



This with the initial letter that the branch executive sent (22nd November).

Dear Sue Midha,

We note your e-mail message of 21 November 2022 and the policy regarding pay deductions to which the e-mail refers. The policy states that you reserve the right to make pay deduction for those staff undertaking Action Short of Strike Action, for example for refusing to reschedule classes missed due to strikes. For us to respond to this we would be grateful if you could confirm definitively within 24 hours whether it is your settled intention to make such deductions. We will assume a failure to respond as confirmation that it is your intention to deduct pay from those staff undertaking ASOS.

As you can imagine, UCU takes threats to deduct members pay very seriously and we will be responding robustly to any threats to do so. UCU is seeking a resolution to our current disputes, and we believe that employers should be focussed on supporting meaningful national negotiations rather than attempting to undermine lawful industrial action. Deducting pay for refusing to reschedule classes missed through strike action until they have been rescheduled appears to deny the right to withhold one's labour, a human right.

Yours sincerely,

Cardiff UCU executive committee

This was the reply that the branch executive received (23rd November).

Dear Cardiff UCU, Executive Committee

I write further to your letter of the 22 November 2022 in relation to the University's policy regarding pay deductions for staff undertaking Action Short of Strike that amounts to partial performance. I wish to reiterate what I said in my e-mail of 21 November 2022 to staff, which is that we respect the right of staff to take industrial action and appreciate that this will be a difficult decision for many.

As outlined in the FAQs which are referred to in my e-mail, the University's policy where Action Short of a Strike **escalates into partial performance** (i.e., refusing to undertake selected contractual activities), remains unchanged from previous periods of industrial action and the University continues to **reserve** its legal right to withhold 100% of pay if necessary. The University has not needed to enact this provision in the past given the constructive approach taken by staff here at Cardiff. On this basis, where colleagues work with schools to mitigate the impact of any detriment to student learning outcomes, we cannot envisage a situation where it will be necessary for pay to be withheld. However it is only fair to advise staff of the potential for pay deductions should this become necessary. This is not a threat as you suggest but simply to ensure transparency.

Please be assured that we also continue to advocate for a constructive sustainable solution for all.

I trust this clarifies matters.

Regards

Sue

This was the further reply to Sue Midha's response sent by the branch executive (8th December).

Dear Sue Midha,

Thank you for your message of 23 November in which you clarified aspects of how the university intends to enact its policy on pay deductions for staff undertaking Action Short of a Strike.

We note that you claim a 'legal right to withhold 100% of pay' for Action Short of a Strike that amounts to partial performance. We are concerned that this claim may not be fully accurate. Not only is a determination of when 'working to contract' crosses over into 'partial performance' contentious, but legal advice obtained by UCU states that 'it is possible (but not certain) that a judge may agree that 100% deduction was not reasonable when a significant proportion of work was being carried out by the employee'. Other employers make partial deductions and indeed Cardiff University itself has in the past informed staff that partial deductions may be made. While any legal advice you obtained may differ from ours, the fact of differing legal opinions suggests that there is legal uncertainty surrounding disproportionate deductions (such as 100% deductions) for what employers deem partial performance.

In this context, we are concerned that continuing to emphasise claims of a 'legal right to withhold 100% of pay' for partial performance may not be perceived by our members as providing transparency (as is your stated intention), but rather as a threat. Since your message to staff of 21 November, we have received a large volume of member communications on this matter and it is clear from this that your communication of 21 November has already significantly damaged labour relations at Cardiff University. We are concerned that further such HR communications may entrench a toxicity in labour relations at Cardiff University that may be difficult to recover from in the short term. We would regard such an outcome as most unfortunate. For this reason, we would welcome a more conciliatory tone in future HR communications with staff. We believe that such an approach would be in the interest of the university as a whole.

Further, we would like to discuss with you ways to avoid situations of hardship among staff caused by strike-related pay deductions. The staggering of strike-deductions over longer periods has in the past proved a very suitable measure to achieve this and it has always been much appreciated by staff. We think in the festive season and amid the cost of living crisis in particular, it would be a welcome sign of goodwill on the part of the university. We would be happy to meet to discuss this proposal either before Christmas or in January.

Kind regards,

Cardiff UCU executive committee