



BATH & WELLS
Multi Academy Trust

'That they may have life, life in all its fullness' John 10:10

Guidance on the management of Industrial Action

Introduction

The Bath and Wells Multi Academy Trust (hereafter referred to as the MAT) will seek to work with staff and their representatives to prevent and/or to minimise Industrial Action and disputes wherever possible. However the MAT recognises that there may be occasions when staff choose to participate in Industrial Action.

This document provides guidance on the effective management of Industrial Action and provides the information needed for employees who are involved in industrial action.

Industrial action happens when trade union members are in a dispute with their employer that can't be solved through negotiations. Industrial action includes 'strike action' and action short of strike action such as 'work to rule'.

A trade union can only call for industrial action if the majority of its members involved support it in a properly organised postal vote - called a 'ballot'.

A trade union calls industrial action by telling members and the employer when and how this action will be taken. This should be done by a trade union official or committee that has the legal right to do so.

Section 1: Guidance

The following guidance has been taken based on statutory and DfE guidance.

Principles

Employees taking part in industrial action will be breaching their contract of employment as they will not be doing the work they are paid to undertake. Employees do not have a contractual claim to be paid unless they are ready and willing to perform their contract in full. There is no obligation for employers to pay employees for work that has not been done.

The MAT considers staff participating in industrial action to be in breach of their contract and therefore in cases of full strike action the MAT will withhold/stop a day's pay for each day the employee does not work

Legally an employee is not able to select which parts of their contract they are willing to undertake and if they choose to take part in selective industrial action short of a strike, they may be refusing to undertake their full contractual duties. Any employee involved in partial performance, deliberately refusing to undertake their full, normal contractual duties are in breach of their contract. In such circumstances where employees continue to work during industrial action but are not fulfilling their full contractual duties the MAT may consider paying them a

proportion of their contractual pay in recognition of the duties that are carrying out, further advice should be sought.

Employees involved in industrial action will have their length of service reduced by the number of days they were on strike. This is important when working out pensions and things like statutory redundancy pay.

Communication with staff

The Headteachers/Principals/Executive Principals of each school are responsible for communicating with staff before any planned industrial Action. This communication should take place as soon as possible.

Headteachers/Principals may ask staff to share with the school/MAT their intentions and whether they will be taking part in industrial action and what the nature of the action will be. However, employees are not obliged to tell their employers whether they intend to take strike action.

Absence for other reasons on day of industrial action

Staff that are sick on the day of industrial action should follow the usual sickness absence reporting procedure and the absence will be managed in accordance with the MAT's Management of Sickness Absence Policy. If a member of staff has short term sickness absence on subsequent days of Industrial Action then it may be reasonable for the school to request a fit note to certify this absence. Some GPs may require payment for certificates, especially for a single day of absence and it would be reasonable for the MAT to pay for this, should it be necessary.

Maternity pay for staff on maternity leave will not be affected by the strike.

The MAT recognises that some staff will experience genuine difficulties with child care and other disruption to their domestic arrangements caused by industrial action in other public services. Staff who anticipate such difficulties should discuss them with their line manager and make every effort to make alternative arrangements so they can attend work

Requests for any type of leave and lieu days which have been granted in advance of notification of the industrial action will usually be honoured. Requests for any type of leave or lieu days after industrial action has been notified will not normally be granted.

In the unlikely event that a member of staff is physically prevented from attending work due to picketing, he/she should formally notify their employer that this is the case and that they are not taking industrial action.

Schools should take a register of staff on the day of absence. For those members of staff who have decided to take strike action, the school will be responsible for notifying the MAT's payroll provider so that pay can be appropriately deducted.

Cover arrangements

Wherever possible the school will cover the essential duties of those staff involved in industrial action. The school can consider where reasonable to ask staff to cover duties of others on strike providing the duties are within the remit of their job descriptions, redeployment of other staff may

be considered and the use of volunteers may be considered where appropriate and safe. Agency staff should not be used to cover an employee taking part in industrial action.

Principals/Headteachers may ask other teachers to cover the classes of those taking industrial action. Where teachers are employed under the *School Teachers' Pay and Conditions Document (STPCD)*, however, they cannot be compelled to provide cover for other teachers during industrial action, but may choose to do so if asked. Cover supervisors, or teachers who are employed wholly or mainly to provide cover and are not taking industrial action themselves, can be directed to provide cover during industrial action. Support staff should not be used to replace teachers, but may provide supervision in some instances.

Infant class size legislation limits the size of infant classes to 30 or fewer with a qualified teacher. This applies to reception and other classes where the majority of the children will reach age 5, 6 or 7 in that school year. However, the infant class size limit does not apply to activities normally carried out in larger groups, for example assemblies, sports and other activities that the school may choose to provide on strike days. For nursery provision in maintained schools (children aged 3 and over) there must be one member of staff for every 13 children. At least one member of staff must be a school teacher and one other member of staff must have a Level 3 qualification. For pupils older than 7 there are no set ratios for the number of staff required to supervise pupils on site. All schools have a duty of care and so a risk assessment should be undertaken to assess what levels of supervision are appropriate. This should take into account a range of factors including the age and abilities of the children and the layout of the school.

Most agencies will be committing a criminal offence if they supply work seekers to an employer in order to:

- Cover for a worker who is on strike, or
- Cover for a second worker, who has been redeployed to cover worker A.

The penalty can be up to £5,000 and the employer which took on the work seekers from the agency could be liable for aiding the offence.

However, agency workers can be used:

- To cover employee taking part in unofficial action
- If the cover worker is self employed
- If the employment agency does not know or has no reasonable grounds for knowing that worker being covered is taking part in industrial action

Keeping the school open

Where possible and safe to do so the school will remain open to pupils. The Headteacher/Principal/Executive Principal will be responsible for taking the decision as to whether the school shall remain open to pupils or whether it shall be closed to pupils. In making this decision Headteachers/Principals/Executive Principals will carefully consider staff to pupil ratios, health and safety of the children and any other relevant impacting factors. Headteachers/Principals will be responsible for communicating the decision to parents/careers and staff.

If the Principal or Headteacher decides to close the school on the day of any industrial action, staff who are not taking part in industrial action should notify him/her that they are not taking part and that they are available to work normally. Staff not involved in industrial action should

turn up for work as normal unless advised otherwise in advance by senior management. If the decision is taken to close the school then the MAT should be informed via Jason Brown and Human Resources.

Strike action taken by the Headteacher/Principal/Executive Principal

In the event of strike action being taken by the Headteacher/Principal or Executive Principal of the school the Chair of the Local Governing Body will be responsible for fulfilling the duties of the Headteacher/Principal/Executive Principal as mentioned in this guidance note. They will be responsible for taking the decision as to whether to close the school or whether to keep it open and for communicating effectively with Staff and Parents/Carers.

Staff not involved in strike action

Staff not participating in industrial action will not unreasonably be asked to take on the duties of absent colleagues. Staff not involved in industrial action will continue to receive full salary payments.

Section 2: Legal Context

The following information is provided as useful background information to the legal context and may be helpful to schools that have questions from their employees on the legalities of strike action.

Dismissal for industrial action

Employees will **not** be subject to disciplinary action/dismissal for industrial action if:

- The industrial action is called as a result of a properly organised ballot
- The industrial action is about a trade dispute between workers and their employer (e.g. terms and conditions)
- a detailed notice about the industrial action (which is legally required) has been given to the employer at least 7 days before it begins

After 12 weeks, the MAT may consider dismissal if employees take industrial action and when the MAT has tried to settle the dispute.

Non-union members who take part in legal, official industrial action have the same rights as union members not to be dismissed as a result of taking action.

The MAT may consider disciplinary action for an employee taking part in a strike if:

- the union hasn't held a properly organised ballot
- the union hasn't given the employer the correct notice for balloting members or taking action
- the union hasn't called its members to take action because they think the dispute is settled or action is called by someone who doesn't have the authority to do so
- it's in support of workers taking action against another employer (otherwise known as 'sympathy' or 'secondary' action)
- it's in support of only employing union members (otherwise known as a 'closed shop')
- it breaks any other parts of industrial action law

Picketing

A picket line is where workers and union reps ('picketers' or 'pickets') stand outside a workplace to tell other people why they are striking. The Code of Practice on Picketing states that the number of pickets should not exceed six at any entrance to or exit from a workplace and that frequently a smaller number will be appropriate.

Pickets should not prevent people from going to work or doing their usual work if they want to do so.

It's a criminal offence for pickets to:

- use threatening or abusive behaviour to people walking past or crossing the picket line
- block people or vehicles trying to get into the workplace which is on strike (called 'causing an obstruction' by police)
- carry weapons
- damage property
- cause or threaten to cause a 'breach of the peace'

- try to block roads near the picket line (called 'causing an obstruction to the public highway')
- try to stop the police who are outside the workplace from doing their job

Legal action can be taken against individuals that break the law or encourage others to do so when picketing. This includes:

- trespassing (trying to enter a building without permission)
- making a noise nuisance
- using threatening language or offensive material, libel or slander in leaflets, banners, placards, chants or speeches

Returning to Work

Staff returning to work following industrial action will be expected to resume to their full duties.

Pensions

Employees are advised to contact their pension's scheme for advice if they are participating in industrial action, particularly if they intend to retire in the next 12 months.

Legal positions of Unions and Employees

In backing strikes or other action, unions have statutory protection from legal action by employers by virtue of the Trade Union and Labour Relations (Consolidation) Act 1992, provided that:

- there is a valid dispute
- the union follows the provisions in the act regarding balloting and notifications procedures.

The legal protection of the employee taking part in the industrial action depends on whether the action is:

Unofficial – not authorised or endorsed by a union

Official – authorised or endorsed by a union but not protected

Protected – official action which is taken in response to a valid trade dispute and following a properly conducted ballot and proper notification of the employer of the participating employees.

Employees taking part in **unofficial** action can lose their right to claim unfair dismissal. Employees taking part in **official** but **unprotected** action lose their right to complain of unfair dismissal unless the employer:

- Dismisses selectively
- Dismisses all participants but then re-engages some of them within 3 months of dismissal.

Employees taking part in **protected** industrial action cannot be fairly dismissed in the first 12 weeks of the action, after that dismissal can still be unfair if the employer has not taken reasonable steps to resolve the issue.