



Industrial Action: Management Guidelines

Owner: Human Resources Directorate

Updated: January 2023

Contents

1.	Introduction	2
2.	Types of Industrial Action	2
3.	Legal Principles.....	2
4.	Balloting for Industrial Action	2
5.	Results of the Ballot	3
6.	Assessing the Potential Impact of Industrial Action	3
7.	Record Keeping	3
8.	Communicating Industrial Action	4
9.	Failure to Declare.....	4
10.	Deduction of Pay.....	4
11.	Rescheduling Teaching Sessions	5
12.	Pension Contributions.....	5
13.	Leave Arrangements	6
14.	Employees Not Taking Action	6
15.	Health and Safety.....	6

1. Introduction

Brunel University London recognises four trade unions for representation and bargaining purposes; GMB, UCU, Unison and Unite. The University seeks to maintain constructive industrial relations with all our recognised trade unions. However, there are occasions where, despite collective efforts, matters may result in industrial action.

Brunel respects the right of employees to take part in legal industrial action and this guide has been developed to provide clarity on our approach to dealing with industrial action.

When industrial action does occur, Brunel will seek to maintain normal operations and services as far as possible. Most importantly, we will take all reasonable steps to fulfil our responsibilities to students in ensuring that any disruption is minimised and that students, as far as possible, are not disadvantaged by the action.

2. Types of Industrial Action

There are two forms of industrial action:

- i) strike action – the complete withdrawal of labour for a defined period of time, usual single and/or intermittent days, or for a continuous and specific period; and
- ii) action short of a strike (ASOS) - ‘partial performance’ of duties and involves the partial withdrawal of labour or a refusal to carry out specified duties.

3. Legal Principles

The law relating to industrial action is set out in the Trade Union and Labour Relations (Consolidation) Act 1992, often referred to as TULRCA.

While Brunel recognises that trade union members are entitled to participate in lawful industrial action, such action is likely to be a breach of contract and so there is no obligation to pay employees for work they have not undertaken.

In recognition of the legitimate role of industrial action in collective bargaining, trade unions members participating in lawful industrial action that is listed on the ballot notification are protected against disciplinary action including dismissal.

4. Balloting for Industrial Action

Trade unions are required to conduct a ballot before industrial action can take place. They must provide at least seven calendar days’ notice of their intention to hold a ballot.

The written notification must state:

- the date which the ballot will start;
- a list of the categories of employees entitled to vote in the ballot;
- a list of the workplaces where the employees work (if aggregated);
- the total number of employees concerned; and
- a copy of the ballot paper confirming the action being balloted on.

A ballot will only be valid if at least 50% of trade union members entitled to vote do so and the majority of those members support taking action. If the ballot does not meet the 50% threshold, any industrial action will not be protected by law.

A ballot can take place in relation to a matter at an individual institution or at a wider national level. A dispute that incorporates employees at more than one institution can also be regarded as a national issue and the trade union(s) can aggregate the votes cast in order to achieve their desired mandate. This is referred to as an aggregated ballot.

A ballot at an individual institution is referred to as a disaggregated ballot. Since the introduction of the Trade Union Act 2016 and the need to meet a 50% threshold, trade unions have increased their use of disaggregated ballots.

5. Results of the Ballot

Trade unions normally confirm the results of their ballot to their members and employers as soon as possible after the ballot closes. In the event that the ballot threshold of 50% is met and there is a majority 'yes' vote is achieved, the trade union must give at least 14 days written notice to the employer of the commencement of industrial action.

6. Assessing the Potential Impact of Industrial Action

It is important that Heads of Department consider the potential impact of industrial action so that contingency plans can be put in place to minimise disruption to students, employees and visitors.

A communication will normally be sent to employees encouraging them to let their manager know in advance if they intend to participate in industrial action. It is entirely appropriate for managers to ask employees about their intentions and they should do so courteously. Employees are not obliged to confirm their intention in advance of taking action but they must answer truthfully if they are asked after having taken action. It is important that colleagues are not in any way victimised for participating in lawful industrial action.

7. Record Keeping

It is important that we keep accurate records of employees taking part in action. This will assist with determining the impact of any action and with mitigating the effects of industrial action as far as possible.

Accurate record keeping is also essential to ensure there is a fair and consistent approach to withholding pay across the university.

All staff who participate in any strike action are required to record their absence from work in CHIME. This is recorded in the same way as other absences and 'industrial action' should be selected from the drop down list of absence reasons.

Where an employee is unable to record their own absence, the line manager can record the absence for them. Line managers should speak with colleagues to check whether they did take part in strike action and on which dates before recording absences in CHIME.

8. Communicating Industrial Action

The University is entitled to know which employees are participating in industrial action, whether full strike action or partial performance.

There is no obligation for an employee to tell their manager if they intend to take action in advance of doing so but they must answer truthfully if asked afterwards.

Prior to the first day of action, the HR Directorate will email employees to ask them to consider advising their Head of Department whether they intend to be working normally on the dates of actions to assist with managing any potential disruption to students and services.

Following the date or dates of industrial action, Heads of Departments (with assistance from HR) will email colleagues in their area(s) to ask them to record in CHIME if they took part in strike action so that the appropriate deductions from pay can be made.

Deductions from salary will normally be made in the first available pay run.

9. Failure to Declare

Departments will review the information returned by employees and if there is any uncertainty (e.g. a colleague who was scheduled to attend a meeting on a strike date but didn't and doesn't appear on the list) the manager should contact the employee in the first instance to ask again if they participated in industrial action.

If an employee takes action and does not declare when asked that they did so, the action will not be legally protected and will be a breach of their contract of employment. This may result in disciplinary proceedings.

10. Deduction of Pay

- Strike action

The University will withhold a full days pay for each day of strike action taken. A day's pay is calculated as 1/365th of salary.

Employees who do not attend work because of a refusal to cross a picket line will be treated in the same way as any employee taking strike action.

- Action short of a strike (ASOS)

Employees do not have a right to be paid unless they are ready and willing to perform their contractual obligations in full. This means that if an employee choses to take part in action short of a strike (i.e. they are willing to undertake some of their duties but refuse to perform others) the University has the option to either accept or reject the partial performance. In relation to a particular dispute, the University will make it clear in advance whether it will accept or reject partial performance.

The University reserves the right to reject partial performance and to withhold 100% of pay where an employee is participating in ASOS. However, we recognise the high-level of

commitment of employees to our students and understand that colleagues may choose to continue to perform some of their duties during industrial action to minimise the impact to their students. The University may therefore withhold a percentage of pay for ASOS; this percentage and the impact of partial performance on students will be kept under review.

Although working to contract and not undertaking voluntary duties suggests that an employee would not be in breach of contract, in practice there may be a breach of an express or implied contractual term. Implied terms can vary between departments but may include covering for absent colleagues and not rescheduling lectures missed due to strike action. In some cases, job descriptions and/or custom and practice may require an employee to undertake all teaching, research and administrative duties that are reasonably required. Therefore, if a reasonably managerial instruction is given asking an employee to re-prioritise their work to cover for an absent colleague or to reschedule missed teaching, refusal could be a breach of contract and in which case pay could be withheld.

The question in each case will be, was the duty the employee refused to undertake truly voluntary or non-contractual or was the University entitled to require the duty to be completed by reference to an implied contractual term, a written contractual term or custom and practice. Therefore, Heads of Department are advised to seek guidance from their Senior HR Business Partner on whether an employee's refusal to undertake a duty is a breach of contract.

11. Rescheduling Teaching Sessions

ASOS may include a refusal to reschedule teaching sessions that did not take place due to strike action. In some cases, it may not be necessary to reschedule teaching sessions. For example, where another colleague has covered the teaching or if a lecture has already been captured electronically.

Where teaching does need to be rescheduled, managers should ask employees returning from strike action to reschedule any missed teaching sessions. Employees should be given 7 calendar days to reschedule the teaching sessions. If the employee makes arrangements to reschedule the missed teaching within this time, no further pay will be withheld.

If an employee refuses to reschedule the missed sessions and has not done so at the end of the 7 day period, pay may be withheld at the rate of 25% for each day up until the teaching session has been rescheduled. Once teaching has been rescheduled the proportion of pay withheld will be refunded to the employee.

It may be necessary for managers to ask employees to re-prioritise work commitments to ensure they have sufficient time to undertake the missed teaching.

It is important to recognise that the timing of rescheduled teaching sessions may not be completely within the control of the employee, for example due to timetabling and room availability. Pay will only be withheld until the date the employee confirms the teaching has been rescheduled rather than waiting for the replacement session to take place.

12. Pension Contributions

Pension accrual

Pension benefits will not accrue during strike days if contributions are not maintained.

Employee's may however choose to continue full contributions during the strike action in which case, full employer contributions will also be maintained by Brunel meaning pension benefits would accrue as normal. Any elections to pay full contributions will automatically apply to all future strike action. Should employee's wish to make an election to pay full contributions or revert a previous decision they should contact pensions@brunel.ac.uk.

Life cover and ill health retirement benefits

If employee and employer contributions are not maintained during the industrial action life and ill health cover will continue to be maintained provided that the individual's total period of absence in respect of this strike period does not exceed 31 days. Special contributions will not be required during the strike action.

13. Leave Arrangements

Providing the University is aware of an employees leave of absence (including annual leave, sick leave, family leave and sabbatical leave) in advance, then they will not be treated as taking industrial action.

Annual leave requests authorised before notification of action will be honoured. Managers will need to be sensitive to the needs of students and carefully consider whether any requests for annual leave received after notification of the dates of industrial action can be authorised. Similarly, employees working in a hybrid manner may be required to work on campus to minimise the impact of industrial action on students and services.

14. Employees Not Taking Action

The majority of employees will be working normally. Staff are entitled to attend work without fear of intimidation and should not be put under undue pressure by other staff to take action.

Work may be re-allocated to those staff who are not involved in industrial action. Such requests should be reasonable and within the capabilities and experience of the employee concerned. Any training and/or health and safety issues should be addressed in advance.

Managers must give due consideration to workload distribution of those continuing to work normally with a view to minimising excessive demands.

15. Health and Safety

The University has a duty to ensure the health, safety and welfare at work of all our employees and visitors. Employees also have a duty to take care of their own health and safety and that of other people. This legal responsibility continues to apply during industrial action.

A health and safety risk assessment should be carried out at a College/Departmental level before action starts to ensure any risks to health and safety of employees, students and visitor is minimised as far as reasonably practical. Areas of particular attention include:

- lone working that may arise from the action
- impact of reduced staffing levels on safe systems of work
- any impact on staff or students with disabilities

- emergency evacuation procedures
- first aid provision
- fire marshal provision
- use of equipment, materials and research facilities

The University's security and campus support services encourage our trade unions to engage with them at the earliest convenience so that they we can ensure action takes place safely for those participating and for other members of the university community.