

Online or Mixed Media Learning Delivery – April 2020

With the COVID 19 pandemic now impacting on all aspects of education, many employers are seeking alternative means of providing teaching to learners.

It is important that when you are asked to undertake such work, that you understand how this will be used; to whom these recordings will be available; and for how long your employer will hold the recordings. It is also crucial that you consent to your employer holding this information on you.

UCU's position

UCU is concerned that when staff are recording teaching for use in a prison setting, there can be significant risks to the security of the individuals, particularly if recordings in educators' homes could lead to prisoners identifying where they live.

We also do not know where the recordings will be watched or listened to, and how access will be restricted to only those for whom it is appropriate to have them.

We know that educators can become the targets for aggressive treatment by disgruntled prisoners, and we do not want what seems like a helpful means of providing educational contact to be used for such negative purposes.

Employers need to give proper thought and consideration to how they will use such resources; how they will get staff on board to provide this; how they will ensure staff safety and prevent them from being compelled to participate if they feel uncomfortable about this; how they will provide the proper training, support and technology for staff undertaking this work; and how they will handle this personal data.

UCU believes that online or mixed media learning delivery can be a useful pedagogical tool if set up and used properly, but it is vital that we ensure the safety of teachers and learners in order to secure that outcome.

The legal bit

Video or audio recordings of you are personal data as described in the General Data Protection Regulations (GDPR), which are covered by the Data Protection Act 2018.

An employer must identify valid grounds under the GDPR for collecting personal data, and in these circumstances that would be by informed consent for a specific purpose.

Consent must be clearly given and cannot be implied, so you are within your rights to refuse to give your consent. You can also withdraw your consent at any time and ask for all data held on you by the employer to be deleted.

These rights can be enforced via the Information Commissioner's Office - <https://ico.org.uk/make-a-complaint/>

Guidance for individuals

Should your employer approach you to undertake online/mixed media deliver of learning, then we would suggest staff use the following model letter to raise the following queries with their employer:

Dear [Insert name of Line Manager/Education Manager here]

I am writing to you regarding the plan to provide online/mixed media delivery of teaching to prisoners.

I have been advised by UCU that any video or audio recordings that my employer holds on me would be considered personal data as defined by the Data Protection Act 2018, which brings into English law the General Data Protection Regulations.

As such, I have the right to be asked for my informed consent about the use of and holding of such data before I undertake this work. To inform my decision I would like to know the following:

- Can you confirm that participation is voluntary?
- What will this recording be used for?
- Who will be able to access it?
- How will access be controlled?
- How long will these recordings be held for?
- How will they be stored?
- What training, support and technology will I be provided with to help me undertake this work?

I look forward to your response to these questions and will refrain from any online/mixed media delivery of teaching until I am able to make an informed decision.

Yours sincerely,

[Add name here]

Even if you get the answers you need to make an informed decision, you are not required to give your consent. There may be personal concerns or reasons that can't be satisfied by any assurances, and you are within your rights to withhold your consent.

If you have already started to undertake such work, you can withdraw your consent, and send the above model letter to gain the answers to your questions. Do not feel that your agreement so far precludes your ability to change your mind.

If your employer will not accept you refusing to undertake this work, please contact your branch Reps as soon as possible.

Negotiating a proper agreement with an employer

The best way to approach any online/mixed media teaching delivery, is for the employer to agree a framework for this with the local branch. Contact your branch Reps to find out if there is an agreement in place already, or if there isn't, encourage your branch Reps to seek one.

UCU has guidance on Lecture Capture in HE, which is currently being updated, but is a useful reference point for branches when embarking on such discussions. This guidance can be found here - https://www.ucu.org.uk/media/10060/Lecture-capture-in-HE-UCU-bargaining-guide-2013/pdf/ucu_lecture-capture_bargaining-guidance_2013.pdf You will need your Membership No. to access this guidance.

The key things for an agreement to cover are:

- The employer agrees that video and audio recordings are personal data and must be held with reference to the GDPR requirements in the Data Protection Act 2018.
- The employer will clearly state what the recordings will be used for, and that they will not be used for any other purposes (i.e. lesson observations or in disciplinary proceedings).
- The employer will make it clear how this data will be stored securely.
- It will designate a Data Controller for these recordings, who can be contacted by educators if they have further questions or queries, and regarding consent.
- The employer will state how long this data will be held for and when it will be destroyed, usually this would be when the relevant cohort of learners finishes the course, but roll-on/roll-off delivery might require a different time limit. Make sure the time limit is not excessive.
- No worker will be forced to participate in online/mixed media teaching delivery. The agreement should state that their informed consent will be sought BEFORE this work starts and that they can withdraw their consent at any time.
- These resources will only be available to the students on that course, and not widely available to any prisoner in the prison or attending education.
- The prisoners will only have access to them for a specified period of time and prisoners must return the recordings (if in a physical format) after that timeframe ends (like returning a library book). Any unreturned items will be reported to the prison.
- Staff will be provided with appropriate training, support and technology to undertake this work BEFORE they start producing it.
- The employer will undertake a risk assessment BEFORE commencing this work, and issue clear guidance to staff to ensure their security is safeguarded.
- All videos and recordings will be reviewed to ensure that no one is putting themselves at risk BEFORE they are shared with prisoners. Any file properties identifying the individual or their location should be removed and if they can't be the recordings will not be used.

If you need any help to secure this agreement, please contact the Bargaining and Negotiations team or your Regional Office for support.