



House of Commons  
Work and Pensions Committee

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**Management and  
Administration of  
Contracted  
Employment  
Programmes:  
Government Response  
to the Committee's  
Fourth Report of  
Session 2009–10**

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**Second Special Report of Session  
2010–11**

*Ordered by the House of Commons  
to be printed 13 October 2010*

**HC 508**  
Published on 21 October 2010  
by authority of the House of Commons  
London: The Stationery Office Limited  
£0.00

## The Work and Pensions Committee

The Work and Pensions Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Work and Pensions and its associated public bodies.

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### Committee staff

The current staff of the Committee are Carol Oxborough (Clerk), Andrew Hudson (Second Clerk), Hanna Haas (Committee Specialist), Laura Humble (Committee Media Adviser), Lisa Wrobel (Senior Committee Assistant), Dory Royle (Committee Assistant) and Stephen Price (Committee Support Assistant).

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## Second Special Report

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On 18 March 2010 the Work and Pensions Committee published its Fourth Report of Session 2009–10, *Management and Administration of Contracted Employment Programmes* HC 101. On 6 October 2010 we received the Government's Response to the Report. It is reproduced as an Appendix to this Special Report.

In the Government Response, the Committee's conclusions and recommendations are in bold text. The Government's response is in plain text.

## Appendix: Government response

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### Introduction

The Government welcomes the Fourth Report of the Work and Pensions Select Committee on the Management and Administration of Contracted Employment Programmes. The Department of Work and Pensions has always insisted on the highest standards of probity in relation to claims and payments for providers' activities and always investigates any allegation of fraud and wrongdoing. The Department is focused on preventing fraud as much as detecting it and has a strong fraud prevention regime in place.

The Government is reviewing policy in this area. The Work Programme, which is being introduced from summer 2011, will provide an integrated package of personalised help based on the needs of individuals who find themselves out of work. The Work Programme will radically simplify the array of existing employment programmes and deliver coherent, integrated support more capable of dealing with complex and overlapping barriers to work. The Work Programme will be underpinned by strong processes and controls for ensuring that providers meet high standards in respect of information security, financial probity and basic business integrity.

This new approach to delivering employment related support services, offering integrated support to those who most need it, will be delivered through a new procurement framework for potential delivery partners. The Departments Framework For Provision of Employment Related Support Services, known as "The Framework" will enable us to move packages of work quickly to the best performing delivery partners, thus delivering improved performance and better value for money. The Framework will be used to procure contracts to deliver the new Work Programme, and may be used by both the Department and other publicly funded bodies to deliver other future employment related support services.

### Prevention of fraud

**[Paragraph 15] Levels of detected fraud in contracted employment programmes are low. We were also told that there is little evidence that there is a problem with undetected fraud. However the frauds uncovered to date have highlighted the extent of the risk that weaknesses in the system could be exploited. The Department must ensure that processes for the detection of fraud are rigorous and robust.**

Enhanced measures, processes and systems have been introduced into all Contracted Employment Programme contracts over the past year through a revised contractual model. All Department's contracts include 4 key fraud prevention principles. They are:

- there must be a whistleblowers charter in place, enabling supplier staff to report inappropriate behaviour by colleagues in respect of performance claims;
- performance management systems within the organisation must not generate perverse incentives among individual employees to falsely claim performance achievements;
- there must be segregation of duties within the supplier's operations between those achieving performance and those reporting it to the Department: between claim and validation; and
  - an internal audit regime must be in place which provides for periodic checks of the performance reporting regime.

**[Paragraph 17] The Department was not able to tell us how many fraud cases to date had come to light as a result of the provider notifying the Department. Until now it seems that the majority have been identified either by whistleblowers or through the Department's own processes. The Department needs to issue clear guidance to providers about what problems can be dealt with internally and when it must be informed. The Department must also keep records of when providers notify it of suspected fraud.**

**[Paragraph 18] It is a matter of concern to us that the Department is moving towards a system based on providers detecting fraud themselves and notifying the Department. On past performance this would seem highly optimistic. If the Department is to continue down this route it must work with providers to develop a system which is rigorous and transparent.**

The Department's contracts contain clauses detailing the actions providers are required to undertake to ensure prevention of fraud and irregularity in the delivery of provision.

The Department requires organisations bidding for welfare to work contracts to notify the Department of any disputes, breach or default action in the last three years against them or any of their sub-contractors. Any instances of this type will impact negatively on further consideration of the bidder.

Providers are required to notify the Department immediately if they suspect fraud has been or is occurring. The relevant contract clause states:

36.2 The Prime Contractor shall use its best endeavours to safeguard the Authority's funding of the Provision against fraud generally and, in particular, fraud on the part of the Prime Contractor's directors, employees or Sub-contractors. The Prime Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.

The Department does not rely solely on providers for assurance; the primary purpose of the Department's Provider Assurance Team (PAT) is to provide assurance that providers' systems of internal control are effective at managing risk to the Department's expenditure and data. This includes looking at their fraud prevention systems to ensure that they adhere to the four key fraud prevention principles and that they are operating effectively. For example, PAT assesses the operational effectiveness of provider whistleblower policies to notify the Department of fraud by talking to individuals within the company to assess how accessible the policy is, how comfortable individuals would feel using the policy, and if the ethos of the company encourages whistle blowing.

**[Paragraph 23] We welcome the Department's four key principles for employment programmes. They provide a good minimum standard for providers to work from. However we are concerned that there is not an outright ban on individual bonuses linked to job outcomes. These have played a role in at least some of the past frauds, and could do so again in future.**

The Department rewards contracted employment programme providers primarily on the basis of outcomes delivered, so it is logical to assume that some providers will also look to reward individuals/teams working for them on a similar basis. Whilst the Department could choose not to award contracts to providers that operate in this way, this could be counter-productive to delivering outcomes. The Department works with providers to ensure that they have effective controls in place to manage the risk of individual employees making inappropriate claims for example appropriate validation procedures and segregation of duties.

**[Paragraph 32] We have heard that the current paper based system for verifying job outcomes is bureaucratic and unpopular. We are worried by reports that some employers are charging providers for the paperwork they have to complete. The Department must ensure that the burden of paperwork does not discourage employers from hiring people on employment programmes.**

**[Paragraph 33] There is not yet any clear evidence as to how effective off-benefit checks are for verifying that FND customers are in work. Were they to prove reasonably accurate we could see the potential benefits to the Department, providers and employers, of relying more on off-benefit checks combined with random checks, as the Department proposes. However, we believe any move to a less bureaucratic system, with savings for both providers and the Department, should be balanced by severe penalties for any provider which has fraud taking place in its organization, systematic or otherwise. A system of deterrent could be as effective, and cheaper, than the current system of paper-based verification.**

The Department has recently reviewed its end-to-end process for evidencing outcomes claimed by providers with the focus specifically on addressing three major concerns within existing systems; 1) that the evidence it asks of providers is not independent, 2) it is overly bureaucratic for providers and 3) that using off-benefit checks alone do not necessarily mean that an individual is in work. The Department has consulted with providers as part of the review.

As a consequence the Department is currently looking to implement a process that will combine off-benefit checks in 100% of cases before payment is made with sample checks post payment, using internal links with Her Majesty's Revenue and Customs data and/or independent checks with employers to confirm that the individuals for whom providers have received payment are both off benefit and in work. As well as further validating the provider claim, this post payment check will also allow the Department to measure the effectiveness of the off-benefit check.

Taking responsibility for these activities within the Department will not only allow the Department to reduce some of the bureaucracy, for example by telephoning employers rather than asking them to complete and return documentation, it will also free up some of the provider's time and resource to allow them to focus on what the Department is paying them for; getting customers back into work.

**[Paragraph 40] The Department needs to be clear about the purpose of the service fee. FND has several mandatory parts, which include an initial assessment, a work focused action plan, and four weeks full-time work related activity. If the service fee is a fee for services rendered, then the Department needs to check that these activities take place, and demand a refund of the service fee if they do not. If the service fee is actually an up-front payment for set-up costs it should be renamed to avoid confusion. Whichever is the case, the Department needs to ensure that there is monitoring of the mandatory parts of FND, and that providers are clear that the Department expects them to be delivered.**

The Service Fee was developed as a non outcome based fee payable to Prime Contractors by the Department for the delivery of employment provision. The service fee does not currently carry any stipulations as regards how providers spend it. The Department has not experienced problems with providers misunderstanding the term "service fee".

The Government is introducing a new Work Programme which will replace current programmes including the Flexible New Deal (FND). The Work Programme will support a wide range of customers, from Jobseeker's Allowance recipients who have been out of work for some time, to customers who may previously have been receiving incapacity benefits for many years.

In the future, providers delivering the Work Programme will be paid first and foremost by results, including sustained work outcomes. The Department will pay providers for what they achieve but will not specify how they achieve results; a "black box" approach. The level at which these results payments will be made has yet to be decided. As the Department will not be specifying the activities which attract payment, the definition of what constitutes a "service fee" will not be an issue in the future.

**[Paragraph 45] Anyone involved in fraud risks criminal sanction. However at the moment companies where fraud is found which is not systematic face no penalty beyond repayment. This is not acceptable. Where the Department has identified "inadequate management oversight and controls on the part of providers" allowing fraud to take place, providers should be penalised. The Department can terminate contracts in the most serious cases, but in all cases there must be financial penalties beyond the repayment of fraudulently claimed outcome fees.**

**[Paragraph 46] The Department is moving to a system where providers are taking more responsibility for detecting fraud through their own internal procedures, while the Department carries out less auditing itself. The Department should combine this model with stringent financial penalties as one way to ensure providers are focused on preventing fraud.**

All the Department's contracts now contain clauses which stipulate the penalties which the Department will apply to providers who commit fraud. These include termination of contracts, and recovery of "liquidation damages" in respect of reputational damage and cost of investigations. These penalties are over and above the repayment of fraudulently claimed outcomes.

**[Paragraph 53] We welcome the Department's commitment to publish the lessons learned from Risk Assurance Division (RAD) reports but we believe this does not go far enough. We also welcome the fact that A4e were in favour of RAD reports on the company being published. We agree with the Minister that in cases where there is no case to answer RAD reports should not be published. However where wrong doing is found they should be published, with redactions where necessary. If this would prejudice an ongoing investigation the report should be published after such investigations are finished. We believe that seeing the detail of the report will provide valuable lessons for other providers, and that publication will also provide another form of deterrent.**

The Department has looked at the scope for producing individual "redacted" reports where there is evidence of wrongdoing. The Department has obtained legal advice that although it is not an outright allegation of proven criminal activity, "wrongdoing" is suggestive of criminal conduct. Any redacted reports must therefore be redacted to an extent that the provider could not be reasonably identified. Failure to do this could expose the Department to litigation for libel, particularly if the provider suffered financial detriment as a result of publication. The Department has therefore concluded that reports would need to be redacted to such an extent that they would have limited value.

The approach favoured by the Department is to include information in an Annual Report on Contracted Employment Provision that:

- provides much of the information that would be contained in individually "redacted" reports about wrongdoing;
- sets out volumes and types of offending, including trends over time; and
- identifies lessons learnt and proposed responses.

The Department believes that the proposed Annual Report is a sensible, reasonable-cost alternative to the Committee's recommendation which will allow the reader to gain a better understanding of the extent of the vulnerability to fraud and wrongdoing in employment programmes. The Department is currently undertaking work to establish the format for the Annual Report and will update the Committee on progress.

[Paragraph 54] We were surprised that the Department does not routinely share the results of investigations with other Government departments, non-departmental public bodies or local authorities. It should do so, and also ensure it is notified of investigations by other bodies. While the Department has not identified any “systematic fraud” it has identified cases of “inadequate management oversight and controls”, something which must be shared with other bodies who have contracts with those companies.

The Department has been unable to identify a forum or mechanism for sharing details of cases where inadequate management oversight and controls has been identified. There is no central record or database of contracts held by organisations, so it is not possible to identify which public bodies have contract with those organisations.

However, the Department intends to explore the opportunities the new Framework for Provision of Employment Related Services provides in allowing access by other Departments to information on provider performance.

### ***Customer Service***

[Paragraph 65] We received strong evidence that customers need more information about what help and support they can expect from providers. We recognise that there could be a tension between this and the “black box” approach. However, in Glasgow we met clients who were receiving very little help, and who had no idea that personalised help and training were options. Jobcentre Plus staff should have a role in monitoring provision, and talking to customers about what help and training they have been offered. The customer could then challenge the provider if they felt they were missing out.

[Paragraph 86] Customers can also have an important role in letting the Department know what is going on on the ground. They may be able to identify instances of creaming and parking, or to identify the reasons for a provider’s poor outcomes. We agree that one way to do this would be through customers’ continuing relationship with Jobcentre Plus. However, Jobcentre Plus staff need to be advised to initiate these conversations with customers, and to be given the time to talk to customers. There also needs to be a mechanism for any problems to be fed back to both the provider and the Department.

[Paragraph 104] We were disappointed, but not surprised, to hear of evidence of “parking” on Pathways. We also note the evidence that this was linked to pressure from managers after it emerged that previously agreed targets were unrealistic. As we noted in our previous report the targets for FND are very challenging. The Department needs to focus on ensuring that this pressure does not result in customers being parked.

The Work Programme, due to commence summer 2011, will replace current programmes including Flexible New Deal and Pathways to Work. Through the Work Programme the Department will support a wide range of customers from Jobseeker’s Allowance recipients

who have been out of work for some time to customers who may previously have been receiving incapacity benefits for many years.

Providers delivering the Work Programme will have greater freedom to give people the support they need. Providers will be paid first and foremost by results, with the focus on aligning rewards with benefit savings.

Commercially qualified Account Managers have been appointed to work with providers to drive up their performance across all contracts. Provider Engagement Meetings are being conducted with Jobcentre Plus staff and providers where performance and delivery issues are discussed and actions agreed, to improve customer experience.

The Shared Promise on Customer Care should further improve awareness amongst customers of what they can expect to receive from their provider. Providers are contractually obliged to inform customers of their complaints procedures.

**[Paragraph 70] The ERSA Charter is currently voluntary and unenforceable. Customer rights need a much higher status than this. It is also important that customer rights are enshrined right from the start of contracts. We regret the fact that the Department seems to be adding in customer rights as an afterthought. We call on the Department to introduce a compulsory, monitored and enforceable Customer Charter as soon as possible. This should be based on the ERSA charter and contain details of how customers can complain.**

The Department takes the experience of customers very seriously. Processes are in place to ensure providers meet their contractual requirements regarding customer service. The Department intends to survey customers about their experience on a regular basis, as customer feedback and satisfaction is integral to its contract management process. Where customers have complaints, the Department is committed to ensuring that these are dealt with swiftly at the appropriate level. The Department does not therefore consider that a compulsory monitored and enforceable Customer Charter based on the Shared Customer Promise would add value but will keep this under review.

All providers are required to have a complaints process. Providers are asked to give details of their processes including their grievance and customer complaints procedures. This is then assessed as part of the evaluation process and forms part of their contract. Feedback from customers forms part of regular Department contract performance discussions with providers. The Department will continue to develop its approach to customer surveys and strengthen the channels through which Jobcentre Plus advisers and customers can raise any concerns they have about the behaviour of particular providers.

**[Paragraph 77] We were disappointed to hear of a range of poor service experienced by customers. The evidence we heard was anecdotal and we have not had the opportunity to establish whether such problems are widespread. We do not doubt the commitment of most providers to customer service, but the Department and providers must work harder to ensure problems are dealt with promptly. Customers on many programmes have no right to change provider, making it particularly important that they are given a good service. We note that many of the customers we**

**spoke to were reluctant to complain. The Department and providers need to be proactive in order to identify, even serious, problems.**

The Department is planning a programme of work to build on the existing customer complaints procedure including working with Jobcentre Plus to develop a systematic process for analysing and acting on customer complaints, and developing an on-line facility for customers to register their experiences of contracted employment provision. The Department will also continue to develop its approach to customer surveys and strengthen any channels through which Jobcentre Plus advisers can raise any concerns about the behaviours of particular providers.

**[Paragraph 78] Providers seem to agree that “zero hours” contracts should not have a place on employment programmes. However, such contracts are still eligible for outcome payments. This is unacceptable, and the Department should act quickly to ensure that “zero hours” contracts are not eligible for outcome payments.**

“Zero hours” contracts are a fact of modern employment practice. The Department does not pay for job outcomes that do not comply with the definition of an outcome as used within a specific piece of provision. The Department will make a payment where the provider has satisfied the criteria for claiming a job outcome, regardless of the type of contract.

**[Paragraph 85] It is important that providers have a complaints system in place. However they should also have mechanisms for customers to provide feedback and comments and the Department should check that this takes place. Such information will not be comparable year on year, or between providers, or with Jobcentre Plus. We recommend that the Department carry out and publish a “Customer Survey” for customers on contracted provision, as they do for their own customers, to provide rigorous comparable data.**

The Department ensures that it is open to messages from the many sources of intelligence on providers’ standards and delivery. The Department has recently published independent research of customer experience of contracted employment provision. Participants were asked about their experiences, and what has been important in moving them towards work. The Department is using the results to measure the extent to which customers are satisfied with the service from providers. The data collected can be analysed by customer characteristics, so the Department will be able to identify for each provider if there are any tendencies for certain groups of individuals to achieve better or poorer job outcomes.

The Department currently requires providers to put in place customer complaints systems. Where customers have complaints the Department will ensure that these are dealt with swiftly at the appropriate level.

**[Paragraph 91] Customers on programmes need to know how to complain about the service they receive. They need to be able to lodge formal complaints which receive a response and to escalate that complaint to the Department if it is not resolved satisfactorily. We are not yet convinced of the need to set up an Ombudsman, but the Department should keep this under review.**

The Department has a clear, well advertised and detailed complaints system, and does not consider that a further level will add value. There is plenty of scope for a customer to lodge their complaint and to escalate the matter to the Department through the three stage complaints resolution process, including if they wish to have it considered by the Independent Case Examiner and, ultimately, to the Parliamentary and Health Service Ombudsman.

The Department seeks to continually improve its complaints resolution procedures through feedback from customers and staff. Improving resolution performance at the earliest possible stage of a customer's complaint provides considerably better customer outcomes and is much more cost effective than adding further layers of escalation. There are no plans for a formal review of an ombudsman for complaints, but the Department will continuously review the effectiveness of its complaints system.

**[Paragraph 97] We have received evidence that Ofsted has improved its inspection of providers over recent years. However employment programmes tend to rely far more heavily on the relationship between staff and customers than academic or vocational education. Motivation and self-esteem can be more important than what the customer has actually learnt. The Department needs to monitor closely that what Ofsted identifies as quality actually relates to sustained job outcomes.**

**[Paragraph 98] We heard contradictory evidence about whether Ofsted was using specialist inspectors or moving to a more generic use of inspectors. Employment programmes are very different from much of the provision inspected by Ofsted and specialist inspectors should be used.**

From 11 August 2010, external inspections will no longer be carried out by Ofsted in England, Estyn in Wales and HMIE in Scotland.

From this date, the Provider Assurance Team will extend its remit to cover, in a light-touch way, some of the quality issues that formed part of external inspections. A new single quality self assessment tool will also be developed to replace both the existing Self Assessment Report and Quality Assessment Questionnaire. The Department will provide further information about what this will mean in practice as development work progresses.

### ***Vulnerable Groups***

**[Paragraph 107] The Department has told us that it will try and prevent “parking” through the contract management system. However we believe that incentivising contractors to work with all customers is crucial. We again welcome the Department’s plan to pilot an accelerator model of payment and call on it to keep the Committee updated on their progress.**

Personalised Employment Programme pilots have been superseded by the Government's planned Work Programme, due to commence summer 2011. The Work Programme will radically simplify the back to work system by ending the complexity of the previous regime. Through the Work Programme the Department will support a wide range of customers—from Jobseeker's Allowance recipients who have been out of work for some

time, to customers who may previously have been receiving incapacity benefits for many years.

The payment structure for the Work Programme is currently under development. Detailed information will be available when the Department begins the Work Programme procurement mini-competition in December 2010. The Department is establishing an umbrella arrangement of “approved” providers (“The Framework”) which may be used by the Department and other publicly funded bodies to deliver both the Work Programme and other future employment related services. The competition commenced in June 2010 and results will be known in November 2010. The next stage of the procurement process, the “mini-competition” commences in December 2010 when organisations successful in the Framework competition will be invited to tender for the Work Programme contracts with implementation by summer 2011.

The Work Programme will include a largely outcome-based payment system that rewards delivery partners for helping those with greatest need, ensuring that they will be motivated to help everyone. Outcome payments available will be higher the harder it is to get someone a sustained job, better matching the cost of supporting the harder to help and the benefits that result.

**[Paragraph 115] We were very pleased to hear that under Flexible New Deal some prime contractors were offering higher outcome payments for the harder to help than they themselves receive from the Department. However the Work Capability Assessment is leading to more people with health problems on Jobseekers Allowance, and to a higher proportion of the severely disabled on Employment and Support Allowance. This will lead to providers needing to work with customers with more severe barriers than they had anticipated. The Department must work with providers to ensure appropriate support is provided for these customers.**

**[Paragraph 119] Providers have told us that for those with the greatest barriers to work Flexible New Deal funding is not appropriate. One provider told us that there are over half a million people who are not served by current DWP programmes. We call on the Department to investigate the issue, and to supply the Committee with its estimate of how many people are not served by current programmes, and details of the measures they are taking to ensure that FND and other programmes cover all those who need help.**

The new Work Programme will replace current programmes including the Flexible New Deal (FND) from summer 2011. The Work Programme will support a wider range of customers—from Jobseeker’s Allowance recipients who have been out of work for some time, to customers who may previously have been receiving incapacity benefits for many years.

In addition, the Government has announced its clear commitment to help disabled people by introducing a new Work Choice programme from October 2010. Work Choice is designed to respond more flexibly to the individual needs and help disabled people, who face the most complex barriers to finding and staying in employment, into work.

Work Programme delivery partners will be given longer to work with individuals and greater freedom to decide the appropriate support for them. Delivery partners will also be offered stronger incentives to work with the harder to help, and job outcomes will be paid out of the additional benefit savings they realise as a result of placing people into work.

The Government aims to have the new Work Programme in place nationally by the summer of 2011.

**[Paragraph 125] The Department has told us that it is confident that Flexible New Deal will meet the needs of all customers, including all those moving from Incapacity Benefit onto Jobseekers Allowance. We also note the range of measures it is taking to prevent parking. However, as the Department will not be collecting management information by impairment, it will not know whether these measures are working. The characteristics of those claiming Jobseekers Allowance are changing and there are increasing numbers of people with health problems and disabilities receiving the benefit. The Department must recognise this and ensure that the evaluation of FND examines the impact on different impairment groups. In addition the contract management process must pay close attention to what services providers are offering people with disabilities. If problems emerge then monitoring by impairment should be introduced.**

**[Paragraph 126] We were concerned to hear that there may not be monitoring by impairment on Work Choice. This is unacceptable in a brand new programme specifically designed for severely disabled people. We call on the Department to introduce monitoring by impairment groups for the first two years; progress can then be reviewed.**

The Department already has comprehensive data on the characteristics of benefit recipients and participants on employment programmes. There are plans to incorporate data on job outcomes, and customer experience, into this data infrastructure. This will enable the Department to monitor customer progress on contracts by impairment, and use it to support contract management.

The Department computer client records contain information on whether the client has a disability, and if so, its nature, using the following categories:

- Mobility
- Manual Dexterity
- Physical Co-ordination
- Continence
- Ability to lift, carry, move everyday objects
- Speech, hearing or eyesight
- Memory or ability to concentrate, learn or understand
- Perception of the risk of physical danger
- Cumulative effect of several of the above
- Past disability
- Progressive condition
- Recurring condition

- Severe disfigurement

In addition, to strengthen how the Department will monitor impairment on a programme specifically designed for customers with moderate to severe disabilities, the Department is developing an additional disability drop down marker within the Work Choice “opportunity type” to capture the following enhanced management information:

- Condition restricting mobility dexterity
- Visual impairment
- Hearing and/or speech impairment
- Long term medical condition
- Moderate to Severe Learning Disabilities
- Mild Learning Disabilities
- Severe Mental Illness
- Mild to Moderate Mental Health Conditions
- Neurological conditions
- Multiple conditions

This information will be available for the Department for evaluative or operational purposes.

### ***Sub-contractors***

**[Paragraph 140] The New York City experience has shown that it is possible to run a commercially successful prime contractor making little or no use of sub-contractors. It has also seen the numbers of subcontractors decrease over time. The Department cannot rely on market pressure alone to ensure that sub-contractors remain involved. However the New York City experience has not demonstrated whether “prime only” contractors were able to provide a quality customer experience, or whether they have the same long-term outcomes as those who used subcontractors.**

**[Paragraph 141] New York City does not require prime contractors to use sub-contractors, and it does not see itself as having a “market stewardship” role. Despite this, when subcontractors are used it has been necessary for them to intervene in the relationships between prime contractors and subcontractors to ensure service delivery is not jeopardised.**

**[Paragraph 162] Practices have been reported to us, and reported in the press, whereby potential prime contractors are submitting tenders which subcontract to each other on a reciprocal basis, squeezing others out of the market. We were very disappointed that the Minister was not able to tell us that we had been mis-informed. The practices described to us should have been easily visible to the Department at the tendering stage. The Department must look not just at what percentage of work prime contractors are devolving to sub-contractors, but at who those subcontractors are. If a cartel is operating it should be broken up.**

Customers with multiple barriers need a range of support. The success of the Work Programme will depend on ensuring that specialist provision is integrated effectively into

the supply chain. In practice, much of this support is delivered by local, specialist, voluntary and community sector organisations.

The Department is therefore conducting a procurement competition to appoint “approved” providers and then a “mini-competition” for the Work Programme from these appointed providers. In order to be on the Framework providers will need to demonstrate that they have sufficient capacity and capability to manage complex and diverse supply chains. To be successful in the mini-competition and be awarded a Work Programme contract, providers will need to demonstrate that they have the credibility to deliver.

The Department will monitor and regulate provider relationships throughout the entire supply chain through the Merlin Standard, the new supply chain accreditation, to verify that providers have excellent, healthy working arrangements, and ensure that all parties act with integrity. The Department will be reassured through the Merlin Standard that prime contractors can evidence success in managing high value and complex multi-layered supply chains, including in how well they support and help develop their subcontractors and delivery partners.

**[Paragraph 163] The Department’s Code of Conduct says that “Funding should be on a basis that is fair to the different organisations involved and reflects relative ability to bear particular risks.” In order to enforce this the Department must have a clear idea of what constitutes “fair”, we are not convinced that it does. The Department needs a clear idea of what constitutes a fair contract, and to make this known to providers.**

The Department imposes certain contractual obligations upon prime providers in respect of fair treatment. These include a requirement for all providers to pay their supply chain partners within 30 calendar days. The clause is:

*8.1 The Prime Contractor shall include in its contracts with suppliers or Sub-contractors engaged for the purposes of providing the Provision a written condition undertaking to make payment for the supply of their goods and/or services within thirty (30) calendar days of receipt of the supplier's or Sub-contractor's valid invoice (provided that such goods and/or services have been supplied in accordance with the relevant contract).*

In addition, the Department’s Code of Conduct sets out the parameters of expected behaviour for the Department’s welfare to work providers. All providers are contractually required to operate in accordance with the Code.

Beyond this, it is for providers to develop a delivery model which is regarded as fair by their supply chain partners. The type of model may differ depending on the contract being delivered and the organisations involved. The Department does not wish to prescribe exactly what constitutes a fair supply chain, as this would deny providers the flexibility to form an agreement appropriate to their particular circumstances.

Sub-contractors will be consulted as part of Merlin assessments, allowing them to help define what fairness means to them, and highlight instances where they feel prime contractors are treating them unfairly.

At Invitation to Tender stage, all potential bidders are required to submit project costs. All completed Tenders are subjected to separate formal quality and price evaluation against published criteria and scoring system. In addition, the Welfare to Work Terms and Conditions Payment Schedules are tailored to meet the needs of an individual contract which is derived from the Prime Contractor bids.

**[Paragraph 164] We were very concerned by the reports of subcontractors who have not been paid. We welcome the reassurances of the Department that it is willing to get involved in such cases. However, this does not seem to have happened in practice. The Department needs to ensure that its staff are aware that they should intervene in such cases, and that subcontractors know who to contact. The Code of Conduct says that the Department will “ensure that delivery providers can have a ‘voice’ direct to DWP”. This is clearly not happening, the Department must ensure that it does.**

Contracts state that providers must pay their supply chain partners within 30 calendar days. Sub-contractors are expected to do all they can to resolve any issues with the prime contractor in the first instance. However if the sub-contractor does not receive a satisfactory resolution they can approach the Department directly through the Department’s Account Manager responsible for the prime provider.

Merlin will respond directly to the issue of provider voice through the assessment process, by checking out if smaller providers and other supply chain partners are being treated and paid in line with the terms negotiated and agreed pre and post contract award. The mediation and arbitration service will provide a route for supply chain partners to report grievances where they believe the prime may have breached the Code of Conduct, but only when normal dispute resolution processes have been exhausted.

**[Paragraph 165] We welcome the Department’s stated policy of “active market stewardship”. However we are not seeing it happen in practice. The Department needs to clarify what constitutes fair treatment of subcontractors and ensure that prime contractors meet these standards. So far it is clear to us that the Department does not even have a clear idea of what constitutes fair treatment, and, despite the rhetoric, has shown no willingness to get involved with even the most serious cases.**

The Department’s market stewardship role is to create an environment within which providers can deliver welfare to work services, and which allows new organisations to enter and flourish as the market grows.

Sub-contractors will be consulted as part of Merlin assessments, giving them the opportunity to provide 360 degree feedback up the supply chain, providing the Department with a definitive view on prime providers’ management of their supply chain. The Department is committed to working with providers who can demonstrate excellent supply chain management capabilities, which is why the development of the Merlin Standard is so important.

**[Paragraph 169] We do not know how widespread unfair treatment of subcontractors is, but neither does the Department. If such behaviour by prime contractors were to be widespread it would have the potential to put otherwise viable subcontractors out of business, leading to a loss of specialist knowledge in the market. However it could also jeopardise the delivery of contracts or lead to market failure, the Department must be alert to this risk.**

Recent pilot Merlin assessments have shown that excellent supply chain management and the principles of the Merlin Standard are becoming business as usual in prime provider led supply chains. The assessments highlighted cases where preferable and supportive terms are being used in supply chains. Through the new Department's Account Management structure the Department works closely with prime providers and is in a better position to detect any instances of any perceived unfair treatment. Should this arise in the future, the Department would work closely with prime providers to overcome any concerns and take corrective action.

**[Paragraph 172] There are barriers to small providers tendering for contracts, particularly the need to submit tenders to multiple potential prime contractors. However in Glasgow we were very impressed with the measures small organizations had taken to work together and share expertise and resources. Every help needs to be offered to ensure that small providers can participate in the market; however the Department must ensure that the biggest barrier to potential subcontractors is not the attitude of prime contractors.**

The Department is keen that small specialist organisations who have a valuable contribution to make to the quality and effectiveness of services to claimants, are able to play as full a part as possible in delivering the Department's services. The Department does not require prime contractors to follow particular procurement processes in deciding which sub-contractors to engage.

The Department shares information with providers via the DWP website. The "Sub-contracting with DWP" web pages give advice specifically aimed at smaller providers and prospective new market entrants. Along with bidding opportunities, networking events are publicised here, and a Standard Information Sharing Form can be downloaded. This form has been designed to facilitate initial contact between prime providers and sub-contractors to reduce the burden on small organisations during initial discussions.

Furthermore, the Department is developing a web portal as part of the Merlin project, which will enable providers to share information with one another. It will act as a "shop window" for the sector, and allow all providers to see whole supply chains. This will give greater transparency and present more opportunities for supply chain partners to network and have more choice where they bid to work.

An easily accessible "expression of interest" tool will help guide providers through the process of engaging with potential primes and larger supply chain partners, and help to standardise the process. This will replace the Standard Information Sharing Form on the DWP website. The Department is working closely with the Office for Civil Society to ensure that we reflect best practice in involving voluntary sector organisations in welfare to work delivery.

**[Paragraph 173] We heard that providers who had run a service successfully for many years could lose work if they were too small to tender to be a prime contractor, and the prime contractor that won the contract then took the work in-house. This loss of local expertise and a proven service cannot be in the interest of customers. Tenders should be judged on their impact on existing services which are working well.**

All Departmental procurement exercises must comply with the Public Procurement Regulations, ensuring all exercises are all open, fair and transparent using competition. The Department's published Commissioning Strategy details the procurement strategy and the Code of Conduct which covers the values and principles expected of providers in development and ongoing relationship with sub contractors and small and medium employers.

The Department assesses all bids against the published evaluation criteria, ensuring they have the capacity and capability to deliver the programme and do not discriminate against the size of organisation. This evaluation is based on key competencies and evidence of a provider's track record. This is done so that the Department can compare and contrast current providers and new providers without disadvantaging either group. The Department wants to create a dynamic market and it will do this through the establishment of a framework of providers who will each need to demonstrate the ability to manage complex diverse supply chains in order to deliver a personalised service to customers with multiple barriers to employment.

**[Paragraph 182] The Invitation to Tender for Flexible New Deal Phase 2 says that Merlin "will link to a mediation and arbitration service where there is evidence that suppliers are acting in breach of the contractual obligations of the Code of Conduct". However the Draft Merlin Specifications contain no details of a "mediation and arbitration service". If a prime contractor is in breach of its contract with the Department we fail to see why the Department would not get involved itself. There may be a role for a formal arbitration service to look in detail at contracts; however, sub-contractors should be able to approach the Department first, and the Department should be able to resolve clear cut cases.**

From summer 2011, the Work Programme will replace Flexible New Deal. The principles of how the Department manages the relationship between prime contractors and their sub-contractors will however remain the same. Sub contractors are expected to do all they can to resolve any issues with the prime contractor in the first instance. However, if the sub-contractor does not receive a satisfactory resolution, they can approach the Department directly through their designated account manager.

All providers and their sub-contractors have a route for contacting the Department via "Supplying Department for Work and Pensions" on the department's website, which includes a link enabling the user to contact the supplier enquiry team. Sub-contractors can and do contact the Department directly, and meet regularly with both ministers and officials.

**[Paragraph 183] Decisions made by Merlin will have implications for the viability of individual subcontractors and for service delivery. Its decisions on what constitutes**

fair risk sharing will affect the ability of the market to cope with changes in on-flows. Potentially Merlin could make decisions which would result in a crucial subcontractor, or large numbers of subcontractors, leaving the market or going out of business. It makes sense for the Department to make these decisions itself, allowing it to ensure the market develops in a way which is stable, robust and meets the needs of customers.

**[Paragraph 184] The Draft Merlin Specifications provide for prime contractors to be graded as “Excellent”, “Compliant” or “Unsatisfactory”. We call on the Department to spell out what would be the consequences for a provider of receiving an “Unsatisfactory” grade.**

The Department remains the ultimate decision maker on all provider contracts. These decisions will be informed by the assessments made through Merlin, but the Department has yet to determine how this will be realised. Any impact on a provider's supply chain would always be considered.

Merlin will interface with internal provider assurance and contract management functions. Furthermore, the Department has made it compulsory that providers sign up to Merlin, the Code of Conduct and the Supplier Charter. As part of the Merlin project, the Department is also considering a range of appropriate measures to be used where a prime contractor has breached the Code of Conduct.

Under the proposed Merlin assessment criteria, a provider will be graded unsatisfactory if they have weaknesses in meeting the requirements of the Merlin Standard and need to improve to meet the requirements of the Standard. The Department is considering as part of the Merlin Pilot what action should be taken if a provider has an unsatisfactory Merlin assessment result.