

COVID-19

COVID-19 remains a major health and safety issue, and is likely to be so for the foreseeable future. The NASUWT has produced extensive guidance around the health and safety issues related to COVID-19 which can be found at: <https://www.nasuwt.org.uk/advice/health-safety/coronavirus-guidance.html>.

From a health and safety perspective, the major issues will continue to be around risk assessments, and health and safety representatives should ensure that these are regularly reviewed and shared with members. In addition to risk assessments, health and safety representatives should also ensure that there is no relaxation of any control measures on the basis of mass testing being rolled out.

HSE Spot Checks

The Health and Safety Executive (HSE) has published data from the spot checks it carried out on schools in the Autumn term. The HSE undertook 5,000 telephone spot checks, which resulted in site visits to 20% of the schools. 10% required verbal advice, and 1% required formal intervention. If this is indicative of the whole system, this would mean hundreds of schools have significant failings in their systems and controls for COVID-19.

The NASUWT is deeply disappointed that the HSE has now stated that it will not be carrying out further spot checks on schools, as it believes there are 'good standards' across the system. The Union disputes this assertion and is concerned that without effective oversight and enforcement, standards are likely to fall.

If Health and Safety Representatives/Local Secretaries have concerns around the health and safety management of COVID-19 at a workplace, they are encouraged to report these concerns to the HSE using the email address union.covidconcerns@hse.gov.uk, copying in your National Executive Member(s) and nasuwt@mail.nasuwt.org.uk. Please also forward any responses received.

Ventilation

It is becoming increasingly apparent that aerosol transmission is a much greater route of infection than was thought at the beginning of the pandemic. Adequate ventilation is therefore key to reducing this transmission route. The NASUWT has produced guidance on ventilation during COVID-19 which can be found at: <https://www.nasuwt.org.uk/advice/health-safety/coronavirus-guidance/full-reopening-of-schools/ventilation-and-covid-19.html>.

The HSE is also recommending the use of carbon dioxide sensors as a method of measuring the ventilation in a room. These can be purchased relatively cheaply from a range of suppliers and give a real-time indication of the level of ventilation.

The NASUWT has had concerns around ventilation for many years. Adequate ventilation is not only a legal requirement, but is necessary for effective learning to take place, and several studies have shown that increased levels of carbon dioxide lead to lower performance. In the post-COVID world, carbon dioxide sensors could continue to be utilised to monitor ventilation levels to ensure these are optimised for both comfort and learning.

Assaults

Following issues in Herefordshire that were raised with the HSE by the NASUWT, the HSE has provided some useful clarifications around risk assessment and the provision of data to health and safety representatives.

The HSE has stated that data on assaults in schools should be provided to health and safety representatives, and can only be withheld if the data directly identifies an individual. Health and Safety Representatives should only be requesting summary data that does not include personally identifiable data, and this should be provided.

With regard to risk assessments on potentially violent pupils, the HSE has stated that generic risk assessments should consider the overall needs of the organisation to include the general risks, identify appropriate control measures, and identify appropriate instruction, information and training needs for relevant staff, and clear responses or actions to violent and aggressive behaviours.

Additionally, the HSE has stated that this can extend to assessing the risk posed by any individuals where their specific behaviour or history suggests that there is a foreseeable additional risk over and above that which can be dealt with by the wider generic control measures.

In cases where there is the need for individual risk assessments, these should be developed to consider wider care or support plans, relevant medical conditions, or other significant factors which may influence the propensity for violence and aggression. These assessments should identify whether there are any further specific measures that will be taken in respect of the individual, over and above the generic controls. They will also consider whether individuals can remain in a mainstream setting and may include professional and clinical judgements.

The HSE has also confirmed that health and safety representatives should be provided with the generic risk assessments and control measures as a matter of course, and the employer will need to demonstrate that there is an effective mechanism in place to undertake individual risk assessments and ensure that any additional specific control measures are identified and shared with only relevant individuals to ensure that the risks are controlled, including a clear threshold and factors which would trigger the need for an individual assessment to be completed.

The HSE also states that where individual risk assessments have been undertaken, the General Data Protection Regulation (GDPR) **does not 'trump' health and safety regulations**. Therefore, risk assessments must be shared where it is necessary for the proper performance of health and safety representative functions.

Luton Judgement

The HSE has recently secured a successful prosecution of Luton Borough Council (LBC) over an incident where a teacher was attacked by a pupil and left with life-changing injuries.

The pupil had a history of violence, yet an investigation by the HSE found that there were significant shortcomings in relation to the measures at the school. No effective consideration was given to the risk of injury or death posed by the pupils to others, and measures were not taken to reduce that threat to as low as reasonably practicable.

The investigation also found that LBC as the employer did not ensure that the school had people with sufficient competence in the management of health and safety involved in running the school to ensure that the threat was addressed. The Council also did not see to it that staff members at the school had the training either to remedy that shortcoming or to deal with violent and aggressive pupils in a way which did not expose them to risk, and failed to monitor the adequacy of the measures the school had in place. The council therefore failed to pick up and address the shortcomings.

In fining LBC £104,000 plus £60,000 costs, the Judge stated: *"I am satisfied that the systems that were in place were inadequate and oversight by the local authority was 'light' – I accept that no concerns were brought to the attention of the local authority but that equally, it does not appear that the local authority invited matters to be brought to its attention."*

The HSE also stated that *'in community schools, where the local authority is the employer, the local authority must monitor the arrangements its schools have in place to manage the risk from violence and aggression.'*

The tragic case underlines the importance of all employers having sufficient oversight of their schools/colleges to ensure that health and safety legislation is being complied with, and to say that no concerns have been raised is an insufficient excuse.

Health and safety representatives and local secretaries/National Executive Members are advised to ensure that this judgement is raised with schools and employers to highlight both the need for effective risk assessments to be put in place for all hazards, including potentially violent pupils, and for employers to ensure risk assessments are being carried out.



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