

Our Ref: VC-MC-2023 05 03 UCU

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Southampton University and College Union  
University of Southampton  
19 Hartley Avenue  
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3 May 2023

Dear UCU Colleagues,

Thank you for your letter dated Wednesday 26 April 2023, which was received on Thursday 27 April 2023. The content of your letter was shared with the University's Executive Board (UEB) on Tuesday 2 May for discussion and the response shared with you on behalf of UEB. Your request to share this response with your membership at your branch meeting on Wednesday 3 May 2023 was noted, and we agreed we were happy for you to do so.

On **Pay (and working conditions)**, I can assure you that we have been very committed to producing a fair offer. Senior colleagues at Southampton have a strong record of diligently engaging in all national discussions and have met regularly with Universities and Colleges Employers Association (UCEA) to represent the views of our institution and to discuss realistic ways forward given this is a national dispute. As you know, the pay uplift for the 2023-24 pay award has resulted in the highest HE pay offer made in nearly 20 years, providing a minimum uplift of 5 percent for anyone earning between £31,000 - £65,000. A detailed breakdown of how this applies to colleagues across the University, is available [here](#).

We were pleased that it was UCEA who imaginatively suggested bringing this year's pay negotiations forward with a target to get some extra money in people's pockets much earlier than the sector is obliged to under the JNCHES agreement. Some acknowledgment by UCU that this was an employer initiated discussion would be helpful. The University has already implemented part of this uplift six months early to reflect the cost of living pressures and we remain committed to the next implementation, from August. [UCEA has been clear](#) that there is no possibility of a new or revised pay uplift for the 2023-24 pay round or any re-opening of the 2022-23 round which it is presumed all your colleagues are clear on.

Locally, the University has taken additional action to implement enhancements to the Level 1 to 6 and Level 7 pay scales, delivering a further permanent pay rise. We have also commissioned two Strategic Major Projects in response to concerns raised by our wider staff community and UCU on 'Workload' and 'Casualisation', which demonstrates clearly the importance this university attaches to these issues. We were pleased to see the four workstreams that emerged from the ACAS negotiations, and it would be a great pity if these national initiatives were not progressed as an

outcome from the current action, as getting the sector collectively to this position could potentially benefit many of your members.

On **Pensions**, Julie Fielder wrote to you on 28 February 2023 to confirm that Pensions Committees had positively received the Universities UK and UCU joint statement and expressed a desire to reach a locally agreed joint endorsement of the statement. To date, we have yet to receive a response from you to this position, but the option remains open.

Whilst we were pleased to receive confirmation on 19 April 2023, of UCU's withdrawal of industrial action on Pensions, the University is disappointed that despite the efforts mentioned above on Pay and working conditions, UCU continues to ask its members to take further industrial action here at the University of Southampton, including a **Marking and Assessment Boycott** (the 'Boycott').

This action by UCU in its nature and timing is deliberately targeted at a point in the academic year, which is aimed to cause significant potential impact, disruption and harm to our students and their education, some of whom have also had their studies impacted by the pandemic. While the University completely respects the right of every individual to participate in lawful industrial action, in turn, the University expects UCU to respect the University's duty to protect students, including its legal right to withhold pay from individuals for not fulfilling their contracts.

The University's policy on withholding pay for industrial action has remained consistent since its introduction in 2018; the University does not accept partial performance. As such, UCU is aware that the University is legally entitled to withhold 100% of pay for partial performance. The University has decided in the first instance, to exercise its discretion and withhold a proportionate amount of pay, 50%, in relation to the Boycott.

Whilst it is not a decision taken lightly, the decision to withhold pay for the Boycott, is based on the impact, disruption and harm this has the potential to cause our students and any subsequent litigation they may bring, as well as the effect on our wider staff community, who continue to work as normal. We also recognise that whilst under partial performance, any other work completed is considered 'voluntary', staff will likely wish to continue to perform their other duties.

The University has committed to keeping this position under review and should an assessment of the impact from the Boycott be more (or less) severe than anticipated, the University reserves the right to vary the amount of pay to be withheld.

The University disputes UCU's position that staff were not informed of the University's position until 25 April 2023. Upon receiving notice from UCU of its dispute in relation to the 2022-23 pay round, the University published its relevant documentation in response to any strike action and action short of a strike (ASOS), including the Withholding Pay policy, ASOS guidance, and the Frequently Asked Questions (FAQs). These resources have been available to staff since November 2022 (the start of industrial action on the 2022-23 pay offer) and were available at the start of the Boycott, on 20 April 2023.

As previously outlined, the University has always made clear that it rejects partial performance. Both the policy and guidance documents published in November 2022 (the Withholding Pay policy was later updated in January 2023) clearly outline this position and the implications of participation in partial performance. The ASOS guidance published in November 2022 (which has

remained unchanged), outlines that the University reserves the right to withhold 100% of pay and shall do so, where all planned educational activities are not undertaken. The Boycott, clearly falls under such activity.

However, for the reasons already outlined, the University communicated on 20 April 2023, its decision to exercise its discretion and withhold a proportionate amount of pay in the first instance. Therefore, any staff participating in partial performance from 20 April 2023, would knowingly have been doing so with the expectation that pay would be withheld.

Two final points. UEB was dismayed to note UCU's inflammatory language contained in some of the points raised, in particular the point around victimisation, which was considered highly inappropriate. UEB is unaware of any such cases, as it is against the values of the University and would ask you to substantiate these claims, as well as kindly suggesting that UCU considers very carefully its use of language and reference to such claims in future correspondence. With regard to the specific points you have raised in relation to the University's Frequently Asked Questions (FAQs), Equality Impact Assessment, and the collection of data. These points were noted by UEB and the Industrial Action Planning Group (IAPG) via its Chair has reviewed these and provided responses below.

With thanks and best wishes,

A handwritten signature in black ink, appearing to read 'Mark E. Smith'.

**Professor Mark E. Smith CBE  
President and Vice-Chancellor**

**Responses from the Vice-President (Operations), as Chair of IAPG to the specific points raised in the letter by UCU –**

**Point 3.**

It is our view that the terms 'allocated' and 'available' have been perceived differently to how we originally intended. Upon review, we have removed the section of wording you referred to and amended the FAQ, to simply state:

***How and when is participation in the Marking and Assessment Boycott considered to have begun?***

*Participation in the marking and assessment boycott will be considered to have begun from the point, on or after 20 April 2023, where you have chosen not to undertake your duties in respect of any activity or task related to marking and assessment (as outlined above in the FAQ 'What is a Marking and Assessment Boycott?').*

For clarity, the start date of participation will be the date at which any planned marking or assessment activity or task is allocated and is available, or from the date the marking and assessment activity or task was due to take place. If multiple marking and assessment activities or tasks are boycotted concurrently, the start date of participation will be the earliest date.

Given the high regard we have for our colleagues we are trusting members will use the self-declaration form accurately.

#### **Point 4.**

We agree, the point where an employee returns to working their normal, full duties will be considered as the end of partial performance. However, where the employee refuses a reasonable request to prioritise any marking or assessment activities or tasks not undertaken, as a result of the boycott, this will be considered as a continuation of partial performance.

Upon review, we have amended the FAQ, as below:

*Your participation in the marking and assessment boycott will end:*

- *When you declare that you have resumed normal working and are carrying out your full duties related to marking and assessment\*;* or
- *when you are informed by the University that the marking and assessment which would have been undertaken by you but for your participation in the marking and assessment boycott, is no longer required;* or
- *UCU ends the marking and assessment boycott;* or
- *UCU's mandate for industrial action expires (currently on 30 September 2023)*

*Participation in the marking and assessment boycott will be considered as continuous and shall only be considered as ended when one of the events above has happened.*

*\*The University expects any outstanding marking and assessment activities or tasks that would have been undertaken by you, but for the marking and assessment boycott to be immediately prioritised (over non-teaching activities). Failure to do so would be considered as a continuation of your participation in the boycott.*

**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. The University requests the employee to prioritise the completion of the marking they did not undertake, the employee refuses and the marking is reassigned to another colleague and completed on 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). As whilst the employee stated they were no longer participating in ASOS, they were still unwilling to undertake their full duties related to marking and assessment, and therefore still considered to be taking industrial action.*

#### **Point 5.**

This FAQ refers to all industrial action but was drafted with the particular focus on strike action, as such a point of clarification has been made to the FAQ to confirm that pre-recorded leave should only be cancelled where the individual declares their participation in strike action. Upon review IAPG have agreed to amend the FAQ, as below:

***I've got holiday or leave that coincides with industrial action. Do I have to cancel it if I want to participate in industrial action or to support business and mitigation planning***

*Staff shouldn't book holiday or other forms of leave to avoid declaring their participation in industrial action. Where a member of staff declares their participation in strike action, any holiday or leave on the date(s) declared should be cancelled from the system.*

*Where staff have already received approval for their holiday or leave prior to the dates of industrial action being announced, permission should not normally be withdrawn by the line manager. However, line managers may consider sensitively asking the staff member if there may*

*be any flexibility with their leave arrangements where there is a potential risk to faculty/service delivery.*

*For future leave requests, line managers have the discretion to accept or reject these requests and where industrial action may reduce the number of staff available to undertake work, line managers should consider maximising attendance by limiting the amount of annual leave they agree for the period of industrial action.*

*Please see the Industrial Action Guidance for more information.*

#### **Point 6.**

IAPG have consulted and informed UEB of the previous response provided. The University position is directly in response to UCU's action and is a personal choice by members whether to participate (or not), and as such our decision to withhold pay for partial performance is based on employment law. Given participation in industrial action is led by UCU, the University does not consider it appropriate to share the EIA, in the same way we do for other policy development. Please see previous response:

*The University is under no obligation to provide you with the Equality Impact Assessment (EIA), however please see below response, which may be helpful for your upcoming members meeting.*

*The University completed an EIA upon the creation of the withholding pay policy in 2018. This has been subsequently reviewed in both May 2022 and November 2022, at the point the University adopted a position to reserve its legal right to withhold 100% of pay for partial performance (Section 3), which includes the provision to withhold a proportionate amount of pay, at the University's discretion.*

*The University's policy position, along with its supporting guidance aligns to the provisions outlined within employment law and applies to all staff, regardless of any protected characteristics. Whilst we recognise there will be a financial impact upon employees who participate in industrial action, as we do not have a detailed breakdown of personal information, as to who will participate in the action (only the information provided by UCU under Section 234A of the Trade Union and Labour Relations (Consolidation) Act 1992), we're unable to determine whether members are more or less likely to be part of a particular protected group.*

*Therefore, the University considers the impact of withholding pay related to equality to be 'Low', as overall it will be an individual's personal decision as to whether or not they choose to participate in industrial action.*

#### **Point 7.**

The University understands the sensitivity around collecting information on the participation of industrial action and has taken all steps to ensure the information is handled in accordance with the necessary legal provisions. The IAPG group will provide a further report in due course, as requested by UCU.