



Consultation on the Fair Deal Policy

This response is submitted by Unite, the UK's largest trades union with 1.5 million members across the private and public sectors. The Union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport and local government, education, health and the not for profit sectors.

The Union has many members who are or have been employed in the public sector and who have a direct interest in the treatment of pensions in the context of potential or past transfers to the private sector. The lack of legal protection for pensions, as compared to other terms and conditions, in the context of TUPE transfers, and the general position and trends in private sector pension provision mean that Fair Deal and associated policies are seen as being of critical importance.

Introduction and summary

The Government has committed itself to a policy of maintaining good quality defined benefit provision for public servants. It also wishes to facilitate a greater plurality of public service provision. The only way to reconcile these policies is to strengthen and extend Fair Deal provisions.

Dilution or abandonment of Fair Deal policies would have the effect of encouraging exactly what the Government has said it wishes to avoid, which is a race to the bottom in pension provision, as would be especially detrimental to the lower paid public sector workforce.

Pensions will rapidly once again become a major obstacle to greater plurality, with a return to the industrial relations difficulties which lead to Fair Deal being evolved. Any concept of a level playing field in respect of pension provision would disappear.

There is a wide-ranging consensus extending across trade unions, contractors and public sector employers that the preferred outcome of this consultation would be wider access to public service schemes, creating a level playing field in this area.

The public service schemes should come to be regarded as industry-wide schemes for their sectors, defined as providing public services funded by government, with no differentiation between existing and new employees. This would encourage the retention and recruitment of quality staff in our public services and the mobility of labour within the sectors.

If Fair Deal were abandoned and all private sector employers excluded from participation in public service schemes then there would be a destabilising effect on schemes, most particularly in the short-term on the LGPS, and contribution revenues from the unfunded schemes would be significantly reduced.

Response to the questions

Q.1. Are there other people or organisations who may be affected by this consultation?

1. This is a matter of great concern for all employees, not just those who are, or have been, transferred.

2. For public service employees generally this will be seen as a threat both to their future pension provision and to their job security. An end to Fair Deal policies will signal that, contrary to statements made, the Government does not see the maintenance of a decent standard of pension as a priority and that it is interested in joining the 'race to the bottom' and seeking to make financial savings from doing so.

3. For employees more generally it will be seen as reducing their chances of securing employment with a decent standard of pension whether through employment in the public, private or not for profit sectors. It will devalue the Government's role as a standard-setter and accelerate the decline of defined benefit pension provision.

4. Abolition would also be a concern to all those employers who seek to maintain a decent standard of pension provision for their employees as it will intensify competition from those employers who will provide the bare minimum in bad faith.

Q.2. How does Fair Deal operate in your experience and what implications are there for future policy?

5. The Fair Deal policy has gone a long way to defusing what still remains a difficult issue. Critically it provides a reassurance that out-sourcing is not being fuelled by the removal of employees' pension rights.

6. A measure of the success of Fair Deal can be taken from the experiences that preceded it. Insistence on comparable pension was extremely significant in overcoming industrial relations difficulties which otherwise privatisation/out-sourcing would have caused. Also it was important in helping to ensuring that out-sourcing was driven by the pursuit of genuine efficiencies rather than at the expense of employees' terms and conditions. This means that, for example, in local government competitive tendering there was a more level playing field which allowed in-house bids to compete.

7. Continued membership of a public service scheme is generally very much the best solution. It has worked especially well in relation to the LGPS, when well managed and integrated into the contracting process.

Apart from being the solution preferred by members it is also the preferred solution of companies with experience of these arrangements and of local authorities.

8. Any change of pension scheme is a complex and worrying experience for many employees, even if conducted with good intentions and with a view to maintaining comparable pension provision. Employees will, generally, instinctively prefer a solution which allows them to remain in membership of their public service scheme.

9. Transfer to a private sector scheme providing comparable benefits will always be a second-best solution, even though it maintains a degree of protection.

10. Key shortcomings of the policy from an employee perspective are the loss of security inherent in a move to a private sector scheme and the loss on transfer when an individual voluntarily switches back in to the public service schemes, as they seek to progress a career in public service. These are the main factors accounting for the low incidence of members transferring past service rights out of the public service schemes following an employment transfer. There will be a general discouragement of labour mobility.

11. In most circumstances, unfortunately, Fair Deal protection only determines the pensions of those existing employees who are subject to transfer and does not extend to new employees who may subsequently be recruited to provide the out-sourced public service.

12. In recent times even where employers have initially maintained a standard of pension for new employees they have in some cases moved away from this and only maintained public service standard pension provision where directly obliged to do so.

13. It is very clear that abolition of Fair Deal would rapidly impact on staff already out-sourced, who would feel betrayed when protection they understood to be permanent was withdrawn.

14. Friction can arise in situations where out-sourcing proceeds where public employers fail to appreciate the requirements early enough in the process and where, perhaps because unionisation is limited, the issues are not raised early enough.

15. Fair Deal does not generally cause practical difficulties for medium – large employers but is more problematic in respect of smaller more marginal employers who are less experienced in pension matters and whose financial position is less strong. Generally, employees would have little sympathy for the latter group as their inability to cope with pension issues is indicative of wider problems which means that they would not be regarded highly as future employers or suitable recipients of public sector contracts.

Q.3. What other objectives should be taken into account?

16. Whether the Government is the direct employer or indirect employer, as they would be after out-sourcing, it should have the same policy that those employed in providing public services should have a decent standard of defined benefit pension provision.

17. The Government has a key role in setting a standard for pension provision to the private sector. If it did not place requirements on contractors this role would be completely undermined.

18. In respect of removing barriers to plurality of public service provision the concept of ‘competition’ needs to be carefully considered. Competition should be regulated in respect of requiring contractors to maintain defined standards. If competition comes to be on the basis of reducing employee pensions and conditions then, apart from being unfair to employees, the proper basis of competition which is quality of service would be lost sight of.

19. Fair Deal was evolved, in part, because it was impossible for in-house provision to compete. It defined competition on the basis of comparable provision rather than competition on the basis of minimum pension provision. This objective should be taken as seeking to improve on the Fair Deal principle not its abandonment.

20. In respect of allocating cost appropriately, the objective is sound but it is not inevitable that ‘the Government then bears the pension liabilities in these cases, but without control of the cost drivers’. Clearly policies have

been and are continuing to be developed as can ensure that private employers meet the cost of their pay and employment decisions.

21. Whichever employers, public services are provided through the Government should maintain a close interest in recruiting and retaining quality staff within the sector and in encouraging mobility between different employers within the sector. The Fair Deal policy helps to achieve this.

Q.4. Is there a case for changing the current Fair Deal policy?

22. Unite does not believe there is any justifiable case to remove the Fair Deal policy, but there is a case for making changes to try and ensure it meets its objectives of ensuring comparable pension provision in a better way.

23. One key change which Unite would support is to widen access to public service pension schemes on the principle that eligibility should focus more on whether employees are engaged in providing public services and less on who they are, or were, employed by.

24. The facility for open admission agreements in the LGPS should be further developed and encouraged and provides a model on which other schemes could model parallel arrangements.

25. Mechanisms have been and can be developed to protect the public interest in respect of costs derived from pay deviating from public sector norms or private employers failing and not being able to meet their liabilities to the public sector scheme.

26. Risks from mortality had been limited by the cost-sharing principles which are a feature of the main current schemes and which pre-date the Hutton proposals. In this context there is an acceptance of risk-sharing by employees across a wider community of public service workers.

27. It is evident that there is strong employer support for wider access and that some support amongst employers for an end to Fair Deal is largely based on a presumption that this policy will not be adopted.

Q.5. What should an alternative policy cover?

28. Unite rejects alternative measures to Fair Deal and therefore has no proposals to make in this area.

29. We would note that the level of pension provided under TUPE requirements would fall well short of providing an adequate standard of pension benefits.

Q.6. What extending access might achieve

30. A policy of building on Fair Deal to provide more widespread availability and use of extended access could meet all the essential objectives of policy laid down in Chapter 3 of the consultation document, as supplemented by our answer to Q.3.

31. It could serve to neutralise completely the frictions involved in the current operation of Fair Deal as experienced by both employees and employers.

32. It would send the clearest signal that out-sourcing was not going to be fuelled by the provision of minimum pensions to transferred employees and therefore would more likely to be based on the realisation of genuine efficiency savings.

33. It represents the best way of making progress on a basis that would achieve the greater degree of consensus as between employers and employees.

34. An example of this might be found in the 2005 Report of the NHS Pension Review body, which after an investigation of the issues expressed the view that 'It is noteworthy that there is a strong consensus on the issue across NHS and private sector employers and staff representatives that Scheme access should be broadened'.

35. The Government's focus should be on developing and extending best practice Fair Deal arrangements i.e. the open access administered body status found in local government with negotiated cost-pass through provisions.

Q.7. Practice after re-tendering of Fair Deal contracts if Fair Deal was abolished?

36. Staff transferred under Fair Deal will expect the commitments made on pensions at the time of transfer to be honoured and will look to their trade unions where they feel their contract of employment terms have been breached.

37. It would seem difficult, even though affected employees would expect it, to conceive a situation where Fair Deal was maintained on re-tendering for contracts first tendered whilst the policy was in operation but not required for new contracts.

Q.8 The approach to be followed or staff transferred back to public sector employment?

38. Where employees are transferred back to the public sector if service are again to be provided in-house then the practice should be to put them in the position that they would have been had they remained throughout in public sector employment and scheme membership.

39. It would be inappropriate and unfair to treat them as new employees if new employees are offered reduced scheme terms as compared to employees recruited at earlier times.

40. This would follow general practice in a number of schemes in respect of preserving lower pension ages after the normal pension age was raised for new members in April 2008.

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Closing date for submissions: 15 June 2011

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