



# **EIS-FELA Branch Guidance on Deeming**

This guide is to help EIS-FELA Branches with the next steps to take if they have been issued with a notice of deeming in relation to ASOS. The ASOS guide issued by the EIS-FELA in February 2024 should be consulted first, with this guide offering supplementary advice.

**Please note that this process may differ for each Branch depending on the branch structure.**

Steps for any Branch moving into dispute may include:

1. Recognise that the College has given notice that it will deem members for partial performance thereby triggering an EIS-FELA dispute.
2. Check local RPA (Recognition and Procedures Agreement) and/or dispute resolution policies,
3. Schedule and hold branch meetings (inc. voting on entering dispute),
4. Drafting the dispute letter/email,
5. Engaging in the dispute process,
6. If needed, steps to local industrial action

### **1. Recognise that the College has given notice that it will deem members for partial performance thereby triggering an EIS FELA dispute.**

A College needs to inform staff that it will deem pay for members carrying out ASOS; either 100% if the College advises that it rejects partial performance or a percentage of pay if it accepts partial performance. Furthermore, it needs to give a reasonable notice of the deadline re partial performance.

When a College advises that it will deem for ASOS then the standard EIS response is to lodge a dispute, and begin the process of seeking an industrial action mandate. If we wait for the deeming to be carried out before lodging a dispute then we will be too late. Lodging a dispute and following a 'trade union' route does not preclude obtaining legal advice and following a judicial route too.

### **2. Check local RPA and/or Dispute Resolution policies.**

As deeming notices have been issued by local college management, this requires to be challenged locally. RPAs (or in some cases, disputes processes) will give information on declaring a local dispute with college management.

It is advisable to contact your local Area Officer to make them aware of the intention of the branch to declare a local dispute, as they have a role to play with any dispute.

### **3. Schedule and hold branch meetings (inc. voting on entering dispute).**

Before a local dispute is declared with college management, it is advisable to hold a branch meeting/s with the members to discuss the deeming action to be taken by the college. The branch should take a vote on whether to enter into a local dispute on the matter and the college notified of the decision taken by the branch.

Reasons given for moving to dispute could include (Please note that branches must check each of these before citing):

- The branch believes this course of action is contrary to the Fair Work Convention, which is defined as:  
*"work that offers effective voice, opportunity, security, fulfilment and respect; that balances the rights and responsibilities of employers and workers and that can generate benefits for individuals, organisations and society."*
- The course of action taken by the college is disproportionate to the action short of strike. (Deducting 100% of a day's wages is unreasonable in comparison to the duration of time taken to result students and therefore possible to be an unlawful deduction of wages.)
- The 'deeming' may not have been Equality Impact Assessed, and the likely disproportionate impact on part-time workers has not been considered.
- This decision has not been scrutinised or approved by the College Board.
- Rather than seeking to negotiate to resolve the current national dispute, this local course of action directly targets individuals for the collective action decided by EIS FELA.
- If a College rejects partial performance then it is escalating the dispute, as 100% deductions will mean lecturers do not need to work for each day they do not put in results. In other words, the College turns a small ASOS action into an indefinite strike thereby reducing the teaching/training provided to students. In contrast the current ASOS allows for learning and teaching, assessment, marking, student feedback and progress to continue and does not cause the same severe disruption to students.
- The Scottish Government believes that workers have a right to take industrial action and has opposed the Strike Act's Minimum Service Levels on that basis. Deeming is used by employers to crush industrial action and is not consistent with Scottish Government policy.

#### **4. Drafting the dispute letter/email.**

Sending official notice of the dispute to the college can be done by the branch officials or the Area Officer.

An example of this notice is contained in Appendix 1. **It should be noted that the example given in the appendix will need to be amended to reflect the individual branch circumstances.**

#### **5. Engaging in the dispute process.**

Branch officials will be responsible for actioning/coordinating the local dispute, with the EIS Area Officer supporting the branch. This includes local dispute meetings with college management, with the EIS area officer in attendance.

The duration of time taken to start the dispute process through to completion should be carefully monitored by the branch, with an understanding of when to initiate the balloting process for local strike action.

#### **6. If needed, steps to local industrial action.**

If the dispute process has been exhausted with no suitable resolution, the branch should move to consultative ballot for local industrial action. This will take the form of a consultative ballot in the first instance and then a statutory ballot.

It should be noted that the time taken to complete the process of a lodging a dispute, running a consultative ballot, then a statutory ballot only for members and then beginning local strike action is approximately nine weeks.

## Appendix 1

Example of dispute notice to college management.

### Notice of Formal Dispute

Dear [insert Principal's name],

Following a branch meeting of [insert branch name] on [insert date], the membership held a vote and a (unanimous) decision was taken to declare a formal dispute regarding the College's intention to deem (make salary deductions) for staff participating in Action Short of Strike including work-to-contract and a resulting boycott.

The branch believes that [select items from the bullet point list within section 3 as appropriate].

The local dispute procedure, as outlined in the local Recognition and Procedures Agreement (RPA) (or separate dispute procedure if applicable – amend as needed), sets out the expectations, on both sides, for seeking a resolution to disputes and upholding the *status quo ante* while the dispute procedure is engaged in (amend as needed). The EIS representatives will engage, in good faith, in the discussions that take place as part of this resolution procedure. It is our expectation that the management side will commit to engage similarly, in good faith, in these discussions.

To be clear, this formal dispute can be resolved when the college formally withdraw their statement and intention to deduct [insert branch name] members pay for participating in the Action Short of Strike.

I would be happy to discuss enacting the formal dispute resolution procedure, in respect of this dispute, on [insert day/date].

Regards

[insert branch secretary/area officer name]