

Strike Action 30th November 2011

Frequently Asked Questions (FAQ's)

Advice to Chairs of Governors, Governors, Headteachers
and Principals of Schools and Academies.

INDUSTRIAL ACTION

1. What form of action are the unions taking?

At the time of writing, the County Council has not received the statutory notices from all the Unions which are required by no later than 7 days before the strike action is due to take place. However, it seems clear from information on the union websites and the media that there will be a day of strike action on Wednesday 30th November 2011.

2. Does this mean that all members of the union are being called on to strike?

Although we have not received the statutory notices yet, we understand that **all** members of the unions that have balloted will be asked to take strike action on 30th November 2011. This may include the Headteacher and/or Senior Leadership Team.

3. Is the industrial action legal?

There is nothing to suggest that the industrial action is not legal. The unions have conducted ballots and followed the prescribed requirements. Provided that the statutory notices are received not less than 7 days prior to 30th November, the industrial action will have met the necessary legal requirements.

4. What actions can employees take?

The ballot papers issued by most unions asked members to vote on their willingness to take discontinuous strike action, nothing else. This means that the only action a union member can take and be protected by the law is strike action. Action short of strike action, e.g. a work-to-rule is not legitimate and in order to be protected by the law, action short of strike action would require the need to conduct another ballot. The NAS/UWT and ATL, though, balloted for continuous industrial action. Once the outcome of their ballots has been assessed. Further, advice will be given on 25th November although any action will be after the strike day.

5. What if employees ask if they can take action short of strike action?

Some school/academy staff may ask to work limited hours on the day. This could be for example, teaching staff who want to come in to do their PPA time but not teach or, conversely those who want to work their core teaching hours, so as to avoid disrupting the provision for pupils. Employees who seek to do this will not be covered by the legal protection they would have, if they went on strike on 30th November.

In summary, a union member cannot insist that the Headteacher/Principal/Chair of Governors agree to a request to work core hours or do PPA time whereas a Headteacher/Principal/Chair of Governors is entitled to insist that an employee who is not taking strike action, works their normal hours.

6. Can staff be asked whether they will be taking strike action on 30th November 2011?

Yes and you are encouraged to do so, although strictly speaking staff do not have to give you an answer. However, we believe that unions that are likely to be involved in the strike will, through their officials, not discourage employees who intend to take action to tell their manager or headteacher/principal or chair of governors well in advance. It should be stressed that this is a courtesy, which is designed to ensure that alternative arrangements can be made for pupils at the school/academy.

7. Who is able to take industrial action?

The only people who were balloted and are involved in industrial action in schools/academies were members of:

NUT
NAS/UWT
ATL
NAHT
Unison
GMB
Unite
AEP

(Union members from Voice and ASCL are not involved in the industrial action)

Only those members of the unions who were balloted and will be taking industrial action will have legal protection. Members of other unions (including Voice and ASCL) should, and we understand will, continue to work as normal.

Other unions are likely to advise their members not to undertake cover for striking colleagues and they cannot be compelled to do so other than in life threatening situations. Whilst it would be possible to argue that refusing to undertake the duties of a striking colleague constitutes a failure to comply with a reasonable request, pressing the point is likely to produce an adverse employee relations issue and it would be worth avoiding unnecessary confrontation.

8. Are any union members exempt from taking strike action?

As we have not yet received the statutory notices yet, it is difficult to be certain on this point but with few exceptions, this seems unlikely.

However, Unison, have indicated that they will allow exemptions in the following circumstances;

- Employees in their final year of service
- Pregnant woman who have notified the employer of their expected week of childbirth; and
- Employees whose state benefits may be affected by taking part in strike action.

If one of your employees is, or may be, covered by any of the above categories, you should advise them to contact Unison for advice.

As far as other unions are concerned, we will be seeking to clarify the position on any possible exemptions and update this advice if the position changes.

9. What if staff who are not in a union wish to take action?

Employees who are in a trade union that has balloted and has a mandate for strike actions must make a personal decision on whether or not they wish to support the strike.

Staff who are members of trade unions that have not balloted for strike action do not have legal protection if they choose to take strike action and would be in breach of their contracts. This might expose them to legal action. Serious consideration would be given to take action against an employee in this category if the safety and delivery of essential services would be compromised by their action.

It is a quirk of employment law that employees who do not belong to a trade union but decide to take strike action have the same protection against dismissal as a colleague in a trade union that holds a mandate for strike action. Staff in this group may wish to seek their own legal advice before considering their position.

10. What is required in respect of notifying employers of strike action?

The individual unions have to give at least 7 days' notice of each occasion on which industrial action will be taken, giving the employer information about which employees will take part. This would be provided in terms of categories of employees and the number in each category.

The notice is to the employer (this is Norfolk County Council in the case of community and controlled schools, but governing bodies in relation to foundation, aided schools and academies). The union will normally send a copy of the letter to the headteacher/principal as well.

11. Can unions use their own notice boards and the internal post system to promote the strike and can they hold workplace meetings in work time about the proposed strike action?

Unions are still entitled to all their usual facilities to enable them to carry out their duties.

As regards meetings, employees will not be entitled to time off to attend such meetings where the purpose of the meeting is specifically to plan for or discuss the industrial action. It will be at the discretion of the Chair of Governors in relation to Leadership union staff and the headteacher/principal in the case of all other staff to use discretion to decide whether to allow any work place meetings on the school premises. However, union representative should not be allowed time off to attend meetings.

PLANNING FOR THE DAY OF INDUSTRIAL ACTION

12. Should the school be closed for the day?

This decision has to be made at school/academy level. Whilst the Governing Body of a maintained school/academy has general responsibility for the conduct of the school/academy the decision to open, partially open or close a school is an operational one and therefore **normally** falls to the headteacher/principal. Where the headteacher/ principal is planning to strike on the day, this will not prevent him/her from asking other staff if they intend to strike and making an informed decision and plan to manage the strike. However, the Chair of Governors must work alongside the Headteacher/Principal to ensure statutory services are delivered or a closure (or part closure) is planned and properly communicated.

The unions have different levels of membership in every school and it may also be that some union members will choose to work normally rather than supporting the dispute. As a result, it may be possible for the school/academy to continue to operate as normal during the day of strike action.

Whatever decisions you make, it will be important to have a contingency plan in place for the day in order to ensure that any staff and pupils who may be attending can do so safely.

13. What factors should be taken into account in deciding whether or not the school/academy can remain open?

We would hope that schools/academies remain open if it is safe to do so. Where there is a significant trade union membership, or were the staff indicate their intention to take strike action, the headteacher/principal and governing body will need to consider the possible impact on the school day. Clearly the health and safety and pupils must be the first concern and you may wish to consider some or all of the following as part of your planning for the date:

- Who is likely to be on strike on 30th November?
- Are any key employees (for example the headteacher/principal and/or senior leadership team) likely to be involved?
- Which, if any, pupils are likely to be affected by the strike action?
- Can arrangements be made to ensure that the normal, or some limited, curriculum delivery can take place?
- Are there arrangements in place for safe and effective classroom management?
- Can acceptable levels of supervision be provided?
- Can cover arrangements be made (see question 7 above)
- Are there any examinations scheduled to take place on the day of action? If so, what arrangements can be made for the pupils to take the exams?
- Will suitable staff be available in relation to school transport and able to deal with any issues that arise?
- Will suitably experienced staff be available to support children with special needs?
- Will suitably experienced staff be available to respond to any child safeguarding concerns?
- Are suitable arrangements in place in relation to the school crossing patrol?
- Are any external visits planned on the day of strike action? If so, can safe staffing levels be agreed and maintained, or does the visit need to be postponed?
- Will volunteers who would normally be in the school/academy that day stay away, in support of colleagues who are taking strike action?
- Will the school/academy site be accessible or do other arrangements need to be made. e.g. do alternative arrangements need to be made to undertake the key holder responsibilities?
- Will someone senior be available to take decisions to resolve any issues that may arise in school on the day?
- Will someone be available to advise/take decisions if the heating, lighting, ventilation etc fails?
- Will there be adequate supervision in place during break/meal times?
- If the school will definitely have to close, have the catering/transport services been informed?
- Are there any events taking place at the school run by external organisations that may need to be notified of the strike action?

- Is any maintenance by external contractors planned for the day and, if so, can adequate supervision arrangements be made?
- Will there be access to sufficient qualified first aiders on the day?
- Arrangements for visitors to the school – will there be someone with sufficient seniority to assist visitors?
- If the school has a residential provision, will there be adequate cover and do staff know whom to contact in an emergency?
- Are arrangements in place for maintaining clean working areas and supervision of chemicals and other hazardous substances?

14. What can I do to ensure that the school/academy remains open?

Much will depend on the extent of the action and the number of staff intending to strike. It may be that some staff will decide to work as normal but where some staff are taking action, you may wish to consider reallocating work to colleagues in similar job roles who are not taking part in the strike.

Providing that the work is of a similar nature, this should not present contractual problems but you should consider carefully the potential impact on employee relations and future working relationships of asking an employee to cover for an absent colleague. If you do decide to ask an employee to provide cover, you will need to be sure that the request is reasonable and that he/she is competent to perform the duties you wish to reassign. Bear in mind also that staff who are in unions but have decided not to strike, may well have received advice from their unions to restrict their activities to the tasks/area they are usually committed to.

Teachers/instructors employed under the School Teachers Pay and Conditions document cannot be compelled to provide cover for other teachers, unless the circumstances are unforeseen. Given the notice required to take strike/industrial action, it is clear that this 'unforeseen' requirement cannot be met. However, that does not prevent Chairs of Governors /headteachers /principals from asking other teachers to cover the classes of those taking industrial action. However, most teachers are in unions and may have been issued with advice on this as above. Also, the impact of such requests on employee relations and future working relationships needs to be considered.

15. Could we bring in agency staff to teach classes on the day?

Current legislation does not allow employers to use agency staff to cover the work of others who are conducting industrial action. Regulation 7 of the "Conduct of Employment Agencies and Employment Business Regulations 2003" makes it unlawful for agencies to 'introduce work seekers to replace employees who are undertaking industrial action'.

However, it is possible for the school/academy to offer supply staff employment for the day of action but, as indicated earlier, the impact of doing so on working relationships should be considered. Also, bear in mind that supply staff are often trade union members who can elect to pay into the pension scheme and it should not be assumed that the strike action is not an issue for them or that they have not been given union advice.

16. After reviewing the position, so many of our critical staff will be on strike that we have decided to close the school for the pupils. Who do we need to inform?

Parents, carers and pupils will need to be advised as early as possible. It is also important to notify any service providers e.g the catering/bus providers that they will not be required. Please also check the bullet point list in 12 above but bear in mind that this is a generic list and you will need to check your own positions carefully.

In order to assist with information that may be required by a variety of sources, as well as communicating directly with parents/carers, please use the 'School Closures Hotline' facility. However, it is essential that schools/academies are responsible for accurate and timely communication with their own staff and with all parents of children at their school so that they can make arrangements for the day. In addition we would appreciate to be notified of the impact on your school, including partial closures, via the schools closure email box. A link to that email box is provided in the accompanying MI Sheet.

17. In circumstances when the school is closed, what about staff who do not intend to strike?

Any member of staff who does not intend to take action should be able to work as normal, so you may wish to consider using the time for duties that would normally be performed by those staff, albeit not on the day of the strike. These could include carrying out performance management, planning or preparing classroom activities or meetings.

18. When the school is closed for pupils but still accessible for staff, can they bring their own children into work if their children's school/academy is closed because of strike action?

There is no entitlement for staff to bring their own children into school and to do so would potentially jeopardise insurance, health and safety and safeguarding arrangements. Moreover, staff will have known about the strike action for some time, so would not be eligible to take time-off for an 'urgent family reason'. If members of staff are unable to make alternative arrangements for child care, they may request unpaid leave and it will be for the school/academy to decide whether to approve any such requests. Bear in mind the future employee relations impact when considering this and also the need to act consistently on this day and on any potential future strike days.

19. What happens if the headteacher/principal takes strike action?

Paragraph 58.4 of the School Teachers 'Pay and Conditions' document states:

"if the head is absent from the school a deputy must undertake their professional duties to the extent required by the headteacher or the relevant body or, in the case of a foundation, voluntary aided or foundation special school, the governing body"

Therefore, where the headteacher is taking part in the industrial action but the deputy is not, the governing body should consider whether they wish to require the deputy headteacher to perform the headteacher's duties, bearing in mind the need to keep the school open.

20. What about when both headteacher and deputy headteacher will be on strike on the 30th November?

There are occasions when both headteacher and deputy are out of school but still contactable in an emergency. This situation is different in that both staff would be withdrawing their labour to take part in the strike action and therefore, their leadership will not be available. Given that 58.4 of part 10 of the current School Teachers Pay and Conditions states that **only** deputy heads can undertake the duties of a head in their absence, the implication is that in such circumstances, the school would need to be closed for pupils.

21. What happens if my school is open to pupils but the meals are provided from another school, which is closed? (I have pupils entitled to free school meals.)

We understand that where Norse is the contractor for meals, they will be able to deliver a service provided by another kitchen, though the meal will not necessarily accord to that shown on the termly menu.

22. Some support staff are saying that they understand that Unison will reimburse members for the day's strike, from their Hardship fund. Can you confirm this?

It is not the employer's role to be involved in such an issue but staff should be encouraged to seek any clarification that is necessary through their union steward or through any Unison publications or telephone the Branch (01603 222384).

23. What are the implications for Pensions where staff take strike action and are there any arrangements in place to 'buy back' the service lost?

Any member of the **Teacher Pension Scheme (TPS)** who strikes will not have this day counted as 'reckonable service'. This will be notified to Teacher's Pensions and reflected in the calculation of their pension upon retirement. There is no provision for buy back within the TPS but there is an ability for members to 'purchase additional pension.' If staff wish to consider this option, they are advised to seek further details from the following website www.teacherspensions.co.uk/

Any member of the **Local Government Pension Scheme** who takes strike action, or who chooses not to cross a picket line and is deemed to have taken strike action, will lose that day's pensionable service. However, they can buy this back by paying 16% of a notional day's pay as prescribed by the scheme regulation by completing the absence due to Trade Dispute form by Friday 30th December 2011. [Click here](#) for a copy of that form. If staff require advice on buying back their lost service, they should contact Norfolk Pensions Services for advice from the following website <https://www.norfolkpensionfund.org/Pages/Welcome.aspx>

Employees who are members of a different pension scheme should contact their pension scheme administrator for advice on the pension implication.

PARENTS, CARERS AND PUPILS

24. What should the school tell the parents, carers and children?

Before taking steps to notify parents, carers and pupils, the Chair of Governors should speak to the headteacher/principal to clarify whether or not he/she intends to take strike action on 30th November.

Even if he/she has decided to take strike action, the headteacher/principal will normally be best-placed to assess whether any of the school staff intend to take strike action and to advise on possible contingency plans for the day.

It is essential to write to parents and carers as soon as possible to advise them of any changes to the normal arrangements for the schools, irrespective of whether the school intends to deliver a service to the pupils. In the current circumstances, when there is already a degree of media speculation about the impact of the strike action, giving early reassurance or at least clear guidance, should help to alleviate some parental concerns.

25. What action should the school take if parents, carers or pupils complain about not being able to attend school on 30th November 2011?

Having kept everyone well informed about whether the school will be able to remain open on 30th November, anyone who wishes to raise a complaint about the school/academy's failure to provide a service on that day, should be directed to the school/academy's normal complaints procedure.

ON THE DAY OF THE STRIKE

26. What do we need to know about picketing?

At this stage we do not know whether there will be picket lines at any schools /academies in Norfolk. Although past experience would suggest that this is relatively unlikely, given the number of unions that are striking on the same day, it is more likely than on previous occasions when industrial action has taken place. It is more likely that a rally will be held in Norwich and potentially in other centres of populations in Norfolk, Unison have announced rallies and demonstrations in Norwich, Dereham, Great Yarmouth and King's Lynn. The position of other unions, however will no doubt become clearer in due course.

The unions involved in this dispute are responsible organisations and all issue guidance to their members that any picketing should be a peaceful activity. A picket line should not exceed six people at an entrance to a workplace.

Picketing is a legitimate form of industrial action. However, anyone involved in a picket line is required to conduct themselves as follows:

- Peacefully obtaining or communicating information; or
- Peacefully persuading another person not to work
- Picketing at or near their own place of work
- Not committing any other unlawful act such as nuisance, trespass or obstruction.

Equally, anyone crossing a picket line is expected to behave in a similarly responsible and courteous manner.

In managing any access to the site, you will need to ensure that arrangements are available to offer protection to anyone who crosses the picket line.

27. What happens when staff refuse to cross a picket line?

Staff refusing to cross a picket line where they have not been balloted are likely to be regarded themselves as having taken unofficial industrial action, leading to potential legal consequences for the person(s) concerned. It is for this reason that unions advise against such action.

Where it is known that non-attendance is in support of the industrial action, it is legitimate to deduct pay.

In 22 above, reference is made to the obligation to try and ensure that employees are given every protection in crossing a picket line. Occasionally, however, employees may be willing to cross a picket line but are reluctant to do so for fear of their own safety. In such circumstances, if the governing body considers that the employee(s) concerned has made every effort to cross the picket line but was unable to do so, their absence should not be treated as industrial action and therefore they should be paid for the relevant period concerned.

28. What happens if an employee requests to book annual leave for the day of the strike

This applies only to staff who have disposable annual leave. Teachers and other staff whose contracts require them to work during school term times (within which 30th November falls) will not be entitled to request leave.

If someone with disposable leave (often those support staff on full time contracts) has already booked leave, this should obviously be honoured. Any new requests will need to be considered carefully, and much will depend on contingency plans you have made, or will make, for the school/academy.

You may wish to note that for staff employed directly by Norfolk County Council, the advice to managers is that further requests for leave after it is known that strike action is planned for a specific date(s) should not be granted. Moreover, in terms of any possible future action, requests should only be approved if they do not disrupt normal working.

29. What happens when a teacher who is intending to strike but says that they are available to work their other (e.g. SMSA/TA) role?

In these circumstances, if the school remains open, they should turn up for duty and will be paid. If the school is closed, they will be paid (for this role)

30. What happens if a teacher, who is also a SMSA/TA, asks for leave on 30th November?

This will be regarded as a new request and should be considered in light of the contingency plans you have made or will be making.

If the member of staff merely does not report for duty, this should be treated as a potential disciplinary offence. A subsequent disciplinary investigation will need to determine what action, if any, to take but, in the meantime, pay should not be deducted.

31. What happens if a striking teacher, who is also a SMSA/TA, is attempting to undertake their non teaching duty, refused to cross an official picket line?

This would be a potential disciplinary matter (see 27 above.) Where it is subsequently established that there were genuine grounds to believe that crossing the picket line would have put that person at risk of injury, no deduction of pay would be applicable.

32. What if an employee is off-sick on the day of the strike?

Union members who are off sick on the day of the strike should be treated as sick, provided they have followed the school/academy's reporting requirements (appropriate medical certification being required if absent for more than seven days). Schools/academies will subsequently conduct a return to work interview so that their line manager can confirm the reason for absence.

Where staff who normally receive information from staff who are sick, but are known to be planning to be on strike on 30th November, schools/academies will need to make alternative arrangements as part of their contingency planning.

33. What if an employee is booked to go on a course on 30th November?

This is a matter for your discretion but you will need to check whether the employee still intends to attend the course, or has decided to take strike action. It is possible to ask a non-striking employee not to attend the course on that day (whether they are a union member or not) but you need to bear in mind that this is likely to damage relations well beyond the strike day.

You will also wish to ensure that the training provider is aware of any decision as soon as possible.

34. What about press coverage?

It is likely that unions will organise press coverage on the day of the action, both at local and national level.

Headteachers/Principals and Governors, provided the school/academy has bought into the service package of handling media enquiries, may wish to direct requests to Kate Gooding, the Children's Services Media Officer on 01603 224214

35. What if the school/academy needs advice on child protection on the day of the strike?

Whilst the strike action is also likely to affect some County Council Services in addition to school, business continuity arrangements are in hand for advice to be available on child protection issues in the normal way, using the usual contact number.

36. How do I record pupil absence if the school/academy was closed?

If the school/academy will be closed to some or all pupils as a result of the strike action, sessions for those pupils should be marked in the register using the Y code, which will mean it is not counted as a possible attendance.

37. What happens when staff who are not entitled to take action choose not to report for duty?

These staff are expected to come to work as normal during industrial action. If staff decide to stay away from work, this should be treated as unauthorised absence and a breach of contract and pay and pension deducted accordingly in the same way as for employees taking official action. The legal protection afforded to trade union members who breach their contracts do not apply to these employees but in practice such employees are regarded as being on strike and treated accordingly.

38. What other sources of advice exist?

For more general information on the national position, you may find the following websites helpful:

www.education.gov.uk/schools/adminandfinance/emergencyplanning/b00199934/advice-for-handling-industrial-action-in-schools

www.lgps.org.uk Reform of public sector pensions

www.lge.gov.uk/lge/core/page/do?pagelId=13667990

<http://www.lge.gov.uk/core/page.do?pagelId=13846641>

www.teacherspensions.co.uk/members/memberreforms.htm

In addition, all of the trade unions that are participating in the industrial action have a range of information on their websites.