



TEACHER COVER

GUIDANCE FOR DIVISIONS, ASSOCIATIONS AND NUT REPRESENTATIVES

INTRODUCTION

This briefing deals with the provision that teachers should 'only rarely' cover which has been part of teachers' conditions of service since September 2009. The document sets out guidance on ensuring this provision is fully and properly implemented in schools.

Notwithstanding the fact that these provisions became part of teachers' contracts in 2009, the NUT believes there is a need for continued vigilance with regard to their implementation, in particular where school or local authority policies on cover and teacher absence may be subject to revision.

BACKGROUND

Since September 2009, teachers have only been required to provide cover for absent colleagues 'rarely', in circumstances which are not foreseeable. This provision applies to all teachers, including head teachers, teachers on the leadership spine, advanced skills teachers and part-time teachers. It applies to teachers, in England and Wales, employed by a local authority or by the governing body of a foundation, voluntary aided or foundation special school. It may also apply to teachers in academies and will do so where teachers have transferred when a school has adopted academy status. It does not, however, apply to teachers employed wholly or mainly to provide cover in a school.

Alongside this provision, there is a duty upon head teachers to ensure that cover for absent teachers is shared equitably among all teachers in a school.

In March 2009 the NUT issued its advice on the meaning and implementation of the new provision to ensure that it achieved its aim of reducing teacher workload. This was followed, in May 2009, by guidance from the Workforce Agreement Monitoring Group (WAMG)¹ also known as the Social Partnership. The guidance entitled 'Rarely Cover Implementation Guidance' can be accessed on the Local Government Employers website at <http://www.lge.gov.uk/lge/core/page.do?pagelId=1157845>.

It is important to be aware that during its existence, WAMG had no statutory basis and its guidance had, and continues to have, no special status in law. WAMG guidance does not supersede local agreements; rather, it has the status of a suggestion as to how the 2009 cover provisions should be implemented.

Where the 'rarely cover' provision is not properly implemented or amendments to school cover policies are proposed, NUT members can be assured that the Union will take all

¹ WAMG was abolished by the coalition government in 2010

appropriate steps to support members in protecting their entitlements, including strategies for collective action, and legal action where relevant.

TEACHERS' RIGHT TO 'RARELY COVER' FROM 1 SEPTEMBER 2009

As stated above, from 1 September 2009 a new provision was included in the School Teachers' Pay and Conditions Document (STPCD) as an individual contractual right of every teacher to cover for absent colleagues 'only rarely, and only in circumstances that are not foreseeable.'

Cover is defined within the list of professional duties of teachers contained in the STPCD as "supervising and so far as practicable teaching any pupils whose teacher is not available to teach them". Cover is therefore based on the absence of the teacher who is assigned to a class or group of pupils, rather than being based on the availability of a teacher because their own class is absent, such as during gained time when a class is on examination leave. Indeed, guidance to the 2011 STPCD states that 'the absence of the person(s) who has been timetabled to take a particular class or group is the trigger for cover.' (Paragraph 59, section 4, STPCD 2011).

Definition of 'Only Rarely'

The Union's view is that teachers should be asked to undertake cover **only** in exceptional circumstances, such as emergency situations.

In addition, the view of the NUT is that 'only rarely' applies not just to the number of individual occasions, but to the total number of hours that a teacher is asked to provide cover on a particular occasion. A teacher who is asked once in a year to take pupils from a split class for a whole day while their teacher is absent would be covering for at least 5 hours, which would not fall within the definition of 'rarely'.

The Union opposes the introduction of a fixed hours limit to cover duties as this would be incompatible in practice with cover being undertaken only rarely or exceptionally, as it would become an expectation that teachers could be asked to provide cover to that limit.

The WAMG guidance refers to cover being undertaken in circumstances which are not foreseeable. The 'Rarely Cover Implementation Process Guidance' (the WAMG guidance) refers to the need for robust systems to deliver the contractual entitlement to cover for absent colleagues only rarely. Each school's 'robust system' would be expected to 'deal with all foreseeable events, but would not be expected to deal with unforeseeable events.'

This definition is helpful. It is the Union's view that most events which prompt a need for cover will be foreseeable. For example, it will be foreseeable that a number of staff are likely to take sick leave or maternity leave. In many areas of England and Wales it will be foreseeable that there may be adverse weather or traffic conditions which will affect teachers' attendance, although it may be that any particular occurrence is itself unforeseen. It will certainly be foreseeable that there will be a need for cover to be arranged when teachers are absent from school due to other work commitments such as school trips, external meetings, or INSET. This definition of what should be included within school policies on cover allows NUT representatives to argue that all such events which take teachers out of school should be provided for within the school cover policy.

The WAMG guidance underlines the definition of 'foreseeable' by suggesting that schools analyse their historical patterns of absence. The WAMG guidance assumes that most cover is required due to generous leave of absence policies, an assumption which the NUT questions. When engaging with consultation on a school absence policy, representatives will want to participate in identifying the reasons why teachers may be absent from school, including those occasions which are due to other work-related commitments, in order that the school cover policy is able to apply to the full range of reasons that a teacher may not be available for their class.

In addition to the previous helpful definition, the WAMG guidance unfortunately includes a reminder that "when devising strategies to implement 'rarely cover' schools should bear in mind that 'rarely' does not mean 'never'".

School Cover Policies

Guidance to the STPCD 2011 states that 'every school should have in place a clear policy and robust system that does not require teachers or the head teacher to provide cover other than rarely'. (Paragraph 61, Section 4, STPCD 2011).

Schools should have an effective cover policy which establishes a strategy for dealing with planned and unplanned absences of teachers. This will ensure that cover can be arranged in a speedy and appropriate way. Where revisions are proposed to a school cover policy, or to related policies on teacher absence, teachers should be fully consulted.

What should be covered in the School Cover Policy?

The NUT advises that the school cover policy should:

- identify that the purpose of the policy is to set out ways in which provision can be made for the absence of teachers **without an increase in workload for teachers** at the school;
- focus on the use of **qualified teachers to provide cover**. Teachers may be employed on a full time basis to provide cover in a school or across a local authority, or on a part time or supply basis. Permanent minimum hours contracts may be negotiated to ensure both flexibility and employment security for cover teachers;
- ensure that it is possible for cover to be provided by a **qualified teacher** both where the absence is planned, such as when a teacher will be absent on an educational visit, and when it is unplanned, for example because of adverse weather or traffic conditions or when a teacher is sick;
- ensure that **teaching assistants are not expected to work outside their proper role**. If there are cases where a head teacher will not employ supply cover and chooses instead to cover a planned absence by deployment of a cover supervisor or HLTA, there are statutory limitations on the use of cover supervisors and HLTAs which must be respected (see Appendix). Where a head teacher seeks to deploy a teaching assistant in a role which is beyond those limitations, it will be possible to take further steps to challenge such a breach of statutory provisions;

- provide for cover by colleague teachers **only in those exceptional cases in which all other options have been exhausted**. Financial difficulties are not included in such exceptional cases. The Union believes that it is not appropriate for head teachers to suggest that financial situations require teachers to cover rather than provide the proper arrangements within the cover strategy;
- set out that even though teachers may provide cover only rarely, it is important that, so far as is reasonably practicable, **the burden should be shared evenly** among all staff so that, over a year, arrangements are equitable. The retention of a cover log will assist in this respect;
- provide that existing **non-contact time will be respected**, as the purpose of the provisions is to reduce teacher workload;
- include guidance on the **setting of work** for staff covering lessons when teachers are absent. Teachers should not routinely be asked to set or plan additional lessons for use by cover staff. The exception to this would be during gained time where teachers can be directed to 'identify appropriate materials for use by supply staff and/or cover supervisors.' (Section 4, paragraph 77, STPCD 2011).

The advantage of using regular supply teachers to provide cover in a school will be that they will be familiar with planning documentation and schemes of work. The WAMG guidance on cover supervisors specifically states that 'the arrangements for providing appropriate work for pupils who are being supervised should not place additional burdens of planning, preparation and assessment on teachers.'

- **Not undermine existing contractual and agreed arrangements** for leave of absence.

The school cover policy may also helpfully set out the situations in which the cover policy will apply. For example:

Split Classes

A class whose teacher is absent may be split and shared between other classes. As this is a form of cover, splitting of classes should occur only 'rarely' and when other strategies for providing cover have failed.

Educational Visits

Educational visits are planned activities which should be provided from within the school cover policy. Teachers should not be asked to provide cover if a colleague is absent on a visit, unless there is an emergency, as it would not be reasonable for provision not to have been made for a planned activity.

Support can be found in the guidance to the 2011 STPCD which states that 'learning outside the classroom is an important part of the curriculum and provision for it should be included in school calendars and timetables. Appropriate arrangements should be included in the timetable for both the staff and pupils who will be participating in learning

outside the classroom and for those who are not.’ (Paragraph 73, Section 4 STPCD 2011).

There have been suggestions that head teachers may seek to reduce the number of educational visits due to pressure on resources as a result of the cover provisions. Any such moves would be very unwelcome, and should be strongly resisted as educational visits are an important element of pupils’ learning activities.

Gained Time

‘Gained time’ is the time during the academic year, particularly in the summer term, when teachers who take examination classes or groups are released from some of their timetabled teaching commitments as a result of pupils being on study or examination leave. Teachers may be directed to use gained time to cover for a colleague. This should, however, only happen rarely, in accordance with the 2009 provisions.

Work undertaken during gained time will, however, not necessarily come within the definition of cover as ‘supervising and so far as practicable teaching any pupils whose teacher is not available to teach them’. There is a list of duties within the guidance section of the STPCD² which sets out the duties which it will be reasonable for a teacher to be directed to undertake if classes are absent:

- (a) developing/revising departmental/subject curriculum materials, schemes of work, lesson plans and policies in preparation for the new academic year. This may include identifying appropriate materials for use by supply staff and/or cover supervisors;
- (b) assisting colleagues in appropriate, planned team teaching activities;
- (c) taking groups of pupils to provide additional learning support;
- (d) supporting selected pupils with coursework;
- (e) undertaking planned activities with pupils transferring between year groups or from primary schools; and
- (f) where the school has a policy for all staff to release them for CPD during school sessions, gained time may be used for such activities.

It is only where such activities are being undertaken with pupils whose teacher is absent, that the activities will necessarily be considered to be ‘cover’, in which case the ‘rarely cover’ provision will apply.

Opposing Review of Leave of Absence Policies

The WAMG guidance focuses heavily on absence management as a way of reducing the need for cover. The Union continues to reject this conflation of a teacher absence policy with a cover strategy. There will be times when a teacher is not available to teach their class, but is still engaged in work activities, which will also prompt the need for cover.

² Section 4, paragraph 77 STPCD 2011

The WAMG guidance suggests that the majority of cover requirements are for situations over which the school will have some control. It recommends that schools' leave of absence policies 'should cover the following elements:

- for what activities leave of absence will be granted;
- the length of the leave for each type of absence;
- whether the leave will be paid or unpaid;
- who in the school has the authority to grant the leave – for the head teacher this would normally be the chair of the governing body.'

The guidance suggests that there should be consultation with teachers and support staff on an "absence and cover policy" and sets out the process by which this should be done.

The Union continues to reject the notion that renegotiation of leave entitlements is justified, or that it is appropriate for policies that will affect contractual entitlements to take place at school level where those contractual entitlements have been established at local authority or diocesan level.

It is important to remember that in schools where the LA is the employer, collective agreements on absence made with the LA will form part of teachers' contracts. The employment relationship of teachers in community schools is with the local authority, so that school policies which impinge on contractual rights will not be valid. All attempts at school level to cut back on, for example, hospital appointments in school hours, leave for religious observance and time off to care for sick relatives, should be resisted. The Union is prepared to take legal and collective action to protect both contractual rights and custom and practice at school level. Where appropriate, the Union will consider ballots for industrial action.

It is also important to resist claims that the WAMG guidance has a special status which requires that it is followed. It does not, having no statutory basis, and is no more than an agreement between the WAMG partners as to how 'rarely cover' might be implemented.

In order to do this effectively Division Secretaries should check contractual entitlements to leave that have been agreed locally and should seek to ensure that school representatives are fully aware of these entitlements and the need to be alert for proposals at school level which could threaten the entitlements.

School representatives should be prepared to resist attempts to agree school absence and cover policies which would undermine such contractual entitlements.

Any attempts to amend absence monitoring procedures so that 'trigger periods' become harsher, or reporting requirements are made more onerous should be resisted. Should such steps be threatened in any review of a school cover policy, the Union is prepared to take legal and collective action to prevent teachers' conditions of employment and work from deterioration. Where appropriate, ballots for industrial action will be considered.

NUT guidance on absence monitoring procedures is available on Hearth at: <http://www.teachers.org.uk/node/5801>.

NUT guidance on leave of absence is available at: <http://www.teachers.org.uk/node/12839>.

The Union advises that representatives engage with the development of school cover policies which respond to the historical pattern of teacher non-availability to teach their class, whether that is for reasons which result in planned or unplanned absence, and establish arrangements which provide for cover by supply or cover teachers. The school cover policy should be as comprehensive as possible.

Opposing Re-timetabling

The WAMG guidance includes reference to re-timetabling within the academic year as well as from year to year. Such measures could include the re-timetabling of those teachers who have gained time, so that they are no longer 'covering' for an absent teacher as the re-timetabling will have re-designated them as the relevant teacher for that class. Guidance to the STPCD makes it clear that 'in-year changes to the calendar and timetable may be made, but this should be only for sound educational reasons – for example, a long-term absence or significant educational development. Such changes during the year should not be a frequent occurrence.' (Paragraph 72, Section 4, STPCD 2011).

The Union will support NUT representatives in opposing proposals to re-timetable as part of a review of school cover policies, other than 'for sound educational reasons' as described above.

TAKING ACTION TO ENSURE TEACHERS RARELY COVER

1. Local Negotiations

As a recognised trade union, the NUT has rights to information, consultation and negotiation with the local authority. Where a local authority fails to meet its obligations under existing bargaining arrangements, a collective dispute may be lodged. Further advice should be sought on collective and legal strategies to protect bargaining arrangements.

Any attempts by LAs to re-negotiate leave of absence arrangements should be resisted strongly. Where the LA persists in attempts to make detrimental changes to teachers' entitlements, advice should be sought on pursuing collective and legal strategies to protect current provisions.

Division and association secretaries should seek to secure local agreements which include an express agreement that cover supervisors and HLTAs will be used only in the limited circumstances set out in the legislation and that supply teachers will be engaged to ensure pupils receive teaching from a qualified teacher.

Discussions on cover policies will also give an opportunity to seek agreement as to the employment and deployment of supply teachers. The Union's advice

document, 'Supporting Supply Teachers – Guidance for Members', which includes guidance on the impact of 'rarely cover', can be found at <http://www.teachers.org.uk/node/14723>.

2. Ensuring Implementation in Schools

Where a school cover policy is proposed that

- does not comply with the provisions of the STPCD on 'rarely cover'; or
- seeks to worsen local contractual entitlements to leave of absence;

the Union will pursue collective and legal remedies as necessary and appropriate. Where the Union's position has not been achieved in a school, Division secretaries will want to consider the best way forward with the NUT representative and school group concerned, with advice from the Regional/Wales office.

APPENDIX

IN WHAT CIRCUMSTANCES CAN A TEACHING ASSISTANT PROVIDE COVER?

The Union believes that every effort should be made by schools to employ supply teachers. Despite the clear arguments for cover to be provided by a qualified teacher, some head teachers will wish to deploy teaching assistants in such roles.

There are statutory limitations on the ways in which teaching assistants can be deployed to provide cover.

1. Cover Supervision

Cover supervision can be lawfully carried out by a teaching assistant. Cover supervision takes place when no active teaching takes place and pupils carry out, under supervision, work which has been prepared in advance.

The STPCD advises that 'cover supervision is particularly valid....where work has been set, or where pupils are able to undertake effective self-directed learning'. (Paragraph 88 of Section 4 of the 2011 STPCD). NUT policy, agreed at Annual Conference 2009 sets out that cover supervisors should not be used for more than the first 3 days of absence in secondary schools and for more than the first day of absence in primary schools.

The WAMG Guidance Note on Cover Supervision includes advice which may assist with arguments for only limited deployment of cover supervisors:

1. 'Cover supervision occurs when there is no active teaching taking place. Pupils would continue their learning by carrying out a pre-prepared exercise under supervision.' (paragraph 2) 'The arrangements for providing appropriate work for pupils who are being supervised should not place excessive additional burdens of planning, preparation and assessment on teachers.' (paragraph 7)
2. 'Cover supervision should only be used for short term absences' (paragraph 8). 'Head teachers will use their professional judgement in determining what should be regarded as a 'short-term' absence. There will be a number of considerations which the head teacher will need to take into account when deciding whether cover supervision is appropriate or not:
 - the extent to which the continuity of learning can be maintained;
 - the length of time a particular group of pupils would be working without a teacher;
 - the proportion of the total curriculum time affected in a specific subject over the course of a term.' (paragraph 9)

The NUT believes that a definition of short-term absence should be included in a school's cover strategy.

3. 'In a setting where a class is predominantly led by one teacher for the majority of the day, it is likely that cover supervision would very quickly become 'specified work' and active teaching would be required. This would, therefore, fall under the Education (Specified Work and Registration) (England) Regulations' (paragraph 10).

The NUT recognises that this is more likely to be the case in primary settings and, therefore, cover supervisors are predominantly secondary based.

4. The WAMG guidance note on cover supervision does suggest that cover supervisors should only be used for up to three days.

2. "Specified Work"

There are restrictions on the circumstances in which a teaching assistant can be deployed to do what is known as "specified work". A teaching assistant who has undertaken HLTA training can be directed to undertake specified work within the restrictions set out below. If not, they can only undertake cover supervision.

Specified work is defined in the Education (Specified Work and Registration) (England) Regulations 2003 as:

- (a) planning and preparing lessons and courses for pupils;
- (b) delivering lessons to pupils. This includes delivery via distance learning or computer aided techniques;
- (c) assessing the development, progress and attainment of pupils; and
- (d) reporting on the development, progress and attainment of pupils.

The Regulations set out that in addition to these duties being carried out by an HLTA-trained teaching assistant who the head teacher is satisfied has the skills, expertise and experience, an HLTA-trained teaching assistant must only undertake 'specified' work:

- to support and assist a qualified teacher;
- under the supervision of a qualified teacher.

Whilst the Union argues that pupils should have the benefit of the availability of a qualified teacher, if the above conditions are met, a head teacher is allowed by law to deploy an HLTA to carry out such work. The Union advises that where regrettably head teachers do deploy HLTAs in this way, they should provide cover only on a very short-term basis.

The Union believes that those who are qualified to undertake HLTA work should be employed on such a basis for all of their work at a school and not given

separate contracts for different roles. WAMG Guidance Note 22 supports this view.

Inappropriate and Unlawful Deployment of Teaching Assistants

Where NUT representatives are aware that teaching assistants are being requested to go beyond the proper limits of their role, they should inform their local representative or Regional Office, in order to discuss ways in which this can be challenged and remedied.

Support staff unions have concerns that their members are being asked to carry out work beyond their role and without proper pay and conditions, and support staff in schools may be advised to seek advice from their own union.

Where teaching assistants are being deployed in a way which is outside the statutory provisions, this should be challenged. Employers who allow such deployment may be in breach of statutory duty. The Union will pursue appropriate collective and legal remedies for such breaches.