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**PROGRESSION ON THE UPPER PAY SCALE**  
**SEPTEMBER 2008**  
**ADVICE TO NUT MEMBERS**

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This NUT guidance gives advice on Upper Pay Scale (UPS) progression for September 2008. It sets out in full the relevant provisions of the School Teachers' Pay and Conditions Document (STPCD) 2008, which all local authorities and governing bodies are required to follow, and the accompanying statutory guidance on UPS progression.

The provisions governing UPS progression for September 2008 are unaltered except in one respect. The STPCD now requires governing bodies in England to consider recommendations from performance management reviewers when taking decisions on UPS progression. NUT advice on this matter is included in this guidance.

The NUT's guidance gives comprehensive advice on applying the STPCD's provisions. Governing bodies should follow the NUT's guidance in order to help ensure that decisions on UPS progression are made fairly and objectively.

## **SECTION 1**

### **STATUTORY PROVISIONS ON UPPER PAY SCALE PROGRESSION**

#### ***Statutory procedures for consideration of progression***

1. The statutory procedures set out in the STPCD are as follows:
  - Every governing body is statutorily required to carry out an annual pay determination for every teacher, including every post-threshold teacher, on or after 1 September (STPCD para 4.1.a).
  - When carrying out the annual pay determination for a teacher paid on the Upper Pay Scale, the governing body is required to consider whether the teacher meets the statutory criteria for UPS progression (STPCD para 19.4.1). Other than in exceptional circumstances, however, teachers paid on the UPS are eligible to progress only every 2 years on that scale (STPCD para 19.4.1).
  - When taking decisions on UPS progression, governing bodies in England are required to have regard to any recommendation on pay progression made during the most recent performance management review (STPCD para 19.4.2)<sup>1</sup>.
  - The governing body should take all decisions on UPS progression by no later than 31 October (STPCD statutory guidance para 16) and to ensure that every teacher is notified in writing of the outcome at the earliest opportunity and no more than one month later (STPCD para 4.4).
  - Any consequent pay increase is effective from 1 September (STPCD para 4.1.a).

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#### **<sup>1</sup> UPS PROGRESSION IN WALES**

The requirement to consider pay recommendations made by performance management reviewers applies only in England. Separate arrangements on performance management apply in Wales, where there is no requirement for the reviewer to make a pay recommendation or for the governing body to consider any such recommendation. See Section 4 for further specific advice on Wales.

- The governing body is required to “*establish procedures for addressing teachers’ grievances in relation to their pay*”, including appeals against decisions to deny UPS progression (STPCD para 3.b). These procedures should be set out in the school pay policy (STPCD statutory guidance para 12).

### **Statutory criteria for progression**

2. The statutory criteria for progression on the Upper Pay Scale are set out in paragraph 19.4.1 and 19.4.2 of the 2008 SPTCD and are set out in full in Appendix 1.
3. Para 19.4.1 provides that the teacher may not progress up the Upper Pay Scale unless:
 

*“the relevant body is satisfied that the teacher’s achievements and contribution to the school, or to the school or schools in which he previously worked have been substantial and sustained, having regard to the results of the two most recent appraisals or reviews carried out in accordance with the [performance management] regulations”*
4. Para 19.4.2 provides further, in relation to teachers in England, that:
 

*“when making any determination ... the relevant body shall have regard to any recommendation on pay progression recorded in the teacher’s most recent planning and review statement”*

### **Statutory guidance on applying the statutory criteria**

5. The STPCD also includes additional statutory guidance on the application of the statutory criteria. The statutory guidance does not, however, have the same legal status as the statutory criteria. This is explained below.
6. The statutory guidance, which is again set out in full in Appendix 2, provides that:
 

*“Progression on UPS should be based on two successful consecutive performance management reviews”*; and that

*“To ensure that the achievements and contribution have been substantial and sustained, that performance review will need to assess that the teacher has:*

  - *continued to meet post-threshold standards; and*
  - *grown professionally by developing their teaching expertise post-threshold.”*

### **Status of the statutory criteria and statutory guidance**

7. The governing body is bound by the statutory criteria for UPS progression in all cases. The governing body must decide that teachers have met the statutory criteria for UPS progression before awarding progression.
8. The statutory criteria say that the governing body should “*have regard*” to the outcomes of performance management and the reviewer’s pay recommendation and to the provisions of the statutory guidance. Legally, the use of the phrase “*have regard*” means that the governing body should take their decision by reference to these unless the circumstances are such that there is a good reason not to do so.
9. The governing body is formally responsible for determining whether the teacher has met the statutory criteria for UPS progression. While the governing body is required to “*have regard*” to the reviewer’s pay recommendation, the governing body must formally decide

that it is satisfied that the statutory criteria have been met. It should itself consider the issues and the evidence for the recommendation and the advice of the head teacher, not just simply agree to follow the reviewer's recommendation without such a discussion. This can be an important issue in appeals against decisions that a teacher should not progress. Section 2 below gives further advice on this area.

10. In some circumstances, it will not be possible for the governing body to take a decision by reference to the outcomes of performance management and the reviewer's pay recommendation and the provisions of the statutory guidance. It may be that it would be inappropriate to take the decision using only this evidence or it may be that the evidence is simply not available. It is for such reasons that the phrase "*have regard*" is used. In such situations, the governing body should decide whether the teacher meets the statutory criteria on the basis of such other information as is available, not simply the evidence provided by performance management and the formulations of the statutory guidance. Sections 3 and 4 below give further advice on this area.

## **SECTION 2 NUT ADVICE ON THE PROCEDURES FOR UPS PROGRESSION**

### ***Responsibility for decisions on UPS progression***

11. The STPCD provides that the governing body is responsible for undertaking pay determinations and taking decisions on UPS progression. The governing body is, however, permitted under separate statutory provisions to delegate such decisions to a committee of the governing body, to individual governors or to the head teacher.
12. **In the NUT's view, the governing body committee responsible for staffing issues should take decisions on UPS progression and a separate appeals committee should exist to hear appeals. Decisions should be reported to the full governing body. Decisions should not be delegated to the head teacher acting alone.**
13. References to "*the governing body*" in this document include, where appropriate, any governing body committee taking pay decisions.

### ***Procedure for taking decisions***

14. The governing body has formal responsibility for determining whether the teacher meets the statutory criterion for UPS progression.
15. The performance management regulations require that where a teacher is eligible for UPS progression, the reviewer must make a recommendation on pay progression which is passed to the head teacher as part of the planning and review statement. The STPCD then requires that the governing body should, in making its decision on UPS progression, have regard to the recommendation and to the results of the two most recent performance management reviews.
16. The governing body is not bound by the reviewer's recommendation; nor is the head teacher denied the opportunity to advise the governing body further. **The NUT expects head teachers to advise governing bodies on decisions on UPS progression, whatever the recommendation of the reviewer.**
17. The governing body must satisfy itself whether a teacher has met the standards required for progression whenever any recommendation is made that a teacher should not progress. **The governing body should itself consider the issues and the evidence for the recommendation and the advice of the head teacher, not just simply agree to follow the reviewer's recommendation without such a discussion.**

### ***Timetable for decisions and notification of decisions***

18. Para 16 of the STPCD statutory guidance provides that *“relevant bodies [i.e governing bodies] should conduct teachers’ annual pay reviews without undue delay. The pay policy should set out by when decisions (effective from 1 September each year) will be made ... which should be by 31 October at latest.”*
19. **Performance reviews should be completed in time to allow pay decisions to be taken by 31 October. There should be no delay in pay decisions due to delays in the timetable for performance management reviews.**
20. Para 4.4 of the STPCD provides that teachers must be notified in writing of the outcome of the pay decision at the earliest opportunity and no more than one month later. The NUT advises that the notification given to teachers should contain the reasons behind the recommendation of the head teacher and the decision of the governing body. Denial of such information would be an obstruction of the teacher’s right of appeal.

### ***Applications and further evidence***

21. Unlike the threshold, progression on the Upper Pay Scale is not an application process. Para 4.1(a) of the STPCD *requires* governing bodies to undertake annual pay determinations for all teachers, including post-threshold teachers.
22. In some schools, teachers are asked to complete an application form or submit evidence in support of UPS progression. **The NUT advises that teachers cannot be required to make an application or to complete any application form. Whether or not a teacher has submitted an application form or supporting evidence, the governing body is required by law to undertake the annual pay determination and take any decision due on UPS progression.**
23. Governing bodies will have access to the reviewer’s recommendation and the outcomes of performance management and should have access where necessary to a range of other evidence and knowledge of the teacher’s work. This should be sufficient to form the necessary judgements on UPS progression.
24. Where teachers are asked to provide evidence to support UPS progression, the NUT accepts that they may decide to do so in order to draw particular achievements to the attention of the governing body. If any teacher decides not to do so, however, the governing body must still undertake the assessment as set out above and the teacher’s decision should not influence the governing body’s decision in any way.

### ***Appeals***

25. Para 3.b of the STPCD states that an appeals procedure must exist allowing a teacher to appeal against any pay decision, including decisions on UPS progression.
26. The STPCD’s statutory guidance reminds governing bodies that the procedure must meet the requirements of employment law and be based on a three stage process. The teacher should first seek to resolve the matter informally by discussion with the decision-maker. Where this is not possible or the matter is still unresolved, the teacher should have the right to a hearing, within ten working days, before the person or committee which took the decision; and the right to a further appeal, normally within 20 working days, before a governing body appeals committee of at least three governors not involved in the original decision. The teacher should be allowed to make representations in person and to be accompanied by a friend or union representative.

27. The performance management regulations also allow a teacher to appeal against the contents of the performance review statement, including the pay recommendation made by the reviewer. Teachers are therefore entitled to seek to reverse recommendations that they should not progress on the UPS before these are submitted to governing bodies. That appeals procedure must also meet the requirements of employment law and be based on a three stage process. The NUT advises that the informal discussion and first hearing should involve the reviewer and also the head teacher if the head teacher is not the reviewer. Any appeal should be to the appeals committee, in order that the committee which will eventually take the pay decision on UPS progression is not involved before it takes that decision.
28. The NUT will provide support to members who believe that decisions on UPS progression have not been in accordance with the proper procedures or are unjustified in terms of the statutory criteria, as set out in Section 5, "NUT Support to Members".

### **SECTION 3 NUT ADVICE ON THE CRITERION AND STANDARDS FOR UPS PROGRESSION**

#### ***Standards required for progression***

29. The statutory criterion in the STPCD for progression on the Upper Pay Scale is that the teacher's achievements and contribution should have been "*substantial and sustained*". Progression should only, therefore, be withheld where the teacher has failed to make a substantial and sustained contribution.
30. The following sections set out the NUT's advice on the proper interpretation and application of the statutory guidance which support the statutory criteria and which will inform the reviewer's recommendation and the governing body's decision.

#### ***"Two successful consecutive performance management reviews"***

31. The statutory guidance states that UPS progression based on "*two successful consecutive performance management reviews*". Although the meaning of this phrase is not defined, it is not necessary that all performance management targets are met in full. The DCSF recognises that targets vary substantially in their degree of challenge and attainability and advises in the Explanatory Notes accompanying the STPCD that:

*"Objectives or targets for action form an important framework for assessing performance but there is no automatic link between meeting objectives or targets and the award of a pay point. A teacher who has made good progress on, but not quite achieved a very challenging objective or target may have performed better and made a more significant contribution than a teacher who has met in full a less stretching objective or target."*

32. **The NUT advises that teachers should not, therefore, be regarded as having failed to achieve "*two successful consecutive performance management reviews*" and denied progression on the Upper Pay Scale simply because their individual performance targets have not been met in full.**

#### ***"Continued to meet threshold standards" and "Grown professionally"***

33. The statutory guidance states that the teacher should have "*continued to meet post-threshold standards*". The post-threshold standards are included within the STPCD and are those standards against which "performance threshold" applications are judged. They cover a wide field including professional attributes, professional knowledge and understanding and professional skills. The NUT accepts that teachers should continue

to meet the post-threshold standards in order to satisfy the statutory criteria for UPS progression requiring their contribution to have been “*substantial and sustained*”.

34. The statutory guidance also states that the teacher should have “*grown professionally*”. Again the meaning of this phrase is not further defined. The NUT does not, however, regard this as requiring performance to standards higher than the post-threshold standards. Such an interpretation would have been made clear if it had been the Government’s intention. There are, in any case, no prescribed standards to which reference can be made other than the post-threshold standards.
35. The NUT’s view is that every teacher who continues to work to the post-threshold standards will necessarily, through an additional two years’ teaching experience, have “*grown professionally*”.
36. **The NUT therefore advises that, where a teacher has previously been assessed as meeting the post-threshold standards and has continued in the last two years to meet those standards, the teacher should be regarded as having met the criteria of “*substantial and sustained*” in all respects and should be awarded progression on the Upper Pay Scale.**

#### ***Cases when decisions cannot be taken by reference to performance management***

37. In the large majority of cases, the governing body will be able to decide whether a teacher meets the statutory criteria for UPS progression by reference to the outcomes of performance management and the reviewer’s recommendation.
38. As noted earlier, however, taking a decision on the basis of performance management outcomes will in some cases be inappropriate or impossible. Such cases might include, for example, teachers who are or have been on maternity leave, extended sick leave or secondment; and teachers whose previous schools have been unable or unwilling to provide information relating to performance management reviews.
39. **In such circumstances, the NUT advises that the governing body should not take its decision solely by reference to performance management outcomes and the reviewer’s recommendation. It should take the decision on whether the teacher meets the statutory criteria by reference to such other information as is available.**
40. The governing body may need to consider information from only one performance management review or from any part of the two year period when the teacher was present. In extreme circumstances, the decision might be postponed until information is available from the following school year and then backdated. Where a governing body acts in this way, complaints of, for example, unlawful discrimination are less likely to arise. Section 4 of this guidance gives NUT advice on a range of such situations.

## **SECTION 4 NUT ADVICE ON COMMONLY ENCOUNTERED SITUATIONS**

### ***Teachers in Wales***

41. The performance management regulations for teachers in Wales are in some important respects different to those applying to teachers in England. In particular, there is no requirement in Wales for performance reviewers to make pay recommendations as part of teachers’ performance reviews. The STPCD does not therefore include any requirement for governing bodies in Wales to consider such recommendations when taking decisions on UPS progression.

42. The remaining provisions of the STPCD, setting out the procedures for pay decisions and the statutory criterion for progression, apply to teachers in Wales in the same way as to teachers in England. The terms of the NUT's guidance on the application of these provisions also apply to teachers in Wales in the same way as to teachers in England.
43. Decisions on UPS progression for teachers in Wales for September 2008 should, therefore, be taken by governing bodies in the same manner as in previous years. The governing body should consider whether the teacher concerned has met the statutory criterion of a "*substantial and sustained contribution*" by reference to the information available to it and to any recommendation or advice from the head teacher. It should take full account of the advice given in this NUT guidance on the application of the STPCD's provisions.

#### ***Unattached teachers***

44. The STPCD's provisions on annual pay determinations and UPS progression apply to all teachers, including "*unattached teachers*" employed in local authority central services or in pupil referral units. Such teachers are entitled to an annual pay determination and to consideration for UPS progression in the same way as other teachers.
45. The procedures and criteria should be applied in the same way as for teachers employed in schools. Where the body responsible for pay decisions for such teachers is the local authority, the pay decision should be delegated to an appropriate panel or individual. Where such teachers have been subject to performance management arrangements, the pay decision should not be taken by the line manager who has undertaken the teacher's performance management review and made any pay recommendation. In the absence of performance management arrangements, the decision as to whether the teacher meets the statutory criteria should be taken on the basis of the available evidence. Appropriate arrangements must exist for appeals.

#### ***Teachers who have moved post***

46. The STPCD's provisions apply also to any post-threshold teachers who have moved to new schools with effect from 1 September 2008 or have moved during the previous year. Such teachers must be assessed for progression and should not be denied it simply on the basis that their contribution to their new schools cannot be assessed over a two year period. The statutory criterion refers to the teacher's contribution to "*the school, or the school or schools in which the teacher previously worked*".
47. Para 27 of the STPCD statutory guidance advises that, where a teacher has moved schools during the 2 year period prior to UPS assessment, the head teacher should consult with the head teacher of the previous school(s) to seek evidence. Where confirmation is provided by the previous head teacher that the work of the teacher satisfied the criteria, this should be accepted and result in progression on the Upper Pay Scale. Where information is not made available by the head teacher of the previous school, the decision should be based on such information as is available. Where necessary, the decision should be deferred to allow information to be obtained relating to the present post.

#### ***Teachers who have moved from other sectors***

48. The STPCD provides that certain teachers who move to schools from other sectors of teaching or related employment are automatically entitled to be paid as post-threshold teachers on the Upper Pay Scale.
49. The full list of such teachers is set out in the STPCD definition of "*post threshold teacher*" (STPCD para 1.2). It includes most teachers who have previously been paid

as leadership group members or advanced skills teachers; teachers who have passed the threshold or equivalent standards while working in sixth form colleges, Northern Ireland, Academies and various other situations; and teachers previously employed as Soulbury-paid local authority advisory staff.

50. On appointment, the governing body has the discretion to determine at which point on the UPS such a teacher will be paid (STPCD para 19.3.5). The STPCD statutory guidance advises governing bodies to consider in particular any pay progression made in their previous capacity under pay provisions comparable to the UPS and that they “*should not unreasonably withhold appointment at the equivalent point on the UPS*” (para 33). The NUT believes that such teachers should be appointed to the UPS at least at an equivalent point to that which they were paid in the former post.
51. Following appointment, the STPCD’s provisions on further progression on the UPS apply to such teachers in the same way as other teachers. It may be appropriate for such teachers to be considered for further progression at the beginning of the next school year, utilising the provision relating to “*exceptional circumstances*” (STPCD para 19.4.1), if for example they would have been due further pay progression at that time in their former posts.

***Teachers with more than one post***

52. Some teachers hold two or more posts and are employed simultaneously on, for example, two separate regular part-time contracts with different schools. In such situations, separate annual pay determinations have to be undertaken in each of the schools concerned.
53. The commonsense solution is for the school in which the teacher works most of the time to undertake the pay determination first and, where progression is awarded, for the other school to agree to pay the teacher on the same point of the Upper Pay Scale. In such cases, however, a decision by one school does not legally bind the decision by the other school at which the teacher works. It is theoretically possible for one school to seek to deny progression even where the other has agreed to progression.
54. Once such a teacher has been placed by a school on a particular point of the Upper Pay Scale, this becomes a permanent entitlement in that post. On movement to any subsequent new permanent or temporary post in that or another school, the teacher is entitled to be paid on the same point of the Upper Pay Scale as in that former post.

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

55. Such teachers are entitled to an annual pay determination and to consideration for UPS progression in the same way as other teachers, whether or not they have returned to service following the period of absence.
56. In such cases, however, performance management reviews may not have been completed in two consecutive years and the governing body may not have any reviewer’s recommendation to consider.
57. Governing bodies should therefore decide whether teachers meet the statutory criteria by reference to such information as is available. This might include information from one completed performance management review or information from any part of the two year period when the teacher was present.
58. Failure to consider progression in this way could clearly constitute less favourable treatment on the basis of gender or disability and leave the governing body open to complaints of unlawful direct discrimination.



***Teachers employed for less than a term***

59. Teachers in England employed on contracts of employment lasting less than a term are not subject to performance management regulations. Recommendations and other evidence from performance management may not, therefore, be available for teachers who have previously been employed on one or more such contracts.
60. Governing bodies should decide whether such teachers meet the statutory criterion by reference to such information as is available. Where the teacher has worked at the school for the whole or a large part of the previous two years, sufficient evidence will be available within the school to allow the decision to be taken. Where the teacher has worked at another school or schools during the previous two years, the head teacher should consult with the previous head teacher to seek evidence. Where such information is not made available, the decision should be based on such information as is available or deferred to allow information to be obtained relating to the present post.

***Supply teachers employed by local authorities or governing bodies***

61. Supply teachers who are employed by local authorities or by the governing bodies of foundation or voluntary aided schools are entitled to an annual pay determination and to consideration for UPS progression in the same way as other teachers. The annual pay determination should be undertaken by the governing body of the school in which the teacher has most frequently worked over the past two years. If the teacher works for a central supply pool, the body responsible for pay decisions will be the local authority and the pay review will have to be delegated to an appropriate panel or individual. In the absence of performance management arrangements, the decision as to whether the teacher meets the statutory criteria should be taken on the basis of the available evidence. Appropriate arrangements must exist for appeals.
62. When a supply teacher is awarded progression to points 2 or 3 on the Upper Pay Scale, this becomes a permanent entitlement. On movement to subsequent supply engagements or to new permanent or temporary posts, the teacher is entitled to continue to be paid on that point on the UPS.

***Teachers employed by agencies***

63. Teachers who are employed by agencies rather than by local authorities or governing bodies are, regrettably, not covered by the provisions of the STPCD. Their pay is determined by the agency concerned and, for many teachers, does not match the levels of pay available under the Upper Pay Scale provisions of the STPCD. The NUT is continuing its efforts to assist these teachers and has reached agreement with certain agencies that their pay should match that available under the STPCD. For other teachers employed by agencies, however, their pay may continue to be below that provided under the STPCD.

***Teachers denied UPS progression in September 2007***

64. The STPCD requirements to undertake an annual pay determination and to consider UPS progression apply to all post-threshold teachers, including teachers who were eligible for UPS progression in September 2007 but were not awarded progression.
65. Such teachers are therefore again entitled to be considered for UPS progression in September 2008 and to be awarded such progression if they meet the statutory criteria. They do not have to wait until two years after they were last assessed for UPS progression as is sometimes mistakenly suggested.

***“Characteristics of UPS3 teachers”***

66. The STPCD statutory guidance includes a preamble describing “*characteristics*” of UPS3 teachers and the role they play in the life of schools. This preamble does not constitute additional criteria for progression to UPS3 and should not be regarded or used as such.
67. Equally, progression to UPS3 does not alter the professional duties or obligations of teachers on UPS3. They cannot be required to take on additional duties compared to other teachers on the Main or Upper Pay Scales. Any additional responsibilities should be rewarded through payment of teaching and learning responsibility (TLR) payments.

***Funding for UPS Progression***

68. The STPCD does not permit decisions on UPS progression to be related to budgetary considerations. Schools may not use budgetary constraints as a justification for refusal to allow UPS progression. The Government’s “agreement” on the Upper Pay Scale in 2004 with the Local Government Employers and other teachers’ organisations explicitly provided that UPS progression “*should not be subject to a quota*”.
69. Funding for schools in England includes a specific element for the costs of UPS progression. Authorities may distribute this to schools using the general funding formula or a separate formula. The level of funding is the same as under the previous grants system. It is intended to provide full reimbursement of the costs of threshold progression and partial reimbursement of the costs of further Upper Pay Scale progression. In Wales, funding for schools is set at a level intended to be sufficient to allow schools to afford in full the costs of UPS progression.

**SECTION 5****NUT SUPPORT FOR MEMBERS**

70. The NUT is determined that all post-threshold teachers should be treated fairly and equitably with regard to UPS progression. This guidance, used where necessary in conjunction with assistance from the NUT, will protect members from unfair treatment.
71. **NUT representatives should seek confirmation from the head teacher that UPS decisions will be taken by 31 October and in accordance with the statutory provisions and NUT guidance set out in this document. They should also ask the head teacher to issue information about the process for pay progression decisions as soon as possible after the start of the academic year.**

***Failure to carry out pay determinations***

72. In such cases, NUT representatives or NUT members individually should seek assurances from the head teacher that:
- the annual pay determinations required by the STPCD will take place;
  - any decisions on UPS progression will be undertaken according to the statutory criteria and the above advice from the NUT;
  - decisions on UPS progression will not be limited or rationed because of budgetary constraints; and
  - UPS progression will take effect from 1 September 2008.

73. Where arrangements for pay determinations appear to contradict the statutory provisions and the NUT's advice, the matter should be raised with the head teacher in the first instance. Such representations may solve the problem. If they do not, assistance should be sought from the NUT local secretary or from the NUT regional office or, in Wales, NUT Cymru.

***Decisions that NUT members will not progress to UPS Point 2 or 3***

74. NUT members who have been informed that they will not progress to UPS points 2 or 3 should contact their NUT local secretary or their NUT regional office or, in Wales, NUT Cymru.
75. They should also write to the head teacher and ask for the information set out below to be provided to them in writing. This information will be used for reference when making representations against the decision and pursuing any appeal.
- The school pay policy and the governing body's policy and procedures for considering UPS progression.
  - The date on which the governing body reached its decision.
  - The process of reaching the decision, including full details of:
    - the recommendation made by the performance reviewer;
    - any further recommendation made or advice given by the head teacher and any other information or advice relied on by the governing body;
    - the basis for the governing body's decision that the teacher's contribution did not meet the statutory criteria for UPS progression.
  - Any actions taken previously to alert the teacher to concerns about performance and any support given to the teacher to address these concerns.
  - The procedure for the teacher's appeal against the decision.
76. Appendices 3 and 4 are provided for use in seeking such information.

**STPCD provisions on progression on the Upper Pay Scale**

- 4.1 *The determination of the remuneration of a teacher must be made -*
- (a) *annually with effect from 1st September...*
- 4.2 *When determining the remuneration of a teacher, the relevant body must have regard to its pay policy and to the teacher's particular post within its staffing structure.*
- 4.4 *When the relevant body have determined the remuneration of a teacher, they shall, at the earliest opportunity and in any event not later than one month after the determination, ensure that the teacher is notified in writing of that determination...*
- 19.4.1 *Save in exceptional circumstances, there shall be no movement up the pay scale set out in paragraph 19.2 prior to the second annual determination after the date on which the post-threshold teacher was first placed on that scale or the date on which the teacher was last awarded an additional point on that scale unless-*
- (a) *in the case where the post-threshold teacher is not subject to the 2002 Regulations or the 2006 Regulations, there has first been a review of his performance and the relevant body is satisfied that the teacher's achievements and contribution to the school, or to the school or schools in which he previously worked, have been substantial and sustained; or*
  - (b) *in the case where the post-threshold teacher is subject to the 2002 Regulations or the 2006 Regulations, the relevant body is satisfied that the teacher's achievements and contribution to the school, or to the school or schools in which he previously worked have been substantial and sustained, having regard to the results of the two most recent appraisals or reviews carried out in accordance with the 2001 Regulations, the 2002 Regulations or the 2006 Regulations, as the case may be.*
- 19.4.2 *When making any determination under sub-paragraph 4.1 in the case of a post-threshold teacher who is subject to the 2006 Regulations, the relevant body shall have regard to any recommendation on pay progression recorded in the teacher's most recent planning and review statement.*
- 19.6 *A post-threshold teacher's salary shall not be increased by more than one scale point in the course of a single annual salary determination and any such points shall be permanent whether the teacher remains in the same post or takes up a new one.*

## STPCD statutory guidance on the Upper Pay Scale

**27. Relevant bodies should ensure that they review the performance of post-threshold teachers who are eligible for consideration for movement up the upper pay scale in accordance with paragraph 19. They should take full account of the clarification of the application of the criteria for upper pay scale progression set out in the following box, in the light of any considerations set out in the relevant body's own pay policy as referred to in paragraphs 8-10 of this guidance. Where teachers have moved school in the assessment period, the head teacher should consult with the head of the teachers' previous school to seek evidence as to the teacher's suitability for progression.**

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### **Application of Upper Pay Scale Progression Criteria – Clarification**

*UPS3 teachers play a critical role in the life of the school. They provide a role model for teaching and learning, make a distinctive contribution to the raising of pupil standards and contribute effectively to the work of the wider team. They take advantage of appropriate opportunities for professional development and use the outcomes effectively to improve pupils' learning.*

*The following paragraphs refer to all teachers seeking to progress on the Upper Pay Scale.*

*To achieve progression, the School Teachers' Pay and Conditions Document (STPCD) requires that the achievements of post-threshold teachers and their contribution to school(s) should have been substantial and sustained. To be fair and transparent, judgements must be properly rooted in evidence and there must have been a successful review of overall performance.*

*Progression on UPS should be based on two successful consecutive performance management reviews, other than under the exceptional circumstances as set out in the STPCD.*

*A successful performance review as prescribed by the regulations involves a performance management process of*

- *performance objectives;*
- *classroom observation;*
- *other evidence.*

*To ensure that the achievements and contribution have been substantial and sustained, that performance review will need to assess that the teacher has:*

- *continued to meet post-threshold standards; and*
- *grown professionally by developing their teaching expertise post threshold.*

**Upper Pay Scale Progression  
Specimen form for use by NUT Members in seeking support from the NUT**

Complete and return this form, attaching as much information as possible on the questions asked, together with the following:

- a copy of your threshold application form and feedback;
- a copy of the school's policy on Upper Pay Scale progression;
- information obtained from the head teacher using the attached letter.

**Personal details**

Name: \_\_\_\_\_

School: \_\_\_\_\_

NUT Membership No: \_\_\_\_\_

Post Held: \_\_\_\_\_  
(indicate any TLR payments or additional allowances)

Permanent / Fixed term / Temporary / Supply

Full-time / Part-time      If part-time state proportion of full-time \_\_\_\_\_

Period of employment at present school: \_\_\_\_\_

**Please provide information on the following areas:**

***Procedure adopted on UPS progression in your school***

Are you aware of the policy adopted by the Governors of your school for UPS progression?

Were you required to make a written application before the decision on UPS progression was taken?

Were you required to provide further evidence before the decision on UPS progression eg on professional development undertaken over the last two years? Did you volunteer such evidence?

Did your performance reviewer discuss her/his recommendation on UPS progression with you? Did your performance reviewer recommend that you should not progress? Did you challenge that recommendation at the time?

When were you informed that you would not progress to the next point on the UPS?

Was the decision given in writing, including the reason and citing evidence?

***Competence issues***

Were you informed at any time during your performance management cycle that your agreed targets would not be met? Do you feel that your targets were appropriate and achievable? Was any attempt made to alter your targets, without your agreement?

Have any concerns been expressed over the last two years in any other way concerning your competence as a teacher?

Have you been subject to any informal/formal capability procedure in that time?

Were there any implications for further professional development, including the feedback on your original threshold application?

Was any INSET support or advice promised which did or did not materialise?

***Absence and other issues***

How much absence have you had over the last two years? (Please provide brief summary of overall length of absence, number of occasions and reasons)

Do you feel the decision is discriminatory on the grounds of race, gender, disability, sexual orientation, religion or belief, trade union affiliation or other reason?

***Further comments***

Please add any further comments that add to the points above or in general terms.

**Upper Pay Scale Progression  
Specimen Letter to Head teacher for Use by NUT Members**

Dear Head teacher

I refer to your communication of \_\_\_\_\_ advising me that it has been decided that I should not progress to the next point of the Upper Pay Scale.

I am advised by my union, the National Union of Teachers, that the statutory criteria for progression under para 19.4.1 of the School Teachers' Pay and Conditions Document are that the governing body is "*satisfied that the teacher's achievements and contribution to the school, or to the school or schools in which he previously worked, have been substantial and sustained*".

In the light of these criteria, I request the following information.

- The school pay policy and the governing body's policy and procedures for UPS progression.
- The date on which the governing body reached its decision.
- The process of reaching the decision, including full details of:
  - the recommendation made by the performance reviewer;
  - any further recommendation made or advice given by the head teacher and any other information or advice relied on by the governing body;
  - the basis for the governing body's decision that my contribution did not meet the statutory criteria for UPS progression.
- Any actions taken previously to alert me to concerns about my performance and the support given to me to address these concerns.
- The procedure for appeal against the decision.

Please ensure that any meetings to which I am invited to address any appeal are arranged in consultation with my Union Representative who is \_\_\_\_\_ so that he/she can be available to represent me at a mutually convenient meeting.

Yours sincerely