Dear Sir

Consultation on the Fair Deal policy: Treatment of pensions on compulsory transfer of staff from the public sector

The National Union of Teachers (NUT) is pleased to take the opportunity to submit evidence to this consultation on the Fair Deal policy. As a member of the Trades Union Congress, we also endorse the TUC submission.

The NUT supports the continuation of the Fair Deal arrangements that were agreed in 2000. Although Fair Deal has not applied directly in teaching to date, we believe the principle it establishes is a good one. If the private sector wishes to compete with the public sector, it should do so on the basis of innovation and efficiency. It should not compete on the basis of driving down public sector employees’ terms and conditions. Any change to Fair Deal should not also lead to changes to existing pensions for the membership of the Teachers’ Pension Scheme (England and Wales).

Our starting point is that all those working as a teacher in England and Wales should have access to the Teachers’ Pension Scheme (TPS). We are extremely concerned that this consultation, and the concentration by the Government on plurality of provision as an end in itself, are part of a train of thought that could potentially lead to many teachers being excluded from the Teachers’ Pension Scheme.

There is a growing fragmentation within school provision, with the formation of Trust Schools and, in particular, Academies. This has not affected the TPS to date because there are explicit provisions within the TPS Regulations which require Academies to offer membership. To date, the funding agreements for Academies have also required them to offer membership of the TPS. The Government wishes to vastly expand the Academies programme and create ‘Free Schools’. The NUT believes that some of these organisations would, left to their own devices, wish to save money by organising separate and inferior pension provision for their teachers.
The NUT also has around 3,000 members within the Local Government Pension Scheme (LGPS). These members may, as for example in the case of Serco’s adoption of Local Government functions in Islington, be transferred against their will to a non-public sector employer in the future. We believe that these employees should retain access to the LGPS.

Question 1: the Government welcomes views on whether there are any people or organisations who may be affected by this consultation other than those listed in 1.7

Whilst this consultation concerns Fair Deal, the Government should recognise the links between this consultation and other negotiations currently taking place surrounding public sector pensions. Recommendation 16 of the Hutton Commission states that it is in principle undesirable for future non-public service workers to have access to public service pension schemes. The vital question is what constitutes the public service workforce.

Lack of clarity over this issue means that there may be groups of teachers who are currently considered by all concerned to be part of the public service workforce who may be affected by this consultation. Depending on interpretation, teachers in academies, trust schools and free schools could be affected. The NUT believes that all those teachers working in institutions funded by the state should be categorised as part of the public service workforce. It would be useful for the Government to clarify this at an early stage.

Non-public service workers who are nonetheless members of public service pension schemes will be affected by this consultation. A prime example are teachers in independent schools. Historically, the TPS has allowed membership to teachers working in independent schools which have ‘accepted school’ status. This status is obtained in return for guarantees given to the Scheme by the independent schools.

In the long term, the combined employer and employee contribution are intended to finance the cost of pensions in their entirety as laid down in the quadrennial actuarial valuations of the scheme. This surmounts the problem of private sector employers having to offer pension provision at a higher cost than that available through the TPS because of increased covenant risk. The NUT supports the continuation of this provision which aids mobility between the sectors.

Question 3: The Government welcomes views on whether there are any objectives which should be taken into account other than those set out in 3.2 when developing future policy

Movement within education
An objective which has not been highlighted is encouraging movement within the education sector. As noted above, The NUT believes that teachers should be able to continue to move freely within the education sector – to academies, trust schools and the independent sector without putting their pension rights at risk.

Pension rights could be put at risk by moving in two major ways. It is a reasonable hypothesis that organisations that are outside the TPS would have inferior pension provision. This may be inferior defined benefit provision, or even, if Fair Deal is ended altogether, defined contribution provision. Analysis of the private sector from the Association of Consulting Actuaries’ survey has shown that employer
contributions to defined contribution provision are around half that to final salary schemes.

The second risk is Government plans to introduce a career average pension scheme for teachers. Teachers who leave the TPS would be treated as deferred members of the scheme. Current plans are that teachers in deferment would have their pensions indexed to the Consumer Prices Index (CPI), rather than enjoy the earnings indexation provisions for active members.

Recommendation 16 of the Hutton Commission could mean that future non-public service workers are excluded from public sector pension schemes. If some educational institutions are deemed to be outside the public sector for the purposes of TPS accrual then there is likely to be little voluntary movement between TPS and non-TPS accruing institutions. Why would a member of a public service pension scheme move within the education sector if their action would disqualify them from TPS membership? The Government may end up encouraging plurality of provision at the expense of a workforce that dare not switch institution. The NUT does not believe that this would be a healthy development.

Recruitment and retention of teachers
The Teachers’ Pension Scheme has a powerful effect on recruitment and retention. Removing it from teachers in schools outside local authority control will have a considerable impact on the ability of schools to recruit and retain good teachers.

Younger teachers are very much aware both that there is a pension scheme and that it is a good pension scheme. The Teachers’ Pension Scheme compensates in some small part for the fact that starting pay for teaching is below the average for graduate professions and that teachers’ average pay progression is slower than for graduates elsewhere. Teachers’ pay on entering the profession in England and Wales outside London is £21,101, lower than the median starting salary for graduates at £25,000 according to Incomes Data Services. Pay progression is also slower than average graduate pay progression, with a further shortfall of 7 per cent after five years and 13 per cent after ten years.

There are an increasing numbers of older entrants in their 30s and 40s to the teaching profession. Entrants to FE/HE have for many years been older than those entering school teaching. These groups view pensions as an extremely important recruitment and retention issue.

The pension scheme is also an effective retention tool for senior employees who might otherwise be inclined to move to managerial posts in the private sector, which may well have significantly higher pay than within the public sector.

**Question 4: Is there a case for changing the current Fair Deal policy?**
The NUT believes that there is not a case for changing the current Fair Deal policy. If the private sector wishes to run public services, then any savings it makes should be on the basis of innovation and efficiency. Savings should not be on the basis of driving down the terms and conditions of the workers transferred. If good occupational pensions are seen by private sector employers as a barrier to ‘greater plurality of provision of public services’ then we believe this is a more than adequate comment on the motivations of the private employers who wish to provide public services.
We have already seen how this road progresses with supply teachers. Twenty years ago, most supply teachers were employed by local authorities with full access to the TPS and other teachers’ terms and conditions. This has now broken down into an increasingly casualised supply workforce, with more and more supply teachers employed by agencies which are not obliged to offer entry to the TPS or comparable pay rates. The result has been that supply teachers are now increasingly employed as classroom supervisors rather than professional substitute teachers. We utterly oppose any attempt to extend this trend to permanently employed teachers. Instead, we believe that all those who work as teachers, whether permanently or on a short-term basis, should be offered membership of the TPS. It is worth noting that pension entitlement will not be affected by the introduction of the Agency Worker Regulations, and the NUT also fears that many agency supply teachers will not benefit from equal treatment in relation to pay.

The NUT also struggles to understand why the Treasury is consulting on changing the Fair Deal policy now. The Government is planning major reforms to public service pensions, which could result in a radically different pensions landscape. Under these circumstances, it seems sensible to await the outcome before amending or removing the Fair Deal provisions.

Conclusion
The NUT hopes that you have found the issues raised in this submission useful. The NUT would be happy to deal with questions following from the Treasury’s study of this submission, and would provide further written or oral evidence on request.

Yours faithfully

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General Secretary