



Department  
for Education

# **Advice on the NUT and NASUWT industrial action**

**December 2012**

# Summary

## About this departmental advice

This is advice from the Department for Education. This advice is non-statutory and answers a number of questions raised by headteachers and employers in relation to the NUT and NASUWT industrial action.

## Who is this advice for?

This advice is for:

- All organisations which employ teachers. Depending upon the type of school, this will be the local authority, the governing body or the Academy Trust.
- School leaders and governing bodies in all maintained schools and academies.

## Key points

- Members of NUT and NASUWT participating in the NUT/NASUWT action short of strike action are very likely to be in breach of their contracts of employment. This advice sets out the circumstances in which a breach of employment contract will have occurred.
- While this will always be a decision for schools, in such circumstances employers are entitled to make pay deductions. This advice sets out a suggested approach to making pay deductions if this is appropriate.

## NUT and NASUWT industrial action

Since 3 October 2012, the NUT and NASUWT have been undertaking national industrial action in furtherance of a trade dispute with the Secretary of State for Education. The unions have issued a series of 25 instructions. In the great majority of schools, the industrial action is not having an impact because teachers are instead focusing entirely on providing the best possible education for their pupils. In a small number of schools, however, the action is having a severe impact.

Members of NUT and NASUWT participating in this industrial action are very likely to be in breach of their contracts of employment. While this is always a decision for schools, in such circumstances employers<sup>1</sup> are entitled to make pay deductions. This advice sets out the steps that should be taken when considering pay deductions.

### Step 1 – Establishing whether there has been a breach of contract

Most teachers' contracts incorporate the School Teachers' Pay and Conditions Document ('STPCD'). For these teachers, a breach of the STPCD would amount to a breach of contract. The table at **Annex 1** compares the union instructions with the respective provisions in the STPCD and identifies instructions which, if followed, would result in a teacher breaching the STPCD.

Even if a teacher's contract is not based on the STPCD, a teacher could still be in breach of his or her contract<sup>2</sup>. All employees have a duty to serve their employer faithfully. This includes following reasonable, lawful instructions of the employer, even if this duty is not mentioned explicitly in the contract, providing that the act required is within the person's competence, and within their normal working hours. If there is clear evidence that a teacher is, on an ongoing basis, failing to follow the employer's reasonable, lawful instructions, and the purpose is to disrupt the effective operation of the school, an employee will be in breach of his or her contract.

### Step 2 – Deciding whether to refuse to accept part-performance of the contract

On the basis of evidence of a breach of contract, it is open to the employer, without dismissing the employee, to refuse to accept part-performance of the contract. An employer could inform an employee that unless the employee is prepared to carry out all of his/her duties without exception, they will be sent home without pay or that any work they will do will be treated as voluntary and will not be paid<sup>3</sup>.

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<sup>1</sup> Depending on the type of school, this will be the local authority, the Governing body, or the academy trust.

<sup>2</sup> For instance, the Court has found that overly literal construction of contractual rules or obligations to be a breach of contract.

<sup>3</sup> In following this course of action, it will be important that the employer informs staff that the employee's actions are regarded as a breach of contract and that the employer is insisting on the full range of contractual duties. It is also important to ensure that the employer's conduct is not such as to accept any

### Step 3 – Deciding whether to make pay deductions

Alternatively, if a breach of contract occurs, the employer may wish instead to accept part-performance of the contract and make appropriate pay deductions. This is because the right to be paid is dependent upon the employee being ready and willing to work in accordance with the entirety of the contract of employment.

It is important that schools act fairly and proportionately when making pay deductions<sup>4</sup>. We have therefore set out at **Annex 2** an appropriate approach to deducting pay for employees in breach of contract.

Decisions about pay deductions should always be made on a case by case basis: this advice is intended for general information and circumstances will vary in each school.

Employers should remain mindful that if pay is deducted from a teacher not in breach of his or her contract, that teacher will have a claim at an employment tribunal for wrongful deduction of pay<sup>5</sup>. If there is any doubt about whether an employee is in breach of his or her contract, the employer should seek legal advice on the individual case.

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purported performance by the employee.

<sup>4</sup> In terms of the amount of pay deducted, there are certain judicial views that allow employers to decide the appropriate level based on their own judgement, given that it is also open to them to pay nothing at all. We suggest though that the percentage pay deduction should be at a level which would be regarded as reasonable and proportionate to a reasonable and well-informed outsider.

<sup>5</sup> In order to be successful in the claim, the teacher will need to prove that he or she was, in fact, carrying out all duties required in the contract, was serving the employer faithfully and did not refuse to comply with reasonable, lawful instructions of the employer.

## Annex 1 – NASUWT/NUT action short of strike action instructions compared to STPCD

| Instruction   | Department's view of whether a breach of STPCD would occur if instruction is followed  | Additional Information   |
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| <p>1. Members are instructed not to participate in any appraisal/performance management process which does not conform to all elements of the NASUWT/NUT joint appraisal/performance management checklist and the joint classroom observation protocol.</p> | <p>Yes. Under the STPCD, teachers may be required to undertake the following duties:</p> <p>61.13 Participate in arrangements for the appraisal and review of their own performance, and, where appropriate, that of other teachers and support staff.</p> | <p>Ultimately it is in teachers' interests to participate in arrangements for their own appraisal, as pay decisions are made having regard to the outcomes of teachers' performance reviews/appraisal reports.</p> <p>If teachers refuse to participate in the appraisal of other teachers, they would be putting the pay of those others at risk. The headteacher decides who is to be each teacher's appraiser so could appoint an alternative if the original appraiser refused to participate in the arrangements.</p> |
| <p>2. Members are instructed not to participate in any form of management-led classroom observation in any school which refuses to operate a policy of a limit of a total of three observations for all purposes within a total time of up to three</p>     | <p>Yes. A teacher would be in breach of 61.13 (see above).</p> <p>However, the amount of observation would have to be reasonable for the teacher to be required to comply – both in terms of the</p>   | <p>This is an amplification of the above. The limit of 3 observations is one of the features of the NASUWT/NUT checklist. This instruction is much more restrictive than the previous 2006 PM regulations were because those regulations allowed</p>   |

| <b>Instruction</b>  | <b>Department's view of whether a breach of STPCD would occur if instruction is followed</b>                         | <b>Additional Information</b>   |
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| <p>hours per year.</p> <p>The only exceptions to the above are observations carried out by Ofsted inspectors as part of a Section 5 or Section 8 inspection of the school.</p>  | <p>arrangements in the school for observation generally and of what happens in practice for individual teachers.</p> | <p>more than 3 observations (provided that they did not exceed 3 hours in total) and because the limit applied to observations for PM purposes only - not to all observations.</p> <p>The 2012 appraisal regulations place no limits on classroom observation.</p> <p>Union guidance lists further exceptions (e.g. for NQTs). There is an implied, but not explicit, exception for those in capability procedures.</p> |
| <p>3. Members are instructed not to carry out classroom observation in any school which refuses to accept that there will be a limit of a total of three observations for all purposes within a total time of up to three hours per year.</p> | <p>Yes. A teacher would be in breach of 61.13 (see above).</p> <p>See also comments in row 2.</p>                    | <p>This is an amplification of the above, but is directed at those who would carry out the lesson observations. The limit of 3 observations is one of the features of the NASUWT/NUT checklist.</p> <p>See also comments in row 2.</p>  |

| Instruction   | Department's view of whether a breach of STPCD would occur if instruction is followed   | Additional Information  |
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| <p>4. Members are instructed not to organise or co-operate with any arrangements which involve pupils commenting on, or observing the work of, teachers or being involved in decision making about teachers' roles, responsibilities, pay or promotion.</p> | <p>Yes, in relation to observation (if the school's appraisal policy included references to pupil input). The teacher would be in breach of 61.13 (see above).</p> <p>If the school's appraisal policy did not include reference to pupil input, the teacher would still be in breach of 61.13 but the school would be operating outwith its policy so the teacher could have a legitimate complaint.</p> <p>Yes, in relation to recruitment (if school policy included references to pupil input). Under the STPCD, teachers may be required to undertake the following duties:</p> <p>61.11 Contribute to the recruitment, selection, appointment and professional development of other teachers (and support staff).</p> | <p>There is no formal role for pupils under the new appraisal regulations or suggested in the DfE model policy, but some schools may wish to introduce such a role (for example by giving teachers objectives related to pupil satisfaction).</p> <p>We are aware that some schools have pupil interview panels as part of their recruitment process.</p> |
| <p>5. Members should refuse to be observed teaching by anyone who does not have</p>   | <p>Yes. If the school policy was that those without QTS could observe teachers a</p>  | <p>The DfE model policy envisages that observations for appraisal purposes will be</p>  |

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| qualified teacher status (QTS).  | <p>teacher would be in breach of 61.13 (see above).</p> <p>If school policy was that only those with QTS should carry out lesson observations, the teacher would still be in breach of 61.13 but the school would be operating outwith its policy so the teacher could have a legitimate complaint.</p>   | carried out by those with QTS, but that is optional, not a statutory requirement.   |
| 6. Members are instructed not to participate in mock inspections commissioned by the school, sponsor/provider or local authority. Members are instructed not to undertake or co-operate with any preparation for a Section 5 or Section 8 Ofsted inspection commissioned by the school, sponsor/provider or local authority. | <p>Yes. As part of their professional responsibilities as set out in the STPCD paragraph 56.3, a headteacher may be required to undertake the following duties:</p> <p>to develop, implement and evaluate the school's practices and by 56.4 to lead and manage teaching throughout the school.</p> <p>Paragraph 61.16 requires a teacher to collaborate with colleagues.</p> | A headteacher may decide to use a 'mock inspection' in order to inform their decision making and develop a strategy that is capable of raising the school's standards. Non-cooperation would prevent the head from being able to effectively discharge his or her duties. |
| 7. Members are instructed to produce only  | Yes. Under the STPCD teachers may be  | The STPCD does not stipulate the format that reports should take, or set a limit on   |



| Instruction | Department's view of whether a breach of STPCD would occur if instruction is followed  | Additional Information   |  |
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|             | <p>one written report annually to parents.</p>   | <p>required to undertake the following duties:</p> <p>61.3 Assess, monitor record and report on the learning needs, progress and achievements of assigned pupils.</p> <p>61.15 Communicate with pupils, parents and carers.</p>  | <p>the number of occasions that reporting should take place.</p> <p>The frequency and format of reports is more likely to be set by individual school policies and the failure to follow school policies may be considered a breach of contract.</p>   |
| 8.          | <p>Members are instructed to refuse to implement any existing management-led policies and working practices which have not been workload impact assessed and agreed by the NASUWT/NUT.</p> | <p>Yes. Under the STPCD teachers may be required to undertake the following duties:</p> <p>61.5 Contribute to the development, implementation and evaluation of the school's policies, practices and procedures in such a way as to support the school's values and vision.</p> <p>61.16 Collaborate with colleagues and other professionals within and beyond the school.</p> | <p>Whilst the STPCD sets out a number of matters to which headteachers and school governors, when carrying out their duties, must have regard - in relation to headteachers' and teachers' well-being, work/life balance along with adherence to the working limits set out in the Working Time Regulations (63.4), there is no specific requirement for school policies and working practices to be workload impact assessed.</p> |
| 9.          | <p>Members are instructed to refuse to implement any new management-led</p>  | <p>Yes. Paragraphs 61.5 and 61.16 apply to</p>   | <p>See above comment. It will always be useful to involve school staff in the</p>  |

| Instruction  | Department's view of whether a breach of STPCD would occur if instruction is followed  | Additional Information  |
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| <p>working practices or policies which have not been workload impact assessed and the subject of consultation and agreement with the NASUWT/NUT.</p>   | <p>this instruction also.</p>  | <p>formulation of new policies and practices and how those can best be implemented – paragraph 61.5 supports that position. However, there is no requirement for new policies to be collectively agreed by all staff prior to implementation.</p> |
| <p>10. Members are instructed not to attend any meetings outside school session times which are not within directed time and where there is no published directed time calendar for the academic year which has been agreed with the NASUWT/NUT.</p> | <p>There are two specific elements to this instruction. Determining whether, by following it, a teacher would breach the provisions of the STPCD requires each to be considered separately:</p> <ul style="list-style-type: none"> <li>- Failure to attend meetings outside of school session times, which are not within directed time, would not breach the STPCD.</li> <li>- Failure to attend meetings where there is no directed time calendar for the academic year that has been agreed with the NASUWT/NUT, simply for that reason, would breach the STPCD.</li> </ul> | <p>Although non-statutory guidance within Section 4 of the STPCD suggests every school should publish a calendar for each school year, there is no statutory requirement to do so.</p>  |

| Instruction | Department's view of whether a breach of STPCD would occur if instruction is followed   | Additional Information |
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|             | <p>The STPCD sets out teachers' 'Specified working hours'. Paragraph 62.4 requires a full-time teacher to be available to perform such duties as may be specified by the headteacher for 1265 hours, with those hours being allocated reasonably throughout those days in the school year on which the teacher is required to work.</p> <p>Paragraph 62.5 applies this requirement to teachers with part-time contracts, to the extent of the proportion of the 1265 hours relative to the teacher's total remuneration.</p> <p>Paragraph 62.8 provides that a part-time teacher cannot be asked to be available for work on any day of the week, or part of any day of the week that the teacher is not normally required to work under their contract.</p> <p>Paragraph 62.6 also requires that in addition to those 1265 hours, or for part time teachers the relevant proportion of 1265 hours, a teacher must work "such</p> |                        |

| Instruction  | Department's view of whether a breach of STPCD would occur if instruction is followed   | Additional Information   |
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|  | <p>reasonable <u>additional</u> hours as may be necessary to enable the effective discharge of the teacher's professional duties". The paragraph goes on to provide examples, but not an exhaustive list, of what those duties may be.</p> <p>Paragraph 62.7 of the STPCD prevents a headteacher from determining how many additional hours should be worked or when those hours should be worked.</p> <p>We consider non-attendance purely on the grounds that there is not a predetermined directed time calendar would be in breach of paragraph 61.5.</p> |  |
| 11. Members should refuse to agree to timetable changes where no sound educational reasons have been given for the change. | Yes. Paragraph 62.4 requires a full-time teacher to be available to perform such duties as may be specified by the headteacher for 1265 hours, with those hours being allocated reasonably throughout those days in the school year on which the teacher is required to work.   | There is no guarantee that, once determined, a school's timetable, will not need to be amended to reflect, often unavoidable, circumstances within the school. Whilst it is clearly good practice to avoid frequent or unnecessary changes to the timetable, and to consult staff on any changes, the STPCD does not require |

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|  |  | agreement to be reached before changes can be implemented. Similarly, in these circumstances the STPCD does not give grounds for a teacher to refuse to implement any changes made.   |
| 12. Members are instructed not to submit lesson plans to members of the senior management team or anyone acting on behalf of the senior management team. | Yes. Under the STPCD teachers may be required to undertake the following duties:<br><br>Paragraph 61.2 provides that teachers may be required to "Plan and teach lessons and sequences of lessons to the classes they are assigned to teach within the context of the school's plans, curriculum and schemes of work." | The STPCD does not stipulate teachers must formally document their lesson plans. However, it is likely that school policies will stipulate the expected format of lesson plans, e.g. written.<br><br>Headteachers will need to consider lesson plans in order to carry out their duties under 56.3 to develop, implement and evaluate the school's practices and 56.4 to lead and manage teaching throughout the school. Paragraph 61.16 again requires a teacher to collaborate with colleagues and so any refusal is likely to prevent the headteacher from being able to perform the duties described above. |

| Instruction  | Department's view of whether a breach of STPCD would occur if instruction is followed  | Additional Information  |
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| <p>13. Members are instructed only to send and respond to work-related emails during directed time.</p>  | <p>Yes - if sending or receiving emails are necessary to enable the effective discharge of the teacher's professional duties.</p> <p>Paragraph 62.6 requires that in addition to the required 1265 hours (paragraph 62.4), or for part time teachers the relevant proportion of 1265 hours (paragraph 62.5), a teacher must work "such reasonable <u>additional</u> hours as may be necessary to enable the effective discharge of the teacher's professional duties". The paragraph goes on to provide examples, but not an exhaustive list, of what those duties may be.</p> | <p>Teachers may be able to manage their day so that they send and respond to emails during directed time. However, there is nothing within the STPCD that stipulates that a teacher should only send and/or respond to emails during directed time.</p>                                   |
| <p>14. Members should ensure that they have on their timetable a minimum of 10% guaranteed time for PPA. Members will refer any failure to provide the time to the NASUWT/NUT to implement the procedure for refusing to teach their timetabled lessons, unless all members at</p> | <p>By virtue of the STPCD paragraphs 63.5 and 63.6, a teacher is entitled to reasonable periods of time for planning, preparation and assessment to enable the discharge of their professional responsibilities of teaching and assessment and that must not amount to less than 10%</p>   | <p>Should a teacher not receive their entitlement we would expect the headteacher to rectify this. It is not clear whether the NASUWT/NUT instruction is suggesting, in these cases, every teacher in the school should refuse to teach all timetabled lessons pending reinstatement,</p> |

| <b>Instruction</b>   | <b>Department's view of whether a breach of STPCD would occur if instruction is followed</b>   | <b>Additional Information</b>  |
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| <p>the school are guaranteed on their timetable a minimum of 10% timetabled time for PPA.</p>  | <p>of the teacher's timetabled teaching time.</p> <p>If a teacher refused to teach their timetabled lessons they will be in breach of the STPCD paragraph 62.4, which requires a full-time teacher to be available to perform such duties as may be specified by the headteacher for 1265 hours, with those hours being allocated reasonably throughout those days in the school year on which the teacher is required to work, or paragraph 62.5 if they are a part-time teacher.</p> | <p>but if so, we would consider this would be a disproportionate response.</p>   |
| <p>15. Members should only undertake in PPA time planning, preparation and assessment activities which they determine are appropriate to support their timetabled lessons.</p> | <p>Yes. The STPCD (paragraphs 63.5 – 63.8) guarantees teachers no less than 10% of their timetabled teaching time in order for planning and preparation and assessment (PPA) to enable the discharge of the professional responsibilities of teaching and assessment.</p> <p>However, the STPCD does not limit this</p>  | <p>Although it is anticipated that most PPA time is used in relation to time-tabled lessons, the STPCD does not limit teachers use of this time for time-tabled lessons purposes only.</p> |

| Instruction  | Department's view of whether a breach of STPCD would occur if instruction is followed   | Additional Information  |
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|  | time to only planning, preparation and assessment in support of their time-tabled lessons.  |   |
| 16. Members should refuse to accept the direction of the headteacher to undertake any other activity, including cover, in PPA time.  | Yes, if alternative arrangements for PPA time to be taken at a later time are made. The STPCD gives teachers a contractual entitlement to a minimum amount of PPA time (no less than 10% timetabled time) for the purposes of PPA.  | Where a teacher is directed by the headteacher to perform specified duties during a period normally set aside for PPA, alternative arrangements should be made for PPA time to be taken at a later date/time in order to prevent the loss of entitlement.   |
| 17. Members paid on the leadership spine or in receipt of a Teaching and Learning Responsibility (TLR) payment should refuse to undertake any leadership or management responsibilities unless they have their contractual allocation of dedicated timetabled time to support the discharge of these responsibilities. | Yes. Under the STPCD, teachers may be required to undertake the following duties:<br><br>61.5 Contribute to the development, implementation and evaluation of the school's policies, practices and procedures in such a way as to support the school's values and vision.<br><br>63.9 provides that a teacher with leadership or management responsibilities is entitled, <u>as far as is reasonably practical</u> , to a reasonable amount of time during school | The nature of the roles of those teachers paid on the leadership spine or receiving TLR payments is likely to include a strong element of management/leadership responsibility that runs as a thread throughout their specified, or indeed their additional, hours. It would be difficult, therefore, to identify where specific management or leadership responsibilities begin and end. |



| Instruction | Department's view of whether a breach of STPCD would occur if instruction is followed   | Additional Information |
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|             | <p>lessons for the purpose of discharging those responsibilities.</p> <p>In order to be paid a TLR payment, paragraph 23.1 of the STPCD requires a teacher's duties to include a significant responsibility that, amongst other matters, involves leading, managing and developing a subject of curriculum area, leading and managing pupil development across the curriculum and leading, developing and managing the teaching practice of other staff.</p> <p>Paragraphs 58.1-58.3 of the STPCD require a teacher paid on the leadership spine (deputy head and assistant heads) to play a major role in the overall direction of the headteacher in formulating aims and objectives of the school; establishing policies through which they are to be achieved; managing staff and resources to this end; monitoring progress towards their achievement and also to undertake any professional duties of the headteacher</p> |                        |

| Instruction | Department's view of whether a breach of STPCD would occur if instruction is followed   | Additional Information   |   |
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|             |   | reasonably delegated by the headteacher.   |   |
| 18.         | <p>Members should refuse to undertake leadership and management activities without being paid a TLR or on the leadership spine.</p> | <p>Yes. Under the STPCD, teachers may be required to undertake the following duties:</p> <p>61.5 Contribute to the development, implementation and evaluation of the school's policies, practices and procedures in such a way as to support the school's values and vision.</p> <p>61.6 Work with others on curriculum and/or pupil development to secure co-ordinated outcomes.</p> <p>Paragraph 63.9 provides that a teacher with leadership or management responsibilities is entitled, as far as is reasonably practical, to a reasonable amount of time during school lessons for the purpose of discharging those responsibilities.</p> | <p>By virtue of the STPCD, there is an expectation that all teachers will have a role in contributing to leadership and management activities of their school. It does not necessarily follow, therefore, that those sorts of activities would be considered to be a 'sustained additional responsibility' or would include a sufficiently significant responsibility, which is not required of all classroom teachers – those being key criteria used to consider whether a teacher's post merits a TLR. Only headteachers, deputy headteachers or assistant headteachers may be paid on the leadership spine.</p> |
| 19.         | Headteacher members with a 50% or more timetabled teaching commitment   | Rights to dedicated headship time, conferred by paragraph 57.2 of the STPCD  | A headteacher will have a clear influence over the amount of headship time  |

| <b>Instruction</b>   | <b>Department's view of whether a breach of STPCD would occur if instruction is followed</b>  | <b>Additional Information</b>   |
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| should refuse to undertake their teaching commitment unless they have an allocation of dedicated headship time on their timetable. | entitle headteachers to a reasonable amount of time during school sessions, having regard to their teaching responsibilities, for the purpose of discharging their leadership and management responsibilities.  | identified within the school's timetable. It will be for them to take steps to ensure their working practices meet the requirements of the STPCD. |
| 20. Members should refuse to cover for absence.  | <p>Yes, subject to the following. Under the STPCD, teachers (who are not employed wholly or mainly for the purpose of providing cover) may be required to undertake the following duties:</p> <p>61.7 Subject to paragraph 63.10 to supervise and so far as practicable teach any pupils where the person timetabled to take a class is not able to do so.</p> <p>63.10 Teachers should be required to provide cover only rarely, and only in circumstances that are not foreseeable.</p> | The STPCD is clear that it is acceptable for a teacher to be required to provide cover in certain circumstances, as set out in paragraph 63.10.   |
| 21. Where teachers are released from timetabled teaching commitments as a  | Yes, provided the activity is one that the headteacher could otherwise request a  | If this time is to be considered towards the 1265 (or pro-rated hours for part-time   |

| Instruction  | Department's view of whether a breach of STPCD would occur if instruction is followed  | Additional Information   |
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| <p>result of pupils being on study or examination leave, members should refuse to undertake any activities during that time other than in Section 4, paragraphs 76-77 of the School Teachers' Pay and Conditions Document (STPCD).</p> | <p>teacher to do under paragraph 62.4 (64.3 for pro-rated staff). There is nothing within the statutory provisions within the STPCD that prescribe activities that should be undertaken during periods of pupil study or examination leave. Section 4 of the STPCD is non-statutory guidance.</p> <p>Paragraph 62.4 requires a full-time teacher to be available to perform such duties as may be specified by the headteacher for 1265 hours (62.3 – pro-rated for part time staff), with those hours being allocated reasonably throughout those days in the school year on which the teacher is required to work.</p> | <p>staff) specified hours that a teacher is required to work, a headteacher may direct a teacher to perform duties as required to meet the aims and objectives of the school.</p>  |
| <p>22. Members should refuse to undertake supervision of pupils during the lunch break.</p>  | <p>No. Rights conferred by paragraph 63.2 of the STPCD prevent a teacher from being required, under their contract of employment as a teacher, to undertake midday supervision.</p>  | <p>The STPCD is clear that it is not part of a teacher's role to undertake midday supervision. Paragraph 63.3 also confers upon those teachers who work for more than one session in a single day a right to a break of reasonable length between 12</p> |

|     | Instruction  | Department's view of whether a breach of STPCD would occur if instruction is followed  | Additional Information   |
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|     |  |  | noon and 2pm.  |
| 23. | Members should refuse to invigilate any public examination, including GCSEs and SATs.  | Yes. Rights conferred by paragraph 63.11 of the STPCD make reference to teachers' participation in arrangements for preparing for external examinations. It goes on to state that where those arrangements do not call for the exercise of a teacher's professional skills and judgment, such as invigilation, a teacher should not be <u>routinely</u> expected to do so. | Although paragraph 63.11 does not advocate routine involvement in examination invigilation the STPCD does not exclude teachers from doing so. Schools should always look to deploy teachers in a way that makes best use of their professional skills and expertise and it follows that to be routinely deployed to invigilate external examinations may not be effective use of their time. |
| 24. | Members should refuse to undertake the invigilation of any 'mock' examinations where the school reorganises the timetable to replicate the external examination process. | Yes. There is no statutory provision within the STPCD to prevent a teacher from invigilating a mock examination.   | We consider there may be instances where this activity would be appropriate e.g. teachers may be required to conduct practical and oral examinations in their own subject area and to undertake the preparation of pupils and those aspects of assessment, recordings and reporting associated with external examinations, which require the professional input of a                         |

|     | <b>Instruction</b>   | <b>Department's view of whether a breach of STPCD would occur if instruction is followed</b>   | <b>Additional Information</b>   |
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|     |  |  | qualified teacher.  |
| 25. | Members should refuse to undertake administrative and clerical tasks as exemplified in Annex 4 of the STPCD. | Yes. Paragraph 63.12 of the STPCD makes clear that a teacher would not be required to <u>routinely</u> undertake tasks of a clerical or administrative nature that do not call for the exercise of a teacher's professional skills and judgment, | Although paragraph 63.12 does not wholly exclude teachers from undertaking tasks of a clerical or administrative nature, it does prevent them from doing so routinely. However, we do consider there to be circumstances that it would be appropriate as there are many activities in schools that require a mixture of professional judgement and administrative input e.g. writing reports on pupils' progress. |

## **Annex 2 – Advice on an appropriate approach to deducting pay for employees in breach of contract**

1. If a teacher breaches his or her contract, this should formally be recorded and written evidence sought (where possible).
2. When a decision to deduct pay is made, the employer (or the headteacher acting on its behalf) should write to teachers in breach of their contract setting out the ways in which they are breaching their contract and warning them that, if they continue to breach their contract after a certain date, a specified percentage of their salary will be deducted on an ongoing basis. The teachers should be asked to acknowledge receipt of the letter. If they do not, an additional copy should be provided to them with a reminder asking them to respond.
3. Some teachers may respond by stating that they will no longer breach their contract and that no pay deduction should be made. In such cases, the employer should take steps to confirm that the teacher is now not breaching his or her contract and that there is no basis on which to deduct pay.
4. After the date specified in the warning letter, pay deductions should be made at the level set out in the letter. These deductions should only relate to the period during which the teacher is in breach of contract and after the specified date. It is important not to deduct pay in respect of periods the teacher is not in breach of their contract and has not been warned that pay deductions will be made.



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