

PRIVATE FINANCE INITIATIVE

Pay for It Indefinitely?

Resource Pack

**For a one day course on the Private Finance
Initiative in The Health Service**

UNISON
Learning and Organising Services

Briefing Pack Contents

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The Private Finance Initiative - A Briefing

What is it?

The Private Finance Initiative (PFI) involves the private sector in the finance and operation of public services. It affects mainly hospitals and schools.

Under PFI the Government awards a long-term contract to the private sector to finance the building of a new facility and run the non-clinical services in it such as maintenance, cleaning, portering and security.

The clinical, medical and nursing services continue to be provided by the NHS. Thus the Government spreads the cost of new construction and the responsibility for support services is transferred to private companies.

Why is UNISON opposed to PFI?

There are three main reasons why UNISON opposes PFI.

Borrowing

The Government can borrow money at preferential rates of interest. Over the long term the cost of providing new facilities through private investment is thus higher.

Profits

The banks and operating companies will also want profits, as opposed to the Government's not-for-profit ethos. Profit levels are also kept confidential.

Accountability

Private sector provision of services leads to a loss of accountability and control. In PFI hospitals, for example, the needs of the PFI consortium will be the key factor, not the needs of the NHS.

How does PFI affect staff?

Clinical staff

Although medical and nursing staff will remain NHS employees, they will have to deal with the consequences. If the PFI scheme increases costs, cutbacks in clinical budgets are inevitable and quality levels will fall.

Non-clinical staff

Maintenance and estates staff become private sector employees. However UNISON has secured protection for transferring staff. Three sites are piloting a scheme where non-supervisory support staff (catering, cleaning and portering) remain NHS employees but are managed by the private sector. This is sometimes known as 'PFI without the people'.

How does it affect the public?

Although the public may get a badly needed new facility it will have cost implications. In several areas escalating PFI costs have diverted funds from other health services. UNISON fears future PFI projects could influence health policy and eat up new money for the NHS.

What is UNISON doing about PFI?

UNISON campaigns to persuade the Government to abandon PFI and instead concentrate on public funding for new developments. UNISON provides advice and training for branches affected by PFI. A range of materials are also available including circulars and briefings from the Health Group and other campaigning materials from the Communications department.

Tel: Steven Weeks ext. 357

HC/85/01

To: All Health Branches

30th November 2001

Dear Colleague,

UNISON AGREES PFI PILOTS (RETENTION OF EMPLOYMENT) - ENGLAND

The Service Group Executive meeting on the 21st November has agreed that UNISON should participate in three pilot PFI schemes under which ancillary support staff (in catering, cleaning, portering, security, and laundry) would remain NHS employees but be managed by a private sector company. These "PFI Pilots" will take place at Queen Mary's Roehampton, Stoke Mandeville and Havering Hospitals. This approach is known as the Retention of Employment model. Branches will be aware that UNISON has been involved in intensive negotiations with the Department of Health over the last three months on the PFI pilots (See HC/57/01) on the "Retention of Employment Model" in England.

On the 16th November the Department of Health presented its main proposals and some final improvements were secured on the 20th November. A summary of these proposals is attached. The proposals were presented on the basis that they would be withdrawn if not accepted and the Government would continue with compulsory staff transfers. The Service Group Executive met on the 21st November and following lengthy debate agreed that UNISON would endorse the go ahead for PFI pilots. The relevant branches have also agreed to participate.

The branches affected are in Havering Hospital Trust, Queen Mary's Roehampton and Stoke Mandeville. The pilot would be jointly evaluated by the end of the year and then if agreed to be a success, possibly extended to PFI schemes that have yet to be signed. UNISON has made clear that any extension is subject to joint agreement and will take a decision on any extension after evaluation.

UNISON continues to press for further changes to the model in particular on issues such as services covered, the position of contracted out staff and the position of staff in trusts where schemes have already been signed. No commitments have been given on further changes to the proposals at this stage.

UNISON continues to campaign against PFI. Branches will be aware UNISON has launched the Positively Public advertising campaign and is organising a rally with the TUC on 4th December. Branches should continue to argue for public funding for proposed hospital developments and exclusion of services from schemes. Further advice will be offered to branches in the next wave of capital developments on how this affects their scheme. These branches should contact their Regional Officer for information.

If you have any queries please contact the Health Group for clarification.

Yours sincerely

PAUL MARKS
National Secretary

Summary of Department of Health proposals for PFI pilots in England

The Department of Health has put forward proposals for a new model of how staffing will work under Private Finance Initiative schemes. Full copies of the proposals are available on request. The UNISON Service Group Executive has agreed that this approach should be piloted at the Stoke Mandeville, Havering and Queen Mary's Roehampton hospital schemes. The proposals affect PFI schemes only. Other forms of market testing contracting and public private partnership are not included. The proposals cover staff in cleaning, catering, laundry, portering and security services.

- Under this new model 85% of these NHS support staff will be retained as NHS employees as will any new staff taken on in these services. Existing NHS managerial staff will transfer on TUPE terms and conditions to the company, which may also bring its own managerial staff on its own terms and conditions. Staff in other occupations may continue to be included in the PFI and possibly be transferred. Craft and maintenance staff will continue to transfer. The private sector company will manage the staff.
- NHS supervisors would also transfer to the private sector unless they objected in which case they would have the option of being retained as NHS employees on a protected salary in suitable alternative employment or may in agreed circumstances qualify for redundancy.
- The private sector managers would have limited role in disciplinary procedures. They could be able for example to issue a verbal warning but could only issue a final written warning after consultation with the Trust. As the Trust would remain the employer only the Trust will have the power under existing agreed procedures to dismiss and the Trust would be the respondent in an Employment Tribunal.
- Staff would have the right of appeal on disciplinary issues to a Board involving a representative of the Trust, private sector and an agreed independent third party.
- The Trust, the private sector and the unions would discuss the output specification and staffing levels. Any changes to working practices would be negotiated under local procedures.
- The private sector would administer payroll and in limited circumstances be able to employ temporary staff as agreed at local level.
- The private sector Company would also have a range of other roles for example it would participate in recruitment of new staff. Staff would remain NHS employees on their existing terms and conditions and be entitled to subsequent changes e.g. under Agenda for Change.
- There are specific provisions in the proposals dealing with the position of currently contracted out staff these are outlined below.

Steven/2001/UNISON has to give its response.doc

POSITION OF CURRENTLY OUTSOURCED STAFF

Save in circumstances outlined below all staff who are currently outsourced as part of a market testing contract, who will be included in the PFI schemes who are in

(portering, domestics, cleaning, linen/laundry and security) will be brought back into the NHS.

This will be achieved by:

At a point prior to signing the PFI contract, the market-tested contract will be terminated and staff on these groups will be TUPE'd across to the NHS;

Staff who elect to TUPE in will be offered the choice of assimilation onto Whitley/local terms or conditions or retaining existing terms, as is their right under TUPE. This choice for the members of staff to make. Trust will include past NHS service in order to determine point of entry into payscale and will have discretion to account of private sector service.

Staff will be entitled to join the NHS pension scheme. Where staff chooses as is their right to retain existing terms and conditions the Private Finance Unit will be consulted over pension issues

Overall Evaluation

New staff recruited to replace staff who kept their own conditions will be on Whitley or local terms where these exist until these are phased out under Agenda for Change or by agreement locally.

The exceptions are as follows:

Where the existing market-testing contractor is the same as the successful PFI contractor, staff must remain in the employ of the private sector. This is because legal advice states that any interim transfer to the NHS would not be recognised in law.

Where the Trust has no in-house capability in any of these areas because all the services have been market tested for three years or more, the Trust may choose not to bring these staff in house. This is because the Trust would have to incur considerable expense in gearing up to operate the RoE model. Trusts must seek agreement of the PFU before adopting this solution. UNISON will discuss these issues with PFU.

UNISON and the NHSE will jointly evaluate the FFI pilots in terms of value for money work ability and legal issues raised. UNISON continues to discuss how any implementation would be managed.

SAMPLE PFI STAFF PROTECTION AGREEMENT

Some UNISON Branches in the Health Service have been successful in negotiating staff protection agreements. The sample agreement below is based on an agreement negotiated by a UNISON Branch. The agreement is not meant to be a model but it will give you ideas of the kind of things that could be included.

If you are involved in negotiating a staff protection agreement you should seek advice from UNISON on the most recent agreements.

The names of the UNISON Branch, the NHS Trust the contractors involved have been removed.

AN AGREEMENT BETWEEN MANAGEMENT SIDE, THE PRIVATE CONTRACTOR AND THE TRADES UNIONS (STAFF SIDE)

This agreement is entered into by the parties set out above in respect of the development of the new ...hospital and specifically the transfer of support services staff under the terms of the PFI agreement.

1. It is agreed that the (private contractor) will not alter any of those contractual terms and conditions of employment for transferred employed without the agreement of the trades unions corporately, with the exception of changes introduced by the Whitley Council or by law.
2. If (the private contractor) sub-contracts all or part of the services, it will be a requirement that any sub-contractor, or successor sub-contractor, will not change any terms and conditions of employment without agreement with the trade unions. The Trust confirms that it will use its role in determining sub-contracting to ensure that the terms set out under para 1 are maintained by sub-contractors.
3. At the time of reaching this agreement, the interim management arrangements for the support services are planned for these services to transfer to the management of (the private contractor) as per the timetable attached at Appendix 1. It is agreed that staff transfer will take place under the terms of this agreement to the contractor. It is further agreed that the date of staff transfer is inextricably linked to the financial close of the PFI agreement and the provisional timetable for this is set out on the attached schedule, which is correct at the time of reaching this agreement.

The reasons for the advance transfer are to enable changes in staffing and working practices to be determined in accordance with the commitment set out in para 1. It is further agreed that consultation will take place over the final date and phasing of the transfer after the financial close and prior to the staff transfers being effected. That consultation should take the form as laid down in section 39 paragraph 6.1 of General Whitley Council – “It should be accepted that the mere passage of information is not consultation. Consultation involves an opportunity to influence decisions and their application. It is best conducted when some attention has been given to alternatives, but they have not taken their final form”.

4. (The private contractor) further undertakes that all transferring staff will continue to receive the same benefits that would have been provided under s.46 of the General Whitley Council had the employee remained with the NHS. In addition to the transfer of benefits for existing recipients under the terms of the NHS Injury Benefit Scheme, the Trust and (the private contractor) will work towards securing a scheme that would give a qualifying transferring employee the same benefits that would have been provided had the employee remained in the NHS.
5. In return for the commitment set out by (the private contractor) regarding the protection of terms and conditions of service of staff transferring from the management of the NHS trust, the staff side will work in a spirit of partnership with (the private contractor) on the full range of staffing issues associated with the development of the new hospital. Both (the private contractor) and the trades

unions will work reasonably and neither party will withhold agreement unreasonably concerning changes to working practices.

All trades unions on the staff side with members transferring to the contractor, whilst retaining their in principle opposition to PFI, will not allow this to determine future industrial relations in the Trust

To underpin this, the staff side will negotiate, with a commitment to reaching agreement, on a structured disputes procedure to enable the orderly resolution of differences with the Trust.

6. The Trades Unions and (the private contractor) will open negotiations aimed at entering a Recognition Agreement which will include a machinery for consultation and collective bargaining for (private contractor) staff employed at the hospital (whether or not having transferred from the NHS in which elected representatives will work with management within a defined framework aimed at enhancing effective communication with all (private contractor) staff and to achieve greater participation in the issues to be faced in running and developing the (private contractor) organisation at the hospital. All parties will seek to conclude negotiations within 4 weeks of this agreement.

In addition to continuing information and briefing exchange via the JSCC on the new hospital development it is agreed that the forum now established with agreed membership from the (list of unions involved) for consultation/negotiation be convened periodically to consider any agreed outstanding matters. There will also be a programme of communication with individual staff in conjunction with the trade unions, in respect of pension matters and general updates relating to the PFI programme.

It is acknowledged that this agreement does not create and is not intended to create legal relations between the signatories.

Appendix 1 to Sample Staff Protection Agreement

Timetable for Hospital PFI Agreement

Timetable	Action	Date
(From financial close)	Financial Close (Deal Closure and Novation of all sub- contracted services)	9/99
6 Months	First Transfer	Earliest Date 1.4.00
7 Months	Second Transfer	These services will

follow in phases

8/9 Months

Third Transfer

4 ½ years

Completion of Phase 1 30.4.04

7 ½ years

Completion of Phase 2 30.3.07

Useful Publications:

Available from UNISON Communications:

Stock No.	Title
1350	PFI - Dangers, Realities, Alternatives
1589	Step by Step: A UNISON Guide to the Private Finance Initiative Process
1658	PFI: Negotiating Guide for Branches
1704	The Only Game in Town? A Report by UNISON Northern Region on the Cumberland Infirmary Carlisle Scheme
1237	Your Questions Answered about PFI
1426	Back in the Team? Review of Market Testing
1604	Downsizing for the 21 st Century (2 nd Edition)

Available from UNISON Health Care Service Group

- Putting a Price on the PFI: The Illusionist Economics of the PFI
- PFI in the NHS: Interviewing Short-listed Bidders

Other Resources:

Treasury Taskforce Private Finance Policy Statement No. 4 – Disclosure of Information and Consultation with Staff and other Interested Parties
The Employment Impact of the Private Finance Initiative, ADLO January 1999.

Useful Websites:

There is a special PFI page on the UNISON web site:

www.unison.org.uk/pfi/index.htm

Branches may find it helpful to use the UNISON PFI webpage as their first port of call and link to other useful websites from there.

There are direct links from the UNISON PFI webpage to:

- The 4ps –The Public Private Partnership Programme Ltd (established to promote PFI in local government)
- DETR (Department of Environment, Transport and the Regions)
- Treasury Taskforce PFI website
- Scottish Office (Government website holding general information on PFI as well as the list of PFI schemes in Scotland)

Links are regularly updated on the UNISON website.

Useful Contacts:

In addition to contact your Regional Office and the Service Group at Head Office may also find it useful to contact:

UNISON Bargaining Support Unit

UNISON
1 Mabledon Place
London
WC1H 9AJ

Tel: 0171 5511 267

e.mail

Centre for Public Services

In campaigning against PFI reports have been produced such as those on the Durham and Carlisle hospital PFI schemes. If you think this would be an appropriate course of action on a PFI proposal in your area you should contact the Regional Office for advice.