

Northern Ireland Court Service
PFI: The Laganside Courts



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
HC 649 Session 2002-2003: 4 June 2003

executive summary

- 1 The Northern Ireland Court Service (the Service), a Department of the Lord Chancellor, is responsible amongst other things for facilitating the conduct of the business of the Supreme Court, the County Courts, the Magistrates' Courts, Coroners' Courts and certain Tribunals. In addition to providing administrative support to the Judiciary in the conduct of court business the Service also provides suitable accommodation where proceedings can be heard. The Belfast Courts handle the bulk of business in the criminal and civil courts.

1 Locations of the Crumlin Road and Laganside Courts



- 2 In the early 1990s it was clear to the Service that the court buildings in Belfast would need to be updated or replaced and that a radical solution was needed to provide for the operational needs of the Service into the Millennium and beyond. A number of measures were contemplated, including the feasibility of refurbishing the Crumlin Road Courthouse to deal with increasing Crown Court business arising in large part from the impact of civil unrest and terrorist related offences. The courts themselves were not immune from terrorism and several were badly damaged or destroyed in attacks.
- 3 By the end of 1996 the Service was convinced, following an independent market study, of the feasibility of a Private Finance Initiative (PFI) project to provide a new courts complex in Belfast to deal with Crown and County Court business. Advisers were appointed to assist in the procurement and by the end of 1997 the Service issued an Invitation to Negotiate for a larger complex, incorporating Belfast and Newtownabbey Magistrates' Courts, to three consortia.

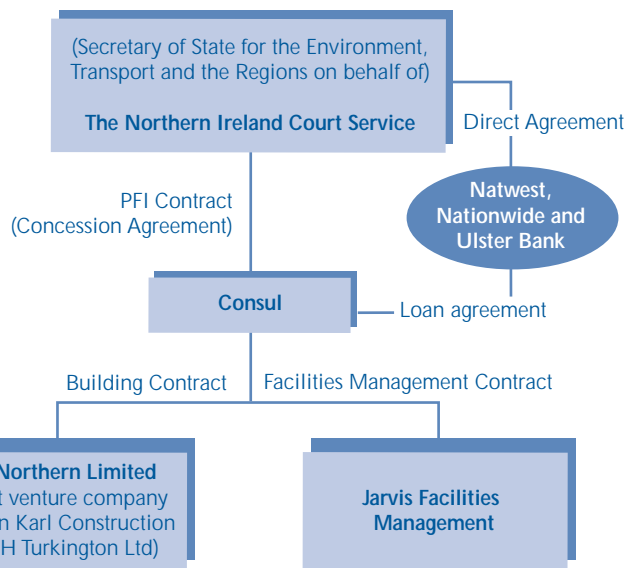
In February 1999 the Service let a PFI contract (see Figure 2) to Consul Services Ltd (Consul) to design, build, finance and operate a 16 court complex (now known as Laganside Courts). The contract is for 25 years at a cost, in net present value terms, of £40 million. This was the first major accommodation PFI contract signed in Northern Ireland and the first of its kind to reach financial close in the court sector in the United Kingdom. The Service occupied the new complex in January 2002. A chronology of key events is at Appendix 1.

- 4 We examined the extent to which this PFI deal is likely to deliver value for money. Our report *Examining the Value for Money of Deals Under the Private Finance Initiative* (HC 739, 1998-99) provides an outline of the general methodology, which acts as the starting point for PFI examinations. The detailed methodology adopted for this study is set out in Appendix 2.

Although the courts are delivering benefits, the Service needs to improve on contract management

- 5 The Service considers that it has a modern building which meets all its operational needs. The combination of Crown, County and Magistrates' Courts at Laganside Courts has improved upon the previously dissipated nature of court provision in Belfast. Initial reactions from court users have been positive and a preliminary review of throughput has indicated increased availability and efficiency of the courts. Nevertheless, the Service did not undertake all the actions it might have prior to occupying the new complex. Performance monitoring was not fully operational and consequently, for an initial period, there were limited means by which performance against service standards could be measured.
- 6 The contract has in place a number of mechanisms which should help to protect value for money in the future, but there are limitations with the way availability and performance of the new building are reflected in the payments made to Consul. The monthly unitary charge of £300,000 paid to Consul includes fixed elements that limit the total abatement for unavailability to 44 per cent of the total amount due, even if the entire building is out of action.

2 Deal structure



In addition, the abatements to the unitary charge if one of the Courts is unavailable appear relatively small. For instance, the non-availability of a standard Crown Courtroom would reduce the service payment by approximately £18 an hour, less than £150 a day. Such a deduction for non-availability seems limited and unlikely to be commensurate with the abortive costs associated with the postponement of proceedings for a day. In such circumstances, however, the Service would take action to ensure business continuity. The performance element of the monthly unitary charge is also proportionately small. An unacceptable standard of performance for a range of services, such as reprographics or cleaning, would result in a deduction of only some £6,000 a month.

- 7 The Service secured a reduction in the unitary charge from £4.2 million to £3.6 million a year in return for agreeing to limit the size of any abatement for non-availability or poor performance. The negotiated reduction was closely linked to what could be afforded for the new courts and ensured that a hard bargain on price was negotiated with Consul. The Service considers that the level of abatements is appropriate in relation to the estimated profitability of the facilities management element of the deal.

This early PFI deal illustrates a range of key issues that departments must continue to bear in mind

- 8 The procurement process was handled well. The Service put together a business case, established an appropriate project management structure and appointed advisers after open competition. An initial market-sounding exercise was undertaken to gauge interest in the project. Expressions of interest were received from four consortia and, following a pre-qualification assessment, an Invitation to Negotiate was issued to three of them. The subsequent bids were evaluated against a range of criteria and, although the Consul bid was not the cheapest, it scored most highly across the selection criteria.
- 9 Although a traditional procurement was ruled out at an early stage because of insufficient capital funding, the Service prepared a nominal public sector comparator to test the cost of a PFI deal. This indicated that the overall cost of the preferred bid was marginally less than a conventional procurement. The comparator included substantial costs for carrying out remedial work and then mothballing the Crumlin Road Courthouse, a listed building, throughout the 25 years of the project. This made a material difference to the net present cost of a conventional procurement, increasing it by about £7 million relative to the PFI bid. If these costs are excluded, the comparator would have been considerably less expensive. The Service believes that there would have been no private sector interest, other than through the proposed PFI deal, in taking on the building. The Service considers that it would have been obliged to incur such costs for the Crumlin Road Courthouse throughout the 25-year period, if a conventional procurement had been possible, and that it was legitimate to include all the costs in the Public Sector Comparator.
- 10 The Service considered the issue of risk allocation from an early stage in the procurement process and achieved an allocation similar to other private finance contracts of this nature - transferring design, construction, commissioning and operating risks to the private sector. Nevertheless, there is no evidence that the Service quantified the respective risks transferred and retained to enable a like for like comparison between the Public Sector Comparator and the PFI deal.

Recomm



11 This was one of the earlier PFI deals and the new courts have only been up and running since February 2002. Nevertheless, it is apparent to us that the new Courthouse is an example of imaginative and successful design of a building that is providing a vastly superior service to its users than the nineteenth century Crumlin Road Courthouse, good no doubt in its time, that preceded it. There are, however, a number of points relevant to the forward management of the deal and the development of the PFI generally, that are worth highlighting.

A) The Service should resolve the remaining problems with the building as soon as possible

Problems with water ingress, the outstanding negotiations on price adjustments for changes to sight lines in the Crown Courts and the indexation of the unitary charge have been known about for some time and the Service is working to resolve them.

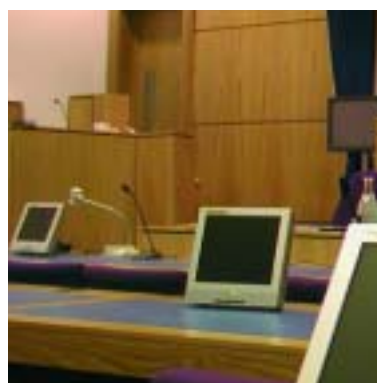
B) Performance monitoring should be kept under review

Putting in place adequate arrangements to measure performance took a back seat to getting the courts operational. As a result the Service was exposed to the risk that it might be paying in full for what was sub-standard service delivery although there have been no significant examples of unavailability or performance issues to date. Formal contract management arrangements are now in place and the Service must make sure that it keeps a close watch on performance monitoring in the future.

C) The payment mechanism must be agreed and tested before service delivery begins

To achieve a good price and keep the deal affordable, the Service agreed to limit the amounts that could be deducted for unavailability or poor performance. As the details of the payment mechanism had not been fully worked up at the time the deal was being negotiated, the Service was not in a position to consider fully the potential effect on the incentives to the private sector to provide acceptable standards throughout the 25-year term of the contract. In the circumstances, the Service should now ensure that the longer term benchmarking and market-testing provisions contained in the contract are used fully.

Recommendations



D) Public Sector Comparators are subject to inherent uncertainty

Public Sector Comparators tell departments nothing about the benefits of alternative procurement methods and are subject to inevitable uncertainty, given the long timescales involved. Although public capital was not available to the Service to build the new courts, a nominal public sector comparator was prepared. The comparator showed that the cost of a PFI deal was marginally less than a traditional procurement. The difference, of less than 0.4 per cent, depended on whether responsibility for the Crumlin Road Courthouse, which was not needed for operational purposes, might have to remain with the Service. The uncertainty inherent in a Public Sector Comparator is illustrated in this deal by what might or might not happen to the Crumlin Road Courthouse over the next 25 years. The Service considers that the site is unlikely to be developed by the private sector without substantial subsidy from public funds.

E) The Service should have in place an agreed negotiating strategy if the deal is refinanced

The Service and its financial advisers believe that the deal was tightly negotiated and, as currently structured, the opportunities for a refinancing appear limited. However, an initial meeting has taken place between the parties and Consul may develop a proposal on refinancing for the Service's consideration. If a refinancing is proposed the Service should ensure, taking full account of guidance issued by the Office of Government Commerce, that an appropriate proportion of any gain made by Consul is returned to the taxpayer.