UNIVERSITY GUIDANCE

1. Introduction

1.1 The University has been notified by UCU that their members will be taking industrial action in relation to the proposed changes to USS and failure to agree a collective agreement protecting pension benefits. Their intention is for there to be continuous action short of a strike which will consist of their members:

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

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 from the date when they stated to participate in the 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 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. However, it has been decided that, in the first instance, the University will withhold 25% of pay at a daily rate of 1/365th of annual salary (equivalent to 1.25 hours per day, assuming 35 hours worked across 7 days) from the date on which the employee began to take part in the industrial action short of a strike and it becomes evident they are not fulfilling their full contractual duties. The payment of salary for the remaining 75% is discretionary and conditional on other contractual responsibilities and attendance commitments being met. This will be reviewed at regular intervals during the dispute.

   3.2 The University reserves the right to increase the percentage withheld up to 100%, during any period where the impact of partial performance, including to our students, has become even more serious.

   3.3 Please note that pay will be deducted 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, 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 and ensure that correct deductions are made, the employee must inform their Head of Faculty Operations (for academic staff) or line manager (for Professional Services staff) immediately at the point they commence participation in the above action short of a strike, on or after Thursday 22 February 2018. If the employee later decides to change their position regarding their involvement in the industrial action or resume working normally, they must inform their Head of Faculty Operations (for academic staff) or line manager (for Professional Services staff) immediately in writing. The employee’s salary will then be reinstated to their normal contractual salary from the date on which their return to normal working. Any pay withheld will not be reinstated.

5. **Pension contributions**

   5.1 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.

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Kate Walmsley | February 2018
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