
From: Head of Employee Relations Date: November 2019

UNIVERSITY GUIDANCE

1. Introduction

1.1 The University has been notified by UCU that their members will be taking industrial action in response to the final pay offer made by UCEA in the 2019-20 collective pay negotiations and in respect of the USS contribution increases. Their intention is for there to be continuous action short of a strike which will consist of their members:

- working to contract;
- not covering for absent colleagues;
- not rescheduling lecturers or classes cancelled due to strike action;
- not undertaking any voluntary activities;
- not sharing materials relating to lectures or classes cancelled as a result of strike action.

1.2 Potentially, this action could amount to partial performance. The University has on several occasions made clear to employees that it will not accept partial performance of a contract of employment and that any industrial action is a breach of contract for which it is entitled to withhold 100% of salary for any day during which industrial action is taken. Full details are set out in the Withholding Pay Policy. This means that if the employee decides to take part in this industrial action and do not fulfil all the requirements of their contract, they would consequently not be entitled to their contractual pay whilst participating in such action.

2. Legal and contractual position

2.1 During this period of action short of a strike, the University expects staff to continue to carry out all of their contractual duties as set out in their job description, contract of employment, those that have been assigned to them by their line manager and those that are undertaken by custom and practice. An employee is entitled to refuse to carry out duties above and beyond those contractually required; and a refusal to do work that is genuinely voluntary is not a breach of contract.

2.2 In practice standard contracts for academics and professional and managerial staff at level 4+ refer to a job description which is typically broad. However, the job description does make it clear that employees are required to carry out “any other duties as allocated by the line manager following consultation with the post holder”. Managers are entitled to give their staff lawful and reasonable instructions about how to exercise their contractual duties including instructions about the prioritisation of work and timescales for completion. Where staff have discretion regarding how to carry out their contractual obligations, this discretion must be exercised for the benefit of the University.
2.3 The University considers providing cover for absent colleagues and rescheduling lecturers or classes cancelled due to strike action is established custom and practice. The University’s position is where the request to cover work is within an employee’s own work area and there has been previous practice of staff covering for colleagues this would amount to a lawful contractual instruction. It would also be a reasonable management instruction to ask that staff prioritise the rescheduling of work missed due to strike action, including cancelled lectures and classes. A refusal to carry out these reasonable management instructions will amount to a breach of contract and to partial performance.

3. Pay arrangements

3.1 Where a clear breach of contract does occur, the University reserves the right to withhold 100% of pay, at a daily rate of 1/365th of annual salary, and to continue to withhold pay until the employee resumes their contractual duties in full. The University will not reinstate any pay which has been withheld once the employee resumes their full contractual duties.

3.2 However, it has been decided that, in the first instance, the University will not withhold pay for partial performance arising from this period of action short of strike. This position will be reviewed at regular intervals during the dispute and, based on an assessment by the University of the impact from the action short of a strike, the University may decide to withhold an amount of pay, proportional to the impact for a specified period. If, during the specified period, the action short of strike escalated and the impact seriously increased, the University would then withhold 100% of pay.

3.3 For clarity, the University reserves the right (without prejudice to the right to withhold 100% of pay at a later time) to vary the proportion of pay withheld during any period where the continued action short of strike begins to have a very serious impact on students and the University as determined at the University’s sole discretion.

3.4 Where the University decides to withhold pay, that pay will be withheld from the employee on a continuous basis, either from when the employee informs the University that they are participating in the industrial action and refuses to carry out their full contractual duties through partial performance of their contract, or from when it becomes evident from other information that the employee is participating in industrial action. Pay will be withheld until such time as the employee returns to their full contractual duties.

4. Notification of participation

4.1 In order that the University can plan properly, the employee must inform their Associate Director of Faculty Operations (for academic staff) or Director of Service (for Professional Services staff) immediately at the point they commence participation in the above action short of a strike, on or after Monday 25 November 2019. If the employee later decides to change their position regarding their involvement in the industrial action or resume working normally, they must inform their Associate Director of Faculty Operations (for academic staff) or Director of Service (for Professional Services staff) immediately in writing.

5. Pension contributions

5.1 The University is not obliged to pay pension contributions where pay is withheld for participating in a strike of one or more days’ duration or action short of a strike. To demonstrate its good faith, the University has decided to initially maintain pension contributions and continuity of membership where individuals have participated in the industrial action, including partial performance. However, the University reserves the right to review this decision as part of its overall mitigation arrangements at any point during this continuous period of industrial action.
| Last updated: | 14 November 2019 |
| Consulted: | IAPG  
HR SLT |
| Date consulted: | 12 November 2019  
14 November 2019 |
| Date to JJNC: | N/a |
| Date approved: | N/a |
| E&D Assessment: | Yes, 13 February 2018 |
| Date reviewed: | 08 November 2019 |
| Author: | Kate Walmsley – Employee Relations Policy Specialist |