



## expertise and experience

Procurement - June 2009

### Public procurement and major healthcare projects

#### Our team and approach

**We operate as a fully integrated team – we are not compartmentalised into silos. This enables us to be flexible and responsive and import ideas and best practice across sectors**

Morgan Cole is a 54 partner firm with over 300 lawyers and offices in Cardiff, Oxford, Reading, Bristol and Swansea.

We have particular experience in [procuring major projects](#) in the healthcare sector. We act for the Department of Health, Welsh Assembly Government, and a wide range of NHS bodies including PCTs, Strategic Health Authorities, acute Trusts, Local Health Boards and regulatory bodies including the HFEA and Care Quality Commission. We also act for private and third sector providers including Philips UK, Asteral, Nuffield Hospitals, Medix and Shaw Healthcare.

We handle a project from “[cradle to grave](#)”. One team of lawyers is assigned to your project at the outset and sees it through to the finish, providing continuity. Our role does not finish when the contract is signed – we can stay involved as needed to handle training, implementation, project management issues, and resolving disputes.

We are familiar with the governance needs of public sector organisations, including the various approval stages and assisting with business cases.

#### Our services

We provide the full range of commercial legal services required in relation to arrangements between NHS and independent sector providers. We have particular expertise in the following areas:

- Public procurement, state aids and competition;
- Health and social care regulatory matters;
- Clinical services agreements;
- Construction;
- Third sector and social enterprise; and
- External funding, joint ventures and collaborations

#### Our experience

Some examples of our recent work include:

- [Department of Health Independent Sector Treatment Centres](#) – advising DH on a number of Wave 1 and Phase 2 projects, including a £230 million, 6-year scheme with UK Specialist Hospitals for elective services in Avon Gloucester and Wiltshire, commuter walk-in centres, mobile scanning services, and contract management advice across the whole ISTC programme
- [Framework of External Support for Commissioners](#) – advising DH on implementation of FESC following its procurement, and we also acted for the first PCT to use FESC under the DH’s pilot scheme to commission invoice validation services. We have since acted for other PCTs in FESC procurements of various commissioning skills. Our work includes advising on the potential uses of FESC, the various payment models, the FESC procurement process and the quickest route to contracting, drafting invitations to call off services under FESC, supporting PCTs during bidder days, bid evaluation and drafting and negotiating the call off contract (ESSA). We are currently acting for a consortium of PCTs seeking a complex mix of services drafting their collaboration agreement as well as their ESSA



(call off contract). Given our central involvement in FESC with the DH from its outset, we are uniquely placed to guide PCTs through the process and ensure they have a robust and workable commercial contract with their suppliers.

- **Peterborough Hospital PFI Imaging scheme** – advising the provider (Asteral) on a £130 million, 35-year, vendor-independent Managed Equipment Service for imaging equipment across three facilities as part of a new-build PFI scheme.
- **Designed for Life - Building for Wales** – advising Welsh Health Estates and the Welsh Assembly Government on Wales' equivalent to ProCure 21. This is a collaborative framework for capital investment in healthcare, covering all schemes with a value of over £5 million. With a duration of 4 to 6 years, the framework has delivered over £250 million of investment so far.
- **Belfast Royal Group of Hospitals Imaging PFI** – advising the provider (Philips Medical Systems) on a £110 million PFI managed equipment service for a full suite of “state of the art” imaging equipment and clinical IT systems.
- **St David's Community Hospital PFI** – advising the private provider (Impregilo Macob Consortium) on a new-build PFI hospital and also the recent variation of the project and re-tendering of hard and soft FM services. Total project value in excess of £50 million.
- **East London and the City Mental Health Trust** – advising the Trust on disposals of redundant estate and re-development, and also four separate partnering agreements with local authorities for joint health and social care services provision.
- **Teenage Cancer Unit** – advising Cardiff and Vale NHS Trust on a charity-funded development of a specialist unit, to complement the flagship Children's Hospital for Wales.
- **Swansea University / IBM collaborative partnership** – advising the University on a 3-way research and development collaboration with IBM and the School of Medicine at Singleton Hospital valued at c.£50 million, which involved provision by IBM of a £25 million super-computer and input of staff research and resources by the other two partners, with the aim of developing and jointly exploiting medical IT applications.

- **Radiology Framework** – advising Welsh Health Supplies on procurement of a £53 million framework for radiology and imaging equipment.
- **Policy development and advisory work** – our expertise in procurement and public/private projects is recognised by a number of appointments to government committees, including Special Adviser (by invitation) to the Welsh Assembly's Business Procurement Task Force, and Special Adviser (following open tender) to the Finance Committee in relation to their recent investigation into the use of PFI/PPP and its future potential.

### What others say about us

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Our team is recognised by the Legal 500 as “**dominant in the provision of advice to the healthcare sector**”, and the Chambers Guide to the Legal Profession applauds our “**versatility and ability to learn very quickly**” and “**exceptional level of support**”. Individuals within the team have attracted comments such as “**insightful and good humoured**” and “**hard-working**”.

Our clients praise our lawyers for their “**availability**”, “**responsiveness**”, and “**crystal-clear advice**”, “**approachable and helpful style**” and for displaying “**a degree of calmness only borne through experience**”.

The latest edition of Legal 500 says:

“**Healthcare is Morgan Cole's target sector, and the firm certainly has the strength in depth necessary to advise parties across the industry. The health and social care team is led by Eve Piffaretti, a leading authority on mental health law, particularly in relation to children. The public sector teams are cross-departmental, calling on the expertise of lawyers such as Simon McCann, who last year acted for Asteral in a substantial PFI arrangement for Peterborough Hospital. Healthcare clients include a large number of NHS trusts, the HFEA, and the Human Tissue Authority.**”

### Training and publications

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We regularly provide training to NHS and Government bodies on procurement matters, including how to use the **Competitive Dialogue** and have spoken by invitation at a number of major conferences.

We produce a regular **newsletter and briefings** and if you would like to be put on the mailing list, please contact Lucy Hopkins on 029 2038 5405 or at [lucy.hopkins@morgan-cole.com](mailto:lucy.hopkins@morgan-cole.com)



## Our people

### Meet the team

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**Bruce Potter**

Partner

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For the past 20 years, Bruce has worked on corporate transactions for a wide variety of companies and organisations, both listed and non-listed. He heads up the technology practice of the firm, especially working with growing technology companies, often internationally based. He also has extensive experience on major UK health projects while on secondment to the Department of Health working with Independent sector and NHS providers.

Commentators from the 2009 edition of Chambers and Partners say he “has invaluable insight into the inner workings of the health service.”



**Simon McCann**

Partner

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Simon is a commercial/projects partner who specialises in public procurement and major public projects. Before joining Morgan Cole, Simon led the health legal team in the National Assembly for Wales. His recent experience includes advising the Department of Health on a £230 million elective services scheme, and on the procurement of Fund Managers for the DH’s Social Enterprise Investment Fund (using the Competitive Dialogue). Simon has also worked on major managed services projects including advising Philips UK on a £110 million-plus imaging equipment and medical IT systems PFI in Belfast, and Asterol on a 35-year, £130 million PFI contract for imaging equipment and systems at the new Peterborough Hospital. His recent construction and engineering experience includes advising the Welsh Assembly on their iconic £50m debating chamber in Cardiff Bay, setting up a national Welsh framework for hospital construction (worth over £250 million to date), a £75 million engineering collaboration involving three local authorities, and several major education PFI construction schemes. He is based in Cardiff but works across the UK and has recently completed projects in Leeds, Belfast, North Wales and London.



**Gayle Curry**

Partner

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Gayle is a commercial contracts lawyer who specialises in health sector projects. Her recent experience includes leading the legal team drafting the DH's standard national contracts for acute, community, mental health and ambulance services; acting for the first PCT to use the FESC framework to call off services (acute invoice validation); project managing the DH's procurement of the Independent Sector Extended Choice Network; working with the project teams to deliver centrally procured ISTC schemes in Kidderminster and Nottingham. She advises on Transforming Community Services and the new legal forms for delivery of services, undertakes PCT Board development work, delivers contract negotiation and management training to PCTs and has 3 years experience of acting as an NHS non executive director.



**Alison Patten-Hall**

Partner

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Alison is a commercial lawyer advising a wide range of clients from individuals to large multi-national corporations, educational establishments, NHS trusts and research authorities on IP and IT issues. Alison has worked on legal matters for NHS Trusts in Wales, Oxfordshire, Sheffield, London and Norwich as well as private sector companies operating in the healthcare market primarily in relation to the licensing and exploitation of medical products and devices. Alison has a particular expertise in advising NHS Trusts and Universities on the commercial arrangements surrounding clinical trials including advising on the ABPI model clinical trial agreement. Alison has expertise in the identification and protection of IP, including trademark, patent and design right registrations, the commercialisation of such rights by way of licensing or assignment, and enforcement of the rights. She also carries out due diligence exercises and IP audits to advise organisations on their IP protection, policies and procedures.



**Christopher Williams**

Partner

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Chris is an IT and projects lawyer with a wide range of experience in acting for public and private sector bodies in IT projects and outsourcing. His expertise includes negotiating a variety of IT agreements, public and private sector outsourcings, and advising on computer and e-business contracts. In particular, Chris has considerable experience within the Health Sector, including advising in relation to a major elective scheme.