

NAHT

The Association for all School Leaders

NASUWT “work to rule”: NAHT management advice for school leaders

[Maintained Schools in Wales]

Context

NASUWT has instructed its members to take action short of strike action, beginning on 1 December 2011. The instructions were issued following a national ballot so, while members taking part are likely to be acting in breach of contract, they should be afforded limited protection from dismissal.

While the union’s trade dispute is with Michael Gove over workload, pensions, pay, including pay progression, conditions of service and job loss, a stated aim of the first phase of their action is to ensure “that teachers are receiving their contractual rights and entitlements.....”

The instructions and associated initial guidance may be accessed via the NASUWT website (www.nasuwt.org.uk) or the following links:

http://www.nasuwt.org.uk/consum/groups/public/@press/documents/nas_download/nasuwt_008625.pdf

http://www.nasuwt.org.uk/consum/groups/public/@press/documents/nas_download/nasuwt_008631.pdf

http://www.nasuwt.org.uk/consum/groups/public/@press/documents/nas_download/nasuwt_008626.pdf

It is anticipated that NASUWT will issue additional instructions in due course.

The NAHT Position

- NAHT endorses the right of any teacher, including school leaders, to receive in full their contractual and statutory rights and benefits in relation to their employment
- The association is not aware of any body of evidence which might support the assertion that teachers, nationally are being denied such entitlement
- If specific local issues exist, these should be addressed in the relevant establishment, through the use of the locally agreed dispute resolution procedures, to which NASUWT will be a party
- NAHT has significant concerns about the NASUWT action short of strike action, as those who will be most affected (school leaders and governing bodies) are not in a position to resolve the dispute as it is with the Secretary of State

Responding to the NASUWT Action

NASUWT members who respond to the call to action are likely to be in breach of their contracts. A “work to rule” is not a “work to contract”. NASUWT must have

recognised this fact, which will be why they have sought the limited protection offered by an official ballot.

The nature of any response to the action is a matter for individual employers, so head teachers are advised to seek clear guidance from the relevant employer about the nature and extent of any sanctions they should apply.

Employers are likely to require head teachers to report the facts and circumstances of any possible contractual breach. While not wishing to entrench attitudes, head teachers may need to issue an individual teacher with an instruction to carry out a particular duty and to seek confirmation that the teacher is refusing to comply. This will be particularly important where the words of an apparent refusal are ambiguous (e.g. "My union has instructed me to...." Or "I am unable to")

It will then be for the employer to determine whether or not a breach of contract has occurred and the appropriate remedy.

*Relevant **advice for employers**, from the Local Government Association, may be found at:*

<http://www.lga.gov.uk/lga/core/page.do?pagelD=119717#deductions>

What schools may expect

NASUWT members will have received a notice calling on (instructing) them to take action in respect of 11 separate activities.

The initial guidance on implementation relates to these 11 and also to voluntary activities outside school sessions. NASUWT members should act in accordance with the "implementation guidance" rather than the document which simply lists the instructions in summary form.

Where NASUWT members follow the instructions to take action contractual breaches may occur.

The contractual requirements for teachers in maintained schools are established, primarily, by the School Teachers' Pay and Conditions Document.

A commentary on the areas covered by the NASUWT Instructions

1/ PPA Time

The contract

- All teachers who participate in the teaching of pupils are entitled to reasonable periods of Planning, Preparation and Assessment (PPA) to enable the discharge of the professional responsibilities of teaching and assessment.
- PPA time must amount to not less than 10% of the teacher's timetabled teaching time (and for this purpose "timetabled teaching time", in relation to a teacher, means the aggregate period of time in the school timetable during which the teacher has been assigned by the head teacher in the school time-table to teach pupils).

- PPA time must be provided in units of not less than half an hour during the school's timetabled teaching week.
- A teacher must not be required to carry out any other duties during the teacher's PPA time.

Commentary

If a teacher is not receiving their contractual entitlement, this should be rectified as soon as is possible but would not justify a refusal to teach timetabled lessons.

Useful Documents

- [NAHT FAQs: PPA time](#)

2/ Leadership and Management Time

The contract

- A teacher may be required to contribute to the development, implementation and evaluation of the school's policies, practices and procedures in such a way as to support the school's values and vision.
- A teacher may be required to work with others on curriculum and/or pupil development to secure co-ordinated outcomes.
- A teacher with leadership or management responsibilities is entitled, so far as is reasonably practicable, to a reasonable amount of time during school sessions for the purpose of discharging those responsibilities.

Commentary

These provisions apply to all teachers, regardless of whether or not they are in receipt of a TLR payment, or are paid on the leadership scale, as detailed the NAHT guidance document "Reasonable expectations of teachers not in receipt of a TLR payment".

A refusal to carry out leadership or management activities, including subject co-ordination, may constitute a breach of contract.

Useful Documents

- [Reasonable expectations of teachers not in receipt of a TLR payment](#)
- NAHT FAQs
 - [Leadership and Management Time](#)
 - [Working time for teachers and leadership group](#)

3/ Dedicated Headship Time

The contract

- A head teacher is entitled to a reasonable amount of time during school sessions, having regard to their teaching responsibilities, for the purpose of discharging their leadership and management responsibilities.

Commentary

The assignment of classes to individual teachers is a matter for the head teacher to determine, so to a large extent the head teacher controls the amount of dedicated headship time that is to be made available to them.

Useful Documents

- [NAHT FAQs: Dedicated Headship Time](#)

4/ Work/Life Balance

The contract

- Governing Bodies and head teachers, in carrying out their duties, must have regard to the need for the head teacher and teachers at the school being able to achieve a satisfactory balance between the time required to discharge their professional duties and the time required to pursue their personal interests outside work.
- In having regard to this, Governing Bodies and head teachers should ensure that they adhere to the working limits set out in the Working Time Regulations.
- A teacher may be required to contribute to the development, implementation and evaluation of the school's policies, practices and procedures in such a way as to support the school's values and vision.

Commentary

There is no requirement for the school's policies to be "evaluated for impact on workload and working hours".

Any refusal to implement a school policy may constitute a breach of contract.

Useful Documents

- [NAHT FAQs: Work/Life Balance](#)

5/ Cover for Absence

The contract

- Teachers may be required to supervise and so far as practicable teach any pupils where the person timetabled to take the class is not available to do so.
- Teachers should be required to provide cover only rarely, and only in circumstances that are not foreseeable (This does not apply to teachers who are employed wholly or mainly for the purpose of providing such cover).

Commentary

"Rarely cover" is not "no cover". Any refusal of an instruction to provide cover, in accordance with the above conditions, may constitute a breach of contract

6/ School Calendar and Timetable

The contract

- A teacher employed full-time must be available to perform such duties at such times and such places as may be specified by the head teacher for 1258.5 hours (1265 hours in a normal, non-Jubilee, year) those hours to be allocated reasonably throughout those days in the school year on which the teacher is required to be available for work.
- For a teacher employed part-time, the number of hours the teacher must be available for work must be that proportion of 1258.5 hours which corresponds to the proportion of total remuneration the teacher is entitled to be paid.
- In addition to the hours a teacher is required to be available for work, a teacher must work such reasonable additional hours as may be necessary to enable the effective discharge of the teacher's professional duties, including, in particular planning and preparing courses and lessons; and assessing, monitoring, recording and reporting on the learning needs, progress and achievements of assigned pupils.
- The employer must not determine how many of the additional hours must be worked or when these hours must be worked.
- No teacher employed part-time may be required to be available for work on any day of the week or part of any day of the week that the teacher is not normally required to be available for work under their contract of employment (whether it is for the purposes of teaching pupils and performing other duties or for the sole purpose of performing other duties).

Section 3 of the Document (statutory guidance) states: "The relevant body should ensure that they consult with all staff and their union representatives on the teaching timetable and an annual calendar which includes staff meetings, parental consultations and other activities."

Section 4 of the Document includes the following non-statutory guidance:

School calendar and timetable

To ensure the system for managing cover is robust, every school should publish a calendar and timetable for each school year and should:

- (a) consult with staff and their union representatives;
- (b) plan any changes well in advance; and
- (c) deploy staff appropriately, according to their skills, experience and qualifications.

The school calendar sets out the school's activities scheduled to take place in the academic year, for example: learning outside the classroom, meetings, parental consultation evenings and INSET days.

The timetable sets out the school's provision for teaching and learning in the school's timetabled teaching week.

The pattern of the school timetable may vary across the year. For example, a school may accommodate activities during the year by having a timetable that

follows the same pattern for 36 weeks and a different pattern for 2 weeks. This is an illustration, and schools will devise their own patterns.

Teaching timetables are not frozen in time and there may be variations from year to year.

In-year changes to the calendar and timetable may be made, but this should be only for sound educational reasons – for example, a long-term absence or significant educational development. Such changes during the year should not be a frequent occurrence.

Commentary

This provision, describing what schools should do, is not a requirement but is good practice. In any event it does not prevent schools from making changes to the planned calendar during an academic year.

There is no requirement that a school shall only hold one after school meeting per week nor that any such meeting shall be limited to a 1 hour duration.

Any refusal to attend a meeting or activity, because it was not on the school calendar, may constitute a breach of contract.

Useful Documents

- [NAHT FAQs: Working time for teachers and leadership group](#)

7/ Gained Time

The contract

Section 4 of the Document includes the following non-statutory guidance:

During the academic year, particularly in the summer term, teachers who take examination classes/groups are often released from some of their timetabled teaching commitments as a result of pupils being on study or examination leave. Such time is known as gained time.

There are activities directly relevant to teaching and learning for which it would be appropriate and desirable to use gained time and which it would be reasonable for a head teacher to direct teachers to undertake. An agreed list of these activities is listed below:

- (a) developing/revising departmental/subject curriculum materials, schemes of work, lesson plans and policies in preparation for the new academic year. This may include identifying appropriate materials for use by supply staff and/or cover supervisors;
- (b) assisting colleagues in appropriate, planned team teaching activities;
- (c) taking groups of pupils to provide additional learning support;
- (d) supporting selected pupils with coursework;

(e) undertaking planned activities with pupils transferring between year groups or from primary schools; and

(f) where the school has a policy for all staff to release them for CPD during school sessions, gained time may be used for such activities.

Commentary

A refusal to undertake an activity which forms part of their duties, during gained time, even if it is not contained in the list in the section 4 guidance, may mean that the teacher is acting in breach of their contract.

The head teacher can, of course, vary the school's timetable during the examination period and assign teachers to teach different groups of children. Teachers should be given sufficient notice of the change so that they can plan adequately for the lessons.

8/ Lunchtime Supervision

The contract

- A head teacher is entitled to a break of reasonable length in the course of each school day, and must arrange for a suitable person to assume responsibility for the discharge of their functions as head teacher during that break.
- Deputy Head Teachers, Assistant Head Teachers, Advanced Skills Teachers and Excellent Teachers are entitled to a break of reasonable length as near to the middle of each school day as is reasonably practicable
- A teacher who is required to be available for work for more than one school session on any school day must be allowed one break of reasonable length either between school sessions or between the hours of 12 noon and 2.00pm
- No teacher may be required under their contract of employment as a teacher to undertake midday supervision.

Commentary

Unless a teacher has entered into a separate contract to undertake lunchtime supervision, a refusal to continue to volunteer to undertake such supervision is unlikely to constitute a breach of contract.

9/ Invigilation of public Examinations

The contract

- Participating in arrangements for preparing pupils for external examinations does not require a teacher routinely to participate in any arrangements that do not call for the exercise of a teacher's professional skills and judgement, such as invigilation.

The section 4 guidance states:

Invigilating examinations is not a productive use of teachers' time. From September 2005, teachers have no longer been routinely required to invigilate external examinations (e.g. National Curriculum tests, GCSE and AS/A2 examinations).

Teachers may, however, be required to conduct practical and oral examinations in their own subject area and to undertake the preparation of pupils and those aspects of assessment, recording and reporting associated with external examinations which require the professional input of a qualified teacher.

Teachers may also be required to invigilate internal examinations and tests where these take place during their normal timetabled teaching time. However, if a school reorganises the timetable for 'mock' examinations to replicate the external examination process then teachers should not be required to invigilate.

The principle underpinning the change is that invigilation does not require a teacher's professional expertise. In this context, it is a reasonable expectation that, subject to the agreement of the head of centre (usually the head teacher), a teacher should be present at the beginning of an external examination in their subject area to check the paper and to ensure that there are no problems with it. Those invigilating the examination should be made aware of the procedure for dealing with emergencies and for contacting a teacher in the subject area under examination should any candidate raise a concern or problem with the paper which requires their professional judgement. It may also be appropriate for a teacher to be present at the end of an external examination to ensure its efficient conclusion.

None of the tasks outlined above which require a teacher's professional expertise constitute invigilation. When carrying out such tasks, teachers should not be expected to stay in the examination hall/room for any longer than is necessary to perform them.

Commentary

A teacher refusing to accept an instruction to invigilate, which complies with this guidance, may be in breach of their contract.

10/ Administrative and Clerical Tasks

The contract

- Participating in administrative and organisational tasks, including the direction or supervision of persons providing support for the teachers in the school does not require a teacher routinely to undertake tasks of a clerical or administrative nature which do not call for the exercise of a teacher's professional skills and judgment.

Commentary

A refusal by a teacher to comply with an instruction non-routinely to undertake tasks of a clerical or administrative nature may amount to a breach of contract.

11/ Performance Management/Appraisal

The contract

- Teachers are required to participate in arrangements for the appraisal and review of their own performance, and, where appropriate, that of other teachers and support staff.
- Teachers are required to participate in arrangements for their own further training and professional development, and, where appropriate, that of other teachers and support staff including induction.

Commentary

The NASUWT guidance to their members refers to “the three hours per limit on classroom observation”. However, the School Teacher Appraisal (Wales) Regulations 2002 do not impose any limit, on the time for classroom observation that may be planned for any appraisal cycle. The only requirement is for the appraiser to observe the teacher teaching on at least one occasion during the appraisal cycle.

Schools may need to arrange additional classroom observation for other purposes.

Therefore any refusal to co-operate with observations for monitoring purposes or by Local Authority representatives may amount to a breach of contract.

Similarly teachers may be required to follow any governing body policy which involves visits to classrooms by members of the governing body.

Useful Documents

- [Classroom observation and other monitoring: the statutory position \[Wales\]](#)

12/ Voluntary Activities Outside School Sessions

Commentary

A refusal to continue to volunteer to engage in voluntary activities outside school sessions is unlikely to constitute a breach of contract.

However, the NASUWT Interim Guidance advises their members:

“Therefore, where members have volunteered freely to undertake extracurricular activities and have not been placed under pressure to do so, the action short of strike action instructions are not intended to prevent these from continuing.

Extracurricular activities include school teams, music/drama productions and clubs.

Where members have made a professional judgement and have volunteered freely to provide extra support for certain pupils outside school sessions, these can also

continue. However, where any of the above activities have been imposed on a member, then the action short of strike action instructions enable the member to withdraw from these activities. In these circumstances, members should inform the headteacher in writing in sufficient time before the next activity is scheduled to take place so that any notification to pupils and parents which may be necessary can be given.”

Distribution of materials relating to the industrial action to staff and to parents

NASUWT may ask permission to distribute materials and information to parents through the school. Such an activity is unlikely to be covered by any local “facilities agreement” and should only be allowed with the explicit permission of the employer.

If the employer does grant permission, it may be on condition that a letter setting out the employer’s perspective accompanies any NASUWT publication.

Summary

Deduction of pay and other possible sanctions

It is for the employer to determine whether or not a breach of contract has occurred and the nature of any sanction or remedy that may be appropriate.

Who is the employer?

- For Community and Voluntary Controlled schools it is the Local Authority
- In the case of Foundation, Voluntary Aided, Free schools and Academies it is the governing body
- And for Independent schools the proprietor is the employer.

For further advice and guidance, NAHT members may contact the NAHT Specialist Advice Department:

01444 472475

specialistadvice@naht.org.uk