



NATIONAL UNION OF TEACHERS

SUBMISSION TO IPPR COMMISSION ON PUBLIC PRIVATE PARTNERSHIPS

The National Union of Teachers, the largest school teachers' union in England and Wales, welcomes the opportunity to make this submission to the IPPR Commission on Public Private Partnerships.

This NUT submission follows the structure of the IPPR's Call for Evidence and the order of questions posed in that document. The NUT includes, in particular, substantial consideration of the private sector's involvement in the "outsourcing" of local educational authority services and in Education Action Zones.

1. Do you agree with the above "building blocks?" What do you think are the key social, political and economic factors that you think have led to the growing use of PPPs?

Public authorities rarely act alone and have, historically, delivered public services to communities without the need for the private sector as a main service provider.

Enabling the public authority can overcome shortcomings in public service delivery rather than privatisation because, as the paper suggests, it is not an answer for alleged shortcomings in public services.

Far from 'clinging to the status quo' public sector education has, historically, included the private sector in service delivery.

The NUT agrees that PFI/PPPs are not a panacea for resolving the challenges and there is little evidence in the education sector that this has been achieved. The Union also agrees that PFI/PPP are not a means of resolving the crisis in the funding of public services. If PFI was to be used as part of the wider strategy then this may be more acceptable than the present situation where LEAs have little option but to use PFI when seeking funding for new school accommodation.

A key social factor is the years of neglect in capital investment in school premises and the underinvestment in rectifying structural deficiencies in buildings. A key political factor is the apprehension of an increase in public spending to a level that can repair school premises, combined with the political apprehension of the potential increase in taxation and/or public spending to achieve such repairs.

2. In general terms, what does the growing use of PPPs allow UK public authorities to achieve that would not have been possible if they had relied upon traditional methods of procurement, service delivery, and problem solving?

The growth in use of PFI/PPP to remedy school building deficiencies allows local authorities to achieve improved learning conditions for pupils but the use of PFI/PPP has replaced and not added to traditional methods of procurement in recent years. Little has been achieved by use of PFI/PPP in schools that could not have been gained by increasing traditional spending methods. On the contrary, the costs involved in procuring PFI/PPP, especially in terms of consultancy fees, could have been used to further enhance the school building stock.

Traditional funding attracts a lower rate of borrowing on the part of the Government which could be passed on to LEAs or schools. This could have seen more finances injected into the improvement of schools rather than the massive diversion to consultancy fees that occurs with PFI/PPP.

The increases in spending through traditional methods recently announced by the Government provide obvious reasons for arguing that PFI/PPP should not be viewed as the sole route for financing public investment projects and that future PFI/PPP proposals should be more strictly tested on value for money grounds than has hitherto been the case in the education sector at least.

5. Do you have a working definition of a PPP and how would you distinguish a partnership relationship from traditional procurement, contracting out or privatisation of a public service?

PPP should be used as a definition of partnership in the widest sense but should not be confused with a master/servant relationship of, for example, outsourcing. PPP is a description of a relationship to deliver an objective whereas outsourcing is a form of privatisation of an entire service.

6. In your view does the use of PPPs allow higher levels of total investment than would otherwise occur? If so, why?

Government rhetoric is that PFI/PPP would allow higher levels of investment than would otherwise have occurred. It is highly questionable whether PPP funding in the education sector has represented an addition to traditional investment. The public funds lost in the process of pursuing PFI/PPP mean that the total investment in school buildings could have been higher.

7. Do existing Treasury borrowing rules allow for a level playing field between PPPs and conventional financing option? If not, why not?

The Government (Treasury) borrowing rules do not allow a level playing field between PPPs and conventional funding. LEAs are restricted in borrowing conventionally so that traditional funding is not an option. It is clear that PFI/PPP is presented as the first and in many cases the only option available to LEAs to fund capital projects in schools.

11. Some recent studies have found typical expected efficiency savings under PFI of 10-20%. Based on your experience/research what do you think of these estimates? In your view, what are the key drivers of value for money? (see questions in section VII on pay and conditions and vfm)

In a schools PFI/PPP, it must be difficult for any private provider to estimate any efficiency savings without depressing the terms and conditions or salary of support staff. Where PFI is used as a funding mechanism to replace schools, this leads in the vast majority of cases to the teaching staff remaining in employment of the LEA but the support staff transferring to the private sector. Efficiency savings can, therefore, only be made by depressing support staff conditions. Similar efficiency savings cannot be included in the Public Sector Comparator which the LEA is obliged to produce.

12. How should 'risk transfer' be dealt with in PFI? What elements of project risk are best transferred to the private sector and which should the public sector bear?

With a schools PFI/PPP, the local authority maintains the "risk" that pupil numbers will be sustained at the levels for which the accommodation is built. Should the number of pupils at a school fall, the authority remains locked in a contract with the private provider at the level of accommodation anticipated when the contract began. Ultimately, therefore, the risk remains with the public sector throughout the period of the contract.

13. What are your views on the current methodology used in the construction of public sector comparators (PSCs)?

The current methodology of public sector comparators is deeply flawed. In the example of a schools PFI, the local authority is expected to dedicate time and resources to a PSC exercise that is intended to establish whether PFI is economically preferred to conventional forms of funding. Should the PSC indicate that public procurement should be preferred, the guidelines for PFI issued by the Treasury dictate that PFI should not be used.

There is, however, little scope for the alternative 'traditional' approach to be used due to limits on capital funding offered by the DfEE. This is, perhaps, why the Union is not aware of any examples of a PSC recommending a public procurement rather than PFI/PPP.

The PSC process is also flawed in the following way:

- substantial resources will be required to construct a PSC as a viable alternative to PFI/PPP and the cost of producing the PSC is not included in the cost of a PFI alternative;
- conventional funding will probably not be forthcoming if the public alternative is preferred; and
- the process of constructing a PSC does not allow for efficiency savings, unlike the bids from the private sector under PFI/PPP.

14. How important is the use of PSCs in ensuring vfm compared to other factors such as the competitive pressure of bidding for contracts? Do you think it is always necessary to use a PSC?

As stated above (13) the present system of using PSC for schools PFI is flawed because there are few, if any, examples of the PSC leading to conventional forms of procurement which leads to the conclusion that PSCs are either not constructed in similar detail to PFI bids or the rules for such construction of PSCs do not allow for a proper comparison.

17. What is the potential for greater innovation in service delivery if the private sector is allowed to provide a wider range of services in PPP deals?

There is a presumption that the private sector has a monopoly on innovative and efficient service delivery and that the public sector is not able to deliver as innovatively or efficiently. If the innovative and efficient delivery by the private sector is the depression of terms and conditions of service of support staff then this is not in the NUT's view an 'innovation'.

18. What would be the costs and benefits of experimenting with DBO (as opposed to DBFO) PPPs?

The benefit of DBO over DBFO is that the private provider will be unable to refinance a deal once the accommodation (in the case of schools PFI) has been built. It is possible, under present PFI

schemes, for the private provider to refinance, once the risk of construction has gone. This could lead to larger profits for the private provider whereas this would be a saving for the public sector if the accommodation were constructed in the conventional manner.

19. What are the arguments for and against the ownership of assets reverting to the public sector after a PPP contract has ended?

The NUT strongly believes that any public asset should remain in the public sector throughout and following the PPP contract. Use of school premises should be exclusively dictated by the needs of the curriculum during and following the contract.

21. How can long-term contracts be designed which allow for sufficient flexibility to ensure that the parties are not locked-in to outdated forms of service provision? What type of governance and review arrangements can be built into contractual arrangements to ensure greater flexibility during the life of the contract?

In terms of a schools PFI/PPP, it is important for periodic reviews of accommodation requirements to be part of the PFI/PPP contract. It is particularly important for ICT provision due to the rapid changing nature of the specifications. A fall in pupil numbers attending a school, due to demographic factors or others, may lead to an LEA paying for accommodation not required. Such situations could be avoided by building service reviews into contracts.

23. What criteria should be used to determine the life-span of PPP contracts? What examples can you provide of (in)appropriate contract lengths? What are the strengths and weaknesses of using shorter contracts for the maintenance of service provision as opposed to relying on 'periodical reviews' in long-term contracts?

The NUT has serious reservations over the long-term nature of many PFI contracts involving schools, the majority of which last 25 years or more. The reservations centre on the uncertainty of future school budgets and the necessary 'ring-fencing' of PFI funds to fulfil contractual obligations. The longer the contract, the greater the uncertainty for those managing schools budgets.

26. What would be the advantages of developing more PPPs which 'bundle' together various investment projects within one PPP deal? What are the obstacles to this type of PPP deal? Does this approach inhibit the ability of smaller firms to bid for PPP contracts?

The advantages, for private companies to 'bundle' projects within one PPP deal will probably revolve around the 'economies of scale' arguments that larger schemes or schemes involving a number of projects can be financed and operated more efficiently. The NUT's concern is that some schools may be included as part of a PFI project to ensure vfm and profit for the private company and not necessarily to remedy the worst cases of disrepair nationally. The obvious cost implications to the public purse are also more relevant to those projects that cost more to procure, as grouped school projects would do.

27. When do you think that profit-share arrangements in PPP contracts work effectively? Should they be introduced into more PPP contracts?

In the case of a schools PFI, it is possible for the private provider to make profit by using school premises and facilities 'out of hours.' Where such as profit is made, the Union believes that an agreement should be made to return a substantial element of such funds to the school and not for

the private company to hold it all as profit. In addition, use of school premises should be at the discretion of the Head teacher of the school and not the private provider.

28. Do you think that the private sector should be encouraged to specialize in the skills of turning around under performing organisations? What are the strengths and weaknesses of this approach? Do you think this 'provider of last resort' model should be tried out in other areas of the public services?

The NUT does not believe that the private sector should be encouraged to specialise in turning around underperforming LEAs. The NUT recognises that some LEAs may deal with similar challenges more successfully than other LEAs, but believes that partnerships between such LEAs would be less disruptive, create fewer uncertainties and would probably be more successful than the outsourcing solutions being attempted by the Government

Outsourcing offers companies considerable scope for expansion. Demand for public outsourcing was estimated at around £3 billion in 1997, according to market researchers ROMTEC, which believes that the market will have doubled by 2001. It has been estimated by Capital Strategies, a corporate finance house, that potential outsourcing of the 150 LEAs in England represents a £500 million market. It has been reported, however, that many large companies did not join the original DfEE list of approved consultants and providers as they wished to see evidence that substantial contracts would be offered before committing themselves to the lengthy tendering process currently employed.

There is also evidence from the private sector itself that there is a reluctance among companies to take on outsourced services since the number identified by the DfEE deemed to be suitable was tiny. One cause of that reluctance is the understandable expectation of the private sector to gain a reasonable profit for taking over from the LEA its provision of services. This profit can be achieved in two ways. The first is by reducing the service through efficiency gains or cuts in provision. The second is by securing a contract for the value of the service which also had added to it the profit margin and the costs of its own managers and administrators. The consequence of such an approach must be that at least for the period of any contract the cost of providing hopefully improved services must increase.

The NUT believes that specific solutions and/or strategies for the improvement of LEAs cannot be prescribed. The existing expertise and experience of LEAs in supporting schools, and the creative potential of the dialogue which the task groups will encourage, are such that the most appropriate and successful support strategies will emerge. The sense of ownership generated amongst local stakeholders by these processes will further enhance the impact of the strategies deployed.

Although some LEAs deal with similar challenges more successfully than others, the NUT believes that partnerships between such LEAs would be less disruptive, create fewer uncertainties and would probably be as, if not more, successful than the outsourcing solutions currently proposed. This view is supported by the House of Commons Education and Employment Committee report "The Role of Private Sector Organisations in Public Education":

"We do not consider that private sector organisations are inherently more skilled or are more likely to achieve high standards than public sector organisations."

In addition, Government does not acknowledge that private sector organisations have not always been successful in providing services previously the responsibility of the public sector. Examples of such underperformance include ICT services in Sheffield and administration systems in Leeds.

The NUT believes that there are a number of factors which should be taken into account when examining the case for outsourcing.

Firstly, the current basis for outsourcing LEAs should be scrutinised. The outsourcing of LEAs' services has been driven in each case to date by an OFSTED inspection report, although Government has stated that, ideally, outsourcing should not be confined to underperforming LEAs alone. Discussions on the efficacy of LEAs and extrapolations of future models of LEAs and service delivery have therefore been based on a relatively small number of inspections, which do not accurately represent LEAs throughout England in terms of geographical location, type of authority or socio-economic composition. In addition, the criteria for LEA inspections conducted have changed, so that comparisons for some services are difficult to make. It should also be noted that consultants, appointed to advise LEAs on their response to areas of provision criticised by OFSTED, have not always agreed with the inspection's findings. For example, KPMG's consultancy study for Sandwell LEA reported:

“we were unable to find any evidence to support the OFSTED criticism that there was no agreement between the Schools Psychology Service and schools about the level of service to be provided.”

KPMG then went on to list various types of documentation to support this view. In Haringey, OFSTED found that support for the maintenance of school buildings and for IT in administration was poor, yet Capita, the consultants responsible for drawing up recommendations for improvements, proposed that the authority should retain responsibility for the former service. In the light, therefore, of a narrow and unrepresentative evidence-base, which is not supported by the findings of other independent bodies, the conclusions drawn by OFSTED and the DfEE on the need for private sector involvement in LEAs must be treated with extreme caution.

The OFSTED draft report also acknowledges that there is a high correlation between socio-economic deprivation and school performance. The NUT notes that the LEAs which are subject currently to outsourcing initiatives from Government are those in which schools face multiple deprivation factors including extremely high levels of poverty, inter-generational unemployment, family instability, high percentages of ethnic minority pupils with language support needs and transient school populations. These additional challenges to a significant minority of LEAs have rarely featured in discussions on ways of improving LEAs' performance yet have a tremendous impact on what can be realistically achieved.

Another important omission from the debate about private sector organisations turning around underperforming LEAs is the changing nature of the role of LEAs over the last decade and the impact on LEAs' efficacy. Developments in the grant-maintained sector and the role of advisors, a myriad of centrally imposed responsibilities such as target setting, school improvement and other educational initiatives such as Excellence in Cities and specialist schools, have all had a profound effect on the work of LEAs, yet the impact these changes have had on overall levels of service provision does not appear to have been considered.

Secondly, the implications of the expansion of outsourcing for local democracy, such as the future role of elected members, have not been explored sufficiently. The House of Commons Education and Employment Committee report “The Role of Private Sector Organisations in Public Education” states:

“the underlying principles of public accountability should not be disregarded”

and:

“ultimate responsibility for the quality of service provided to users of education services (should) remain with locally elected representatives. This principle is at the heart of public accountability, and should not be compromised by the involvement of private sector organisations in service delivery.”

The involvement of the private sector results in the blurring of lines of the responsibility for and the accountability of the education service. Time will tell whether the current limited involvement of the private sector in education will have a negative impact on coherence and equity of provision. The NUT believes however that education must not suffer the consequences of allowing private companies to make a profit at the expense of high quality services. One truth is self-evident. The debate on the idea of private sector involvement in education has obscured other debates about whether or not the structural changes brought about by government initiatives are effective.

It is notable that the views of teachers and parents within local authorities where services have been outsourced have not been taken into account in these decisions. Although it could be argued that the majority of parents are much more concerned that their children are receiving a decent standard of education than about whether it is delivered by an LEA or other source, (judging by the low turnout for local elections, the concept of local democratic accountability is not a burning issue for most parents) they are, however, likely to be concerned that a private company is making a profit out of public money and their taxes. The NUT believes that it is vital that the impact of outsourcing should be evaluated in the light of these issues.

Local democratic responsibility is further marginalised by current evaluation and accountability mechanisms for the quality of outsourced services, which are completely unclear. The NUT believes that HMI/OFSTED and the Audit Commission should have an oversight role in the operation of outsourced services.

Thirdly, the process of outsourcing itself raises a number of concerns. It is disappointing that an important aspect of LEAs' work, the facilitation of “joined-up government” has been largely ignored. There is no evidence to suggest that this might be more effectively led by private sector organisations, although it is a crucial aspect of the challenge central Government has set local government. The NUT believes that LEAs have generally tackled the challenge of “joined-up thinking” well, a view supported by the evidence presented in “The Policy Context” section of the draft OFSTED report “Local Education Authority Support for School Improvement”, and have been responsible in recent years for the successful delivery and implementation of myriad cross-departmental initiatives, not only at LEA- but also at school-level.

One of the key issues relating to the improvement of under-performing LEAs, the need for improvements to be made quickly, has been addressed rarely. The current procedure for LEA outsourcing, entailing a considerable period of time between the initial inspection report and the selection of a preferred bidder, does little to affect the improvement of provision of services to schools, which is the *raison d'être* of the involvement of the private sector. In addition, LEA officers' time and energy will necessarily be less focused if they have to prepare a post-OFSTED plan and work with consultants. For example, it took Hackney's consultants seven months to draw up its final post-OFSTED Action Plan, which is hardly the most efficient way of addressing supposedly “urgent” problems.

The encouragement of private sector management of LEAs' services also has implications for the staffing of LEAs in the future. It has been stated by Brian Oakley-Smith, Chief Executive of Cambridge Education Associated, that private sector companies involved in the provision of

educational services will need to “headhunt” current or former LEA officers to recruit staff with the relevant expertise. This practice could have a dramatic impact on the quality of LEA staff in the future, emphasising the fact that LEAs are not competing on a “level playing field”.

Fourthly, the economic arguments offered in support of outsourcing are questionable. Currently the financial burden of the imposition of outsourcing is being borne by the LEAs affected. The Government does not provide extra resources for its experiment, draining the already inadequate funding for education LEAs have at their disposal. For instance, it is estimated that the hiring of consultants alone would cost an LEA up to £1 million. Islington will pay Cambridge Education Associates £11.5 per year for its services. Calderdale, on the other hand, used a Local Government Association team rather than an external consultant and paid a fraction of the cost of the latter (£75,000).

The nature of private companies involved in the provision of educational services also raises doubts about the primacy of improving standards by outsourcing. It is natural that the private sector should expect to gain a reasonable profit for taking over the provision of services from an LEA. This profit can be achieved in two ways. The first is by reducing the service through efficiency gains or cuts in provision. The second is by securing a contract for the value of the service which also had added to it the profit margin and the costs to the company of its own managers and administrators. The consequence of such an approach must be that at least for the period of the contract the cost of providing hopefully improved services must increase. Even if “for profit” companies are tightly regulated by the terms of their contracts to operate under comprehensive, equal opportunities criteria, their whole *raison d’être* is to make a profit for their shareholders, not to run a democratically accountable education service. Kevin McNeany, Chief Executive of Nord Anglia PLC, one of the leading educational companies in this field, has consistently re-iterated his obligations to his shareholders for example. In Southwark, for example, consultants have included the ICT Unit in the outsourcing “package” to make it more attractive to potential bidders, although it was found to be a well-run service by OFSTED. These practices must call into question Government’s claims regarding the efficacy and appropriateness of the private sector taking responsibility for all or most of an LEA’s functions.

It is perhaps appropriate here to cite the views of Peter Mortimore, of the Institute of Education, on this topic:

“The situation whereby one tier of democratic government uses public money to investigate the efficacy of another tier (also democratically elected) and, if it does not like what it finds, has the power to recommend privatisation of its services is worthy of Kafka.”

29. What types of contractual arrangements are best suited to the challenge of turning around under performing public services?

The NUT believes that the Government has adopted an ad hoc approach towards outsourcing. At present LEAs have been required to transfer services to a “person” by way of outsourcing. There is no single pattern, or a single framework of guidance, or a single code for outsourcing. There is confusion over who has the sanction against the contractor if the contractor’s services are not satisfactory. There is confusion also over which body is responsible for policy and which for management in the event of the bulk of an authority’s services being outsourced.

Wherever this involves the transfer of any part of an LEA’s undertaking, the principles of the TUPE Regulations should be followed. The NUT has welcomed the commitment to this principle shown

in the Cabinet Office consultation document on staff transfers occurring as a result of PFI/PPP and seeks consistent and straightforward application of the TUPE principles.

It may be necessary to extend the principle of commonality in the treatment of staff beyond TUPE protection for staff transferred. There is an inevitable tension in the relationship between private and public sector pay and other conditions of employment, particularly in the education service in which there is a predominance of statutory regulation of pay and other conditions. Public and private sector partnerships will suffer seriously from the effects of that tension if staff working within the partnership are subject to rivalries, jealousies and competitiveness arising from differences over pay and conditions. This problem must command serious attention in considering the processes appropriate to achieving satisfactory partnership arrangements.

It is notable that the Government has accommodated the private sector's demands in relation to contractual arrangements and enabled it to maximize its profits. The DfEE extended service provider contracts from three to five or seven years due to commercial pressure, although the LGA argued that this was too long a period for a contract of this kind.

30. Are there innovative public sector solutions which could be used to improve under performing public sector organisations? Is enough effort being made to find these public sector solutions? What are the differences in incentive facing public, private, voluntary or community managers seeking to turn around under-performing public sector organisations?

At the 1999 North of England Conference, the Secretary of State announced that he intended to use his powers under the School Standards and Framework Act to contract out LEA services where those services were deemed to be failing. It is important to note that the Secretary of State's powers are not powers to privatise LEA services; they are powers to contract out LEA services. The Secretary of State also has the option, in identifying another "person" to run such services, to ask other LEAs or a consortia of LEAs to take on such services. It is unfortunate that these latter options have been marginalized in the national debate about the improvement of LEAs generally.

No solution other than outsourcing has been recommended seriously for the improvement of LEAs. Other models of improvement, such as those promoted by the Local Government Association, which involve support from other, more successful local authorities and often involve the secondment of experienced staff, are rarely acknowledged. The House of Commons Education and Employment Committee share this view of improvement in its report "The Role of Private Sector Organisations in Public Education". It argues:

"addressing long-term under-performance should not always end with intervention or involvement by a private sector organisation. Some public sector providers have a good record of innovative, high quality education services, often in the most challenging circumstances".

The Government should examine the widest possible range of LEA support mechanisms, including case studies of successful practice, and acknowledge the fact that a variety of solutions are required to meet the particular needs and circumstances of individual LEAs. "The Role of Private Sector Organisations in Public Education" states:

"We do not see that a single model of involvement in under-performing authorities of schools can be found which meets the varied needs of all authorities a wide range of solutions should be developed."

For example, the use of “twinning” LEAs for support was given as an example by Estelle Morris, Minister for School Standards, to the Education Select Committee but no practical encouragement of this idea has been offered.

A properly functioning LEA which inspires and leads is more likely to contribute to high standards. The most effective LEAs are ones which do not operate from the citadel of the County or Town Hall but is one where employees, parents and governors are included as part of the corporate LEA and where teachers and their organisations work in genuine partnership with the LEA. In every LEA there are many teachers who could act on a part- or full-time advisory basis, who could contribute to policy development and who could adopt a role as consultants for schools, thus utilising their local knowledge and expertise and increasing the capacity of schools to improve themselves.

The NUT believes that an LEA in need of support is more likely to gain successful support from within the LEA or government sector, rather than from private providers. Private contractors operate on the basis of their own profit-based imperatives and not on the basis of the value gained by co-operation between LEAs.

31. Are there some areas of the core public services - 'no go areas' - which should be ring-fenced for exclusively public sector providers or do you think that private/voluntary providers should be allowed a role in all areas of the public services?

There is evidence from the private sector itself that there is a reluctance among companies to take on outsourced services since the number identified by the DfEE deemed to be suitable was tiny. One cause of that reluctance is the understandable expectation of the private sector to gain a reasonable profit for taking over from the LEA its provision of services. This profit can be achieved in two ways. The first is by reducing the service through efficiency gains or cuts in provision. The second is by securing a contract for the value of the service which also had added to it the profit margin and the costs of its own managers and administrators. The consequence of such an approach must be that at least for the period of any contract the cost of providing hopefully improved services must increase.

In an ideal world no service should be subject to profit arising from the management of state schools and other LEA services. Existing circumstances are, however, very different. LEAs are not the sole suppliers of materials and equipment. Successive Governments have put out to contract the inspection of schools and many sources of advice come from independent consultancies. It would therefore be futile to expect private companies in tendering for services and contracts not to expect also to make a profit.

The NUT believes that profit must not be made out of the provision of education. In terms of private companies' role as service provider and their expectations to make profits on a commercial basis, the Government has not evaluated the consequences on education budgets of those profit margins. Earlier on in the submission, the NUT emphasised that unless the Government recognized through additional funding the consequences of outsourcing such services as those provided by LEAs, the costs involved in outsourcing could damage the provision of advice and support to schools.

The NUT is concerned that the necessity of a local structure for co-ordinating the provision of services to schools has not been acknowledged sufficiently. This ensures that schools are able to focus on their prime function, the raising of standards, rather than on procurement and administration. Little consideration has been given to whom or what will provide an overall

vision/direction for education at a local level or to how, other than outsourcing, improvements in school improvement support could be facilitated.

Consistent with its view of the role of the private sector in the maintained education service, the NUT opposes any form of employment relationship which would constitute private sector employers as employers of teachers working in schools. There exists already alarmingly diffused accountability and it cannot be helpful to complicate this even further by the addition of private sector employed teachers, engaged in a range of support activities with schools.

It should continue to be the responsibility of local authorities to articulate a locally shared vision for education and provide strategic leadership of the wider educational community, including early years providers, community education and TECs. This is in line with the Government's focus on local authorities as agents of empowerment for local communities and citizens' advocates, ensuring that service delivery is of the highest quality, relevant and co-ordinated in such a way as to maximise equality of opportunity.

32. Do you think that the existence of the profit motive within the public services undermines the values on which public services were founded? If so, why? Can you give examples of how the profit motive has affected the nature of the service delivered?

The profit motive within the private sector, rather than the public sector, undermines the delivery of public services. The pressure for a worthy profit for the private sector in a schools PFI will be at the expense of the terms and conditions of those providing support services, or at the expense of support to those delivering the curriculum.

33. Do you think that the public sector has a unique service ethos which means that it is better placed to provide core services?

34. What are the benefits (if any) that you think could be gained by allowing the private or voluntary sector more freedom to provide core services?

One disadvantage of the private sector delivering core services is the accountability aspect. Public services, provided by local councils, are accountable via the electorate and local councillors. In the case of a private company delivering a core service, accountability is blurred and ultimately those delivering the service are accountable to share holders and not the local electorate.

35. What are the advantages/disadvantages of the core/ancillary distinction? Are there problems in having the public and private sectors supplying different elements of what should be an integrated service?

As above, there is a question of accountability, not only to the electorate but also which body is accountable for each area of service delivery. In the case of education, teaching staff remain in the employment of the public sector whereas support staff are usually transferred to the private provider. This carries the disadvantage of lack of control, or at least blurred control, as to whom the support staff report. The integrated service of the operation of a school is thus confused by several employers.

36. Do you think there would be gains from more competition between a diversity of public, private and voluntary providers in more areas of the public services? Can you give examples of areas which have benefited from having a diversity of providers? Alternatively, what do you think would be the advantages of ensuring that the public sector is the sole provider of core publicly funded services, such as health, education and prisons?

The first part of this question returns to the perceived monopoly on innovation and efficient service delivery that the private sector is presumed to hold over the public sector. It can be argued that, as an alternative to increasing competition between the sectors, more efficient services can be delivered by a stricter public sector using techniques of the private sector where necessary.

The advantage of ensuring that the public sector as the sole provider is primarily one of accountability to service users and the local electorate. A further advantage is that any profits or cost savings made from the delivery of a service will remain within the public sector rather than handed over to share holders as dividends. The public provider, unlike the private provider, will not have to drive down terms and conditions of employment of those providing key public services to ensure such profit.

37. What distinction (if any) would you make between the suitability of the voluntary sector and private sector to provide core services?

As with the above answer, the Union believes that a voluntary sector with the necessary expertise in a particular field would not have to seek efficiency gains to satisfy shareholders, unlike a private company.

38. Does involving the private sector in the provision of key services expose the State (who still funds these services) to the risk of being overcharged (e.g. in areas such as health)?

Yes, especially in the earlier experiences of PFI in schools. Local Education Authorities, for example, had no expertise in the procurement of PFI/PPP. In those instances where satisfactory contracts were in place it was at the cost of large consultancy fees. In others, for example the Lewisham catering contract, it was at the expense of the service provided. The performance standards in the Lewisham catering contract allows for the quality of service provided to schools to reach as low as 79% yet the private provider continues to reap 99.9% of the total fees payable.

39. If the private or voluntary sectors are to provide key services what regulatory safeguards need to be used to ensure that provision is equitable and accountable? Does the current nature of the purchaser-provider split in the area of your interest help or hinder the safeguarding of these values? Is there sufficient regulation in areas where the private/voluntary sector already plays a central role (e.g. long term care, prison management, provision of LEA services)?

The NUT welcomes the detailed service specifications which have been drawn up by the DfEE on behalf of outsourced LEAs, which link expected levels of performance to payment, thus ensuring minimum standards of quality. However, the Government has issued no guidelines on what proportion or how much profit can be made from education, including essential school services. It is inevitable that any profit made by contractors or providers will come from money previously earmarked for the benefit of schools and their pupils.

40. What, in your view, have been the strengths/weaknesses of these initiatives? What have the private and voluntary sector added to the partnership? Could partnership organisations, such as EAZs, have a further role in commissioning services for schools or in appointing school management?

Education Action Zones have the potential to be a force for empowering teachers, allowing them to reclaim their professional autonomy and have a real say in what their pupils are taught and how. The extra funding provided for EAZs has also re-ignited the national debate on how schools can be resourced fairly and effectively, by taking schools' individual needs into consideration, and may yet force a radical rethink of the way all schools are financed. In addition, the initiative has highlighted the impact of deprivation on educational standards and forced educationalists to consider how equality of educational opportunity can be ensured for all sectors of society by facilitating the targeting of additional resources on schools in areas of significant socio-economic deprivation, enabling a variety of strategies for addressing poverty, disaffection and underachievement to be employed

If nothing else, the initiative has demonstrated the belief that education is an important way of advancing one's life chances and has highlighted the need for schools to seek individual solutions to the individual problems their pupils face. The holistic approach to tackling disadvantage used by EAZs, uniting schools with a range of other agencies, is a practical recognition that schools may not be able to raise standards by themselves and that factors beyond schools' control, such as housing, health, unemployment and crime, must also be addressed if schools are to "make a difference" to the lives of some of the country's most deprived pupils.

The bidding process used by Government to determine the establishment of EAZs, however, is unfair and discriminatory, often reflecting the skills of the bid-writing personnel in the LEA rather than the strength of the case. It is also wasteful of time and energy which would be better spent on supporting schools. The bidding process for the second round of EAZs, for instance, attracted 123 bids of which 48 went on to be finally approved. The workload of staff within schools in compiling bids also takes a disproportionate amount of time which is often wasted. The NUT believes that the bidding process is a way of attracting maximum publicity for the Government for a particular initiative in return for a limited amount of funding.

The initiative is funded on a short-term basis, although Government expectations for EAZs indicate more long-term outcomes. First round EAZs have recently been extended from three to five years (apart from five zones which are required to further develop their plans). Hopefully, this is a recognition by the Government that the full benefits of additional funding can only make a real difference when a reasonable timespan is guaranteed.

The Government's 1997 White Paper, "Excellence in Schools", did not pre-figure later actions by the Government which involved private companies in the provision of public sector education services. It was only when the Government published and announced its first round bidding guidance for Education Action Zones (EAZs) at the 1998 North of England Conference that the Government demonstrated its clear intention that private companies should play a leading role in aspects of the maintained sector.

"Ministers would like to support one Zone in the first five which is led and run by a business and several like this in a programme of 25 zones." (EAZ Bidding Guidance)

The focus of the EAZ debate then became centred, not on the targeting of educational disadvantage, but on whether they would be a test bed for the privatisation of the school system.

As a result of interventions by the National Union of Teachers and the Local Government Association, the Government clarified its position on the role of commercial companies in EAZs. Letters from the Secretary of State to the General Secretary of the NUT made it clear that the provision of such services would not be for profit.

“What has excited the recent press coverage is the perception that zone policy is a covert attempt to start removing the education service from LEAs, or even to privatise education. I can reassure you that there is no fuel to feed the conspiracy theorists.” (Secretary of State to NUT General Secretary - 21 January 1998)

“EAZ policy is not about business making a profit.”
(Included in question and answer correspondence between Secretary of State to NUT General Secretary - 24 February 1998)

Alongside this press coverage, it was clear that the Government had a definite expectation that EAZs would act as change agents on the curriculum, on the management and financing of schools, on the way teachers worked, both professionally and in terms of their pay and conditions, and on the involvement of business and other community groups in all areas of school life.

The NUT has little evidence to date of the involvement of commercial companies in EAZs being used in inappropriate ways, or to promote their own commercial interests. Although representatives of commercial companies often have key roles on the Forums, the expertise of the LEA, the involvement of governing bodies and the presence of the teachers' organisations have ensured that the direction of the EAZ initiatives is educationally focused. The Project Directors of the current 25 EAZs have education or public sector experience rather than purely commercial backgrounds.

The second round EAZ bidding guidance issued by the DfEE early in 1999 focused on encouraging to private companies to take up the challenge and submit bids. The NUT EAZ Unit has analysed the 48 bids which received DfEE approval and has found that, although national commercial firms feature as partners in the bids, this is usually on a well-established local basis and rarely in a leading role. The exceptions to this are the ICT companies such as BT and Research Machines. As in the first round, commercial educational companies are included in the bids in a partnership role, for example CfBT, Include, World Challenge and Capita. In a number of bids, these companies would be involved in providing services to the Zone, such as World Challenge on adventure and residential experiences.

The DfEE has claimed that three bids were led by business - Oxford, Islington and Manchester Wythenshawe. The NUT's information is that the first two bids are LEA bids in association with established educational trusts - the Hamilton Trust in Oxfordshire and the Fischer Family Trust in Islington. Much has been made of the connection with Manchester airport in the Wythenshawe bid but it appears that the bid has been initiated by local schools and the LEA. Project management expertise from the airport is specified as “in kind” support in the bid, plus a £10,000 cash contribution to the development of the bid. The reference to business-led bids is an unfortunate spin.

The apparent political need for the Government to do this is regrettable. The emphasis on the exaggerated involvement of private industry sustains political opponents whilst distracting attention from the potential educational benefits that might result from EAZs.

In the second EAZ round, bids needed to obtain matched funding in order to qualify for up to £250,000 from the DfEE. The bids contain breakdowns of the commercial support in cash or “in kind” within the matched funding. As in the first round, support is largely “in kind”, with many bids having a long way to go to reach the target amount.

When representatives of CfBT, Nord Anglia and 3Es appeared before the Sub-Committee in July, they appeared to agree that EAZs did not provide fruitful opportunities for significant commercial company investment of time or funding. The NUT has no evidence that the threat of private companies making a profit from EAZs schools or exercising an undesirable influence over EAZ Forums has become a reality. In this respect, EAZs have been a failure from the Government's point of view. Business involvement has built on well-established school industry links. Financial contributions to EAZs have been difficult to obtain and have largely been "in kind" rather than in cash.

51. What impact do you expect the new best value regime to have on the use of partnerships in the delivery of local services? Do you think that further incentives or regulations are required in order to encourage public sector commissioners to enter into PPPs for service provision?

The best value regime will not, in the short term at least, impact directly on the delivery of education in schools. The impact will be upon the support services provided by the LEA to the school. It is unclear how existing PPPs including schools will have to respond to best value. PFI/PPPs are commonly via contracts of over 25 years and if the best value ethos is to apply then services must 'continually improve' for this period. It is also unclear how a local authority can terminate or even alter a contract if this is not the case.

57. What are the skills that organisations need to learn to make partnership agreements work? Are these currently in short supply in the public, private and voluntary sectors? If so, how should this skill shortage be addressed?

The expertise necessary to secure PPPs is absent in many local authorities. The required skills covering such a wide range of areas, for example financing and legal aspects of PPP contracting, is lacking in many authorities. The necessary skills can be found more in the private sector, at a cost to local authorities and these costs are passed on to the local taxpayer. The shortage of necessary skills in the public sector should be addressed prior to an authority embarking upon PFI/PPP.

60. What examples do you know of public/private sector organisations successfully managing the transition into a partnership arrangement? Do you know of PPPs which have benefited from the use of conflict resolution procedures?

The NUT believes that all PFI/PPP contractual negotiation should address the issue of conflict resolution, far in advance of any contract reaching signature stage or 'mutual recrimination'. Any schools PFI/PPP contract should address issues such as compliance in excess of the minimum and 'worst-case' scenarios of, for example, provision in case of bankruptcy on the part of the private provider.

62. What are your views of existing TUPE arrangements? Do they provide adequate protection for employees? What other safeguards would you propose?

The Union welcomes recent amendments to TUPE regulations and in particular the Cabinet Office guidance on the same, published January this year. It remains unclear, however, how such guidance should be interpreted by local authorities procuring PFI/PPP in light of the Local Government Act 1988, in particular Part II. The Union would welcome clear guidance from the DETR to local authorities, stating that TUPE should apply to PFI/PPP transfers.

63. According to your experience/research what has been the experience of employees transferred between sectors as the result of PPPs (in terms of wages and conditions, pension rights, and motivation)? Have transferred staff experienced more/less opportunity for career development and training? What has been the impact on morale and motivation?

In any schools PFI/PPP, it is perhaps too soon to realise the impact of staff transfer on the delivery of the curriculum and the impact on morale and motivation of staff. There are, however, concerns that one of the few ways in which companies may improve “efficiency” in a schools PFI is to reduce the terms and conditions and salaries of support staff in the school that may have transferred as part of the contract. There are further concerns of the level of pay of new staff that will not have been included as part of the transfer.

64. From your experience/research what proportion of any efficiency gains that have resulted from PPPs that you know of have arisen from changes in employee terms and conditions?

As outlined above, in schools where the teaching staff are employed by the local authority and the accommodation has been built and is occupied, there are few alternatives available to private companies to make efficiency gains other than by seeking a reduction in staffing costs. A reduction in staffing costs can be achieved either by reducing salaries paid to staff or by increasing hours worked. In either scenario, the support available to teaching staff will be affected.

65. How do you think the use of PPPs affects the accountability of service managers to elected representatives, citizens and regulators?

Private companies delivering local services via contracts of 25 years in length will be no more accountable to the electorate than councillors will to share holders of private companies. Service delivery may become more transparent when delivered by a private company, depending on the service and the nature of the contract, but this does not lead to increased accountability to the local electorate. On the contrary, the Union believes that a private company with a contract to deliver local services over 25 years will have little incentive to become accountable to anything but the contract.

66. Do current models of PPPs allow enough scope for citizens and the users of services to influence key issues such as: whether or not a PPP should proceed; the nature of performance targets set in partnership agreements; the monitoring and evaluation of whether these targets have been achieved? How willing do you think the private and voluntary sector would be to operate in partnerships where users have more influence over these issues?

The Union’s experience in schools PPP is that service providers, especially those employed in schools that are to be subject to PFI/PPP, are not included in the decision making process. There is little scope for teachers or support staff to be included in a decision as to whether PFI should be chosen as a form of procurement. On the contrary, the NUT has found that in many PFI proposals the term ‘confidential sensitivity’ is used to justify withholding information such as the number of classrooms in a new school and the size of playground space available. The Union has also encountered few projects where parents were included in the process. Monitoring of performance targets and evaluation of service delivery is often addressed at the latter stages of the contract negotiation and it is usually at this point that staff in schools begin to discover how the working environment may change.

72. What are the areas of public policy/public services where you think that cross-sectoral PPPs have a significant role to play? What are the barriers to the creation of cross-sectoral PPPs in these areas?

Schools already play an important role in many local communities, not only via delivery of education but also use of school premises out of school hours. The cross-sectoral PPPs referred to in the paper, especially the example of a new primary school being built as part of a housing development, usually entail the sale of local authority land as part of the PPP. The NUT believes that existing land used by schools should be protected rather than exchanged for lower payments to the private provider as occurs at present.

75. Is there an adequate central database which pools information on the performance of all partners? If not, what ideas do you have for how this resource should be made available to all public managers involved in procurement?

There is very little information available to parties with an interest in a PFI/PPP development. As stated above, staff in schools are rarely informed of a proposed PFI/PPP and are usually only informed once a decision to procure using PFI/PPP has been taken.

Centrally, the PFI library within the Treasury Taskforce may have had the potential to hold documentation from the earlier PFI schemes but this potential has not been realised. A central database of information available to those procuring using PFI and also of performance following contract awards would be useful to overcome the alleged "commercial confidentiality" which acts as a barrier at present.

76. Do you think that enough effort is being made to spread best practice on the design, management and evaluation of PPPs? What role do you think organizations such as Partnerships UK or the Office of Government Commerce should play in this regard?

The Union believes that there is limited access to what is best practice in PFI/PPP procurement. Most local authorities are procuring under PFI/PPP for the first and possibly the only time and there is a lack of materials and publications for such authorities to provide to staff and interested parties. The Treasury Taskforce, as referred to in the answer above, could have played a role in the spread of best practice and the Union anticipates that the Office of Government Commerce could play a similar role. Such best practice guidelines should place emphasis on service delivery and contract management using PFI/PPP rather than the present focus which is largely on procurement using PFI/PPP.

National Union of Teachers
August 2000



THE RESPONSE OF THE NATIONAL UNION OF TEACHERS TO THE HOUSE OF COMMONS' EDUCATION AND SKILLS SELECT COMMITTEE ANNUAL REVIEW OF PUBLIC EXPENDITURE

INTRODUCTION

1. The National Union of Teachers (NUT) welcomes the opportunity to submit evidence on Private Finance Initiative (PFI) projects to the Education and Skills Committee review of Public Expenditure.
2. The NUT's PFI Unit monitors all schools PFI projects in England and Wales and draws upon local Divisions and Associations experiences of PFI to inform the development of its own policies.
3. The NUT's submission to the Education and Skills Committee is based upon this local evidence as well as findings from national research on PFI in schools. The report draws attention to the implications of this evidence in view of the DfES' plans to further the use of PFI in schools as detailed in their annual report.

LOCAL EVIDENCE

4. The NUT would draw to the attention of the Select Committee the attached NUT document (Annex A) *'Five reasons why teachers and school governors should say no to PFI'*. This document details a selection of the many negative experiences of PFI in schools. Specifically it sets out the five reasons why the NUT opposes the use of PFI in schools:
 - It does not offer value for money;
 - It meets the needs of contractors and not the needs of schools;
 - PFI threatens future education budgets;
 - Privatised "facilities management" does not improve the quality of services; and
 - All the project risks do not transfer to the private contractor.

CONSULTATION AND DISCLOSURE OF INFORMATION IN SCHOOLS PFI PROJECTS

5. The NUT has recently expressed its concerns to the DfES about the weaknesses and lack of transparency in the present consultation arrangements following our experiences with the Calderdale Schools PFI project. A copy of the letter that was sent to the DfES on 13th May 2003 is attached to this submission as Annex B. The NUT is awaiting a reply from the DfES.
6. The NUT is further concerned by the affect that the DfES' plans to shorten the procurement of PFI projects could have on consultation processes. Whilst the NUT would welcome the lower costs to the public sector that would result from a shortening of the procurement process, a streamlined procurement process should include sufficient time for meaningful consultation with trade unions and other key stakeholders.
7. Furthermore, the Building Schools for the Future proposals (see paragraphs 35-40) will weaken the democratic accountability of PFI projects by transferring key decisions from the LEA to a regional body. This is a matter of serious concern.

NATIONAL EVIDENCE

AUDIT COMMISSION REPORT 'PFI IN SCHOOLS'

8. The NUT would draw to the attention of the Select Committee the Audit Commission's report 'PFI in Schools', published in January 2003¹. The Audit Commission compared a sample of traditionally funded new schools across England and Wales with 17 of the early PFI schools. The report examines whether the PFI schools were of good quality, what the schools' users thought about the buildings and services, and their cost.
9. The study found that overall, the quality of all schools, however funded, fell below 'best practice'. The quality of the PFI schools was, statistically speaking, significantly worse than that of the traditionally funded sample. The expected benefits of a single private consortium designing, building and operating schools were not yet widely evident.
10. The unit costs of new schools varied widely, with no clear-cut difference between PFI and traditional schools in either construction or most running costs. There was no evidence that PFI schools were delivered quicker.
11. The study noted that the DfES only approves an outline business case for a PFI scheme if the schools have been consulted and given their agreement to the

¹ Audit Commission, 'PFI in Schools' www.audit-commission.gov.uk (2003)

scheme. Yet the report found that the level of staff involvement varied across the early PFI schemes. Only 16% of users stated that they were involved in the procurement process 'a great deal' or 'a fair amount'. Those users who expressed less overall satisfaction with their new school also said that they had little involvement in the design phase.

12. Problems in some early PFI schemes arose from the PFI providers' lack of understanding of what schools needed.
13. Some schools stated that specialist equipment installed by the PFI provider was out of date. The Commission believes that equipment obsolescence is a risk that needs to be factored in to the financial calculations.
14. In some schemes the last minute cutting down of the specification to fit affordability constraints led to some components and design 'desirables' being sacrificed. Some of the affected schools then had to install additional furniture and equipment at their own expense.
15. The report identified a number of areas where unplanned risks could emerge during the contractual period. For example, the popularity of new-build schools can lead to increased demand risk, with pressure to expand pupil capacity very quickly. Whilst the Audit Commission regards this as a positive sign, it notes that the LEA must deal with the consequent financial demands that arise from a variation to a PFI contract. There is also a possible risk to neighbouring schools from a drop in demand that could create additional financial pressures for the LEA. Early signs of this risk materialising were reported during the fieldwork period.
16. If there is a major problem with a school building, the bottom line is that the LEA must step in if the PFI provider fails to respond appropriately, because it is the LEAs responsibility to provide the education service.
17. The payment mechanism is the primary vehicle for ensuring that the PFI provider performs to the standards set out in the output specification and therefore for achieving good value for money. Yet, the Audit Commission found that the mechanism was not enforced rigorously in some instances. For example, teething problems with the provider's information system meant that one LEA had no information base to make any deductions. In addition, further work is needed to ensure that payment deductions are a proper reflection of the impact of the non-delivery of a service. For example, a deduction of £268.62 was made out of a monthly payment of about £150,000, for two days' non-availability of an athletics field. This sum may not be high enough to act as an effective incentive, and probably cost more to calculate and administer than the value of the deduction.

18. The report emphasised that the Public Sector Comparator (PSC) is one of the significant inputs informing the judgement as to whether a project will deliver good value for money. The Audit Commission believes that the PSC falls short of this in two important ways:
 - It compares a PFI scheme's cost with a hypothetical alternative, rather than an actual set of costs from comparable schemes; and
 - It considers the projected PFI contract cost before the design is finalised rather than the actual outcomes of the final contract negotiations.
19. In every case the Commission investigated PFI was judged to offer a saving over the PSC. This would suggest that the value for money of schools PFI has already been proven. But if the PFI scheme's costs were not lower than the PSC estimate, it was unlikely to receive permission to proceed, and the opportunity to obtain new buildings or refurbishment would have been lost. Some interviewees claimed that the incentive to estimate on the high side for the PSC in order to obtain the government funding was strong. In all but two of the schemes in the sample the cost advantage of the PFI option relied on the estimate of the cost of risks transferred. And the size of risks transferred was related to the difference between the PFI cost and the PSC estimate – where the PSC estimate of construction and running costs was much below the PFI cost, the cost of risk transfer added on was on average higher.
20. Most of the LEA officers interviewed by the Audit Commission stated that affordability gaps under PFI had grown as a result of some of the improvements introduced. Yet the Commission found that the additional cost of these improvements was not off-set in the early schemes by the hoped for efficiency gains in schools capital and running costs resulting from innovation or service efficiencies.
21. The report identified the risk with PFI is that the impact of under-funding may well surface several years into the contract, allowing LEAs little room for manoeuvre.
22. The Audit Commission found that the early wave school schemes shows that the PFI process did not as a matter of course guarantee better quality buildings and services, or lower unit costs. The Commission believes that the key lesson is that if the large-scale new investment is to fulfil the Government's vision of quality schools that can boost attainment, then these benefits must be levered out from each individual scheme, and a way found to ensure that a scheme does not fall short of this vision during the procurement process. A consistent message, particularly from headteachers, was that a significant investment of time and personal commitment in the detailed design and development stages is essential if the benefits are to be realised.

AUDIT SCOTLAND REPORT ON PFI IN SCHOOLS

23. The NUT would draw to the attention of the Committee the Audit Scotland report *'Taking the initiative – using PFI contracts to renew council schools'*². The study looked in detail at six of the twelve PFI schools projects currently in operation in Scotland.
24. Audit Scotland reported that the single most important driver of PFI as the procurement route for new schools has been the opportunity to obtain substantial additional investment. Alternative traditionally funded procurement routes have not been a viable option within the financial framework in operation. This purports the often-repeated claim of English LEA's that PFI is the 'only game in town'.
25. For some schools there is a risk of long-term pupil roll reductions and surplus capacity. It is also likely that there will be new legislation and shifts in education policy over the 25-30 year lifetime of the PFI contracts that will affect how the school buildings are used and what is required of them. For future PFI projects, councils and private sector providers should explore the allocation of risk carefully, particularly whether PFI providers should and could take more responsibility for managing risk associated with the need to reconfigure schools, should demand vary within predetermined limits.
26. The report called on the Scottish Executive to consider the benefits of promoting real choice between procurement options for school services and said that creating a framework that allows councils to choose between a mixture of procurement options (i.e. both PFI and non-PFI) would help secure best value from PFI.
27. The benefits of PFI procurement are not consistently available to all school projects or are all unique. It may be possible to achieve similar benefits from other procurement approaches but in practice because of funding considerations there has been little or no opportunity for councils to test them in practice. Disbenefits of the use of PFI in schools are:
 - Managing the PFI procurement process is expensive for both public and private sectors, particularly for smaller projects. In the six cases that Audit Scotland examined the combined set up and advisers cost for private and public sectors ranged between £1 million and £12 million (or between 5% and 15% of core constructions costs);
 - There is a risk that future financial pressures will fall on the remaining part of the education budget or on other council services. For the six projects

² Audit Scotland *'Taking the initiative – using PFI contracts to renew council schools'* (2002)

examined the net PFI payments (after deducting level playing field support grant) averaged 14% of the councils' total non-staff education budget. In Glasgow (the largest contract) the net PFI charges represent 24% of the council's entire non-staff education expenditure in 2000-01; and

- The cost of private finance is higher than in the public sector. This cost generally varied in the range 8% to 10% a year, 2.5% to 4% higher than a council would pay if it borrowed money on its own account for a similar project.
28. Audit Scotland found that in most cases the cost advantage in favour of PFI as opposed to the PSC was narrow:
- In 5 of the 6 cases the PFI construction costs were higher than the PSC;
 - In all 6 cases the operating costs of the PFI option were higher than the PSC; and
 - In most cases the risk adjustment figure tipped the balance back in favour of the PFI option.

HARINGEY SCHOOLS PFI SCHEME

29. The NUT would draw to the attention of the Committee a report on the Haringey Schools PFI scheme which was published in 2002³.
30. The report found that two years after signing the PFI contract, Haringey LEA was short of more than £6 million needed to complete the work the PFI deal was supposed to cover. The LEA had to take £250,000 from the budget for the borough's primary and secondary schools to cover the funding shortfall.
31. The LEA then had to agree to find an extra £2 million a year for most of the 25 years of the contract from its own resources.
32. The report noted that to get government approval for a PFI scheme, local authorities have to demonstrate that it would give better 'value for money' than using publicly-provided financing, and that the council could afford it. In Haringey, councillors were advised to exclude the provision of essential services from the contract to make the project "affordable". Yet, Haringey's Outline Business Case stated that the cost of the PFI option was £12.9 million higher than the Public Sector Comparator (PSC). The estimated cost of the public sector option was then 'refined' upwards until it was higher than the Council's preferred PFI bidder. Part of this refinement involved adding to the

³ Melanie McFadyean and David Rowland 'PFI vs Democracy? School governors and the Haringey Schools PFI Scheme' (2002)

PSC the cost of the various risks involved in refurbishing, maintaining and operating school buildings. But how can such risks be quantified? One commentator noted *“there is some evidence that the costs of risks transferred.... to the private sector have been exaggerated so casting the PFI option in an unduly favourable light”*.

33. The classroom size set out in the PFI contract is too small for the curriculum needs in at least three of the schools. The necessary variation to the contract will cost the schools more than £1million between them. They can no longer change contractors and what is more, the annual payments to the contractor take priority over everything else, including the teaching budget, regardless of whether or not government funding for either councils or schools is adequate.
34. The report highlighted the role of school governors in the Haringey PFI project. Governors were excluded from playing any role in deciding what refurbishment their schools needed, in spite of having hands on local knowledge of their needs. The Council delayed consulting school governors about the PFI proposals until the plans were almost ready for Treasury approval. Later, it provided them with a mass of complex detail that they were ill equipped to understand, and gave them little help in understanding it. Many governors' doubts about the project hardened into opposition so the council made strenuous efforts to persuade them that they had no choice but to agree as PFI was the 'only game in town'. The most reluctant governors won a few concessions (one was promised a new sports hall for their school) and eventually all of them fell into line.

BUILDING SCHOOLS FOR THE FUTURE

35. The NUT has previously commented on the DfES' Building Schools for the Future proposals in its response to the consultation exercise which accompanied the launch of the proposals. The NUT would draw to the attention of the Committee its main concerns about the proposals:
36. The consultation paper proposes that of the £2.2 billion that would be allocated in 2005-06 to a new national procurement body, £1.2 billion would be procured via PFI. As the NUT is opposed to the use of PFI it believes that all of the £2.2 billion funds should be procured through traditional capital funding.
37. The NUT views the Government's decision to earmark a set amount of funds for PFI schemes years in advance of any procurement process as unwise. It pre-supposes that using the Government's criteria PFI will offer better value for money than other procurement methods in 2-3 years time. Instead of allocating £1.2 billion to be procured through PFI, the Government should allow greater flexibility and accept that value for money might be best achieved procuring the full £2.2 billion through traditional capital funding.

38. It is unclear from the Building Schools for the Future consultation paper whether the proposed £1.2 billion to be procured through PFI will be ring fenced. Clarity is needed in view of the frequent occurrence of rising project costs in PFI schemes. For example, if £1.2 billion was not enough for the Government to fund the PFI projects where would the additional funding come from? The NUT would be concerned that there may be a temptation to re-allocate funds from the remaining £1 billion of the £2.2 billion to cover the costs of PFI. To avoid such a situation, the NUT, in its response to the consultation exercise, urged the Government to ring fence the £1 billion PFI funds.
39. Furthermore, the proposal that companies that successfully win the first bids will be awarded all the contracts for the next five years (as is the case with the Partnerships for Church of England Schools initiative) cannot be in the public interest, or consistent with the securing of best value from competitive tendering. It is also difficult to see how such arrangements could accord with the European Union procurement directives.
40. The NUT is surprised to see Building Schools for the Future described as a “commitment” in the DfES Annual Report (launched on 14th May) when the deadline for responding to the consultation exercise was not until 30th May. By including the proposals in their Annual Report before the end of this consultation process, the DfES pre-supposes acceptance of the proposals by those responding to the consultation.

CONCLUSIONS

41. In view of the substantial amount of evidence detailed above, the NUT considers the DfES’ plans to further the use of PFI in schools, as set out in their 2003 Annual Report, to be ill advised.

ATTACHMENTS:

Annex A: Five Reasons why teachers and school governors should say no to PFI

Annex B: Letter to the DfES raising concerns about consultation with trade unions and a lack of disclosure of information in schools PFI projects

ANNEX A: FIVE REASONS WHY TEACHERS AND SCHOOL GOVERNORS SHOULD SAY NO TO PFI



FIVE REASONS WHY TEACHERS AND SCHOOL GOVERNORS SHOULD SAY NO TO PFI!

1. PFI does not offer “value for money”

The Government claims that PFI offers “value for money” compared to traditional public funding. These claims hardly stand up to analysis since schools will be paying for:

Higher borrowing costs - the cost of private finance is higher than in the public sector. Audit Scotland found that this cost generally varied in the range 8% to 10% a year, 2.5% to 4% higher than a council would pay if it borrowed money on its own account for a similar project

The large returns demanded by the private sector – profits from PFI are extremely high. The companies involved with the PPP for the London Underground expect to make annual returns as high as 20%.

Consultancy fees - £4 million was spent on consultancy fees (lawyers and accountants) for a £48 million PFI project in Tower Hamlets. Consultancy fees amounted to over 8% of the total project costs. Audit Scotland found that the combined set up and advisers cost in PFI projects ranged from between 5% and 15% of core constructions costs.

In addition, the value for money test that all PFI projects have to pass – the Public Sector Comparator (PSC), has been totally discredited. The PSC will be typically loaded unfairly in favour of PFI. For example in Haringey:

- Councillors were advised to exclude the provision of essential services from the contract to make the project “affordable”. Soon after the contract was signed the LEA faced a funding shortfall of £6 million – they couldn’t afford to fund and provide the services excluded from the contract.
- The Council came up with the idea that upgrading schools through PFI would improve pupils’ exam results and that this would mean a higher proportion of school leavers would find employment. The value of this improvement in educational attainment was costed at £4.8 million and helped make PFI appear to be value for money.

Jeremy Colman of the National Audit Office has said that these value for money

exercises are “*pseudo-scientific mumbo jumbo where the financial modelling takes over from the thinking*”.

Analysis of the early PFI schemes further undermines the Government’s claim that PFI offers better value for money than traditional sources of capital funding:

- The Audit Commission compared early schools PFI schemes (built between 1999 and 2002) with schools built with traditional capital funding (built between 1997 and 2001) and found that the unit costs of new schools varied widely, with no clear-cut difference between PFI and traditional schools in either construction or most running costs.
- The Public Accounts Committee surveyed local authorities with up and running PFI schemes – 23% of authorities thought that there had been a decline in value for money after the contract had been let. The high prices for services additional to those in the contract were an area of particular concern for authorities.

2. PFI meets the needs of contractors and not the needs of schools

Schools have many varied needs. Under PFI contracts though, schools will be up against the competing needs of the private contractor and its shareholders. As a result, in many cases the needs of the private company will be met at the expense of the needs of the school.

Private contractors will work to the output specification. Contractors can exploit any vagueness in the specification in order to cut corners and to increase their profit margins. For example, an investigation into PFI in schools reported that:

“ In one case, internal viewing windows to a sports hall were omitted by the contractor during the construction phase, although they had been seen on design drawings. It transpired there was no mention of them in the output specification nor in room data sheets, and that the architect’s intentions had no contractual force”.

In Sheffield, the contract excluded structured cabling to the tune of £50,000, which had to be funded by the LEA.

PFI contractors have difficulty meeting the needs of the school year. For example:

- Edinburgh - the refurbishment of the Royal High School fell four months behind schedule. The delayed building works have disrupted children’s education through disturbance caused by drilling, hammering, dust and exposure to electrical wiring.
- Kirklees - the PFI contractor failed to deliver a summer refurbishment project in time for 20 schools in the Huddersfield area to open in September 2002.

- Haringey - In 2001, Jarvis failed to complete works on 4 schools before the start of the school term. In 2002, the same thing happened in 5 schools.

Further problems arise because of contractors lack of understanding and awareness of what is required in schools. For example:

- The roof and walls at Malmesbury School in Wiltshire are so thin that lessons cannot be heard when it rains. A lack of soundproofing between classrooms meant that A-level practice papers had to be halted and a pupil moved because the rain was so loud.
- There have been problems in many of the schools involved in the Stoke on Trent schools project with a lack of storage and a lack of ventilation. The contractor also put hand-dryers in primary school toilets at adult height – meaning the children couldn't reach.

CABE, the Government's architectural watchdog, have described some PFI schools as "*little better than agricultural sheds with windows*".

The Audit Commission found that the quality of the PFI schools was, statistically speaking, significantly worse than traditionally funded schools. The expected benefits of a single private consortium designing, building and operating schools were not widely evident. The Commission also identified a clear link between schools users satisfaction with PFI schools and their involvement in the design phase - those users who expressed less overall satisfaction with their new school also said that they had little involvement in the design phase.

3. PFI threatens future education budgets

School staff and governing bodies may be persuaded that the scheme is "affordable" at the start of the contract but what about the future? What can seem affordable to start with may not prove to be so in future - but contractual commitments will have to be met.

Planning LEA and school budgets over 25 years or more can be a very uncertain business. For some schools there is a risk of long-term pupil roll reductions and surplus capacity. It is also likely that there will be new legislation and shifts in education policy over the 25-30 year lifetime of the PFI contracts that will affect how the school buildings are used and what is required of them.

How certain can anyone be about how school rolls will change? What will parents feel about sending their children to schools where building work is going on or where pupils have to be bussed to other sites? What will be the effect of 16-19 proposals? All of these uncertainties could create budget problems for schools.

PFI tie schools into a binding contract where payments to the PFI consortium will have first call on education budgets, whether or not the

school can afford it. Any shortfall will have to be found elsewhere - probably by cutting the staffing budget.

And PFI schemes can impact upon other schools' budgets as well. Haringey LEA was short of more than £6 million to complete the work that its PFI deal was supposed to cover. The scheme needed more money for furniture and equipment; for wheelchair access and IT provision. These items were deliberately omitted from the contract, after the Treasury and the DfES advised councillors to exclude them to make the project 'affordable'. The DfES has had to bail out the council with an additional £2 million. The rest of the shortfall has had to be funded from other parts of Haringey's budget.

4. Privatised "facilities management" does not improve the quality of services

One of the key things private contractors include in projects is taking charge of "facilities management" i.e. caretaking, cleaning and building maintenance. This is one of the main routes to increasing profit margins through cutting jobs, pay and conditions. But this can mean a worse service for schools.

The House of Commons Public Accounts Committee survey of local authorities with PFI schemes found that 58% of authorities with a performance review process had made performance deductions from payments due to PFI contractors – this suggests that the private contractors are not delivering the level of service that is required.

Facilities management doesn't transfer fully to the private contractor - PFI is not only time consuming during the contract negotiations and the construction work – PFI wastes valuable time throughout the 25-30 year contract. For example, headteachers in Sheffield have been disappointed at the need for the continued involvement of senior managers in facilities management issues after the occupation of schools buildings. Any expectations of full transfer of premises responsibilities as a feature of PFI are misguided.

Things that used to be just part of working together in a school community will now become subject to contractual restrictions. The Scottish Parliament has pointed to particular difficulties with contractors charging for use of premises outside school hours.

Transferring premises management to an outside employer raises serious practical difficulties for staff and schools alike. Confusion and delays arise while requests for use of premises are checked to see if they fall within the contract or involve an additional charge to the school.

There are numerous examples of poor facilities management from the early PFI schemes:

- Park View Academy School in Haringey had to close 2 days early for the Christmas holidays in 2002 on health and safety grounds because of

problems with the heating system.

- The six Sheffield schools involved in the grouped PFI project have been beset with problems - leaking roofs, inadequate water drainage and the use of poor materials impacting on the quality of the fabric of the buildings. As a result of the poor cleaning services provided by the contractor, sixth formers have been paid £4.90 per hour to clean their own school.

5. The myth of risk transfer to the private contractor

An oft-repeated claim of its supporters is that under PFI the risks associated with school construction work and facilities management transfer to the private contractor. Yet this claim does not stand up to scrutiny. The myth of risk transfer to the private contractor has been borne out in the early schools PFI schemes.

As the Audit Commission report found, if there is major problem with a school building *“the bottom line is that the LEA must step in if the PFI provider fails to respond appropriately, because it is the LEAs responsibility to provide the education service”*.

The Commission’s report identified a number of areas where unplanned risks could emerge during the contractual period. For example, the popularity of new-build schools can lead to increased demand risk, with pressure to expand pupil capacity very quickly. The LEA must also deal with the consequent financial demands that arise from a variation to a PFI contract. There is also a possible risk to neighbouring schools from a drop in demand that could create additional financial pressures for the LEA. There have been early signs of this risk materialising in the early schools PFI schemes.

The following examples highlight further the risks the LEA retains in PFI projects:

- East Renfrewshire Council had to step in to repair a school roof that was torn off by gale force winds after the private contractor supposedly responsible for facilities management at the schools said that they could not provide employees to carry out the repairs. Six classrooms at the school had to remain closed for two months until the Council stepped in and made the repairs.
- Jarvis failed to deliver to summer refurbishments in time for the reopening of four secondary schools in Haringey in September 2000. Some works were not completed satisfactorily and some had still not been completed by mid-December. Jarvis were fined just £2,673 for these delays.

In addition, payment deductions are often not a proper reflection of the impact of the non-delivery of a service. For example, the Audit Commission found that from one unnamed PFI schools contract a deduction of £268.62 was made out of a monthly payment of about £150,000, for two days’ non-availability of an athletics

field. This sum is nowhere near high enough to act as an effective incentive, and probably cost more to calculate and administer than the value of the deduction.

In conclusion...

- **PFI commits schools to an uncertain future for 25+ years**
- **PFI involves a commitment which binds schools contractually for decades to come. It is almost inevitable that over the period of the contract, unforeseen requirements will arise.**
- **Yet any extra work that arises will fall outside the terms of the original contract and will need extra funding. If things go wrong, the contract may be terminated but this will require compensation for the failed contractor and continuing repayment of the capital sums involved!**

So ... the NUT believes that PFI should not be rushed into without proper consultation. PFI doesn't deliver in schools.

ANNEX B: NUT LETTER TO THE DfES RAISING CONCERNS ABOUT CONSULTATION WITH TRADE UNIONS AND A LACK OF DISCLOSURE OF INFORMATION IN SCHOOLS PFI PROJECTS

Jim Lockie
Head of Schools Private Finance Unit
Department for Education & Skills
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

13th May 2003

Dear Jim,

CONSULTATION WITH TRADE UNIONS AND DISCLOSURE OF INFORMATION IN SCHOOLS PFI PROJECTS

You are no doubt aware of the many and widely held concerns about the use of the Private Finance Initiative (PFI) in public services. The National Union of Teachers (NUT) shares these concerns.

Although the NUT opposes the use of PFI in schools, this opposition does not mean that the Union will not seek to influence at a local level the outcome of the PFI proposals nor would we wish to distance ourselves from the local consultations that take place during the PFI process. I trust you would agree that the National Union of Teachers, as the largest classroom union with approximately 250,000 members in England and Wales, can and should take part in consultation processes about proposed schools PFI schemes.

I have thought it necessary to write to you over the difficulties that one local NUT Division has experienced in trying to take part in the consultation process. In particular I ask that you consider our experiences as detailed below and take the necessary steps to ensure that they are not repeated where PFI schemes are planned in the future.

Calderdale Schools PFI project

The PFI contract for five Calderdale schools was signed on 31st March 2003. In the ten months prior to the contract being signed the NUT Division sought, unsuccessfully, to enter into a meaningful consultation with Calderdale LEA over their PFI proposals.

PFI Project Team

After two months of pressure from Calderdale NUT and many months after the programme of Project Team meetings had commenced, the Calderdale Federation of Professional Teachers' Associations and Community Education Staff Unions were

offered a seat on the PFI Project Team. The NUT believes that in schools PFI projects Professional Teachers' Associations should be offered a place on project teams from the outset.

The Calderdale Federation of Professional Teachers' Associations and Community Education Staff Unions nominated their representative for the Project Team and notified the Group Director Regeneration and Development of the nominee on 28th October 2002.

The first correspondence that the Federation representative received on this matter was a letter dated 13th November 2002, in which the Group Director Regeneration and Development said *"the meetings have been cancelled due to the fact the work of the Project Team is not required during this period as the two bidders were (sic) in the process of submitting the best and final offer (BAFO)."*

In a letter to the NUT's Senior Solicitor dated 12th November 2002, Calderdale MBC's Chief Law and Administration Officer said *"the Council is sharing PFI information with Governors, Headteachers and the trade unions through representation on the Project Team which has been set up"*.

At the time of writing the only correspondence that the Federation representative on the Project Team has received about the PFI project is the letter of 13th November 2002 which said that the meetings had been cancelled. As such, the claim by Calderdale MBC's Chief Law and Administration Officer that the Council shared PFI information through the Project Team appears difficult to maintain. Since cancelling the Project Team meetings, Calderdale LEA have selected a Preferred Bidder, entered into detailed negotiations with their first choice bidder and then signed a contract with them worth £55 million. The NUT is concerned that the Project Team was not consulted at all during these critically important stages of the PFI project.

Bidders employment track record

In a letter to the Group Director Regeneration and Development dated 4th July 2002, Calderdale NUT, in accordance with good practice as set out in the Treasury Taskforce Private Finance Policy Statement No.4, requested a copy of each of the shortlisted bidders statements regarding their track record in employment, including wages and conditions, labour relations, health and safety and training.

In a reply dated 25th July 2002, the Group Director Regeneration and Development said *"The ITN required potential bidders to make statements about employment practices. This information is available in their bids. Following advice, I will arrange for the relevant sections to be photocopied and made available to you."*

This information is made available to officers of the NUT on the strict understanding that no part of the information is disclosed to any other party. This information forms part of the contractual negotiations and must remain totally confidential".

Calderdale NUT was never sent copies of the statements from bidders. Furthermore, had they been given this information, the suggestion in the letter of

25th July 2002 that the provision of this limited information *“must remain totally confidential”* is surely not in keeping with the Treasury Taskforce’s desire for openness and transparency in PFI projects.

Community consultation

In a letter to Calderdale NUT dated 6th June 2002, the Group Director Regeneration and Development said that there would be *“wider community consultation especially in respect of the design and third party usage proposals”* when the project reached the Best and Final Offer (BAFO) stage. In a further letter dated 26th September 2002, the Group Director said *“later in the autumn term there will be an opportunity for the public to consider the plans for each of the new schools.”*

Assuming that what was promised actually happened, it appears that it was insufficient as only after the contract was signed did the Calderdale public become fully aware of the plans. The *Yorkshire Post* reported on 23rd April 2003 that as part of the plans for the new South Halifax High School, the premises would include a licensed bar. Under the developer’s plans the bar would be sited only 30 metres away from the school boundary wall and for local residents would *“create intolerable bar noise and an invasion of privacy”*. Had these plans been revealed as part of the ‘wider community consultation’ and the PFI Project Team been consulted about this, the public and the Federation of Professional Teachers’ Associations and Community Education Staff Unions would have had the opportunity to register their disapproval prior to the contract being signed. The LEA and the Preferred Bidder could have been made fully aware that many people think it inappropriate to have a licensed bar on school premises and the plans could have been revised accordingly. Instead, this controversial part of the PFI plan is currently going through a protracted planning committee process which looks set to delay the start of construction works at the school.

Whilst I am not suggesting that the NUT’s experience in Calderdale is any way typical I do believe that it highlights weaknesses in the current guidance from the 4ps on disclosure and consultation in PFI projects. The guidance provides more of an outline for local authorities of the general principles of disclosure and consultation to be used in the PFI procurement context, rather than detailed step-by-step guidance.

It would be helpful to see a clear timetable for the release of key PFI documents, such as the Outline Business Case, together with a requirement for local authorities to give full explanations when information is not disclosed. At present the theme that runs through the guidance and which constantly acts as a proviso to duties of disclosure and consultation is that of “commercial confidentiality” and the harming of “commercial interests”.

Given the increasing reliance on PFI for school building projects and that the DfES has recently revealed its intention to use PFI as part of its Building Schools for the Future initiative from 2005-06, there is a clear case for strengthening the guidance in order that trade unions are guaranteed the opportunity to take part in meaningful consultation exercises about PFI projects. Our experience in Calderdale highlights the

FIN(3)-PPP-006b - National Union of Teachers

current weaknesses and that stronger guidance would not only be in the best interests of our members, it would also be in the best interests of the wider community.

I look forward to receiving your reply.

Yours sincerely,

BARRY FAWCETT
Assistant Secretary
Salaries, Superannuation, Conditions of Service/H&S
National Union of Teachers