

To: Chairs of Governors, Heads of all  
Suffolk LMS Schools, PRUs and  
Highfield Nursery

**LMS Document**  
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Dear Colleagues

### **Potential industrial action re teachers' pensions**

The NUT and the ATL are currently balloting their members about the government's proposed changes to the Teachers' Pension Scheme. Both ballots will close on 14<sup>th</sup> June, so although the local authority has not yet received formal notification that strike action will take place, I am writing to you now so that you can plan ahead. I will contact you again once we know the result of the ballots.

As a general point, I wish to make clear that:

- any refusal by staff to undertake their contracts of employment is regarded as a breach of contract;
- If any teachers or headteachers take such action, a deduction from wages will be made;
- If any teachers or headteachers take industrial action but no deduction from wages is made, this may be challenged in the courts or by auditors and may be seen to condone industrial action which is in breach of a statutory duty; and
- Any inconsistency in response is likely to be seen to be strengthening the unions' case.

### **What is industrial action?**

There is no legal definition of industrial action. However, case law has established that:

- Industrial action must be concerted action against the employer's interests. It does not, therefore, usually cover action taken by an individual
- It must be taken in order to put pressure on the employer in an attempt to achieve some objective

### **When are employees taking part in industrial action?**

As a basic guide, employees will probably be taking part in industrial action if they:

- Collectively withdraw their labour
- Refuse to undertake some of their duties
- Refuse to carry out reasonable instructions
- Take part in a sit-in, go-slow or work to rule
- Take part in picketing

### **Who is the dispute with and what legitimate response can governing bodies make?**

The ATL and the NUT are in dispute with the government. Action taken by staff as a result of the dispute means that they are failing to fulfil the terms of their contracts of employment and therefore governing bodies can legitimately take action in response.

With industrial action, including action short of a strike, governing bodies are entitled to withhold pay for work not done.

### **What if teachers are willing to carry out some, but not all, of their duties?**

For industrial action short of a strike or 'partial performance' of duties, an employer is entitled to refuse to accept the partial performance of the contract of employment offered by employees. This would mean telling employees that they should only attend work when they are prepared to work in full compliance with their contracts. Until they do so they will have no entitlement to pay.

In the current situation we advise that governing bodies do not accept the breach and should therefore inform teachers who take action that, in the governing body's view, a breach has occurred and that the intention is to deduct pay.

### **Can we bring in supply teachers to cover?**

No, it is not lawful to engage temporary staff to provide direct cover for staff taking industrial action.

The other unions are likely to advise their members not to undertake cover for colleagues taking industrial action. Consequently unless staff volunteer to undertake additional duties, headteachers are advised to seek alternative remedies.

### **How much pay should be deducted for people who take industrial action?**

Staff who take industrial action will be deducted a full normal day of their annual pay for each day's industrial action. A day's pay is defined as 1/365<sup>th</sup> of annual pay.

### **What's the impact on someone's pension?**

In taking industrial action, as well as the loss of a day's pay, a teacher will lose a day's contribution to the Teachers' Pension Scheme. Absence due to industrial action is not classed as pensionable service and there are no provisions in the Teachers' Pensions Scheme for a teacher to purchase the day lost.

### **How will the payroll deductions be made?**

Schools will need to give the names and details of all teachers who take action to Payroll. We will provide further information and guidance if the strikes take place, ie once the ballots have closed and the unions have notified us of their intentions.

I would be grateful if you would advise staff of the contents of this letter.

Please do not hesitate to contact the Schools' HR Team in the first instance on 01473 265440 if there is any further information you require.

Yours sincerely



**Simon White**

Director for Children and Young People