



# **JNCHES REVIEW NEGOTIATIONS**

**BRIEFING PAPER FOR UCU BRANCHES & LAs**

## 1 PREAMBLE

1. The JNCHES Review Working Group has met on several occasions (26<sup>th</sup> March, 18<sup>th</sup> April, 17<sup>th</sup> May and 13<sup>th</sup> June). In connection with these meetings, there have been round table discussions of all the participating unions, and intensive work at official level.
2. One of the side-issues has been discussions with the PTAAS unions on the prospect of an annual meeting to share views on our pay negotiating strategies for the coming year in order to identify opportunities for joint action. This can be pursued irrespective of the final shape of JNCHES.
3. From the start it has been clear that UCU had no support from the PTAAS unions for its position on separate tables, and EIS was not willing to risk national bargaining over the issue. After several difficult meetings we won recognition for the fact that UCU negotiators had no mandate to make any change to this fundamental position, and that the process would require both a steer from HEC and a sector conference.
4. A preliminary discussion took place at the final transitional HEC on May 11<sup>th</sup>. It was agreed that this should be a matter for the new HEC to deal with. The new HEC met on June 22<sup>nd</sup> and agreed (1) that a sector conference on this question should be held at a suitable date in the autumn, and (2) that in the meantime the negotiators should not propose any form of words which would imply a departure from the status quo as regards two tables for national pay negotiations.
5. The employers' side, represented by UCEA, consistently argued (1) that its constituency required a final agreement by the end of the full JNCHES meeting on July 12<sup>th</sup>; (2) that said agreement would have to be on the basis of a single table; and (3) that many of its members would depart immediately from the national framework were these two conditions not met. Despite these robust statements, the UCU negotiators made it clear that they had no remit and no power to reach such an agreement prior to the decision of a full conference.
6. The full JNCHES meeting took place on July 12<sup>th</sup> and received the report from the Review Group. There was a meeting of all the unions together in the morning at which a number of suggestions to amend the draft agreement were discussed. Some inter-union progress was made, but it was clear that substantial differences between the unions and the employers remained; this became very evident at the full meeting which lasted from 2.30 to 5.45.
7. The meeting concluded in a somewhat unsatisfactory manner, though it was explicitly stated by UCEA that there would be no immediate withdrawal from national bargaining, and that all parties would return to the table following UCU's internal consultation. Very significant differences remain unresolved, and these are detailed in the commentary below on the draft agreement.

## 2 UCU'S POSITION

8. The UCU negotiators set out their position as follows:

- A commitment to national pay bargaining
- An appropriate defence of the case for special consideration of specific categories of staff
- Opposition to any agreement which in any way restricts our freedom to ballot members on pay settlements and industrial action
- A commitment to finding a timescale for pay negotiations which is acceptable to all sides
- A clear presentation to HESC of the PTAAS and employers' position
- Extensive consultation with HEC and members, to be completed in the autumn
- A full discussion of paragraph 7 (of the draft agreement) in particular

9. In addition to the above statement, the negotiators would wish to add the following priorities which should be reflected in any final agreement:

- A recognition that the spine itself is negotiable, including the possibility of removing points from the bottom and adding points at the top.
- An acknowledgement of the fact that if the single table is driven by issues of equality (in itself a disputed claim), so too is the matter of payments off the present scale and above point 51.
- An acknowledgement by all parties that the national agreement does not imply single table fora locally, where negotiations are specific to forms of employment.

10. It might be worth also citing the relevant part of a letter sent to THES by the three lay negotiators intended for publication on July 12<sup>th</sup>:

"UCU are keen to negotiate improvements to the national higher education bargaining structures. We also want to work with all the other unions in all areas of joint concern. The UCEA negotiators know very well that UCU is currently discussing the mechanisms, and is fully committed to national bargaining, but until we have assurances that the ability of our union to negotiate on matters particular to its members in any new structure is protected, (a condition any union would seek), we will find it hard to put proposals for change to a conference, which, as UCEA know, we would need to alter such a key element of UCU policy.

UCU's negotiators are committed to rational debate, since all sides benefit from national bargaining in a sector where there is so much in common, and where academic and related staff share a national and international labour market."

11. A copy of the draft agreement as it stands following the meeting of July 12<sup>th</sup> is appended. The negotiators would recommend most of its clauses, including the proposal for a disputes resolution procedure. But there are three areas of contention which must be addressed. These are: Paragraph 7 (page 2), Paragraph 11 (page 3) and the penultimate bullet point in the Dispute Resolution Procedure on page 5 (all highlighted in the appendix).

### **3.1 Paragraph 7**

12. This paragraph sets out the preferred position of the Employers, the PTAAS unions, and EIS. As it stands it reads:

"All matters will be negotiated within JNCHES as a whole. Where certain issues are exclusive to particular staff groups, it is expected that the dialogue within JNCHES will be principally between the employers' representatives and those unions representing the staff concerned."

13. HEC, at its meeting on 22 June, considered a form of words which could expand on this paragraph and look to resolve this issue. Consistent with the HEC position (referred to in paragraph 4 of the preamble above), this approach has not been explored with any other JNCHES representatives. It is the view of the negotiators that were we to be able to get agreement on such a formulation as an explanatory gloss on Paragraph 7, we could settle on this matter. The wording discussed was:

Where matters relate to the pay and/or conditions of particular staff, then negotiations will be between UCEA and the union(s) representing these staff, with observer status for the other unions."

"JNCHES will have one or more standing sub-committees (as well as ad hoc groups convened for particular purposes). One of these sub-committees will be a Pay Review Group for grades paid on points 21 and above on the current spine. The trade union side composition will reflect the audited relative size of union membership within these grades. The remit will include a function to review pay arrangements that cover those grades paid on points 21 and above and make recommendations to amend the Framework agreement (i.e. Appendix C). These recommendations will be included in any pay settlement finalised by JNCHES.

### **3.2 Paragraph 11**

14. The purpose of Paragraph 11 is to provide a structured framework of meetings, normally four in a year. The two planned for October and December are not controversial. Problems arise over the timing of

meetings intended to respond to pay claims. The version favoured by the employers follows:

“JNCHES will meet at least four times each year, normally: for the strategic discussion about the sector in December; and a general meeting in October. Meetings in March and May will facilitate effective consideration of pay claims submitted before the March meeting. Dates for these meetings will be agreed in June of the preceding academic year. Whilst the aim will be to complete negotiations in June so that agreed rates of pay can be implemented from August, additional meetings on agreed dates may be arranged if required.”

15. This represents a modest concession by the employers, who originally wanted the pay claim business to stretch to June. At the other end, we have argued for a February initial response, but to no avail. It is recognised by all the unions that March is the earliest we can achieve (due to the timing of institutional HEFCE funding announcements). The problem with May is, of course, that if the resolution procedure were only initiated then, our scope for balloting for effective action is limited. (To target assessment, balloting would need to start by March.)

16. The unions put forward an alternative form of words which sought either to bring the second negotiating date forward to April, or to leave it entirely open:

“JNCHES will meet at least four times per year, normally

- A meeting to be held in December for strategic discussions about the sector
- A meeting on general business to be held in October
- Two meetings in March and April to facilitate effective consideration of pay claims submitted prior to the March meeting

Dates for the four meetings will be agreed in June of the preceding academic year with the aim to complete negotiations in June so that agreed rates of pay can be implemented from 1 August. Additional meetings on agreed dates may be arranged if required.”

17. There was no discussion of this issue on July 12<sup>th</sup>, which remains to be resolved. It should be noted that the employers have made it clear that they will not shift from the March/May proposal, which they regard as a compromise.

18. The timing is of greatest significance for UCU and EIS, less so for the PTAAS unions. The negotiators take the view that, while the alternative wording would be desirable, in situations where there is likely to be a serious failure by UCEA to make a realistic offer, that will already be evident by the end of March, and that we will be free to initiate a ballot, even if its implementation might be postponed pending further talks. This has a bearing on our position as regards the third area of contention.

### 3.3 Draft Dispute Resolution Procedure (Annex A)

19. The penultimate bullet point, reads;

“Throughout the period for dispute resolution meetings, and for third-party assistance, the status quo will apply. The HE employers will not impose a resolution, and the trade unions will refrain from balloting their members on any form of industrial action until the procedure has been fully exhausted.”

20. This is in some ways the simplest to deal with. The negotiators are unanimous in rejecting this as it stands, and will not recommend putting any such proposal to HEC. An acceptable form of words might be something like:

“Throughout the period for dispute resolution meetings, and for third-party assistance, the status quo will apply. The HE employers will not impose a resolution, and the trade unions will refrain from *initiating any form of industrial action* until the procedure has been fully exhausted.”

There was strong support for this position from EIS and most of the PTAAS unions, though one or two seemed to signal that they might be able to live with the original statement. Our view, and that of EIS, is that this is a matter of fundamental principle on which no compromise is possible

## **APPENDIX 1**

### **JOINT NEGOTIATING COMMITTEE FOR HIGHER EDUCATION STAFF**

#### **REVIEW OF NEGOTIATING AND CONSULTATION ARRANGEMENTS**

##### **DRAFT ONLY**

##### Preamble

1. The 2001 agreement which established the Joint Negotiating Committee for Higher Education Staff (JNCHES) provided for review of the new and transitional negotiating arrangements in the light of experience. The JNCHES Pay Agreement 2006-09, agreed in June 2006, put this review in train with the aim of agreeing necessary changes to the negotiating arrangements by July 2007.
2. The HE employers and unions remain united in their view of the vital contribution which staff at all levels make to the continuing success of UK higher education, and the need for them to be rewarded properly. They share a continuing commitment to the benefits of working in partnership, to seeking effective and forward-looking national dialogue and agreement on remuneration and related issues, and to sustaining the improvements achieved since 2001.
3. To these ends the HE employers and unions have agreed on revitalised arrangements for national negotiation and consultation that are streamlined, flexible and provide a framework for strategic discussions. These are set out in the following paragraphs. They will take effect from September 2007 and will supersede the 25 June 2001 agreement from that date. Agreements made by JNCHES and predecessor negotiating bodies, which remain in force in August 2007, will be inherited by the reformed machinery.
4. The parties to this agreement – EIS/ULA, GMB, UCU, Unison, Unite and the UCEA on behalf of its subscribing HE institutions – commit themselves to proceeding in accordance with the arrangements set out below and to operating these in good faith.

## Reformed negotiating machinery

5. The JNCHES national negotiating board (NNB) will comprise:

6 representatives of the employers, nominated by the UCEA;

18 union representatives to be decided by the staff side which will include a proportion of observers<sup>1</sup>

Meetings will be chaired alternately by a representative of the employers and a representative of the unions.

6. JNCHES will be responsible for negotiation of those pay and related matters that are determined at national level, including specifically:

- regular review of the Framework pay spine;
- further consideration of the provisions of the Framework Agreement for the Modernisation of HE Pay Structures (2004);
- any further consideration of those provisions in earlier agreements inherited by the JNCHES which remain in force in August 2007.

**7. All matters will be negotiated within JNCHES as a whole. Where certain issues are exclusive to particular staff groups, it is expected that the dialogue within the JNCHES will be principally between the employers' representatives and those unions representing the staff concerned.**

## Additional arrangements

8. To complement the above negotiating remit the NNB will convene:

- a strategic meeting, annually, with wider representation from the employers and unions to discuss the state of the HE sector and prospective developments. Representatives of other bodies, such as government departments and the funding councils, may be invited to these meetings;
- discussions across remuneration matters where the detail is determined locally in the context of the Framework and inherited agreements – allowing consideration of practice and potential developments across the sector as a whole;
- discussion of pay-related issues negotiated in other fora, such as pensions. Employers to expand on groups?

9. Where jointly agreed as appropriate, the NNB may establish time-limited or ad hoc working groups for particular purposes – such as the present Equalities Forum.

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<sup>1</sup> \*these numbers will reduce from September 2010 reflecting the impact of recent union mergers



10 When necessary, the NNB will facilitate:

- discussion between employer and union representatives in devolved administrations about pay and related matters, if these are not taking place under other auspices;
- negotiations on matters concerning clinical academics' pay, if the translation of relevant NHS pay awards cannot be agreed between officials of the UCEA, BMA, BDA and UCU. Such negotiations should include representatives of these four bodies, on an agreed basis;
- discussions about particular groups of staff with professional equivalents outside the HE sector, such as in the field of healthcare.

### Procedures

**11 JNCHES will meet at least four times each year, normally: for the strategic discussion about the sector in December; and a general meeting in October. Meetings in March and May will facilitate effective consideration of pay claims submitted before the March meeting. Dates for these meetings will be agreed in June of the preceding academic year. Whilst the aim will be to complete negotiations in June so that agreed rates of pay can be implemented from August, additional meetings on agreed dates may be arranged if required.**

### Alternative

**11a JNCHES will meet at least four times per year, normally**

- **A meeting will be held for strategic discussions about the sector in December**
- **A meeting on general business will be held in October**
- **Two meetings in March and April will facilitate effective consideration of pay claims submitted prior to the March meeting**

**Dates for the four meetings will be agreed in June of the preceding academic year with the aim to complete negotiations in June so that agreed rates of pay can be implemented from 1 August.**

**Additional meetings on agreed dates may be arranged if required.**

12 Agendas for meetings of the JNCHES and additional arrangements will be agreed in advance between nominated representatives of the employers and unions. These representatives will also agree on the wider attendance intended for the annual meeting and on any appropriate augmentation of attendance for the other meetings outlined in paragraph 8 (for instance to facilitate attendance of representatives, or independent bodies, with particular expertise).

13 Where meetings under the additional arrangements jointly identify scope for national agreement on certain matters or for a joint statement or guidance being issued to the sector, these matters will be referred to the JNCHES for confirmation or further consideration. In some instances it may be possible for

such questions to be settled by correspondence, rather than by reference to the next scheduled meeting of the JNCHES.

14 All parties to negotiations in the JNCHES are committed to striving for agreed outcomes. If, exceptionally, these cannot be achieved, either the employers or unions may invoke the dispute resolution procedure described in Annex A.

15 The employers and unions are agreed in principle on sharing the provision of facilities for meetings. UCEA will provide secretariat services. Any detailed issues will be resolved between UCEA and union officers. If the JNCHES intends to commission any significant project from external contractors, arrangements for funding it will be agreed in advance between the employers and unions.

16 The arrangements set out in this agreement will be the subject of joint review by the JNCHES in autumn 2011 in the light of experience in the period to that date.

NOTE subject to the above changes the PTAAS unions negotiating staff side may be in a position to recommend to PTAAS unions that they provisionally sign up to the agreement at the 12<sup>th</sup> July JNCHES meeting. However this would depend on the position of the UCU. We would reserve the right to re-open negotiations if UCEA and the UCU subsequently sought to alter any parts of this agreement.

## DISPUTE RESOLUTION PROCEDURE

The parties to the negotiations in the JNCHES are committed to striving for agreed outcomes. If, exceptionally, these cannot be achieved, either the employers or unions may invoke the following procedure:

- Where it appears that all scope for progress through normal negotiations has been exhausted, either the employers or any of the unions represented on the JNCHES may give formal notice to all parties that it is applying this dispute resolution procedure;
- Following receipt of such notification the parties will agree within 7 working days on dates for at least two meetings to seek to resolve the dispute. Unless agreed otherwise, these meetings will take place within the following 14 working days;
- Attendance at these meetings will normally include national officials and lay officers of the unions in dispute, together with senior UCEA officers and representatives of the UCEA Board;
- The focus of these meetings will be on reaching a settlement of the issue(s) in dispute. Such settlement should also seek to include recommendations on how similar disputes might be avoided in the future;
- Further meetings beyond this initial period may take place where that is agreed between the two sides;
- If it has not been possible to resolve the dispute through this series of meetings, the parties will consider whether third-party assistance – normally using ACAS for mediation and conciliation – would be helpful. A decision on this should be taken within the following 7 working days;
- **Throughout the period for dispute resolution meetings, and for third-party assistance, the status quo will apply. The HE employers will not impose a resolution, and the trade unions will refrain from balloting their members on any form of industrial action until the procedure has been fully exhausted;**
- Outcomes from any stage in the procedure will be communicated jointly.