ul style="list-style-type: none"> • Some contracts involve the contract manager and business users in the tendering phases but this is not common • Contract managers have a basic knowledge of key parts of the contract • Contract managers have documented job and role descriptions but these are not standard across MOJ • Contract managers have variable capability • Training is available but it is not standardised or mandated 	<ul style="list-style-type: none"> • Contract management is adequately resourced • A standardised MOJ wide process ensures contract managers and business users are fully integrated into tender teams • Contract managers are fully conversant with the contract • Role and job descriptions are standardised across the MOJ • Standardised training is available with mandatory requirements. Staff are regularly assessed for competence 	<ul style="list-style-type: none"> • Regular reporting and metrics are available to management on the performance and competence of CM staff • People inputs are rigorously planned across the whole contract life-cycle • Capability assessments and people performance monitoring are automated on standard MOJ systems • Competence assessments form part of a wider assurance framework 	<ul style="list-style-type: none"> • Contract managers are all experts in their field with subject matter experts employed for management of bespoke contracts • A formalised contract management 'community' has been set up and facilitated by MOJ for staff to share knowledge and experience
Key					
 Assessment of current state		 Suggested minimum target maturity*			

Figure 9. Current state assessment and target contract management maturity for People(*Future state to be confirmed through separate assessment of business needs and achievability)

Administration

	1 Ad-Hoc	2 Informal	3 Standardised	4 Monitored	5 Optimised
Current and Target maturity					
Administration	<ul style="list-style-type: none"> • Hard copy contracts are not stored or logged • No contract management software or systems are available • Administrative mechanisms are not defined or planned • No management information of produced or reported 	<ul style="list-style-type: none"> • Hard copy documents are retained but the process is driven at contract level and not standardised • Software is available but not used • Administrative mechanisms are present but not planned or standardised • Management reporting is informal and does not use standard templates or metrics 	<ul style="list-style-type: none"> • There are standardised policies and processes for hard copy document management • Plain English contract summaries are produced • Software use is standardised across MOJ for contract management • Administrative mechanisms form part of standard MOJ processes • Management reporting is formalised but may not be aggregated across MOJ 	<ul style="list-style-type: none"> • Management information is standardised and in a form which makes it possible to manipulate and aggregate across MOJ • Automated system links are present between functions involved with administration 	<ul style="list-style-type: none"> • Administrative processes are fully automated, linked and integrated across MOJ functions and business units. • Systems enable ad hoc interrogation by management for production of bespoke reports

Key

	Assessment of current state		Suggested minimum target maturity*
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Figure 10. Current state assessment and target contract management maturity for Administration (*Future state to be confirmed through separate assessment of business needs and achievability)

Relationships



	1 Ad-Hoc	2 Informal	3 Standardised	4 Monitored	5 Optimised
Current and Target maturity					
Relationships	<ul style="list-style-type: none"> • Supplier roles and responsibilities are not defined • Stakeholders and communication routes are not defined and communication is limited • Problem resolution is ad hoc with no defined process 	<ul style="list-style-type: none"> • Roles and responsibilities are defined on some contracts but the quality of this varies • Contracts have both structured and informal communication routes with stakeholders but these are unlikely to be documented and their application will vary • Problem resolution processes may be in place but do not follow MOJ standards 	<ul style="list-style-type: none"> • Roles and responsibilities clearly defined for all contracts using MOJ standard formats • Structured and informal communication processes are in place, documented and follow standard MOJ processes • Users have a clear expectation and understanding of the contract • Problem resolution processes are standardised across MOJ 	<ul style="list-style-type: none"> • Relationship management and communication processes are monitored as part of an MOJ wide assurance regime • Communication takes a variety of forms which are optimised depending on purpose • Joint statements of intent are formalised between contract managers and suppliers • Customer and Supplier staff are co-located where necessary 	<ul style="list-style-type: none"> • Communication routes are fully aligned and integrated with MOJ communication systems and processes • Productive and collaborative relationships exist with all suppliers and across all contracts maximising value and innovation

Key

	Assessment of current state		Suggested minimum target maturity*
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Figure 11. Current state assessment and target contract management maturity for Relationships (*Future state to be confirmed through separate assessment of business needs and achievability)

Performance

	1 Ad-Hoc	2 Informal	3 Standardised	4 Monitored	5 Optimised
Current and Target maturity					
Performance	<ul style="list-style-type: none"> • Service baselines are not used or set. Parties do not understand what is being delivered • Performance management frameworks are simplistic or do not contain adequate mechanisms for monitoring • Supplier performance is not assessed or metrics are not in place for adequate assessment • No performance reporting takes place • User compliance with the contract is not monitored • Feedback and performance review processes for suppliers are not in place 	<ul style="list-style-type: none"> • Service baselines are set for most contracts but the process is not standard • Performance management frameworks exist but mechanisms are not standard or have some deficiencies • Supplier performance is assessed but metrics may not be optimal and the processes employed non standard • Reporting takes place on an informal basis • User compliance is considered but compliance processes do not exist • Feedback and performance reviews are informal 	<ul style="list-style-type: none"> • A standardised service management process is in place and applied to all contracts • A performance management framework is used on all contracts and follows MOJ standards • Performance metrics have been set according to MOJ standards and are optimised for specific contracts • Reporting takes place per a standard MOJ process • User compliance is checked and enforced via a standard process • Feedback and performance reviews take place in line with MOJ guidance and process 	<ul style="list-style-type: none"> • Service management and performance metrics are compiled, aggregated and reported across MOJ enabling regular monitoring • Performance risks are regularly assessed and monitored by MOJ management • Performance monitoring is automated using MOJ wide systems • Performance monitoring forms part of a comprehensive risk based assurance plan • Supplier feedback drives innovation and cost savings 	<ul style="list-style-type: none"> • Performance metrics align and are integrated with MOJ wide performance frameworks and objectives • Systems allow management to interrogate data and produce reports on demand to facilitate decision making

Key



Assessment of current state



Suggested minimum target maturity*

Figure 12. Current state assessment and target contract management maturity for Performance (*Future state to be confirmed through separate assessment of business needs and achievability)

Payment





	1 Ad-Hoc	2 Informal	3 Standardised	4 Monitored	5 Optimised
Current and Target maturity	 				
Payment	<ul style="list-style-type: none"> • Payment mechanisms are not understood by the contract managers and are not documented • Payment processes are not defined, inefficient and include limited checks and authorisations • Costs are not monitored • Financial incentives are not in place 	<ul style="list-style-type: none"> • Payment mechanisms are understood but may not be documented or follow MOJ standards • Payment processes are defined but will vary across contracts • Teams involved in processing payments may not understand each others roles and tasks may be duplicated or missed. • Limited checking of invoices takes place but it is unlikely to follow an MOJ standard process • Costs may be monitored but variance against forecasts does not take place • Limited financial incentivisation takes place 	<ul style="list-style-type: none"> • Standardised processes ensure payment mechanisms are fully understood by all parties • Payments follow standardised MOJ processes and are customised where necessary • Those involved in payments fully understand each others roles and these are documented • Standardised invoice checking processes are used on all contracts. The processes are flexible enough for application across all contracts • Monitoring of costs takes place and variance against forecasts is measured and reported • A basic assurance regime is in place to ensure compliance with standardised processes • Financial incentives are in place and used on all contracts 	<ul style="list-style-type: none"> • Payment processes are automated where possible with system based controls designed and implemented where possible • MOJ management receive regular monitoring reports highlighting payment exceptions and supplier errors • A risk based assurance plan is developed and in place for all contracts, scheduling comprehensive payment assurance activities 	<ul style="list-style-type: none"> • Payment processes align and fully integrate with MOJ wide systems and processes • Lessons are learnt from previous issues and with learning disseminated and applied across MOJ • Payment issues rarely arise as a result of class leading integration between contract management and suppliers
Key					
 Assessment of current state  Suggested minimum target maturity*					

Figure 13. Current state assessment and target contract management maturity for Payment (*Future state to be confirmed through separate assessment of business needs and achievability)

Risk







	1 Ad-Hoc	2 Informal	3 Standardised	4 Monitored	5 Optimised
Current and Target maturity					
Risk	<ul style="list-style-type: none"> • No risk management processes are in place • Risks are not identified, monitored or managed • No escalation of risks take place • Contractual terms are not understood or monitored 	<ul style="list-style-type: none"> • Risk management processes are in place on contracts but these do not follow an MOJ standard and so may be deficient • Risk are identified but not actively managed or monitored • Risks may be escalated but not through a formal reporting process • Contractual terms are understood but not actively monitored 	<ul style="list-style-type: none"> • Risk management processes for contracts are standardised across MOJ • Standard processes are used to identify, monitor and actively manage risks • Risks are escalated in line with standard MOJ process . Risks are reported to defined governance bodies • High risk contractual terms are understood and actively monitored 	<ul style="list-style-type: none"> • Contract Risk management processes form part of the wider MOJ governance system • Standardised management information on risks is used at all levels within MOJ • Class leading risk management and assessment processes form the basis of a comprehensive assurance plan for all contracts 	<ul style="list-style-type: none"> • A culture of risk management is embedded across the MOJ and contract management is fully integrated within this culture
Key					
 Assessment of current state			 Suggested minimum target maturity*		

Figure 14. Current state assessment and target contract management maturity for Risk (*Future state to be confirmed through separate assessment of business needs and achievability)

Contract development

	1 Ad-Hoc	2 Informal	3 Standardised	4 Monitored	5 Optimised
Current and Target maturity					
Contract development	<ul style="list-style-type: none"> • Contracts are not regularly reviewed to ensure they still meet business needs • Formalised change processes are not used • Changes are implemented operationally without contractual variations • Value for money testing does not take place • Dispute processes are not well defined or understood 	<ul style="list-style-type: none"> • Contracts are reviewed to ensure they meet business needs but not as part of a formal process or on a regular basis • Change processes are used but are not documented and are not standardised across MOJ • Value for money testing takes place on an informal basis • Dispute processes are defined but not standardised across MOJ 	<ul style="list-style-type: none"> • A standardised MOJ process exists for assessment and review of contracts to ensure they meet business needs • Standardised change processes are in place which involve all MOJ stakeholders. These are used on all contracts • All changes are fully impacted and contractually agreed before being operationally implemented • Value for money testing takes place in line with a standardised process • Dispute processes are standardised and understood by all parties 	<ul style="list-style-type: none"> • Contract changes and variations are actively monitored and reported as part of MOJ governance processes • Non compliance with MOJ change procedures is actively monitored and managed • Change processes use MOJ systems for contractual updates and document control 	<ul style="list-style-type: none"> • A culture of continuous improvement is embedded within MOJ contract management. • Contract development and innovation regularly drives performance improvements and value for money

Key



 Assessment of current state	 Suggested minimum target maturity*
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Figure 15. Current state assessment and target contract management maturity for Contract Development (*Future state to be confirmed through separate assessment of business needs and achievability)

6.17 This review has focussed on how contracts are actually managed and not “if existing systems and processes were applied, would they be fit for purpose”. When the contract management future requirements have been set it will be necessary to undertake a more detailed assessment of the people, processes and systems to ensure they can support the requirements and target process maturity.

iii. Initial route-map

6.18 Having established future requirements, and in light of the significant nature and breadth of some of the issues identified, MOJ should undertake a more detailed assessment of its current contract management organisation and governance framework. The aim of this assessment is to allow MOJ to understand whether it is necessary to design and deliver a new operating model for the contract management organisation, or embed organisational processes already within MOJ, but not being used.

6.19 Such an assessment is a pre-requisite to any organisational and governance design process and will build on the analysis from this report. Figure 16 sets out indicative next steps for an assessment phase, and outlines a route map beyond the assessment phase. The time required for design, construct and implement phases should be determined following the assessment phase and by alignment with MOJ’s appetite for change.

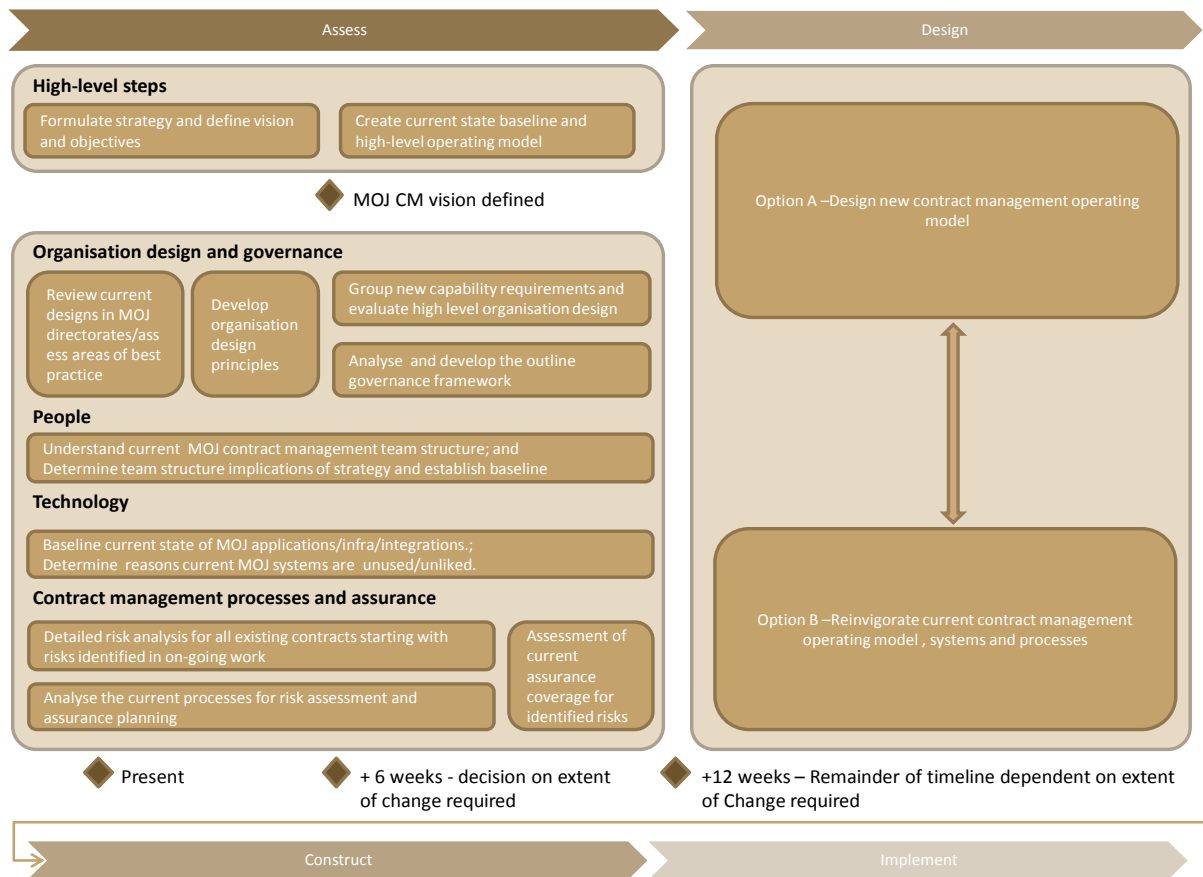


Figure 16: Indicative next steps for organisational assessment and possible redesign

6.20 The assessment phase will require an analysis of what MOJ currently has in place in each of the following areas:

- Governance, strategy and organisational operating model;
- People skills, capability, roles and responsibilities;
- Technology available to support contract management; and
- Contract management processes and assurance.

6.21 The assessment process will identify whether, in each of the four areas identified above:

- Redesign is required;
- Current process and governance is fit for purpose, and should be embedded into MOJ’s contract management; or
- A combination of the above.

6.22 Initial output from this assessment phase will be MOJ’s requirements for the future of its contract management organisation. The future requirements, combined with a full understanding of MOJ’s current baseline will determine the extent of future work required. Considerations will include the following:

- How MOJ contract management will look in the future. A developed hypothesis (or picture) of what the organisation will look like in the future – this should include assessments of the future direction of MOJ and government as a whole;
- What the MOJ wants to change and achieve – this assessment should be driven by the organisation as a whole and will include issues such as affordability and appetite for change;
- The impact of the change initiative on the current contract management operating model. This includes which operating model components will need to change including the MOJ procurement organisation as a whole; and
- MOJ should then define its future contract management operating model and decide the extent of future development and implementation work required.

6.23 MOJ should be targeting their contract management practices against industry good practice. The application of any good practice model should be tailored to the specific needs and environment of MOJ. Good practice contract management frameworks typically include a set of common components. Examples of relevant frameworks include:

- NAO ‘Good practice contract management framework’;
- The International Association for Contract and Commercial Management contract management framework; and
- Chartered Institute of Purchasing and Supply – the contract management specific requirements from its best practice procurement framework.

Appendix A: Key meeting topics

No.	Topics
T1	Scope & services
T2	Contract structure
T3	Contract handover from bid / tender
T4	Change process (continuous improvement, change generation)
T5	Change pricing
T6	Change approval
T7	Termination, exit strategy, extensions and retendering
T8	Business case management - requirement, approval, scope, tender
T9	Sponsorship
T10	Benefits definition, measurement
T11	Supplier assessment and capabilities - tender
T12	Process for business case to scope and tender
T13	Contract strategy Subcontractors and supply chain
T14	Competition / other suppliers
T15	Contract owner, beneficiary, user etc.
T16	Budget holder and approval process
T17	MOJ contract strategy and business objectives
T18	Contract lifecycle - procurement to ops etc.
T19	Performance measurement
T20	Quality and inspection
T21	Reporting (from supplier and upwards)
T22	Supplier assessment and capabilities - ongoing
T23	Assurance / independent review, access and audit rights
T24	Impact of failure / ability to influence
T25	Payment process (complexity)
T26	Payment assessment / data analysis / cost model
T27	Cost control - budgets, forecasting, cost monitoring
T28	Documentation, policies, manuals (MOJ / NOMS)
T29	Systems - data, documentation handling, tools, workflow management
T30	IT support / limitations (e.g. IE6)
T31	Organisation
T32	Stakeholders management and internal interaction (contract lifecycle)
T33	Decision making, accountability, responsibility, boards etc.
T34	Skills, knowledge, training and development
T35	Communications, meetings, decision making, escalation
T36	Continuous improvement
T37	Risk assessment and management
T38	Roles, responsibilities and capacity

Appendix B: Recommendations to address each finding

i. Governance, documentation, decision making and escalation

No.	Finding	Recommendations
A(i)	<p>MOJ governance procedures appear inconsistent and difficult to identify.</p> <p>Issues in relation to this key finding were identified in seven (7) of the fifteen (15) contracts sampled, as well as two (2) EM contracts. The issues included:</p> <ul style="list-style-type: none"> • Guidance on governance not consistently being applied; • A lack of suitable, documented governance procedures for contract management; and • A lack of comprehensive documentation of roles, responsibilities and key controls. 	<p>The MOJ should review its current governance processes and documentation for all contracts over and above those covered in this report. The review should ensure the processes are fit for purpose and consistently applied. The following recommendations should be considered:</p> <ul style="list-style-type: none"> • Some areas of MOJ have well established and consistently applied governance processes (ICT and Major works). It is recommended that MOJ performs an exercise to identify the areas of best practice used within contract groups, draws on its experience and develops a common set of lessons which can be rolled out to the other contract groups that have weaker governance processes. • Identify where processes and procedures are either missing or inadequate and develop or mature those processes. • If updates to the current governance processes and documentation are required, it is recommended that, where possible, standardised approaches and processes are used that are flexible enough for application to all contracts. A review should assess the extent to which current governance documentation and processes reflect the whole-life contract management life-cycle from identification to close out.

A(ii)	<p>Change processes are not always used, are perceived to be slow to process or are inappropriately applied.</p> <p>Issues in relation to this key finding were identified in twelve (12) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p> <ul style="list-style-type: none"> • A lack of understanding of change processes leading to inconsistencies across contracts; • Uncertainty over who has responsibility for key activities involved in change control; and • A lack of timely formal change documentation, and the perception that decision making and approvals in respect of changes are slow and onerous. 	<p>Contract change processes are essential to ensure that all parties remain protected by the terms of contracts and that the implications of any changes are understood and communicated. The following recommendations should be considered:</p> <ul style="list-style-type: none"> • MOJ should review its current set of principles and guidance surrounding contract change and ensure that these are being consistently applied. The standard terms and conditions policy should mandate the consistent application and operation of change processes for specific contracts and ensure that decision making is efficient and proactive. • MOJ should ensure that, for existing contracts, contract managers understand the change process and ensure that it is documented and consistently applied. As a minimum, the following documentation should be readily available to contract managers and understood by them: (1) Responsibilities and accountabilities for approval of changes; (2) the process for assessing the financial implications of each change; (3) the process for communicating changes to key stakeholders. • For all contracts, a comparison of current service to the contracted service should be carried out to identify the extent of exposure to non-contractual changes. MOJ should assess the overall prevalence of instances where change is operationally implemented before being contractually agreed. These instances should be minimised but where necessary MOJ should monitor the lag between change and agreement as a KPI for contract management performance. • It is recommended that MOJ should ensure current governance processes are flexible enough to be proportionate to the value and risks of the contract. In this way, onerous processes on low risk contracts can be avoided. • MOJ should identify instances where stakeholders believe the governance processes are onerous. In all identified instances, MOJ should ensure the governance

		requirements are proportionate to the contract’s risk and value.
A(iii)	<p>Issues with continuous improvement.</p> <p>Issues in relation to this key finding were identified in eleven (11) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p> <ul style="list-style-type: none"> • Suppliers do not typically originate opportunities and there is a perceived reluctance towards change initiated by suppliers, where that change brings innovation; and • In some instances, innovations appear to be deferred until replacement contracts are put in place, rather than implemented in ongoing contracts. 	<p>It is recommended that the current performance management review process is reviewed for all contracts in order to ensure appropriate continuous improvement activities take place. The review should ensure that:</p> <ul style="list-style-type: none"> • A process is in place for planning and coordinating the performance reviews of current contracts. • The basis for the management reviews should be the metrics and KPIs planned and used in order to measure performance. The reviews should focus on determining the effectiveness of delivering performance relative to these targets and understanding the drivers for performance – both positive and negative. • Performance shortfalls and identified corrective actions should be published with a process for documenting lessons from the reviews established. • Improvement actions from the reviews should be monitored and tracked with unresolved action items reported and escalated. • The process should be used to provide feedback on redefining KPIs, with targets updated as required in order to achieve new levels of performance.
A(iv)	<p>Unclear risk management.</p> <p>Issues in relation to this key finding were identified in ten (10) of the fifteen (15) contracts sampled as well as the two (2) EM contracts. The issues included:</p>	<p>Analysis and management of contract risks should be a driver for many of the contract management activities MOJ undertakes. For example, analysis of risks will (1) dictate the complexity and types of validation and control activities designed into contracts; and (2) inform the assurance planning process.</p> <p>The following recommendations should be considered:</p>

Contract Management Review

	<ul style="list-style-type: none">• Risk management processes are not understood or applied in many cases.	<ul style="list-style-type: none">• MOJ should ensure that risk analysis processes are carried out consistently on all current contracts. Performance, commercial, sustainability and reputational risks must be identified (amongst others) and actively managed to ensure controls are in place for mitigation and monitoring.• MOJ should ensure its risk management process for contract management is consistently used across all contracts. The process should also be reviewed against best practice to ensure it has sufficient flexibility to accommodate differing levels of contract complexity. The process should be communicated to all contract management stakeholders and responsibilities are understood.• See the recommendation below on risk based assurance planning.
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ii. Definition of Roles and Responsibilities

No.	Finding	Recommendations
B(i)	<p>Issues with definition and understanding of roles and responsibilities.</p> <p>Issues in relation to this key finding were identified in ten (10) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p> <ul style="list-style-type: none"> • Only broad definitions of roles of key staff involved in contract management; • Individuals not understanding their own roles and responsibilities and those of others; • Issues with the boundaries of responsibilities between individuals; and • Gaps in the understanding of delegated authority, decision making processes and escalation processes. 	<p>Roles and responsibilities across all contracts should be reviewed and assessed. The assessment should ensure that processes are clearly defined and understood by all individuals, contract management teams and agency/authority bodies. The following recommendations should be considered for implementation:</p> <ul style="list-style-type: none"> • Current contract management activities and processes across all contracts should be mapped where this has not already been done. Where not used, a 'RACI' approach to all processes and activities should be adopted to ensure roles and responsibilities are understood and documented for both people and teams. • Whilst assessing the roles and responsibilities for the MOJ's contract management processes and defining appropriate RACI matrices, an assessment should be carried out of the efficiency with which roles and accountabilities are delegated throughout the organisation. Documented and communicated delegated decision making rights should aim to enhance the speed at which decisions can be made. • Where they are not in place, organisational terms-of-reference for contract management should be defined and communicated for all teams and third parties responsible for any aspect of contract management.

<p>B(ii)</p>	<p>Issues with the clarity of business ownership and accountability of service.</p> <p>Issues in relation to this key finding were identified in five (5) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p> <ul style="list-style-type: none"> • Issues with the understanding amongst those involved in contract management as to who within MOJ has overall accountability for the management of contracts; • Limited understanding of the role of the sponsor or “Senior Responsible Officer” and lack of engagement of the sponsor in decision making; and • Limited documented guidance around the business accountability for services and ownership of contracts. 	<p>For all contracts, contract processes and for wider contract management functions, a review should take place to ensure defined authority levels and escalation routes are in place, documented and communicated in line with a broader MOJ governance model.</p> <p>Currently each contract has owners in different areas such as Procurement and Operations. It is recommended that whilst it may be appropriate for ownership within different areas to remain, a single role within the MOJ should be made accountable for delivery of business benefits and responsible for ultimate decision making. That role should have the appropriate authority and accountability defined and understood by all. Where this is currently the case, such as the SRO role, MOJ should ensure the process is working effectively.</p>

iii. Resource, capability and capacity

No.	Finding	Recommendations
C(i)	<p>Possible contract management resource issues</p> <p>Issues in relation to this key finding were identified in six (6) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p> <ul style="list-style-type: none"> Some teams felt that they lack time or resource to perform supplier audits, monthly assurance for payment applications and service data analysis. 	<p>As part of a full review of resource capability and capacity, the following should be considered:</p> <ul style="list-style-type: none"> A review of the numbers of contract management resources and vacant positions should be carried out against an assessment of the overall risk of each contract and specific risks identified. In the short term, it is recommended that resources are prioritised based upon assessments of risks, while a wider review of the people and organisational structure takes place. It is recommended that a review also takes into consideration MOJs current contract management processes. Where these are defined and documented, a resource assessment should be carried out against each process. Where resources are limited, a tactical assessment of the responsibilities of each contract management resource should be carried out and a short term prioritisation of the responsibilities against known risks should take place. Contract and financial management procedures tend to fall into a monthly cycle which drives peaks of resource. This cycle should be reviewed to see if it is possible to smooth the resource demand over a month by staggering the monthly contract administration cycles. Where the risk/resource assessment identifies resource shortfalls and where it is not possible to reprioritise staff, it should be identified whether additional governance or additional control processes can be carried out in order to mitigate risks.
C(ii)	<p>Issues with professional skills, experience and training of some staff.</p> <p>Issues in relation to this key finding were identified in four (4)</p>	<p>The following recommendations should be considered in the regular performance evaluation of contract and operations management staff:</p> <ul style="list-style-type: none"> Individuals should be assessed against established role profiles and capability gaps should be understood and addressed. Once individuals have been assessed, MOJ should ensure that the departments and contracts are reviewed to see if there is sufficient competency, or if resources need

	<p>of the fifteen (15) contracts sampled. The issues included:</p> <ul style="list-style-type: none"> • Shortfalls in skills or experience within teams identified by those leading the teams; and • MOJ’s professional development framework being under-utilised. 	<p>reallocating, to meet the needs of particular contracts.</p> <ul style="list-style-type: none"> • Review the appropriateness of current contract management training provisions. The blockages to staff uptake of training opportunities should be understood and an understanding of why certain staff consider that training is not appropriate should be understood.
C(iii)	<p>Skills and resources are not always effectively managed in a holistic manner.</p> <p>This key finding is based on an overall observation. The issues included:</p> <ul style="list-style-type: none"> • Challenges in sharing resources, skills and knowledge within and across contracts and functions within MOJ. 	<p>The following recommendations should be considered as a part of MOJ’s current restructuring:</p> <ul style="list-style-type: none"> • As set out above, it may be possible for the monthly contract administration cycles to smooth peak resource demands. • High risk contracts should have the most capable resources allocated to them. • Maintain a plan of procurement cycles in relation to each contracted service to manage the need to roll over contracts due to insufficient management resources. For example the procurement pipeline system, which is in place to try and mitigate this problem.

iv. Management information and supplier data

No.	Finding	Recommendations
D(i)	<p>Standardised Management Information is not readily available.</p> <p>Issues in relation to this key finding were identified in six (6) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p> <ul style="list-style-type: none"> • Good quality management information does not appear to be readily available on some contracts; • Where reporting dashboards or summaries do exist, they appear inconsistent; and • MOJ staff sometimes require supplier assistance to provide reports that were not contemplated in the contracts. 	<p>The definition of appropriate MOJ governance bodies and roles should be a first step in considering the appropriateness and required levels of management information. Management information should be sufficient to enable effective governance activities to take place. The following recommendations should be considered by MOJ:</p> <ul style="list-style-type: none"> • MOJ should review its contracts creation processes to ensure it mandates a design process for management information at the contract creation stage. This should take place in collaboration with the governance process design. Appropriately designed MI focused on governance requirements should seek to limit the levels of ad-hoc reporting required. MOJ should ensure this process is consistently applied. • MOJ should assess its current processes for management information definition during contract creation. Management information should be designed to monitor the metrics that measure performance/benefits delivery, cost and risk. It is critical that the metrics enable management to make timely and informed decisions and interventions. The metrics should be standardised, where possible, to enable aggregation and analysis across different contracts, departments and contract groups. It should be agreed at contract creation as to what raw data is to be supplied or collected in order to create the metrics. • MOJ should assess the suitability of the management reporting dashboards currently in use. Suitable dashboards and management information summaries should be consistently used to display relevant metrics to key stakeholders. These may be contract specific or cross-contract depending upon the governance organisation or the role that the information is intended to fulfil. • For all current contracts it is recommended that the MOJ undertakes a gap

		<p>analysis against the above requirements.</p> <ul style="list-style-type: none"> MOJ should undertake an analysis of the areas of MOJ currently exhibiting good MI practice. Lessons should be taken forward and applied to develop new guidance to ensure consistency in the MI approach.
D(ii)	<p>Frequency of meetings and reporting is inconsistent.</p> <p>Issues in relation to this key finding were identified in nine (9) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p> <ul style="list-style-type: none"> Issues over the clarity of terms of reference for meetings, including inconsistency in attendees between contracts and from meeting to meeting within contracts; and Examples where business users are not adequately involved in regular contract management meetings. 	<p>MOJ should assess its current contract management governance model and the consistency with which its principles are applied. A standardised governance model, with sufficient flexibility to be applicable to all contracts, should provide MOJ with guidance that aims to ensure that governance meetings and information are fit for purpose. MOJ should consider:</p> <ul style="list-style-type: none"> Performing a review of all current governance documentation. The review should ensure that, where it is not already the case, governance forums have defined and documented terms of reference. This should include details of the required attendees and sponsorship from senior stakeholders to ensure that meetings have the required authority. Analysis of attendees should ensure coverage of all contract management stakeholders within the governance bodies. Where gaps are discovered in the documentation of roles and responsibilities, documentation should be appropriately remediated and communicated. Once the outputs of these recommendations have been produced MOJ should analyse the appropriateness of the current governance against identified overall MOJ contract management risks.
D(iii)	<p>Management of data is inconsistent.</p> <p>Issues in relation to this key finding were identified in eight (8) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p> <ul style="list-style-type: none"> Few instances where relevant data 	<p>The following recommendations should be considered:</p> <ul style="list-style-type: none"> MOJ should review existing data management policies to ensure they are appropriate and applied consistently across contract management. Where necessary, specific policies and processes should be developed for contract management. The review of the data management policy should cover the following areas:

	<p>management policies were applied;</p> <ul style="list-style-type: none"> • Data records and audit trails do not appear to be adequately maintained; • Systems within MOJ to facilitate data management are under-utilised; and • Inconsistent approaches across contracts as to the type of performance data that is requested from suppliers. 	<ul style="list-style-type: none"> i) Ensure data is managed at an appropriate level within MOJ and contract management with appropriate levels of ownership. ii) Provide a structured approach to designing, implementing and sustaining data management across contract management. iii) Enhance the value of contract management data sources with appropriate analysis and dissemination. iv) Align data management initiatives with the objectives of contract management. v) Ensure expected benefits are realised from data management. vi) Guide the processes and controls necessary for the success of data management. <ul style="list-style-type: none"> • A review of MOJ’s knowledge and data management systems should take place in order to examine their consistency of use. Formal, standardised knowledge and data management systems should be used in a consistent way across MOJ contract management. In contract groups where data management systems are consistently used in line with best practice, MOJ should exploit these areas of good practice by updating and enforcing its system policies and guidance. • These recommendations should be aligned with other recommendations made within this document including those relating to the identification of data requirements for independent validation of supplier data sources.
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v. Communication and Collaboration

No.	Finding	Recommendations
E(i)	<p>MOJ may lose knowledge between phases of the contract lifecycle.</p> <p>Issues in relation to this key finding were identified in six (6) of the fifteen (15) contracts sampled. The issues included:</p> <ul style="list-style-type: none"> • A lack of suitable guidance on how to achieve continuity between phases of a contract lifecycle; and • A lack of knowledge transfer and staff continuity between phases of a contract lifecycle. 	<p>MOJ should review its current contract management operating model and ensure it promotes an organisation, culture and set of processes which support whole-life contract management from contract creation through to contract closure. The early stages of the contract life-cycle are fundamental to good contract management and administration with the effectiveness of many of the contract administration processes determined by agreements made during contract creation. Recommendations include:</p> <ul style="list-style-type: none"> • Ensuring that contract teams consist of Procurement, Delivery, Commercial and Legal functions throughout the lifecycle of a contract, with the different functions leading during the relevant phase of the lifecycle. • Review the consistency with which tender teams include representatives from the relevant business user community, operations, Legal and Finance. For the tender process of large or high risk contracts, secondments into tender teams should be considered, facilitating transfer of knowledge back to business users and functional teams. • The processes for development of contract management plans for each contract at the procurement phase should be reviewed and consistently applied. The plans should pass through the lifecycle, recording key assumptions, risks, risk management plans, events and decisions. • Plain English contract summaries should be communicated to all key stakeholders especially the business users and functional teams directly involved in contract management activities. • It is understood that formal knowledge management systems and document

		<p>repositories exist within MOJ contract management. The appropriateness of these systems and the consistency with which they are used should be reviewed. Examples exist where contract groups use appropriate document management systems.</p> <ul style="list-style-type: none"> Options for using new and existing technology or systems to improve information communication should be explored more generally.
E(ii)	<p>Differing levels of collaboration between MOJ functions in the management of contracts.</p> <p>Issues in relation to this key finding were identified in eleven (11) of the fifteen (15) contracts sampled. The issues included:</p> <ul style="list-style-type: none"> No documented definitions of the divisions of responsibility between staff and functions involved in contract management. 	<p>MOJ should take steps to ensure that its current contract management processes are integrated across the organisation and scalable to the complexity of contracts. Opportunities include:</p> <ul style="list-style-type: none"> Currently used contract management processes and contract management information should be assessed to ensure responsibilities and accountabilities are both understood and fit for purpose. It is recommended that a 'RACI' system is used for all processes, setting out Responsibility, Accountability, Consultation and Information requirements for people and organisations. For key contracts, governance meeting cycles should be assessed to ensure they involve key contract stakeholders, business users, operations, contract management and other supporting functions. They should promote a collaborative approach to contract management and with defined terms of reference and RACI structure should promote efficient resolution of issues and actions. Stakeholder meetings of some kind are in place on most contracts, but often lack either the appropriate attendance (e.g. business users), appropriate terms of reference or appropriate decision making authority and understanding of roles and purpose to be effective.

vi. Performance management; measurement and monitoring of service delivery

No	Finding	Recommendations
F(i)	<p>MOJ does not consistently measure end-to-end service delivery.</p> <p>Issues in relation to this key finding were identified in five (5) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p> <ul style="list-style-type: none"> • MOJ does not always measure the end-to-end service outputs, but rather focusses on measuring supplier input into service delivery; and • A lack of end-to-end service measurement is particularly evident in contracts where interaction with other agencies or Authorities forms part of the end-to-end process. 	<p>MOJ should design KPIs and data requirements which adequately measure and reflect the benefits the contract is intended to deliver. The following should be considered:</p> <ul style="list-style-type: none"> • A full review and assessment of the KPIs and data available for performance measurement of current contracts. Where deficiencies are discovered, changes to the KPIs should be designed and agreed. • For future contracts the recommendations surrounding an integrated approach to contract creation and a whole life contract view should be considered when designing KPIs. Critical will be engagement with the users and operational teams during contract creation, as they will have a responsible for the service and consequently have an understanding of what defines the achievement of benefits. • KPIs must be designed to be fair and balanced. Where KPIs measure service outputs rather than supplier inputs and where outputs are dependent on factors outside of the suppliers’ control, penalties and payment structures must be appropriate and fair. In these cases, contractual measures with penalties in relation to supplier obligations should be considered in addition to non-contractual measures for the end-to-end service to give visibility to MOJ without penalising the supplier.
F(ii) and F(iii)	<p>KPIs are not always accurately reported and may not reflect actual service delivered or known service deficiencies.</p> <p>Issues in relation to this key finding were identified in seven (7) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.</p>	<p>In addition to relevant recommendations above, the following recommendations are suggested for this finding:</p> <ul style="list-style-type: none"> • It is recommended that a performance management review process is carried out at regular intervals for all contracts in order to ensure that KPIs remain relevant and deliver measures of contract benefits. This process is critical for instilling a

	<p>Examples exist where MOJ does not adequately define and monitor the KPIs to prevent interpretations by suppliers that adversely impact MOJ.</p> <p>Issues in relation to this key finding were identified in three (3) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts.</p> <p>The issues included:</p> <ul style="list-style-type: none"> • Performance measures may not measure the service received by the business user, and may not reflect the business user views on the quality of service being delivered; and • There are instances of supplier KPIs lacking definition, leaving the KPIs open to interpretation by suppliers. 	<p>culture of continuous improvement. Depending on the contract risks and complexity, these reviews should be carried out frequently, such as annually.</p> <ul style="list-style-type: none"> • A standardised and defined process for development of performance management data should be considered during contract creation and for continual improvement activities. This should include steps to ensure: (1) analysis and input into the KPIs by key business users and stakeholders; and (2) identification and understanding of information and data gaps. Working back from the benefits to be delivered under the contract, only as many KPIs as are necessary to measure benefit delivery should be defined, where a benefit may be delivered by multiple outputs. Where possible KPIs should measure end benefit as well as individual outputs. • KPIs should be defined to ensure that serious incidents do not get lost in aggregated data. During KPI development, critical risks to service delivery should be identified with 'red-flag' events specified and reported outside of aggregated KPI data. • During contract creation, the financial implications of a failure by the contractor to deliver the contracts benefits must be modelled. Penalties associated with failures to meet KPI targets and deliver benefits should, where possible, be proportionate to the costs associated with non-delivery of specific benefits, subject to there being supplier wiliness to accept such penalties. Tender teams must have sufficiently modelled cost data in order to robustly challenge contractors seeking to cap liabilities.
<p>F(iv)</p>	<p>MOJ often relies on supplier self-reporting of performance and does not always validate services or assure supplier systems and processes.</p> <p>Issues in relation to this key finding were identified in seven (7) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p> <ul style="list-style-type: none"> • For some contracts, there appears to be limited MOJ activity to validate, test or assure that suppliers 	<p>Adequate assurance over supplier performance and service delivery is critical for management to place reliance on self-certified performance data both in terms of commercial contract administration and MOJ reputational risk. Self-reporting may be an appropriate approach to performance measurement. However, the appropriateness must be determined by the risks associated with the contract and the type of data being reported. In addition, where data is self-reported, an appropriate level of risk based assurance must be applied in order to provide comfort that data reported is accurate and valid. As such the following recommendations should be considered:</p> <ul style="list-style-type: none"> • It is recommended that an exercise is conducted to identify the key delivery risks for all contracts over and above those covered in this review. Once completed,

	<p>have provided the contracted service; and</p> <ul style="list-style-type: none"> Supplier self-reporting appears to be commonly accepted with limited challenge. 	<p>MOJ should identify what data and KPIs are available to monitor and provide assurance over these risks. Where data sources and KPIs are self-reported it is recommended that the MOJ develop a plan of appropriate independent assurance to validate the data.</p> <ul style="list-style-type: none"> Dependent upon the specific risks involved and where processes have been identified as high risk, the MOJ should consider collection of its own performance data in order to independently measure performance. Where self-reported performance data is received from suppliers, MOJ should be confident appropriate assurance is gained over the systems and processes which produce the data and KPIs. Where contracts allow, and where it is not already taking place, a programme of supplier system and process audits should be considered to enable the MOJ to place reliance on the supplier self-certificated data where appropriate. Dependent upon the risks involved this may be more efficient than substantively validating the supplier data. The processes and rights to audit agreed during contract creation are essential for providing robust assurance over data and processes. MOJ should ensure it establishes sufficient reporting and auditing requirements during procurement.
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vii. Validation and assurance of supplier delivery and charges

No.	Finding	Recommendations
G(i)	<p>Identified issues with levels of verification of services delivered.</p> <p>Issues in relation to this key finding were identified in seven (7) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p>	<p>Self-certification by suppliers may be an appropriate approach to invoicing in some instances. However, the appropriateness must be determined by the risks associated with the contract, the complexity of the pricing mechanism and the value of the invoiced amounts. An appropriate level of risk based assurance must be applied to invoices in order to provide comfort that data reported is accurate and valid. As such, the following recommendations should be considered:</p>

	<ul style="list-style-type: none"> • On some contracts, MOJ authorises invoices based on suppliers' own service delivery data; and • In some instances, MOJ has minimal visibility of what is being delivered and what is being paid for. 	<ul style="list-style-type: none"> • For all contracts, it is recommended that an exercise is conducted to identify the key risks that threaten invoice accuracy and validity; this may build on the existing risk assessment processes. Once completed MOJ should map the processes which monitor and provide assurance over these risks in order to identify gaps (see risk based assurance recommendation below). The MOJ should then develop additional processes in order to cover any gaps. • Dependent upon the specific risks involved and where contracts have been identified as high risk, the MOJ should consider collection of its own cost/delivery data in order to enable independent validation of invoices. • The MOJ should, where possible, ensure that payment is linked to actual delivery of service or benefits with appropriate service data available in order to validate payments. • If not in existence, a plan of appropriate independent assurance and contract compliance should be developed for all contracts and include audits of invoiced amounts and payments. This should be in addition to validation processes already in place and may be provided by organisations or MOJ functions that are independent of contract management, such as MOJ's internal audit. Independent assurance should be targeted at key risk areas. (see risk based assurance recommendation below) • Where self-certified invoices are received from suppliers and where this is accepted as being appropriate for the risks to MOJ, it is recommended that appropriate assurance is gained over the systems and processes which produce the invoices (where this is not already the case). Where contracts allow, a programme of supplier system and process audits should be enacted to enable MOJ to place reliance on the supplier self-certified data where appropriate. • These recommendations must be considered during contract creation. The processes and rights to audit agreed in the contract will be essential for providing robust assurance over invoices and payments.
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<p>G(ii)</p>	<p>Inconsistent control over the invoice processes.</p> <p>Issues in relation to verification of services delivered were identified in one (1) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p> <ul style="list-style-type: none"> It is apparent that some contract management staff lack understanding of the complete invoice process. 	<p>The following recommendations should be considered:</p> <ul style="list-style-type: none"> For contracts where it does not already happen, the current invoice processes should be mapped and documented. The mapping documentation should ensure that the roles and responsibilities within the process are clearly defined and recorded in a 'RACI' matrix²⁴. The process mapping should be used to identify weaknesses within the current invoice processes (1) in terms of controls over completeness, accuracy and validity; and (2) in terms of the roles, responsibilities and communication of information to necessary stakeholders. Using the outputs from the above recommendations, a programme of process improvement for affected contracts should be undertaken. This should seek to improve the controls within invoice processes and ensure that information is provided by and communicated to key stakeholders such as users, operations and contract management. For all new contracts, this form of process definition and documentation should be considered by the procurement teams so that robust control and communication processes are included in contracts from the outset.
<p>G(iii)</p>	<p>Limited evidence for use of an effective risk-based assurance strategy.</p> <p>Issues in relation to verification of services delivered were identified in nine (9) of the fifteen (15) contracts sampled, as well as the two (2) EM contracts. The issues included:</p>	<p>MOJ should review how its existing systems provide integrated risk based assurance plans covering all contracts. The MOJ assurance plans should include:</p> <ul style="list-style-type: none"> A process for understanding the sources of assurance. The sources of assurance may come from different levels within MOJ, and outside MOJ, including: (1) Assurance through design and operation of robust contract control processes and systems; (2) Assurance through operation of management controls and monitoring; (3) Independent assurance from within the MOJ, such as from internal audit; and (4)

²⁴ 'RACI' – A matrix based system for defining and displaying roles and responsibilities. Defining where a person or body is: (1) Responsible; (2) has an Action; (3) needs to be Consulted; and or (4) needs to be Informed.

<ul style="list-style-type: none"> • Lack of use of integrated assurance strategies or plans by some contract management staff; • Limited understanding by key stakeholders of the current assurance activities taking place on a contract; and • Assurance activities that are being undertaken have proven to be ineffective or unsuitable in some cases. 	<p>Assurance from external sources such as the NAO or external auditors.</p> <ul style="list-style-type: none"> • A process for understanding and mapping the risks associated with each contract. Each risk should be ranked in order to prioritise assurance or ensure development of proportionate processes. • Once mapped and ranked, assurance from one or more of the assurance providers should be planned against each risk. The numbers of assurance providers to provide assurance over each risk will be dependent upon its risk ranking. • The plan should be presented such that MOJ management are able to visualise quickly the risks associated with contracts and quickly see that they are covered by appropriate planned assurance. <p>A risk based assurance approach should provide the following benefits to MOJ:</p> <ul style="list-style-type: none"> • An understanding of the risks will enable design of strong system controls and processes. • Assurance planning will enhance contract management resource planning. With assurance needs planned across the contract portfolio and defined processes in place, accurate assessment of contract management resource requirements can be made. • Planned assurance will facilitate early engagement with assurance providers. For example, early engagement with MOJ internal audit will make it more likely that contracts will be included within internal audit’s annual audit plan. • Planned assurance will enable the early identification of capability gaps for the assurance of unusual or non-standard risks or contracts. This will enable efficient use of external assurance providers and external experts to provide assurance where capability gaps exist.
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