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WRITTEN EVIDENCE

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Memorandum submitted by the Association of Teachers and Lecturers (PSP 02)

SUMMARY

ATL accepted the government's Proposed Final Agreement on changes to the Teachers' Pension Scheme as the best that could be achieved through negotiation.

Nevertheless, ATL has significant concerns in relation to the detailed drafting of the Bill. These are:

— that the government has included an option for the public sector pension schemes to cease to be defined benefit schemes and instead become defined contribution schemes (Clause 7);

— that any future increase in the State Pension Age and Normal Pension Age will apply retrospectively to members' past service (Clause 9);

— that there is no obligation on the Treasury to order a valuation of the public sector pension schemes, nor any binding instructions on the form of such a valuation (Clause 10);

— there is no compulsion on the Treasury or the Secretary of State to enter into discussions with members regarding the employer cost cap (Clause 11);

— for the first time, a member's benefits may be revalued down as well as up if inflation is negative (Clause 8);

— a member with service in the existing and new pension schemes will automatically have that service calculated in line with their final salary rather than having the option of using their revalued salary at the closing of the old scheme (Schedule 7); and

— the Bill is silent on Fair Deal—the mechanism by which outsourced public sector workers are able to continue to access the public sector pension schemes.

1. ATL, the education union, is an independent, registered trade union and professional association, representing approximately 160,000 teachers, head teachers, lecturers and support staff in maintained and independent nurseries, schools, sixth form, tertiary and further education colleges in the United Kingdom. AMiE is the trade union and professional association for leaders and managers in colleges and schools, and is a distinct section of ATL.

2. ATL is affiliated to the Trades Union Congress (TUC), Irish Congress of Trade Unions (ICTU), European Trade Union Committee for Education (ETUCE) and Education International (EI). ATL is not affiliated to any political party and seeks to work constructively with all the main political parties.

3. The Teachers' Pension Scheme (TPS) is a contracted out, defined benefit pay-as-you-go occupational pension scheme funded by contributions from teachers and employers operated by the Department for Education and governed by statutory regulations. Membership of the scheme is voluntary and is open to members of the teaching profession in England and Wales who satisfy the membership criteria.

4. Teachers who joined the TPS prior to 1 January 2007 have a Normal Pension Age (NPA) of 60, at which point they are entitled to a pension of 1/80 of their final salary for each year of service, and a lump sum of 3/80 of their final salary. Following reforms implemented in 2007, the NPA for new entrants to the TPS was increased to 65, with an accrual rate of 1/60 of final salary for each year of service with a lump sum by commutation only.

5. ATL accepted the government's Proposed Final Agreement on changes to the Teachers' Pension Scheme as the best that could be achieved through negotiation.

Clause 7: Types of scheme

6. Sub-clause (1) states that pension schemes for persons in public service may be a defined benefits scheme, a defined contributions scheme or a scheme of any other description. This means that the public sector pension schemes could become defined contributions or other types of scheme in the future and directly contradicts Lord Hutton's recommendation that *"the Government should continue to provide a form of defined benefit pension as the core design* [of the new schemes]".[1] Lord Hutton also considered the defined benefit design to be "*an efficient design for a large employer to share risk with employees*".[2]

7. ATL would like to see the government remove reference to defined contributions and other schemes in this clause as these references are unnecessary given Lord Hutton's recommendation and the adoption of the Career Average scheme design.

[1] Ex 11, Recommendation 5, page 9, *Independent Public Service Pensions Commission: Final Report*—10 March 2011.

[2] Ex 14, page 10, *Independent Public Service Pensions Commission: Final Report*—10 March 2011.

Clause 9: Pension age

8. Sub-clause (1) states that the NPA of a person in a public sector pension scheme will be the same as the person's State Pension Age (SPA) (or 65 if that is higher). Therefore, as the state pension age rises, which the government plans for it to do[3] (to 67 between 2026 and 2028) normal pension age in the public sector schemes will mirror that rise.

9. ATL's concern relates to sub-clause (4), which states that as a person's SPA changes, so should their NPA, and that the change to the normal pension age must apply to all benefits, including benefits already accrued in the scheme.

10. ATL has several objections to this. The first is that it reduces a member's past benefits, ie benefits that have already accrued. Section 67 of the Pensions Act 1995 protects members of private pension schemes against detrimental changes to *"any entitlements or accrued rights"* by requiring an employer to seek the consent of the members of a pension scheme before changing it, or, in some cases, to obtain a certificate from an actuary stating that the proposed new benefits are equivalent to the existing benefits.

11. However, public sector scheme members will enjoy no such protection. Members' normal pension ages will be their state pension ages: an ever-shifting concept, the definition of which in the Bill is: *"the pensionable age of the person as specified from time to time..."* With public confidence in the provision of pensions already at an all time low,[4] such uncertainty will do little to encourage people to stay in their occupational pension scheme. Lord Hutton himself, in his 2011 report on public sector pension provision, emphasised the importance of giving members "*certainty and trust*"[5] in their schemes. It is our belief that linking NPA to SPA for service in the past will undermine members' trust and confidence in their pension provision.

12. ATL also believes that the retrospective nature of this provision is open to challenge under human rights legislation. Article 1 of Protocol 1 of the European Convention on Human Rights (incorporated into the law of the United Kingdom by the Human Rights Act 1998) states:

> *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."*

13. It has been established that a pension can form a proprietary right capable of protection under this article (*Muller v Austria, Dumanovski v the former Yugoslav Republic of Macedonia*). Therefore, were the Bill to pass into law as currently drafted there would be an infringement of Article 1 Protocol 1 and the European Court of Human Rights (the Court) would have to decide if that interference was "in the public interest" and whether it satisfied the requirements of proportionality (*Pressos Compania Naviera S.A. and others v Belgium*). In *Pressos* the Court found that the Belgian state had legislated with retrospective effect with the aim and consequence of depriving the applicants of their claims for compensation. Therefore, the Belgian government had violated Article 1 of Protocol and the case was sent back to the Belgian court to assess pecuniary damage.

14. Furthermore, it is fundamentally unfair that a teacher may work for 10 years contributing to the TPS on the basis of a particular retirement age, only to discover at the end of that 10 year period that the age at which they wish to take those benefits has moved further away, reducing the benefit of their pension to them.

15. Members of the TPS may well question why they are required to pay the same amount of contributions per month, whilst the age at which they can take their pension goes up. To help to convince these members that their pension is safe, ATL believes that there should be a valuation of the TPS triggered by any rise in SPA. If, as ATL believes, the valuation shows that such high contribution rates are no longer necessary, then the contribution rates should fall, as we would expect that the valuation would show that paying for longer for a later retirement age would mean that the contributions would go down.

16. Finally, ATL has concerns over equalities—those who are disabled will find that they have to wait until later in life to access their benefits. Recently published research has shown that by the time men and women are aged between 60 and 64 around 30% of them have a disability that limits their ability to work.[6]

17. In addition, ATL would like to see the government follow the recommendations of Lord Hutton in his *Final Report on Public Sector Pensions,* dated 10 March 2011 (the Report). In Chapter 4 paragraph 20 of the Report Lord Hutton states:

> *"However, the Commission's recommendation is that as well as the link to SPA being put in place, NPA (Normal Pension Age) should also be regularly reviewed by an independent body, to see if the link is appropriately tracking changes in longevity. The body would then make recommendations to the Government (either for each scheme or for the public service as a whole) on whether linking the NPA for public service pension schemes to the SPA was still appropriate, and if not, what the NPA should be."*

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[3] Impact Assessment—Long term State Pension sustainability: increasing the state pension age to 67, http://www.dwp.gov.uk/docs/ia-increasing-state-pension-age-to-67.pdf

[4] *National Association of Pension Funds (NAPF) survey,* published June 2012. The survey showed 54% of all employees were not confident in pensions compared with other ways of saving.

[5] Paragraph 4.21, page 95 *Independent Public Service Pensions Commission: Final Report*—10 March 2011.

[6] *Pensions World* Editorial, June 2012.

ATL notes with regret that the Bill establishes no such body and urges the government to include the Commission's recommendation in the Bill.

18. ATL objects in the strongest possible terms to the link between NPA and SPA applying retrospectively to a member's service. Not only does it undermine members' trust in the scheme, but it is potentially in breach of human rights and equalities legislation.

Clause 10: Valuations

19. A formal actuarial valuation of the TPS was last completed with an effective date of 31 March 2004.

20. The Financial Reporting Manual (the technical accounting guidance for public funds) requires that, *"the period between formal actuarial valuations shall be four years, with approximate assessments in intervening years."*[7] Under Regulation 128(2) of the Teachers' Pensions Regulations 2010 (the 2010 Regulations) the Secretary of State should have secured that: *"(a) the next review date is no later than 31 March 2012, and (b) the review date for each subsequent report is no later than four years after the previous review date."*

21. Therefore, a formal actuarial valuation is currently due, but has not been ordered or carried out to date (or it has, but the Government Actuary's Department (GAD) report has not been published) because valuations have been suspended by HM Treasury. According to the most recent set of accounts of the TPS:[8]

> *"The primary purpose of the formal actuarial valuations is to set employer and employee contribution rates, and these are currently being determined under the new scheme design."*

22. Now, the government is consulting on revoking Regulation 128 of the 2010 Regulations, which means that there will be no obligation on the Treasury to order or publicise any actuarial valuation of the TPS. In failing to request a valuation, or at least to publish it, the Treasury has restricted the amount of information available on the TPS at the very moment that unions, employers and government are seeking to reach agreement on contribution rates in the current schemes and in the new scheme. ATL's view is that it is inequitable and unjust for this state of affairs to continue—the Treasury must be compelled to request and to publicise formal valuations of the public sector pension schemes.

23. ATL would like to see the inclusion of a date by which the first valuation has to be carried out and to remove the Treasury as the sole arbiter on the principles of the valuation, including a requirement to consult with stakeholders and members of the scheme (or their representatives) over the scope of the valuation.

Clause 11: Employer Cost Cap

24. Under Clause 11 the Treasury must make regulations which specify the margins within which the costs of the scheme must remain. According to Clause 11 (6): *"For cases where the cost of the scheme would otherwise go beyond the margins,"* regulations may provide for a procedure whereby the responsible authority, employers and members (or their representatives) can reach agreement on the steps required to achieve the target cost, as well as the procedure if there is no agreement between the parties.

25. As it is currently drafted, the Bill does not compel individual schemes to include a procedure in their regulations for remedying the employer cost cap. However, ATL believes that it should be a mandatory duty on the Secretary of State to discuss the employer cost cap with members (or their representatives) with a view to reaching agreement with them, as required by Clause 20 of the Bill. Indeed, in his letter of 10 October 2012 to Brendan Barber (General Secretary of the TUC) Danny Alexander wrote:

> *"These arrangements for cost control and the legislative backstop will also apply to all schemes. There will always be a period of consultation before changes are made to bring costs back to the cap. If agreement cannot be reached through this consultation, then scheme regulations will provide for an adjustment (for example, to accrual rates) to take place as an automatic default."*

26. Clause 20 of the Bill ("Consultation and Report") states that where the Secretary of State wishes to change one of the "protected elements" of a scheme then he/she must not only consult with the persons affected or their representatives, *"with a view to reaching agreement with them,"* but must also lay a report before parliament. Clause 20(6) provides that where it appears to the Secretary of State that a change to a public sector scheme is required by or consequent upon the employer cost cap then Clause 20 will not be followed. If there is no parity between the procedures in Clauses 11 and 20 then the Secretary of State may deem that changes are consequent on the employer cost cap in order to escape the consultation provisions in Clause 20.

27. In addition, without a scheme valuation that is published to scheme members and their representatives, those groups will not necessarily have enough information in order to take part in the procedures outlined in the Bill.

28. Finally, the Chief Secretary to the Treasury has repeatedly stressed that this is a deal which will last for 25 years. The Committee should be aware that public sector workers and trade unions have been here before. The principles for pension reform in the Teachers', NHS and Civil Service pension schemes were agreed by the

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7 *Teachers' Pension Scheme (England and Wales) Annual Accounts 2011–12*. (For the year ended 31 March 2012) authorised for issue on 27 June 2012.

8 See footnote 2.

Government and the TUC in the Public Services Forum on 18 October 2005 and put in place by an agreement in November 2006. At that time the government, employers and trade unions all agreed that the reforms delivered the necessary changes and were appropriate to the circumstances of the schemes and within the cost envelope provided. However, the Treasury decided to raise £6.3 billion over three years and the public sector pension schemes have been forced to foot the bill. Therefore, having robust procedures in place to ensure accountability and consultation and making information available sooner rather than later is of vital importance.

Clause 8: Revaluation

29. Clause 8 concerns the procedure for the revaluation of earnings of active members in the new Career Average Revalued Earnings (CARE) schemes. The revaluation of earnings on an annual basis is necessary to work out a member's accrued annual pension, and the revaluation for the Teachers' Pension Scheme will be CPI plus 1.6%.

30. ATL is concerned that the current wording in sub-clause (2) would allow for a decrease in revalued earnings in the event that earnings and/or prices were negative in a particular period:

> *"The changes in prices or earnings to be applied for the purposes of such a revaluation is to be such a percentage increase or decrease as a Treasury order may specify in relation to the period."*

This would mean that the value of a member's accrued benefit would actually fall.

31. Currently, preserved or deferred pensions or pensions in payment are increased annually by a percentage which is equal to the percentage rise in the Consumer Prices Index (CPI) in the 12 months to the preceding September, under the Pensions (Increase) Act 1971. Therefore, if the CPI is negative (a rare occurrence, but one that did happen in September 2009) then public sector pensions stay flat in cash terms—they are not allowed to fall.

32. However, the proposal in this Bill is that accrued pensions can in fact lose value. ATL believes that this would constitute an unlawful interference with property contrary to Article 1 Protocol 1 of the European Convention on Human Rights (see paragraphs 12 and 13 above) because a percentage decrease would have the effect of a shrinking the value of the accrued pension of an active member of a pension scheme.

33. Finally, ATL is concerned that the Treasury is the only government department empowered to take decisions as to revaluation in each of the public sector pension schemes. Logistically, it would make sense for each "responsible authority" (ie the Secretary of State) to be able to make an order under this clause as there will be scheme-specific factors to take into account in doing so.

Link to final salary

34. Schedule 7 paragraph 3 contains the provisions relating to the use of the final salary at retirement for calculating the final salary benefits under the old scheme. However, there is no flexibility here to take account of a teacher whose final salary at retirement may be lower than their (revalued) final salary when they left the old scheme. Therefore, ATL would like to see an "either or" calculation allowed here, as for some members it will be better for a revalued final salary to be used rather than their final salary at retirement. An example of such a member is a teacher who wishes to reduce his/her responsibilities leading up to his/her retirement, but who is prevented from doing so because their pension from the old scheme will be linked to their final salary.

35. This inflexible approach is contrary to the recommendation of Lord Hutton who, in his report,[9] encouraged flexible retirement and suggested that members should have greater choice over when to draw their pension benefits.

Fair Deal

36. As drafted, the Bill does not include any commitment from the government to continue with Fair Deal. Fair Deal is the arrangement whereby on a transfer of public sector staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) the new employer has to provide a broadly comparable scheme to the relevant public sector pension scheme and offer the transferring staff the opportunity to do a bulk transfer to the new broadly comparable scheme.

37. In a written ministerial statement issued on 4 July 2012 the Chief Secretary to the Treasury[10] stated that employees transferred from the public service under TUPE (including subsequent TUPE transfers) to independent providers of public services would retain membership of their current employer's pension arrangements. Therefore, there would be no need for the new employer to set up a broadly comparable scheme or facilitate a bulk transfer.[11]

38. As the Bill is silent on Fair Deal, and in an increasingly fragmented state education sector, ATL is concerned for the welfare of its support staff members (for example, catering staff) in the Local Government Pension Scheme (LGPS) who could be at a disadvantage if they take up work at an independent school within the state sector (such as an Academy or Free School) which has outsourced its catering work to a private contractor. It would appear that this private contractor would not necessarily have to apply to be an "admitted body" of the

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[9] Recommendation 10, paragraph 3.I03, page 83 *Independent Public Service Pensions Commission: Final Report*—10 March 2011.

[10] Written Ministerial Statement from the Right Honourable Danny Alexander MP Chief Secretary to the Treasury dated 4 July 2012.

[11] In any case, bulk transfer is no longer necessary as we move to CARE schemes under which there is no longer a need to preserve the link between benefits and final salary for all accrued service.

LGPS with the consequence that employees in a publicly funded workplace do not have access to a public sector pension scheme.

39. ATL is also concerned because the government's commitment to Fair Deal is linked to independent schoolteachers' continued membership of the TPS. In the Heads of Agreement on Reform of the Teachers' Pension Scheme (March 2012), to which ATL members gave their backing, the government stated that its:

> *"…decision on Fair Deal meant that independent schools which already have access to the TPS will continue to do so (for existing and new teachers); and new teachers and independent schools will continue to be able to join the TPS under the existing qualifying criteria."*

40. ATL urges the government to stick to its undertaking and include a commitment to Fair Deal in the Bill.

November 2012

Memorandum submitted by Michael Johnson (PSP 07)

THE APPROACHING CASHFLOW CRUNCH:
WHY COALITION REFORMS TO PUBLIC SECTOR PENSIONS WILL NOT HOLD[12]

THE AUTHOR

Michael Johnson is a Research Fellow at the Centre for Policy Studies (CPS). He trained with JP Morgan in New York and, after 21 years in investment banking, joined Towers Watson, the actuarial consultants. More recently he was Secretary to the Conservative Party's Economic Competitiveness Policy Group. He is widely recognised as a leading expert on UK pensions, and is the author of a number of influential reports on the subject, including: *Don't let this crisis go to waste: a simple and affordable way of increasing retirement income* (Centre for Policy Studies, September 2009); *Simplification is the key: stimulating and unlocking long-term saving** (CPS, June 2010); *Self-sufficiency is the key: addressing the public sector pensions challenge** (CPS, February 2011) and *Put the saver first: catalysing a savings culture** (CPS, July 2012).

** Backed by Conservative and Labour peers.*

Michael has been invited to present formal oral evidence to the DWP's Select Committee, as part of its inquiry into Governance and Best Practice in Workplace Pension Provision (19 November 2012).

SUMMARY

- This paper evidences why another round of public sector pension reforms will be required, probably before 2020.
- The catalyst is likely to be the rapidly increasing cashflow shortfall between contributions and pensions in payment.
- These are forecast to rise to an unacceptably high level. In 2005–06 it was an irrelevant £200 million, before growing to £5.6 billion in 2010–11. By 2016–17 the OBR expects it to have increased to £15.4 billion: a 77-fold increase in 11 years.
- This will, eventually, have to be paid for by taxpayers. With employers' contributions of an extra £17.2 million, the annual burden on taxpayers will be over £32 billion—the equivalent of £1,230 for every household in the country. Nearly £4 out of every £5 paid in pensions to former public sector workers will come from the taxpayer.
- The Coalition has justified its reforms on the grounds that they achieve a material reduction in the total liability. But the liability is a nebulous concept which does not manifest itself in day-to-day life, and its modelling techniques are unclear. Conversely, the cashflow shortfall, as it emerges, will be both clear and tangible.
- The current reforms will only produce significant cashflow savings after 20 to 30 years, far too late to assuage pressure for further reform. That said, the public's opprobrium could be fuelled as much by unfairness as unaffordability.
- During that time, public sector workers will enjoy certainty of income in retirement until the day they die, mostly paid for by the 80% of the workforce in the private sector, almost none of whom have that security.
- The Coalition should now:
  - put all its modelling assumptions for the reduction of the liability into the public domain; and
  - start to prepare the public sector for a risk-sharing arrangement such as a cash balance scheme, en route, ultimately, to a wholly Defined Contribution (DC) framework.
- This approach would, at long last, provide comparable pensions across the UK, irrespective of the employment sector. Not to express such a vision would be to accept that the quality of pension provision in the (wealth-creating) private sector will, from hereon, be second class.

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[12] NOTE: This paper's focus is the public sector's unfunded pension schemes, covering roughly 85% of the workforce. A subsequent paper will examine the financial health of the funded Local Government Pension Scheme (LGPS), which covers most of the other 15% of the workforce.

— If action were not forthcoming (before 2020), the government of the day may have to consider actually cutting pensions in payment, to ward off the risk of societal schism, both between generations and between public and private sector employees.

INTRODUCTION

Lord Hutton, the architect of the recent reforms, has clearly had second thoughts:

> *"What we've seen is how very quickly the assumptions which underpinned my assessments of the long-term sustainability of public service pensions have been shown to be too optimistic. That is going to affect the sustainability of public sector pensions in a negative way."*[13]

1. *These foolish things…*

1.1 On 2 November 2011, Danny Alexander, the Liberal Democrat's Chief Secretary to the Treasury, made a statement to the House of Commons concerning enhancements (ie government concessions) to the public sector pensions' reform package. His speech included the following:

> *I believe this package is affordable. I believe it is also fair, not just to public sector workers, but delivers significant long-term savings to taxpayers who will continue to make a significant contribution to their pensions.*
>
> *If reform along these lines is agreed, I believe that we will have a deal that can endure for at least 25 years, and hopefully longer.*

1.2 Notwithstanding the need for political expediency, in time this may prove to be thoroughly misleading. Indeed, robust evidence is already emerging, from government sources, to strongly suggest that this is the case.

2. *Distraction politics*

2.1. The Government has made much of the reforms to public sector pensions "halving the net liability". The OBR's July 2012 Fiscal Sustainability Report (FSR) projects spending on public service pensions to fall from 2.2% of GDP (2016–17) to 1.3% (2061–62), a 40% reduction, which is significant. But a half a century away.

2.2. In addition, this forecast entails colossal modelling risk, notably in the assumptions used for GDP growth (primarily driven by what may prove to be an excessively optimistic underlying assumption for productivity growth[14]), life expectancy, inflation, wage growth, the discount rate and the future size of the public sector workforce. The OBR should rerun (and extend) its cashflow forecasts using a range of lower GDP growth rates, and put all of the modelling assumptions, and results, into the public domain.

2.3. That notwithstanding, focusing attention on the liability (funded or unfunded) is a red herring; it is a tabloid, nebulous concept that does not manifest itself in day-to-day life. Consequently it imposes no meaningful political pressure, as well as diverting attention to unconstructive debates concerning the underlying modelling assumptions. What matters is cashflow, as any (private sector) businessman knows, but on this, the FSR is silent.

3. *Cashflow forecasts*

3.1 The Treasury's Public Expenditure Statistical Analyses (PESA) annual report provides a forecast for the cashflow gap between contributions (from employers and employees) and pensions in payment to former public sector workers. The data is in respect of the unfunded (ie pay-as-you-go, PAYG) schemes, which cover roughly 85% of public sector employees (the principal exception is the funded Local Government Pension Scheme, LGPS). Table 1 compares the 2011 and 2012 PESA reports' cashflow forecasts.

Table 1

CASHFLOW SHORTFALL: COMPARISON OF 2011 AND 2012 PESA REPORTS

2011 PESA report	*2005–06 £ billion*	*2006–07 £ billion*	*2007–08 £ billion*	*2008–09 £ billion*	*2009–10 £ billion*	*2010–11 £ billion*	*2011–12 £ billion*	*2012–13 £ billion*	*2013–14* £ billion*	*2014–15* £ billion*
Total contributions	17.4	18.0	19.2	19.4	20.7	21.4	21.7	21.6	21.6	22.0
less pensions in payment	17.6	19.1	21.4	22.6	24.4	25.9	27.4	28.9	30.2	31.7
Shortfall, pre-reforms	0.2	1.1	2.2	3.2	3.7	4.5	5.7	7.3	8.6	9.7

2012 PESA report	*2005–06 £ billion*	*2006–07 £ billion*	*2007–08 £ billion*	*2008–09 £ billion*	*2009–10 £ billion*	*2010–11 £ billion*	*2011–12 £ billion*	*2012–13 £ billion*	*2013–14* £ billion*	*2014–15* £ billion*
Total contributions	–	–	19.2	19.4	20.7	21.4	21.1	22.1	22.3	22.4
less pensions in payment	–	–	21.4	22.6	24.4	26.0	27.8	32.1	33.8	35.2
Shortfall, post-reforms			**2.2**	**3.2**	**3.7**	**4.6**	**6.7**	**10.0**	**11.5**	**12.8**
Increase in shortfall between PESA reports			**0.0**	**0.0**	**0.0**	**0.1**	**1.0**	**2.7**	**2.9**	**3.1**

**planned*

[13] Interview with BBC Radio 4's *World This Weekend*, broadcast on 4 December 2011.

[14] This assumption, at 2.2% per annum, has been unchanged for years. This may well be too generous: indeed, it would be prudent to assume that our ageing population will become less productive over time.

3.2 As Table 1 shows, since 2005–06 an alarming cashflow shortfall has developed, and it is forecast to continue to deteriorate. Particularly surprising, indeed shocking, is the increase in the forecast shortfall between the two reports, because the 2012 report includes the recent (cost-saving) reforms. One would expect the forecast shortfall to start reducing after 2014, when the reforms are implemented… but the opposite is expected to happen. Over the four year period commencing in 2011–12, the forecast aggregate shortfall is nearly £10 billion more in the 2012 PESA report than the prior year's. The shortfall has to be plugged by the Treasury, ie taxpayers (who are already funding the employers' contributions).

3.3 Another source of cashflow data is the OBR, which provided the data and calculations for the recent Budget reports.

Table 2

SUCCESSIVE OBR CASHFLOW FORECASTS

	2008–09 £ billion	*2009–10 £ billion*	*2010–11 £ billion*	*2011–12 £ billion*	*2012–13 £ billion*	*2013–14 £ billion*	*2014–15 £ billion*	*2015–16 £ billion*	*2016–17 £ billion*
Budget June 2010 (pre-reforms)	3.1*	3.1	4.0	5.1	5.8	7.3	8.9	10.3	–
Budget March 2011 (pre-reforms) A	–	4.7*	5.8	7.0	7.8	8.0	8.7	9.7	–
Budget March 2012 (post-reforms) B	–	–	5.6*	8.4	11.6	12.2	13.2	14.3	15.4
Increase in forecast shortfall after reforms (B-A)				**1.4**	**3.8**	**4.2**	**4.5**	**4.6**	

**outturn*

3.4 It is clear that the OBR (in the Budget 2012 report) and the 2012 PESA report are in broad agreement that, following implementation of the reforms, the annual cashflow shortfall is expected to rise further. Why is this, when the reforms include moving from a final salary to a career average basis of accrual, linking pensionable age to the (retreating) State Pension Age, and increasing the employees' contributions?

4. *The tide is coming in*

4.1 There are several reasons why the Budget 2012 report's forecast for the cashflow shortfall shows a marked increase on what was expected only a year earlier, in spite of the reforms in the interim period:

(i) the inclusion of the Royal Mail pension scheme between the last two Budget reports, adding (from 2012–13) some £1.5 billion per year to the forecast shortfall;

(ii) less income from contributions than was forecast in Budget 2011, care of the public sector wage freeze (contributions are linked to wages). Meanwhile, pensions in payment continued to rise with CPI; and

(iii) a marked acceleration in forecast pension and lump sum payments. This could be partly explained by the anticipation of more redundancy-induced, and very costly, early retirements, over the next few years, along with further improvements in longevity.

4.2 The reforms' increase in employee contribution rates (by an average of 3.2% of income) is expected to raise an additional £1.2 billion (in 2012–13), rising to £2.9 billion in 2016–17.[15] This additional income is included in the 2012 Budget report, but it is dwarfed by the scale of the relentlessly increasing pensions in payment. Hence the rising forecast for the annual cashflow shortfall.

4.3 Defenders of the *status quo* will point out that the unfunded schemes' contributions are set to meet the cost of the accruing benefits, not the cost of meeting pensions in payment. But will the general public care (or understand) the nuances of how a PAYG scheme is supposed to work when, come 2016–17, the OBR is expecting a cash shortfall of £15.4 billion? This, added to that year's forecast for employers' contributions (£17.2 billion), means that taxpayers will then be contributing nearly 80% (£32 billion) of the cost of paying pensions to former public sector workers.

4.4 Essential, public sector pensions have, for decades, been hugely under-priced (on a PAYG basis), contributions being woefully insufficient to meet the accruing benefits. The legacy of successive governments' inability to implement the necessary radical reforms is now manifesting itself as a rising tax burden on today's workers.

4.5 Yet, following the latest reforms, most employee contributions will still be less than 10% of incomes. Danny Alexander made this point himself, in his November statement to the House of Commons, when describing the pensions that a teacher and a nurse could expect: *"to earn the equivalent pension in the private sector… both would require an annual contribution of around a third of their salary"*.

5. *The reforms' fatal error: Grandfathering*

5.1 Danny Alexander's November statement also contained the following sentence: *"anyone 10 years or less from retirement age on 1 April 2012 are assured that there will be no detriment to their retirement income"*.

[15] The OBR's forecasts in the Budget 2012 report used the Hutton reform contribution increases set out in Table 2.13 from the Autumn 2011 Economic and Fiscal Outlook (EFO).

At a stroke, this concession to the unions vaporised the prospect, for at least the next decade, of exerting any significant control on the widening cashflow shortfall.

5.2 To get a deal done, the Government punted the prospect of smaller pensions sufficiently far into the future, so as not to concern many public sector employees (including, given their ages, the unions' negotiating team). Consequently, the recent reforms only deliver material savings in the long term so, as the OBR and PESA reports illustrate, the growth in pensions in payment will continue to accelerate ahead of post-reform (ie increased) employee contributions.

5.3 To-date, the lack of transparency inherent in public sector pensions' PAYG structure has allowed successive governments to avoid the political inconvenience of facing reality. But the rapidly growing, and highly visible, cashflow shortfall means a larger tax burden, and that will translate into a political pressure point that readily punctures the recent reforms' upside of a smaller liability, as espoused by the Government. The latter is too remote from individuals' day-to-day experience (as, indeed, are subjective concepts such as affordability or sustainability). Conversely, higher taxation is immediate and unambiguous, and is likely to be accompanied by a growing appreciation of the (media-fuelled) unfairness of the public sector's pension arrangements. Post-reforms, public sector workers will continue to enjoy certainty of income in retirement until the day they die, predominately paid for by the 80% of the workforce in the private sector, almost none of whom enjoy such certainty.

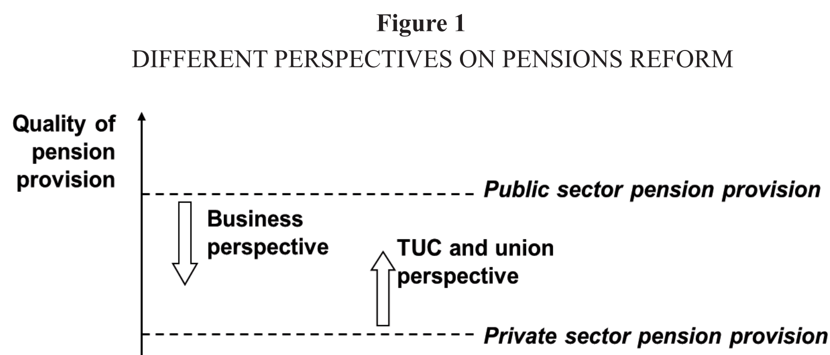
6. *The next steps in unfunded public sector pensions reform?*

Diametrically opposed views

6.1 The position of the TUC and the public sector unions is that private sector employers should do more for their workers and improve the quality of pension provision. The business perspective is the reverse, namely that the relative generosity (ie cost) of public sector pensions should be curtailed, as Figure 1 illustrates.

Figure 1

DIFFERENT PERSPECTIVES ON PENSIONS REFORM



Resolving this difference in opinions is akin to trying to push together the wrong ends of two magnets.

A Light in the Dark: Defined Ambition?

6.2 The DWP is currently overseeing work to give some definition to Steve Webb's defined ambition approach, a pensions "third way" between the disparate worlds of DC and DB. Working groups are examining what "DB Lite" and "DC Plus" could look like, seeking an accommodating environment for risk-sharing between employer and employee, somewhere in the regulatory No Man's Land that today separates the very different DB and DC regulatory regimes.

6.3 Defined ambition was born out of Steve Webb's laudable desire to resuscitate private sector occupational schemes: it is unlikely that public sector pensions are on his radar. But amongst the myriad of potential structures, one in particular would lend itself very well to providing the next step in public sector pensions reform: a cash balance scheme.

The "Pay Twice" Problem

6.4 Cash balance schemes were first developed in the US, to replace conventional (funded) DB schemes. Much as we should wean ourselves off an unfunded framework, with its lack of transparency and attendant generational inequality, we face the "pay twice" problem. Adopting a funded framework would mean that today's workers would have to contribute both to their own pension pots and contribute (directly or via taxation) towards paying for the previous generation's on-going pensions in payment. This could be thought of as a hangover, following addiction to the convenience of an unfunded, PAYG, framework.

6.5 Consequently, introducing a cash balance arrangement would (initially) have to be on an unfunded basis. Employee and employer contributions would be notionally credited to each employee's personal retirement account, the actual cash returning to the Treasury, to help it continue to meet pensions in payment. The accumulating notional balance would grow at an assured rate of return, such as CPI, the yield on a Treasury Bill or, given the context, the discount rate used to determine the size of the public sector pensions liability. Consequently, employers assume the investment risk, up until retirement. At retirement, the "cash balance" is passed to the retiree who is then encouraged to purchase an annuity at the prevailing market rate, thereby creating

certainty of income in retirement; a “pension”. Thus, crucially, longevity risk (arguably the most significant risk) resides with the individual, not the state.

6.6 Subsequently we could slowly transition to a funded structure. The implementation of this, and the aforementioned introduction of a cash balance arrangement, are described in considerable detail in *Self-sufficiency is the key*,[16] a paper backed by Conservative and Labour peers.

6.7 For legal purposes, in the US cash balance schemes are still treated as DB schemes. However, the promised benefit is the size of an account balance at retirement, not a specific, on-going, income in retirement. Ideally a similar legal accommodation could be obtained in the UK.[17]

7. Conclusion

7.1 After the recent Lord Hutton-inspired reforms have been implemented, weakened by subsequent concessions, public sector pensions will remain unsustainable. Over the next few years it will be become impossible to ignore the furiously ringing alarm bell that is the burgeoning cashflow shortfall between contributions and pensions in payment.

November 2012

Memorandum submitted by Northern Ireland Local Government Officers’ Superannuation Committee (NILGOSC) (PSP 09)

1. Introduction

1.1 The Public Service Pensions Bill was introduced in the House of Commons on 13 September 2012. This paper provides specific details of those matters in the Bill which, in the view of NILGOSC, require amendment.

1.2 NILGOSC has not taken specific legal advice on these matters.

1.3 NILGOSC is the Northern Ireland Local Government Officer’s Superannuation Committee. It is the Non-Departmental Public Body with responsibility for administering the Local Government Pension Scheme for Northern Ireland (LGPS(NI)). NILGOSC’s sponsoring department is the Department of the Environment, one of the Northern Ireland Executive’s central government departments.

1.4 The Local Government Pensions Scheme in Northern Ireland has in excess of 92,000 members. 204 public sector employers use the scheme. The LGPS (NI) is a funded pension scheme.

2. Contents of the Bill

2.1 *Clause 5—Pension Board*

2.1.1 Paragraph 7 outlines those bodies which can act as a “relevant authority”. NILGOSC should be listed here but reference to it is missing. NILGOSC should be listed under 5(7)e as the relevant authority of the LGPS(NI). It is unnecessary to list Clause (e), “a district council constituted under section 1 of the Local Government Act (NI) 1972”, as it is not relevant.

2.2 *Clause 12 Employer Contributions in Funded Schemes*

2.2.1 Paragraph 92 of the explanatory notes, which deals with Clause 12 of the Bill, expressly states that the Responsible Authority for the LGPS (NI) is the Department of Finance and Personnel. However, the draft Bill states in Clause 12 (8) that the Department of the Environment the Responsible Authority. The Explanatory Notes need correcting.

2.3 *Clause 14 Records*

2.3.1 Under this clause, the Department of Finance and Personnel has the power to direct NI schemes to keep certain records. We would like it confirmed that it is the drafters intention that this power rests with Department of Finance and Personnel for the LGPS (NI) and not the Department of the Environment.

2.4 *Closure of Existing Pension schemes*

2.4.1 Paragraph 1 states describes a “closing date”. The word “closing” has specific meaning for pensions schemes. It is NILGOSC’s understanding that the new LGPS 2014 scheme will be made by amending existing secondary legislation. Service will stop accruing on 31 March 2014 in the old schemes and will start accruing in the new scheme from 1 April 2014, but the old scheme will not close. An alternative wording to “closed date” should be found.

2.4.2 Paragraph 4 states that the existing LGPS scheme will close on 1 April 2014—this date should be 31 March 2014.

November 2012

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16 Michael Johnson, CPS, 2011.

17 Morrisons, the supermarket operator, has just announced (October 2012) a cash balance scheme for its employees, but most details (including the regulatory treatment) are not yet in the public domain.

Memorandum submitted by The Fire Brigades Union (PSP 10)

Summary

1. The Fire Brigades Union does not accept the Government's proposal for a new firefighters' pension scheme—particularly the proposed normal pension age of 60. The union believes that an occupational pension scheme for firefighters must reflect the realities of firefighting, if it is to remain sustainable in the long run. There is no medical evidence to suggest firefighters can work safely beyond 55. There are few opportunities for redeployment. The current proposals will have adverse consequences for the service and the public. The FBU urges the Government to design the new scheme around a workable NPA.

Introduction

2. The Fire Brigades Union (FBU) represents the vast majority of professional firefighters in the UK fire and rescue service. The FBU does not accept the Government's current proposals for a new firefighters' pension scheme and is particularly concerned about the proposal to increase the normal pension age (NPA) to 60, in Clause 9(2) of the Public Service Pensions Bill.[18]

3. The *Written Ministerial Statement: Fire and Rescue Service,* made by Robert Neill on 24 May 2012 included a commitment to review the NPA proposal specifically for firefighters.[19] The review is still ongoing, with the active involvement of the FBU. However, it has not reported it findings.

4. The Government has not put forward any evidence to justify an NPA of 60. The figure was proposed by John Hutton as something for Government to "consider", but no evidence was provided to justify it.[20]

5. At present, two-thirds of firefighters in a pension scheme in the UK are members of the Firefighters' Pension Scheme (FPS). The NPA for these firefighters is 55 years of age. Some are covered by the proposed transitional protection arrangements. However, around 9,400 firefighters in the FPS would be expected to continue working until they are 60. The New Firefighters' Pension Scheme (NFPS) was introduced by the last Government in 2006 and has an NPA of 60. Some 4,600 wholetime firefighters and 5,000 retained firefighters in the NFPS are currently expected to work to 60.[21]

The Nature of Firefighting

6. The starting point for any new firefighters' pension scheme must be the specific occupational characteristics required of UK firefighters. The current fire service pension "was established to reflect the special nature of firefighters' work."[22]

7. During the 1990s, the Home Office commissioned Michael Haisman to assess the age limits in the UK fire service. He recognised that: "The firefighter's job environment is unique in many respects and it has been described as among the most extreme of the non-military vocational experiences."[23] More recently, the FireFit Steering Group report stated that it is "widely accepted that firefighting is one of the most physically demanding and hazardous occupations with the potential for exposure to severe physiological and environmental thermal loads".[24]

8. Other research for CLG by Optimal Performance found that the tasks performed by UK firefighters range from "activities of moderately low intensity but extended duration", such as road traffic accidents, extended search and rescue operations, chemical spillages, rail disasters, to "high intensity operations of short duration either in the heat or the cold", such as "hot rescues in full turn-out gear and self contained breathing apparatus (SCBA)".[25] These kinds of activities have been investigated by other Government-sponsored research, such as the *Medical and Occupational Evidence for Recruitment and Retention in the Fire and Rescue Service.*[26]

9. The FBU believes that it is not reasonable to expect firefighters to work beyond 55 because of the nature of the job. It is not simply that firefighters do not want to work beyond the current NPA—it is that the majority cannot do so given the exceptional physical intensity of the job without putting themselves and others at greater risk.

10. The FBU's judgement on this is backed by the overwhelming majority of firefighters. A YouGov survey in May–June 2011 asked FBU members for their opinions on Government plans for firefighters to work until they are 60. Around 18% of FBU members participated in the survey. Some 90% said they strongly opposed

[18] HM Treasury, Public Service Pensions Bill 2012–13.

[19] Robert Neill, Written ministerial statement: Fire and Rescue Service, 24 May 2012, *Hansard* 77WS.

[20] Independent Public Service Pensions Commission, Final Report, 10 March 2011, p 14.

[21] CLG, Firefighters' Pension Scheme 2015: Equality Statement, September 2012.

[22] Home Office, Fire Service Pensions Review: Consultation Paper, 1998 p ii.

[23] Michael Haisman, Age limits for serving firefighters, Fire Research and Development Group, 1996, p 34.

[24] Richard Stevenson, Paul Wilsher and Kevin Sykes, Fitness for Fire and Rescue. Standards, Protocols and Policy, FireFit Steering Group, 2009, p 7.

[25] *Optimal Performance*, Operational physiological capabilities of firefighters: Literature review and research recommendations. *Fire Research Technical Report 1/2005* p 19, p 24.

[26] Ian Gemmell, Diana Kloss, Tony Williams and Mark Rayson, Medical and Occupational Evidence for Recruitment and Retention in the Fire and Rescue Service, 2004, Chapter 2.

the plans, while a further 7% tended to oppose them.[27] Recent CLG research into firefighters' attitudes to their pension scheme supports this view.[28] Firefighters made it clear they did not want to be "running around putting fires out at 60".

Firefighters' Health and Fitness

11. Government publications recognise that the fitness demands of firefighting can be very severe. Haisman argued that "there is agreement that in order to meet these demands high levels of anaerobic power and strength are required together with corresponding high levels of aerobic fitness".[29]

12. Optimal Performance reports on the physiological assessment of search and rescue have underlined how tough the job is, even for young and very fit personnel.[30] Firefighters face the additional demands because of the Personal Protective Equipment (PPE) and breathing apparatus worn. In relation to the PPE, compared to shorts and T-shirt, "wearing standard fire kit (excluding SCBA) increased oxygen consumption by approximately 15–20%". There was "a further increase of a similar magnitude with the addition of SCBA".[31]

13. Given the demands of the job, a key consideration is whether firefighters can maintain the levels of fitness necessary for their own health and safety, commensurate with the safety of other firefighters and the members of the public.

14. Human fitness declines with age for well-understood physiological reasons. First, fat mass and the extra cellular space increase with age and make up a passive mass which does not contribute. Secondly, and in combination with the former, muscle mass may be lost during ageing. Thirdly there is decline in skeletal muscle. Finally, changes in tendon properties might play a crucial role.[32]

15. Age-related decline in fitness has been recognised in research about firefighters. Haisman argued that aerobic fitness, anaerobic power and strength decline with age.[33]

16. In 1998, the Home Office *Fire Service Pensions Review* stated: "The fire services standards of fitness and health become progressively more difficult to maintain as firefighters approach age 55. This is a key difference from most other public services". The review stated:

17. 5.4 Advice has been sought both from the organisations representing firefighters and from the local authority associations, with the assistance of their medical experts, on the age up to which serving firefighters might be expected to meet the physical requirements needed to perform the operational duties of a firefighter... *This is also the advice of the Association of Local Authority Medical Advisers (ALAMA), who told us that such research as had been done did not support any raising of this age.* The review considered that the compulsory retirement age of 55 for firefighters of the ranks of Station Officer and below should remain (our emphasis).[34]

18. More recent research has also acknowledged evidence of age-related decline in fitness. An Optimal Performance report for CLG stated that UK fire service entry standards for recruit aerobic fitness were "set at that level for recruits in part to allow for expected age-related declines in aerobic fitness".[35] Similarly, a FireFit paper argued that the physical demands of firefighting appear to be insufficient to enhance or maintain role-specific fitness levels "in addition to the recognised age related declines in physical potential".[36]

19. There is an assumption in some quarters that with the right fitness regime in place, firefighters can be made fit enough to work an additional five years. These claims have not been tested by thorough research. They also assume that virtually no fitness regimes exist within the service.

20. However, fitness policy has evolved more rapidly at brigade level in recent years. In 2012, the FBU gathered evidence on the fitness regimes in 50 out of 57 the fire and rescue services in the UK (88% response rate), including 42 responses out of 46 fire and rescue services in England (91% response rate). Two-thirds (66%) fire and rescue services in the UK have a fitness policy in place or under discussion. The vast majority (90%) test wholetime firefighters for fitness and similar numbers (88%) test retained firefighters for fitness.

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[27] FBU, *Firefighter* magazine, August–September 2011.

[28] ResearchWorks, Research into firefighters' attitudes to their pension scheme, including the impact of increased employee contribution rates, August 2012, p 23, p 47, p 62, p 69.

[29] Haisman, 1996, p 4, p 12, p 34.

[30] *Optimal Performance*, Physiological assessment of firefighting, search and rescue in the built environment, 2005b p 25; V Richmond, M Rayson, D Wilkinson, J Carter and S Blacker, Physical demands of firefighter search and rescue in ambient environment conditions, *Ergonomics*, 51, 7, 2008, p 1023–1031.

[31] Optimal Performance, Operational physiological capabilities of firefighters: Literature review and research recommendations, 2005a p 26.

[32] Martin Runge *et al*, Is muscle power output a key factor in the age-related decline in physical performance? A comparison of muscle cross section, chair-rising test and jumping power, *Clinical Physiology & Functional Imaging*, 24, 6, 2004, p 339; Jerome Fleg *et al*, *Accelerated Longitudinal Decline of Aerobic Capacity in Healthy Older Adults*, Circulation, 112, 2005, p 676, p 679.

[33] Haisman, 1996, p 16.

[34] Home Office, *Fire Service Pensions Review: Consultation Paper,* 1998, p 14.

[35] *Optimal Performance*, 2005a p 49, p 73.

[36] Richard Stevenson, *Testing Physical Capability in the UK Fire & Rescue Service*. *Review and Recommendations*, 2006, p 3.

21. Some two-thirds (68%) of fire and rescue services in the UK use the Chester step test. One in four (24%) in England test firefighters every six months for fitness. A third (33%) in England test firefighters annually for fitness, while 43% in England test firefighters biennially or less for fitness. Four out of five (80%) of fire and rescue services in the UK use a VO2max fitness standard of around 42/35 ml.kg-1.min-1. The vast majority (86%) offer fitness advice through occupational health and/or a fitness advisor. A significant minority (44%) of fire and rescue services in the UK have taken firefighters off the run over fitness concerns.

22. Another argument is that simple answers about retirement age are not possible because of the variability of fitness within each gender at any age. Graveling and Crawford reviewed the literature review for the FBU. They concluded:

23. In summary, some firefighters will be capable of continuing to meet the operational demands of being a firefighter beyond the current retirement age. However, an increasing number will suffer from health problems which will impair this ability, including (amongst many) musculoskeletal disorders (especially of the back); osteoarthritis and diabetes. In addition, age-related deterioration in physical fitness, muscle strength and heat tolerance will mean an increasing number will find it difficult to meet the acute challenges of firefighting, resulting either in a degradation in operational performance (older firefighters performing allotted tasks more slowly) or an increase in risk of acute injury such as severe fatigue or heat-related illness (where self-pacing is either not possible or not practiced). It could be argued that imposing a blanket age limit will unnecessarily restrict some firefighters who could safely remain in service. However, until some reliable and fair means is identified of determining who those individuals are, raising the current limit will place more firefighters at risk than is currently the case.[37]

24. Forcing all firefighters to work beyond 55 puts them, other firefighters and members of the public at greater risk. Most firefighters cannot continue to perform the role prescribed for them by the fire and rescue service beyond 55 with “reasonable” safety and there is no evidence to suggest that they can.

Unintended consequences of increasing the NPA above 55

25. There will be significant foreseeable consequences for the fire and rescue service and for individual firefighters if the NPA is extended beyond 55.

26. The FBU does not believe that even a draconian fitness regime provides the basis for increasing the NPA. The FBU asked Richard Graveling to examine the implications of imposing the 42/35 ml kg-1 min-1 VO2max standard.[38] He calculated that “by the age of 40 years, approximately 65% of firefighters would be estimated as having a predicted maximum oxygen uptake (aerobic capacity) of 42ml kg-1 min-1, with approximately 20% already failing to attain the lower criterion of 35ml kg-1 min-1”. By the age of 50 years, “those values have risen to 86% failing to attain the higher criterion, with almost half (47%) not reaching the lower value”. Although he warned that the figures should not be relied on to provide categorical values, the exercise illustrated the pitfalls of designing a pension scheme around a normative fitness standard the majority of firefighters are unlikely to reach.

27. The fire service has made progress in recent years to make firefighters more representative of the communities it serves. Since the early 1980s, more women and minority ethnic people have been recruited. This has undoubtedly improved the quality of the service. The proportion of female firefighters in England has increased from 1.7% in 2002 to 4.3% in 2012.[39] Nevertheless, there is very little gender-sensitive research on the fitness requirements for women firefighters.[40]

28. Any proposal to force firefighters to work beyond 55 would drastically reduce the number of women firefighters able to complete their career and receive a full pension. Even some women with elite fitness levels would not be able to reach the minimum standard required and work beyond 55. The imposition of inappropriate and unrealistic fitness standards designed to make all firefighters work longer, are also likely to drive large numbers of highly effective professionals, especially women operational firefighters, out of their jobs.

29. Increasing the NPA will also increase ill health retirements. The Government Actuary’s Department (GAD) have previously been asked about the projections for an increase in the NPA from 55 to 60. GAD confirmed its assumption that “any increase in retirement ages will result in a corresponding increase in ill-health retirements”. It also stated that “it would not be until after the first recruits of the NFPS have completed their careers that a determination could be made on whether GAD’s assumptions are correct or incorrect”.[41]

30. It is extremely risky to wait until ill-health retirements begin to increase in 35 years or so. The evidence clearly suggests the likelihood of increasing numbers of ill-health retirements, if the NPA is increased.

37 Graveling and Crawford, 2011, p 8–9, p 14, p 15.

38 Richard Graveling, *Fitness for Work: Estimate of the deterioration of the aerobic fitness of firefighters with age*, 2011, p 4.

39 CLG, *Fire and Rescue Service: Operational Statistics Bulletin for England 2011–12*, p 8–9.

40 Graveling and Crawford, 2011, p 8.

41 Notes of meeting with GAD, CLG and interested stakeholders that took place on 19 December 2005.

31. The FBU asked First Actuarial consultants to provide an assessment of the potential impact of any rise in ill-health retirements on the schemes.[42] The assumption for ill-health retirements following the 2007 valuation is 5%. Using the costs outlined in the 2007 valuation and projecting these to reflect the proposed reference scheme, an increase in ill-health retirement by between 10% and 15% will nullify any savings that might be delivered by increasing the NPA from 55 to 60. An increase by 20% will actually make the proposal to increase the NPA from 55 to 60 more expensive than the current scheme arrangements.

32. If the NPA is extended beyond 55, then this is likely to increase the pressure of fire and rescue service managers to use capability procedures to sack firefighters. Firefighters who fear that they will not finish their career and receive a full pension because of the risk of capability procedures against them would be tempted to opt out at an early stage or not to join the pension scheme in the first place. The FBU believes that there is a real danger of a significant number of firefighters opting out of a new pension scheme and thereby making such a scheme unsustainable for the rest.

Redeployment opportunities

33. The NFPS introduced in 2006 included the NPA of 60. At the time, the government promised that there would be sufficient redeployment opportunities for firefighters who could not maintain operational fitness. It stated that "greater emphasis on fire safety will create a wider range of job opportunities where some experience of firefighting and other emergency work will be beneficial".[43] This was the main argument used to justify the new NPA.

34. The FBU warned that firefighters would not be able to maintain operational fitness in the numbers required to maintain an effective and efficient fire service. The union viewed the NPA of 60 as unworkable and unrealistic.

35. Since 2006, fire authorities have restructured and removed any potential redeployment opportunities (apart from exceptional cases). The FBU recently surveyed fire and rescue services to enquire what opportunities they had for redeploying firefighters deemed unfit for operational duty on ill-health grounds. Annually this currently involves less than 100 firefighters in England, (with an NPA of 55).[44] Only five of the 46 fire and rescue services confirmed that they currently have any redeployment opportunities. The total number of redeployment presently available for England is 16 posts.[45]

36. Clearly this is far too few even for existing requirements, never mind the increasing numbers of firefighters if the NPA became 60 for all. The FBU believes that a sustainable occupational pension scheme should reflect the nature of the profession. In the case of firefighters, it should include an NPA that the vast majority of firefighters are capable of reaching. The terrible alternative would involve instituting capability procedures to sack firefighters in the years before they can retire, after a lifetime of public service.

Conclusion

37. Firefighters believe that designing a new pension scheme around an NPA of 60 will end up damaging an essential public service and cost the public purse more. There is no definitive medical evidence that the majority of firefighters in the UK can continue to perform beyond 55. In fact all the major studies by the UK government in the last two decades have concluded that the NPA of 55 is appropriate.

38. No evidence has emerged to challenge that conclusion. As Graveling and Crawford put it in their recent literature review: "In 1996, Haisman concluded that raising the current age limit for firefighters of 55 years 'would result in diminishing numbers being able to meet the requirements' of being a firefighter. There is no evidence that the requirements in the current service are any less taxing than they were at that time, or that current firefighters are any better able to meet those requirements. There is therefore no apparent justification for deviating from that view."[46]

39. The FBU has shown that redeployment opportunities are insufficient even for current purposes—they cannot sustain the significant increase in cases over several decades as currently-employed firefighters get older.

40. The job of a firefighter is quite specific and quite different from any other profession. A pension scheme for the fire and rescue service has to reflect the nature of the occupation if it is to be sustainable. There is no case for increasing the current NPA for members of the FPS; indeed there is a strong case for reducing the NPA of NFPS members.

41. If the government is committed to designing a workable occupational pension scheme for firefighters, it will listen to the voice of professionals within the fire and rescue service.

November 2012

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[42] First Actuarial, *Report to FBU: Impact of Government's proposals for members of the FPS and NFPS*, 31 August 2011.

[43] ODPM, Government Proposals for a New Firefighters' Pension Scheme: Government response to the consultation, 21 September 2005.

[44] CLG, *Fire and Rescue Service: Operational Statistics Bulletin for England 2011–12*, 25 September 2012.

[45] FBU, Research on redeployment opportunities in English FRAs, October 2012.

[46] Graveling and Crawford, 2011, p .15.

Memorandum submitted by Dr Robert Reynolds (PSP 11)

My recommendations are as follows.

1. Design of any new pension system should have in mind congruence with a future democratic settlement on income distribution, in public and private service, and in education, sickness and frailty, taking this to be implicitly in line with the democratic objectives of all UK governments.

2. Apart from the obvious positive reasons for democratic equality—representation of each other by each other, and equal individual economic command in the market-place for goods, services and politics—experience has taught the folly both of unfair and arbitrary discrimination as a constant irritant, and of frankly fraudulent guarantees and small-print betrayals at maturity and times of need.

3. It should be specially noted that "career average" schemes, subject no less than "final salary" schemes to long-run national economic uncertainties, may give rise to "unaffordable commitments", with adverse consequence for public and/or private finances. More sensible—and honest—would be straightforward universal relation of pensions to national prosperity and national investment strategy.

4. It might be thought too difficult, or dangerous, to make incomes—benefits, wages and pensions—dependent on national accounting and democratic allocation to private spending. Having in mind desirable stability for markets, for consumer-retailer-manufacturer-investors, and for renter-providers of housing, the "hand on the income tiller" would of course have to be "reasonably steady", no doubt with algorithmic assistance and formal oversights.

5. However, such a hand, on such a tiller, would afford invaluable facility in reactive negotiation of not uncommon and far more problematic "natural" turbulences, whether domestic, regional or global. Even radical "changes of course" can be accepted, and "worked with", when shown to be truly necessary and tolerably fair.

6. Of immeasurable assistance in a true equal democracy, would be general trust in the situations of the few to whom decisions can fall, equally subject to economic consequences. In our current circumstances, less happy if not fraught, gradualism "raised to a principle" will afford some protection for those—perhaps most of us—with personal and extended-family situations far from "the average". However, achievement of perceived fairness between groups, in "gradual movement" towards "more fairness" within different groups, is inescapably problematic. Comprehension is needed of "all classes", not least that of "decision-makers", perhaps "become as the gods", far above mortal concerns.

7. In the terms of any new pension scheme, it would be of some comfort to mortals to include a "scheme of democratisation", whereby—should again "the gods fail us", and necessity arise for another reorganisation of contributions and commitment—the fall-back scheme will be securely egalitarian.

8. Even as mainly a locum worker in lowly NHS medical employment, I counted myself very fortunate being able to "subsidise" the careers of children with as yet non-paying ambitions in science, technology and art. As now an NHS pensioner, I count myself fortunate having been able to allocate some pension to a child who many never work. Yet I would gladly have forgone my privileges, and would gladly now give-up those remaining, in exchange for the knowledge of "belonging" equally for all.

9. The benefits of equality would be far beyond "bureaucratic savings", considerable though these would be. Far greater would be the saving of "opportunity costs", the release of all energies "in conscience", all of us afforded security to speak, free to compete to be the best we can be. Not the least benefit to all would be freedom to choose our time of departing from this world, those who might assist no longer being troubled by questions as to motive.

10. For all still with work-capacities, contributing as able, competing for better jobs and business finance, good sense would I believe support the deserving; and would see any penalties only for the lazy and criminal. People with good ideas would I hope find backing; or they might choose to take "a measured hit" to be able to back their self-belief. Vitally, all would be able to "try something else", to have a life alongside all others.

11. I ask the committee to imagine for all, a life of belonging—in childhood, work, sickness and age—free to follow conscience, free from the tyranny of Fear that otherwise corrupts from shareable purpose.

November 2012

Memorandum submitted by Public Service Pensioners' Council (PSPC) (PSP 12)

Pensioner Representation on Pension Boards

I write as General Secretary to the Public Service Pensioners' Council (PSPC). The PSPC was established almost 50 years ago with the aim of protecting the interests of retired public servants. It brings together the various organisations of retired public servants and the retired members' sections of public sector unions in order to provide a united voice to Government and the main political parties on issues of concern to public service pensioners.

The PSPC notes Clause 5 of the Public Service Pensions Bill relating to the establishment of Pension Boards to oversee the administration and governance of public service schemes. The PSPC urges the Bill Committee to give serious consideration to establishing mandatory pensioner representation on each Pension Board to represent the pensioner viewpoint. We believe that pensioners have different concerns and needs to those of active members which raises the need to have separate representation for pensioners. Pensioners are not accruing additional pension rights, but rely on good administration and excellent communication in order to understand their pensions.

The PSPC believes that any pensioner representative(s) should be drawn from appropriate membership organisations rather than through direct election. Such organisations exist for retired members of all of the various public service pension schemes. We are concerned that Board members may find it difficult to represent or communicate with retired members if they are not a representative of a retired member organisation/trade union or in close contact with one. A member elected under such circumstances would merely be able to offer their own experience rather than be linked to the experience of members as a whole.

November 2012

Memorandum submitted by the CBI (PSP 13)

In answer to questions raised at evidence session on Tuesday 6 November.

The CBI's view on accrued benefits is that any change the employer wants to make to them, including to the age at which these can be received, should be allowed so far as they comply with section 67 of the Pensions Act 1995. Section 67 states prevents scheme rules being modified if the change adversely affected members' rights without member and trustee consent.

The Bill's definition of accrued benefits prevents changes being made to public service schemes, but our legal advice has told us that this would not be transferable, or set precedent, for private sector schemes. In that case, we are content with the current definition in the Bill. As such we are comfortable with the drafting in the Bill.

November 2012

Memorandum submitted by the National Union of Teachers (PSP 14)

Introduction

The purpose of this memorandum is to provide a commentary from the National Union of Teachers (NUT) on the Public Service Pensions Bill. The memorandum sets out the key proposals of importance to the Union and identifies to members of the Bill Committee areas where we believe amendments would be useful. This memorandum also expands upon some of the points raised by the NUT's Deputy General Secretary in his oral evidence to the Committee on 6 November 2012.

In short the NUT has serious concerns about the Government's proposals for public sector pensions. The proposals to make teachers and other public servants work longer and pay more for their pensions and get less in return when they retire are excessive, given the reforms already implemented in 2007, and are a breach of agreements reached on those reforms. Furthermore the Bill provides for the Treasury being given excessive discretionary powers or power to make regulations.

Key Concerns

Clause 8

Subsection (2) provides for the Treasury to reduce accrued pensions entitlements as a result of annual revaluation. The provision for revaluation of active members' accrued benefits is necessary due to the implementation of a career average basis for the schemes. The various scheme negotiations have established varying formulae for revaluation, ranging from a simple CPI link for the civil service scheme to an earnings link for the firefighters scheme. For pensions in payment and deferred benefits, revaluation is governed by the 1971 Pensions (Increase) Act. That Act—although recently controversial due to the Government's decision to move from RPI to CPI inflation as the basis of revaluation—does not provide for reductions in pensions entitlement should the formula yield a negative figure. The NUT believes that this possibility should be removed from the revaluation provisions of this Bill as well.

Clause 9

The Bill seeks to link the pension age in public sector pension schemes to the state pension age, other than for specified exceptions (the uniformed services). This was not a specific recommendation by the Hutton Commission, which recommended only that appropriate measures should be taken to manage longevity risk. The Treasury adopted this policy at a late stage in the process of scheme negotiations and, in doing so, banned individual Departments from negotiating any different provision—an action which confirmed that no agreement would be reached in respect of the Teachers' scheme where a formulation of "NPA = SPA minus 3 with a minimum of 65" had been proposed by the Department for Education. The Treasury policy is an extremely blunt instrument for managing longevity risk and does not provide any greater security against longevity risk

than the previously proposed link for the Teachers' scheme. The NUT believes that it is unnecessary given other provisions within the Bill relating to control of costs and believes that this clause should be amended to permit scheme regulations to provide for scheme pension ages which are not specifically equal to the State pension age.

Clause 10

The NUT believes that Clause 10 could be improved by including a requirement for quadrennial valuation of schemes. The current Teachers' scheme regulations provide for a quadrennial valuation of the scheme, although in consequence of the proposals to change the public sector schemes the valuation of the Teachers' scheme due as at 31 March 2008 (like some other scheme valuations) has not been undertaken. The NUT is concerned at the absence of any specific requirement on timing of valuations from this Bill and would like to see a binding provision, applying to all schemes, which would prevent any future decision not to undertake valuations as happened on this occasion.

Clauses 20–22

The NUT is opposed to this section of the Bill which allows for retrospective amendments to—and reduction of—pensions entitlements. The Union would like to see the Bill amended to protect public sector workers from any retrospective worsening of their pensions.

Members of private sector pension schemes are protected against detriment by section 67 of the 1995 Pensions Act which provides that benefits can only be changed if an actuary is willing to certify that the alternative benefits provided are actuarially equivalent and will not cause more than a small percentage of members to lose out. While that Act does not apply to public service pension schemes, it has previously been believed that the 1972 Superannuation Act offers at least some protection against retrospective changes. It should be noted that European law might also offer some protection for accrued pension entitlements as property rights but this could only be determined by litigation.

The NUT would welcome an amendment to the Bill that would introduce a specific provision giving members of public service pension schemes equivalent protection to that enjoyed by members of private sector schemes. Once pension benefits have been accrued, they should not be removed.

Additional Information following Oral Evidence Session

In his oral evidence to the Committee on 6 November, the NUT Deputy General Secretary expressed his concern that young teachers might not be able to afford to contribute to the pension scheme. The Government wants to increase every teacher's pension contributions to an average 9.6% of pay by April 2014. This means that for each pound that a new teacher in 2014–15 earns above £21,000, the following deductions to be made:

- Income tax: 20%.
- National Insurance: 12%.
- Student loan repayment: 9%.
- Pension contribution: 8.5% (Inner London) or 7.9% (rest of country).

The new teacher would therefore lose either 48.9% or 49.5% of each pound earned above £21,000. The NUT is concerned that the pension contribution is the only part of this which is optional and this may encourage new teachers to opt out of the TPS.

The NUT Deputy General Secretary also referred to analysis[47] conducted by the Union on payments into and out of the Teachers' Pension Scheme since its inception in 1923. This analysis found that teachers and their employers have paid in £46.4 billion more to the scheme in contributions than has been paid out in pensions, if the yearly surpluses/deficits are adjusted in line with GDP growth over time. In the absence of the latest Scheme valuation, teachers will continue to feel that the Government has had a long cheap loan from teachers, but now baulks at paying their pensions that are due.

Further Information

The Union has drafted amendments to the Bill on each of the key concerns highlighted above. These can be sent to Committee members that are interested in tabling them.

November 2012

Memorandum submitted by British Dental Association (PSP 15)

Introduction

The British Dental Association is the professional body representing dentists in the United Kingdom. It has 19,000 dentist members and 4,000 student members. The vast majority work in the National Health Service and are members of the NHS Pension Scheme. Others are employed by the Ministry of Defence and are in the Armed Forces Pension Scheme; yet others work in academic institutions and they are members of the Universities Superannuation Scheme. Our members have been very concerned at the attack on their pensions.

[47] http://www.teachers.org.uk/files/technical-note---tps-contribs-versus-payments-out.doc

We appreciate the opportunity to submit written evidence to the Committee scrutinising the Public Service Pensions Bill. Our detailed observations appear below.

Detailed Comments

We have a number of concerns about the wording of the Public Service Pensions Bill which is the vehicle to give effect to the final "agreement" concerning the future shape of NHS Pensions with effect from April 2015.

Our principal concerns relate to:

- Issues surrounding Future Normal Pension Age.
- The extent of the increase in power and control by the Treasury.
- The reference to negative revaluation.

1. *Future Normal Pension Age*

We are greatly concerned regarding the decision in the new NHS Pension Scheme to make Normal Pension Age equivalent to State Pension Age.

This will lead to a large group of dentists, and other health workers, having to work to age 68 for example, rather than age 60—eight years longer.

This makes no allowance for the possible deterioration in clinical skills and manual dexterity of surgeons as they age and opens up the very real possibility of danger to patients occurring in extreme cases.

The BDA can see no reference in Clause 9 of the Bill to the establishment of the Working Longer Group which was set up to conduct a scientific study of the pressures of working longer and whether particular occupational groups were likely to be especially disadvantaged by having to work longer.

It seems as if no cognisance is to be taken of the work of that group even prior to the publication of its report.

2. *Treasury control*

There are a number of places in the Bill where power is reserved to HM Treasury to exercise control.

Examples of this power appear in Clause 11—Employer cost cap—where the cap is to be set in accordance with Treasury directions. The valuation methodology in Clause 10 is also subject to Treasury control: there appears to be no involvement of the Department of Health in the NHS Pension Scheme on these matters.

This places unprecedented power and control into the hands of one Government department rather than Parliament.

3. *Revaluation*

A reference appears in Clause 8 (2) to "a revaluation is to be such percentage increase or decrease as a Treasury order may specify in relation to the period".

This opens up the possibility of negative revaluation that does not appear in the text of the Final Agreement of March 2012. The word "decrease" should be removed.

Conclusion

There are other points that we could make in addition to the aforementioned main concerns that we have already expressed. However, they can best be expressed by the following comment:

> *Although we understand that the Bill is of necessity an "umbrella" Bill covering as it does most public service schemes, the fact that it does not correspond in detail to the wording of the final "agreement" that was reached regarding the NHS Pension Scheme gives us considerable cause for concern as to the extent to which detailed secondary legislation will mirror the terms of that "agreement".*

November 2012

Memorandum submitted by Local Government's Association's (LGA) (PSP 16)

Following the Local Government's Association's (LGA) oral evidence to the Public Service Pensions Bill Committee, the LGA would like to provide further evidence to the Committee as well as providing a more detailed response to certain questions asked during the session.

During the Committee's evidence session, Committee members asked the LGA particular questions relating to whether the Bill reflects accurately the special position for the Local Government Pension Scheme (LGPS) and also relating to use of the word "closure" in Clause 16 of the Bill.

Background

The Local Government Association (LGA) and trade unions reached agreement on and submitted to government at the end of July a set of proposals covering the future governance and cost management of the LGPS. As outlined during our evidence session, the LGA, in agreement with the unions involved in the project, consider that certain areas of the Bill require clarification and amendment.

As noted during the LGA's evidence the LGPS is a funded pension scheme with £145 billion of assets in 89 local authority funds across England and Wales. The framework of the scheme is markedly different from other public service schemes and for example in Clause 4 and 5 reference is made to a scheme manager and scheme boards at national level. For the LGPS the understanding was that these would be at a local level, however, this is not clearly reflected in the wording of the Bill. In addition the case was made for the LGPS to have a national scheme board however the Bill does not reference a national scheme board for the LGPS.

The LGA also require clarification to the potentially inappropriate use of the terms closure and closing in Clause 16 of the Bill (and "old" and "new" in Schedule 7) in the context of a funded scheme such as the LGPS. There is a need to ensure the wording used in Clause 16 matches the intention of that clause.

The following information includes the relevant amendments we would like to see in respect of the areas raised in these questions.

Clause 4—Scheme Manager

This clause provides that scheme regulations must provide for a person to be responsible for managing or administering a public service pension scheme set up under Bill powers and any other statutory pension scheme connected to it.

The LGA would like to see the role of scheme manager for the LGPS directly referenced in this clause. This would improve the clarity of the clauses and improve cross referencing.

Clause 5—Pension Board

This clause requires public service pension schemes that are set up under Clause 1 to establish a pension board. The board's role is to assist the scheme manager in securing the effective and efficient administration of the pension scheme and any statutory scheme connected with it.

The LGA wants to see this clause strengthened by clearly separating the role of scheme manager and scheme board. Separating the roles through this amendment should provide for more robust management of conflict of interest.

Amending the Bill in this way should also provide a primary legislative foundation for a national scheme board for the Local Government Pension Scheme to bring it in line with the other schemes, as well as providing a national focus for the scheme.

Clause 16 and Schedule 7—Closure of existing pension schemes and Final Salary Link

Clause 16 provides that existing schemes made under existing primary legislation should not except in circumstances described elsewhere in the Bill provide for further accrual of benefits.

In Schedule 7, final salary scheme pension benefits accumulated up until the date that existing schemes close by virtue of either Clause 16(1) or Clause 28(2) are to be calculated in relation to the member's final salary at the point they retire or otherwise leave pensionable service, not the point at which their final salary scheme was closed. This final salary link applies to all past service in final salary schemes prior to the closing date.

The LGA would like to see the removal of the unfortunate use of the words closure and closing from the Bill. This would remove any possibility of misunderstanding the correct intent of the clause. This is because the closure of a funded pension scheme has the potential for a variety of serious consequences on both scheme costs and governance arrangements such as crystallisation events, the splitting of funds and the impact on ceasing admission agreements which the LGA understand were not intended. These amendments do not change the meaning of the clause in any way.

November 2012

Memorandum submitted by South Yorkshire Pensions Authority (PSP 17)

1. Introduction

1.1 This Authority is an administering authority of the Local Government Pension Scheme (LGPS) and manages two funds that were together valued in excess of £4.8 billion at the end of October 2012 and which provide pension services to approximately 150,000 individuals. This ranks the Authority as one of the top 50 pension funds in the country.

1.2 It appears to the Authority that this Bill has been written without proper recognition of the differences in the way that public sector pensions are financed. There is a clear difference between the funded Local Government Pension Scheme (LGPS) and the unfunded "pay-as-you-go" schemes. In unfunded "pay-as-you-go" public sector pensions schemes the cost of paying existing pensioners is met by contributions from employers and employees and by direct funding from the Treasury. The accretion of unfunded pension liabilities in these schemes stems from this "pay-as-you-go" approach. In contrast, in the LGPS, the cost that falls upon the taxpayer arises solely from employers' contributions: there is no direct Treasury funding. These contributions and those from employees are used primarily to pay for the pensions of existing pensioners: surplus LGPS cashflows are used to meet future pension liabilities. These funds are invested in revenue and income producing assets thus

helping to reduce the cost of future employers' contributions. It is estimated that LGPS funds currently own assets worth roughly £150 billion.

1.3 The fact that LGPS administering authorities are democratic, locally based and locally accountable (both through the ballot box and authority budget) means that they are subject to a discipline not necessarily found elsewhere within the public sector. LGPS funds are also more transparent than most with all of them now publishing annual reports, accounts statements and submitting performance to central bodies such as CLG. Each LGPS fund has a different liability profile and, therefore, merits separate administration: however, national data is collated. The current degree of LGPS "localism" sits comfortably with the present government's exhortations regarding this concept.

1.4 This Authority recognises that it is not a typical administering authority of the LGPS since it is a single purpose authority created by Statutory Instrument. The Authority also recognises that the Bill is intended to apply to all LGPS administering authorities and that its own governance and structural arrangements are not replicated elsewhere.

1.5 The Authority has not been directly involved in the negotiations with the trades unions, Government and employers regarding the proposals governing the new 2014 LGPS or this Bill and, therefore, only has a limited knowledge of the discussions that have taken place. The Authority understands that this Bill is designed to be an enabling Bill allowing the underlying schemes to issue detailed Regulations in due course. However, the Authority is concerned that the Bill as drafted will result in serious unintended practical consequences for the LGPS and that amendments are required if the viability of the LGPS is not to be jeopardised.

The Authority is grateful for the opportunity to bring the following observations to the notice of the Committee.

2. Observations

2.1 *Scheme closure (Clause 16)*

2.1.1 This clause describes a "closing date". The word "closing" has a specific meaning for pension schemes. The term closure triggers problems for all funds but most notably for the LGPS where as a funded scheme investment strategies and employer contributions are predicated on the continuity of the scheme. The Bill's current wording will be interpreted as triggering fund closures in all LGPS funds. As drafted the closure of the LGPS could lead to the wind up of some employers as funds will demand deficits are paid off at the point of closure leading to potential employer insolvency.

2.1.2 It is the Authority's understanding that the new LGPS 2014 Scheme will be introduced by amending existing secondary legislation. Service will stop accruing on 31 March 2014 in the old scheme and will start accruing in the new scheme from 1 April 2014 but the old scheme will not close. Ongoing members will remain active members of the old scheme but will not build up any more service and will not contribute to the scheme. However, those same ongoing members will become active members of the new scheme into which their contributions will go. Therefore, the wording of the Bill needs to be amended. The Authority notes that the legislative mechanism for a transition exists since such a provision was used when the LGPS was revised in 2008.

2.1.3 Notwithstanding the above, Clause 16(4) states that the existing LGPS scheme will close on 1 April 2014. This is incorrect: it should read 31 March 2014.

2.2 *Valuations (Clause 10)*

2.2.1 As written, Clause 10 removes the responsibility of the Secretary of State to manage valuations of the Scheme. The Bill allows Treasury to align valuations as it deems appropriate irrespective of the sensitivities of the Scheme covering matters such as timing, periods for measurement, data, methodology and assumptions. This is a particular problem for the LGPS where local valuations are conducted by private sector actuaries on the basis of actual experience data on membership, investments and contributions and using assumptions agreed with the fund.

2.2.2 The LGPS operates in a very different way to the other schemes since it is funded and not unfunded. Individual employer contributions are set at a local level and not centrally. Clause 10 gives Treasury control of the employer contribution process thus seriously undermining the local involvement of funds and employers. Currently, each fund has its own demographics and resulting liability structure, a range of employers and an investment strategy which reflects those facts. As a result there is flexibility in the valuation process to allow funds a degree of independence in order to operate effectively. If Treasury takes responsibility for all key parameters of the valuation process, this will not be possible. Clause 10 also cuts across the "model" valuation approach adopted by CLG and GAD which is intended to ensure a close match to the real valuations that take place at fund level.

2.2.3 There is also no recognition that stability is a key consideration when setting contribution rates in funded schemes: it is not just a solvency issue alone.

2.3 *Contributions to other pension funds (Clause 23)*

2.3.1 Clause 23 allows employers to bypass public service pension schemes completely. The Authority is not aware of any obvious need for this provision. In the LGPS its introduction could lead to employers' withdrawing

with consequential damaging effects to the substantive scheme. These include higher contribution rates for those employers who continue to offer the LGPS as well as demands for large crystallisation payments from those who don't.

2.4 *Revaluation (Clause 8)*

2.4.1 The provision for "negative revaluation" of CARE schemes was completely unexpected and, as far as the Authority is aware, was not raised during the LGPS 2014 negotiations. At the very least this threatens to overcome one of the bases of pension provision namely that what has been accrued is safe. Pensions being accrued should not be reduced just as pensions in payment should not fall from one year to another which is a principle widely accepted. The concept that a pension already accrued may be reduced is a significant shift in provision and is possibly in breach of law.

2.4.2 The present position results in a freeze in pension payment if the rise in CPI is zero or below.

2.5 *Governance and national board (Clause 5)*

2.5.1 It has long been a view that notwithstanding that the LGPS is managed locally it has been proper for a degree of central oversight. The IPSPC Report of March 2011 recommended that a national board be established to provide co-ordinating and advisory assistance to the Secretary of State. However, it is not clear from the Bill how this structure will be achieved with regard to the LGPS. Most administering authorities are county councils and it has been alleged that in certain circumstances this can cause there to be limited transparency. Whilst it would, therefore, be useful if such a national body could ensure good governance, including compliance with regulation and the collation of data; however, given the local nature of the LGPS, as explained above with regard to Clause 10, such a national board should not have statutory powers but should have statutory existence.

The Authority hopes that these observations are helpful and urges the Committee to consider them when reviewing the drafting of the Bill.

November 2012

Memorandum submitted by TUC (PSP 18)

Summary

The Public Service Pensions Bill seeks to put in place the legislative framework for reforms to public service pensions. These reforms were the subject of discussions at the central level between a TUC team drawn from the public service unions and Ministers from the Treasury and Cabinet Office. These talks began in February 2011, and detailed talks at scheme level with the relevant Government departments (and employers in local government) began in summer 2011.

The Bill has been presented as an enabling piece of legislation, and many details of the schemes will be set out in regulations. Key details about the future shape of the schemes were set out in Proposed Final Agreements for the schemes, published in spring 2012. Following the publication of the Proposed Final Agreements, the majority of unions balloted their members on the proposals. Unions will be providing separate evidence setting out their positions in line with the results of these ballots.

For an enabling piece of legislation, the Bill goes into an unnecessary level of detail on some areas, such as revaluation rates where it cuts across the packages discussed at scheme level. On the other hand, it remains virtually silent on areas of importance for all of the schemes such as the commitment to a strengthened and improved Fair Deal policy.

There are a number of concerns that range across the Bill, including the excessive concentration of powers with the Treasury, and the lack of recognition of the unique circumstances of the Local Government Pension Scheme (LGPS). There are also specific concerns, including the inclusion of retrospective powers, the narrow drafting of the 25 year guarantee and the potential for a shift away from defined benefit schemes.

In addition, there are at least two important elements missing from the Bill:

Fair Deal

The original Fair Deal policy provided that where public service workers were transferred out under TUPE a new employer must provide a "broadly comparable" scheme and protect accrued rights.

On 20 December 2011 the Chief Secretary to the Treasury announced "we have agreed to retain the fair deal provision and extend access for transferring staff". This means that instead of contractors having to set up a new scheme, the requirement for "broadly comparable" pensions will be met by allowing outsourced workers to stay in the public service scheme.

This commitment was a critical factor in the proposed final agreements and in agreements where they have been reached. The Bill should deliver on this commitment.

Review of SPA-NPA link

Recommendation 11 of Lord Hutton's final report was that the link between the Normal Pension Age in the schemes and the State Pension Age should be "regularly and independently reviewed" to make sure it is still appropriate. The Bill is silent on this recommendation, and should make provision for such a review.

Key Clauses

3: Scheme regulations

Clause 3, subsection 3 includes the "Henry VIII" power which enables the Government to amend the Act using secondary legislation. It also permits retrospective provision, which could mean future changes to accrued benefits which members thought were safe.

This undermines the claim by the Government that these reforms should be a settlement for a generation, meaning that further changes are possible, including to accrued benefits.

This has not previously been the case in the public sector: the Superannuation Act 1972 required member consent (in effect via their recognised trade unions) to any detrimental changes—direct or indirect—to accrued rights. This clause removes that protection. Nor is it the case in the private sector: section 67 of the Pensions Act 1995 says that changes in private sector pensions should not have retrospective effect (unless they are actuarially equivalent).

In addition the requirement for Treasury approval of all regulations is likely to increase bureaucracy, slow down policy making and reduce transparency.

4: Scheme manager, 5: Pension board, 6: Information

The Bill introduces governance requirements for the schemes, which are welcome. However, the TUC would like to see greater clarity and strength in these requirements, analogous to the requirements in private sector trust-based schemes.

In particular, the Bill should reflect Lord Hutton's recommendation that there should be a requirement for member representation on the Pension Board. It should include a commitment to member representation via the recognised trade unions on the national Boards and in each local LGPS fund.

In addition, the Bill does not provide for a National Pension Board for the LGPS. The local government unions and employers support a national board as a key element of the governance arrangements for the scheme.

In the TUC's submission to the Hutton review it was proposed that there should be an annual Treasury publication including key information about public service pensions in submission to Hutton. Lord Hutton's final report included a recommendation in line with this suggestion but this is not clearly reflected in the Bill, where the only concrete requirements are on the schemes to provide information to the Treasury, but not on the Treasury to publish.

7: Types of scheme

By specifying that the schemes established under the Bill can be defined benefit, defined contribution or "a scheme of any other description" apart from final salary, the Bill threatens to undermine a central tenet of the proposed final agreements. The Government has repeatedly said that the schemes should remain defined benefit, including in the November 2011 Good Pensions that Last paper. This commitment should be clearly reflected in the Bill in order to maintain member confidence.

8: Revaluation

Clause 8 concerns the revaluation of pensions during active membership (ie not in payment or deferment), which is of central importance in a CARE scheme.

The negotiations that took place at scheme level considered the balance between the revaluation rate and the accrual rate, and this led to differences in the revaluation rates that were chosen in each scheme. The civil service and local government schemes proposed final agreements chose CPI for revaluation, whereas the NHS scheme uses CPI+1.5% and the teachers' scheme CPI+1.6% in exchange for a less generous accrual rate. The proposed final agreement for the firefighters' scheme uses earnings revaluation. These differences reflect careful consideration at scheme level about the nature of the membership and the relative weight given to accrual rates as against revaluation.

Any change to revaluation rates would therefore represent a major change for members, yet the Bill offers the Treasury the opportunity to cut across all of the scheme-level packages by determining the rate, without consultation or scrutiny.

It is also unclear why the Government feels the need to set the revaluation rate out on the face of the Bill, rather than leaving it to scheme regulations as it has done with provisions for indexation of pensions in payment.

The second problem with Clause 8 is that subsection two allows for negative revaluation. This would mean that if inflation was negative, members would see the value of the pension they are accruing decrease. It is important for member confidence in pension saving that they do not see the value of their pension fall in their annual benefit statement.

The approach in the Bill is not in line with existing practice in the public sector: the nuvos CARE scheme in the civil service has a 0% floor, so that if inflation is negative, there is no increase or decrease. In addition, pension increases in deferment in the current public sector schemes ignore any periods of negative inflation, effectively using 0% inflation when determining the revaluations to be applied to deferred pensions in these circumstances.

9: NPA-SPA link

Clause 9 introduces the link between the Normal Pension Age in the schemes and the State Pension Age. The TUC and individual unions have stressed the importance of including Recommendation 11 of Lord Hutton's final report, which was that a regular and independent review should be established to examine whether the link was appropriate.

Secondly, the Bill should make space for the outcomes of reviews that are still underway to consider the impact of the increased NPA. In the NHS a tripartite Working Longer Review Group is only just beginning its work. The project will include detailed research and consultation and is likely to take at least a year. The Bill as drafted precludes a potential outcome of this review by listing NPA 60 occupations. There is also a review underway in the firefighters' scheme, which is expected to report at the end of this year.

Third, if there is to be a link between NPA and SPA there should also be more transparency in the process of setting the SPA. The TUC supports calls for an independent commission to consider the state pension age and any changes to it. This should have clear criteria, trade union involvement and public consultation, and should include a consideration of occupational effects (eg shift working) as well as longevity, and a focus on sharing the proceeds of economic growth fairly.

10: Valuations

The treatment of scheme valuations in Clause 10 is another example of the concentration of power with the Treasury without appropriate scrutiny and flexibility for schemes. The clause as drafted allows the Treasury to direct the timing, data, assumptions and methodology for scheme valuations, instead of the "responsible authority" (ie the relevant Secretary of State).

In some instances this cuts across the proposed final agreements for the schemes, such as in the civil service where the PFA says that assumptions should be determined by the Minister with input from the scheme actuary, Treasury and the scheme Governance Group.

This attempt to secure consistency across the schemes is artificial as it ignores significant differences in the make-up of the schemes (demographics, occupational effects and so on). It is also out of step with private sector legislation and good practice, where setting the assumptions for a scheme valuation is the trustees' responsibility.

There is a danger that this concentration of power without scrutiny will undermine confidence in the integrity of the valuation and cost management process. Instead, we would like to see flexibility between the schemes including a central role for the governance bodies, and early engagement and consultation.

This clause is of particular concern in the case of the LGPS, where individual funds undertake their own valuations, including an assessment of the performance of the investments they hold.

11: Cost cap

Clause 11 establishes the outline for cost management arrangements in the schemes. This is another example of a concentration of power with HMT with virtually no consultation or scrutiny. The previous arrangement (cap and share) was set in regulations and so the move to HMT directions is an unwelcome step away from public accountability.

Subsection 7 of this clause allows for a reduction in accrued benefits. This is likely to constitute a breach of scheme members' rights under the European Convention on Human Rights, as the Explanatory Notes for the Bill recognise.

20: Consultation and report (25 year guarantee)

Clause 20 aims to put in place the "25 year guarantee" given by ministers that the reforms should last a generation without further significant changes. The clause as currently drafted does not deliver on this commitment. It is narrowly drafted, weak in terms of the consultation requirements, and undermined by the retrospective powers introduced by Clause 3. In effect, it provides significantly weaker protection than that currently offered by the 1972 Superannuation Act.

Only three "protected elements" are identified by the clause: the CARE nature of the scheme, the member contribution rate and the accrual rate. There are many other elements that, if changed, could represent a significant change and detriment to members. These include the pension increase rate (in deferment or payment), the revaluation rate, ill health provisions, eligibility for the scheme or the final salary link for those with transitional protection.

22: Extension of schemes

Clause 22 would allow schemes to be opened up to members who would not previously have been eligible to join, such as those working on outsourced public service contracts in some sectors.

It does not, however, make reference to the Government's commitments to strengthen and extend Fair Deal. This policy would allow members to stay in their public service schemes if they were outsourced: effectively delivering the requirement for "broad comparability" by giving people the right to remain in the public sector scheme.

This commitment was a key element of the package across all of the schemes. It is central to confidence in the new schemes, and should be reflected on the face of the Bill.

23: Non-scheme benefits

This clause enables scheme managers and employers to make payments to a pension arrangement other than the appropriate public service scheme. There are concerns that this could seriously undermine the commitment to the public sector schemes. It is unclear why it is necessary to include this in the Bill at all.

Local Government Pension Scheme Issues

There are numerous ways in which the Bill as currently drafted fails to deliver—on indeed cuts directly across—the agreement reached between local government unions and employers for the LGPS. The distinctive structure and funding of the LGPS means that in many circumstances it is inappropriate to treat it in the same way as the other schemes. Discussions between the local government employers and unions have led to an agreed package of changes which will be put in place a year earlier than those for the other schemes, and a number of elements of the Bill risk undermining this progress.

Local government unions have provided detailed evidence on these points, but in summary the key areas are:

— There should be a national Board for the LGPS as well as local governing bodies for each LGPS fund.

— The valuation provisions are particularly problematic. In the LGPS individual funds hold real assets and conduct individual valuations with advice from their fund actuaries.

— The provisions on cost controls cut across the discussions that are currently at an advanced stage in the LGPS to design an appropriate method for the scheme. The LGPS proposals developed by unions and employers consider governance and cost controls together, but this is undermined by the Bill

— The provisions for scheme closure are particularly problematic for the LGPS, where they could trigger major changes in investment strategy and potentially lead to insolvency for some employers.

November 2012

Memorandum submitted by UNISON (PSP 19)

Introduction

UNISON is the largest public service trade union in the UK representing around 1.4 million members. The majority of our members are in the public service including approximately three quarters of a million members in the Local Government Pension Scheme (LGPS), nearly half a million members in the NHS Pension Scheme (NHSPS) and several thousand members in the Principal Civil Service Pension Scheme.

UNISON was at the forefront of scheme specific negotiations with employers and government departments that resulted in the agreement for the Local Government Pension Scheme England and Wales from April 2014, and the NHS and Civil Service Pension Schemes from April 2015. UNISON undertook a comprehensive consultation with its members including member ballots in the Local Government Pension Scheme England and Wales, the NHS pension Scheme and the Civil Service Pension Scheme.

UNISON believes that the purpose of the Public Service Pensions Bill should be to enable the individual pension schemes to implement the agreements reached between the employers and members.

UNISON has a number of serious concerns with the current wording of the Bill. It is our intention to try and seek clarification and reassurance on a number of the clauses of the Bill and obtain amendments to the Bill where necessary. It is for this reason that we did not recommend MP's vote against the Bill at the second reading but will reserve our right to lobby MP's to vote against the Bill if necessary.

The concerns we have with the Bill fall under four main headings:

1. Are the provisions in the Bill as currently worded helpful to the implementation of the scheme specific Heads of Agreements?
2. Does the wording in the Bill provide adequate protection to members' rights and are there clauses with unintended consequences?
3. Does the Bill as currently worded enable schemes to deal with major issues that will impact on the ongoing cost of the schemes such as changes in longevity?
4. Does the Bill do enough to ensure effective governance of the schemes?

Are the provisions in the Bill as currently worded helpful to the implementation of the scheme specific Heads of Agreements?

For the agreements to work in both the LGPS and the NHSPS, it must be clear from the Bill that the schemes will be free to set up their own structures, as is the case now, to review pension policy and consider major changes to their scheme rules if necessary following a valuation.

In the NHSPS considerable work is undertaken by the Technical Advisory Group both on the assumptions and methodology used in the costing of the scheme and formulating proposals for change when necessary. The proposals are then taken to the Governance Group and Staff Council. At all stages the view of the Treasury is taken into account in formulating proposals.

UNISON would like assurance that a group along the lines of the Pension Policy Groups, as set out on *recommendation 17 of the Hutton Report,* would be able to be set up, and existing structures that currently undertake that role are able to stay in place, to operate effectively and consider any proposed changes to the scheme.

Under *Clause 10* dealing with scheme valuations we would seek clarification that Treasury directions will not apply to individual LGPS funds. LGPS funds currently appoint their own actuary and agree with that actuary the assumptions and methodology most appropriate to their specific fund. Scheme regulations already specify when valuations are to be carried out and the requirements and control of valuations will be significantly strengthened under *Clause 12 (4)* of the Bill.

UNISON would suggest an amendment to *Clause 10* to make it clear that Treasury directions made under this clause would require not just consultation, but the agreement of the Government actuary. Also, that the Treasury should be required to consult and take into account the opinions of the existing governance structures of the schemes, before making a direction. To do otherwise seems to simply undermine the role of scheme specific governance structures.

In respect of *Clause 11*, dealing with the employer contribution cap, UNISON would seek clarification as to what the Treasury involvement would be with the LGPS. Principles designed jointly by the LGA and trade unions and agreed by the Government; provide a mechanism for setting the cap and collar that will be incorporated into the scheme regulations

We do not understand why Treasury directions should therefore apply to the LGPS as this seems to contradict the principles already agreed by Government.

We would also seek to make it clear that any Treasury direction made under this clause would also need the Treasury to at least consult with the scheme manager and scheme board of the appropriate schemes.

UNISON is not convinced that as currently worded the Bill recognises the devolved powers that exist in Scotland and Northern Ireland. For example, UNISON would suggest an amendment to *Clause 3* to make it clear that Scottish ministers have the power to legislate by regulation a scheme in Scotland with different provisions; in particular in respect of governance with design, administration and cost control. A new sub clause may need to be added to give effect to this.

UNISON is concerned that as currently worded, *Clause 16* could unintentionally trigger a "crystallisation event" in funded schemes like the LGPS. This would have significant funding implications for all the funds in the scheme. We would suggest this clause is amended to make it clear that existing public service schemes would not be closing but would be changed from a scheme change date, to reflect the respective agreements so that members can only accrue benefits on the agreed basis from that date.

Does the wording in the Bill provide adequate protection to member's rights and are there clauses with unintended consequences?

As currently worded, UNISON does not believe that the Bill gives sufficient security to members and there are a number of clauses that could potentially undermine the scheme specific agreements.

In Clause 3(3)(c) UNISON would not oppose an enabling provision which would allow Scheme regulations to make retrospective changes. It is however, essential that regulations cannot be made that have the effect of reducing accrued rights to pension benefits, unless the scheme members or their representatives have agreed to the change. The absence of such wording potentially undermines the commitment given by Government that accrued rights up to the date the schemes are changed will not be reduced

This would also ensure workers in public service pension schemes would enjoy the same protection of their accrued pension rights as exist for workers in the private sector in pensions law.

UNISON understands from certain comments made by the Government at the committee stage of this Bill that the Government believes trade unions would be able to prevent such a change and that if that failed, members could rely on the European Convention on Human Rights. Whilst appreciating the recognition of the role of unions in protecting workers pensions entitlements we would prefer that protections are built into Bill itself.

Under *Clause 7*, UNISON would suggest an amendment to sub Clause 7 (1). The National Agreement with the Government is based on public service schemes remaining Defined Benefit Schemes after 2014 and 2015. The Government is on record as believing that these agreements should last at least 25 years and this is set

out in Clause 20 of the Bill. The power currently in Clause 7 to potentially replace the schemes with defined contribution schemes, let alone a scheme of any other description, will undermine confidence in that agreement.

There is a defined contribution scheme already operating in the civil service but this is in addition to the defined benefit scheme. Members are able to choose which scheme they can join. If the intention is to be able to establish other types of schemes to operate alongside the defined benefit schemes, the wording should reflect this.

UNISON would suggest an amendment to *Clause 8* on revaluation. We are concerned that this clause will continue to allow the Treasury to simply choose in the future what method of revaluation should be applied to prices and earnings. UNISON believes that such a change would have an immediate and potentially dramatic effect on the public service pension schemes that have been negotiated and agreed with Government, and that such a change should acquire the affirmative procedure requiring a proposed change to be debated in Parliament.

UNISON would suggest an amendment to *Clause 8 (2).* UNISON is not sure whether the full implications of the proposed wording have been considered. For the purposes of revaluing prices or earnings, the revaluation should not be less than zero, as is the case now, for existing defined benefit schemes in the private and public sectors.

With the move to CARE provision this would have the effect of reducing accrued rights especially in the case of schemes negotiated for the LGPS and Civil Service Pension Schemes where the revaluation rate on earnings only is linked to CPI. The possibility of reducing benefits through negative revaluation was not part of the scheme specific discussions or the costings that underlined them.

UNISON is concerned at the current wording of *Clause 17.* It seems to be saying that all existing Injury and Compensation Schemes have to close unless Scheme Regulations make specific exceptions. We have already set out our understanding that existing public service schemes would not be closing but would be changed from a scheme change date to reflect the respective scheme specific agreements, so we cannot see why injury benefit schemes need to be closed—this was not part of the scheme specific discussions that UNISON attended.

UNISON believes the emphasis in this section should be on continuing existing injury allowance arrangements in accordance with the existing scheme regulations. Injury benefit arrangements have already been periodically reviewed and regulations amended in the NHSPS.

UNISON would suggest amendments to *Clauses 20 and 21* to protect the accrued rights that members have earned in their Public Service Pension Schemes. We cannot see why there should be a power to make retrospective provision which adversely affects members of the schemes and so it should be deleted. If it is retained we would want to change the wording so that any adverse effect would require the changes to be made to regulations using the affirmative procedure, so that it would be debated in parliament. An adverse effect can be measured but a significant adverse affect is open to interpretation and is subjective.

Under the agreements a cost cap will be enforced so it is certainly possible that schemes will need to change in the future, however, it should be made clear in *Clause 20 (6)* that any change must not have the effect of reducing accrued rights. UNISON would also question why such changes would not require normal consultation procedures. The jointly agreed scheme specific governance arrangements should be discussed and considered by the relevant scheme bodies and then, if agreed by the stakeholders, consulted in the usual way.

UNISON is concerned that there is no specific mention in the Bill of the agreement that "Fair Deal" should remain. In future Fair Deal would be achieved by members being allowed to stay in their existing public service schemes on first and subsequent transfers to the private sector. UNISON sees this as a key protection both to the scheme members and the continuing sustainability of the schemes.

"Fair Deal" is important to scheme members, because it means their pension provision will not worsen if they are outsourced. It is important for the continuing sustainability of the schemes because if large numbers of contributing members are lost to the scheme it means the schemes will become increasingly "cash poor" with the gap between contributions coming in, and pensions being paid, widening. In addition, for funded schemes it will mean the proportion of younger members against the total membership is likely to decline, with the result that the older profile of the scheme members will mean the cost of the scheme increasing.

Does the Bill as currently worded enable schemes to deal with major issues that would impact on the ongoing cost of the scheme such as changes in longevity?

As part of the agreements, normal pension age in the public service schemes will be linked to a member's state pension age (SPA) for service after the date that the schemes change in 2014–15. UNISON understands the Government's intention to try and use the link to SPA to deal with increases in life expectancy of scheme members. UNISON would however, suggest an amendment to *Clause 9* of the Bill to allow for a future review of the continuing appropriateness of the link between Normal Pension Age (NPA) and SPA. We believe it is necessary to ensure that the variation in changes in life expectancy in public service schemes is reflected in the changes in the SPA. Periodic reviews were recommended by Lord Hutton in his final report.

There are clear issues of fairness relating to groups of workers who do not enjoy the same life expectancy as others and there are serious issues regarding how schemes would be costed, if scheme specific life expectancy is seriously out of sync with SPA.

The other issue that makes it prudent to allow a review to take place is whether the link is ever likely to be successfully challenged under the European Convention on Human Rights. This could occur for example, if a service is outsourced and colleagues doing the same job end up with different levels of protection on their NPA.

In the private sector, if a retirement age is changed it can only apply to service after the date of the change. In the proposed public service schemes after 2014–15 all service from those dates would be changed to reflect a different retirement age if SPA continues to be increased.

UNISON would also suggest an amendment in respect of *sub Clause 9 (2)* to allow flexibility in the light of scheme specific discussions regarding the affect of working longer on specific groups of workers. For example, as part of the agreement in the NHSPS, a Working Longer Review Group has been set up. The review will take up to 18 months and will look at specific groups, for example paramedics. UNISON would not wish to pre-judge the findings of the group. The Bill should at least enable schemes to be able to look objectively at the effect on members having to work longer and also take into account the views of employers. Employers may find it preferable that some groups have a lower normal retirement age rather than having to deal with issues including increasing long term sick leave and ill health retirements as retirement ages increase.

Does the Bill do enough to ensure effective governance of the schemes?

UNISON has always worked hard to try and improve the governance of pension funds and to make them more transparent and accountable to the stake holders.

All funded public sector schemes in the European Union, including those made under statue with a state guarantee are covered by the requirements of the EU Directive—Institutions for Occupational Retirement Provision (IORP). The provisions in the Bill fall far short of the requirements of a funded pension scheme, which the LGPS is.

The Bill sets out the local authority becoming the scheme manager for each fund, with a pensions committee and/or a local board, but does not say how that board is constituted. Currently the pensions committee is run under local authority law, on which the councillors sit in the lead party majority, with a fiduciary duty to tax payers and not to scheme members.

This means that that the current governance system sits outside of the EU IORP Directive despite its transposition into UK law via the Pensions Act 2004 and the Occupational Pension Scheme Investment regulations. UNISON's counsel opinion, which we submitted in detail to the Hutton Commission, is clear that the IORP Directive Applies to the LGPS funds.

Governments can exempt statutory IORPs, such as the LGPS from Articles 9 to 17 of the Directive's 22 principal articles. This is by virtue of Article 5 of the Directive which says:

> *"Article 5: Member States may choose not to apply Articles 9 to 17 to institutions where occupational retirement provision is made under statute, pursuant to legislation, and is guaranteed by a public authority."*

However, the major issues of non-compliance of the LGPS arise from Articles 8 and 18 of the Directive.

Article 8 requires legal separation of the IORP (in this case each LGPS fund) from the employer. Article 18 requires prudential investment rules, investments to be made in the sole interests of scheme members and beneficiaries and conflicts of interest resolved in their favour.

We believe that the Government must introduce the directive to the LGPS by amending the Bill or face potential legal challenge.

UNISON would suggest an amendment to show that the European Directive—Institutions for Occupational Retirement Provision (IORP) applies to public funded Public Service Schemes such as the LGPS. UNISON does not believe it is appropriate for *articles 9–17* to apply to a statutory funded scheme such as the LGPS and member states can choose not to apply these articles. However, there is no such power to dis-apply *articles 8 and 18.*

UNISON would suggest an amendment to the wording in Clause 5 that makes it clear that the Pensions Manager and Pensions Board cannot be one and the same person or persons. In practice the two roles are distinct so a tightening up of the wording we believe would be advisable. The local authority cannot run the pension system, an independent board could if it is separated from the sponsoring employer, and an example of this is the London Pension Fund Authority.

UNISON believes that amending the wording to reflect the above will lead to greater transparency and more effective governance. It is particularly important at a time that discussions are taking place over the extent of possible infrastructure investments that *articles 8 and 18* are taken into account.

UNISON has pushed for member representation on pension scheme committees for many years. Lord Hutton in his final report recognised member representation on pension fund committees represented best practice and should be introduced. UNISON would suggest that *Clause 5* is amended to set out that every pension board should have member representation. Ideally it should provide the same level of representation in public service pension schemes as is required in private sector defined benefit schemes. After the "Maxwell" pension scandal and the findings of the Goode Committee, the Pensions Act 1995 required all defined benefit schemes to have a

minimum proportion of member nominated trustees. This is still in force as amended by the Pensions Act 2004. The minimum proportion was initially and remains one-third of the Trustee Board but the Government has given itself the power to increase this to half at some time in the future.

The argument has been in the past that an occupational pension scheme that is made under statute like the Local Government Pension Scheme means that members of the scheme do not bear the same level of risk as colleagues in the private sector. In fact, it has become clear that while accrued benefits are effectively underwritten by the Local Authority, investment performance together with employers paying very low levels of contributions during the 1980s and early 1990s has significantly contributed to the size of LGPS past service deficits. The effect of low contributions and declining investment returns has had a greater effect on the size of the deficits than the increase in life expectancy. It is clear that the cost pressure caused by these deficits has been a major factor influencing decisions to change future pension provision in the past. So although under the current cost cap proposals investment returns are excluded, the members of the scheme do bear significant risk if the performance of the funds do not result in alleviating cost pressure and should have representation on the pension boards.

November 2012

Memorandum submitted by the Public and Commercial Services Union (PCS) (PSP 20)

Introduction and Summary

Summary

1. The Public and Commercial Services Union (PCS) is the largest union in the civil service representing over 266,000 civil servants and other members in both the public and private sector who provide public service work. Many of our members will be directly and in many cases adversely affected by the provisions in the Public Service Pensions Bill.

2. Our submission focuses on our members who are part of the Principal Civil Service Pension Scheme (PCSPS) and by-analogy schemes. Our members work in a diverse range of civil service roles, including a range of physically demanding work in the customs division of HM Revenue and Customs, Forestry Commission, Ministry of Defence and others. These individuals are in a combination of final salary schemes (Classic and Premium) and a whole career scheme “Nuvos” that was open to new entrants from 2007 and already has a “65” pension age.

3. Our submission highlights some of our concerns about the Bill not least the link to state pension age (Clause 9), which is a key issue for our members. We also highlight our other concerns about the Bill where there could have more safeguards to protect existing rights, these include:

(a) Cost controls (Clauses 10–12);

(b) Scheme governance (Clauses 5 and 6);

(c) Consultation (Clause 19);

(d) Fair deal (Clause 26 and Schedule 9); and

(e) Public bodies (Clause 28).

Pension Age

4. PCS believes that the key issue in this Bill is the link of the scheme age to the state pension age (Clause 9). The idea that people will be able to keep working until an ever increasing state pension age, assumes good health and job availability. Evidence provided by recent TUC research[48] show that half a million people approaching state pension age are too ill to work.

5. Disability and poor health are preventing nearly half a million people approaching retirement from working, a figure that will only increase as the state pension age starts to rise, according to a TUC analysis of official labour market data. In the civil service members who had left on grounds of ill health and are under state pension age are sometimes classed as fit for work by the Atos work capability assessment. They are forced back into the labour market still suffering ill health and in practice are unable to find work. There are no statistics available but we are receiving increasing numbers of members approaching us for help in relation to this.

6. Individuals who work on past the time they and their employers believe appropriate, cause not only loss of dignity for the individual but concerns for colleagues and family members as they take on extra responsibilities. Increasing numbers of civil servants take partial retirement, sometimes to access pension lump sums to pay off debt and subsequently leave on ill health grounds. They lose out financially due to the way the scheme works and often end up on state benefits. Raising the state pension age to save money, only to find more people end up on employment and support allowance or jobseeker’s allowance, would be a false economy.

[48] TUC report, August 2012: http://www.tuc.org.uk/economy/tuc-21355-f0.cfm

7. Unpaid caring for partners, parents and others saves the state £25 billion per year.[49] Those civil servants who have up to now left for reasons related to caring responsibilities will be forced to keep working not only leaving the burden of care to the ever stretched state but becoming more at risk of losing good health themselves. Working isn't just about the job one does but travelling and pressures on performance in a competitive workplace.

Cost controls (Clauses 10–12)

8. To our members their pension is deferred pay. The pension has been a right since 1972 and we would argue that it is an integral part of the pay package. In this time of pay freezes and this year an average of 1% pay increase many members cannot afford to pay more in contributions that would mean a further cut in pay in real terms.

9. We acknowledge that assurances have been offered about cost ceilings and floors but given our experience that increases can be imposed at a time when no actuarial valuation was carried out, we are concerned at the open ended nature of the regulation.

10. The 2010 valuation of the PCSPS was not carried out and this made it difficult to have meaningful negotiations around the reform. Further information provided by the Treasury still does not alleviate concerns around the so called *"Henry VIII clause"* of this Bill—Clause 3(3) allowing retrospective changes. This would overwrite existing protections of accrued pension rights in Clause 2(3) of Superannuation Act 1972.

11. We understand that secondary legislation using the affirmative parliamentary procedure would have to be laid to bring into force retrospective and adverse changes, but are not reassured that this is enough. The promised 25 year guarantee[50] is not written into the rules to protect accrued rights for staff.

Scheme governance (Clauses 5 and 6)

12. The Bill aims to put in place good scheme governance arrangements using "best practice" models. Lord Hutton in his report described the civil service scheme management board which has trade union representatives as "good" yet the Bill does not refer explicitly to pension boards having a minimum number of employee or employer representatives in the same way that a trustee board would have a minimum number of member nominated trustees.

13. We would want that protection especially as the Treasury has an enormous amount of control in terms of scheme management and governance (Clause 13 (4)). The Bill does not specify the timing of valuations (Clause 10) for example, we would argue that valuations should happen regularly and we would suggest at least every three years.

14. There is a lack of clarity and transparency in terms of information over valuation and the assumptions used. PCS has found when the 2010 valuation was missed this caused difficulties discussing reform. Members are already paying more and will continue to do so yet there may be less information available for them and their representatives to monitor the health of the scheme.

Consultation (Clause 19)

15. Although this clause mentions employee representation we would like to see wording which sets out a clear requirement that the consultation should aim to reach an agreement with the employee representatives.

Fair deal (Clause 26 and Schedule 9)

16. PCS, along with other unions and the TUC, has met Treasury officials on the detail of the new "fair deal" arrangements and welcome the consultation around a new code.

17. We would, however, like to see the code as part of the Bill to protect workers moved to the private sector. We have experience of the problems that arise from pre "fair deal transfers" and re-entry into the public sector so would like to see a strengthening of the code.

Public bodies (Clause 28)

18. PCS members in public bodies in many cases will either be brought into the civil service or other public sector schemes and need the protection of accrued rights and benefits of previous schemes.

19. We are concerned that the Bill misses an opportunity to protect staff working in public bodies who are not brought into the core scheme. They could lose any kind of defined benefit scheme and end up carrying the risk in a defined contribution scheme. Currently the Commonwealth War Graves Commission is consulting on placing new staff into a defined contribution scheme, whereas existing staff are in a final salary scheme.

20. We believe the Bill could help by making a career average scheme the first alternative to final salary continuing defined benefit arrangements.

[49] MGM advantage report, October 2011: http://www.mgmadvantage.co.uk/news-centre/new-report-society-undervalues-retired-population/

[50] Danny Alexander said on 20 December 2011, "I have committed that these reforms will be sustained for at least 25 years. The Government intends to include provisions on the face of the forthcoming Public Service Pensions Bill to ensure a high bar is set for future Governments to change the design of the schemes." http://www.hm-treasury.gov.uk/statement_cst_201211.htm

Conclusion

21. As you can see we are concerned that the Bill does not do enough to protect the thousands of low paid public sector workers who have already been faced with jobs cuts, a pay freeze and now extra contributions to their pensions.

22. We believe that linking the scheme age to the state pension age could mean that well planned retirement for staff with long service is further delayed and could cost the taxpayer more in the long term.

23. Finally we also believe that the Bill could be strengthened around cost controls, scheme governance and consultation to ensure there are safeguards in place to protect staffs' existing rights and would call on the committee to ensure these changes are made and agreed to protect the pensions benefits of public sector workers.

November 2012

Memorandum submitted by John Ralfe (PSP 21)

Public Service Pensions Bill

1. I would like to submit comments on the Public Service Pensions Bill to the Public Bill Committee.

2. I am an independent pension consultant and have written on many aspects of public sector pensions, in the *Financial Times* and elsewhere, as well as being interviewed several times on the *Today* programme and *Channel 4 News*. Please see my attached biography (*not printed.*).

3. In making changes to public sector pensions it is crucial that the real annual economic costs of the pension promises are used. I believe that the official annual costs, calculated by the Government Actuary's Department ("GAD"), and quoted by the government, are materially understated. This means:

(a) Proper comparisons between the old and the new public sector pension benefits, such as the impact of increasing the retirement age or increasing the annual accrual rate, are impossible.

(b) Proper comparisons between the generosity of public sector pensions and private sector DC pensions, are impossible.

(c) At the macro-level, the current generation of taxpayers will pass an economic cost to be paid by future generations, which is inherently unfair.

All of this challenges the idea that the public sector pension changes are fair and equitable with the private sector and represent a "settlement" for 25 years.

4. The Government quotes that its changes to NHS, TPS and Civil Service pensions have reduced the overall cost to taxpayers by a third from around 23% of salary to 15% of salary, which have been repeated in the recent report published by the Pensions Policy Institute.[51]

The PPI estimates that the average private sector DC cost, including contracting into SP2, is 10% of salary, so it concludes that the new public sector pension terms are only 5% more generous than the majority of private sector pensions.

5. However, I believe these costings are wrong:

(a) The total real cost of public sector pensions, before member contributions, remains at around 31% of salary, even after the changes. The saving from the higher retirement age has been offset by the higher rate of pension earned each year.

(b) The cost saving for taxpayers is due to the increase in member contributions of around 3%. The increase from just over 6% to just over 9%, reduces the real cost to taxpayers from around 25% of salary to 22%, a much smaller saving than suggested by the Government.

(c) This in turn means the new public sector pensions at a cost of 22% of salary, versus 10% in private sector DC, are much more generous than suggested by the PPI—12%, not 5%, more generous.

6. The GAD calculates annual public sector pension costs using the Treasury method of discounting expected pensions at CPI + 3%, representing expected GDP growth.

The correct discount rate should be based on the yield on long-dated index-linked gilts, since public sector pensions and ILGs share similar characteristics. Both are obligations of the UK Government, both are contractually committed, legally-binding and both are inflation-linked. (The yield should be adjusted for the differential between CPI and RPI as public sector pensions are uprated in line with CPI.)

7. I attach a letter to George Osborne in April 2011, signed by 23 pension experts from the UK, US and Australia, arguing for the use of the ILG yield, not forecast GDP growth. This received extensive press coverage, including:

(a) The *Financial Times* 27 April 2011:

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[51] http://www.pensionspolicyinstitute.org.uk/default.asp?p=12&publication=332

"Rethink urged on future pension bill" By Norma Cohen.

http://www.ft.com/cms/s/0/7b7e80ec-703c-11e0-bea7–00144feabdc0.html#axzz2ACJ79WKF

(b) The *Financial Times,* 2 May 2011:

"Bean counters ignored over discount rates" By Pauline Skypala.

http://www.ft.com/cms/s/0/b78f585c-7282-11e0-96bf-00144feabdc0.html#axzz2ACJ79WKF

(c) Robert Peston *BBC* blog, 3 May 2011:

"Is the Treasury understating pension liabilities?"

http://www.bbc.co.uk/blogs/thereporters/robertpeston/2011/05/is_the_treasury_understating_p.html

8. The ILG costings I quote above are based on a real ILG yield of 1%, significantly higher than the current yield, so there is an argument that even these costs are understated.

9. Using ILG yields to calculate annual pension costs and liabilities is not an academic exercise—it is precisely the method used to value the liabilities of the House of Commons Members' Fund which makes payments to former MPs and dependents with little or no pension under previous arrangements.

> The latest valuation by the Government Actuary in September 2006 uses "*a market-related approach such that the interest rate used to discount the liabilities falling due in future years is the real yield available in the open market, on the reporting date, on investment in a medium-dated index-linked gilt portfolio. Accordingly, a discount rate of 1.5% a year net of price inflation has been used to value the Fund's liabilities*" (para 6.3).[52] The rate in 2003 was 1.86% reflecting higher gilt yields.

10. Furthermore, the Bank of England uses ILG rates to calculate its annual pension costs, which were as 54.5% of salaries in the 2008 valuation.

11. The official total cost of public sector pensions, before member contributions, bears no relationship to the market cost of individual or bulk annuities.

12. There are many examples of economists and pension experts who support using the riskless rate, or ILGs, in addition to the 23 who sent the letter to George Osborne.

Let me quote Donald Kohn, a Member of the Bank of England's Financial Policy Committee, who said in 2008, when he was Vice-Chairman of the Federal Reserve Board:

> *"... public pension benefits are essentially bullet-proof promises to pay. We all have read about instances in which benefits were lost when a private-sector pension sponsor declared bankruptcy and terminated the plan. In the public sector, that just hasn't happened, even when the plan sponsor has run into serious financial difficulty. For all intents and purposes, accrued benefits have turned out to be riskless obligations. While economists are famous for disagreeing with each other on virtually every other conceivable issue, when it comes to this one there is no professional disagreement: The only appropriate way to calculate the present value of a very-low-risk liability is to use a very-low-risk discount rate."*[53] (My emphasis. Note: Although he is talking about the US, the same conclusion also applies to the UK.)

David Wilcox, a senior economist at the Washington Federal Reserve, also said in 2008:

> *"The economics of how cash flows with no credit risk should be discounted are utterly unambiguous and non-controversial. They should be discounted using rates derived from securities with no credit risk."*[54]

I would be very happy to discuss these crucial issues with the Committee.

November 2012

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26 April 2011

Dear Mr Osborne

Public sector pensions discount rate

You announced in the Budget that the annual cost of new public sector pension promises would be calculated using a discount rate of expected GDP growth above inflation and the formal reasons for this were published on 6 April.

We are writing to ask that you re-consider this decision which we believe fundamentally misrepresents the economics of public sector pensions and has serious pernicious consequences.

[52] http://www.publications.parliament.uk/pa/cm200607/cmselect/cmfund/985/98507.htm

[53] http://www.federalreserve.gov/newsevents/speech/kohn20080520a.htm

[54] Comments before the Public Interest Committee of the American Academy of Actuaries 4 September 2008.

In our view the correct discount rate should be based on the yield on long-dated index-linked gilts, (adjusted for the difference between consumer price inflation and retail price inflation), since public sector pensions and index-linked gilts share similar characteristics. Both are obligations of the UK Government, both are contractually committed, legally-binding and both are inflation-linked**.**

The Consultation suggests the argument for using expected GDP growth is that pensions are *"paid for out of future tax revenues*".

But gilt interest and principal payments are *also* paid for out of future tax revenues. This clearly does not mean that new gilt issues should be valued by discounting payments in line with expected GDP growth, rather than the market gilt rate.

In using expected GDP growth, the Treasury has not explained how an obligation to pay a public sector pension differs from an obligation to pay gilts. If there is no difference, then pensions should be discounted at the gilt rate. The other possibility, that gilt payments should be discounted at the expected GDP growth rate, is immediately contradicted by the market.

The Government's approach implies that it is cheaper for it to promise an inflation-linked pension payment to a public sector employee than it is to pay the coupon and principal on an index-linked bond.

By overstating the discount rate we understate both the current economic cost of public sector pensions and the real economic savings from the Hutton Report's recommendations. It also means that the efficiency of individual public sector bodies is overstated, as employment costs are understated and at the macro-level, the current generation of taxpayers is passing on an economic cost to be paid by future generations.

We must be clear that public sector pensions are not discretionary Government spending, like health or education, which, subject to the ballot box, can be reduced to maintain affordability. They are deferred pay earned as part of a legally binding contract of employment, the equivalent of giving gilts to be redeemed at retirement and we believe their true cost should be properly measured.

In light of this we ask you to re-consider this decision.

Memorandum submitted by the NHS Working Longer Review Group (PSP 22)

For information to the Committee:

NHS Pension Scheme—Working Longer Review

1. The NHS Pension Scheme proposed Final Agreement includes the provision that in the new scheme, for pension accruals post 2015, Normal Pension Age should be set equal to State Pension Age. This will mean that each member will have an individual Normal Pension Age dependent on their date of birth. If there are further changes to State Pension Age, there will be an automatic link to change the Normal Pension Age of members of the NHS Pension Scheme by an equivalent amount in relation to the whole of their post 2015 service.

2. These changes may impact more on certain categories of staff within the NHS. As a result, it was agreed as part of the Heads of Agreement to set up a tripartite review between the Department of Health, NHS Employers and the NHS Trade Unions to address the impact of working longer in the NHS, with particular reference to staff in frontline and physically demanding roles including emergency services.

3. The outcome of this review will be recommendations to the Health Ministers including, for example, how employers can support an ageing workforce, the use of existing NHS pension scheme flexibilities and suggestions for how career pathways can be modified to improve health and well being for staff.

4. In order to ensure this review is robust, and results in effective recommendations, evidence will be gathered from a range of sources including academic literature, primary research from NHS staff and employers, NHS Pension scheme data and any other source that the review group members deem appropriate.

5. As joint Chairs of this review we write to inform you that the review commenced on 28 September successfully and would like to request that we provide you with regular updates on our findings for information to your committee.

6. To provide you with further detail about this review we have attached the following documents for your reference:

- Annex C of the Proposed Final Agreement.
- Terms of Reference.
- List of members of the Review group.

We hope this information is useful for you and our offer to provide you with regular updates is welcome.

Annex C

IMPACT OF WORKING LONGER REVIEW GROUP

TERMS OF REFERENCE

1. *Context*

The NHS Pension Scheme proposed Final Agreement includes the provision that in the new scheme, for pension accruals post-2015, Normal Pension Age should be set equal to State Pension Age. This will mean that each member will have an individual Normal Pension Age dependent on their date of birth. If there are further changes to State Pension Age, there will be an automatic link to change the Normal Pension Age of members of the NHS Pension Scheme by an equivalent amount in relation to the whole of their post 2015 service.

These changes may impact more on certain categories of staff within the NHS. As a result, it was agreed as part of the Heads of Agreement to set up a tripartite review between the Department of Health, NHS Employers and the NHS Trade Unions to address the impact of working longer in the NHS, with particular reference to staff in frontline and physically demanding roles including emergency services.

2. *Purpose of this review*

The main parameters of the proposed new scheme, as set out in the review partner's Heads of Agreement (December 2011), include the Government's proposal for the normal pension age to be equal to State Pension Age.

This review is focused on the implications of NHS staff working longer. This review will include gathering evidence, seeking views from relevant stakeholders assessing impact, and, if necessary consideration of available options to mitigate implications of an older workforce.

3. *Governance*

This review will be carried out in partnership with secretariat support provided by the NHS Employers organisation. The Review Group will provide:

— timely reports to the NHS Staff Council and the NHS Pensions Scheme Governance Group; and

— make recommendations to the NHS Pension Scheme Governance Group and subsequently the NHS Staff Council, for consideration and ratification prior to submission to Health Ministers.

4. *Group objectives*

The objectives of the group are:

— Gather and examine current and emerging evidence to determine the impact of the whole workforce working to state pension age and any impact on the delivery of healthcare to patients and clients. This evidence should make comparison with UK wide population data and sector specific data.

— Highlight any equal pay/equality issues arising from the new scheme Explore the option for employer funded contribution rates to offset the cost of early retirement for any potential staff groups identified as suffering detriment from working longer with particular reference to staff in frontline and physically demanding roles including emergency services.

— Engagement of relevant partnership bodies eg National Ambulance Strategic Partnership Forum, POSHH etc.

— Examine the potential impact of an older workforce on ill-health retirement, scheme costs and sustainability.

— Make an assessment of the implications of working to state retirement age on the NHS workforce.

— Identify incentives for positive employer practices and behaviours which support the development of age diversity practices in the NHS.

— Consider what strategies employers will need to put in place to support the extension of working lives. This would include health and well being and new career pathways for staff.

— Identify any categories of worker for whom an increase in Normal Pension Age would be a particular challenge in respect of safe and effective service delivery and consider how this may be addressed.

— Identify any categories of worker for whom an increase in Normal Pension Age would be a particular challenge in respect of their health and wellbeing.

— Determine the scope of pension scheme design flexibilities to support staff working to state retirement age and in particular to support flexible retirement.

— Consider links between scheme flexibilities and the concept of total reward as described in the NHS Employers organisation briefing Total Reward in the NHS. This briefing provides advice for employers on how to develop a total reward approach.

5. *Group composition*

It is proposed that the group composition is determined in discussion with the NHS Staff Council and its Executive. The scope of this review spans a number of work areas of the NHS Staff Council so the composition

of the group may be better supported by the selection of management and staff side representatives from across the wider membership.

The secretariat for the review will be provided by the NHS Employers organisation.

6. *Ways of working*

It is proposed that:

- The group should commence meetings from March 2012.
- Meeting frequency should be reviewed following the completion of the Heads of Agreement.
- The group should meet either via teleconference or face to face where practical.

It is recommended that the impact of working longer should become a standing agenda item at future Scheme Specific Discussion meetings, enabling the review group to report back on progress and receive feedback from the wider group.

7. *Key milestones/timescales*

It is proposed that:

- Identify appropriate membership and scope initial work programme March/April 2012.
- Commission literature review/evidence gathering.
- Develop and agree assessment of impact an older workforce, identifying available options to mitigate implications as necessary.
- Review partner recommendations submitted to Department of Health by autumn 2012.
- Supporting products developed and implemented by March 2013.
- Support and monitor implementation, refining materials as necessary, in the run up to the introduction of the new pension arrangement in 2015.

November 2012

Memorandum submitted by Mercer (PSP 23)

Introduction

1. Mercer is a subsidiary company of Marsh & McLennan Companies, a global professional services firm providing advice and solutions in risk, strategy and human capital. Within Mercer UK we have a dedicated and experienced Public Sector Advisory Services Team with over 250 years' combined experience, and are one of the leading actuarial and investment advisers on the Local Government Pension Scheme (LGPS).

2. We set out below our evidence to the Bill Committee. This evidence is provided by our Public Sector Advisory Services Team. We recognise that much of the Bill is concerned with the Government's social and financial policy, and in particular the need to contain public sector pensions costs going forward and to have provisions which properly reflect the increasing longevity of the membership. Our particular expertise, and therefore the comments below, relate primarily to the operational and funding aspects of the new schemes. In general we welcome the overall direction of the new Public Service Pension arrangements, particularly the new requirements for governance and the improved provisions for regulatory oversight. We are of the view, however, that the effectiveness of the new provisions will depend to a large extent on the detailed arrangements which are put in place, and we comment on this further below.

Governance

3. Sections 4–7 of the Bill cover the governance arrangements for the new Public Service Schemes, which contain requirements over and above those which currently apply. In particular they contain a requirement for the appointment of pensions boards with specific responsibilities under the Act. We welcome these new provisions, particularly the associated requirements for a member of the board to have adequate knowledge and understanding of the scheme concerned.

4. In relation to the LGPS, the majority of individual Funds already have a pensions committee in place, the members of which are normally councillors who are subject to re-election on a regular basis. We have experience of a large number of well-run and well-governed Funds. In our view, the distinguishing features of such funds are that they devote the appropriate amount of resource to their management and governance, they have a pensions committee of an appropriate size, ensure that the committee is sufficiently well-versed in its responsibilities, and devote time to training where appropriate. We would welcome a greater consistency of approach, to ensure that the experience and standards of the best-run Funds are shared more widely. We would hope that any new requirements should not be detrimental to this objective, and that any regime should concentrate on the establishment and monitoring of arrangements against agreed principles, rather than a prescriptive "tick-box" type approach.

Revaluation of Benefits

5. Section 8 of the Bill covers revaluation of benefits. It affords the Treasury very wide powers in setting the rate of revaluation to be applied to members' benefits. As such, we believe that the arrangements for determining the rate of revaluation are not sufficiently transparent, and we believe it would be preferable to see the rate more closely defined either in the Act or in the supporting Regulations. We would wish to see the choice of an appropriate revaluation index which properly reflects changes in costs of living, recognising that different indices may be appropriate for different purposes. However, we are aware that the majority of the Schemes already have "Heads of Agreements" which allow for revaluation of "CPI plus a fixed margin" as the revaluation index, so we are unclear about whether or not the proposal is to unwind these Heads of Agreements in this particular respect. This is an area which we believe should be clarified.

Normal Pension Age

6. Section 9 deals with the link between Normal Pension Age (NPA) under the Public Service Pension Schemes and State Pension Age (SPA). In terms of managing life expectancy change, linking NPA to SPA a very blunt tool, and may not reflect the specifics of each Scheme concerned. SPA is affected by politics as much as financial equity, so is unlikely to be a good reflection of the effect of unanticipated changes in life expectancy within the Public Service Pension Schemes. It is possible that the overall cost control arrangements (as covered under Section 11 of the Bill) may be able to deal with any effects of unanticipated changes in longevity, to the extent that they are not already covered by changes in SPA. However, trying to include both longevity changes and changes in NPA/SPA within the cost control arrangements is likely to involve even greater effects being covered than might otherwise be envisaged. Therefore how any changes through the cost control mechanism link with changes to SPA needs to be clarified.

Cost Control Mechanism

7. Section 11 deals with the employer cost cap and the associated cost control arrangements. In principle, we welcome the introduction of these arrangements to support the sustainability of the Schemes. However, in terms of the mechanism overall, the arrangements could have unintended consequences if costs are measured over a wide spread of liabilities (pensioners, deferreds and actives), but then the effects concentrated into a much smaller group (eg just actives). In particular, the effects on this smaller group could be both disproportionately large and volatile. This applies particularly if past service liabilities from any of the existing public service schemes are to be covered within the cost control mechanism (and in this context the letter from the Chief Secretary to the Treasury to the Trades Union Congress on 10 October confirmed that the cost control arrangements will include pre 2014–15 past service liabilities for those who become active members under the post 2014–15 arrangements). Overall, this may not give the desired outcome for both taxpayers and scheme members.

8. In the current LGPS (and likely the other schemes), less than 50% of the liabilities relates to members who are currently active, so the proposed cost control mechanism leaves well over half of the existing liabilities outside its coverage and the tends from those liabilities will still affect employer contribution rates in individual LGPS Funds (it seems to us that there is a window of opportunity to address this at the present time). This needs to be understood and considered when dealing with the treatment of the "old" and "new" LGPS.

9. For the LGPS, the control mechanism needs to be fit for purpose and recognise its different funded and demographic nature. In particular, we support the concept, as agreed by the "LGPS Project Board" earlier this year, that remedial action should be considered whenever the variation from the employer cost cap exceeds a narrower margin (for example 1% of pay). However, the frequency of any changes needs to be monitored as regular changes in benefits or contributions will affect members' confidence in the scheme, as well as make it impractical to administer and communicate. Any lead-in time for changes to benefits or contributions will need to be managed, so that members' expectations for their arrangements are maintained and that they can retain confidence in the scheme going forwards.

Actuarial Valuations

10. Section 10 of the Bill refers to actuarial valuations. The wording of the Bill seems to apply this to all actuarial valuations, including the actuarial valuations of the individual LGPS Funds for the purpose of setting employer contribution rates. Whilst we have seen correspondence from the Treasury indicating that Section 10 will not be applied to such individual LGPS Fund valuations, we believe that this intent should be clarified in the wording of the Bill.

11. Section 12 of the Bill appears to include within its scrutiny coverage the actuarial valuations for the purpose of setting contribution rates under the LGPS. Whilst we would like greater clarity over the interpretation of "solvency", and "long-term cost-efficiency" our main point concerns the potential subsection 12(4), dealing with reviews of actuarial valuations. We would hope that any review process will be able to recognise the different local characteristics of each of the LGPS Funds, in particular their different maturities, investment strategies and demographic characteristics, but the form and extent of such reviews is not clear from the Bill itself.

Closure of Existing Schemes

12. Section 16 sets out provisions in relation to the closure of existing arrangements. This could be interpreted to mean that the existing arrangements will be kept separate in some way from the new schemes. Whilst we suspect that this is not the intention, we believe that the wording of the Bill should be reviewed carefully to

ensure that there are no unintended consequences which arise from the wording used. For example separating the old scheme liabilities would be in effect closing that scheme with knock-on implications for investment strategy and therefore long-term costs.

Non-Scheme Benefits

13. The potential effect of Section 23 seems very wide, in that it appears to allow Public Service Employers to establish pension arrangements outside the proposed new Schemes. We would suspect that this is not the intention, but are nevertheless of the view that the purpose of this Section should be clarified as part of the ongoing discussions.

November 2012

Memorandum submitted by NASUWT (PSP 24)

The NASUWT is pleased to have the opportunity to submit evidence to the Public Service Pensions Bill Committee.

The NASUWT is the largest teachers' union in the UK and represents serving and retired teachers in all phases of education.

The evidence draws upon the extensive experience the Union has of teachers' pension provision and retirement expectations.

Introduction

1. The NASUWT is opposed to the Government's proposed programme for public sector pensions reform which the Union believes represents an unnecessary and unfair attack on public sector pensions in general and on teachers' pensions in particular. The NASUWT has not signed up to the proposals outlined by the Department for Education's *Proposed Final Agreement* on changes to the Teachers' Pension Scheme (TPS). In fact, unions representing over 90% of all teachers are opposed to the proposed changes to teachers' pensions.

2. The NASUWT has no principled objection to reform of teachers' terms and conditions. In fact, the Union has a track record of constructive engagement with the Government on a wide range of terms-and-conditions matters, including pension reforms agreed in 2006 to protect the taxpayer through a-cap-and share arrangement for contributions.

3. However, the NASUWT is opposed to the draft Bill and believes that it fails to protect the public, fails to protect the teaching profession, and fails to protect education for future generations. It also fails to fully reflect the recommendations of Lord Hutton's Independent Public Services Pensions Commission (IPSPC).

General Concerns

4. The NASUWT is concerned that the provisions in the Public Service Pensions Bill, if implemented, would have a damaging impact on the morale of teachers and on future recruitment and retention in the teaching profession. The NASUWT is further concerned that the Bill, as originally drafted, is inadequate in safeguarding teachers from further damaging changes being made to teachers' current or future pension rights.

5. The NASUWT is concerned by the scant provisions on the face of the draft Bill that deny teachers and other public service employees the protections and safeguards they deserve when planning for their retirement.

6. The Bill, as presented, leaves a great deal of the content of subsequent Regulations to be determined by HM Treasury and provides HM Treasury with more powers and discretions to determine the nature and level of public service pensions than ever before, for the most part subject to little or no parliamentary debate.

7. The Bill gives HM Treasury extensive new powers to make directions and bring forward Regulations that could radically affect members' future benefits and accrued rights, their revaluation, normal pension age, scheme governance, future valuations and cost-capping arrangements to an extent never envisaged or discussed between stakeholders in the run up to the publication of the Bill.

Specific Concerns

Clause 3

8. This clause gives powers to HM Treasury to amend any legislation, including primary legislation, without restriction, opening up the possibility that, at any time, HM Treasury may make retrospective changes, potentially worsening the level of pension provision and denying the accrued rights of teachers and other public service employees, thereby breaking a key promise of the Coalition Government's programme for government. This will make it impossible for individuals to organise their lives and careers or to make sensible financial plans for their retirement.

9. If the powers to amend primary legislation are to be circumscribed, as the Government claims, then this ought to be clear on the face of the Bill itself. The NASUWT believes that, without amendment, the provisions allowing retrospective changes to accrued benefits under any new scheme could be challengeable at a future date in respect of individual property rights under the European Convention on Human Rights.

10. The NASUWT believes that the Bill as drafted should be amended in order to properly protect the accrued rights and entitlements of teachers and other public service workers as has been the case hitherto.

Clause 5

11. The draft Bill's requirements for the establishment of a Pension Board to assist the scheme manager on matters of scheme governance and administration do not adequately reflect the recommendation of the IPSPC that every public service pension scheme should have "a properly constituted, trained and competent Pension Board, with member nominees" and that there should be "a pension policy group for each scheme at national level, for considering major changes to scheme rules", with member and employer representation, as part of the consultation and negotiation machinery.

12. Clause 5 should be amended in line with good practice and the recommendations of the IPSPC to include an explicit requirement for member representation on the Pension Board similar to that for active and retired members on trustee boards in the private sector. It is the view of the NASUWT that the Bill should require at least one third of the Board to be made up of scheme members. The Bill should also include provision to require the establishment of bodies with member and employer representation for consultation and negotiation as recommended in the IPSPC Report.

Clause 7

13. Clause 7 of the Bill goes way beyond the provision of career-average defined benefit schemes as proposed by the IPSPC and gives express powers to HM Treasury to define and redefine the arrangements for public service pension provision in future—whether on the basis of "defined benefit", "defined contribution" or "a scheme of any other description".

14. This power to redefine the types of pension scheme that may in future operate for UK public service employees, subject only to a negative parliamentary procedure, is excessive in the extreme. It completely undermines the Government's current proposals and would make it impossible for teachers to plan with any degree of confidence for their retirement, with potentially damaging effects on future education provision.

15. The NASUWT believes that HM Treasury's discretion to determine the type of public service pension scheme arrangements for the future should be removed along with reference to "a defined contribution scheme or a scheme of any other description" in Clause 7 of the Bill. The Bill should stipulate that such schemes should be defined benefit schemes.

Clause 8

16. Clause 8 on the annual revaluation of earnings/benefits provides HM Treasury with extensive discretionary powers to control and change the basis for revaluation by reference to changes in the general level of prices or earnings estimated in such manner as the Treasury considers appropriate. Allowing the Treasury such considerable scope to determine and vary the measure of revaluation, including the possibility of an increase *or decrease* in accrued benefits, would increase levels of uncertainty and unpredictability for scheme members over the level and maintenance of their future and accrued benefits.

17. Again, these provisions, as drafted, are subject only to the negative Commons procedure and are contrary to the recommendations of the IPSPC and the provisions of the Pensions (Increase) Act 1971 which specifically preclude reductions in pensions. They would also undermine the specific provision in the Government's current proposals, breach the commitment to protect accrued pension rights set out in the Coalition Government's programme for government, and further weaken the confidence of teachers and other public service employees in the value of public service pension schemes.

18. The NASUWT believes the method for the revaluation of benefits is too significant to be left to HM Treasury to determine and to be subject only to the negative Commons procedure. The Union believes the clause should be amended accordingly to limit HM Treasury discretion in this respect and remove any possibility of a decrease in benefits already accrued. We would expect the Coalition to honour their commitment to protect accrued rights.[55]

Clause 9

19. The provisions in the Bill linking NPA to the member's state pension age (SPA) has provoked significant anger and consternation among teachers along-side other aspects of the proposed reforms. The prospect of further increases to NPA, following the increase to age 65 under the reforms introduced in 2007, have raised genuine concerns as to the reasonableness, practicality and sustainability of the provisions, given the high physical and mental demands associated with teaching, which is widely recognised, nationally and internationally, as one of the most stressful of all occupations.[56]

[55] The Coalition: our programme for government—page 26.

[56] European Wide Survey on Teachers Work Related Stress—Assessment, Comparison and evaluation of the Impact of Psychological Hazards on Teachers in their Workplace. ETUCE http://teachersosh.homestead.com/Stress_III/Work-Related-Stress-III.html Teachers' Mental Health—A study exploring the experiences of teachers with work-related stress and mental health problems. Research report for the NASUWT by Rothi, Leavey and Loewathal. http://www.nasuwt.org.uk/MemberSupport/NASUWTPublications/AllPublications/ResearchProjects/MentalHealthReport/index.htm

20. The Government has argued that increased longevity provides the justification for increasing the NPA in line with the SPA. However, the Government's inconsistent approach is thrown into sharp relief by the proposal to treat the police, firefighters and armed forces qualitatively differently. These occupations will have a NPA fixed at 60 years of age and will see no further increases in their NPAs beyond 2015 irrespective of future longevity trends and irrespective of any future increase in the SPA. The Government has provided no objective justification of this qualitatively unequal treatment of teachers in comparison to these other occupations.

21. This could potentially discriminate against the high numbers of women who make up the public sector workforce in many roles, including teachers, and the fact that the proposed increase in SPA to 68 may be brought further forward by the Government will only exacerbate the inequity between different occupational groups.

22. This provision also ignores the recommendation of the IPSPC that "the link between the State Pension Age and Normal Pension Age should be regularly reviewed, to make sure it is still appropriate".

23. The NASUWT is particularly concerned that Clause 9(4) requires that future changes to NPA "must ... apply in relation to all the benefits (including benefits already accrued under the scheme)", further breaking the commitment previously given by the Coalition Government to protect accrued pension rights and contradicting the view of the IPSPC that "protecting accrued rights is a prerequisite for reform both to build trust and confidence and to protect current workers from a sudden change in their pension benefits or pension age".

24. The NASUWT believes that this clause of the Bill should be substantially amended to remove the automatic link with SPA, to allow for a lower pension age than 68 for teachers (to be determined, in consultation with stakeholders, in light of emerging evidence and trends) and to preserve the commitment to protect accrued pension rights in respect of any future changes to public service pension scheme arrangements. To be absolutely clear we oppose any increase in existing normal pension age and oppose the link to state pension age.

Clause 10

25. The requirement in Clause 10 that schemes must be actuarially valued is tempered by the provision for scheme valuations to be carried out in accordance with HM Treasury directions as to how and when a valuation takes place and under what assumptions. There is no requirement for the valuation to be carried out at specified intervals, such as every four years, as under the current Regulations (although the Government seems able to circumvent the current provisions). This gives no protection to members against unreasonable delay or the use of unreasonable or biased methodologies for the purposes of conducting future valuations.

26. The NASUWT believes the provisions on scheme valuations in the Bill should be more explicit and if it is the Government's intention that the valuations for the unfunded schemes will be carried out every four years (as stated in the Treasury note on actuarial valuations of public service pension schemes, November 2012) then the Bill should clearly state this.

Clause 11

27. The provisions in Clause 11 in respect of setting the employer contribution rate and the operation of a "cost cap" for employer contributions in accordance with HM Treasury directions, give HM Treasury wide powers to specify how the first valuation is carried out for setting the cap and which costs fall inside and outside the cap. The actions to be taken when costs exceed the cost cap are to be set out in Treasury regulations, subject only to the negative Commons procedure, but may include increases or decreases in members' benefits or contributions.

28. The NASUWT believes this clause should be amended to restrict the extensive powers of HM Treasury to take decisions which potentially will result in further detriment to scheme members and to provide for any measures to amend scheme benefits as a result of the cost-cap arrangements to be taken only after proper consultation with a view to reaching agreement with the representatives of those likely to be affected. The Bill should not provide for regulations that would have the effect of allowing the Treasury to impose changes as a result of the cost-cap arrangements. Any amendments should not have the effect of reducing a member's accrued benefits.

Clause 20

29. Clause 20 seeks to give effect to the Government's 25-year guarantee of no further changes to the public service pension but to all intents and purposes the provisions in the Bill as drafted, render the guarantee meaningless. There is very little practical protection for scheme members to validate this guarantee. This is because the Bill only requires the relevant legislature to consult with a view to reaching agreement (but not necessarily to actually reach agreement) with those likely to be affected or their representatives. Furthermore, the relevant legislature is required only to have regard to the desirability of not making a change to the protected elements of the scheme, rather than requiring an objective justification for change.

30. Clause 20 specifically provides that the Government can make retrospective changes to scheme benefits and accrued pension rights again subject only to consultation with a view to reaching agreement. As a result, members of public service pension schemes would have less protection than private sector scheme members, where benefits can only be changed if the alternative benefits provided are actuarially equivalent.

31. The NASUWT has serious reservations about the practicability of securing a 25-year guarantee of "no changes" but believes any provisions in the Bill would need to be substantially strengthened in order to have any realistic chance of doing so. As a minimum, Clause 20 should be amended so as to include further scheme

provisions within the protected elements, including at least the definition of earnings/benefits and rates of revaluation, and to require express agreement with the representatives of those likely to be affected, similar to the existing provisions of the 1972 Act for retrospective changes, before any changes under this clause can be implemented.

November 2012

Memorandum submitted by Defence Fire & Rescue Service (PSP 25)

Dear Committee Members.

I will introduce myself first, I am Fire-fighter David Kirby 44 years of age, from the Defence Fire and Rescue Service currently Stationed at RAF Leconfield, Normandy Barracks near Beverley, East Riding of Yorkshire.

I have been a Firefighter for 25 years this year having served with the Royal Air Force Fire Service for six years before joining the DF&RS in 1993.

Within the DF&RS there are around 800 Fire-fighter grades with an Officer core of about 140 which support military operations within the UK and around the world. We have been deployed many times at very short notice to cover ops during the last 15 years and I believe offer a great service to the MoD, Armed Forces, its dependants and this country.

The reason for me contacting you is with regard to *The Hutton Report* and specifically to do with retirement ages for uniformed staff ie Fire Services. Ex 31, Ex 32 and recommendation 14, from the Hutton report.

We have been informed by the Director of Civil Service Workforce Mr W Hague that we are not to be aligned with the Local Authority Fire and Rescue Service retirement age of 60 but to be in line with the Civil Service with the state retirement age.

We feel that this is an injustice to ourselves as we have the same job to do, to the same standards, medicals are to a very similar standard and our pay is linked to the Local Authority F&RS. How can the retirement age be different?

The Hutton report states; “The commission’s view is that the Normal Pension Age in this scheme, 60, should be seen as a benchmark for the uniformed services as a whole.”

A new pension scheme was brought into the Civil Service/MoD in 2007 called NUVOS and that scheme had a retirement age of 65 with it. This only affected new starters in our job and we had been informed via our HQ staff that they would be looking in to this and also only a couple of years ago were told that we maintained the right to retire at 60, which I took to mean everyone. I take it now that it only meant the staff on the classic scheme and not the new starters.

This issue needs to be addressed and looked at properly by the Government, as it is not feasible for someone at an age of over 60 to maintain such a high level of fitness and mental awareness to remain competent and safe towards themselves, colleagues and the people there are trying to protect and rescue.

It is hard enough trying to remain fit enough when you get into your 40’s and 50’s but to do that when you are over 60 is asking too much. I would welcome Mr Hague, Francis Maude MP and Danny Alexander MP to have a day with Fire Service training staff so they could actually see what we have to do and be prepared to do at all time’s regardless of age. I do not think they could come away from an intensive fire having had to wear breathing apparatus and rescue numerous casualties from either a building or an aircraft and still thinking that there should be a two tier system that allows people who do the same job to have different retirement ages, when they in work for the same employer, all be it one is funded by County Councils and the other from central government.

It would be much appreciated by me and every Firefighter within the DF&RS if the committee could help in making sure there is not a two tier normal pension age for Firefighters, we should have the same retirement age as Local Authority Fire & Rescue Service personnel.

Documents attached are for supporting evidence (*not printed*).

Annex (a) Retention of a Compulsory Retirement Age for Personnel Employed within the Defence Fire and Rescue Service (DFRS).

Annex (b) Submission from the Fire Brigades Union (PSP 10).

Annex (c) *The Hutton Report.*

All above previously published.

November 2012

Memorandum submitted by James Lee (PSP 26)

Area of Special Interest

Police pension reform.

My Background

I am a police constable serving with West Yorkshire Police, with eight years of service. My wife is also a police constable with a similar length of service.

Summary

The Public Service Pensions Bill impacts unfairly and excessively on police officers. The scale of the changes is unprecedented and does not reflect the cost saving measures that other public sectors are being asked to accommodate. The Bill's protection for those within 10 years of retirement at 1 April 2012 amounts to age discrimination.

1. Police officers are being asked to accept an increase in retirement age of between five and 12 years. If these figures were applied to the State Pension Age there would be uproar—imagine if all Public Sector workers were told they could not retire until age 77. Police officers are pragmatic people, and accept the need for increased pension ages life expectancy increases, but the scale of the change in relation to police officers is excessive and unfair. It is too much to be accommodated into one's plans for later life, and simply throws them into turmoil.

2. The commutation factor proposed in the new Bill is punitive towards police officers. I stand to be £65,000 worse off at retirement due to this factor alone. My wife being a police officer also, as a couple we will be £130,000 worse off. Again, people's plans for later life (mortgages, children's education etc) are based on their pension, and again no-one expects to keep the current levels of remuneration. But these quantities of money are life changing and unfair.

3. The above figure accounts for only the change in commutation. When factoring in extra payments into the mortgage, and five years of payments that will not be received due to retiring later, I will be £177,000 worse off at retirement. Doubling that to account for my wife, and we as a couple will be £354,000 worse off than we would have been under the *status quo*, and receive £9,800 less per annum. How can this be right?

4. My circumstances do not even reflect a worse-case scenario. There are those unfortunate enough at certain lengths of service (as PC's, not higher ranks) as this goes through, to stand to be £250,000 worse off at retirement. Quarter of a million pounds! This is silly money to a police constable and if any Public Sector employee, including the Public Bill Committee, does not agree then their salaries should be carefully inspected because they are being paid too much.

5. If the Government deems these changes to Public Service Pensions right and necessary then new recruits should be allowed to make their own minds up whether to embark on this career. Police officers ask that the transition is made fair to avoid these catastrophic impacts on our personal finances. We should not be penalised for planning for our future and choosing a career which helps make it secure. This is what the Government actively encourages and it is two-faced to take this position.

6. The current transition arrangements to "smooth" the impact of these proposals are woefully inadequate for the reasons shown above—they do not smooth the transition for me, and only protect the select few with the necessary service length. The 10 year protection bracket is arbitrary and discriminatory, as will be discussed in the next paragraph. The four years of "smoothing" period for those with service length 16–19 years is again arbitrary and also unfair. It will still allow for the situation where someone can have one day short of 20 years of service and find the impact on them wholly different from a person who joined the day before, and possibly retire as much as 12 years later. This does not appear very "smooth". The suggestion that provision has been kept to retire early on an actuarially reduced pension is dishonest, as the sums proposed are so punitive as to effectively prevent anyone choosing this option.

7. The proposals are discriminatory on the basis of age as two officers with the same lengths of service but at different ages are treated differently. This exact situation has actually arisen with a team-mate of mine and his wife. Consider the following example:

Two recruits join together. *A* is aged 19 years, *B* is aged 30 years. At the cut-off date 1 April 2012 both have 16 years of service. Hence *A* is 35 years old and *B* is 46 years old. *A* was due to retire aged 49 in 2026. *B* was due to retire aged 55 in 2021 (as *B* is unable to complete the standard 30 years' service due to age). This means *B* is nine years from retirement so falls within the 10 year protection bracket, and will retire on their 1987 pension as planned. *A* is 14 years from retirement and offered only minimal "transitional smoothing". *A* will, under the 2015 proposal, now have to retire 11 years later than planned, in 2037 and at massive financial detriment which as shown earlier could amount to £250,000.

In short, the proposals discriminate against *A* due to their age.

Conclusion

It has been said publicly that police officers are not a special case and should be treated the same as whole public sector. The fact is that police officers have historically been treated as a special case, regardless of the

arguments for and against that situation. As such, to simply yank police officers into line with the entire public sector in one fell swoop unfairly and severely impacts upon them. The transitional arrangements for this pension reform must account for the current schemes which most police officers are members of, and make changes which can be reasonably accommodated within the lives of those officers.

November 2012

Memorandum submitted by Simon Gray (PSP 27)

Dear Sir or Madam,

1. I write with reference to the Public Service Pensions Bill more specifically the proposed changes to the Police Pension Scheme 1987.

2. I am a serving police officer with Lancashire Constabulary. From a young age, it had always been my ambition to join the police as I wanted to serve the community and make a difference. I studied hard at school and college achieving 10 GCSE's and four A-Levels. I secured a place at De-Montford University which I deferred for a year so that I could apply for the Police when I reached the minimum required age. I considered myself very privileged to pass the selection process on my first attempt and as such I have now served for just over 12 years. I have performed a number of diverse roles from uniformed response to a serious acquisitive crime team and I am now a qualified detective. I have also passed my sergeants exams and I await a board process.

3. I am extremely concerned with regards to the recent announcement surrounding police pensions. My circumstances mean that I will not qualify for the tempering period and as such come 2015 my 1987 scheme will cease and the proposal will see my pension move to a new 2015 scheme.

4. I feel this process is unfair, unjust and discriminates against people in my circumstances due to my age. I, like a number of officers in my position, are to be penalised for joining the service at a young age. This decision means that I will have to work a further 11 years to qualify for my full pension at 60. This means my total length of service will be 41 years instead of the current 30 years' service.

5. In making these proposals I feel there is a complete lack of understanding of the role which a police officer undertakes. The mental and physical strain is untold. The abuse faced, grappling with dangerous people, working constant shifts, working late into the night at short notice then turning in early the following morning with little or no sleep, cancelled rest days, missed family events, eating at the wrong times, these are just some examples of what I have faced during my service. I find it wholly unreasonable to expect an aging workforce to undertake these commitments. For example, to expect somebody of 57 to be chasing and fighting with somebody half their age is simply unrealistic. I appreciate that an individual working in a safe office environment could work well into this age range but not somebody performing the role of a police officer.

6. I feel it has gone unnoticed that the average life expectancy of a police officer is little more than 59 years, 21 years less than the average person. I do not consider that it is fair or right to expect me to work until I am 60.

7. The proposals set out in Winsor Part Two also detail:

8. … that if I am injured in the line of duty I will be made redundant, meaning I am unable to draw my full pension. As I get older I am more susceptible to injury but I still have a duty to protect the public, last year's riots are a stark reminder of the dangers we the police face.

9. … that if I fail a fitness test three times then I will be made redundant. I have no issue with the principle of fitness tests, I think they are long overdue, however, any test should be properly considered before being introduced to ensure it is fair and equal. I ask however, how many people aged between 50–60 are asked to undertake and pass a regular fitness test? Is this reasonable and realistic?

10. I feel when you add these specific proposals in with the pension proposals then I am sadly being set up to fail and that I will never achieve my full pension entitlement anyway.

11. I have planned my life around the terms I signed up to when I joined. I am not married yet but I am due to marry next year. I have no children yet but we are planning children for next year. I consider myself a responsible person. I wanted to plan financially to support my family hence I have waited; I do not want to be in debt. I want my children to have the best upbringing which I can provide them. I have planned financially to see them through further education. These proposals have no consideration for people who have sound financially planning. I am expected to work longer, pay more and get far far less. I am being penalised for being responsible. This is unfair.

12. There are a number of radio and television adverts of late quoting "mis-sold your PPI?" Under these proposals, I have been mis-sold my police pension. The terms which I signed up for when I joined, effectively my police contract of employment was 30 years. There was never any suggestion that this would change. I fully accept this unique and difficult financial position this country finds itself in. I am happy to do my share, to pay more towards tax, national insurance and ultimately pension contributions but these proposals are a step too far. I gave up my place at University to join the police service. I gave up my chance to achieve a degree which could ultimately have afforded me other employment opportunities if needed. I passed on the opportunity to travel and

see the world when I was younger, as many people do today, and chose to defer this until later in life. I am giving my best years to public service. I made these choices. What choice do I have now?

13. Again, I am being discriminated against because of my age. My unique position as a police officer is being taken advantage of. This is not right.

14. Section 2 of the Police Pensions Act 1976 was put in place to ensure that no police officer could be disadvantaged by any future changes to their pension. As a servant of the Crown I do not have industrial rights and I have to rely on legislation to safeguard my terms. The fact that to introduce these changes now is illegal and that you have to change legislation to allow this to change to occur demonstrates that what this Government is doing is wrong.

15. My pension forms part of remuneration for my unique position as a police officer. I am never off duty, I do not have employment rights, I put my life on the line, I work countless hours without claim to ensure the job is done right.

16. The only fair and proper way to bring about these changes is to introduce them as the terms for all new officers joining the service. This approach provides them with the proper knowledge of the terms of employment and allows them to make an informed decision. To impose these changes on those officers within the existing pension schemes is simply unfair and wrong.

November 2012

Memorandum submitted by MOD Defence Internal Audit (PSP 28)

1. Introduction

I am a civil servant who works for the Defence Internal Audit section of the MOD.

I am concerned about inadequacies in the Equality Impact Assessment for this Bill and non compliances with the 2010 Equality Act.

2. Summary

A. The Equality Impact Assessment produced in support of the Public Sector Pensions Reform Bill is not fit for purpose. It excludes the oldest 37% of staff from its assessment. The Equality Impact Assessment is rather lacking in content in respect of age discrimination.

B. The Public Sector Pensions Reform Bill is non compliant with the 2010 Equality Act because it discriminates on age in favour in staff currently within 10 years of their standard retirement date.

C. The Public Sector Pensions Reform Bill is non compliant with the 2010 Equality Act because it discriminates on age against younger staff who will have a higher standard pension age than older staff.

D. The Public Sector Pensions Reform Bill is non compliant with the 2010 Equality Act because no compensation arrangements are provided for staff who were unfairly required to join the Nuvos Pension Scheme from 2007 onwards.

3. Detail

A. *Problems with the Equality Impact Assessment in respect of Age Discrimination Assessments*

1. Paragraph 1.13 of the Equality Impact Assessment states that staff within 10 years of their current normal pension age will not be considered as part of this Equality Impact Assessment. Based on figures quoted in the Equality Impact Assessment, this excludes the oldest 37% of public sector staff. It is most unfair to exclude 37% of current staff from the Equality Impact Assessment, especially when they are all due to get preferential treatment under the Pension Reform Bill transitional arrangements. This is just as unfair as if the Equality Impact Assessment had excluded all males from sex equality impact assessments or if it excluded all whites from race equality impact assessments.

2. The Equality Impact Assessment provides very little factual information about the impact of the pension reforms across different age groups. Examples of areas where it could reasonably be expected to provide more information are:

- The Equality Impact Assessment does not specify what the 2010 Equality Act says about age discrimination. It does not make any assessment on whether or not the Pension Reform Bill and the associated new Pension Agreement comply with the relevant age related clauses which are specified in the 2010 Equality Act.
- The Equality Impact Assessment does not examine the financial impact of the pension reforms on staff of different ages.
- The Equality Impact Assessment does not examine how many extra years staff of different ages will have to work as a result of the pension reforms.
- Government ministers expressed a concern about staff having the opportunity to make other pension arrangements including Additional Voluntary Contributions, top up pensions, annuity purchases and

other investments. The Equality Impact Assessment does not examine how much disposable income is available to staff of different ages or different salary levels. Nor does it examine how much staff currently spend on other pension arrangements or make an assessment as to how this spending pattern may change as a result of the new pension arrangements.

— The Equality Impact Assessment life expectancy at birth chart excludes older people born before 1966. Based Equality Impact Assessment figures, this chart excludes the older 49% of currently employed public servants.

— The Equality Impact Assessment does not provide any charts or tables which examine "good health" life expectancy to see how long staff born in different years will be able to enjoy an active retirement.

— The Equality Impact Assessment does not provide any charts or tables which examine what proportion of staff born in different years will be fit enough to carry on working to their standard pension age or even whether or not they will make it to the new state retirement age.

B. *Discrimination on age in favour in staff currently within 10 years of their standard retirement date*

1. The 2010 Equality Act states that age is a protected characteristic.

2. The Pension Reform Bill allows staff within 10 years of their current normal pension age to continue in their existing pension schemes until retirement. It allows staff between 10 and 13.5 years of their current normal pension age to continue in their existing pension schemes for up to seven years longer than younger staff. The Equality Impact Assessment estimates that 49% of current staff will benefit from this preferential treatment. These transitional arrangements are clearly discrimination based solely on age which is not permitted under the 2010 Equality Act.

3. The argument for having preferential transitional arrangements for older staff was that they would have less time than younger staff to make alternative pension arrangements including Additional Voluntary Contributions, top up pensions, annuity purchases and other investments. However, the fairness of this argument is flawed because older staff within 10 years of the Standard Retirement Age will be much less affected by the pension reforms. They will have up to seven years worth of pension right accruals affected by the pension reforms compared with younger staff who may spend their whole career under the new pension arrangements. Therefore older staff have much less need for the transitional arrangements.

4. Many older staff with Standard Retirement Age of 60 will only need to work an extra year or to regain the same pension benefits as they would have got under the existing pension arrangements. By comparison younger staff under the age of 24 will have to work until they are 68 to get comparable pension benefits under the new pension arrangements.

5. Should older staff be able to afford to purchase Additional Voluntary Contributions, top up pensions, annuity purchases and other investments to compensate for the loss of income under the new pension scheme arrange, the value of these purchase that they will require is proportionately much less than is required for younger staff. Hence older staff will require a much shorter investment period than younger staff in on order to make up for their respective income shortfalls.

6. It is a reasonable assumption that staff with the lowest salaries are the staff with the least disposable income available for purchasing sufficient Additional Voluntary Contributions, top up pensions, annuity purchases and other investments needed to compensate for the loss of income under the new pension scheme arrangements. Salary is not a protected characteristic under the 2010 Equality Act. Therefore it would be much fairer and more legally compliant to provide the seven year transitional protection to the 49% lowest paid staff instead.

C. *Discrimination on age against younger staff who will have a higher standard pension age than older staff*

1. The proposal in the new pension arrangements to link the Standard Pension Age to the State Pension Age is unfair because age is a protected characteristic under the 2010 Equality Act.

2. Under the new pension arrangements, situations will arise where staff of different ages may join their department at similar times, be paid the same salary but they are simultaneously earning different pension benefits. This is because younger staff will be affected by future rises in the State Pension Age which will result in them receiving their pension for a shorter period than older staff.

3. It is also contractually unfair to link pension benefit accruals to the Standard Pension Age at retirement because decisions to raise the State Pension Age may be taken after these pension benefits have been accrued.

4. It would be much fairer to link pension benefit accruals to the State Pension Age in operation at the time these benefits are accrued instead of them being linked to State Pension Age in operation at the time of retirement.

D. *Discrimination on age against certain new starters using the Civil Service Nuvos Pension Scheme*

1. All staff joining the Civil Service since mid 2007 have been required to join the Nuvos pension scheme. They have not been allowed to join the Classic, Classic Plus and Premium pension schemes which have been run in parallel for Civil Service staff joining before mid 2007. This is discrimination based on length of service.

2. The 2010 Equality Act places restrictions on discrimination based on length of service because it is a form of indirect discrimination linked to age. The text on discrimination based on length of service in the 2010 Equality Act is as follows:

> "10 (1) It is not an age contravention for a person (A) to put a person (B) at a disadvantage when compared with another (C), in relation to the provision of a benefit, facility or service in so far as the disadvantage is because B has a shorter period of service than C.
>
> 10 (2) If B's period of service exceeds five years, A may rely on sub-paragraph (1) only if A reasonably believes that doing so fulfils a business need."

3. The wording in the Act clearly allows discrimination to happen during the first five years of service. However, employers may only rely on this exemption beyond five years where there is a clear business need, for example pay scales for junior hospital doctors where it typically takes a junior doctor eight years to work their way up to hospital consultant status. It would clearly be unreasonable and against the principles of the 2010 Equality Act for an employer to rely on this exemption beyond five years as cost saving measure.

4. By the time the new Public Sector Pension Scheme arrangements come into place in 2015, some staff in the Nuvos pension scheme will have been discriminated on the basis of length of service for up to eight years. Therefore they will have exceeded the five year discrimination limit allowed by the 2010 Equality Act. The fairest solution is to give those affected staff the opportunity to convert their pension accruals for years six, seven and eight into either the Classic, Classic Plus and Premium pension schemes.

4. Recommendations

A. The Equality Impact Assessment should be revised to cover 100% of public sector staff and to include meaningful analysis and statistics on age related aspects of the 2010 Equality Act. These revisions should be carried out before there is any further House of Commons debate on the Public Sector Pensions Reform Bill.

B. Special arrangements to delay starting the new pension scheme until 2022 should be offered to the 49% lowest paid staff instead of the 49% oldest staff.

C. The Standard Pension Age should be linked to the state pension age in operation at the time pension benefits are accrued.

D. Staff in the Civil Service Nuvos pension scheme should be offered the opportunity to convert their pension accruals for years six, seven and eight of the Nuvos scheme into either the Classic, Classic Plus and Premium pension schemes.

November 2012