

University and College Union

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To	Branch and local association secretaries
Topic	Commission on effective industrial action
Action	Branches are asked to distribute the final report to members and discuss it at their next branch meeting
Summary	This final report is for comment from all branches, members, regional and national committees ahead of a debate at Congress 2018
Contact	Matt Waddup (mwaddup@ucu.org.uk)

Dear Colleague

Introduction to the recommendations

The general secretary at Congress last year launched a Commission into what would constitute effective national and local industrial action. An elected Commission of thirteen representatives from last year's congress representing all of the regions and devolved nations that UCU covers met five times and drew evidence and opinions from academics, regions, branches and individual members. Their recommendations appear below.

Before reading the recommendations, it is important that we set a frame for their assessment. Even without the further restrictions on industrial action which were introduced with the Trade Union Act 2016, UCU is operating within a very challenging environment. Faced with marketisation, casualisation, privatisation, de-professionalisation, widespread inequality and pay restraint, the union needs to be able to stand up for its members and take action to fight back.

A campaigning union with campaigning branches is key when beginning to work out what constitutes effective industrial action. UCU has shown recently that it is capable through this approach to beat the government thresholds and deliver effective industrial action. Indeed, as we finalise this report the union is engaged in a major struggle to defend the USS pension fund. There are no doubt many campaigning lessons to learn from this dispute, but we do believe that our recommendations are within the spirit of the times.

First, Commissioners would like to make clear that there are no magic wands when it comes to conducting effective industrial action. The trade union movement faces major challenges especially considering the new trade union legislation that is designed to make it much harder for working people to take collective action to protect their working environment. There is no substitute for well organised branches, imaginative materials that are sent out well in advance of a ballot or action and hard work!

Second, national industrial action is not a luxury. A union that cannot deliver effective national industrial action does not have a future. This means delivering not only in the sense of beating government set thresholds but also by prosecuting industrial action that is hard hitting, and if necessary, substantial.

We need to be able to deliver effective action both nationally and locally. Many of the recommendations below apply to both.

The Commissioners would ask you to support these recommendations as a start to help build a union that continues to be a force to be reckoned with by governments and employers. We recognise that to achieve the systematic change in approach required the union will need to ensure our branches and staff are effectively resourced, supported and trained and that elected members have a clear understanding of their role.

A rationale for the recommendations is presented after the recommendations themselves.

Recommendation 1

The UCU should adopt a four-pronged approach to the planning of industrial action – [1] undertake long term campaign planning, including identifying a clear strategic path to success; [2] identify issues that members think are important; [3] Begin campaigning and mobilising members in advance of any action around those issues; and [4] concentrate available resources in furtherance of the action and campaign.

Recommendation 2

Whilst one day strikes have their place, often they will not be enough to move the employer or government. When necessary the union must be prepared to move beyond one day strikes and towards taking sustained strike action, timed effectively and aimed at economically hurting the employers and publicly embarrassing them. This strategy should be clearly signalled both to members when they vote and to employers if they choose not to negotiate with UCU.

Recommendation 3

As part of its national strategy, UCU needs to support its UK-wide staff and branches to carry out effective industrial action. This entails committing resources and building the organisational capacity of the union. Alongside a narrative spelling out what UCU's key strategic objectives are, UCU needs to devote resources to mobilise UCU HE and FE members - in particular, marginalized and casualised members and staff groups - around these key strategic objectives. UCU should be going into workplaces to set up training sessions and events on winning industrial action and campaigns and setting up organising networks in workplace.

Recommendation 4

If Action Short of a Strike (ASOS) is to be used, it should be as part of rather than a substitute for a broader strike centred strategy. The union needs to explain clearly to

members the paradox that if ASOS is effective (as for example with assessment boycotts) it will almost certainly attract a substantial penalty of up to 100% of daily pay from the employers. If ASOS is to be used in disputes, the union will therefore need a clear, worked out, well communicated plan to defend members in the event of 100% pay deductions. We recommend that disputes involving ASOS should include the use of punitive pay docking in their terms of settlement. This would allow members both to take action in the event in response to punitive docking and for any settlement to also include consideration of the issue.

Recommendation 5

When campaigning around a range of issues which involve national and/or local action, the union should locate any particular industrial action within an overall consistent campaigning narrative (as with the Communication Workers' Union's 'Four pillars' campaign), recognising that while disputes may go at different speeds they all form part of our broader industrial, political and professional agenda. This approach is characterised by long term planning, union wide consultation to establish issues that are important to members, a prioritisation of resources and a gradual mobilisation running up to ballot. UCU should undertake such a process with a view to achieving union wide agreement on what narrative we prioritise.

Recommendation 6

Branches that are involved in preparing for industrial action should be kept properly up to speed with disputes including being provided with proper advance notice of ballots and of direct communications with the employers.

Recommendation 7

Equality and casualisation issues must always feature as a central part of the union's campaign messages and strategies and where the national fighting fund is utilised such staff should be prioritised where possible. Members on the equality strands and casualised contracts should play a leading role in determining how best to do this, including through consultation with the Equality Standing and Anti-Casualisation Committees.

Recommendation 8

'The NEC/HEC/FEC or Welsh, Scottish and Northern Ireland Committee as appropriate must always make clear voting recommendations when calling a ballot to authorise or cease a dispute.'

Any local or national Committee responsible for the conduct of industrial action must always make clear recommendations when a ballot is called, including detailing the aims of the industrial action wherever feasible. The Committee should also set out an appropriate timetable and strategy consistent with recommendations 1 and 4.

Recommendation 9

During disputes UCU should aim to communicate support for action effectively using all mediums including social media.

Recommendation 10

Where possible, UCU should always try to co-ordinate action with sister unions.

Recommendation 11

Consultative ballots should be used as a campaigning tactic to encourage and gauge the level of member involvement, not as a hurdle to a statutory ballot. In local disputes decisions by the union's authorising officers about whether a consultative ballot is required should be taken in consultation with the branch and should include consideration of the track record of the branch. When a consultative ballot is conducted it must be used as a campaigning tool which carries the relevant officers/committee's recommendations as opposed to a passive surveying of members' views.

Recommendation 12

Where a decision is made by the FEC/HEC or other relevant representative body after an e-consultation and following a successful GTVO campaign, to ballot a certain number of branches it must be considered a form of national action and therefore the same approach must be applied; branches do not have to request to be put into the ballot they are automatically put in to the statutory ballot. The decision on what kind of action is to be taken after a successful statutory ballot must be taken at a national level to allow the maximum coordination.

Recommendation 13

A future Labour government is committed to introducing legislation that forces employers to set up sectoral collective bargaining. The Commission recommends that UCU is prepared for this possibility by producing proposals for what constitutes meaningful sector bargaining within higher and further education respectively and ensures that staff within adult education and prison education are covered by such proposals.

Recommendation 14

UCU should not suspend industrial action when an offer is put to members unless it is accompanied by a recommendation from the relevant representative body to accept.

Recommendation 15

Acceptance of an offer and thereby the ending of a dispute should ordinarily require a vote of all relevant members.

Recommendation 16

An effective GTVO campaign involves members and prepares them to take action. UCU should continue to organise GTVO active campaigns which engage members even if the anti-trade union legislation requiring 50% participation is repealed.

Recommendation 17

An aggregated ballot is one where all branches are involved in one ballot as opposed to a dis-aggregated ballot whereby branches are balloted on a branch by branch basis. A successful result for industrial action conducted by an aggregated ballot is binding on

all those involved. Whilst branch sovereignty is sacrosanct this sovereignty must not be used to undermine the collective decisions made by the whole union/group when expressed in an aggregated ballot. Individual branches cannot undo the decisions arrived at through an aggregated ballot through branch e-surveys or branch meetings. UCU to make clear to all branch officers involved in aggregated industrial action ballots that it is binding on those involved to implement decisions of any such ballot.

Recommendation 18

Obtaining and maintaining support from the wider community, particularly students and the other campus trade unions, is an important part of successful industrial action and as part of the union's strategic planning implicit in Recommendation 1, the union should consider how best to build the widest possible coalition in support of any action.

Recommendation 20

Building for industrial action should include developing and strengthening the union, including through recruitment and recognition campaigns, the use of health and safety inspections to combat e.g. workloads, stress and bullying and campaigns on equality issues and anti-casualisation which take the lead from members of the equality strands and on casualised contracts, and recognition of the different perspectives of the devolved nations and English regions. There is also a role for strategic planning, particularly at branch level, and the union should provide training to enable branches to contribute to the planning process set out in Recommendation 1 and its implementation at local as well as national level.

Report of the Commission for Effective Industrial Action (CEIA)

1 About the Commission

1.1 In her speech to the 2017 Congress, general secretary Sally Hunt stated:

1.2 'I intend to put together a Commission made up of delegates from Congress, our elected officers, our branches and our lay membership itself. A Commission which will: look at the pros and cons of all different forms of industrial action; listen to the views of branches and regional committees and UCU staff; take advice from academic and other experts in the field and report back to the Executive by the end of the year. My aim is to achieve a broad consensus on this question by the time we next meet - sooner if possible.....and I hope that you will support me in taking that forward with the urgency it requires.'

<https://www.ucu.org.uk/gsaddress2017>

1.3 Emergency Motion 9, carried at Congress, resolved:

that the membership of that Commission must be elected by and from this annual Congress and must be made up of lay members from all the devolved nations and regions.

Regional committees, devolved nations and branches must be strongly encouraged to organise specific meetings to discuss the issues that are to be discussed by the Commission

the Commission to draw up recommendations to put to a one-day special Congress to discuss industrial bargaining and action strategies

the Congress should be made up of cross sector and sector sessions.

- 1.4 The Commission, consisting of thirteen members from each UCU region or nation, was duly elected in late July. The Commission has been convened by the UK President and has met throughout the academic year 2017/18.
- 1.5 The Commission asked for evidence from members, branches, regional committees, and national committees with a specific interest in ensuring the views of underrepresented groups were heard. 126 submissions were received from members, branches and committees.
- 1.6 The Commission has also heard from a range of academic experts including Professors' Gregor Gall and John Kelly and John Hendy QC as well as commissioned research on a range of topics including the legal position, the strike fund, action short of a strike, analysis of previous disputes, sector bargaining.
- 1.7 The Commission is grateful for all advice received, particularly that from UCU members, but the recommendations in this report are our own.

2 Our recommendations

- 2.1 Industrial action is a key weapon of any trade union. However, as the general secretary noted in her speech, the effectiveness of industrial action in recent years has been a contentious issue within the union. The context for that discussion has been a series of low annual pay settlements; falling turnouts for national ballots; a toughening of employer attitudes to action short of a strike in HE; and a reduction in the coverage of national bargaining in FE.
- 2.2 The Trade Union Act, passed in 2016, has now created new challenges for all unions – primarily by creating a turnout threshold of at least 50% below which industrial action will be unlawful.
- 2.3 We start from the premise that all parts of the union want the union to be able to organise industrial action that is as effective as possible. Our recommendations are therefore intended to address that contentious debate with a view to achieving a united position on what needs to happen for industrial action to be effective.
- 2.4 To be clear our recommendations do involve some changes in approach; and if accepted may have implications both for how the union allocates its resources and for how our decision-making bodies approach the strategic and tactical aspects of an industrial action campaign.

2.5 Communications between the union and its branches

- 2.5.1 We discussed in some depth the relationship between branches and the national union. We received evidence both from activists who felt that major announcements were sometimes made with very little or no notice and from officials about why sometimes the union acted speedily.
- 2.5.2 Our view is that a pre-requisite for effective action is effective communication between branches and the centre and regular two-way communication between those are the centre of negotiations and those tasked with mobilising members.

2.6 Long term planning – a clear strategic path

- 2.6.1 The Commission was persuaded by evidence from Professors Kelly and Gall that effective action was a function of the union's ability to think and act strategically. Professor Gall, writing about the Communication Workers' Union's successful mobilising strategy in 2017, described four key lessons in his submission to the Commission:
- 2.6.2 **First**, it [the campaign] began well over six months before the ballot with the creation of its 'Four Pillars' campaign over i) decent pensions; ii) a shorter working week; iii), extension of the 2013 legally binding agreement with Royal Mail prior to privatisation and; iv) the maintenance of the universal service obligation. This 'Four Pillars' campaign aims to stop the now privatised company driving down members' terms and conditions of employment in order to help it retain market share and boost profitability.
- 2.6.3 **Second**, pick an issue – or set of issues - that really matters to members. Asking members to strike for just a 1% higher pay rise might not provide much motivation when the cost of striking could wipe any higher pay rise and where the real value of pay has fallen by over 10% since 2010. Being able to decide what is the right issue to run with can only be gained by doing the necessary ground work of talking extensively to members to judge their mood.
- 2.6.4 **Third**, gradually up the ante amongst members. So in the case of the CWU's postal union members, first, there was a petition amongst members and union reps meetings, then there were the countless bulletins and umpteen video messages or podcasts. All these were supplemented by campaign material in various formats. And, all this was before the ballot was even launched. The ballot was then followed by the largest online union meeting in recent times and hundreds of workplace gate meetings. Although the members of the CWU postal union deliver 'snail mail', they have not shirked from extensively using social media like twitter and Facebook to further reinforce the campaigning message. So this has been the strategy of a 'slow burn' rather than a not a 'quick flash in the pan' campaign. It was patient, methodical and well-planned out. Other unions cannot expect to pass the new thresholds unless they do so similarly.
- 2.6.5 **Fourth**, the CWU has not run any other ballots in this period so it could concentrate its resources on this ballot.
- 2.6.6 The Commission felt this approach was directly applicable to UCU.

2.7 What kind of action should UCU take?

- 2.7.1 The Commission discussed at some length the effectiveness of one-day strikes, noting that many submissions received from members lamented their lack of impact upon the employer – a point also made by both Gall and Kelly in their submission to us.
- 2.7.2 The Commission noted and adopted their advice that to be successful a strike needs to either hurt the employer economically or create sufficient political pain to induce concessions from the employer.
- 2.7.3 Given the higher threshold required and the more constrained timetable within which action must take place, unions were now increasingly seeking to maximise the impact of any action they were able to take. This resulted in the front-loading of action – e.g. in Gall's words, the new tactic is 'to announce a far greater number of strike days in a highly truncated period than is usual.'

- 2.7.4 The Commission can see how front-loading (setting out clearly that a long period of strike action will follow a successful ballot) could be effective in UCU's sectors if managed in a strategic way, not least in signalling to both members and employers the union's seriousness in prosecuting a dispute.
- 2.7.5 The Commission also discussed Action Short of a Strike (ASOS) and specifically a boycott of marking. There was widespread agreement about the effectiveness of this as a tactic. However, it was also noted that in both FE and HE its operation had been made much more difficult by the employer's policy of deducting up to 100% of pay for taking part.
- 2.7.6 The Commission also noted that members often mistakenly voted for ASOS as the softer option and that it could be an isolating experience which created significant pressure upon the union as well as upon the employer. The paradox of ASOS is that if it is effective it almost always attracts a substantial penalty in the form of a deduction from pay of up to 100%.
- 2.7.7 Where ASOS is used, we are advised that one option is for the union to make the use of punitive deductions a part of the terms of the dispute. In this way, action is possible as a response to these deductions and consideration of the issue can also form part of any settlement.
- 2.7.8 While we gave in depth consideration to the use of solidarity action with regard to punitive pay docking, the legal advice we received made it clear how restrictive the law is and how difficult it is to construct an argument in favour of – for example – a group of staff at one employer taking action in support of another without risking substantial legal penalty and compromising the dispute.
- 2.7.9 This gives rise to a more general debate on the pros and cons of strike action versus ASOS. Our view is that – in general – the union's most effective weapon is sustained strike action. It is also the easiest action to explain to members; and the least isolating.
- 2.7.10 The Commission's conclusion is that the union should take care in its use of ASOS; that members need to be educated as to its pros and cons; and that it should only be used as part of a clearly defined strike centred strategy.

2.8 Action and the union's narrative

- 2.8.1 The Commission received evidence from both Gall and Kelly about the need to create a consistent narrative within which action would take place. The Four Pillars campaign of the Communication Workers Union was cited as providing that union's members with a clear, overarching story into which the union's demands fit and provided a way of transcending pay rounds, or juggling negotiating priorities according to circumstances.^[1]

2.9 The need to reach all UCU members

- 2.9.1 The Commission discussed the diversity of the workforce UCU represents both in terms of types of job security and equality.
- 2.9.2 It was recognised that some groups of staff are more vulnerable than others when it comes to participating in industrial action. For example, casualised staff may face significant pressure not to take action, both from management and in terms of their own financial situation.

2.10 Providing clear direction to members

- 2.10.1 The Commission discussed the process by which the union makes recommendations to members about whether to initiate or continue industrial action.
- 2.10.2 The Commission recognises that decisions of this nature are properly a matter for the relevant representative bodies whether at local or national level. However, we believe that it is important that members know and understand the views of their elected representatives before they vote.
- 2.10.3 The Commission also considered the circumstances of when action might appropriately be suspended due to a new offer being put before members. Our view is that action should continue until a point at which the representative body is recommending acceptance of an offer.

2.11 Using all modes of communication

- 2.11.1 The Commission noted that union are increasingly using a range of mediums to get their message across including Facebook, Twitter and other social media.

2.12 Working with other unions

- 2.12.1 The Commission noted the view of many members who submitted evidence that action was more effective when UCU was able to work together with other unions.

2.13 Using consultative ballots effectively

- 2.14 The Commission considered the use of consultative ballots in some detail. On the one hand, arising from the Trade Union Act 2016, it is important to ensure that when the union takes action it has a good chance of reaching 50% turnout. Indeed Gall, in his evidence to us, notes that many unions are using consultative ballots as a way of estimating the strength of feeling among different groups of staff prior to a full, legal ballot. However, Gall also notes that the regular use of such consultations can give rise on occasion to ballot overload among members.
- 2.15 The current practice in UCU is that, where possible, branches are asked to run a consultative ballot prior to a formal ballot and that this forms part of the evidence the nationally-elected officers consider when they consider whether to approve the ballot or not.
- 2.16 We recognise that consultative ballots can have positive benefits in terms of allowing a trial run for activists at GTVO, testing their arguments with members and indeed as a tool for increasing leverage upon the employer. We also recognise that each individual ballot application is different and should be taken on its merits and that consultative ballots can be a powerful campaigning tool.
- 2.17 We do believe that branches must ensure, in line with our wider recommendations, that they have clear, well thought out Get the Vote out (GTVO) plans before they begin statutory ballots. However, we also recommend that – so long as an effective GTVO plan is in place - current practice be applied less rigidly and that it will not always be appropriate to hold a consultative ballot. For example, branches with a strong track record of reaching 50% are less likely to need a consultative ballot to test opinion, even if they decide it is a

good idea tactically.

2.18 Bargaining structure and industrial action

- 2.18.1 The Commission heard evidence from John Hendy QC on behalf of the Institute for Employment Rights (IER). The IER is seeking a commitment from politicians to sector based collective bargaining and was successful in securing one from Labour in 2017.
- 2.18.2 IER argue that sector bargaining provides a much more effective way of negotiating than current arrangements, levelling the playing field between employers and employees and reducing the ability of the former to undercut each other with lower pay and conditions.
- 2.18.3 The Commission believes that a move towards sector-based bargaining will make industrial action more effective and recommends that UCU makes clear its support for the campaign and brings forward a detailed plan for how sector bargaining might operate in our areas of organisation across the UK, including the devolved nations.

Appendix 1: Statement by the Commission to the USS Conference

The Commission for Effective Industrial Action (CEIA) sends solidarity greetings to all USS delegates.

The CEIA was initiated by the general secretary and contains one elected representative from each region or nation. The Commission is chaired by the UK president, and its task is to make recommendations on industrial action strategy to a future special congress.

We will make a detailed report in the New Year, but we felt it might be useful for USS delegates to be aware of some key principles which we have already discussed and which we expect to form part of our final report.

The importance of keeping branches properly up to speed with disputes including providing proper notice of ballots and of any communications with the employers.

The need for the union to undertake long term campaign planning which identifies issues around which members think are important, mobilises members around those issues and sets out a clear strategic path for the campaign.

The need to move beyond largely ineffective one day strikes and towards taking sustained strike action which should be timed effectively and aimed at economically hurting the employers and publicly embarrassing them. We should clearly signal this strategy both to members when they vote and to employers if they choose not to negotiate with UCU.

The need for ASOS, if it is to be used, to be part of rather than a replacement for a broader strike centred strategy. The union needs to explain clearly to members the paradox that if ASOS is effective it will almost certainly attract a substantial penalty from the employers. If ASOS is to be used in disputes, the union will need a clear, worked out, well communicated plan to defend members

in the event of 100pc pay deductions.

The need to locate action within the union's overall narrative, recognising that while disputes may go at different speeds they all form part of our broader industrial, political and professional agenda. A good current example is the Four Pillars campaign of the Communication Workers' Union (CWU) which is characterised by long term planning, union wide consultation to establish issues that are important to members, a prioritisation of resources and a gradual mobilisation running up to ballot.

The need for the union's campaign messages to always cover broader issues of importance to specific groups of members including the equality agenda and casualisation.

The need for elected committees to make clear recommendations, wherever possible, when a ballot is called.

Support for action to be communicated effectively from national UCU using all mediums.

Where possible, UCU should always try to co-ordinate action with sister unions.

^[1] For more detail see Gregor Gall's article here

<http://www.scottishleftreview.org/article/taking-on-the-tories-trade-union-act/>