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October 2014

When I attended the programme of talks recently, I said how pleased I was that the talks had produced some positive results.

I was pleased to learn that this includes three new pieces of advice for schools on appraisal, pay appeals and equalities issues. I fully endorse the content of these documents, which were developed closely with union colleagues.

I attach a further copy of the three documents as an annex to this letter and would encourage you all to consider how you can make use of them.

I look forward to the discussions continuing throughout this term.

Rt Hon Nicky Morgan MP



Department  
for Education

# **The Use of Evidence in Appraisal and Pay Decisions**

**Departmental advice for local authorities,  
maintained schools, academies and free  
schools**

**June 2014**

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# Summary

## About this departmental advice

This is departmental advice from the Department for Education. This advice is non-statutory, and has been produced to give advice to schools and local authorities on the appropriate use of evidence and reducing unnecessary bureaucracy when making appraisal and pay decisions.

## Expiry or review date

This advice will be kept under review and, if necessary, updated in the light of future School Teachers' Review Body (STRB) reports.

## Who is this advice for?

This advice is for:

- Local authorities
- School leaders, school staff and governing bodies in all maintained schools, academies and free schools.

## The use of evidence in appraisal and pay decisions

1. *The Education (School Teachers' Appraisal) (England) Regulations 2012* ("the Regulations") came into force on 1 September 2012 and apply to all maintained schools in England, including maintained special schools, and to local authorities in respect of unattached teachers. They do not, however, apply to teachers in maintained schools who are serving a statutory period of induction, teachers employed for a period of less than a term, or any teacher who is the subject of capability procedures. *The School Teacher Appraisal (Wales) Regulations 2011* apply in Wales (although appraisal is a devolved matter in Wales and some aspects of this guidance may not be relevant). The Department for Education (DfE) are considering the implications of this in relation to existing guidance for schools on establishing fitness and ability to teach (as required by *the Health Standards (England) Regulations 2003*).
2. [The Departmental Advice on Reviewing and Revising Your School's Approach to Teachers' Pay](#) (published in September 2013) explains that schools need to set out what evidence they will take into account when making judgements about whether teachers' performance has met the relevant standards and their individual objectives. The range of evidence required should be clearly set out in the school's pay policy.

## Reducing bureaucracy

3. A fundamental principle that schools must take into account when developing and implementing pay and appraisal policies is the need to minimise the impact on workload for individual teachers, line managers and headteachers. Schools should always be aiming for policies and processes that avoid unnecessary bureaucracy for all parties concerned, and that are proportionate to support robust decisions. Schools should also ensure that all teachers are treated fairly, and should take particular care in respect of those teachers who have different working patterns or those with particular protected characteristics under equality legislation – the Department has issued further advice for schools on taking account of their equalities responsibilities in the context of their appraisal and pay processes.

## No evidence outside of the appraisal process

4. While schools are free to determine the range and level of evidence that is appropriate for pay determination purposes, that decision must be taken in the context of minimising bureaucracy. Whatever evidence is used, it should provide all teachers with a fair opportunity in their appraisal to demonstrate that they have met the relevant standards and their individual objectives, and the range of evidence requirements must be rooted firmly within the parameters of the appraisal process as set out in the school's pay policy. **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.** Schools should consider carefully the inappropriate use of evidence, and the need for targets and objectives that enable teachers to demonstrate *performance*, rather than simply results.

5. Teachers should receive constructive feedback on their performance throughout the year. In addition to the annual assessment, performance and development priorities may be reviewed and addressed during the course of the year, on a basis agreed between the teacher and their line manager.

6. Both the teacher and their line manager are responsible for considering and reviewing evidence for the assessment, in accordance with the school's appraisal policy. The appraisal process should be supportive and developmental and the school's pay and appraisal policy should set out clearly how the outcome of the appraisal process will feed into pay decisions. The school should manage the appraisal process so that there are no surprises at the end of the year – throughout the appraisal cycle both the teacher and line manager should understand what objectives are in place, the evidence that will be used and the criteria to assess performance, and progress towards meeting these.

7. There is a clear expectation in the statutory School Teachers' Pay and Conditions Document that good performance should lead to pay progression and the school's pay policy should define what constitutes good performance in the context of the school. Schools should also take sensible financial decisions that take account of the likely cost of pay progression. However, in circumstances where a teacher does not receive pay progression, an important part of feedback will be to explain the evidence which was taken into account to support this decision, and how any development issues can be addressed. Provisional assessments of performance against the Teachers' Standards in England and the Practising Teacher Standards in Wales should be given at performance reviews and, should they be deemed necessary, any interim feedback meetings. 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. The Regulations state that each teacher's appraisal report must include an assessment of that teacher's professional development needs, and identification of any action that should be taken to address them. Throughout this process schools need to take account of the need to ensure robust processes which fully enable all teachers to demonstrate their performance but which are not overly bureaucratic and time-consuming.

8. The role of line managers/appraisers is central to ensuring that the appraisal and pay determination process is carried out effectively and efficiently. Appraisers must take account of the principle that evidence for appraisals must be proportionate and clearly rooted within the appraisal process and that the appraisal cycle does not add unnecessarily to teachers' workloads. It is also essential that all appraisers fully understand the appraisal process within their school, how it is linked to the school's pay policy and have the skills necessary to

carry out this important function. Schools should therefore ensure that all appraisers are suitably prepared for carrying out all elements of the appraisal process and ensure suitable training is made available where necessary.

9. It is for governing bodies to decide how far they delegate decisions to headteachers. Headteachers may delegate the role of appraising teachers within their schools to other individuals, but remain accountable for the appraisal process under the Regulations. All appraisers should have appropriate knowledge and skills before they appraise other staff.

## **Intelligent use of private providers and their materials**

10. Under the Regulations, teachers' performance must be assessed against the relevant standards and against their individual objectives. For the majority of teachers in maintained schools in England, the relevant standards are the Teachers' Standards, and in Wales they are the Practising Teacher Standards

11. 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. Headteachers and other appraisers should use their professional judgement when appraising teachers' performance. 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.

12. When considering how to support the delivery of appraisal and pay reform, Governing Bodies may wish to consider services provided by Local Authorities and collaboration with other schools. If, however, they choose to use external or private providers, they should satisfy themselves that the method of procurement gives the school the greatest value for money and that resources do not negate the use of professional judgement of appraisers or impose an unnecessary bureaucratic burden on teachers.

## Further information

### Other relevant departmental advice and statutory guidance

- [Departmental Advice on Reviewing and Revising Your School's Approach to Teachers' Pay](#)
- <https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>





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# **Managing Appeals against Pay Determination**

**Departmental advice for local authorities,  
maintained schools, academies and free  
schools**

**June 2014**

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# Summary

## About this departmental advice

This is departmental advice from the Department for Education. This advice is non-statutory, and has been produced to give advice to schools and local authorities to appropriately manage pay decision appeals.

## Expiry or review date

This advice will be kept under review and, if necessary, updated in the light of future School Teachers' Review Body (STRB) reports.

## Who is this advice for?

This advice is for:

- Local authorities
- School leaders, school staff and governing bodies in all maintained schools, academies and free schools.

# Managing Appeals against Pay Determination

## Background

13. 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 for 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.

## Existing requirements

The School Teachers' Pay and Conditions Document (STPCD) requires schools and, in relation to unattached teachers, local authorities, to have a pay policy in place which sets out the basis on which they determine teachers' pay, and to establish procedures for determining appeals.

Hearings and appeals against pay decisions must meet the requirements of employment law, in accordance with Part 4 of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended). In basic terms, these provide that employers and employees should follow the ACAS Code of Practice No. 1 – "Disciplinary and Grievance Procedures"

## Support for school leaders and governors

14. It is important that school leaders and governors are well supported in managing pay and appeals processes. The Department recommends that governing bodies seek Human Resource (HR) advice to guide them in exercising their judgement; and reinforce the need for minuted, auditable decisions on pay and appeals processes. HR advice should be available if needed during any formal hearings, or as soon afterwards as is reasonably practicable and before any decision is confirmed. The HR provider should be familiar with the duties placed on schools by the Equality Act 2010, the ACAS Code of Practice and relevant case law concerning pay grievances and equal pay claims. Schools should regularly review their choice of HR provider to ensure that it is competent in these areas.

15. Schools should ensure that an appeals procedure is in place before any pay determinations are made. The adoption of an appeals procedure after a pay appeal has already been lodged could leave schools open to legal challenge. An appeals policy should have clear timescales which are reasonable in all circumstances, make allowances for school holidays, but allow appeals to be expedited in good time.

## **Example of a pay appeals procedure**

16. What follows is intended as a guide as there is no statutory process for schools to follow in terms of hearing pay appeals. A key aspect of the process is the opportunity for a teacher to discuss a pay recommendation prior to it being confirmed by the governing body. This stage in the process will help to ensure that pay decisions and pay policies are seen as transparent and fair. The opportunity to discuss a pay decision before it is made may also mitigate the need for the more formal stages two and three.

### **Stage one – informal discussion with the appraiser or headteacher prior to confirmation of pay recommendation**

i. a teacher who is dissatisfied with a pay recommendation has the opportunity to discuss the recommendation with the appraiser or headteacher before the recommendation is actioned and confirmation of the pay decision is made by the school.

### **Stage two – a formal representation to the person or governors' committee making the pay determination;**

ii If, having had an informal discussion with the person making the pay recommendation, the teacher believes that an incorrect recommendation has been made, he/she may make representation to the person (or governors' committee) making the decision. To begin the process the teacher should submit a formal written statement to the person (or governors' committee) making the determination, setting down in writing the grounds for not agreeing with the pay recommendation;

iii. The teacher is given the opportunity to make representations, including presenting evidence, calling witnesses and the opportunity to ask questions, at a formal meeting with the person (or governors' committee) who will make the pay determination. Following this meeting the person (or governors' committee) will make a pay determination that will be communicated to the teacher in writing.

### **Stage three – a formal appeal hearing with an appeals panel of governors**

iv. Should the teacher not agree with the pay determination, the teacher may appeal the decision and have an appeal hearing before an appeals panel of governors;

v. In the hearing before governors, both the teacher and the management representative will have the opportunity to present their evidence and call witnesses, and to question each other. The panel is permitted to ask exploratory questions – **Annex A** sets out how an appeal hearing might be run;

vi Having heard the appeal, the panel must reach a decision, which it must relay to the teacher in writing, including their rationale for reaching the decision. The appeal panel's decision is final and, as set out in Section 3, paragraph 6 of the STPCD, there is no recourse to the general staff grievance procedure.

## Appeals hearings panels

17. It is recommended that the panel which hears pay appeals should comprise three governors who were not involved in previous discussions regarding the teacher's pay determination. Governors on appeals panels should be familiar with the school's pay and appraisal policies. To ensure that appeals are properly considered, governing bodies should consider any training needs their members have, including in duties placed on the school by the Equality Act 2010 and the ACAS Code of Practice (Disciplinary and Grievance Procedures).

18. Teachers making representation at stage two and making an appeal at stage 3 may be accompanied by a colleague or representative from a professional organisation or trade union.

19. Pay appeals should be formally clerked and a note of proceedings should be produced.

# **Appendix A: Possible Pay Panel Hearing Procedure**

A suggested procedure for the conduct of formal hearings:

## **Introductions**

Chair introduces everyone, what their role is, and then outlines the order of the hearing.

HR clerk takes notes of the hearing.

## **The employee case**

Employee or their representative presents employee case providing any evidence to support their case including from witnesses (if any).

Management representative has the opportunity to question the employee.

Chair asks questions and subsequently opens the discussion to the panel.

## **The management case**

Management representative presents management case, providing any evidence to support their case and any witnesses.

Employee or their representative has the opportunity to question the management representative.

Chair asks questions and subsequently opens the discussion to the panel.

## **Summarising and end of hearing**

Employee or their representative sums up the employee case.

Management representative sums up the management case.

If appropriate, the Chair can sum up the key points on both sides.

Chair will then end the hearing, advising the employee that they will receive the panel's decision in writing within a given timescale.

## **Decision-making**

Panel meet to reach their decision.

HR clerk notes main points of panel discussion and their decision.

Panel obtains HR advice if required to inform their decision-making.

## **Communication of decision**

Employee is notified of decision.

Decision and reason for the decision confirmed in writing.



## **Further information**

### **Useful resources and external organisations**

- [ACAS](#)

### **Other relevant departmental advice and statutory guidance**

- [Interim School Teachers' Pay and Conditions Document 2014](#)
- [Reviewing and Revising School Teachers' Pay](#)



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Department  
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# **Equalities considerations as part of the appraisal and pay determination process**

**Departmental advice for local authorities,  
maintained schools, academies and free  
schools**

**June 2014**

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# Summary

## About this departmental advice

The Department for Education is committed to helping schools eradicate unlawful discrimination through its policy-making and implementation. This advice is intended to provide support for schools in ensuring their equalities responsibilities are being met when making decisions about or relating to pay. It also provides guidance which will help schools ensure that they do not discriminate against individuals or groups of staff when making pay decisions.

## Expiry or review date

This advice will be kept under review and, if necessary, updated in the light of future School Teachers' Review Body (STRB) reports.

## Who is this advice for?

This advice is for:

- Local authorities
- School leaders, school staff and governing bodies in all maintained schools, academies and free schools

## Overview – The Equality Act 2010

Schools must not directly discriminate against anyone because of a relevant protected characteristic<sup>1</sup>. For example, if a school chooses not to give a female teacher a pay rise because she is pregnant, that is unlawful. Indirect discrimination is also potentially unlawful where, for example, a school's pay policy, though applied equally to all, might disadvantage a particular group.

When formulating pay policies and making pay decisions schools should take care to avoid discriminating against teachers on grounds of their protected characteristics. They should also ensure that part-time teachers<sup>2</sup> and fixed-term teachers<sup>3</sup> are not treated less favourably. At the same time, schools should recognise the benefits of taking equalities considerations seriously. A pay system that contributes to raising educational standards will also recognise and reward teachers fairly and appropriately.

All public authorities – including schools – must comply with the new Public Sector Equality Duty (PSED) introduced by the Equality Act 2014<sup>4</sup>. To discharge the duty schools must have due regard to the need to:

- (i) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act<sup>5</sup>,
- (ii) advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it<sup>6</sup>,
- (iii) foster good relations between people who share a relevant protected characteristic and people who do not share it<sup>7</sup>.

The effect of the equality duty is that schools must have due regard to the needs at (i) to (iii) above in relation to the management of their pay policies. Public authorities are also required to prepare and publish equality objectives and publish information, to demonstrate compliance with the general duty<sup>8</sup>. Complying with the PSED will also assist schools in avoiding direct or indirect discrimination.

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<sup>1</sup> Protected characteristics are defined by the Equality Act 2010.

<sup>2</sup> Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

<sup>3</sup> Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

<sup>4</sup> Section 149 of the Equality Act 2010.

<sup>5</sup> Applies to all protected characteristics.

<sup>6</sup> Applies to age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation

<sup>7</sup> As per 6 above.

<sup>8</sup> The Equality Act 2010 (Specific Duties) Regulations 2011.

## What this means for teachers' pay

The duty to have due regard to the needs set out above means in the context of teachers' pay that, whenever pay policies are amended or pay decisions made for individuals, decision-makers and appraisers in schools should assess whether there are implications for people with particular protected characteristics. In particular, equality should be considered in relation to:

- **Objective setting** – the nature and weighting of performance objectives agreed during a teacher's appraisal should be non-discriminatory and should provide teachers with an equal opportunity to access pay progression. This will have implications for the training of appraisers and for the moderation of the appraisal arrangements at the school;
- **Pay progression criteria** – the nature and degree of challenge of pay progression criteria should be considered to avoid indirect discrimination.
- **Recommendations and decisions on teachers' pay progression** – the outcomes should be recorded and reported, taking account of the profile/characteristics of those who are granted pay progression and those who do not receive pay progression;
- **The nature and scale of pay progression of teachers at the school** – in particular, where some teachers receive accelerated pay progression (e.g. double-jumping), the governing body should look at the profile/characteristics of the teachers concerned as against other teachers not in receipt of accelerated progression;
- **Appeals** – both in terms of teachers accessing the appeals process and the outcome of pay appeals at the school (the Department has produced additional departmental advice aimed at supporting schools with the appeals process).

In that regard it is good practice for schools to record what steps they undertake to avoid discrimination before and at the time that they develop policy and take decisions, and monitor the effectiveness of those steps in eliminating discrimination - they should also keep these under review on a continuing basis. Equality monitoring is the most effective and efficient method of identifying potential inequality in workplace policies and procedures. The Equality and Human Rights Commission (EHRC) has published a considerable amount of information to help employers undertake equality monitoring. Once potential inequalities have been identified, schools should take steps to amend arrangements in order to avoid discrimination. On-going equality analysis can assist schools in identifying any potential inequality and would help demonstrate that the school is attempting to eliminate discrimination and advance equality etc. A breakdown of pay decisions according to each protected characteristic (where applicable) would provide an initial snap-shot. Comparisons

year on year would then show trends and may identify potential discriminatory practices or procedures.

It is also important that considerations about equality issues, either at a system level or for individual teachers, take account of the cumulative effect of decisions over time. For example, individual pay progression decisions in a particular year may in themselves be taken in accordance with the school's pay policy. However, when all of the pay decisions in a school are looked at over a number of years, it may become apparent, for example, that a greater proportion of men received higher rates of pay progression or faster pay progression than women. This kind of pattern may be an indication of some form of inequality in the decision-making process and should come to light if the PSED is properly discharged. Indirect discrimination in pay decisions is more common than direct discrimination and is likely to be highlighted by annual equality monitoring of pay decisions.

Although, as set out above, it is important that schools embed equality throughout their management of the appraisal and pay determination process, there are some specific key areas where schools will want to take particular care in terms of ensuring that equality issues are properly considered and unlawful discrimination avoided.

### **(i) Non-portability of salary**

Since September 2013, where a teacher moves from one school to another, the new school has no longer been required to match the teacher's previous salary. This new flexibility has enabled schools to better match an appropriate salary level to the specific post on offer. However, when considering new appointments and appropriate levels of salary, decisions must be taken within the context of ensuring that teachers are not discriminated against in that process on the ground of a protected characteristic. An example of this might be where a teacher returns to a school following a career break. Although it is good practice for a teacher and a school to agree the terms on which the teacher will return from the break, schools should also take into account the potential for indirect discrimination.

Schools should avoid discriminating against teachers returning to the profession following a career break whether they return to the same school or to another school. Blanket policies against pay portability are likely to disadvantage women teachers who have taken a break from teaching to give birth and/or to care for their children.

### **(ii) Teachers who are on maternity or long-term disability or sickness absence**

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. 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.



Schools need to take a practical and flexible approach to conducting appraisals and making pay decisions for those absent on maternity leave, including where a teacher has been absent for part or all of the reporting year.

In those circumstances, schools should ensure that the absent teacher receives fair treatment while ensuring the integrity and robustness of the school's appraisal process for all teachers. When considering these options, schools should seek to ensure that they minimise bureaucracy for all involved. 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. However, schools should not require teachers to use Keeping in Touch (KIT) days for the purposes of appraisal.

Schools should ensure that their pay and appraisal policies incorporate any adjustments which can reasonably be made to give a teacher who is absent for disability related reasons an equal opportunity to participate in appraisal and to access pay progression. While there is no equivalent of the "maternity equality clause" (i.e. the clause that deems a woman to have received a pay rise to which she would have been entitled had she not been on maternity leave) in the Equality Act, schools should consider utilising the same range of options outlined above for teachers on maternity leave.

When a teacher returns to work following a disability related absence, the school must not refuse a pay increase that the teacher would have received, following appraisal, had he or she not been absent for a reason related to disability, if the reason for the refusal is the teacher's disability or the refusal cannot be objectively justified.

### **(iii) Equal pay considerations**

Even where individual schools have robust pay policies in place and make pay decisions for individual teachers that are compliant with the direct discrimination provisions in the Equality Act, there is still the possibility for equal pay issues to arise. This may be where, for example, teachers seek to demonstrate that the pay policy in one school disadvantages teachers in that school compared to teachers in another employed by the same employer; and the former school had a greater proportion of either men or women affected by the respective pay policy. At this point, in order to successfully defend the claim, the employer of the teachers in both schools would need to be able to show objective justification for the difference in pay.

The principal means of preventing equal pay claims is for schools to ensure that individual pay decisions are fully compliant with the Equality Act as set out above, and that the duty to have due regard is discharged. Schools will need to satisfy themselves that pay decisions year on year are not indicating a pattern that might cause concern. This may be, for

example, where a disproportionately higher number of men than women are receiving progression generally or higher rates of progression.

Schools should consider identifying:

- the pay profile of teachers by age, disability, race and gender;
- the reasons that teachers with different protected characteristics are rewarded differently if that is the case;
- whether teachers who share particular protected characteristics are being treated less favourably than other teachers.

The government is clear that the duties on schools and employers should not be overly burdensome and schools and local authorities will need to consider how to make best use of the data they already collect in relation to pay and how this may change as pay policies and schools' confidence in using and refining them mature over time.

## **Further equalities advice**

### **Useful resources and external organisations**

- <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/equality-act-guidance-downloads/>
- <http://www.equalityhumanrights.com/publication/equal-pay-statutory-code-practice>

### **Other relevant departmental advice and statutory guidance**

- <https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>



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