

UCU Advice on Taking Action Short of Strike and Working to Contract

15th July 2014

UCU is asking members to

- Work-to-contract
- Boycott the Performance Development Review process

KCL UCU will keep members up to date with developments by email and regular meetings.

Frequently asked questions:

1. Why has the union chosen this action?

Without our efforts universities would cease to function properly. As UCU's Leading Counsel observes, universities survive because staff do over and above what is strictly required by their contracts. This often means working long hours to get marking done; covering teaching for other colleagues; performing administrative tasks beyond those they were originally employed to do and many other things that staff do to ensure their institutions run effectively.

The point of this action is to say to our employers: until such time as you will negotiate properly with us, we will not be "going the extra mile".

While the action causes disruption it is one step back from an assessment boycott and therefore gives our employers an opportunity to come to their senses without widespread conflict and disruption. UCU will try this tactic first and will only move to further escalating action if the College either fails to address the concerns of staff and students that includes the halting of the current process so that a mutually agreeable solution can be found that does not harm students, staff and the reputation of the College or the College imposes punitive and unfair deductions on members taking part in the working to contract action.

It is clear that a minimum consultation period of 45 days was never going to be long enough in the context of higher education which involves complex arrangements around teaching, research and administration. The fact that the senior managers did not recognise this prior to starting this process has been a major cause for concern and suggests that they have become marginalised from the core activities of the College.

2. To which UCU members does the action apply?

If you are a member of UCU, you are expected to support the call to work to contract, and any other such future calls for action made by the union. UCU, like other trade unions, does not allow any exemptions from the call to action.

3. On what mandate has the union called the action?

A legal ballot of KCL UCU members took place between 6th and 25th June. 82% voted to support strike action, and 89% to support action short of a strike (ASOS) on a 58% turnout. Further details are available at

<http://www.kcl.ac.uk/unions/ucu/Health-Schools-Restructure-2014/Ballot-Details.aspx>

4. What action is the union asking its members to take?

Starting on 11th July 2014 UCU instructs its members to abide by the terms of their contracts (including their obligation to perform their duties in an efficient manner), but to do no more than that; and in particular to:

(a) work no more than their contracted hours where those hours are expressly stated and in any event not to exceed the maximum hours stipulated by the Working Time Regulations (unless there has been an individual opt-out);

(b) perform no additional voluntary duties, such as out of hours cover, or covering for colleagues (unless such cover is contractually required);

(c) set and mark no work beyond that work which they are contractually obliged to set and/or mark;

(d) attend no meetings where such attendance is voluntary on the part of the member;

(e) not undertake the work of staff who are made have been made redundant because of the implementation of these plans. UCU also instructs its members to refuse to participate in any meetings or associated paperwork or communications in connection with the Performance Development Review (PDR) process. This applies equally to all members, management included.

5. Is the union's action based on legal advice?

Yes. The union has drawn up these plans acting on the advice of Leading Counsel.

6. Can I have my pay deducted when I participate in the UCU action?

If you are performing your normal duties but not undertaking activities over and above that, the employer has no justification for deducting your salary. UCU will challenge any attempts to make deductions from staff who are working to contract and not participating in PDR.

7. How long will the union give this action?

The vote for industrial action allows the union to call further action short of a strike, and strike action, if the employers refuse to negotiate. Our next steps may include: a marking boycott if there is still no progress, and referral to the national UCU Higher Education Committee to consider the withdrawal from and non-participation with the College of fellow UCU members from other United

Kingdom educational institutions. The vote also allows the union to call further strike action including two or more successive days of action.

8. Will students be affected by this action?

The union has chosen our action carefully in order to minimise disruption to students. If implemented, Management's plans, however, will cause severe and lasting disruption to students as well as our own members. Potential action in autumn, strike action or escalated action short of a strike, could have a high impact on students. We currently have strong support from the students and KCLSU and will continue to work with them. The students' understand that the action being taken is of national significance and has implications for students and staff not only at our institution but beyond King's. The quality of the education students receive is at stake.

9. Do I have to tell my employer that I am taking action?

Once the action has begun (from 11th July onwards), if you are asked in writing by an appropriate person (Line manager, HR etc), you should answer truthfully that you are participating as follows:

"I confirm that I am participating in current industrial action organised by UCU, in the form of "working to contract". UCU advises me that because I am fulfilling all reasonable contractual duties, the employer should not make any unauthorised deductions from my salary."

If you are asked to complete the PDR form and/or attend an interview as part of the PDR process by an appropriate person you should respond as follow:

"I am participating in current industrial action organised by UCU, which includes a boycott of the PDR process."

If you are a manager responsible for administering and undertaking PDR of your staff you should also boycott the process.

Members should contact ucu@kcl.ac.uk if this is not accepted by their line manager or HR.

10. I have found appraisals useful, Why are we boycotting PDR?

The current redundancy exercise, however, means that we no longer have any confidence in senior management's ability to manage performance. The use of arbitrary performance indicators to select colleagues for redundancy in the Health Schools makes a mockery of the College's PDR process. Health Schools' colleagues were told that their jobs were to be evaluated on the basis of teaching hours and research grant income. Those who had followed advice given by their 'line manager' to

prioritise publishing books or articles for submission to the REF, for example, or to carry out duties not recognised by the teaching hours database, therefore had their jobs put at risk. We intend to boycott this process until a guarantee is given that arbitrarily imposed performance criteria will not be used to select staff for redundancy. In the absence of such a guarantee, colleagues who follow the current PDR process are leaving themselves vulnerable to redundancy since criteria that have played no part in their PDR may be imposed on them without warning.

None of this precludes informal meetings between colleagues to discuss career development or current duties.

11. How can I let my colleagues know that I am taking part in the action?

We would encourage UCU members to arrange local departmental meetings so that any issues arising from the action can be discussed. If questions arising from these meetings cannot be answered then please seek further advice from the KCL UCU Executive committee. We are there to provide a supportive role and to advise.

Members can also use the following text in an automatic email reply:

"From 11 July, in response to College proposals for redundancies in the Health Schools and the Department of Education and Professional Studies, I will be participating in continuing industrial action short of strike action called by my union UCU, which may mean that my responses to emails are slower than usual."

Working hours

12. What are my contractual weekly hours?

Your contractual hours will be those expressed within your contract or within a collective agreement on workload between UCU and your employer. Not all staff have clearly expressed contractual hours. If you are unsure what your contracted hours are then please contact your local HR adviser who should be able to help. Below are the some of the contractual hours currently in place:

The pre pay and modernisation academic contract (before 1 March 2008) states the following:

5.0 HOURS OF WORK

5.1 The appointment is full-time unless stated otherwise in the letter of appointment.

5.2 The member of staff will be expected to work the hours necessary for the proper performance of the duties of the post.

The post pay and modernisation terms and conditions (1 March 2008 onwards), including hours of work, can be found at <https://internal.kcl.ac.uk/hr/recruit/terms.aspx>. Staff still employed on non-

academic contracts prior to pay and modernisation, and staff transferred over to the College from other educational institutions (TUPE), may have different terms and conditions. HR should be able to tell you what these are. Note if you were promoted on or after 1 March 2008 you are likely to be employed on a post pay and modernisation contract. Please contact your local HR advisor if you are unsure.

13. What are the Working Time Regulations?

The Working Time Regulations (WTR) provide a right for workers no more than an average of 48 hours in any 7 day working time period. Unless your contract does or could require you to work weekends, the 7 day period does not include Saturday and Sunday, but a day is a 24 hour period so does include evenings. Surveys indicate that many academic and professional services staff work substantially more than this.

14. Are the Working Time Regulations included in the “working to contract” action?

Our legal advice from Leading Counsel is that UCU members are covered by the Regulations and therefore that working within its limits is not a breach of contract. Consequently, working to contract is consistent with your contractual obligations as no employee can be required lawfully to work in excess of the WTR’s 48 hour limit.

Therefore if you do not have an expressed number of weekly hours (see question 13), you should still work no more than an average of 48 hours and keep a basic diary of how many hours you do per week to ensure you do not work more than that over a longer period.

UCU members undertaking casework, whether this results from the health school plans or not, should include this as part of their working week. Please keep a record of all casework support given including telephone conversations, meetings to advise members, attendance at individual and collective consultation meetings with line managers and HR that are part of any consultation process and/or arise because of the activation of any College procedure (e.g. redundancy).

15. What work is included in the total of 48 hours covered by the Working Time Regulations?

All work which is part of your normal duties as set out in your contract will count towards your 48 hours. For academics, for example, this typically will include teaching time, administration and research.

Note staff undertake many other citizenship activities that are not explicitly recognised by the College (i.e. they do not have a key performance indicator) for example the pastoral care of students or attending open days. We advise that all activities of this kind should be counted as part of your working week. It is unfortunate that the collegiate ethos that previously existed, and its importance to the life of the College, is no longer valued.

16. What should I do if, in any one week, I have not completed my normal contractual duties within either my contractual hours or the 48 hour limit set by the Working Time Regulations?

You will not be acting in breach of your contract if you stop working and resume the uncompleted task(s) in the following week. However, if a particular task must be completed by a specific deadline in that week, you should complete the task. If your line manager asks why other duties were not completed you should inform them that you have been unable to complete the remainder of your normal duties within the limits either of your contractual hours or the Working Time Regulations, and that you will resume them in the following week.

It is important that all the tasks and functions you normally carry out are discharged. The work to rule does not mean that duties should not be done – it is simply a question of when you do them, and not exceeding the maximum hours stipulated in your contract or the WTR.

If you believe you are being asked to work too many hours, that is to say if you find that you cannot fulfil all your contractual duties within the hours limit in your contract, or the WTR (whichever is the greater) you should also make reference to your institution's occupational stress/wellbeing (<https://internal.kcl.ac.uk/about/ps/safety/oh/staffpgs/well.aspx>) or local workload policies which will set out various duties upon the employer to address heavy workloads.

17. Should I work after hours or at weekends?

The WTR stipulates that an average of 48 hours should not be worked in any working time period of 7 days. However, "working time" is defined as any period during which the employee is "at the employer's disposal" or any period during which s/he is receiving relevant training. This means that if your contract does not or could not require you work in the evenings or at weekends you can

refuse to work at those times. The calculation of the 48 hours average then takes account of your normal working days only. If you can be required to work at weekends, then these days also count for the purposes of the calculation of the average 48 working hours.

If you are asked to take on new duties in addition to your normal duties, which involve either evening or weekend working you should refuse citing the UCU working to contract action and pointing out your willingness to perform your normal contractual duties within reasonable weekly limits as set down either by your contract or the Working Time Regulations.

18. What should I do if I do not have any contractual hours?

You should undertake your normal contractual duties but not take on additional duties.

Additional voluntary duties

19. Can I refuse to cover for absent colleagues?

Our legal advice is that unless it is explicitly stated within your contract, you should refuse to cover for colleagues unless this is a clearly established custom and practice.

20. Can I refuse to undertake duties associated with my line manager if they are absent?

Yes, unless it is explicitly stated within your contract that you will undertake duties associated with your line manager, you should refuse to do so citing the UCU working to contract industrial action.

21. Can I refuse to undertake cover work for which I have no expertise or which is not mentioned in my contract?

Yes. A recent Employment Appeals Tribunal case looked at whether someone who had been engaged as a lecturer in Theatre Studies could be asked to undertake teaching on an English course. It found that "a management instruction [like this] to carry out duties which the Appellant was not contractually obliged to perform is unlikely to be reasonable."

Note similar arguments could also apply to staff being asked to undertake the teaching of colleagues being made redundant in the health schools particularly if they have never taught the subject before, or not for a very long time. At all times your workload should remain acceptable and not breach the working time regulations.

22. What freedom do management have to ask me to perform other duties which are not expressly set out in my contract?

There is a general duty upon employees to be cooperative and you should continue to be so. However, the EAT case mentioned above states that “in our judgment whilst it may be necessary to imply a term of co-operation to govern performance of contractual duties it cannot be relied upon in this case to enlarge those duties.”

Health and safety

23. What are my duties in relation to healthy working?

Your legal duties as an employee include:

- taking reasonable care for your own health and safety and that of others who may be affected by what you do or do not do;
- co-operating with your employer on health and safety;
- correctly using work items provided by your employer, including personal protective equipment, in accordance with training or instructions; and
- not interfering with or misusing anything provided for your health, safety or welfare.

24. How do I know that I am working in a safe workplace?

Every employer must have conducted a risk assessment on your job and must have recorded significant points. Regulation 10(1) of the Management of Health and Safety at Work Regulations 1999 stipulates that your employer has a duty to provide you with this information.

Your institution will have a health and safety policy that lays out the responsibilities of employees and various layers of management for dealing with health and safety issues. Kings has produced two guides: Working safely at King's: a safety guide for staff (Version 2 February 2013) <https://internal.kcl.ac.uk/about/ps/safety/general/wrksaf.pdf> and Safety risk management: a summary for staff and students (version 2 February 2013) <https://internal.kcl.ac.uk/about/ps/safety/general/riskmgmt.pdf> and a list of FAQs <https://internal.kcl.ac.uk/about/ps/safety/general/office/faqs.aspx>.

25. What should I do if I do not have or have not seen a copy of a recent risk assessment on my job?

You should request a copy of the risk assessment on your job and workspace. Your institution has a legal duty to provide you with a copy of this risk assessment document. This will probably sit with your line manager or the university's safety office. You should write to your line manager or head of department in the first instance.

26. What should I do if I do NOT receive a copy of my risk assessment?

If you do not receive a copy within two weeks, you should complain to your line manager in writing to the effect that you are concerned that no assessment has been undertaken and that you do not wish to become complicit in your employer failing in a legal duty by working in a potentially unsafe environment.

27. What if I do receive a copy of my risk assessment?

If you do receive a copy of your risk assessment, you should assess it, preferably in conjunction with your local UCU Health and Safety Representative or branch Health and Safety Officer. Identify whether or not the risk assessment is 'suitable and sufficient': have all hazards been identified; is the assessed level of risk appropriate; are the proposed control measures effective and operational; does the risk assessment need to be reviewed?

If you and your safety reps are satisfied that there are hazards in your workspace that are not identified in the risk assessment, you should immediately demand that another is conducted by a competent person, stating that you are concerned about safety in your job. A template letter is available at: <http://fairpay.web.ucu.org.uk/working-to-contract-what-action-is-the-union-asking-me-to-take/#what-if-i-do-receive-a-copy-of-my-risk-assessment>

28. What should Health and Safety reps do to help ensure that my workplace is safe?

- Write to the university's Health and Safety office requesting in writing, copies of all risk assessments requested by members of staff for which they have responsibility.
- Complain in every case where these are not provided, citing the legal duty on the employer to maintain and provide such records.
- Assess whether or not these are adequate risk assessment documents, using our guidance here: <http://www.ucu.org.uk/2424>
- Call for the establishment of a joint committee to monitor and control all risk assessments in the college/university.

29. Am I protected in my use of Display Screen Equipment?

As the HSE says, "Computer workstations or equipment can be associated with neck, shoulder, back or arm pain, as well as with fatigue and eyestrain. Surveys have found that a high proportion of DSE workers report aches, pains or eye discomfort. These aches and pains are sometimes called upper limb disorders (ULDs), which can include a range of medical conditions such as RSI. Most of these conditions do not indicate any serious ill health, but it makes sense to avoid them as far as possible. The Health and Safety (Display Screen Equipment) Regulations 1992 aim to protect the health of people who work with DSE. The Regulations were introduced because DSE has become one of the most common kinds of work equipment." UCU believes that most members fall under the category of DSE users. That means that they are covered by these Health and Safety regulations. More details about using DSE can be found at <https://internal.kcl.ac.uk/about/ps/safety/general/office/faqs.aspx>.

30. Does my employer have to do ensure that I am safely using Display Screen Equipment?

Yes. The Regulations do not contain detailed technical specifications or lists of approved equipment. Instead, they set more general objectives. Employers have to:

- Analyse workstations, and assess and reduce risks - Employers need to look at the whole workstation including equipment, furniture, and the work environment; the job being done; and any special needs of individual staff.
- Ensure workstations meet minimum requirements
- Plan work so there are breaks or changes of activity
- On request arrange eye tests, and provide spectacles if special ones are needed
- Provide health and safety training and information

Every employer will have a DSE policy. Find out more details about what your employer should be doing here: http://www.ucu.org.uk/media/pdf/6/h/hse_vdu.pdf

31. How do I request an eye test, a risk assessment or other support from my employer?

Your institution will have a specific policy which will tell you how they propose to comply with the regulations and how you can request an assessment of your work station and access eye tests and other remedial actions and resources. Every member should make use of this policy. Your institution's policy is here: <https://internal.kcl.ac.uk/about/ps/safety/general/office/faqs.aspx>

32. How can my employer help me avoid injuries at work through manual handling?

Manual handling is one of the most common causes of injury at work and causes over a third of all workplace injuries which include work related Musculoskeletal Disorders (MSDs) such as upper and lower limb pain/disorders, joint and repetitive strain injuries of various kinds.

Your employer must abide by the Manual Handling Operations Regulations 1992. These apply to a wide range of manual handling activities, including lifting, lowering, pushing, pulling or carrying.

The Regulations require employers to:

- avoid the need for hazardous manual handling, so far as is reasonably practicable;
- assess the risk of injury from any hazardous manual handling that can't be avoided; and
- reduce the risk of injury from hazardous manual handling, so far as is reasonably practicable.

Your employer will have a specific policy adapting these regulations for your workplace. Your employer has an obligation to undertake manual handling risk assessments and ensure that employees receive manual handling training.

All employees covered by a risk assessment - including generic assessments should be told about the risks it identifies, so you should ask for a copy of the manual handling risk assessment on your job and workspace.

Your institution will have a specific manual handling policy that will tell you more about your and your employer's responsibilities, which you can access here:

<https://internal.kcl.ac.uk/about/ps/safety/general/wrksaf.pdf>

33. What should I do if I think that I have identified hazardous handling activities?

Employees have duties too. They should:

- follow appropriate systems of work laid down for their safety;
- make proper use of equipment provided for their safety;
- co-operate with their employer on health and safety matters;
- inform the employer if they identify hazardous handling activities;
- take care to ensure that their activities do not put others at risk.

<http://www.hse.gov.uk/pubns/indg143.pdf>

You should avoid and report any high risk activities in your working processes to your management. Examples of high risk activities are twisting the trunk; stooping; reaching upwards or forwards from the trunk; considerable lifting and lowering distances and any combination of the above movements.

It is then your employer's responsibility to modify your work activities or workplace to minimise these risks.

Setting and marking work

34. How should I approach setting and marking of work including dissertations and theses?

Staff are often placed under pressure by their institution to conclude their marking or second marking speedily in order to ensure internal deadlines are met.

It is important that you mark to the standard required and are not coerced by workload tariffs that often understate the amount of time required to mark a paper or dissertation.

However staff have a responsibility to ensure that quality standards are being maintained, even if this means deadlines have to slip.

Academic staff should therefore take due care and consideration when marking work, ensuring that they are precisely meeting the guidelines both from the university itself and from the QAA.

Second marking or blind marking should be undertaken with similar due care and consideration, with staff again ensuring that they are precisely meeting the guidelines both from the university itself and the QAA.

Under no circumstances should staff allow themselves to be rushed by their institution to the extent that they are unable to fully meet the terms of both the university and the QAA guidelines.

35. What do I do if I fall behind with my marking or second marking as a result of working fully to the university's and QAA's guidelines?

You should inform your line manager that, in accordance with your contract, you are fully complying with the University, department and QAA guidance and will therefore be unable to complete your marking or second marking by the required deadline.

If staff within a department take a consistent approach to this, and submit similar messages to the line manager this will have a substantial impact.

Where can I get further information about the the Quality Assurance Agency's Code of Practice for the Assurance of Academic Quality and Standards in Higher Education?

The Code of Practice recommends that all institutions should have transparent and fair mechanisms for marking and moderating marks and can be read here:http://www.qaa.ac.uk/Publications/InformationAndGuidance/Documents/COP_AOS.pdf

This may normally be determined in relation to different programmes at department or faculty level, but you can find your institution's policies on academic quality at <http://www.kcl.ac.uk/aboutkings/quality/academic/index.aspx> and marking and assessment at <http://www.kcl.ac.uk/college/policyzone/index.php?id=500>

Non-attendance at voluntary meetings

36. How can I determine whether a meeting is voluntary?

If you are in doubt you should ask your head of department whether attendance is voluntary or mandatory. If they say you must attend, ask them to put in writing direct to you and take it up with your Rep. A written instruction to you does not count as a general instruction to all, so other members should seek individual confirmation that they are also required to attend.

37. I am a Head of Department, Line Manager or other senior academic/related role. How can I best support the action?

Many of the union's strongest members are in senior roles. Senior staff can play an active role in the dispute by working to contract just like everyone else and also as follows:

- Always referring a query from a UCU member related to the dispute to senior managers before responding, and doing so in each individual case
- Working within your own contract and not acting up for other staff
- Supporting staff who follow to the letter the quality guidelines in place for marking and second marking
- If you are yourself instructed to instruct staff to do something, follow the instruction precisely – let the individual know but do not send a wider message until further instructed
- Boost morale in the department by making it clear to all that you are supporting the union's work to contract action
- We are asking UCU members not to participate in any form of PDR

38. I am hourly paid what should I do to support the action?

When working to contract, hourly paid staff should ensure that they work no more hours than those for which they are contracted and receive payment. Where payment is comprehensive i.e. it includes an element of preparation / marking / administrative time / holiday pay for every teaching hour it is important to know how much additional time is being paid. If this is not clear from the contract and / or payslip then hourly paid staff should request from human resources an explanation of how their pay is calculated.

Once advised how many hours are being paid for every teaching hour, hourly paid staff will have the information they need to observe the working to contract action being called by UCU.

39. Can my line manager instruct me to do something which is outside my contract?

If you are instructed to do something which you have not regularly done previously and you consider to be outside your normal contractual duties, insist that the line manager puts the instruction in writing to you. You may be able to rely on the EAT decision mentioned above. You should also seek advice from a UCU Rep.

40. Should I use equipment which I have not been fully trained on?

Under no circumstances should you operate equipment upon which you have not been properly trained and for which there has not been a recent risk assessment.

41. Should I take lunch breaks and breaks from working at my computer?

Staff should always take lunch or alternative breaks and breaks from working at your computer. You should ask your line manager to put it in writing to you if you are told not to take a lunch break because you have too much work to do and raise this with your UCU rep.

42. Should I do work in my own time?

The union's advice is based on Leading Counsel's opinion that you should "not go the extra mile" as part of this action. Therefore while you should perform your normal duties if you cannot get them done either within your contractual hours or the weekly hours specified by the working time

directive or finishing the task is putting you under considerable stress you should inform management that you have too much work for a normal working week and ask them for a formal, written response setting out how they intend to address the overload. Where possible, quote from your University's occupational stress/wellbeing policy which management need to honour.

43. What should I do if my manager is away?

If your work is dependent upon a manager's instruction you should wait until you are instructed to perform duties before beginning work.

If your manager is away and you send them a query about a work matter, do not continue working on this matter until you have received a response.

44. What should I do if management insist that I perform a task I believe to be outside my contract?

If management insist on you complying with an instruction, do not lay yourself open to disciplinary action. Comply under duress, and raise a formal grievance by speaking to your local rep. It is totally legitimate to raise a grievance against a decision that you disagree with and it will cause further disruption. Most importantly, if you have any doubts regarding the consequences of a particular course of action, contact your local branch for advice (ucu@kcl.ac.uk). We cannot guarantee an immediate answer in all cases, but we will get an answer as quickly as we are able to.

45. Where can I get help and more advice?

If you need any advice or have a query on what you are being asked to do please contact your union rep immediately or send an email to ucu@kcl.ac.uk.

46. What do I do if my manager puts me under undue pressure not to follow the work to contract action?

The action UCU members are taking is perfectly legal. If you are put under undue pressure or coercion by line managers to withdraw from the action, you should ask the manager concerned to put their instructions in writing and tell UCU immediately. UCU will not hesitate to launch collective grievances or institute further industrial action in support of members who are bullied while taking part in lawful industrial action.

47. Can Non Members take action?

UCU has not called upon non-members to take industrial action. However, nothing prevents them doing so as the action is not a breach of contract. If you are a non-member or know of non-members that wish to take part in the action, they should join UCU immediately at www.ucu.org.uk/join. We strongly advise you to join UCU before beginning any action.

48. I have been invited to an interview to discuss my participation in the action, what should I say and do?

If you are invited to attend an interview, ensure that you take a UCU representative with you. In the interview, which should take place only between yourself and a line manager with a UCU representative present. If the manager instructs you to complete a task not covered by Working to Contract (WTC) and boycott of PDR then you should agree to carry out the task. That instruction applies to you only.

Prior to the interview send your manager a copy of this FAQ document. They should not be coercing you into undertaking activities covered by WTC, if they do then follow the instructions shown under FAQ 46.