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Industrial Action Policy

The University's policy on industrial action and withholding pay has been developed to protect its mission to provide high-quality academic education and University services to its students. Where industrial action does occur, the University will seek to ensure that normal operations and services are maintained as far as possible. Most importantly, the University will take all reasonable steps to fulfil its responsibilities to students in ensuring that any disruption is minimised, and that as far as possible students are not disadvantaged in any way by the action. Our approach is consistent with the prevailing relevant legal framework in the UK.

Whilst the University supports the right to take legal and principled action, it believes it is important for staff to bear in mind the University's unequivocal position on strike action. Staff must be similarly mindful of Hope's position on Action Short of a Strike (ASOS), where the nature of the ASOS is deemed to result in partial performance of contract. Any member of staff who refuses to carry out duties which form part of their contract of employment, either by strike action or ASOS, will be committing a breach of their contract of employment. In response to such action, Liverpool Hope University has developed this policy, which was initially agreed at University Council on 4th July 2007.

Strike Action

Participation in any form of strike action is a breach of contract and it is therefore the University's policy to withhold a full day's pay for each day upon which an employee takes part in strike action. This is because employees participating in such action are regarded as not performing or undertaking the work for which they are paid. For strike action the University reserves the right to withhold 100% of pay, at a daily rate of:

- 1/365 of annual salary of Academic Staff - to recognise the contract obligation to work such hours as may be reasonably necessary for the performance of their duties and therefore there are no specific limits around working hours and when duties may be undertaken¹.
- 1/260 of Annual Salary for non academic staff - to recognise the contract sets out normal regularly working hours.

A pro rata arrangement will be applied to part time staff.

Action Short of a Strike (ASOS) and Partial Performance

The University does not accept partial performance of duties. Consequently, where a member of staff refuses to undertake any part of his/her contracted duties, any of the remaining duties which are performed are treated as voluntary service and hence without any right to be paid.

The University may elect to accept partial performance and continue to pay at 100% of pay or, alternatively, the University may elect to accept partial performance and pay less than 100% of pay by deducting a fair sum from pay representing the proportion of pay which would have otherwise been paid in respect of the duties the employee is refusing to carry out.

¹ Based on working the hours required to do the job. In light of the Supreme Court ruling in Hartley versus King Edward VI College in 2017, pay for staff with this type of contract has to be apportioned over the entire year, i.e. 365 days.

For the avoidance of any doubt, should the University elect to accept partial performance and continue to pay at 100% of pay this does not prevent the University at a later date from electing to either (i) continue to accept partial performance but pay less than 100% by deducting a fair sum from pay representing the proportion of pay which would have otherwise been paid in respect of the duties the employee is refusing to carry out, or (ii) refusing to accept partial performance at all and withhold 100% of pay on the basis that any work undertaken is undertaken on a purely voluntary basis. The University will notify staff of its position in respect of any partial performance and will communicate any changes to its position before implementing any reductions to pay.

Further Commentary

ASOS and Partial Performance

Action short of strike action, or partial performance, is where the employee is willing to undertake some of their duties but refuses to undertake others. Legally an employee is not able to select which parts of their contract they are willing to undertake and if they choose to take part in selective industrial action short of full strike, i.e. partial performance, they are refusing to undertake their full contractual duties. Partial performance normally begins from the time a particular express or implied contractual duty is not performed by an individual and ends when the employee resumes normal any exceptional cases following industrial action where pay has incorrectly been withheld from a member of staff who advises that they are not participating in such action working and this will be the period for withholding of pay. For clarity, working to contract and fulfilling contractual duties will not result in a withholding of salary.

As noted above, the University will not normally accept the partial performance of the contract of any member of staff. This means that if you decide to take part in ASOS by refusing to undertake part of your contractual responsibilities, you would consequently not be entitled to your contractual pay from the date when you started to participate in the action. If a member of staff decides only partially to tender their services, those services thus provided, whether in the University, at home, or elsewhere, will be deemed to be voluntary on the member of staff's part. The University's policy not to accept partial performance means that if you breach your contract of employment by refusing to fulfil your contractual duties in full then the University reserves the right not to pay you for any other work you voluntarily choose to do while participating in the ASOS. The University does not accept partial performance in breach of contract and reserves the right to make a salary deduction of up to 100%, at a daily rate of:

- 1/365 of annual salary of Academic Staff - to recognise the contract obligation to work such hours as may be reasonably necessary for the performance of their duties and therefore there are no specific limits around working hours and when duties may be undertook².
- 1/260 of Annual Salary for non academic staff - to recognise the contract sets out normal regularly working hours.

Liverpool Hope will continue to withhold pay until the employee resumes their contractual duties in full. The University will not re-instate any pay that has been withheld once the employee resumes their full contractual duties.

² Based on working the hours required to do the job. In light of the Supreme Court ruling in Hartley versus King Edward VI College in 2017, pay for staff with this type of contract has to be apportioned over the entire year, i.e. 365 days.

A Day's Pay

A day's salary will be calculated in line with the above either 1/365 or 1/260 of the member of Staff's annual salary. The withholding of pay is without any prejudice to any other right or remedy of the University, including any claim for damages for breach of contract.

Any salaries withheld will be donated to Student Learning or the Universities charity 'Global Hope'.

However, as noted above, based on an assessment by the University of the impact of a specific ASOS, the University may at its discretion decide not to withhold any pay or, alternatively, to withhold a smaller sum, proportional to this impact, for a specified period without prejudice to its right to withhold 100% of pay for any subsequent ASOS. The University will continue to monitor the impact of the action and keep its policy of withholding pay under constant review.

The withholding of pay is without prejudice to the University's right to change the amount of pay being withheld, or to pursue any other remedy of breach of contract against an employee.

Communication

Staff should be aware that _____ will write to relevant staff groups prior to and, if required, after any planned industrial action taking place, to determine and/or confirm those individuals currently taking part, and/or those who have taken part previously, in industrial action. We will require staff to complete documentation to make clear their involvement in any industrial action. Such communications will be issued regularly, and every effort will be made to give members of staff the opportunity to inform us of their intentions. Appropriate systems will be set up to deal promptly with any exceptional cases following industrial action where pay has incorrectly been withheld from a member of staff who advises that they are not participating in such action.

Annual Leave

No annual leave requests for days of strike action, or for a period which includes a day of strike action, will be granted after notification to the University of the date(s) of intended action or a date otherwise determined by the University. Annual leave requests authorised before this will be honoured.

Returning to Work

Staff returning to work following industrial action will be expected to resume their full duties. It is recognised that as a community all Hope employees share a deep commitment to student learning. As a result of this shared commitment, we will ask staff involved in industrial action to prioritise certain forms of work on non-strike days to ensure that we deliver student educational needs. We expect that staff will prioritise student education needs ahead of other activities in which they might otherwise be involved. Refusal to do so may constitute a breach of contract and result in the withholding of contractual pay. The University will not re-instate any pay which has been withheld once the employee resumes their full contractual duties.

Pensions

The trades unions may advise on pension implications for employees participating in industrial action or employees should themselves seek information on their pension options if they intend to take part in strike action.

Responsibilities

Deans /Heads/ Directors of Professional Service

The co-operation of Deans / Heads / Directors / Managers (and their nominees) is crucial to the University being able to manage the action effectively. Deans / Heads / Directors / Managers (or their nominees) who are also Trade Union members and who refuse to cooperate in managing the effects of any industrial action may be removed from the office, where it is not their substantive role, either permanently or for the period of the dispute. Where the management role is held substantively, they will be treated the same as other staff participating in the action and pay will be withheld as appropriate.⁵

Employee

- Staff are legally required to inform the University if they have participated in industrial action. This should ideally be done by following the process outlined in the letter/ email received from People Services once they are participating in the action, or as soon as reasonably possible.
- Staff are not legally required to inform their employer that they **intend** to participate in industrial action, however, the University is entitled to make reasonable enquiries in order to prepare for industrial action and maintain business operations.