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Next steps for Carillion's clients

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Many NHS organisations have services provided by Carillion and will be concerned as to the next steps. The government has given assurances around the continuity of public sector contracts and in the case of NHS organisations who have contracts with Carillion for services such as catering and cleaning, that is likely to mean that the services will be brought back in house pending any decision whether to go to the market for a subsequent outsource contractor, continue in-house longer term and/or establish a shared service with other public sector organisations.

Key principles to bear in mind when deciding next steps include:

- The contract is still relevant and needs to be reviewed to understand the contracting authority's rights in this situation, including whether it will automatically terminate due to the triggering of an insolvency event or whether the authority has to proactively notify the special manager of its intentions and/or to exercise step in rights.

- Where Carillion is a service provider as part of a larger consortium under a PFI scheme then the responsibility for replacing the service provider will principally be governed by your PFI Contractor's relationship with Carillion through the FM Contract (and associated parent company guarantee). However, under the terms of the Project Agreement with your PFI Contractor your consent to any appointed replacement FM Contractor party is likely to be required. It would be sensible, therefore, to enquire of your PFI Contractor what steps they are taking at this time. They are likely to be deliberating termination for insolvency-based default on the part of Carillion, but also possibly facing questions at the same time from their senior lenders as the liquidation of Carillion is also likely to trigger events of default under the financing arrangements (though whether or not such defaults are actioned by the senior lenders is another matter and for their discretion). Occupational arrangements dependent on service provision should collapse with any contract termination, but leaving behind a registration footprint to be regulated.

- Some of Carillion's employees are members of a workplace 'defined contribution' pension plan, which won't be affected by the firm's liquidation. Most (around 28,000 employees) belong to one of Carillion's 13 'final salary' pension schemes, which are very likely to pass into the Pension Protection Fund (PPF) – this will happen automatically following the appointment of Insolvency Practitioners without NHS trusts having to take any steps. Former Carillion members who have already retired will continue to receive 100 per cent of benefits due, whilst staff who retired early or are still working will end up getting around 90 per cent of what they were due, subject to an annual cap.

- In an insolvency situation, the rules applying to the application of TUPE and, to an extent, procurement can be relaxed in certain circumstances to facilitate the transfer. In relation to TUPE, these relaxations may not apply where an insourcing or recontracting occurs. In any event the key issue for NHS bodies is likely to be around preserving service continuity and this is likely to mean respecting employees' existing terms and conditions.

- Many trusts are considering operating estates and facilities and related services through subsidiary companies, including on a shared service basis across multiple NHS organisations / STP footprints. These models can provide the trusts with opportunities to benefit from greater "commercial focus" for the relevant teams. Subsidiary companies offer the governance model of a separate entity whilst retaining the benefits of NHS ownership. NHS organisations taking services back "in-house" may wish to examine the potential efficiencies of this model in comparison to other options for continued service delivery.

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