



National Audit Office

Report

by the Comptroller
and Auditor General

Ministry of Justice

The Ministry of Justice's electronic monitoring contracts

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Ministry of Justice

The Ministry of Justice's electronic monitoring contracts

Report by the Comptroller and Auditor General

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Amyas Morse
Comptroller and Auditor General
National Audit Office

18 November 2013

This memorandum sets out the events surrounding the Ministry of Justice's process in 2013 to re-compete its electronic monitoring contracts with G4S and Serco, and its subsequent decision to commission a forensic audit of these contracts by PricewaterhouseCoopers.

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Introduction

1 This memorandum sets out the events surrounding the Ministry of Justice's (the Ministry) process in 2013 to re-compete its electronic monitoring contracts with G4S and Serco (the providers), and its subsequent decision to commission a forensic audit of these contracts by PricewaterhouseCoopers (PwC).

2 Our report covers:

- the role electronic monitoring plays in the justice system (Part One); and
- the main findings from forensic audit of the electronic monitoring contracts commissioned by the Ministry (Part Two).

3 Additional reviews into government contracts are under way, including a criminal investigation of the electronic monitoring contracts by the Serious Fraud Office. Our report does not comment on any of these or their potential findings. We also do not comment on whether the Ministry, Serco or G4S have interpreted the electronic monitoring contracts correctly. We are also in the process of undertaking work on whistleblowing allegations relating to electronic monitoring and G4S, some of which relate to operational matters, but we will conclude on these at a later date and this report does not make a judgement on public safety issues.

4 On 12 November, the NAO published two reports: *Managing government suppliers* and *The role of major contractors in the delivery of public services*, which explore government's relationship with major contractors from a strategic viewpoint.

Part One

Electronic monitoring in the justice system

1.1 Justice agencies in a number of jurisdictions in the world make use of electronic devices to confirm that individuals are in required locations. In England and Wales, electronic monitoring is used to determine whether an individual is at a specified location at a given time, for example at the direction of a court, for the purposes of bail supervision or as part of a community-based sentence. The relevant authority – for example, the court when electronic monitoring is included as part of a community order – determines the curfew period, which is the times in any given day or week when the individual must be at the specified location. The appropriate authority also sets the period of time during which monitoring must take place.

1.2 There are two devices used to enable monitoring: a home monitoring unit, which is placed in the specified location, and a personal identification device which is attached to the individual, often known as a ‘tag’. The home monitoring unit is designed to detect whether the tag is within range and therefore whether the individual is complying with their curfew requirements. If the individual is not present at the required time, the home monitoring unit automatically notifies the providers, who can then take further action. The equipment does not currently make use of Global Positioning System (GPS) technology in England and Wales, except when used under the provisions of the Terrorism Prevention and Investigation Measures Act 2011.

Who delivers electronic monitoring

1.3 Electronic monitoring was first introduced across England and Wales in 1999 by the Home Office, with three companies contracted to provide the service. The Home Office awarded new contracts to two providers in 2005: G4S Care and Justice Services Limited and Serco Limited (‘the providers’). These contracts currently remain in force, with responsibility for their oversight passing to the Ministry of Justice after it was created in 2007. The providers are required to provide equipment and monitoring services to deal with subjects within the framework of the Criminal Justice Act 2003. The level of expenditure under the contracts is demand-led, dependent on the number of individuals that the justice system requires to be covered. Since 2005, the government has spent more than £700 million on electronic monitoring. **Figure 1** overleaf sets out the summary spend and number of cases¹ recorded by the Ministry of Justice over the life of the contracts. By way of context, the total expenditure on holding people in prison was £2.2 billion in 2012-13

¹ Due to the dispute between the Ministry and the providers regarding what represented separate chargeable items under the contracts, we have referred in Part 1 to these as “cases”. The providers’ stated interpretation was that these were orders pertaining to subjects; the Ministry’s view is that they should be subjects.

alone. In 2006, the National Audit Office (NAO) reported that electronic monitoring could provide good value for money when used appropriately as an alternative to custody, and noted that the cost of 90 days in custody for an individual was around five times greater than the same period under an electronic monitoring arrangement.

1.4 The providers' monitoring services cover all of England and Wales (**Figure 2**). The Ministry is currently in the process of putting in place new contracts for electronic monitoring. These were due to be agreed in 2013, but following the events detailed in this memorandum the procurement process was delayed and the current service providers have now withdrawn from the process. To ensure continuity of service the Ministry decided to extend current contracts until 2014 when it intends to have completed the procurement exercise.

The purpose of electronic monitoring within the justice system

1.5 **Figure 3** on page 8 provides an overview of how the electronic monitoring system works for the Ministry.² The Ministry primarily uses electronic monitoring to support the following requirements:

- **Home detention curfews.** Offenders sentenced to between three months and four years' imprisonment can be released under home detention curfew before the halfway point of their sentence. The Ministry makes use of electronic monitoring to ensure compliance with the curfew.
- **Curfew orders.** Courts can impose a curfew on offenders aged 16 or over as part of a community-based sentence (order). The curfew can last a maximum of 12 hours a day for up to six months.
- **Bail.** Courts can make electronic monitoring a condition of any bail term.

Figure 1

Expenditure and number of cases charged to date under the current contracts

	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	Total
Expenditure (£m)	58	68	82	93	94	102	117	108	722
Recorded number of cases (000)	60	73	92	100	105	116	105	90	741
Average cost per case (£)	974	938	895	925	892	876	1,113	1,200	975

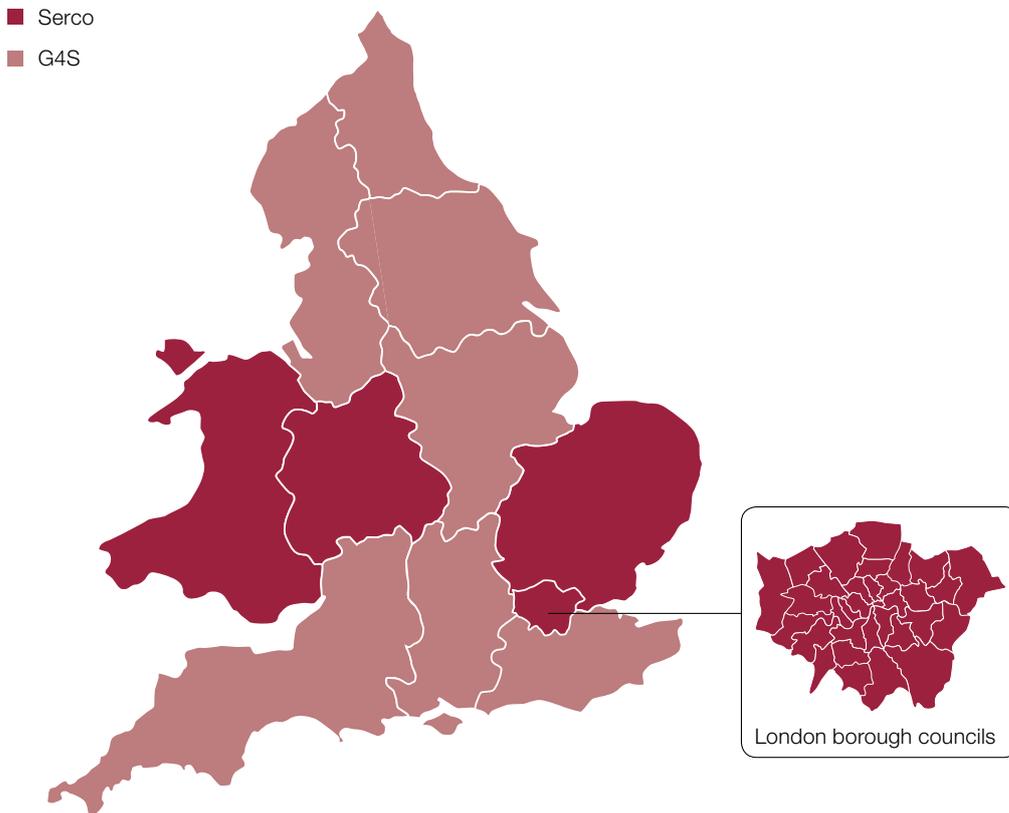
Notes

- 1 Expenditure is presented on a cash basis and has not been adjusted for inflation.
- 2 Average cost per case relates only to the charges paid to electronic monitoring service providers. It does not include any associated administrative costs for other parts of the justice system, for example courts and probation.
- 3 The number of cases is as reported by the service providers. The actual number of separate individuals monitored each year is not known.

Source: Ministry of Justice data

2 The Home Office also makes use of the electronic monitoring contracts for activities relating to immigration and terrorism. The scale of these activities is much smaller, with fewer than 500 subjects a year.

Figure 2
Electronic monitoring areas covered by G4S and Serco

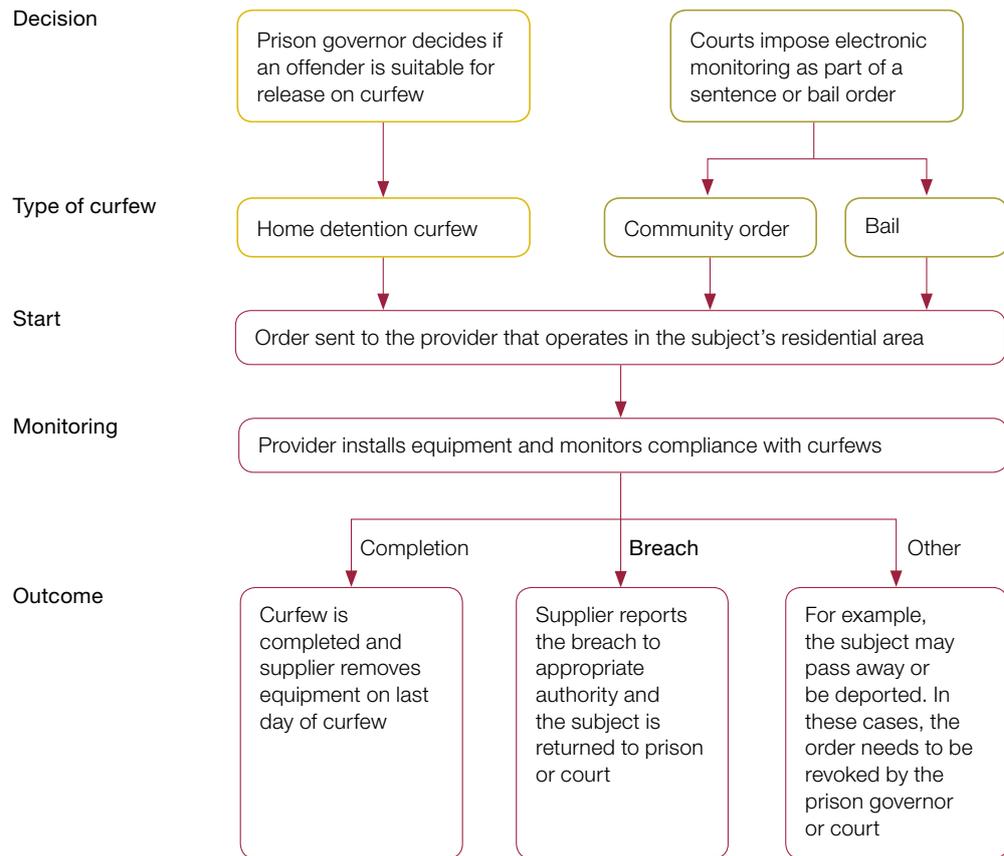


Source: National Audit Office

The electronic monitoring service provided

1.6 When an appropriate authority makes a request for electronic monitoring under one of the above requirements, they send a request for monitoring to the provider covering the monitoring area for the address where the subject will live. This sets out how long monitoring should last for, and during which hours each day the subject should be required to be at the specified address (the curfew period). This can vary based on the nature of the offence and the subject's personal circumstances, but a typical curfew period is overnight (for example 7pm to 7am). In the case of release on temporary licence, the length of the monitoring period depends on the point in the custodial sentence at which an offender has been released.

Figure 3
High-level overview of electronic monitoring process



Source: National Audit Office analysis

1.7 The contracts specify that the service provider should attempt equipment installation on the same day as the curfew was set, or the next day of the curfew period if the provider receives the order after 3pm. The provider installs the home monitoring unit within the subject's nominated address, and attaches the tag to their ankle or wrist. Where a provider is unable to install the equipment after two attempts³ the subject might be found in breach of their curfew and recalled to the court for further action.

³ Three attempts are allowed in the case of individuals under the age of 18.

1.8 The home monitoring unit should alert the provider if:

- the tag is not within range of the home monitoring unit during the curfew hours;
- the home monitoring unit is moved or damaged; or
- the tag has been damaged or tampered with.

1.9 The monitoring equipment records any absences during the required curfew periods. If an absence exceeds five minutes the service provider must contact the curfew location to investigate by calling the receiver on the home monitoring unit, and discuss the violation with the subject if they are available. The provider records the accumulated time violations and any explanations provided by the subjects. At lower thresholds these can lead to a warning letter being issued to the subject, but with more substantial or repeated violations the provider will formally notify an appropriate authority such as the police that the subject is in breach of their requirements. The appropriate authority then decides what further action to take, and can take into account any explanations offered by the subject to the provider. Where the subject reports equipment problems to the provider the provider may choose to investigate further to verify whether equipment is working as required.

1.10 There can be various reasons why the subject's monitoring period might end. These can include successful completion of the requirement, a breach that results in the subject being sent to prison, the death of the subject, deportation from the UK, or the end of bail.

Monitoring of performance and contract management by the Ministry

1.11 The Ministry has a team responsible for monitoring performance against the contracts and identifying and dealing with any issues that impact on service delivery. The contracts defined a number of service levels to be reported each month, including performance on:

- maintaining a continuous service relevant to electronic monitoring (for example, the call centres' monitoring activity);
- installation and removal of equipment;
- monitoring subjects in accordance with the contracts; and
- reporting to the Ministry in a timely manner.

1.12 Service level descriptions and performance thresholds were the same for both providers. Failure to meet required thresholds on some of these service levels could lead to the Ministry applying financial penalties on the providers, or even terminating the contracts.

Part Two

The Ministry's audit of the electronic monitoring contracts

2.1 As part of the exercise to replace the current generation of electronic monitoring contracts, which were due to expire in April 2013, the Ministry requested supporting information from bidders, including the current providers G4S and Serco. The Ministry identified what it believed were anomalies in some of the data provided by G4S regarding the average length of orders under which subjects were being monitored. The Ministry's procurement team asked for an explanation from G4S and was unable to obtain the assurance it required. The Ministry then decided to commission PwC to undertake a forensic audit of the G4S contract.

2.2 At around the same time a former employee of G4S who had worked at its call centre covering its electronic monitoring contract contacted both the National Audit Office (NAO) and the Ministry with a series of allegations about operational practices at the company. Some allegations related to direct matters of dispute in the employment relationship, which we decided not to review.

2.3 We contacted the Ministry regarding this in April 2013 and agreed that the most appropriate way to deal with these allegations was to include them within the scope of the forensic audit. PwC began its work in May 2013 (for detail of the scope and work performed, see Appendix One). The scope of the forensic audit was subsequently expanded to cover the Serco contract, except for the aspects raised by the whistleblower that related to G4S only. The Ministry has since commissioned a further forensic audit from PwC examining its other contractual arrangements with G4S and Serco. At the time of publication the total amount spent by the Ministry on the forensic audit of the electronic monitoring contracts was in excess of £2 million. This report focuses on the forensic audit of the electronic monitoring contracts only. We are still looking into the allegations and do not cover them in this report.

2.4 The Secretary of State for Justice first announced that the Ministry had commissioned PwC to carry out the forensic audit of the electronic monitoring contracts on 17 May 2013. On 11 July 2013, he provided a statement to the House of Commons, outlining the early findings that we detail below. On the same date Serco also announced that it was withdrawing its bid for the next generation of electronic monitoring contracts, and G4S withdrew its bid on 6 August. Serco agreed to undergo more detailed scrutiny as part of the forensic audit. G4S did not agree to this and the Ministry subsequently referred its case to the Serious Fraud Office. The Serious Fraud Office subsequently announced on 4 November 2013 that it had opened a criminal investigation into the G4S and Serco electronic monitoring contracts.

2.5 The Cabinet Office also announced on 11 July 2013 that it would conduct a review of all government contracts with G4S or Serco, other than those held by the Ministry that are being reviewed in PwC's further forensic audit.

Disputed charging practices

2.6 There are three charging practices which both providers have stated they have followed throughout the life of the contract since it started in 2005 that the Ministry is now disputing:

- a Charging on the basis of the number of orders, rather than the number of subjects.** Courts can impose more than one electronic monitoring order on a subject. An extra order applied to a subject could require some extra work, such as a separate visit by the relevant provider to explain the additional requirements to the individual, but a subject with multiple orders would still only need to be monitored once. The providers charged separate monitoring fees for each order pertaining to any subject, and the Ministry's view is that this is not in accordance with the contract.
- b Charging a monitoring fee when electronic monitoring had ceased.** There were a variety of circumstances when continued monitoring of the subject through the use of the electronic monitoring equipment was no longer taking place; for example, if the subject had absconded. The providers' view of the contracts was that they could not close an order until informed by an appropriate authority to do so. Until they received such a formal notification they continued to charge monitoring fees.
- c Charging monitoring fees after the first attempted installation of equipment, whether installation was successful or not.** The providers' interpretation of the contracts was that monitoring charges were applicable from the next day of the curfew period after the first visit, regardless of whether the equipment was successfully installed. At the start of many monitoring cases this might result in an extra day of charging above what the Ministry would have anticipated; however, in some cases equipment was never successfully installed but charging nonetheless occurred for months or even years if an appropriate authority did not issue a formal notification to close the order.

2.7 Although Serco and G4S used different management information systems, our understanding is that both systems required an end date for an order to be entered so that those systems could function properly. As bail orders typically did not have specified end dates that could be entered both providers chose arbitrary end dates as standard, on the basis that otherwise there was a risk that orders might have been closed down before an appropriate authority requested that this occur. In the case of G4S this was set as being the year 2020, and in the case of Serco the year 3000. This meant that charges on individual cases could have continued until an end date was formally notified by an appropriate authority. **Figure 4** provides examples of cases where the implications of the difference between contractual interpretations of the Ministry and the providers are at their most marked. These examples also illustrate some of the administrative weaknesses in the criminal justice system which we refer to in paragraph 2.13.

2.8 Both providers have undertaken their own investigations of the operation of their respective electronic monitoring contracts. We have not had access to the content or results of these investigations. Based on the information we have seen or that has been made publicly available, we summarise the respective positions of the providers as follows:

- **G4S.** G4S has stated to us that in its view, the Ministry should have been aware of the way in which it was billing, and that it provided written explanations to the Ministry in 2009 that reflected its interpretation of the contract at the time. G4S also stated, however, that “irrespective of the contractual position, the current management of G4S believes that the interpretation applied to historical billing practices was not appropriate in respect of periods when no electronic monitoring was taking place.” G4S has written to the Ministry stating it intends to offer credit notes totalling £23.3 million in respect of issues that it has identified to date.
- **Serco.** Serco has stated to us that it considers it charged in line with its genuine interpretation of the contract and that it was open about this to the Ministry throughout. Serco has stated publicly that it will refund any agreed overcharges.

Due to the decision of the Serious Fraud Office to conduct a criminal investigation into the electronic monitoring contracts, we make no comment on the above positions.

2.9 As part of its forensic audit of the electronic monitoring contracts, the Ministry asked PwC to quantify the potential amount charged by the providers that did not accord with the Ministry's interpretation of the contract. This is a time-consuming and complex exercise involving the analysis of data for thousands of cases. PwC has reported to us, based on the work undertaken so far, that it is likely that the potential overcharge to the Ministry in total amounts to tens of millions of pounds. The Ministry is yet to agree a position with either provider at the time of publication.

Figure 4

Illustrative examples of disputed charging practices

These examples are taken from PwC's review of a number of individual cases, which was designed to identify matters relevant to the disputed charging practices. We warn explicitly that the examples are not necessarily representative of the full range of issues arising in the population of all disputed cases.

Cessation of monitoring

On 13 September 2011, G4S informed the police that a bail subject had breached their curfew. A day later the Metropolitan Police Service confirmed that the subject had been sentenced to two years' imprisonment. G4S removed the monitoring equipment on 16 September. G4S has subsequently told us it chased for confirmation of the bail status from the courts on four occasions in 2012. As at 20 May 2013, the court had still not provided the relevant cessation paperwork to G4S and at that date the total time charged without monitoring equipment installed was 612 days at a cost of approximately £3,000.

G4S installed equipment on 27 September 2010. A number of breaches were reported, with the last breach (Section 9) notice sent to the police on 28 October 2010. On the same day G4S suspended visits to the curfew address and the police recovered the home monitoring unit. On 3 November 2010, G4S confirmed with the relevant magistrates court that the subject had pleaded guilty and electronic monitoring was no longer required. G4S chased for written confirmation on 3 December 2012 and 7 December 2012. As at 20 May 2013, no response had been received and billing had continued. The total time charged without electronic monitoring equipment installed as at 20 May 2013 was 935 days at a cost of approximately £4,700.

Serco installed equipment on a subject for bail purposes on 8 October 2009. On 26 November 2010, Serco detected that the home monitoring unit had been moved and conducted three consecutive daily visits with the subject being declared in breach each time, and the home monitoring unit was removed. On 28 February 2011, the court put out a warrant for the arrest of the subject. On 22 May 2012, Serco wrote to the court asking for confirmation of bail status. Serco asked for bail disposal paperwork after the commencement of the forensic audit and with confirmation received the order was ended the following day. In total, Serco charged monitoring fees for just over two and a half years after the equipment was removed.

Charging for orders rather than subjects¹

Serco was monitoring one subject with four separate orders for four separate alleged offences. The equipment was installed on 1 May 2012 to cover all four orders. Monitoring charges commenced on 2 May 2012 for each order, rather than one charge for the subject.

Charging monitoring fees when equipment was not successfully installed

Serco was unable to install equipment at the designated property in July 2008 when informed by the property owner that the subject was not welcome at the address. The police contacted Serco a month later and informed them that the subject was due to be arrested. In 2009 Serco attempted twice to obtain details regarding the case but was not successful. As part of a wider review Serco attempted to visit the property in October 2010 but was informed that nobody had been living in the property for 18 months. Serco lodged a further request for verification of bail status with the court in April 2012, but no response has been received yet. Serco has billed for almost five years at an approximate cost of £15,500.

Notes

- 1 The contracts for both providers were changed to provide a rebate for the additional revenue from increasing levels of concurrent order volumes.
- 2 Monitoring fees levied by the providers varied month on month depending on the total number of cases being handled each month. The calculations are an approximation based on the rate used at the time monitoring commenced in each subject case.

Source: PricewaterhouseCoopers forensic audit of electronic monitoring contracts

Matters relating to the criminal justice system

Data on electronic monitoring

2.10 The Ministry does not have, and has not had, an independent source of data to compare with data from the providers. The Ministry does not collate summarised data on the number of requests for electronic monitoring from HM Courts & Tribunals Service or individual prisons, and has been reliant on providers' data. The Home Office had originally intended to gain remote access to the providers' databases to verify performance data independently. However, technical difficulties relating to the secure transfer of data over the Government Secure Intranet meant this project ceased in 2006.

2.11 This, combined with the practice of billing by orders rather than subjects, means that statistics published in response to parliamentary questions have in some instances been incorrect. We identified instances where answers to parliamentary questions about the number of individuals who were electronically tagged were confusing, inadequate or erroneous, due to confusion regarding whether the statistics provided related to orders or subjects.

Administration and management

2.12 In providing a frontline service, the providers operate as a core part of the criminal justice system. This means that they needed to interact with a number of other organisations to operate effectively, including the police, probation services, prisons and HM Courts & Tribunals Service. The forensic audit identified a number of issues relating to the administration of the criminal justice system, many of which have been previously identified by the NAO and other parties. In 2010 we reported⁴ three key findings about the criminal justice system, all of which have relevance to the issues identified in this memorandum:

- Governance and management arrangements in the criminal justice system are complex, and changes to one part of the system can have unexpected consequences for others.
- Delivery partners need to be working well together at national and local level, focusing on how best to achieve the overall objectives of the criminal justice system, rather than optimising the performance of their own organisations.
- Information flows within the criminal justice system can hinder the most efficient passage of cases, and may not always provide sufficient information to inform future planning.

4 National Audit Office, *Criminal Justice Landscape Review*, November 2010.

2.13 There are a number of other relevant reports by inspectorates which looked at the operation of electronic monitoring, including Her Majesty's Inspectorate of Probation reports published in 2008⁵ and 2012⁶. The 2008 report found several weaknesses in the administrative arrangements within the criminal justice system at the time, and the 2012 follow-up found that many of these had not been addressed. The NAO may undertake a future more detailed review of this area.

5 HMI Probation, HMI Court Administration and HMI Constabulary, *A Complicated Business – A joint inspection of electronically monitored curfew requirements, orders and licences*, October 2008.

6 HMI Probation, *It's Complicated: The Management of Electronically Monitored Curfews*, June 2012.

Appendix One

The scope of PwC's forensic audit of the electronic monitoring contracts

1 The Ministry engaged professional services firm PricewaterhouseCoopers (PwC) to undertake a forensic audit of their electronic monitoring contracts with G4S and Serco. The scope of the forensic audit included consideration of whether the providers had incorrectly charged the Ministry during the contracts.

2 As a result of the emerging findings from the forensic audit of the electronic monitoring contracts, the Ministry asked PwC to undertake three additional pieces of work. These are:

- reviewing Serco's internal emails to ascertain whether there is any suggestion of dishonesty in the charging practices;
- estimating the financial difference between the Ministry and providers' interpretations of the contracts; and
- a wider review of the other 23 contracts the Ministry holds with G4S and Serco.

3 This memorandum draws on the estimation of financial differences between the varying providers' interpretations of the contracts, but not the findings from the other two pieces of work. There were a number of other aspects of the forensic audit of the electronic monitoring contracts which we do not cover in this report.

The work of PwC

4 As part of the forensic audit, PwC's work included the following:

- On-site review of processes and procedures at the providers' call centres;
- observations of field visits conducted by both providers, which included observing the process of fitting tags;
- documentation of the various billing scenarios;
- documentation of the billing process;
- performing detailed testing of the billing process at both providers, including looking at the reported key performance indicators;
- performing an analytical review of the invoices received;

- reviewing a number of cases at both providers;
- establishing how many orders were being billed without electronic monitoring equipment being installed;
- performing a document review of relevant emails and reports held by the Ministry relating to electronic monitoring;
- interviewing the whistleblower formerly employed by G4S; and
- interviewing members of the contract management team.

5 PwC has asked us to state on its behalf that it prepared the forensic audit of the electronic monitoring contracts only for the Ministry and solely for the purpose of, and on the terms agreed with, the Ministry. It accepts no liability (including for negligence) to anyone else in connection with the forensic audit or its content or findings.

The work of the NAO

6 We reviewed and helped set, with the Ministry of Justice, the terms of reference for the PwC review. We have reviewed PwC's initial reports and supporting documentation, including primary evidence collected and analysis conducted by PwC, and discussed progress and findings with PwC and the Ministry throughout the audit. In addition, we have also:

- reviewed published documents, such as HM Inspectorate of Probation's reports on electronic monitoring;
- interviewed the whistleblower formerly employed by G4S;
- visited G4S's call centre; and
- interviewed key personnel at the Ministry.

Glossary

This glossary sets out the definitions of the terms as we have used them in this report. They are not intended to represent how any terms may have been defined in the electronic monitoring contracts.

Appropriate authority	The organisation with power to open or close orders. This is usually the prison or courts.
Bail order	An order made by the courts to release a defendant from custody until their trial.
Breach of curfew	When a subject has not complied with the terms of their curfew.
Charging practices	The way the providers each charged the Ministry based on their respective interpretations of the electronic monitoring contracts.
Community order	A sentence passed by a court that is served in the community rather than by a prison sentence.
Concurrent order	An order applied to a subject who already has an electronic monitoring order against them.
Curfew period	The period of time in which the subject should remain at their monitoring address.
Electronic monitoring	Using a home monitoring unit and personal identification device to verify whether a subject is at a specified curfew location during their hours of curfew.
Home detention curfew	A curfew applied to subjects granted early release from prison.
Home monitoring unit	A device installed in the subject's home that monitors whether the personal identification device is within a set range during the curfew period. If this is not the case it notifies the provider automatically.
Order	An instruction from the court which details the sentence given to a subject for a particular offence. Orders can include a requirement for electronic monitoring.
Personal identification device	A device installed on a subject for the purposes of electronic monitoring, often referred to as a 'tag'. The personal identification device can be identified when in range of the relevant home monitoring unit.
Service levels	A series of performance requirements agreed with the providers through their respective contracts relating to the service provided, such as response times to telephone calls.
Subject	The person who is subject to electronic monitoring.



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