

7 June 2023

Education, Children and Young People Committee Convener
The Scottish Parliament
Edinburgh
EH99 1SP

Ref: GD/JPH
Direct: 07801 887820

Dear Convener,

College Regionalisation Inquiry Report – Employers’ Response to the Lessons Learned Recommendations

Further to the committee’s comments in relation to industrial relations in the college sector, and specifically the recommendations of the Strathesk Lessons Learned report, the Committee sought a response from employers:

“...400. The Committee will revisit this issue once the responses from unions, employers and the Scottish Government to the Strathesk lessons learned report have been received.”

Therefore, please find enclosed a paper addressing the five headline recommendations of the Lessons Learned report and the employers’ responses to them.

Please don’t hesitate to get back in touch if you require any further information.

Yours sincerely,

Gavin Donoghue
Director of CES

David C Watt
Chair of CES

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College Regionalisation Inquiry Report – Employers’ Response to the Lessons Learned Recommendations

Background

As the committee is aware, the Scottish Government commissioned Strathesk Solutions in 2021 to take forward the Lessons Learned exercise as part of efforts to improve national negotiations, break the cycle of annual disputes within the college sector and make future industrial action less likely.

The exercise was carried out over 2021 and early 2022. An independent report, dated 25 March 2022, was compiled. College Employers Scotland (CES) discussed the report’s recommendations over Spring 2022 and formally notified Scottish Government on 4 July 2022 that employers accepted the independent report, as a whole, and would work with the government and trade unions on the detail of how the recommendations could be implemented.

It is important, however, to emphasise that the work of colleges as employers is not limited to the often-contentious issues around negotiating pay, terms and conditions - even though employers are proud of the fact National Bargaining has resulted in significant improvements for staff. CES would also highlight instances of innovation thanks to successful partnership working between employers and trade unions – such as the Menopause Policy – since such cooperation will be vital to boosting relationships between partners. Improved relationships should make for increased levels of trust, allowing the National Bargaining process to become stronger, more constructive, and more productive.

Employer Actions

Since notifying the Scottish Government of the employers’ acceptance of the Lesson Learned report, CES has taken a proactive approach to addressing several of the report’s findings. CES has set out its own actions and positions below, under the five headline recommendations of the Lessons Learned report:

1. Resetting the authority of the national bargaining process

- *The ability of the bargaining process to reach negotiated outcomes that are timely and accepted as fair will depend on shared sectoral goals and effective joint working.*
 - CES agree that both parties to the collective bargaining agreement should pool knowledge in advance of budgets being set so that a planning statement of the sector’s needs, which would be jointly delivered and discussed with the Scottish Government and the Scottish Funding Council (SFC), can be produced.
 - SFC and/or Scottish Government officials could be involved by attending the initial pay meeting each year, to help set the context for discussions, or purely just verifying figures on behalf of employers and trade unions.
 - CES also suggest that SFC is incorporated formally into an updated National Joint Negotiating Committee (NJNC) Protocol, or a similar document, in order to formalise their verification role.

2. Joint review of the Bargaining Agreement

- *There should be a joint review of the National Recognition and Procedure Agreement (NRPA) and how it operates.*
 - CES concur, particularly in relation to dispute resolution, and stress the importance of ensuring that any review is independently facilitated. Ideally, this would be

accomplished through the appointment of a new, publicly-funded and independent Chair of the NJNC.

- CES also feel the review should consider policies and governance, and that it should precede any rearrangement of NJNC structures. This would allow form to follow function.
- CES would argue that much more business should be conducted outside formal NJNC structures, with side tables and the Central Committee providing the platform for formal governance sign-off of the activities of working groups etc.
- CES agree the review process should support the joint approach to the Scottish Government (described above under Recommendation 1) by embedding a consideration of the college sector's strategic and budgetary needs.

3. Resetting the evidence base

- *Robust mechanisms for information exchange will underpin enhanced joint working to cement the authority of collective bargaining and make it as evidence based as possible.*
 - While employers agree in principle, we would argue that any information sharing should happen at the national or sector level rather than on a college-by-college basis. CES would also stress that, in our view, the current National Bargaining Agreement is already aligned with the Advisory, Conciliation and Arbitration Service (ACAS) code of practice on information disclosure for collective bargaining purposes.
 - As stated in the report, consideration should be given to the role of SFC in ensuring that information generated or disseminated is accepted by all parties as accurate.

4. Enhancing Negotiation Skills

- *Training in advanced negotiation skills will ensure a common understanding about how negotiations should be conducted.*
 - Key members of the CES team, including the Chair, Director and the Management Side negotiators, have undergone negotiation training. It is hoped that this training will be provided on an annual or bi-annual basis going forward.
 - CES also refreshed its own negotiating team in Academic Year 2022/23

5. Resetting behaviours

- *Insufficient resources, training and time have contributed to low levels of trust in national bargaining. This, in turn, undermines the possibility of constructive disagreement and joint problem solving, and increases the risk of ill-tempered exchanges causing a breakdown in negotiations.*
 - CES has already taken significant steps to ensure the current bargaining process is fully supported, including increasing the budget and staffing complement of CES, and splitting the roles of Director and Joint Secretary.
 - As stated above, key members of the CES team have now undergone negotiation training.
 - CES also agrees with the report's recommendations on an agreed code of conduct and an independent chair to keep order during meetings, as we believe this would lead to further improvements in behaviour.
- *Clarity around roles, responsibilities and decision-making powers will be crucial to maintaining a trust-based, productive bargaining process that enables constructive disagreement.*
 - Between August 2022 and January 2023, CES undertook a governance review, chaired by an external governance expert, which made a variety of recommendations that are currently being acted upon.

- CES would welcome open discussions with trade unions about the decision-making processes of both parties to the collective bargaining agreement, so that all sides have a clear understanding of each other's' internal processes.

Conclusion

In conclusion, despite the impact of funding cuts and the cost-of-living crisis, Scotland's colleges continue to offer a world-class learning experience to students to learn in and a rewarding environment for staff to work in.

The Lessons Learned report presents a range of measures that will help improve the system for negotiating staff pay, terms and conditions in the college sector. Employers look forward to working with the Scottish Government and the trade unions to progress the report's recommendations and ensure that the damaging annual cycle of industrial disputes becomes a thing of the past.

May 2023