

UCU branch guidance

Bargaining to protect members during the Covid-19 crisis

(last revised 21 April 2020)

1. Introduction

This document sets out guidance for branch negotiators on issues that may arise because of the impact of Covid-19. The guidance is intended to provide an outline of the key issues and to give branches some key principles around which to negotiate or represent members' interests. Branch officers should contact their regional office if in need of specific advice relating to their institution.

2. The key principles

UCU's expectation of employers is that they adopt the following principles in their approach to Covid-19:

- **understanding** that 'business as usual' does not apply during the crisis
- **recognising** that any related changes to ways of working necessarily rely on the good will of all staff
- **acknowledging** that a cooperative, collaborative and trust-based approach between managers and staff is required
- **addressing** issues of isolation associated with online working and working from home and recognising they will affect all staff differently
- **facilitating** a supportive and non-coercive approach to new ways of working in all circumstances
- **considering** the needs of all staff in the implementation of any new processes or procedures, and making them subject to regular review and agreement between trade union representatives and management
- **agreeing** rapid escalation routes for the resolution of issues arising from changes to working methods between management and trade union representatives.
- **scheduling** regular meetings, at least weekly, between management and unions to review the situation generally and agree appropriate responses to any problems/issues that arise
- **avoiding** staff cuts in response to the covid-19 crisis, including decisions not to renew contracts or offer hours to staff on variable hours/zero hours contracts.

Branches are recommended to seek to agree a statement of intent with their employer based on these key principles through which Covid-19 issues which affect staff can be discussed.

3. Working from home

UCU has already produced guidance for members and branches on working from home (WFH) **which can be found here**. The transition to working from home has by necessity been rapid and pre-existing working from home policies, where they exist, are unlikely to have been designed to deal with such a sudden and largescale shift to homeworking. Existing policies will have been written in the context of an assumption of business as usual and may not be appropriate for the current circumstances.

Negotiating arrangements for largescale home working will not be immediately possible. Early agreement should be secured from the employer that no staff will be subject to any form of coercion, informal or formal disciplinary, or capability procedures as a result of issues associated with being managed while working from home. Branches may wish to seek agreement on interim arrangements in relation to Covid-19 e.g. agreement that any temporary arrangements to support students in the current circumstances are without prejudice to negotiated terms and conditions and do not set precedent for future academic sessions.

Issues concerning WFH in the current circumstances that UCU branches may need to address through negotiation with their employer include:

- reasonable expectations concerning working hours/workload of staff WFH - employers should not expect staff to work beyond their contractual hours. If additional hours are worked (e.g. to help the move to online provision of teaching) then staff should be able to recover those hours later or be paid overtime for them
- acknowledgement that employees may not be able to commit to their full hours (e.g. staff with children and/or other family/household members at home, staff caring for a family member who is unwell or in self-isolation) and should be flexible about how and when work is done. In certain circumstances it may be appropriate for staff with caring responsibilities to be given special leave
- in consideration of the above branches should seek a commitment from their employer that they recognise that members WFH can only do what is possible and that normal performance management procedures cannot apply during this period
- reasonable expectations concerning new activities such as online teaching (see **UCU guidance on WFH and online teaching**)
- avoidance of micro-management of online WFH - managers should be supportive to staff who are working from home and should not seek to micro-manage their work. Any virtual attendance at online teaching provision should be undertaken only by agreement of the member of staff and with adequate warning
- staff for whom working from home exposes them to increased risk (e.g. from domestic abuse).

Employers should consider a WFH allowance to offset the costs to staff of being home-based. **See relevant official advice regarding the tax status of payments in respect**

of additional household expenses incurred while working from home (including costs such as electricity, heating, or broadband): *'Payment or reimbursement to your employees of up to £4 a week (£6 a week from 6 April 2020) is non-taxable for the additional household expenses incurred when your employee is working from home'* and **HMRC guidance here**.

Staff on casualised contracts should be given the same support to move to working from home as other members of staff (recognising that many of the lowest paid members may need financial assistance to purchase the necessary equipment to WFH).

Where, because of the nature of their work, it is impossible for staff to undertake work from home the employer should continue to pay staff and should not require staff to use leave to cover the period in which they are unable to attend work. Such circumstances may lead an employer to seek to temporarily lay-off or 'furlough' staff, this should be subject to consultation with the recognised trade unions and, if it occurs, should also be on full pay. Lay-offs should only be considered where there is no work for an employee to do; it is currently our understanding that FE/HE employers are able to access the government job retention scheme (JRS), so even if members have no work their full salary should be assured, with the JRS covering 80% and the employer having to cover the remaining 20%; to be laid-off, or 'furloughed', requires individual consent - members should be advised to agree to nothing before checking with their local UCU branch. **UCU has produced detailed guidance on the job retention scheme**. Branches should also note **this briefing from UCU's legal partners Thompsons** and **the government advice regarding the scheme**.

4. Self-isolation

Public health guidance indicates that all staff who can work from home should now be working from home. However, for those HE/FE/Prisons and ACE staff who are required to continue attending work to provide essential services some may need to self-isolate for several reasons including but not limited to:

- displaying symptoms associated with Covid-19
- Having a household member displaying symptoms of Covid-19
- being in a category vulnerable to serious health complications from Covid-19
- caring responsibility for a household member in a vulnerable category.

Staff who need to self-isolate should receive full pay from their employer. Staff should not be required to use annual leave to cover periods without work due to Covid-19. Such absences should not contribute to any 'triggers' or procedures contained in local absence management policies.

5. Annual leave

Staff should be encouraged to take annual leave as usual, with managers adopting a supportive response to annual leave requests. It is unreasonable for employers to insist that employees cover time spent WFH or periods in which they are unable to attend their workplace due to Covid-19 through enforced annual leave or unpaid leave. Branches are advised that there is no basis for agreeing to variations to collective agreements on annual leave e.g. branches should not agree to restrictions on when members can take annual leave.

6. Staff required to attend work

UCU considers that all core, non-essential face-to-face functions should already have ceased. There are only exceptional circumstances when staff should be required to attend work, in line with current government advice.

All members working in HE (including academic-related/professional services staff for example in libraries), FE, ACE and in Prisons should be allowed to work from home in line with government public health guidance and with no financial detriment. This also applies to those employed on casualised contracts of any form.

In exceptional circumstances (for example in FE where some classes remain open for vulnerable students) a full risk assessment should be undertaken and all safety measures put in place, in agreement with local UCU health and safety officers, before staff are required to work. No member of staff in an at-risk group, or who lives with anyone in such a group, should be required to attend work.

In maintaining essential services appropriate personal protective equipment (PPE), as identified in the risk assessment, should always be provided. Soap and hot water/hand sanitizing facilities must be provided. Intensified cleaning regimes should be put in place to ensure the workplace environment is safe. Wherever possible such work should be performed respecting public health recommendations for two-metre social distancing or, where this is not possible, appropriate protective clothing must be provided. Where practicable staffing should be organised on a rota basis, in which case rotas should be agreed with staff and be based on a weekly, or ideally fortnightly pattern of attendance to minimise cross infection between staff on the rota.

Employers should undertake risk assessments to consider all risks and put in place control measures to minimise the possibility of teaching and other staff becoming ill through exposure to coronavirus. Under the Safety Representatives and Safety Committees (SRSC) Regulations employers should work with/consult safety representatives to determine what is safe and, for example, any circumstances which would cause the organisation to send a young person/learner home. Vulnerabilities of individual teaching staff should be included in any assessment e.g. pregnant or elderly staff and/or staff with underlying health issues will be at greater risk and should not be required to attend.

The minimum PPE to be worn for cleaning an area where a person with possible or confirmed coronavirus (Covid-19) has been is disposable gloves and an apron. Hands should be washed with soap and water for 20 seconds after all PPE has been removed.

See the following Government advice regarding educational institutions:

- <https://www.gov.uk/government/publications/guidance-to-educational-settings-about-covid-19>
- <https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision>
- <https://www.gov.uk/government/publications/guidance-to-educational-settings-about-covid-19/guidance-to-educational-settings-about-covid-19>

7. Staff sickness

Staff who fall ill contracting Covid-19 should be protected by the employer's occupational sick pay and should remain on full pay irrespective of their sick leave entitlement if they contract the virus (some members may quickly exhaust sick pay entitlement, particularly recent starters who will not yet have built-up full entitlement).

Sickness absence due to Covid-19 should not contribute to any absence 'triggers' or similar procedures in local absence management policies. Requirements to provide 'fit notes' should be waived for the period of the crisis until such time as the NHS confirms patients can attend surgeries as normal. Staff who are sick (for whatever reason) should not be expected to undertake work at home.

8. Internal casework procedures (e.g. disciplinary and grievance procedures)

UCU's view is that other than for exceptional reasons employers should suspend procedures and postpone meetings or hearings under discipline/grievance/capability and other such procedures. Employers should not presume that procedures can simply be progressed through remote means without raising problems of representation and compromising fairness of outcome.

It is UCU's view that where they wish to, individual members should be entitled to request that any formal hearing be postponed, to be conducted in person after a return to normal working circumstances, rather than being held remotely at this time (in-person meetings not being appropriate during the Covid-19 outbreak). If an employer refuses such a request and insists on a hearing going ahead remotely, then while UCU can express concern, we have been advised that even in these unprecedented circumstances employers are entitled to deal with cases remotely (which is not in breach of ACAS Code of Practice) and such decisions are likely to be deemed to be within the range of reasonable responses for an employer.

Whether an employer's actions are unreasonable in this regard, would ultimately be for an employment tribunal to decide. We should, however, argue that refusing a member's request for an in-person hearing would be unreasonable particularly if the potential sanction is punitive. This will be a question of balance considering the particular facts of each case. For example, where a case is document heavy and complex the representative could be significantly disadvantaged in putting forward the member's case.

Additionally, if a member involved in a formal procedure is disabled then there would be further considerations of reasonable adjustments and the member may want to request an in-person hearing, when it is safe to do so, as a reasonable adjustment.

9. Staff on casualised/insecure contracts

UCU believes that all staff engaged on casual and insecure employment arrangements should be retained on existing patterns of employment and paid to work from home in the same manner as permanent and directly employed staff. All staff on casualised contracts should be paid in the normal way, even if it is not possible to undertake work because of cancelled classes etc. Staff should be paid for agreed hours, including all elements of any comprehensive hourly rate of pay.

Where hours have yet to be agreed, the employer should negotiate with UCU on a fair way to agree hours to be paid going forward. This may be by reference, for example, to average hours worked over a recent similar period/the same period last academic year/an average over an agreed past period of months or years.

To deny pay to staff on casualised contracts would be to treat them as second-class members of staff and send a very negative message to loyal members of staff whom employers will need to rely on when circumstances return to normal.

UCU does not believe there to be any justification for not continuing to engage such staff as it is our current understanding that FE/HE employers are able to access the government job retention scheme (JRS), so even if members have no work their full salary should be assured with the JRS covering 80% and the employer having to cover the remaining 20%. UCU is seeking further assurances of no detriment on all other funding streams affecting our sectors.

Employers should consider the fractionalisation of their hourly paid staff (including those on zero and variable hours contracts) to allow them to fully explore government assistance to cover staff wages.

UCU opposes moves to reduce staff hours or to make staff redundant as premature, unacceptable and counter to the government's intention that jobs be retained through this period. Employers should suspend any dismissals due to the ending of a fixed-term contract for at least the period of the crisis and then review staff needs. It should be

recognised that staff dismissed at this time will find it almost impossible to secure alternative employment whilst the crisis continues.

Employers may be able to access funds from the government job retention scheme. Government advice regarding the scheme (<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>) includes advice on how pay of casualised staff will be calculated:

Employees whose pay varies

If the employee has been employed (or engaged by an employment business) for a full twelve months prior to the claim, you can claim for the higher of either:

- *the same month's earning from the previous year*
- *average monthly earnings from the 2019-20 tax year*

If the employee has been employed for less than a year, you can claim for an average of their monthly earnings since they started work.

If the employee only started in February 2020, use a pro-rata for their earnings so far to claim.

10. Research staff on fixed-term-contracts

The contracts of research staff employed on a fixed-term contract should be extended, at the very least, to the period equivalent to the time from March 2020 until staff are safe to return to work. **UCU has written to UK Research and Innovation (UKRI)** to seek a commitment to this effect, but employers are able to introduce such contract extensions without UKRI intervention.

11. Responding to potential staff reductions

Employers will be concerned about the longer term consequences of the crisis, particularly the impact on student numbers. However, any decisions now to cut staff, including among the most vulnerable staff groups through the non-renewal of fixed-term contracts and removal or reduction of hours for hourly-paid staff, need to be resisted by UCU.

Branches should seek agreement that any proposed reductions, including among staff on casualised contracts, will be deferred until at least the end of the Covid-19 crisis. Any proposals for staffing thereafter should be handled in the normal way and according to the institution's change management policy.

It is UCU policy to oppose cuts and redundancies, including to those of our members on casualised contracts. Any attempts to single out staff on casualised contracts to take the brunt of proposed cuts needs to be vigorously resisted. The first step for any branch in

such a situation is to call on all members to oppose such cuts and make this an issue for the whole branch.

Branches should seek support from their regional office in resisting and campaigning against any proposed cuts.

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