



The Educational
Institute of Scotland

Alistair Gaw
City of Edinburgh Council
Waverley Court
4 East Market Street
EDINBURGH
EH8 8BG

Ref: LF/KN/DofE 091220

09 December 2020

Dear Mr Gaw

I write with regard to the decision by the Scottish Government to decline any national move towards remote learning platforms being deployed around the Christmas and New Year holidays and subsequent requests from our Local Associations for consideration of the same on a Council basis.

The 2020-21 school year has been a difficult and long session for teachers- as they coped with the changes, disruptions and stresses of teaching full classes and timetables during the pandemic. Many are exhausted – both physically and emotionally, as I am sure you appreciate, and are looking forward to sharing the Christmas break with family and loved ones. Given the late closure dates of many schools, however, there is anxiety that the festive period may be disrupted by late Covid outbreaks in schools and concern for many that the risk of infections having occurred may make unsafe plans such as meeting with elderly relatives.

Some of these worries apply equally to pupils and parents as a need for a pupil to self- isolate over Christmas would be highly disruptive to their family.

Advice from the European Commission on staying safe this Christmas, issued on Dec 12th, states that “In order to reduce transmission risks in the period following the festive season, consider extending school holidays or introducing a period of online learning as a way of introducing a buffer period and avoiding infections to be brought into schools.”

In short, the EIS believes that the safety and wellbeing of teachers are at heightened risk by face - to - face teaching after 18th December 2020, and potentially even before then, and would call for remote learning to be put in place, for the reasons cited in the EC advice quoted above.

The purpose of a move to use of remote platforms for a limited period would be:

1. To allow staff to feel that they can safely enter a Christmas bubble and safely see or visit family over Christmas;
1. To follow Scottish Government advice to limit interactions before forming a Christmas bubble in order to minimise coronavirus infections. (A minimum of a seven day period between school closure and forming a Christmas bubble could be established, if our request was granted);
2. To limit interactions in the 14 day period after the end of the Christmas bubble in order to minimise coronavirus infection upon school buildings reopening;
3. To follow Scottish Government advice that : *"... every effort is made to ensure that senior leadership teams and school staff get a proper break, and that the likelihood of staff being required to support contact tracing activities over the holiday period is minimised."*

The EIS understands that several Councils have cited and may have been unduly influenced by a communication from a senior civil servant in the Scottish Government stating that, *"we expect schools to remain open"* and which appears to instruct:

"There should be no move to blended or remote learning unless this is based on local public health advice, following an outbreak involving a school or where the local authority judges it is not safe to open the school physically for example due to a shortage of staff."

The EIS believes that the Scottish Government's "instruction" above is *ultra vires* and has no legal or authoritative standing. It goes beyond the Scottish Government Guidance for schools, which is of itself discretionary. The instruction is a clear attempt to frustrate any Council intending to implement locally targeted remote learning and is, in our view, an interference in local government autonomy.

Furthermore, the Scottish Government's email copies a selective piece of its own Guidance to seek to support its position. In doing so it actually highlights the freedom Councils have to exercise their local judgement:

"There may be circumstances in which, based on clear evidence and public health considerations, or other relevant factors (e.g. minimum staffing requirements) specific schools require either to close, or to implement remote learning for some children and young people, for a defined period of time. All such decisions will continue to be made by local incident management teams working in partnership, and on the independent advice of local Directors of Public Health, who will take full account of school safety and wider public health considerations in line with their statutory duties. Similar decisions may require to be taken by local authorities in conjunction with schools where staffing constraints (e.g. due to self-isolation or shielding) or other matters make such a move unavoidable."

Other parts of the Scottish Government's guidance for schools clearly facilitate local decision making on matters of local school closures, and any local move to blended or remote learning:

"Local authorities and schools should exercise their judgement when implementing this guidance, to ensure the safety and wellbeing of their children, young people and staff taking into account local circumstances."

"...the use of targeted remote learning remains an important contingency for schools at all levels of the Strategic Framework....."

Each Council has a statutory duty to protect the health and safety of employees. The Scottish Government recognises this and states:

"Nothing in this guidance affects the legal obligations of local authorities with regard to health and safety, public health and their responsibilities under the Equality Act 2010. Local authorities must continue to adhere to all such duties when implementing this guidance. Under the Coronavirus Act 2020, they must have regard to the advice relating to coronavirus from the Chief Medical Officer for Scotland."

On behalf of the EIS, I would express disappointment with, and urge reconsideration of, any Council's decision to refuse the EIS request for the use of targeted remote learning. It is clear that the Scottish Government's guidance gives sufficient scope for Councils to exercise their judgement in initiating targeted remote learning in order to protect the safety and wellbeing of their staff.

To be clear, the EIS holds each Council to be solely responsible for the decision not to accede to the EIS request for targeted remote learning from at least 18th December 2020. It does not accept that there was any binding Scottish Government instruction or legal bar to the Council implementing targeted remote learning after 18th December, 2020.

Our view is that any such Council decision is perverse and disregards the wellbeing of its teachers to such an extent that the EIS does not believe that the Council is fully discharging its duty of care to teachers.

The EIS believes that any such Council action may breach Section 8 of the Human Rights Act (1998) which protects your employees' right to a family life, including the right to have and maintain family relationships.

A Council decision not to deploy remote learning as requested by the EIS, will not provide a sufficient break from work for our members owing to them having to engage in track and trace issues over the holiday period, or worrying about the effects of entering a Christmas bubble. I would draw your attention to the UK Government's decision to ensure all teachers have at least 6 days' break before Christmas as good practice.

EIS Local Associations have been authorised to consult with our members in individual Councils to establish whether there is a lack of confidence in the Council's ability to exercise its duty of care appropriately and/or desire to lodge a trade dispute to that effect.

The EIS urges the Councils which have decided not to facilitate targeted remote learning at the end of this term and the start of the next term, to reconsider the matter. Each Council has a duty of care to its staff and should exercise its own

judgement in implementing the Scottish Government Guidance in order to fully discharge its statutory duty to protect the health and safety of employees and the sustainability of the education service.

Yours sincerely

A handwritten signature in black ink that reads "Larry Flanagan". The signature is written in a cursive, slightly slanted style. The first letter 'L' is large and prominent, and the 'y' has a long, sweeping tail that extends under the 'a'.

Larry Flanagan
General Secretary

