National Infrastructure
& Service Transformation
Authority

Building Blocks of PFI Reset

Introduction to the building blocks of PFI Reset

PFI Centre of Excellence

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Building Blocks of PFI Reset

Introduction

Purpose

This guidance:

- Introduces the building blocks of PFI reset.
- Sets out how each of the building blocks is relevant to PFI reset.
- Signposts further guidance and toolkits relevant in the application of the building blocks to reset.

This is the third of NISTA's guidance documents supporting reset, the others being:

- PFI Reset: an introduction for SROs and contract management teams
- Delivering PFI Reset

You should note:

- We are not advising that each reset process should involve each of the building blocks. Parties will need to consider the extent to which each is applicable to the particular project in question.
- This guidance does not offer best practice guidance on contract and performance management and related topics. That best practice guidance is covered in the wider suite of guidance and toolkits which NISTA has produced and which is referenced throughout this document.

A separate document includes the toolkits which are referenced within the section on governance and relationships.

Audience

This guidance is primarily aimed at Senior Responsible Owners (SROs) with PFI responsibilities and their contract management teams. Reset, however, should be a joint endeavour between the public and private sector parties and, as such, this guidance is intended to be useful to investors, funders, asset managers, market suppliers and all those with an interest in PFIs. This guidance has been developed in consultation with a broad range of stakeholders across the public and private sector.

Legal caveat

This guidance is designed to help you consider what practical steps you should take to manage your PFI project, why you should take them, and how you might go about them. Given the breadth of the PFI sector, the guidance is necessarily generic in nature and not intended to override your contract. Action should not be taken without careful consideration of the details of your own project. As such, this guidance cannot be relied on as legal or any other form of advice, or professional opinion. You should seek formal professional advice as necessary.

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1. Building blocks of reset

For any project to be successful, there are 4 core building blocks which need to work optimally:

- **Governance and relationships** – the starting point for effective joint working is good governance, with regular meetings and a commitment from all parties to attendance. Allied to this, good working relationships and professional behaviours act as the fundamental building block of good operational performance. Getting these right is key.
- **Resourcing and related considerations** – without the right approach to resourcing, both in terms of the numbers and skillset of available resources, no project can be successful.
- **Contract management** – making sure a strong contract management structure and related processes are in place is key to improving projects and embedding change.
- **Performance** – service delivery and asset performance represent the key outputs of PFI projects, and if these are not working well then all parties should be committed to improvement.

These were referenced in PFI Reset: an introduction for SROs and contract management teams and are reflected in the structure of the PFI Stocktake; where a need for a reset has been identified through the stocktake process, it will be because one or more of these key building blocks is not working well.

In this section, we describe why each of these building blocks matters in the context of PFI reset and provide guidance and/or signpost further documents which will help you drive improvements and implement a PFI reset.

This guidance will therefore help you define the scope of your reset.

1.1 Building block 1: Governance and relationships

Governance

The complexity and multi-party nature of PFI projects mean they require robust governance structures to ensure their success. Effective governance is critical to managing risks, facilitating collaboration among stakeholders, and delivering project objectives.

Effective governance is built on formalised structures, and these are essential to a well-performing project, and particularly so during a reset.

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This involves having:

- **Clearly defined project governance structures** – what meetings, with whom and how often.
- **Effective governance administration** – are meetings properly minuted and are actions tracked in a transparent and user-friendly manner.
- **Formal terms** of reference and delegated authority limits.
- **Clarity on how** project governance meetings fit in with the wider structure (i.e. internal governance) and supports better project outcomes.
- **An understanding** of the other parties' internal processes (to help manage expectations and avoid frustrations caused by unanticipated delays).

Identifying problems in governance is simple in many respects, and it should be obvious if the indicators set out above are not in place and/or working as they should be once you have carried out the Project Stocktake process. Where this is the case, we recommend using the framework we have set out in NISTA's guidance on PFI governance in order to identify areas for improvement. This can be found on the PFI Centre of Excellence website.

In many cases, making changes to improve governance should largely be a mechanical affair – i.e. it can be a simple question of identifying which structures are missing and what is needed. It should be an area where parties find it easy to cooperate around change.

Relationships

Relationships are inherently more complex and contextual than governance and, as well as being a key enabler of a reset, in some projects may have been identified as a problem through your Project Stocktake.

Instinctively, we know that good relationships create more value than poor relationships. Yet relationships continue to be cited as a major challenge in the PFI sector. The nature of PFI contracts means that effective relationships are both essential and challenging for a number of reasons.



Good relationships must be productive, not just cordial, and be built on a bedrock of assured performance.

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Importance and challenges of good relationships

Aspect	Importance	Challenges
Collaboration and communication	Supports sustained cooperation over the long term, allowing for effective problem-solving and project success.	Maintaining consistent communication and collaboration over time, especially with personnel changes and diverse interests.
Risk and performance management	Enables proactive risk-management and enhances service delivery through trust and open communication.	Differences in risk tolerance and misalignment in performance expectations can lead to misunderstandings and tension.
Issue resolution and flexibility	Facilitates constructive resolution of issues and encourages adaptation to changing circumstances, leading to improved project outcomes.	Lack of established mechanisms and resistance to change can lead to prolonged disputes and stifle innovation.
Objective alignment	Balances public service delivery with private sector profitability, ensuring value for money and return on investment.	Conflicting objectives and priorities require ongoing negotiation and risks disputes.
Complexity of contracts	Manages the intricate details and multiple stakeholders involved, ensuring clarity and alignment of interests.	The complexity of contracts can lead to misunderstandings and difficulties in aligning diverse stakeholder interests.

Given the fundamental importance of effective relationships, this section provides you with a framework to help you manage relationships on your project. It also provides you with some insights into the challenges you may encounter doing so during a reset.

You will need to adapt this guidance to meet the needs of your reset and current relationships.

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Why is managing your relationships during a reset important?

A reset will generally be focused on improving PFI outcomes, performance and processes, but to do so you will need to work with the other parties. Your current relationship and key relationship risks may impact on the success of your reset, and your Project Stocktake process may actually have shown that poor working relationships are part of the reason for your project needing a reset approach.

Poor working relationships will hinder your ability to progress a reset in a number of ways:

1. **Communication breakdowns:** Ineffective communication can lead to misunderstandings, misinterpretations, and a lack of clarity regarding the reset objectives and processes. This can result in delays, errors, and increased tensions among stakeholders.
2. **Loss of trust:** Trust is a foundational element in any partnership. During a reset, if parties feel that information is being withheld or that decisions are being made unilaterally, trust can erode. This loss of trust can hinder negotiations and collaboration.
3. **Conflict escalation:** Resets often bring to light underlying conflicts or disagreements. If not managed properly, these conflicts can escalate, leading to disputes that may require legal intervention, causing further delays and costs.
4. **Stakeholder misalignment:** Different stakeholders may have varying expectations and priorities. Misalignment among stakeholders can lead to resistance, lack of cooperation, and challenges in reaching consensus on key decisions.
5. **Resistance to change:** Some stakeholders may be resistant to changes proposed during the reset, especially if they perceive these changes as threatening their interests or established ways of working. This resistance can slow down the reset process and create friction.
6. **Power imbalances:** Imbalances in power or influence among stakeholders can lead to decisions that favour one party over others, causing resentment and dissatisfaction. This can damage relationships and lead to long-term issues.
7. **Cultural differences:** Differences in organisational culture, values and practices can create misunderstandings and conflicts. These cultural differences need to be acknowledged and managed to ensure effective collaboration.

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8. **Lack of engagement:** If stakeholders are not adequately engaged or feel excluded from the reset process, they may become disengaged or adversarial, which can undermine the reset's objectives.
9. **Poor behaviours:** Unprofessional behaviours can prevent parties from being able to work well together and achieve joint outcomes. In a worst case scenario, they can also impact a party's ability to meet operational needs by leading to staff illness, retention issues and/or difficulties in filling vacancies.

Addressing these relationship risks requires proactive management, open communication and a commitment to collaboration and transparency. By recognising and mitigating these risks, parties involved in a PFI reset can enhance the likelihood of a successful outcome. This will not only support a reset approach but also improve the general operation of the project and reduce the likelihood of problems emerging again.

The continuum of relationships

Before assessing the relationships on your project, it is important to understand the continuum of relationships in business ranges from low to full collaboration. This continuum can be understood through various stages and elements that define the depth and quality of collaboration between parties.

- **Transactional relationships** – At the lowest level of collaboration, relationships are primarily transactional. These involve basic exchanges of goods or services with minimal interaction beyond the transaction itself. The focus is on fulfilling contractual obligations without any additional engagement or shared objectives.
- **Cooperative relationships** – As relationships progress, they become more cooperative. This involves some level of communication and coordination between parties to achieve mutual benefits. However, the primary focus remains on individual goals rather than shared objectives.
- **Coordinated relationships** – In coordinated relationships, parties begin to align their activities and processes to achieve better efficiency and effectiveness. This stage involves more structured communication and planning, but the collaboration is still limited to specific areas or projects.

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- **Collaborative relationships** – At this stage, parties work together more closely, sharing resources, information and risks to achieve common goals. Collaborative relationships are characterised by trust, mutual respect, and a commitment to long-term success. They often involve joint decision-making and problem-solving.
- **Integrated relationships** – The highest level of collaboration involves fully integrated relationships where parties operate almost as a single entity. This stage is marked by shared values, objectives and governance structures. Integrated relationships often involve strategic partnerships or alliances where both parties are deeply invested in each other's success.

These stages and principles provide a framework for organisations to assess and enhance their collaborative relationships, moving from basic transactional relationships to fully integrated partnerships. You will need to understand where you are on this spectrum and where you would like to be – and how this aligns with the views of other PFI parties.

How do I prepare my relationships for a reset?
Resetting your PFI is a complex process that will require working with the other PFI parties and gaining access to the necessary data to enable your reset workstream and objectives. Below is a step-by-step guide to help you understand your current relationship, including data sharing, developing plans to improve and change your relationships, and engaging your partners.

Irrespective of whether relationships have been identified as an issue in your Project Stocktake, we recommend that you use the approach outlined below, adapting it to your own needs and objectives, to evaluate, develop and manage your relationships going forward. The toolkits referenced below are included in the separate Relationships Toolkits published alongside this guidance.

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Step 1 Evaluate current relationships

1. **Identify key stakeholders:** List all partners involved in your PFI project, including the PFI Co, main service providers, investors, lenders and other public stakeholders (e.g. the user and academy trusts). Understand their roles and contributions to the project.

   Toolkit 1 – Toolkit title

2. **Assess relationship dynamics:** Evaluate the quality of your relationships with each PFI partner. Consider factors such as trust, collaboration and mutual respect.

   Toolkit 2 – Toolkit title

3. **Gather feedback:** Conduct surveys or interviews with internal teams and stakeholders to gather feedback on the current relationships. Identify areas of strength and areas needing improvement in terms of relationship dynamics.

   Toolkit 3 – Toolkit title

4. **Review communication and data sharing:** Analyse the effectiveness of current communication channels and data-sharing practices. Determine if there are any barriers to open and transparent data exchange.

   Toolkit 4 – Toolkit title

5. **Understand PFI parties perspectives:** Take the time to understand the perspectives and motivations of the other PFI parties. Recognise their goals and challenges to better align your objectives. Toolkits 1 to 4 will help you do this by either a) considering the questions from their perspective, or b) asking them. Note that you may wish to consider your views now, and ask them at a later stage of the process.

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Step 2 Develop plans for relationship and data-sharing improvement

1. **Set relationship and data-sharing goals:** Define what you want to achieve in terms of relationship and data-sharing improvement. This could include building trust, enhancing collaboration and establishing efficient data-sharing protocols.
2. **Identify relationship and data-sharing challenges:** Based on your evaluation, identify specific challenges related to relationships and data sharing that need to be addressed. This could include misunderstandings, misaligned goals or communication barriers.
3. **Training and development:** Identify training needs for relationship skills, such as communication, negotiation, and conflict resolution to equip your team, and others, with the tools needed to maintain strong relationships.

Step 3 Engage PFI parties in relationship and data-sharing discussions

1. **Prepare for discussions:** Gather all relevant information and prepare a clear agenda for discussions with your partners. Focus on relationship building, data-sharing needs and mutual understanding.
2. **Initiate open and honest dialogue:** Speak to the other PFI parties to initiate discussions. Emphasise the importance of strengthening relationships and improving data sharing for the success of the project.
3. **Listen actively and empathise:** Be prepared to listen actively to the other PFI parties' concerns and perspectives. Show empathy and understanding to build trust and rapport.
4. **Collaboratively address challenges:** Work together to address any relationship and data-sharing challenges. Encourage open communication and seek win-win solutions.
5. **Develop relationship building and data-sharing strategies:** Create strategies to strengthen relationships and improve data sharing with the PFI parties. This might include regular meetings, joint workshops, or implementing secure data-sharing platforms.

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6. **Foster a collaborative environment:** Encourage a culture of collaboration by promoting shared goals and mutual benefits. Highlight the importance of working together and sharing data to achieve project success.



Learning from experience

The authority held a workshop with their PFI Co and FM Co. They were asked to explain their role in the PFI.

That the PFI Co primary obligations was to repay the debt and provide returns was a surprise to many. However, after discussions, the whole group understood the importance of their role and realised that this explained some of the PFI Co's actions.

7. **Formalise agreements:** Once agreements are reached, formalise them in writing. Update contracts and agreements to reflect the new relationship and data-sharing goals and objectives. This could be documented in a joint relationship management plan (JRMP).



Toolkit 5 – Toolkit title

8. **Implement relationship building and data-sharing initiatives:** Begin implementing the agreed upon relationship-building and data-sharing initiatives. Monitor progress and make adjustments as needed to ensure successful implementation.

Step 4 Monitor and nurture relationships and data-sharing

1. **Regular check-ins:** Schedule regular meetings with the PFI parties to review relationship and data-sharing progress and address any ongoing issues. You may decide that this should be a separate and dedicated meeting within the reset governance to provide the necessary focus and importance.
2. **Evaluate outcomes:** Periodically evaluate the outcomes of the relationship-building and data-sharing efforts to ensure they are meeting the desired objectives. This could use the feedback process in Toolkits 2 and 3.
3. **Encourage continuous improvement:** Foster a culture of continuous improvement by encouraging ongoing feedback and collaboration with the PFI parties. These could be documented in an update reset or relationship management plan, as appropriate.

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Insights for managing relationships in PFIs

This section has explained the benefits and challenges of managing relationships, along with an outline process to support you in doing this. Below, we provide some insights which may help you consider these challenges and develop strategies to address them.

1. **Relationship and trust are a journey:** The relationships and levels of trust will not materially change just because you have agreed to reset. It takes time and action to build trust and improve relationships.
   a. Consider starting with reset activities that are likely to be easier to address by parties. The success in these areas should help build trust and demonstrate that parties can work together positively to solve problems. This will help later with more challenging and contentious matters.
   b. Take time to understand the drivers and motivations of each other. Consider time away from day-to-day activities and the associated pressures to do this – time is precious, but experience suggests that even after years of working together parties often only have a superficial understanding of the other party.
2. **Role model:** You should look to role model the behaviours that you wish to see in the relationship. Changing behaviours requires leadership to create the right culture.
   a. Consider the behaviours that you wish to see on the contract and seek to codify these in the JRMP or a code of conduct, or adopt an existing set e.g. Nolan Principles[1] or the Civil Service Code.[2]
   b. Recognise that behaviours may not change immediately. Do not accept poor behaviours: provide constructive feedback – mirroring poor behaviours undermines your position and the case for others to change.
   c. Being professional, objective and courteous does not compromise your commercial position. It is not about giving way or conceding on matters, but rather avoiding bad behaviours or becoming personal in your engagements.

1 https://www.gov.uk/government/publications/the-7-principles-of-public-life
2 https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code

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3. **Listen and understand the views of others:** To address the issues in reset you need to listen and understand the views and needs of others. This will help build trust and mutual understanding, and lead to you being able to find better and mutually acceptable solutions and reduce the risk of disputes.
4. **Persevere:** Good relationship management takes time and commitment from all parties. Where you have identified current approaches as problematic, it will take time to improve things.
5. **Use neutral parties to "mediate":** Where disagreements or poor relationship practices have arisen, the use of neutral pathways to resolution can be very effective. Identifying neutral parties who can support in these circumstances can be a good way of removing emotion and finding solutions dispassionately.
6. **Focus on dispute resolution in a constructive way:** Some believe that effective relationships and disputes are mutually exclusive – NISTA does not believe this is the case. It is possible to maintain good relationships whilst navigating a dispute, and in many cases a formal dispute process can be used to resolve long-standing issues which the parties have been unable to agree on.
7. **You might need to change people if they are a blocker:** This can be a sensitive issue for obvious reasons, but in some circumstances moving people can be the only viable option to finding better ways of working.

Ensuring your project exhibits strong governance and relationships is not a simple thing and takes genuine commitment – if you do not believe things are working well, then you should not be afraid of communicating this to other parties.

If you are unable to resolve your concerns through this engagement or feel that you need additional support, we recommend that you speak to your sponsoring department or NISTA.

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1.2 Building block 2: Resourcing and related considerations

Having the right approach to resourcing is an obvious requirement for projects of all types to function well. By completing the Project Stocktake process you will have identified the extent to which resourcing is an issue on your project and some, or all, of the reasons why.

PFI reset will also bring added complexity as it is likely that its demands will require additional resources to supplement your day-to-day contract management team. In some cases, with significant technical and commercial challenges, it may even be the case that defining objectives and initial engagement with your private sector partners on the output of the Project Stocktake may require additional support.

Resourcing challenges will generally arise because of a lack of people in necessary roles or a lack of the right kind of capabilities and skills. These challenges can obviously be overcome by either supplementing existing capability with additional expertise and/or increasing the size of a team, in each case on a temporary or performant basis depending on the project context.

In the sections below, we expand on the role of the PFI Co and Management Services Company (MSC) and also the service provider to provide additional background to contracting authorities to assist them in understanding the influences behind the resourcing approaches of each party. We also touch on the importance of understanding a project's financial performance in considering these issues.

Before we do that, we briefly consider the role of the contracting authority.

The role of the contracting authority

As a contracting authority, your resourcing approach will be key – without an intelligent client function (ICF) in place, it is not possible to manage a project well and hold your private sector partners to account for their service delivery obligations.

The ICF is an important concept in the management of PFI contracts. It provides the contracting authority with the expertise and capacity to maintain, manage and oversee the PFI contract and to ensure the successful delivery of the assets and services provided by the PFI Co.

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NISTA's ICF guidance examines the skillsets and knowledge that are needed to maintain an ICF and how those may evolve over time, and how you should go about determining the right skillsets and knowledge for your project.

Understanding what support you need in terms of additional resource or expertise will be driven by a number of factors:

- Magnitude of issues and change required – on a significant reset, it may make sense to bring in specific project management expertise.
- Technical capability of existing team – what are the existing skills within the team and where are the gaps?
- Available budgets – these are likely to be limited and so you will want to think carefully about where any additional support is focused.

Remember:

- Keep your resourcing strategy under review – as your reset plans develop, you may need to bring in additional support and/or refocus existing channels.
- If you need external support from specialist advisers, brief them clearly and ensure they keep to the scope you have set.
- Obtaining specialist support should not be viewed as a sign of failure – PFIs are complex and involve a broad range of skills and specialisms.

Whatever approach you take to developing resourcing, we recommend documenting your analysis and decision-making as a matter of good contract management practice.

The role of the PFI Co/MSC

The White Fraiser report[3] highlighted the lack of an active MSC as a key risk factor which can hinder good operational performance. Although ultimate responsibility for delivery resides with the directors of the PFI Co, it is the MSC which will act as the day-to-day manager of the PFI Co. The MSC is therefore integral to any work on your project and needs to be an active participant with the right resources in order to get the best outcomes from your reset. An MSC will not need to be resourced to the same extent as a service provider but will need to adopt a resourcing strategy which is proportionate to the size/needs of the contract and enables it to play an active role in the project.

3 https://www.gov.uk/government/publications/white-fraiser-report-private-finance-initiative-sector

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How involved is the MSC on your project?	• Does the MSC attend meetings on site? • Do you believe that they are properly resourced? • Do they listen and respond to your concerns and act as a proactive solution provider? • Do they actively assure performance and manage the service provider(s)? Are they able to evidence their assurance activities? • How would you describe the relationship between the MSC and the service provider?
Do you have clear lines of communication and escalation to the directors of the PFI Co and, ultimately, the investors who appoint them?	• If you are dissatisfied with the performance of the MSC on your project, do you have a clear line of escalation and are you fully utilising the escalation routes available to you in the Project Agreement? • The selection of the MSC is ultimately a decision for the investors in the PFI Co, and so any concerns you have should be escalated to the directors of the PFI Co who represent the investors. • Many investors have their own MSCs, so you should not assume that they are independent of each other.
How should you engage with PFI Co directors?	• Do you know who the directors of the PFI Co are and who they represent? • It makes sense to have regular meetings with PFI Co directors so that you have clear lines of communication. In well-performing projects with minimal issues, these could be bi-annual. In other cases, it makes sense to have more regular meetings ranging as appropriate to the circumstances at hand.
What if escalation fails?	• Where you have concerns regarding the MSC and where escalation to PFI Co directors, and ultimately investors, has failed, you should contact your sponsoring department or NISTA for advice.

The relevance of "back to back" principles

PFI projects are structured in line with project finance principles, and these require that a PFI Co does not carry material operational risk. In theory, this means that all key operational obligations are passed down by PFI Cos to their service providers on a "back to back" basis so that a PFI Co should not have any obligations connected to service delivery which are above and beyond those of its service provider(s).

The "back to back" principle means that in the vast majority of PFI projects PFI Cos are wholly dependent on – and must manage effectively – their service providers to provide all operational services and implement operational change. In the context of reset, this will mean that service providers are an essential part of any proposed change. It is important to understand this point when considering the extent to which a PFI Co is wholly in control of implementing change.

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It is also likely that reset activity, as with variations, will involve the PFI Co needing lender/shareholder/subcontractor/parent company consents. It is important that this is understood by all parties and that the PFI Co directors should be accountable, and MSCs largely and generally responsible, for obtaining consents.

This point also reinforces the fundamental importance of the MSC – a PFI Co brings value to a PFI project through its active management of the service provider, and, without this, problems are likely to emerge.

The role of the service provider

To maximise the probability of a successful reset, it will therefore be important to engage with and secure buy-in from your service provider who, depending upon subcontracting arrangements will be responsible for delivering your service. Whilst there may be no direct contractual relationship with the service provider, and the PFI Co/MSC will need to be involved with these discussions, the following considerations do have an impact on assessing how to proceed with a reset.

Does the service provider have the appetite to engage?	This is needed even on projects where the issues are not related to the service provider's service (e.g. construction-related defects).
Is the service provider performing in accordance with the contract?	This will be key to determining the service provider's relevance to the reset – for example, are identified issues related to the service provider's performance? In some projects, resourcing can be an issue at both MSC and service provider level and is sometimes the reason for performance issues – such as long-standing reactive maintenance remaining unresolved.
Is the service provider incentivised to participate in the reset?	Irrespective of the cause of the issues that have led to a reset being considered, engagement from the service provider is going to be important, not least because they will hold information and data critical to operational performance. Structures that incentivise the service provider to engage and participate are likely to deliver the best outcomes.
What is the service provider's risk and reward exposure on the project?	Understanding the risk/reward profile will enable all parties to better approach a reset. What are the key commercial terms of the service provider's contract? For example: does it hold lifecycle risk or is that held by the PFI Co?

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Does the project have the benefit of Parent Company Guarantee (PGC) from the service provider's parent?	Whilst almost all projects would have had a PCG in place at financial close, this may no longer be the case (often where service providers have been replaced over time, for example following an insolvency event). Where a PCG is in place, this is likely to help deliver resets with the parent company aware of the obligations it has guaranteed and incentivised to support its subsidiary company.
Is the service provider part of the same group of companies as the PFI Co?	Whilst not necessarily helpful or unhelpful to a reset, understanding this is important and it may drive different behaviours to those you would expect to see where the two entities are not jointly owned.
Is the service provider incentivised to deliver high levels of performance?	Understanding the way in which the contract incentivises behaviour and performance will be important – payment mechanisms that are either too penal or lack teeth can both have the effect of allowing poor performance to continue.
How does the service provider judge performance under the contract?	We are aware of projects where deductions are effectively "baked" into a service provider's financial forecast, meaning that internally the service provider can report that performance is on target (and in accordance with budget) even though it is suffering a level of "accepted" deductions for poor performance.
Is the service provider's governance fit for purpose?	Anecdotal evidence suggests that decisions can often sit with middle management, preventing issues getting the required senior oversight (and therefore resolution).
Is there a wider strategic context?	For example, does the service provider provide services to the contracting authority, or PFI Co investors, on other contracts (PFI or non-PFI) and/or is it interested in the delivery of the services post-expiry? This can garner goodwill and a more positive engagement with a reset.
Do you have clear communication in place? Have you communicated a potential change in contract management approach?	When the contracting authority changes its approach to the management of the contract and increases the application of the performance criteria of the contract, or employs a performance consultant to help manage the contract, it should signal its intention to do so to the service provider.

Understanding the financial context

A good understanding of the basic financial metrics and mechanics of a PFI project should be something that every contracting authority has. As part of a best-practice contract management approach it should have up-to-date information including:

- The identity of the **investor(s) and the PFI Co directors** (available from Companies House).
- The **latest financial statements** of the PFI Co and service provider (available from Companies House).
- A copy of the **financial close model** (available from the PFI Co if not held).

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- Ideally, the identity and remaining **exposure(s) of the lenders** to the project as well as the final repayment debt of senior debt.
- The **management arrangements** relating to the project. For example, is the MSC on the project part of the same group of companies as the investors?

Where a reset is planned, we would advise a further level of diligence. Understanding and tracking the financial performance of the PFI contract will help inform reset discussions and your commercial strategy. This will ensure that informed decisions are made based upon this financial information and the real state of the project (as opposed to a theoretical exercise that may never be deliverable).

You should consider the following:

- Is the project performing well from the perspective of the investors and meeting their expectations in terms of cash generation? Or, is it underperforming, with pressures on debt service and thus on budgets for maintenance and renewals? This will require elements of both backward- and forward-looking analysis.
- Connected to the above, can you establish the level of debt service and dividends from the PFI Co compared with what was assumed in the financial model? This will help give an idea of how well the project has operated vs the baseline assumption.
- In some scenarios – where there is a belief that additional cash may be needed from the PFI Co to support a reset – it would be useful to understand how much "free cash" is available in the project.
- FM performance – do you know how the service provider views performance? This will be important to understand and will help inform action(s) required as part of a reset approach. A commercially unattractive FM contract could be a source of problems for a project.

Several of the issues raised above are complex in nature, and in order to answer the questions you may need to obtain support from your finance team, department and/or advisers. This is not unusual, understanding service performance and commercial drivers of specific contracts is challenging, and you should not be afraid to ask for help.

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1.3 Building block 3: Contract management

Effective contract management is a key enabler of strong operational performance, and getting the basics of this right will be key to progressing a reset approach.

You may have your own perspectives on any issues with the current contract management approach, and completion of the Project Stocktake process will also have helped inform perspectives.

NISTA has developed a suite of contract management guidance (available on the PFI Centre of Excellence website) which supports contract management teams in making sure their approach is aligned with best practice, and this is set out in the table below.

NISTA contract management guidance will help with the following topics:	
1	**Document stocktake:** helps you to make sure you have all of your contractual documentation.
2	**Gaps and ambiguities list:** helps you to understand gaps and ambiguities in your contract and how to resolve them.
3	**Contract review:** helps you (or external advisers) review your contract to understand what commercial and other levers are available to you.
4	**Contract management strategy:** helps you to develop a strategy that is aligned with your business needs.
5	**Contract management plan:** helps to develop a contract management plan that supports you with managing your contract effectively.

In developing your approach to reset further, we recommend that as a starting point you:

- Review NISTA's contract management guidance in the context of your Project Stocktake results.
- Identify and implement any actions which you can take without the need for joint working with your private sector partners.
- Identify any actions which will require your private sector partners to work with you and develop a plan with those partners to make the necessary changes.

Building Blocks of PFI Reset

Remember, you are not seeking to achieve perfection. Your contract management approach and the steps you take to implement good contract management will need to be proportionate, taking into account your aims and objectives and available resources. Try to focus on what is most material and balance that against what is realistically achievable.

A word on data

The provision and assurance of timely and accurate data is critical to a well-functioning PFI contract, and a key to a successful reset. A lack of access to data can be a major cause of frustration for contracting authorities:

- What do you have?
- What data do you need?
- What are you entitled to?
- Does it exist, in what format?
- Is it relevant?
- Is it confidential?
- What is it reasonable to ask for?
- Have you asked for it?

These eight points are expanded on below. The lists of examples are not exhaustive but offer a starting point that you can then add to when you have considered your contract specifics.

Building Blocks of PFI Reset

What do you have?	(i) Are you receiving and do you hold all of the management reporting that is required under the project agreement? (ii) Is what is being provided "fit for purpose" and compliant? This may, subject to the terms of your project agreement, include: • Monthly performance reports. • Management accounts. • Annual maintenance plans. • Lifecycle plans and reports (1 and 5 year).
What data do you want and what do you need?	Can you differentiate between the data you want and the data you need? Requesting or receiving information for information's sake is not a productive use of anyone's time and can damage relationships.
What are you entitled to?	Have you reviewed your contract provisions to understand what rights to information you may have? For example: • Standard form contracts (based on SoPC) and many earlier contracts include broadly drafted general provisions relating to record keeping by the PFI Co and entitle the contracting authority to be provided with information it may reasonably require. • There may be an entitlement to see all information provided to lenders, such as up-to-date financial models, compliance reports, financial tests, condition surveys, insurance claims and technical reviews. This can be a very helpful source of independent information and may be more comprehensive than the summary reporting by the PFI Co.
Does it exist, in what format?	It is important to establish what data exists. It may be that, through historic arrangements, certain information required under the contract is no longer being produced, perhaps because it was not considered useful or never put to any use. Likewise, it may be that it has simply been lost, particularly where the information only ever existed in hard copy form.

Building Blocks of PFI Reset

Is it relevant?	A simple example of 'relevant information' is lifecycle information. A contracting authority may wish to know how much has been spent on lifecycle, how much the PFI Co intends to spend and how these compare to the financial model. This is a very reasonable position for a contracting authority to take. The private sector may argue that there is no reason or obligation to share such information on the basis that it is not a public sector risk and will make no difference to the public sector's ultimate position. However, a contracting authority does have an obvious and valid interest in getting this information given that the assets will return to the public sector on expiry and their ongoing maintenance is being funded by public money. At the same time, contracting authorities should recognise that under or overspend relative to the financial model is no guarantee of condition. In theory, it is feasible for assets to be in compliant condition with underspend against lifecycle forecasts.
Is it confidential?	Confidentiality may sometimes be cited as grounds for not sharing information. This is a complex area to navigate and this guidance will not attempt to consider the detailed specifics of confidentiality, but does recommend seeking your own specialist advice if this is an issue you are experiencing. Nevertheless, the following points should be considered: • It is hard to deliver a successful reset when not all the relevant information is available and where parties are relying upon weak contractual provisions around information sharing to delay or prevent the sharing of information. • Open and transparent sharing of information is obviously an excellent indication of strong collaboration. • Any refusal to provide information which the contracting authority has a right to see under the PFI contract should be challenged. • Whilst all contracts have built-in confidentiality requirements, there may be occasions where it could be reasonable to consider stand-alone confidentiality agreements to allow information provision. Irrespective of the terms of the PFI contract, the Nolan Principles and the principle of "openness" arguably create an expectation in favour of sharing information which is wholly consistent with a collaborative way of working.
What is it reasonable to ask for?	Contracting authorities may ask for any information they feel is reasonable, but it must be recognised that in some contracts there may be no obligation for the PFI Co to provide all requested information. Setting out what you need, when you need it and specifically what the provision of information enables, along with developing good relationships with your private sector partner, will help encourage the sharing of information in support of an effective reset.
Have you asked for it?	Sometimes, information has not been shared because it has simply not been requested. The starting point should always be to make a request setting out clearly what information is being sought and, where applicable, the basis for that request.

Building Blocks of PFI Reset

In NISTA's experience, addressing difficulties around data can be one of the most challenging issues for contracting authorities – it is a frequent area of serious frustration. There are no easy answers here, but perhaps the best example of collaboration is where your private sector partners acknowledge your concerns and respond in a positive way.

1.4 Building block 4: Performance

This section deals with performance and is relevant to both service delivery and asset condition.

Performance

Underinvestment in contract and performance management has been a contributory factor on many of the projects that have suffered poor performance, and it is this "management gap" which sits at the root of the White Fraiser reset recommendation.

The White Fraiser report identified the following issues as relevant in this area:

- Service provider inspection and management regimes not being thorough enough to pick up all issues.
- Issues not being accurately described in service provider reports.
- Complex and ambiguous drafting in specifications creating differing expectations.
- The PFI Co and MSCs not properly scrutinising service providers' reports.
- The unintended and undesirable consequences (e.g. erosion of goodwill) of the public sector ramping up contract management unilaterally, without discussion or explanation.

Building Blocks of PFI Reset

We agree that there is a need for improved performance management measures in PFI contracts. Reset provides the opportunity to put in place those improved management measures in a joined-up way.

From a contracting authority perspective, this really is about getting the basics right on your project – understanding what you expect from your contract and the private sector, how to go about validating private sector approaches, and then what you need to do if you have concerns regarding performance and how it is being managed.

NISTA is developing best practice guidance which will deal with each of the areas highlighted in the table below in order to support better approaches to performance management. This guidance will become available on the PFI centre of excellence website (Communications will advise when online).

Performance management		
1.	Operational reporting	Helps to understand how to review performance and how to manage non-performance.
2.	Helpdesk management	Helps to understand why and how to complete assurance audits on helpdesk reporting.
3.	Payment mechanism	Helps to understand what service failures, deductions, unavailability and ratchet mechanisms are and how to apply them as part of effective performance management. Helps to understand what "dispensations" are and what "relief" is in a performance management context and when they are usually applicable.
4.	Lifecycle planning, delivery, management and assurance	Helps to understand lifecycle plans, how they work and how they're produced. How lifecycle is different to maintenance/PPM and how to audit and review both. Help to understand lifecycle plan and assure its adequacy along with what to do when issues in reporting are found.
5.	PPM management	Helps to understand how PPM management interacts with other elements of performance management and how to review PPM reporting (monthly, annually, 5-yearly) and what to do when issues are found with PPM reporting.

Building Blocks of PFI Reset

If performance management is a concern on your project, you will need to work through the guidance highlighted above and use that to implement improvements in your approach. In doing this, you should draw on additional support from your sponsoring department and external advisers as required.

Ideally, this work will be completed collaboratively with your private sector partners, but in the event that your private sector partners are not engaging in some or all of the reset opportunity, you will need to consider what actions you can take unilaterally to ensure effective performance management is in place.

Communicate changes in approach

If you are making radical changes in your approach to performance management, it makes sense to communicate this to the private sector so that they are aware of the changes which you are making and the reasons why. This is because improvements in performance management will often have a direct commercial consequence for a PFI Co and service provider.

In considering changes in approach and more active performance management, you should consider the following:

- Where there are concerns, try to back these up with evidence where it is possible to do so. In some cases, a lack of evidence may in itself be a cause for concern and this should be raised as a reason for concerns.
- Adjusting your approach without communicating concerns in advance is likely to cause relationship issues which make it harder to embed better working practices going forward.
- Gaining comfort on current practices is likely to be dependent on an element of independent audit and assurance of performance – what are the available routes to get this comfort?

Building Blocks of PFI Reset

Asset condition assurance

Concerns over asset condition and compliance are likely to form part of many resets – asset condition is at the heart of operational performance in all PFIs.

PFI assets will often compare favourably with non-PFI estates because of the additional investment demanded by the PFI model – this "complacency by comparison" can increase risk as PFI assets are sometimes assumed to be in a "better" condition than they are due to the comparison. In NISTA's experience, this can sometimes store up issues for expiry and lead to project distress as well as an increased prospect of disputes.

Assurance of asset condition should not be viewed as an activity which is only relevant to expiry and hand back. A condition survey can be used to give parties a single version of the truth and establish a common understanding of asset condition and associated compliance. Doing this during the operational phase and well in advance of expiry has obvious benefits.

Condition survey procurement and approach

NISTA has worked with private sector stakeholders to produce technical guidance on condition surveys at hand back – the Asset Condition Playbook (the Playbook) to support contracting authorities in making use of the Playbook.

The Playbook provides a methodology to achieve a common understanding and baseline position regarding asset condition when undertaking asset condition surveys on PFI buildings.

Although the Playbook is focused on expiry, much of it is very relevant to the surveys that may be required during the operational period of a project, and therefore to resets.

This reset guidance does not repeat what is in the Playbook but does summarise in the table below some key aspects that you may wish to consider in the context of your own reset and which are expanded upon in the Playbook and its associated guidance.

Building Blocks of PFI Reset

Area	Summary	Guidance reference
Scope of the survey	The scope of your survey may typically consider physical asset condition, compliance with statutory regulations and other contract specific standards, environmental performance (temperature, ventilation, acoustics, lighting, etc.) and fire safety. By referring back to your Project Stocktake, and through discussion with end-users, you will likely be able to identify what is important to include in your scope. Where there are known condition issues, you may also want to consider the procurement of specialist surveys to investigate issues, diagnose cause and estimate remediation costs – we have seen this approach work well for a range of issues, including persistent roof leaks, heating systems, subsidence and flooding.	**Asset Condition Playbook, CH3-10-Scope of Requirements**
Appointing a surveyor – a joint approach	NISTA encourages a joint approach to carrying out condition surveys as, provided that the scope of the survey is set clearly to assess condition against the contractual requirements, this can work well to establish a common understanding between parties. The Playbook recommends a joint approach. A joint approach will mean just that – a surveyor selected and formally appointed jointly by the contracting authority and PFI Co, sometimes including the service provider, to assess asset condition against a mutually agreed standard. A joint appointment will provide a single version of asset condition that can be relied upon by all parties. Progressing a joint approach does, however, require active collaboration from all parties, so, where strong collaboration is not in place, it may not be possible to proceed in this way, and parties may need to consider unilateral procurement. This will bring added risk and complexity as it will increase the scope for parties to disagree on survey findings, and the route to rectification of issues could be more challenging. Where unilateral procurement cannot be avoided, there will be benefit in providing transparency and an opportunity to comment regarding survey scope and findings as this can mitigate the risks inherent in this route.	**Asset Condition Playbook, CH1-Introduction to the Asset Condition Playbook (and throughout)**
Base data	In order to maximise the value of the survey, you and your PFI Co will need to prepare the relevant "base data" in advance. This will vary from project to project and will be informed by the scope of the survey and contractual requirements.	**Asset Condition Playbook, CH3-9, Data, CH5-2-Base data**

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Area	Summary	Guidance reference
Costs of the survey	A key commercial decision to be made relates to payment of the surveyor's costs and whether these are picked up by the public sector, or the private sector, or are shared. The Playbook recommends that these are shared on an equitable basis.	**Asset Condition Playbook, CH3-7-Payment for survey**
Potential to provide relief	Relief is a complicated and emotive topic which often comes up in the context of condition surveys and is a discussion point which cannot be avoided. Relief from deductions and/or other consequences of non-performance should never be assumed by the private sector – risk transfer is a fundamental commercial principle of PFI projects, and guidance on the statistical classification of PFIs makes it clear that, in the normal course of business, deductions should be applied in order to ensure risk transfer. It is for contracting authorities to decide what relief they may be willing to give. Many contracts contain temporary repair regimes which allow for quick fixes pending permanent rectification, and these should always be considered and applied in a proportionate and reasonable manner when available to contracting authorities. On some projects, the historical and current extent to which the SPV and its contractors have been able to gain access to carry out maintenance and defect rectification works has been a real issue, and this may understandably influence the decision whether or not to provide relief. Any decision to provide relief above and beyond existing contractual routes could have consequences for statistical classification. These would need to be considered on a case-by-case basis, so contracting authorities should ensure that advice is taken from a suitably qualified person when considering the potential for relief.	–
Works delivery	Once surveys have been completed, attention will turn to rectification of identified issues. In many ways implementation of survey findings is often the area which is most underestimated and requires the greatest focus. Depending on the results of the survey and size of the asset(s) in question, the management of that rectification plan is a time-consuming project management role which authorities should consider obtaining external support for (assuming limited spare resource internally). NISTA's specific guidance on this topic will support you in doing this.	–