



THE PRIVATE FINANCE INITIATIVE

The Retention of Employment Model

A UNISON BRIEFING
AND NEGOTIATING
GUIDE
2003

The Retention of Employment model

A UNISON Briefing & Negotiating guide

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The Retention of Employment Model

A UNISON Briefing and Negotiating guide

INTRODUCTION

The Retention of Employment (ROE) model is a new policy implemented by the Department of Health, covering staff employed in NHS Trusts in England, which are involved in Private Finance Initiative (PFI) schemes. In ROE ancillary staff in cleaning, catering, laundry, portering and security services remain NHS employees and do not have to transfer to the private sector. They will however be managed by the private sector and other groups of staff (ancillary supervisors, estates and maintenance staff and other non-clinical support staff) may still be subject to transfer. The ROE model currently applies to any PFI scheme, which had not already gone out to advert by June 2001. It is currently being implemented in around a dozen such schemes.

This negotiating guide seeks to explain

- UNISON policy on ROE
- Who is affected by ROE
- How ROE works
- How branches can negotiate before ROE is implemented
- How branches can safeguard the interests of staff after ROE

SECTION 1

PFI AND THE NHS

ROE applies to staff in NHS Trusts which are being built or redeveloped using the Private Finance Initiative (PFI). Branches should continue to campaign against PFI and for public funding of new NHS facilities. Funding for local campaigns may be available from UNISON's General Political Fund.

The Government has committed itself to the largest building programme in the history of the National Health Service. Over 30 new hospitals are currently being built and many existing ones are being redeveloped. UNISON welcomes this long overdue modernisation of the NHS.

Unfortunately the Government has chosen to fund these new facilities through the Private Finance Initiative (PFI). In PFI new hospitals are designed, built, maintained and financed by the private sector. The NHS then pays fees known as charges to use the facilities. In effect the NHS "rents" the buildings from the private sector for the lifetime of the PFI contract usually 30 years. In contrast in the past NHS facilities would have been built by the private sector but once completed they would have been owned and operated by the NHS.

There are currently nearly a dozen hospitals being operated under PFI and a further 30 are planned over the next five years. The Government continues to see PFI as the main method for improving the infrastructure of the NHS and continues to believe there are benefits from involving the private sector in the NHS. Alongside PFI, it has extended the PFI model into primary care through the development of Local Improvement Finance Trusts (see UNISON guide) and has introduced a number of other forms of Public Private Partnership into the NHS e.g. in pathology services, Diagnostic Treatment centres and the LIFT* scheme for primary care. At present the ROE model only applies to PFI schemes.

UNISON is opposed to PFI and has demonstrated that it is a more expensive way of providing new NHS facilities than traditional public funding. We have also highlighted the problems experienced in new facilities built under PFI e.g. in a recent source report** on the experience of staff in those hospitals where PFI has already been implemented. UNISON continues to press for the independent review of PFI agreed by the 2002 Labour party conference.

[For more resources on NHS PFI see the UNISON Health Group PFI web site and on PFI in general the UNISON Positively Public web site - www.unison.org.uk]

HOW PFI AFFECTS STAFF

In the NHS how PFI affects staff depends on whether staff are designated as clinical or non-clinical. UNISON does not accept this distinction and argues that all staff are equal members of the NHS team.

In the type of PFI used in the NHS the clinical services are excluded from the PFI scheme and will continue to be operated by the NHS. As a result clinical staff will not be affected by ROE and will remain NHS employees. This means that nursing, medical, Allied Health Professionals and most PTB staff are not transferred under the current PFI rules.

*Local Improvement Finance Trusts see UNISON Guide

** The PFI Experience

However these staff will still be affected by the PFI scheme. For example, nursing jobs have been cut in some PFI schemes to make the scheme affordable or to balance the books. The PFI charge, paid to the private sector is one of the first calls on the NHS Trust's budget. So a Trust with financial problems will look to cutting non-PFI services and staff first. It is vital that branches involve clinical staff in the campaigns over PFI and highlight the consequences of PFI to them.

Under PFI non-clinical services like cleaning can be operated by the private sector. There is no definitive list of what services can be included in a PFI scheme (see Appendix B for current DoH guidance). Generally, all estates and maintenance, most ancillary services and some administrative and clerical services such as medical records and information technology have been included. In a few schemes some PTB staff such as EBME technicians have also been included.

In the past where services were included many non-clinical staff transferred to the private sector. Under ROE the majority of ancillary staff in PFI schemes will remain NHS employees (see below for further details).

SECTION 2

THE RETENTION OF EMPLOYMENT MODEL

The Retention of Employment model was developed by the Department of Health in response to UNISON campaigning on PFI. It does not end PFI but does mean that most ancillary staff no longer have to transfer to the private sector where PFI is used. As such it is a major step forward in UNISON's efforts to protect staff from the effect of PFI.

UNISON negotiated the Retention of Employment model as a means of limiting the number of staff forced to transfer under PFI. UNISON continues to argue that PFI should not be used, services should not be included and that all staff should remain NHS employees. The Department of Health position is that ROE will be used in PFI schemes where services are included and ROE will not apply to schemes that were advertised or signed off prior to June 2001.

Branches should continue to campaign against the use of PFI. Even if a scheme is given the go ahead it is still possible to argue, under existing PFI guidance, for ancillary services to be kept out of the scheme. More details of how to do this is given in Appendix A.

If ancillary services are included in ROE, as is likely in most large PFI schemes, branches need to be aware of the key issues that will be raised and how to influence ROE and protect members. In this section we look at how ROE operates and the key issues for branches at local level. The Department of Health has not yet issued detailed guidance on the implementation of ROE though it has issued an interim guidance known as the "matrix" setting out the framework for how ROE should be operated. Further advice will be issued once the Department of Health issues its final guidance and as and when local agreements are reached on implementation. This guidance note gives advice on how branches should approach local negotiations on ROE. Branches should liaise closely with their Regional Officer on ROE and copy any agreements to the Health Group nationally so that best practice can be shared.

WHO IS COVERED BY THE ROE?

The Department of Health ROE matrix (Appendix B) sets out the main ancillary staff groups covered by ROE. These are known as the "five trades" and cover about 85% of staff usually affected by PFI. All non-supervisory staff, in these areas, will be covered by ROE and remain NHS employees although managed by the private sector partner (PSP).

- Catering (this does not cover delivery of cook chill meals);
- Cleaning (Excluding external building cleaning);
- Laundry (this refers to in house laundries);
- Security (there may be some debate over building/car park security);
- Portering (except where portering/maintenance roles have been combined where there will need to be local negotiation).

Where these services are currently contracted out they will be generally be brought back in house before being subject to ROE unless they are currently provided by the same company that is selected as part of the PFI project. (See pages 7 and 8).

Supervisory and managerial roles will be transferred to the private sector. Management is defined as supervisory staff above chargehand level but “cut off points” will be agreed locally. The jobs of these staff will transfer to the PSP. So far, in the first ROE Trusts, individual supervisors have had the option of redeployment within the trust or redundancy rather than transfer to the private sector and branches should argue for this right to be maintained.

Other ancillary/support services are not covered by ROE. For example:

- Switchboard and patient reception services;
- Central Sterile Supply Service Departments;
- Medical/Patient Records;
- Information Technology systems/ Payroll.

Staff in these services will continue to face transfer if these services are included in the PFI scheme unless the Trust can make a “value for money case” to exclude them. In two Trusts, switchboard services have been included in ROE. Branches should seek to extend ROE where such services cannot be excluded completely from the scheme. The DoH is known to be advising trusts against extending the scope of ROE but branches should continue to push for this. Ministers have advised that other services can come into the scope of RoE by all parties agreement locally.

ESTATES AND MAINTENANCE STAFF

ROE alters the position for ancillary staff but not for estates staff. Hard FM maintenance services such as building and estates maintenance remain included in all PFI schemes and individual trusts will generally not be able to vary this locally. These staff will therefore continue to transfer to the private sector partner (PSP).

The branch will need to negotiate a staff transfer agreement for all staff facing transfer. Advice on how to do this is in Appendix C.

INFLUENCING ROE

Prior to ROE being implemented there will need to be local negotiations with the union on a number of issues

- Staffing levels and output specifications;
- Selection of bidders;
- Position of currently contracted out staff.

STAFFING LEVELS AND OUTPUT SPECIFICATIONS

Under ROE the contractor will take over responsibility for managing the support services. They will run these services for a fee and seek to make a profit from them. As they will no longer employ the non-supervisory ancillary staff they will not be able to make money simply by cutting wages and conditions. They may however seek to do so by reducing staffing levels. It is therefore important that branches seek to get agreement with the Trust on the staffing levels that will be in place when the contractor takes on the contract. The contractor should not be able to change these without the agreement of the Trust and the branch should seek to ensure that there is a “status quo” provision preventing this.

If the Trust seeks to change staffing levels prior to ROE this should be dealt with using existing policies on organisational change. The Private Sector Partner (PSP) is required to discuss any changes it wishes to make with the trade unions but the final decision on staff numbers is a matter for the Trust.

There is concern over cleaning standards in the NHS and it is not in the Trust’s long term interest for staffing levels to be cut back. There are also health and safety implications of reductions in areas such as security and portering. Branches should seek the support of clinical staff when campaigning on this issue. Quality clinical services depend on adequate levels of support staff.

Where the PSP and the Trust implement staffing levels below those currently in place, any resulting redundancies must be dealt with under NHS redundancy provisions, as outlined in the DoH matrix. UNISON believes that where redundancies cannot be avoided staff should be redeployed in the Trust or elsewhere in the NHS. The PSP is allowed to become involved in such discussions under section 1-d of the guidance issued by the DoH. (See Appendix B)

In addition to staffing levels, the union should seek to influence the overall content of the output specification for the services that the private sector will be managing. Branches should seek to include reference to staffing levels in the output specifications. Trusts may resist this by arguing that staffing levels are on input not an output but it is clear that adequate services cannot be achieved without sufficient staffing. In any event, health and safety, training and quality standards need to be included. The specification needs to be clear and ensure the PSP can be held accountable to it.

INFLUENCING THE CHOICE OF PSP COMPANY

Under ROE most staff will remain NHS employees but the choice of which company becomes the ROE Private Sector Partner remains a very important one and branches should seek to influence it. Under guidance issued in 1999 and revised in April 2003* branches have the right to be consulted throughout the process and interview shortlisted bidders and this still applies in ROE.

- Be provided with information about the shortlisted bidders including any documentation they submit about their personnel policies.
- Submit comments and responses to this information to the Trust. UNISON's Bargaining Support unit can supply information on most of the major support services contractors and can carry out research on other bidders. Branches should be aware that Trusts will share any written comments from the union with the bidders and should ensure that all comments can be substantiated. Information received from bidders is an important resource and should be copied to your Regional Officer and the Health Group nationally.
- Branches have the right to take part in selection interviews with the bidders and ask them questions on personnel matters. In the light of the answers branches should make a recommendation as to which bidder best meets the need for good employment practice. Branches should note that the Trust continues to make the actual choice. Experience has shown that involvement in the selection process can be a major protection for staff and branches are advised to participate whilst reserving their position on PFI. Branches should keep their Regional Officer informed of the process and may wish to obtain their advice or support.

Further advice on this is contained in the "UNISON PFI Guide – "Challenging the Private Finance Initiative" – Stock Number 1763 available from Communications on 020 7551 455 or email: m.carley@unison.co.uk

CONTRACTED OUT STAFF: RETURN TO THE NHS?

Under ROE where services in the five trades are currently contracted out they will generally be brought back in house prior to ROE though there are some exceptions to this discussed below e.g. where the PSP company is the company that currently provides contracted out services staff will remain employed by the private sector.

In many cases the use of ROE will allow staff to be brought back in house and this has already begun to happen in some schemes. This is a major step forward for these staff and will mean they will become NHS employees.

This will raise a number of issues that branches need to negotiate on:

- Staff will be able to join (or rejoin) the NHS pension scheme. This is a major benefit, as most contractors do not offer such pension provision. Branches need to get Trusts to explain the benefits of joining or re-joining the NHS scheme. If previously transferred staff have joined company pension schemes appropriate arrangements will need be made to enable them to transfer benefits back into the NHS scheme.

*Revision to PFI Guidance "Fair Treatment of Staff" and observing TUPE www.doh.gov.uk/pfi

- Contracted out staff will be brought onto NHS pay scales and conditions of service or they can retain existing terms. In most cases NHS terms will be preferable. Staff will not be able to “cherry pick” i.e. choose NHS conditions but contractor pay rates if these are higher than NHS ones Local negotiations should deal with these anomalies. The DoH guidance states that even where such staff remain on contractor salaries any subsequent replacement staff should be on NHS terms. This provision will need to be monitored to ensure compliance.
- The DoH guidance says that staff transferring into the NHS will do so as new starters. Clearly UNISON will want to negotiate a return to NHS scales with adequate recognition of experience and skills perhaps phased in over time.
- These staff will also be covered by Agenda for Change if it is accepted and implemented in full from 2004

There are two circumstances in which contracted out staff may remain contracted out.

- Where the Trust has insufficient capacity to run the service itself it is allowed to leave the staff contracted out. It can however still bring services back in house “where there are operational benefits” from doing so and there is a value for money case. There is no definition of what constitutes “in house capacity” and simply because a service has been contracted out for a number of years is not in itself a justification for keeping it as contracted out. Branches should press Trusts hard on this point and work with them to help recreate in house capacity. Contact your Regional Officer if the Trust is behaving unreasonably on this issue.
- Where the selected PSP is the same as the current contracted out contractor the staff will remain employed by the PSP for legal reasons. This makes union involvement in selecting a bidder in such circumstances a priority.

DISCIPLINE

Under ROE NHS employees will be managed by managers/supervisors working for the PSP. This will create a number of issues; in particular how to deal with disciplinary matters and grievances. These issues are covered in section 4 of the DoH guidance (Appendix B) but much of the detail is left to local negotiation.

Staff will be NHS employees and therefore the Trust’s discipline and grievance procedures will apply. However, it will be necessary to review and modify these procedures to reflect the different management arrangements for this group of staff

Under ROE management/supervisory staff employed by the PSP will be able to issue disciplinary warnings up to the level of a final written warning. They will do this on behalf of the Trust and operating within the Trusts disciplinary procedures. The PSP should follow existing Trust policies on when such warnings would be used and should not seek to toughen policy on issues such as absence and timekeeping. Any changes to such policies should be agreed with the unions and the Trust.

Apart from this delegation of powers staff will retain existing rights e.g. to appeal to a Trust appeal panel. Only the Trust will have the power to dismiss. The Trust will be the respondent at any Employment Tribunal.

SERIOUS DISCIPLINARY MISCONDUCT

In cases of serious misconduct the PSP may wish to “suspend” an individual and remove them from the workplace. There should be joint agreement on the circumstances in which this power is exercised. This would generally apply only in cases of alleged gross misconduct, which could warrant immediate dismissal e.g. violence or racial and sexual harassment. The PSP would then return the individual to the Trust for any necessary action.

If the Trust is not satisfied that the person should have been removed they should discuss this with the PSP and redeploy if appropriate. Branches should attempt to agree protocols with the Trust and PSP on these important issues.

GRIEVANCES

Staff who are covered by ROE should continue to have the right to raise grievances within Trust procedures though the PSP could deal with the grievance itself so there will need to be local negotiation on this. These procedures will need to allow staff to raise issues concerning the behaviour of PSP managers or this could be done through a separate procedure agreed with the PSP. In cases where managerial behaviour is unacceptable the PSP should deal with the manager under its own procedures. The Trust should have the right to ask the PSP to remove a manager from the workplace where this would be. However these managers also have rights and there may be representational issues if the PSP employee is also a UNISON member.

OTHER ISSUES

There is a range of other bargaining issues that will need to be addressed in ROE.

- ROE allows for the use of temporary staff where other measures have not solved recruitment and retention problems. This must be agreed with the Trust and the union locally. It should only be used where there is no practical alternative. If staffs are employed for more than a year they should be taken on as NHS employees under ROE.
- The equal opportunities and health and safety policies of the Trust may need to be amended to take account of the new arrangements. For example, PSP managers must abide by Trust policies as they are on Trust premises and acting on behalf of the Trust. PSP managers may need to be given delegated powers to ensure workplace health and safety and have some link to the Trust Health and Safety policy.
- For ROE staff there should be no change to recognition and facilities arrangements but branches may need to clarify representational arrangements for transferring staff. Under TUPE provisions and existing guidance recognition rights will transfer with the transferring staff but branches may need to clarify that this enables Trust employees to continue to represent members that have transferred. Branches should also seek to ensure that there are stewards for the transferring staff
- There will need to be a union “recognition” agreement with the PSP to facilitate recruitment, negotiation & representation of PSP employees. There will also need to be a procedure/agreement to facilitate discussion on issues of day to day management, discipline and working practices for PSP managed trust staff. This could take the form of a departmental consultative committee with a link into the

Trust JNC. The PSP could attend as an observer. These are matters for local negotiation.

- The PSP cannot change terms and conditions for staff but may propose changes to working practices such as shift patterns, organisation of work or use of new technology. Branches should not unreasonably oppose change but seek to ensure any such changes are agreed and not to the detriment of staff. Any failure to agree should be registered with the Trust under existing local procedures.

IMPLEMENTATION ARRANGEMENTS

The final mechanism for how ROE is implemented is currently under discussion between UNISON and the Department of Health. For legal reasons there will be a complex procedure under which staff will have to:

- Have the option of transfer under TUPE provisions to the PSP company. This is to ensure staff retain their full legal rights.
- If they refuse the transfer they will be retained as NHS employees and then “seconded” to the PSP Company.

It will be essential to ensure that staff exercise their choice based on full information and further advice will be issued once the procedures are finalised. Consult your Regional Officer if the issue is raised locally.

ORGANISING IN ROE

Branches need to develop an organising strategy to build and sustain membership in areas affected by ROE. This should begin before any ROE scheme is implemented. There are three main tasks:

- Mapping the workplaces affected by ROE to identify any areas lacking stewards or with poor levels of membership. Resources should be focussed on these areas.
- Developing effective communication methods to brief members affected by ROE. In particular to explain the issues of who will transfer and who will not and to explain the complicated procedures that implements ROE. UNISON has argued for a simple procedure but the Department of Health has insisted on a complex one for legal reasons. Various paper techniques can be used e.g. newsletters and bulletins but section and workplace meetings will also be important to get feedback and respond. Time off should be available for such meetings.
- Recruitment efforts need to be targeted. Campaigns should highlight the need for existing staff to join to ensure they are protected and highlight the union role to contracted out staff brought back to the NHS.

This type of activity is time consuming and resource intensive but is the key to effective influence. Without an active and large membership UNISON will not be able to address the challenge of ROE even with the best information.

The Heath Group will seek to promote exchange of information between branches affected by ROE. Examples of best (and bad) practice should be shared so lessons can be learned.

SUMMARY AND CHECKLIST

UNISON is opposed to PFI and will continue to argue for public funding of new capital developments in the NHS. Where a project is approved for PFI, branches should continue to argue for the exclusion of services as outlined in Appendix A. Where this cannot be achieved, however the Retention of Employment model represents a major safeguard for staff and should be utilised to seek to minimise the number of staff faced with transfer.

The following is a checklist of key points to be negotiated under ROE.

- Seek to reach agreement on staffing levels and output specifications;
- Agree procedures for involvement in selection of the PSP;
- Seek to bring contracted out staff back into the NHS;
- Agree local procedures for dealing with discipline and grievance issues;
- Reach local agreement on organisation change and other issues;

KEEPING ANCILLARY SERVICES AND STAFF OUT OF PFI SCHEMES

UNISON has a twin track approach on PFI. We have consistently argued against PFI in principle. Where PFI schemes have gone ahead UNISON has sought to protect the interests of staff. UNISON has secured extensive protections building on the transfer of undertakings regulations for staff forced to transfer to the private sector as a result of PFI.

In 1999, following pressure from UNISON, the Department of Health agreed that ancillary services and staff no longer had to be included in PFI schemes. Each Trust would decide whether to include such services and therefore whether these staff would be transferred. Estates and Maintenance services (known in Department of Health jargon as Hard FM services) continued to be compulsorily included and therefore continued to have to transfer. The “value for money” criteria used to decide whether ancillary (or Soft FM) services are included however remain very loaded in favour of inclusion of these services in PFI projects.

UNISON branches in a number of Trusts e.g. Blackburn Hospital were successful in excluding services from PFI schemes and in this way stopping the transfer of staff. Most Trusts however insisted in including staff and this led to a number of disputes most notably the industrial action at the Dudley Group of Hospitals. This option is still a possible way of excluding staff and advice on how branches can use it is set out below.

The “value for money” test is however biased toward inclusion of services. This is because Trusts have tended to compare the costs of in house services with bids from the private sector or with averages derived from benchmarking clubs or NHS Estates data. Many of these benchmarking clubs have included costs from contracted out services. This has led to unfavourable comparisons with in house costs. As a result of these biased comparisons very few in house services were shown to be “value for money” through this process. A genuinely fair comparison, which excludes the lower wage costs of private sector contracts and the untestable claims in private sector bid, would show that in house services are “value for money”. This VFM test is separate from the Public Sector Comparator, used to test for whether PFI should be utilised.

Branches should therefore continue to press for services to be excluded under the 1999 rules using the following arguments.

- Inclusion of services is unnecessary and divisive. In house support services can produce efficiency savings at least as good as those of the private sector. A fair VFM test will show this. Trusts have tended to accept private sector claims that they can cut costs and improve services. Branches are encouraged to get involved in developing their own proposals for service improvements and on benchmarking. The Health Group can advise on how to use consultants to help develop arguments around benchmarking and for an in house service improvement strategy. How far to get involved in this is a matter for the branch in consultation with their regional officer and depends on your judgement of whether the Trust is genuinely open to looking at alternatives.

- Involving the private sector is claimed to provide risk transfer but in practice involves the Trust in taking a risk of services failing as has been shown by the history of contracting out. Some services are highly sensitive e.g. Medical/patient records and CSSD and these should not be included. This argument also applies where ROE is used.
- In smaller schemes the complexity of ROE arrangements may be out of proportion to the number of staff affected. Keeping services out of the scheme will be simpler and easier

It is likely though that in larger schemes that many Trusts will seek to include services as this is now seen as the preferred model for PFI and the model that the Department of Health now favours. Where services are included ROE will apply and most staff will no longer transfer. For those that do see Appendix C.

DEPARTMENT OF HEALTH GUIDANCE ON ROE (THE MATRIX) AND GUIDANCE ON IMPLEMENTATION ARRANGEMENTS

Seconded Staff

This document refers to the RoE model to be applied in the three pilot schemes

	Description of Issue	Proposed Procedures
1.	<p>Set Up</p> <p>Selection of which Trust employees second to PSP.</p>	<p>a. PSP (Private Sector Partner) discusses with the Trust and TUs the number and grade of staff required to meet the service required under the Output Specification, then informs Trust of precise numbers as part of BAFO tendering negotiations. Trusts to ensure its own rules or operating procedures do not conflict with numbers/grades PSP settles on.</p> <p>b. Selection of staff is made on the basis of the existing Trust policy in respect of organisational change. Or if no policy exists then a policy is agreed with TUs following consultation with the PSP.</p> <p>c. PSP has no power to veto the secondment of a Trust employee if selection is undertaken using agreed policies.</p> <p>d. As in the case in current PFI contracts, the PSP is to be responsible for managing those staff who by common agreement are to be made redundant as a consequence of the PFI contract.</p> <p>e. Global Secondment Agreement is to be negotiated between the TUs and DH at a national level, but there will also be consultation with Trust Staff and information briefings by the Trust. Secondment Agreement carries all of the existing Trust Terms and Conditions attached to it.</p> <p>f. The RoE model acknowledges that there will be a TUPE transfer of all staff. Close to the time at which the services transfer to the PSP (the precise time to be agreed with national TUs, Trust and private sector) a formal objection is lodged by staff in the trades concerned. It has yet to be agreed if this can be done collectively. Once served, the Trust will offer revised contracts to the staff concerned. Staff not in the trades concerned who object will not be offered alternative secondment contracts.</p> <p>g. The Trust will agree with TUs the contracts to be offered and how soon after the objection the new contracts will be signed.</p> <p>h. A TUPE transfer will take place: staff who fail to object will TUPE across. Those who do will be on secondment contracts.</p> <p>i. TUs to discuss with PFU how objection to be applicable to all staff in the trades concerned not just those in UNISON.</p> <p>j. Staff who do object but not in the 5 trades will not be offered revised contracts will be resigning from the NHS by objecting.</p>

	Description of Issue	Proposed Procedures
2.	<p>Recruitment of new staff during Contract Period</p> <ul style="list-style-type: none"> - Specification of grades and numbers - Advertisement - Decision to employ - Joining process 	<p>PSP contractually obliged to adhere to Trust's existing policies in respect of the actual procedure of hiring. PSP completes the process from specification of grades and numbers to the selection for employment. TUs and Trust have right to discuss with PSP staffing numbers during contract period.</p> <p>PSP places advertisement, which will include the Trust's name and logo and information on the Trust. PSP will recruit alongside the Trust, but provided choice is made in accordance with Trust's policies, there is no reason why PSP cannot solely act on Trust's behalf. PSP has final say in choice. Local procedures will have to be agreed and adopted regarding interviews, etc. Trust will formally employ and pass over to PSP (on standard secondment contract) for training and induction.</p> <p>PSP recommends the individual for employment by the Trust. Trust retains right to check procedures to ensure no discrimination and all recruitment is in accordance with its policies.</p> <p>Trust confirms employment, contract etc. Trust carries out introduction to the Trust and then PSP induction / training.</p>
3.	<p>Employment</p> <ul style="list-style-type: none"> - Staff Briefings - Disciplinary Notices (see below) - Performance appraisals - Performance monitoring - Training / promotion - Compliance with NHS employment initiatives/motivation/enrichment - Serious Disciplinary Matters 	<p>Trust Newsletters and Staff Briefings on major events at the Trust would continue to be distributed to Trust Staff as now. All staff – not just secondees – are treated as Trust employees in this respect.</p> <p>A confidential monthly report on staffing will be linked to the Monthly Invoice from PSP and would contain a section on "Reportable Staff Incidents" – disciplinary procedures commenced, written warnings etc. This would be discussed at a monthly management meeting. All Trusts/PSPs will be obliged to undertake these. Urgent disciplinary cases and final written warnings to be discussed outside of these monthly meetings if necessary.</p> <p>All existing Trust policies covering performance appraisals would have to continue to be performed, but by PSP. Copy of performance appraisal sent to the Trust for maintenance of staff personnel file</p> <p>As above, Reportable Staff Incidents copied to Trust.</p> <p>PSP to include all necessary training in its overall price/staffing requirement to Trust. PSP, Trust and TUs recognise that staff who take up promotion to management grades will have to resign from NHS. Terms of employee's new contract to be agreed between PSP and individual.</p> <p>PSP is to manage staff, in relation to enrichment/motivation, as they were its own. PSP free to offer staff bonuses, incentives, etc. (at its expense) provided they are not in contravention of Trust's policies. PSP required to implement new NHS employment initiatives on a cost pass through basis, unless foreseeable at the time of the initial contract award. General changes of law or practice to be PSP's risk.</p> <p>PSP to advise senior Trust manager present of its wish to suspend an individual immediately because of a serious disciplinary matter, and end secondment on disciplinary grounds if it considers offence warrants instant dismissal. Trust to <u>understand</u> reasons for PSP action <u>before</u> suspension/end of secondment. Trust to accept employee back at end of secondment and let individual know of its decision as soon as is practical.</p>

	Description of Issue	Proposed Procedures
4.	<p>Discipline</p> <ul style="list-style-type: none"> - whose procedures - who implements <p>– Including grievance, harassment etc.</p> <p>– Employment Tribunals</p> <p>Redeployment.</p>	<p>The Secondment carries all current Trust employment terms and conditions.</p> <p>In broad terms, implemented by PSP.</p> <p>All existing procedures will include an appeal process. See separate note for detail of appeals/discipline process.</p> <p>Trusts procedures to be followed which will be implemented by PSP. PSP to report monthly all grievance/harassment reports received.</p> <p>The Trust as employer will be named as the Respondent in the Employment Tribunal. Trust will therefore have to be present at the ET. PSP likely to be main witness for Trust as it was employee's manager. PSP to indemnify Trust should ET find in favour of employee unless PSP acted on instructions from Trust. PSP is bound to follow ET's findings, as is the case now. If PSP has followed Trust procedures correctly, but tribunal still finds against the Trust, Trust will meet the cost.</p> <p>Trusts may (as is the case now) seek to re-locate or re-train individuals as part of a disciplinary process. If Trust has agreed, as part of a disciplinary process, that the employee is to be retrained/re-deployed elsewhere in NHS, the Trust is to agree terms/duration of attempts to find appropriate post before end of secondment with the individual.</p> <p>The employee is to show good faith in search for alternatives. If downgrading is selected as method of retaining NHS employment, pay will be on a mark time basis.</p>
5.	Dismissal	Act of dismissal will be by Trust. It will have had extensive discussions with PSP at time of final written warning.
6.	<p>Definition of which terms and conditions and what is included</p> <p>New Whitley</p> <p>Redeployment.</p>	<p>To be agreed with PSP/TUs nationally <u>before</u> pilots are signed off. Definition will be either local or Whitley.</p> <p><u>Either</u> the PSP to be refunded cost impact of Whitley increases after base price set at contract signing. Refund of costs to be on basis of an index of NHS salary/Whitley price rises. Local Increases above Whitley (if PSP so decides) to be at risk of PSP.</p> <p><u>Or</u> If it is a separate payment stream, with PSP acting as a payroll bureau, the amount of any Whitley increases will just be reflected in what the Trust passes to the Project Co.</p> <p>New Whitley will be introduced on a cost pass through unless terms known prior to tendering/pricing.</p> <p>If Trust has agreed, as part of a disciplinary process, that the employee is to be retrained/re-deployed elsewhere in NHS, Trust to agree terms/duration of attempts to find appropriate post before end of secondment.</p> <p>The employee is to show good faith in search for alternatives. If downgrading is selected as method of retaining NHS employment, pay will be on a mark time basis.</p>
7.	Definition of manager	<p>As laid out in other documentation. Management is a function related to risk and control of contractual obligations. Defined as all staff of supervisor/chargehand level and above.</p> <p>Local variations on individual posts will be inevitable as different contractors use different staffing levels, depending on design solution and approach to service delivery, e.g. cook/chill v. in-house catering. Actual split to be discussed between Trust, TUs and PSPs. PSP to make final decision.</p>

	Description of Issue	Proposed Procedures
8.	<p>Payroll</p> <ul style="list-style-type: none"> - Who pays? 	<p>PSP pays staff as an agent of Trust. PSP makes relevant contribution direct to NHS Pension Scheme.</p> <p>Staff have integrated pay and pensions statements as they do now.</p>
9.	<p>Harmonisation of terms and conditions of staff TUPE transferring back from an outsourced service provider</p> <ul style="list-style-type: none"> - staff on different terms and conditions - impact of PSP paying higher than Whitley - impact of equal pay claims 	<p>a. If the Trust has an in-house capability or capacity in any of the 5 trades covered by the RoE model, it is assumed that any staff currently outsourced in a market contract for these trades will be brought back into the NHS. In these trades will be TUPE'd into the Trust before being seconded out. TUPE will apply, so staff can keep current terms on secondment out to PSP if they wish.</p> <p>b. Because of legal problems, if any of the staff in these trades are already employed by the PFI contractor, RoE will not apply to these trades and all staff will stay in the employ of the PSP. For operational reasons, where the Trust has no in-house capability or capacity in any of the 5 trades, RoE will not apply unless the Trust has operational or other reasons that makes this desirable.</p> <p>Already outsourced staff being TUPE's back to Trust prior to secondment will make own choice as to whether to switch to Trust/Whitley rates, or remain on existing. NHS Pensions will be available to staff who elect to keep their existing terms (subject to alternatives being available). These staff can either choose to keep existing terms and TUPE direct across to the PFI contractor or object to the transfer and be offered a standard NHS secondment contract along with existing NHS employees. On joining the NHS, staff who join NHS will do so as a new starter. Individuals will be given details of the rates of pay well before they are asked to make their choice.</p> <p>New staff recruited to replace staff who elected to keep existing terms will go on to Trust/Whitley rates.</p> <p>Where RoE can't or doesn't apply, PSP will employ new staff on its terms and conditions.</p> <p>Rates are based on Whitley or local Trust, depending which is in force. PSP to price in any adjustment to market.</p> <p>A shared PSP/Trust risk, dependent upon circumstances.</p>
10.	<p>Promotion</p> <ul style="list-style-type: none"> - who selects 	<p>PSP would identify and offer promotion. PSP is however fully in control of employment of its own "management" staff i.e. PSP not obliged to offer promotion to a Trust employee. Promoted staff will have to resign from NHS to join PSP.</p>
11.	<p>Change in working practices / Role Development / Flexibility / Multi-skilling</p> <ul style="list-style-type: none"> - Nationally agreed changes to working practices 	<p>The Trust, as is the case now, has the option to negotiate with its staff the introduction of new working practices. Should the PSP wish to implement new policies, these would need to be agreed by the Trust and TUs.</p> <p>New Whitley will be introduced as a variation on existing contracts (depending on timing, either at Trust expense or under competition at next market test). Will be included on contracts being tendered when first introduced.</p> <p>Ahead of new Whitley, local staff to co-operate in the discussion regarding the introduction of new working patterns reasonably requested by the PSP.</p>

<p>12.</p>	<p>Temporary/Relief Arrangements</p> <ul style="list-style-type: none"> - can cover be used from elsewhere – i.e. PSP direct employees? - Can agency be used - What is a temporary member of staff? 	<p>PSP should have the flexibility to cover sickness / absenteeism / inability to recruit sufficient staff using Whitley/local Trust rates with temporary staff directly employed by the PSP.</p> <p>Yes</p> <p>PSP employees on short term contracts up to 1 year.</p>
<p>13.</p>	<p>Definition of services included – which services are in/out and why?</p>	<p>Only the 5 trades are included – portering, catering, domestics, laundry and custody/security services. Custody/security is only included if portering is also included. Hard FM only schemes which happen to include security will not be subject to RoE. Car parking security (if linked to fee earning obligations) is excluded.</p>

NOTE ON NEGOTIATING STAFF TRANSFER AGREEMENTS

In order to safeguard the interests of staff that do transfer to the Private Sector under ROE Branches should negotiate a “Staff Transfer Agreement” with the Trust and the new employer(s). Where an agreement involving the Trust cannot be secured there should be agreements directly with the contractors. The Trust should be asked to act as a guarantor for these agreements and there needs to be some dispute resolution mechanism. There are some contractors with whom UNISON has national recognition arrangements and UNISON can also raise issues with the DoH. Trusts must comply with Department of Health guidance issued in April 2003. This can be found on the Department of Health website <http://www.doh.gov.uk/pfi>

The Government has also given a recent commitment that staff who are contracted out should have terms which are “not less favourable” than those who are transferred as has already been agreed in local government.

Some of the key bargaining issues are:

- UNISON to be recognised for both transferring staff and for new employees. No group of staff should be excluded e.g. managers should be covered by these bargaining arrangements even if they have accepted PSP personal contracts. Recognition should be automatic and not be dependent on any thresholds. This is made clear in the April 2003 guidance. Contact your Regional Officer in the event of any attempted denial of recognition. Branches should seek to clarify this at an early stage before any staff transfer.
- Transferring staff have the right to retain the terms and conditions in place at the date of transfer. In addition, under existing case law and in line with DoH guidance, they have the right to any future pay increases agreed by Whitley or successor arrangements in Agenda for Change including grading changes for the relevant group of staff. These terms apply until and unless any new arrangements are agreed. The PSP should also agree to use the NHS job evaluation system.
- Under DoH guidance working arrangements for transferring staff can only be changed by negotiation through agreed local procedures.
- The Government has said it wants to end the two-tier workforce. UNISON should press for new staff should be on terms no less favourable than those on offer to transferees and similar pension benefits.
- There will need to be a broadly comparable pension scheme for transferring staff (certificated by the Government Actuary Department) as outlined under April 2003 rules. UNISON believes new staff should have similar pension benefits and is continuing to press for this.
- There should be a limited use of subcontracting and all agreements should apply to subcontractors and/or associated employers.

A transfer agreement will need to cover a wide range of issues and the agreement secured at the Dudley Group of hospitals is a model which branches may find useful. It is available on request from the Health Group.