

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/help-and-advice/pay> 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). These apply to teachers employed by local authority maintained schools and to those employed by academies and multi-academy trusts which have adopted their provisions. The position of other teachers will depend on the provisions of their employment contracts.

Using this document

This document gives advice on how the pay progression system for classroom teachers works. With pay progression depending on appraisal outcomes and meeting standards set by schools, knowing how the system works and how to challenge pay policies collectively or appeal decisions individually is essential to protect teachers' pay.

NEU advice on procedures for pay progression decisions

Teachers' pay and the STPCD

The statutory provisions governing pay progression for teachers in local authority maintained schools are set out in the School Teachers' Pay & Conditions Document (STPCD). Most academies follow the STPCD provisions or similar provisions.

Under these provisions, all pay progression is related to performance. Every school governing body must have a written pay policy which sets out the criteria and standards for pay progression. The pay policy and the criteria and standards for progression are determined by the governing body but must be consistent with the STPCD's provisions.

The DfE also publishes pay advice - "Implementing your school's approach to pay" which is "non-statutory" advice to which

governing bodies are expected to have regard but are not statutorily required to follow.

Responsibility for decisions on pay progression

Governing bodies are permitted to delegate pay decisions to a governing body committee, individual governors or the head teacher. The NEU advises that decisions should be taken by the governing body committee responsible for pay/staffing issues and reported to the full governing body. Decisions should not be delegated to the head teacher alone.

References to "the governing body" in this document should be read as including any governing body committee taking pay decisions.

Timetable for taking decisions and notifying teachers of decisions

The STPCD requires every governing body to carry out an annual pay determination for every teacher, including every post-threshold teacher and school leader with effect from 1 September.

The governing body is required to notify teachers of the outcome of pay decisions in writing at the earliest opportunity and no more than one month after the decision is taken. Any consequent pay increase is effective from the previous 1 September (para 3.1 a).

The STPCD does not contain any statutory deadline for taking pay decisions, and the DfE's pay advice no longer states that decisions should be made "as quickly as is reasonably possible". However, many schools have retained the former statutory deadlines of 31 October for classroom teachers and 31 December for leadership teachers.

The NEU advises that all schools should take decisions by these dates or as soon as practicable thereafter.

Statutory provisions on pay progression

The governing body should set out in the school pay policy the precise criteria and standards that will be used to determine decisions on pay 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 are therefore allowed to set their own criteria subject only to the requirements in para 19.2 set out above. No statutory national criteria or guidance exist for reference. This makes it harder to argue that pay progression criteria are

being incorrectly applied, or that they are incompatible with the STPCD, excessive or otherwise inappropriate.

Criteria must, however, 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.

For leadership teachers, the process is essentially the same as for classroom teachers, i.e. pay progression is determined on the basis of appraisal outcomes.

Applications and further evidence

The STPCD requires governing bodies to undertake annual pay determinations for all teachers. Pay progression is not an application process. Teachers cannot be required to "apply" or complete any application form, since the governing body must undertake pay determinations whether or not teachers have complied with any requirements set by the school. Moreover, the DfE advice 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)".

Pay progression solely based on appraisal

The DfE's pay advice argues firmly against unnecessary bureaucracy and in favour of taking pay decisions informed solely by appraisal. It states, inter alia, that "evidence requirements must be rooted firmly within the parameters of the appraisal process"; and that "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".

The NEU advises, therefore, that:

- the appraisal review should be the only source of evidence teachers require to support pay progression; and
- teachers should not be required to submit additional evidence but should be permitted to do so if they wish to draw attention to

particular achievements which support pay progression.

The Appraisal Regulations require that where a teacher is eligible for pay progression, the reviewer must make a recommendation on pay progression which is passed to the head teacher as part of the planning and review statement. The teacher should be informed of the outcome of the appraisal process and the reviewer's recommendation when it is made and before the pay decision is made.

The STPCD in turn requires that the governing body, in making a decision on progression, must "have regard" to the reviewer's recommendation (para 19.2.b). The governing body isn't however bound by the reviewer's recommendation; nor is the head teacher precluded from giving advice to the governing body. For the head teacher, the reviewer making the recommendation is an appointed panel of governors.

The NEU advises that:

- Where the recommendation from the reviewer or the head teacher is that a teacher should not progress, the governing body should consider the evidence itself and discuss it with the reviewer or the head teacher, not just accept the recommendation without discussion. The governing body should satisfy itself that the teacher has not met the standards required for progression.
- Where the recommendation from the reviewer is that a teacher should progress, the governing body should award pay progression. Any decision not to follow such a recommendation would have to be justified by clear and strong evidence.

"No surprises" principle

Crucially, the DfE's pay advice states that "the relevant body should manage the appraisal and pay determination process so that there are no surprises at the end of the appraisal cycle - throughout the appraisal cycle both the teacher and line manager should understand what objectives are in place, the evidence that will be used to assess performance against objectives

and the criteria for a successful performance review".

Whenever a reviewer or head teacher recommends denial of pay progression and the teacher is not already aware that this is likely, there are obvious grounds for objecting to that recommendation and for appealing against any decision to deny progression.

The DfE's pay advice also states that teachers should have the opportunity to discuss the pay recommendation with the appraiser or head teacher before the pay decision is taken by governors; and that if, after such a discussion, the teacher continues to object to the recommendation, they should be permitted to make formal representations to the governing body in person before it takes a decision.

The Appraisal Regulations also require an appeals procedure allowing teachers to appeal against appraisal statements and pay recommendations. The NEU supports the inclusion of such provisions in all pay procedures - it may be easier to persuade governors not to take a decision to deny pay progression than to persuade an appeals panel to overturn a decision once it has been taken.

The NEU advises that any notification given to teachers that they have been denied progression should contain full reasons for this decision. Denying the teacher this information would be an obstruction of their right of appeal.

Appeals

The STPCD requires schools to have an appeals procedure in relation to pay decisions (para 2.1(b)). The DfE's pay advice includes a recommended appeals procedure which is endorsed by the NEU and also by NAHT and ASCL. It includes the above provisions allowing teachers to make objections to pay recommendations before pay decisions are made; and also provides for a formal appeals hearing at which the teacher can appear in person, represented if they wish by a union representative.

Advice on pay appeals is set out in the separate Pay Appeals guidance in this NEU toolkit.

All the above points apply to leadership group teachers, i.e. no applications; progression based on appraisal outcomes; the 'no surprises principle' and the statutory appeals procedure.

NEU advice on criteria and standards for pay progression

Setting the criteria and standards for pay progression - the school's pay policy

As noted earlier, the governing body sets the criteria and standards for pay progression but these must be consistent with these provisions of the STPCD.

Para 19.2 of the STPCD says that the governing body decides how pay progression will be determined for classroom teachers, 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;
- the governing body must "have regard" to the reviewer's pay 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 of the STPCD requires the governing body to set out clearly in the school's pay policy how pay progression will be determined. The particularly important provision for teachers is the right to expectation of progression on the basis of "continued good performance".

See document 9 in this NEU pay toolkit for an explanation of pay progression for leadership teachers.

NEU policy on standards for progression

The NEU's policy is that teachers should be awarded pay progression following a successful appraisal review. Reviews should be deemed to be successful unless significant concerns about a teacher's performance have been raised in writing with the teacher during the annual appraisal cycle and have not been sufficiently addressed through support provided by the school by the conclusion of that process. The NEU seeks the inclusion of this provision in every school's pay policy.

Interpreting and applying the STPCD provisions

The following sections set out NEU advice on the proper interpretation and application of the STPCD provisions in the context of three measures which commonly feature in schools'

pay progression criteria - performance against the Teachers Standards; achievement of appraisal objectives; and standards of teaching as measured by classroom observations/overall judgements of performance.

Use this advice to ensure that appraisal objectives are appropriate, recommendations from reviewers are fair and pay decisions are correct. You can also use it to assess whether your school pay policy is acceptable (see also the separate guidance in this NEU toolkit, *Winning an Acceptable Pay Policy*).

a. Performance against the Teachers' Standards

The Teachers' Standards (or in Wales the Practising Teachers' Standards) form a backdrop to appraisal, informing the setting of objectives and the appraisal discussion. The STPCD does not require that teachers' performance is assessed against the Standards individually.

The Standards should not be used as a checklist for assessing teachers' performance. This would divert the appraisal discussion away from the issues and objectives identified at the initial appraisal meeting. In the NEU's view, appraisal assessments should start from the premise that the teacher is continuing to meet the Standards unless there is evidence to the contrary.

Some governing bodies 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.

The NEU rejects such documents, which would reduce teacher appraisal to a tick box exercise and prevent professional dialogue on performance or professional development. This view is endorsed by the DfE's pay advice 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".

b. Achievement of objectives

Objectives which will be used to inform pay decisions must be appropriate and fit for purpose.

The DfE advice to schools identifies a need for “targets and objectives that enable teachers to demonstrate performance, rather than simply results”. Separate guidance on setting appraisal objectives is available on the NEU website.

A joint union model appraisal policy and an appraisal policy checklist can be found on the NEU website.

Objectives which are unachievable or otherwise inappropriate will skew the appraisal process and obstruct pay progression. Teachers should challenge any objectives they think are unachievable or inappropriate at the outset and, if they are imposed, 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 DfE’s pay advice notes that “a school 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. Similarly, a teacher may have achieved all their objectives but failed to meet all of the relevant standards”. The NEU expects that teachers who met their objectives should normally receive pay progression. Conversely, teachers who do not fully meet objectives should not automatically be denied pay progression.

c. Standards of teaching / Judgements of overall performance

The STPCD provides clearly that “continued good performance ... should give [a teacher] an expectation of progression”. Criteria which set higher standards for progression than this will obviously offend against the STPCD’s statutory requirements. Adopting criteria which impose standards higher than those specified in the statutory provisions could also be regarded as unlawful practice, adopted to ensure that teachers do not progress.

The NEU has seen various pay policies which include criteria requiring teachers to meet standards of teaching or of overall performance which use wording such as “sustained high quality”, “outstanding”, “good with elements of outstanding” etc. All of these are inappropriate progression criteria to adopt in pay policies applying to classroom teachers.

The criterion of “sustained high quality” appears in the STPCD pay progression provisions for leadership teachers, not classroom teachers. It has a different meaning to “continued good performance” and, if applied to 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 go beyond “continued good performance”. Similarly, teachers should not be expected to be “models of good practice” in order to get progression. Again this would lead to pay progression being the exception rather than the norm.

NEU advice on commonly encountered situations

Progression to and on the Upper Pay Range

Governing bodies are now able to decide, if they wish, that teachers on the Upper Pay Range (UPR) are eligible for pay progression every year rather than every two years. Most school pay policies, however, continue to provide that teachers are eligible for progression every two years on a three point scale on the UPR.

Teachers on the Main Pay Range are required to apply to move to the UPR. The STPCD sets out specific criteria for movement to the UPR. The NEU has published separate and more detailed advice for teachers on applying to move to the UPR.

The STPCD states at para 12.2 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”. There is no provision which allows a teacher to agree to, or be compelled to, surrender their entitlement to be paid on the UPR as a consequence of any appraisal or pay decision.

Progression to the UPR does not alter the professional duties or obligations of teachers. In particular, the STPCD statutory guidance states 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 should not be required to take on additional duties without appropriate payment; and pay progression decisions should not be based on their performance of additional responsibilities which they have been required to take on without appropriate additional payment.

Teachers denied pay progression in previous years

Any teacher who is eligible for, but does not receive, pay progression is entitled to be considered again for progression the following year, by virtue of their right to an annual pay assessment.

Teachers who have not been subject to appraisal

In most cases, governing bodies will be able to take pay decisions by reference to the appraisal reviewer’s recommendation. In some cases this will not be appropriate or possible eg where the appraisal process has not been completed due to maternity leave, extended sick leave or secondment or where previous schools have not provided information about appraisal reviews.

The DfE has made it clear in its pay advice, however, that denying progression in such circumstances is unfair and can constitute unlawful discrimination.

The NEU advises, therefore, that in all such circumstances pay decisions should be taken by reference to such information as is available. Governors may need to consider information from only one appraisal review or from whatever part of the appraisal cycle when the teacher was present. In extreme circumstances, the decision might be taken on the basis that the teacher’s performance might have been expected to have been maintained throughout the appraisal period in question; or postponed until information is available from the following school year and then backdated.

Where a governing body acts in this way, complaints of unfair treatment and possible unlawful discrimination are less likely to arise.

Teachers on maternity or extended sick leave or otherwise absent during the period

The DfE’s pay advice confirms that such teachers are entitled to consideration for pay progression in the same way as other teachers, whether or not they have returned to service at the date of the annual pay determination. In such cases, however, it is particularly likely that appraisal reviews may not have been completed and the governing body may not have any reviewer’s recommendation to consider.

The NEU therefore advises that pay decisions should be taken by reference to such information as is available. This might include information from the most recent appraisal review or any part of the appraisal period when the teacher was present.

Failure to consider progression in this way could clearly constitute less favourable treatment on the basis of gender or disability and leave the governing body open to complaints of unlawful direct discrimination.

Teachers who have recently moved posts

Any teachers who move post with effect from 1 September or during the previous year are still entitled to be assessed for pay progression, even if they have not taken part in appraisal at their current school. The STPCD requirements on annual pay assessments apply to all teachers who have “completed a year of employment since the previous annual pay determination” (para 19.1) and are not restricted to teachers who have completed a year’s employment at the particular school.

The NEU advises that the following approach should be adopted:

- The teacher's starting pay should (where appropriate) be calculated according to the school's pay policy, preferably maintaining the teacher's previous salary in line with the principle of pay portability;
- A further decision should then be taken on pay progression according to the criteria set out in the pay policy.

The STPCD previously required head teachers to seek evidence from the teacher's previous head teacher to inform pay progression decisions. The NEU continues to support this approach. Where such evidence supports pay progression, this should be accepted. Where information is not forthcoming, the decision should be based on such information as is available or deferred to allow information to be obtained relating to the present post.

Teachers moving from other sectors

When teachers move from other sectors, governing bodies can take relevant experience, both within and outside teaching, into account when determining starting pay. The school pay policy should cover this.

Teachers with more than one post

Some teachers hold two or more posts and are employed simultaneously on, for example, two separate regular part-time contracts with different schools.

Where progression is being considered in such situations, a decision in one school will not legally bind that in the other. However, schools may agree to accept decisions taken by schools

where the teacher spends the majority of their time. This can be part of the school pay policy.

Where pay progression is being considered, the common sense solution is for a decision to be taken in the school in which the teacher works most of the time and adopted in the other school as well. A decision in one school does not legally bind the decision in the other school, however, so in such cases it is possible for a teacher to progress to a higher pay point in one school than in the other.

Supply teachers

Supply teachers employed by LAs or by governing bodies are entitled to an annual pay determination and consideration for pay progression in the same way as other teachers. They are not, however, entitled to be paid at any particular pay scale point when taking up any new engagement, due to the abolition of pay portability, which will significantly harm their ability to retain pay entitlements or progress up the pay scales.

Unattached teachers employed by LAs

The 2018 STPCD's provisions on annual pay determinations and pay progression apply to unattached teachers (ie teachers employed in LA central services or in pupil referral units) in the same way as other teachers. They should be applied in the same way as for teachers employed in schools. The body responsible for pay decisions may be the local authority or a management committee. The pay decision should be in such cases be delegated to an appropriate panel or individual but should not be taken by the line manager who undertakes the teacher's appraisal review and makes the pay recommendation. If appraisal is not taking place, teachers are still entitled to be considered for pay progression as set out above.

NEU support for members

The NEU is determined that all teachers should be treated fairly and equitably with regard to pay progression. NEU representatives should seek confirmation from the head teacher that pay decisions will be taken and notified by 31 October. They should also ask the head teacher to issue information about the process for pay progression decisions as soon as possible after the start of the academic year.

Failure to take pay decisions

In such cases, NEU representatives or NEU members individually should seek assurances from the head teacher that pay decisions will take place as required by the 2018 STPCD and will be taken in accordance with the statutory provisions and school pay policy criteria which match NEU policy.

Where arrangements for pay decisions appear to contradict the statutory provisions and the NEU's advice, NEU representatives or NEU members individually should seek advice from the Union by referring to the 'contact us' details on the NEU website.

Decisions that teachers will not progress

NEU members who have been informed that they will not progress will need to consider

whether they wish to appeal and if so on what basis.

Any NEU member who wishes to appeal should consult the NEU guidance document on pay appeals included in the NEU toolkit. They should register their appeal within the timetable set by the school pay policy and they should use the NEU model letters included with the NEU toolkit to register the appeal and ask for relevant information in writing.

Web Links

See the full NEU toolkit on pay progression at www.neu.org.uk/pay. The 2018 School Teachers' Pay and Conditions Document is at <https://www.gov.uk/government/publications/school-teachers-pay-and-conditions>

[ool-teachers-pay-and-conditions](https://www.gov.uk/government/publications/school-teachers-pay-and-conditions) whilst the DfE's pay advice to schools can be found at www.gov.uk/government/publications/reviewing-and-revising-school-teachers-pay