

UNISON RESPONSE TO THE LESSONS LEARNED REVIEW 2022

After a promising start to the latest lessons learned review, it seemed to dissipate quickly without a proper opportunity to discuss, question or develop some of the emerging ideas. The end review felt rushed and did not allow us to seek clarity on a number of the areas. This has affected some of our responses to the recommendations.

Trust and confidence

While we agree that there is an absence of trust between both sides there is also an absence of trust in how the machinery is currently operated and managed (rather than the design itself).

The absence of time, training and resources is highlighted in the report. UNISON highlighted the chronic absence of facility time and ongoing issues of recognition of our Branch and the role of unions in the FE sector which has had a dramatic impact on time and resources. Facility time for the Branch was recently addressed after several years but still leaves us with a very small and finite resource. This makes proper engagement with the machinery very challenging. This contrasts dramatically with the employers' side who have an abundance of resources, staff and training available to them. The machinery itself is managed at great expense by Colleges Scotland whose performance in running the machinery has never been evaluated despite widespread dissatisfaction with their role. The running of the machinery, in our view, should be managed independently.

It is interesting to note that since the production of this report the employers' side have embarked on training. Neither the content nor the cost of this has been shared with the unions. It may have been appropriate considering the mistrust issues identified in the sector to offer training in partnership with the trade unions. We are encouraged, however, that it appears that the most acute need for training, has been identified on the employers' side and should acknowledge that. Ironically, since the training allegedly took place, industrial relations are at their lowest ebb.

The employers' presentation of high levels of trust at local level are a fallacy and are not backed up by facts. UNISON's survey with local reps highlighted a completely different picture (see attachment with this response). There are several disputes in different colleges which show a consistency of general problematic relationships with the employers in the sector. We believe this line has been peddled by the employers to suggest there are failings with the machinery rather than with the relationships more generally. The report suggests an anomaly "*where instances of high trust at personal and local (college) levels were reported, these have made little difference to the low trust prevailing at national level*". However, no such anomaly actually exists and the evidence we have provided shows that employers do not work well with trade unions neither locally nor nationally.

We agree there are not enough good news stories emanating from the national machinery even when there is good reason to share these (first sector to achieve living wage accreditation and a national menopause policy both of which were proposed by UNISON).

The general ongoing, and in the main, negative negotiations tend to undermine the case for joint sharing of good news stories.

Procedures, practice and tactics

While we agree that the machinery has been slow to deliver (incredibly so), we believe this is down to more than just issues around delegated authority of the employers' side negotiators.

We believe the astonishing approach amongst the employers of requiring consensus means that the more extreme college employers can block movement for months or years (UNISON attempts to get an agreement on a common approach to how the sector consults over job losses through VS, for example, has taken years and is still no further forward. The same applies to a facilities time allocation for UNISON national branch). This is, no doubt, because there are some constituents who have an interest in blocking. If the trade unions were to operate on the same consensus basis, business would come to a complete standstill.

The management of the machinery by Colleges Scotland could best be described as shambolic and amateurish and as we stated earlier, their performance not been evaluated since they were charged with its running and operation. Most meetings have action points which are not addressed from one meeting to the next - sometimes stretching years, the meetings often do not get through the agenda and are neither frequent enough nor long enough to get through the work. This needs some oversight or a change of management. On top of that, the technology for meetings is not fit for purpose with a recent meeting resulting in the Chair being apparently unable to hear or see anyone at multiple points in an important pay dispute meeting.

We disagree that it is the acrimonious exchanges which have "tested the enthusiasm and staying power of both sets of negotiators". We believe such claims are a convenient and deliberate position taken by the employers to block and delay progress on an annual basis.

Behaviour

We are not really convinced by this 'red herring' that behaviours are a serious issue blocking progress on the support side table.

The report refers to "perceived" lack of commitment to the negotiating process. There is no doubt that many on the employers' side wish to see the failure of the machinery and should be held to account for blocking and delaying. The recent issues over the unilateral pause by the employers of the national Job Evaluation and harmonisation exercise is an example worthy of review and scrutiny given the substantial government investment in the project.

Information flows

The report suggests that there is an "absence of commonly accepted evidence base" but this is not true. Instead, there is a refusal of the employers to provide even basic costings for offers, claims or much else which they are required to do. UNISON requested information from the employers in June 2023 in relation to the current national pay dispute which they have refused to supply.

Rebuilding trust and confidence in the collective bargaining process

We disagree with the assertion within the report that “It is also clear that neither side has much faith that the negotiating process itself can deliver a realistic settlement”. We strongly believe that it can, but it needs to improve, and that the national machinery be given authority and autonomy rather than being stopped by veto by individual colleges, as is the case at the moment. The Job Eval & harmonisation of pay project was at its strongest when it had autonomy and authority but since the local employers have been given control, the project has slowed down and stopped.

The notion that the machinery has been undermined by the threat of ministerial pressure is another employer “red herring” which has been treated as fact by the report writers. There needs to be targets and pressure on the employers’ side not to just sit and do nothing (current strategy). The support staff, for example, have only taken industrial action twice during the history of the machinery. Perhaps if the employers were rewarded for making progress rather than dragging the machinery into an annual cycle of chaos the process would improve.

Recommendations

1. Resetting the authority of the national bargaining process

We agree with the thrust of the general recommendation however more information would be required on what some of the recommendations entail.

a) focus should be given to providing jointly agreed guidance on the interpretation of national agreements.

While the failure of the sector machinery to “police” national agreements is obvious we are not sure how this recommendation does more than the current guidance notes which are currently issued with agreements and then promptly ignored or “re-interpreted” by local colleges.

b) the parties to the CB agreement should pool their knowledge in advance of budgets being set to decide a planning statement indicating the needs of the sector, to be jointly delivered and discussed with SFC and the appropriate parts of SG.

We agree this would be useful.

c) The joint statement would be worked up by discussion at the side tables, based on the knowledge and established needs of the relevant parties, and ultimately signed off at the central table. In effect, a joint team, representative of both management and TUs, would engage in meaningful discussion over funding and other issues (for example, development of, and alignment with, Scottish Government Policy, implementation of Fair Work measures or specific projects) needed to take the sector forward in ways that meet its strategic and social needs.

More information and discussion would be required on this recommendation. We are uncertain that this would work as the employers currently refuse to discuss anything other than summarised general information on finances in particular. There would also be question

marks over the efficiency and consistency of conducting this exercise at side tables rather than the central table. We also have fears that this would never make any progress in the machinery. It should be noted that UNISON will always be led by the needs and demands of our membership.

None of the recommendations around the employer's readiness and ability to negotiate and the "by consensus" approach adopted are covered here and this seems like a missed opportunity.

2. Joint review of the Bargaining Agreement

An independently facilitated joint review of the Agreement and how it operates should be undertaken. Good practice suggests that Agreements should be reviewed regularly, even where the review confirms that changes are unnecessary. There was widespread acknowledgement that the Agreement is not of itself the source of the problems, rather it was felt the problems lay in how it operates. In this sense the protocols initially agreed to lubricate the negotiating process are plainly in need of a revisit and possible reset. Accordingly, we suggest a review should cover:

- a) considering which parties/groups are involved, the roles they play in the processes, how the parties interact with each other both during and between negotiations.*

More information and discussion would be required on this recommendation. If this is used as a tool to restrict the voice of the lay unions (an employer preference), then we could not accept this.

- b) in this context, full consideration should be given to appointing an Independent, non-voting Chair for the NJNC.*

More information and discussion would be required on this recommendation. This would depend on who this would be. The management of the machinery is supposed to be independent, yet it is run by Colleges Scotland.

c) establishing a robust and effective dispute resolution process

We already have a dispute process. There is nothing in the report about the disputes processes although it is clear it does not work effectively.

d) embedding the joint scoping of strategic and budgetary needs into the process to inform the joint approach to SG for alignment with future funding and SG policy, as outlined above.

e) in that respect, we're conscious that these recommendations will necessarily require more input from both management and union representatives so some discussion about that, and the facilities available for them to do so, will be required.

We agree with point e. More information and discussion would be required on recommendation d.

f) the range of topics that should be considered at NJNC level alongside establishing greater clarity on how and when contentious issues can/should be escalated.

We are not sure where this recommendation has come from as it is not included in the report. More information and discussion required.

3. Resetting the evidence base

The additional joint working we envisage in Recommendation 1 will require mutual and timely exchanges of information. The whole negotiation process must be as evidence based as possible. In addition, subsequent negotiations around distributing resources will also require information to ensure mutual understanding of the underlying needs and the consequences of options being explored. Accordingly, we recommend:

a) at the very least, the current national bargaining agreement should adopt (ideally exceed) the ACAS code of practice on information disclosure for collective bargaining purposes.

b) a jointly agreed protocol to clarify what information needs to be shared with who, how and when.

c) consideration be given to the role SFC should play in ensuring information generated is accepted by all parties as accurate, including the option of SFC attending certain meetings to ensure information flow is timely and fully understood by all parties

We agree with the recommendations.

4. Enhancing Negotiation Skills While participants in these negotiations are, in the main, seasoned negotiators, their experiences are quite diverse. Many indicated they had been given limited training in negotiation skills, particularly in relation to Collective Bargaining. To ensure a common understanding around the table about how negotiations should be conducted we recommend:

a) CPD Advanced Collective Bargaining Skills training should be undertaken, ideally involving all negotiators, so there is a common understanding of up to date thinking on the most effective approaches to negotiation.

b) anyone coming new into the negotiating teams should, within a reasonable timescale, be provided with a grounding in the theories behind effective Collective Bargaining.

c) this training should be updated every 2 to 3 years with CPD 'top ups', or more frequent review sessions considering updated thinking.

d) a joint programme of Effective Partnership training for management and TU representatives be implemented to ensure all parties are properly equipped with the requisite skills and knowledge needed for constructive disagreement, joint problem solving and consensual decision making. Such a programme would also enable all

parties to explore the opportunities that developing such relationships might confer. It would allow consideration of the most effective levels of representation and how best to interact with SG for the benefit of the Sector.

We agree with the recommendations however given the constant change of negotiators from the employers, we are not sure how this would work. As we have already pointed out, the employers have already embarked on this training without the unions again and we think this may have undermined the recommendation already.

5. Resetting behaviours It is evident negotiations over the last seven years have featured ill-tempered exchanges that have impaired the potential for building effective levels of trust. Equally, there is a desire expressed by both sides to put national negotiations onto a more constructive and sustainable footing. Some of this may be facilitated through common understanding of the principles of effective CB, and the background to wider union campaigning, etc. To promote trust levels that allow for constructive disagreement and a focus on joint problem solving, we recommend:

- a) revisiting behavioural standards and protocols, ensuring that everyone who becomes involved is aware of these. The standards should also be revisited on a regular basis so any developing issues can be discussed openly and with a view to adapting where it is agreed to be necessary.
- b) some urgent, independently facilitated, reflection on how management and unions should work together between negotiations (flowing from recommendation 2 above), with particular reference to the Dimensions of Fair Work.
- c) building on the work started through the Strategic Forum, develop some less formal strategic-thinking sessions so all parties can start to think more about opportunities, anticipate problems and jointly prepare approaches to them.
- d) the existing central table be reserved for sector-wide, strategic discussions and planning, and is independently chaired.

We agree with the recommendations a and b. The strategic forum has, ironically, been paused by the employers without achieving anything. More information and discussion would be required on recommendations c and d.