

# Managing Industrial Action in LDBS Schools

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## **1. INTRODUCTION**

- 1.1 The purpose of this guidance is to assist Headteachers in our Schools planning for and managing the effects of industrial action by staff. Although industrial action can take many forms, this guidance deals with strike action i.e. complete withdrawal of labour for a specified period of time.
- 1.2 If you have any staffing queries or concerns arising from industrial action please contact the LDBS HR Adviser linked to your school.

## **2. HOW WILL YOU KNOW ABOUT INDUSTRIAL ACTION?**

- 2.1 Trade unions are required to provide employers with at least 7 days notice of official industrial action. If such notice is not given, then the action would be illegal. In LDBS Schools, such notice should be sent to the Headteacher and the Chair of Governors, who should ensure that the local authority are notified immediately.

## **3. DECIDING ON WHAT TO DO**

- 3.1 Whatever the circumstances that give rise to strike action, Headteachers need to make decisions about how to respond to the situation.

### **Which employees will be going on strike?**

- 3.2 Schools are able to ask staff about their intentions as to whether they are going to participate in the strike and it is a legitimate management request to do so, but it is important to note that employees can also lawfully refuse to answer any such question and it is also important not to treat staff detrimentally if they fail to respond or do not keep you informed. It is helpful to know the intentions of staff to properly assess the risks associated with the strike and to consider what course of action to take. We would advise that this exercise is carried out in the spirit of the school making enquiries to make plans to deal with absence and where necessary communicate with parents about the implications of the proposed strike action. There are clear health, safety and safeguarding issues involved in the decision to open if there is an inadequate ratio of teachers.

The pro – forma attached as Appendix A can be used for this purpose.

### **Risk Assessment**

- 3.3 Once Headteachers know which employees are going on strike, it will be possible to assess whether the school can remain open with those staff who have indicated they will be in work. This can be done by reviewing the schools standard risk assessment, considering whether the absence of certain staff will increase risks and considering whether or not there is anything that can be done to mitigate these.

Examples of things to be reviewed will include:

- Adequate staff in all classrooms

- Pupils moving between classes or sent out of class
- Cover for break and lunch times
- Cover for sporting activities
- Behaviour management
- Security – people, money, property, etc
- After school clubs
- Opening and closing the school
- Availability of meals
- Use of equipment
- Lifting and handling
- Contractors working on site
- Dealing with accidents
- Emergency procedures e.g. evacuation in the event of fire or flood where striking staff would normally be involved
- Duration of the strike - It is likely that the longer the strike, the greater the risks and the harder it will be to mitigate them.

3.4 Risk assessments involve making judgements based on local circumstances and Headteachers are best placed to do this. Given the short timescales involved, it is appropriate that this decision is made in conjunction with the Chair of Governors.

#### **Health and safety considerations**

3.5 The Health and Safety at Work Act 1974 and associated Regulations continue to apply during a period of industrial action and there is still a general duty on the employer to ensure the health, safety and welfare of employees, so far as is reasonably practicable.

3.6 No duty of care is owed to staff who are on strike as they are not officially 'at work' even though they may be engaged in industrial action (including picketing) at or near their place of work. However, duties are owed to those employees who attend for work and also third parties such as contractors.

3.7 Employees who are on strike do not have any specific health and safety responsibilities as they are not 'at work' however there is a general duty on 'all persons' regardless of employment status, not to interfere with or misuse anything provided or done for health and safety reasons.

3.8 There is a risk to the school if remaining staff are asked to undertake tasks for which they are not competent or have not been trained. As such, Headteachers should exercise caution when asking remaining staff to carry out tasks, which they may not normally undertake.

#### **Continuing to provide education**

3.9 Headteachers should seek to continue to provide education and to minimise disruption for pupils and their parents or carers. If the risks are minimal or if action can be taken to mitigate them, then it should be possible to keep the school open for pupils.

### **Partial Closure**

- 3.10 It may be that the number of staff available for work is significantly reduced but that there are enough people to continue to provide education for some pupils. In such cases, the school should not close completely but should remain open for priority pupils such as those due to take statutory tests.

### **Complete Closure**

- 3.11 Complete closure should be the last possible resort where no other arrangements can be made and should normally only be considered in cases where the health and safety of pupils might otherwise be jeopardised.
- 3.12 Headteachers will be asked to confirm that all alternatives have been explored and will also need to advise all parents and carers, giving clear reasons for the decision.

## **4. WHO NEEDS TO BE INFORMED?**

- 4.1 All those that may be affected by the strike should be provided with information on the potential impact as soon as is reasonably practicable.

### **Parents and carers**

- 4.2 Letters should be sent to parents and carers giving them as much information as possible and as a minimum, telling them the duration of the strike, whether or not the school will be closed to pupils and what other changes to normal activities are planned. If the school day will be finishing earlier than usual parents must be informed well in advance so that appropriate arrangements can be made.
- 4.3 Office and reception staff should be fully briefed on what to tell parents about the situation.

### **Catering contractor**

- 4.4 If the school will be partially or completely closed to pupils, the catering contractor will need to be advised and given an indication of how many pupils and staff will require meals.
- 4.5 In the event that catering staff are on strike, parents could be asked to provide packed lunches for those pupils who normally pay for meals and for those entitled to free school meals, arrangements to provide sandwiches should be made by the school.

### **Others**

- 4.6 Others that may be affected by the strike should also be notified. This includes, but is not limited to
- Visiting professionals
  - Transport Services
  - Other users of the premises
- 4.7 Once a decision has been made as to whether or not to remain open for pupils, the local authority should be notified.

- 4.8 There needs to be consideration given to the communication with parents to ensure that they are kept well informed from the correct sources. It is also sensible to prepare a statement in case press contact you.
- 4.9 Staff should be reminded that even in the midst of industrial action they remain ambassadors and employees for the school so they should respect confidential school business and breaches in the school code of conduct will be managed in the usual way.

## **5. STAFF ISSUES**

- 5.1 Please ensure that all your staff are aware of their rights and obligations. Copies of this guide can be made available for staff to refer to.

### **Non-striking staff**

- 5.2 Where it has not been possible to keep the school open, all non-striking staff should still report and indicate that they are available for work. This normally involves a minimum requirement for staff to come to school and sign an attendance register but it is also legitimate for managers to ask staff to undertake other duties relevant to their jobs.
- 5.3 Non-striking staff should not suffer as a result of their attendance by being asked to undertake unreasonable cover or to have planned and booked annual leave denied unreasonably. On the other hand, staff are obliged to comply with reasonable requests to undertake work outside their usual duties. A balance needs to be struck between the school's needs and individual goodwill.

### **Unauthorised absence**

- 5.4 If a member of staff fails to attend work during a strike and their absence is not for some authorised reason (sickness, holidays etc.) then the presumption can be made that they are participating in strike action and an appropriate deduction from pay can be made.

### **Deduction of pay**

- 5.5 Members of staff who participate in a strike or are absent from work without authorisation, will be subject to a deduction of their pay. Deductions for teachers will be on the basis of 1/365<sup>th</sup> of their pay as set out in the Burgundy Book conditions of service for teachers. Deductions for support staff will be calculated on the basis of 1/5<sup>th</sup> of a week's pay.

### **Continuity of Service/Pension**

- 5.6 While strike days do not affect continuity of employment, a strike day will not count towards aggregated employment and so will be excluded from pension benefit calculations. If staff wish to make contributions for the days they are on strike, they will need to contact the LPFA, or TPA directly.

### **Annual Leave and Special Leave**

- 5.7 Leave should only be agreed having regard to the needs of the service. Generally, where annual leave or special leave has been pre-booked and is genuinely not an

attempt to avoid the day of action, it should not be withdrawn. However, care should be taken in authorising leave when it becomes clear that strike action is imminent.

### **Sickness**

- 5.8 Sickness properly certified and which has started before the 1<sup>st</sup> day of strike action will not be affected. A doctor's statement will be required for periods of absence that start on any day during which the strike is expected to last.

### **Overtime**

- 5.9 Staff that take strike action should not be allowed overtime in order to clear work that was not done because they or their colleagues took strike action.

### **Notification of absence and salary deductions**

- 5.10 Schools are required to notify all absences to their payroll provider

### **Using Agency Staff**

- 5.11 The Conduct of Employment Agencies and Employment Businesses Regulations 2003 prevent agencies from supplying workers to directly replace staff who are on strike. They can however, provide staff to back-fill for employees who are covering strike-affected areas. These regulations only apply to agency staff and not temporary staff who have been recruited directly.

## **6. PICKETS**

- 6.1 The purpose of picketing during industrial action is peacefully to obtain or communicate information or peacefully to persuade a person to work or not to work. It is unlawful for pickets to obstruct entry to the school. Where picketing is not carried out in the manner described above, striking staff can face disciplinary action. In rare and exceptional cases, where there is obstruction or violent or threatening behaviour by staff who are striking at School premises, the Headteacher can call the police to take action where appropriate.
- 6.2 Unions are expected to limit excessive numbers of pickets and in general the number of pickets should not exceed six at any entrance or exit from a workplace; frequently a smaller number would be appropriate.
- 6.3 If a member of staff refuses to cross a picket line then they are in breach of their contract of employment and will be treated as participating in the strike action. They will not be paid for the dates they are absent by the School.



## Appendix B

### Sample Letter to Parents – Decision to Close

Dear Parent,

Industrial Action [Date]

The School has received notification from [Trade Union/s] that its members propose to take industrial strike action on [Date]. This action relates to [reason for action given in trade union notification letter].

Some staff within the school are members of this union and therefore the school is affected by the industrial action.

We have undertaken a risk assessment for the School and to safeguard children's safety, I and the Local Governing Body feel it is necessary to close the School for pupils on [Date]. The School will reopen on [Date].

*Any dinner monies paid for [Date] will be credited to a pupil's account.*

It is with regret that I must inform you of these circumstances.

Yours sincerely,

Headteacher



## Appendix B

### Sample Letter to Parents – Decision Not to Close

Dear Parent,

Industrial Action [Date]

The School has received notification from [Trade Union] that its members propose to take industrial strike action on [Date]. This action relates to [reason for action].

Although some of our staff are members of this union, I have undertaken a risk assessment of the impact and it is NOT proposed to close the School for pupils on the day of action as adequate arrangements can be made to ensure pupil's safety and continuity of education.

< or add any specific details such as changes to normal activities/ if the school day will be finishing earlier than usual etc >.

A further assessment will be undertaken [date], which could result in the School being closed to pupils. Should this happen we will need to contact parents on this day. Please ensure we have your current contact details.

Yours sincerely,

Headteacher