School Briefing - Strike Action on Thursday 10th July 2014

Purpose of this Briefing

The NUT have declared a day of strike action on Thursday 10th July 2014 following an on-going dispute about pay, pensions and conditions to coincide with Strike Action being taken by Unison, GMB and Unite whose members voted in favour of strike action. Unite Trade Union have informed the Council that they have not balloted CBC members.

The one day strike action will take place on Thursday, 10 July 2014.

This briefing is designed to provide you with background information about the strike action and specific guidance on what you should be doing to prepare for this.

Background

Under industrial relations legislation, Trade Unions are obliged to ballot their members to establish whether there is a collective will to take strike action. The NUT balloted their members on 11 September 2012 regarding Action Short of Strike Action and Discontinuous Strike Action, the NUT members indicated they wished for both of these to go ahead and this was endorsed by the NUT. NUT members commenced Action Short of Strike Action on 3 October 2012.

NJC employers have offered a pay increase of 1%, with a proposal to increase the bottom six spine points by between 1.25% and 4.66% to recognise the position of our lowest paid employees.

The Local Government Association have outlined the following:-

“In making their offer, the Employers recognised that local government workers are affected by the difficult economic climate and its impact on councils and how hard our employees are working to maintain the high quality services of which the sector is rightly proud. However, the economic climate and resultant budget cuts also explain our final offer of 1.0% which we believe is fair and at the limit of what we can afford. That said, our offer does include the proposal to increase the bottom six pay points by between 1.25% and 4.66% to recognise the position of our lowest-paid employees.

The Employers made their full and final pay offer at the earliest opportunity in order to ensure that employees would receive their pay increase as quickly as possible in the new financial year. Strike action will not change the Employers’ offer but will instead delay by some months extra money getting into employees’ pockets.

Employees should think carefully about the financial implications of taking strike action. For each day on strike they will lose one-fifth of a week’s pay”.

Advance Planning

There are a number of practical steps that all managers can take to anticipate and prepare for strike action.

**Asking staff whether they intend to strike** - This is legitimate and whilst your staff are under no obligation to inform you in advance whether they intend to strike, it is not unusual for staff to provide advance information.

**Anticipating impact** - where a headteacher identifies work that must be covered they should carefully consider the following options:

- Reallocating work to staff not taking part in the action - it is important not to expect staff to perform work that is either unreasonable or for which they are not competent to perform.

- Schools will need to exercise some care to avoid endangering the goodwill of non striking staff by asking them to perform additional duties. All disputes eventually come to an end and actions that undermine team spirit and divide the workforce may have a negative, medium term effect on service performance.

- Schools should recognise the ‘rarely cover’ provisions of the National Agreement. Cover for short term absences can be provided by persons who are not qualified teachers. To the extent that during the period of cover such persons are involved in ‘specified work’ as defined by Section 133 of the Education Act 2002 they must operate in accordance with the Regulations and the relevant guidance. Schools may wish to consider strategies that ensure pupils have appropriate work while being supervised by non qualified staff.

- It is possible that senior staff in schools might provide a source of additional volunteers to undertake supervision and cover duties. An employee cannot be forced to do work which conflicts with their contract of employment unless it is reasonable for the employer to ask them to do so. ‘Reasonableness’ will depend upon the importance of the task and the employee’s ability to perform it. For example, it may be appropriate to ask a teaching assistant, normally working with children in a mainstream setting, to work in a specialist unit for the day where this is necessary. It would not be appropriate, however, to ask a member of the school office staff to undertake such a role.

- Schools can continue to use existing agency workers but cannot engage additional temporary agency staff to carry out work normally done by employees who are on strike. Agencies are also restricted from providing staff to replace employees who are covering striking workers.

**Reviewing existing plans** - All schools already have continuity plans in place and these should be reviewed in light of the probable impact of strike action.

**Key holding staff** - headteachers should ensure that employees who retain equipment as part of their normal duties return the property before they take industrial action. This could include, for instance, employees who hold keys to school buildings.
Given the scale of the industrial action it is recognised that a number of schools may find it necessary to close. To ensure that schools can remain open where possible it is important that Head teachers and governors do not lose control of the property (if, for example, the site agent refuses to cross a picket line). Senior managers (including governors) should therefore ensure that they retain full access to:

- Key and alarm access codes for all buildings
- Fuel
- Power, heat and light
- Vehicles and their keys
- IT systems
- Information systems.

**Headteachers taking strike action** - in respect of any headteacher industrial action which may take place, employers should note that, as set out in the School Teachers' Pay and Conditions Document, deputy headteachers are required to undertake the professional duties of the headteacher in the headteacher's absence.

**Paragraph 49.2 of STPCD states:**
"If the Head is absent from the school a Deputy Headteacher must undertake their professional duties to the extent required by the Headteacher or the relevant body or, in the case of a foundation, voluntary aided or foundation special school, the governing body"

Clearly, it is possible that the deputy head in a school will also be on strike on the 10th July 2014. However, where the headteacher is taking part in industrial action but the deputy head is not, the governing body should consider whether they wish to require the deputy headteacher to perform the headteacher's duties in accordance with paragraph 49.2, bearing in mind the need to keep the school open wherever possible. If both the headteacher and the deputy headteacher take strike action the governing body will need to determine if the school should close to pupils.

**Informing parents that the school is closed**

If, as a result of industrial action by staff on 10th July 2014, the governing body has made the decision to close the school, in addition to usual methods of communicating with parents, transport, school meals providers, etc schools should ensure that on the day they update Central Bedfordshire Council's Schools Open System (SOS).

**Please note it is possible to update the system from 5 pm on the 9th July 2014.**

The governing body should take a decision whether to close the school only to pupils or also to staff and should communicate this using the SOS system.

If the school is to remain open to certain classes or year groups it is also advised to complete the SOS system and indicate in the additional information section. If you have forgotten your log in details for the SOS system, please email sos@centralbedfordshire.gov.uk. If you are to also inform HEART FM or Three Counties Radio of a school closure or partial opening you should do so providing them with the confidential password previously provided to you.
Managing Employees

Can employees bring their children to school with them if they aren’t striking?

Whilst such a decision rests with the head teacher, there are a number of reasons why you might consider such a request should be turned down.

Any decision to allow an employee to bring their children into the school is likely to set a precedent and would need to be applied consistently. The school could be faced with making arrangements for a number of such children. The school’s priority has to be supporting registered pupils and it is unlikely you will have spare capacity to ensure the safety and wellbeing of additional children. Should an incident occur during the course of the day to a child who is not a registered pupil, problems may arise in relation to insurance cover and/or compliance with health and safety law.

If you decide to permit employees to bring in their children, you should ensure that risks have been properly assessed and relevant precautions have been put in place.

Annual leave for employees in school who have an annual leave entitlement

If there is a vote for strike action then it is advised annual leave requests for 10th July 2014 should not be granted in order to ensure service delivery is maintained. This should not affect arrangements where employees have booked one – two weeks leave but it is likely to affect requests for short periods.

Every effort will be made to honour leave arrangements already agreed. Where an employee knows they have personal commitments requiring one – two days leave on or after the strike days these should be requested and considered by line managers immediately. Where strike action begins during a period in which an employee is on annual leave, then in the absence of evidence to the contrary, he or she should be deemed to be on leave and not on strike.

Sickness

Employees who are absent on account of sickness before industrial action starts should be assumed to be on sick leave, providing that the necessary certification is produced.

Schools can request that employees that haven’t previously been absent from work that call in sick on the 10th July 2014 support this with a doctor’s certificate. Should schools wish to enforce this they should communicate this to employees prior to the 10th July 2014 and meet any charge made by the doctor.

Employees who are absent from work through illness before a stoppage of work retain their right to statutory sick pay (SSP) during the period of industrial action. Where, however, an employee is away from work because of a trade dispute when their sickness begins, they are excluded from SSP, except where he or she has no ‘direct interest’ in the dispute and has not participated in it at any time.

If an employee returns to work after industrial action and then goes off sick, the average earnings for SSP purposes will reflect the lower earnings during the action, as eligibility for SSP is based on earnings during the previous eight weeks of employment.
Shift workers
It is the responsibility of schools to determine if and when a shift worker is taking Industrial action. It is probably best to assume in the case of a one-day strike that it operates from midnight. A careful check is necessary on the intentions of shift workers and what hours they actually work.

Pay arrangements

With industrial action, a response may be to deduct pay and governing bodies are entitled to determine that pay is withheld for work not done.

Governing bodies may wish to consider the following when determining if pay should be deducted:

- The potential for challenges in the Courts and from auditors if no deduction is made, thus appearing to condone industrial action which is in breach of a statutory duty;
- That any inconsistency in response is likely to be seen to be strengthening the Trade Union's case;
- The consequent requirement to advise employees taking strike action that a deduction from wages will be made.

Guidance on how to calculate a days pay for NJC employees can be found within the document ‘Schools NJC Calculation of Days Pay’. Deductions from payroll for Teachers should be calculated at a rate of 1/365th.

Employees have no rights to conditions of service benefits when they are on strike.

Schools should liaise with their HR and Payroll providers to advise them of all staff members whose pay should be deducted following the strike action.

Safeguarding

Where the Head teacher is considering any action to be taken to provide alternative curriculum arrangements and temporary adult supervision within the school they must ensure that safeguarding the welfare of pupils and safe staffing standards are addressed at all times. This should be recorded in any written risk assessment. The duty desks within Children’s Services will be a staffed during the day and child protection concerns should be referred as normal.

Pensions

Absence due to strike action of a day or more will not count as pensionable service.

It is important that members of the Teachers’ Pension scheme have the strike day recorded as a day without pay on their service history for the annual service return. There is no provision in the Teachers' Pension Scheme for teachers to buy back strike days. Further information can be found on the Teachers’ Pensions website here: https://www.teacherspensions.co.uk.

Following the changes to the 2014 LGPS regulations, the process of notification of a strike day and the form for employees to buy back ‘Lost Pension’ has changed. Further information can be found within the document ‘APC Guidance for Schools’. An Additional Pensions Contributions Letter should be sent to all LGPS members who took part in strike action shortly after the event. Schools will be required to provide information to the Council on which LGPS members have received a letter.
Picketing

Picketing occurs when a group of people gather outside a workplace to try and persuade others, such as non-strikers, substitute workers or suppliers, to take some form of industrial action. It is possible that picketing may occur.

Where picketing takes place, employees not directly involved in the industrial action may refuse to cross picket lines. Such employees should be regarded as being on strike and treated accordingly.

Occasionally employees may be willing to cross picket lines but are reluctant to do so for fear of their safety. In such circumstances, headteachers should try and ensure that the employee is given every protection in crossing the picket line, or where practicable, is given the opportunity to work at another establishment.

Health and Safety

Employers continue to have a statutory duty in respect of health and safety during a dispute. The impact of industrial action can be magnified by the collapse of important health and safety provisions. For example, it may not be acceptable for staff to work in a building where the evacuation procedures have been undermined by the absence of fire marshalls. Where such issues can be anticipated consideration needs to be given to alternative arrangements and for discussion of these alternative arrangements to take place with staff and their representatives in advance. It is therefore appropriate for Head teachers (and governors) to enter into dialogue with staff ahead of the strike so that appropriate planning can be carried out.

In addition if a school is closed to pupils but some teachers, teaching assistants or other support staff are not striking, then consideration must be given to potential lone working. A risk assessment should be completed with adequate control measures (e.g. regular telephone or face to face contact with the member of staff). It is advised that staff should not bring their own children into the workplace due to strike action at another school.

A record of school closures due to strike action will be obtained from the Schools Open System on the 10th July 2014

Post Strike Action Reporting

Further, more detailed information relating to the numbers of employees who took strike action will be requested following the action in order for the Council to report information to the DfE. You will be able to obtain this information from the data you provide to your payroll providers in order for appropriate deductions from salary to be made. You will be informed of the date for the return of this data via Anycomms.

Further Guidance

DfE advice on handling strike action can be found at: https://www.gov.uk/government/publications/handling-strike-action-in-schools

If you have any questions about this guidance please contact David Waller, HR Policy & Implementation Manager on tel: 0300 300 6053 or Rachael King, HR Policy Advisor on 0300 300 4804 or email HRservicesschools@centralbedfordshire.gov.uk. If you have any other questions please contact your HR / Payroll provider.