

DCC Guidance Re SATs 2010

Devon County Council has been informed by the NUT and NAHT that they are calling on their members to take action short of strike action by refusing to administer **Key Stage 2 assessment tests for English and Maths**, commencing on Tuesday 4 May and this will be continuous. Industrial action short of strike action is a breach of contract if the employee fails to undertake duties expressly required by the contract.

For **Headteachers**, the School Teachers' Pay and Conditions Document (STPCD) 2009, Part 9 states that *'Headteacher's professional duties must be carried out in accordance with and subject to the provisions of the Education Acts...'*. The Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) (Amendment) Order 2010 specifies the requirement placed on the Headteacher.

For **Deputy Headteachers and Assistant Headteachers**, Part 10 of the STPCD states that *'A person appointed as a deputy or assistant headteacher in a school.... must ... undertake any professional duties of the head teacher reasonably delegated by the head teacher' and "in the case of a deputy head teacher only, undertake to the extent required by the head teacher or the relevant body or in the case of a foundation, voluntary aided or foundation special school, the governing body, the professional duties of the headteacher in the event of the absence of the head teacher from the school.'*

An instruction by the **Governing Body** to ensure that tests are undertaken is a reasonable instruction, as long as it does not involve invigilating the tests which has not been required of teachers since September 2005, as a result of the National Agreement on Raising Standards and Tackling Workload. Governing bodies have delegated responsibility for their budgets and for staffing decisions and so are responsible for responding to industrial action.

Clearly, in respect of the current action, the NAHT and the NUT are in dispute with the government. However, any action which individuals take as a result of this dispute will result in them failing to fulfil the terms of their contracts of employment and therefore governing bodies should respond to this. (see overleaf)

Advice to Governing Bodies

This advice is being given to all Governing Bodies and it is important that there is a consistent response to the industrial action.

1. The Governing Body must instruct the headteacher to ensure that the Key Stage 2 tests are undertaken and administered appropriately within the school.
2. Where an employee is not ready and willing to perform **all** duties, this is a clear breach of contract and this is what provides the employer with the entitlement to withhold pay, The Governing Body must inform the staff that if they take action that, in the Governing Body's view, a breach of contract will have occurred and that the intention will be to deduct pay.
2. The Governing Body must not, in this context, expect, or arrange for, alternative work to be undertaken by teachers in substitution for the work they would have undertaken in connection with the key stage 2 tests, because this would automatically lead to the conclusion that no breach of contract had in fact occurred.
3. Where there is limited industrial action, the employer must not withhold all pay, it can only withhold the pay for the work not done. There is a 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. The governing body will need to consider how much pay can be withheld in response to the "partial performance" being offered by teachers.
4. Any work that the employee does in substitution of the work they were supposed to do is done voluntarily and does not merit pay. If teachers involved in the current dispute say that, instead of making arrangements for the tests, they will undertake other work, this does not mean that they should be paid for this other work - the governing body is entitled to withhold pay for the fact that the tests are not being done.

Making Alternative Arrangements To Run The Tests

It is unlikely that other teachers who are not members of NAHT or NUT will be prepared to help to make arrangements to run the tests in schools where they are being boycotted.

It is not permissible under current legislation for Governing Bodies to engage the services of agencies to run the tests which teachers in the school are refusing to arrange. Agencies are also legally restricted from supplying temporary labour to replace employees who are covering for employees undertaking industrial action.

If you have any queries, please contact the Schools' Personnel Helpline. 01392 384567
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