House of Commons

Committee of Public Accounts

The PFI contract for the redevelopment of West Middlesex University Hospital

Nineteenth Report of Session 2002–03

HC 155

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Report, together with formal minutes and minutes of evidence

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The Committee of Public Accounts

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Angela Eagle MP (*Labour, Wallasey*)

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Committee staff

The current staff of the Committee is Nick Wright (Clerk), Leslie Young (Committee Assistant) and Ronnie Jefferson (Secretary).

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Summary

In January 2001, the West Middlesex University Hospital NHS Trust (the Trust) let a contract under the Private Finance Initiative (PFI) to a private sector consortium called Bywest. The contract required Bywest to redevelop the Trust's site at Isleworth, West London and then to provide ongoing maintenance and facilities services. The Trust expects the net present value of the contract payments over the 35 year contract period to be some £120 million.[1]

On the basis of a Report by the Comptroller and Auditor General[2] the Committee took evidence from the West Middlesex University Hospital NHS Trust and the Department of Health (the Department) on whether the analysis of the PFI deal had been correctly prepared and interpreted, and what lessons could be drawn for the NHS and more widely for negotiating future PFI deals.

Our key conclusions are:

- **Spurious precision in public sector comparators is unproductive.** When using a public sector comparator to aid decision-making on PFI deals, public authorities need to recognise the degree of uncertainty inherent in such comparators. In this case, the Trust's advisers strove to make slight adjustments to the calculations, well within the range of error inherent in costing a 35 year project, to ensure that the PFI cost appeared marginally cheaper than the public sector comparator. Yet this work added nothing to the quality of the Trust's decision-making on the deal.

- **Departments should base decisions on PFI deals on a realistic and comprehensive analysis of costs, benefits and risks.** Instead of placing undue weight on the public sector comparator, the Trust should have attached importance in its assessment to wider factors such as the advantages of passing appropriate risk to the private sector and the potential risks involved in a contractually binding 35 year partnership.

- **There is scope for action by the NHS to reduce PFI advisory costs.** This deal was only the latest in a long series of hospital PFI deals, yet the Trust spent £2.3 million on advisers on this deal, virtually the same amount as those incurred by the Dartford & Gravesham NHS Trust in letting the first PFI hospital contract four years earlier. To counter the risk that the decentralised approach of the NHS to negotiating PFI deals might lead to reinventing the wheel, the NHS should establish a database of what advice on PFI has already been commissioned by NHS bodies. Where, as in this case, useful innovations are made, such as the use of a new standard NHS PFI contract, a streamlined bidding process and a price commitment by the preferred bidder, the NHS should promptly disseminate the lessons learned.

1 Based on discounting future cash flows at 6% in real terms in line with Treasury guidance at the time the contract was let. The Department estimates that the total cash payments under the contract, including increases allowed under the contract for inflation, will be over £470 million (Ev 23).

2 C&AG's Report, *The PFI Contract for the redevelopment of West Middlesex University Hospital* (HC 49, Session 2002–03)

1 The analysis of PFI deals

1. Treasury guidance says that the evaluation of projects should take into account the relevant costs and benefits to government and society of all options.[3] In practice, however, departments often place great emphasis on a cost comparison between the PFI contract price and an estimate of the cost of a supposedly equivalent conventionally procured project (the PSC). Being based on very long term forecasts, this comparison is subject to large inherent uncertainties. It does not take into account the various other factors, such as certainty of service delivery or the possibly constraining consequences of a long term contract, which need to be taken into account in deciding whether to proceed with a PFI deal.

2. In this project, the Trust's initial PSC cost estimate was lower than the price of the PFI deal. The Trust had concerns about the accuracy of this initial financial comparison and whether a cost estimate showing the PSC cheaper than the PFI deal would prevent it from obtaining Departmental approval. The Trust and its financial advisers KPMG reappraised the cost comparison believing that there were underestimates in the PSC allowance for risk. Adjustments were made to the PSC before seeking Departmental approval. The final calculations estimated a risk adjusted saving from using the PFI of £5.5 million over 35 years (**Figure 1**).[4]

Figure 1: Estimated payments and savings from the PFI deal

	£m
Estimated PFI payments in cash over 35 years	470.9[1]
Estimated net present value of PFI payments	123.8
Estimated PSC (without risk transfer)	116.2
Estimated PFI excess cost before risk transfer	7.6
Risk transfer	13.1
Estimated PFI savings after risk transfer	5.5[2]

Source : The Trust and the Department[5]

[1] Based upon an opening annual payment of £9.77 million which is then subject to inflation uplifts (Qq 59–73, 77–79, 101–102, 146–147,183; Ev 19–22

[2] Based upon a discount rate of 6% in real terms which was the rate set out in Treasury guidance at the time this deal was signed.

3. The Department aims to carry out a rounded assessment of PFI deals but sees the PSC as an important part of that assessment. It considers the PSC is a good way of helping NHS Trusts in their negotiations to focus on risks and the PSC could also be used to drive prices down. Whilst these may possibly be benefits from preparing a PSC, Figure 1 shows that the PSC, and the resulting savings attributed to the PFI deal, are significantly affected by the level of risk assumed in the PSC. The risk assumptions in the PSC were based on advice

3 HM Treasury, *Appraisal and Evaluation in Central Government* (2003), para 5.8 (updated from previous guidance published in 1991 and 1997)

4 C&AG's Report, paras 3.12–3.13

5 *ibid*, Figure 11, p21; Ev 22–25

from KPMG and information from the Department about the standard band for risk on these deals. The final overall allowance for risk in the PSC was around 15% of the construction costs. The Department told us some projects had previously experienced 20 or 30% overruns.[6]

4. The Department acknowledged that there could be no certainty about the savings projected in the cost comparison which was based on assumptions of costs in the long run. Although there was always scope for improvement, there was a rigorous process for estimating PSCs. In calculating the PSC for this deal the Department considered it had made the best possible assumptions based on the evidence it had. It saw the cost comparison as reflecting the fact that construction costs had been driven down very significantly as a result of the PFI process compared to the extensive cost overruns in building projects it had previously experienced. The Department considered this to be the biggest benefit from using the PFI.[7]

5. The Department stressed that if the West Middlesex hospital deal had not given value for money on PFI terms, the project would have been publicly funded. It had rejected the PFI as the method of procurement for a number of major schemes. Public funding was still being used for certain projects. For example, £84 million of public funds was being used to expand and improve hospital services at the Royal Berkshire Hospital and £50 million of public funds was being used to rationalise various services at Guy's and St Thomas's hospitals.[8]

6. Although considerable emphasis had been placed on the cost comparison, other factors had been taken into account in the Department's decision that this PFI deal represented value for money:

- *Certainty on price and timing of delivery.* The Trust pointed to certainty over the price and the timing of the delivery of the new facilities. The Department did not consider the project could have been done more quickly using public finance, where there had been a long history of time overruns.[9]

- *Maintenance.* The Trust placed importance on the fact that it would also get a well-maintained hospital whereas the NHS had not had a good history of maintaining facilities. Knowing that the contractor was responsible for dealing with any faults in the PFI building would assist the Trust in managing its annual costs. The Department was now focussing on setting better standards for maintenance in publicly funded hospitals to ensure that all hospitals would be in a good condition.[10]

- *Design and innovation.* The Trust thought that better design and innovation had been secured through the PFI bidding process compared with the conventional approach of putting a pre-determined design out to tender.[11]

6 Qq 8–10, 16–19, 39–40, 74–76, 104,178, 182, 212
7 Qq 105–106,177–178,180,183
8 Qq 20–28, 181; Ev 22
9 Qq 46–52, 172–173, 176–177,183
10 Qq 34–38, 172–173,178, 181, 183, 200–206
11 Qq 174–175

- *Staffing.* Most staff responsible for facilities management had already been working for contractors. Those who would now transfer to Bywest would have their pay and conditions of service protected. The terms and conditions for new staff would be set by Bywest but if these affected Bywest's ability to recruit staff the Trust could raise this issue with Bywest.[12]

7. The deal also had benchmarking arrangements and controls over the pricing of variations which were intended to ensure the contract continued to deliver value for money in the future. Bywest would not be allowed to make a higher margin on variations than the margin on which the original contract had been based. If the Trust was not satisfied with Bywest's proposals for a variation then the Trust had the right to use another contractor or public funds for the variation.[13]

8. The financial assessment of a PFI deal may well vary depending on the length of the contract period. In this deal the Trust decided to extend the contract period from 30 to 35 years, partly to reduce the annual payments it would have to make.[14] The Department maintained that although this had made the scheme more affordable for the Trust, it had not been done to justify the use of the PFI. The contract extension had not improved the position of the PFI deal relative to the PSC. After 35 years the hospital would revert to the NHS, although there was the option for the Trust to extend the contract to 60 years. If Bywest went into liquidation the banks would have the right to find an alternative provider. If another provider could not be found the Trust would have the right to step in and provide the services.[15]

9. Interest rates have fallen in recent years and this has been reflected in new Treasury guidance on appraising projects.[16] This project was evaluated by the Trust using a discount rate of 6% in real terms in line with Treasury guidance at the time the contract was let in 2001. The new Treasury guidance published in January 2003 expects departments to use a discount rate of 3.5% in real terms. The Department acknowledged that, other things being equal, it would not have gone ahead with this PFI project based on an evaluation using a discount rate of 3.5% in real terms. But the Department and the Treasury told us that the new guidance required other factors to be taken into account in evaluating project costs. The new guidance encourages departments to include provisions for the tendency of project appraisers to be overly optimistic. The guidance also expects departments to take account of taxation differences between alternative options.[17]

10. The Department acknowledged that it was still developing a strategic plan for London, but in deciding to take forward the West Middlesex project it had taken into account the need to deliver health services to the local population of 300,000. The hospital design and the contract terms had flexibility to adapt to changing needs. The project needed short-term financial support, but underspending in one part of the country could be used to provide short term support in other areas. The Trust stressed that the £1.6 million a year

12 Qq 87–96

13 Qq 41–45, 179

14 C&AG's Report, Figure 8 note 3, p17

15 Qq 12–15, 148–149, 181–182, 193–197

16 HM Treasury, *Appraisal and Evaluation in Central Government* (The Green Book) (2003)

17 Qq 152–160, 168–170, 196; Ev 19–22

cost savings it had been asked to make to pay for the PFI contract would not result in a reduction of service. The savings would come from using the redeveloped site more efficiently. Clinical staff utilisation would be better, less ambulances and porters would be needed and heating would be less costly. In addition, there would be the opportunity for possible future land sales from the West Middlesex site which the local strategic health authority and the Department would take account of in future planning.[18]

The management of advisers

11. The Trust incurred advisory costs of £2.3 million. Although this is a smaller deal, these costs are virtually unchanged from the costs incurred on the earlier PFI hospital contract this Committee examined let by the Dartford & Gravesham NHS Trust (**Figure 2**). In addition, Bywest had incurred costs of £1.8 million. The Trust also incurred an estimated further £0.5 million of costs in an earlier abortive PFI scheme.[19]

Figure 2: Comparative costs of the West Middlesex and Dartford & Gravesham PFI hospital deals

	West Middlesex £m	Dartford & Gravesham £m
Financial	0.97	0.96
Legal	0.80	1.22
Other	0.57	0.18
Total	2.34	2.36
Capital value	60.0	94.0
Advisers' costs as a % of capital value	3.90%	2.51%

Sources : The West Middlesex University Hospital and Dartford & Gravesham NHS Trusts and the Department

12. The Trust told us that it had learned lessons from its earlier abortive PFI scheme and had been able to absorb up-to-date experience from the involvement of the Department and the NHS Private Finance Unit. The Trust considered it had controlled costs effectively and attributed the scale of the costs of the West Middlesex deal to the development of a new standard form contract for NHS PFI deals which would benefit the whole of the NHS. It was only at the end of the negotiations when more work was needed on the standard contract that costs had exceeded its expectations. The Trust's financial advisers KPMG were also the advisers on the Dartford & Gravesham hospital and other PFI deals. Their charges for financial advice on the West Middlesex deal were unchanged from their charges for providing advice on the Dartford & Gravesham deal, the first PFI hospital contract to be let. That deal had needed a large amount of financial advice as it involved issues relating to PFI procurement which had not previously been dealt with in the NHS.[20]

13. Large amounts are being spent on advisory costs in taking forward NHS PFI deals despite there being considerable similarity between the deals. Over £70 million of taxpayers' money has been spent on NHS PFI advisory costs. The costs vary between 1 and 8% of the capital value of the projects with the average being 3.7%. This average is broadly consistent with the range of costs which the Ministry of Defence told us previously it

18 Qq 1–2,11, 97–100, 127–138, 147, 160–168,181–182, 184–192, 198–199

19 C&AG's Report, Figure 4, p4; Ev 29–31; Qq 213–215, Ev 25

20 Qq 29–33, 80–86; Ev 29–31

expected to incur on major projects based on costs as a proportion of total contract value. In addition, the private sector is also incurring substantial costs on PFI deals which it says generally represent between 2 and 2.5% of the capital cost of each deal, with the costs being 10% of the capital costs of smaller projects. It is inevitable that these costs will be reflected in the pricing of PFI deals. In taking forward a series of PFI hospital deals the NHS seems to be paying repeatedly for the costs of similar advice.[21]

21 Ev 29–31; 4th Report from the Committee of Public Accounts, *Private Finance Initiative: redevelopment of MOD Main Building* (HC 298, Session 2002–03); Q 55

2 Lessons from the new techniques pioneered on this deal

14. In the procurement of this deal the Department pioneered the following new techniques:

a) a new standard contract for NHS PFI deals;

b) moving directly from three bidders to a preferred bidder without an intermediary round of bidding with just two final bidders;

c) asking the preferred bidder to give a written commitment that it would remain committed to the price it had bid for a specified period.

The new standard contract for NHS PFI deals

15. Payment deductions for poor performance are a key feature of PFI contracts, which is intended to incentivise the contractor to maintain a good standard of service. The contract for this deal included an arrangement that if an operating theatre was out of action for 24 hours Bywest would suffer a payment deduction of approximately £1,400.[22] This did not seem a large deduction in a situation where patients' operations might have to be cancelled. The Trust told us that it had ten operating theatres and having one theatre out of action would not have a significant impact on its work. It planned to have spare capacity in its operating theatres in case an unexpected incident occurred or a theatre was out of action.

16. As many as eight operations might have to be cancelled if a theatre was out of action. On average it would cost £8,000 in total for these operations to be carried out in the private sector, more than five times the amount it would recover from Bywest. In practice the Trust would look to mitigate the problem of a theatre not being available for use. Changes could be made to the schedule for maintaining and cleaning theatres to free up a theatre where another was out of action. Having four or five theatres out of action, however, would have a significant impact, and in this situation the penalty Bywest would suffer would be more than £1,400 for each theatre which could not be used. The Trust saw this as an improvement over previous arrangements where payment deductions were based on a standard rate per square metre which did not take into account the impact that the loss of any particular area would have on the work of the Trust.[23]

17. In this contract, finalised in January 2001, the Trust will be entitled to receive 30% of Bywest's refinancing gains. But in November 2000 this Committee had urged departments to share refinancing gains with the private sector and arrangements to give departments 50% of refinancing gains in new deals have now become the norm.[24] The Department maintained that there had been a clear understanding with the Treasury at the time this

22 C&AG's Report, Figure 10, p20

23 Qq 6–7, 53–58

24 C&AG's Report, paras 2.14–2.15; 13th Report from the Committee of Public Accounts, *The refinancing of the Fazakerley PFI Prison Contract* (HC 372, Session 2000–01)

deal was being finalised that, in deals at an advanced stage, departments should be looking for a 30% share of refinancing gains. The Office of Government Commerce had accepted that departments had to take a view on whether to insist on a 50/50 arrangement where this might delay the deal significantly or where contractors might seek to amend the deal in a way that would not be value for money.[25]

Moving directly from three bidders to a preferred bidder

18. In this procurement, to save time and costs, the Trust went from three bidders to a preferred bidder without an intermediate step involving two final bidders.[26] Selecting a preferred bidder quickly can, however, create a risk that the preferred bidder will be in a strong position to exert leverage in further negotiations before the contract is finalised. That was a particular risk in this deal as the new standardised contract was being negotiated and implemented for the first time. In the competition for this contract, there had been little to choose between the three bidders on price, their bids falling within a range of £1.4 million. But subsequently the price increased by £28.6 million during eleven months of further negotiations with Bywest.[27] The Trust maintained that it in moving from three bidders to a preferred bidder it had balanced a wish to limit bidders' costs with the need to be as competitive as possible.[28]

Price commitment from Bywest

19. To try to guard against deal drift the Trust obtained a price commitment letter from Bywest when it became preferred bidder. Bywest confirmed that, subject to certain conditions, it would remain committed to the price it had bid for seven months. In the event it took nearly a year to close the deal and there were changes to the deal price due to a number of different factors (**Figure 3**).[29]

Figure 3: Increases to deal price after Bywest became preferred bidder

	Annual charge £m	Total cost over contract NPV £m
Bywest's bid : February 2000	8.6	95.2
Various changes to the annual payments[1]	0.8	9.2
Effect of increasing the contract period From 30 to 35 years	(0.1)	7.3
Change in discount base date[2]	-	7.0
Energy costs[3]	0.5	5.1
Final cost at contract close: January 2001	9.8	123.8

Source: The Trust

[1] Further details are set out in the C&AG's Report, Figure 8, p17
[2] The Trust's calculation of the NPV of the contract at preferred bidder selection (February 2000) was subsequently updated at contract closure (January 2001) using a different discount base date.
[3]Throughout the procurement it had always been agreed that the selected contractor would pass on energy costs based on actual usage. These costs had not been included in the February 2000 bids.

25 C&AG's Report, *PFI refinancing update* (HC 1288, Session 2001–02) para 2.27; Qq 139–145
26 C&AG's Report, para 2.19
27 *ibid*, Figure 7, p6, para 2.26 and Figure 8, p17
28 Qq 109–115
29 C&AG's Report, paras 2.26–2.27 and Figure 8, p17

20. As Bywest had limited the period of its price commitment to seven months there would have been an incentive for it to delay the final negotiations until the seven months had elapsed and to then seek a price increase. The Trust maintained that the deal had taken more than seven months to close because of the new standard NHS PFI contract which was being trialled on this procurement. It had previously been advised that the negotiations over the new contract could be concluded within seven months.[30]

30 Qq 3–5

Conclusions and recommendations

The analysis of PFI deals

1. The Trust decided to go for a 35 year deal rather than the 30 years originally proposed solely to keep down the annual cost of the deal. The Trust did not systematically evaluate the risks of a longer contractual commitment, such as being locked into an outdated arrangement. The duration of PFI contracts should reflect operational needs rather than be a by-product of financiers' calculations.

2. Had the Trust properly followed the Treasury's long-standing guidance on investment appraisal, "The Green Book", it would not have pursued spurious precision in its public sector comparator nor would it have based its decision on the length of the contract on such inadequate analysis. Now that the Treasury has recently produced a revised version of its guidance, it should consider what further advice and training is needed to embed the new guidelines in departments' thinking.

3. The new guidance includes several significant changes on matters of judgement: a lower discount rate and new arrangements for optimism bias and for the impact of taxation. It is unclear what effect the new guidelines would have had on the appraisal of the West Middlesex deal. Our predecessors advocated that to assist their assessment of the uncertainty in their calculations, departments should examine the sensitivity of PFI appraisals to changes in the discount rate. Judgemental estimates for factors such as specific risks, general optimism bias and taxation differences should likewise be shown separately in the calculations so that the impact of these estimates can be clearly identified.

4. In this case, the Trust could afford the annual payments due under the PFI contract only by getting extra money from elsewhere in the NHS, to the detriment of the services that could otherwise be provided there. Since NHS funding in total is limited, decisions on such PFI deals should not be taken in isolation but should take account of the effects elsewhere in the NHS of the extra PFI costs.

Learning from experience of PFI in the NHS

5. The NHS should undertake a systematic post-contract review of advisers' costs on each PFI hospital deal. The NHS Executive should use these evaluations to monitor the progress which is being made in reducing advisory costs.

6. In November 2000, we had recommended departments to secure 50:50 shares of refinancing gains. It subsequently took the Office of Government Commerce 20 months to issue detailed guidance to that effect. During that interval, this deal was signed providing for the public sector to receive only a 30% share of refinancing gains. Public authorities need to ensure that all their PFI contracts include arrangements to share refinancing gains 50:50.

7. In this deal the preferred bidder agreed to hold its price for seven months but it took the Trust eleven months to close the deal. The price increased after the commitment

period had expired so the price commitment only had limited effect. The principle of securing a price commitment to deter "deal creep" is good, but a department using that approach needs to be sure it can close the deal while the commitment still holds.

Formal minutes

Monday 12 May 2003

Members present:

Mr Edward Leigh, in the Chair

Mr Ian Davidson	Mr David Rendel
Mr Frank Field	Mr Gerry Steinberg
Mr Nick Gibb	Jon Trickett
Mr George Osborne	Mr Alan Williams

The Committee deliberated.

Draft Report (The PFI contract for the redevelopment of West Middlesex University Hospital), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 20 read and agreed to.

Conclusions and recommendations read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Nineteenth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No 134 (Select Committees (Reports)) be applied to the Report.

[Adjourned till Wednesday 14 May at 3.30 pm

Witnesses

List of written evidence

List of Reports from the Committee of Public Accounts Session 2002–03

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Second Report	Dealing with pollution from ships	HC 119 *(Cm 5770)*
Third Report	Tobacco Smuggling	HC 143 *(Cm 5770)*
Fourth Report	Private Finance Initiative: redevelopment of MOD Main Building	HC 298 *(Cm 5789)*
Fifth Report	The 2001 outbreak of Foot and Mouth Disease	HC 487 *(Cm 5801)*
Sixth Report	Ministry of Defence: Exercise Saif Sareea II	HC 502 *(Cm 5801)*
Seventh Report	Excess Votes 2001–02	HC 503 N/A
Eighth Report	Excess Votes (Northern Ireland) 2001–02	HC 504 N/A
Ninth Report	The Office for National Statistics: outsourcing the 2001 Census	HC 543 *(Cm 5801)*
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