

The Educational Institute of Scotland

General Secretary – Appointment or Election?

1. Introduction

- 1.1 The following resolution was approved by the Annual General Meeting in June 2014.

"This AGM instructs Council to investigate and report on the appointment process for the General Secretary with particular regard to:

(a) electing the General Secretary for a fixed term and;

(b) the General Secretary being directly elected by all members".

- 1.2 In 2003 the Annual General Meeting approved a resolution dealing with the constitutional changes which would be required to move to a system of direct election of the General Secretary. At the current time the appointment of the General Secretary is a matter for Council (Rule XI.9). In 2009 Council established a Working Party to consider whether the General Secretary's position should be filled by appointment or by election.
- 1.3 The statutory requirement on Trades Unions to elect their General Secretary was introduced by the 1987–1992 Conservative Government as part of a raft of anti-trade union laws in the early 1990s. The new legislation was opposed by the Trade Union movement at the time because it was seen to be disruptive, to undermine the work of the Trades Unions and to increase the level of State interference. The legislation also included significant restrictions on the check off system and on industrial action. The specific statutory provisions which cover the election of the General Secretary are to be found in Sections 46-61 of the Trade Union and Labour Relations (Consolidation) Act 1992.
- 1.4 The EIS is not required by law, however, to elect its General Secretary. The Certification Officer holds a list of organisations (entitled Special Register Bodies) which are exempt from the requirement to conduct elections for the position of General Secretary. There are 13 such organisations in the UK, many of which are incorporated by charter or letters patent but which also act as a trade union on behalf of their members. However, if an organisation were to include the General Secretary as a voting member of its Executive Committee, the statutory provisions with regard to the election process would come into play.

2. The Situation at Present

- 2.1 The current General Secretary was appointed to the position at a meeting of Council held on Friday 27 January 2012. Prior to this, an

advertisement for the post of General Secretary had appeared in a number of national newspapers (Herald, Scotsman, TESS) and the Appointments Forum interviewed candidates on the long list on Thursday 19 January 2012. A short list of four candidates was then interviewed by Council and the successful candidate was determined by exhaustive ballot amongst the 126 members of Council who were present on the day. A similar process had been used to appoint previous General Secretaries of the Institute.

- 2.2 In some respects the differentiation between "appointment" and "election" as presented in the AGM resolution is a misleading one. The use of the term "election" is often understood as meaning an election involving ballot papers being issued to the entire membership. The term "appointment", for the post of General Secretary, in a sense, also involves an election albeit involving a reduced electorate i.e. the directly elected members of Council. Constitutionally, Council is the main decision making body of the Institute between AGMs and, from a legal perspective, it is the Principal Executive Committee of the Union and must be directly elected by the thirty-four constituent parts of the organisation (i.e. 32 Local Associations and 2 Self Governing Associations).
- 2.3 The appointment of all other official/officer positions within the Institute involves a process of advertisement, listing and interview by a specially elected Appointments Forum, taken largely from the Executive Committee.
- 2.4 In cost terms, the last occasion on which there was a national election of one of the Office Bearers, the cost to the Institute was in excess of £20,000. Each meeting of Council (held in September/October, November, January, March and May) costs in the region of £10,000 (covering both travel costs and the hire of the hotel). Costs associated with the advertising of posts are likely to be in excess of £10,000 per advert.

3. Some Issues to be Considered

- 3.1 The first matter which should be considered is the nature of the post of General Secretary itself. At the present time the General Secretary is the principal official of the Institute responsible, inter alia, for: all EIS employees, is the chief media spokesperson and acts as Returning Officer for all Institute elections. The General Secretary also attends all committee meetings, Council and AGM but does not have voting rights. The General Secretary is an employee of the Institute and has all of the employment rights which apply to all other employees. In other trades unions the General Secretary has a more "political" role within the organisation and can be a voting member on committees, Executive, Council etc. In one sense, therefore, there is a strong argument for maintaining the status quo, i.e. appointing the General Secretary, if it is intended that the post of General Secretary would remain as the senior paid employee of the union with no voting rights on the main committees.

- 3.2 If, however, it is intended that the General Secretary would have a vote in relation to policy making it is perhaps more appropriate that the General Secretary should have a democratic mandate similar to that which the Office Bearers currently enjoy.
- 3.3 Should the EIS move to have a more "participative" General Secretary with a broad democratic mandate, then the relationship between the General Secretary and the elected Office Bearers and Council members would have to be redefined. Tensions may develop between a directly elected General Secretary and the elected Office Bearers and members of Council in relation to the extent to which each enjoys an "electoral mandate". The extent to which each has the right to take decisions may also become an issue. In most other teacher unions, for example, it is the General Secretary who reports to the Executive Committee rather than what we would regard as lay officials.
- 3.4 The developing trend in recent years has been that the elections for Office Bearers and for Council have more and more frequently resulted in "no contests" and, where positions are contested, only a small percentage of the relevant membership actually participates. In some other trade unions the "election" of the General Secretary has resulted in only one candidate coming forward while, in others where there is a contest, the turnout can be as low as 10%.
- 3.5 The existing method of appointing the General Secretary through an election process at Council does provide a key role for the Institute's Principal Executive Committee. EIS Council is directly elected and ensures a sectoral balance in the decision making process. In one respect Council could, perhaps, be regarded as an electoral college with all Local Associations and Self Governing Association Representatives participating in the process and representing the various constituencies. One option would be for this position to be articulated more explicitly in our procedures to make clear the difference between the appointment of the General Secretary and other officer and official posts.

4. Implications of moving to a National Election for the post of General Secretary

- 4.1 It is accepted that there is a superficial attraction in moving to a system where the senior official of the Institute would be seen to have secured the office through an openly democratic process, which would result in the General Secretary possessing a democratic mandate (similar to that which applies to the existing Office Bearers). In addition the election process itself would involve the membership, albeit dependent on voter participation, in the decision making process regarding the choice of the most senior official within the organisation.

- 4.2 However, evidence suggests that the election process in other trades unions does lead to a considerable period of disruption and/or distraction from the day to day work of the organisation in the period running up to the election, with several months being dominated by the internal politics associated with a contested election. It is widely believed in the Trade Union movement that this period of internal disruption was one of the principal reasons for the introduction of the legislation in the first place. It should be remembered that the legislation in question also introduced the restrictions on industrial action, the limitations on the use of "check off" and the introduction of the short-lived office of the Scottish Commissioner for the Rights of Trade Union Members (SCROTUM).
- 4.3 In addition, the period prior to the election itself, can often result in potential candidates vying for intra-union and wider media coverage in order to construct a platform to try to gain an electoral advantage. Once again this process distracts from the main task of representing members' best interests.
- 4.4 Unlike many other unions, the EIS General Secretary does not have a direct vote on matters of policy and, as such, the EIS remains very much an elected member led union. In addition the General Secretary does not contribute in a formal sense to policy debates, although this is not constitutionally prohibited. If one of the aims of having a directly elected General Secretary is to facilitate the more direct involvement of the post holder in policy debate, this can be achieved without resort to an election process by simply allowing the General Secretary speaking rights but no voting rights.
- 4.5 In some trades unions, while the election process for General Secretary can result in either a "no contest" or a very limited turnout in the ballot, the relationship between the General Secretary and the other officials, officers and staff may also have undergone significant change as the General Secretary takes on a more "political" role rather than a "management" role within the organisation.

5. Issues to be Addressed if the EIS were to move to Elect its General Secretary

- 5.1 As indicated above, any move to a direct election involving the membership in the election of the General Secretary should be predicated on a change in the role of the General Secretary. In other words the General Secretary would become more "political", participative and directly involved in decision making.
- 5.2 A move to a direct election process could also have implications for existing and/or future employees of the Institute. These possible implications include:
 - (a) a move to a fixed term appointment might prove to be a disincentive for existing permanent staff;

- (b) rules on campaigning activity would have to take account of the position of permanent employees;
 - (c) consideration would have to be given to the position of unsuccessful permanent employees, particularly a defeated but previously elected, General Secretary. For example, would a permanent position be created for the deposed General Secretary or would a sufficiently attractive severance package be available to obviate the need for Employment Tribunal proceedings.
- 5.3 Consideration would have to be given to the manner of removing an unsuitable, elected General Secretary. Clarification would have to be sought whether the General Secretary had the status of an employee and that the existing, agreed, disciplinary procedure would apply.
- 5.4 The extent to which a directly elected General Secretary could vote at committee meetings would also have to be considered. (see paragraph 4.4 above).
- 5.5 Decisions would have to be taken on the length of the term of office of a directly elected General Secretary and the continuity which the EIS has benefited from in recent times may be jeopardy.
- 5.6 A number of crucial administrative matters would also have to be addressed prior to any move to direct election viz:
- (a) Any new process would have to define whether nominations would be restricted to EIS members or would be permitted from a wider base. Consideration would also have to be given as to whether nominations should have to come from Local Associations or would be permitted from individual applicants. A decision would also be required regarding whether the post would be advertised externally.
 - (b) The nature to the balloting process would also have to be agreed, for example, should all valid nominations appear on the final ballot paper. Consideration would also have to be given to the nature of any leeting process or whether a "preferred candidate" system should be introduced.
 - (c) Strict and detailed rules and procedures relating to campaigning and expenditure would also have to be agreed to ensure an even playing field for all candidates (see paragraph 5.2 (b) above).
 - (d) The voting method in the national ballot would also have to be agreed in advance involving either a first past the post system or one of the PR systems such as the alternative vote or STV.
 - (e) Finally, a decision would have to be taken about the length of term of office or whether the position would be subject only to the normal retirement age of the post-holder or dismissal (see paragraphs 5.3 and 5.5 above).

- 5.7 The first clause of the resolution refers to electing the General Secretary for a fixed term and this is referred to above in the context of direct elections. If the concept of the current "appointment" arrangements being akin to an electoral college arrangement is accepted, or even if it is simply regarded as an appointments mechanism, it is possible to consider further, the issue of a fixed term contract e.g. a 5 year term subject to renewal by the same process. This may be seen as addressing some of the arguments around accountability and a continuing mandate. A number of issues would require to be addressed but these are not insurmountable.
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