

# Industrial action update: school strikes

21 April 2023

## 1) NEU strike action and dispensation guidance

On 3 April 2023 the NEU announced that their members have voted to reject the Secretary of State's latest pay offer for teachers, with almost 98% of those voting electing to reject the offer.

Two further days of strike action by NEU teacher members in England are planned on 27 April and 2 May 2023. The proposed strike action will prove disruptive to schools and pupils in the immediate lead up to this year's examinations. Some schools may also see modern foreign language oral examinations affected, where the proposed industrial action falls within the oral examination window.

The NEU have issued dispensation guidance to its membership regarding the performance of teaching by its members during strike days. The practical implications for employers are considered below.

### What is the NEU proposing?

The NEU have provided a dispensation for its members not to strike on the forthcoming strike days, to minimise the disruption to exam preparation for year 11 and year 13 students. The NEU outlines that it is for headteachers and their NEU school representatives to agree a minimum level of teaching staff needed to allow year 11 and year 13 students to attend school for revision activities or exam practice. The guidance suggests that NEU teacher members may agree to attend school either for a full day or just to perform specific limited duties.

The NEU propose the following might be acceptable where it is agreed with your NEU school representative in advance:

- **Setting cover work:** teachers with normal responsibilities for year 11 or year 13 could be asked to provide revision activities that can be delivered to their year 11 and year 13 classes in their absence on strike day.
- **Attending school to deliver teaching:** in exceptional circumstances, the NEU may agree locally that it is appropriate for their members to attend school for part of a strike day to supervise a specific exam group. In those cases the NEU suggest that their members would not stay at work for the whole day and would instead leave after their exam group teaching has finished (referred to below as "partial performance"),

The NEU are not proposing any wider general dispensation for its teacher members to work on strike days; however the NEU suggest that any specific requests for dispensations connected to residential trips should be referred directly to NEU regional secretaries.

### Do schools have to agree a minimum service level of teaching staff with the NEU?

No. There is no legal obligation upon schools to agree arrangements with the NEU. Employers cannot compel NEU teacher members to attend school on a strike day. If a school seeks to impose an arrangement for attendance on its NEU teaching staff, the arrangement would not be enforceable. The NEU has also threatened to withdraw its dispensation guidance if this occurs.

### Do schools have to accept teachers working only part of the day?

No. Employers are not required to accept partial performance by a teacher of only part of their contractual duties. Employers are entitled to reject any proposed partial performance and instead insist that their teaching staff in the NEU either turn up to do a full day's work in

accordance with their contract of employment or do not turn up at all, in which case they will be treated as being on strike for the day and will not be paid.

If you elect to reject partial performance, you should communicate this to your workers in advance.

## **Why would schools consider permitting limited teaching duties to be performed?**

Some schools may wish to engage with the NEU dispensation guidance in an attempt to agree an exam preparation cover arrangement and elect to accept partial performance by NEU teacher members to fulfil this. Schools will need to assess the viability and necessity of these arrangements depending on their specific circumstances.

## **If we agree arrangements with the NEU, does it guarantee that NEU members will turn up on strike days?**

No. The NEU explain that they are authorising their members to attend work on strike days but they cannot be compelled to do so, even if a local agreement has been reached between the NEU and the headteacher. This means that employers will have no guarantee regarding the numbers of NEU members who might attend work on strike days. Some employers might take the view that this undermines their ability to rely on any local agreements when undertaking their strike action contingency planning and making decisions regarding the opening or closure of their school.

## **Do schools have to pay striking staff who only attend work for part of a day?**

If an employer elects to reject partial performance by NEU teacher members on a strike day, they are under no obligation to pay teachers for that day. However, if employers decide to accept partial performance of their duties by an NEU teacher member on a strike day, they will need to pay those members of staff who attend for their labour on the day in question. The NEU assert that their members should be paid in full on strike days if they attend to do any teaching. Employers may be entitled to make a partial deduction from the pay of any member of staff who provides only partial performance on a strike day; however, employers should take legal advice before doing so.

The NEU urges its members who are paid by their employers for attending school on strike days to donate their earnings to its hardship fund.

## **2) ASCL confirm ballot**

On 20 April 2023, ASCL confirmed that for the first time in its 150-year history it intends to hold a formal strike ballot with its membership, with just over 50% of its members having previously voted in favour of a ballot being held. ASCL have announced that the ballot will be held on a, as yet undecided, date in the summer term. If their members vote in favour of taking strike action, ASCL envisage that strikes will take place in the autumn term. ASCL explained the ballot, which they describe as a last resort, relates to inadequate funding, pay erosion and teacher shortages, pointing to the Government's refusal to reopen negotiations.

ASCL represent more than 23,000 school and college leaders in primary, secondary and post-16 education across the UK. Any strike action by its members is likely to lead to further disruption for schools and pupils. DfE guidance sets out that where a headteacher is on strike, the headteacher should delegate their duties to another member of the leadership team. If the entire leadership team is on strike, the DfE recommend that the employer approaches another member of staff to carry out the headteacher's duties, for example a senior teacher or a retired headteacher employed by the school. If the trade unions decide to coordinate strikes, schools may have no option but to close in many circumstances.

## **3) Updated DfE strike guidance**

The DfE has updated its guidance, *Handling strike action in schools*. The revised guidance includes further detail regarding:

- the provision of free school meals
- the prioritisation of places in schools during strike action, including vulnerable children and young people, children of critical workers and, where possible, pupils due to take public examinations
- asking employees whether they intend to participate in strike action

## Key contact



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