Legal Advice for Schools

13 March 2020

[When can we lawfully close our school due to COVID-19?](https://www.stoneking.co.uk/literature/e-bulletins/coronavirus-covid-19-legal-advice-closing-school)

A decision to close the School is made by the Headteacher (or Principal), although they must get the agreement of Governors or Academy Trustees (depending on the type of school).

A school can be lawfully closed in in two circumstances:

1. The school’s health and safety assessment, having taken all relevant factors into account, is that the welfare of the school community cannot be sufficiently protected if the school continues to operate. In practice closure for this reason can only take place after the school has updated its risk assessment having taken all the relevant measures recommended by the DfE and received advice from its local Health Protection Team. We advise a school to take legal advice before deciding on a closure of this type.

or
2. In response to a DfE direction or acting on DfE Guidance: Schools will need to take heed of any new Guidance issued by the DFE on how best to manage the risks and under what circumstances schools should close. The Government is also aiming to pass emergency legislation in relation to school operations which will provide greater clarity on this issue and also the powers the Government would need to direct all types of schools to close.

In the event that a staff member or pupil is confirmed positive for COVID-19 at your school, Public Health England’s Protection Team will contact you to discuss this further. If there is a confirmed risk, a risk assessment will be undertaken by the school under the advice of the local Health Protection Team. In some cases the outcome may lead to closure, but this will vary depending on the size of the school, pupil mixing and whether the confirmed case(s) were symptomatic at the time. Note that if there is a suspected yet unconfirmed case, it is not necessary for a school to close in the interim.

[Additional considerations for independent schools](https://www.stoneking.co.uk/literature/e-bulletins/coronavirus-covid-19-legal-advice-closing-school)

For independent schools, it is likely that there will be force majeure provisions in your parent contract in relation to closure. These should be carefully reviewed, as they may include additional obligations on the school in the event of closure.

Whether or not fees will be payable / refundable in the event of closure will depend on the provisions of the parent contract and the particular factual circumstances of the case, including whether fees may be refunded if the school is unable to perform its obligations (see insurance section below). It also may be that the contract includes obligations to prevent/minimise such events (closure), and to provide educational services as far as reasonably practicable during any such event.

Schools should do all they can both in terms of preventative steps and also to prepare for the provision of education remotely in the event of a closure. This may include the provision of pastoral support remotely if possible. All such steps should be documented as this will assist in responding to any complaints or claims relating to a closure.

The contract may also require parental cooperation of parents in working with schools to minimise the impact of a school closure – non-payment of fees and/or a right to a refund may apply (depending on the contract terms) if parents can demonstrate that their child did not receive any level of educational provision.

For boarding schools, note that the Foreseeable Crisis Plan should be updated in light of the school’s risk assessment. Plans should also include remaining open for the Easter break for those unable to go home. This will require particular consideration in terms of risk, and the potential application of the guardianship provisions and associated requirements relating to responsibility for welfare under the National Minimum Standards.

[If my school is closed can we expect people to work from home?](https://www.stoneking.co.uk/literature/e-bulletins/coronavirus-covid-19-legal-advice-closing-school)

Subject to timing, bearing in mind the Easter holidays, this is a possibility even though this is an unusual concept for teachers. Schools should be thinking now about ways in which different staff members can carry out work at home.

[What is the position with pay on school closures?](https://www.stoneking.co.uk/literature/e-bulletins/coronavirus-covid-19-legal-advice-closing-school)

School employees covered by the Burgundy Book (teachers) and Green Book (support staff) sick pay schemes may be entitled to full pay for absence when they are required to be absent due to infectious illness and this absence does not count against sick pay entitlements. Although strictly speaking the provisions do not unequivocally cover situations where the employee is not actually ill, the unions are pushing very strongly for this to be the interpretation of the relevant clauses. As such unions would expect all staff to be paid in full for time off due to the virus or as a consequence of absence due to school closure (in circumstances where they could not work from home).

Employees in schools which do not follow the Burgundy and Green Book schemes will be entirely reliant on individual contractual provisions. However, there is generally considered to be an implied term that where an employee is willing and able to perform work in accordance with the contract, the employer has an obligation to pay wages, unless there is a contractual right not to do so.