

Local Government Association advice

on NASUWT industrial action short of a strike

Members of the NASUWT teachers' union have voted for industrial action on the basis of "Adverse changes to pensions, workload, conditions of service, including pay and pay progression and job losses".

Members were balloted on their willingness to take both strike action and also industrial action short of a strike. Therefore, they engaged in strike action on 30 November and will engage in what the Union has termed a "work-to-rule", from 1 December onwards.

The advice issued by the NASUWT to its members can be viewed on their website at the link below. To fully understand the action short of a strike that NASUWT members may engage in it is important to read this advice. http://www.nasuwt.org.uk/Whatsnew/NASUWTNews/NASUWTindustrialaction/ActionShortOfStrikeAction/index.htm

In respect of this action short of a strike, the LGA's starting point is that the majority of school teachers should be and will be in receipt of their contractual entitlements and so will have no reason to seek to engage in the action. If there are examples of clear breaches of the School Teachers' Pay and Conditions Document then, quite clearly, the LGA would not endorse this. We would encourage employers to help head teachers clarify the issues and resolve the situation as soon as possible. However, it is our view that the actions which the NASUWT is inducing its members to take are likely to constitute, *in many cases*, a breach of contract due to the action amounting to partial performance. This is because in many cases they will be refusing to carry out particular duties unless the school meets certain demands where either the employer will already be meeting their obligations in respect of the contract (notwithstanding that the teacher may not agree) or, even where the employer may have failed to meet a term of the teacher's contract of employment, the action taken by the teacher is disproportionate in light of their implied duty of good faith.

However, employers should bear in mind that refusing to carry out a duty that is specifically precluded within their contracts (e.g. refusing to carry out lunchtime supervision) is unlikely to be a breach a contract as it is not the same as refusing to carry out particular duties unless the school meets certain demands (e.g. a teacher refusing to teach because they have not received their full PPA entitlement), as outlined above.

Where a NASUWT member chooses to engage in this industrial action it will be the head teacher who will need to make an initial judgement, based on the particular circumstances, about whether or not the teacher is in breach of contract and, if so, the extent of the breach. The National Association for Head Teachers (NAHT) has prepared advice for its members, which can be accessed here: http://www.naht.org.uk/welcome/advice-davice-home/staff-management-advice/advice-on-nasuwt-action/

The role for local authorities, in particular in their capacity as the employer in community and voluntary-controlled schools, will be to assist head teachers in considering whether there has been a breach of contract. They are likely to be called upon to advise on whether the school can and should accept any partial performance and the extent of any pay deduction. In this respect, LGA advice on dealing with industrial action, including breach of contract and deductions from pay can be found here:

http://www.lge.gov.uk/lge/core/page.do?pageId=119717#deductions