University and College Union
Carlow Street, London NW1 7LH, Tel. 020 7756 2500, www.ucu.org.uk

To HE branches and LA’s

Topic HE National pay claim and dispute 2016/17

Action To note

Summary This circular informs branches of letters received from HEIs challenging the pay dispute for 2016-2017. UCU’s standard reply to these letters forms part of this circular.

Contact Michael MacNeil, National Head of Bargaining and Negotiations mmacneil@ucu.org.uk

Dear Colleagues,

We have received a number of challenges to the establishment of our current dispute in relation to the pay and conditions of service of our members. It appears that UCEA has provided a template letter that institutions are using as a basis of their reply letter (see attached for the general content) to us.

Please find attached the response sent to those institutions on behalf of the union. In a few cases the response was amended slightly.

Branches are reminded that the terms of this dispute are clearly laid out in the letter of 17 March and must ensure that they do not inadvertently amend the terms of what this dispute is about in local communications.

Branches attention is drawn to the content of the UCEA template which indicates that it is possible their communications, including social media, may be cited in an attempt to undermine the dispute.

If branches are unsure of any issue about the trade dispute, please contact your Regional official in the first instance.

Michael MacNeil
National Head, Bargaining and Negotiations
Appendix A - UCEA template letter

11 April 2016

Dear xxx

NATIONAL CLAIM 2016/17 – DISPUTE

I write in response to your letter dated 5 April 2016. Despite the warnings in your letter dated 17 March of the potential for a trade dispute, I am surprised and disappointed at UCU’s decision to open a ballot for industrial action so prematurely.

As you know, this institution has signed up to participate in the national New JNCHES pay negotiations and has done so in good faith with the understanding that UCU, with the other four sector trade unions, is taking part in those negotiations following the procedures set out in the New JNCHES Agreement to which your union is a signatory.

At present, just one of the three agreed negotiating meetings for 2016-17 has taken place, at which UCEA made an opening offer, and therefore the negotiating process is far from concluded. We would not expect UCU to ‘recommend’ an opening offer to its members and therefore consider it unacceptable for UCU to seek to pursue a dispute so lacking in merit, which would disrupt the institution and our students’ education when the agreed national negotiating process has only recently begun.

In addition, I have been advised by UCEA that UCU has sought to lodge a national dispute through the New JNCHES procedure. I have seen a copy of the response from UCEA to UCU, which quite rightly refused to permit recourse to the New JNCHES Dispute Resolution process at this early stage prior to the conclusion of the agreed negotiating timetable.

As such UCU does not have a national dispute with UCEA, nor do we believe you have a local dispute with this institution, given that we have agreed to have the pay uplift dealt with at a national level.

As you will be aware, Section 219 of the 1992 Act grants an immunity to a union calling a strike (after a valid ballot has been conducted) when that union does so “in contemplation or furtherance of a trade dispute”.

Pursuant to section 244 of the 1992 Act, a “trade dispute” must be a dispute “between workers and their employer”. UCU has committed to participate in a national negotiating process under which it and other unions agreed to meet under the JNCHES Agreement to discuss pay over the period March to May each year. All other parties remain willing to continue with that process and it is only UCU has sought to subvert that process.

It is clear therefore that the “dispute”, to whatever extent, is not one that exists between UCU’s members and this institution; rather it is a “dispute” orchestrated by UCU on its own behalf an which has no real or apparent connection with UCU’s members employed by this institution.

If so, any such industrial action called in reliance upon the ballot would not be lawful and UCU would be liable to us for any losses arising.

In the light of this we require UCU to withdraw the ballot immediately and to confirm that no industrial action will be taken in reliance upon the ballot.
Application for specific disclosure

In the circumstances, we reserve the right to make an application for disclosure of all UCU’s documents (meaning anything in which information of any description is recorded, including without limitation emails, text messages, internet and social networking sites, and tweets or other similar forms of communication) evidencing the true reasons for the conduct of the ballot in relation to the decision to call the ballot in breach of these agreed arrangements.

Preservation of documents

We also place UCU on notice of potential proceedings in relation to the matters set out in this letter. You will of course be well aware of your existing obligations to preserve all documents (physical or electronic) relevant to this matter, including documents which adversely affect your own case.

Conclusion

I would strongly urge that UCU concentrates its energies on negotiating a settlement through the agreed New JNCHES process. This institution remains committed to the national New JNCHES negotiations and its outcomes, but we consider that UCU’s conduct so far in this round seriously undermines the strength of the process and risks deterring institutions from participating in future years if a union can disregard the process so wantonly.

In the meantime I await confirmation that you will rescind your ballot notice. Pending receipt of that all our rights are reserved. I look forward to hearing from you as soon as possible and no later than 12 April.

Yours sincerely
Appendix B - UCU's standard reply

Dear xxxxx

Thank you for your letter of xxx seeking our reply by 12 April 2016. I note, without further comment, that I have had correspondence from other Vice Chancellors and Principals in identical terms.

In essence, your letter raises two points:

1. UCU does not have a national dispute with UCEA on the pay offer made to date: and
2. Given that you have agreed to have the pay uplift dealt with by UCEA, we do not have a local dispute with your institution.

Neither point has any substance, and I shall deal with each briefly in turn.

1. **UCU does not have a national dispute with UCEA on the pay offer made to date**
   You are, of course, aware that we have lodged a dispute with UCEA. While you might disagree with that action, it is inaccurate to say that the UCU is not in dispute. I do not think that is a matter that it is appropriate for you to determine. In addition, it is immaterial and irrelevant to the union’s ability to hold an industrial action ballot whether or not UCU has a national dispute with UCEA. As you rightly note, in the context of industrial action, it is the definition of a trade dispute found in section 244 Trade Union and Labour Relations (Consolidation) Act 1992 that matters.

2. **Given that you have agreed to have the pay uplift dealt with by UCEA, we do not have a trade dispute with your institution.**
   Again, I refer you to my letter of 17th March 2016. I could not have been clearer. In the face of an unacceptable offer from UCEA, you were being asked directly to concede the union’s claim on behalf of its members at your institution or before 30 March 2016. You did not do so. We have, therefore, declared a trade dispute between you and our members about pay and terms and conditions.

**Conclusion**
My correspondence to date has made it clear that it is possible for the HE employers to avoid a dispute. The UCU is keen to engage in meaningful negotiations but an offer which, candidly, in no way reflects our claim and our members’ strength of feelings was only ever likely to lead to industrial action. You could not have been in any doubt about that from my letter of the 17th.

You end your letter with references apt for pre-litigation steps. That is unfortunate but in no way a deterrent to the union. The simple fact if the matter is this – if a judge has to ask him or herself whether union members know why they are being asked to vote for industrial action, we are confident the answer will come back clearly and resoundingly ‘yes’. They will know that it is because their pay has fallen year on year, and there are persistent issues with other terms of employment.

No-one wants unnecessary industrial action but the ball is squarely in the employers’ court to make a serious offer. I urge you to use your offices to persuade your negotiators to address meaningfully and
materially the loss in value of pay and the other matters we have raised in our claim at the next New JNCHES meeting on 28 April.

In the meantime, I have no intention of rescinding the ballot notice.

Please let me know if you would like to discuss this further.

Yours sincerely,

Michael MacNeil
National Head of Bargaining and Negotiations