

# University of Leeds UCU Statute Dispute Action Short of Strike FAQs: Working to Contract 2017

## 1. Why has the union called industrial action?

During the ballot period UCU negotiators have met informally with University management both informally and formally to discuss the outstanding issues that remain regarding the proposed new Employment Statute. Regrettably insufficient progress has been made during the negotiations to consider ending the dispute or calling off industrial action. The University remains wedded to the substantive issue of introducing a procedure that ultimately will enable employees to be dismissed for unspecified substantial reasons (SOSR). In addition UCU negotiators have not been able to maintain the status quo position of the inclusion of a medically qualified chair for appeal panels deciding on potential ill health dismissals or an independent legally qualified practitioner chairing appeals for conduct and capability dismissals. The University has though conceded that SOSR dismissal appeals will be chaired by an independent legally qualified chair.

In addition because no agreement has been reached on the above issues the University has chosen to go ahead with a short “enabling” employment statute with employment procedures being reduced to Ordinances. This is contrary to the understanding which has underpinned these lengthy negotiations, that is, all procedures would remain within Statute.

In a ballot which closed on 26th May 2017, 67.3%% of members voted to support strike action and 77.3% voted for 'action short of a strike'.

## 2. What industrial action has the union called?

UCU has called strike action for 22nd June, 2017 and has called 'action short of a strike' with effect from Friday 16th June 2017 in the form of a 'work to contract' and an instruction not to work in excess of the maximum number of hours as expressly stipulated in your contract of employment, or, where they are stipulated in a workload agreement. In any event you should not exceed the maximum number of 48 hours per week as stipulated in the Working Time Regulations.

Detailed guidance on Action Short of Strike: Working to Contract is set out in this guide.

### **3. What is working to contract?**

'Working to contract' is defined as 'where members stick absolutely to the parameters of their contractual duties or other terms in their contract. An employee is entitled to refuse to carry out duties above and beyond those contractually required.' Or, in common parlance, to refuse to 'go the extra mile'. Check what your contract says about your working time and duties as you read this guide. If your contract makes a specific reference to weekly hours and particular duties you must work whatever is stated.

### **4. What does this mean in the case of UCU members?**

In general, this means:

- performing no additional voluntary duties, such as out of hours cover, covering for colleagues (unless your contract can require this of you), or attending weekend open days etc.
- setting and marking no work beyond that work which they you contractually obliged to set and/or mark or which you are competent to do
- attend no meetings where such attendance is voluntary on your part
- undertake no duties that breach statutory guidance, health and safety policies or other significant employer's policies.

### **5. What is the situation if I am asked to attend a weekend open day?**

Academic members of staff volunteer to participate in weekend open days, and this was the position that was agreed between the University and the union several years ago in JCUU. Custom and practice does not over-ride the fact that your participation is voluntary and therefore a matter of goodwill. You may withdraw that goodwill as part of the work to contract. Admissions staff / tutors are expected as part of their role to work on weekend open days and this may be read as contractual and so we advise that you continue in that role on weekends. If you are not directly involved in admissions and you are instructed by a line manager to attend a weekend open day please contact the union for further advice.

### **6. What should I tell my employer if they ask if I am participating in action relating to working to contract?**

You should wait until you are asked by your manager or a person in authority whether you are participating in 'action short of a strike' and then answer as follows:

Dear [Name],

As you will be aware, following a recent ballot, UCU is calling on its members to take continuous action short of strike from Friday 16th June 2017. This is to take the form of working to contract. I am writing to inform you that I shall be working the hours stipulated in my contract or workload agreement and no more. In addition, I will perform no additional voluntary duties, such as out of hours cover, or covering for colleagues, unless this is a contractual requirement, nor will I set and mark work beyond that which I am contractually obliged to set and/or mark, nor will I attend meetings where attendance is voluntary. I will not undertake duties that breach the University's health and safety and I will work strictly in accordance with the university's policies or procedures having contractual force.

As I will therefore complete my contractual duties on a weekly basis and in any one week I will not expect the University to make any deductions from my salary save in respect of any strike action which I might take. I will raise a formal grievance if I am deducted pay whilst I am working in accordance with my contract.

**7. My contract says I must work 'such hours as are reasonably necessary to perform my duties' - What action can I take?**

The union has called 'action short of a strike' consisting of a refusal to work beyond a 37 hour week (or pro rata if you work on a less than full time contract). This is on the premise that the range of duties that can be lawfully and reasonably required of you to carry out in any one week can be achieved in 37 hours. The inclusion of the word 'reasonably' in your contract necessarily means that you are not obliged to work an unreasonable numbers of hours in any single week. You should, therefore, work no longer than a 37 hour week for the duration of the action. Work that cannot be reasonable completed in one week should be carried forward into the following week. **But, to be clear, you are not being asked to refuse to carry out a task which is within your contractual responsibility to undertake.**

Most academics have reasonable autonomy over their working time, and you should plan your work to ensure a sensible daily work/life balance and with the aim of completing your normal contractual duties, including anything which is urgent, within the 37 hours.

**8. What should I do if I believe I will not be able to complete my normal contractual duties within any particular 37-hour week limit?**

You should inform your manager that you are supporting the UCU 'action short of a strike' (ASOS), let them know about the competing priorities you believe will be difficult to meet and ask them to tell you in writing which tasks the university wishes you to prioritise.

**9. If I do not get something done which is part of my normal contractual duties, should I do it the following week?**

Yes. It is important that the tasks and functions you normally carry out are discharged. The work to contract does not mean that duties should not be done - it is simply a question of when you do them, and not exceeding the maximum hours that your contract stipulates. If you need guidance on competing priorities, you should ask your manager to set out in writing the tasks the university wishes you to prioritise.

**10. Should I do work in my own time?**

You should not be working beyond the reasonable limit of 37 hrs per week, and, so far as possible, these hours should be worked in the normal working week of Monday to Friday. So, for example, you should not be reading or responding to emails in the evenings or at weekends.

**11. Should I work at weekends or evenings?**

You should not carry out directed work at weekends or evenings unless instructed in writing to do so and the work you are instructed to do is part of your normal contractual duties. When you do, you should insist on reasonable notice and count these hours against the 37 hour per week total. If you are consistently being asked to work at weekends or evenings you should raise a grievance, seeking a work/life balance consistent with the university's own policies.

## **Additional duties**

### **12. What might constitute 'additional duties'?**

An additional duty is one which is beyond your normal contractual duties. This will vary but our legal advice is that you should ask yourself in this regard whether you are being asked by management to 'go the extra mile' in order to perform this duty. This might include being asked to 'volunteer' for a departmental committee or role, cover at short notice someone else's teaching, staff a student open day, mark work which is beyond your own area of academic expertise, perform administrative duties more normally done by another member of staff and so on. Duties which are unlikely to be 'additional' are those which you have regularly performed before, or are customarily done by staff on your grade or in your position.

### **13. What should I say if I am asked to perform an additional duty?**

The determination of an additional duty may not always be easy to decide. If you are clear that you are being asked to 'go the extra mile' you should respond, in writing, as follows:

I am supporting UCU's 'working to contract' action. I consider xxxxxxxxxxxx an additional duty not covered by my normal contractual duties and, having sought union advice, will not be performing it. Please be advised that in line with UCU's 'action short of a strike' I am continuing to perform my normal contractual duties and that no deductions from my salary should therefore be made.

If you are unsure, you would be better advised to agree to perform the duty, but make it clear that you intend to raise a grievance about the instruction as you consider it to be unreasonable and beyond the terms of your contract. You should also ask what other duties you should de-prioritise to undertake the additional duty, having regard to the overall maximum 37 hour per week.

### **14. Can I refuse to cover for absent colleagues?**

Our legal advice is that unless it is explicitly stated within your contract, you should refuse to cover for colleagues unless this is a clearly established custom and practice within your department. Where custom and practice does exist and this is therefore part of your normal contractual duties, you should ask in writing that allowance be made for the cover you are providing in your workload for that week and you should count the hours you spend covering a colleague towards your 37 hour maximum.

### **15. Can I refuse to undertake duties associated with my line manager if they are absent?**

Yes, unless it is explicitly stated within your contract that you will undertake duties normally performed by your line manager, you should refuse to do so citing the UCU working to contract industrial action.

### **16. Can I refuse to undertake cover work for which I have no expertise or which is not mentioned in my contract?**

Yes. A recent Employment Appeals Tribunal case looked at whether someone who had been engaged as a lecturer in Theatre Studies could be asked to undertake teaching on an English course. It found that 'A management instruction to carry out duties which the

appellant was not contractually obliged to perform is unlikely to be reasonable. [\[see Smith v London Metropolitan University\]](#)

## 17. What freedom do management have to ask me to perform other duties which are not expressly set out in my contract?

There is a general duty upon employees to be cooperative and you should continue to be so. However, the Employment Appeal Tribunal decision mentioned above states, 'whilst it may be necessary to imply a term of co-operation to govern performance of contractual duties it cannot be relied upon in this case to enlarge those duties'.

## Setting and marking work

### 18. How should I approach setting and marking of work?

If marking is part of your normal contractual duties, you should perform it within your normal working hours or workload agreement. If you believe there is insufficient time to do your marking and your other normal contractual duties, you should seek your line manager's advice in writing as to which of your duties you should prioritise.

If marking is NOT part of your normal contractual duties, but you are asked to do some you should refuse citing UCU's 'action short of a strike' and quoting our guidance on additional duties.

### 19. What if I am being unfairly pressured to complete marking?

UCU's industrial action is likely to lead to disruption and, in these situations, universities sometimes unfortunately seek to put pressure upon staff to speed up. However, you should remember that you have a responsibility to ensure that quality standards are maintained, even if this means deadlines have to slip. Academic staff should always therefore take due care and consideration when marking work, ensuring that they are precisely meeting the guidelines both from the university itself and from the QAA. If you are asked to do something which in your opinion would be to cut corners we advise you immediately put your concerns in writing and ask your line manager to put their instruction to you in writing, including which aspects of the marking process they wish you to cut corners on in order to speed up.

### 20. Where can I get further information about the Quality Assurance Agency's Code of Practice for the Assurance of Academic Quality and Standards in Higher Education?

The code of practice recommends that all institutions should have transparent and fair mechanisms for marking and moderating marks. [The code can be read here \(pdf\)](#). This may normally be determined in relation to different programmes at department or faculty level, but you can find your institution's policies on marking and assessment.

## Working in a safe environment

### 21. What are my duties in relation to healthy working?

Your legal duties as an employee include:

- taking reasonable care for your own health and safety and that of others who may be affected by what you do or do not do

- co-operating with your employer on health and safety
- correctly using work items provided by your employer, including personal protective equipment, in accordance with training or instructions; and
- not interfering with or misusing anything provided for your health, safety or welfare.

## **22. How do I know that I am working in a safe workplace?**

Every employer must have conducted a risk assessment on your job and must have recorded significant points. Regulation 10(1) of the Management of Health and Safety at Work Regulations 1999 stipulates that your employer has a duty to provide you with this information.

Your institution will have a health and safety policy that lays out the responsibilities of employees and various layers of management for dealing with health and safety issues.

## **23. What should I do if I do not have or have not seen a copy of a recent risk assessment on my job?**

You should request a copy of the risk assessment on your job and workspace. Your institution has a legal duty to provide you with a copy of this risk assessment document. This will probably sit with your line manager or the university's safety office. You should write to your line manager or head of department in the first instance.

## **24. What should I do if I do NOT receive a copy of my risk assessment?**

If you do not receive a copy within two weeks, you should complain to your line manager in writing to the effect that you are concerned that no assessment has been undertaken and that you do not wish to become complicit in your employer failing in a legal duty by working in a potentially unsafe environment. You can use the template text below:

Dear xxxxxxxxx

As an employee of xxxxxxxxxx, I am aware that I have the following rights in relation to Health and Safety regulations,

- as far as possible, to have any risks to my health and safety properly controlled
- to be provided, free of charge, with any personal protective and safety equipment
- to stop work and leave your work area, without being disciplined if I have reasonable concerns about my safety.

[http://www.direct.gov.uk/en/Employment/HealthAndSafetyAtWork/DG\\_4016683](http://www.direct.gov.uk/en/Employment/HealthAndSafetyAtWork/DG_4016683)

I am concerned that my employer is not currently fulfilling its duties in respect of these rights in the following ways\_\_\_\_\_

I am mindful of my duty to work safely and of my right to stop work and leave my work area. Unless my concerns are immediately dealt with, I will consult my union about further steps.

## **25. What if I do receive a copy of my risk assessment?**

If you do receive a copy of your risk assessment, you should assess it, preferably in conjunction with your local UCU health and safety representative or branch health and safety officer. Identify whether or not the risk assessment is 'suitable and sufficient': have all hazards been identified; is the assessed level of risk appropriate; are the proposed control measures effective and operational; does the risk assessment need to be reviewed?

If you and your safety reps are satisfied that there are hazards in your workspace that are not identified in the risk assessment, you should immediately demand that another is conducted by a competent person, stating that you are concerned about safety in your job using the following wording:

Dear xxxxxxxxx

As an employee of xxxxxxxxxx, I am aware that I have the following rights in relation to health and safety regulations,

- as far as possible, to have any risks to my health and safety properly controlled
- to be provided, free of charge, with any personal protective and safety equipment
- to stop work and leave your work area, without being disciplined if I have reasonable concerns about my safety.

[http://www.direct.gov.uk/en/Employment/HealthAndSafetyAtWork/DG\\_4016683](http://www.direct.gov.uk/en/Employment/HealthAndSafetyAtWork/DG_4016683)

I am concerned that my employer is not currently fulfilling its duties in respect of these rights in the following ways\_\_\_\_\_

I am mindful of my duty to work safely and of my right to stop work and leave my work area. Unless my concerns are immediately dealt with, I will consult my union about further steps.

## **26. What should health and safety reps do to help ensure that my workplace is safe?**

- Write to the university's health and safety office requesting in writing, copies of all risk assessments requested by members of staff for which they have responsibility.
- Complain in every case where these are not provided, citing the legal duty on the employer to maintain and provide such records.
- Assess whether or not these are adequate risk assessment documents, using our guidance here.
- Call for the establishment of a joint committee to monitor and control all risk assessments in the college/university.

## **27. Am I protected in my use of display screen equipment (DSE)?**

As the HSE says, 'Computer workstations or equipment can be associated with neck, shoulder, back or arm pain, as well as with fatigue and eyestrain. Surveys have found that a high proportion of DSE workers report aches, pains or eye discomfort. These aches and pains are sometimes called upper limb disorders (ULDs), which can include a range of medical conditions such as RSI. Most of these conditions do not indicate any serious ill health, but it makes sense to avoid them as far as possible. The Health and Safety (Display Screen Equipment) Regulations 1992 aim to protect the health of people who work with DSE. The Regulations were introduced because DSE has become one of the most common kinds of work equipment.'

UCU believes that most members fall under the category of DSE users. That means that they are covered by these Health and Safety regulations.

## **28. Does my employer have to do ensure that I am safely using display screen equipment?**

Yes. The regulations do not contain detailed technical specifications or lists of approved equipment. Instead, they set more general objectives. Employers have to:

- analyse workstations, and assess and reduce risks - employers need to look at the whole workstation including equipment, furniture, and the work environment; the job being done; and any special needs of individual staff
- ensure workstations meet minimum requirements
- plan work so there are breaks or changes of activity
- on request arrange eye tests, and provide spectacles if special ones are needed
- provide health and safety training and information.

Every employer will have a DSE policy. Find out more details about what your employer should be doing here.

## **29. How do I request an eye test, a risk assessment or other support from my employer?**

Your institution will have a specific policy which will tell you how they propose to comply with the regulations and how you can request an assessment of your work station and access eye tests and other remedial actions and resources. Every member should make use of this policy.

## **30. How can my employer help me avoid injuries at work through manual handling?**

Manual handling is one of the most common causes of injury at work and causes over a third of all workplace injuries which include work related Musculoskeletal Disorders (MSDs) such as upper and lower limb pain/disorders, joint and repetitive strain injuries of various kinds.

Your employer must abide by the Manual Handling Operations Regulations 1992. These apply to a wide range of manual handling activities, including lifting, lowering, pushing, pulling or carrying.

The regulations require employers to:

- avoid the need for hazardous manual handling, so far as is reasonably practicable
- assess the risk of injury from any hazardous manual handling that can't be avoided; and
- reduce the risk of injury from hazardous manual handling, so far as is reasonably practicable.

Your employer will have a specific policy adapting these regulations for your workplace. Your employer has an obligation to undertake manual handling risk assessments and ensure that employees receive manual handling training.

All employees covered by a risk assessment - including generic assessments - should be told about the risks it identifies, so you should ask for a copy of the manual handling risk assessment on your job and workspace.

Your institution will have a specific manual handling policy that will tell you more about your and your employer's responsibilities.



### **31. What should I do if I think that I have identified hazardous handling activities?**

Employees have duties too. They should:

- follow appropriate systems of work laid down for their safety
- make proper use of equipment provided for their safety
- co-operate with their employer on health and safety matters
- inform the employer if they identify hazardous handling activities
- take care to ensure that their activities do not put others at risk.

<http://www.hse.gov.uk/pubns/indg143.pdf>

You should avoid and report any high risk activities in your working processes to your management. Examples of high risk activities are twisting the trunk; stooping; reaching upwards or forwards from the trunk; considerable lifting and lowering distances and any combination of the above movements.

It is then your employer's responsibility to modify your work activities or workplace to minimise these risks.

### **32. Should I undertake work which I have not been fully trained to carry out?**

Under no circumstances should you operate equipment upon which you have not been properly trained and for which there has not been a recent risk assessment.

## **You and your employer**

### **33. Can I have all or some of my pay reduced when I participate in the UCU action short of strike?**

If you are performing your normal duties but not undertaking activities over and above that, the employer has no legal justification for deducting your salary. Some employers may inform you that they will reduce your pay by a certain percentage (e.g. 10%) during your participation in UCU's working to contract. You should not do anything to signify your assent to this practice, or agree that the percentage itself is a reasonable one. UCU will challenge any attempts to make deductions from staff who are following the advice we have given.

### **34. I have been invited to an interview to discuss my participation in the action, what should I say and do?**

If you are invited to attend an interview, ensure that you take a UCU representative with you. In the interview, which should take place only between yourself and a line manager with a UCU representative present, you or your representative should politely state that you are following lawful industrial action, and ask that any threats or other comments are put in writing. If you are instructed to do additional duties you should follow the union's advice above.

## Advice for members who are heads of department

### 35. I am a head of department, line manager or other senior academic/related role. How can I best support the action?

Many of the union's strongest members are in senior roles as heads of department or schools. Senior staff can play an active role in the dispute by working to contract just like everyone else and also as follows:

- working within your own contract and not acting up for other staff
- encourage your staff to seek clarity from yourself on an individual basis on whether they should be performing any given tasks in relation to the dispute
- make sure that you refer each individual query and avoid issuing blanket guidance
- ensure that you support your staff who are following to the letter the quality guidelines in place for marking and second marking and as far as possible shield them from pressure
- boost morale in the department by making it clear to all that you are supporting the union's work to contract action.

For example, in a recent strike, one head of department wrote to their members of staff the following:

'Being in a managerial position, I expect that colleagues will bombard me with requests. UCU's advice is that I should forward these requests to my Head of School. In principle, if enough requests are generated, decision making will become paralysed. In practice, many managers will try to issue guidance covering all situations. UCU's advice is to ignore blanket guidance and to ask about every single piece of activity that has not been agreed in advance with a manager and which is not clearly covered by the standard contract.'