

Minimum Service Levels for Education Consultation: United Learning response

This is a response on behalf of United Learning to the consultation document *Minimum Service Levels for Education* published on 28 November 2023¹. We are submitting our response in writing rather than via the online portal as the key points we wish to make in response to the proposals go beyond the narrow set of questions there.

Background on United Learning

We are a group of schools which aims to provide excellent education to children and young people across the country. We seek to improve the life chances of all the children and young people we serve and make it our mission to bring out 'the best in everyone' – students, staff, parents and the wider community. Uniquely, our Group includes significant numbers of schools in both the public and the private sectors, working together for mutual benefit. Our growing group has over 100 schools, from Cumbria to the south coast, over 60,000 pupils and over 10,000 members of staff.

Points in response to the consultation

Neither we nor any other school employer will in practice issue work notices

The legislation² places no duty on employers in schools to implement a minimum service level. In that context, whilst the legislation provides that an employer may give a work notice, it is inconceivable that any employer will in fact choose to do so.

On the whole, employers in the school sector deplore strikes and think they are harmful to children and to a key public service as well as inconvenient to parents. Any good school leader will already be taking all reasonable steps to keep their school open for as many pupils as possible, as indeed is expected by the DfE's guidance on handling strikes. But they also recognise that employees have a right to withdraw their labour and believe that the correct balance between the right to strike and the need to deliver a public service is struck by the *status quo*.

School leaders recognise that issuing a work notice would be inflammatory, damage industrial relations and harm their image as an employer throughout the sector. It would make it impossible to retain the goodwill and discretionary effort of staff; harder to retain staff; and the reputational impact would make it harder to attract new staff. In the end, this would have a more negative impact on children and parents than the strikes themselves. Especially in a difficult labour market, it is inconceivable that rational employers will issue work notices.

We think that the policy in its current form is wrong in principle and in its details and likely to be self-defeating in practice. We will not be issuing work notices if the policy goes ahead as is.

We disagree in principle with the concept of a 'Minimum Service Level' for schools

The concept of a 'Minimum Service Level' is not one that can coherently be applied to schools. There is no 'level' of service, less than normal provision, which must unarguably be maintained at all times, as there is for some other public services. In healthcare, for example, emergency services and life-saving treatment must continue in the interests of public safety and to avoid loss of life, and because that is obvious, this is what already happens during industrial action.

¹ [Minimum service levels for education consultation](#)

² [Strikes \(Minimum Service Levels\) Act 2023 \(legislation.gov.uk\)](#)

In the school context, there is no gradation of service, such that some parts deal with immediate threat to life (or other pressing emergency) while others do not. A school is also not like a railway, where service is gradated by quantity and choice, where only those with a pressing need to travel will choose to do so on a strike day and such that one driver driving one train could provide a limited service on a line – if a school is to open for anyone, significant staffing is required; and if it is not to open for everyone, some must be required to attend and some prohibited from attending.

Delivering education to all pupils on roll is essential and that is the service schools should provide. If the ‘minimum’ service is something less than this, for example one of the options proposed in the consultation, it calls into question what exactly schools are delivering on a normal day.

We disagree with further limiting the right to strike

We believe that education is the most essential public service – the one that shapes the entire future of our society. That is why so many of us have dedicated our working lives to improving the educational outcomes and life chances of children and young people. Anything that disrupts education is therefore, in our view, harmful. We share others’ concern about the disruption to children caused by industrial action in the last academic year following the serious harm caused by covid lockdowns.

Our own strong opposition to anything that disrupts children’s education is, however, an inadequate basis for denying others the right to withdraw their labour. We agree that these competing rights have to be balanced, but the appropriate balance is achieved through pre-existing legislation, and in the Department’s existing *Handling Strike Action in Schools* guidance.

As we disagree that the concept of a minimum service level can be applied to schools, and disagree with further limiting individuals’ rights in this area, we therefore do not agree that minimum service levels regulations should be implemented for schools.

The government itself has hitherto taken the same view. In the Memorandum on the European Convention on Human Rights accompanying the original Transport Strikes (Minimum Service Levels) Bill³ (since withdrawn and superseded by the Strikes (Minimum Service Levels) Act) the government argued that existing statutory duties on and guidance for schools already mitigate the impact of strikes sufficiently to justify limiting MSLs to transport only.

The impression is of a concept designed for rail strikes being clumsily retrofitted to schools.

The MSL definitions proposed in the consultation are inappropriate

Beyond these points of opposition in principle, we see significant issues with both of the definitions of a supposed MSL that are proposed in the consultation. The categorisations used during the pandemic are not in our view an appropriate starting point for a ‘minimum service level’ during industrial action, because the context and circumstances are very different. At a time when schools were closed for weeks or months at a time, and the rest of society was in complete lockdown, there was a need to prioritise vulnerable pupils who could have been otherwise isolated for an extended period and at greater risk of harm. In extremis, this *could* have been a matter of life and death. The context of industrial action is different.

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1112462/transport-strikes-minimum-service-levels-bill-echr-memorandum.pdf

We agree that it is important to prioritise the needs of vulnerable pupils in school closure situations, but using this as a definition of a 'minimum' service in this context risks beginning to imply that the education of some pupils is more essential than others. This is a harmful view.

Similarly, while we recognise that school closures have a problematic impact on other public services, and may be more disruptive for the parents of primary children, we would be concerned that basing a 'service level' definition on this risks creating a public perception that the 'service' a school provides is first and foremost a childcare service. We see this as particularly problematic in the context of the current challenges we are facing on attendance and the need to restate the *educational* value and purpose of school.

We cannot see how the proposals could be implemented in practice

Leaving aside all the questions of principle, the practicalities of this policy have not been worked through for the schools sector. We do not know which members of staff are members of which union. Nor could we prevent movement between unions. Nor can we establish which individuals within a union plan to strike.

It is clear that the process described – that a work notice should go from the employer not to the employee who is required to work but only to 'a trade union' – is designed and thought-through from the perspective of another sector or situation (presumably transport). It is unclear in the schools context who exactly in which union the employer would give this work notice to, particularly in the case where the employer is a large trust employing thousands of teachers across many schools.

Again, we note with interest that in the ECHR Memorandum to the original, now superseded, Transport Strikes Bill, the government itself stated that 'The large number of employers in the education sector would also likely make minimum service arrangements difficult and very burdensome to implement'.

We are disappointed that this has not been discussed with employers

It is frankly extraordinary that employers, who would be expected to implement these arrangements, were not seriously consulted in advance, given that we understand the proposals were the subject of extensive discussions with the unions. Such discussions with employers could have enabled greater exploration of the significant questions and challenges around both principles and implementation.

We hope that this response will help to inform further policy development and would be happy to discuss any aspect of it with Ministers or officials.