

University of Reading proposed redundancies and/or cuts to pay, terms and conditions
A discussion paper for Reading UCU Branch.

What is University of Reading Proposing?

On 16 June 2020, University of Reading sent UCU a section 188 consultation letter. This letter set out a series of proposals for consultation. This included consultation on dismissal by reason of redundancy all of the 4583 staff employed by University of Reading. The University would then offer new contracts on reduced terms and conditions for staff. **The consultation ends on 31 July 2020.**

The University also included provision to make staff redundant without re-employment within the section 188 notification. The number of planned redundancies is actually unclear. The University has stated a number of 500 FTE, but will not provide any detail such as number of posts, grades or roles. The number is derived from the amount of savings targeted by the University from the staffing budget, divided by the average gross wage of a staff member at the University (note, comparison not based on actual employment costs). These numbers are always being presented in the following terms; if University of Reading cannot take the difficult action to cut staff costs, University of Reading will need to make these very large scale redundancies.

The University of Reading's stated objective is a collective agreement with UCU to agree a series of cuts to pay, terms and conditions over a 3 year period, with the objective of generating savings of £60m from the staffing budget.

Whilst the University's stated objective is to reach an agreement with UCU, it has also made all of our members at risk of redundancy. Reading UCU has repeatedly condemned this tactic, but the University is maintaining that it requires this as a contingency if it cannot reach an agreement with UCU.

The University has declined to rule out compulsory redundancies, as we have requested. In the consultation meetings the University is pushing the line that redundancies could be minimised or even avoided, but is unwilling to be specific.

The University of Reading sets out four different options on costs savings that each achieve at least £60m in savings (page 14-15 of the University of Reading Post COVID-19 Restructuring Process document).

Model 1 sets out a potential menu of cuts to pay, terms and conditions that the University state will allow it to achieve £60m in savings. The University describes this as follows:

Model 1 - This option contains a variety of measures listed above but unlike the other options does not include any redundancies. This option assumes the following:

- A. No inflationary pay award for 3 years from 2020/21 and therefore this feeds in to future years.
- B. No Incremental progression occurs for 12 months for 1st October 2020.

- C. All staff reducing to 80% of their contract for 12 months, assumed to start from 1st October 2020 for 12 months. We have assumed there would be a corresponding reduction in everyone's contractual FTE.
- D. Vacancy Freeze. It is assumed that this continues for the next 3 years. The numbers are based on 50% of vacancies being unfilled. The estimate is based on historic vacancy levels.
- E. There is a 25% Reduction in Casual/Sessional and Overtime
- F. There is a 50% Reduction in Travel
- G. There are Interview cost savings due to lower recruitment
- H. Strict spending control measures continue.

In the Restructuring Consultation Group meetings to date, the University has been almost exclusively focused on the proposed cuts in model 1.

Models 2 and 3 are essentially proposing different timescales for the imposition of redundancies, either in January 2021, or 31 July 2021 (at a potentially larger scale). These models do not provide meaningful information about the distribution of posts at risk of redundancy.

In model 4 is a 'hybrid' which combines smaller scale cut to pay, terms and conditions, with redundancies of 350 staff taking effect on 31 July 2021.

It should be noted that in the approach to negotiations, the University is seeking to present itself as being 'open to all options' whilst also seeking to frame the discussion to solely focus on the proposed cuts. This approach has been consistently contested by the Reading UCU Branch Negotiators.

The legal framework for redundancies

Redundancy is one of the lawful reasons for dismissal (section 139, Employment Rights Act 1996). This is broadly defined as a reduction or diminution of work of a particular kind, or work at a particular place. The legal definition of redundancy include situations in which work has not diminished but fewer employees are required to do it through mechanisms such as: reallocation of duties, changes to terms and conditions of employment and restructuring/reorganisation.

The reason for redundancy that work of a particular kind has ceased or diminished would fit with the likely impact of COVID-19 and/or financial problems faced by the employer.

The University estimate of the number of redundancies is up to 500 FTE, but it will not provide any detail such as number of posts, grades or roles at this time. For these redundancies to move ahead, there would need to be a further redundancy consultation process, in which further information would be required to be disclosed to UCU, including details of the specific posts in scope of the exercise. It should be noted that this is referenced on page 5 of the University of Reading Post COVID-19 Restructuring Process document.

In my view, the University is for insufficiently clear about, or is conflating, the different phases of its restructuring process in its communications to staff. Put simply, it is seeking to increase the fear of potential redundancies, in order to obtain consent from its staff for the proposed cuts to their pay, terms and conditions.

However, ***we cannot simply dismiss the threat to jobs faced by members in the autumn if we were to reject all cuts to pay, terms and conditions.*** Given that the 500 FTE job cuts threatened equates to 11% of total staffing by headcount, we should be mindful that even if the University of Reading is exaggerating the scale of the potential redundancies, the number of posts likely to be at risk would be likely larger than any previously seen at University of Reading.

It should also be noted that, as explained above, the section 188 consultation letter is primarily framed around the potential for dismissal by reason of redundancy all of the 4583 staff employed by University of Reading. The University would then offer new contracts on reduced pay, terms or conditions for staff.

What legal mechanisms are available to University of Reading?

There are a number of mechanisms that University of Reading can use in order to enact the kinds of cuts to pay terms and conditions outlined in model 1 in the University of Reading Post COVID-19 Restructuring Process. This should be understood in the context that the changes that University of Reading is seeking to enact amount to a change in the contracts of employment for University of Reading staff.

1. A collective agreement

University of Reading recognises UCU for collective bargaining for the grades six to nine on the University grading structure. This means that UCU can enter into collective agreements that alter the agreed pay scales, or terms and conditions within contracts of employment, such as the number of working hours.

If UCU enters into a collective agreement with University of Reading, this would alter the contracts of employment for all staff in grades six to nine, regardless of whether or not they are UCU members. This process is the most administratively straightforward for University of Reading.

UCU policy would mean that Reading UCU would have to undertake a ballot of all members before entering into any such agreement with University of Reading.

2. Individual Sign Up to new contract of employment

An employer can ask its employees to enter into a revised contract of employment on reduced pay, terms or conditions. This is the only mechanism available to University of Reading with respect to staff employed on grades one to five.

The problem with this strategy, from the University's point of view, is that as a straightforward proposal, there is little incentive for staff to agree to a cut in pay or conditions.

We have seen examples elsewhere in HE in which Universities have successfully pursued this strategy to force through changes to terms and conditions. However, these proposals have normally been orientated around some kind of inducement, for example a reduction in annual leave in exchange for more pay.

Given the context and the University's stated objective of £60m in savings, the University is stating that it will need to make some staff redundant if they do not accept the proposed cuts. However, it is likely that the University is going to seek to invite staff to sign up to the cuts, using the potential threat of the 500 FTE redundancies as the primary motivation to obtain the required agreement from employees.

3. Dismiss and Re-Engage

Extract from LRD 'Law at Work' July 2020, on Dismissal for refusing to agree changes to terms and conditions (some minor edits for length):

In recent years, a growing number of employers are using the tactic of dismissal and re-engagement to force through unwelcome cuts to terms and conditions. In this kind of dismissal, the employer gives notice to end the employment contract while at the same time offering a new contract with new, less favourable terms.

The legal position is that by ending an existing employment contract and offering new terms in this way, the employer does not break the contract, as long as they give employees their full legal notice of termination (*Kerry Foods v Lynch* [2005] IRLR 680).

Arguments based on breaches of the duty of trust and confidence are common here, but they are difficult to win, especially because most employers work through a structured process of consultation, at least on paper, particularly where a union is involved, before threatening dismissal and re-engagement as a final step in any negotiation.

Although not a contract breach, ending the contract is still a dismissal, so employees with at least two years' service can claim unfair dismissal.

An employee who refuses to accept unfavourable changes to terms and conditions can be fairly dismissed for "some other substantial reason", depending on all the circumstances.

As Reading UCU has repeatedly stated in the consultation meetings, this approach is one that is used by only the most unscrupulous employers such as British Airways, and has not to the best of my knowledge been previously used by any University, prior to the onset of the COVID-19 crisis (please note that other Universities are currently considering similar proposals).

Response by UCU to redundancies and cuts to pay, terms and conditions

UCU launched the Fund the Future Campaign in June 2020, warning that the sectors our members work in are projected to suffer more from the economic effects of coronavirus than any other. The Fund the Future campaign has three key aims: defend members' jobs; increase government funding; win the argument for a different education system.

UCU members, especially in Universities, have been facing threats of redundancies. UCU has issued bargaining guidance for UCU Branches to take a 'jobs first' approach that prioritises the maintenance of employment over other institutional priorities like capital spending or protection of reserves. The advice can be found here:

https://www.ucu.org.uk/media/10958/Fund-the-Future---bargaining-note-for-HE-branches/pdf/ftf_branch_bargaining-note.pdf

There are prerequisites to, and conditions on, UCU Branches engaging with employers regarding potential cuts in members' terms and conditions. These include, but would not be limited to:

1. **Full and transparent disclosure of financial information by HE employers.** The University must open up the books to critical examination, so that staff can appreciate and quantify the financial situation that may require them to consider cuts in order to save jobs from redundancy.
2. **Temporary measures.** Cost reduction measures with negative impacts for staff (e.g. pay freezes/ deferral of pay awards/ suspension of salary increments) must be agreed as temporary measures only. Specific expiry dates should be agreed in advance, with automatic reinstatement of full terms and conditions when temporary measures expire.
3. **Future restitution of detriment.** Agreements should be sought for future restitution of financial detriment suffered by staff through any temporary measures, as soon as financial circumstances allow - criteria to identify those circumstances should be agreed in advance.
4. **UCU member consultation.** Any potential agreement must be subject to consultation with branch members. Any proposals that the Branch is considering adopting must be consulted on through a full consultative e-ballot of branch members before final agreement. I think that it is important that we are consistent in stating that final decisions will rest with UCU members.

If Reading UCU engages in negotiation or bargaining with the University about proposed changes to pay, terms and conditions, we would need to be mindful of potential differential impacts on different staff groups and those at different stages of career progression in order to avoid inadvertent discriminatory outcomes. To this end Equality Impact Assessments should be completed for all proposals and shared with UCU before consultation with UCU members and any agreement being concluded.

Any proposals should address potential impact upon pension contributions and future benefits.

UCU also needs to carefully consider potential impact on other groups of members, such as colleagues on precarious contracts (hourly paid and fixed term) or colleagues in Academic Related and Professional Services roles.

The Branch negotiators have to date primarily focused on seeking full and transparent disclosure of information from University of Reading. UCU has sought to test the assumptions made by University of Reading, rather than simply to accept the claims of the necessity of proposed cuts at face value.

UCU Policy in responding to redundancies and COVID

The general approach that UCU advises that UCU Branches should adopt is set out in the above guidance. UCU Branches can negotiate with their employers on a range of measures to put 'jobs first.'

At the end of any negotiation or bargaining process, any proposed agreement should be put to a full ballot of UCU members in the Branch.

UCU Branches should not recommend a collective agreement to members if there is any detriment. For example, pay cuts.

UCU Branches can negotiate collective agreement that includes some cuts to terms and conditions if this will save jobs, but this must go to a ballot of UCU members with a neutral recommendation.

In this situation, UCU Branches should seek to provide members with factual information, so that members can make informed choices about the advantages and drawbacks of entering into the agreement. This can be framed as a choice between A) The proposed agreement B) The employers stated action if the agreement is rejected, i.e. redundancies.

Does Reading UCU want to enter into a negotiation process to seek to minimise job cuts?

Reading UCU has to consider whether the Branch is willing to engage in a negotiation and bargaining process with University of Reading to seek to stop or reduce the scale of redundancies of UCU members.

We have legitimate concerns that University of Reading is overstating the scale of the cuts required in the short term, however our analysis highlights long term financial weaknesses in University of Reading that could impact on the security of our members employment in future years.

We should note that the planned trajectory of the University of Reading Senior Management is to push ahead with cuts, and it is likely that the University will proceed regardless of whether it is able to reach an agreement with UCU (noting the legal restrictions, as described above).

Reading UCU could campaign and organise against these cuts, but the power and leverage lie with University of Reading. The Branch could draw attention to the disreputable approach taken by the University, but these actions may not stand out in the wider economy as Britain enters into what could be the steepest recession in the modern era.

Any discussion of potential agreement to cuts would also need to involve discussions about transparency and oversight, restitution of any detriment, and protecting staff on insecure contracts of employment.

If Reading UCU is to enter into a negotiation process, we need to be clear that the core bargaining objective would be to seek an agreement that stops or dramatically reduces the scale of redundancies of UCU members. This objective would be balanced against minimising the cuts to members pay, terms and conditions, with protecting security of employment.

We would need to be clear if we enter into negotiations with the University that any agreement would only be entered into after approval by a full ballot of UCU members.

Moray McAulay
Regional Official, UCU Southern Region
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