

First Minister and Deputy First Minister
The Executive Office
GD36 Stormont Castle
Belfast
BT4 3TT

6 October 2020

Dear Ministers

I am compelled to bring to your attention the dire state of industrial relations in the Northern Ireland Further Education sector.

Last week the UCU was left with no alternative but to declare a formal trade dispute with all six of the regional colleges. The dispute follows the breakdown of pay and conditions of service negotiations after the employers' attached wholly unreasonable demands to the lecturer pay offer.

Amongst other things, these demands included removing workload protections out of the existing contract, insisting the trade unions surrender our collective bargaining rights, removing the right to an independent appeal at the Labour Relations Agency in circumstances of dismissal and grievance, and agreeing to a pay cut for hourly paid lecturing staff. This list is not exhaustive.

The parties entered a conciliation process facilitated by the Labour Relations Agency but agreement could not be reached and the Trade Unions left the process. The employers subsequently breached the confidentiality agreement binding upon conciliation talks publishing a partial and factually inaccurate description of the discussion to all academic staff across the sector. As matters currently stand, the Trade Unions now have no safe space to re-enter negotiations - the employers having failed to treat industrial relations processes with necessary integrity.

Even more worryingly, the UCU has uncovered evidence indicating the pay negotiation was underpinned by a clandestine policy collaboration between senior civil servants within the Department for the Economy and the FE employers. In a briefing to the Permanent Secretary this project known as 'Transform To Deliver' (TTD) aims to reform the lecturer contract and the industrial relations framework. TTD appears to have been

conceived in the absence of a Minister.

The Permanent Secretary briefing makes clear considerable work has been invested into the project by the Civil Service who, at no stage, sought the opinion of Trade Unions representing staff in the sector. The UCU was particularly alarmed to read of the following:

"Director of FE Division continues to engage with the College Employers' Forum (the collective group of six chairs and the six Principals) on the redraft of the business case to ensure the sector will be ready to respond when the timing is appropriate."

The above was submitted to the Permanent Secretary on 16 November 2018. The employers did not approach the Trade Unions to enter into negotiations until January 2019, the terms of reference were not agreed until February and the negotiations began in March 2019. Throughout those discussions there was very little movement by the employers on any issue, now we understand why. It seems the outcome was pre-determined, the business case having been drafted with the Department, without Ministerial cover or approval, long before any approach was made to the Trade Unions.

The DfE have confirmed it holds further information in relation TTD but has applied an exemption under section 35 of the Freedom of Information Act relating to formulation of government policy. Again, this raises further concern as there is no evidence in the public domain supporting the contention that TTD is a bona fide government policy.

The ambitions within TTD was not pledged in any political party's manifesto. It did not feature in the draft 2016-2021 Programme for Government nor the associated Outcomes Delivery Plan. It was not a departmental 'Indicator' for the ODP's implementation and there is no reference to TTD in New Decade New Approach (NDNA).

The proposals for the business case the employers put to the Trade Unions sought to erode a range of collective bargaining rights and restrict the work of the Lecturer Negotiating Committee to pay, hours of work and annual leave. The Permanent Secretary briefing confirms the Director of the FE Division assisted the employers in drafting the business case and changing the industrial relations framework to one that is prejudicial to the position of the Trade Unions and their members. Section 75 of the Northern Ireland Act 1998 requires public authorities to have due regard to promoting equality between persons of different political opinion. Case law has long established political opinion is not simply confined to covering Northern Ireland politics but has been held to include

opinions such as trade unionism. Impartiality is an expressed clause in the Northern Ireland Civil Service Code of Ethics insisting Civil Servants must not "*act in a way that unjustifiably favours or discriminates against particular individuals or interests.*" On the face of it, it rather appears the Director of FE Division has acted to discriminate against the interests of the lecturer Trade Unions.

Amongst the 'reforms' sought to the lecturer contract was a removal of the maximum cap on the number of hours a lecturer could be asked to teach in a week, a potentially negative change to the status of the teaching qualification and slashing the pay of the most insecure, vulnerable staff in the sector. This reactionary agenda stands in stark contrast to the cross Party agreement set out in NDNA that explicitly commits the Executive to:

Workers' Rights

- x. There will be an enhanced focus within the Programme for Government on creating good jobs and protecting workers rights. The parties agree that access to good jobs, where workers have a voice that provides a level of autonomy, a decent income, security of tenure, satisfying work in the right quantities and decent working conditions, should be integral to public policy given how this contributes to better health and wellbeing by tackling inequalities, building self-efficacy and combating poverty.

Similarly, the refusal of DfE to release information and act with transparency directly contradicts clause 3 of the NDNA:

*3. Ministers and civil servants, including special advisers, each have a part to play in **rebuilding the trust of citizens** in the operation of a future administration. The parties reaffirm their commitment to greater transparency and improved governance arrangements that are aimed at securing and maintaining public confidence. This is particularly important in light of the public inquiry into the RHI scheme.*

A further commitment to accountability is specified at clause 17:

*17. The parties also agree to introduce reformed measures to **put civic engagement and public consultation at the heart of policy-making**, recognising the vital role that wider society plays in supporting effective and accountable Government.*

TTD appears to be an initiative devised between civil servants and the FE employers independent of any democratic mandate or Ministerial direction ordinarily required of government policy formulation. Support for this contention is found in the following statement:

"The release of confidential information before ministerial approval is obtained would undermine their ability to make objective policy decisions and could potentially compromise their role as Minister."

Ministerial approval to develop policy in a specific area is required prior to its formulation. The implication here is the Civil Service decide the policy as well as write it and only thereafter is the Minister's opinion sought. If this is the case then such must not be allowed to continue.

I therefore seek an urgent meeting with you both at your earliest convenience to discuss resolving the very serious matters raised within this correspondence before the situation deteriorates any further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Grady'. The 'J' is a simple, rounded shape, and 'Grady' is written in a cursive, slightly slanted style.

Dr Jo Grady
UCU General Secretary

cc. Katharine Clarke, UCU Northern Ireland Official

Katherine Clarke
UCU Northern Ireland Official
Suite 1 Shaftesbury House
Edgewater Road
Belfast
BT3 9JQ
Tel: 028 90372870

Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD
Telephone: 028 9025 7777
Web: www.economy-ni.gov.uk
Email: FE.Transformation@economy-ni.gov.uk

Date: 2 September 2020

DfE Ref No: FOI 2020-0092

Freedom of Information Act 2000

Thank you for your request for information relating to all correspondence exchanged between Department for Employment and Learning/Department for the Economy, the Minister and the Principals of the six Further Education Colleges (SERC, NRC, SWC, NWRC, BMC, SRC) and members of the College Employers Forum concerning an industrial relations framework following the collapse of the Salisbury taskforce in 2015 up until the present. The request was received on 7 July 2020 and the Department is dealing with it under the terms of the above legislation.

I can confirm that the Department holds the information requested and have attached the following to this letter - a briefing provided to the Permanent Secretary on Reform of the Industrial Relations Framework.

I can confirm that the Department also holds additional information which is being withheld as it is exempt from disclosure under section 35 (1)(a) of the Freedom of Information Act 2000 which relates to the formulation and development of government policy. In making this decision, the Department has considered the following public interest test factors:

Arguments in Favour of Disclosure

- Promotes government transparency and accountability
- Public interest in being able to participate in decision making process and to make a more effective contribution to it.
- Encourage trust in the policy development process

Our Privacy Notice is available at:

<https://www.economy-ni.gov.uk/sites/default/files/publications/economy/Privacy-Notice-FOI-EIR-SAR.pdf>

Arguments in Favour of Maintaining the Exemption

- The development of the Transform To Deliver policy is still at the formative stage and will require final ministerial approval before implementation. The release of confidential information before ministerial approval is obtained would undermine their ability to make objective policy decisions and could potentially compromise their role as Minister.
- The area under discussion: employee terms and conditions is particularly sensitive and access to such information has been very tightly controlled both within the Department and in Colleges. The release of policy proposals/consideration prior to agreement between colleges and TUS and before Ministerial approval is sought and obtained would have major repercussions for industrial relations, and for the ongoing negotiations. It could damage the Department's reputation and could make it more difficult for a resolution to be reached.
- The release of information around the respective costs and affordability of options being considered could potentially endanger public finances, giving rise to undeliverable expectations and resulting in undeliverable budgetary pressures, possibly impacting on the ability of the FE Colleges to meet the needs of both individual learners and of the economy as a whole.
- Proposals are still under discussion and may change over time. It is important that officials have the space to develop and formulate policy away from public scrutiny.

On the basis of the assessment set out above, the Department considers that it is not in the public interest to disclose the information covered by the exemption under section 35 (1)(a) of the Freedom of Information Act 2000.

An Access to Information Factsheet available at <https://www.economy-ni.gov.uk/access-information#toc-3> provides information on what to do if you are not happy with our response.

Yours sincerely



SEAN BROLLY
FE TRANSFORMATION BRANCH

Our Privacy Notice is available at:

<https://www.economy-ni.gov.uk/sites/default/files/publications/economy/Privacy-Notice-FOI-EIR-SAR.pdf>

BRIEFING PROVIDED TO PERMANENT SECRETARY 16 NOVEMBER 2018

ISSUE: TRANSFORM TO DELIVER (TTD) (REFORM OF INDUSTRIAL RELATIONS FRAMEWORK)

BACKGROUND

- Seeks to reform the lecturers' contract and industrial relations framework in order to achieve transformational change of the lecturing workforce across the six further education colleges in Northern Ireland.
- In order to offset the overall cost of the financial proposal within the current business, TTD sought in part to address outstanding remits for lecturing staff over a number of years.
- However, the position in relation to pay became untenable and contractually entitled increments were paid up to and including 2017/18, in effect decoupling the pay remits from the TTD proposal.
- Together with addressing the specific issues raised by DoF in the original business case, decoupling of the pay remits from the financial element determines that a full refresh of the current business case is necessary. However, there are implications for timing and progression of any revision of the business case given the Buick judgement and the absence of a Minister.

LINES TO TAKE

- It is critical that colleges continue to be responsive to demand and employer needs and this programme will look at various aspects of lecturers' contract to ensure flexibility in future to meet these demands.
- The overarching objective, of delivering transformation change of the lecturing workforce remains sound. Legacy issues remain to be resolved and the proposal still represents an opportunity to reform the lecturers' contract and industrial relations framework within the six further education colleges in Northern Ireland.
- Director of FE Division continues to engage with the College Employers' Forum (the collective group of six Chairs and the six Principals) on the re-draft of the business case to ensure the sector will be ready to respond when the timing is appropriate.

Our Privacy Notice is available at:

<https://www.economy-ni.gov.uk/sites/default/files/publications/economy/Privacy-Notice-FOI-EIR-SAR.pdf>



Department for the
Economy
www.economy-ni.gov.uk

Our Privacy Notice is available at:

<https://www.economy-ni.gov.uk/sites/default/files/publications/economy/Privacy-Notice-FOI-EIR-SAR.pdf>