

**The following is a written response to the employer's 'management proposals' received in writing via ACAS on 10 June 2024.**

## **Introduction:**

Unite is concerned that the employer has reframed and conflated elements of the dispute under 'Issues Covered'.

*Issues covered:*

- *Branch concerns regarding the treatment of Black members of staff*
- *Industrial relation and organisational culture*
- *Hybrid working (return to office)/Working from home agreement/policy*
- *Union membership amongst UCU staff*
- *Agreeing a gender identity policy*

For clarity our dispute is as follows (and it would be helpful going forward if written proposals from the employer speak to the actual points of dispute):

- **A fundamentally broken organisational culture and damaging approach to industrial relations which is adversely affecting the mental and physical health & safety, terms & conditions and security of employment of our members.**
- **Equalities issues**
  - The employer's disproportionate **use of formal procedures that can lead to dismissal** (disciplinary; capability; probationary extensions and failures) against Black employees
  - The employer's failure to agree a Gender Identity policy
- **Breaches of the recognition and procedure agreement including Unite's sole status as the recognised union**
  - Failure to adhere to the status quo clause in our recognition agreement.
- **Failure to adhere to the status quo ante clause of the UCU procedure for the avoidance and settlement of local disputes**
- **A breakdown in industrial relations**
  - Failure to follow procedures
  - Refusal to agree a Hybrid working policy
  - Failure to comply with the UCU procedure for organisational change

**We have responded to each part of the proposals in the relevant section and set out points of clarifications in bold.**

## Response:

Firstly, we would like to address the way in which the management proposals are drafted in that it speaks to a wider point of Unite's experience as to how the employer engages with the recognised trade union. As a management position statement, it is rather curious that the employer seeks to assume Unite's position and what we agree to. These are position statements of one party (the employer) but they seek to articulate the position or views of Unite. This is really not helpful framing and we will comment, where necessary, without labouring the point as we respond below.

### 1. *Branch concerns regarding the treatment of Black members of staff*

*On Friday 31 May, SMT wrote to Unite to outline a plan for "a robust and comprehensive examination of the experiences of both Black staff and Black members at UCU. We are committed to working collaboratively with both the staff unions and the BMSC, to ensure that both members and staff can have confidence in how the review is constructed and conducted, as well as – importantly – how the recommendations will be taken on board".*

*The communication indicated that the information set-out (see Annex below) was presented "as the basis for further engagement." Unite have since responded to confirm their availability for a meeting on 20 June and providing some useful feedback. We have also received a response from the BMSC noting their availability on this date so we will get this set up and confirmed to all parties ASAP this week.*

We are glad to have finally had sight of an outline plan for the review, albeit only after taking a day's strike action. We are happy to represent our members and play a full role in this work.

**It would be really useful if our clarification questions posed in emails on 3rd and 7th June could be answered in advance of the meeting on 20th June.**

We continue to have concerns about the employer's capacity to meet the requirements of the review if it is to be meaningful.

We are not prepared, however, to participate in joint work involving other unions when we have an outstanding dispute about the breach of our recognition agreement. Unite believes the status quo ante clause applies under our single union recognition agreement. Continued reference to "unions" and proposals to include another union in this process, is not indicative of the behaviour needed if we are to improve industrial relations. Fundamentally the employer is at risk of derailing a solution from one area in dispute (Race Review) by unnecessarily doubling down in another (Recognition) .

*In relation to the outstanding disciplinary investigation involving a Black member of staff, in response to Unite claims of a compromised process and differential treatment, UCU management are referring the process for an independent review of the handling of this case and the relevant comparator complaint (appropriately anonymised through redaction). Findings of the independent assessment will be shared with Unite.*

We are disappointed that the employer has decided to refer a personal case to a third party without disclosing the final investigation report and relevant paperwork to the individual or their caseworker, or having sought their permission. The current proposal doesn't speak to the issue raised about institutional racism and the over-representation of Black staff in formal processes. This proposal also further delays natural justice for the individual concerned. We believe the procedure has already been compromised by the length of time the suspension was active and subsequently concluding an investigation and not producing a written report in a timely manner. Unite insists that the member be provided without further delay the final written investigation report as per section 5 of UCU's Investigations Procedure.

**Has the employer made an assessment as to how their failures to follow agreed procedures creates further undue stress for any individuals involved, and that this directly undermines the employer's commitment to the implementation of the agreed OSRA?**

We believe that at this point the only appropriate resolution is to discontinue the formal processes and consider this whole episode, and similar uses of formal procedures against Black staff, as part of the race review. It is also Unite's expectation that the probation case, not mentioned by the employer above, is also referred to the Race Review.

**Our assessment of the status of issues in dispute:**

**Race review - work in progress, Unite will reassess and report back to our members following the meeting to discuss terms of reference on 20 June, and on the proviso that GMB is removed as a party to the review.**

**Individual Cases - remain in scope of dispute. Unite's view is the employer is exacerbating the situation and placing our members at further risk of harm.**

## *2. Industrial relations and organisational culture*

### *Industrial relations*

*Both parties accept the need to improve industrial relations as a matter of priority.*

*It is agreed that both parties will seek assistance from ACAS to improve the current relationship by tackling:*

- o Perceptions of the current relationship and the breakdown in trust*
- o Ways of improving the process of joint dialogue*

### *Organisational culture*

*Alongside the work to improve industrial relations, it is acknowledged that there is a need to address concerns raised by Unite members about the wider organisational culture within UCU.*

*Both parties acknowledge that the current relationship between SMT and Unite is having a detrimental impact on how UCU is perceived as an organisation. It is also acknowledged that while many staff teams in the organisation are functioning well, some teams are reporting discontent and unhappiness.*

*Both parties recognise a joint responsibility to promote a positive workplace culture; one seeking to establish common values; and one that will benefit both UCU as a trade union established to promote and protect the interests of tertiary education sector workers, and those who are working for UCU as an employer.*

*In addition to work already underway (e.g. all-staff meetings, management training, OSRA implementation) work is required to reach a shared understanding of organisational culture and agree approaches to cultural change as required.*

*It is agreed to seek assistance from ACAS to conduct a joint exploration of the current organisational culture within UCU, and to consider any action that may be necessary as a result.*

*SMT commit to this piece of work. Accepting that this requires further discussion in relation to the practicalities of resource constraints, such as ACAS availability, we would hope to be able to coordinate the first meeting to discuss these issues by July 2024 and conclude the work with an agreed action plan by the end of 2024.*

We believe the employer continues to be in denial, to misunderstand and/or to misrepresent our previous concerns outlined on these matters. There is no acknowledgement of the damaging impact that working in such a toxic culture is having on many of our members or the significant detrimental health impacts that this is having on staff, nor of the dysfunctionality and chaos of organisational operations.

Organisational dysfunction is a leading component of Unite's dispute and one which we believe requires urgent action. It is unhelpful for the employer to continue to downplay this element and conflate it with industrial relations issues. These matters were set out separately in our declaration of dispute letter because they are separate issues.

Nor is it helpful to suggest that Unite somehow has some part to play in the creation of a toxic workplace, when all we have sought to do, over a considerable length of time, is bring this to the employer's attention.

*Both parties acknowledge that the current relationship between SMT and Unite is having a detrimental impact on how UCU is perceived as an organisation.*

Unite does not acknowledge this. It is solely the employer's own hypocritical and intransigent behaviour that is having a detrimental impact on how UCU is perceived as an organisation. As a trade union employer it has brought its own self into disrepute.

We are concerned about 'woolly' language such as 'consider any action' which is not demonstrable of any meaningful commitment or tangible outcomes by the employer.

It is also noted that the employer has offered no commitment to properly follow agreed policies and procedures going forward, nor to now adhere to the status quo ante clauses in our disputes procedures which is a key driver of the broken industrial relations.

ACAS have told us that whilst they could undertake a diagnostic process, they could not carry out an exploration of these issues, and that they would talk to Unite and SMT separately about this. We do not believe such an ACAS managed process would be suitable or wide-reaching enough nor would it place the employer under the sufficient scrutiny required to learn and change. Additionally, all parties are aware of the limited resources and capacity available from ACAS, so we have significant concerns about this, but also, significantly, about the capacity of SMT to deal with multifaceted issues with the urgency required and which our members need.

In any event, we note, even if the employer has not, the Congress policy contained within three key motions B18<sup>1</sup>, B30<sup>2</sup> and B31<sup>3</sup>. It is our expectation therefore that the employer will move to implement that policy as follows:

Our proposal for resolution is an independent investigation to assess the organisational climate with the terms of reference and investigator agreed with Unite, along with a commitment from the employer to fully implement any recommendations. The scope of the investigation(s) to include, at minimum:

- staff health, safety, and well-being and Risk Management Strategy impact

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<sup>1</sup> B18 "agree to Unite's proposed resolutions: Withdraw dismissal-related procedures against Black staff; An independent investigation into workplace culture and organisation; Respect recognition agreement with Unite"

<sup>2</sup> B30 "ensure the General Secretary resolves the dispute with Unite and agrees an independent investigation into UCU's organisational climate"

<sup>3</sup> B31 "to settle the staff dispute on terms agreed by UNITE UCU and to hold within three months and with bodies agreed with UNITE UCU, an independent inquiry into the workplace culture in UCU"

- organisational structure and culture
- breach of recognition agreement
- failures of communication
- equalities
- bullying

### **Is the employer now going to take steps to implement Congress policy as set out above?**

We are happy for ACAS to be involved in helping the parties draft the terms of reference for such an investigation into the organisational and cultural issues in this dispute and in choosing investigator(s).

We are equally happy to engage with ACAS and the employer on work to improve industrial relations in parallel to such an investigation, including hearing more about what values the employer believes it holds as a trade union employer and explaining our experiences as the trade union within a trade union employer.

### **Our assessment of the status of issue in dispute:**

#### **No progress**

#### *3. Hybrid working / Working from home agreement/policy*

- *Unite recognise that it is a legitimate policy for the organisation to re-open UCU offices fully and for staff to regularly attend their office base.*
- *The SMT welcomes Unite's clarification that they do not have a 'no return to office' position.*

As set out above, the way in which these proposals are written misrepresent Unite. We do not feel that the first bullet point is helpful or accurately represents Unite's position. There is no agreed definition of 'regularly' or 'fully'. It does not reference the context of Unite's numerous objections to the actions of the employer. It does not adequately reference the numerous breaches of procedure or status quo, or indeed the widely, deeply felt views of Unite members. Unite has always been very clear that we do not have an in-principle objection to staff returning to offices. Indeed the very fact we tabled a hybrid working policy back in January 2022 is evidence that Unite has always been willing and prepared to work with the employer to that end. It is simply that we have long established Unite branch policy, as voted for repeatedly by members of our branch, that there should be no return to office working until such time that the relevant agreement is reached with the employer. This was originally fully accepted by the employer.

#### *Both parties agree the following:*

- *SMT will undertake an Equality Impact Assessment of the process of office reopening.*
- *To enter a period of intense negotiation with the aim of reaching agreement over a Hybrid working / Working from Home policy. Both parties agree to use their best endeavours to conclude these discussions as soon as possible.*
- *This process of negotiation and consultation will seek to reach agreement on a fair approach to the allocation of London Weighting to relevant posts. For example, it is accepted that it would be unfair for a member of staff to live outside London, not come into the Carlow Street office but, because their post is designated as based at that office, receive London Weighting.*

- *The process of negotiation and consultation shall also seek to provide additional assurance on means to ensure a consistent approach across the organisation (for example: the sharing of information with Unite representatives)*
- *That the current recognition agreement has the facility for different outcomes from discussion. These include:*
- *A collective agreement to be expressly incorporated as terms of the contract of employment of some or all UCU employees*
- *A collective agreement directly relevant to the terms of the contract of employment*
- *Policies which are relevant to the terms of the contract of employment.*

**Prior to engaging in the detail set out above, we would like to clarify whether the employer is now agreeing to negotiate on all aspects of hybrid working and working from home policy/arrangements inclusive of the safety controls contained in the OSRA?**

**If the answer to the above question is ‘yes’, then Unite would request that the employer pauses implementation, as per the status quo ante clause (required by the dispute procedure), of the return to offices until a negotiated agreement has been reached, and with the relevant safety consultations concluded.**

**Our assessment of the status of issue in dispute:**

**Unite awaits response to the above clarification**

4. *Union membership amongst UCU staff*

*Both parties recognise the ongoing issue concerning union representation of a group of H-grade staff.*

*The parties agree to write to the TUC or ACAS, as a matter of urgency, to seek their assistance in resolving the issue through mediation. SMT acknowledges that this does not restrict Unite pursuing any case through the TUC disputes procedures.*

This proposal doesn't speak to Unite's actual dispute which is a **breach of our recognition agreement**. It is **not** about which union(s) individual members of staff choose to join - it is about who has a right to collectively bargain on their behalf - and to pretend otherwise is egregious nonsense, especially from a trade union employer. This is another reframing of our dispute we strongly object to.

It is a point of fact which has been acknowledged and admitted to by the employer, including in correspondence to UCU Congress delegates, that they have breached the agreement - *"In hindsight, we acknowledge that we should have communicated formally with Unite branch representatives on the issue of GMB recognition at an earlier point."*

This element of the dispute can easily be settled by the **withdrawal from the recognition agreement with GMB** and thereafter tabling any proposals for amendments to Unite's recognition agreement as per the procedure.

Unite is willing to enter into formal discussion, including mediation if necessary, with colleagues in GMB once the above conditions are met, but this is not directly relevant to our dispute with our employer.

UCU's SMT has no influence or involvement in any TUC (Bridlington Agreement) dispute process which is between GMB and Unite.

**Our assessment of the status of issue in dispute:**

## No progress.

### 5. Agreeing a Gender Identity policy

*UCU management is fully committed to establishing a gender identity policy; regrettable delays in implementation have been entirely linked to capacity and should not be seen to indicate any lack of commitment in this regard.*

*Nevertheless, UCU management recognise the need to achieve this as soon as possible. We therefore commit to ensuring that Unite receives a revised draft of the policy, amended in accordance with legal advice received to minimise the risk of legal challenges, by Friday 28 June, at which point we will schedule further meetings with a view to agreeing the policy formally as soon as possible.*

We welcome this proposal but require more detail in order to assure members that progress will be made on this matter considering the long delay we have already experienced on progressing this policy (over 12 months). The employer told us verbally at the ACAS session on 10 June that the legal advice that has been provided to UCU would be shared with Unite, but this isn't included as part of the employer's written proposals.

In light of broken assurances and commitments in the past, our experience tells us, and this dispute mandates us, **to request a date by which time limited negotiations would conclude. In light of the departure of the Head of Equality & Policy at the end of July, identification of the SMT (delegated) lead on this from that point on would also be required.**

### Our assessment of the Status of Issue in Dispute:

**No tangible progress. Unite will reassess and report back to members following receipt of the revised draft policy on or before the 28 June.**

## Summary

As has been stated in previous discussions about the matters in dispute, Unite now need tangible offers that reflect the employer's genuine commitment to resolve them. In Unite's view, this can only be done if the offer on each part of the dispute speaks to the extra resource the employer needs to ensure it has the capacity necessary to implement its commitments. And there must be a clear timeline set out for the conclusion of each piece of work that forms a part of the offer.

It must also be said that we remain disappointed and concerned at the lack of progress we are making. Some of our issues have a years-long history. We declared a dispute over the toxic and unsafe organisational culture three months ago, and indeed raised these concerns directly with the general secretary back in August 2023. Yet for all the employer's declarations that they are working hard to resolve the dispute, after six formal meetings we've barely made any tangible progress. All the while our members continue to suffer the fallout of the ongoing misuses and abuses of agreed policy and procedures.

### Unite Negotiators

12 June 2024