KING&WOOD MALLESONS
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KWM On Agile

Contents

What is agile?

Agile basics

When you hear the word 'agile' in a work context your first thoughts may be of hot desking, flexible working hours or working from home (or perhaps even at the beach?!). However, while the word may be used in that sense, it is also often used in a very different sense to describe an innovative way of approaching the design, management and delivery of complex projects.

Under an agile approach, solution requirements will be defined and updated as the solution itself is built and tested through a series of iterations, with feedback and learnings from each iteration incorporated into the next. With this type of approach, little is fixed in stone, and project objectives are continuously questioned, refined and updated based on experience generated from work on the project itself.

What is agile used for?

Agile project delivery methodologies were originally conceived as a way of managing software development projects more efficiently. The early proponents of agile developed an agile 'manifesto' to capture the key distinguishing features of agile. According to this manifesto, agile workers value individuals and interactions over processes and tools; working software over comprehensive documentation; customer collaboration over contract negotiation; and responding to change over following a plan.

While its roots lie in the software world, agile is increasingly being adapted for use on other types of projects. Many businesses, both large and small, are now using agile strategies for a much wider range their product development and delivery activities. This can be challenging for workers and management teams that are more accustomed to working under more traditional linear or 'waterfall' project delivery frameworks, where design, build and test activities are organised into a carefully ordered sequence. The dynamic, flexible and ever-changing nature of agile is the very antithesis of the staged and rigid nature of waterfall frameworks. Despite these marked differences, neither of these approaches is inherently superior and each has its own strengths and weaknesses.

Are there different types of agile?

There is no one single 'type' of agile. Any way of approaching a project that aligns with the principles captured in the agile manifesto may be considered to be an 'agile' approach.

Having said that, much work has been undertaken by academics and management consultants on developing clear and repeatable agile project frameworks. For example, you may read about Scaled Agile Frameworks (often abbreviated as **SAFe**), Large-Scale Scrum (**LeSS** or just **Scrum**) or Disciplined Agile Delivery (**DAD**). All of these are agile frameworks and share important common features, even though they may appear quite different in practice. Think of the difference between a diet and a recipe. A vegetarian diet is an approach to eating based on identified values and principles. A recipe for tofu stir fry is a way of implementing those values and principles in practice. If you think of agile as a diet, then SAFe, Scrum and DAD are recipes that follow that diet.

How does agile differ from waterfall again?

As described above, under an agile process, project planning, design, development and testing activities all essentially happen at once. This is made possible by breaking down the project into small bite-sized tasks that can be completed within the space of a single sprint cycle. This in turn enables the project team to prioritise delivery of the scope that adds the most value and make adjustments at the end of each sprint cycle if necessary.

By contrast, under a more traditional waterfall-style approach, each of these activities will be completed on a whole-of-project basis in a linear sequence, with the customer approving the outcome of each stage in the sequence before the team can progress to the next stage. For example, at the start of the project a comprehensive set of functional requirements will be defined and signed off by the customer before the project team designs a set of detailed technical specifications that will meet all of those requirements. Once the specifications have been approved by the customer, work will begin to build a product that meets all of the specifications. The product as a whole will then be subjected to testing and, if it passes, will be implemented into production. This process is described in the diagram below.

A critical difference compared to agile is that under a waterfall approach once each stage is completed, there is generally limited appetite and budget to turn back and make changes. For example, once the functional requirements and specifications have been locked down, there will be limited capacity for the customer to require a change in direction if, half-way through development stage, the customer changes its mind or realises that the requisite product features have been omitted or unnecessary features included. On the other hand, if project requirements are unlikely to change and delivering to budget and on-time is critical, then a waterfall approach clearly has its attractions. That is a key reason why many major construction and infrastructure projects tend to be managed according to a waterfall framework.

Figure I - Agile Process Flow

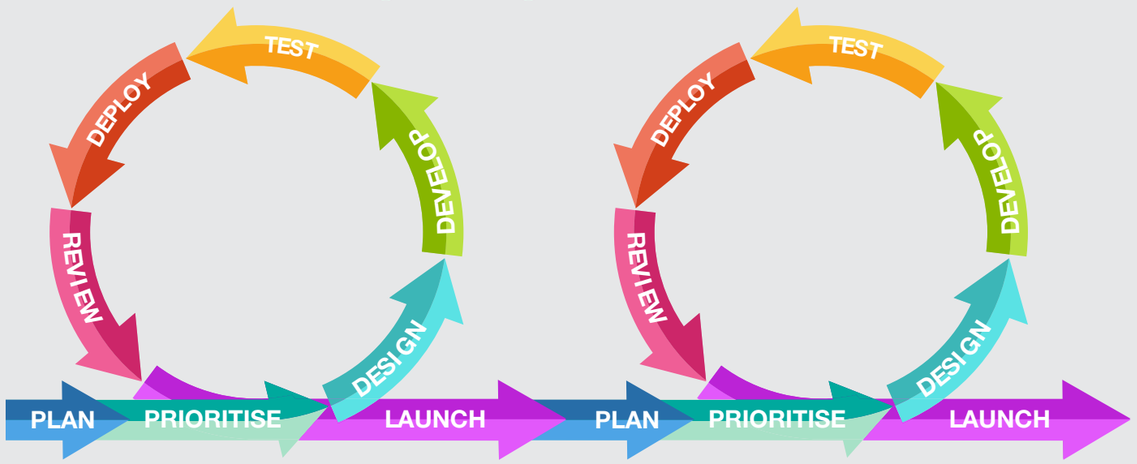
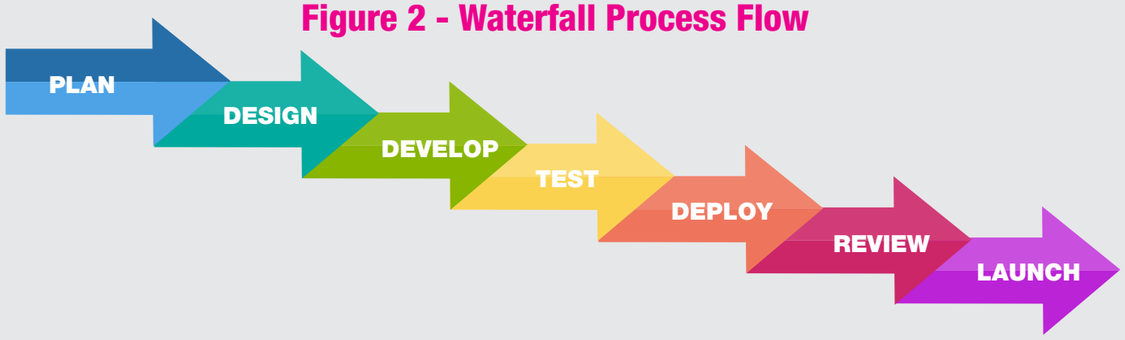


Figure 2 - Waterfall Process Flow



Case Study – ING

Dutch bank ING is one of the best examples of applying agile working methodologies to a traditional non-IT focussed business. Indeed, ING now provides a model that many other banks and other financial services institutions are attempting to follow. Starting in 2015, ING reorganised its entire group headquarters of >3,000 staff by breaking up traditional functional departments and replacing them with 350 nine-person multi-disciplinary teams or ‘squads’ (with many existing personnel having to take on unfamiliar roles) that were then grouped into 13 ‘tribes’ in order to align with broader organisational objectives. Within this framework, squads are formed, dissolved, and re-formed as specific customer-centric ‘missions’ are identified, assigned, and completed. Through the use of this framework, ING was able to accelerate its IT delivery functions to enable new software releases every 2 weeks, rather than through a handful of ‘big launches’ every year as had been the case previously. ING’s bold new agile approach has also driven substantial improvements in time-to-market for new banking products (particularly for mobile banking and digital delivery of services, which required a new way of looking at some of the bank’s traditional products and approach to service delivery), as well as increases in overall productivity, customer satisfaction, and employee engagement at ING. In fact, it has been so successful that numerous academic groups have written up formal case studies based on the use of agile at ING. You can access the Harvard Business Review version here.

Eat, sleep, scrum, repeat

Scrum is a popular framework that represents an easy introduction to agile for relative newbies. Under the Scrum framework, project development teams are organised into small groups or 'scrum teams' that each work on specific actions to be completed within short time-boxed iterations called 'sprints'. The Scrum framework emphasises the importance of rapid incremental product releases in order for the project team to quickly identify what does and doesn't work in practice and, if necessary, pivot to a different approach that is likely to be more successful.

A scrum team will feature three key roles:

- The **product owner** effectively operates as a proxy for the end customer. The product owner will decide what each scrum team will work on by allocating tasks (often expressed as 'user stories') from a list known as a 'product backlog'. The product owner will have power to add or subtract tasks from the product backlog. The product owner will also be the final arbiter of whether a task has been successfully completed based on criteria set out in the product backlog (often referred to as the 'definition of done') and should have ultimate accountability for delivery of the end product and achievement of the agile project's goals.
- The **scrum master** is a team facilitator or coach assigned to each scrum team to help guide them through each sprint. The scrum master may not be directly involved in the development work undertaken by the scrum team, but will help facilitate that work by coordinating necessary inputs and removing roadblocks. The scrum master will also be responsible for guiding the team through the key activities required as part of the agile process, such as by leading daily 'stand-up' meetings where team members can identify what they are working on and any key blockers or needs they have in order to successfully deliver on their part of the project.
- The **development team members** are the members of the scrum team who will actually do the development work. Ideally the development team members will be drawn from different functional groups within the relevant organisation so that each scrum team will have access to the full range of skills and knowledge required to deliver on their project tasks. All scrum team members must work together and are collectively responsible for delivering an end product to the product owner at the end of each sprint.

The members of the scrum team will all work together to deliver the project according to a series of iterative sprint cycles. Each cycle will be broken down into different stages, as roughly described below:

- **Sprint planning**: the purpose of sprint planning is to define what work is to take place during the sprint. Sprint planning is a collaborative exercise that should be a joint effort by the product owner along with the whole scrum team. The product owner should set the overall goals of the sprint and identify which backlog tasks will contribute to achieving those goals. The scrum team will then plan what work is necessary during the sprint to deliver on those goals and complete the relevant backlog tasks. The sprint planning process should produce a sprint plan that is agreed between the scrum team and the product owner and will set the agenda for the sprint.
- **Sprint execution**: this is the time to create! The scrum team will work for the duration of the sprint (usually a defined period of 2 to 4 weeks) to complete the tasks assigned to that team by the product owner. On a regular basis, ideally daily, the scrum master will hold stand-up meetings (often only 15 minutes or less) to check on progress and identify / resolve potential roadblocks for the work that each development team member is progressing. Work produced during the sprint will be subject to testing during the sprint so that if accepted, it will be ready to be put into production at the end of the sprint (at which point it may be referred to as a 'shippable' product).
- **Sprint retrospective**: at the end of the sprint, the product owner will determine whether or not the definition of done has been satisfied for each task assigned to the team for that sprint cycle. In either case, whether successful or not, at the end of the sprint the scrum team will hold a retrospective meeting to review what did and didn't go well during the sprint from a team perspective. At the retrospective, the team will celebrate what was achieved, and consider areas where improvement is required for the next sprint cycle so that the team is constantly evolving and seeking to achieve increases in productivity and efficiency.
- **Repeat!**: the sprint cycle should be repeated until there are no more tasks left in the product backlog, at which point all project objectives should have been achieved.

What other agile jargon should I know?

As you may expect given its origins in the tech industry, a whole special language – including much potentially confusing jargon – has built up around agile. As long as you understand the core agile principles, it isn't necessary to memorise all the buzzwords. However, there are a couple of key terms that are useful to know:

- **Kanban** – Kanban is a popular type of framework, which provides a visual way for team members to identify and review all of the tasks required to complete a particular project and then to easily track progress on a task-by-task basis. The visual elements used for Kanban are displayed on a Kanban 'board' (which may be physical or virtual), which will typically consist of a series of 'cards' representing individual tasks arranged across a series of columns representing stages of the workflow process – e.g. 'to do', 'in progress' and 'complete'. Task cards may be given different colours to represent a particular team member that owns the relevant task. In this way, the Kanban board can provide a snapshot about overall progress and allocation of workload in a way that helps to identify potential bottlenecks, capacity constraints and other issues.
- **Lean** – Lean is an approach to project delivery that draws upon manufacturing principles developed by Toyota and other heavy manufacturing businesses in the middle of the 20th century. Like agile, lean is based on a series of principles, a number of which will resonate with any proponent of agile. In particular, a lean approach will endorse: making decisions iteratively, enabling decisions to be made when the maximum amount of relevant information is available (reducing uncertainty by delaying decision making until as much input information as possible has been generated), delivering as fast as possible (on the basis that, given the pace of technological change in the modern world, the fastest to adapt will be the most likely to succeed), and empowering team members to make decisions (so that more operational decisions are made by those on the ground, thereby motivating workers and reducing the risk of waste and rework.

Case Study – Department for Work & Pensions (DWP) UK

The UK's 'Universal Credit' programme, which was intended to revolutionise the country's social welfare system, was once touted as the world's largest agile project with a budget for implementation measured in the billions of pounds to be spent over a period of more than a decade. However, despite grand ambitions, only a couple of years after the programme commenced it was beset by cost overruns and delays, with the DWP having to make significant write offs on new IT assets and scaling back delivery commitments. A review conducted by the National Audit Office uncovered a range of underlying causes for this unhappy turn of events and painted the DWP as an organisation that was not ready to adopt an agile approach at such scale. In particular, the NAO found that: (1) the timetable that the DWP set when moving the Universal Credit programme to an agile operating model was overly ambitious for a project of such size and complexity and had not been subject to an appropriate feasibility study; (2) the DWP tried to retrofit agile ways of working into existing contracts, governance and assurance structures that were not suited to that purpose, with weak controls that left the DWP unable to properly assess and control progress against overall project objectives; and (3) the DWP lacked suitable internal expertise and leadership to manage such a large scale agile process, with high turnover in the senior leadership team contributing to a lack of clear direction and poor decision-making. You can access the NAO's report on the project here.

How do I know if agile is right for me?

Both agile and waterfall approaches have their respective strengths and weaknesses and neither approach is inherently superior to the other.

There are certainly conditions under which adopting an agile approach will have advantages over sticking with a traditional waterfall approach. However, in order to maximise chances of success, it is critical to be able to recognise these conditions and to make a clear and objective assessment as to whether your organisation and your project is well suited to an agile approach.

As the chart below suggests, choosing between agile and waterfall approaches is really a "horses for courses" decision. Many organisations are using a combination of the two approaches across different engagements – preferring a more traditional waterfall approach for mission critical back-office core systems, while experimenting with a more nimble agile approach for rapidly evolving front-office needs, where priorities are driven by ever-changing customer demand. We have even seen organisations experiment with combinations of the two methodologies on a single project, with work carried out by scrum teams according to an agile process but with payments tied to achievement against pre-agreed milestones as would be more familiar in a waterfall context. The various potential advantages / drawbacks – for both customers and service providers – of these novel approaches need to be considered very carefully before proceeding.

More suited to **agile**

You have a relatively experienced and sophisticated project team that has capacity to be actively involved in the project and has 'bought into' the agile mindset and approach

Because agile follows an iterative approach, with decisions to be made on a continual basis throughout the process, it will usually work best where your team is highly engaged and has the right skills and bandwidth to actively participate in the project. If you don't already have experience in managing agile processes within your internal team, you could consider engaging agile coaches to assist with this and to build on your internal know-how

You have an overall vision for the project outcome you want to achieve, but don't know exactly how you want to get there

Agile allows flexibility to change and refine direction between iterations or cycles and so should suit you better if you intend to 'feel' your way through and make decisions on an iterative basis as relevant information emerges

There is a high prospect that your project requirements will change or be refined over time

Agile is an inherently dynamic approach that offers flexibility to incorporate and deal with change after iteration of the agile framework

Your budget and timeframe are flexible and project sponsors are comfortable with some uncertainty and are open to change

As flexibility and the possibility of change is a feature of any agile approach (with ongoing reprioritisation of tasks following each development cycle), it also means that time and budget expectations may also need to be flexible and accommodating of changes. In addition, given the collaborative nature of agile, the project sponsors will need to accept some joint accountability for any cost or overruns

You have an existing and ongoing relationship with external service providers that is robust and supports open conversations and a constructive approach to resolving disputes (with all parties invested in ensuring that the other succeeds)

Parties on an agile project need to trust each other, as there may be fewer fixed commitments to use as leverage in the event of a dispute or difference of opinion – performance issues will usually need to be managed at a relationship level

You know who your end customer is and they are able to actively participate throughout the development phases

Agile requires a customer-centric mindset that focuses on ensuring that end customers are satisfied with the product being produced, with a willingness to make changes on a dynamic basis following customer feedback

All of your project team members are in the same physical location

The collaborative nature of agile means that best project results will likely be achieved when everyone is in the same location (it is hard to run a stand-up successfully with people dialling-in or on VC!)

More suited to **waterfall**

You have a relatively inexperienced or unsophisticated project team that is struggling to manage capacity constraints or that does not believe in the agile approach

Because waterfall is a more structured approach with clearly defined decision points, it may be easier to manage where you are operating under capacity constraints and are not able to be actively engaged with the project team at all times, or where you are dealing with team members who do not have faith in the agile approach and, therefore, are less likely to fully engage with that approach and may instead revert to behaviours more suited to a traditional staged framework

You have an overall vision for the project outcome you want to achieve, and have a clear preferred solution that you consider will achieve that outcome

Waterfall requires bigger decisions to be made at each juncture on a whole of project basis, which may suit you if you are confident in committing to a defined course of action at an early stage

Your project requirements are locked in and unlikely to change over time

Waterfall is a more rigid framework that favours certainty over flexibility, which may suit you if your project is being driven by external factors that are imposed upon you and are unlikely to change (e.g. where a project is driven by regulatory compliance, or if it will form part of a broader scope of work where requirements and timeframes are dictated by a third party)

You have strict budget constraints and hard deadlines for delivering the project outcomes (e.g. in order to meet customer commitments or to provide inputs for other broader activities) with project sponsors who are unlikely to offer much flexibility

The certainty offered by a waterfall approach may help you to manage fixed budget and time constraints – that is not to say that waterfall projects will not run late or over-budget (no one can promise that!) – but it may be easier under a waterfall framework to identify issues early and to allocate liability for the over-runs between the parties involved as their respective responsibilities will have been clearly defined in advance

You have not worked with your external service providers before and there may not be strong prospects for future ongoing work with those service providers beyond the end of the immediate project

A waterfall approach will feature more fixed commitments to manage any performance issues that may crop up – this more structured approach means that outcomes will be less relationship-dependent

You have a good idea of who your customer is, but they are unlikely to be actively involved in product development and will not be available to provide feedback until development is completed

The waterfall approach is largely internalised and will not require a great deal of ongoing involvement from the customer except at designated testing or approval stages

Your project team members are spread across different physical locations

Because project responsibilities will be more clearly defined upfront, a waterfall approach is more suited to project teams who will be working on a separate / independent basis and only coming together at certain defined points in time

What risks are associated with agile, and how can I mitigate those risks?

Congratulations – you've chosen to go agile for your next project! So what's next? Well, you should carefully consider the different types of risks that you may face as a result of adopting an agile approach, so that you can put in place practical measures to counter those risks. After all, as they say, failing to plan is planning to fail! To help with your planning, we have identified some key risks below for you to consider when engaging a service provider on an agile project, along with strategies you can use to mitigate the impact of these risks.

The project doesn't deliver the outcomes you were hoping for

What is the risk? Outcomes on projects that use agile practices are inherently less certain, as they are always susceptible to review and change "in accordance with the relevant agile process. This means that there is no guarantee that the project will deliver the outcomes that you may have expected at the start of your engagement with the service provider, and you may have no clear recourse against the service provider if that comes to pass. There is also a risk that the momentum of a project using agile practices will lead to things dragging on with wheels spinning through unproductive development cycles – even though you are not making material progress towards your desired outcomes – effectively resulting in you 'throwing good money after bad'.

How can the risk be mitigated? From a practical perspective, while individual tasks and priorities might be decided on a sprint-by-sprint basis, the agile process should be designed to ensure that the project team has a longer term horizon. Each user story or task allocated to a sprint should form part of a broader 'release' or 'epic' that aligns to an overall project objective and the product owner should ensure that user stories are prioritised according to their relative importance to delivering on the release/epic. Each release/epic may itself be grouped according to broader 'themes' that connect to higher-level organisational goals, to ensure that the work done by the agile team remains consistent with those goals. Rigorously following relevant agile processes - including daily stand-ups, visual management of tasks, and use of agile coaches - can also help mitigate risks by ensuring there is constant communication and visibility of issues as they arise.

If, despite these planning steps you see that the project is still drifting off course, it is important that you retain rights to terminate the engagement at any time – or at least at the end of each sprint cycle – at no cost. Such a right will provide you with the commercial leverage to dictate the management of the project and adjust the direction of the project quickly if something isn't working. It will also allow you to cut the project short if you see it is blowing your budget or if your relationship with the service provider deteriorates. Of course, while including termination rights in a contract is one thing, exercising them in practice is another. As such it is important to ensure that the members of your executive team who are in charge of the project remain objective, and do not become too personally invested or caught up in the desire to keep 'chasing results', so that you are confident they will be able to make a timely decision to terminate if required.

Finally, you could consider structuring your engagement with the service provider so that there is some level of shared accountability for achieving overall project outcomes. Any shared accountability structure should involve some part of the service provider's remuneration being linked to whether or not the project achieves broader goals that are agreed and defined at the start of the engagement. Of course, if you take this approach, the service provider will likely request a greater degree of control over management of the project, including by having some influence over the make-up and prioritisation of tasks from the product backlog. You should carefully consider whether this compromise can be justified by the additional level of accountability it may bring.

The quality of the service provider's work is not up to scratch

What is the risk? Not every sprint will be guaranteed of success – tasks not fully completed within a sprint will need to be entered back into the product backlog and reassigned to a subsequent sprint. That is something to be expected. However, if it happens too often then you may find yourself paying for sub-standard work that does not advance your overall project goals.

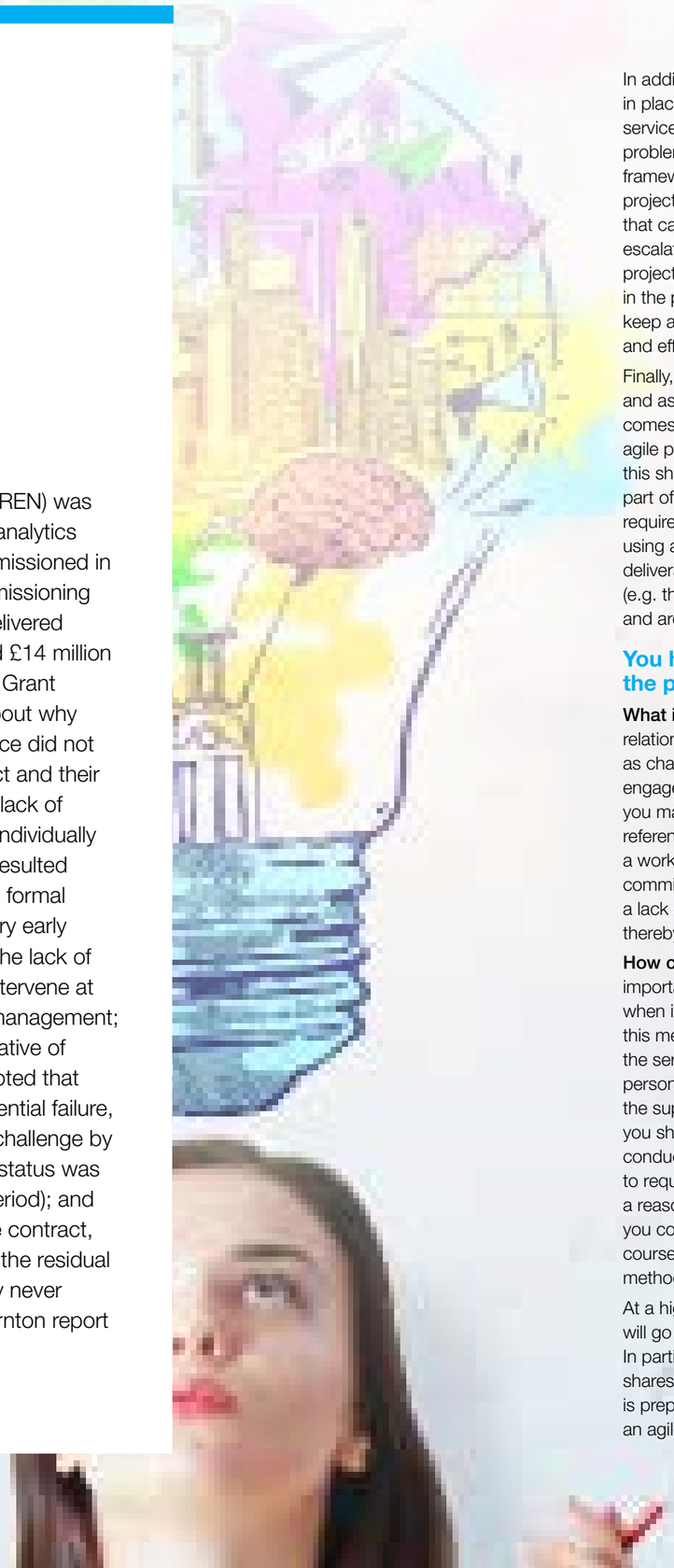
How can the risk be mitigated? As flagged above, any agile project contract should include clear rights for the customer to terminate without payment or other penalty. However, while that may be an ultimate point of leverage, you don't want to be in a position where you always need to have to threaten termination in order to make the service provider lift their level of performance. An alternative is to design performance metrics that measure the quality of the service provider's outcome, and ensure that failure to meet an adequate standard of performance will have a financial consequence for the service provider. For example, you may have a performance metric that measures how often the service provider 'gets it right the first time' by completing a user story within a single sprint cycle. If a high proportion of user stories are not completed successfully first time and need to be re-assigned to a subsequent sprint, the service provider's performance against this metric would suffer and that should have an impact on the calculation of their fees.

Case Study – Spotify

Spotify is one of the archetypal agile businesses and is famed for its adoption of novel agile processes that many others have since attempted to emulate, rarely with the same level of success. Agile at Spotify is an existential priority as the business operates in a sector where technology is constantly driving rapid change and the only way for Spotify to stay ahead of the chasing pack is to move faster than the rest. Developing a strong agile culture is critical to achieving the necessary speed. And, in turn, people are critical to the development of Spotify's agile culture. As with most agile models, Spotify organises its people into agile teams or squads with defined objectives and representatives from across different organisational functions. However, things don't stop there. A critical feature of Spotify's interpretation of agile is the way that it enables squad members to continually develop, learn and become better. Members of each squad are also able to join 'guilds' that are effectively groups joined by a common interest or practice. Any squad member can join or leave a guild at any time. The key purpose of the guild is to facilitate knowledge and experience sharing between squads so that important lessons learned in one part of the business are quickly disseminated throughout the organisation. Every squad also has an agile coach to play an active mentoring role to ensure squads are always engaged, collaborating, and performing at the highest possible level. A similar ethos flows through into Spotify's approach to recruitment, where cultural fit, open mindset and flexibility are valued over existing knowledge and skills. This reflects a mentality that investing in the process, and even more importantly investing in the people who will drive the process, is the most important step in achieving success with agile.

Case Study – SIREN

The Surrey Integrated Reporting Enterprise Network (SIREN) was intended to provide a crime record storage and a data analytics software system to the Surrey Police force. It was commissioned in 2005, with an original budget of £3.3 million, with commissioning expected in September 2009. The project was to be delivered using an agile framework. However, around 8 years and £14 million later, the project was terminated in April 2013. Auditors Grant Thornton made a number of very interesting findings about why the project failed so badly, including that: (1) Surrey Police did not have the requisite experience to manage an agile project and their chosen supplier did not make up for this shortfall – this lack of experience led to a series of poor decisions that taken individually may not have been fatal to the project, but collectively resulted in significant cost overruns and delays; (2) there was no formal acceptance of the iterative modules delivered from a very early point, yet further iterations continued to be delivered – the lack of review of the iterations and failure by the customer to intervene at an early stage reflected an overarching lack of project management; (3) reporting was 'rose tinted' and not always representative of actual progress made by the project (Grant Thornton noted that there was a cultural aversion to communicating the potential failure, and that project reporting was not subject to sufficient challenge by management, notwithstanding the fact that the project status was 'red' under a traffic lights framework for a substantial period); and (4) there was no termination for convenience right in the contract, which ultimately resulted in the customer having to pay the residual balance of agreed development costs even though they never received a working product. A version of the Grant Thornton report can be found here.



In addition, you should make sure there are governance structures in place that enable you to identify and raise concerns over the service provider's performance in order to resolve any underlying problems before they spiral out of control. The governance framework – which should be clearly documented in the agile project contract – should be designed to ensure that any issues that cannot easily be resolved at an operational level are quickly escalated to appropriately empowered senior executives. Your project will run most smoothly if these executives are fully engaged in the project and are prepared to make themselves available and keep across the operational detail, so that they can deal swiftly and effectively with issues as they arise.

Finally, it is important to remember that standard quality warranties and associated enforcement rights are not redundant when it comes to agile engagements, and should still be included in agile project contracts. While agile is about increasing flexibility, this should not equate to 'all care, no responsibility' on the part of the service provider. The service provider should be still required to ensure that work is completed with care and skill using appropriately qualified and trained personnel, and that any deliverables they produce meet minimum quality requirements (e.g. they do not contain any material defects at time of delivery and are free of malicious code).

You have to devote more resources to managing the project than you'd planned

What is the risk? On any IT project there will be a risk that your relationship with the service provider will deteriorate over time as challenges rise and take their toll. However, with an agile engagement the magnitude of this risk is amplified because you may not be able to hold the service provider to account by reference to pre-agreed project outcomes. This means that where a working relationship starts to break down, you will find yourself committing additional resources of your own to compensate for a lack of commitment or engagement from the service provider, thereby driving up your overall project costs.

How can the risk be mitigated? People are always the most important part of any project, but that is particularly the case when it comes to agile projects. From the customer's perspective, this means that having the ability to influence the make-up of the service provider's team (beyond simply a few nominated key personnel) is critical – more than ever, you need to know that the supplier is bringing their 'A-team' to the table. For example, you should be looking for contractual rights to review CVs and conduct background checks on the service provider's personnel, to require the service provider to limit turnover within the team to a reasonable level, and to require replacement of personnel who you consider are not performing to an acceptable standard. Of course these concerns are not unique to any particular project methodology, but they are certainly magnified in an agile context.

At a higher level, choosing the right service provider to begin with will go a long way to ensuring the success of any agile project. In particular, you need to be confident that your chosen partner shares your values and level of commitment to the project and is prepared to commit to the level of transparency required of an agile project. Ideally, there should be a clear prospect of a meaningful, ongoing relationship between the organisations which extends beyond the project at hand, so that there is a relationship that both parties want to invest in. These matters should be considered as part of a comprehensive due diligence process before you settle on a chosen service provider. And before you confirm the engagement, there should be some direct interaction between your top level decision-makers in order to ensure there is no doubt about alignment before work begins.

Finally, you should take advantage of the ongoing feedback cycle that should be a feature of any agile process – such as through the retrospective held at the end of each sprint in a scrum framework – to ensure that any issues at a working level are promptly identified and addressed so that each side enters the next development cycle with a renewed focus and level of engagement.

Delivering the project is more expensive than you predicted and you blow your budget

What is the risk? The risk of cost blow outs tends to be greater for agile projects as it may be difficult to produce an accurate cost estimate at the start of an agile engagement, since your requirements and the service provider's scope will not be locked down upfront but rather will be developed in a dynamic manner over the life of the project. In these circumstances, if completing the project requires additional sprint cycles or other efforts, then final costs may quickly escalate and it will be difficult to ask the service provider to stick to a fee cap.

How can the risk be mitigated? While it may be difficult to provide a clear upfront estimate of cost when the scope of work remains uncertain, it is still reasonable to expect the service provider to commit to achieving an agreed level of productivity. There are a number of ways in which productivity on an agile engagement may be measured. For example, it could be as simple as counting the number of user story 'points' delivered by the service provider in each sprint cycle (i.e. the number of points allocated in the product backlog to each story that the product owner accepts was successfully completed in that cycle) so that you have some certainty as to what you are paying on a 'cost per point' basis. You may also consider applying a discount or other financial consequence if the cost per point in a given sprint cycle (or series of consecutive cycles) exceeds what you consider to be an acceptable level.

As suggested above, you may also consider developing a shared accountability framework with the service provider, so that they are jointly responsible for ensuring overall project objectives are completed within a defined timeframe or budget (with bonus payments or rebates applying to provide a suitable financial incentive for the service provider). While in these circumstances the service provider may expect to gain some measure of control over the management and prioritisation of the product backlog, this does not necessarily need to be the case. An alternative would be to design governance structures that will give the service provider an opportunity to raise concerns about how you are managing the product backlog, and to have those concerns addressed and resolved by relevant senior executives, if they consider that your actions are threatening their ability to successfully deliver on the overall project objectives. This would be consistent with the relationship-focussed approach that agile naturally encourages.

Case Study – ANZ

Adopting agile on a 'whole of enterprise' basis is a significant management challenge that should not be underestimated. Most importantly, it requires great commitment to cultural change from the most senior executive levels downwards. This is illustrated by the experience of ANZ – one of Australia's oldest and largest businesses – in its decision to adopt new ways of leading (or NWOL) and new ways of working (or NWOW) using agile principles across its business in Australia. As of late 2018, ANZ reportedly has over 9,000 people working in agile teams and that number continues to grow as the roll out of NWOL and NWOW throughout the organisation continues. Interestingly, the 9,000 all effectively had to reapply for roles within the new agile environment. No doubt this was quite a confronting experience for some, and would have required a huge investment in management time and HR resources, but it was essential in order to achieve the cultural / mindset shift required in order for the adoption of NWOL and NWOW to be a true success. Unsurprisingly, these changes have resulted in some turnover in staff (11% of the Australian workforce over FY18), but the outcomes so far have been impressive with significant productivity gains being realised from the newly instituted smaller agile teams. Of course, challenges still remain for ANZ, such as the fact that some funding processes for internal projects are still managed on an annual cycle, whereas agile project cycles are far more frequent and may take work on some projects in unexpected directions, which may impact funding. It is important for any organisation moving towards more agile ways of working to have full management buy-in to push through these challenges in order to realise the potential longer term benefits of 'going agile'.

KWM's agile experts

Agile projects we have worked on

Global Technology Company: advising on the engagement of a leading international consulting firm to assist with the implementation of agile ways of working across the organisation. Our work included helping to develop unique metrics to measure success in embedding the desired new ways of working and a shared accountability contracting model to ensure that fees were dynamically adjusted to reflect achievement against those metrics. We later assisted the same organisation in renegotiating contracts with key incumbent IT service providers in order to retrofit a new agile DevOps process to ongoing application development and maintenance services.

Commonwealth Government Agency: advising on a program of work to deliver a new digital identity system on an iterative and agile basis. The unique nature of the program required a bespoke approach to legal service delivery. The KWM team developed a contract structure that could flex in an agile manner according to the shifting requirements of the program.

Major Australian Bank 1: advising on the adoption of agile principles and methodologies in the bank's technology division and more recently across the whole of its Australian business. As a key adviser to this client, KWM has worked with the bank to better understand their approach to agile and their desired ways of working so we can more closely align with their processes and help support them in achieving better customer outcomes. This has provided us with an opportunity to see first-hand how scaled agile can be successfully implemented in practice.

Major Australian Bank 2: advising on a refresh of the bank's strategic application services providers (ASPs). As part of this project, the bank negotiated new long term master agreements with these ASPs that introduced a range of significant new requirements to supplement services provided under existing agreements. To facilitate this, KWM amended the documents to include optionality for executing projects under the agreements on an agile basis.

Leading Financial Institution: drafting a template IT services procurement agreement for a major Australian building society to cover development and configuration services based on lean and agile procurement principles. This involved us working closely with the client's technical team in order to define and document their preferred approach to agile and the particular agile development framework they intended to follow.

Large Listed Mining Company: advising on the engagement of an external consultant to help develop and propagate agile principles and methods for implementing new digital solutions within its business. This involved careful consideration of a range of issues associated with allocation of liability for service outcomes.

Our unique agile contracting model

At KWM we have developed an entirely new contracting framework for the purposes of engaging service providers on an agile basis. Unlike a traditional service contract, our framework emphasises the agile principles that will guide the relationship between the parties, along with processes and governance structures to support the implementation of these principles, over technical legal terms and boilerplates.

We think that our framework will serve as a practical tool for ensuring that agile relationships stay on track and that clients who use the framework will find themselves wanting to keep the contract on their desk as a useful tool for guiding their relationship on an ongoing basis, rather than to bury it in their bottom drawer and only pull it out when the relationship has broken down (which in our experience occurs too frequently with other types of contract documents!).

In designing our framework, we have also used visual contracting techniques and simple plain-language drafting to make it accessible to lawyers and non-lawyers alike, with the aim of turning around the natural prejudices of non-lawyers against legal drafters. We would be excited to share this new approach with you and to discuss how it may be applied to your business.

KING&WOOD MALLESONS
金杜律师事务所

Our agile team

We have a large team of experts on agile contracting and project management issues across our offices (including accredited agile coaches and experts on visual contracting that can help develop and implement novel approaches to contracting for your business).

Please reach out to any of the team if you have questions on KWM's approach to agile:

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