

The NEU Pay Toolkit

This National Education Union guidance document is part of a toolkit for NEU members and representatives on teachers' pay progression issues.

Other documents include guidance on the rules of the pay progression system and on pursuing appeals against denial of pay progression.

The full NEU toolkit can be found at <https://neu.org.uk/pay-toolkit> Links to other key documents are at the end of this briefing.

Note: All the documents in this NEU pay progression toolkit focus on the provisions of the School Teachers Pay and Conditions Document (STPCD) in England and the now separate though very similar School Teachers Pay and Conditions (Wales) Document. These apply to teachers employed by local authority maintained schools. In England, they also apply to teachers employed by academies and multi-academy trusts which have adopted the provisions of the STPCD. The position of other teachers will depend on the provisions of their employment contracts.

Using this toolkit

This part of the NEU Pay Toolkit gives advice on securing pay progression by persuading governors not to accept a recommendation to deny pay progression or by appealing successfully against a decision to deny progression. **It really is very easy to appeal!**

Follow the straightforward steps of the appeals process in your school's pay policy. Use the model letters in part 5 of this NEU Pay Toolkit. [Ask the NEU](#) for any advice you need along the way.

Many teachers who lodge an appeal receive progression without going to a hearing, and many of those that do go to a hearing are successful.

You and your colleagues should also collectively challenge any policy or criteria likely to deny progression to teachers in your school. Now that all pay progression - and even the annual cost of living increase - depends on appraisal outcomes and criteria set by schools, there is no sense in failing to challenge an unacceptable policy.

Looking at your school's pay policy

This section advises on your first step – checking your school pay policy's pay progression criteria and its procedure - and whether the policy itself should be challenged, not just the decision made under the policy.

Checking the policy's progression criteria

There are no longer any statutory and nationally-applicable criteria for taking pay progression decisions. The 2019 STPCD provides only that pay progression decisions

should be based on appraisal outcomes and that the school pay policy should set the criteria to be achieved for progression.

Para 19.2 says that the governing body decides how pay progression will be determined, subject to the following requirements:

- "the decision whether or not to award pay progression must be related to the teacher's performance" as assessed through appraisal;

- a written pay recommendation must be made as part of the appraisal report and the governing body "must have regard to this recommendation"; and
- "continued good performance as defined by an individual school's pay policy should give [a teacher] an expectation of progression to the top of their respective pay range".

Para 19.3 requires the governing body to set out clearly in the school's pay policy how pay progression will be determined.

Schools can set their own criteria subject only to the requirements in para 19.2. No statutory national criteria or guidance exist for reference. This doesn't mean, however, that you cannot argue that pay progression criteria are being incorrectly applied, or that they are incompatible with the STPCD, excessive or otherwise inappropriate.

Criteria must be fair, transparent and objective in order to meet the standards proposed by the DfE's pay advice that "arrangements ... can be applied consistently and pay decisions can be objectively justified".

Criteria which do not meet these requirements should be challenged through collective challenge or pay appeals. Equally obviously, any unfair or inappropriate interpretation of criteria should be challenged as well.

Checking the procedure for taking decisions and making appeals

In most schools, the decision on pay will be made by a governors' committee, which must "have regard" to the reviewer's pay recommendation and may also seek the views of the head teacher as well. It is possible for governing bodies to delegate pay decisions to head teachers alone - but the NEU and other teacher unions advise strongly against this.

The DfE's pay advice says that if head teachers think teachers should not progress, they should allow those teachers to attend the governors' decision meeting (with the right to have a union representative) and present their views before the decision is taken. **This is welcome – it is easier to stop decisions being taken than to get them overturned. The NEU believes that this should apply in all schools as part of their pay procedures.**

Regardless of whether the teacher was allowed to be present when the decision was taken,

there is a formal right of appeal against any decision to deny pay progression. The DfE's pay advice identifies a range of possible grounds for appeal (this is not an exhaustive list):

"Teachers have the right to raise formal appeals against pay determinations if, for example, they believe that the person or committee by whom the decision was made:

- (a) incorrectly applied the school's pay policy;*
- (b) incorrectly applied any provision of the STPCD;*
- (c) failed to have proper regard to statutory guidance;*
- (d) failed to take proper account of relevant evidence;*
- (e) took account of irrelevant or inaccurate evidence;*
- (f) was biased; or*
- (g) unlawfully discriminated against the teacher."*

Pay appeals can also be pursued on the grounds that the criteria are excessively or unfairly demanding in practice to an unintended extent (in particular if they do not in practice guarantee progression for "continued good performance"); or are irrational or potentially discriminatory.

The NEU's preferred criteria for pay progression

The NEU argues that all teachers who have had successful appraisal reviews should receive pay progression; and that appraisal reviews should be deemed successful unless significant concerns about performance were raised in writing with the teacher during the appraisal cycle and were not sufficiently addressed through support from the school by the conclusion of that process.

The NEU has negotiated pay policies on this basis with many LAs and academy chains and with many individual schools and academies. Pay policies drawn up on this basis will support fair pay progression.

What to do if you decide your policy is unfair or in conflict with NEU policy

If your school's pay policy sets unfairly high demands for progression or includes criteria which disadvantage teachers in certain groups or with certain protected characteristics (eg older women), it is not too late to organise to secure a different policy. You could use

examples of members being treated unfairly in previous years to strengthen the case for changing the policy.

Read the separate NEU document in this toolkit on Winning an Acceptable Pay Policy for

guidance on assessing your school's policy and on getting support from the NEU to help you and

your members challenge the policy collectively, up to and including strike action.

Tackling matters collectively will be a far better approach than trying to deal with problems as individual pieces of casework. Denial of progression to only one or two teachers this year could be followed by an ever increasing number of teachers losing out as time goes by if the policy isn't challenged.

Challenging pay decisions

This section advises on how to tackle common situations where members have to appeal individually against decisions to deny them pay progression. Refer to the NEU checklist in preparing yourself for any meeting - and use the NEU model letters in part 5 of this Pay Toolkit to seek information about the policy and decision in order to help you challenge them.

The advice covers:

- Situations where governing bodies should be asked to set aside provisions of the policy because the progression criteria or system for reaching a decision were inappropriate;

- Situations where the decision in particular cases is challenged either on the basis of the evidence available or the way in which the criteria were applied;
- Situations where the decision should be challenged on the basis of potential unlawful discrimination; and
- The position of teachers applying to move to the Upper Pay Range.

Before raising these arguments in an individual appeal, you should discuss the possibility of a collective challenge to the policy with members (see above).

Setting aside provisions of the policy

Challenging excessively demanding criteria

The NEU fears that some governing bodies may establish criteria which set much higher hurdles than previously for progression. NEU reps should ask, even before decisions start to be taken each year, whether the head teacher and governing body intend that rates of progression should be in any way reduced as a result of any new policy on pay progression.

The STPCD provides clearly that "continued good performance ... should give [a teacher] an expectation of progression" (para 19.2). Criteria which set higher standards for progression than "continued good performance" will obviously offend against the STPCD's statutory requirements. The use of criteria imposing standards of performance in excess of the level specified in the statutory provisions could be regarded as unlawful practice, adopted to ensure that teachers do not progress.

In such situations you are challenging the criteria, not the decision - and asking that the criteria are set aside for all decisions because

they are now seen to be creating unfair obstacles to progression and potentially leading to discrimination in some cases.

Some policies include criteria requiring overall performance or teaching observations to meet standards such as “sustained high quality”, “outstanding”, “good with elements of outstanding” etc. All of these are inappropriate criteria for classroom teachers. The criterion of “sustained high quality” appears in the STPCD pay progression provisions for leadership teachers, but it does not apply to classroom teachers. It has a different meaning to “continued good performance” and, if used as a progression criterion for classroom teachers, will put the governing body in breach of the STPCD’s requirements. Other formulations such as “outstanding”, “good with elements of outstanding” or even “performance at the highest possible level” also clearly go beyond “continued good performance” and would lead to pay progression being the exception rather than the norm.

Excessively demanding criteria should first be challenged wherever possible through collective action rather than individual appeals.

Challenging use of the Teachers’ Standards as a checklist and/or use of Career Stage Expectations checklists

The NEU opposes the use of the Teachers’ Standards as a checklist, either during appraisal or during pay decision making. In the NEU’s view, assessment should start from the premise that the teacher is continuing to meet the Teachers’ Standards unless there is evidence to the contrary, in order that the appraisal discussion is not diverted away from the key issues and objectives identified at the initial appraisal meeting.

Some governing bodies, however, have been persuaded to adopt complex, but essentially meaningless, documents which purport to identify and define the precise levels of performance expected of teachers under each heading of the Teachers’ Standards and at each stage of their career (and sometimes even at each point on the pay scale). These are adopted for use either in the appraisal discussion or in subsequent pay decision making. The NEU rejects this approach which would reduce teacher appraisal to a tick box exercise, completely preventing professional dialogue on performance or professional development.

The NEU’s view is largely shared by the DfE’s pay advice (p.13) which says that “It is not necessary for schools to adopt rigid models that

seek to set out exactly what the relevant standards mean for teachers at different stages in their careers, and teachers should not be expected routinely to provide evidence that they meet all the standards”. It also states that “the collection of evidence should be proportionate and not increase workload for teachers (for example, teachers should **not** be asked to produce written evidence against each of the teachers’ standards)”. Your aim in such situations should therefore be to persuade the governing body to set aside the use of such checklists in taking pay decisions.

Again, excessively demanding criteria imposed through such an approach should be challenged wherever possible through a collective response rather than individual appeals.

Challenging quotas and relative performance judgments

The NEU opposes any rationing of progression via any policy which allows only a set percentage of teachers to progress. Setting quotas, or basing decisions on comparisons of relative performance as opposed to comparing it to absolute standards, will do just that.

Although the DfE’s pay advice suggests that quotas or relative performance judgments could be considered appropriate in some schools, the NEU believes that these will necessarily conflict with the STPCD’s provision which requires governing bodies to allow progression to teachers on the basis of “continued good performance”. Again, such an approach should first be challenged wherever possible through collective action rather than individual appeals.

Relative judgments will also raise the prospect of unfair and potentially discriminatory treatment of teachers, particularly in community schools or chain academies where teachers across a number of different schools share the same employer and are entitled to compare their treatment to that of teachers in those other schools. Teachers should not be denied progression simply on the basis of relative performance.

Challenging funding constraints

Funding problems at the school are not acceptable as criteria for denying pay progression – the NEU believes that every school governing body should have set a budget which provides sufficient funding for pay progression for every eligible teacher.

The DfE's pay advice says that in setting budgets, governing bodies should "identify and consider the budgetary implications of pay decisions and consider the impact they will have

on the school's spending plan". Again, such an approach should first be challenged collectively wherever possible rather than forming the basis of individual appeals.

Challenging the evidence or the application of the criteria

Challenging decisions - evidence is important

The school's pay decision must obviously be based on evidence. In most of the following situations, pay appeals involve challenging the evidence put forward against teachers.

Schools' decisions should be firmly based on evidence - and only evidence available through the appraisal process which is relevant to the appraisal process (see below).

The DfE's pay advice contains at pages 12-14 some important guidance on the use of evidence in appraisal and pay decisions which was produced in consultation with the teacher and head teacher unions.

Any teacher who thinks they may face problems over pay progression should prepare for this by keeping evidence of their own, in relation to their objectives, their work and their wider contribution to the school.

You should not hesitate to challenge decisions by offering your own evidence, both about the areas covered by your objectives and appraisal, and where necessary about other areas of your work and involvement with the school as well, in order to convince governors that you have made the necessary contribution over the year. You should also have available your appraisal reviews and associated evidence from previous years. For example, if criticisms are voiced about pupil behaviour, you might be able to point to comments made in previous appraisal reviews or classroom observations about behaviour standards in class. If there are particular personal circumstances which may be relevant in appeal, such as a personal illness or family circumstances, you may want to have evidence available in relation to these as well.

Challenging decisions using the "no surprises" principle

If the decision to deny pay progression comes as a surprise, this is in itself evidence that the procedure has not been followed properly.

The DfE's pay advice (p.14) says that "Schools should provide feedback where necessary during the course of the year on the areas where the teacher might need to improve in order to secure a positive assessment at the end of the appraisal period. If any additional support and training to improve performance is deemed necessary before the end of the appraisal cycle, the teacher and their line manager should consider how these should be delivered".

Why was this decision a surprise? Was there any advice offered that standards were not being met or that denial of progression was likely, either in writing during the cycle or at any interim meeting? If there was no interim meeting to raise concerns, why not?

If the teacher was advised that there were concerns, what was done about that? What support was offered (advice, training, peer support etc) to assist the teacher in meeting the standards?

If support was not provided then this constitutes as much of a failure by the manager as by the teacher - and it is not one for which the teacher should be penalised.

Challenging decisions that are not clearly based on appraisal evidence

Two key questions here are as follows:

- Was the decision made after the end of the appraisal process and following proper consideration of the outcomes of the process?
- Was the decision based clearly and solely on evidence that was available and discussed during the appraisal process?

On the first matter, you should refer back to the two statutory requirements set out in para 19.2

of the 2019 STPCD referred to earlier - that the pay decision must be related to the teacher's performance as assessed through appraisal and that the governing body must have regard to the reviewer's pay recommendation. Any pay decision taken before the end of the appraisal process, or without considering that pay recommendation, is in breach of the STPCD's requirements.

On the second point, you should refer to the DfE's clear expectations set out in its pay advice which says (p.13) that "Whatever evidence is used ... the range of evidence requirements must be rooted firmly within the parameters of the appraisal process... It would not be appropriate for schools to introduce evidence requirements that are not directly and explicitly related to the formal appraisal process and with the objectives and standards that have been agreed with the teacher."

This does not, however, mean that teachers should accept any excessive evidence requirements imposed by the school. The DfE's pay advice says that decisions on the range and level of evidence "must be taken in the context of minimising bureaucracy" (page 12). The NEU believes that while teachers should be able to offer additional evidence if they want or need to, they should not be required to provide excessive evidence as part of pay decision making.

Challenging decisions that set aside the appraiser's recommendation

If the governing body decided to reject a reviewer's recommendation, you should demand a full written account of why it did this, including reasons for the decision and any additional advice or opinion received eg from the head teacher.

Emphasise that the STPCD imposes a statutory requirement on governing bodies to "have regard" to the reviewer's recommendation. There is no requirement to have regard to the views of the head teacher or even to ask what they are. Any decision by the head teacher to seek to overturn a reviewer's recommendation, and any decision by the governing body to reject a recommendation whether or not the head teacher expressed a view, should be supported by very robust evidence, not simply justified as a difference of opinion.

Challenging decisions based on moving the goalposts

Standards and criteria for progression should be known at the start of the performance cycle. The criteria should be clear and understood and communicated to every teacher. Teachers' objectives should be similarly clear and understood. New meanings or interpretations should not be determined at the end of the year and then applied retrospectively. Any decisions should be based on the criteria and objectives as they were known and understood at the start of the cycle (unless it was necessary to review the objectives in mid-year - see below).

Challenging decisions based on objectives

Setting fair and appropriate objectives is a major challenge. If teachers' objectives are unachievable or otherwise inappropriate, this damages appraisal and obstructs pay progression. Guidance on setting appraisal objectives is available on the NEU website.

Sometimes the unfairness or inappropriateness of an objective will only become apparent during or at the end of the year - but sometimes a teacher will have felt it was unfair from the outset. Teachers should challenge any objectives they think are unachievable or inappropriate at the outset and, if they are imposed, to record their objections in writing.

Failure to do this at the time does not, however, in any way obstruct the right to appeal on the basis that the objective was inappropriate or unachievable.

The starting point, therefore, must be to look at the objectives themselves, before considering the teacher's performance against them. Look in particular at the appraisal policy and the advice it gives to managers with regard to setting objectives (and also at the training given to those setting the objectives).

The aim in such situations will be to persuade the governing body that the decision to deny pay progression is unjustified because there has been sufficiently good performance even though a particular objective or objectives may not have been achieved.

Were the objectives appropriate and achievable/attainable? Or were they excessive or otherwise inappropriate, and if so why? If so, argue for the objectives to be set aside and not used to determine pay progression. At the same time, offer the alternative evidence needed to demonstrate that progression should be awarded.

Did the teacher object to the objectives and were they imposed? Did the teacher record those concerns? If the teacher had concerns about the objectives, account should be taken of that fact. What account was taken during the year of the fact that the member thought objectives were inappropriate or unachievable? The fact that a teacher took this view should certainly not be seen as reflecting badly on the teacher, especially if later on they are deemed not to have been met.

What support was available to the teacher to assist their achievement of the objectives? Was this in the event lacking in any way? This can be particularly relevant to objectives involving interaction with other teachers or agencies.

How close did the teacher get to meeting the objectives? This is particularly relevant in relation to objectives which were not agreed, or ones which were agreed at the time to be stretching objectives. The DfE advice itself recognises that not fully meeting objectives does not mean teachers should be denied pay progression, saying that schools might consider that "a teacher who has made good progress on, but not quite achieved, a very challenging objective has performed better and made a more significant contribution than a teacher who met in full a less stretching objective" (page 18).

Some objectives are more important than others. Which ones did the manager think were most important? Did the teacher meet those more important objectives, even if not meeting others?

If some objectives were met but not others, can it be argued that having met objectives in relation to classroom teaching standards, student achievement etc was more important than meeting objectives relating to other matters? If the objectives missed are related to TLR responsibilities, argue that there should be flexibility in relation to pay progression - other teachers without TLR responsibilities would have progressed if they had achieved the same standards (or maybe even lower standards) on classroom practice and achievement by students taught.

Objectives may need to be reviewed during the year in cases where teachers are absent from work for significant periods or where other changes suggest that discussion is needed on how and whether objectives should be amended

in order than they remain reasonable and achievable.

Challenging decisions based on student outcomes objectives

The DfE's pay advice identifies a need for "targets and objectives that enable teachers to demonstrate *performance*, rather than simply results" (page 13).

The NEU argues that using student outcomes to measure teacher performance is inherently wrong and potentially misleading. Student outcomes are affected by a range of factors outside of the control of an individual teacher. These include home background as well as the contributions of other teachers, both past and present. The resources made available by the school are also important. Student learning cannot be fully measured according to performance in given tests.

The joint NEU/NAHT model appraisal policy says that "Where use of numerical targets is appropriate, these will be reasonable, in the circumstances in which the teacher works and it will be recognised that factors outside teachers' control may significantly affect success".

Better policies will at least make reference to extenuating circumstances. Use this whenever there are any such circumstances - this could include arrivals or departures within the class, other disruptions within the class, or wider disruptions within the school. The point made earlier about the relative challenge of an objective and other points about objectives apply here as well.

Here is an example of a reference to extenuating circumstances that has been used by NEU activists: 'This is an aspirational target, and whilst I will endeavour to ensure all children make the expected progress, a number of circumstances outside my control could impact on attainment. Any failure to meet the targets as set should not automatically result in a failure to successfully complete the performance management/appraisal process.'

Challenging decisions based on lesson observations

Consider first of all - is the manager who carried out the observation actually competent to pass judgement on the quality of lessons? Have they been trained? Ask to see their own records of the classroom observation - do those indicate a

systematic approach? Some observation records are a lot less thorough than the lesson plan for the lesson being complained about. This point can also apply to other records kept by managers during the appraisal cycle eg book looks, drop ins, records of conversations - if these are in a mess, then that can cast doubt both on the quality and reliability of the manager's judgement.

How did the manager assess quality of teaching? If based only on lesson observations, cite the Ofsted position as recently adopted - Ofsted now says that basing an assessment of quality of a teacher's teaching on a single lesson observation is not reliable, and Ofsted inspectors will not be allocating a grade to single lessons at all in future. Judgements on teachers' capabilities cannot be reliably formed through lesson observation, especially if the criticism is that only one or two lessons were observed and were not up to standard.

Separate guidance on lesson observations is available on the NEU website.

Challenging decisions based on pupil or parent feedback

Some schools may seek to use criteria based on pupil or parent feedback. The NEU believes this is completely inappropriate. Decisions to deny progression on the basis of pupils' and parents' views should be challenged on the basis that such views are likely to be subjective and based on a lack of understanding of pedagogy. Again, however, such an approach should be challenged wherever possible through collective action rather than individual appeals.

Challenging decisions based on requirements which teachers haven't had the opportunity to meet

Decisions based on criteria such as "the ability to coach and mentor others", or actual experience of doing so, should be challenged where teachers (particularly those on the Main Pay Range) have not been allowed sufficient opportunity to do this work.

Challenging decisions that don't take learning curves into account

When teachers are new in a role (whether in their early years of teaching, new to a promoted post, or simply new to a particular school or year group etc), that should be taken into account when objectives and expectations are set and

when judgments are made. The DfE's pay advice says that "Teachers' performance should be assessed against the relevant standards to a level that is consistent with what should reasonably be expected of a teacher in the relevant role and at the relevant stage of their career" (page 13). Check the feedback given after observations, in interim reviews etc for any evidence about whether this happened.

Challenging decisions based on inappropriate expectations of UPR teachers

The Upper Pay Range (aka Upper Pay Scale) is not a separate grade or post to the Main Pay Range. It does not create different or additional duties and responsibilities and should not lead to expectations on UPR teachers to undertake additional responsibilities without payment.

In particular, the statutory guidance in the STPCD states at section 3 para 48 that teachers' contractual obligation to contribute to curriculum development "does not mean that they can be expected to take on the responsibility of, and accountability for, a subject area or to manage other teachers without appropriate additional payment. Responsibilities of this nature should be part of a post that is in the leadership group or linked to a post which attracts a TLR1 or TLR2".

Teachers with additional responsibilities should be paid TLR payments for those responsibilities. Progression should not be denied to UPR teachers on the basis that additional responsibilities for which no TLR payment was given were not undertaken or were not undertaken properly.

The STPCD states that "Any pay increase ... awarded to a teacher on the main pay range [or] the upper pay range ... or any movement between those pay ranges must be permanent for as long as the teacher remains employed within the same school" (para 12.2). There is no provision allowing a teacher to agree to, or be compelled to, give up their entitlement to be paid on the Upper Pay Range following any appraisal or pay decision by the reviewer or governing body.

Challenging decisions based on a need for training

Identifying professional development needs is not the same as identifying concerns about performance. Everyone will have development needs in a broad sense throughout all stages if

their career. The development purpose of appraisal would be destroyed if a request for training was then used to justify denying pay progression. Simply having identified training needs - or having identified concerns for which training was allegedly required - should not be enough to deny progression. That should only happen if the concerns were valid and the training (and other support) was provided but the concerns persisted after that had happened. Similarly, the NEU would not accept denial of progression on the basis that teachers had not discharged a responsibility for identifying and meeting their own professional development needs.

Challenging decisions on the basis of the financial impact of denying pay progression

Make sure governors understand the financial losses caused by denial of pay progression. Appendix 1 of this document sets out the potential cumulative financial loss to teachers who are denied their expected pay progression on just one occasion. The losses set out in the Appendix will happen even if they get pay progression every year thereafter on the Main Pay Range and every two years on the Upper Pay Range because they will be paid on a lower pay point each year until they finally reach the top of the pay range. This can represent, effectively, a massively disproportionate "fine" for just one year of perhaps marginal under-performance.

For teachers who will have their pension benefits based on their career average earnings there is also an ongoing loss throughout their retirement.

Challenging discrimination

Challenging decisions on the basis of potential unlawful discrimination

During the first years of the threshold application system, clear evidence of discrimination on the basis of race was found by DfE monitoring. The NEU fears that the Government's reforms to teacher pay will lead to discrimination against many teachers on grounds of age, part time status, gender, disability, sexual orientation etc as well as on grounds of race. Further NEU advice on identifying and tackling potential discrimination is set out in Appendix 2.

If you believe that you have been discriminated against on these or any other grounds then you should specify this in your appeal, and you should also inform the NEU locally in such circumstances. Collective action would be the most appropriate response to systemic problems leading to discrimination.

The DfE's pay advice contains guidance on monitoring equality issues in pay decisions. Governing bodies should be asked to record the steps they are taking to avoid discrimination in pay decisions and to disclose how and when they propose to monitor the effectiveness of those steps. The DfE's pay advice provides useful guidance on how to do this.

Governing bodies should provide school-based data on the equality impact of pay policies. Employers with teachers in multiple workplaces such as local authorities and academy chains should produce regular reports on pay levels, pay progression and appeal outcomes across all the workplaces where they employ teachers. Where inequality in pay or pay progression is identified, the governing body or employer should take action to redress the inequality.

Criteria based on contribution to pupil activities beyond the normal working day would clearly unfairly disadvantage some teachers and might even constitute unlawful discrimination. Using such criteria would disadvantage teachers with family caring responsibilities and disproportionately affect women teachers. Similarly, criteria relating to contributions to meetings held outside the school day or "overall contribution to the school" should be challenged where they require significant additional work beyond the school day.

Challenging decisions to deny progression to teachers on maternity leave or extended sickness absence

The DfE's pay advice says that "Where a teacher is away from school because of maternity leave, it is unlawful for the school to deny that teacher an appraisal and subsequent pay progression decision because of her maternity" (page 41). Similar advice is given in respect of teachers on extended sickness absence.

Such teachers must not be unfairly penalised in pay terms as a result of their absence. Pay decisions must still be taken. If they were present for some of the year, then they should be assessed on the basis of their work during that period (with account taken of any impact on their work of their pregnancy or early stages of ill health). If they are absent for the full review period, the NEU argues that their previous pay recommendation should be the default position.

The DfE's pay advice contains guidance on protecting the position of such teachers in its guidance on equality issues in pay decisions. It says that "Schools should consider conducting appraisals prior to individuals departing on maternity leave, even if this is early in the appraisal year, and basing any appraisal and pay determination on the evidence of performance to date in that appraisal year. Account could also be taken of performance in previous appraisal periods if there is very little to go on in the current year" (page 42). With regard to extended sickness absence, the following paragraph says that "Schools should consider utilising the same range of options [as] for teachers on maternity leave".

You should also check what has happened to teachers who have recently returned from maternity leave or extended sickness absence. The DfE advice says that "When a teacher returns to work from maternity leave, the school must give her any pay increases that she would have received, following appraisal, had she not been on maternity leave" (page 41) and advises similarly with regard to teachers returning from extended sickness leave.

Applications to be paid on the Upper Pay Range (threshold applications)

The STPCD includes more specific criteria about such applications (para 15) requiring the governing body to be satisfied that (a) the teacher is "highly competent" in all elements of the Teacher Standards / Practising Teacher

Standards, and (b) the teacher's "achievements and contribution ... are substantial and sustained". The pay policy should explain in more detail how the governing body will interpret these criteria and also explain the procedure and timetable for making and considering applications.

As noted earlier, the NEU fears that some governing bodies will establish criteria which will - by accident or design - set much higher hurdles than previously for progression. There is a danger that accessing the UPR will become much more difficult in some schools.

NEU reps should again ask, even before decisions start to be taken, whether the head teacher and governing body intend that rates of progression to the UPR should be in any way reduced as a result of the new policy on pay progression.

Web Links

See the full NEU toolkit on pay progression at <https://neu.org.uk/pay-toolkit>. The 2019 School Teachers' Pay and Conditions Document is at www.gov.uk/government/publications/school-teachers-pay-and-conditions

The School Teachers' Pay and Conditions (Wales) Document 2019 is at

<https://gov.wales/school-teachers-pay-and-conditions-wales-document-2019>

whilst the DfE's pay advice to schools can be found at

www.gov.uk/government/publications/reviewing-and-revising-school-teachers-pay

Appendix 1 - Financial Loss due to Denial of Pay Progression

These tables set out the total cumulative financial loss to teachers denied pay progression on just one occasion - even if they get pay progression every year thereafter on the Main Pay Range and every two years on the Upper Pay Range. Denial of pay progression is also likely to affect the eventual pension for most such teachers.

The tables below illustrate the scale of the financial loss involved to qualified classroom teachers. A corresponding and proportionate degree of loss would, of course, affect those on leadership, leading practitioner and unqualified pay ranges.

ENGLA ND	2019-20 Salary	Loss	Cumulative Loss
M1	£24,373	£1,925	£16,117
M2	£26,298	£2,115	£14,192
M3	£28,413	£2,186	£12,077
M4	£30,599	£2,411	£9,891
M5	£33,010	£2,961	£7,480
M6	£35,971	£1,683	£4,519
U1	£37,654	£1,396	£2,836
U2	£39,050	£1,440	£1,440
U3	£40,490		

INNER LONDON	2019-20 Salary	Loss	Cumulative Loss
M1	£30,480	£1,590	£19,091
M2	£32,070	£1,671	£17,501
M3	£33,741	£1,758	£15,830
M4	£35,499	£2,731	£14,072
M5	£38,230	£3,253	£11,341
M6	£41,483	£4,230	£8,088
U1	£45,713	£2,247	£3,858
U2	£47,960	£1,611	£1,611
U3	£49,571		

OUTER LONDON	2019-20 Salary	Loss	Cumulative Loss
M1	£28,355	£1,758	£16,186
M2	£30,113	£1,863	£14,428
M3	£31,976	£1,980	£12,565
M4	£33,956	£2,880	£10,585
M5	£36,836	£3,199	£7,705
M6	£40,035	£1,384	£4,506
U1	£41,419	£1,532	£3,122
U2	£42,951	£1,590	£1,590
U3	£44,541		

FRINGE	2019-20 Salary	Loss	Cumulative Loss
M1	£25,543	£1,925	£16,092
M2	£27,468	£2,113	£14,167
M3	£29,581	£2,194	£12,054
M4	£31,775	£2,404	£9,860
M5	£34,179	£2,973	£7,456
M6	£37,152	£1,645	£4,483
U1	£38,797	£1,392	£2,838
U2	£40,189	£1,446	£1,446
U3	£41,635		

WALES	2019-20 Salary	Loss	Cumulative Loss
M1	£24,906	£1,392	£15,584
M2	£26,298	£2,115	£14,192
M3	£28,413	£2,186	£12,077
M4	£30,599	£2,411	£9,891
M5	£33,010	£2,961	£7,480
M6	£35,971	£1,683	£4,519
U1	£37,654	£1,396	£2,836
U2	£39,050	£1,440	£1,440
U3	£40,490		

Appendix 2 - Potential discrimination

Unequal outcomes between men and women, black and white, disabled and non-disabled, older and younger teachers may result from overt or direct discrimination, or from a failure to remove or adjust criteria which place certain groups of teachers at a disadvantage.

Direct discrimination in pay may arise, for example, if a teacher's value is judged by reference to assumptions about what someone with her/his protected characteristics is capable of, rather than by the evidence of what s/he has achieved. Direct discrimination in pay may also arise if a teacher is denied opportunities (e.g. training, mentoring and/or professional support) which would help improve their teaching practice and put their skills and abilities in the best light.

In contrast, indirect discrimination may arise if an employer assesses the worth of each individual's contribution to the school by reference to criteria which, although they apply equally to everyone, are harder for teachers with certain characteristics to meet and therefore place them at a disadvantage. By way of example, criteria based on contribution to pupil activities beyond the normal working day would disadvantage some teachers with family caring responsibilities and disproportionately affect women, who still carry greater family responsibilities in British society than men.

Dealing with discriminatory performance objectives at the appraisal stage

Where a member believes that a performance objective is likely to place her/him at a disadvantage and that the disadvantage caused is likely to lead to discriminatory pay outcomes, s/he should not agree to the performance objective without seeking appropriate advice from the Union. Dealing with such concerns at the pay appeal stage is akin to closing the stable door after the horse has bolted.

Women teachers

Here are some truths about the gender pay gap:

- Women face a pay gap in nearly every occupation – teaching is no exception;
- The gap is worse for BME and disabled women;
- The gap grows as women become older;
- The gap exists among women without children as well as those with children.

The average pay for all women teachers in all state funded schools including academies is £2,800 less than for their male counterparts every year.

Women teachers may be disadvantaged by appraisal and pay policies which attach greater value to:-

- Full-time working (women are still more likely than men to work part-time);
- A commitment to work unsociable hours;
- A willingness to take on greater responsibilities;
- Active involvement in extracurricular activities and contributions to meetings held outside the school day;
- Excellent attendance record (women taking maternity leave may be disadvantaged, as will women taking time-off to care for sick children and elderly relatives);
- Quantity of work output (without reference to quality of work);
- Subject areas (women are likely to be disadvantaged if greater value is attached to Maths and Science than the Arts and Humanities).

Employers are not of course prevented from attaching value to the above and remunerating teachers accordingly. The law, however, requires that where they attach value to these areas, their actions must be capable of objective justification.

For example, if a female teacher has a smaller quantity of work output than a male teacher, but is nevertheless as effective as the male teacher, then all things being equal, an employer may struggle to justify a difference in pay between the two.

Black and minority ethnic teachers

Pay discrimination among Black and minority ethnic teachers is, in the NEU's casework experience, extremely difficult to prove. This is because the motives and behaviours underlying less favourable treatment are very subtle, may sometimes be unconscious and are often the result of the application of appraisal and pay policies rather than the policies themselves. During the first years of the threshold application system, for example, evidence of discrimination on the basis of race was found by DfE monitoring.

BME teachers often report the following as a possible explanation for their lack of relative success in pay, appraisal and promotion:

- Racial abuse from pupils leading to behaviour management issues;
- School inaction in relation to reported incidents of racial abuse;
- Absences caused by lack of support and understanding of the impact of racial abuse;
- Lack of confidence (our surveys have revealed that on average BME teachers in the SMT applied for an SMT post at least twice before achieving success);
- Lack of access to continuing professional development and knowledge of appropriate courses and development opportunities;
- Unacknowledged contribution to school life (eg supporting and mentoring NQTs);
- Other people's negative perception of the capability and potential of Black people.

Pay appeals should be considered where an employer applies the following criteria as the basis for a pay award, without taking the above factors into account where appropriate:-

- Relationships with pupils;
- Behaviour management;
- Pupil attainment (eg being expected to achieve the same levels of exam success with bottom-set as with top-set pupils);
- Relationship with parents;
- Number and quality of CPD courses taken;
- Effectiveness as a team member.

Disabled teachers

A study of pay gaps across equality strands, commissioned by the Equality and Human Rights Commission (EHRC), suggests that disabled women and men experience substantial pay gaps and pay penalties. The reasons given are complex, but they include:-

- A large proportion of part-time working among disabled people, which leads to pay inequalities similar to those experienced by women who work part-time; and
- A 'glass ceiling' that appears to operate for more highly qualified disabled people.

Disabled teachers may be disadvantaged by policies which attach greater value to:

- Active involvement in extracurricular activity;
- Number and quality of CPD courses taken (access to courses may be difficult depending on the nature of the disability/condition);

- Enthusiasm and energy (teachers with mental impairments often lack enthusiasm and energy);
- Excellent attendance record;
- Quantity of work output.

Where disabled teachers are disadvantaged by provisions in pay or appraisal policies, the employer may be under a duty to make reasonable adjustments to remove or ameliorate the disadvantage. For example, where disabled teachers have been unable to meet performance objectives because of absences related to disability, employers may be required to rely on their performance during the last appraisal cycle as the basis of a pay award, or alternatively, consider using a different and/or shorter time period as the reference period for assessing pay. In any event, DfE guidance requires pay policies to make it clear how teachers on long-term leave will be treated in relation to pay progression.

Younger teachers

Younger teachers, or to be more precise new entrants to the profession, are likely to experience pay inequality if:

- Equal access to professional development opportunities is not guaranteed; and
- Achieving the required standards at the end of induction will not normally be sufficient to progress to the next point on the main classroom teachers' scale.

The NEU's view is that newly qualified teachers who achieve the required standards at the end of induction should normally progress to the next point on the main classroom teachers' scale.

Older teachers

Our surveys have shown that older women teachers are much more likely than other groups to be the subject of capability proceedings. This less favourable treatment is likely to be reflected in pay determinations too. Older teachers may be disadvantaged by criteria which:-

- Require experienced classroom teachers to be 'models of good practice';
- Impose standards of performance in excess of the level specified in statutory provisions;
- Rewards only experienced classroom teachers who take-on management responsibilities or additional responsibilities without payment.