

CHALLENGING the **private finance initiative**

About this guide

This guide outlines UNISON's policy and strategy on the private finance initiative. It is intended to be used by all branches whose members could be the subject of a PFI scheme.

PFI cuts across all sectors but in particular health, local government, education, transport and environment. This guide contains some service specific advice (drawn particularly from experience in health and local government) but the principles will be the same for all PFI schemes. It also shows where to get further, more detailed, information. It is based on current PFI rules. Keep up to date with UNISON PFI briefings.

The guide is divided into sections covering different aspects of PFI. It follows UNISON's twin-track approach of campaigning to oppose PFI and negotiating the best deal possible for our members if a scheme does go ahead.

Each section includes action points and activities which can be used to help branches tackle PFI in a practical and systematic way.

Your comments

UNISON welcomes comments on this booklet from branches. Either write or email to the Bargaining Support Group
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1. Introduction to PFI

The private finance initiative (PFI) was launched by the last Conservative government to increase private sector involvement in the provision of public services. PFI schemes were first introduced in large projects like the Channel Tunnel Rail Link and have been used to build new hospitals since 1995.

The Labour government has injected new life into PFI since 1997 by streamlining the process, promoting PFI in local government and concentrating on a smaller number of projects.

UNISON opposes PFI for the following reasons:

- ▶ PFI is a more costly way of financing public services than direct borrowing by the public sector. The Government should properly fund public investment as well as allowing public authorities to borrow to invest.
- ▶ PFI projects tend to escalate both in scale and cost leading to financial shortfalls which must be met from other parts of the public sector or by reductions in service provision.
- ▶ The 'public sector comparator' used to assess the viability of PFI schemes does not actually compare like with like. To assess value for money, the costs of both the public sector comparator and the PFI scheme should be broken down into component parts.
- ▶ If PFI continues, services should be excluded from schemes, thus reducing the resources devoted to PFI and allowing employees to stay in the public sector.
- ▶ Despite some improvements in staff protection in PFI schemes, staff transferred to private companies and new staff tend to suffer a worsening in terms and conditions as well as cuts in jobs.
- ▶ Increasingly the public sector will lose control over assets and service provision. Under PFI the provision of public services could become determined by what the private sector wants rather than what the public needs.

UNISON has developed a twin-track approach to tackling the threat of PFI:

- ▶ Campaigning against PFI nationally and locally.
- ▶ Negotiating to get the best deal for members if PFI projects do go ahead.

UNISON's twin-track strategy: campaigning and negotiating

CAMPAIGNING

UNISON opposes PFI – because of the threat to public services and to our members. UNISON campaigns against the high financial, employment and democratic costs of PFI.

Local campaigns should be targeted at:

- ▶ Employers (including school governors)
- ▶ Local politicians
- ▶ Trade union members and other staff
- ▶ Service users and local interest groups such as school governors, tenants' and residents' associations, and community health councils.

An effective campaign can strengthen your negotiating position if a scheme goes ahead.

NEGOTIATING

If PFI projects do go ahead, UNISON wants the best possible deal for our members. Throughout the campaigning period, branches should continue to put the case against PFI and at the same time keep track of all stages of the proposals so that they can influence the outcome.

UNISON branches should:

- ▶ Seek information about the PFI project as soon as any options are put forward.
- ▶ Challenge the PFI proposals as soon as possible, especially on issues relating to staff; the staffing implications of any PFI project are crucial to UNISON.
- ▶ Negotiate exclusion of staff from the PFI scheme, or, if they are included, negotiate employment protection for them (see *Section 4* and *Section 7* of this guide).
- ▶ Interview shortlisted bidders (see *Section 6*).

Some UNISON branches, especially in the NHS, have negotiated staff protection agreements with PFI contractors that build on TUPE (transfer of undertakings) protection. (There is more on this in *Section 7: Negotiating PFI agreements*.)

At the same time as campaigning vigorously against a PFI project, a UNISON local government branch successfully negotiated with the council for meetings with potential bidders. Until recently this entitlement did not apply to local government. The branch also negotiated access to key PFI documents that they

would otherwise not have seen. The high profile public campaign has strengthened their negotiating position now and for the future.

'We have worked hard for two years on a high profile public campaign against Haringey Council's schools PFI scheme. By linking up with parents, governors and other trades unions we have built an effective campaign. We know that even if we can't defeat the scheme our efforts will not have been wasted. It has forced the Council to consult us properly. Also we will have forced significant concessions from the bidders and have ensured our members threatened with transfer to a private contractor will be better protected. The campaign has also increased our credibility with headteachers and school governors which will stand us in good stead for the future.'

Haringey local government branch secretary

What is PFI?

The private finance initiative (PFI) is the Government's preferred way of investing in public services and assets, such as buildings, as well as increasing private sector involvement in the provision of public services.

The Government also uses the term public private partnership (PPP). While PPP is the general name for any public service that involves the private sector, in practice the vast majority of PPPs are PFI.

Under PFI, a public authority buys the services of a private company to design, build, finance and then operate the services for a facility, such as a new hospital or school. The private sector borrows the money for the scheme and the public body then pays an annual fee to the private company under a long-term operating contract for the services. The staff who deliver the services are transferred from the public sector to a private sector company.

'The PFI transforms government departments and agencies from being owners and operators of assets into purchasers of services from the private sector. Private firms become long term providers of services rather than simply upfront asset builders, combining the responsibilities of designing, building, financing and operating the assets in order to deliver the services demanded by the public sector.'

Treasury Taskforce, *Partnership for Prosperity*, November 1997

Under traditional funding for projects to refurbish or build facilities – such as hospitals, schools, leisure centres, libraries and housing – the public authority borrows the money and then owns and operates the facility. But under PFI the public authority may never own the asset (for example, the building) and is also not responsible for its maintenance, insurance or repair – the private sector is.

The public authority makes an annual payment to a private company to cover all the costs of designing, building, financing and operating the facility. Instead of paying for the facility over a few years the public authority undertakes to pay the private company for many years to come – typically at least 25 – passing the real costs on to future generations.

UNISON has campaigned on the public finance implications of PFI. We have argued that PFI costs more and will draw in funds from other parts of the public sector to pay for it.

The Government has shifted its own arguments about PFI: it now says that it could afford to pay for all the PFI schemes but prefers PFI because it is better value for money. UNISON is concerned that both the Government and the private sector expect PFI projects to save money on jobs, pay and conditions.

What is a PFI project?

The most common PFI projects are 'design, build, finance and operate' (DBFO) schemes. The public authority buys the services of a consortium of private companies to conduct all four stages of the process and pays for it over at least 25 years.

DESIGN

The private company does the architectural and engineering work involved in designing a public facility, such as a new health centre or hospital, housing, libraries, sports centres and schools. This was traditionally done by in-house design teams.

BUILD

The facility is built by private contractors. In this area the public and private sectors have co-operated effectively for many years without the need for a PFI arrangement.

FINANCE

The private sector has to borrow the money to finance the whole project at higher interest rates than a public authority would have to pay. The PFI consortium then charges what is, in effect, a rental to the public authority.

OPERATE

Most public services are operated by public sector employees trained to deliver the service effectively to the public. Under PFI the private contractor operates the service and employs staff directly. In hospitals and schools, teaching and clinical staff have so far been excluded. Since June 1999 PFI projects may exclude other staff (see *Section 4*).

Strategic planning and ownership

The length of PFI contracts can be anything up to 60 years. Most market testing and compulsory competitive tendering (CCT) contracts were for five years. This long contract period

raises questions about the strategic planning of public services as well as accountability.

Moreover at the end of the contract the facility is not necessarily owned by the public authority. Treasury guidelines issued in 1999 say that schools and hospitals built under PFI should revert to public ownership at the end of the contract if there is no alternative use for the asset (buildings, land, equipment etc).

The examples given include schools that, due to their location or nature, are only of value to the local authority. They also include those assets which have no viable economic life beyond the PFI contract but are built on land which does have economic value.

On the face of it this is welcome. But there could be a real danger that by the end of a 30-60 year contract authorities are left with schools, housing estates or other buildings which are nothing more than white elephants, because demographic or other social changes mean there is no further need for them.

On the other hand if the assets could be used for other things, there may still be a price for taking them back into public ownership. The private sector would probably charge much higher annual fees during the life of the contract for an asset which is likely to return to public ownership.

Scale of PFI projects

By April 2000 there were signed deals worth £13 billion, with another £20 billion's worth projected over the following three years. The first schemes were in health, especially for acute hospitals, and in central government, especially for transport. More recently there has been a move into schools.

PFI DEALS SIGNED BY GOVERNMENT DEPARTMENT AT 1 APRIL 2000

Department	£m
DETR	7,379
Defence	1,022
Scotland	1,025
Trade & Industry	141
Wales	212
Social Security	350
Home office	492
Health	1,049
DfEE	444
Inland Revenue	340
Northern Ireland	36
Department of Culture, Media and Sport	74
Lord Chancellor's Department	74
Foreign & Commonwealth Office	21
National Savings	100
Serious Fraud Office	4
Total	12,763

Major schemes include:

Local government

126 PFI projects were listed to receive revenue support from central government on 12 April 2000.

There are 35 signed PFI projects:

- 2 depot and vehicle services
- 3 information technology
- 3 housing
- 4 property
- 4 transport and street lighting
- 4 waste management
- 5 individual schools
- 2 'other'
- 3 residential homes
- 2 police HQs
- 1 police station
- 2 'other' police schemes

There are also schemes in progress: 52 school, 13 housing, 7 residential homes, 15 police, 6 fire service.

Health

There have been three phases of hospital PFI schemes

Capital cost (ex VAT) £m

NHS Wave 1: PFI schemes

Bromley Healthcare NHS Trust	118
Calderdale Healthcare NHS Trust	65
Carlisle Hospitals NHS Trust	65
Dartford & Gravesham NHS Trust	94
Greenwich Healthcare NHS Trust	93
Hereford Hospitals NHS Trust	64
Norfolk and Norwich NHS Trust	144
North Durham Health Care NHS Trust	61
South Buckinghamshire NHS Trust	45
South Durham Healthcare NHS Trust	41
South Manchester University Hospitals NHS Trust	66
South Tees Acute Hospitals NHS Trust	122
Swindon & Marlborough NHS Trust	96
Wellhouse NHS Trust	54
Worcester Royal Infirmary NHS Trust	87
Total Wave 1 PFI schemes reached financial close	1,215

NHS Wave 2: PFI schemes

Dudley	68
King's College London	64
Manchester	127
Newcastle	124
University College Hospital London	160
Walsgrave	181
West Berkshire	29
West Middlesex	33
Total	786

NHS Wave 3: Proposed PFI schemes

<i>Leeds</i>	<i>125</i>
<i>Oxford</i>	<i>71</i>
<i>Havering</i>	<i>148</i>
<i>Portsmouth</i>	<i>75</i>
<i>Blackburn</i>	<i>52</i>
<i>Derby</i>	<i>177</i>
Total	648

There are also other projects in the pipeline eg St Georges and Royal London Trusts and a fourth wave is planned.

Higher education

<i>Greenwich University student accommodation</i>	<i>11</i>
<i>King's College</i>	<i>142</i>
<i>Durham University IT</i>	<i>13</i>

Environment Agency

<i>Flood protection</i>	<i>105</i>
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Scotland

Signed deals include: hospitals (eight schemes), schools (12 grouped schools), waste, IT.

Wales

Signed deals include: two hospitals.

Activity 1**SPREADING THE WORD ABOUT PFI**

This activity gives you some ideas about how to raise awareness among activists and members about PFI.

▶ **Lead a discussion on PFI at your branch meeting or in your workplace to explain what it is and why it's an issue for UNISON.**

To help you to do this, use the information in this guide – especially *Section 2: Challenging PFI* and *Section 4: PFI without the people*.

Speakers' notes and slides for a presentation can be downloaded from the UNISON PFI website at www.unison.org.uk/pfi. If you do not have internet access, contact your regional office.

If any branch members have lay tutor training, ask them to facilitate the discussion.

▶ **Access the UNISON PFI Discussion Forum that is located on the UNISON PFI website at www.unison.org.uk/pfi and share information about PFI with other branches. To do this go into the UNISON PFI website at the address given here, click on the 'Discussion Forum' icon and follow the on-screen instructions.**

▶ **Your service group will have specific information on PFI.**

— **Contact your regional officer or regional education officer about organising training on PFI.**

2. *Challenging PFI*

As soon as branches are aware that there is a PFI proposal in their area they should start to organise themselves to challenge it.

If the scheme is approved, branches should also ensure the union's involvement in any negotiations about staff in the PFI scheme and try to ensure that staff are excluded or – if they are included – that they are protected. There is more about exclusion of staff in *Section 4: PFI without the people*.

This section outlines some of the information on PFI that is available and explores some of the arguments put forward in favour of PFI and how these can be challenged.

Finding out whether there is a local PFI scheme

In order to influence developments branches need to identify whether a PFI is planned in their area. This can be done by using documents which are publicly available as well as asking your employer for information. Wherever there is a plan for new buildings or for redevelopment of existing facilities the PFI is likely to be considered. Early warning of PFI schemes is crucial to your chances of influencing the process.

Start gathering information on possible PFI

projects.

There are more details on how to get the information in the *Section 3: Getting and using information*.

Making links

Branches should use UNISON networks and links with sympathetic councillors or others who may be able to assist. The Government is emphasising the need for openness in public services and we should use this to press for full disclosure of PFI plans.

We also need to make links with local community organisations such as community health councils (and equivalents in Wales and Scotland), user groups, school governors and other bodies who can help the campaign.

Branches should be aware that the issues for local organisations might not be the actual principle of PFI. But experience has shown that issues such as the effect on the number of hospital beds or school facilities or location of new facilities can generate large local campaigns. UNISON branches should work in coalition with other groups whilst emphasising our principled opposition to PFI.

UNISON has campaigned within the Labour Party to change policy on PFI and continues to raise the issue nationally through our Affiliated Political Fund. Branches may wish to raise the issue within their local Labour Party.

Use the networks you already have to get

information and make your case.

Disclosure of information

Branches might want to consider negotiating an agreement with their employer on disclosure of PFI information to ensure that they get early information about potential schemes (see *Section 3: Getting and using PFI information*). This would help ensure that UNISON is consulted at an early stage in the process, but it should not involve any agreement to the use of PFI.

For some services there are specific requirements for publication of information and these are outlined in *Section 3*. These usually come after decisions have been made and we should be pressing for disclosure before any decision has been taken.

Press for disclosure of information before

decisions are made.

UNISON needs to be able to put our arguments to the key decision makers on why projects should be publicly financed.

Those decision makers include:

- ▶ Health authorities/boards (which now have local authority councillors as members)
- ▶ Local authorities (especially key committee members)
- ▶ Governing bodies and other boards.

NHS SCHEMES

In the NHS there is a series of public documents which must be made available: these can be used to assist our campaigns. (See *Section 3: Getting and using PFI information for more details*.)

A balancing act: campaigning and negotiating

UNISON branches should be both campaigning against PFI and making sure that if a PFI project goes ahead we get the best possible deal for our members.

A key part of that campaign should involve keeping up to date with PFI developments, as things are changing all the time.

Keep up to date with current PFI developments**by accessing the UNISON PFI webpage****at <http://www.unison.org.uk/pfi>**

What balance between campaigning and negotiating branches decide on will depend on the type of PFI project involved, the type of service or where it is located. But what all campaigns should have in common is the twin-track approach.

Branches should get information on which sections of their members are affected by the PFI proposal and analyse their branch organisation in the service affected. It is crucial to involve members in the campaign and also to use the opportunity to recruit new members in affected areas. Employers may not take UNISON's arguments so seriously if we cannot show enough interest from our members.

Use the threat of PFI as a recruiting and organising tool in the areas affected.**CAMPAIGNING AGAINST PFI**

There is much work to do for a PFI campaign. Start by forming a campaign team to share out the work. One job is to try and identify what arguments against PFI you can use most effectively with the target groups in your campaign. You can do this by thinking about what arguments in favour of PFI your employer may put forward and how you will counter them.

Set up a campaign team and share out the work.

Campaigning against PFI is not easy. The community, and even staff, may welcome some much-needed capital investment without considering the long-term implications for service delivery and cost. Local councillors, Members of Parliament (MPs and MSPs), and Assembly members will often be ignorant of the true facts, or the long-term implications. Other unions whose members are not directly affected may not be supportive. And the local media will lose interest unless there is something new to report.

The case against PFI, however, is a strong one. National campaigning has led to changes in the PFI process. At local level, even where schemes eventually went ahead, campaigns have strengthened our ability to negotiate better protection for our members.

Remember UNISON's twin-track approach of opposing PFI in principle while negotiating to secure protection for members if it goes ahead. Public campaigns can support and strengthen your negotiating position.

Remember the twin track approach of opposing**PFI and negotiating to protect members' interests.****TACTICS**

A range of tactics should be used to put across our case, depending on audience. For example:

- ▶ Explain PFI to UNISON members and members of other unions.
- ▶ Brief key decision takers based on your analysis of the project.
- ▶ Distribute leaflets and other materials to the public and service users; these should focus on the local impact of the project.
- ▶ Target leaflets and arguments at specific groups such as other employees, service users, the public, local politicians.
- ▶ Brief the media using factsheets about the proposals.
- ▶ Organise lobbies and other public events.
- ▶ Liaise with local councillors and MPs.

Contact your regional officer for further advice and assistance.

Decide on the groups you will target in your**campaign and your approach to each.****THE ONLY GAME IN TOWN? WHAT THEY SAY IN FAVOUR OF PFI**

Here are some examples of the types of arguments that may be used in favour of PFI and which you will need to be able to tackle.

Employers

Employers may argue that there is no alternative to PFI given the restrictions on borrowing and reduction to capital finance. For example, public buildings are in a state of severe disrepair: it is estimated that local authority housing requires £19 billion investment to bring the stock up to standard, £10 billion for backlog repairs and £9 billion for improvements.

They may also argue that PFI brings in additional funding and expertise from the private sector, value for money, innovation and flexibility. Each of these apparent benefits can be challenged. (See Section 5: *Challenging the figures*)

Employers have claimed that PFI will leave them free to get on with their core services, but branches should stress, for example, to employers that whoever undertakes the services, the responsibility for health and safety cannot be delegated. The contracting authority retains this responsibility and PFI will only complicate their duties. (See Appendix E: *health and safety and PFI*.)

Make sure the contracting authority knows that they are still responsible for health and safety even after a PFI transfer.

Employees

Employees may feel there is nothing they can do about the employer's proposals. They may work in dilapidated conditions and would welcome the opportunity to have new premises. They may not have thought through the consequences of PFI. You will need to put forward arguments which acknowledge UNISON's concern for members' working conditions but stress both that there are alternative funding options and that services will suffer in the long run because of the high costs of PFI.

Stress to staff that PFI may not just mean a new building but may mean transferring to a private contractor, with a real possibility of worse pay, terms and conditions and loss of pension rights.

Other unions may not have the same position as UNISON on PFI and may have to be won over. Even if their jobs are not in the firing line they will be affected if their workplace is subject to PFI.

Some members may argue that to negotiate a PFI information agreement involves the union in the process and undermines our campaigning strength. The branch will need to develop arguments to deal with this and to pursue the twin-track strategy of campaigning against PFI while trying to get the best deal for members if it goes ahead.

General public and outside bodies

A new school, hospital or leisure facility may be long overdue. For example, children may be sitting in dilapidated classrooms, with paint peeling off the walls. Parents want a bright new building for their children and may not see the problem in getting money from the private sector. The union should develop its campaign to counter these arguments and build support from school governors against the proposal by stressing the loss of democratic control when a private company runs a school under a contract and the possible future loss of the school as an asset.

Identifying the arguments against PFI

COST

- ▶ The private sector has to borrow at higher rates than the public sector, so PFI costs more.
- ▶ The 'buy now pay later' financing of PFI projects hides the real costs.
- ▶ Public authorities do not have to find the money up front to

meet the initial capital costs. So in the short term any PFI deal may seem more affordable than conventional procurement, but in the long term costs are higher than in conventionally financed equivalent projects.

- ▶ The set-up costs of a PFI contract are higher, with lengthy negotiations with private sector consortia on the bid and large sums paid to advisers. The first 15 NHS trust PFI schemes spent £45 million on advisers – an average of 4% of the capital value. Some spent as much as 8.7% of the capital costs on advisers.
- ▶ PFI consortia usually want an excessive rate of return on their investment, for example the rate of return for the Skye Bridge was over 18%. This adds to the cost and comes out of public funds.

LOSS OF FLEXIBILITY AND ACCOUNTABILITY

- ▶ PFI contracts can be for anything up to 60 years. This commits the public sector to paying for services for a very long time and limits the ability of public bodies to switch resources in the future. This also means that if spending must be cut the PFI contract payment will be protected and non-PFI expenditure would have to carry proportionally deeper cuts.
- ▶ How will a public authority know what type of school building, housing or other facility it will need in 30 to 60 years time? Will the facility still be of use or value to the local authority? Will it still be necessary or appropriate at the end of the contract?

Find out what the proposed cost of the PFI is and what the length of the contract will be.

IMPACT ON EMPLOYEES

A key concern for UNISON is the impact of PFI projects on staff. The trend in PFI contracts has been to reduce the salaries of staff taken over from the public sector, to cut jobs and for increased casual and part-time working.

The Prison Service claimed that the costs of the first two prisons built under PFI, at Bridgend and Fazakerly, were 10% lower. A House of Commons Public Accounts Committee investigation showed that the savings were due to the lower wages paid to prison officers in the private sector. A security officer in a Securicor prison is paid £14,000 for a 44 hour week whilst an HMP prison officer is paid £20,000 for a 39 hour week.

UNISON's earliest experience of PFI has been in health where after lengthy negotiations we have reached agreements with most major contractors on protections for staff.

There are, however, still major areas not covered by the agreements:

- ▶ *Variations to agreements.* Even where agreements have been

reached, an employer may attempt to get transferred staff to accept new, inferior contracts. Where these protections exist, they may be limited to a period of time after which the employer may try to lower pay and conditions.

► **New staff.** In most PFI schemes, the terms and conditions of staff transferring do not extend to new staff taken on. UNISON wants to see all staff treated fairly; in particular, staff should be paid for the work they do and not the historic circumstances under which they were taken on.

► **Pensions.** Many contractors make no provision for pensions for new staff.

Contractors are required to provide comparable pensions for transferred staff, but the schemes are sometimes not as good as those which have been left. UNISON wants contractors to be able to join the NHS pension scheme in the same way as they can the local government pension scheme, which would allow them admitted body status. However in local government schemes the choice of joining remains with the contractor and UNISON would like this to be strengthened to give transferred staff the right to participate. Until that is allowed we need to ensure staff do not lose out on pensions. See section 6 on pensions on page 33.

NATIONAL AND POLITICAL ARGUMENTS AGAINST PFI

► The UK's public finances are in a very healthy state. Last year the public sector net cash requirement (PSNCR) – formerly known as the public sector borrowing requirement (PSBR) – recorded a surplus of £7.4 billion. This means the Government *could* afford to increase public borrowing significantly to finance much-needed investment in our public services directly without adversely affecting the PSNCR. The Government actually agrees with UNISON on this. They no longer try to justify PFI in terms of the public finances.

► Public spending by the Government is at its lowest for 40 years and the Government has cleared £32 billion of public debt. This is a key indication of continued under-investment in public services.

► PFI is a substitute for publicly financed capital expenditure and is not additional capital funding.

VALUE FOR MONEY?

► PFI projects are supposed to provide better value for money. (See *Section 5: Challenging the figures*). But the costs of PFI are extremely high since the private sector pays more than the public sector to borrow money and the set up cost is very high due to lengthy negotiations about the contract.

► The PFI consortia make excessive profits from their investment. For example, the rate of return for Bridgend Prison is 19.4% a year.

► PFI consortia are likely to maximise their profits by cutting

back on jobs, pay and terms and conditions of staff.

► The Parliamentary Health Select Committee criticised the impact of PFI on the NHS, stating that PFI achieves value for money by reducing the terms and working conditions of the staff involved. (Third Report, *Future NHS staffing requirements*, March 1999)

► The Public Accounts Committee, a government body that monitors public sector expenditure and accounting, showed that the 10% savings achieved by the PFI prisons at Bridgend and Fazakerly were achieved by paying lower wages.

► The experience by local government employees of job losses and cuts in terms and conditions of employment under the CCT regime of the 1990s is being repeated in PFI projects – and once again it is mostly women part-time workers who bear the brunt.

Project boards: to join or not to join

In some areas trade unions may be offered the opportunity to join the project board of the organisations developing the PFI. You should use the following criteria to assess whether to do this:

- Will membership bring any benefits, for example access to information?
- Has the PFI project been given final approval? (In the NHS this means its outline business case has been approved). Branches are recommended not to accept places on boards before this stage, as it will be interpreted as support for the PFI option.
- If final approval is given, branches need to assess the benefits that joining boards can provide compared to the drawbacks.

BENEFITS

- There may be greater access to information and an opportunity to influence the shape of services in PFI programmes, such as the exclusion of support services.
- Trade unions gain a voice and can communicate members' views to the board.
- Representatives can be kept informed on issues raised by PFI and increase their expertise in dealing with it.

DRAWBACKS

- Boards often insist on highly restrictive confidentiality clauses which mean information cannot be shared.
- UNISON members may view their representatives' involvement as actual support for PFI.
- Accountability to the branch/staff side puts great pressure on representatives who are also on the board.

The issue of whether to join project boards is separate from negotiating an agreement on information, which some branches are likely to find useful (see *Section 3: Getting and using information*).

Consider the benefits and drawbacks of joining

a project board.

Action point checklist

Action point 1

Start gathering information on PFI projects.

Action point 2

Use the networks you already have to get information and make your case.

Action point 3

Press for disclosure of information before decisions are made.

Action point 4

Keep up to date with current PFI developments by accessing the UNISON PFI webpage at <http://www.unison.org.uk/pfi>

Action point 5

Use the threat of PFI as a recruiting and organising tool in the areas affected.

Action point 6

Set up a campaign team and share out the work.

Action point 7

Remember the twin track approach of opposing PFI and negotiating to protect members' interests.

Action point 8

Decide on the groups you will target in your campaign and your approach to each.

Action point 9

Make sure the contracting authority knows that they are still responsible for health and safety even after a PFI transfer.

Action point 10

Find out what the proposed cost of the PFI is and what the length of the contract will be.

Action point 11

Consider the benefits and drawbacks of joining a project board.

Activity 2

CHALLENGING PFI

This activity is to help you:

- ▶ Analyse your branch and its readiness for campaigning.
- ▶ Start to develop your campaigning and negotiating teams and share out the work.
- ▶ Develop arguments against PFI targeted at particular interest groups.

DOING A SWOT ANALYSIS OF YOUR BRANCH

SWOT (strengths, weaknesses, opportunities, threats) analysis is a framework which may be useful to the branch campaign team to get a strategic overview of where they are and what they want to do. An honest assessment should inform the branch, so that you can use organisational strengths, address organisational weaknesses, identify changing opportunities and anticipate any threats facing the branch in your campaign against PFI.

SWOT is about looking at things as they are now (not how we want them to be) so that the team can identify what action is needed.

For example, a PFI campaign may give you an opportunity to recruit new members in the affected areas and help to strengthen branch organisation. It will also help you identify where you should concentrate your campaigning activity and the scale of your campaign, using the resources you have. A targeted campaign, for example focusing on a specific area or interest group could help to shift public opinion and strengthen the union's negotiating position.

An example of a SWOT analysis is shown opposite. This chart may not be complete but it gives an example of how a SWOT analysis works.

**SWOT ANALYSIS BY BRANCH FACED WITH A PFI PROPOSAL
FOR A COMMUNITY BASED SERVICE**

<p>Strengths</p> <ul style="list-style-type: none"> ▶ Good steward network in main building and number of stewards recently increased. ▶ UNISON has a good local reputation for campaigning. ▶ Regular branch newsletter. ▶ Good relationship with a group of local councillors and/or community health council. 	<p>Weaknesses</p> <ul style="list-style-type: none"> ▶ Few stewards in community based services. ▶ Community based membership density relatively low. ▶ Community based members hard to contact on a day to day basis.
<p>Opportunities</p> <ul style="list-style-type: none"> ▶ Branch newsletter going out soon. ▶ New campaign leaflets on PFI being prepared with local angle. ▶ Management have called a meeting of community based staff to discuss changes to work patterns. Unions can have access – chance to make contact and possibly recruit new members. 	<p>Threats</p> <ul style="list-style-type: none"> ▶ Other unions in the workplace not opposed to PFI (only see it as a way to get new facilities). ▶ Management getting stricter on time off for stewards.

HOW TO DO A SWOT ANALYSIS

Step 1

Divide a long sheet of paper or a white board into squares and head the boxes 'strengths', 'weaknesses', 'opportunities', 'threats' (see example above).

Step 2

Working as a group make a list under each heading. It is often easier to spot our weaknesses – make sure you have covered every angle and make the most of your strengths. Don't take anything for granted.

Step 3

Go through each section systematically and work out how you will maximise your strengths and opportunities and minimise the weaknesses and threats. In the example given, the branch might decide to concentrate its first efforts on getting more members and stewards in the community based services by using the threat of PFI as an organising tool. This could strengthen their position in negotiations.

Step 4

Work out a realistic action plan and timetable.

BUILDING A NETWORK

Make a list of the organisations and people the branch already has links with and those you need to build a network with (don't forget other UNISON branches in the area).

Decide who will make contact and develop the network. Gathering intelligence about potential PFI schemes is crucial. The earlier UNISON can start campaigning and negotiating to ensure employees are excluded from the PFI the better.

PUTTING THE CASE

Using the information in this section and *Section 4: PFI without the people* and *Section 5: Challenging the figures*, identify what arguments against PFI you will use with each of the following groups (which groups you have to influence will depend on the kind of PFI and which service it is in):

- ▶ Employers (including school governors), local councillors or members of NHS trust boards.
- ▶ UNISON members and other employees.
- ▶ Service users, the general public and bodies such as community health councils, tenants' and residents' associations, political representatives such as MPs, MSPs and Assembly members.

3. *Getting and using PFI information*

This section looks at what information should be available and how branches can obtain it.

There are distinct differences between the information available on NHS PFI schemes and those in local government and other services. Clear guidance has been issued to NHS trusts about the information on PFI proposals that must be made publicly available. But other branches have found it far more difficult to get information and employers often withhold information using the excuse of commercial confidentiality.

There are two sorts of information to collect:

▶ About PFI generally (see *Appendix E: Resources*.)

▶ About a specific PFI scheme affecting you, which is what this section looks at.

This section outlines:

▶ The different kinds of information produced during the PFI process.

▶ Disclosure of information in the NHS.

▶ Disclosure of information in local government, including the standards of disclosure UNISON wants to see established.

▶ Negotiating an agreement on information disclosure.

Trade union rights to information

Branches should use the Treasury Taskforce private finance policy statement No.4, *Disclosure of information and consultation with staff and other interested parties* (circulated in ULG/90/98, HC/18/00 and HE/1/99. See also *Appendix E: Resources*).

INFORMING AND CONSULTING TRADE UNIONS

The Treasury Taskforce policy statement makes the following points in its Section 3 on openness, staff and user consultation:

▶ The commitment of the Government 'to take account of the needs of staff when considering the involvement of the private sector'.

▶ The need for 'full, effective and continuous communication' as a key to successful projects.

▶ The need for involvement of trade unions 'as soon as a review which might lead to change is mooted'.

▶ Continued involvement of trade unions once a project has started 'to share what has been achieved'.

The policy statement makes a further important point in relation to the need for information to be given to service users: 'Where services will be used directly by the local community, departmental guidance should also address arrangements for providing information to such groups as... parents of schools included in PFI projects.'

This is an important development and one which branches should impress upon their employers.

INVOLVING TRADE UNIONS IN THE PROCUREMENT PROCESS

Using the key points in the policy statement, branches should continue to raise employment issues if a PFI scheme is planned. In local government the policy statement should add weight to our argument that best employment practice will provide Best Value.

The key points the policy statement makes in relation to involvement of trade unions in the procurement process and consideration of workforce matters are that:

▶ Trade unions should be provided with a copy of the 'broad strategy' where PFI is an option, including the 'strategic planning and business objectives'.

▶ Consideration of invitation to trade unions to 'submit relevant information about potential tenderers' should be taken into account in the selection of bidders.

▶ A copy of the invitation to tender should be provided to trade unions.

▶ Client authorities 'should consider inviting recognised trade unions or staff representatives to discuss relevant employment issues with shortlisted bidders'.

▶ They should also 'consider the introduction of independent observers of tender evaluation panels' proposed by trade unions and staff.

▶ 'Where it is relevant to the delivery of the service... each bidder should be requested, at formal bidding stage, to submit a statement of their recent track record in employment'.

▶ Public sector authorities 'may wish to consult recognised trade unions or staff reps about whether they can provide relevant and verifiable information on the fitness of potential tenderers'.

- ▶ Disclosure of the identity of specific bidders will be at the discretion of client authorities.
- ▶ Client authorities 'may wish to consider' inviting recognised trade unions to meet shortlisted tenderers. They will need to consider both the views of tenderers and legal restraints in doing so.
- ▶ There will need to be 'clear agreement' with trade unions on information to be received to avoid legal challenge.

Different kinds of information produced during the PFI process

Early warning of PFI schemes is crucial if your negotiations and campaign are to succeed. In particular, the earlier UNISON can get involved in campaigning against PFI or in negotiations to exclude staff from the PFI the better.

Gather intelligence – check minutes of committee

meetings and any strategic plans for indications

of possible PFI schemes. Maintain links with

local politicians, other unions and members of

governing bodies.

H In local government – scrutinise the Best Value

local performance plan for indications of possible

PFI projects.

H In the NHS – get a copy of the health

improvement programme (or equivalent in

Scotland and Wales) that sets out planned service

and capital developments.

Branches should consider negotiating an agreement on information (see *page 18*) to ensure that they are provided with the information they need at every stage of the PFI process.

The Treasury Taskforce has identified 14 stages in the PFI process (see *Appendix B*). You can use their document to help identify the key stages in the PFI project you are concerned with and also to identify the documents you will want to see at each stage.

Check where the PFI scheme has got to against the

Treasury Taskforce's recommended 14 stages

in *Appendix B*.

ESTABLISHING BUSINESS NEED AND APPRAISING THE OPTIONS (STAGES 1 AND 2)

All public authorities have to establish a business need and appraise the options for a PFI scheme. This means that they have to assess what public service, facility or capital development is needed, how it should be delivered or provided and they may consider whether it should be delivered using PFI.

While all public authorities undertake such an analysis, different public authorities produce different documents or reports for this process. When a NHS trust establishes the business need and appraises the options for PFI, they produce a strategic outline case (SOC).

The SOC sets out the way capital investment is needed, how new facilities should be provided, different options for services and the timetable for developments. There should be consultation on the SOC.

Branches may find it useful to commission an analysis of the SOC. It is important in the early stages of a health service PFI project to question the need for the new facility, whether it constitutes value for money and whether it is affordable.

In local government, establishing the business need and appraising the options must be done under Best Value where all services are subject to a Best Value performance review. The review must also justify the decision to provide the service through PFI. All proposals for PFI projects and existing PFI projects should be identified and published in the Best Value local performance plan published each year.

It is vital that branches seek to influence the public authorities' views on the exclusion of support services from the project at this stage. (See *Section 4: PFI without the people*.)

All public authorities planning PFI projects must produce all of the following documentation:

OUTLINE BUSINESS CASE (STAGE 3)

In the outline business case (OBC) plans are developed in more detail in terms of cost, value for money and affordability, using techniques known as economic appraisal, scoring of non-financial benefits and overall cost benefit analysis. To a non-specialist, an OBC can seem confusing and often has several volumes.

Depending on how far the scheme has progressed

get a copy of the strategic outline case or the

outline business case.

The public authority has to submit the OBC to the Government to get approval and funding for the PFI project: it is therefore vital for branches to seek to influence what goes in to the OBC before it is submitted to the Government.

It will contain key information which you need both to assess the impact of the project and campaign against it. Most importantly, the OBC will contain a public sector comparator (PSC), sometimes known as the reference project. The PSC is supposed to represent a publicly funded alternative to the PFI option. The two are then compared to see which gives the best value for money. But in practice there are strict guidelines on how the PSC is constructed, and it does not represent a genuine publicly funded alternative to PFI.

UNISON recommends that in large scale PFI schemes branches consider commissioning an analysis of the OBC. Contact your regional officer for advice on how to do this.

Since June 1999, it is no longer required to include most services in PFI projects. The OBC will indicate which services are intended to be included in the scheme, and therefore which jobs will be transferred to the private sector. See *Section 4: PFI without the people* for arguments to use for exclusion of support services.

Information in the OBC should be challenged. *Section 5: Challenging the figures* can help you do this.

Key information the OBC should include and how to challenge it

▶ Relative costs of a PFI option compared with a public sector comparator (PSC). *UNISON believes that the cost comparisons in OBCs are biased against public funding options.*

▶ The OBC should set out what risks are transferred from the public authority to the private sector, how the risk would be transferred and the notional savings from this. *Challenging this by using information in the OBC can be very effective in discrediting the PFI as the alleged benefit of risk transference in most cases is exaggerated.*

▶ The OBC should make clear the penalties for private sector operators for failure to provide services.

▶ Costing for a 'do minimum' option involving refurbishment rather than new build. *UNISON might want to argue for this as an alternative to the use of PFI. This option is often not properly evaluated, as new developments funded by PFI are preferred by the private sector.*

▶ Costing should make clear the rate of return that the private sector consortium will make on the project and the cost of the borrowing necessary to finance it. *This helps to show the true cost of PFI as profit does not arise in publicly funded schemes and which can also borrow money at lower rates.*

▶ An affordability analysis by the public authority that evaluates whether the scheme can be funded. *UNISON may be able to highlight the danger of over ambitious projects, resulting in the pub-*

lic authority either having to scale down the projects or cut back other local services to fund them.

▶ The OBC should set out the range of services to be included in the project. *Before the OBC is submitted for government approval, it is crucial for UNISON to try to influence this so as to ensure the exclusion of support services from the project. (See Section 4: PFI without the people.)*

Check the SOC or OBC to see the range of services to be included. This early information is vital to try to get them excluded from the scheme.

Disclosure of the outline business case

▶ In the NHS, the outline business case must be made publicly available within a month of final approval, in the same way as the SOC. For projects worth more than £10m an advert must also be placed in the local newspaper.

In the NHS the OBC must be approved by the regional office of the NHS Executive before it can be advertised and tenders sought.

▶ After the OBC is approved there should be wide consultation on the shape of the project. According to guidance issued in the NHS this 'must give an opportunity to influence decisions before they are taken'. This should include issues such as whether ancillary support services are included (see *Section 4: PFI without the people*).

After the OBC is approved there are a series of other steps, which branches need to be aware of.

Decide whether to commission an analysis of the SOC or OBC and contact your regional office for advice.

INVITE EXPRESSIONS OF INTEREST; PUBLISH THE OJEC NOTICE (STAGE 6)

The advertisement seeking tenders for the project is placed in the *Official Journal of the European Communities* (OJEC). This summarises the scope of the project and sets out which services will transfer to the private sector. Information on OJEC can be found on the Treasury website or via the UNISON website (see *Appendix E: Resources*). The *Memorandum of information* is then sent out to interested bidders.

PREQUALIFICATION OF BIDDERS (STAGE 7)

The *Prequalification questionnaire* asks for summary information on bidders. This is used to sift out technically unsuitable

bidders. In each service there are regulations governing the criteria that are used to decide which bidders go forward to shortlisting. UNISON is pressing for employment policies to be a key factor used to assess the suitability of bidders.

Answers to the prequalification questionnaire should be disclosed to the trade unions. Contact the Bargaining Support Group and your service group with your responses to help us build up a profile of bidders and check the accuracy of their claims.

SELECTION OF THE SHORTLIST (STAGE 8)

Branches should ask the public authority to take workforce matters into account when selecting the shortlist of contractors and refer to government guidance in Treasury Taskforce Policy Statement No. 4. There is guidance specific to local authorities in draft DETR guidance *Best value and procurement: Handling of workforce matters in contracting* and guidance for health branches in HC/18/00.

FULL OR FINAL BUSINESS CASE (STAGE 9)

A *Final business case* (FBC) will be drawn up which then becomes the final plan for the PFI scheme. UNISON branches should try to obtain a copy of the FBC as prices and specification may have changed during the negotiation phases. In the NHS, the FBC must be disclosed on a similar timescale to the OBC.

Obtain the answers to the pre-qualification questionnaire and pass the information to the service group or the Bargaining Support Group at head office.

INVITATION TO NEGOTIATE (STAGE 10)

The *Invitation to negotiate* (ITN) seeks final details from short-listed bidders. Some information supplied in response to the ITN can be withheld from the trade unions on grounds of commercial confidentiality.

Disclosure of information in the NHS

HEALTH IMPROVEMENT PROGRAMMES

The health improvement programme (HIMP) produced by each health authority sets out what service developments are planned and should include details of any capital developments. The HIMP is a public document on which health authorities should consult all local organisations including UNISON. It will contain details of the primary care investment plan and joint investment plans cov-

ering mental health and social care services. Because it contains development plans it will effectively give early warning of any PFI schemes. There are equivalent documents in Scotland and Wales.

STRATEGIC OUTLINE CASE (SOC)

In the NHS a SOC has to be drawn up for any major proposed capital development. The SOC sets out the way capital investment is needed, how new facilities should be provided, different options for services and the timetable for developments. If the project set out in the SOC is considered viable the public agency will then look at whether it should be funded publicly or through PFI.

The SOC must be made publicly available within one month of approval. This means one copy each must be:

- ▶ Available on trust premises.
- ▶ Given to the chairperson of the local trade unions.
- ▶ Lodged with the local community health councils.
- ▶ Lodged with the local authority.
- ▶ Placed in the main public library (and in the House of Commons Library for schemes worth more than £10m and in the Treasury Taskforce library for schemes worth more than £25m).

The community health council must be consulted about the SOC and the local authority should also be.

Capital Prioritisation Advisory Group

The SOC will then be submitted to the Capital Prioritisation Advisory Group (CPAG) which selects schemes for further work. If the project is less than £25m the trust or health authority make their own evaluation.

The CPAG was set up to screen out unviable projects and assess whether applications are in line with overall government policy, for example in terms of bed provision. Early PFI schemes planned major bed cuts and government policy is now to increase NHS bed numbers.

If the CPAG gives the go ahead, the trust or health authority will be asked to prepare an outline business case. The CPAG will indicate whether the project will be funded via PFI or through public funding although this will be reviewed once the outline business case is finalised.

CODE OF PRACTICE ON OPENNESS

In the NHS, trusts must abide by the *Code of Practice on Openness* which says that the following information must be released:

- ▶ Range of tender bids, including by agreement the prices.

- ▶ Identity of successful tenderer.
- ▶ Performance standards to be included in the contract.
- ▶ General contract terms and conditions.

The Department of Health has also instructed trusts to release information on overall output levels and terms of business.

Information can be withheld on the grounds of commercial confidentiality only if its release during the contract period might jeopardise the process. The DoH has said that details of risk allocation, charging arrangements and sources of finance can be withheld on these grounds. UNISON does not accept this.

Disclosure of information in local government

Disclosure of information, and consultation with staff, in local government is not as clear-cut as in the NHS.

DISCLOSURE OF INFORMATION IN SCOTLAND

Publication of full business cases

In June 1999, the Scottish Minister for Finance announced that full business cases for PFI projects signed from that date would be made publicly available. While this change applied directly to government departments and agencies, the minister made clear he expected that the rest of the public sector would follow suit. The following guidance on the publication of FBCs is similar to that already issued to health boards and trusts and also applies to local government:

- ▶ FBCs may be edited to exclude text of a commercially sensitive nature. Details relating to unsuccessful bidders should not be placed in the public domain. Only text of a commercially sensitive nature should be deleted. Any document which contains reference to suppliers must be cleared with the appropriate supplier(s) before publication.
- ▶ When preparing FBCs, contracting authorities should avoid the unnecessary inclusion of commercially sensitive information which may later need to be edited and consider grouping as much of the commercially sensitive material together to make the editing task easier. In most cases the department will have seen and approved the FBC. However before publication, particularly if the approved version has been edited, the FBC should be cleared with the Private Finance Unit before being published.
- ▶ FBCs should be made publicly available within one month of contract signature, financial close, or FBC approval, whichever is the later. This means placing the FBC on view within the offices of the contracting authority, the office of the local authority (which may be the same) and, for schemes with a capital value in excess of £10m, at the local library.

▶ For schemes with a capital value over £10m, the general public should be told that FBCs are available for perusal by an advert placed in the local press detailing their placement in the local library and the date from which they can be viewed.

▶ For schemes with a capital value over £10m, a copy of the FBC should also be placed in the Scottish Parliament Information Centre (SPICE).

▶ Furthermore, a copy of the FBC should be placed in the PFI library of the Treasury Taskforce once the scheme has reached financial close.

▶ Each document should clearly show a contact name, address and telephone number within the contracting authority for enquiries specific to the project and that general enquiries on PFI should be addressed to the Private Finance Unit, 3-C23, Victoria Quay, Edinburgh EH6 6QQ (telephone 0131 244 7500, fax 0131 244 7499).

▶ Any request from members of the public for copies of the documents should be met, but the cost of copying and postage may be charged.

DISCLOSURE OF INFORMATION IN ENGLAND AND WALES

The 4Ps (Public Private Partnerships Programme) was established by the Government in 1996 to develop PFI in local government.

It produced a draft *Guidance to local authorities on disclosure of information and consultation with staff and other interested parties on PFI*, in conjunction with the DETR and the Treasury Taskforce, during 1999. Copies are available to branches and have been circulated (circular ULG 78/99).

Key points include:

- ▶ Information and consultation on PFI projects must be in line with the principles of open government.
- ▶ Information and consultation on PFI projects must also be in accordance with the legal duty of local authorities to consult with key stakeholders.
- ▶ Trade unions and employees are recognised as key stakeholders.
- ▶ The key principle in the provision of information and consultation is that it is a matter of when and not if information is provided to key stakeholders.
- ▶ Local authorities decide when information is deemed confidential.

BEST VALUE IN LOCAL GOVERNMENT

From April 2000 all local authorities have to ensure that all their services meet the best value framework. This includes all PFI projects.

Best value and PFI checklist

- ▶ All PFI proposals/projects must be part of the council's best value fundamental performance review of all its services.
- ▶ Any performance review of any service must justify the decision for providing the service through PFI.
- ▶ All PFI projects should be subject to independent audit and inspection by the district auditor and the best value inspectors.
- ▶ The best value local performance plan should report whether any achievements, targets and standards set have been met by the PFI.
- ▶ Branches should ask their local authorities how PFI would meet the requirement for 'continuous improvement of all services under best value'. *Once the PFI contract is agreed and signed there would be little room for variation in how the service is provided, so it is difficult to see how the service provided under PFI could be constantly improved.*
- ▶ Proposals for PFI projects and existing PFI projects should be identified in the best value local performance plan, which is published each year.
- ▶ Local authorities must undertake genuine consultation with the local community, including service users and council tax payers, on what services the council provides and how they should provide them.
- ▶ Local authorities should provide information to and undertake genuine consultation with the local community on all aspects of PFI projects throughout the process.
- ▶ Branches should ensure that any PFI projects involving employees should meet UNISON's *Best value best employment charter* (see Appendix C).

The PFI project should meet nationally set standards, meet corporate objectives, and should be capable of being benchmarked against other services. This includes ensuring there is a public sector comparator for the PFI.

STANDARDS UNISON WANTS TO SEE ESTABLISHED FOR LOCAL GOVERNMENT

UNISON has highlighted the secrecy of the PFI process, under which commercial confidentiality is used to deny proper disclosure of information, and has raised concerns about a number of local authorities refusing UNISON branches access to information on PFI proposals. In some cases this has occurred even after PFI contracts have been

signed. UNISON is also concerned that the public's right to freedom of information is being infringed.

Despite the Government's commitment to ensuring that documentation on PFI projects would be available, following contract signature, in the Treasury Taskforce library, there are few PFI projects filed there.

UNISON believes that:

- ▶ The PFI process and information and consultation on PFI proposals should comply with the duty to consult under the best value legislation.
- ▶ In the event of a transfer of staff the PFI process, including information and consultation on PFI proposals, should comply with the requirements to inform and consult trade unions under the Transfer of Undertakings (Protection of Employment) Regulations 1981, as stated in previous government guidance on TUPE and paragraphs 3.11 and 4.2.11-4.2.19 of the 4Ps' guidance.
- ▶ There should be disclosure of information and full consultation on PFI proposals with key stakeholders – trade unions, employees, users and local community representatives – before any decision is made to opt for a PFI proposal. Information and consultation with key stakeholders should begin at stages one and two of the PFI process and continue throughout all 14 key stages of the PFI process (see Appendix B: *The PFI process*).
- ▶ There should be mandatory guidelines on disclosure as is the case for NHS PFI schemes. All key PFI documents, including outline and full business cases, should be made publicly available within one month of their respective final approval.
- ▶ The definition of 'publicly available' should include one copy each to be:
 - Placed on local authority premises for employees, service users and other key stakeholders to see.
 - Provided to the chairperson of trades unions representing local authority employees.
 - Sent to the main local public library where it must be available for viewing.
- ▶ If any information is withheld about a PFI scheme, local authorities should be required to give a full explanation for non-disclosure rather than hiding behind blanket phrases of 'commercially confidential' or 'not in the public interest'.
- ▶ As the 4Ps' guidance states, disclosure should focus on when and not whether information should be disclosed. So at each of the 14 key stages of the PFI process, there should be a clear timetable for the release of PFI documents with which all authorities would have to comply.

FURTHER SOURCES OF INFORMATION

Branches should try to develop their own means of discovering information about PFI (see *Section 2: Challenging PFI*).

- ▶ Scrutinise minutes of council meetings (both committees and full council) and examine the best value local performance plan for possible PFI projects. Whenever new facilities are being planned PFI will be considered as a funding option.
- ▶ Develop networks with sympathetic councillors and user groups to obtain and share information about potential PFI schemes.
- ▶ Specialist trade journals may carry hints that a PFI proposal is being considered, for example, for the development of a new sports complex.

If the employer refuses to provide information branches should use this as part of their campaign. What have they got to hide? How open is government if we can't get documents about the future of the service?

If a local authority refuses to provide information, saying that PFI proposals are commercially sensitive, branches can complain to the 4Ps. If you do this, don't forget to tell the Local Government Service Group at head office. Not all information is commercially sensitive as they claim.

AMENDMENT OF PART II OF THE LOCAL GOVERNMENT ACT 1988

The DETR has issued a draft consultation guidance on amending Pt II LGA 1988, contained in *Best value and procurement: Handling of workforce matters in contracting – A consultation paper on draft guidance*, April 2000 (circulated to branches, ULG 49/2000).

The modifications to Pt II LGA 1988 will permit local authorities to follow the guidance in Treasury Taskforce private finance policy statement No.4 (see *Appendix E: Resources*) – to the extent that it is relevant to the performance of a particular contract. This puts local government contracting on a similar basis to all other public authorities. Previously statement No. 4 only applied to health, higher and further education, transport and the environment.

This means that local authorities will be able to take into account workforce matters throughout the PFI procurement process, including 'where it is relevant to the delivery of the service... each bidder should be requested at formal bidding stage, to submit a statement of their recent track record in employment'. (Treasury Taskforce, Private finance policy statement No.4)

However workforce matters that are not directly relevant to the delivery of the service in question should not be taken into account (for example local labour).

Negotiating an agreement on information and involvement in PFI

Branches can negotiate PFI information agreements with the employer. This does not mean that branches are signing up to PFI. The agreement can be simply a way to ensure that you get information and are included in any discussions on PFI proposals. This will help you to campaign and protect members' interests.

In local government, any PFI information agreements should meet the *Best value best employment charter* (see *Appendix C*).

PFI INFORMATION AGREEMENT CHECKLIST

- ▶ Consultation and negotiation with trade unions at the earliest possible stage. That is, as soon as there is a proposal for a PFI project.
- ▶ A clear definition of what consultation means to each party.
- ▶ Full disclosure of all relevant information, including copies of key documents as outlined above.
- ▶ Time off and facilities for stewards and branch officers where there is a PFI project, including facilities for training.

Decide whether to negotiate an agreement on disclosure of information.

Action point checklist

Action point 1

Gather intelligence – check minutes of committee meetings and any strategic plans for indications of possible PFI schemes. Maintain links with local politicians, other unions and members of governing bodies.

In local government – scrutinise the Best Value local performance plan for indications of possible PFI projects.

In the NHS – get a copy of the health improvement programme (or equivalent in Scotland and Wales) that sets out planned service and capital developments.

Action point 2

Check where the PFI scheme has got to against the Treasury Taskforce's recommended 14 stages in *Appendix B*.

Action point 3

Depending on how far the scheme has progressed get a copy of the strategic outline case or the outline business case.

Action point 4

Check the SOC or OBC to see the range of services to be included. This early information is vital to try to get them excluded from the scheme.

Action point 5

Decide whether to commission an analysis of the SOC or OBC and contact your regional office for advice.

Action point 6

Obtain the answers to the pre-qualification questionnaire and pass the information to the service group or the Bargaining Support Group at head office.

Action point 7

Decide whether to negotiate an agreement on disclosure of information.

Activity 3

GETTING INFORMATION ON PFI

This activity will help you to:

- ▶ Identify what information you need to collect and where to get it.
- ▶ Consider whether to negotiate an agreement on getting PFI information with the employer.

Step 1: identifying what information you will need and where to get it. Refer back to the text and, using the grid below, on the left hand side make a list of all the information you need to collect.

Step 2

In the centre column write down how and where you think you will find the information.

Step 3

If you already have a campaign team in place note down

who will be responsible for finding, collating and storing the information in the right hand column.

Negotiating a PFI information agreement

▶ Discuss with colleagues in your branch whether you should try to negotiate an agreement with the employer on access to PFI information.

▶ You may find it useful to look for information on this on the UNISON PFI website www.unison.org.uk/pfi as well as in this section.

▶ If you do decide to negotiate a policy, decide what your priorities would be. Use the PFI information agreement checklist in this section as a guide.

▶ Once you have negotiated a policy, put the information on the UNISON PFI Discussion Forum (see *Section 1: Introduction* for how to do this).

INFORMATION WE NEED	HOW TO GET IT	WHO WILL DO IT

4. *PFI without the people*

The Government has changed its line on PFI. There is now a general acceptance that the arguments about PFI being a way of increasing private finance are no longer valid and that the Government could comfortably pay for the entire PFI programme without breaching the fiscal rules it has set itself. This strengthens the grounds for using alternative forms of financing for public investment rather than PFI.

In your campaign emphasise that the Government could fund the scheme from public funds and that PFI isn't necessary.

The Commons Public Accounts Committee report on a PFI hospital says, 'we look to the NHS Executive to continue to give proper consideration to the option of using public finance in all hospital projects'.⁽¹⁾ UNISON believes that proper consideration should be given to using public finance in all investment decisions.

Where PFI does go ahead, government rules introduced from June 1999 mean that there is no longer a requirement to include support services in PFI schemes. UNISON therefore needs to use this change to try to limit any transfer of staff by ensuring that support services are excluded.

Stress in your campaign that there is no longer a requirement to include staff in the scheme.

Services can, however, be included where it is 'value for money' to do so. The view of Newcastle City Council is not unusual: 'the more services are included, the more scope there is for the private sector to offer proposals that may offer better value for money than alternatives'.⁽²⁾

Newcastle is at least honest enough to admit that they expect savings of 5% from the private sector from 'purchasing, labour utilisation and labour rate savings'. In other words, apart from savings in purchasing, the remaining savings will be made from jobs, pay and conditions.

Government departments have adopted different approaches to applying these rules. NHS guidance⁽³⁾ requires individual trusts to assess whether excluding 'soft' support services provides better value for money. If trusts show that retaining support services in-house provides better value for money their PFI projects can be restricted to 'design, build and finance' only.

What can be done – value for money (VFM)

The inclusion of services in a PFI project will be justified in the assessment of value for money. In order for negotiators to challenge this, it will be necessary to monitor closely the way the VFM appraisal is carried out, and there is more advice about this in the next chapter.

Closely monitor the way the value for money appraisal is carried out.

Negotiators will need all the relevant figures on services, both for the public sector comparator (PSC) and for the PFI option. The whole method of appraisal prescribed by the Treasury is biased against the public sector, but it is still possible for in-house services to demonstrate better value for money if all costs are made clear and the comparison is done on a like for like basis.

Find out the costs of the separate service components for both the PFI and the public sector comparator.

When Stoke wanted to exclude all services from its school PFI, the Department for Education and Employment insisted that they produce a VFM study for each service; this showed that the in-house team could do the job better.

The detailed costing for each service will also show whether the PFI consortium has proposed a realistic price for services. A consortium could, for example, propose an unrealistically low price for services, as a loss leader, knowing that it will be able to cross-subsidise service provision from higher profits on another part of the project such as construction. In such a case, the services part of the PFI deal would not represent value for money in its own right.

Check whether the private sector option is realistically priced or is offering cheaper services as a loss-leader.

Are the PSC and PFI really comparable?

It is important to check whether the public sector comparator (PSC) really is comparable with the PFI option. Differences in service costs may be due to not comparing like with like.

For example, the PFI design might involve a higher proportion of new build, which might reduce the cost of facilities management; or the PFI design might incorporate cook-chill catering while the comparator assumes that food will be prepared on the premises.

Under these circumstances a simple comparison of service costs between the two options would not show which was most efficient but would just reflect differences in the design of the facility. In order to make a realistic comparison, it is necessary to see how much services would cost under the PFI solution if they were provided by the public sector.

Make sure there is a separate comparator

showing the costs of services provided by public

sector employees under the PFI design.

Arguments to exclude services

Branches that are affected by PFI projects where support services may be either included or excluded need to lobby to influence this decision. Some of the arguments are set out below. Branches may wish to commission specialist advice on this – contact your regional officer.

Lobby to influence the decision on whether to

exclude staff from the PFI.

THE CASE MADE BY PRIVATE CONTRACTORS

The private sector has lobbied hard to keep services in PFI contracts. These are some of their arguments:

‘Contractors cannot provide a design solution which will last if, for example, cleaning services continue to be operated by the public sector.’

Answer:

If the output specification is properly drawn up and there is a service level agreement on the cleaning standards this should not be a problem. If there are poor cleaning standards this should be dealt with by proper management arrangements not by the transfer of staff.

‘Cost savings cannot be achieved without control of all the support services workforce.’

Answer:

This simply shows that cost savings for PFI are based on inferior terms and conditions for the workforce and not private sector efficiency. If change is needed in how services are delivered, this can be achieved without the need to transfer staff.

‘Tenders should be sought for support services in order to test the market.’

Answer:

There is no need to do this. Support services should meet the output specification. If improvements are needed there are many other ways to achieve this, for example by investment in training or changes to management practice with staff involvement.

‘Contractors will not bid unless support services are included.’

Answer:

This is not true as a number of contractors can and do specialise in hard facilities management services and have to bring in sub-contractors to provide support services. But the project should not be based on what contractors want.

UNISON believes that PFI is a wasteful and expensive way of procuring infrastructure. If, however, PFI is to continue, then services should be excluded. Arguments for excluding services from PFI are:

- ▶ Without services, PFI projects are much smaller and therefore fewer resources have to be devoted to them.
- ▶ Without services, staff remain under the direct control of public authorities. For example, schools may prefer to keep closer contact with the staff working in their school. Separating out support staff is likely to damage effective teamwork.
- ▶ The problems of staff employed by different employers, working in the same school or hospital are avoided.
- ▶ The problems of staff doing the same jobs on different pay and conditions are avoided. The Commons Treasury Committee Report into PFI said ‘We wish to guard against the development of two-tier employment status as between TUPE and newly-recruited non-TUPE employees’.⁽⁴⁾
- ▶ In-house staff provide high quality services.
- ▶ Keeping all services under a single, public sector employer gives a flexibility that can meet both the expected and unex-

pected changes that lie ahead. The scope for change remains within the public sector's control, rather than tied up in very long contracts that will be expensive to change.

QUESTION ALL JOB TRANSFERS

It will be argued that some employee groups should be transferred because the services they provide are integral to the provision of the property. This might include staff engaged in estates and maintenance, caretaking, security or even cleaning.

But remember the PFI consortium does not directly provide these services, but subcontracts them to other companies. There is therefore no reason to assume that the company providing the facility will actually be the employer of those staff engaged in property-specific services.

If a separate private sector company can provide the services, why cannot public sector employees? The requirement that staff transfers be justified on the basis of better value for money should therefore apply equally to employees engaged in property-specific services.

Question all staff transfers.

In the NHS

In response to UNISON representations, the Department of Health is currently reviewing whether staff providing hard services, such as craft and maintenance, have to be transferred. Other support services and staff can be excluded. The test is whether this option provides value for money. Ask your national service group for more advice on this.

In local government

A local authority has two options:

- ▶ To exclude certain services from the PFI.
- ▶ To indicate from the beginning that the direct service organisation (DSO) may be involved at a later stage as a sub-contractor to the private sector consortium.

DETR GUIDANCE

The Department of the Environment, Transport and the Regions' document *Local government and the private finance initiative*, published in 1998, clearly states that local authorities can choose whether to exclude certain services from the PFI contract and involve their direct service organisation or direct labour organisation as a subcontractor to the PFI consortium.

Paragraph 5.20 states: 'Some authorities and/or their private sector partners may see benefits in involving the authority's direct

service organisation (DSO) or direct labour organisation (DLO) in PFI projects. There could be a value for money case for doing this when a particular service can be delivered more efficiently in-house by the DSO/DLO. At an early stage a decision should be made on whether particular services should be excluded from the scope of the PFI contract and undertaken by the DSO/DLO, or whether a particular service within the scope of the planned PFI contract might be undertaken 'in house'.

Transfer of risk

As far as the Treasury is concerned, the key criterion for PFI is the transfer of risk from the public sector to the private sector. Some parts of government maintain that if a DSO is sub-contracted to a private consortium, the risk is transferred back to the public sector. We believe this position is wrong. Our position is supported by the Association for Public Service Excellence (formerly ADLO) (see *Appendix E: Resources*).

Currently private consortia can and do employ sub-contractors to provide some or all of their subsidiary services. And the risk of failing to provide the service remains with the private sector consortium. Therefore both UNISON and ADLO recommend that local authorities considering PFI schemes should actively explore whether specific services can continue to be provided in-house.

NO GOVERNMENT REQUIREMENT TO INCLUDE STAFF

A letter from the Treasury to ADLO stated that 'the Government has made it clear that there is not a requirement for staff providing 'soft facilities management' services – such as ancillary staff in hospitals – to transfer as part of a PFI contract'. It goes on 'the same approach would govern the position of DSO staff in PFI projects'. The DETR have indicated that they will take appropriate action to ensure that there are no legal obstacles to this under the 1970 Goods and Services Act.

Despite government announcements that PFI projects do not have to include staff, some UNISON branches have experienced problems with their local authorities and the DfEE insisting on including staff in schemes.

Specific cases were raised with ministers in both the Treasury and the DfEE. UNISON pointed out the disparity in policy between DfEE and DETR, the Treasury and government ministers. We argued that there should be no general position that all in-house staff must be included in projects: it should be open to the parties at local level to consider these matters on a case by case basis in line with DETR and Treasury guidance and policy. We also stressed that the in-house workforce do provide the best value for money. The Secretary of State reversed the DfEE decision which included the in-house workforce as a matter of course.

However local councils are still insisting on a 'value for money' test that appears rigged in favour of including staff in schemes. The Local Government Service Group has raised the matter with Andrew Smith, Chief Secretary to the Treasury, and is continuing discussions with Treasury officials.

Keep up to date with discussions on the 'value for money' test that appears rigged in favour of including staff in schemes.

LOCAL EXAMPLES

In the Environment Agency for England and Wales, a PFI scheme has been developed for a flood protection scheme covering the Norfolk Broads. The scheme awards the contract for 20 years, but, although the existing Agency workforce will be placed at the disposal of the contractors, they will not transfer to the contractors' employment and will be retained by the Agency. The financial implications of this have been taken into account in fixing the fee provisions of the PFI contract. It was thus possible for staff to avoid the pitfalls of TUPE transfers and stay in the Agency's pension scheme.

Stoke-on-Trent local government branch successfully negotiated a PFI schools estates project which excluded cleaning, catering and grounds maintenance staff. However, while Staffordshire County Council decided to keep catering staff within the DSO catering services, it included cleaning staff in its PFI scheme.

Under section 16 Part II of the Local Government Act 1999 – which is the legislative framework enacting best value – the Government will be able to amend laws and give local authorities new powers to ensure that they can comply with best value (see *Appendix C: What about best value in local government?*).

This could also include amending the Local Government Goods and Services Act 1970 to allow direct services organisations and direct labour organisations powers to trade while remaining employed by the local authority. They would be able to provide services to other organisations and local authorities without the restrictions of the 1970 Act, which limits the extent they can do this.

The negative affect of this could mean that council DSOs and DLOs could compete for services provided by DSOs/DLOs in other councils. Currently DSOs/DLOs compete against the private sector not against each other.

Action point checklist

Action point 1

In your campaign emphasise that the Government could fund the scheme from public funds and that PFI isn't necessary.

Action point 2

Stress that there is no longer a requirement to include staff in the scheme.

Action point 3

Monitor the way the value for money appraisal is carried out.

Action point 4

Find out the costs of the separate service components for both the PFI and the public sector comparator.

Action point 5

Check whether the private sector option is realistically priced or is offering cheaper services as a loss-leader.

Action point 6

Make sure there is a separate comparator to show costs of services provided by public sector employees under the PFI design.

Action point 7

Lobby to influence the decision on whether to exclude staff from the PFI.

Action point 8

Question all staff transfers.

Action point 9

Keep up to date with discussions on the 'value for money' test that appears rigged in favour of including staff in schemes.

Notes

1. Public Accounts Committee twelfth report, *The PFI contract for the new Dartford and Gravesham hospital*, March 2000
2. Newcastle City Council report of PFI steering group, *Packaging of services for schools PFI project*, 8 March 2000

3. Department of Health, *Public private partnerships in the National Health Service: Private finance initiative*, December 1999
4. Treasury Committee fourth report, *The private finance initiative*, March 2000

Activity 4

PFI WITHOUT THE PEOPLE

This activity will help you to:

- ▶ Compare the public sector comparator and the private sector option.
- ▶ Add to your arguments against PFI.
- ▶ Share information about PFI projects with other UNISON branches.

Step 1

Get details of the figures on services for the public sector comparator (PSC) and the PFI option.

Step 2

Compare the costs put forward for the PSC and the private sector option.

- ▶ Do the private sector option costs seem realistic?
 - Look for things like: is the contractor claiming major improvements on current practice, such as a big increase in patient throughput and reductions in bed numbers?
 - Is the contractor proposing more intensive use of buildings at a higher cost to users?
- ▶ Do the PSC and PFI option compare like with like?

Step 3

Post up your findings on the UNISON PFI Discussion Forum and see if there is anything there to help you.

Step 4

Add to the list of arguments against PFI that you started in Activity 2.

5. *Challenging the figures*

In order to get approval PFI schemes must demonstrate that they represent better value for money (VFM) when compared to a public sector comparator (PSC). This section looks at what value for money is and how to challenge some of the assumptions behind the VFM exercise.

The first rule is to remember that, however complicated the figures, you do not have to be an expert to ask common-sense questions about PFI. It is often the simple questions that get to the heart of the problem.

This section looks at:

- ▶ Value for money and the public sector comparator
- ▶ What risks?
- ▶ Weaknesses of the public sector comparator
- ▶ Discounting and the net present value (NPV)
- ▶ VFM and affordability.

Information about PFI schemes

In order to challenge the figures fully, branches will need all the information they can get. Many of the important calculations are not in the main report – the OBC or the FBC – but are contained in appendices and supporting information. Branches often have difficulties in getting information about PFI schemes (see *Section 3: Getting and using information*). It is essential to establish what the full set of information is and which bits have been provided to the branch.

Make sure you have all the appendices to the

OBC and the FBC.

Value for money and the public sector comparator

'Value for money' (VFM) is at the heart of all PFI schemes. Every scheme must show that it can provide better value for money by comparing it with a public sector comparator (PSC). The PSC is 'a reference point against which to compare PFI bids' ⁽¹⁾. It must include an assessment of the risks that would be transferred to the private sector under the PFI but which would otherwise remain in the public sector if the PFI did not

go ahead. The PSC is constructed by the same people who put together the PFI – the public authority seeking a PFI.

In an ideal world, the public sector comparator (PSC) would show the cost of a scheme if a public authority provided the service itself, in other words, a public sector alternative. However, the role of the PSC in PFI projects is different. Under PFI, the PSC is a 'hypothetical benchmark'. That means it is a device for demonstrating the savings or value for money of the PFI option and it is constructed according to strict rules⁽²⁾ (see below for *Weaknesses of the PSC*).

According to the Treasury Taskforce, 'the purpose of the PSC is to provide a benchmark against which to form a judgement on the value for money of PFI bids'.⁽²⁾ It is largely a paper exercise to justify using PFI.

The Government claims that PFI will provide value for money because the private sector:

- ▶ Is required to design, build and operate services leading to greater efficiency.
- ▶ Is better able to find innovative solutions and manage better than the public sector.
- ▶ Achieves more intensive exploitation of assets, for example letting out school buildings out of hours.

Finally, PFI is supposedly better value for money because:

- ▶ Risks are allocated to the parties able to manage them at least cost.

This last requirement is the most important in any calculation of value for money in PFI: the authority and the contractors have to identify what the risks in the contract are, who has responsibility for them and put a cost on them. Risk is dealt with in more detail in *What risks?* below.

The case for private sector efficiency is not supported by any evidence but is merely asserted. However:

▶ While some PFI projects are built on time and at cost, others have seriously overrun. But there is no reason why incentives couldn't be built into conventional procurement to ensure schedules are met. After all, PFI schools and hospitals are built by the same companies who built schools and hospitals in the past. The Public Accounts Committee report on the PFI for Dartford and Gravesham hospital revealed that public capital projects had improved their track record in the NHS.⁽³⁾

- ▶ The public sector has always innovated and developed services. Now, under PFI, only the private sector is allowed to

innovate. The public sector must specify what it wants and leave the private sector to suggest the best way to achieve this. There are examples of good and bad management in all sectors.

► The private sector may indeed achieve a more intensive use of assets but this is a *problem* with PFI not an efficiency. In PFI schemes there is much more mixed use of assets by the private sector, for example letting out schools and sports centres at all hours, and the profit interest that drives this can conflict with the legitimate needs of the public services.

PFI increases the pressure to generate income, often putting the interest in paying users first – for example, there are more private beds in PFI hospitals.

What risks?

Table A lists the types of risk that may occur in a PFI project, according to the Treasury Taskforce in their advice.⁽²⁾ These include the risks that construction is not completed on time, to budget and to specification; that demand for services does not match the planned levels; that the costs of keeping the asset in good condition vary from what was budgeted for; and that the operating costs vary, standards fall or services cannot be provided.

For every risk that is identified, it is also necessary to estimate the likelihood of it happening and put a price on it. Some of the hardest negotiations in a PFI scheme will be between the contractor and the public authority over who takes which risks, and what value is placed on each risk. The Treasury Taskforce itself says 'estimating probabilities is not an exact science and inevitably assumptions – sometimes quite bold ones – have to be made'.⁽²⁾

Remember, every assumption is open to challenge precisely because it is not an exact science. So look carefully at the risks in your project.

Some risks are never transferred and always remain in the public sector, for example, demand risk, legislative risk and unforeseen environmental factors.

For many PFI projects, it is only the transferred risks that make the project value for money. At Carlisle hospital there was a tendency to attribute risks to the consortia which they have not in fact taken on under the contract' and 'some £5m was added to the Net Present Cost of the PSC to pay for the risk of clinical savings targets not being met and a further £2.5 million was added for the risk of medical litigation. Neither risk was actually transferred under the PFI contract. By suggesting that they are transferred, the Net Present Cost of the public sector option is inflated by £7.2 million.⁽⁴⁾

Another danger is that the cost of a transferred risk may be exaggerated. So, taking research on Carlisle again, the UNISON report⁽⁴⁾ showed that the hospital trust had greatly

Table A: Treasury Taskforce – types of project risk

Availability risk	The risk that the quantum of the service provided is less than required under the contract.
Construction risk	The risk that the construction of the physical assets is not completed on time, to budget and to specification.
Decant risk	The risk arising in accommodation projects relating to the need to decant staff/clients from one site to another.
Demand risk	The risk that demand for the service does not match the levels planned, projected or assumed. As the demand for a service may be (partially) controllable by the Government, the risk to the public sector may be less than that perceived by the private sector.
Design risk	The risk that the design cannot deliver the services at the required performance or quality standards.
Inflation risk	The risk that actual inflation differs from assumed inflation rates.
Legislative risk	The risk that changes in legislation increase costs. This can be subdivided into general risks, such as changes in corporate tax rates, and specific ones which may discriminate against PFI projects.
Maintenance risk	The risk that the costs of keeping the assets in good condition vary from budget.
Occupancy risk	The risk that a property will remain untenanted – a form of demand risk.
Operational risk	The risk that operating costs vary from budget, that performance standards slip or that the service cannot be provided.
Planning risk	The risk that the implementation of a project fails to adhere to the terms of planning permission, or that detailed planning cannot be obtained, or, if obtained, can only be implemented at costs greater than in the original budget.
Policy risk	The risk of changes of policy direction not involving legislation.
Residual value risk	The risk relating to the uncertainty of the value of physical assets at the end of the contract.
Technology risk	The risk that changes in technology result in services being provided using non-optimal technology.
Volume risk	The risk that actual usage of the service varies from the level forecast.

overestimated the costs of the construction risk. Taking this together with the risks that were not transferred, total risk adjustment was reduced by £11.5 million, leaving the public sector comparator better value for money than the PFI option. This is illustrated in Table B.

Look carefully at the risks in the project. Check that they are real and that the costs of these risks are not being exaggerated.

SENSITIVITY ANALYSIS

The Treasury Taskforce recommends that an analysis be done to see what happens if any of the assumptions underlying a PSC are wrong. This is called a sensitivity analysis:

‘Sensitivity analysis involves consideration of the effect on the project’s net present value if the assumptions made turn out to be incorrect. Such analysis can identify the point at which changes in the assumptions are sufficiently significant as to change the conclusion drawn from the net present value calculation’ [that is, whether the PFI does offer better value for money].⁽²⁾

A good project will still show savings even if the assumptions are changed. In practice, the research undertaken for UNISON shows clearly that very small changes in the assumptions will change the outcome of the VFM analysis. In one schools project UNISON was told that there was no point in undertaking a sensitivity analysis because the savings were so small that they would clearly change dramatically if even small changes were made in the assumptions, and yet this scheme has been passed by the Treasury Taskforce.

The Public Accounts Committee said this about the Dartford and Gravesham hospital PFI⁽³⁾: ‘The savings expected for the PFI option were sensitive to changes in assumptions about the level of capital operating costs. The PFI option should become more expensive than a conventionally funded hospital if the capital or operating expenses were ten per cent less than those assumed in the comparator’.

The Committee went on to recommend that ‘the NHS periodically recheck the assumptions made in previous value for money assessments against actual experience to inform assessments for future projects’.

Ask your authority exactly what sensitivity analyses have been undertaken, look carefully at the results and, if necessary, challenge them.

THE FINAL STAGE

This is to decide which risks will be borne by the public author-

Table B: Risk adjustment to Public Sector Comparator and corrected for known errors at the Carlisle PFI

Type of risk	(1) NPC of PSC £m	(2) Costs of risks £m	(3) PSC adjusted for risk (1)+(2) £m	(4) PSC with actual risks £m
Construction cost overrun	46.5	6.5	53.0	49.0
Operational risk	58.5	5.2	63.7	63.7
Lifecycle costs	10.8	1.6	12.4	12.4
Medical litigation	0	2.5	2.5	0
Clinical cost savings	0	5.0	5.0	0
Other	36.7	–	36.7	36.7
TOTAL	152.5	21.8	174.7	162.8

NPC of PFI Option is £172.6m. Adjusting the risk for the PSC alters the outcome of the appraisal, with the PSC better value for money than the PFI
 Source: *The Only Game in Town. A report on the Cumberland Infirmary Carlisle PFI*, UNISON Northern region.
Note: the figures may not add up exactly due to rounding.

ity and which will be transferred to the contractor. For this, risks are put into three categories:

- ▶ Risks transferred from the public sector client to the successful bidder.
- ▶ Risks retained by the public sector.
- ▶ Risks shared by both parties.

It is important to check which risks your PFI project claims to be passing on to the private sector and which it is keeping. Do they seem reasonable? What values are being placed on them? If you have doubts about this part of the report, you may wish to get some expert help. Your national service group officer will be able to suggest consultants and academics who might undertake the work for you.

Check which risks the PFI project claims to be passing on to the private sector.

WHO REALLY BEARS THE RISK?

In reality the public sector has to pick up the tab if a PFI scheme fails on any of these risks or fails to operate at all – there are many examples of PFI contracts failing. The most public exam-

ple is the fiasco in the Passport Agency where the private company, Siemens Business Services (SBS), failed to provide a computer system that worked, leading to huge delays in processing passports, long queues at passport offices and ultimately more expensive passports.

The cost of this failure was £12.6m but SBS has paid just £2.45m of the costs. The cost of the risk has actually been passed to the public who will now have to pay an additional £7 for a passport.

At Parc Prison near Bridgend in Wales, many of the operational risks have remained with the public sector. Penalties that can be levied from the company for non-compliance are limited to 5% of the annual contract price. The Commons Public Accounts Committee has severely criticised this arrangement.

If a school or a hospital ward has to close, any financial sanctions against the contractor will not compensate for the fact that the public will be without a service. Pupils will not be taught and patients will not be treated while the PFI scheme is not being delivered. The ultimate risk stays with the public sector.

Question whether risks transferred to the private sector have sufficient penalties. Look at the small print.

A NOTE ON REFINANCING PFI DEALS

It is possible for the risks of a PFI deal to change as the project progresses. In particular, the construction risk will disappear as soon as the construction period is over and this is considered one of the greatest elements of risk in a project. At Colfox School in Dorset, the contractor, Jarvis, went back to its bankers after construction, and, on the basis of less risk, refinanced the remainder of the deal, making substantial savings, said to be more than 44% of the cost of borrowing.

Surprisingly, not all public authorities seem to be aware that refinancing can happen. Does your project team know? Have they taken the large savings from refinancing into account – because the contractor will certainly do so.

The Public Accounts Committee said this about Dartford and Gravesham hospital PFI: 'The refinancing of a deal is an important potential source of additional profit for the private sector... We therefore expect NHS trusts to reach a clearly agreed position on refinancing with their private sector partners when closing the deal.'⁽³⁾

Check that any savings from refinancing will go to the public authority and not to the private consortium.

Weaknesses of the public sector comparator

There is detailed advice on the PSC from the Treasury Taskforce⁽²⁾. The main elements in a PSC are:

- ▶ The capital costs of construction.
- ▶ The costs of providing the services that are part of the PFI project.
- ▶ The cost of *retaining the risks* that would have been transferred to the private sector under a PFI procurement.

The assumptions underlying the PSC favour the private sector and therefore the PFI. For example, it is often assumed that only the private sector can modernise services and the Treasury states that the PSC 'is based on the recent actual public sector method of providing that defined output (including any reasonably foreseeable efficiencies the public sector could make)'.⁽²⁾

So the Treasury advice limits the extent to which services can be modernised within the PSC. However, the Public Accounts Committee criticised Dartford and Gravesham because the 'public sector comparator did not take into account the improvements in traditional procurement which are now being achieved as result of lessons learned on previous projects. NHS trusts should not assume, when preparing comparators, that their past performance will continue unchanged in the future, especially where that past performance has been particularly poor. We recommend that, instead, they should make reasonable assumptions about their ability to improve their future procurement performance.'⁽³⁾

Given the scale of investment in PFI projects it would be reasonable to expect current methods of delivery to change quite radically; that a new project would review existing practices and that the opportunities and efficiencies from new technology might also be applied.

Ask whether the public sector comparator reflects the Public Accounts Committee advice and has reasonable assumptions about future improvements to the service.

The PSC is an accounting device for PFI and is not a public sector alternative. Recent government statements admit that PFI brings in no additional money for public investment but claims that PFI does bring better value for money.⁽⁵⁾ If this is so, then public authorities should be allowed to consider other methods of procurement, and not be forced into PFI whatever the costs.

WHAT SAVINGS ARE THERE FROM PFI?

Government statements often claim that PFI schemes have

reduced the cost of services. A recent report from the financial advisers Arthur Andersen⁽⁶⁾ suggests that 17% cost savings have been achieved in a sample of PFI schemes. From the way in which this figure is routinely quoted by government, it would be natural to take it as meaning that the cost of providing the services in question has reduced by 17%. In fact, the 'savings' referred to by Andersen relate solely to the outcome of VFM analysis. They represent the difference between the PFI and the public sector comparator, not the difference between what services cost before and after the PFI. See the UNISON PFI website for a critique of the Anderson report.

Discounting and the net present value (NPV)

PFI projects measure value for money by taking the costs of the project for each year of its life and calculating what they would be worth at today's prices, that is, by discounting them to calculate the net present value (NPV).

The overall effect of the NPV is that costs reduce the further in the future they occur. However, one of the main differences between PFI and a publicly-funded project is that for PFI the costs are deferred far into the future while publicly-funded projects have to meet their costs in the first few years.

So PFI projects are usually going to have lower NPVs and therefore appear to offer better value for money. It is possible for a PFI scheme to cost more than a public sector comparator in hard cash and yet to have a lower NPV.

There are two key elements underlying the NPV:

- ▶ The length of the project
- ▶ The discount rate used.

LENGTH OF PROJECT

NPV favours longer projects which spread payments over a long period such as for PFI. The UNISON study of the North Durham PFI hospital scheme showed that over thirty years the public sector comparator would have cost less by a discounted value of £22m. The trust extended the calculation period to 60 years, at which point, the two schemes came out with an identical value, even though the project is only for 30 years.⁽⁷⁾

Check the impact of the length of the contract on the final cost of the scheme

THE DISCOUNT RATE

In order to bring all the yearly costs of a project to a single value in the present they are discounted by a percentage for

each year that separates them from the present. The value given to that percentage is known as the discount rate.

The Treasury currently uses 6% for the public sector PFI schemes and this is an entirely arbitrary figure. Small changes in the discount rate used can alter the entire VFM calculation.

The Commons Public Accounts Committee, in reviewing the first DBFO roads schemes in 1997, recommended that a range of discount rates be used in future appraisals. Researchers tested the discount rate used for the hospital PFI at Carlisle and found that all the savings disappeared when the rate was lowered from 6.0% to 5.7%.⁽⁴⁾

Value for money and affordability

Value for money is not the same as affordability. Just because a scheme passes the VFM test does not mean that it is affordable. It may be argued that a Mercedes Benz represents better value for money than a Ford Fiesta in the long term, but this is of limited relevance to somebody who cannot afford a Merc.

For a scheme to be affordable, a public authority must have sources of funding available to meet the full costs of the scheme in every year of the contract period. The example below of Dartford and Gravesham shows that the additional costs of the PFI schemes have had to be found from other services. Similar affordability gaps have been found in other schemes.

DARTFORD AND GRAVESHAM HOSPITAL OVERESTIMATED SAVINGS

The first NHS trust to sign a PFI contract, Dartford and Gravesham, was heralded as a flagship PFI project. But in April 2000 the Commons Public Accounts Committee reported that the scheme had failed to make the expected savings:

- ▶ Instead of 9% savings of £17 million over the PSC, the project had only realised 3% or £5 million.
- ▶ The NHS failed to estimate correctly the costs of this long-term contract and extra funding of over £4 million a year is now required to enable the trust to meet its commitments. 'Over half of this extra funding would otherwise have been spent on other health services in West Kent.'
- ▶ The trust failed to detect significant errors in the public sector comparator and it now expects to achieve some £12 million less in savings.⁽³⁾

Summary

PFI uses complex processes and analyses to obtain value for money calculations. But the methods used are crude and inexact and must be challenged at every step of the way.

Action point checklist

Action point 1

Make sure you have all the appendices to the OBC and FBC.

Action point 2

Look carefully at the risks in the project. Check that they are real and that the costs of these risks are not being exaggerated.

Action point 3

Ask your authority exactly what sensitivity analyses have been undertaken and be prepared to look carefully at the results and, if necessary, challenge them.

Action point 4

Check which risks the PFI project claims to be passing on to the private sector.

Action point 5

Question whether risks transferred to the private sector have sufficient penalties. Look at the small print.

Action point 6

Check that any savings from refinancing will go to the public authority and not to the private consortium

Action point 7

Ask whether the public sector comparator reflects the Public Accounts Committee advice and has reasonable assumptions about future improvements to the service.

Action point 8

Check the impact of the length of the contract on the final cost of the scheme.

Notes

1. Partnerships for Prosperity, *The private finance initiative*, November 1997.
2. Treasury Taskforce Technical Note No.5, *How to construct a public sector comparator*.
3. Public Accounts Committee twelfth report, *The PFI contract for the new Dartford and Gravesham Hospital*, March 2000.
4. David Price, Declan Gaffney and Allyson Pollock, *The only game in town*, UNISON December 1999.
5. See Peter Robinson, *PFI and public finances*, IPPR, March 2000.
6. *Value for money drivers in the private finance initiative: A report* by Arthur Anderson and Enterprise LSE, commissioned by the Treasury Taskforce, January 2000.
7. Declan Gaffney and Allyson Pollock, *Downsizing for the 21st century: A report to UNISON Northern region on the North Durham Acute Hospitals PFI scheme*, Second Edition, 1999.

Activity 5

CHALLENGING THE FIGURES

This activity will help you to:

- ▶ **Make sure you have all the information you need on the PFI project.**
- ▶ **Develop questions you need to ask on the proposal.**
 - ▶ Where an outline business case (OBC) full business case (FBC) has been produced, make sure you have the appendices that go with them. These are the additional sections not included in the main document. They contain important financial information.
 - ▶ Look back at the list of information needed that you developed in Activity 3. Check the list to find out what you have obtained and what you still need.
 - ▶ Make a list of questions you need to ask the employing authority about:
 - What risks have been costed into the public sector comparator (PSC).
 - You can use UNISON's analysis of the Carlisle PFI project to help you to do this – *The only game in town* (see *Appendix E: Resources*).
 - Has a sensitivity analysis been carried out and what was the outcome?
 - Have refinancing options been taken into account?

Decide whether you think it would be appropriate to get the OBC and its appendices professionally analysed. If you decide to do this, contact your regional officer for advice.

6. *Interviewing shortlisted bidders*

This section looks at opportunities for interviewing shortlisted bidders for PFI contracts.

Branches should get a list of the shortlisted bidders from the employer and find out as much about them as possible. You can get information about the companies from the pre-qualification questionnaire and appendices. You can also get information about companies from the UNISON Bargaining Support Group. (see *Appendix E: Resources* for how to contact them).

Get a list of the shortlisted bidders from the authority and find out as much as possible about them.

Whenever staff are included in a scheme UNISON should have the right to interview the shortlisted bidders. UNISON's right to interview shortlisted bidders in NHS PFI schemes enables the union to assess the employment records of various contractors and gives us an opportunity to influence the selection. Outside the NHS the union can raise this as a demand and seek to gain similar rights. This should apply whichever groups of staff are faced with transfer.

The interview process in the NHS is outlined below. You can also get more detailed advice from *PFI in the NHS: Interviewing shortlisted bidders* from the UNISON PFI website or from the Health Service Group at head office. See *Appendix E: Resources*.

Get a copy of the detailed advice on interviewing shortlisted bidders from UNISON. It is on the website at www.unison.org.uk/pfi or available from the Health Service Group at head office.

Interviewing shortlisted bidders: NHS procedures

In the NHS a trust must evaluate bidders' proposals, as far as they relate to the delivery of the contract on:

- ▶ How they apply TUPE (transfer of undertakings)
- ▶ Management of staff and labour relations
- ▶ Pay, terms and conditions
- ▶ Overall policy.

To make sure that happens in the health service, trade unions representing NHS staff are entitled to interview the shortlisted bidders for the PFI contract and report to the NHS trust on how each bidder measures up.

The branch will need to put together an interview team. A strong team will comprise three or four union representatives with a mix of skills and expertise in both negotiating and representing and a knowledge of the services likely to be included in the PFI. Branches should check whether the regional officer wants to attend each interview.

Select your interview team.

PREPARING TO MEET THE BIDDERS

The relevant trade unions then have the right to meet the shortlisted bidders. Appropriate release should be granted for trade union representatives to prepare for these meetings. Ask UNISON's Bargaining Support Group for a profile of each of the shortlisted bidders. This will give you a briefing on the company and might suggest questions you would like to ask them.

Organise a pre-meeting and plan how you will handle the interview.

Decide what questions you will ask (use the list here to help you) and devise questions to probe into what you have found out about companies' track records on employment or involvement in similar schemes.

WHAT TO EXPECT

- ▶ Representatives should meet each of the shortlisted bidders and ask them questions based on their response to the ITN.
- ▶ They should be able to discuss the output specifications and bidders' service and design proposals, as these will affect staff.
- ▶ Do not expect bidders to give details of contract pricing.
- ▶ There should then be an agreed minute of the meeting.

If bidders refuse to provide the information refer the matter to your regional officer.

REPORTING ON THE INTERVIEWS

The trade unions should then assess the responses made by bidders and send a report indicating their preferred bidders (if any). Union comments should also be passed on to bidders for a response.

It is important that unions should not endorse any contractor but use the interviewing process to ensure contractors are pressed to provide guarantees on employment terms and conditions. UNISON has reached agreements with major private contractors and negotiated comprehensive staff protection agreements with contractors in most PFI schemes.

The trust should take the trade unions' assessment into account but the final choice of bidder remains with the trust. Contact your regional officer if the trust or authority overrides union views.

You will face the prospect of having to make a

'recommendation' on the preferred bidder.

Remember, what you are doing is vetting and not endorsing!

Sample questions to shortlisted bidders

- ▶ Will you guarantee to honour existing terms and conditions (including the right to future increases agreed at national level) until such time as the union agrees to changes?
- ▶ Will you employ new staff on existing terms and conditions?
- ▶ What changes would you propose to existing staffing levels and working practices?
- ▶ If there were redundancies how would these be handled?
- ▶ What pension provision does the company make for new staff?
- ▶ What assurances could you offer staff currently on temporary or fixed-term contracts about their future employment?
- ▶ Will you recognise UNISON and other existing unions for all purposes including collective bargaining?
- ▶ If you are awarded the contract, at what point would you wish to open negotiations with the unions on staff transfer issues, including terms and conditions?
- ▶ What is the company's equal opportunities policy and has the company ever been the subject of an investigation?
- ▶ What is the company training policy and would the

PENSION PROVISION

Pension provision is a key area for any assessment. There are two issues:

- ▶ Pensions for transferred staff.
- ▶ Pensions for new staff taken on after transfer.

Pensions for transferred staff

Although there are requirements for contractors to provide schemes certified as broadly equivalent by the Government Actuary's Department, in practice it may be difficult to make a comparison. Seek advice from your local regional officer.

In local government it is now possible for contractors to join the Local Government Pension Scheme (LGPS) and for staff to remain in it. However, it is up to the contractor to choose. So ask each shortlisted bidder whether they plan to join the LGPS.

The same opportunity does not exist in the NHS. UNISON is campaigning for staff to be able to stay in the NHS pension scheme. In the NHS pension related benefits should also transfer. Contact the health group for more advice on this.

Pensions for new staff

Few contractors, if any, provide equivalent pensions for new staff.

company be willing to run a return to learn scheme for its staff?

- ▶ Can you provide copies of your health and safety policies, including information on safety organisation and arrangements, plus accident records over the last five years with information on any prosecutions and other statutory notices?
- ▶ How will this project fit into your organisation and why are you interested in it?
- ▶ Do you intend to change how services are provided?
- ▶ There will be questions that apply in specific projects or service groups. Contact your national service group for advice.
- ▶ Have you had an industrial or employment tribunal case taken against you on TUPE or related issues in the past three years?

Action point checklist

Action point 1

Get a list of the shortlisted bidders and find out as much as you can about them.

Action point 2

Get a copy of the detailed advice on interviewing shortlisted bidders from UNISON. This is available on the website <http://www.unison.org.uk/pfi> or from the Health Service Group at head office.

Action point 3

Select your interview team.

Action point 4

Organise a pre-meeting and plan how you will handle the interview.

Action point 5

Decide what questions you will ask and devise questions to probe into what you have found out about companies' track records on employment or involvement in similar schemes.

Action point 6

You will face the prospect of having to make a 'recommendation' on the preferred bidder. Remember, you are vetting and not endorsing!

Activity 6

INTERVIEWING SHORTLISTED BIDDERS

This activity will help you to organise and find information about private contractors bidding for the PFI project.

► Find out where in the 14 stage process the PFI project is. Look at *Appendix B: The PFI process* and decide at which stage you think your employer's PFI proposal is. The opportunity to interview shortlisted bidders is well into the process.

You can get information from the UNISON PFI website, the Bargaining Support Group at head office and your regional office.

► Find out which companies are bidding for the PFI contract.

► Find out as much as you can about the companies. The Bargaining Support Group has information on all the major PFI companies and can send this to you. You should also check the Discussion Forum and website.

► Use the sample questions in this guide and information about the companies to develop a list of questions you will ask. This is when you may be able to influence the decision and get vital information on companies' attitudes to future employment and relations with unions.

► After the interviews prepare your report to the employer on the companies interviewed.

► Pass on any information you have obtained to the Bargaining Support Group or post it up on the Discussion Forum. It may be helpful to others dealing with the same company.

7. *Negotiating PFI agreements*

Branches should seek to minimise the services that are transferred to the private sector. However, if staff have to transfer to the PFI company, branches should try to negotiate a staff protection agreement with the existing employer or contractor at the earliest possible stage before any staff transfer. This section looks at what to include in such an agreement.

If staff are transferring negotiate a protection agreement at the earliest possible stage.

Decide who will be on your negotiating team and who will speak on what. Make sure every member of the team is briefed on what the branch negotiating priorities are.

Select a negotiating team.

Staff protection agreements

The agreement should provide a framework for protection of staff on top of government guidance. In the NHS UNISON believes agreements should if possible be with the trust as well as with the contractor and they should cover new staff employed by the PFI contractor not just those transferring.

Try to get the agreement with the existing employer as well as with the contractor.

Department of Health guidance requires NHS employers to recognise that:

‘TUPE ensures that employment contracts are protected at the point of transfer to a new employer. Thereafter pay and conditions of service may only be changed as a result of the normal joint process with the agreement of all sides.’

Department of Health, *Public private partnership in the NHS*, Vol 1, 1999, Paragraph 13.20

Under TUPE, transferred staff’s rights to pay increases agreed nationally are also protected. Best practice in staff protection agreements in the NHS extended this principle to cover all staff. In some cases these protections are for the lifetime of the contract and in most cases for a minimum of five years.

Staff protection agreements should also cover all policies, procedures and benefits such as pensions and the NHS injury benefit scheme. Branches should seek both the best possible protection in the agreement and also the longest possible time for it to be in force.

Branches should equality proof staff protection agreements to ensure that they do not unlawfully discriminate against particular groups – women, black workers, disabled workers.

Agreements should cover all existing and new staff and take account of allowances and benefits for particular groups. A two-tier pay and conditions system could be potentially discriminatory. Branches should ensure equal treatment for full-time and part-time staff whether permanent or temporary.

Involve members from all affected groups to ensure that their concerns are being addressed.

Equality proof any protection agreements

to make sure they do not potentially unlawfully discriminate against particular groups of staff.

Transfer of staff to a PFI contractor raises recognition and representation issues for UNISON branches that need to be addressed. Staff protection agreements should provide for trade union recognition. UNISON now has national union recognition agreements with most major contractors as well as local recognition agreements.

Branches can find out from the UNISON Bargaining Support Group at head office whether there is an existing national recognition agreement with the contractor. In addition to formal recognition agreements, branches should consider what new local bargaining arrangements need to be negotiated with the existing employer and the contractor.

Maximise your negotiating strength by campaigning and recruiting as many members as possible in the affected areas.

This has implications for local UNISON organisation and branches should be thinking ahead about arrangements for member representation and seeking to ensure that UNISON reps employed by the existing employer can continue to represent members transferred to the contractor and vice-versa.

Involve members in the campaign and keep them up to date with negotiations by issuing a PFI bulletin or ‘piggy-backing’ meetings arranged by management to brief staff on the PFI.

Find agreements reached in other PFI projects – especially those that involve the same contractor – and see how you can improve on them. Contact the Bargaining Support group/service group for information.

Staff protection and collective agreements – checklist

PFI staff protection agreements should:

- ▶ Be negotiated as early as possible before transfer, as soon as you know staff are to be included in the PFI.
- ▶ Be directly between UNISON and the PFI company or, if at all possible, incorporated into the contract between the current employer and the PFI company.

The agreement should include:

- ▶ Recognition of the appropriate unions for collective bargaining and time off for trade union duties including recognition of current representatives as being capable to represent all members unless alternative arrangements are agreed.
- ▶ No alteration of any existing staff terms and conditions for the lifetime of the contract without trade union agreement, with the exception of changes introduced by national agreement or by law.
- ▶ New employees to be employed on equivalent terms.
- ▶ Any proposals for separate terms and conditions for new staff should be subject to agreement with the union.
- ▶ Comparable pensions or admitted body status to the Local Government Pension Scheme as appropriate.
- ▶ Maintenance of existing staff terms and conditions for the lifetime of the contract.
- ▶ A negotiating structure for changes to procedural agreements and policies.
- ▶ A role for the public body in monitoring the staff policies of the PFI company.
- ▶ A guarantee of no compulsory redundancies set out in an employment security clause which provides for retraining, redeployment or early retirement for staff whose jobs are no longer required.

- ▶ Adherence to all anti-discrimination legislation, including codes of practice, by all service providers. This should include European and UK equal pay and sex, race and disability discrimination laws, and, where appropriate, existing employer procedures.

- ▶ Adherence to European and UK health and safety legislation, including provision of appropriate training for staff.

- ▶ Training and development plans for all groups of staff, linked to recognised industrial standards and professional qualifications (including agreement to provide training such as UNISON Return to Learn programmes)

- ▶ Policies to protect 'whistleblowers'.

- ▶ An agreed timetable for the transfer of staff. Transfer of staff should ideally be delayed until the opening of the new facility.

- ▶ If the contractor sub-contracts all or part of the services, it should be a requirement that any sub-contractor or successor sub-contractor will not change any terms and conditions of employment, including pensions, without agreement with the trade unions. The existing employer should also agree that it will use its role in determining sub-contracting to ensure that this happens.

- ▶ A clear statement of what will constitute consultation between union, contractor and existing employer.

Refer to your Regional Officer for further advice. Your national service group may also issue information on negotiating agreements.

Action point checklist

Action point 1

If staff are transferring, negotiate a protection agreement at the earliest possible stage.

Action point 2

Select a negotiating team.

Action point 3

Try to get the agreement with the existing employer as well as with the contractor.

Action point 4

Equality proof any protection agreements to make sure they do not potentially unlawfully discriminate against particular groups of staff.

Action point 5

Maximise your negotiating strength by campaigning and recruiting as many members as possible in the affected areas.

Action point 6

Involve members in the campaign and keep them up to date with negotiations by issuing a PFI bulletin or 'piggy-backing' meetings arranged by management to brief staff on the PFI.

Action point 7

Find agreements reached in other PFI projects – especially those that involve the same contractor – and see how you can improve on them.

Contact the Bargaining Support Group, your Regional Officer or your service group for more information on negotiating agreements.

Activity 7

NEGOTIATING PFI STAFF PROTECTION AGREEMENTS

This activity will help you to:

- ▶ **Decide your negotiating priorities**
- ▶ **Prepare for negotiations**

Negotiations

Look at the checklist in this guide on PFI staff protection agreements.

Decide what your negotiating priorities will be.

Decide whom you will have to approach about the negotiations.

Decide who will negotiate on behalf of the branch: a range of skills and experience, including financial if possible, is likely to be helpful.

Look at the UNISON Discussion Forum to see if there are any other agreements that can help you.

Union organisation

How will you ensure that the UNISON branch can still represent members transferred to the private contractor? The branch secretary, for example, may still be employed by the local authority or NHS trust and not by the private contractor.

What changes will this mean to your facilities agreement and arrangements for meetings?

Sharing information

Post up any information or agreements you reach on the UNISON PFI Discussion Forum, or send it to your national service group.

<p>ASB Accounting Standards Board</p> <p>Audit Commission Established in 1982 with responsibility for the external audit of all local authorities</p> <p>Best Value A statutory system of service improvement and measurement for local government</p> <p>Bidder A private sector consortium bidding for a PFI procurement</p> <p>Capital expenditure Spending that produces an asset for example a hospital or school</p> <p>Consortium Group of companies interested in jointly bidding for a PFI project</p> <p>CPAG Capital Prioritisation Advisory Group which selects schemes for further development work in the NHS</p> <p>DBFO Design, build, finance, operate: a type of PFI project</p> <p>DETR Department of Environment, Transport and the Regions</p> <p>DfEE Department for Education and Employment</p> <p>Discounting A comparison of quantities that are distributed over time by converting them to a present value by applying a discount rate</p> <p>Discount rate The percentage by which costs are adjusted to today's values.</p> <p>DoH Department of Health</p> <p>Facilities management Support services</p>	<p>FBC Full business case</p> <p>4Ps Public Private Partnerships Programme, a body that advises local government on PFI</p> <p>Hard services (sometimes known as hard facilities management services) Services for the maintenance of an asset, such as building maintenance.</p> <p>ITN Invitation to negotiate – a stage in the PFI process that follows shortlisting</p> <p>Net present cost (NPC) Similar to NPV but measures discounted benefits less costs over time.</p> <p>NPV Net present value – the sum of cash flows over time, discounted to the present value</p> <p>OBC Outline business case</p> <p>OJEC notice Advertisement for PFI project that must be published in the <i>Official Journal of the European Communities</i>.</p> <p>PPP Public private partnership</p> <p>Procurement The process by which the public sector buys in services or products</p> <p>PSC Public sector comparator: device for comparing the costs of the PFI with the costs of a public sector option</p> <p>PSNCR Public sector net cash requirement (formerly PSBR)</p> <p>Public sector alternative Genuine, publicly funded, alternative to PFI that the public sector would like to have</p>	<p>PUK Partnerships UK – commercial offshoot from the Treasury Taskforce that advises on projects</p> <p>Reference project Another name for the public sector comparator</p> <p>Residual value The expected value of a capital asset at some future date, such as at the end of a contract</p> <p>Risk transfer The process of moving the responsibility for the financial consequences of a risk from the public to the private sector</p> <p>Sensitivity analysis Analysis of the effects on an appraisal of varying the values of key variables.</p> <p>SOC In the NHS, a strategic outline case sets out the initial case for investment</p> <p>Soft services Support services such as cleaning, caretaking, portering, catering</p> <p>SPV Special purpose vehicle: a company specially set up to provide the private sector part of the PFI project</p> <p>TTF Treasury Taskforce: department that oversees the PFI process on behalf of government</p> <p>TUPE Transfer of Undertakings (Protection of Employment) Regulations 1981</p> <p>TUPE Plus Negotiated enhanced terms of transfer that are better than TUPE</p> <p>VFM Value for money</p>
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In order to improve the flow of PFI projects the Government set up the Treasury Taskforce which produces advice on PFI and has attempted to standardise the process as far as possible.

The Taskforce has defined 14 stages in the PFI process which are common across the public services and this guide is broadly structured on these stages. (Treasury Taskforce *Step by step guide to the PFI procurement process*, HM Treasury, April 1998)

The 14 stages of the PFI process are outlined in Table C below. We have grouped the 14 stages into four phases in order to make them easier to understand.

Table C: The Treasury Taskforce's 14 stages of the PFI process

Table C: The Treasury Taskforce's 14 stages of the PFI process	
<p>A. PLANNING AND DEVELOPMENT</p> <p>Stage 1 Establish business need The possible need for capital investment is identified</p> <p>Stage 2 Appraise the options <ul style="list-style-type: none"> ▶ Scope of the project ▶ Range of options ▶ Affordability </p> <p>Stage 3 Business case and reference project <ul style="list-style-type: none"> ▶ Output specification – definition of the services required ▶ Outline business case – the case for a PFI investment that consists of: ▶ Reference project A solution to the specification that identifies the costs and risks of the project ▶ Public sector comparator The cost of a non-PFI alternative that takes account of the risks retained by the public sector </p>	<p>C. FINAL SELECTION OF PREFERRED BIDDER</p> <p>Stage 9 Refine the appraisal Further development of the OBC and PSC in the light of knowledge gained so far and reaffirmation of affordability and funding commitment</p> <p>Stage 10 Invitation to negotiate Detailed prospectus for shortlist that includes: <ul style="list-style-type: none"> ▶ Services required in output terms ▶ Proposed contract terms ▶ Timetable for procurement ▶ Criteria for evaluating bids ▶ Extent to which variations in bids will be accepted </p> <p>Stage 11 Receipt and evaluation of bids Establish that bids meet value for money and affordability. Possibly ask bidders for a 'best and final offer'</p> <p>Stage 12 Selection of preferred bidder and the final evaluation <ul style="list-style-type: none"> ▶ Revisit the key issues of affordability and value for money ▶ Compare the preferred bid to the public sector comparator </p>
<p>B. PRELIMINARY TENDERING AND SHORTLISTING OF BIDDERS</p> <p>Stage 4 Developing the team Appointment of: project team, advisers and consultants</p> <p>Stage 5 Deciding tactics Planning the procurement process, for example how much information to request from prospective bidders</p> <p>Stage 6 Invite expressions of interest and publish OJEC notice Advertise the project in the <i>Official Journal of the European Community</i> (OJEC) and invite companies to express interest. The OJEC contains criteria for assessing potential bidders and requests information from them</p> <p>Stage 7 Pre qualification of bidders Preliminary assessment of bidders for general competence</p> <p>Stage 8 Selection of the shortlist More detailed assessment based on how bidders would undertake project</p>	<p>D. CONTRACT NEGOTIATION</p> <p>Stage 13 Contract award and financial close <ul style="list-style-type: none"> ▶ Negotiate final details ▶ Sign contract </p> <p>Stage 14 Contract management A new process that follows the procurement phase</p>

What about Best Value in local government?

UNISON'S BEST VALUE – BEST EMPLOYMENT CHARTER FOR LOCAL AUTHORITIES

Best Value will demand more of councils and more of employees. UNISON members are the majority of those employees. We want to see the best possible services provided to the public. Under Best Value this will mean that staff have to generate the efficiency, effectiveness, economy and continuous improvement which the new approach to service delivery requires. In return, staff will be looking for job security, quality pay and conditions, training and career opportunities to meet this new challenge. We want councils to work with UNISON to provide best employment for Best Value, using this charter.

The Government's *Best value guidance* recognises that the new regime will require well-motivated and well-trained staff. It contains a section on fair employment based on minimum statutory rights. UNISON wants councils to build this section to ensure real job security, protection of pay and conditions and better career prospects. Without these, staff providing services will face the future with fear of change, rather than as creators of change. Councils cannot afford that to happen.

Elected members, managers and staff will need to work in a genuine partnership to improve services. UNISON members know only too well what is needed to do that and what the public wants. They are their only direct contact point with the council in many services and they know how underinvestment and cuts have reduced quality alongside costs. An approach to Best Value which does not view the workforce as an equal partner with managers and elected members cannot succeed. So employee involvement at every stage in the process is central to this *Best Value – Best Employment Charter*.

UNISON wants to see a commitment by councils to keeping and improving direct services and staff, rather than wasting scarce resources on outside consultants, testing markets and the procurement process itself. Keeping services within the council and making them accountable to local voters should be a cornerstone of reviving local democracy. We want the Government to 'invest for change' through Best Value by providing the extra resources needed to kick start the new approach and invest in infrastructure, equipment, training, job security and quality employment. The change in performance they require demands it.

New services and innovative ways of providing existing services should mean job security for all council staff. A review of services or function may suggest that the ratios of staff will change across services. Loss of staff in one service should be compensated for by the need for more employees in another area. Staffing levels have been pared to the bone in many councils. We want to see job security guarantees, with the

promise of training and protected pay and conditions where staff are expected to move to another service or work in new ways.

Councils should build best employment into Best Value at every stage of the process. The local performance plan should make it clear that providing quality employment to council staff is key to quality services, a strong local economy and regeneration. Local performance indicators should reflect the need for equality, high skill levels and quality pay and conditions to secure a stable workforce. Service reviews should examine staffing and skill levels, equality in employment, workforce stability and pay and conditions with a view to achieving the well trained and well motivated workforce the Government wants and the public demands.

The NJC Best Value framework agreement and family friendly policies should be the starting point for best employment negotiations at local level. Local councils and UNISON must build on the NJC agreement commitment to staff involvement, in-house services and maintenance of Green Book conditions to meet the needs of employees within local Best Value plans. The agreement signals a commitment by the national employers to the joint approach UNISON has argued for and which we hope all local authorities will support. New powers under the revised Part II of the 1988 Local Government Act and Section 19 of the Local Government Act 1999 should be used to the full to involve and protect staff when transfers to external providers occur.

UNISON's *Best Value – Best Employment Charter* provides a checklist for UNISON branches and councils to ensure that key employment and training issues are progressed in negotiations and Best Value structures. We aim to use it as the basis for quality employment to provide quality services locally and to check out how near councils are to becoming Best Employers. All managers and personnel staff should use it as their starting point.

1. NJC framework agreement

- ▶ Has your authority adopted the NJC agreement?
- ▶ Does it apply to all services/departments?
- ▶ Is its implementation being monitored?

2. Job security

- ▶ Is there a 'no job loss' guarantee for staff in service review areas?
- ▶ Will staff be redeployed if service reviews suggest reduced staffing?

- ▶ Is there a redeployment policy agreed with the unions?
- ▶ Will staff receive training to enhance or develop new skills?
- ▶ Will pay and conditions be protected?
- ▶ Is there a guarantee against cuts in working hours for part-timers?

3. Pay and conditions

- ▶ Is the council committed to NJC pay and conditions?
- ▶ Will they apply to all Best Value services?
- ▶ Until the next service review cycle?
- ▶ Will contractors be expected to follow/apply the Green Book?

4. Trade union rights and employee involvement

- ▶ Does UNISON have recognition throughout the council?
- ▶ And with contractors?
- ▶ Is UNISON represented at all stages of the Best Value process?
- ▶ Including consultation exercises with service users?
- ▶ Are trade union members at all levels of the council involved?
- ▶ Does UNISON have an opportunity to influence which contractors are selected for the 'approved list' or to run contracts?
- ▶ Is there adequate facility time for UNISON involvement?
- ▶ Have trade union reps been trained for Best Value by the council?
- ▶ Do the branch/UNISON representatives have the right to all relevant information?

5. Training and development

- ▶ Have the training provisions in the Green Book been adopted?
- ▶ Are they being implemented?
- ▶ Has the council carried out a skills audit for Best Value?
- ▶ Do employees all have individual training accounts?
- ▶ Is there a commitment to lifelong learning?
- ▶ Has the council signed up to the Return to Learn programme with UNISON?
- ▶ Is there adequate training for multi-skilling where it's required?
- ▶ Linked to recognised qualifications?
- ▶ And for new application of IT and innovative ways of working?
- ▶ Are managers adequately trained for the job?
- ▶ Are UNISON reps given adequate time off for TUC and Best Value training?

6. Managing Best Value

- ▶ Is there a joint commitment to continuous improvement?
- ▶ What quality management systems have been adopted for Best Value?

- ▶ Have UNISON reps been trained in them?
- ▶ Are they based on a partnership approach?
- ▶ Do all managers have access to training in new management systems?

7. TUPE

- ▶ Has the council agreed to apply TUPE to all contracts?
- ▶ Including second generation and those returning in-house?
- ▶ Have they formally adopted the Government's staff transfers in the public sector approach?
- ▶ Where contracts have been externalised, are contractors applying protection for the life of the contract?

8. Externalisation framework

- ▶ Is UNISON consulted from the start of any procurement process?
- ▶ Is the council making full use of the revised Part 11 powers to ensure 'contract compliance' for best employment?
- ▶ Is UNISON involved in determining the questions to be asked of future contractors?
- ▶ Do they cover all key aspects of pay and conditions?
- ▶ Trade union recognition?
- ▶ Application of TUPE?
- ▶ Training?
- ▶ Equality issues?
- ▶ Pensions?
- ▶ Health and safety?

9. Pensions

- ▶ Is the council committed to transfer of full pension rights where contracts are externalised?
- ▶ Are pensions included in questions to potential contractors?
- ▶ Do the council seek to persuade contractors to seek 'admitted body status' to the local government pension scheme?

10. Equal opportunities

- ▶ Has the council got a comprehensive equal opportunities policy?
- ▶ And a positive action plan?
- ▶ Do they cover all areas of potential discrimination?
- ▶ Does the policy include equal pay?
- ▶ Is a commitment to equal opportunities included in the council's local performance plan?
- ▶ Is there an 'impact assessment' on all forms of equality included in the service review process?
- ▶ How will the impact of Best Value on equal opportunities and equal pay be monitored?
- ▶ Are there local performance indicators to address equality issues?

11. Equal pay and job evaluation

- ▶ Has the council adopted the EOC Code of Practice on equal pay?
- ▶ Are external providers required to adopt it?
- ▶ Are there local performance indicators on equal pay?
- ▶ Has the council carried out a pay and conditions audit to check for inequalities?
- ▶ Is the NJC JE scheme being used to evaluate jobs?
- ▶ Does the new grading structure reflect the evaluation results?

Local Government Act 1999: Best Value and Section 16

EXERCISE OF FUNCTIONS BY BEST VALUE AUTHORITIES: POWER TO MODIFY ENACTMENTS AND CONFER NEW POWERS

16. (1) If the Secretary of State thinks that an enactment prevents or obstructs compliance by best value authorities with the requirements of this Part he may by order make provision modifying or excluding the application of the enactment in relation to those authorities.

(2) The Secretary of State may by order make provision conferring on best value authorities any power which he considers necessary or expedient to permit or facilitate compliance with the requirements of this Part.

(3) An order under this section may

(a) impose conditions on the exercise of any power conferred by the order (including conditions about consultation or approval);

(b) amend an enactment;

(c) include consequential, incidental and transitional provision;

(d) make different provision for different cases.

(4) No order shall be made under this section unless a draft has been laid before, and approved by resolution of, each House of Parliament.

(5) In exercising a power conferred under subsection (2) a best value authority shall have regard to any guidance issued by the Secretary of State.

- ▶ Have jobs been re-evaluated following changes arising from service reviews?
- ▶ Is there adequate protection for downgraded staff?

12. Part-time and temporary workers

- ▶ Are part-time and temporary workers receiving the pro rata benefits laid down in the Green Book?
- ▶ Has this council agreed not to target part-time hours to make savings?
- ▶ Have part-timers been treated fairly in single status negotiations?
- ▶ Do they have a harmonised hourly rate with full-timers?
- ▶ Are part-time workers involved in service reviews and other aspects of Best Value planning?
- ▶ Do they have equal access to training?
- ▶ And time off for trade union duties?
- ▶ Has the council audited and costed the use of temporary and agency staff?
- ▶ Are there temporary staff who should be on permanent contracts?
- ▶ Could the council employ its own peripatetic staff to cover short-term vacancies?

13. Race equality

- ▶ What action has been taken to implement the recommendations of the Lawrence report?
- ▶ Has the CRE Standard for Local Government been adopted?
- ▶ And the CRE Code of Practice on race equality?
- ▶ Are external service providers required to adopt them?
- ▶ Have local performance indicators been drawn up to address local race equality issues?
- ▶ Are managers and staff trained to use the national and local race equality performance indicators?
- ▶ Are they integrated into the service review process?

14. Women's equality

- ▶ Has the council adopted the EOC Code of Practice on eliminating sex discrimination?
- ▶ Is it acting upon the EOC's 'Mainstreaming gender equality in local government' programme?
- ▶ Are external providers required to implement them?
- ▶ Is the national performance indicator measuring the proportion of women in senior management positions integrated into the service review process?
- ▶ Are there local performance indicators to address wider gender inequalities at local level?
- ▶ Have steps been taken to ensure that new ways of working do not discriminate against women staff?
- ▶ Is gender equality being monitored?

15. Disabled employees

- ▶ Has the council adopted the Code of Practice on disability discrimination?
- ▶ Are external providers required to adopt it?
- ▶ Is equal treatment for disabled employees built into the service review process?
- ▶ Have steps been taken to ensure that new ways of working do not discriminate against disabled employees?
- ▶ Are there local performance indicators to address disability discrimination?
- ▶ Is equality for disabled staff being monitored?

16. Family friendly policies

- ▶ Are there agreed policies and procedures to secure flexible working hours to benefit parents and carers in your council?
- ▶ Is there agreed provision for time off for domestic emergencies?
- ▶ Does the authority provide paid parental leave?
- ▶ Is there paid paternity/parental support leave?
- ▶ Is there a right to paid time off for antenatal classes as well as doctors' appointments?
- ▶ Do women on maternity leave have to right to a phased return to work or part-time working?
- ▶ Is there a maternity leave contact scheme to keep staff on leave up-to-date?
- ▶ Are NIC family friendly policies being implemented?

17. Health and safety

- ▶ Does the council comply with all health and safety laws and procedures?
- ▶ Are all changes to working practices under Best Value subject to risk assessments?
- ▶ Is there a functioning health and safety committee /working group?
- ▶ Are potential contractors required to comply with statutory and local health and safety standards and policies?
- ▶ Are there local performance indicators on health and safety under Best Value?
- ▶ Is there adequate time off and training for UNISON health and safety reps?

18. Whistleblowing

- ▶ Are staff encouraged to highlight gaps and problems with services as part of the continuous improvement process under Best Value?
- ▶ Is there protection for staff who 'whistleblow' on poor service provision and employment under Best Value?
- ▶ How is whistle blowing by staff on externalised services dealt with?

Health and safety and PFI

Before entering into any PFI contracts the contracting body should seek information about the health and safety history of potential bidders, including their accident history and any enforcement notices and convictions. They should also obtain details of their health and safety management system and procedures.

Where services are part of the contract, although the appointed contractor has day to day responsibility for the delivery of the service the contracting authority retains the ultimate responsibility for the delivery of statutory duties and services in a safe manner. This means that the health and safety arrangements must be specified as part of the contractual arrangements and that there are powers to penalise poor health and safety performance through the payment mechanism or the right to cancel the contract.

Because of the lengthy life span of PFI contracts it is likely that health and safety legislation will change during the contract. This may have cost implications which should be considered at the start of the contract so that both parties are agreed who should absorb these costs should the need arise.

The *Management of Health & Safety at Work Regulations 1999* also have implications for PFI. They state 'where there is a competent person in the employer's employment, that person shall be appointed (to provide health and safety assistance) in preference to a competent person not in his employment'. This makes it clear that the management of health and safety cannot be one of the functions included in any PFI services contract.

PUBLICATIONS

Available from UNISON Communications

Stock no.	Title
1350	<i>PFI – Dangers, realities, alternatives</i> , 1997
1439	<i>Private finance initiative – pay for it indefinitely? A briefing on the private finance initiative in local government</i> , 1997
1589	<i>Step by step: A UNISON guide to the private finance initiative process</i>
1658	<i>PFI: negotiating guide</i> , May 1999
1659	<i>PFI: UNISON's guide for school governors</i> . May 1999
1704	<i>The only game in town? A report by UNISON Northern Region on the Cumberland Infirmary Carlisle scheme</i>
1237	<i>Your questions answered about PFI</i>
1604	<i>Downsizing for the 21st century, a report to UNISON Northern region on the North Durham Acute Hospitals PFI Scheme</i> , (2nd edition), 1999

Available from UNISON Health Care Service Group

- ▶ *Putting a price on the PFI: The illusionist economics of the PFI*, April 1998.
- ▶ *PFI in the NHS: Interviewing shortlisted bidders*, November 1998.

OTHER RESOURCES

Treasury Taskforce private finance policy statement No. 4, *Disclosure of information and consultation with staff and other interested parties*. Available via UNISON PFI web page or from: Public Enquiry Unit, HM Treasury, Parliament Street, London SW1P 3AG.

DETR: Draft guidance. *Best Value and procurement: handling of workforce matters in contracting*. Available from DETR free literature, PO Box No 236, Wetherby, LS23 7NB. Tel: 0870 1226236. Fax: 0870 1226237.

The employment impact of the private finance initiative, Association of Direct Labour Organisations, January 1999.

USEFUL WEBSITES

There is a special PFI page on the UNISON web site: www.unison.org.uk/pfi There is a link here to the PFI Discussion Forum where UNISON members can share information and experience.

Branches may find it helpful to use the UNISON PFI webpage as their first port of call and link to other 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).
- ▶ Department of Health PFI website.
- ▶ DETR (Department of Environment, Transport and the Regions).
- ▶ Treasury Taskforce PFI.
- ▶ Scottish Office (government website holding general information on PFI as well as the list of PFI schemes in Scotland).
- ▶ Higher Education Funding Council for England.

Links are regularly updated on the UNISON website.

USEFUL CONTACTS

Each service group has an officer dealing with PFI. You can contact them at Mabledon Place. In addition to contacting your regional office and the service group at head office you may also find it useful to contact:

- ▶ **Association for Public Service Excellence (formerly ADLO, the Association of Direct Labour Organisations)**, 4th Floor, Olympic House, Whitworth Street West, Manchester M1 5WG, tel: 0161 236 8433 www.adlo.org.uk
- ▶ **Bargaining Support Group** for information on companies involved in PFI. UNISON, 1 Mabledon Place, London WC1H 9AJ, tel: 020 7551 1267, email bsg@unison.org.uk
- ▶ **Centre for Public Services**. 1 Sidney Street, Sheffield, S1 4RG. Telephone: 0114 272 6683 www.centre.public.org.uk
- ▶ In campaigning against PFI, reports have been produced such as those on the Durham and Carlisle hospital PFI schemes. If you think commissioning a report on a PFI proposal in your area would be the right thing to do, contact your regional officer for advice.



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