

Nuffield Orthopaedic Centre NHS Trust

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The Nuffield orthopedic Centre NHS Trust project was set up to refurbish parts of the Nuffield Hospital and construct new hospital facilities. The project vehicle, Albion Healthcare, consists of a consortium of equal shareholders Barclays European Infrastructure Limited, AWG, Group 4 Falck Global Solutions and United Medical Enterprises.

They split the £2 million equity for the £35 million project. Dexia Public Finance provided the £33 million syndicated senior debt. Lovells acted for both Albion Healthcare (Oxford) Ltd and for Dexia in the PFI project which reached financial close in April 2002.

This landmark deal is the UK's second 'dual role' transaction in healthcare PFI (where a law firm advises both the project vehicle (Albion Healthcare) and the senior lender (Dexia). Construction will be finished in 2007 after which the hospital will have a 30-year concession.

Location: The Centre is located in Oxfordshire, in SouthEast England

Orthopedics Services

The Nuffield Centre is an Orthopaedic hospital, which means it specialises in the prevention or correction of injuries or disorders to the skeletal system and associated muscles, joints, and ligaments. The Trust provides speciality services including rehabilitation, disability, rheumatology, research and metabolic medicine. The rebuild involves a radical design to improve hospital services for patients. The £35 million investment is particularly significant as NHS (National Health Service) plan to create more facilities to reduce waiting times for patients.

Background

The Nuffield Orthopedic Centre dates back to 1872, when the same Oxford site was occupied by the Wingfield Convalescent Home. The modest home housed a handful of patients at one time and was mainly funded by public donations. At the outbreak of the First World War the Home became an auxiliary hospital to the existing Third Southern General Hospital. Excessive injuries during World War 1 led to the home's transformation into an orthopaedic hospital in 1921. In 1948 the hospital became part of Britain's newly founded NHS. The Nuffield Orthopaedic Centre was renamed the Nuffield Orthopaedic Centre NHS Trust in 2001.

NHS Trusts

In 1948 the UK government set up NHS Trusts as organisations responsible for running most hospitals accountable to the Department of Health.

In 2000 a new 10-year government NHS plan was launched. A policy document entitled 'Shifting the Balance of Power' transformed the system in 2001. Trusts would no longer be controlled nationally but would be accountable to local authorities instead. The idea was to give the community a greater say in how their hospitals were run. The Nuffield Centre is an NHS Trust accountable to the Thames Valley Strategic Health Authority area that serves a population of approximately 700,000.

The Project

The Nuffield Trust has experienced considerable physical and organisational change over the past two years. For Nuffield, this meant hiring new members to the Trust board in 2002 and undertaking a radical overhaul of the hospital via a massive development PPP project in 2002.

A PFI of such undertakings is no mean feat. The 100 per cent rebuilding project involves replacing all of the ageing buildings on the Nuffield's Windmill Road site. The innovative new design is radical, and custom built to meet the specific needs of the Nuffield's patients. The project aims to provide a state-of-the-art facility, specifically designed to provide routine and specialist orthopaedic and rheumatological care. AWG Project Investments Ltd undertake all relevant construction and refurbishment works with Group 4 Falck contracted to provide soft and hard facilities (day-to-day project monitoring and portering) management services.

Financing

Total project costs were £35 million (US\$57 million). The SPV Albion Healthcare was comprised of equal partners Barclays European Infrastructure Fund, AWG Project Investments Ltd, United Medical Enterprises and Group 4 Global Solutions Ltd.

The shareholders contributed a total sum of £2 million (US\$3.3 million) equity towards the project. Dexia provided the senior debt of £33 million (US\$54 million) in the mezzanine financing. The debt equity ratio was 90:10.

Legal issues

The Lovells team was led by Jason Radford. The project is very unique in that it has a 'dual structure' i.e. the same law firm advised both the shareholding consortia (Albion Healthcare and the lenders (Dexia). This meant that much time was saved during the negotiation process.

The contract has other unique legal features. The PFI contract had to comply with a PFI standard form project agreement, known as Version 2, introduced by the British government in 1999. "In terms of the procurement process that's adopted by individual NHS Trusts, if they want to get central approval of their schemes then it will be expected that they use this template contract," said Mr Radford of Lovells.

Although accountable to local authorities, the project must perform to NHS standards. These standards are prescribed in the contract. These are monitored every day through a helpdesk run by Group 4.

Another legal quandary the Trust faced was how to secure interim services during the construction phase. Lovells had a separate contract directly between the Trust and Group 4, the service provider, "That related just to the construction period. What that meant was that it solved problems, in that we could get the workforce to transfer across to the private sector two years earlier. This is one of the parts of the scheme that has been exceptionally well received," said Mr Radford.

Risks

The Nuffield project encountered the usual construction and operational risks inherent in any PFI deal with one big difference, in that the construction of the project was taking place at an existing site occupied by patients: "The specifics of this deal are that we are building on existing facilities. Not only were we building a new building, but also we were knocking down an existing building and we were going to move patients and equipment from existing buildings into different areas to allow us then to refurbish existing areas," said Mr Radford.

It was therefore important for Lovells to establish communications with the existing hospital to ensure a harmonious process for both the construction of the centre and the normal day to day running of the hospital: "We had to interface with an existing hospital, (the Nuffield Orthopaedic Centre) which would continue to operate during the construction period," Mr Radford explained. Clinicians were also a very important element of the Trusts' project body.

It was crucial that they understood the design solution being put forward. In order to minimise patient disturbances, Lovells established a template contract over a number of different schemes to begin with: "We decided to keep the number of moves down to an absolute minimum. The builders had restrictions about what they were allowed to do during the day and at the weekend," said Mr Radford.

To minimise the risk of the project being completed on time the consortia asked for fixed-price turnkey contracts from the EPC builders AWG. The lenders looked for liquidated damages payable by the contractor in the event that the

contractor was late or could not deliver on time.

“This was a liquidated damage obligation owed by the construction contractor AWG Construction. That it would owe liquidated damages to the Project Company Albion Healthcare and those could be used by Project Company to repay interest due on the debt,” said Mr Radford.

Dual structure

It is a given that PFI’s of such undertakings require a solid and sound foundation. For this reason, a lot of time was saved working on the Nuffield project by having one law firm representing both the sponsor and the lender. “

“The dual role removed the adversarial tensions and interface risks that could have developed because we had the same advisers on both sides of the fence. This effectively eliminates some of the difficulties and additional expenses of doing projects of this nature by separate lenders counsel,” said Mr. Radford.”

“Another advantage is that you remove a lot of the scope for ‘legal posturing’ - intricate legal debate about legal niceties because the same firm has the same body of knowledge about the market. By using our own standard loan documents, there was no debate about what should be a standard set of covenants, for the lenders from a legal position,” he said.

Lovells held meetings with the consortia and lenders by setting up two teams, one advising Albion Healthcare as borrower and another heading Dexia, as the lender. “They were split like a Chinese wall on either side. But then they would have negotiations. We could have drafting discussions without the clients present. Then if there were any problems we could run them quickly past the client. It took a lot less time,” said Mr Radford.

Project Status

The Nuffield project has already won a PFI award and has applied for a prestigious NHS foundation status. The Nuffield Orthopaedic Centre NHS Trust (NOC) has received £1.5 million of extra funding to build a second MRI scanner from Thames Valley Strategic Health Authority (TVHA) and the Nuffield Orthopaedic Centre Appeal. The Trust’s chairperson Janet Foster said: “The successful conclusion of this agreement underlines our belief that working together with other organisations enables us to develop the highest quality healthcare.”

Lovells remains philosophical that the dual role structure eased the PFI negotiation process: “The message is that the negotiations were remarkably amicable, and that the dual role certainly helped facilitate the approach to the discussions. The process was a lot shorter, there was no animosity, no real significant commercial misunderstandings, or discrepancies. It was a very positive working relationship between the sponsors and lenders.” Phase 1 of construction should be completed in the next few weeks. The project has another 2 and a half years before construction is completed.

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