

6th October 2020

COVID-19 UPDATE

Protecting members

Time budgets

Principals should now have completed training in time budgets. As agreed with Management side, all teachers must have a time budget in place by the 31 October. In calculation, the time budget principals must count every day worked so far as 6.5 hours.

In a minority of schools, we have had reports of principals trying to 'do a deal' with staff to work flexibly if they agree to work outside the terms of the Pay and Workload Agreement. Whilst the Agreement allows for flexibility (e.g. not every teacher has to work the same 195 days or 1,265 hours), attempts by individual schools to seek to renegotiate the collective agreement by requesting that members agree to vary their contractual rights are not acceptable, and members who are asked to do so should contact the NASUWT immediately.

When you receive your individual time budget, you should meet with your principal/line manager to ensure that it is fit for purpose. You will know if it is fit for purpose if every box on the agreed checklist can honestly be ticked. If every box cannot honestly be ticked, please contact the NASUWT. The checklist can be found here: www.nasuwat.org.uk/PayAndWorkloadAgreementNI.

NASUWT letter to the Minister of Education

The NASUWT General Secretary has written to the Education Minister, Peter Weir (www.nasuwat.org.uk/Covid19AutumnTermNorthernIreland) advising that the Union is continuing to monitor carefully the situation regarding the implementation of the policy of reopening schools in relation to the health, safety and wellbeing of members and stating that with the rising number of COVID-19 cases in the wider community, NASUWT members are deeply concerned that in the absence of effective control measures there is increased risk of COVID-19 transmission in schools.

The letter also notes that the Department for Education (DE) is unable to provide any evidence of the effectiveness of the risk control measures recommended in the DE Guidance to schools, and states that members are reporting concerns about:

- lack of additional funding which is leading to schools making critical decisions for example, in relation to cleaning on the basis of cost rather than safety;
- the depletion in staffing numbers in schools;
- the heightened risk to vulnerable teachers;
- the lack of social distancing in schools, the absence of personal protective equipment (PPE) and other effective non-pharmaceutical interventions;
- the failure of the test and trace system.

The letter emphasises the serious issues which have arisen as a result of the Executive deciding to open schools and its failure to:

- take proper regard of the practical and logistical challenges in schools to meet the demands for COVID-19 safe working practices;
- provide robust guidance and measures nationally to secure COVID-19 safe working practices;
- implement appropriate measures to ensure compliance across all schools.

The letter has also put the DE on notice by expressly reserving members' legal rights in the context of a tortious claim for breach of duty of care and personal injury due to foreseeable and any other legal recourse available.

Failure to implement COVID-19 Safety Provisions, including social distancing, in the workplace

The NASUWT has received a significant number of queries from members about compliance with the COVID-19 safety measures employers have put in place, particularly social distancing measures.

Employers must have within their risk assessment the measures they are putting in place to ensure that they are taking all reasonable steps to protect the health, safety and welfare of employees as required by health and safety legislation. This includes the measures relating to social distancing between adults, and between adults and pupils, in the workplace.

Risk assessments are not just a paper exercise. They have a statutory basis.

Employers have a legal duty to ensure that the measures in the risk assessment are implemented, and are vulnerable to legal action should they fail to do so.

Members have reported to the NASUWT that they have raised with their employer breaches of the safety measures, including social distancing, and no action has been taken. Members must ensure that they record any incident in writing using the form provided by the NASUWT (www.nasuwt.org.uk/Covid19AutumnTermNorthernIreland), and send this form to their principal and a copy to the NASUWT (rc-nireland@mail.nasuwt.org.uk). If the employer fails to act on the incident report, the NASUWT should be contacted immediately for further advice.

Employees (this includes principals) have a statutory duty under section 8(a)-(b) of the Health and Safety at Work (Northern Ireland) Order to:

- take reasonable care for their health and safety, and that of anyone who may be affected by their acts or omissions while at work;
- co-operate with their employer so far as is necessary to enable compliance with any statutory duty or requirement relating to health and safety.

Where government/employers have issued clear guidelines on social distancing in the workplace, this may constitute an implied or express term of the employee's contract of employment – failure to follow the guidelines by an employee may therefore be considered by the employer to be a failure to follow a reasonable instruction and could lead to disciplinary action.

It is the responsibility of every member of staff to have regard not only for their own safety but also for the safety of others, and social distancing between staff members must be adhered to at all times.

Changes to working practices in response to COVID-19

There is no doubt that teachers and principals have had to adapt most of their normal working practices as a result of seeking to make educational provision and schools COVID-secure.

Many activities which were normal practice in schools have had to be reviewed in this new context. It is still all too easy to forget that passing documents around colleagues to sign, sharing pens and equipment, or a birthday cake or box of biscuits, all now pose risks in the workplace.

Unfortunately, it appears that some schools are still trying to maintain practices which are increasing the risk of COVID-19 transmission. These include practices such as classroom observations, learning walks, drop-ins, face-to-face parental consultation events/evenings, open days, and mock examinations with large groups of pupils in the school hall.

Members are advised to review very carefully the working practices and activities in the school they are expected to engage in, to think carefully about any activities they may be organising, and to consider whether these are either necessary or safe in the current context.

Members should follow the DE guidance to schools which has been updated to state that it is recommended that tele-conference (a phone call) or video-conference be used for parent teacher meetings or staff meetings in schools. When face to face meetings are required, the current public health advice on social distancing must be followed.

Please refer to the NASUWT website for further advice and guidance.

Workload issues

The DE guidance states that schools should continue to form a contingency plan for the delivery of remote learning in the event of local or wider school closures, or that a class or group of pupils need to self-isolate. The guidance is clear that schools should be mindful of the impacts on teacher workloads, and take into account the guidance on teacher time budgets in TNC 2020/01. If it is not in the time budget, you cannot be required to do it.

Substitute teachers

The NASUWT has been engaging with the DE and employers in relation to issues affecting substitute teachers. Guidance has just been issued from DE in relation to managing teacher absence in relation to COVID-19. The guidance applies equally to substitute teachers and permanently employed teachers. It remains the case that a substitute teacher who has to self-isolate must be paid for the days that they are contracted to work.

The NASUWT has raised the issue of unfairness in the calculation of maternity pay for qualifying substitute teachers and are hopeful of a quick resolution to this issue.

The recent announcement of £11.2m for the Engage programme is expected to benefit substitute teachers. The scheme is designed to provide additional teaching support for pupils, particularly those from disadvantaged backgrounds. The NASUWT is encouraging employing authorities to act with haste to ensure that teachers currently on the Northern Ireland Substitute Teacher Registry (NISTR) register can be placed in schools as soon as possible.

Supporting staff guidance

The DE has published new guidance on absences relating to COVID-19.

The main points of note are:

- Staff who are self-isolating, without symptoms, will continue to receive normal pay and will be required to work from home, where feasible, during any isolation period.
- Absences related to a positive test will be excluded from any calculation of contractual sick pay. The employee will receive normal pay.
- If an employee is directed not to attend their place of work due to a temporary closure, e.g. a school (or a particular year group/department/bubble) on a short-term basis due

to a COVID-19 outbreak, they shall receive their normal pay. Where possible, these employees should work from home or another agreed workplace and return to work when directed to do so.

- Clarification is given on quarantining after foreign travel. If you are due to travel anywhere on the UK quarantine list, please read the guidance before travelling and follow the advice given.
- It is recognised that in an emergency situation, a member of staff may be unable to attend school at very short notice due to their child being required to self-isolate for a period of time as a precaution against COVID-19 and there being no one else available to care for the child. In these specific circumstances, the member of staff should be facilitated to work from home. If the nature of the individual's job prevents this, the member of staff, in these circumstances and for the period of the COVID-19 pandemic, may request exceptional dependant leave from their principal/line manager up to a maximum of ten working days (pro-rated for part time staff) on normal pay.

All of the above points apply to substitute teachers for the period that they are contracted to work.

Self-isolation notes

If your employer requires you to provide evidence confirming the necessity to self-isolate, a reasonable period of time to provide evidence post-recovery or requirement for self-isolation must be given. Staff can obtain a self-isolation notice via the NHS website: <https://111.nhs.uk/isolation-note>.



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www.nasuwt.org.uk