

## Important information for UCU members at Lancaster University

Your Union on Campus: Fighting injustice

November 2010

## Employment Tribunal Ruling: UCU Wins Again

**O**n 27 October 2010, an Employment Appeal Tribunal confirmed the March 2010 tribunal decision that found that this University's management has breached the law by failing to engage in collective consultation about redundancies. In their appeal, University management had challenged the decision and argued that the protective (punitive) award made against the University should be reduced. Instead, the appeal ruling confirmed the judgment and the level of the award against University management.

In a strongly worded judgment the Appeal Tribunal found that University management was guilty of "an important breach of [its] statutory obligation" and that the employer's actions did not meet the legal requirement to consult about "ways of avoiding dismissals, reducing the numbers of employees to be dismissed and mitigating the consequences of dismissals." The appeal judgment has the force of a legal precedent, meaning that the Lancaster UCU branch's victory serves to protect the interests of all employees throughout the land from this moment on.

For the full judgment, see [www.employmentappeals.gov.uk/Public/RecentJudgments.aspx](http://www.employmentappeals.gov.uk/Public/RecentJudgments.aspx) and click on the link for the Lancaster University judgment (hearing date 16/09/10).

A responsible employer would have taken the original ruling to heart and committed itself to cleaning up its act. This employer took the opposite course. First, it tried to downplay the significance of the original tribunal decision by quibbling about the size of the award against it, although the most important point about the judgment was the principle that the employer had acted outside the law.

Secondly, having squandered a huge amount on lawyer's fees in a vain effort to stave off this initial judgment, the University embarked on a still more expensive appeal, wasting more money and placing the University's reputation at further hazard. Now we find the institution's good name has been pointlessly dragged through the mud a second time.

Thirdly, University management, far from repenting, proceeded even more determinedly on the same course by ignoring guidelines on redundancy consultation from the Arbitration and Conciliation Advisory Service (ACAS). ACAS guidelines state that, "regardless of company size and the number of employees to be dismissed, employers should consult with appropriate trade unions or employee representatives as soon as practicable and as fully as possible. Employers should consult at an early enough stage to allow discussion as to whether the proposed redundancies are necessary at all." This consultation has to happen while plans are still being formulated, or the discussions that follow do not meet the definition of adequate "consultation."

In the reorganization of the Student Learning Development Centre (SLDC) and the decision to do away with teaching only contracts (except where some special circumstance requires them), the University failed to meet this standard of good practice – even though both sets of events followed the tribunal ruling, which should have made a responsible employer more circumspect about meeting its obligations. In both cases, University management bypassed the Collective Consultation Forum that ought to have heard of the plans at the earliest possible moment. SLDC staff learned of the plan to redistribute them from a central service to the faculties – a plan that led to redundancies of UCU members – before the campus unions had been informed that any such idea was being considered, let alone before the plan was formulated. The Director of Human Resources, Chris Thrush, threatened to cancel the meeting where the affected staff would learn of their fate because they had the temerity to invite a representative of UCU, their trade union, to attend. "Consultations" took place at the Collective Consultation Forum too late to make any meaningful contribution to the plan; a proposed job-share arrangement to avoid one of the redundancies was rejected out of hand, even though the employer has a legal obligation to find any reasonable measure to minimize the number of redundancies. So much for what the law requires.

In the case of teaching only contracts (see separate article), the employer's defiance of good practice and the law is, if anything, even more extreme. UCU members on teaching only contracts were told of their planned redundancy even before the matter came up at the Collective Consultation Forum. This is not a misprint; you read it right: our members were told they are being made redundant before the matter had even come up at the body set up in order to have the collective consultations required by good practice and the law.

At the meeting of the forum on 19 October, the Human Resources representative stated that the ending of teaching only contracts was not a new policy, even though the reason for one of the mentioned redundancies was given as – you guessed it – "a change in University policy [that] means that it is no longer possible to employ staff on teaching only contracts": this incoherence and disarray on the part of Human Resources is something to which we have long been accustomed but which has significantly worsened in recent times. It might be funny if our members' livelihoods and careers were not at stake.

Anyone can make a mistake. But the measure of a responsible organization is that it learns from its mistakes; and if any organization should have a capacity to learn, it is an institution devoted to education. What is

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extraordinary about this employer's conduct is that it is knowingly repeating the same kind of mistakes, and instead of accepting a legal judgment it tried to act as though the judgment never occurred. It appears that the University management is making a determined attempt to climb to an unenviable top position in the league table for the most lawless employer in the sector. The employer's behaviour is symptomatic of an increasingly dogmatic and aggressive approach to change which does little to encourage constructive relationships with campus unions, including UCU, and serves to damage the reputation of the University. One can only hope the Appeal Tribunal decision will cause the University to reflect on this.

## Teaching Only Staff to be Dismissed

University management has decreed, without consulting any Faculty Policy & Resources Committee or the institution's highest governing bodies, that all staff on "teaching-only" contracts are to be made redundant. This will include all Teaching Associates, Senior Teaching Associates, Teaching Fellows, Senior Teaching Fellows and many other staff who would formerly have been described as "Other Related".

The only exceptions to the rule will be: postgraduate research students who teach; staff delivering "specialist courses which cannot be undertaken by conventional academic staff", such as those in the Centre for Training and Development (CETAD) or the Management and Development Division of the Management School; and temporary cover for absent academic staff. Those employed as cover for absent staff will be employed on "event contracts" with no possibility of extension.

Teaching-only staff on fixed-term contracts are already in the process of being made redundant; all teaching-only staff are formally at risk and "under review". Some Research Associates, who in past years had helped out with teaching, have not been offered teaching work at all this year.

The motivation for the above actions appears in a "policy" written by Chris Thrush, Director of Human Resources, on 6 August 2010 and apparently agreed by University management that month. In Thrush's words, "the normal expectation is that teaching activity will be undertaken by academic staff who engage in both teaching and research."

The UCU, which is the recognised trade union for the staff affected, was not consulted in any way. The union was entirely unaware of the policy until redundancy proceedings were instigated against several UCU members. This lack of consultation is, we believe, potentially unlawful.

The new "policy" is, as many readers of this newsletter will realise, not sufficient grounds to declare anyone redundant. Indeed, the majority of staff on teaching-only contracts are most certainly not in redundant roles. It seems that HR's response to this problem is to instigate redundancy procedures first then try to justify the redundancy later. It is possible that the University will soon face several cases of unfair dismissal.

Human Resources has admitted that teaching staff on fixed-term contracts are the first to be targeted by the new "policy", with those on indefinite contracts likely to follow later. UCU is challenging this discrimination against fixed-term staff which is, we believe, likely to be unlawful.

If you are on a teaching-only contract - and this description includes many staff who do far more than just teach - then your job is at serious risk. If you are a UCU member, get in touch with us without delay. If you are not yet a UCU member, you need to join immediately.

## Redundancy Procedure Negotiations Hit Obstacle

The negotiation of a new Lancaster University redundancy procedure almost came off the rails following a shock revelation about management plans and a disturbing response by the Director of Human Resources, Chris Thrush.

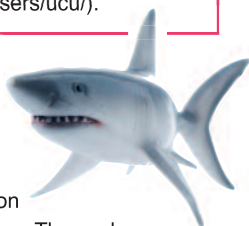
Following the negotiation of the first set of employment procedures (the Capability, Disciplinary, and Grievance Procedures), which the Lancaster UCU branch accepted on 28 July and which have now been activated, the three recognised campus unions rejoined the negotiations on the next set, beginning with a proposed Redundancy Procedure - perhaps the most important one of all. At the session on 12 October the negotiators confronted a shocking development: four days earlier University Council, the governing body of the University, had discussed management documents on "Academic Regeneration" and "Financial Sustainability" that made recommendations directly impinging on the Redundancy Procedure but which had circumvented the negotiations.

Recommendations for further consideration included the cessation of automatic pay increments, changes to the criteria for academic promotion, the abolition of the "Reader" rank, a pay freeze, a pay cut, and the University's abandonment of the national pay framework. Of direct relevance to the redundancy policy was a recommendation that "ruled out" a "voluntary severance scheme open to all staff": one of the very items that the unions had suggested should be considered as a means of avoiding compulsory redundancies. In what sense, the union negotiators asked their management counterparts, were these negotiations meaningful when management bypassed them in this way?

The firm but devastating union objections stunned the Director of HR, who requested an adjournment. What made matters worse was the response he offered after he returned to the room. He said that it had simply not occurred to him that the documents would be a matter of concern to the union negotiators - even though the issue of voluntary severance came directly within the scope of the redundancy policy. The fact that the Director of HR claimed to have been taken so completely unawares by the union objections demonstrates a disturbing lack of awareness as to what management ought to consult the unions about - or more worryingly, it might indicate that management does understand this but chooses to act otherwise. Whichever is the case, these developments and the lack of trust they engender bode no good for the prospects of meaningful negotiations.

Management negotiators' lack of consideration of legitimate union concerns, and their practice of endlessly repeating points that have previously been considered and refuted, have significantly hampered negotiations. To be meaningful, negotiations depend on basic mutual trust, and UCU's experience makes it difficult to retain such trust in the management side.

To give members an insider's view of the work your union negotiators do, see the "Time Line of Decisions on the Capability and Disciplinary Procedures" on the UCU Web site ([www.lancs.ac.uk/users/ucu/](http://www.lancs.ac.uk/users/ucu/)).



## Your Pension

The Universities Superannuation Scheme (USS) has announced that formal consultation on the proposed changes to USS pensions will start on 20 October and run until 22 December. These changes have been proposed, and are being pushed through, by the higher education employers and if you think the changes won't affect you, then think again.

As a reminder, USS is the UK's second-largest private pension fund and is fully-funded by its members – i.e., you and me. We've chosen to defer taking our full salary now, in favour of putting some of it aside for when we retire. If the proposed changes go through you'll be taking a massive future pay cut. UCU is not opposed to changes to secure the scheme in the long term and has made its own proposals for cost sharing. But the employers have ignored these.

## The employers' proposals mean:

- the loss of the right to a full pension for staff made redundant
- an end to final salary benefits for new starters with a loss of more than £100,000 in benefits for many staff
- the loss of final salary benefits for staff made redundant or who take a career break and do not rejoin the sector within six months
- the loss of final salary benefits for fixed-term staff with employment gaps of more than six months
- staff losing access to final salary benefits will receive an inferior icareer average revalued earnings<sup>i</sup> (CARE) pension benefit
- linking pension increases to the consumer prices index (with a 5% cap) rather than the higher retail prices index (RPI)

## You think your accrued benefits are secure?

Members of USS have been repeatedly assured that benefits already accrued are secure, and that changes will only affect new contributions. However, the 5% consumer prices index cap would apply to the whole pension, violating this assurance. Members have been paying into the scheme, often for decades, having been told that their pension will be index linked; the proposed cap would renege on that promise retrospectively and wipe thousands of pounds off the value of your pension. Lord Hutton has not proposed a cap, and it is not part of the Pensions (Increases) Act 1971 which informs the USS scheme. This is the choice of the employers.

## Implications for members over 50

Every USS member over the age of 50 should know that the proposals include a shift in the actuarial cost following

the redundancy of a 50+ member from the employer to the individual and this could potentially cost members in their fifties made redundant after 20+ years of service in the region of £100,000. The employers are trying to justify their proposals as necessary to reduce pressure and risk on the USS scheme, but it is just designed to make it very much cheaper for the employers to make long-standing staff redundant, with potentially devastating consequences for the pensions and life security of those staff.

## Sham consultation

USS is legally required to consult on the proposed changes to the USS pension scheme and the employers are doing everything possible to avoid conducting a proper ballot of all scheme members. Instead, you will by now have received a 12 page booklet which has been written by the employers' negotiators in conjunction with USS but without any input from UCU's pensions negotiators. The booklet will direct you to the USS Web site where, rather than having you vote for or against the proposals, you will be asked to take part in what the employers describe as a "narrative".

## Suggested response

A suggested response to each online question at <http://www.ussconsultation.co.uk/> is:

"This proposal is part of an overall package which is detrimental to both existing and future members of USS, and which creates a highly divisive and damaging two tier benefits system. The challenges facing USS could be dealt with without reducing benefits by adopting the UCU proposals. My clear view is that the USS Board should listen to fund members, and not implement the employers' detrimental package of proposals."

If these changes are allowed to be nodded through without a ballot, they will take effect from 1 April 2011.

**UCU's referendum on the USS changes is the only vote you will get on your pension – so make sure you use your vote and get your voice heard.**

**Defend your USS Pension Rights.**



**VOTE NO in the UCU referendum**

**If you are a member of USS, whether a UCU member or not, email: [consultation@ucu.org.uk](mailto:consultation@ucu.org.uk) with the subject line: Defend USS**

You will then be sent a unique link enabling you to vote on whether you agree or disagree with the proposed changes.

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## What Next for Student Learning Support?

Last summer saw the announcement of a decision to make redundant several members of the team responsible for student learning support across the University and to replace what was the Student Learning Development Centre (SLDC) with three "Student Learning Advisers" who are now attached to individual faculties. The post of Research Training Manager within the SLDC is one of those redundancies.

"... Actually, you did not just help me identify my writing weaknesses; you also helped me regain my confidence and elevated my self-esteem. Thank you so much..." International student

LUCU is not convinced that any meaningful and open consultation took place before this change was presented as a *fait accompli*.

"... What helped was having a place to come where it was OK to feel stressed. [...] I think the most important thing, that helped the most, was chatting to someone who was separate from all of my academic situations. It helped me stand back a bit more, be more objective and really assess what I wanted and how to accomplish it..." Year 2 UG student

No doubt, as in any year, the hard work and goodwill of the three Advisers who remain will not be in question and they will continue to work with staff to develop the most worthwhile and efficient support for students that they can. As the academic year gets underway, the Advisers will be delivering a varied programme of tailored workshops, tutorials and one-to-one sessions for the students of various departments across the University. However, they are now a diminished team.

The words below, from one of the new Advisers, reflect on what has been dismantled and the opportunity the University has missed in failing to undertake proper and constructive consultation with the staff involved, not to mention students and staff affected.

"As we tidy up the empty offices of what was once the thriving SLDC I turn over card after card from students we worked with. As we pack crates, we pack away much more than the usual accumulated 'stuff'. With the loss of half of our staff – and, along with them, their expertise, reputation, years of experience and working relationships – we will also lose a safe place for students to work, a welcoming reception and much of our capacity to help students, including most of the central teaching provision for international and PGR students.

"Where a strong unified centre once stood – with an ethos and a vision guided by sound principles and years of experience – the three individual faculty-based Advisers who remain must now redouble their efforts to ensure a network of practice continues, in the face of massively increased pressures on their time from faculty management and individual departments.

"With the words of the Director of HR in mind ("I don't envisage stopping any of that provision") we are left wondering who will pick up the pieces that we will no longer be able to carry alone.

"This is a time when teaching departments are under greater pressure than ever before to deliver 'more with less'. The Nurse Unit (another student-facing service) is rumoured to be next for the axe and the Counselling Service has been subjected to massive and un-tested 'restructuring'. Teaching and support colleagues are instead to refer all students in trouble to the new central Student BASE, which presents a neat and tidy front to the services students can still access. The BASE is the new face, and demonstrative of the new ethos, of Student Based Services. Let us hope that the new face doesn't turn out to be a façade. Some of us have reservations about this approach and, if I were a student in distress, I wouldn't want to queue in the most visible part of the campus and announce my name and problem to any number of people milling around." Student Learning Adviser

The Student Learning Advisers have now arrived in the Faculties and we want to encourage all to support them. We at Lancaster UCU also want to hear your views and, just as importantly, your experiences as the consequences of a smaller and dispersed student learning support resource make themselves felt over the coming year.



## United for Education

Education institutions across Britain took part in a multi-union Day of Action on 21 June, with

lecturers and support staff rallying together to call on the new government to stop the cuts and defend education.

As part of the United for Education Day of Action, Lancaster UCU held a lunchtime stall in Alexandra Square which gave us the opportunity to talk to concerned staff and students about national and local issues whilst collecting over 250 signatures for the petition. We were joined by members of other unions on campus in addition to our own members, and we'd like to say thanks to everyone who supported the event – we're sure there'll be a lot more events like this to come.

## Membership Checks

Can all members please ensure that their membership details and subscription rates are up-to-date and accurate. The easiest way to check your details is to go online [<https://members.ucu.org.uk/>]. Please contact us and let us know if any of your details need changing. Contact: Kate Wright Email: [k.wright@lancaster.ac.uk](mailto:k.wright@lancaster.ac.uk).

## What Can You Do?

There are a number of things you can do. Tell a colleague to join UCU. Find out who your departmental rep is (contact: [lbanton@ucu.org.uk](mailto:lbanton@ucu.org.uk)) – if your department doesn't have one, volunteer yourself. Contact Patrick Hagopian ([p.hagopian@lancaster.ac.uk](mailto:p.hagopian@lancaster.ac.uk)) to find out about becoming a case worker and what's involved.

**Get involved with your union! We owe it to ourselves to do so. In the end, the job you save may be your own.**

