



School Closures NEU guidance for members in England & Wales

The purpose of this document is to provide brief advice to members if they are told that their school is due to close.

The union fully appreciates the devastating effect school closures have on pupils and staff. It is likely to be a tremendously uncertain time for all involved, but particularly so for staff who may be missing salary payments, notice pay, redundancy pay etc.

Scenario 1

A school closes with immediate effect, without warning, and will not re-open

A school usually closes in these circumstances because it has run out of money. An insolvent school will normally be placed into administration and a liquidator will be appointed. How and when you will receive any monies owed to you will depend on whether the school has any money.

The first thing you should check is whether a liquidator has been appointed. If the legal owner of the school is a limited company, or a company limited by guarantee, you can find this out by looking up the company's name on the Companies House website at: gov.uk/government/organisations/companies-house

The name will be on Companies House register.

Once a liquidator has been appointed you can make a claim for monies owed to you to the government's Insolvency Service, by using the link:

gov.uk/government/publications/redundancy-payments-rp1-help-for-claimants

The Insolvency Service will only pay certain entitlements. They are:

- statutory notice pay
- statutory redundancy pay
- up to eight weeks' wages, including a payment for a protective award if your employer has failed to consult collectively with staff (see below for more information on protective awards)
- up to six weeks' holiday pay
- unpaid pension contributions.

The amount you receive for a 'week's pay' is limited and currently is a maximum of £508 per week gross. If you earn less than £508 (before tax and national insurance is deducted) per week, you will be paid the lower amount. Any other income earned during your notice period will be deducted from your notice pay.

This can include:

- wages from another job
- benefits you are eligible for (such as Jobseeker's Allowance), even if you do not claim them.

My school had a more generous redundancy payment scheme than the statutory scheme. Can I claim this?

No, not from the Insolvency Service. The NEU may be able to issue a claim on your behalf, in an employment tribunal, for breach of contract if it can establish that there was a contractual right to an enhanced redundancy payment. If the tribunal orders that

money is to be paid, your receipt of the money will depend on the availability of any funds.

Does that mean I may end up out of pocket?

Yes. Much will depend on whether the school owns any assets, such as the buildings and the grounds. It will then further depend on whether the sale of the assets covers all the outstanding debts. For example, if the property is effectively owned by a bank due to a mortgage, payment in full or in part is unlikely. It may be that part of the debt that is due to you can be paid, eg it is possible to pay 1p in each pound owed. In such circumstances, if you were owed £1,000 you would receive £10.

If the school owns no assets, any money owed to you will not be paid.

I know that the proprietors of the school own the property and lease it to the school. Can we pursue them for the money owed?

No. The legal position is that a limited company, or company limited by guarantee, is solely responsible for the debts. The directors and/or trustees are not personally liable, and it is rarely possible to pursue others for the debts incurred by the organisation.

I am owed wages which far exceed the limit set by the Insolvency Service. What can I do?

Again, the situation is the same as for any enhanced redundancy. It will all depend on whether there are assets available that can be sold to meet the debts.

There are assets available. How long will it take until I receive my money?

The process is very slow indeed, and usually takes between one and two years before payments (or 'dividends' as they are called) are paid by the administrators. The administrators are legally obliged to go through certain processes that are outside the control of the NEU, and there is nothing that can be done to speed them up.

Scenario 2

A school closes but is sold as a going concern, re-opening in September

In this situation, the key question will be whether the Transfer of Undertaking Regulations 2006 apply – that is whether there has been a TUPE transfer. This is a highly complex area of law and the NEU will need to assess the full facts before providing advice.

If there has been a TUPE transfer, your existing contract will be transferred to the new employer, which will include the length of your continuous service. If you have received payments from the Insolvency Service, you may be required to pay them back. If the new employer refuses to employ you, you may have a claim for unfair dismissal.

The question of whether the new employer is liable for any debts owed to you by your previous employer may not be straightforward and the NEU will provide specific advice, depending on the facts arising.

I have been asked by my employer to work for a couple of weeks without pay. Should I do so?

The union's view is that this is an entirely personal decision. Should you decide to do so, you cannot at a later date claim pay, as you will have expressly agreed not to be paid for the period. It may be beneficial for staff to adopt a collective approach to this request

and the NEU will help you to do so. The union's view is that no-one should work for free and a request to do so is exploitation of staff.

We were given no prior warning of the closure. Is there anything else we can claim?

If an employer is proposing to dismiss 20 or more employees as redundant in one establishment within 90 days or less, it is legally obliged to consult with either the recognised union(s) or elected representatives of staff affected. Failure to consult leads to a 'protective award'. This requires employment tribunal proceedings to be issued, which the NEU will do on behalf of members.

If the tribunal agrees that there has been a failure to consult, it can rule that each employee is entitled to a maximum of 90 days' pay. However, where the employer is insolvent, the Insolvency Service will only pay a maximum of eight weeks' pay (based on the statutory maximum, currently £508).

Information needed from members

It is imperative that you co-operate with the NEU throughout the process. The union cannot claim monies you are owed unless you provide the evidence to prove your claim. You may also need to attend an employment tribunal hearing to give verbal evidence. If you fail to co-operate, the NEU reserves the right to withdraw support.

You should collate the following information and provide it as soon as you are asked by the union to do so:

- a copy of your contract of employment
- your pay slips for the last six months
- your last P60
- details of any new job obtained – start date, rate of pay
- details of any state benefits you have received
- all correspondence you received from your employer relating to the school's closure, together with the minutes of any meetings you attended.

The NEU will deal with your claim as quickly as possible. However, bear in mind that these claims can take a long time to resolve. You will be contacted if anything significant happens, but the number of members involved may mean that it is not possible to maintain regular correspondence.

What should I do next?

If further advice is needed, contact your NEU workplace rep in the first instance. If there is no NEU rep in your workplace, or the peripatetic nature of your employment makes contact with a workplace rep difficult, contact the NEU Adviceline in England on 0345 811 8111 or NEU Cymru in Wales on 029 2046 5000.

Further contact details may be found at: neu.org.uk/contact-us