

11 March 2019

University and College Union

Meeting of Democracy commission

Location UCU, Carlow Street Head Office

Date 22 February 2019

Confirmed minutes

Present Mark Abel, Caitlin Adams, Vicky Blake (co-chair), Cecily Blyther, Sharon Broer, Douglas Chalmers (president elect), Rachel Cohen, Jackie D'Arcy, Jeff Fowler, John Hadwin, Brian Hamilton, Elane Heffernan (co-chair), Margot Hill, John Hogan, Jess Meacham, Sam Morecroft, Denis Nicole, Christine Paine, Nita Sanghera (vice president), Keith Simpson, Sean Wallis, Justin Wynne

In attendance Paul Cottrell (National Head of Democratic Services), Catherine Wilkinson (Head of Constitution and Committees)

1 Apologies for absence

1.1 Apologies were received from Alan Barker, Alison Chapman, Martin Chivers, Lindesay Dawe, Ann Gow, Jane Harvey, Pat Hornby Atkinson, John James, Annie Jones, Chris Jones, Kerry Lemon, Lesley McGorrigan and Saira Weiner.

2 Chair's business

2.1 Vicky Blake, from the chair, reported that legal advice would be made available in respect of item 5, recall, and reading time would be allowed. The chair noted that the commission had previously agreed that recall, and its interim report, would be the priorities for this meeting.

2.2 Elane Heffernan, from the chair, reminded the commission of the need for all members to conduct themselves in the meeting with courtesy and respect, avoiding raised voices and aggression. Noting the volume of business, members were asked to keep their contributions to no more than three minutes.

3 Minutes of the previous meeting held 11 January 2019 (DC/18)

3.1 Paragraph 5.1.5 of the minutes, relating to matters agreed in respect of recall, was discussed. It was AGREED that, after 'the Commission AGREED', the words 'in principle' be inserted.

3.2 With this amendment, the minutes were APPROVED.

4 Matters arising (DC/18)

4.1 Paragraph 4.5, November 2019 special Congress: Catherine Wilkinson reported that two venues were provisionally reserved in Birmingham, one available on Thursday 7 November, one on Friday 15 November. Site visits would now be conducted. The commission's preference for a Friday was NOTED.

5 Mechanism for recall, including draft rule changes (Working group A) (DC/19, 19A, 19B)

5.1 Having allowed time for members to read the legal advice provided, Vicky Blake, from the chair, invited questions on the advice.

5.2 Questions were asked, and dissatisfaction expressed, about the advice being made available only at the meeting and not beforehand, for example on the Sharepoint site. Paul Cottrell responded noting that the advice was covered by legal professional privilege, and any wider circulation risked future legal exposure for the union.

5.3 Following further questions, and comments on the issue of how legal advice was requested, Paul Cottrell further clarified that:

- It had been very recently received as it had been requested only when the draft rule change from Alan Barker was available to seek comment on
- The solicitor had also been asked specifically to comment on ways in which a recall process might be lawfully constructed
- He was happy to take further questions from the commission back to a solicitor.

5.4 The chair moved to discussion of a recall process including those papers set out in DC/19.

5.5 John Hadwin spoke to introduce his paper, *Thoughts on the right of recall*, set out in DC/19.

5.6 The commission NOTED the contribution from Ann Gow in DC/19, *Recall mechanisms - devolved nations*.

5.7 Margot Hill spoke to introduce Alan Barker's proposed rule change in DC/19, which related only to the recall of the general secretary.

5.8 Paul Cottrell spoke in respect of his comments on the rule change set out in DC/19, stressing the need to avoid any drift into disciplinary action.

5.9 The commission discussed the draft rule change and the recall process. Points raised included:

- a. The need to be respectful of both the confidentiality and the content of legal advice, and of the principles of natural justice
- b. The composition of Congress, and whether, in the context of the recall of someone elected by all members, it could be considered truly representative

- c. The commission's clear understanding that recall was not intended to be disciplinary, but an expression of political will
- d. Whether suspension rather than dismissal of the GS would be appropriate in the rule change, or whether the recall motion could trigger a by election without either suspension or dismissal preceding that election
- e. The need to be aware of contractual and employment issues in respect of the GS
- f. Whether, if legal issues to create a recall process became insurmountable, the term of office of the GS should be reduced from the current five years
- g. Further comments on the legal advice, and whether advice from a different solicitor or based on different questions would yield different advice
- h. Whether there was scope for a specific process ahead of a recall vote at Congress, which could include a written report to Congress and a response from the GS.

5.10 Elane Heffernan proposed that a paper of options might be put to Congress in May for discussion.

5.11 Vicky Blake, from the chair, summarised that a number of proposals had been made during discussion, and invited those with specific proposals to amend the rule change, or seek further legal questions, to put these in writing for consideration by the commission after the lunch break.

5.12 Following the lunch break, some written proposals were circulated in a tabled paper.

5.13 From this paper, Douglas Chalmers moved a statement for agreement by the commission. An amendment was proposed by Rachel Cohen: to delete the words 'as stated in that document' from the end of the statement.

5.14 Following discussion, this amendment was CARRIED. As amended, the statement was CARRIED (9 votes in favour, 8 against, 4 abstentions):

This meeting of the democracy commission notes that trade unions have to uphold the principles of natural justice and operate on that basis.

We therefore note the legal advice provided to us in line with this and recommend that proposed changes to rule be drafted in line with the options for lawful recall arrangements.

5.15 Vicky Blake explained that the remaining proposals were ones on which the commission was being asked to agree that legal advice be sought. Paul Cottrell explained that he would again seek the legal advice.

5.16 The commission AGREED that any election following recall should be for a new term of office.

5.17 In respect of the proposal that, if all recall options were discounted on legal grounds, the GS term be shortened to two years, Caitlin Adams moved that this

be amended to three years. This amendment was CARRIED (12 in favour, 4 against, 4 abstentions).

5.18 This proposal, as amended, was then CARRIED (17 votes in favour, 3 against):

If all of these recall options fail then we propose to Congress that recall is not legally possible and the way to have more accountability is via a fresh election every three years to shorten the term.

5.19 The chair then asked the commission to agree that legal advice be sought on the proposals and questions set out in the tabled paper. This was CARRIED. Those proposals and questions are appended to these minutes.

5.20 The commission NOTED paper DC/19A, *Right of recall: Who decides?*, from Sam Morecroft. The chair suggested that any specific proposal relating to this be brought to the next meeting. In response to a question, the chair suggested that Paul Cottrell advise on how an NEC member representing a national area like prison education might fit into consideration of constituencies.

6 Draft interim report of the democracy commission (DC/20)

6.1 Rachel Cohen asked that the paragraph relating to the availability of Congress policy, in searchable form (including information about implementation of that policy) be changed from 'ongoing work' to 'recommendation'. This was AGREED.

6.2 There were no other comments on the report. A further draft would be presented to the next meeting.

7 Other papers for discussion by working group

7.1 Working group B – Accountability (other than recall) and transparency (DC/25, 25A, 25B)

7.1.1 Vicky Blake spoke to introduce the paper in DC/25, *All or nothing? The issue with rule 13*. This asked for consideration of a less formal alternative to the full rule 13 procedure for dealing with certain types of complaint or concern.

7.1.2 Following discussion, the commission AGREED to note the proposal and, noting that the rule 13 procedure was the responsibility of the NEC, ask the NEC to take forward this issue.

7.1.3 Elane Heffernan introduced paper DC/25A, *Delegation of general secretary powers proposal*.

7.1.4 Following the discussion of possible difficulties, Elane Heffernan asked that the reference to the presidential team in point 2 of her proposed rule change be deleted.

7.1.5 Vicky Blake, from the chair, put the proposal, as amended by the mover, to the vote, and it was CARRIED (16 votes in favour, 3 against, 2 abstentions).

7.1.6 Rachel Cohen spoke to introduce paper DC/25B, *Changing the names of the presidential team to clarify elections and roles*.

7.1.7 Catherine Wilkinson sought to clarify that the intention was to replace every existing reference to 'president elect' with 'joint president in their first year', and every reference to 'president' with 'joint president in their second year', thus maintaining a distinction between the two roles, and allowing all the current specific responsibilities of these two posts to continue unchanged. The mover confirmed this intention, which was NOTED.

7.1.8 The commission AGREED this proposal (13 votes in favour, 7 against, 1 abstention).

7.2 **Working group C – Structural issues including the role of paid officials**

7.2.1 Elane Heffernan moved paper DC/21B, *Proposal to introduce elections for the four national officials whose posts hold responsibility for organisation, recruitment and mobilisation*. This replaced the version of the paper circulated in DC/21.

7.2.2 The paper proposed the election of four of the union's SMT roles. This was discussed, including whether elected assistant or deputy general secretary roles might be an alternative, and whether five year terms should be reduced to three in line with the commission's earlier discussion.

7.2.3 It was NOTED that some commission members were aware of a proposal for an elected deputy general secretary being submitted to Congress by a branch.

7.2.4 Following discussion, Elane Heffernan asked that her paper be withdrawn. The commission AGREED to the withdrawal (11 votes in favour, 6 against, 4 abstentions).

7.2.5 In the chair, Elane Heffernan proposed that the second paper in DC/21, *Rule change: eligibility for NEC* from John Hadwin, not be taken, as it sought to re-open a matter on which Congress had previously decided.

7.2.6 John Hadwin replied. The chair's ruling on the issue was accepted.

7.2.7 The paper in DC/21, *UCU Scotland rules as a basis for regional committees* from Ann Gow, was NOTED.

7.2.8 In respect of the fourth paper in DC/21, *The problem of regional quora* from John Hadwin, the chair asked Catherine Wilkinson to provide an update on the current situation in respect of this issue. Following this information, it was agreed that further discussion by the commission was not needed.

7.2.9 John Hadwin spoke to introduce the fifth paper in DC/21, *The role and status of Area committees*. This proposed that area committees be kept where useful and standing orders be created. The commission voted to pursue this issue (9 votes in favour, 4 against and 4 abstentions).

7.3 **Working group C: Conduct of disputes**

7.3.1 Mark Abel spoke to introduce his paper in DC/22, *Democracy and the conduct of industrial disputes*.

- 7.3.2 Elane Heffernan spoke to introduce her paper in DC/22, *Proposal for strike committees to discuss key proposals in strikes*. She suggested that both papers had similar aims in terms of finding a way to give more democratic control of disputes to the branches involved, and proposed that a further paper based on this principle come back to the commission. This was AGREED.
- 7.3.3 There being no further time for discussion, Elane Heffernan noted, from the chair, that papers DC/23, 23A and 23B, relating to working group E: Engagement and representation, would return to the next meeting.

8 Schedule of work and future meeting dates

- 8.1 Vicky Blake, in the chair, noted the next meeting date of 8 March.
- 8.2 There was a brief discussion about priorities for the next meeting and for report to Congress. The commission had previously agreed to prioritise working groups A and B, but overlap between the groups was noted.
- 8.3 It was again noted that rule changes could be agreed by the special Congress in November.
- 8.4 In response to a question, Paul Cottrell noted that the NEC would put forward the report and any rule changes to Congress on behalf of the commission, in order to implement the relevant Congress motion.

9 Date of next meeting

Friday 8 March.

The meeting closed 16:35.

Proposals and questions on which the commission agreed legal advice be sought (minute 5.19)

(Elane Heffernan)

Proposal to vote on

We are committed to the democratic idea that changes in the membership view of how leadership should be exercised must be reflected in our rules and processes.

We take further legal advice on the following recall/renewal of mandate options and put whatever is legally allowed of these to Congress

1. Rule change for recall/fresh election by Alan to be redrafted after discussion about legal advice (with? who is redrafting? allowed to take legal advice from another person/firm? (this may include look at GS contract to make it line with parliament/MP employment status and also may need to address how recall maintains pay for GS until new election but does to give any electoral advantage) and must address no fault

(Mark Abel)

1a. No fault Recall Proposal

Recall procedures and clauses relating to it in contracts of employment should emphasise the difference between recall as a political function from disciplinary action as a result of misconduct. Grounds for recall might arise as the result of changing political context rather than any act by the GS.

The reasoning is that there is an implied term in the GS's contract that they have the confidence of members. A recall motion seeks evidence of this confidence by triggering a fresh election for a new full term or remaining part of term. In this context no evidence of fault is required.

Therefore the possibility should be explored (in terms of getting legal advice etc.) of framing recall as a requirement to renew a mandate, which does not in itself imply 'fault' as it is understood by contractual disciplinary procedures.

2. (Rachel Cohen)

What would be required to produce a contract that allows for an early break as a result of a new election? How can we include specifications that allow for suspension a) during the period in the run up to a recall election; b) in a period following a recall election in which the incumbent has lost.

1. If the GS were to be suspended by NEC as a result of a Congress motion and this lasted for the period of the recall election would there be any negative consequences?
2. Proposal for amending the draft rule change – replace 'dismiss' with 'suspend'

3. (Sean Wallis)

Proposed process - Recall motion, including grounds

- Motion to Congress + grounds of complaint (permitting > 150 words)
- Investigation of complaint, including GS's reply -> Report to Congress
- Congress receives report, votes on motion*
- If passed
 - GS is suspended
 - Ballot of members takes place

*Q of whether or not the motion is put with or without a debate

4. (Sam Morecroft)

If we remove the reference to dismissal and leave Alan's motion as it is what would the legal advice be?

IE: Amendment to Rule Change: Add 28.3

Delete from Paragraph 3 Line 1: "dismiss the General Secretary and"