

21st September 2020

## COVID-19 UPDATE

*Protecting members*

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### **NASUWT letter to the Secretary of State for Education**

The NASUWT General Secretary has written to Secretary of State for Education Gavin Williamson ([www.nasuwt.org.uk/Covid19AutumnTermEngland](http://www.nasuwt.org.uk/Covid19AutumnTermEngland)), 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. The letter states 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 (DfE) is unable to provide any evidence of the effectiveness of the risk control measures recommended in the Government 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 Government 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 measure to ensure compliance across all schools.

The letter has also put the Government 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 subject 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/Covid19AutumnTermEngland](http://www.nasuwt.org.uk/Covid19AutumnTermEngland)), and send this form to their headteacher and copy to the NASUWT at [advice@mail.nasuwt.org.uk](mailto:advice@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 headteachers) have a statutory duty under section 7(a) –(b) of the Health and Safety at Work Act 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.

### **Social activities in schools**

A number of members have raised concerns that their school is organising social activities for staff, asking whether these are safe or appropriate at this time. Planned on-site activities raised with the NASUWT include staff barbecues, fish-and-chip suppers and other social events.

The rationale commonly given to justify these activities is that they are to support staff 'wellbeing'.

Members have reported feeling very anxious about these activities, particularly the fact that they feel that they are expected, or under an obligation, to attend.

In the current context of COVID-19, activities such as these should not be considered by schools either on or off site, not only because they pose an unnecessary risk of aiding transmission of the virus but also because from Monday 14<sup>th</sup> September 2020 new regulations came into force preventing social gatherings of more than six people. Such activities are clearly social gatherings and in breach of the Government's COVID-19 regulations. They may therefore constitute a criminal offence.

Members are strongly advised not to attend such activities and to contact the NASUWT for further advice if any such gatherings are planned by their employer.

Teachers and headteachers should also be aware that failure to adhere to Government regulatory requirements outside the workplace leaves them vulnerable to being reported to the Teaching Regulation Agency (TRA) or being in breach of the Teachers' Standards.

### **Changes to working practices in response to COVID-19**

There is no doubt that teachers and headteachers have had to adapt most of their normal working practices as a result of seeking to make educational provision and schools COVID-19 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 for 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, and also to think carefully about any activities they may be organising and to consider whether these are either necessary or safe in the current context.

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

### **Health and Safety Executive (HSE) COVID-19-related 'spot checks' of schools**

The HSE is carrying out spot checks across all workplaces, including schools, and has contracted a call centre to carry out telephone checks.

The outcomes of the telephone checks are reviewed by HSE inspectors to determine which schools require an inspector visit.

The HSE's aim is to contact 25% of schools, covering all settings, including private and independent schools. They are also looking for common issues in local authorities and multi-academy trusts (MATs).

If the call does not produce the reassurance expected, they are evaluated by the HSE and earmarked for a visit.

Two issues that seem to be triggering HSE visits are the lack of social distancing and insufficient cleaning regimes. This reflects the concerns that NASUWT members have been raising.

Around 20% of the schools that have been called are being referred for visits.

### **Test and trace – NASUWT correspondence with the Minister of State for School Standards**

In a letter to Minister Nick Gibb ([www.nasuwt.org.uk/Covid19AutumnTermEngland](http://www.nasuwt.org.uk/Covid19AutumnTermEngland)), the NASUWT has expressed serious concerns about the failure of the COVID-19 test and trace system and the impact this is having on schools.

The NASUWT has asked the Minister to confirm to schools that:

- where a pupil or member of staff is confirmed with COVID-19 or has symptoms, they must be sent home/stay at home and seek a test;
- individuals in a household with someone with COVID-19 should self-isolate immediately for the prescribed period;
- employers must not put at risk the health and safety of the school community;
- they must not expect or require pupils or staff with COVID-19 symptoms to remain in school and must direct them to remain at home;
- where schools are unable to maintain appropriate staffing levels due to staff absences, they should send groups of pupils home in order that they can continue to maintain safe working practices.

**Members who have any concerns about any of these or other issues should contact the NASUWT immediately for advice.**



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