



**University College London UCU Branch**

President: Saladin Meckled-Garcia, Political Science  
Secretary: Tony Brown, Information Systems Division  
Enquiries: [ucu@ucl.ac.uk](mailto:ucu@ucl.ac.uk), [www.ucl.ac.uk/unions/UCU](http://www.ucl.ac.uk/unions/UCU)

Fiona Ryland  
Executive Director of Human Resources  
University College London

06 March 2018

Dear Fiona

As you are aware, UCU has a number of concerns about the web-based form for capturing strike and ASOS participation during the current USS dispute. Our objections are several and for expedition we have summarised them below.

We would welcome a meeting to discuss this further, but until these matters are addressed we have no choice but to ask our members not to use the web-based form.

We have, as you will note, asked members to submit the relevant information by email to managers when asked. This would give staff the opportunity to supply relevant additional information.

We should clarify that consent for data processing exists in this case only insofar as the necessary actions required for Payroll to perform lawful deductions.

However, unfortunately, if the database used by Payroll internally has the same fields as the online public system, it will also be inadequate for that purpose.

Given the very large participation in the current strike, we are extremely concerned that UCL will make significant numbers of unlawful deductions from salary, and that Payroll, HR, admin staff, and ourselves will spend considerable time correcting these deductions. See Objection 3 in particular.

For this reason we would ask that the entire system be properly reviewed as to its fitness for purpose prior to any processing of deductions.

### **Objection 1. Targeting members by trade union membership**

It is as you know unlawful to target staff by union membership for submitting to the web-based form. However we have received several emails asking for *UCU members* who participate in strikes and ASOS to use the strike recording system.

The error originally appeared in The Week@UCL on 22 February. This stated

If you **are a member of UCU and** decide to participate in the strike action above, or take Action Short of a Strike (ASOS) on other days, you will need to use the online reporting system (staff portal) to declare that you are doing so. You will need to enter each day of action separately. Instructions on how to enter information are available on the portal.  
<https://www.ucl.ac.uk/human-resources/news/2018/feb/industrial-action-ucl-term>

As you know, this is a serious breach of the TULR(C)A 1992. The correct position is now correctly stated on the same link.

All staff who take strike action will have pay deducted on the above basis.

We are glad that the original error has been corrected online. However, that error has been duplicated in numerous messages from departmental administrators, HoDs, etc to staff.

UCL has taken no action to retract the error in its latest communications, yet it would clearly be necessary and reasonable to do so (as otherwise a striking non-UCU member might fail to register their participation on the system).

### **Objection 2. Data protection and blacklisting**

There are several data protection issues that arise in the context of this database, including blacklisting legislation (especially in the context of the error identified above).

It is unlawful for any organisation to compile or use a 'prohibited list' which contains details of persons who are members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and is compiled with a view to being used by employers for the purposes of discrimination in relation to the treatment of workers, or is used to subject workers on that list to a detriment related to their being on that list.

Our concern here is that since all those registering with the database will be in practice considered as taking part to trade union activities (when not also being union members due to the oversight already pointed out in the our previous objection), and since, when engaging in ASOS, their pay will be subject to potentially disproportionate and, thus, unlawful deductions amounting to 'up to 100% of a day's pay' (see our Objection 4), these workers would be subject to a 'detriment' under the 2010 Blacklist Regulations.

### **Objection 3. Inadequate information for performing pro-rata deductions**

The information collected is insufficient to lawfully make deductions in the case of staff who would normally work other than 7.3 hours on strike days, including, but not limited to, part-time staff.

UCL policy is that 100% of pay will be withheld from staff for any days when they are taking part in strike action. Pay will be deducted at a rate of 1/365ths

in these circumstances. Part-time staff taking action will have pay deducted on a pro-rata basis.  
<https://www.ucl.ac.uk/human-resources/news/2018/feb/industrial-action-ucl-term>

The definition of pro-rata as to 1/365 by contract was accepted by Geoff Lang in an email to UCU officers on 16 February 2018.

Hi Sean,

Sorry it's taken a while to confirm the details with Payroll.

Yes we can confirm we will pro-rata deductions for part-time staff. Any staff with questions about part-time deductions can contact payroll@ucl.ac.uk .

And we can confirm that 1/365 supersedes any previous communications about 1/260ths. This will be the rate applied to all deductions.

I hope this clarifies everything for you.

Geoff

However, in the strike reporting system, data collection is limited to two fields (see the screenshot below):

- Date
- Strike or ASOS

Part-time staff may be striking all day on one day, striking part-day, or in the case of hourly-paid staff, striking for a set number of hours.

This is not just an issue for part-time staff. Full-time staff may have pre-booked annual leave for part of the day, or work a working pattern where they deviate from 7.3 hours a day (e.g. compressed hours, i.e. more than 7.3 hours on a given day).

The web form provides no opportunity to enter the number of hours that a member of staff would normally be working on that day, and therefore Payroll has insufficient information to lawfully carry out salary deductions pro-rata to the hours of work withdrawn.

The departmental administrator may have that information recorded somewhere, but ad hoc arrangements cannot be relied upon. Geoff Lang's suggestion that staff with queries should contact Payroll, however well-meant, is not adequate in the circumstances.

The text at the bottom of the page implies that self-submission constitutes acceptance by the employee that the information is deemed to be correct.

However it is clear that in the case of many staff, the information is not sufficient to lawfully carry out a pro-rata deduction.

UCL Human Resources - | X

Secure | [https://www.ucl.ac.uk/hr/industrial-action/request\\_form.php](https://www.ucl.ac.uk/hr/industrial-action/request_form.php)

Enter dates | Record(s) submitted by your HOD | Your submitted record(s) | Logout

**Submit your strike days**

Name: [Redacted]  
 Department: [Redacted]  
 Appt Title: [Redacted]  
 Email: [Redacted]

.....

**Strike Action/ASOS**

I am taking action on: [Dropdown]

Select type of action: Strike  ASOS

.....

I confirm this is an accurate record of the action that I am taking.

#### Objection 4. Lack of clarity of implications of ASOS registration

In the form, ASOS is not differentiated between type.

There are two clear types of ASOS at present:

- ASOS where strike deductions cannot be made (such as work to contract, or refusing to reschedule a lecture cancelled because of strike action, where deductions have already been made in connection to that strike action), and
- ASOS where strike deductions *might in principle* be made (such as refusing to perform particular contractual duties, while accepting to perform other duties specified by said contract).

In the same paragraph quoted above, the only statement about ASOS is the following.

UCL also reserves the right to deduct up to 100% of pay for partial performance of duties, in terms of ASOS, whilst taking into account the impact on the university's performance and/or commitment to its students.  
<https://www.ucl.ac.uk/human-resources/news/2018/feb/industrial-action-ucl-term>

This may be true, in abstract, but as you are aware this is not specific enough to be actionable. There is no statement on this form or in the preamble to the web-based

form as to the consequences of submitting ASOS participation data for salary deductions.

We are pleased that in the interests of employment relations, UCL has not taken the position of some institutions who have made specific threats with respect to non-rescheduling of lectures. But it also means we fail to see the relevance of registering ASOS compliance at this time on this system.

As it is not actionable by payroll, the effect of the request in the context of the sweeping statement quoted above is potentially intimidatory and serves no good purpose.

#### **Objection 5. Misrepresentation of the obligation to complete the form**

Finally, we would note that in some correspondence the completion of this web-based form has been described as a “reasonable management instruction”.

However as you know, negotiations or disputes over a contract are not themselves part of that contract. It cannot therefore be a “reasonable management instruction” to complete a form which pertains to contractual matters.

Given that we have outlined a series of serious concerns about the current database system we are very concerned about any suggestion that staff be threatened with disciplinary action for failure to comply with any such request.

This, like many of the other issues outlined above, should be properly clarified in advance of the submission deadline.

We would welcome a meeting to discuss these matters further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S Wallis', with a long horizontal flourish extending to the left.

Sean Wallis  
UCL UCU Vice President

Prof Nicola Countouris  
Professor of Labour Law and European law

cc: Michael Arthur, UCL Provost and President