Infrastructure and Projects Authority

PFI Guidance Document

Navigating the risks of PFI project distress

Part 1 What contracting authorities should do and when

Reporting to Cabinet Office and HM Treasury

Guidance structure

Contents

Introduction

Part 1 of this guidance document provides guidance to contracting authorities (referred to as "you") on when and how to:

- assess whether your project is in distress;
- monitor the risk of project distress escalating to project company insolvency and/or contract termination;
- get appropriate support when it is needed; and
- develop an effective strategy, either to:
  - avoid further escalation, or where this cannot be avoided;
  - prepare properly for the risk of insolvency and/or termination.

When you should act

The first step is to consider whether your project is showing signs of distress, or has issues that could lead to project distress.

If your project is operating satisfactorily, with effective contract management on both sides, and evidencing robust but professional relationships and good operational performance, then there may be no need to take further action. You should continue to monitor the situation as projects can move from satisfactory performance to distress over time, especially as they near expiry.

If your project is showing signs of distress – for example: performance and contractual issues; disputes or issues that have been continuing unresolved for some time; poor relationships; and/or project company financial stress – then you should consider what further action you need to take.

What you should do

It is important to note that project distress can occur in varying ways and over different timescales:

- projects can become increasingly distressed over long periods of time, or can escalate into distress quickly;
- negotiations can result in temporary solutions to problems, which then return once those temporary solutions expire; and
- long-standing disputes can reach a tipping point where they escalate quickly into insolvency and termination.

The actions in this section should be approached flexibly. You may need to accelerate steps, or combine multiple steps, where project distress is increasing quickly. Alternatively, you may have time to take a more sequential approach. Not all the actions may be required, especially if you resolve issues along the way.

Step 1

Initial assessment

- Get support if you need it
- Gather relevant information
- Carry out an initial commercial, operational and financial assessment

Step 2

Preparing your strategy

- Get good advice
- Know your contract parties
- Inform Accounting Officers
- Develop your legal, commercial, financial and operational strategy
- Create actionable plans for both Plan A (resolution) and Plan B (non-resolution)
- Create the right environment for constructive discussions
- Keep stakeholders informed

Step 3

Implementation

- Develop a business case
- Review timelines
- Consider practical issues
- Get your approvals

Step 1 Initial assessment

Step 1 is an initial assessment of the issues affecting your contract and the risks that might arise if those issues are not resolved satisfactorily.

Get support if you need it

If you are concerned that your project has issues that are causing project distress, or could lead to project distress in the future, you should consider getting support from:

- your internal commercial, financial and legal teams;
- your sponsoring department;
- the IPA's PFI Centre of Excellence.

Whilst this support will not substitute for proper external legal, technical and commercial advice (when needed), it can help guide you through the process – including the appointment of suitable advisers – and access experience from other projects and sectors.

You will need to communicate issues to your SRO as appropriate and bring in specialist support when required.

Gather relevant information

You cannot make effective decisions without having the right information. Some of this information may require you to utilise your contractual rights under the PFI contract – for example to get hold of the information that the project company provides to its lenders. Other information will be available from Companies House and (in some cases) rating agencies.

You should routinely obtain the following:

What	Where from
Project company report and accounts	Companies House
Project company lender financial model (if your PFI contract gives you access to this information), otherwise the latest contract financial model	Project company (check PFI contract drafting – e.g. SOPC Contractor Records clause)
Information provided to the lenders (if your PFI contract gives you access to this information)	Project company (check PFI contract drafting – e.g. SOPC Contractor Records clause)
Names and contact details for: – Project company directors – Shareholder representatives – Management services provider – Service provider contract leads and senior representatives – Lender contacts	Project company
Project contracts, including: – Project Agreement and any variations agreed and documented since financial close – Service Provider Agreements – Loan agreement/financing documents – Funders' Direct Agreement – Service Provider Direct Agreements/Collateral Warranties with lenders – Service Provider Direct Agreements/Collateral Warranties with the contracting authority	Project Agreement and Schedules /project "bible"
Performance and payment mechanism reports (you should be receiving these routinely under the PFI contract terms, and should be assuring the accuracy of the information)	Project company
Lifecycle and maintenance reports and any condition surveys (again there should be periodic reporting under the PFI contract terms)	Project company
Names and contacts of insurers (in case you need to maintain cover on project company insolvency)	Project company
Rating agency reports (for publicly rated bonds)	Standard & Poor's, Moody's, Fitch
Stock Exchange Regulatory News Service (for SPVs that are publicly listed companies)	London Stock Exchange

Initial assessment

Carry out an initial commercial and financial assessment

Project distress usually starts with performance issues on the ground. It is easy to get caught up in the details of these problems, without considering the broader picture. You should try to take a step back and consider the questions listed below. Your ability to answer some of these questions may depend on the availability of financial information from the project company. You may also need specialist support to help you.

1 What are the current issues affecting the project?

2 What are the potential financial consequences:
- what is the size of the problem, e.g. cost of fixing defects or compliance issues, the size of deductions?
- where there is a dispute, what are the financial consequences if the contracting authority, or the project company, is successful?
- can you estimate the financial consequences if the problems are not resolved?

3 Which parties have contractual responsibility for the issues? e.g. the project company, the service providers, the construction contractor? Or is this not clear?

4 Are there subcontractor limits on liability (service provider caps, construction contractor liability periods) which mean the financial consequences are likely to remain at the project company level (rather than be passed down to subcontractors)?

If so, what could the financial consequences be for the project company?

5 Is more information required to help resolve disputes and/or prepare for potential contract termination e.g. condition surveys to establish dilapidations/rectification costs?

6 What is the financial position of the project company?
- has there been prolonged unitary charge deductions for poor performance?
- does it have any outstanding debt? If so, what is the maturity of the debt?
- is the project company in lock-up (unable to make shareholder payments)?
- what balances are in the project company's various reserve (bank) accounts, e.g. debt service reserve, lifecycle reserve etc?
- if the project company is liable for rectification costs:
  - > what are the forecast future shareholder cash flows up to the end of the contract and are those cash flows (plus current cash balances) sufficient to meet the projected costs?
  - > if the costs fall over one or more years, is there sufficient cash to meet those costs in the years they fall?

You should also look at the project company's latest audited report and accounts, available for free on the Companies House website, including any Going Concern issues (see Part 2 for more information) highlighted in the report.

7 Based on the answers above, is there a risk of project company insolvency in the short or medium term?

8 Are the contract issues likely to cause an event of default under the service provider contract, the loan agreement or the PFI contract?

9 Are lenders aware of the issues? Have they increased monitoring? Are they involved in discussions to resolve the issues?

10 Who are the key players involved in resolving any issues or disputes?

11 How would you rate contract relationships?

Are they professional and constructive?

Are people behaving in accordance with the Nolan Principles?

Could relationships be improved by a change in approach and/or a change in personnel?

12 Have issues been escalated to the appropriate people in the relevant organisations?

13 If there are informal or formal contractual disputes:
- are they progressing?
- are they having a detrimental effect on relationships?
- could they be progressed in a more constructive way?

Step 1 Checkpoint

The outputs from Step 1 should inform your approach to the issues impacting your contract:
- If the issues are material and could, if unresolved, lead to project company distress (including the risk of events of default under the project contracts and/or project company insolvency), then you should move to Step 2;
- If that is not the case, you may decide to monitor the situation closely for a period of time, and then consider whether the issues are deteriorating or getting resolved.

Step 2 Preparing your strategy

Step 2 is relevant where your project is showing signs of project distress and/or there is a risk of further escalation. Proper preparation will help ensure that:

- you are clear what you want to achieve under different potential outcomes and can communicate this information to interested stakeholders;
- you are well prepared to navigate the different courses of action; and
- you have senior management and key stakeholder buy-in to your legal, commercial, financial and operational strategy.

Get good advice

You should consider the right time to appoint advisers (legal, technical, commercial and/or financial). You may have already done this to support you in managing ongoing disputes or performance issues. You should consider whether these advisers have the right skills and experience to deal with the complex issues that can arise with project distress, project company insolvency and/or termination, as these tend to be specialist areas.

It is important that you take proper advice, but also that you appoint and instruct your advisers in the right way. For example, if advisers are appointed under a narrow scope, they may not take account of the wider issues that could affect your organisation – such as the need to maintain service delivery, the risk and cost of litigation and the accounting and budgetary impacts of termination. It is critical that you and your advisers fully consider the risks of each course of action.

Your advisers should provide advice but it is important that you take the lead, both in terms of managing their work and in negotiating any technical and commercial outcomes. It is also important that all appointed advisors understand that behaviours reflect on their clients and that parties should adhere to the Nolan principles. Parties should also be clear that it is not appropriate to enter into conditional fee arrangements for PFI disputes.

Know your contract parties

As flagged above, it is important that you identify the key parties and individuals involved in delivering your contract and can develop direct lines of contact where necessary. This can be important when projects are distressed, because:

- you may need to escalate problems to the project company's directors, its shareholder representatives or senior management within the service providers;
- lenders have a critical role to play in resolving distress and you may want to ensure they are sighted on issues;
- when project company insolvency and/or termination happens, you may need to speak directly to the lenders' agent and to each of the lenders, as well as to service providers, to ensure continuity of service.

Lenders often move responsibility for loan monitoring from their portfolio teams to their distressed/work out/special situations teams when projects are distressed. These teams may not know the history of the project, or have significant PFI experience. It can be important to ensure you have contact with senior managers within the lenders who know the project and understand the PFI contract structure.

Inform Accounting Officers

Given the risks inherent in project distress, including potential project company insolvency and contract termination, it is critical that you engage your senior management in developing your legal, commercial, financial and operational strategy.

Start by considering whether your internal governance and reporting structure supports regular communication of risks and issues, as well as progress against actions and deliverables. Be clear who the decision makers are.

Maintain a risk register for your project and ensure that, where appropriate, issues are raised on your corporate risk register. By involving senior management early, you can develop and respond to issues in line with your corporate strategy. As you develop your legal, commercial, financial and operational strategy, your senior management team will need to:

- support you in securing additional resources, from within your organisation and/or externally;
- understand the commercial position of the project and the consequences of further escalation, including the risks of project company insolvency and/or contract termination;
- be clear on the decisions that will be needed – including the use of delegated authority – and the likely timing of those decisions;

Preparing your strategy

- support you in any wider stakeholder engagement, for example with your sponsoring department, HM Treasury and the IPA;
- help set objectives for negotiations, including a Plan A and Plan B, and "acceptable" versus "optimum" outcomes.

Distressed projects can require a lot of senior management time, especially when they involve prolonged disputes and/or litigation. It is important that your senior management team understand the time commitment that might be needed for different courses of action.

Develop your legal, commercial, financial and operational strategy

Your strategy should provide a clear roadmap, with guiding principles, that will inform your decision making in response to the issues you are encountering. The road map will provide plans for how you might respond to the issues you are likely to face.

Your strategy will typically include (at least) two plans: one assuming that you can reach a constructive resolution of the performance and contractual issues with the project company (Plan A); the other assuming that constructive resolution cannot be reached, potentially involving termination of the contract (Plan B), depending on how serious the issues are. It is likely that both plans will be developed at the same time, as you may need to switch from Plan A to Plan B, depending on events.

In most cases, Plan A should be the preferred outcome, with Plan B being for contingency. However, this may not always be the case, depending on the level of project distress and the ability of the parties to resolve it.

In developing your overall strategy, it may be necessary to assess what an "acceptable" outcome looks like versus an "optimum" outcome. Understanding what is acceptable may not be immediately intuitive or obvious, and you will need to consider the risks and impacts of a range of different outcomes.

For example, in deciding what an acceptable resolution of the contractual issues might be, you should take into account the risks and consequences of not reaching a resolution e.g. potential project company insolvency and/or contract termination, with accompanying risk transfer, financial consequences and litigation risk.

As a public sector body, you will have a statutory Duty of Best Value or a requirement to deliver optimal value for money for the public sector. In the context of distressed projects, best value/value for money may not always mean applying contractual remedies to the fullest extent. For example, if applying the maximum payment mechanism deductions would lead to project company insolvency, and a worse overall outcome for the contracting authority, then that might not represent best value/value for money. The overall economic consequences of different potential outcomes should be considered carefully as part of your strategy.

Your strategy will need to consider carefully the risks for your organisation of the different potential outcomes, including Plan A and Plan B. This will include legal, financial and operational risks. Your commercial and legal strategy should include an approach to risk mitigation, to ensure that you do not take any actions that could jeopardise future claims or your organisation's legal position, or expose your organisation to greater legal risk.

For example, where you are forgoing claims and/or giving relief to try to prevent insolvency/termination occurring, but the project does subsequently terminate (despite everyone's best efforts), you should ensure you are entitled to "resurrect" claims previously foregone when assessing compensation on termination.

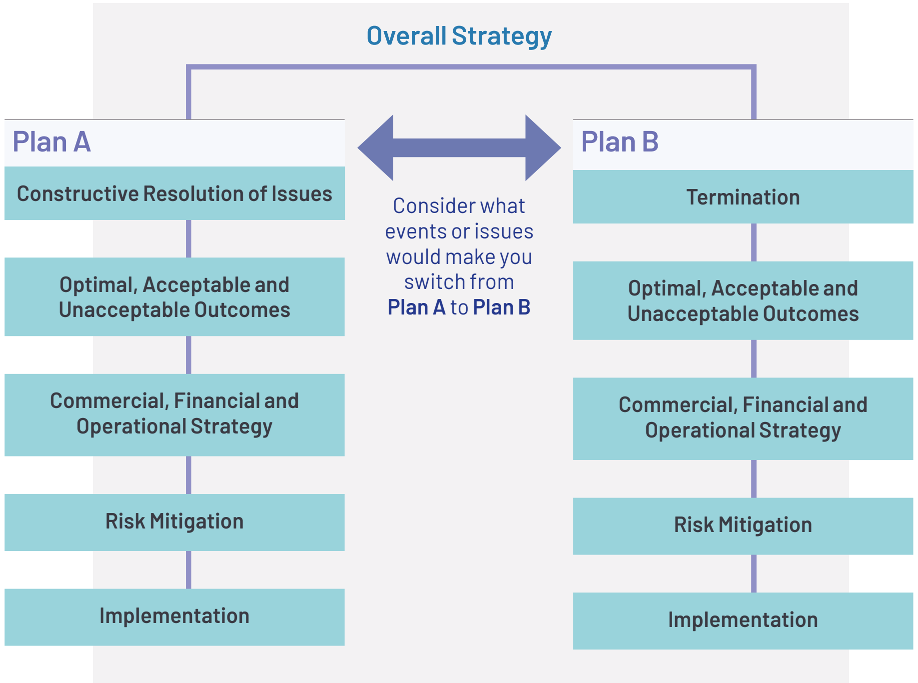
Similarly, you will need to consider risks in relation to legal privilege and what information is shared in your strategy document, briefing papers etc. that could subsequently be subject to Freedom of Information requests/disclosable in court proceedings.

You will also need to assess the potential impact of Plan A and Plan B on service delivery and what arrangements may be needed (on an interim basis and/or longer term) to mitigate the risk of service disruption, especially in the event of contract termination. The IPA's Expiry Guidance provides more information on the issues you may need to consider in these circumstances.[1]

1 https://assets.publishing.service.gov.uk/media/621c877de90e0710bdc09a96/IPA_Guidance_-_Preparing_for_PFI_Contract_Expiry.pdf

Preparing your strategy

Illustration of Plan A and Plan B



You should review and update your plans regularly, as discussions progress. You will need to consider what triggers might make you move from Plan A to Plan B. For example, this might be:

- when it becomes clear that you are unable to achieve an acceptable outcome from the discussions;
- if problems escalate further to a point where Plan A is no longer viable; and/or
- if project company financial stress increases to a level where insolvency becomes a real possibility.

We have set out in the Annex below an example of how your strategy might be structured, including some of the questions it should answer and issues it should address. You will need to consider many of the same questions and issues for both Plan A and Plan B. We are providing this for demonstration purposes only and your strategy will need to be specific to the issues in your contract and to cover themes that are relevant to your organisation and the public services provided.

Create the right environment for constructive discussions

Constructive resolution of contractual issues requires the right environment for discussions and the right people in the room. You should consider the format and approach to discussions, including suitable ground rules, such as:

- acceptable and unacceptable behaviours (with particular reference to the *Nolan Principles*);
- full transparency about the issues; and
- senior attendance at meetings, including decision makers.

You will need to brief your SRO (and other senior leaders) about the issues and ensure your approach to the negotiations aligns with your strategy.

You should set clear expectations for outcomes. You may want to involve mediators where necessary and advisers may need to be involved, but should advise rather than be allowed to determine outcomes.

It is important that the people involved have the right skills and experience, are capable of making decisions and can approach the discussions constructively. This may require a change in personnel from business as usual, particularly where existing relationships have broken down. This should not be viewed as failure or backing down, it is simply a recognition that a different approach may be needed to support constructive discussions.

Keep stakeholders informed

As part of your strategy, you will need to consider the interests and importance of various stakeholders. You should keep relevant stakeholders informed of progress on a regular basis to ensure they receive consistent and reliable information. This may include your sponsoring department and/or HM Treasury, depending on the course of action you expect to take.

Step 2 Checkpoint

At the end of Step 2 you should have a clear strategy, including Plan A and Plan B:

You should keep the strategy under review, and amend or adapt it as circumstances change. You should be ready to implement the appropriate plan when required – see Step 3.

Step 3 Implementation

Step 3. Once you have developed your strategy for Plan A and Plan B, you will need to prepare for implementation. The implementation steps should largely be dealt with in your strategy. In most cases, Plan A will be constructive resolution of the issues, and your strategy will set out what you want to achieve and how. However, you may also need to prepare for implementing Plan B – which could include potential project company insolvency and contract termination.

Develop a business case

You may need to develop a business case to get approvals to take your preferred actions. Much of this will have been developed as part of your strategy document.

Review timelines

You should review the relevant timelines and response times in the various agreements, including the PFI contract, subcontracts and direct agreements, to ensure you are able to respond in a timely manner.

Consider practical issues

You will need to consider any practical issues that arise from your preferred plan. For example, when considering termination of your PFI contract, it will be necessary to think about the practical elements that will be needed from a day-to-day operational perspective. In relation to a building facility, this will include:

- who has the keys for the building;
- what arrangements need to be made with the external security alarm firm;
- where are the O&M manuals for the building;
- where is the compliance certification for the building;
- when is the next EPC due;
- where is the Asbestos Register, Fire Strategy, Water Management Strategy etc.;
- what staff will transfer with the services and what are their terms and conditions.

Projects in other sectors (e.g. waste, street lighting etc) will have different issues that will need to be considered.

There is nothing preventing you from gathering this information in advance, and remember, none of this preparation work will be wasted – it will help you with managing the contract and preparing for expiry.

Get your approvals

Before you implement your plan, you may need approvals, including from your own senior management/Board, your sponsoring department and HM Treasury (contact your sponsoring department and/or the IPA on pfiadviceandsupport@ipa.gov.uk for more information).

DO	DON'T
– Work with Senior Managers to develop a clear strategy to achieve your agreed objectives – Develop a Plan A and a Plan B and review them regularly – Set realistic objectives – what is acceptable to your organisation – Understand what information you require and begin to gather it – Be clear about what your contract says – Seek specialist advice and use this to achieve your objectives – Assess, with advisers, what impact contract termination would have – Revisit your strategy and plan when considering expiry – even if not needed now, it will be helpful then	– Assume that this will not be relevant to your project – Wait to start considering the issues in your project – Underestimate the preparation involved – Be a passenger – you should be proactive in putting your strategy into place to achieve your objectives – Try to do it alone – there is lots of support – be sure to ask for it

Annex: Developing your strategy

Your strategy will typically include (at least) two plans – one assuming that you can reach a constructive resolution of the performance and contractual issues with the project company, the other assuming that constructive resolution cannot be reached, potentially including the risk of project company insolvency and/or termination of the contract. In most cases, Plan A (resolution) should be the preferred outcome, with Plan B being for contingency. However, this may not always be the case, depending on the level of project distress and the ability of the parties to resolve it.

This Annex sets out some of the key issues and questions you should address in developing your strategy – it is not exhaustive and you and your advisers will need to consider carefully the specific issues affecting your project.

Background	Set out clearly the issues you are facing. This should be brief, factual and include relevant and accurate information.
	Some examples for illustration purposes:
	– How long the issue has been going on for
	– Number of sites affected
	– £ values involved – rectification costs, deductions etc
	– Current understanding of positions.
	  > Why is this an issue?
	  > What are the outstanding points between you and the project company?
	  > How have you tried to resolve these issues already?

Objectives	What is your organisation trying to achieve/what are your objectives (there may be more than one)? Some examples for illustration purposes: – Resolve the issues at minimum cost to the contracting authority – Ensure rectifications work are completed within a certain time period and/or with minimal operational disruption – Ensure continuity of service provision whilst issues are resolved or, if they can't be, during and after termination – Repair relations with the project company – Avoid termination of the PFI contract
Optimum outcome	For Plan A and Plan B, what would be the best outcome? E.g. agreement with the project company to resolve the issues.
Acceptable outcome	For Plan A and Plan B, what would be an acceptable outcome? E.g. some sharing of pain (giving of relief) as part of a commercial settlement.
Unacceptable outcome	For Plan A and Plan B, what would be unacceptable? E.g. – continuing and significant poor operational performance and/or defects – unplanned project company insolvency and/or termination
Deliverables	How will you measure your objectives and over what timeframe?

Annex: Developing your strategy

For both Plan A and Plan B you will need to develop more detailed action plans. As you do, a route map will start to develop. The order that actions must be taken will become clearer and you will be able to break down tasks and activities into manageable workstreams.

You will need to consider in your plans: (this list is not exhaustive)

Senior managers	Reporting to and engagement with senior managers: – Which senior managers need to be involved – Section 151/SRO/others – who is the decision maker and what authority do they have? – Do they need to be briefed about the contract first? – How often will you review the issues and progress against your agreed objectives? – Is there an existing governance structure to do this? How will actions be captured – minutes, notes, reports, risk registers?
Specialist Advice	– What external specialist advice do you need? – When should you procure this? – Are there advantages to engaging this advice earlier – for example instructing a legal contract review? – What will the scope of this work be – can this be drafted? – Does the scope cover wider issues/risks that need to be considered (e.g. litigation and termination risk)? – Where will the budget be approved? – Do your usual advisers have the right specialist skills? – Can you access a framework? – Do you have your bible of documents collated and available? Does this include any variations agreed since financial close? – Have you contacted your sponsoring Department or IPA?

Risk Management	You are likely to be constantly considering risks as part of your strategy and associated planning. It is important to record these so that the risks can be prioritised, managed, and escalated or de-escalated. A project specific risk register would be helpful. You may also find it useful to create a risk register specific to the issues that are causing your project distress (this could be a section of your current risk register, rather than a new document). You will likely have a corporate risk register. It will be important to ensure that your PFI project is noted and that the information recorded is accurate. As you deal with issues of project distress, it will be important to add timely and relevant updates to the risk registers.
Stakeholders	Who are your key stakeholders? What are their contact details? Names, addresses (in case you need to serve paperwork), email addresses, telephone numbers. Some examples (for illustration purposes): – SPV directors – SPV Legal Advisers – Shareholder representatives – Lenders – Lenders' consultants – Service providers (e.g. Soft and Hard FM contractors) – Sponsoring department – Healthcare Trusts – Academy Trusts – HMT – IPA – Headteachers – Elected Members – Staff providing PFI Services – Staff delivering public Services How will you engage with them? What influence do they have on the project? What interest do they have in the project?

Annex: Developing your strategy

Resources	What resources do you currently have in response to current and identified needs? Is there the required capacity and competence? How can you fill any gaps? How can you respond quickly to changing needs? What resources will be needed to implement Plan A and Plan B (they are likely to be different)?

Your strategy will have specific Legal, Commercial, Financial and Operational sections relating to each Plan.

Legal	You and/or your advisers will need to do a detailed contract review covering the PFI contract (including any contract variations), loan agreement (and subsidiary documents), service provider contracts and the various direct agreements and collateral warranties. The review may need to consider a range of issues, including the following (see Part 4 for more information on contract termination): – an assessment of the contractual and commercial issues and disputes causing the project distress, including risks to your organisation from prolonged and/or unsuccessful outcomes to formal disputes – how the dispute resolution procedures operate and practical considerations in using them – the events of default under the PFI contract, loan agreement and service contracts – whether, or when, you would have grounds for contractor default termination and the risk of challenge – how termination compensation is calculated – the risk and potential cost of lengthy litigation following termination – the risk that the project company could have grounds for authority default termination – how the direct agreements and collateral warranties operate during and after termination – what rights you have to pay service providers directly during a termination period, and what risks may arise if you do so – TUPE issues
Legal continued	The legal strategy should also include an approach to risk mitigation, to ensure that you do not take any actions that could jeopardise future claims or your organisation's legal position (including legal privilege) or expose your organisation to greater legal risk. You should keep careful records to support any future claims/disputes. It is important that you have a legal strategy in place, with clear objectives, so that you can ensure you are harnessing the legal advice in the pursuit of the overall objectives of your organisation.
Financial	You and/or your advisers should consider the financial risks and consequences of different commercial outcomes. This includes: – the likely financial impact of settling the contractual issues impacting the project (including optimum, acceptable and unacceptable outcomes) – the financial impact of the contracting authority's actions, including levying substantial deductions and whether this could contribute to project company financial distress – any other issues that may be affecting the financial viability of the project company – any budgetary and balance sheet classification issues e.g. if constructive settlement involves a change in risk transfer – the financial impact of contract termination (no-retendering), including: > estimates of termination compensation payments based on a range of possible variables, including: the costs of rectifying defects, the costs of delivering the services to the standards required under the PFI contract, gilt rates and inflation assumptions > the impact on departmental PFI grants > the impact on cash, capital and revenue budgets You and/or your advisers should make an assessment of the project company's financial position, including capacity to absorb financial deductions and additional costs, and the risk of project company insolvency (see Parts 2 and 4).

Annex: Developing your strategy

Operational (including technical)	You will need to consider the operational (including technical) risks and consequences of: (1) Continuing under the PFI contract. E.g. what is the operational impact of implementing a negotiated settlement, including interference to current business operations, decant requirements etc.? Do you understand the full extent of the work required? What is the proposed technical solution and can the project company and its subcontractors deliver that solution to budget and timetable? What are the risks and consequences of failure? (2) Terminating the PFI contract and either retendering it or following the no-retendering route, in which case you will need to consider (i) continuing service delivery through the existing service providers (ii) self-delivering the services or (iii) re-procuring the services with a new provider. These issues are dealt with in more detail in the IPA's guidance on *Preparing for PFI Contract Expiry*[2] though timelines may be significantly compressed You may need to consider how you would ensure service continuity during project company insolvency and/or contract termination, including your rights under the service provider direct agreements. You should consider whether, and how, you would make direct payments to service providers to minimise service disruption. This will require careful review of the project contracts. You may also need to make direct payments to insurers to maintain cover if the project company is insolvent/not paying the premiums. See Parts 3 and 4 and for more information on insolvency and contract termination. If you are considering self-provision of services or transfer of services to a new provider, there will be many practical issues that will need to be considered (access to keys, manuals, staff information etc). If significant rectification works are required, do you understand the extent of the works required, has the facility/asset been surveyed? How will you deliver the works and do you have the skills and resources to effectively manage them, including access to capital?

Commercial	Your commercial plan will, in part, reflect the outputs from the legal, financial and operational analysis you have already completed. You will need to decide: – what further information you need to help resolve disputes and/or prepare for potential contract termination e.g. condition surveys to establish dilapidations/rectification costs? – what your commercial objectives are from Plan A and Plan B, including what your optimum, acceptable and unacceptable outcomes look like. What are your "red lines"? – how best you can achieve these objectives > do you understand the other side's point of view and commercial positions – remember there are a number of different parties (project company, shareholders, lenders and service providers) and they may all have different drivers, constraints and objectives? > do you understand what levers you and the other parties can use and when (e.g. event of default, authority and lenders' step-in rights)? > do you know who the real decision makers are and what levels of authority they have? Will they need to get further approvals and, if so, who from (including any shareholder investment committees and lenders). Are the right people involved in the discussions? – what is your negotiating strategy? – at what point do you need further approvals?

2 https://assets.publishing.service.gov.uk/media/621c877de90e0710bdc09a96/IPA_Guidance_-_Preparing_for_PFI_Contract_Expiry.pdf

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