



National Infrastructure
& Service Transformation
Authority

Gaps and Ambiguities in PFI Contracts

A practical guide to identifying and managing
gaps and ambiguities in PFI contracts

PFI Centre of Excellence

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Gaps and Ambiguities in PFI Contracts

NISTA PFI guidance

NISTA has produced a range of guidance to support public sector PFI contract managers. This can be found on the [PFI Centre of Excellence website](#).

We welcome your feedback on this guidance. Please contact us via pfi-operations-inbox@nista.gov.uk.

Purpose of this Guidance

1. Explain what gaps and ambiguities are in PFI contracts, and why they matter.
2. Provide a structured approach to identifying, capturing, analysing and managing gaps and ambiguities.
3. Help you assess significance and determine appropriate actions.
4. Support consistent contract management by embedding this process into day-to-day practice.
5. Introduce practical toolkits to support documentation and tracking.

Audience

This guidance is primarily aimed at PFI contracting authorities, particularly those engaged in day-to-day contract management and senior responsible owners for PFI contracts. In setting shared expectations, this guidance should be useful to all private sector parties involved in PFI contracts.

Using this document

This guidance is not prescriptive, as the activities and the level of activity required will vary based on the nature of the assets and services and the form of the PFI contract. Instead, it offers a framework which will need adapting to the specific circumstances of your project.

[A PFI Glossary of Terms can be found here](#)

Legal caveat

This guidance is intended to help you identify practical steps for managing your PFI project: what to do, why it matters, and how to approach it. Given the wide range of PFI contracts, the guidance is necessarily generic and does not override the terms of your specific agreement. Any action should only be taken after careful consideration. This document is not legal, professional or technical advice. You should always seek formal professional advice where appropriate.

Icon Key



Warning



Tip



Note



Toolkits



Appendices

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Toolkits



TOOLKIT 1: [Gaps and Ambiguities List Template](#)

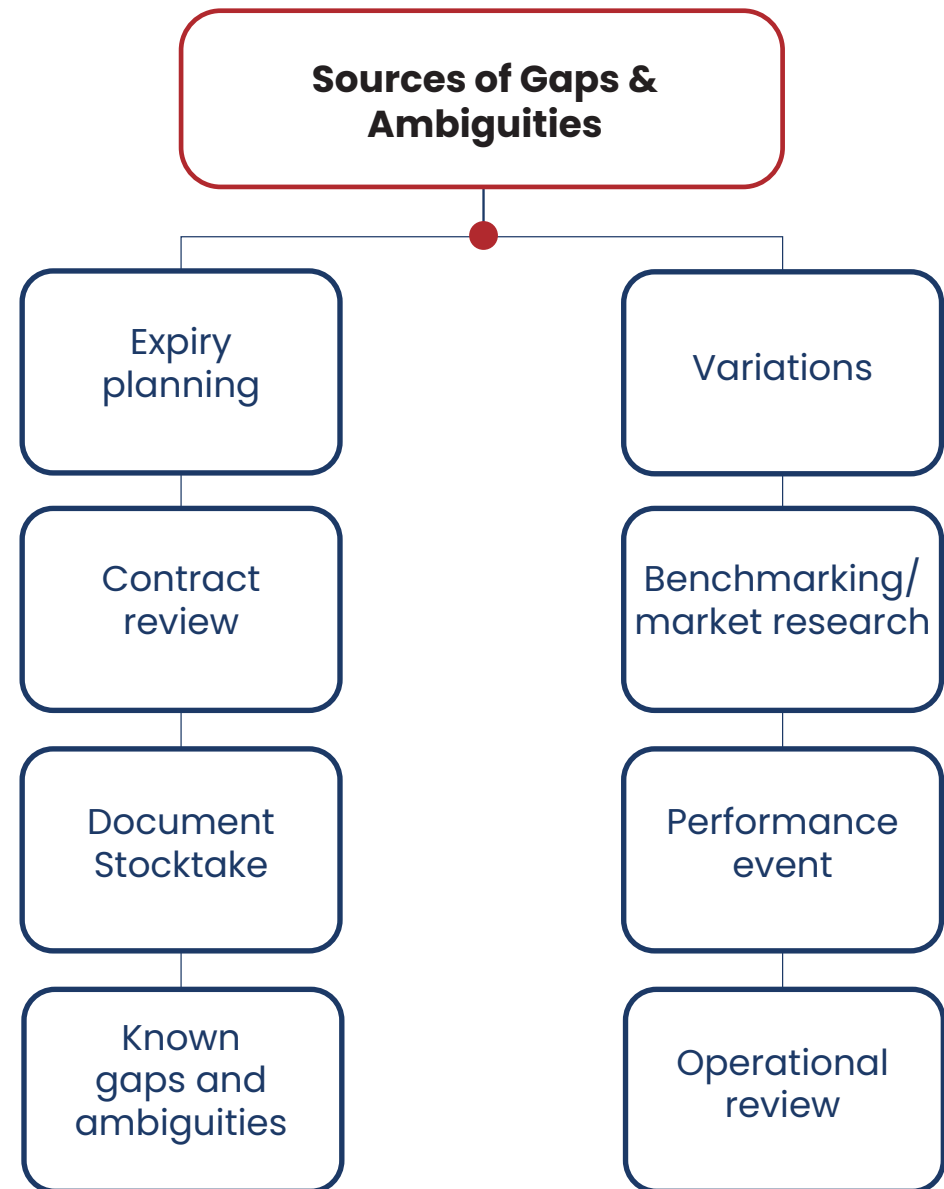
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1. What is a contract gap or ambiguity?

PFI contracts often contain gaps and ambiguities that can create uncertainty or operational challenges. Common examples include:

- **Missing documents:** Key contract documents that cannot be located.
- **Unaddressed matters:** Topics or issues not covered by the contract.
- **Ambiguous terms:** Clauses that are open to multiple interpretations.
- **Unworkable provisions:** Terms that are difficult to apply or unnecessarily complex.

These issues may emerge at various points during the contract term (see diagram for some examples). It is good practice to record them in a gaps and ambiguities list to support consistent management and resolution.



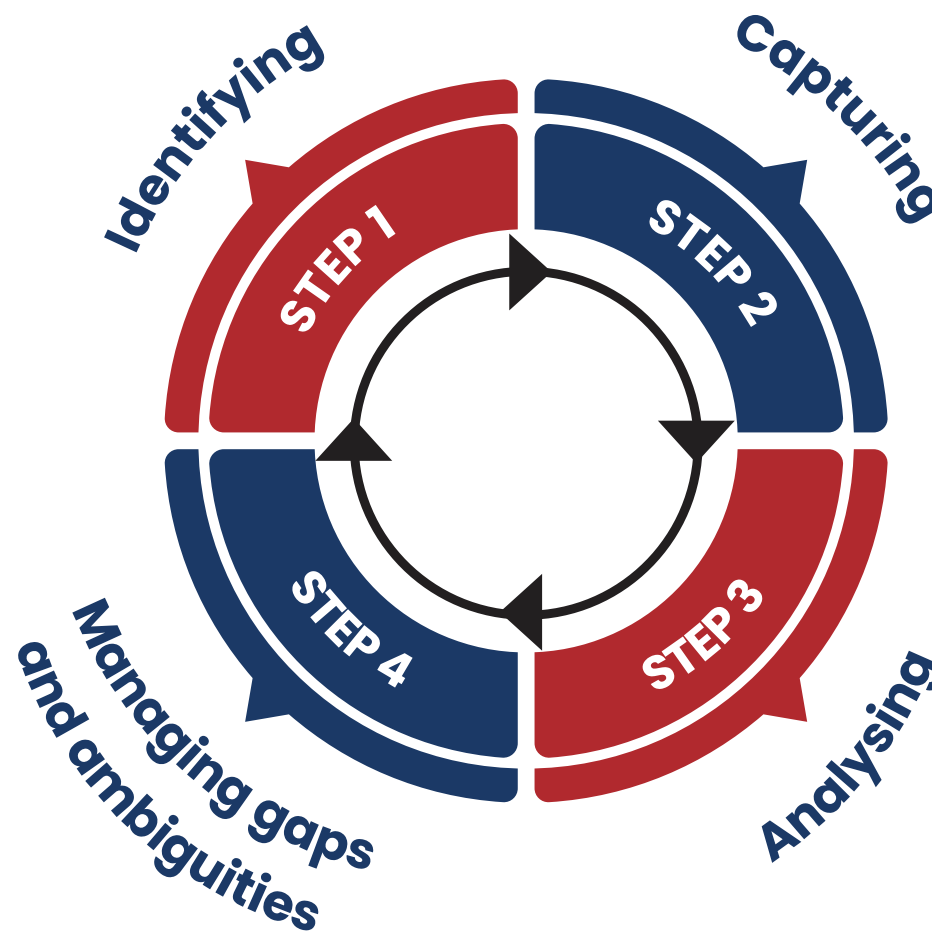
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2. Identifying, capturing, analysing and managing gaps and ambiguities

Gaps and ambiguities in PFI contracts may present varying levels of risk if not effectively managed. By consolidating known and emerging issues into a gaps and ambiguities list, you can:

- Bring together issues already identified across your team.
- Prioritise which gaps and ambiguities require attention.
- Factor these issues into day-to-day contract management and interactions with the PFI Co and service provider.
- Address gaps ahead of key project events, such as benchmarking or market testing.
- Prepare for expiry by resolving issues that could impact handback or transition.

Failure to manage these risks can result in substandard service delivery, non-compliant assets (especially at expiry), increased costs, strained relationships and costly disputes.



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There are four steps to support the management of gaps and ambiguities set out below.

Use  **TOOLKIT 1: Gaps and Ambiguities List Template** to support these steps.

Step 1 Identifying

You may already be aware of some gaps and ambiguities. Others will emerge through routine contract management or in preparation for specific events. Encourage your team to actively identify and capture gaps and ambiguities as part of their role.

Step 3 Analysing

Each entry should be assessed to determine:

- The level of risk and when that risk might materialise.
- Whether action needs to be taken, and if so, what action to address. Some issues may not be material or may not need immediate resolution.
- The appropriate timing for action, some gaps may only need to be addressed ahead of future events.

Step 2 Capturing

Once identified, record each issue in the gaps and ambiguities log.

This ensures visibility and enables consistent tracking.

Step 4 Managing gaps and ambiguities

Once actions are identified, manage them through to resolution. Consider:

- Who owns the gaps and ambiguity list.
- What level of senior oversight is needed.
- How often the log should be reviewed, particularly to reassess risks or progress.
- Monitoring actions and deadlines.
- Assigning clear responsibility for each action.
- Determining when an issue can be closed and ensuring this is documented.
- Whether any issues should also be reflected in other contract management tools for example if expiry survey provisions are unclear, this should be noted in both the log and the expiry risk register.

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3. Addressing gaps and ambiguities

Since most gaps and ambiguities relate to the PFI contract documents, resolving them will often require engagement and negotiation with the PFI Co and, where relevant, the service provider. While some issues may be resolved easily, others may be more complex and require careful handling.

To support successful outcomes and avoid unnecessary disputes, the following should be considered:

- Prepare thoroughly before engaging with the PFI Co or service provider.
- Clearly articulate the issue, its implications and your proposed resolution.
- Approach discussions constructively, aiming for a mutually acceptable solution.

Once a gap or ambiguity has been resolved, it is essential to:

- Document the resolution clearly, including any agreed amendments or formal contract variations.
- Update the gaps and ambiguities list to reflect the resolution and ensure a record is maintained.

Failure to properly document agreements may result in misunderstandings or disputes later in the contract term.



Failure to properly document agreements on gaps and ambiguities may result in misunderstandings or disputes later in the contract term.