

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

**This document replaces joint guidance issued by ASCL, NAHT and NGA in June 2020.**

In September 2020, almost all schools were able to return to full on-site education for their pupils, subject to extensive measures that seek to control the spread of the Covid-19 virus.

ASCL, NAHT and NGA have amended the following guidance to take account of the changed circumstances in which schools are operating, which remain far from normal.

**We continue to expect 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

DfE's [guidance for the full opening of schools](#) continues to advise them '...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. We advise against objectives that set targets for the 'catch-up' of individual pupils or groups or are based on measures related to performance tables and accountability measures, including Ofsted grades. We also advise against basing objectives or performance evaluations around the use of online or remote learning lessons or platforms.

Notwithstanding the above, it should be noted that both performance tables and Ofsted inspections remain 'under review' for the academic year 2020/21, making any link between these and objective setting even more problematic at this time.

The focus of schools should be to support a sustained, positive and productive return of pupils to the classroom, with a strong emphasis on the well-being of pupils and staff.

The approach to performance management and appraisal should remain flexible in order to take account of the possibility of part or full school closures, the need for 'blended' remote learning and / or circumstances where members of staff may need to isolate or shield.

As always, schools should have due regard to ensure that teachers are not disadvantaged where absence is related to any of the protected characteristics. We jointly advise that schools, governing boards and trusts should have due regard to the equalities advice contained in the DfE's non-statutory guidance [Implementing your schools approach to pay](#).

## **2. Pay progression**

We continue to advise that 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.

Given the unpredictable impact of the ongoing pandemic, schools should be prepared to operate a similar approach when reviewing pay progression for the coming academic year, if this is needed.

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

Now that schools are fully open, our joint view is that it is possible for institutions to fulfil consultation requirements related to restructuring and / or redundancy.

However, in these uncertain times schools and governing boards should be particularly vigilant to ensure that no individual is disadvantaged (through, for example, illness, covid risk factors or isolation), and that staff well-being is carefully considered. It remains essential to ensure that all requirements are fully met and that consultation periods are responsive to changes in local circumstances.

## **4. Federations and academy conversion procedures**

Ofsted has confirmed that routine inspection activity will not resume until January 2021 at the earliest. Academy orders will therefore not be made during this term as a result of an inspection outcome.

The DfE's [guidance](#) states that it will continue to support schools that wish to convert to academy status '...on a case-by-case basis'. It continues, 'Those that do not proceed during this period are not cancelled, and processes will resume as soon as practical.'<sup>1</sup>

DfE guidance notes that schools in the process of federating may choose to delay that process, or '...may choose to carry on a consultation via email, online surveys, or webinars. In all cases, consideration should be given to the community involved in the consultation and the difficulties they may face in submitting responses.'

We jointly advise that during the early part of the academic year, schools' principal focus should be on supporting pupils' and staff well-being, and re-establishing their

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<sup>1</sup> DfE has indicated that it will accept electronic signatures during this period. If needed, legal documents will be signed in counterpart to facilitate projects moving forward. DfE will physically sign and seal the documents ahead of the first of each month'

learning and teaching routines. This will continue to be a dynamic and challenging environment for leaders, teachers and support staff, with considerable additional pressure and workload.

Schools considering becoming an academy must 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 ensure there is sufficient stability and capacity to support due diligence and other activities.

## 5. Disciplinary, capability and ill health procedures

The full reopening of schools means that it may now be possible to meet the timeframes associated with a fair process for disciplinary, capability and /or ill-health hearings.

In all cases, any affected employee should be encouraged to seek support and legal advice from their trade union at the earliest opportunity.

Many employment meetings, such as investigations and routine attendance review meetings, can easily be conducted remotely. Some more straight forward hearings can also be conducted remotely.

However, more complex hearings, **especially where employment is at risk**, should normally be conducted in person, in which case separate risk assessments will need to be actioned.

The DfE's [guidance](#) requires schools to adopt a variety of controls, including social distancing, to limit the possibility of transmission of the Covid-19 virus. The implementation of controls varies from school to school, dependent on its phase, context and local circumstances. Many schools continue to maintain separate staff 'bubbles' and prohibit external visitors. As a result, in some schools, there may be practical difficulties in conducting disciplinary or capability procedures 'in person'.

Where a hearing cannot take place 'in person', we continue to offer caution over the use of remote meetings, particularly for more complex cases. 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 so appropriate mitigation strategies should be deployed. 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 / or other dependents, or in a shared dwelling should be considered. Often a lack of bandwidth impacts the performance of online platforms; while appropriate support for the well-being of employees is hard to assure remotely.

Therefore, the employer will need to demonstrate, through a risk assessment, that all appropriate measures have been taken.

Consideration should be given to the impact of the covid pandemic on the provision and accessibility of healthcare services and treatments, particularly in relation to ill-health retirement applications or extended sick leave. These matters could have a bearing on an individual's entitlement to sick pay.

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.

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.