

Lessons Learned – resetting national collective bargaining in the colleges sector

Summary of findings and recommendations.

Introduction

This report provides the final recommendations to the Scottish Government from the Lessons Learned exercise carried out by Strathesk Resolutions Limited over 2021/22. The key objective of this study is to improve future national negotiations rather than to constrain or curtail the activities and interests of any of the parties. The evidence leading to these recommendations was compiled through group and individual interviews, as well as consultation with participants as the findings developed.

This final output from the project aims to clarify the main contributory factors that have undermined national collective bargaining (CB) in the College sector in Scotland. Accordingly, the recommendations put forward are designed to help restore participants' trust and confidence in the process for the future.

Summary of findings

Trust and confidence

- Persistently low trust between the sides has been a feature of national bargaining more or less from the outset. Insufficient time, training and resources were identified as causal factors constraining a smooth transition to national bargaining. Low trust levels have subsequently inhibited participants from taking collective responsibility for the conduct and outcomes of national negotiations.
- Even 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. All parties recognised the need to address this problem if national bargaining is to work effectively in the future.
- National bargaining has, though, resulted in improved terms and conditions for both lecturing and support staff, an achievement that has not been given sufficient credit to counterbalance the negative feelings that have accompanied the shift to national collective bargaining.

Procedures, practice and tactics

- Negotiating practices and tactics are typical of 'old fashioned' positional bargaining.
- The negotiating machinery has proved slow to deliver, whilst differences in clarifying the delegated authority of frontline negotiators has exacerbated delays.
- Longer-term strategic discussions about the sector have been constrained by the inability to build high trust relationships.

- Frequent acrimonious exchanges during negotiations have tested the enthusiasm and staying power of both sets of negotiators.

Behaviour

- Long-standing personality clashes and unresolved (but not uncommon) ideological differences are understood to explain some of the problematic behaviour in negotiations.
- Poor inter-personal behaviour is not a consequence of the bargaining machinery, but likely arises from struggles to reconcile power imbalances, mismatched expectations and internal frustration at perceived lack of commitment to the negotiating process.

Information flows

- Both sides have struggled to ensure the evidence base of negotiations is accepted as accurate and reflective of their relative needs.
- Difficulties in ensuring information disclosure has left the sector with a bargaining culture that is more aspirational than evidence or needs based.
- The absence of a commonly accepted evidence base explains at least some of the commitment difficulties experienced by the negotiators.

Rebuilding trust and confidence in the collective bargaining process

A debilitatingly low level of trust between the negotiating parties was observed by both by our own project and the one led five years ago by John Sturrock. It is also clear that neither side has much faith that the negotiating process itself can deliver a realistic settlement. A significant influence here seems to be the way that the threats and actuality of industrial action have been used to lever last-minute ministerial pressure to reach a settlement.

This has ultimately undermined the credibility of both negotiating teams, seriously disempowering the negotiating process itself. In consequence, a cycle of negative expectation has arisen that foresees a break down in pay negotiations as inevitable, followed by strike ballots, probable industrial action, and a settlement eventually reached with some form of intervention from SG. Thus, negotiators have reportedly become conditioned to the likelihood of a failure to achieve a settlement by way of a normal collective bargaining process.

Timescales

The following recommendations are not presented in order of priority. We also envisage that, while work on some aspects can start immediately, many will take a considerable time to establish. In this context, 'considerable time' should be taken to mean implementation is envisaged within the next 2 to 3 years.

It should also be noted that resources (financial and support) are likely to be needed from Scottish Government to enable some of this development work.

Recommendations

1. Resetting the authority of the national bargaining process

The ultimate authority of the national CB process has to be clear and unequivocal. Similarly, collective responsibility for, and commitment to, the application of the bargaining machinery should be equally clear and unequivocal.

To develop this collective responsibility, we believe there is considerable merit in developing a joint approach to ensuring the strategic longer-term needs of the sector are properly aligned with the government's budgetary planning. We therefore propose:

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

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
- b) in this context, full consideration should be given to appointing an Independent, non-voting Chair for the NJNC.
- c) establishing a robust and effective dispute resolution process
- 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.
- 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.

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

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.

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.

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DG/MC.