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**To College Principals**

## **COVID-19 – Government proposals for the wider opening of schools**

Dear Principal

As you will be aware, following the Prime Minister's statement on 10th May 2020, the Government published, on 11th May, its COVID-19 recovery strategy and the Department for Education (DfE) issued the first part of its guidance to prepare schools for wider opening.

The NASUWT has considered carefully the DfE guidance issued so far and, notwithstanding the fact that it is currently incomplete, the Union believes that there are fundamental concerns about the guidance, including that it is, in parts, inconsistent with wider Government guidance for other workplaces and lacks detail on a number of critical issues. We believe there are serious health, safety and welfare issues for staff and students which have not been addressed.

The NASUWT has raised our very serious concerns with DfE officials and with the Secretary of State for Education.

The NASUWT is sure that you will share our view that, when dealing with a life-and-death situation as a result of the global pandemic, it is essential that the guidance on which colleges base their decisions is robust and accurate to enable the right decisions to be reached.

Stringent guidance has been issued for the NHS, for care homes and for employers across the UK. It is unacceptable that this has not been the case for schools and colleges. The NASUWT believes that schools and colleges have the right to the same consideration and protections, and to be confident that their health and welfare, as well as that of students, is at the heart of any planning for wider opening.

In the absence of the DfE setting out clearly for schools and colleges the legal basis in which its guidance is operating, the NASUWT is writing to employers to set out our position on this matter, which we are confident you will share.

The Government's guidance for employers states that, *'this guidance does not supersede any legal obligations relating to health and safety, employment or equalities and it is important that as a business or an employer you continue to comply with your existing obligations, including relating to those individuals with protected characteristics'* (HM Government, *Working safely during coronavirus (COVID-19)*).

The NASUWT is clear that no member of staff should be expected to go into a school or college that is not safe, and until it can be demonstrated that it is safe to do so, we will be continuing to support and advise members on that basis.

We have also advised our members that:

- there has been no change to the current COVID-19 restrictions for schools at this point in time. There should be no increase in the number of pupils or staff going into schools, or requirement for any member of staff not currently in workplace to go into work at this time;

- 1st June 2020 is the date *from when* schools and colleges *may* be able to extend their opening arrangements. It is neither a fixed nor hard-and-fast date by which all schools and colleges must open and there is no requirement or obligation currently on any school or college to reopen to more pupils from that date;
- schools and colleges are not in a position to make any meaningful preparations or finalise any plans for wider opening at this time, as the DfE has not issued all the required guidance. Planning by schools can only take place when the full suite of information has been issued by the DfE;
- even when schools and colleges are in a position to plan, no final decision can be made by them to open the college or extend the number of students in the college. The Government guidance makes clear that: *'We will only do this provided that the five key tests set by Government justify the changes at the time...'* and so there are no guarantees that there will be any change to the current circumstances after 1st June.

As a consequence of the DfE's failure to advise school and college employers appropriately, increasing the likelihood that our members will be put at risk, the NASUWT has been left with no alternative but to put employers and the Government on notice, by reserving our members' legal rights in the context of a tortious claim for breach of duty of care and personal injury due to foreseeable risk, and any other legal recourse available.

The Union will also consider an employer to be in breach of our members' legal rights under Section 44 and 100 of the Employment Rights Act 1996, if they are subjected to detriment and/or dismissal in circumstances of danger which our members have reasonable belief to be serious and imminent. NASUWT members' rights under sections 47B and 103A of the Employment Rights Act [protected disclosure for the purposes of whistleblowing], including their rights under the Equality Act, are also reserved.

The Government has been clear to employers that: *'to help you decide which actions to take you need to carry out an appropriate COVID-19 risk assessment... This risk assessment must be done with unions or workers.'* The NASUWT looks forward to working with you to ensure that the health, safety and welfare of staff and students are protected in these unprecedented circumstances.

The NASUWT recognises that school and college employers have been placed in a situation where the wrong decision will result in people becoming seriously ill and dying, and will therefore appreciate that there can be no compromise on health and safety. If this means that schools and colleges are unable to open safely before September because they are unable to make arrangements to safeguard their staff and students, then that position must be accepted.

Yours sincerely



Dr Patrick Roach  
General Secretary