

TEACHERS' PENSIONS STRIKE – GUIDANCE TO NGA MEMBERS

The Association of Teachers and Lecturers (ATL), the National Union of Teachers (NUT), National Association for Head Teachers (NAHT) and possibly NASUWT (results of ballot on 18th November) have voted to take industrial action over the issue of pensions. The industrial action takes the form of a one day strike on **30th November 2011**.

Q1: What is the role of the governing body?

Answer: The governing body in voluntary and foundation schools is the direct employer of staff and in community and voluntary controlled schools exercises employer responsibilities. In Academies the Academy Trust is the employer, but usually delegates these functions to either the Directors or the Governing Body (dependent on the relevant Articles of Association).

It is technically the employer who is responsible for managing the outcomes of any industrial action (e.g. deduction of pay). In general terms:

- any refusal by staff to undertake their contracts of employment is regarded as a breach of contract;
- If any teachers or headteachers take such action, a deduction from wages will be made.

The accepted norm for one day's strike action is the deduction of one's day pay (this is calculated as 1/365th of annual salary).

Both ATL and the NUT have advised their members that strike action will result in the loss of day's pay. NAHT have yet to issue guidance.

Q2: Do we have to close the school?

Answer: That will depend on how many teachers are on strike, whether the head and/or deputy head are present and whether there are sufficient staff in the school to safely operate. The presumption should be that the school should stay open unless it is not possible to operate safely.

It should also be noted that closing the school to pupils (because there are insufficient staff to supervise them) does not mean that those staff not covered by the industrial action cannot be required to attend. Staff not taking industrial action may be required to attend school for the day and carry out other work (e.g. preparation and planning). If it is not possible to open the building then staff not taking industrial action will need to have an alternative way of reporting for duty – this can be by telephone to a given number.

Q3: Who decides whether to close the school – the headteacher or the governing body?

Answer: Closing the school is an operational decision and, therefore, a matter for the headteacher. This has consistently been NGA's view and has been corroborated by the DfE. The Education (School Government) (Terms of Reference) (England) Regulations 2000 (Regulation 5 (1)) states that the 'headteacher shall be responsible for the internal organisation, management and control of the school...'

In Academies the Academy Trust has overall responsibility for the running of the school, but these are delegated to either the Directors or the governing body who may in turn delegate them to the headteacher/principal.

It is good practice for the headteacher to discuss with the Chair of Governors any decision to close the school, but fundamentally the lead professional must be responsible for taking the decision, just as they would be in case of adverse weather.

This is not to say that the Chair should not ask searching questions of the head to ensure that it is necessary to close the school – for example, even if it is not possible to operate a full timetable it may be possible to still open the school (but see questions below about non-striking teachers covering classes).

It is possible for the governing body to instruct the headteacher to close or not to close the school, but the NGA would not recommend this course of action. The head is the lead professional and if her/his decision is that the school can or cannot safely operate then the governing body should not over-ride that operational decision. If the governing body insists on the school remaining open and an incident occurs which could be attributed to lack of sufficient staff, the governing body could be held responsible for ignoring relevant advice (i.e. that of the headteacher). If the governing body were to take this course of action then it should take the form of a formal written instruction to the headteacher.

Q4: When should the decision be taken?

Answer: As soon as possible, as parents/carers may need to make alternative arrangements for that day. If both the deputy head and headteacher are striking then it may be known fairly early on that the school will need to close. It is important that parents are given as much time as possible, in order for them to make alternative care arrangements for their children.

There is no requirement for staff members to inform the headteacher that they plan to take strike action, although the head can ask informally. It is not unreasonable for the Chair of Governors to ask the headteacher if s/he is planning to take strike action.

The action planned for 30 November will involve the NAHT (which represents leaders in most special schools and 85% of primary schools), ATL, the NUT and potentially NASUWT. The latter are the three largest teaching unions and means that the vast majority of the teaching workforce will be taking action, plus the support staff unions. So it is likely that many schools will need to close.

Q5: What if the headteacher is a member of one of the unions striking?

Answer: This makes life more difficult. The Chair of governors should ask the headteacher whether they are planning to take action. If the headteacher does take action then the deputy head would take responsibility.

In the event that the entire senior leadership will be taking action then it is likely that the school will need to close because there will be no responsible person on the premises. Only deputy heads have an obligation under the School Teachers' Pay and Conditions document to act as headteacher when s/he is not present. Although other staff can be asked they cannot be required to take on the responsibility. If there is no individual acting as headteacher then it is likely that the school will have to close.

Q6: Could we open the school by bringing in supply staff?

Answer: The Conduct of Employment Agencies and Employment Businesses Regulations 2003 prevents supply agencies from providing staff to cover industrial action.

Although there is no legal reason why schools could not employ supply staff directly to cover strike action this is inadvisable. This is legitimate industrial action and circumventing that action will almost certainly result in poor ongoing relations with staff. The NGA would not recommend that any governing body should attempt to circumvent the strike action in this way.

Q7: What about covering with other teachers/support staff?

Answer: The Association of School and College Leaders (ASCL) and VOICE are the only two teaching unions not balloting for industrial action. In ASCL's case this is because they are still seeking to negotiate a settlement with the Government and in VOICE's case because it is a key principle of the union that they do not take strike action.

In general these other unions, although not taking part in the action, will follow usual protocol and not undermine the industrial action of colleagues by covering lessons that would normally have been undertaken by striking staff. There is also the issue of 'Rarely Cover' where teaching staff should only be asked to cover for colleagues in unforeseen circumstances – given that the date for industrial action was announced several weeks ago the NGA believes it would be difficult to claim that such cover would be unforeseen.

It is also the case that the unions representing support staff (UNISON and GMB) have either already got a mandate to take strike action or are in the process of balloting members. This means that in addition to the teaching workforce the majority of support staff are also likely to be on strike.

Q8 Can we use volunteer parents to keep the school open?

Answer: The NGA would re-iterate that it is for the headteacher to decide whether the school should remain open or not. There are a number of considerations a headteacher would need to take into account before using 'parent volunteers' to keep the school open:

- does the parent have a CRB check?
 - as the whole point of using a parent to provide cover means s/he will be in sole supervision of the children then this needs to be taken into account
- what experience of supervising 30+ children does the parent have?
 - staff with sole responsibility for classes will have been trained in classroom management -

As with using paid staff to cover industrial action the headteacher will need to consider whether using volunteers in this way would be advisable.

Q9: What about transferring control of the premises to a third party?

Answer: The governing body could contract with a third party to provide child care or other activities at the school on the day of the strike. (Governing bodies of maintained schools, apart from maintained nursery schools, have the power to transfer the control of the school premises to a third party to provide childcare or other activities.)

There are however some important considerations:

- Community and voluntary controlled schools would also need to seek the local authority's consent
- Academies – the Academy Trust may bring in an external person or organisation to assist in the provision of childcare or educational services, but the Academy Trust would remain ultimately responsible for the premises and supervision of the children.
- The third party could be charged a fee for using the premises
- Parents could be charged for the service, or the school could subsidise the service
- Governing bodies will need to ensure that third parties have adequate insurance.

Given that the industrial action is taking place in less than three weeks arranging third party childcare provision or other activities may be challenging, especially given that the school at this stage may not have any idea how many children it would need to cater for.