**SCHOOL TEACHERS’ PAY**

**NUT GUIDANCE ON PAY APPEALS**

**SEPTEMBER 2015**

**This NUT guidance document is part of an NUT toolkit for NUT members and NUT representatives on pay progression** **for teachers.**

**It gives advice to help members secure pay progression, either by persuading governors not to accept a recommendation to deny pay progression or by appealing successfully against a decision to deny progression.**

**Read it in conjunction with the rest of the NUT toolkit, which includes separate guidance documents on the rules of the pay progression system and on assessing and challenging school policies on pay progression, and an NUT checklist and model letters to help you assemble your arguments and evidence and make the case.**

**You and your colleagues should 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**

**The full NUT toolkit can be found** [**here**](http://www.teachers.org.uk/paytoolkit)**, while the 2015 STPCD and the DfE’s advice document to schools on pay policy issues can be found** [**here**](https://www.gov.uk/government/publications/school-teachers-pay-and-conditions-2015) **and** [**here**](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/452050/Implementing-your-school_s-approach-to-pay.pdf) **(the full weblinks can be found at the end of this briefing).**

**PART 1**

**LOOKING AT YOUR SCHOOL PAY POLICY**

**This section advises on your first step - being familiar with your school pay policy’s pay progression criteria and its pay appeals procedure - and on steps to take if you decide that the policy itself should be challenged, rather than decisions made under the policy.**

**Checking the policy’s progression criteria**

There are no longer any statutory and nationally-applicable criteria which governing bodies must follow when taking pay progression decisions. All that the 2015 STPCD provides is 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[[1]](#footnote-1).

The key provisions of the 2015 STPCD on pay progression are as follows:

* 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.

It will now be harder to argue that pay progression criteria are being incorrectly applied, or that they are incompatible with the STPCD, excessive or otherwise inappropriate, because schools are allowed to set their own criteria subject only to the requirements in para 19.2 set out above and no statutory national criteria or guidance exist for reference.

Criteria must, however, be fair, transparent and objective in order to meet the requirement in the DfE advice[[2]](#footnote-2) that pay arrangements “can be applied consistently and … pay decisions objectively justified” (page 9, column 2). Criteria which do not meet these requirements should be challenged, whether through collective challenge or through 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 but the NUT and other teacher unions advise strongly against this.

The DfE’s advice to schools 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 (pages 24-26). This is welcome – it is easier to stop decisions being taken than to get them overturned. The NUT 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, however, there is a formal right of appeal against any decision to deny pay progression.

With regard to pay appeals, the DfE advice identifies at pages 23-24 a range of possible grounds for appeal (which do not constitute 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:*

1. *incorrectly applied the school’s pay policy;*
2. *incorrectly applied any provision of the STPCD;*
3. *failed to have proper regard to statutory guidance;*
4. *failed to take proper account of relevant evidence;*
5. *took account of irrelevant or inaccurate evidence;*
6. *was biased; or*
7. *unlawfully discriminated against the teacher."*

Pay appeals can be pursued on any of the above grounds, which cover any situations where teachers are deemed not to have met the required criteria or standards, but can also be pursued on either of the following grounds as well:

* the criteria should be set aside because experience shows that they 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
* the criteria should be set aside because they are irrational or potentially discriminatory.

**The NUT’s preferred criteria for pay progression**

The NUT / NASUWT pay policy checklist and model pay policy 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 NUT 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 NUT 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.

Read the separate NUT document in this toolkit on *Winning an Acceptable Pay Policy* for guidance on assessing your school’s policy and on getting support from the NUT to help you and your members challenge the policy collectively. You could take action through the NUT’s action short of strike action (ASOSA) sanctions or, even more effectively, through strike action for which the NUT would support you with strike pay.

Tackling matters collectively will be a far better approach than trying to deal with problems as individual pieces of casework. Denial of progression to one or two teachers this year will be followed by an ever increasing number of teachers losing out as time goes by if it is the result of unfair demands or inappropriate / discriminatory criteria.

**PART 2**

**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 NUT checklist in preparing yourself for any meeting - and use the NUT model letters 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 criteria for progression or the 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.**
* **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).**

***1. Setting aside provisions of the policy***

**Challenging excessively demanding criteria**

The NUT fears that some governing bodies will establish criteria which set much higher hurdles than previously for progression. NUT reps should ask, even before decisions start to be taken, 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 this 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.**

The NUT has seen a number of policies which include criteria saying that overall performance or teaching observations should meet standards 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. Consequently 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 clearly go beyond “continued good performance”. Similarly, teachers should not be expected to be “models of good practice” in order to achieve pay progression. Again this would lead to pay progression being the exception rather than the norm. Excessively demanding criteria should, of course, 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 NUT opposes the use of the Teachers’ Standards as a checklist, either during appraisal or during pay decision making. In the NUT’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 NUT rejects this approach which would reduce teacher appraisal to a tick box exercise, completely preventing professional dialogue on performance or professional development.

The NUT’s view is largely shared by the DfE advice to schools, 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"* (page 18, 4th para).

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 collective action rather than individual appeals.

**Challenging quotas and relative performance judgments**

The NUT opposes any rationing of progression via a provision allowing only a set percentage of teachers will 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 advice to schools suggests that quotas or relative performance judgments could be considered appropriate in some schools, the NUT 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 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 NUT believes that every school governing body should have set a budget which provides sufficient funding for pay progression for every eligible teacher. The DfE advice says clearly that in setting budgets, *“schools should also take sensible financial decisions that take account of the likely cost of pay progression”.* Again, such an approach should be challenged wherever possible through collective action rather than forming the basis of individual appeals.

***2. 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 will involve challenging the evidence put forward against teachers.

Schools’ decisions should be firmly based on evidence - and only that evidence available through the appraisal process which is relevant to the appraisal process (see below). The DfE advice contains 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 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, then this is prima facie evidence that the procedure has not been followed properly.

The DfE advice 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"* (page 16, 3rd para).

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 one for which the teacher should not 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 2015 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 pay recommendation made as part of the appraisal report. Any pay decision taken before the conclusion of the appraisal process, or without considering the pay recommendation made in the appraisal report, is in breach of the STPCD’s requirements.

On the second point, you should refer to the DfE’s clear advice and expectations as set out in the DfE advice to schools which says 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.”* (page 15, 4th para).

This does not, however, mean that teachers should accept any excessive evidence requirements imposed by the school. The DfE advice to schools also says that the evidence required by the school must not be excessive. The NUT believes that while teachers should be able to offer additional evidence if they need to (see below), 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 the 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 will skew the appraisal process and obstruct pay progression. 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.

The NUT has issued separate guidance on objective setting as part of appraisal which is available at [www.teachers.org.uk/appraisal](http://www.teachers.org.uk/appraisal) 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, you should argue for the objectives to be set aside and not used to determine pay progression. You could at the same time time offer the alternative evidence you would then need to demonstrate that you should progress.

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 8, 2nd para).

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 tin order than they remain reasonable and achievable.

**Challenging decisions based on student outcomes objectives**

The DfE advice to schools identifies a need for *“targets and objectives that enable teachers to demonstrate performance, rather than simply results”* (page 15, 4th para).

The NUT 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 NUT/NAHT/ATL model appraisal policy (available at [www.teachers.org.uk/appraisal](http://www.teachers.org.uk/appraisal)) 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, therefore, at least make reference to extenuating circumstances. This should be pressed in any case if 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 noted earlier about the relative challenge of an objective, and other points about objectives, will all apply here as well.

**Challenging decisions based on lesson observations**

NUT advice and policy on lesson observations, including on challenging unacceptable policies and excessive observation requirements, can be found at [www.teachers.org.uk/appraisal](http://www.teachers.org.uk/appraisal).

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.

**Challenging decisions based on pupil or parent feedback**

Some schools may seek to use criteria based on pupil or parent feedback. The NUT 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 have not 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**

Teachers who are new in a role (whether in their early years of teaching, recently appointed to a post of responsibility, or simply new to a particular school or year group etc) are entitled to have that circumstance taken into account, both when objectives and expectations are set and when judgments are made. The DfE 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 18, 4th para). 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 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 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 Upper Pay Range as a consequence of 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 NUT 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 full financial losses that teachers will suffer when denied pay progression. The table in Appendix 1 of this document sets out the total cumulative financial loss to a teacher who is denied their expected pay progression on just one occasion. This loss will be suffered even if the teacher gets pay progression in every subsequent year on the expected basis (annual on the Main Pay Range, biennial on the Upper Pay Range) because they will continue to be paid on a lower pay point 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.

***3. 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 NUT fears that the new pay system 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 NUT 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 NUT locally in such circumstances. Collective action would be the most appropriate response to systemic problems leading to discrimination.

The DfE 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 effectivess of those steps. The DfE advice provides useful advice on how to do this (pages 33-37).

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 constituste 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 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 36, 1st para). 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 NUT argues that their previous pay recommendation should be the default position.

The DfE advice contains guidance on protecting the position of such teachers in its guidance on equality issues in pay decisions. With regard to maternity leave, 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 36, 3rd para). With regard to extended sickness absence, it says in the next paragraph that *"Schools should consider utilising the same range of options [as] for teachers on maternity leave".*

You should also check what has happened in relation to pay progression for 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 36, 1st para) and advises similarly with regard to teachers returning from extended sickness leave.

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

The STPCD includes more specific criteria about such applications, 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 NUT 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. NUT 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.

**PART 3**

**WEBLINKS**

The full NUT toolkit can be found at:

[www.teachers.org.uk/payandconditions/paytoolkit](http://www.teachers.org.uk/payandconditions/paytoolkit)

The 2015 School Teachers’ Pay & Conditions Document can be found at:

<https://www.gov.uk/government/publications/school-teachers-pay-and-conditions-2015>

The DfE’s advice to schools on pay progression issues can be found at:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/452050/Implementing-your-school_s-approach-to-pay.pdf>

**National Union of Teachers**

**September 2015**

**Appendix 1 - Financial Loss due to Denial of Pay Progression**

This table sets out the total cumulative financial loss to a teacher denied their expected pay progression on just one occasion - even if the teacher gets pay progression in every subsequent year on the expected basis (annual on the Main Pay Range, biennial on the Upper Pay Range).

|  |  |  |  |
| --- | --- | --- | --- |
| **ENGLAND & WALES** | 2015-16 Salary | Loss | Cumulative Loss |
|  |  |  |  |
| M1 | £22,244 | £1,758 | £15,627 |
| M2 | £24,002 | £1,930 | £13,869 |
| M3 | £25,932 | £1,995 | £11,939 |
| M4 | £27,927 | £2,201 | £9,944 |
| M5 | £30,128 | £2,703 | £7,743 |
| M6 | £32,831 | £2,387 | £5,040 |
| U1 | £35,218 | £1,305 | £2,653 |
| U2 | £36,523 | £1,348 | £1,348 |
| U3 | £37,871 |  |  |

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| --- | --- | --- | --- |
| **INNER LONDON** | 2015-16 Salary | Loss | Cumulative Loss |
| M1 | £27,819 | £1,451 | £18,546 |
| M2 | £29,270 | £1,525 | £17,095 |
| M3 | £30,795 | £1,605 | £15,570 |
| M4 | £32,400 | £2,493 | £13,965 |
| M5 | £34,893 | £2,969 | £11,472 |
| M6 | £37,862 | £4,894 | £8,503 |
| U1 | £42,756 | £2,101 | £3,609 |
| U2 | £44,857 | £1,508 | £1,508 |
| U3 | £46,365 |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **OUTER LONDON** | 2015-16 Salary | Loss | Cumulative Loss |
| M1 | £25,880 | £1,604 | £15,780 |
| M2 | £27,484 | £1,701 | £14,176 |
| M3 | £29,185 | £1,807 | £12,475 |
| M4 | £30,992 | £2,628 | £10,668 |
| M5 | £33,620 | £2,920 | £8,040 |
| M6 | £36,540 | £2,199 | £5,120 |
| U1 | £38,739 | £1,434 | £2,921 |
| U2 | £40,173 | £1,487 | £1,487 |
| U3 | £41,660 |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **FRINGE AREA** | 2015-16 Salary | Loss | Cumulative Loss |
| M1 | £23,313 | £1,757 | £15,628 |
| M2 | £25,070 | £1,929 | £13,871 |
| M3 | £26,999 | £2,002 | £11,942 |
| M4 | £29,001 | £2,195 | £9,940 |
| M5 | £31,196 | £2,713 | £7,745 |
| M6 | £33,909 | £2,378 | £5,032 |
| U1 | £36,287 | £1,303 | £2,654 |
| U2 | £37,590 | £1,351 | £1,351 |
| U3 | £38,941 |  |  |

**Appendix 2 - Challenging decisions on the basis of 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 the 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**

Below are some truths about the gender pay gap:-

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

The School Workforce Census (England) 2014 indicated that in secondary schools, women teachers over the age of 29 received less pay than their male counterparts. The disparity in pay continued throughout their teaching career.

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;
* Very active involvement in extracurricular activities;
* 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 NUT’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 arrangements:-

* Racial abuse from pupils leading to behaviour management issues;
* School inaction in relation to reported incidents of racial abuse;
* Absence from workplace caused by lack of support and understanding of the impact of racial abuse;
* Lack of confidence (an NUT survey 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 the life of the school (e.g. 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 (BME teachers complain of being expected to achieve the same level of exam success with bottom-set pupils as they would with the top-set)
* Relationship with parents;
* Number and quality of CPD courses taken;
* Effective 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 pay and appraisal policies which attach greater value to:-

* Very 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 a disabled teacher is disadvantaged by a provision in the pay and/or appraisal policy, the employer may be under a duty to make reasonable adjustments to remove or ameliorate the disadvantage complained of. For example, where a disabled teacher has been unable to meet her/his performance objectives because of absences related to disability, an employer may be required to rely on the disabled teacher’s 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 NUT takes the view that all 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**

A recent NUT survey revealed that older women teachers were much more likely than any other group of teachers 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.

1. See page 11 for advice about applications to be paid on the Upper Pay Range (“threshold applications”). [↑](#footnote-ref-1)
2. DfE – ‘Implementing your school’s approach to pay’ – September 2015. Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/452050/Implementing-your-school_s-approach-to-pay.pdf> [↑](#footnote-ref-2)