

**Holland Haven Primary School**  
**Extraordinary Committee Meeting (EGM) - 3 January 2021**

**In attendance**

Jackie Sharman, Sue Bardetti, Katie Williams, Richard Walker, Andrew Dunnett, Ti Chase, Sharlie Patel, Abi Murphy, Carolyn Terry

Julie Nightingale attended for part of the meeting

**Purpose of EGM**

The EGM was called in response to a need for Governors to consider the impact of advice issued by Unions to their members on whether enough information on the Covid rate of infections had been provided to enable the school to make an appropriate decision on whether it was safe for the school to open or not, along with the response should staff submit letters claiming they did not feel safe to attend

The EGM attendance consisted of enough Governors to be quorate

**Meeting Discussions**

The content of the advice, circulated ahead of the meeting (see Appendix A) was reviewed as to the reasons a staff member could submit a S44 or S100 letter (detail in Appendix B), and the main point to be considered would be that the staff member would need to give clear reasons on why they didn't feel safe to attend school, and allow these issues to be reviewed and if appropriate addressed.

Pay was not guaranteed for any staff deciding to not attend in these circumstances

There had not been any child or staff Covid related sickness in the Autumn term, and the school's Covid Risk Assessment has been reviewed and updated with the latest Covid lockdown 3.0 position.

Governors all agreed the Risk Assessment was comprehensive and covered all areas in detail.

An email has been sent to staff to ascertain whether any were intending to submit S44 or S100 letters. Once this is known it will be able to finalise staffing levels for the start of term, this would need to be managed alongside 3 teachers and 4 LSAs that would be off due to needing to self isolate

Clare Kershaw, Director for Education has also written to all schools in the Tendring, Colchester and Uttlesford to update that Essex County Council has written to the DfE urgently request that primary schools in these areas are also added to the Covid Contingency Framework and only open to the children of critical workers and vulnerable children, and were waiting for a response. As a result, ECC were requesting that HH moves to a remote education day for both Monday 4 January and Tuesday 5 January, but to open for critical worker children and vulnerable children on the Tuesday. This decision also allows an extra day to review responses from any staff deciding to not return to school

Remote learning plans have already been put in place for the term, with teachers paired up with one providing remote learning and the other face to face teaching and then swapping.

Governors offered to provide support by delivering: -

- hard copy packs of materials to children who were unable to access remote learning on-line
- sandwiches to any children that were entitled to free school meals

25/3/21  
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## **Appendix A – email from NAHT to members on 2 January 2021**

We started sending an email to all members with a link to our latest advice. The sheer volume of you logging onto our website at the same time resulted in it timing out.

We apologise for this. We have now included the email message with the advice below.

By now, you may be aware of the advice provided to NEU members on how to rely on statutory rights under health and system legislation to refuse to attend workplaces they consider to be unsafe.

NAHT understands why the NEU has issued such advice. When an employer - and in these circumstances, the government is acting as the employer with its directions to state schools - fails in its duty, statutory protections are all that's left to employees.

You will have read in my update this morning that, along with ASCL, we wrote to the government yesterday under the procedures of Judicial Review Proceedings in an attempt to deal with the same issues.

The difference in approach from the unions in this regard is best explained by the balance of roles that we represent.

As leaders, it falls to you and your governing body/trust board to take action to ensure a safe working environment. The final decision sits with the governing body/board.

We do not believe the government has provided you with a sufficient ability to do this in the light of current infection rates.

That said, it would be inappropriate for school leaders to criticise members of their teams for seeking to rely on statutory provisions unless and until the government can provide a compelling case that the working environment meets the statutory test that it is safe. This applies to the whole school community, not just staff.

You can find our advice below on how to deal with the issues that may now arise.

Best wishes

## **Appendix B – Advice from NAHT**

### **Advice**

#### **What are sections 44 and 100 Employment Rights Act 1996 (ERA)?**

Under s44, individual employees have the right not to be subjected to detriment if they refuse to attend/leave work due to their reasonable health and safety concerns. Under s100, an employee's dismissal for refusing to attend/leave work due to their reasonable health and safety concerns is automatically unfair. These provisions are particularly pertinent amid concerns about the new covid-19 variant.

While there is no precedent on the application of this legislation during the pandemic, a broad interpretation would likely be applied, and the legislation would apply to covid-19.

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**How do staff invoke section 44 and 100 Employment Rights Act 1996? What is the procedure?**

Notification of the decision to rely on this provision should be communicated to the employer as soon as possible.

The employee should be asked to explain their concerns in detail and writing. Careful consideration should be given to the issues raised, and where possible, consideration should be given to any steps that could be taken to mitigate the risk.

If further steps are taken to reduce the risk, these should be communicated to the employee.

However, given the concerns are likely to relate to issues surrounding the transmission of the new covid-19 variant, it is unlikely that school leaders will be in a position to resolve these concerns.

**What should I do about individual members of staff who say they will not come in?**

The school's operational risk assessment should be revisited to consider any staff absence due to health and safety concerns. Clearly, staff levels will be a factor that will need to be considered when determining how a school can continue to operate safely.

As in normal times, a reduction in staffing levels could necessitate a partial or full school closure. Schools should communicate this to parents in the way they normally would for short-notice school closures. Please see our guidance document on school closure.

**Should/can I compel staff to attend?**

You will undoubtedly be aware that NAHT is formally pressing the government for the scientific evidence on which it is basing its decisions on schools opening. In the absence of definite evidence on this point, it may be difficult to provide sufficient assurances to resolve the staff members' concerns.

We would strongly advise that you seek further specific guidance before taking any action against an individual employee to avoid potential liability under the employment legislation.

**Why is NAHT not advising its members to invoke sections 44 and/or 100?**

Sections 44 and 100 set out the test, which requires an individual who relies on this section to demonstrate that "they reasonably believe there to be a serious and imminent danger that they could not be reasonably expected to avert".

As a school leader, you are responsible for much wider decision-making about the safety of opening your school to staff and pupils, and your risk assessment should reflect and evidence your decisions and assessment of the risk. While, of course, you have the protection of sections 44 and 100 as an individual employee, your responsibility as a leader extends to the wider safety concerns for the school as a whole.

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Our advice has been clear that we will support individual members who conclude that their school is unsafe and should not be opened.

**Do I still need to provide care for vulnerable and key worker pupils?**

The guidance provides that schools must open for the children of key workers and the vulnerable. Of course, it is still the case that any school opening for any group of pupils is subject to an appropriate risk assessment that determines that it is safe to do so.

**What should I do if I receive a letter from another union asking to see my latest risk assessments?**

It is good practice to share risk assessments to encourage the engagement of trade union representatives and staff. Workplace union safety representatives should continue to be consulted on the process of risk assessment. If you receive a request for information about your risk assessment that appears unusual or outside of the normal engagement process, please contact our specialist advice line (0300 30 30 333 and select option 1) for further guidance.

**What should I do now? How can I assess who will work on Monday so that I can inform parents?**

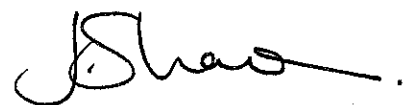
Given the recent announcement by NEU advising its members of their individual right to invoke the protection of s44 and 100 ERA, it would be prudent to contact staff in advance of school opening on 4 January so that you can establish if any member of staff intends to follow this guidance.

We would recommend an immediate communication to all staff that asks them to let you know if they plan not to attend school, and if so, on what basis they are making this decision. This will allow you the opportunity to take the steps listed above and expedite your decision-making process.

**How to maintain cover for the most vulnerable and the key workers**

We understand that NEU members will cooperate in working with school leaders to ensure that there is sufficient cover in place to facilitate schools opening and providing cover for the children of keyworkers and vulnerable children. As always, you will need to look at the staff you have available and your risk assessment before deciding what level of care and supervision you can offer.

25/3/21

A handwritten signature in black ink, appearing to read 'J. Shaw', with a long horizontal stroke extending to the right.