

Covid-19 branch bargaining advice

Covid-19 branch process/cycle

Negotiation:

- 5 W's and UCU 5 tests (sector and national variations)
- risk management framework
- risk assessments (generic and specific)
- safe systems of work
- serious and imminent danger procedure
- policies and procedures to support above.

Ongoing review (jointly with institution management):

- monitoring and implementation of risk assessments
- employer contingency plans based on 'tiered' risk assessments
- health surveillance data and other relevant information held by employer
- national, local, and sector-wide infection rates
- government infection control measures and systems
- union inspection and investigation of incidents and near misses.

Actions:

- if employer fails to consult union regularly on health and safety measures
- if employer refuses to accept union advice on necessary safety measures
- if employer issues instruction for workers to return to work despite known risks to health and safety.

Steps branches can take with ongoing support and advice from their regional/devolved nation office:

- formally reject employers risk assessment(s) as not 'suitable and sufficient'
- union investigations and inspections – reports and findings
- report to regulatory body (HSE, Local Authority)
- campaign, organise and publicise failings
- individual advice to members
- template letters (union letters to employer and individual letters)
- emergency safety committee and/or joint negotiating committee meeting

- formal letters from regional or national union
- advice to protect members from serious and imminent danger
- submission of failure to agree, formally declare a dispute locally
- initiate ballot for industrial action national support and resources.

Negotiation

Negotiations can continue to be framed using UCU 5 tests which have both national and sector variations (<https://www.ucu.org.uk/coronavirus>). Following UCU guidance issued to branches earlier in the pandemic, most branches will now have in place a risk management framework, serious and imminent danger procedure and effective negotiation arrangements to allow for ongoing meaningful consultation. Covid-19 risk assessments should also be in place following consultation with unions and subject to regular monitoring and review.

Example branch action checklist:

- ✓ Covid-19 Risk Management Framework is agreed which sets out a clear and transparent approach to safety management and consultation with trade unions.
- ✓ All risk assessments and safety measures should recognise the unequal impact of the pandemic on different groups of workers who are most affected and at risk from the effects of Covid-19.
- ✓ Equality impact assessments of proposed safety measures should be undertaken to identify and address any potential differential impact.
- ✓ Covid-19 Serious and imminent danger procedure agreed where staff may need to remove themselves from serious and imminent danger.
- ✓ Current risk assessments reviewed to ensure they continue to eliminate, or control identified risks to low levels during Covid-19 pandemic.
- ✓ New risk assessments developed to ensure the virus can be effectively eliminated or controlled within the workplace to prevent staff contracting Covid-19.
- ✓ Generic, organisation level stress risk assessment developed to prevent or control any potential stressors arising from Covid-19 and any new working arrangements.
- ✓ Employer policies and procedures reviewed to ensure that they do not increase potential for harm to health, safety or welfare or increase risk of Covid-19 transmission.
- ✓ Health surveillance systems should be in place to ensure the effectiveness of control measures and safe systems of work. Health surveillance can act as an early warning system for any outbreaks within the workplace.
- ✓ Appropriate collective bargaining fora should be identified for the ongoing review of risk management processes and risk assessments to ensure their effectiveness. This could be through established collective bargaining structures, including safety committees where these exist.

Ongoing review

We are now at a crucial point in the pandemic with the wider re-opening of colleges and universities which is increasing risks to staff, students and the wider public.

Several significant changes are occurring at this time and we need branches to take urgent action and continue (or re-open if necessary) negotiations with employers to prevent any Covid-19 related illness or deaths from occurring due to workplace changes. Any significant changes should lead to an immediate review of the risk assessments and the safety measures in place in the workplace in consultation with trade unions. Reg 5 of the Management of Health and Safety at Work Regulations 1999 requires employers to monitor and review risk assessments and safety measures on an ongoing basis to ensure adequate control, monitoring and review of protective and preventative measures.

Significant changes

- Data on national and local infection rates (e.g. Infection rate is increasing, local outbreaks occurring, infection rate for 17-21 year olds is very high (SAGE and indie-Sage)
- Unreliable and ineffective test, trace and isolate system (availability of testing low, insufficient tracing, poor compliance with isolation)
- New requirements on employers - to produce outbreak management plans in line with government 'Tiering'
- Expectations on employers – wider re-opening of colleges and universities
- Local outbreaks and local lockdowns

Emerging issues for review

Ventilation – Risk assessments should take account of different environmental factors and appropriate controls that need to be in place. As colder winter weather sets in, opening windows will be a less viable control measure. Rooms with mechanical ventilation should be reviewed by specialists who can ensure ventilation systems bring in a sufficient proportion of fresh air, do not have outlets that dump recycled air in places where people may congregate, and that systems are appropriately cleaned and maintained. Poorly ventilated areas should not be used.

Face masks – UCU believe face masks should be used in all indoor settings with appropriate exemptions. The employer should take responsibility for the safe usage and disposal of face masks and see face masks as an *additional* safety measure, *not the primary* safety measure to be utilised. Monitoring of compliance should not be delegated to staff where this will create an increased risk of conflict or work-related stress.

Online delivery – Employers should maximise online delivery and minimise face-to-face teaching to as low a level as possible until UCU 5 tests can be met. We don't expect any

employers at this stage in the pandemic to be moving to full face-to-face teaching and we would expect any blended learning models and on-site duties to involve reduced numbers of face-to-face interactions for limited periods of time. Those areas unable to operate online should only resume face-to-face interactions where risk assessments indicate this is safe to do so.

Rationale to take precautionary approach (not exhaustive)

- The increase in movement of students across the country to attend colleges and universities risks wider spread of Covid-19.
- Face-to-face teaching will increase risks of Covid-19 transmission between and across different staff and student groups and risk spreading Covid-19 to the local community. Employers have a moral and legal duty to protect staff and students from harm and take preventative and protective measures.
- National and local infection rates are increasing, and infections rates are expected to rise further in the next month. It is likely that this will necessitate a switch to remote delivery of education very soon. If employers take decisive action now, staff can focus on the development of high-quality online delivery, prevent further disruption to students' education and better manage staff workloads during the autumn term.
- In many HE and FE workplaces it will be difficult to prevent transmission of Covid-19 due to the complex nature of educational delivery and the mixing of student bubbles across education, residential and social settings.
- Employers will find it difficult to identify and contain individual cases of Covid-19 due to lack of testing capacity for those with Covid-19 symptoms and those who are asymptomatic. Similarly, employers will find it difficult to contain infections due to the limitations of government track, trace and isolate systems.

Employers' legal duty

Employers must operate within the legal framework in the UK to ensure employees are safe and protected from harm while at work. The Health and Safety at Work Act 1974 requires employers to take a precautionary approach to health and safety in the interests of all who may come into contact with their undertaking. They must conduct *suitable and sufficient* risk assessments to avoid or mitigate against any potential risks to workers health, safety and welfare. For instance, if employers know through the emerging data that social distancing can be difficult to maintain, that social mixing is likely to occur outside of any 'bubbles' and that there is a general lack of compliance to isolation requirements across the general public, they should seek to implement additional control measures to avoid the risks or reduce the risks to as low a level as possible. Employers must also factor local and national infection rates and the effectiveness of local and national test, trace and isolate systems into risk assessments to ensure control measures are effective. The employer's ability to prevent or control risks to low levels must be reflected in their operational delivery plans and this means anticipating Covid-19 transmission risks and implementing preventative and protective measures.

Outbreak management plans

The latest government guidance for colleges and universities in England requires education providers to develop outbreak management plans that will allow them to adapt elements of their provision at very short notice. Covid-19 recovery models vary across nations and sectors but all follow an incremental path to extend or restrict face-to-face delivery of teaching and on-site presence. In England the government guidance for both HE and FE suggests 4 *tiers* of risk management controls. These start with a default position of full operational delivery (FE Tier 1) and blended learning with face-to-face tuition (HE Tier 1). Tier 2 and 3 reduce face-to-face delivery and increase restrictions incrementally until Tier 4 – described as a '*last resort*'. At Tier 4 the majority of learning would be online and only essential workers and eligible children of key workers, SEN students and those with EHC plans would be expected on-site.

UCU branches should consider how far government guidance for outbreak management plans complies with the employer's duties under the Health and Safety at Work Act 1974 and the Regulations that sit under this. Branches should make the case locally for where they feel their institution should be operating based upon government *Tiers* or recovery models. There are likely to be contradictions in the government guidance but UCU are clear that the duty to implement preventative measures under Health and Safety legislation must take priority and consider the latest data and research.

Although there is both national and sectoral variation in outbreak containment guidance there is commonality across the UK nations in their definitions of individual cases, clusters, outbreaks and community spread of Covid-19. See example from Department for Health and Social Care (DHSC) below.

Differential levels of outbreaks (DHSC)

'On a sliding scale, there are a range of outbreak scenarios that require appropriate actions:

- *cases refer to individual cases of Covid-19*
- *clusters refer to 2 or more cases associated with a specific setting in the absence of evidence of a common exposure or link to another case*
- *outbreaks refer to 2 or more confirmed cases associated with a specific setting with evidence of a common exposure or link to another case*
- *community spread refers to sporadic or linked cases on a limited or extensive basis'*

Contingency plans should also consider how and when employers should change their delivery models if government support structures are not fit for purpose (for instance, the effectiveness of government testing, track, trace and isolation of cases which is essential to identify and contain any potential outbreaks).

Union health and safety reps

UCU health and safety reps should utilise their statutory rights to information, facilities and assistance from employers to enable them to undertake their statutory functions. Specifically, we expect UCU H&S reps to be given sufficient detail on infections within workplaces to undertake investigations, inspections and to engage in meaningful consultation on all health and safety measures needed within the workplace to prevent exposure to Covid-19. Branch officers engaging in health and safety discussions with employers should also be appointed as union H&S reps and inform the employer of their appointment to ensure the employer is aware of their statutory functions and rights to information.

Branches should also consider the government 'Tiers' and which level they feel is most appropriate. Branches should draw upon the latest science and data as part of their negotiations (for example, **SAGE Further Education Report, SAGE Higher Education Report, Independent Sage**) to allow a preventative and precautionary approach to be taken which meets the requirements of H&S legislation.

The principles of prevention

Regulation 4 of the Management of Health and Safety at Work Regulations 1999 requires employers to implement protective and preventative safety measures in the workplace by following these principles which set out a hierarchy of control:

- avoid risks altogether
- evaluate any risks that cannot be avoided
- combat risks at source
- adapt the work to the individual
- adapt to technical progress
- replace dangerous work with safe or safer alternatives
- prioritise collective over individual protective measures; and
- give workers appropriate instructions.

Given that Covid-19 can lead to serious long-term illness or death, the risks are high, and employers must reduce risks to low levels before expecting any return to face-to-face delivery.

Actions

There are a number of circumstances where UCU branches may believe there is a health and safety risk to all staff or individual members, and it is important that branches are able to respond effectively to these challenges. In doing so it may be necessary to consult the regional/devolved nation office for additional support and advice.

Possible scenarios where union branches should escalate concerns (not exhaustive)

- If employer fails to consult union regularly on health and safety matters
- If employer refuses to accept union advice on necessary safety measures
- If employer issues instruction for workers to return to on-site, face-to-face work despite known risks to health and safety

Example: The union feels the risk assessment is not 'suitable and sufficient' as required by regulation 3 of the management of Health and Safety at Work Regulations 1999.

- Inform the employer in writing that you don't believe the risk assessment is suitable and sufficient
- Identify clearly where there are shortfalls in the risk assessment or its implementation
- Detail the additional controls you want to see implemented as part of the risk assessment
- Give the rationale for additional controls you believe are needed to prevent harm in the workplace (e.g. moving to online delivery, compulsory use of face masks)
- Emphasise the employer's duty of care to staff and students to protect them from harm
- Emphasise the employers moral and civic duty to prevent transmission of Covid-19 and promote public health in their local communities and beyond.
- Report any breaches of health and safety legislation as a trade union reps to the HSE via union.covidconcerns@hse.gov.uk.

Example: The union feels members could be at risk of serious and imminent danger

Unions can advise members who feel at risk of serious and imminent danger to follow the locally negotiated procedure for Serious and Imminent Danger under Regulation 8 of the Management of Health and Safety at Work Regs 1999 where this applies.

Branch guidance for **further education** and **higher education** encouraged the negotiation of a serious and imminent danger procedure for Covid-19. Employers should have this procedure in place to comply with the following legislation:

The Management of Health & Safety at Work Regulations 1999 – Regulation 8:
Establish procedures to be followed in any emergency and in serious and imminent danger, and appoint competent people to implement them: and ensure they can stop work and immediately proceed to a place of safety in the event of their being exposed to serious, imminent and unavoidable danger, and do not return to work until the danger is removed.

The Management of Health & Safety at Work Regulations 1999 – Regulation 14:
requires that workers must work in a safe manner, and tell the employer if there is a

serious and imminent danger, or where they believe there is a shortcoming in the employer's protective arrangements.

If employers **do not** have this procedure in place branches should request this be rectified immediately in consultation with unions and widely publicised to all employees. Seek advice from regional/devolved nation offices where needed to ensure development of a robust 'serious and imminent danger procedure'.

Where a 'serious and imminent danger procedure' for Covid-19 has been agreed, branches can advise their members to follow these procedures where applicable. Ensure that the procedure allows a worker to stop work immediately, be that *withdrawal from* or *no engagement with* the work activity, and to enter a place of safety. Ensure the escalation steps are clear so that workers can raise their concerns once they are in a place of safety. The employer should ensure no others are exposed to harm and that appropriate advice and support can be offered to all those affected.

Unions can advise members of their legal rights under section 44 of the Employment Rights Act with due caution

It is unlawful for trade unions to seek to induce their members to breach their contracts (including by refusing to attend for work or downing tools and leaving the workplace) unless the unions have the protections accrued by having gone through the necessary legal steps to take lawful industrial action. Disputes over health and safety matters can form the basis for lawful industrial action, although, of course, the timescale involved in balloting and other procedural requirements in preparation for industrial action is likely to be too long to respond to any urgent health and safety issue.

Branches should make it absolutely clear in any communication that the union is not asking or encouraging the member to do or to refrain from doing anything at all. It is merely providing information as to their individual rights under ss. 44 and 100. That is something that any trade union must be permitted to do, in order to protect its members' health and safety.

Example: Individuals at increased risk of serious and imminent danger and branch needs to issue individual advice

Branches will have access to a number of template letters to protect individual members who are at increased risk of contracting Covid-19 or being exposed to dangerous situations in the workplace. Letters will be specific to individual's personal circumstances.

Example: Branch has not been consulted collectively, there is high risk of Covid-19 transmission within the workplace and the employer refuses to take the necessary preventative and protective measures in line with legislation

Work together with regional/devolved nation office to protect members' health and safety and utilise the options below as appropriate to local circumstances:

- formally reject employers risk assessment(s) as not 'suitable and sufficient'
- union investigations and inspections – reports and findings shared with employer
- report failings in health and safety to the regulatory body (HSE, Local Authority)
- campaign, organise and publicise failings widely
- individual advice to members
- template letters (union letters to employer and individual letters)
- emergency safety committee and/or joint negotiating committee meeting
- formal letters from regional or national union
- advice to protect members from serious and imminent danger
- submission of failure to agree, formally declare a dispute locally
- initiate ballot for industrial action
- national support and resources.

Additional resources

UCU Covid-19 Resources home page: <https://www.ucu.org.uk/covid19>

Independent SAGE resources: <https://www.independentsage.org/>

SAGE FE Report 3rd September:

<https://www.gov.uk/government/publications/principles-for-managing-sars-cov-2-transmission-associated-with-further-education-3-september-2020>

SAGE HE Report 3rd September:

<https://www.gov.uk/government/publications/principles-for-managing-sars-cov-2-transmission-associated-with-higher-education-3-september-2020>

Hazards Campaign: <http://www.hazardscampaign.org.uk/>

UCU H&S Factsheets: <https://www.ucu.org.uk/hsfacts>

SRSC Regs - 'Brown Book': https://www.ucu.org.uk/media/4830/TUC-Safety-representatives-and-safety-committees/pdf/R25807_Safety_Reps_Brown_Book_2015_UCU.pdf

Government guidance:

English government guidance to Further and Higher Education:

<https://www.gov.uk/government/collections/further-and-higher-education-coronavirus-covid-19>

Covid-19 Contain Framework (DHSC):

<https://www.gov.uk/government/publications/containing-and-managing-local-coronavirus-covid-19-outbreaks/covid-19-contain-framework-a-guide-for-local-decision-makers>

Welsh government guidance for Further and Higher Education:

<https://gov.wales/further-higher-education-coronavirus>

Scottish government guidance for Higher Education:

<http://www.gov.scot/publications/coronavirus-covid-19-universities-colleges-and-student-accommodation-providers/pages/progressing-through-the-phases/>

Northern Ireland government guidance for Further and Higher Education:

<https://www.nidirect.gov.uk/articles/coronavirus-covid-19-advice-schools-colleges-and-universities#toc-2>

Covid-19 National Framework Prisons:

<https://www.gov.uk/government/publications/covid-19-national-framework-for-prison-regimes-and-services>

Outbreak Management guidance for Prisons:

<https://www.gov.uk/government/publications/covid-19-prisons-and-other-prescribed-places-of-detention-guidance/covid-19-prisons-and-other-prescribed-places-of-detention-guidance#what-to-do-if-an-outbreak-of-covid-19-occurs-in-a-ppd>