

news and articles of special interest for
headteachers and senior managers

Welcome...

...to the start of another busy academic year, coinciding with the hot topic of pay rises for teaching staff from 1 September.

One of the most challenging aspects of the government's advice on teacher pay is the difficulty for schools/academies to comprehend the conflation of a suggested cost of living uplift with the issue of performance related pay progression (see *below*). In this issue of our newsletter we also highlight the key amendments in Keeping Children Safe in Education (document last updated in July 2015) and the increasing responsibilities of all educational establishments in regard to protecting their staff and pupils. One of our main messages at this time of year is to encourage senior management to ensure that all their staff are able to make a positive contribution to the school improvement agenda and to be confident in both challenging and managing appropriately the minority of staff who appear unable or unwilling to do so.

Teacher Pay – School Teachers' Review Body (STRB)

In its remit for this year the STRB was asked by the Secretary of State to consider adjustments that should be made to the salary and allowance ranges for classroom teachers (including unqualified teachers) and school leaders to reflect the intention of an overall 1% pay award for public sector workers. Amongst other issues the STRB was asked to consider the need to ensure that:

- their proposals reflect the government's policy, initially set out in the Chancellor's Spending Review statement of June 2013, that public sector pay awards in 2015 to 2016 should average up to 1%
- their proposals are affordable both at a national level and within the existing budgets of individual schools

Summary of the STRB 25th Report

In making its recommendations the STRB considered a wide range of evidence, including issues of recruitment and retention which had become more acute since its 24th Report. Recruiting high quality NQTs and experienced teachers was an increasing concern and

evidence showed that for able graduates in other professions there was faster salary progression to higher levels of earnings. Last year there was a 1% increase on all minimum and maximum pay ranges and allowances but it was emphasised at the time that there would be a future expectation that any subsequent increases should be more clearly related to performance.

The STRB were mindful of the importance of supporting retention and of giving schools meaningful scope for differentiated, performance-based awards. They felt this represented an important signal for both recruitment and retention, their aim being to reinforce the attractiveness of the profession in the early career stages. They recommended

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Point of Interest

How to increase productivity: researchers in the United States have tested a range of different background noises, as well as total silence, to measure the effect on workers. Their findings proved conclusively that the sound of a 'mountain stream' was more conducive to harmonious office life than anything else, providing a lift to both productivity and overall mental well-being.

an uplift of 2% to the maximum of the main pay range but were clear in specifying that they do not expect all teachers on M6 to automatically receive a 2% increase: the full uplift should be awarded only where merited by performance and this was seen as a way of providing meaningful opportunity for a differentiated pay rise to outstanding classroom teachers.

Although they acknowledged continuing recruitment difficulties for school leaders the STRB heard that workload and accountability, rather than pay, were the main disincentives to individuals applying for leadership posts. As a consequence they felt that as governing bodies have considerable flexibility in setting salaries above the maximum of the relevant head teacher pay group (as and when merited) they should not recommend an uplift to the maxima of either the leadership pay range itself or any of the eight head teacher group pay ranges.

The STRB said that to be consistent with the principles of school autonomy and differentiated performance-related pay, discretionary national reference points were to be removed from Departmental advice. This was in recognition that schools may choose to set their own pay points.

In general, however, the unions did not agree with the content of the remit given to the STRB by the Secretary of State and said that all teachers should benefit from an increase of more than 1%. They wanted the continued publication of reference pay points and were additionally concerned that (inflation-related) pay awards should remain clearly separate from pay progression based on performance and specifically commented that conflating the former with the latter was unhelpful.

In line with the recommendations in the STRB's 25th Report, from 1 September 2015 the STPCD includes the following changes:

A 1% uplift applicable to the statutory minima and maxima of all pay ranges in the national pay framework, including allowances, with two exceptions – a 2% increase to the maximum of the main pay range and no increase to the maxima of the eight headteacher pay group ranges.

For all classroom teachers/leadership group members (including headteachers) schools must determine – in accordance with their own pay policy – how to apply the uplift to individual salaries and pay ranges whilst taking account of the uplift to the national framework in the absence of official discretionary reference points.

SEN alert: additional text added to STPCD this year (reproduced in bold): **"The relevant body must award an SEN allowance to a classroom teacher in any SEN post that requires a mandatory SEN qualification and involves teaching pupils with SEN".**

Reminder – Leadership group pay: following changes to the determination of leadership group pay introduced in the 2014 Document, the individual pay ranges for those in a leadership post should only be reviewed when the individual's responsibilities have significantly changed after 1 September 2014. ■

Safeguarding

The Department for Education (DfE) has published revised versions of two pieces of statutory guidance: 'Keeping Children Safe in Education' (KCSIE – first published in March 2015 and updated July 2015) and 'Working Together to Safeguard Children' (2015), along with the amended departmental advice 'What to do if you are worried a child is being abused' (2015).

In relation to the guidance issued under the common inspection framework 2015 it appears clear that Ofsted inspectors will be looking for a culture of vigilance in which safeguarding is an important part of everyday life. Greater emphasis has now been afforded than previously and inspectors *"must evaluate how well early years settings, schools, colleges (etc) fulfil their statutory and other responsibilities and how well staff exercise their professional judgement in keeping children and learners safe"* (extract from 'Inspecting Safeguarding in Early Years, Education and Skills Settings, August 2015').

Key headline changes/amendments in the KSCIE March 2015 and July 2015 documents (described by the DfE as 'technical') include the following:

Child Missing from Education – Schools should have procedures in place to deal with children who go missing from education, particularly on repeat occasions. Staff should be aware of the signs and look out for individual triggers. *"All schools must inform their local authority of any pupil who fails to attend school regularly, or has been absent without the school's permission for a continuous period of 10 school days or more, at such intervals as are agreed between the school and the local authority (or in default of such agreement, at intervals determined by the Secretary of State)".*

Female Genital Mutilation – Section 5B of the Female Genital Mutilation Act 2003 (following amendment by the Serious Crime Act 2015) places a statutory duty upon teachers, along with social workers and healthcare professionals, to report to the police if they believe FGM to have been carried out on a girl under 18; this mandatory reporting duty is effective from October 2015.

Preventing Radicalisation – since 1 July 2015 specified authorities, including all schools, are, under section 26 of the Counter-Terrorism and Security Act 2015 ("the CTSA 2015"), subject to a duty in the exercise of their functions to have

“due regard to the need to prevent people from being drawn into terrorism”. This is known as the **Prevent** duty. School staff should understand when it is appropriate to make a referral to the **Channel** programme, which is designed to focus on provision, at an early stage, of support to people identified as vulnerable to being drawn into terrorism.

There was some confusion in the original KCSIE as to whether allegations against staff should be reported to the designated safeguarding lead or to the Head. The revised guidance clarifies that such concerns should be reported to the Head unless they relate directly to the Head, in which case they should be reported to the Chair of Governors.

The guidance (which incidentally no longer refers to the ‘LADO’ or local authority designated officer) also expressly requires schools to consider reporting historical abuse allegations to the police. Child protection files must be transferred securely between schools, separate to the main pupil file, and DfE now recommends that schools exchanging such material obtain a confirmation of receipt.

KCSIE now makes mention of carrying out appropriate disqualification checks for those who work in childcare provision and refers schools to the statutory guidance ‘Disqualification under the Childcare Act 2006’. This confirms that these checks are now an inspection standard for relevant roles. Guidance on checking volunteers has been slightly revised. ■

Green Book (NJC) scale

Reminder – it has been agreed that Spinal Column Point 5 (SCP5) will be deleted with effect from 1 October 2015, therefore employees on SCP5 will progress to SCP6 on this date. ■

Implied terms in the employment contract

A teacher who was initially engaged by an academy subsequently (whilst still employed by them) took up additional part time work with a further education college. He did so without having sought prior permission from his employer, thus putting him in breach of his contract of employment.

Whilst employed in that secondary work, he was accused by a student of sexual assault and was suspended. As part of their investigation, the police contacted the academy to enquire about his employment history with them. Following a disciplinary hearing he was dismissed for breach of contract (in not seeking his employer’s permission for working elsewhere), but also for his failure to report the allegation of misconduct. (In the event the employee was not charged with any criminal offence as it was thought that the allegations were fictitious.)

The employee lodged an unfair dismissal claim. The Employment Tribunal held that he had been unfairly dismissed because there

was no clear policy or express contractual term requiring him to disclose any allegations made against him. Although the employer appealed the subsequent Employment Appeal Tribunal (EAT) found that the employee was not under a duty to report allegations made against him. It therefore held that, in the absence of an express contractual term, whilst there may in some cases be a duty to disclose proven misconduct, there is no law that an employee must disclose any allegation of impropriety, regardless of however ill-founded it may be. Had there been an express term requiring the employee to report his own misconduct or any allegations against him, the outcome might have been different.

Action – in the light of this case, employers may wish to consider, in appropriate circumstances, amending contractual documentation to expressly state that employees must notify their employer of any formal allegations that arise during the course of their employment. Alternatively you could utilise the school or academy’s Employee Handbook or a code of Conduct (as long as this is contractually binding) to spell out any such requirement. In either case, you should be careful to ensure that the requirement for disclosure includes any relevant factor capable of affecting the continued employability of the employee. ■

Discrimination by association

This is deemed to have occurred when a person is treated less favourably because of a link or association with a protected characteristic eg a member of staff who has a dependent child with a disability.

A recent case – Truman v Bibby Distribution Ltd – has highlighted the problems for employers in circumstances where staff have caring responsibilities for disabled family members. Essentially, Truman had indicated to the employer that he would have increased caring responsibilities for his daughter, who suffered from cystic fibrosis. He was later dismissed (on the day he accrued one year’s service) and informed that the reason was that “his heart wasn’t in the business” and his primary customer was “dissatisfied” with him. The employment tribunal found there was no satisfactory explanation for the dismissal as there was no performance improvement process in place, and no documented indication (from either management or his primary customer) of dissatisfaction with his performance.

Truman successfully claimed associative disability discrimination, on the basis that he was dismissed because his daughter was disabled. This case shows that it is important for employers to carefully consider the reason for dismissal, to have a genuine belief in the reason for dismissal, and to evidence this with appraisals, customer feedback etc. Employers must be aware that without genuine reasons for dismissal, combined with a fair and proper process, they run the risk of falling foul of discrimination legislation (for which no qualifying period of service is required). ■

Employment tribunal fees

Unison has lost a further legal challenge in its bid to overturn the introduction of tribunal fees. The Court of Appeal dismissed the union's third appeal for a judicial review of the fees regime, first introduced in July 2013, claiming there was insufficient evidence to support the union's argument that claimants were unable to afford the fees.

Unison has repeatedly maintained that a sharp decline in the number of cases being brought to tribunal is due to claimants now having to pay, depending on the type of claim brought, anything up to £1,200. Unison had argued in previous appeals that the fees system had a disproportionately adverse impact on women, or those with protected characteristics but these concerns were also dismissed by the Court. At the hearing held on 26 August 2015, Lord Justice Underhill said that, although he was "troubled" by the drop in cases, "...the case based on the overall decline in claims cannot succeed by itself. It needs to be accompanied by evidence of the actual affordability of fees in the financial circumstances of (typical) individuals". ■

Recruitment

A university has been accused of political correctness gone mad after refusing to post a job advert on the grounds that having the word "junior" in the title is "discriminatory".

The University of Nottingham's response has been criticised by an employment lawyer as "idiotic" while the managing director of the company that sent the advert described it as "baffling". Dictionary definitions of 'junior' include 'lower in rank or status'. However, a leading employment barrister commented: "I think junior would normally be seen as inviting young people to apply so (could be seen as) discriminatory but it does depend on the context in which it is used." ■

Uniforms and discrimination

A job applicant attended for interview and half day trial (during which she wore a full length jilbab) and was subsequently offered the job. Her employers noticed, however, that her jilbab covered her shoes and could potentially pose a tripping hazard so she was asked to wear a shorter one to work.

The applicant then brought a claim for discrimination on grounds of religion or belief, saying that the requirement not to wear ankle length jilbabs discriminated against Muslim women. Both the Employment Tribunal and subsequent EAT found that the policy was intended to discourage the wearing of clothing that presented a tripping hazard and this did not discriminate against Muslim women as the employer would allow ankle length jilbabs provided they did not present a tripping hazard. The Tribunals also noted

that the requirement was not discriminatory as it was justified on health and safety grounds. There was a clear requirement to protect staff and children and this represented a proportionate means of achieving a legitimate aim. ■

Probationary periods

Over a number of years we have been asked to assist schools in dealing with support staff who are not performing satisfactorily. Almost invariably this would have been easier had the school or academy made use of the probationary period as it is preferable to clarify your expectations early on.

A probationary period at the start of employment (or, less frequently, following promotion to a new role) represents the timescale during which the employee's suitability for the role is assessed by the manager. The length of a probationary period is typically 3 or 6 months, although this may depend on the nature of the role and the time it would take an employer to properly assess the employee's suitability.

Managers should monitor the employee's performance closely during the probationary period and should not wait until the end of the period. Regular feedback is necessary and the manager should meet with the employee during the process to provide information on whether or not expectations are being met. An extension of the probationary period (for up to another 3 months) may, if necessary, be granted to the employee, but ultimately failure to meet the appropriate standards can lead to their dismissal.

Probationary periods cannot be used for teachers (as their NQT year effectively serves this purpose) but a contract of employment for support staff will usually contain a clause relating to a probationary period. Other than for very short fixed term contracts (where their use would be impractical) we would recommend that probationary periods are used for all new support staff employees, and the beginning of a new academic year represents the ideal opportunity to monitor recent appointees, clearly explaining your expectations of them, and to take appropriate action where necessary – if you need advice don't hesitate to contact Gill Meeson. ■

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