

Industrial Action: Management Guidelines

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1. Introduction

- 1.1 The University will be developing a new Industrial Action Policy in full consultation with the recognised trade unions over the coming months. In the meantime, this guidance has been prepared to give information and advice to Heads of Departments in respect of the current dispute with UCU.
- 1.2 UCU opened a ballot of its members calling for industrial action in November 2018 in response to proposed changes to the USS pension scheme. The ballot closed on 19 January 2018.
- 1.3 Previous ballots in relation to pay and pensions have been held at a national level. However, on this occasion UCU raised individual disputes with 64 institutions rather than one aggregated ballot across the sector. Brunel was one of 61 institutions where UCU secured a mandate for both strike action and action short of a strike (ASOS).
- 1.4 Under the Trade Union Act 2016, unions required at least 50% of their members entitled to vote in the ballot to do so for it to be valid. 51.2% of UCU members at Brunel voted. 80.4% of these members voted to support strike action and 92.3% voted to support ASOS.

2. What action is being taken and when?

- 2.1 UCU have indicated that they will be taking 14 days strike action in the first instance as follows:

Week one:	22 and 23 February	2 days
Week two:	26, 27 and 28 February	3 days
Week three:	5, 6, 7 and 8 March	4 days
Week four:	12, 13, 14, 15, 16 March	5 days

- 2.2 In addition to strike action, UCU secured a mandate for ASOS in the form of:

- working to contract;
- not undertaking voluntary activities;
- not covering for absent colleagues;
- not rescheduling lectures or classes cancelled due to strike action.

- 2.3 The action short of strike is proposed to be continuous and will start on 22 February 2018 and will terminate no later than 19 June 2018.
- 2.4 UCU can only call on its members to take ASOS in the above forms as listed on their ballot paper. They cannot ask members to take any other form of ASOS not listed, such as a marking boycott.
- 2.5 UCU have published FAQs for their members in relation to this period of industrial action. The FAQs encourage members not to share materials that would have been covered in a lecture or class cancelled due to strike action. This advice goes further than UCU's instruction to 'not reschedule lectures or classes cancelled due to strike action' and in effect presents a new category

of ASOS that was not included on the ballot paper (as required by the Trade Union Labour Relations Act) or in the notice of industrial action. As such, this would not be protected action and consequently disciplinary proceedings could be taken if warranted. Managers should seek further advice from their Senior HR Business Partner if an employee refuses to make available materials that would have been covered in a lecture or class cancelled due to the strike action.

3. Why is there a dispute?

- 3.1 UCU are protesting in relation to proposed changes to the USS pension scheme. The following summary is provided by the Employers Pensions Forum. Full details can be found on their website at <http://www.employerspensionsforum.co.uk/sites/default/files/uploads/uss-statement-benefit-reform-employees.pdf>
- 3.2 Essentially, the 2017 USS valuation showed that since the last valuation in 2014, the cost of meeting future scheme commitments has risen by a third, and the scheme deficit has increased by a further “2bn to £7.5bn. The trustees are therefore proposing to close the ‘defined benefit’ element of the scheme (previously a final salary and now career average salary related) and introduce a new ‘defined contribution’ scheme. Removing the guarantee of pension at a particular level upon retirement, so that the level of pension payments is instead dependent on the performance of the scheme’s investments.
- 3.3 The proposals only impact on future benefits; all members’ previously accrued benefits to the point of change are guaranteed.
- 3.4 We recognise that proposed changes to the USS pension scheme are complex and the University has therefore arranging for an external advisor, Mercer, to provide information sessions for employees over the next few weeks. Further details will be advertised on IntraBrunel shortly.

4. How many employees will be taking part in industrial action?

- 4.1 We do not know which employees are members of the union and how many members will be taking part in Industrial Action. However, the notice of Industrial Action received from UCU provides a breakdown of membership as shown in the table below.

Area (categorised by UCU)	Academic /Teaching	Other	Total
Arts & Humanities	26	2	28
Brunel Business School	20	2	22
BEEC	1	4	5
BRICS	0	2	2
CBASS Central Office	0	2	2
CEDPS Central Office	1	0	1
CHLS Central Office	0	3	3

Clinical Sciences	20	1	21
CEDPS (Other)	2	2	4
CMSR	0	8	8
Computer Centre	0	8	8
Computer Sciences	18	4	22
Design	4	0	4
Economics & Finance	17	2	19
Education	15	0	15
Electronic & Computer Engineering	16	2	18
Estates	0	2	2
Finance	0	1	1
Human Resources	0	2	2
Institute Environmental, Health and Societies	2	0	2
Institute of Materials & Manufacturing	1	1	2
Library	0	12	12
Life Sciences	26	4	30
Mathematics	18	3	21
Mechanical, Aerospace & Civil Engineering	14	3	17
Occupational Therapy	1	0	1
Office of the Vice Chancellor	2	0	2
Planning	0	3	3
Politics, History & Law	29	0	29
PDC	0	5	5
Registry	0	3	3
Research Support & Development Office	0	1	1
Social Sciences, Media and Communications	29	5	34
Student Services	1	12	13
NSIRC	1	0	1
Total	264	101	365

5. Legal principles

- 5.1 Industrial action is a breach of contract. Employees taking any form of industrial action will be breaching their contract because they will not be undertaking the work for which they are paid. Official industrial action is protected, subject to certain rules, for unfair dismissal purposes.
- 5.2 There is no obligation to pay employees for work that has not been done. Employees cannot have a contractual claim to be paid unless they are ready and willing to perform their contracts in full.
- 5.3 Legally an employee is not able to select which parts of their contracts they are willing to undertake. If they chose to take part in action short of a strike i.e. they are willing to undertake some contractual duties but refuse to perform others, they are refusing to undertake their full contractual duties and the University is entitled to reject the partial performance offered.

6. How much pay will be withheld for strike action and ASOS?

Strike Action

- 6.1 The University will withhold a full day's pay for each day of strike action. A day's pay for academic and professional grade (H grade) employees will be calculated at 1/365th of salary. Deductions for other staff groups, where contractual hours are set specifically, will be calculated at 1/260th. This is a revised calculation on previous arrangements and reflects recent case law. The new rate for deduction is applicable with effect from 1 February 2018.
- 6.2 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

- 6.3 Although working to contract and not undertaking voluntary duties suggests that employees would not be breaching their employment contracts, in practice it is possible that they could find themselves in breach of either express or implied contractual terms.
- 6.4 Implied terms will vary between departments and possibly even between employees but it is likely that refusing to cover for absent colleagues and not rescheduling lectures missed due to strike action would be a breach of contract. In some cases job descriptions and/or custom and practice will require an employee to undertake all teaching, research and administrative duties that are assigned by their manager. Therefore, if a reasonable managerial instruction is given asking an employee to re-prioritise their work to cover for an absent colleague and/or to reschedule missed teaching, refusal to do so will likely be a breach of contract and pay can then be withheld.
- 6.5 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 should be 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.
- 6.6 The University does not accept partial performance and reserves the right to withhold 100% of pay where any employee is participating in action short of a strike. However, we recognise the high level of commitment of our employees to their students and understand that employees may choose to continue to perform some of their duties during industrial action to minimise the impact on their students. The University will continue to assess the impact of partial performance on students and the percentage of pay to be withheld.
- 6.7 At this stage, the University will deduct 25% of a day's salary for partial performance of duties including refusal to reschedule teaching sessions, cover for absent colleagues and any express or implied contractual terms.

- 6.8 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.
- 6.9 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. However, if an employee refuses to reschedule the missed sessions and has not done so at the end of the 7 day period, pay will 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.
- 6.10 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.
- 6.11 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. Therefore, 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.

7. What happens to pension contributions when pay is withheld?

- 7.1 The University does not have to pay pension contributions during any period an employee is on strike where pay has been stopped. For USS, if contributions are not paid in full for each day of industrial action then these days would be treated as days of 'suspended membership' although the USS Executive have agreed that they will waive the cost of death in service cover for any member/institution who does not maintain full contributions during these days. In any event, the University has agreed to continue paying pension contributions for employees on strike to ensure there is no loss of pensionable service. This will be kept under review depending upon the duration of industrial action and impact on students.
- 7.2 The University will continue to pay full contributions for the period of strike action, including employee contributions. However, as USS have made arrangements for death in service and incapacity cover to remain in place for USS members taking strike action and ASOS where full contributions are not made, employees can choose to opt out of their pension contributions for these dates if they wish by contacting the HR department.

8. How will the University know if an employee is taking industrial action?

- 8.1 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 strike before the day but they must answer truthfully if asked afterwards.

- 8.2 Prior to the first day of strike action, the HR Directorate will email employees to ask them to advise their Head of Department whether they intend to be working normally on the dates of strike action. A copy of the email is below:

Dear Colleagues,

As you may be aware, UCU have called for industrial action in relation to proposed changes to the USS pension scheme. We have received formal notice that strike action has been confirmed for the following days:

- *Thursday 22 and Friday 23 February*
- *Monday 26, Tuesday 27 and Wednesday 28 February*
- *Monday 5, Tuesday 6, Wednesday 7 and Thursday 8 March*
- *Monday 12, Tuesday 13, Wednesday 14, Thursday 15 and Friday 16 March*

In addition, UCU has confirmed that there will be action short of a strike (ASOS), commencing 22 February until no later than 19 June 2018, during which UCU members who take part in the ASOS will be working to contract, not undertaking voluntary activities, not covering for absent colleagues and not rescheduling lectures or classes cancelled due to strike action.

In order to minimise disruption to our students, please advise your Head of Department whether you intend to be working normally on these dates.

Following the strike days a further email will be sent to you from your Department for final confirmation as to whether or not you have taken strike action. If strike action has been taken the appropriate deduction of salary will be made.

Please note the University does not accept partial performance of duties and reserves the right to withhold full pay for ASOS that amounts to breach of contract. However, we recognise the high level of commitment of our employees to our students and understand that employees may choose to continue to perform some of their duties during industrial action to minimise the impact on their students. The University will continue to assess the impact of partial performance on our students and the percentage of pay to be withheld. At this stage, the University will deduct 25% of a day's salary for each day of partial performance of duties that amount to breach of express or implied contractual terms. This will be reviewed again after the first two weeks of action.

The University has agreed to maintain pension contributions during strike action so that there is no loss of pensionable service for employees striking on these days. The University will keep this under arrangement under review depending on the duration of industrial action and impact on our students. USS have made arrangements for death in service and incapacity cover to remain in place for USS members taking strike action and ASOS where full contributions are not made and so employees can chose to opt out of their

pension contributions for these dates if they wish by contacting the HR department.

Further details are available from your Senior HR Business Partner.

Thank you and regards,

*Jane Drysdale
Director of Human Resources*

- 8.3 Heads of Departments should email all employees in their areas to ask whether they took part in strike action so that the appropriate deductions from pay can be made. An email should be sent on **1 March** with regards to the February dates and again on **17 March** for the March strike dates. Suggested email wording is provided below with the bracketed sections to be included/deleted as appropriate:

Dear Colleagues.

Further to recent correspondence from HR regarding the strike action scheduled for [22, 23, 26, 27 and 28 February] [5, 6, 7, 8, 12, 13, 14, 15 and 16 March], we need to ensure information on those who took strike action is communicated to payroll. [Deductions from pay for strike action taken in February will be made from March salary payments] [Deductions from pay from strike action taken in March will be made from April salary payments].

Therefore, please let [me] [named delegate] know by no later than [8 March 2018] [26 March 2018] whether you participated in the [February] [March] strike action and if so whether you took strike action on all days or just single days. If action was taken on single days please also confirm the specific dates.

If you have any questions regarding the above please contact your Senior HR Business Partner.

Regards

[Name & Position]

- 8.4 Heads of Department should return to your HR Business Partner the following information by no later than 12 March for February strike dates and by 9 April for March strike dates:
- Employee full name
 - Employee ID (if possible)
 - Dates of strike action taken

9. What happens if an employee takes action and does not declare it?
 - 9.1 Heads of Departments should review the information returned by employees and if there is any uncertainty, for example if a colleague who was scheduled to attend meeting on a strike day and doesn't appear on the list, the Head of Department should contact the employee in the first instance to ask if they had taken action.
 - 9.2 If an employee takes action and does not declare, the action is not legally protected and will be in breach of their contract of employment. This may result in disciplinary action.
10. What about employees who are on annual leave, off sick, on family leave or on sabbatical?
 - 10.1 As long as the University is aware of the employee's genuine absence they will not be treated as taking action.
 - 10.2 Employees on pre-agreed annual leave for strike dates will not be recorded as having taken strike action. In general, managers need to be sensitive to the needs of the University and carefully consider whether any requests for leave can be authorised during a period in which services may be affected.
11. Where can I find out further information?
 - 11.1 Further advice is available from your Senior HR Business Partner if there is any doubt about the appropriate course of action to be adopted.