



Association of Educational Psychologists

To Dispute or Not to Dispute

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1 Introduction

“To Dispute or not to Dispute” is intended to act as a reference document to be used primarily by the AEP’s NEC when it is considering entering into a dispute with an employer. It is available to all members, and will be particularly helpful to workplace representatives when changes to collective agreements or arrangements are being contemplated locally.

The list of issues included within the “Red Lines” section below is not exhaustive and may be revised from time to time. The document seeks to provide clarity and consistency so that AEP members are properly protected.

2 Disputes

Entering into dispute with an employer is a serious step and each and every case will need to be considered on its merits and on its facts. Local affected members will always be involved in the decision making process.

Disputes should be seen as a last resort and normally should only be contemplated where:

1. Consultation and negotiation with the employer has ended, or is considered futile (e.g. a decision has been taken before consultation begins), or the employer has refused to engage and/or
2. The NEC accepts that the effects on members are unreasonable in all the circumstances.

Consultation with the local membership will always take place before a dispute is declared; However, whilst one of the principal considerations is the extent to which the local membership is calling for the NEC to act, it was also acknowledged that there might be some (very rare) circumstances where the absence of a will to act on the part of the local membership should not inhibit the NEC from taking action in the interests of the wider AEP membership.

That would occur when the scale of the changes being made or proposed is so unreasonable that not to confront it would undermine one of the key strategic aims of the AEP for example, the protection of members’ pay and terms and conditions of service, or a breach of a clear AEP policy position.

3 What does the AEP mean by a Dispute?

A dispute means formal and open disapproval of the employer’s actions or conduct. In general, the process for entering and resolving disputes will be as follows:

1. Report submitted to NEC meeting

This should include background to the situation, steps taken so far, an indication of which red line may be being breached and a suggested outline of what outcomes should be achieved in order to resolve any dispute would be resolved

2. A proposal to enter into a dispute is put to the meeting

3. If the NEC decide that the case warrants entering dispute, the General Secretary writes a formal letter to the employer, setting out the reasons for the dispute and expected actions to resolve the dispute
4. A notice and explanation is posted onto the website
5. The dispute should be reviewed on a regular basis. The reviews should include expectations of actions to be taken to resolve the dispute
6. The dispute can be resolved by one of the following:
 - i) The employer(s) agreeing to the requests of the AEP
 - ii) A settlement being negotiated which is acceptable to the NEC and the majority of affected members

4. What does it mean for members?

All members of the AEP will be notified of the dispute, and the reasons for it. A notice is placed on the AEP website, including the reasons for the dispute.

The action associated with a dispute, in order to support it and strengthen it, can and should vary according to the particular circumstances. Every case will be treated on its own merits.

In some cases, the NEC will intercede and take the action (e.g. some of the publicity actions) in order to protect members who cannot undertake those actions themselves.

The AEP will not, save in exceptional circumstances, accept advertisements to fill vacancies for employers with whom we are in dispute.

Below are some examples of the actions which may be contemplated to support the dispute. Before any action which could be considered 'industrial action'

(this is not an exhaustive list.)

1. Publicity:
 - (i) writing to schools and other stakeholders
 - (ii) writing to and lobbying MPs, councillors and relevant government officials
 - (iii) using the local and national media to highlight the issue
 - (iv) publicising the dispute on the website.

2. Action short of strike action:
 - (i) working to rule
 - (ii) not covering absences or vacancies
 - (iii) refusing to use private vehicle
 - (iv) insisting upon and taking proper breaks.
 - (v) other professional measures
 - (vi) reporting to base at the start and end of each working day.

3. Strike Action

5 Red Lines

“Under what circumstances ought the AEP’s National Executive Committee be asked to consider passing a resolution which would have the effect of entering dispute with an employer, whether or the not the local membership opposes the change?”

The agreed ‘red lines’ are set out below. They may be reviewed from time to time and represent the minimum expected conditions of employment. Any deviation from these minimum conditions should be discussed by the NEC.

For the avoidance of any doubt, where it is not expressly stated below, in all cases the ‘not less favourable than’ principle will also always apply, so as to ensure that our members’ terms and conditions are ‘not less favourable than’ other groups of employees. (Reference: Soulbury Committee Report 2017 Para 10).

Any revision of collective agreements must not be entered into without consideration of this document and reference to the relevant Regional Officer.

1. Pay

The Soulbury Committee Report 2017 provides nationally agreed pay scales for Educational Psychologists.

- As a minimum - National Soulbury pay scales, or the equivalent in monetary value
- No attempts to undermine nationally agreed agreements affecting pay.
- No pay cuts unless accompanied by a commensurate reduction in working hours (and a commensurate reduction in workload) so as to preserve the Soulbury hourly rate.
- No changes that would treat part time workers unfairly
- No freezing of SPA awards
- The Soulbury Committee Report provides for automatic increments. Freezing of increments will only be accepted in line with restrictions on other employees and only if equality-proofed

2. Car Allowances

The National Agreement on Pay and Conditions of Service (Green Book) states in Part 2:

12.1 Where an employing authority authorises an employee to use a private car on official business, the employee will receive an allowance in accordance with the provision set out in Part 3 Section 6.

Part 3 Section 6 sets out allowances that may be paid by an employer.

As a minimum, the allowance paid to Educational Psychologists should cover all costs associated with the provision, maintenance and running of a car for business use, independently calculated and verified (e.g the prevailing AA calculation) OR, where that is breached, the removal of the contractual requirement on members to provide a car for business use so that they have genuine choice.

3. Car Parking

The National Agreement on Pay and Conditions of service states in Part 2:

13. Employees necessarily incurring additional expense in the course of their work in respect of travel, meals or overnight accommodation will be reimbursed approved expenses..... in accordance with local arrangements

The AEP expects the local arrangement to include full reimbursement of any and all costs associated with car parking whenever the car is used actively for business purposes, as opposed to simply commuting to and from the official work base.

4. Sick Pay

Paragraph 10 of Part 2 of the NJC National Agreement on Pay and Conditions of Service sets out the contractual entitlements to occupational sick pay. These are considered to be “key national provisions they are basic provisions which constitute a standard throughout the UK.”

The AEP expects EPs to receive Sick Pay In line with Part 2 of the Green Book.

In particular, there must be no change which would result in the loss of one or more days of occupational sick pay (usually at the start of a period of absence) or the loss or reduction in sick pay entitlements for longer term sick periods.

The Soulbury Committee Report states:

10 Conditions of Service

10.1 The conditions of service of officers del with under this report shall be no less favourable than those prescribed for the local government services staff of the authority.....’

This is taken to mean that the Part 2 provisions are sacrosanct

5. Annual Leave

Any blanket restrictions on taking term-time annual leave must be negotiated and agreed by the recognised Soulbury union(s).

6. HCPC fees

The ‘not less favourable than’ principle applies i.e. if the employer pays fees to enable another professional group to practise, for example, solicitors, then the employer should pay the HCPC regulation fees of Educational Psychologists.

7. Systemic Poor Industrial Relations practises

Evidence of (including but not limited to):

- dismissal and re-engagement;
- more than one member potentially unfairly dismissed;
- deliberate failure to consult with Soulbury representatives on significant changes to terms and conditions
- Unilateral Changes to terms and conditions of employment

8. Trade Union Detriment

- Perceived detrimental treatment of the local elected representative

- Perceived detrimental treatment of members engaging in lawful trade union duties and activities

9. Breach of AEP policies

- Where the employer is acting deliberately and consistently in breach of AEP policies despite more than one formal NEC clarification of the situation being sent

6. Review

In all cases where a dispute has been declared, this will be reported to the NEC and membership together with the date upon which that dispute was declared. Disputes will be kept under regular review and in any event will automatically be considered in detail after 18 months.

This document will be reviewed annually. The next review will be on **January 2020**