

Frequently asked questions

Keeping schools open on strike days

Q. Can I ask my teachers if they are planning on striking?

A. Yes. Employers are fully entitled to ask staff if they are planning to strike; however, employees are not required to tell their employers whether they intend to take strike action.

Q: Can I ask existing staff members to cover for striking teachers?

A: Yes – headteachers may ask other teachers to cover the classes of those taking industrial action. Where teachers are employed under the *School Teachers' Pay and Conditions Document (STPCD)*, however, they cannot be compelled to provide cover for other teachers during industrial action, but may choose to do so if asked. Cover supervisors, or teachers who are employed wholly or mainly to provide cover and are not taking industrial action themselves, can be directed to provide cover during industrial action. Support staff should not be used to replace teachers, but may provide supervision in some instances. In schools where teachers are not employed under the STPCD, staff may be required to provide cover, depending on the terms of their contracts of employment.

Q. Can the headteacher use teaching assistants to replace striking staff and keep the school open?

A. Support staff cannot and should not be used to replace teachers. However, it can be both appropriate and effective for teaching assistants to carry out some teaching roles, including delivering lessons, provided that:

- they are doing so in order to assist or support the work of a qualified teacher in the school;
- they are subject to the direction and supervision of a qualified teacher in accordance with arrangements made by the headteacher of the school to ensure that they are effectively monitored; and
- the headteacher is satisfied that the support staff member has the skills, expertise and experience to carry out the specified work.

Q. If I want to hire volunteers or temporary workers directly, what would be the process to follow to make sure I am safeguarding my pupils?

A. For newly appointed staff schools must obtain a barred list check with an enhanced criminal record check. For employees transferring from a similar position without a break in service of more than 3 months, schools must carry out a barred list check and can choose to carry out an enhanced criminal record check if they wish but there is no requirement to do so. For supervised volunteers there is no duty

for a criminal records check to be carried out.

Q. My school is an academy and does not require teachers to have QTS. Does that give me more freedom to use support staff and others without QTS to cover for striking teachers?

A. Yes. Free schools, academies established after 29 July 2012 and any academy established prior to this date that has agreed a change to its funding agreement are exempt from the Specified Work Regulations. They may deploy staff in whatever way they see fit, as long as pupils' health and safety is ensured.

Q: Can I use supply teachers from the Local Authority to cover on strike days?

A: Yes, if these teachers are employed directly by the Local Authority rather than by an employment business. While the *Conduct of Employment Agencies and Employment Business Regulations 2003* prevent employment businesses from supplying teachers to cover absence during industrial action, an employer can directly employ individuals to cover those on strike.

Q. Could a retired teacher come in and cover a lesson on a strike day?

A. Yes, providing that they were employed directly by the local authority (or governing body / academy trust if they are the employer). Alternatively retired teachers could be used as volunteers provided they are given suitable tasks. In this case, if it is decided they do not need DBS checks, they should not work with children unsupervised.

Q. Don't I have to have one teacher for every 30 children to stay open on a strike day?

A. Infant class size legislation limits the size of infant classes to 30 or fewer with a qualified teacher. This applies to reception and other classes where the majority of the children will reach age 5, 6 or 7 in that school year. However, the infant class size limit does not apply to activities normally carried out in larger groups, for example assemblies, sports and other activities that the school may choose to provide on strike days. For nursery provision in maintained schools (children aged 3 and over) there must be one member of staff for every 13 children. At least one member of staff must be a school teacher¹ and one other member of staff must have a Level 3 qualification.

For pupils older than 7 there are no set ratios for the number of staff required to supervise pupils on site. All schools have a duty of care and so a risk assessment should be undertaken to assess what levels of supervision are appropriate. This

¹ as defined by Section 122 of the Education Act 2002 and the Education (School Teachers' Qualifications) (England) Regulations 2003.

should take into account a range of factors including the age and abilities of the children and the layout of the school.

Q. What happens if strike action coincides with public examinations?

A. In the event of industrial action during exams, the headteacher of a school or principal of an academy retains a formal role as 'head of centre', and is accountable for the conduct of the examinations and provision of facilities in their centre. It is recommended that centres should remain open for examinations and examination candidates where possible, even if the school is closed or partially closed. Further information on contingency planning during examination periods can be found here: <http://www.ofqual.gov.uk/files/2012-12-11-joint-contingency-plan-november-2012.pdf>

Q: Is it true that a school that stays open and offers a reduced curriculum will be judged as inadequate by Ofsted?

A: This is not true; inspectors are required to weigh up the balance of evidence prior to making a judgement. The starting point for these key judgements is the quality of learning experienced by the pupils across the whole school and over time. As with any other possible disruption to a school (such as severe weather), Ofsted will take a view as to whether there is sufficient activity taking place to enable it to conduct an inspection of the school. Where there isn't the inspection is likely to be deferred. Where there is, inspectors will assess the teaching and learning that is taking place at the point of inspection, along with all other evidence about the school and its performance, to arrive at a balanced judgement about the performance of the school.

Q. Does a school have to close if it cannot provide meals?

A. If a school is unable to provide a normal lunch service due to strike action, there is no *requirement* to close the school. If the school is open, it has a duty to provide free school meals for eligible pupils even if there is no normal lunch service.

Q. What flexibilities are available to me to help keep my school open?

A. There are many examples of schools staying open during strike action, sometimes in very challenging circumstances. The key factors for minimising the disruption of industrial action are effective industrial relations and good relationships between management and staff. In addition, the following case studies set out some of the ways schools have been able to stay open:

- Using existing resources in a flexible way

"We feel that we have a responsibility to parents and pupils to keep the school open on strike days. Most of our teachers chose to go out on strike, so we made the decision to collapse classes so that larger groups could be supervised to carry out a

prepared task or controlled assessment. Supervision was provided by the school leadership team, cover supervisors and support staff.

A small number of teachers who were not on strike gave extended revision sessions in their own subjects to exam classes, particularly Year 11. Years 12 and 13 were asked to carry out independent study.”

- Pooling resources across schools

“As a soft federation, we have a working arrangement between four schools: one secondary school and three primary schools. As strike day approached, we knew that we wouldn’t have enough teachers in each school to keep all four schools open, but we were determined to. We decided to keep the secondary school fully open, and invite pupils from the rest of our federation into the secondary school. Pooling staff meant we could provide for around half of the pupils of all four schools, enabling many parents to go in to work. This arrangement also meant that secondary school pupils could mentor primary school pupils, opening up opportunities to support with reading and other activities”.

- Employing additional staff

“Many of our teachers were on strike, so we were not able to open for all classes. However, we employed exam invigilators as temporary workers to allow public examinations to take place. One practical examination was on the same day, and those teaching staff came in to carry out the exam despite the strike, even though they were not asked to do so – they felt that this critical work could not be carried out by anyone else. We made sure that all students had access to the school’s virtual learning environment to carry out independent study, and we contacted parents to let them know that if they were not able to take time off work, we would provide supervision for their child. A small number of parents took up this offer, and these pupils were supervised in the library.”

- Organising alternative activities

1. “We chose to run an ‘activity’ day, when the usual timetable was suspended and enrichment activities took place. We asked a theatre company to come in and deliver performances and workshops in the school hall. This meant that a large number of students could be engaged in activities in the same room, and thus supervised more efficiently with fewer school staff and the support of members of the theatre company.”

2. “We asked a local football coaching company to come in for the day and deliver coaching to the whole school. This was a safe, enjoyable activity for the pupils. Pupils who did not want to take part in the football coaching were supervised in alternative activities by teaching assistants and the few teachers who were working despite the strike. The school used the money saved from the deduction of a day’s pay from striking teachers to support this approach.”

The law on trade disputes and picketing

Q. Who should be notified that a union proposes to take action?

A. If a Trade Union has correctly notified the employer/s of the outcome of the ballot, it is required to provide employers with at least seven days' notice of official industrial action. If such notice is not given, the action would be unlawful. Sometimes trade unions will inform headteachers unofficially of the intention to take industrial action well before the seven day legal requirement.

Q. Who is the employer in different types of school?

A. For maintained, community and voluntary controlled schools the local authority is the employer, with the governing body exercising employer responsibilities. As such, it is likely that notice of industrial action will be sent to the Chief Executive of the local authority in respect of these staff. Governing bodies are the direct employers of staff at foundation and voluntary aided schools. In academies the employer is the academy trust itself and, as such, they should receive notice directly from trade unions.

Q. My union is telling me that if I choose to come into work on a strike day I will not be covered by their insurance, is this true?

A. It is very unlikely that any insurance policy would be drafted by the insurers so as to penalise a union member not taking industrial action. Section 64 of the Trade Union and Labour Relations (Consolidation) Act 1992 gives the right to a member not to be unjustifiably disciplined by a union. Section 64(2)(d) states that "disciplined" includes where he/she "should be deprived to any extent of, or of access to, any benefits, services or facilities which would otherwise be provided ..". Section 65(2)(a) states that "unjustifiable discipline" includes by reason of "failing to participate in...a strike."

Q: We have had large numbers picketing outside the school which is intimidating for the children. What can I do about this?

A: It is lawful for striking members of staff and union officials to picket at or near their place of work. The number of people picketing should not ordinarily exceed six. If the picket includes people other than staff members and / or union officials representing striking staff members then it is unlawful. In the first instance, the employer (or the headteacher acting on its behalf) may wish to contact the union to inform them that their picket is unlawful. The employer may also apply to the court for an order preventing, or stopping, the unlawful picketing, or its organisation. Members of a picket cannot break the criminal law, for example by causing damage, intimidating employees or creating public disorder. If they do, they would be committing an offence and the police should be notified.

Q. Are students allowed to picket?

A. It would be inappropriate for schools to authorise absence for children to participate in demonstrations in support of industrial action. It is also not lawful for a picket to include pupils of the school.

Q: Where do I go for advice on the current NASUWT/NUT industrial action short of strike action?

A: The Department for Education published advice on the NUT/NASUWT action short of strike action in January 2013.