

## 7 WHAT GOVERNORS NEED TO KNOW ABOUT REWARD, RECOGNITION AND COLLECTIVE BARGAINING

7.1 A governing body's responsibility for HR includes ensuring that pay and conditions of employment are properly determined and implemented. Given the scale of investment in staff, making sure your HEI is getting value for money is important. As a governor, what is your view about whether your HEI's reward and recognition arrangements are both fair and effective? Of course, reward is not just about pay, nor even financial and other benefits (such as pensions) but also includes intangible things (such as public esteem, and - usually - a pleasant working environment), and HEIs typically underestimate the value of their total reward package. This chapter addresses these issues. The arrangements by which these processes are collectively agreed is also summarised.

### Information and consultation

7.2 As a governor you need to recognise that under the Information and Consultation of Employees Regulations 2004 (2005 in Northern Ireland), your HEI has a duty to provide information to employees on:

- Recent and probable developments in your HEI's activities and financial situation.
- The structure and probable development of employment in the HEI and any measures envisaged, in particular, where there is a threat to employment.
- Decisions likely to lead to substantial changes in work organisation or contractual relations (for example, changes in working hours, etc).

7.3 Most HEIs have long standing agreements with one or more trades unions. In most cases, these constitute 'pre-existing agreements' under the Regulations. Employees can use these Regulations to compel employers (under certain conditions) to introduce or change arrangements for providing information to and consulting with the workforce. Most HEIs make efforts to consult widely with the workforce (for example, through staff newsletters, the intranet, staff forums, etc) in parallel with formal consultative mechanisms with trades union representatives.

7.4 Consultation and collective bargaining are most acute in relation to industrial action, and there have been two episodes of sector wide industrial action in higher education in recent years - in 2004 and 2006. In both cases, apart from one or two days of strike action, the academic unions focused their attention on action short of a strike (Asos), the most disruptive form of which was an assessment boycott, when staff refused to set exam papers or undertake marking. Whilst the case law governing industrial action is frequently unclear and, in relation to Asos, not recent and sometimes contradictory, the experience of the 2006 dispute suggests that there would be value in institutions deciding in advance how they would respond to Asos and advising staff accordingly in the normal course of events, rather than waiting until a dispute has begun and feelings are running high.

## National bodies, bargaining and joint working

- 7.5 There are two national bodies involved in aspects of collective bargaining that all governors need to be aware of: the Universities and Colleges Employers Association (Ucea) and the Joint Negotiating Committee for Higher Education Staff (Jnches)<sup>36</sup>.
- 7.6 Ucea is a company limited by guarantee<sup>37</sup> which provides a single employers' organisation for higher education. Membership is open to all UK HEIs and its activities are financed by members' subscriptions. The members of the company nominate a board of directors, which comprises heads of institutions and chairs (or deputy chairs) of governing bodies. Ucea offers a number of services to subscribing HEIs including: providing advice on all aspects of HR; commissioning legal advice on sector wide issues; research (particularly in relation to pay and conditions and recruitment and retention); negotiation on behalf of higher education employers with the major trades unions; policy development; and lobbying on behalf of the sector on matters related to employment.
- 7.7 The origins of collective bargaining in the sector are diverse, but in 2001 agreement was reached on new negotiating machinery between Ucea (on behalf of HEI employers) and the main trades unions representing staff, and Jnches was established. It has a membership of up to 41 - an independent chair and 20 members each nominated by the employers and trades unions<sup>38</sup>. It was agreed in 2001 that, for a transitional period, there would be two subcommittees - one dealing with all academic staff, and academic related staff in pre-1992 HEIs, and the other dealing with support staff covered by national agreements.
- 7.8 The Jnches 2006-09 pay agreement included a commitment by all parties to agree changes to the national bargaining arrangements by July 2007. At the time of writing, a provisional agreement for new arrangements, based on single table bargaining, had been accepted by Ucea and the support staff unions, but rejected by the members of the Universities and Colleges Union (UCU) in a ballot - alternatives to national collective bargaining are discussed in paragraph 7.17.

## Does your HEI operate equal pay arrangements?

- 7.9 'Yes of course it does', may be your initial reaction, but can you be sure? In 2006, an average female full time lecturer in an HEI earned 17.2% less than her male counterparts<sup>39</sup>. The Equal Pay Act 1975 gives women and men the right to be paid the same for the same work, work rated as equivalent by an analytical job evaluation scheme, or work of equal value. Additionally, statutory equality duties (see Chapter 5) mean that HEIs have a duty to review the impact of their reward arrangements by gender, race and disability.
- 7.10 An equal pay review highlights areas where there are pay gaps between different groups doing the same job (women and men, different ethnic groups, people with and without disabilities). All HEIs which have introduced new arrangements under the Framework Agreement (see below) should have conducted an equal pay review within a year of implementation.

<sup>36</sup> For details see [www.ucea.ac.uk](http://www.ucea.ac.uk)

<sup>37</sup> The four members of the company are the CUC, GuildHE, Universities UK and Universities Scotland

<sup>38</sup> EIS-ULA, GMB, UCU, Unison and Unite (formerly Amicus and the TGWU)

<sup>39</sup> Facts about Women and Men in Great Britain 2006, EOC

## The Framework Agreement

- 7.11 Recent years have seen substantial discontent about pay and conditions. In general, pay levels in higher education in the period around 2000 had fallen behind private and public sector comparators, and the pay structures were no longer fit for purpose. This was the background to the Framework Agreement for the Modernisation of Higher Education Pay Structures which was concluded between Ucea and seven of the trades unions representing staff in July 2003. The Agreement's main provision was that, by 1 August 2006, HEIs would introduce new pay structures for all staff covered by existing national pay agreements, which would support the achievement of equal pay for equal value and which would be:
- Based on a national 51 point single salary spine.
  - Underpinned by job evaluation.
  - Developed in partnership with local trades unions.
- 7.12 As national agreements on pay are now restricted to annual uplifts to the single salary spine, there is considerable diversity in pay structures across the sector, with wide variations at both the bottom and top of grades for the same jobs in different institutions. There is also increasing variability in pay rates between HEIs. Indications are that the post-Framework Agreement pay structures are more competitive than those they replaced. Data from the Office of National Statistics Annual Survey of Hours and Earnings 2007, indicates that average professorial salary exceeded that of pilots, flight engineers and solicitors. Average pay for lecturers exceeded that of secondary school teachers, civil servants and quantity surveyors.
- 7.13 However, the Framework Agreement was more expensive than many HEIs had anticipated, and Ucea reported that starting salaries for lecturers were (on average) 12% higher post-implementation, and that twice as many staff were upgraded as downgraded following job evaluation<sup>40</sup>. The salary settlement for 2008 has added to these costs. Overall, salary costs have exceeded the additional funding made available. Much of the increased cost is ongoing and, to an extent, cumulative because it results from structural rather than one off factors. In the majority of HEIs, the Framework Agreement was implemented on a 'something for something' basis, with agreements to adopt new working practices and performance management systems, all designed to improve productivity. However, it is inevitable, given the other upward pressures on the pay bill, that some HEIs will have no alternative but to reduce the size of their workforces.
- 7.14 Post-Framework Agreement pay structures have been tailored to the particular needs and market position of each HEI, and many now have much more flexibility in responding to recruitment and retention issues and rewarding contribution. However, the value of salary points on which the post-Framework pay structures are based are fixed nationally and can only be changed by an HEI withdrawing from the national machinery. The cost of Framework has prompted some governing bodies to consider opting out of national pay bargaining (see below).

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<sup>40</sup> Facts and Figures Briefing 2007, UCEA

## Pensions

- 7.15 HEIs participate in a number of pension arrangements, and in addition, many pre-1992 universities maintain local schemes for their own support staff - in these instances, lay members of the university's council may be trustees of the local pension fund. Ucea has produced a briefing note on pensions in higher education<sup>41</sup> and the topic is covered in more depth in the volume on finance in this series.
- 7.16 Pension provision is an important element in the total reward package and there has been a growing recognition that staff find the final salary pension schemes in higher education attractive. However, the costs of providing them have increased significantly, and there have already been rule changes to some (including increasing the retirement age of new entrants, reducing pension benefits on premature retirement and changes in the funding of early retirement costs) in order to ensure their long term viability. Options available for the long term sustainability of high quality occupational pension scheme provision for the sector are being reviewed. The clerk of your board will be able to update you with the latest national discussions.

## Alternatives to national collective pay bargaining

- 7.17 Many governors wonder if the national pay bargaining system provides advantages to their HEI, and there are different views on this. All HEIs are likely to engage in some form of collective bargaining to negotiate terms and conditions for their workforce. The principal advantage of national collective pay bargaining lies in economies of scale - undertaking the market analysis and preparation necessary for a deliverable bargaining strategy is time consuming, and it is cost effective for an employers' organisation, such as Ucea, to undertake this on behalf of its members. Other advantages include PR activity that has greater impact because it is conducted on behalf of the sector as a whole, and negotiations conducted by people whose primary professional role is to negotiate.
- 7.18 The major disadvantage of national collective bargaining (particularly for a sector as diverse as higher education) is that the negotiating remit is bound to involve compromises - there will always be members of the employers' group who could pay substantially more than the maximum limit of the remit and there will be some for whom even the smallest increase is unaffordable. Another disadvantage of large employer groupings can be a fragmented response to industrial action - the employers' negotiating position is significantly weakened if the local responses to nationally directed action are inconsistent.
- 7.19 The increasing fragmentation of the sector, perceived weaknesses of national collective bargaining (particularly in the wake of the 2006 pay dispute) and the UCU's stance in relation to single table bargaining, mean that the continuation of universal national pay bargaining after 2009 is in some doubt, although it may persist for a subset of HEIs. Some alternatives are available, but none of the main trades unions are in favour of any weakening of national pay bargaining.

### SUGGESTED TASK

As a governor you might want to ensure that you are fully aware of the issues facing your HEI over future pensions provision.

*"We need to get out of national bargaining just as soon as we can - it's costing us a fortune"*

LAY GOVERNOR

*"Local bargaining sounds attractive, but the fact is that we haven't got the HR expertise to do it ourselves. Perhaps we are paying slightly more than we should, but the reality is that it may be good value for money"*

LAY GOVERNOR OF SMALL HEI

<sup>41</sup> Ucea, (2008), Pension Provision in HE: Briefing and Q&A,

7.20 The main alternatives to national collective bargaining are:

- a) *Group (or consortium) bargaining:* in principle, this brings together comparable HEIs which should result in a negotiating remit that involves fewer compromises. Also, a smaller grouping is likely to find it easier to agree on, and implement, a consistent response to industrial action. However, none of the mission groups of HEIs are homogeneous, and this means that there will still be tensions both in establishing the negotiating remit and in responding to industrial action.
- b) *Regional bargaining:* groups of HEIs in the same geographical regions would come together to form a bargaining unit. This would have potential advantages in relation to negotiating the terms and conditions of staff recruited within the geographical region but not in respect of academic and specialist staff recruited nationally or internationally, and to split the bargaining remits could work against efforts to achieve equal pay for work of equal value.
- c) *Institutional bargaining:* local bargaining can be a very powerful means of driving change, and the implementation of the Framework Agreement demonstrated that bargaining at institutional level delivers benefits if it is on a 'something for something' basis. However, this would involve a large shift in expectations on the part of unions and staff if applied to pay, and would require high levels of skill and commitment from managers to realise the potential benefits. HEIs and governing bodies would need to be very clear about the potential gains from local pay bargaining and convinced that these justified the increased costs.
- d) *Workforce councils:* this is institutional bargaining, but with representatives elected by the workforce rather than with trades unions officials. Some institutions have established a workforce council or forum as an additional means of consulting with the workforce in parallel with existing formal consultative.

## SUGGESTED TASK

Consider which of the approaches to collective pay bargaining in paragraph 7.20 would best suit your own HEI?

## Self-challenge questions

- Has your HEI conducted an equal pay review? Were the findings reported to the governing body?
- What mechanisms, both formal and informal, does your HEI use to inform and consult with staff? How effective are they from a governing body perspective?
- How would you characterise relationships between management and the trades unions in your HEI? Is the governing body content with the position?
- Is your governing body content with the arrangements for determining salaries? If not, what changes would it like to see, and why?

## A GOVERNOR'S DILEMMA 7:

When the governing body of your institution approved a new pay and grading structure as part of the implementation of the Framework Agreement you were assured that the additional costs would be offset by improved efficiency and productivity because the agreement delivered 'added value'. Several years on, the institution's pay bill is going through the roof and you don't seem to have the evidence of improved productivity. A number of governors, including yourself, are beginning to get frustrated by this. What, if anything, can you do about the situation?