

## PFI UNDER ATTACK FROM HAVE- A-GO HEROES?

PFI firms will not have failed to notice the publicity last weekend given to remarks by Francis Maude, the Cabinet Office Minister, who stated that many PFI deals were “ghastly” and imposed an unfair “penalty” on schools, hospitals and other public services.

The Telegraph reported that the Cabinet Office and Treasury Officials were examining PFI contracts looking for ways to claw back money for tax payers. With this political impetus and the financial pressure to which they are now subject, it would not be surprising if public bodies started to mount challenges to these contracts. Operational PFI contracts will be scrutinised against current best practice and efforts may be made to upgrade and update them in ways which go beyond contractually-permitted variations, or to reduce the public sector liability or the private sector profit.

In our experience, even if a case in law may be questionable, where there is sufficient political and financial pressure, there is a risk that contracting parties will “have a go”, creating problems for their PFI partners who have invested heavily in order to reap their rewards over years to come.

If faced with any such challenge, PFI firms would no doubt want the robust support of an experienced legal team. Issues such as limitation, the enforceability of terms, possibly of the contracts themselves, as well as performance issues and termination rights may need to be examined. If claims arise the possibility of third party liability (for example liability of professionals who advise on the contracts) may need to be examined. A further complication may be exposure under refinancing or transfer deals relating to the original contracts.

For expert advice on all aspects of contractual, finance, construction and public sector claims, contact the team at Pitmans – experts in fighting your corner.

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