



Sutton-on-Trent Primary and Nursery School Guide on Industrial Action

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HR Advice, Support and Training Service

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Nottinghamshire Guidance on Industrial Action

1. Preparation

- 1.1 Governing Bodies and Head Teachers need to be aware of the impact on their staff taking strike action in terms of their pay, pensions and terms and conditions.
- 1.2 Whilst employees are not required to tell their employer whether they intend to take strike action **Head Teachers should make general enquiries and try to identify their employees' intentions as to whether staff will be available for work. This should be done as soon as possible in advance of the day of action, in order to establish whether minimum levels of cover are likely to be available to enable schools to stay open.** Head Teachers should do this sensitively during the course of the school day and ensure that they do not do anything which could be seen as threatening, intimidating or an attempt to persuade staff not to strike.
- 1.3 Maximum flexibility should be applied to the use of staffing resources to ensure service provision in essential areas e.g. reallocating work to non- striking staff, those not in any trade union or in a trade union which has not returned a yes vote (if any), or to other staff or staff groups on a voluntary basis, dependent on their ability to perform it. Schools should act reasonably and care should be taken not to endanger goodwill or to force employees to undertake work which conflicts with their contract of employment.
- 1.4 It is unlikely that teachers and support staff who are not members of the union(s) taking industrial action will be prepared to undertake the work that those taking the action would have undertaken. Regulation 7 of the Conduct of Employment Agencies and Employment Business Regulations 2003 makes it unlawful for agencies to provide workers to cover the work normally carried out by employees on strike if the agency is aware of the action. Therefore it is not advisable for governing bodies to seek to engage the services of employment agencies for this purpose.

2. Attendance

- 2.1 Employees who belong to unions other than those who have balloted in favour of action and non-union members cannot legally support a strike (if their trade union has not balloted for strike action) and they will be expected to report for work as usual where a decision is taken to keep the school open. Should any staff choose not to cross a picket line they will be considered as being on strike and pay and pension contributions deducted accordingly. Some trade union members may choose not to follow their trade union's instructions and wish to work as normal.
- 2.2 Arrangements should be put in place to ensure that employees who want to work can safely cross any picket line outside or in the vicinity of the school. Schools should also put in place signing in arrangements to record staff who were available and at work and should the school close, Head Teachers will need to be clear which staff would have worked if the school had been open. If this cannot be confirmed then it should be assumed that the member of staff was on strike. Specific Health and Safety arrangements are also required so that it is known who is present in school (Please see separate Health and Safety guidance in Section 10 of this document and Appendix 1 - Fire Safety Register).

- 2.3 Women on maternity leave may delay their return to work where industrial action makes it unreasonable to resume work without effect on their entitlement to occupational maternity pay. Any requests for Special Leave should only be supported in exceptional circumstances i.e. requests which meet the criteria for compassionate leave which could not be planned in advance. Non-attendance on training courses without due explanation will also constitute strike action.
- 2.4 Schools will not require employees who are sick on the strike day to produce medical certificates for reasons of cost and the difficulties in actually establishing any false claims. Employees should adhere to normal sickness absence reporting procedures and any such absence will be part of the monitoring process. Where Head Teachers have evidence that sickness absence on the strike day is not genuine, this should be dealt with under agreed disciplinary procedure as should other proven unauthorised absence.
- 2.5 Should Head Teachers or Governing Bodies consider that there are grounds to withhold the pay of any employee who has not attended work for reasons other than direct strike action, they should seek the advice of their usual contact in the HR team for their school in the first instance (see contact details at the end of this document) in order to ensure fairness and consistency across the authority.
- 2.6 Agreement will be sought with the trade union side that, in the event of a major civil emergency, the strike be suspended for those required to support the emergency planning team.

3. Picketing

- 3.1 Legal picketing must consist only of communicating information and/or peacefully persuading persons from attending work. A Protocol for standards of employee behaviour during industrial action at picket lines and in the workplace following the day of action is available in Appendix 3. ***Please bring this to the attention of your staff.***
- 3.2 Schools and Governing Bodies will be responsible for ensuring the safety of any employee who chooses to cross picket lines and work. Should any employee be prevented from doing so, an alternative means of entry to the workplace should be arranged if at all possible.
- 3.3 Where picketing takes place, employees not directly involved in the industrial action may refuse to cross picket lines. Such employees can normally be regarded as being on strike. Occasionally however, employees may be willing to cross picket lines but are reluctant to do so for fear of their safety. In such circumstances, the school should try and ensure that the member of staff is given every protection in crossing the picket line. If the school considers the teacher has made every effort to cross the picket line but was unable to do so, then the governing body may decide not to treat their absence as industrial action.
- 3.4 Employees should not be penalised through deduction of pay if they have made genuine attempts to attend their place of work. They should be advised to contact their head teacher as soon as possible to agree a course of action should this occur.

- 3.5 Head Teachers and Governing Bodies should make sure that picketing is monitored and recorded by identified responsible persons nominated by the school. Reported acts of misconduct, e.g. violence, harassment or damage to property will be noted and responded to. These may lead to a police presence and individuals identified as acting inappropriately by their school will be dealt with under agreed disciplinary procedures. Any damage to property by pickets should be reported via the **help desk** (see section 12) set up to deal with any issues arising on strike days.

4. Employment Implications

- 4.1 Employees who take part in strike action are in breach of their contract of employment and will result in them failing to fulfil the terms of their contracts of employment and therefore Governing Bodies will be expected to respond to this. With industrial action, including action short of a strike, a response may be to deduct pay and governing bodies are entitled to determine that pay is withheld for work not done.
- 4.2 **Teachers** - where **strike action is taken for a complete day** or a number of days, our recommendation is that as a result of the breach of contract a deduction of pay should be made on the basis of 1/365 for each day's action. Paragraph 3 of Section 3 of the *Conditions of Service for School Teachers in England and Wales* (the 'Burgundy Book') specifies this rate of deduction for unpaid leave of absence, giving industrial action as an example.
- 4.3 **Where teachers take part in such action, the Governing Body must advise those taking part that a deduction from salary will be made and that their absence details will be submitted via the School Self Service portal.** Strike action pay will be deducted on the basis 1/365th of Full Time Equivalent annual salary for teachers being representative of the duties not performed.
- 4.4 Please arrange for the absence details to be submitted via the School Self Service portal. The Absence Booking for myStaff – Strike User Guide is available on the [schools portal](#).
- 4.5 On submission of the strike absence details, the Local Authority will deduct one day's pay i.e. 1/365ths of Full Time equivalent annual salary. This action will also lead to a loss of one day of annual pension accrual.
- 4.6 **Support Staff** - employees who take part in strike action are also in breach of their contract of employment and will have their pay deducted on the basis of one fifth of a week's pay for each day lost or hours normally worked on the strike day for part time staff. Please complete the **absence details via the School Self Service portal**.
- 4.7 Absence on strike action for Support staff does not count as pensionable service. It will cost employees 16% of lost pay if they wish to pay extra contribution to restore lost service.

5. Signing in arrangements

- 5.1 In order that the authority can deduct pay consistently, fairly and appropriately, it is essential that signing in provisions are made in each school / site.

6. Voluntary Aided, Foundation and Academy Schools

- 6.1 For staff employed at voluntary aided, foundation and academy schools, the responsibility for deciding responses to industrial action lies with the Governing Body or the Trust. In discharging that responsibility Head Teachers and Chairs of Governors may want to take into account the above advice relating to community schools.

7. Deciding whether to keep your school open

- 7.1 Governing bodies and head teachers should be encouraged to keep schools open to maintain continuity of educational provision, taking into account health and safety requirements. Please refer to the Health and Safety guidance in Section 10 of this document on Health and Safety issues. The County Council has recently reviewed its procedures and guidance for reporting school closures. The procedures now include arrangements for notifying the local authority in advance of closures caused by industrial action. The procedures are available from [severe weather school closure guidance](#). **If your school will be closed (or partially closed) due to industrial action please follow the actions within Appendix 1 of the [School closures guidance](#)**

8. What is industrial action?

- 8.1 There is no legal definition of industrial action. However, case law has established that:
- Industrial action must be concerted action against the employer's interests. It does not, therefore, usually cover action taken by an individual.
 - It must be taken in order to put pressure on the employer in an attempt to achieve some objective.

9. When are employees taking part in industrial action?

- 9.1 As a basic guide, employees will probably be taking part in industrial action if they:
- Collectively withdraw their labour, as in this case
 - Refuse to undertake some of their duties
 - Refuse to carry out reasonable instructions
 - Take part in a sit-in, go-slow or work to rule
 - Take part in picketing

10. Health and safety

- 10.1 The County Council continues to have a statutory duty in respect of health and safety during a dispute. Head Teachers will therefore need to review their services to establish which are 'essential', and then look at the key elements in those services that need to be in place if they are to be delivered. Those key elements

then need to be assessed as to their vulnerability to industrial action, and as to the likelihood of such action taking place.

- 10.2 Head Teachers requiring health and safety advice should in the first instance contact the **Health & Safety Team at Lawn View House on 0115 8040333**. On the day of the action, support and advice will be available on this number, alternatively advice will also be available through Emergency Planning on 0115 9772000.

10.3 General Health and Safety responsibilities

Head Teachers need to ensure that they are adaptable to changing circumstances, vigilant for the safety of staff, service users and the public, aware of limitations that the action may place on services and able to ensure that action is taken to maintain health and safety by managing risk in a sensible and practical manner.

- 10.4 Staff need to ensure that they continue to work safely by complying with safe systems of work, risk assessments and following control measures and procedures designed to maintain health and safety. Staff should note that there is an expectation that they will continue to work in accordance with legal requirements and that they may be held individually responsible should they make decisions to withdraw a service or vary a practice without involving their manager/supervisor and where this results in injury or dangerous practice. Staff are encouraged to read the *Protocol on standards of behaviour during industrial action* (Appendix 3) prior to the strike so that they are clear on the standards of behaviour that are expected by them individually and by staff on any picket lines that they may decide to cross.

10.5 Risk Assessments

It is absolutely essential to ensure that risk assessments are reviewed.

Where industrial action is being taken Head Teachers must consider the activities normally carried out by staff and review risk assessments to reflect any significant change in circumstances. Consideration must be given to whether new control measures are required. Examples of factors to consider when reviewing risk assessments and assigning tasks to different employees are:

- The level of the cover required;
- The correct selection of individuals;
- The provision of adequate information;
- The provision of any necessary personal protective equipment;
- The transportation of staff and equipment
- The supply of necessary equipment;
- The provision of safe systems of work to be followed;
- The provision of necessary staffing levels, instruction and training and effective levels of supervision;

- 10.6 Head Teachers will need to ensure that sufficient numbers of staff are available to deliver a service safely and that staff:

- are competent to perform the tasks assigned to them;

- are able to operate as an effective member of a team , are well supervised and capable of working within an accepted system of work;

10.7 Examples of activities and hazards that require particular consideration are provided in Appendix 2. Head Teachers should contact the **Health & Safety Team on 01623 434033** if they are unsure about the action they should take to review risk assessments.

10.8 Building Facilities

Continued use of building facilities on the day will require a degree of planning by Head Teachers and NPO's (Nominated Property Officers) in each service prior to the strike and at the start of the day of action. Head Teachers should familiarise themselves with the normal arrangements prior to the day and consider whether these can be maintained during the strike. This will include arrangements for accessing buildings, providing emergency fire and emergency evacuation arrangements, first aid cover and use of lifts. In the main campus buildings Head Teachers and NPO's will be informed of any changes to the usual arrangements by their facilities management team. Where they are unclear about the arrangements that will be in place, Head Teachers must take the initiative to find out and ensure suitable arrangements are in place.

10.9 Fire safety

Head Teachers will need to ensure that their teams are familiar with fire safety arrangements, evacuation routes and assembly points and take action to ensure that arrangements are maintained at all times.

10.10 Arrangements should be made to ensure that the Fire Service is contacted in the event of an emergency and ensure that this emergency is confirmed with them even where the system is automatic. The Fire Marshal will be responsible for ensuring that (9)999 has been dialled and they will be the central point of contact and liaison with the fire service when they arrive.

10.11 There are two methods of ensuring that staff are evacuated safely and accounted for. These are by roll call or by clearing areas, using fire wardens to check that areas have been fully evacuated. In most of our buildings the latter is the preferred method for managing emergency evacuations.

10.12 Where Property Division normally manages the facility, Facilities Officers will advise Head Teachers where fire warden cover cannot be maintained and any alternative arrangements required to keep the building open.

10.13 Head Teachers who are directly responsible for the buildings that they occupy will need to review their fire risk assessments to ensure that emergency arrangements are maintained. Head Teachers may be able to identify alternative cover using other staff who must be fully briefed on their role. This will usually involve a manager and deputy and/or a suitable number of staff being appointed as temporary fire wardens for the day. They will take control within their area of responsibility in a fire or similar emergency and ensure arrangements are in place for checking the work areas as

they leave. In larger areas it may be necessary for Head Teachers to agree between them who will take on this role.

10.14 Alternatively establishments that cannot maintain their usual fire warden levels will need to ensure that Head Teachers agree on how the attached Fire Safety Register (Appendix 1) will be used, who will be responsible for roll call etc. In addition it will be necessary to ensure that a fire marshal is appointed to take charge of the incident, liaise with the emergency services and check to ensure that roll calls have accounted for all staff. Clear procedures should be agreed at the start of the day to ensure that these arrangements are in place. Head Teachers will need to agree with staff who should take on this role.

10.15 In smaller establishments there may only be a relatively small number of staff and a manager will be nominated to carry out the roll call and act as the Fire Marshal for the building. This person will be responsible for liaising with the Fire service.

10.16 Mobility impaired persons

This issue will obviously need careful consideration in relation to service users and a thorough risk assessment must be carried out to determine where people can be located and how they would be safely evacuated should a fire occur.

10.17 Mobility impaired persons who need assistance during an evacuation should be identified prior to the event and suitable arrangements made to ensure safe access, egress and emergency evacuation are maintained.

10.18 In establishments where 'evac' chairs are normally used then Head Teachers need to ensure there are sufficient number of 'evac' chair operatives available. Where this is not possible then the manager needs to consider alternative working arrangements for the individual(s) with impaired mobility such as a ground floor location or working from home.

10.19 First Aid

Where industrial action is being taken Head Teachers must maintain First Aid cover and make alternative arrangements to deal with medical emergencies where cover cannot be maintained in the short term. In larger buildings this will usually involve asking first aid staff to cover other areas as well as their usual allocation. It may also be necessary to ensure that changed contact details are distributed to staff and to reception where applicable so that people are aware of how to access emergency first aid support where necessary.

10.20 Other emergencies

Some buildings will have alternative arrangements in place for non-fire emergencies such as bomb threats, gas leaks etc. Staff should be reminded of these procedures and any changes necessary should be communicated to them.

10.21 Use of lifts

Head Teachers may need to consider the impact of industrial action on the use of lifts during a dispute, as someone must be available who can respond where lifts break down and people are caught in them. This could also impact on mobility impaired persons.

10.22 Health and Safety – Contractors and Suppliers

Contractors and suppliers should not be forgotten. They may work in part of our buildings, in partnership to deliver services or as sub-contractors involved in service delivery. We have a clear responsibility to ensure that we comply with legal requirements and ensure they are not placed at risk because of the dispute. Consideration should therefore be given to ensuring that they are covered in any risk assessments to identify whether activities can continue.

Please ensure that you are aware of any local health and safety information that may be issued to supplement this document.

11. School meals for children on the day of strike action

- 11.1 If a school is unable to provide a normal lunch service due to strike action, there is no requirement to close the school. If the school is open, the duty to provide free school meals for eligible pupils (including for all infant pupils from September 2014) still applies, even if there is no normal lunch service. Schools do not have to provide a hot meal to free school meal eligible pupils, provision of a cold lunch is permitted.
- 11.2 If on strike day a school does not have staff available to prepare and serve meals for pupils entitled to free school meals, it is for the school to put suitable alternative arrangements in place. For example, this could be arranging cover to prepare meals on site, or arranging for meal to be brought in. Schools are permitted to ask parents of children not eligible to free school meals to provide a packed lunch if they are unable to provide a catering service on the day of industrial action.
- 11.3 Schools are advised to contact their Nottinghamshire County Council Catering Service Area Manager for information on catering provision available to schools during the course of industrial action. **(Catering Team telephone number: 0115 9772187)**

12. Help desk

- 12.1 A help desk will be provided in the Emergency Centre on days when industrial action is taking place; any problems experienced by schools on strike days should be routed to the **help desk on 0115 977 2000**. Please note that this number will be only be staffed on the day when industrial action is taking place.

13 Action short of a strike

- 13.1 Action short of a strike involves employees performing the requirements of their job (e.g. what they are contracted or statutorily obliged to do) but no more. Contractual breaches and failure to fulfil statutory obligations may arise if an employee fails/refuses to carry out a duty required by:

- Statute (e.g. Part 2 of the School Teachers' Pay and Conditions Document and the Teachers' Standards)
- Other regulations related to their employment e.g. appraisal regulations
- Their contract of employment (e.g. an implied or explicit requirement to comply with all the policies and procedures by the employer).

13.2 Whether an employee is contractually obliged to complete certain duties is not always easy to decide. On the one hand it may be obvious, e.g. it is in their contract of employment or job description. The position becomes less clear if it is not specifically stated in these documents. It may be that an employee has been doing a number of duties over a period of time and, whilst not specifically mentioned in the job description or contract, they have nevertheless become part of the core duties of their contract by virtue of them having done it for a long time. The law also implies a number of terms into the contract of employment whether they are written or not. This will need to be managed by the school; however any specific queries regarding a potential breach of contract should be discussed with your HR contact (list provided below).

14. **Further information**

If Head Teachers or governing bodies require advice on any employment matters prior to the strike then further advice is available from your designated HR contact shown below or via the **HR Duty Desk – 0115 977 4433**.

HR contact points for schools:

Ashfield Schools

Wendy Baker	0115 977 4657
Elizabeth Cope	0115 977 4008

Bassetlaw Schools

Claire May	0115 977 4211
Rebekah Morris	0115 977 4292

Broxtowe Schools

Wendy Baker	0115 977 4657
Tracey Clare	0115 977 3940

Gedling Schools

Joy Allen	0115 977 2953
Susan Morris	0115 977 2551
Charlotte Martin	0115 977 3321

Mansfield Schools

Sarah O'Shaughnessy	0115 977 3521
Tracey Clare	0115 977 3940
Joy Allen	0115 977 2953
Charlotte Martin	0115 977 3321

Newark Schools

Elizabeth Cope	0115 977 4008
Bhavesh Amlani	0115 9774843

Rushcliffe Schools

Sarah O'Shaughnessy	0115 977 3521
Charlotte Martin	0115 977 3321

External Schools and Learning Centres

Elizabeth Cope	0115 977 4008
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Special schools

Charlotte Martin	0115 977 3321
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Please also refer to the following documents for further guidance relating to industrial action:

- NEOST guidance on industrial action by school teachers
- DFE guidance – Advice for handling Industrial Action in Schools
- LGA frequently asked questions regarding industrial action
- Documentation for [school closures](#)
- Schools Self Service User Guide (TUG V2) for deducting pay

Appendix 1 – Fire Safety Register

Please follow your normal emergency procedures in terms of raising the fire alarm and/or evacuating the premises.

- Please note that your assembly point is _____
- Your roll call, **where applicable**, will be carried out by _____
- **Please ensure that this register is complete if you leave the site and when you return.**

Time of arrival	Name	Time of departure

Appendix 2

Example list of activities/hazards that may need particular consideration during industrial action;

- Moving and handling loads including the moving and handling of people (this could occur in one of our residential or day care centres, one of our schools, etc)
- The transport of materials and equipment in private vehicles i.e. training aids and equipment.
- Use of or exposure to hazardous equipment, machinery, vehicles, lifting equipment, noise, hand tools, chemicals, substances, dust, fumes or biological agents.
- Working at heights (scaffolding, ladders, platforms, cherry pickers etc), in trenches/excavations or on the same level where there is a risk of falling because of the working environment, poor lighting, housekeeping, storage etc.
- Critical maintenance work carried out by contractors that requires knowledge of the location of asbestos or other hazards.
- Potential for violence and aggression.
- Working with electricity, pressure systems, radiation, water, gas or fuel systems.
- Working on or adjacent to the highway.
- Working in workshops.
- Hot working (welding, cutting etc)
- Persons working near water, animals/livestock
- Preparation of food
- Landscape Services
- Cleaning activities.
- Lone working in remote areas etc.
- Caretaking

Consideration should also be given where we are in loco parentis or have a similar duty of care to ensure that suitable levels of supervision are maintained. This may be relevant for special events booked on the day such as educational visits or other 'adventure activities'.

Please note that this is not intended to be a comprehensive list of activities but merely to get people thinking about potentially hazardous activities that they may need to consider.

Appendix 3 – Protocol on standards of behaviour during Industrial Action

For the attention of all employees who may be affected by the planned industrial action.

This protocol sets out the way in which Nottinghamshire County Council employees should conduct themselves during any industrial action and their subsequent behaviour towards colleagues on return to work. The Council expects that this protocol will be adhered to at all times.

The planned industrial action is within the law, following ballots that have been administered by an independent scrutineer within the prescribed legal framework. On the day of action, pickets will wish to talk to employees entering the workplace (including those in vehicles) with the aim of peacefully persuading them not to enter. All employees approaching a picket line should expect to be approached in this manner. Particular care should be taken by all parties where a picket line is arranged at vehicle access points; drivers should be prepared to stop to avoid personal injury or damage to vehicles. Any person who decides to cross a picket line must be allowed to do so.

Employee behaviour on strike days should reflect the Council's normal standards and expectations and must not contravene its policies and codes of conduct on the way staff treat each other. All employees, whether involved in picketing or those crossing picket lines, including those arriving at work in a motor vehicle (whether driving them self or as a passenger of another driver), should conduct themselves in a safe and responsible manner which does not constitute a physical or verbal threat to any party. They should show mutual respect and courtesy; take care not to cause offence and respect difference and diversity in the context of equal treatment. Any third party (e.g. partners or friends) accompanying employees to work should be advised to comply with the standards of behaviour set out in these guidelines.

Any reported incidents of unacceptable behaviour by an employee; e.g. intimidation, verbal or physical harassment, either on the strike day or on return to work, should be reported to the appropriate senior manager as soon as possible. All such matters will be investigated and where appropriate will be dealt with under disciplinary procedures.

Should the behaviour of any employee or member of the public constitute assault, obstruction or threatening behaviour or where it may constitute a public order offence, either the Council or Trade Unions may involve the police.

JCNP Staffing Regulations Working Party	N/A
Lead HR Business Partner	Andy Wilson
Date policy updated	June 2016
Review date	As per legislative chang