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UNIVERSITY MANAGEMENT TACTICS ON STRIKE AND ASOS PAY DEDUCTIONS — AND WAYS TO PUSH BACK

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University management tactics on strike and ASOS pay deductions—and ways to push back

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In this brief we address how a number of university managements are taking aggressive stances on pay deductions for the [current](#) UCU strike and Action Short of a Strike (ASOS). We suggest actions that UCU members can take to defend themselves against these stances, and remind members of how successful collective action was during the 2018 pensions strike in combatting punitive approaches to ASOS (see [#USSbriefs9](#) by Andy Balmer). We consider five areas:

1. The rate at which pay is deducted for striking
2. The continuation of pension contributions
3. The first month in which pay is deducted for striking
4. The number of months over which pay is deducted for striking
5. The threat of deducting pay for not rescheduling teaching after the strike

UCU members should be able to find their own institution's stance on these areas in a letter from the Vice-Chancellor or head of Human Resources (HR), or in a set of 'Industrial Action FAQs for staff' in the HR section of the website. For example the Durham University FAQs are [here](#). We have [collected](#) institutional statements and encourage you to compare your own university against others. We have also [compared](#) statements on points 1, 2, and 4 above. (We welcome further submissions. Send documentation to USSbriefs@gmail.com. Sender's details will always be anonymised.)

1. The rate at which pay is deducted for striking

In earlier UCU strikes, some institutions deducted pay at the rate of about 1/260th of annual salary per day (based on the number of weekdays in the year). This time almost all institutions are deducting at the rate of 1/365th of annual salary per day. This follows the decision in the Supreme Court case [Hartley and others v King Edward VI College \(2017\)](#). However, one or two institutions, such as [Queen's University Belfast](#), have said they will deduct pay at 1/261st for staff in grades 1–5 and at 1/365th only for staff in grade 6 and above.

Advice for members:

If your institution has said that your pay will be deducted at 1/261st, check your contract. If it includes a clause saying that you are required to work the hours required to do the job rather than specifying a certain number of hours per week, then your pay should only be deducted at 1/365th. Contact your branch for advice. The branch can write to the management of the institution on your behalf, pointing to the Supreme Court decision and asking them to revise their decision in light of it.

2. The continuation of pension contributions

University employers have a choice over whether they pay or suspend pension contributions for the period that staff are striking. In previous strikes, many universities have continued to pay pension contributions. If contributions are not continued, any unpaid strike days will not count towards individuals' scheme membership. UCU has more information on this aspect of strike pay deductions [here](#).

There are different institutional positions on the continuation of pension contributions during the present strike.

For example [University of Exeter](#) has said 'the University can use its discretion to continue to make its employer contribution: in this case the employee will continue to make his/her contribution. This will mean that the period of the strike will continue to count as pensionable service'.

By contrast, [Edge Hill University](#) has informed staff it will not be paying pension contributions over the period of the strike, so that this period will not count as pensionable service.

Advice for members affected:

Check your university's position on pension contribution deductions. If your university has said it will deduct pension contributions, ask your branch to take this up with the management. Branches can point out that this policy is more punitive than that of many other institutions.

3. The first month in which pay is deducted for striking

Some institutions have said that they will deduct pay 'as soon as practicable' or 'as soon as possible'. In this case, what matters is whether a staff member reports that they were on strike in November before or after the institution's 'payroll deadline' or 'payroll cut-off

date' for December. This is the date near the start of each month by which information about a staff member's previous month's activities must reach the payroll office so as to be included in the calculation of the staff member's salary payment to be made at the end of the present month. The December payroll deadline may be earlier than for other months if the December salary payment date is earlier. Members should be able to find a list of monthly payroll deadlines and salary payment dates for 2019 by searching the HR pages of their institution. For example the list for University of Cambridge is [here](#).

In these institutions, if members report that they were on strike on 25–29 November before the December payroll deadline, then pay for those strike days will be deducted from their December pay. If they don't report this till after the December payroll deadline, then pay for those strike days will be deducted from their January pay, along with pay for the strike days on 2–4 December. Members are not obliged by law to declare that they have been on strike until after the period of striking has finished.

Other institutions have specified that they will deduct pay for the strike in certain months: for example, spread over the January, February and March 2020 payments.

Advice for members affected:

If you are in the first group of institutions you may wish to declare your November strike days early so as to spread the deductions over December and January, or declare them late so as to delay them all to January. But you can also ask your branch to take up the issue with management, so that you are not forced into this choice. The branch can write to the management asking them to revise their position and follow the lead of other institutions which have declared that they will deduct pay over three months beginning in January. See section 4 below.

4. The number of months over which pay is deducted for striking

For those institutions that have said that pay will be deducted 'as soon as practicable', this means it will be deducted over two months or in a single month, depending on how early staff members declare that they have been on strike, as explained above.

For those institutions that have specified the months in which pay will be deducted, some have stated that this will be in a single month, some over two months, and some over three months. For example, University of Aberdeen, University of Cambridge, City University of London, Royal Holloway, University of London and University of St Andrews have stated that pay will be deducted over three months. (See the appendix for their statements.)

Advice for members affected:

If your institution is planning to deduct in a single month, support your branch in arguing for a fairer timescale. Branches can write to the management arguing that taking all pay in a single month is both unnecessarily punitive and also potentially discriminatory, and asking for deductions to be spread over three months as at the above mentioned institutions.

The discrimination argument is this: There is a substantial BAME and gender pay gap nationally; there is very likely to be one at this institution. Also, choosing a one-month rather than a three-month deduction period will disproportionately impact lower-paid staff, because they will be living closer to the breadline. Therefore it will disproportionately impact BAME and women staff. In many jurisdictions it has been ruled that a policy is discriminatory if it disproportionately disadvantages those with a protected characteristic and if the basic aim of the policy could have been achieved without this disproportionate impact. This is regardless of whether there is any intention to discriminate. See the discussion of 'indirect discrimination' in the *Stanford Encyclopedia* article on ['Discrimination'](#). Therefore, choosing a one-month rather than a three-month deduction period is discriminatory towards BAME and women staff members. As such, it is likely to be incompatible with the institution's own equalities policy and may potentially even be unlawful.

5. The threat of deducting pay for not rescheduling teaching after the strike

UCU has called for members to engage in the following forms of ASOS from 25 November 2019 onwards:

- work to contract
- not cover for absent colleagues
- not reschedule lectures or classes cancelled due to strike action
- not undertake any voluntary activities.

These forms of ASOS do not include a marking and assessment boycott. UCU [provides](#) more detailed advice for academic-related and professional services staff.

Meanwhile, immediately after the UCU ballot results the Office for Students (OfS) issued a briefing note ['Response to disruption caused by industrial action'](#) in which it rehearsed the conditions of registration for HE institutions, including, 'The provider must [...] provide and fully deliver the higher education courses advertised', and implicitly

threatened institutions with de-registration if they do not 'take reasonable steps to avoid or limit disruption and do everything possible to minimise or make up for its impact'.

This advice seems to have led a number of institutions to demand that staff who have taken strike action reschedule teaching activities that would have taken place during the strike, and even to claim that failure to do this will constitute 'partial performance of duties' and to 'reserve the right' to deduct up to 100% of salary per day for such partial performance.

However, a number of institutions have taken a more conciliatory stance. For example, [Heriot-Watt University](#) lists the above forms of ASOS and then states: 'Based on the above, we do not consider the ASOS would result in partial performance of duties. Therefore, whilst we recognise that this will have some impact on University life, we do not consider it necessary or appropriate to deduct any pay in relation to the ASOS as defined above'.

Other institutions have said that they will not withhold pay for the ASOS as defined above, at least unless circumstances change, for example: University of Cambridge, City, University of London, University of Edinburgh, Institute of Development Studies, University of Kent, University of Sheffield, University of St Andrews and University of Ulster. (See statements in the appendix.)

We should remember that one reason for the overwhelming rejection by members of the [ACAS agreement](#) negotiated during the USS strikes between UCU and Universities UK (UUK) on 12 March 2018 was that it included the clause, 'UCU undertakes to encourage its members to prioritise the rescheduling of teaching in order to minimise the disruption to students' (see report in [The Guardian](#)).

In threatening to deduct up to 100% of pay for refusal to carry out a specific duty, such as rescheduling a lecture, institutions are relying on the assumption that this would constitute a 'partial performance' of contractual duties, and on the case [Miles v Wakefield Metropolitan District Council \(1997\)](#), in which Lords Bridge and Brightman decided that employers were entitled to deduct 100% of pay per day for partial performance. However, it could be argued that requiring that in the period after a strike a teacher does the teaching they would have done during the strike, *as well as* the teaching they would normally have to do in the post-strike period, is tantamount to depriving them of the fundamental right to withdraw their labour. It is doubtful whether a management would wish to test this in court. Therefore there is likely to be an element of bluff in these threats.

Advice for members affected:

If your institution is threatening to withhold pay unless members reschedule lost teaching activities, support your branch in urging them to retract this threat. Some points that branches can make are:

In general, the demand that teaching staff perform extra teaching activities in the period immediately following a strike *over and above* those they would have performed in that period, in such a way that overall no teaching is lost, undermines the right of teaching staff to withdraw their labour.

It is quite possible to conform to the requirements of the OfS without making this demand.

In the present case, demanding that teaching staff cram an extra eight days worth of teaching into the remainder of term, alongside teaching already scheduled for that period, creates a serious burden of stress on those staff and raises individual health and welfare implications. It may put the institution in breach of the [Management of Health and Safety at Work Regulations 1999 \(sec. 3\)](#), which apply to mental as well as physical health.

Such cramming would be logistically impossible given the limits on teaching space in most institutions.

It would also be detrimental to students' education and indeed their wellbeing.

In the end, it is willingness of branches to argue forcefully with managers, and of members to back them up, which can persuade them to step back from punitive stances. And let us never forget how much strength is gained by working collectively at a national level to shame those institutions who persist in acting in the most punitive manner possible.

Further support

Branches can contact their [regional officials](#) for support on the above issues. On health and safety related issues branches can contact [Adam Lincoln](#).

Members can also join the [UCU activists discussion email list](#), and use it to share information between branches on what has been effective in shifting the stance of managements on pay deductions.

Appendix: Helpful statements by some institutions

1. On timing of pay deductions for strikes

'Following a constructive meeting with Aberdeen UCU, we have agreed that pay deductions for November and December action will be made over a three-month period:

in the payrolls for January, February and March'. ([University of Aberdeen](#), 20 November 2019)

'Where it is not possible to administer adjustments to pay by the payroll cut-off date for that month, the deduction will be made in a subsequent month. [...] To minimise financial hardship on members of staff during the strike action period, deductions will be phased over three months, unless individuals elect on the participation form that deductions should not be phased'. ([University of Cambridge](#), 29 November 2019)

'[W]e will phase the deductions from salary over three months starting with the January salary payment'. ([City, University of London](#), 15 November 2019)

'As we are entering the festive period, any reductions in pay for this specific strike action will be applied over a three month period from January to March 2020'. ([Royal Holloway, University of London](#), 18 November 2019)

'[Pay] will be deducted over the course of the following 3 payroll months (January (3 days), February (3 days), March) (2 Days)'. ([University of St Andrews](#), 6 November 2019 or before)

2. On deducting pay for ASOS

'The University has decided not to withhold pay for ASOS at this time; however it reserves the right to review this decision during this period of industrial action, depending upon the nature and extent of the disruption and its impact on students'. ([University of Cambridge](#), undated)

'The ASOS called by UCU has the potential to have a serious adverse effect on students. Where a breach of contract does occur we reserve the right to withhold 100% of pay, at a daily rate of 1/365th of annual salary. However, in the first instance and in view of the imminent date of the end of the term at City (6th December 2019), we have decided that we will not withhold pay from the outset of the the period of ASOS but will continue to keep the severity of the impact of ASOS under review'. ([City, University of London](#), 15 November 2019)

'Although entitled to do so, the University has decided its initial approach will be not to withhold pay if you are partially performing your contract due to taking action short of a strike. We do however reserve the right to amend this position depending on the impact of the action on University business.

You will be partially performing your contract if you:

- refuse to reschedule lectures or classes which were cancelled due to strike action
- refuse to share materials relating to lectures or classes cancelled as a result of strike action, and/or

- refuse to cover for absent colleagues (unless contractually required)'. ([University of Edinburgh](#), 15 Nov 2019)

'The UCU have advised us that action short of strike will consist of: working to contract; not covering for absent colleagues; not rescheduling lectures or classes cancelled due to strike action; not undertaking any voluntary activities. The Institute will not withhold pay for action short of a strike'. ([Institute of Development Studies](#), 15 November 2019)

'Will I lose pay if I participate in the proposed ASOS? No — not at present. Although participation in some forms of ASOS proposed by UCU (eg not covering for absent colleagues and refusing to reschedule lectures or classes) is likely to mean you will not be performing your full contractual duties and would therefore be in breach of contract, and although the University rejects such partial performance of the employment contract, the University has decided not to make any deductions from pay in respect of ASOS for the time being'. ([University of Kent](#), undated)

'On Action Short of a Strike, the advice we have received from the University and Colleges Employers Association is that the following are likely to amount to a breach of contract and to partial performance:

- Refusal to reschedule lectures or classes cancelled due to strike action
- Refusal to share materials relating to classes cancelled due to strike action
- Refusal to cover for absent colleagues

The University is entitled to withhold pay for those elements of Action Short of a Strike which amount to partial performance. In St Andrews, however, we have decided that we will not withhold pay for ASOS, although we reserve the right to change our position on this matter in future, should we believe it necessary to safeguard the interests of our students'. ([University of St Andrews](#), undated)

'The action short of a strike called by UCU has the potential to have a serious impact on our students. However, at this stage, we will not deduct any pay from staff who participate in this type of action. We will assess the impact of any action on an ongoing basis and review our decision accordingly. If our position needs to change, we would only make pay deductions if there is a breach of the contract of employment'. ([University of Sheffield](#), undated)

'The University has no plans at this time to deduct salary arising from action short of strike. If this is reviewed, we will update this information'. ([University of Ulster](#), undated)

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