



Dear

We apologise for writing to you at such a difficult time. We know the intense pressure schools are under, both as a result of Covid-19 and because of the repeated sudden changes in Government policies.

However, yesterday the Department for Education (DfE) e-mailed you about recent advice UNISON and the National Education Union (NEU) gave its members on the safety of face-to-face teaching in schools.

This email followed Gavin Williamson saying in Parliament: 'I'd like to thank both the National Education Union and UNISON for recognising the fact that the action that they took and the advice that they gave their members on Sunday was incorrect and that they have withdrawn that advice'. **Gavin Williamson was simply wrong. At no point have UNISON or the NEU said the guidance and advice to members was incorrect.**

That advice was issued before 4 January when Government was directing all schools to remain fully open to all pupils. On the 4 January, Government directed the closure of schools except for the attendance of vulnerable children and those of critical workers. Because of this radical change of Government direction, we removed the advice on section 44 from our websites. **But this emphatically does not mean we believe face-to-face work with full or near full classes in schools is safe in the current circumstances** – far from it. Neither does the removal of this advice from our websites indicate that we do not believe it was the right advice to give at the time.

Contrary to the impression given by the DfE circular, the existence of the new strain of the virus greatly exacerbates the serious risks to the health and safety of those working in schools. It is irrelevant that the new strain of the virus may not cause more serious illness in those children or adults who are infected by it. The increase

in risk arises from the fact that the new strain is highly transmissible, between 50-74% more transmissible than pre-existing variations of Covid-19, [according to London School of Hygiene and Tropical Medicine](#). The historic data on infection rates among teachers referred to by the DfE fails to capture the greatly increased threat arising from the new strain.

It is because of the new strain that infection rates and the R number have dramatically increased since December. It was precisely because of the “increase in risk associated with the new variant” that **SAGE recommended closing schools as part of a strategy of strengthening control measures at its meeting on 22**

December. That is why the Government finally decided to close schools to most pupils; and that is why school staff faced a greater risk of catching Covid-19 than they did before. This is, or should be, obvious to the DfE and Government.

In that light, is completely inadequate for the DfE to assert that the existing controls in school “create an inherently safer [sic] environment for children, young people and staff” and that the “way to control this virus is the same, whatever the variant”.

Members who work in schools have a right to work in a safe working environment, and workers who reasonably believe they are facing serious and imminent danger have the right to leave the workplace. The effect of those rights must be fundamentally reassessed owing to the greater risk of transmission posed by the new variant of Covid-19. The same applies to the existing control measures adopted in schools.

We only summarise the relevant legal provisions below. The key point is that all these legal duties must now be viewed in circumstances where Covid-19 is much more transmissible than it was before owing to the new strain.

- Schools owe duties under s 2 of the Health and Safety at Work Act 1974 to ensure, so far as is reasonably practicable, the health and safety of their employees. This includes a duty to provide work systems and work environments which are, so far as is reasonably practicable, safe and without risk to health. Schools owe similar duties to others, who are not in their employment, under s.3 of the Act.
- Under the Management of Health and Safety at Work Regulations 1999, employers must undertake a suitable and sufficient assessment of the risks to health and safety affected by the conduct of the employer’s undertaking. The risk assessment must be reviewed whenever there is a “significant change in the matters to which it relates”. The new strain of Covid-19 triggers this duty.

- Employers must establish appropriate procedures which enable employees to leave or stop work if they are exposed to serious, imminent and unavoidable dangers.
- Measures for controlling risks to health and safety must be adopted in accordance with a hierarchy of **measures set out in Schedule 1 to the 1999 Regulations**. The primary duty is “avoiding risks”, followed by “evaluating risks which cannot be avoided” and then “combating the risks at source”. All these duties point towards avoiding face-to-face teaching and teaching on-line given the high risk of transmission posed by the new strain.
- While there is a duty to provide suitable PPE to those who are exposed to risks to health and safety, this is only intended as a last resort, where a “risk has not adequately been controlled by other means”.
- Schools owe duties to assess risks and to protect employees against exposure to biological agents, such as the new strain of Covid-19, under the COSHH Regulations 2002.
- Employers must inform and consult with safety representatives under the Safety Representatives and Safety Committee Regulations 1977 (and the linked regulations where no union is recognised) on all matters to do with health and safety. This should include consultation on the appropriate steps to take in light of the risks posed by the new strain of Covid-19.
- Finally, under sections 44 and 100 of the Employment Rights Act 1996, employees are protected from detriment or dismissal where there exist circumstances of danger which they reasonably believe to be serious and imminent, and they leave or propose to leave, or otherwise refuse to return to their place of work. There are also protections under these provisions for those who take appropriate steps to protect themselves or others in circumstances which the employee reasonably believes amounts to a serious and imminent danger., These rights remain very relevant to those engaged in face-to-face work in schools, especially in light of the new strain of Covid-19. Employees must not be subjected to any disadvantage, such as deductions from pay, where they exercise these rights.

We hope that that this makes our position clear and corrects the impression given by the e-mail from the DfE.

Finally we would like to show our appreciation for the work of our sister head teachers unions NAHT and ASCL during this difficult period. We have shared this

letter with them and know that they are as exasperated with the Government as you are.

Mary W. Boustead.

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