

# Joint guidance on the conduct of schools on professional matters in light of the covid-19 pandemic

The covid-19 pandemic initially closed schools to all but small groups of vulnerable pupils and children of key workers. In recent weeks some schools have been able to expand in-school provision to specific year groups in accordance with the government's rules and 'hierarchies of control'. Throughout, teachers and leaders have continued to use their best endeavours to support the learning of pupils and students within their own homes. All national tests and examinations have been cancelled.

These extraordinary circumstances have resulted in significant disruption to the conduct of a wide range of professional and organisational matters within schools. ASCL, NAHT and NGA have agreed that **the following guidance will be provided to the respective members of their organisations. Underpinning it is an expectation that governing boards and school leaders will respond flexibly with care, due diligence and concern for the mental health and well-being of those working in schools.**

## 1. Performance management and appraisal

The DfE's Actions for schools during the coronavirus outbreak guidance states that performance management requirements remain in force. However, it states that it expects schools 'to use their discretion and take pragmatic steps, to adapt performance management and appraisal arrangements to take account of the current circumstances'. The DfE guidance makes clear that there should be no detriment to individuals.

We jointly encourage schools, governing boards and trusts to respond flexibly and pragmatically, given that the performance management objectives of teachers and leaders are likely to have been impacted by the government's covid-19 emergency measures, including school closures imposing limitations to on-site provision. Indeed, it is likely to be the case that the vast majority of objectives set for teachers and leaders will be adversely affected by the inability of teachers and leaders to work towards their objectives during a substantial part of the performance management cycle.

## 2. Pay progression

The DfE's guidance states: 'schools must ensure that teachers are not penalised during the appraisal process or in respect of any subsequent pay progression decisions as a result of partial school closures, where this has impacted on the ability of the teacher to meet fully their objectives.'

We believe schools should consider favourably those teachers and leaders eligible for pay progression for the academic year 2019/20 so that those who have been unable to successfully complete their performance management/appraisal objectives do not suffer a detriment.

### **3. Restructuring and/or redundancy**

On balance, we believe it is not possible for institutions to fulfil consultation requirements related to restructuring and / or redundancy at this time. We, therefore, urge schools to 'pause' all such procedures until the normal operation of schools has been re-established. If the result of a 'pause' to a planned restructure would make a deficit in the following academic year unavoidable, schools should seek short term financial support.

### **4. Academy conversion procedures**

Ofsted has ceased all inspection activity, meaning that no academy orders will be made as a result of an inspection outcome. Furthermore, the DfE advice to governing boards is to prioritise providing support to their school leaders and staff where needed, to allow them to get on with operational matters.

When schools re-open in September, either partially or fully, their focus will be on supporting pupils' well-being, their transitions to the next stage of their education and re-establishing their learning routines. This will be a dynamic and challenging environment for leaders, teachers and support staff, with considerable additional pressure and workload.

Schools must also be certain that they are able to fully meet all of their statutory obligations in relation to conversion proposals. Our advice to the governing boards of schools and trusts that are either considering voluntary academisation or are in the process of developing or implementing academy conversion procedures is to consider carefully if it is appropriate to continue such activities. Our view is that it may be prudent to 'pause' until schools have re-established normal operations.

### **5. Disciplinary, capability and ill health procedures**

Partial opening, social distancing rules and self-isolation mean that it may not be possible for schools to meet the timeframes associated with a fair process for disciplinary, capability and /or ill-health hearings.

We recognise that the nature and complexity of such hearings mean that the use of alternative technology (such as telephone or video-conference facilities) can make it more difficult to demonstrate that a fair process has been achieved. In many cases, particularly those involving witnesses or an extensive examination of evidence, 'online' hearings may not provide sufficient opportunity for all parties to engage appropriately or reliably in order for a fair process to be undertaken.

Further, the impact of a hearing conducted in a home environment with children and dependents, or in a shared dwelling during 'lockdown' should be considered. Often a lack of bandwidth impacts the performance of online platforms; while appropriate support for the well-being of employees during a hearing is hard to assure remotely.

In view of this, we think it is reasonable for governing boards (or other employers) and employees to delay such processes until such time as schools and their employees have re-established normal working practices

In 'very serious cases' employees may need to be suspended on full pay and employers may need to proceed with investigations. However, no decision should be taken to terminate the contract of an employee unless and until they have had the opportunity for a full hearing to be conducted 'in person' according to fair process. In all cases, any affected employee should be encouraged to seek support and legal advice from their trade union at the earliest opportunity.

Collective agreements negotiated by trade unions and legitimately adopted by employers should remain as recognised. Any amendments or changes would need to be renegotiated (or further negotiated) with all relevant unions on behalf of their membership.

## **6. No termination of employment contracts which would have continued but for the covid-19 crisis and re-engagement of anyone terminated as a result of the pandemic**

The government has confirmed that state-funded schools will continue to receive their budgets for the coming year, as usual, regardless of any periods of partial or complete closure. This will ensure they are able to continue to pay their staff and meet their other regular financial commitments.

We, therefore, encourage all schools to maintain existing employment contracts and to take the opportunity to re-contract the employment of anyone whose contract had been terminated, in line with the rules set out in the government furloughing scheme. This scheme may also apply to staff whose salaries are paid through an income stream other than grant funding. We advise that a principle of no detriment should also apply to those for whom furloughing is possible, so that affected individuals continue to receive a full salary and pension provision.