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NASUWT

The Teachers' Union

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**To: Directors of Education/Children's Services
Chief Executives of Multi Academy Trusts
Heads of Independent Schools**

Dear Colleague

COVID-19 – reopening of schools and colleges in January 2021

On 30 December 2020, the Government announced its revised plans for the reopening of schools in the Spring Term 2021.

It has now become abundantly clear that the pandemic is seriously impacting on the ability of schools to continue to operate normally, and there is continuing uncertainty over whether schools and colleges can remain open safely.

Schools, colleges and other settings can only remain open to all pupils where it is safe for them to do so. It is, therefore, extremely regrettable that the country finds itself in the grip of a further escalation of Coronavirus transmission with a new variant that has been identified and which the Government has indicated is up to 70% more transmissible. We also note with the utmost concern that the new variant may present an increased risk amongst children and young people.

With the impending reopening of schools and colleges in January, it is essential that your previous COVID-security plans are revised and updated, subject to appropriate consultation. Given the current situation and the serious threat to life, the NASUWT must insist that you consider very carefully whether it remains safe for your schools to reopen from Monday, 4 January 2021 and that an immediate move to remote learning is appropriate to safeguard the health and safety of pupils and staff.

The NASUWT believes that it is extremely regrettable that following the Government's latest announcements in respect of the Coronavirus emergency, school and college employers have not had the opportunity to review and consult appropriately on their health and safety risk assessments prior to the start of the new term. You will be clear that whilst the Government has announced dates for schools and colleges to reopen from 4 January 2021, the responsibility for ensuring the health and safety of pupils and staff rests with school and college employers. It is therefore essential that all appropriate

health and safety mitigations are considered, consulted upon and implemented by you to ensure a safe start to the new term.

The NASUWT understands that employers will have found the timescale for completing their plans for the January 2021 opening extremely challenging, not least with regard to the completion of updated risk assessment planning and the introduction of appropriate contingency measures in response to the heightened risks of Coronavirus transmission in schools, colleges and across local areas.

The NASUWT is committed to working with employers to ensure the safe opening of schools, colleges and other educational settings. An important starting point for the NASUWT is that teachers and other school staff have the right to the same considerations and protections in the workplace that are being applied to other workers and to the public, and to be confident that their health and welfare, as well as that of pupils, is at the heart of any planning for opening.

Our expectation is that all employers will ensure that their schools, colleges and other settings have completed their reopening health and safety checks, taking account of the additional risks associated with the Coronavirus.

You will recognise that relying on risk assessments prepared for the autumn term 2020 is not sufficient for the purpose of meeting your statutory employer duties and legal obligations for health and safety at work.

In light of the increased threat levels, there is a clear requirement for all employers to review their risk assessments and mitigations to limit the spread of the virus within schools and colleges. It is essential that employers do not continue to operate on the basis of outdated risk assessments produced when COVID-19 transmission levels were at their lowest immediately prior to full reopening at the start of the autumn term. This would present a serious and foreseeable risk to the health and safety of our members and to the pupils in their care. As the employer, you will be well aware of your statutory responsibilities and the duties of your employees for the pupils in their care under the Children's Act 1989.

The NASUWT is seeking urgent confirmation from you that in light of the increased COVID-19 threat levels, you will now complete the review and updating of all COVID-19 risk assessments and control measures for your schools, colleges and other settings in consultation with employees, the NASUWT and other trade unions. Your legal obligations as the employer in these matters are non-delegable.

The NASUWT insists that you must immediately act to ensure that all schools, colleges and other settings for which you are responsible as the Employer will have:

- a comprehensive and updated COVID-19 operational plan, including new risk assessments which will have been the subject of full consultation with all staff and unions, before reopening to staff and pupils in January, and taking into account the increased risks identified by the Government of Coronavirus transmission in your local area;
- updated the guidance and training provided to all employees on safe working practices in light of the additional risks identified by the Government;
- conducted new individual risk assessments for clinically vulnerable employees and with regard to other employees identified as at higher risk from the Coronavirus;

- notified all employees who are clinically extremely vulnerable (CEV) in tier 4 areas that they must stay at home/work from home and conducted new individual risk assessments for CEV employees if they are required to work in tier areas 1, 2 or 3;
- updated their plans and protocols with regard to the safe deployment of supply teachers;
- put in place such procedures as necessary to ensure full compliance with the measures in the risk assessments, and have a notified procedure for dealing immediately with any breaches.

The NASUWT expects all employers also to remind schools, colleges and other settings that teachers' contractual rights with regard to pay and other conditions of service must be adhered to at all times, including when planning for onsite or remote education provision.

The Union further reiterates to you that we are putting all employers and the Government on notice, by 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 Union will also consider an employer to be in breach of our members' legal rights under Section 44 and 100 of the Employment Rights Act 1996, if they are subjected to detriment and/or dismissal in circumstances of danger which our members have reasonable belief to be serious and imminent. NASUWT members' rights under sections 47B and 103A of the Employment Rights Act [protected disclosure for the purposes of whistleblowing], including their rights under the Equality Act, are also reserved.

The NASUWT recognises that schools and college employers have been placed in a situation where the wrong decision will result in people becoming seriously ill and dying, and will therefore appreciate that there can be no compromise on health and safety. If this means that schools and colleges need to delay reopening to pupils in order to ensure they can complete all necessary planning, consultation and training of staff required to safeguard the health and safety of staff and pupils, then that position must be accepted.

The NASUWT looks forward to working with you to ensure that the health, safety and welfare of staff and pupils are protected in these unprecedented circumstances.

I look forward to hearing from you.

Yours sincerely



Dr Patrick Roach
General Secretary