



Hillscourt Education Centre
Rose Hill
Rednal
Birmingham
B45 8RS

NASUWT Scotland
35 Young Street North Lane
Edinburgh
EH2 4JD

Telephone: 0131 226 8480

E-mail: nasuwt@mail.nasuwt.org.uk
Website: www.nasuwt.org.uk

Date: 24 September 2020

Our Ref: 200924/Swinney J/PR/DL

General Secretary: Dr Patrick Roach

John Swinney MSP
Deputy First Minister and Cabinet Secretary for Education & Skills
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Email: DFMCSE@gov.scot

Dear John

I am writing to you today following the announcement by the First Minister yesterday of further national restrictions in response to the significantly increased threat to public health from the Coronavirus pandemic.

As a second wave of Coronavirus transmission has prompted the UK Government to uprate the Covid threat level to 4, we believe that there are implications for schools which now urgently need to be considered and addressed by Scottish Government.

The NASUWT is concerned that whilst the First Minister has announced a number of additional measures to be followed by the general public and in workplaces, no additional measures have been announced to ensure that the virus does not continue to spread within schools.

We are further concerned that the additional emergency measures announced yesterday do not go far enough and that urgent and additional action is needed to protect the health and safety of teachers and support staff across all schools

We note that whilst the Scottish Government has again reinforced the unchanged position of the need for people to work from home if possible and to minimise social contact between households, no corresponding advice has been provided to those who work in schools who are being expected to continue working as normal.

We are concerned to note that Scottish Government has not issued any advice to local authorities following yesterday's announcements which require, in the event of the increased covid threat level, that employers review and update their risk assessments and control measures in consultation with employees and unions.

You will know from our previous correspondence that there are significant numbers of teachers who are pregnant, or who are clinically extremely vulnerable, or who have underlying conditions or who are from higher risk groups (e.g. BAME teachers) who are working in schools and who are already extremely concerned and anxious about their safety at work. Their concerns have been heightened as a result of the increased incidence of Coronavirus transmission, together with the lack of social distancing within schools and the absence of PPE within classrooms. These risks continue to present serious concerns for our members. We, therefore, ask you to confirm what additional measures you intend to implement to minimise the risk of the Coronavirus being transmitted to these groups within the workforce.

The NASUWT continues to monitor carefully the situation regarding the implementation of your policy on the reopening of schools in relation to the health, safety and wellbeing of our members.

With rising numbers of confirmed Covid-19 cases in the wider community, our members are deeply concerned that, in the absence of effective control measures, there is increased risk of Covid-19 transmission within schools. We further note with concern that Scottish Government has not yet been able to provide any evidence on the effectiveness of the risk control measures recommended in your guidance to schools. Furthermore, you will be aware of the increasing number of schools where pupils and staff have tested positive for Covid-19 or are required to self-isolate. Our members are reporting:

- (i) the depletion of staffing numbers in schools whether through illness or having to self-isolate which is resulting in serious operational difficulties for schools in maintaining safe working practices at all times;
- (ii) the heightened risks to health for vulnerable teachers (including teachers who are otherwise categorised as clinically extremely vulnerable, pregnant teachers, older teachers, disabled teachers and teachers from particular BAME backgrounds) following your guidance on those who may return to work in schools;
- (iii) the lack of social distancing within schools, the absence of PPE and other effective non pharmaceutical interventions;
- (iv) The variance in interpretation of the guidance to be followed when a suspected Covid case is identified in a class/school setting.
- (v) how you will have regard for the practical and logistical challenges within schools to meet the Government's demands for covid-safe working practice;
- (vi) the need for further guidance and measures to be taken by government to ensure that schools adopt and maintain covid-safe working practices;
- (vii) the need for government to implement appropriate measures to ensure compliance across all schools.

I also request clarification from you as to:

- a) the data on which the Government is relying with regard to virus transmission and the number of confirmed Covid-19 cases involving pupils and staff in schools since 10 August;
- b) the position in respect of teachers who are unable to access childcare due to local lockdown restrictions and/or where a child or young person is required to self-isolate;
- c) the support and assistance the Scottish Government intends to provide to supply teachers who are unable to obtain work as a consequence of how schools are deploying additional staff and applying your Guidance on covid-safe working practice.

The NASUWT has been consulting with its members since the start of the Autumn term. The evidence from our preliminary polling raises further concerns about the urgent need for stronger protections to be introduced to ensure the Covid-secure working practices that the Government has promised.

According to our most recent survey data, we note with concern that measures recommended by government to mitigate the spread of COVID-19 were not in place consistently across schools three weeks following full reopening.

In accordance with the First Minister's commitments on behalf of the Government, our members have the right to the same considerations and protections in their workplaces that are being applied to other groups of workers. The NASUWT's expectation is that government will have conducted appropriate checks on the compliance by schools with your guidance and that you will have made provision for suitable on-going monitoring and compliance arrangements. We would welcome confirmation from you as to the nature of the arrangements you have put in place and the evidence base on which you now rely.

We also seek confirmation from you that you have obtained assurances that the implementation by schools of your decisions on the reopening of schools are not in breach of schools' legal obligations relating to health and safety, employment or equalities.

For the avoidance of doubt, the NASUWT is and remains committed to ensuring that schools remain open safely as the country continues to deal with the challenges and consequences presented by the Coronavirus pandemic. However, it is incumbent on us to emphasise the serious issues that are arising as a result of the following:

- the Government's decision to reopen schools in the manner adopted since 10 August 2020, and your failure to take proper regard of the practical and logistical challenges within schools to meet the Government's demands for covid-safe working practice;
- the failure of your Government to implement appropriate measures to ensure compliance across all schools.

Therefore, the NASUWT is putting the Government on notice by expressly reserving our members' legal rights in the context of a tortious claim for breach of duty of care and personal injury due to foreseeable risk, and any other legal recourse available.

The NASUWT requests confirmation as to the measures you intend to take to address the concerns raised in this letter.

Given the gravity and urgency of these matters, I look forward to hearing from you as a matter of the utmost priority.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Patrick Roach', written in a cursive style.

Dr Patrick Roach
General Secretary