



YOU DESERVE A PAY RISE: Appealing over 'pay-progression'

ADVICE ON PAY APPEALS - OCTOBER 2015

Since the 1920s, teachers' pay has been structured around annual increments. Teachers could rightly expect to progress up the pay scale as they gained experience. However, following Gove's imposition of 'performance-pay', Governors could decide to pick and choose who gets a pay rise - and who doesn't.

Performance-related pay is divisive, demoralising and discriminatory. International research shows that it fails to improve pupil achievement. It certainly doesn't help teachers! It is, of course, really about cutting the pay bill. The NUT cannot accept this robbery. The Union was founded in 1870 to oppose 'payment-by-results' and we must do so again today.

In the first year of the new performance-pay system, most teachers continued to receive pay progression. However, too many teachers still lost out. For example, figures suggest that as many as a third of main range teachers were refused progress in some of the biggest academy chains. Upper pay range rejections were even greater. This is just the start. We have to act firmly to make sure this becomes the exception, not the rule.

• Don't suffer in silence, tell your colleagues

Being rejected for progression can make teachers feel like failures, but it's not staff who are failing, it's the system we are working under. Unreasonable workload, growing pupil needs and a lack of time and resources all make it hard to meet the ever-growing demands put on teachers and their schools. So don't be ashamed, be angry and organise to win the salary you deserve.

Performance-pay is designed to be divisive but trade unions have always said 'unity is strength'. If you are rejected for pay progression, don't just accept it. Talk to your union colleagues and make a plan of action - both for your individual appeal and for collective action against unfair policies that could threaten all teachers.

• Check your school pay and appraisal policies

Government policy is designed to fragment schools, including when it comes to pay. Each school has to adopt its own pay and appraisal policies. While many schools will adopt models provided by employers, some will have their own versions, sometimes where they have agreed to accept trade union amendments. School reps should make sure they ask for the latest copies of the policies adopted by your Governing Body.

• Check the timescale for lodging appeals

The school pay policy has to set out a procedure for teachers to appeal against being rejected for pay progression. However, don't get caught out by missing any deadlines for lodging appeals. In addition, make sure you are given clear written reasons as to why you were rejected, so you know what points to challenge.

The Lewisham model policies have the following steps:

1) The appraisal policy says that, as part of your annual performance review, your appraiser will produce a written appraisal report. This must be given to you by 31 October at the latest. The policy says that it should include a recommendation on pay. "Where a teacher objects to any of the entries in the appraisal report, those objections should be put in writing".

So prepare in advance for the appraisal meeting and be ready to make your case. If you object to the written report, whether it be over pay, the comments recorded or over the targets set, put your objections in writing.

2) The appeals section of the pay policy sets out the next steps. After the appraisal reviews, the Head will moderate initial pay recommendations from across the school. The Head's pay decision is then "included in the draft statement that is provided to the teacher".

The policy allows a teacher to first have an informal discussion with the Head to argue their case: "if the teacher wishes to better understand the rationale for the pay recommendation or bring any further evidence to the attention of the appraiser/headteacher, they should be given the opportunity to do so before the final pay recommendation is drafted".

Use this 'informal stage' to make your case from the outset. You aren't yet entitled to representation but you can ask to be accompanied by a rep or colleague.

3) The Head now makes a final recommendation to the Governors' pay committee. Governors can also look at evidence such as the appraisal review statements. A final written decision is now formally sent to teachers, including the reasons for that decision being taken. The policy says that this will be done by 31 October.

Once you receive the pay decision, you then have ten school working days in which to submit an appeal, including "a statement, in sufficient detail, of the representations that he/she intends to make".

Act promptly to prepare and submit an appeal before the deadline. You will already have thought of your objections and taken advice from colleagues but make sure your grounds are clearly argued and set out.

4) The pay committee must now arrange a hearing for you to put your case. You can be represented by your union, perhaps your school rep who will be well-placed to know the specifics of your school. It should be arranged within 10 working days of you submitting an appeal, but the NUT sometimes has to press to get things finalised! However, you can also request a postponement if the time offered isn't suitable.

Liaise with the NUT about the date of the meeting and who will represent you, also providing your evidence and details about the case that needs to be made.

Look on the National Union website via www.teachers.org.uk/paytoolkit for further information, model letters and advice documents. Get in touch with Lewisham NUT if you need support.

5) If you don't succeed at that hearing, then you have a further right of appeal to a Governors' appeal committee. Once again, a statement of appeal must be submitted within 10 school working days of being told the outcome. Again, make sure to liaise with the NUT about making arrangements for the appeal hearing and to discuss the evidence that needs to be submitted to make your case.

● **A quick reminder - how much you stand to lose**

If that process looks rather daunting, remember that your Union is on hand to support you. Remember too that after all the hours of work you put in, you deserve this salary! If you accept any rejection of pay-progression, it won't set you back just for one year. You will be further down the pay-scale than you should be for years to come.

So, denial of pay-progression, even for just one year, could cost you over £10,000 overall. That's worth appealing!

● **How to make a challenge - general arguments**

The NUT pay toolkit on the National website lists a range of different areas where a challenge could successfully be made. Here are some of the key points to consider:

1) DfE advice to schools lists possible grounds for appeal. You could highlight where some of these fit your case:

- (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.

2) Use Para 19.2 from the Pay and Conditions Document.

▪ "the decision whether or not to award pay progression must be related to the teacher's performance as assessed through appraisal". DfE advice adds that schools should not "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." So, object to evidence being used that wasn't part of the agreed appraisal objectives/review. Of course, this argument also means that teachers should object to unacceptable objectives in the first place. Make sure to read our separate advice on appraisal targets.

▪ a written pay recommendation must be made as part of the appraisal report and the governing body "must have regard to this recommendation". So, object if an original appraiser's positive recommendation is then over-ruled.

▪ "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". So, object if overly harsh expectations are set - such as needing to show 'increasing impact' on the main pay range or 'outstanding' teaching on the upper. Also, don't accept 'good' as meaning 'as graded by observations'. Remember, Ofsted says "It does not grade individual lessons. It does not expect schools to use the Ofsted evaluation schedule to grade teaching or individual lessons".

3) Don't accept schools saying they 'can't afford to pay'. 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 "schools should also take sensible financial decisions that take account of the likely cost of pay progression".

4) Use the 'no surprises' principle. 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'. Lewisham's model policy also says 'teachers will be awarded pay progression unless significant concerns about standards of performance have been raised in writing with the teacher during the annual appraisal cycle'. If feedback, support, training and advice weren't clearly given, then it is not acceptable to stop pay progression at the end of the year.

5) Look out for potential discrimination, particularly if some teachers feel they are being treated unfavourably. The DfE gives specific advice on equality monitoring and where teachers are, or have been, on maternity leave.

● **How to make a challenge - your specific case**

These general points can be useful but, above all, you must prepare a case that is particular to you and answers the specific reasons you've been given for not progressing.

Your union representative can help advise but you will be the person who best knows the facts. The Union advises:

- Make sure your rep is given the essential facts. Have all the relevant information and paperwork to hand.
- Find out if other NUT members are experiencing similar things. You and your rep should ask school colleagues.
- Arrange a pre-meeting. Decide on your key arguments.
- Consider likely arguments from the other side and prepare counter-arguments and answers to difficult issues. Know the criteria written in your school policies.
- Prepare key documentation - take paperwork into the meeting with key sections or quotes highlighted.
- Try to stick to your strongest points. Object to evasive answers. Ask for facts if vague statements are made.
- Use brief adjournments, if needed, to regroup or look at new information. If a longer adjournment is necessary, ask for it. Agree the new time and date before you leave.
- Insist on an agreed, written record of meeting outcomes.

● **Upper Pay Range and 'threshold applications'**

The points above apply equally to decisions about pay progression on the Upper Pay Range. Upper range teachers should also have decisions about their progression based on appraisal and without excessive expectations being set. DfE advice is clear that Upper pay progression is not about having to take on tasks that should be awarded a TLR.

An 'application' can only be required from teachers moving from the Main to Upper ranges. This should still be based on appraisal but must show they are "highly competent" in the relevant standards and that their achievements and contribution are "substantial and sustained". Make sure that the deadline for submitting applications is clear.

● **Don't just object individually, act collectively**

Colleagues being rejected for pay progression isn't their personal concern, it's an issue for every teacher. Next time it could be your pay progression or annual pay rise being denied - especially if things go unchallenged at the outset.

Make sure to discuss pay progression at your school NUT meeting. If you feel your school policies are being used to unfairly deny colleagues their pay rise, then decide on a plan of action to get things changed. The NUT can advise and back you - right up to taking strike action if necessary.