

Fair Wages

*How to end the two
tier workforce in
public services and
achieve fair wages*

June 2004



UNISON

Fair Wages: How to end the two tier workforce in public services

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1. Introduction

Years of privatising public services have left thousands of workers employed by contractors on the lowest pay and conditions. Those covered by TUPE (Transfer of Undertakings (Protection of Employment) Regulations 1981) have transferred with their public sector pay and conditions intact, often only to see both their pay and their conditions erode over time. New starters have had to accept the worst terms and conditions offered by contractors and to work alongside better paid transferred staff, creating a two-tier workforce.

This briefing outlines the campaign for fair wages, how far we have come and what remains to be done before we can really claim that we have achieved public sector wages and conditions for public sector work and all the benefits to service quality that flow from good employment practices.

2. Fighting For Fair Employment

Over the years, UNISON has campaigned for high quality, publicly provided services, and to protect the pay and conditions of those workers transferred to private employers. The fight for a new Fair Wages Clause is part of this ongoing campaign.

UNISON wants to see fair wages regulation in public contracting that will protect the pay, conditions and pensions of all staff providing public services, regardless of who employs them.

The environment for contracted support services is highly competitive. Cost control is a dominant concern and labour costs are typically 70-80% of the contract price. The result is that workers providing services to private employers in local government, the health service, further and higher education, are today paid wages so low that even a forty hour week does not cover their most basic needs.

Under fair wages legislation public service employers would be compelled to require contractors to provide their staff – both new and transferred - with pay and conditions at least as good as those received by directly employed staff doing equivalent work. Contract staff would also be entitled to the same pay increases and improvements in conditions as directly employed staff during the life of the contract.

Such a clause would prevent private contractors from competing for contracts on the basis of lower pay and conditions and it would remove incentives to public bodies to privatise in order to achieve savings on labour costs.

3. *Background To Fair Wages*

Until it was abolished by the Thatcher government in 1983, Britain had a successful Fair Wages Resolution. It required companies contracting with public authorities to pay the going rate for the trade or industry, based on terms agreed in national collective agreements.

The UK was also a signatory to International Labour Organisation (ILO) Convention 94 which stipulated that public contracts should include clauses ensuring the workers concerned had wages and other conditions “no less favourable than those established for work of the same character”.

As a precondition to privatisation the Thatcher government renounced ILO Convention 94 and abolished the Fair Wages Resolution. At the same time contracting out and market testing resulted in tens of thousands of staff being transferred from local councils and the NHS to private contractors. The process has continued with outsourcing, private finance initiative (PFI), Public Private Partnerships (PPPs), Best Value and housing stock transfers.

Under TUPE (the Transfer of Undertakings (Protection of Employment) Regulations 1981) staff have usually been transferred to the new service provider on their existing terms and conditions. More recently pensions protection has been improved and private contractors are expected to offer a ‘comparable’ pension scheme to transferred staff. However, TUPE does not guarantee life-long protection and there are many examples of the terms and conditions of staff being cut over time. And new employees are offered no protection at all – invariably creating a two-tier workforce.

For example, before ISS agreed to boost the pay of their staff at the Royal London Hospital, contract staff earned £4.42 an hour, compared to the NHS rate of £5.53. ISS staff were not entitled to London Weighting, paid carers leave or compassionate leave. Most shocking for staff working in the Health Service, they had little or no occupational sick pay, so they worked the wards when ill, to make ends meet.

4. *UNISON's Campaign Paying Off*

UNISON is campaigning for Fair Wages at every level. The union has lobbied for Fair Wages policies to be incorporated into European and UK legislation. We have pressed public authorities to include fair wages policies in their procurement procedures and at a local level branches have fought for extended protection for contract staff not covered by TUPE.

In Europe a new Public Procurement Directive was agreed in February 2004. This Directive provides the framework of regulation for all contracting of public services across the European Union, including the UK. The new Directive reflects recent European case law and acknowledges the possibility of taking employment matters into account when contracting out services.

UNISON's efforts have also convinced the UK government that something must be done about the inequities of the two-tier workforce.

The first public authority to enact a Fair Wages policy was the Greater London Authority (GLA). In 2002 the GLA introduced a fair employment clause into its contracting procedures. Private contractors working for the Greater London Authority (GLA) are now asked if they are willing to pay their staff at least the equivalent of public sector wages. The GLA has so far applied this policy to contracts for the cleaning and catering services for City Hall and new services in Trafalgar Square.

In December 2002 the Scottish Executive signed a protocol with the STUC ensuring that in all future public private partnerships (PPPs), contract workers will receive 'fair pay' and rights over pensions, holiday and sick pay commensurate with colleagues in the public sector. The protocol has already convinced a number of Scottish councils to alter plans on staff transfers to the private sector. Councils reported increasing union involvement in discussions following the protocol.

In February 2003 the Office of the Deputy Prime Minister introduced changes governing contracting out in all Best Value authorities including local government and police authorities. The Code of Practice on Workforce Matters in Local Authority Service Contracts obliges contractors to offer new staff 'fair and reasonable terms and conditions' which are 'no less favourable' than those of transferred employees. The Code guarantees new joiners reasonable pension provision - either membership in the Local Government Pension Scheme, a good quality employer pension scheme, or a stakeholder pension scheme with a minimum 6% employer contribution.

Local Government Minister, Nick Raynsford, explained that the Code would ensure that all staff working to provide local government services were fairly treated, whether they were employed directly by local government or by a private or voluntary sector partner.

"It will prevent good contractors with high quality employment standards from being undercut by those willing to abuse the system. And it will remove the risk that service quality is undermined during the life of the contract by a provider who is willing to drive down staff terms and conditions."

A similar Best Value Code covering local authorities and national park authorities in Wales came into force in April 2003. UNISON was part of a Joint Working Party, whose report on extending the Best Value Code to other parts of the public sector is now with the Wales Assembly Government.

While no such agreement exists in the NHS in England and Wales, the Department of Health agreed a 'retention of employment' model in April 2002 for new PFI schemes which keeps at least 85% of support staff in the NHS. The agreement has been applied successfully to the first two PFI projects where almost all staff were retained.

There are currently no two-tier workforce protection deals in Northern Ireland.

5. *Local Gains*

Around the country local pay negotiators have been drawing attention to the appalling levels of low pay and poor conditions suffered by private contract staff. Local claims for improvements, linked to UNISON campaigns and community support, have brought some real gains. A concerted campaign by UNISON across the Scottish health service led to the signing of the Low Pay Agreement between the STUC and the Scottish Executive. The agreement binds NHS Scotland employers to pay contract staff a minimum rate of £5 an hour, with a maximum working week of 37.5 hours a week.

The Newcastle Local Government UNISON Branch mounted a successful campaign around a schools PFI project, resulting in a significant breakthrough in fair wages policy. The branch negotiated a protocol with Newcastle City Council permitting them to review tender documents and interview contract bidders. The Council agreed that TUPE would apply to all local authority staff transferred to the PFI consortium for the life of the contract and that new and transferred staff would receive the same pay and conditions as staff directly employed by the local authority.

UNISON members in four East London Hospital Trusts employed by the contractors ISS Mediclean and Medirest submitted a joint pay claim in June 2002 seeking parity with NHS staff employed doing similar work. The claim was part of a wider 'Living Wage' campaign carried out in partnership with The East London Communities Organisation (TELCO). UNISON and community members lobbied Trust boards and the North East London Strategic Health Authority in support of the claim. Ultimately the campaign won a significant boost in pay for contract staff in the four trusts and a commitment to harmonise their pay and conditions with the NHS by April 2006.

TELCO also won an important victory for contracted staff in the private sector which could have far-reaching implications for all Fair Wages negotiations. Along with UNISON and banking union UNIFI, TELCO succeeded in persuading Barclays Bank to accept responsibility for minimum pay and conditions for contractor's staff at its new tower HQ in Canary Wharf. The agreement means that staff will receive conditions which meet a "socially responsible" minimum standard. As a result of the talks, cleaners at Barclays' Canary Wharf offices will receive £6.00 per hour, a pension with 4.5%

employer contribution, 15 days paid sick leave and eight paid bank holidays, in addition to 20 days annual leave. Bonuses and training are also included in the deal.

Pressure on HSBC has also recently resulted in a similar successful agreement at Canary Wharf.

6. *What's Left: The Gaps*

Each new Fair Wages protocol and policy has reduced the number of workers left vulnerable to the two-tier workforce. But important gaps remain. For example, there is no obligation on employers to implement Fair Wages clauses in market testing in the NHS. Legions of contract staff in the NHS continue to receive rock bottom pay and conditions, made worse by the fact that, as private contractor employees, they will receive no benefit from the newly negotiated Agenda for Change pay package.

There are also gaps where the Best Value Code of Practice does not apply in local government. The Code does not cover situations where there has been no transfer of staff, such as the home help service, where a local authority is paying contractors to provide the staff for the service, or where it only provides funding to a voluntary or a community sector organisation. Even where Fair Wages protection exists, agreements will need to be monitored and rigorously enforced.

A Fair Wages clause enshrined in national legislation, covering all sectors and all types of contracts, would close these gaps and ensure a level playing field for all workers, employers and contractors.

7. *How We All Gain From Fair Wages*

The low wages and poor conditions offered by most contractors may save pennies in labour costs, but they damage the sectors in which the work is done. Recruitment and retention problems bedevil most private contractors. With unemployment the lowest it has been in twenty-five years, workers are walking away from jobs that don't provide a living wage. At Barnsley District General Hospital, for example, contract cleaners employed by Initial are paid the minimum wage of £4.50 an hour and receive only five days sick pay a year. These conditions have led to a 20% vacancy rate and serious concerns about the cleanliness of the hospital.

Staff turnover represents a significant cost to any employer. A recent survey by the Chartered Institute of Personnel and Development indicates that it costs £1,489 to fill even the lowest level unskilled job, meaning that labour turnover is costing employers millions of pounds a year.

Not only would improved pay and conditions reduce recruitment and training costs, but the accumulated experience and expertise of long-serving staff is an important asset to any company, particularly in the highly competitive world in which contractors operate. It is also particularly important in relation to public services where the degree of staff turnover has a direct impact on the quality of the service provided to the public.

A Fair Wages policy would support the government’s laudable goal of promoting equality. Workers employed by private contractors complain about the low morale and staff divisions that come from working alongside colleagues who are on better terms and conditions. Particularly where contract staff are disproportionately female or from ethnic minorities, contractors who operate a two-tier workforce are perpetuating inequality in the workplace.

Public authorities are responsible for promoting policies that meet the government goals of ending child poverty, closing the gender pay gap and tackling social exclusion. They are not helped in this process by the two–tier workforce which deepens poverty in their communities. Fair wages agreements would help public authorities to meet their obligations to promote social and economic well being in their communities, as well as allowing them to regain their role as ‘good employers’ who set the standard for the private sector.

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UNISON Publications are available from UNISON Communications:
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- UNISON Comments on new Treasury Guidance for PFI (April 2004)
- Not just child's pay – Why young workers need a minimum wage (November 2003)
- Privatising Halls of Residence (February 2002)
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UNISON Website:

UNISON has a special page on its website devoted to PFI

<http://www.unison.org.uk/pfi/index.asp>

as part of the Positively Public campaign

<http://www.unison.org.uk/positivelypublic/index.asp>

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Published by UNISON, 1 Mabledon Place, London WC1H 9AJ
June 2004/Stock No: 2348