

Dear Colleague

UCU has notified Liverpool Hope University that it is calling on its members to take industrial action in support of its dispute over the 2022-23 pay award. The notification of action follows a UCU re-ballot which closed on 31 March 2023.

Whilst any strike or other industrial action is regrettable, we fully respect the right of our staff to take part in authorised industrial action. We are committed to the principle of fair pay for our staff and have set out our position on this with UCEA.

We recognise the inflationary pressures facing staff and in line with UCEA's request implemented an uplift of 5% for academic staff via two separate increases initially in February and then August 2023. The university also separately paid a £1,000 (pro rata) payment in December 2022 partly in recognition of the economic conditions facing staff. We acknowledge the national pay award was rejected by UCU.

Consistent with our mission for Education and the requirements of the OfS, our aim is to minimise the impact of industrial action on our students and we will seek to work with our staff and students to protect learning and teaching and the student experience throughout this dispute.

Action short of a strike (ASOS)

UCU has instructed their members to participate in the forms of action short of a strike (ASOS) which are listed below:

1. A marking and assessment boycott.
2. Working to contractual duties and not undertaking any voluntary activities.
3. Not covering for absent colleagues.
4. Not rescheduling classes and lectures cancelled **due to strike action**.
5. Removing uploaded materials related to, and/or not sharing materials related to, lectures or classes that will be or have been cancelled **as a result of strike action**.

To date UCU has not given notification of any days of strike action.

As UCU's instructions include asking their members to take action by "Working to contractual duties and not undertaking any voluntary activities" We would like to clarify that the contractual duties of staff cover what is in their contracts of employment and related documents, the customary ways in which people have worked in their schools, departments or units and the duties of cooperation and faithful service that are implied in all contracts.

You are also expected to perform your duties in an efficient manner, without seeking to disrupt the institution. Our expectation is that members of staff will therefore continue to work normally and efficiently.

Liverpool Hope University expects staff to continue to abide by their contracts of employment during the period of industrial action short of a strike, apart from where they take the ASOS instructed by UCU as listed at points 1, 3, 4 and 5 above.

Partial Performance

The University recognises UCU's valid mandate for industrial action and therefore participation by UCU members in the actions specified is lawful. Notwithstanding this, whilst ASOS may be lawful, it remains the case that participation in some forms of ASOS might amount to 'partial performance' of the contract of employment, which constitutes a breach of contract. It is the policy of Liverpool Hope University to withhold the pay of staff who participate in industrial action that amounts to a breach of contract, please see the [Industrial Action policy](#)

The University does not accept partial performance in breach of contract by any member of staff and are obliged to inform you that the University is entitled to, and reserves the right to, withhold up to 100% of salary. This means that if you do not fulfil all the requirements of your contract, for example by not carrying out marking and assessment duties that are expected of your role you will consequently not be entitled to your contractual pay. Should you decide only partially to tender your services, those services you do provide, whether in the University, at home, or elsewhere, will be voluntary on your part and we reserve the right to withhold full pay from when it becomes evident that you have breached your contract (See Pay implications of participating in the MAB below).

While the University always reserves this right, we will **not** be withholding salary at this time in respect of participation in the action short of strike action detailed above save for participation in a **marking and assessment boycott**. Any decisions to withhold pay will be informed by the impact ASOS has on our students and the level of disruption to their education and staff will be written to in advance with the detail.

Marking and Assessment Boycott (MAB)

We recognise that some colleagues will choose to take part in the national marking and assessment boycott as part of ASOS, although due to the adverse impact of such action on students, we know this decision will not be taken lightly. A marking and assessment boycott has clear potential to cause students disruption and significant concern about progression to their next year of study, or completing their awards and graduation.

As a University, it is essential and appropriate that we ensure students receive their marks and feedback, and that they are able to progress to the next stage of study or to graduate as expected this goes to the core of our mission. We will continue to focus on putting mitigations in place to ensure that students do not experience unnecessary disruption as a result of this further action.

To this end, colleagues are instructed to prioritise marking activity when asked, to ensure a full set of marks are returned in accordance with applicable deadlines and that other assessment and marking duties are fully attended to - this should be regarded as a reasonable management instruction.

For the avoidance of doubt it is clear that participation in a MAB would amount to partial performance and give rise to a breach of contract, particularly where reasonable management instructions have been given, to make clear this activity must be given priority.

Pay implications of participating in the MAB

As participation in a MAB would amount to partial performance and a breach of contract Liverpool Hope University **reserves the right** to withhold 100% of salary for this type of industrial action.

- Staff members who elect to participate in the MAB will have a day's pay withheld (at a rate of 1/365ths of salary) for every day that they participate in the boycott Pay will be withheld for the period, starting no earlier than Thursday, 20 April 2023, for which staff are required to undertake duties covered by the boycott eg marking and/or assessment work or attending subject meetings or assessment boards etc but refuse to do so. For any work submitted for marking or assessment on or after the 20th April **the student submission deadline will be the start date for withholding pay** for those participating in the MAB.
- For any marking and/or assessment duties for work submitted by the student before April 20th, where staff declare they are taking action consisting of MAB and where marks are not submitted by the end of the marking period the withholding of pay will commence from or be backdated to the 20th April 2023.

- Technically and consistent with the framework and direction provided by UCEA, 100% of pay may be withheld for those participating in the MAB. However, without prejudice to this principle, where staff participating in the MAB are still performing their other contractual duties on a voluntary basis, we are, at the present time, willing to maintain an element of pay on a purely voluntary and ex gratia basis.
- **Accordingly, the University intends to withhold pay at the rate of 50% of pay, with 50% maintained as described, on a voluntary and ex gratia basis for the period of time an individual participates in the MAB.**

This form of partial performance is deemed to be continuous even if there are days in the period of your participation on the MAB when you may not normally be marking or completing assessment activity.

This proportion of pay will be kept under review and could be increased, reduced or withdrawn in full at any time. For the avoidance of doubt any decision to withhold pay will continue to be informed by the impact that ASOS has on our students and the level of disruption to their education.

Reporting on participation in the MAB

Please follow this [link](#) to a **pro forma for completion** by no later than 5pm on the 28th April 2023 asking you to confirm whether you are taking or intend to take action short of a strike in the form of a marking and assessment boycott or not. If we do not receive a return by the 28th April we will assume you are taking part in the action (with the result that a proportion of your pay will be withheld as described above) until **you inform** us that you are no longer taking action.

Personnel will liaise with Heads and University Executive Managers (UEMs) throughout the period in seeking to assure that records are accurate. To ensure that pay is only withheld if individuals have participated in the MAB and because we do not know who this might be, we would strongly encourage everyone to complete the declaration as soon as possible. We will while the action is ongoing as a University both centrally and locally continue to check the status of staff on MAB. However please see below details as to how you can inform us if you have changed your position.

Pay will no longer be withheld once you resume normal working, or UCU ends this form of ASOS, or there are no further duties covered by the boycott e.g. marking or assessment work or attending subject meetings or assessment boards etc that would be expected of you. Any withholding of pay will be applied in the first available pay period from when the action commences and then subsequently in the next available pay periods whilst the action continues. Pay will be withheld at the appropriate rate on a continuous basis until the individual informs the university that they are ceasing their participation in the MAB.

If, at a later stage, you decide to change your position regarding your involvement in the ASOS, **you should notify** Personnel **immediately** via email at hr@hope.ac.uk.

The University will be reviewing the action short of strike on a regular basis and will communicate any changes to its current position directly to staff.

Effects of Partial Performance via MAB on Pension

As stated the University reserves the right to withhold (up to 100% of) pay due to partial performance during ASOS. This includes any period of a marking and assessment boycott.

However as the initial response to the MAB is a partial withholding of pay, employer and employee pension contributions will be calculated based on the actual pay that the individual receives after the reduction in pay has been applied. This will result in the individual accruing a lower pension during the period of the pay being withheld. (If 100% of pay is withheld at a

future point then the individual will have a day out of pensionable service and no pension will accrue for that day.)

FAQs

A series of FAQs on the MAB will be available shortly at:

<https://www.hope.ac.uk/gateway/staff/personnel/industrialaction-markingandassessmentboycott/>

You will appreciate that we do not know which of our employees are members of UCU and therefore it is necessary to write to all staff in preparation for the industrial action.

We regret having to write to you in these terms, but we do wish to ensure that all staff members are clear on Liverpool Hope's policy. Liverpool Hope very much hopes that you will consider your position with respect to decide not to take part in the marking and assessment boycott very carefully before making a final decision about your level of participation..

Yours sincerely

University Senior Executive Team