



Dear Chair of Governors

NUT and NAHT boycott of KS2 English and mathematics tests (SATs) in 2010

We wrote to you in March to tell you of our joint decision to ballot for a boycott of the Key Stage 2 English and mathematics tests in 2010.

You will know that both of our unions secured good majorities for the action and have called on our leadership members to take the following action from 4 May 2010:

- Refuse to follow the test opening, checking and administrative procedures;
- Refuse to carry out the 2010 tests;
- Refuse to ensure that all eligible and able pupils take the tests;
- Store the unopened test papers securely until such time as they are collected.

This action relates to a trade dispute between the NAHT and NUT and the Secretary of State. It is not a dispute between heads and governors and we think it is important that this vital relationship is fostered over the coming period.

The role of Governors

We agree with the advice that the National Governors' Association (NGA) gives on its website, which clarifies that Governors should not get involved in the administration of the tests if the head teacher is boycotting them:

"...The duty to arrange the tests falls directly on the head teacher and is clearly an operational matter. If the boycott goes ahead the governing body should not get involved in operational matters and should not get involved in the administration of the tests. The governing body can reasonably enquire of the head teacher (assuming your head teacher is a member of the NAHT/NUT) what action they will be taking and what steps are in place to administer/manage the tests. The governing body cannot force the tests to be carried out, and should not try to do so, but it may remind the head teacher of the government's view of the boycott's legalities..."

Secretary of State's advice to Governors

Ed Balls and Vernon Coaker have written to Governors suggesting that they should seek to run the tests despite a head teacher boycotting and should find another "competent" person to administer the tests.

Ed Balls' advice flies directly against the Local Government Employers' (LGE) advice which states: *"Neither is it permissible under current legislation for governing bodies to engage the services of agencies to run the tests which teachers in the school are refusing to arrange. Regulation 7 of the Conduct of Employment Agencies and Employment Business Regulations 2003 makes it unlawful for agencies to supply or introduce work seekers to replace employees who are undertaking industrial action. They are also restricted from supplying temporary labour to replace employees who are covering for employees undertaking industrial action."*

We will continue to advise head teachers to follow our industrial action advice and to keep the 2010 papers securely locked up.



Mr Balls' advice also suggests that governing bodies should ask head teachers to stay at home while someone else administers the tests. To take such a measure would be a disproportionate escalation of the dispute and would seriously damage relationships between heads and governors. It is a very foolish thing for Government to suggest.

Is our action legal?

Both of our unions have taken legal advice at all stages and we are confident that our trade dispute is legal. The dispute relates to the way that national curriculum tests can have negative consequences for the pay, tenure and career prospects of our head teacher, deputy head teacher and assistant head teacher members.

We wrote to the Secretary of State on 1 March stating our intention to ballot and outlining the terms of the dispute. At the time of writing this letter to you we have had no response from the Secretary of State to our 1 March letter to indicate that he intends to challenge the legalities of the dispute. We have also sought talks under the auspices of the Advisory, Conciliation & Arbitration Service (ACAS) to seek a resolution to the dispute but the Government has failed to respond to invitations from ACAS to meet.

Should Governors deduct pay?

The LGE has issued advice to local authorities, suggesting that governing bodies can withhold pay from members who only give "partial performance" of their duties as a result of the boycott of SATs-related activities. The LGE also advises that governing bodies should "consider what proportion of pay can legitimately be withheld", whilst noting that, where alternative work is undertaken to substitute for boycotted work, it will be questionable whether any deduction can lawfully be made.

The NUT and NAHT believe that no deductions from pay should be made and governing bodies should not be put under pressure to deduct.

There is no requirement for governing bodies to make deductions, and a refusal to do so would not amount to acceptance of the action or breach of contract or leave a governing body open to challenge. In the 1993 Key Stage tests action, no governing body was challenged for a refusal to make deductions.

It is also noted that the LGE does not attempt to advise about the amount of deduction that might be made, unsurprisingly given that those taking action will continue to perform the broad range of leadership duties and responsibilities despite boycotting SATs-related activities. Leaving governing bodies to make assessments as to whether there has been 'partial performance' by deciding what part the administration of the tests plays in the performance of duties, and to make a corresponding deduction, opens them to unnecessary and damaging challenge.

It is most unfortunate that the LGE has issued this advice, and that governing bodies may be led to believe that they have a duty to take steps which would lead them into conflict with their leadership teams. We believe that governing bodies will want to avoid such unnecessary and damaging conflict.

We recognise that Governors are legally bound not to support our action. However, there is an opportunity for Governors to show support for our ongoing *educational* campaign by visiting our websites and signing our petition to join the growing chorus for change to the way we assess children's progress in Year 6.

Yours sincerely



Christine Blower – NUT General Secretary



Mick Brookes – NAHT General Secretary

www.teachers.org.uk

www.naht.org.uk