

Professor Smith  
University of Southampton  
Highfield  
Southampton  
SO17 1BJ

Wednesday, 26th April 2023

Dear Professor Smith,

We note that the University has now published details of its plans to make disproportionate, punitive deductions for participation in the UCU Marking and Assessment Boycott (MAB): during a cost-of-living crisis, and in a manner that is likely to strain relations between the University's handsomely remunerated leadership and its underpaid and chronically overworked teaching staff. We raise the following points on behalf of our members:

1. We would like to query the basis on which you have arrived at the figure of 50% as a fair deduction for participation in the MAB. Please clarify whether the University is treating the deduction as a set-off of projected damages for breach of contract against members' full salary. If so, please explain exactly how the value of the potential damages to be set off has been calculated. We would expect the University to be able to provide costings for alternative provision to cover the MAB. Alternatively, if the University believes it will be paying a sum which represents the value of the work members' have actually done (a *quantum meruit*), please explain clearly how that value has been assessed. It is our view that even when engaging in the MAB, the value of the work of our members is easily over 100%, as we are required to work unpaid overtime.
2. The University has an obligation to notify staff of its intention to withhold pay at a rate of 50% for participation in the MAB before deductions are applicable. We hold that our members were not properly notified of the University's intention to deduct 50% of pay for MAB participation until 25 April at the earliest. The University's prior statements that it reserves the right to withhold 100% of pay do not constitute such notification. Further, we do not consider that updating a list of FAQs buried in a SharePoint site constitutes such notification (we also note that the SharePoint site was updated several times during 19-20 April, to add, remove, then add again the 50% figure), nor do we consider the posting of a news story on SUSSED at 12 noon on 20 April to constitute such notification, as staff are not alerted that such posts have been made. Notification should be proactive, e.g., an email to staff. Consequently, the University should not apply any deductions for MAB participation during the period 20-25 April inclusive. On the same basis, where an assessment was boycotted during this period, no deductions should be applied until such a time that the original assessment has been rescheduled and that rescheduled assessment has been boycotted by our member. We reserve the right of our members to dispute whether proper notification was given for deductions that were applied from 26 April, including where the University is unable to prove that the individual member was properly proactively advised of the University's intentions beforehand. We invite you to update your guidance accordingly.

3. We note that the University states that '[t]he point at which you declare your participation; or the planned activity or task is allocated to you; or from the point at which the activity or task is available to you for marking or assessment, *whichever is sooner*, will be used to record the start of your participation.' (Our emphasis. Source: <https://sotonac.sharepoint.com/teams/IndustrialAction/SitePages/Faculty-specific-information.aspx#marking-and-assessment-boycott>). We consider this to be wrong, and likely illegal (the extract, as regards allocation and availability, should read '... whichever is later...'); an employee can only boycott marking or assessment which they have been allocated **and** is available. We invite you to correct this statement.
4. We note your assertion that 'participation in the marking and assessment boycott will end ... when the marking and assessment which would have been undertaken by you but for your participation in the marking and assessment boycott, has been completed/submitted/uploaded', and also your 'Example 5': *'Example 5: An employee is allocated their marking duties on the 3rd May with a deadline of 24th May but indicates they will not undertake this work as they are participating in ASOS. The work remains unmarked for some time but the employee later indicates they will no longer be participating in a marking and assessment boycott and resumes their full duties on 19th May. They do not complete their marking duties until 4th June. The period of deduction would be continuous from 3rd May (the date the activity was allocated) until such time that the work was no longer required (4th June).'*' (Source: <https://sotonac.sharepoint.com/teams/IndustrialAction/SitePages/Faculty-specific-information.aspx#marking-and-assessment-boycott>)  
We have received clear advice that this position is unlawful. Participation in the MAB (and thus partial performance) ends at the point where staff resume working as normal, not where any delayed marking and assessment is completed. We invite you to correct this statement.
5. We note the University's comments about holiday leave (<https://sotonac.sharepoint.com/teams/IndustrialAction/SitePages/Faculty-specific-information.aspx#i%E2%80%99ve-got-holiday-or-leave-that-coincides-with-industrial-action.-do-i-have-to-cancel-it-if-i-want-to-participate-in-industrial-a>). We can see no legitimate justification for the cancellation of a planned leave. Existing annual leave policies are not suspended during periods of industrial action, and we advise UCU members to continue to book and take leave according to established custom and practice. We expect staff to receive 100% of their pay during their leave.
6. For your information: Separately, we have written to the University to request a copy of the Equality Impact Assessments for the University's Withholding Pay Policy, and for its policy of making 50% deductions for participation in the MAB. So far, the University has refused to provide these, although it claims to have completed one for the general *Withholding Pay Policy*. This is the first time in the memory of the current Branch Executive Committee that the University has refused to provide us with an Equality Impact Assessment for a policy on request; indeed, more often than not we are asked to help draft and comment on the University's Equality Impact Assessments, in recognition of our officers' experience and expertise in this area. We invite you to intervene and ensure that we are provided with the requested documents.
7. We are aware that the University has begun collecting information about the impact of this year's industrial action on learning outcomes, assessments etc., in many cases with module leads being asked for information. Modules leads are rarely line managers of those they work with; they should not be holding or collecting data pertaining to trade union activities. We would remind you that trade union

membership is a special category (i.e., sensitive and due extra protection) under GDPR, presumably to avoid victimisation of the kind we have seen at this University in the recent past. We request reassurance that the University intends to observe its legal GDPR obligations and will review how it is collecting data on the impact of Industrial Action. Further, we request a full report on this matter from the University.

8. We have cited above several statements and actions that give us cause to believe that the University is acting or threatening to act in a manner that is outside employment law. This would appear to be a deliberate strategy aimed at intimidating our members to discourage them from engaging in trade union activities, specifically lawful industrial action. Such behaviour must cease immediately.
9. We will support members who wishes to challenge any or all salary deductions made by the University, and we will fully support any member who considers that they have been subjected to bullying, harassment, or victimisation due to their trade union activities (or, indeed, in relation to any matter).
10. Please provide a report on any recent activities you have taken to try to resolve dispute, including a summary of any representations you may have made to UCEA since the latest 'final offer' on pay and pensions was tabled. Further, we ask you to put pressure on UCEA and Vice Chancellors at other universities to improve UCEA's offer, and to move this dispute to a timely resolution.
11. Finally, we believe that many members of UEB are members of the USS pension scheme, and thus, as valued colleagues, will perhaps want to show their gratitude to local UCU members who went on strike to reverse their pension cuts. UEB members can show their gratitude by donating to the following account:

Account name: UCU Southampton 71 Hardship Fund  
Account number: 20391537  
Sort code: 60-83-01

We will be holding a General Meeting on 3 May, and so a response before then would be welcome.  
Southampton UCU

With best wishes,



*Denis Nicole*

(on behalf of)  
Southampton University UCU Branch