

The Right Honourable Michael Gove MP
Secretary of State
Department for Education
Sanctuary Buildings
Great Smith Street
London SW1P 3 BT

17th May 2013

Dear Secretary of State

The NASUWT/NUT Pay Policy Checklist

The General Secretary has referred me to your letter to her of 15th May.

Your letter encloses a copy of a letter by you of 15th May which you say you have sent to all schools. Your letter to schools refers to a document headed "Information for schools on the NUT and NASUWT's pay policy checklist" which is undated but has been prepared by the Department for Education (hereafter referred to as "the DfE"). Your letter and the Information document have been put on the DfE website. Your obvious intention is to dissuade schools from acting in accordance with the NASUWT/NUT checklist.

The NUT objects to the statements in your letter to schools and in the Information document that schools would be acting unlawfully by adopting the checklist. The NUT objects to any claim that it would encourage schools to act unlawfully. The particular points made in the Information document which claim illegality are wrong as is set out below.

Movement from Main Pay Range (MPR) to Upper Pay Range (UPR)

Paragraph 17.1 of the draft STPCD 2013 provides that whenever an application is made to be paid on the Upper Pay Range, a relevant body 'shall assess any such application received and make a determination, **in line with their pay policy**, on whether the teacher meets the criteria in sub-paragraph 2' (my emphasis). The criteria in sub-paragraph 2 provide that 'an application ... will be successful where the relevant body is satisfied:

- a) that the teacher is highly competent in all elements of the relevant standards; and
- b) that the teacher's achievements and contribution to the school are substantial and sustained.

Paragraph 17.3 then continues to state that the pay policy, referred to in paragraph 17.1, 'should set out the process for assessing applications'.

The statutory content of the draft STPCD 2013 thus provides that a relevant body must assess whether the two criteria are met in line with its pay policy. It is self evident that the pay policy can therefore determine how a relevant body will satisfy itself that the criteria in 17.2 are met. If a relevant body wishes to arrive at the determination that a teacher is highly competent in all elements of the relevant standards by relying on successful performance management/appraisal reviews which they themselves carried out, as the NASUWT/NUT Checklist provides, then they are perfectly able to do so.

The DfE Information seems to be labouring under the misapprehension that a pay policy in compliance with the NASUWT/NUT Checklist would remove the need for a relevant body to satisfy itself that a teacher was highly competent. It would not. It would simply have provided a way for the relevant body to come to that decision. The NUT's view is that there could be few better ways of deciding whether a teacher was highly competent than relying on a school's own performance review system.

There would be nothing unlawful about a school taking that approach. It would not be seeking to remove or avoid the criteria in paragraph 17.2. It would not be weakening the process. It would not be contrary to the provisions of paragraph 17. Instead, it would be an example of a school using the flexibilities of the draft STPCD 2013 to determine their own way of assessing applications to move to the UPR.

Advanced Skills Teachers (ASTs) and Excellent Teachers (ETs)

In a similar way, there would also be nothing unlawful about a pay policy deciding to assimilate existing ASTs and ETs on to the Leading Practitioner Pay range (LPPR), as provided for by the NASUWT/NUT Checklist.

Again, it is useful to set out the terms of the draft STPCD 2013 at paragraph 18.1. The LPPR applies to teachers in posts that the relevant body 'has **determined** have the primary purpose of modelling and leading improvement of teaching skills' (my emphasis). It is clear that a relevant body is free to determine, as they see fit, whether a post has such primary purpose. There is nothing further provided in the statutory body of the draft STPCD 2013 that would guide a relevant body as to how to reach such determination.

The draft guidance appended to the draft STPCD 2013 does provide some further information. Paragraph 44 states that 'schools can create posts ... whose primary purpose is the modelling and leading improvement of teaching skills. **There are no national criteria for appointment to such posts**' (my emphasis). This guidance only serves to emphasise the fact that whether the LPPR applies to a particular post is one for a relevant body to reach itself.

The view of the NUT is that it is eminently sensible for schools to determine that AST and ET posts should be assimilated to posts on the LPPR. Under the current STPCD 2012, the focus of AST and ET posts is upon the coaching, mentoring and induction of new teachers, the professional development of their colleagues and the helping of teachers who are experiencing difficulties. That is the very example of 'modelling and leading improvement of teaching skills' that is the purpose of posts on the LPPR.

It is therefore clear again that any pay policy complying with this element of the NASUWT/NUT Checklist would not be unlawful. It would simply be another example of a school using the flexibilities of the draft STPCD 2013 in the way that, in its view, best suited the school.

Conclusion

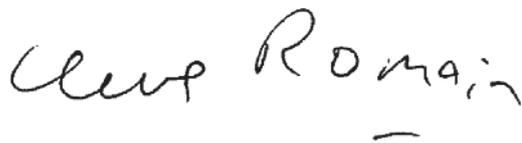
It appears that the references to unlawfulness that I have referred to above betray the DfE's own misunderstanding of the framework created by the draft STPCD 2013. Schools are free to set pay policies that allow them to apply the terms of the draft STPCD 2013.

There is nothing unlawful about schools choosing to set such policies in accordance with the NASUWT/NUT Checklist. The NASUWT/NUT Checklist does not contravene any provision of the draft STPCD 2013.

It is entirely inappropriate, irresponsible, unreasonable and an abuse of the office of the Secretary of State for a government department to label a particular course of action unlawful when it so clearly is not. It is equally inappropriate for a government department to suggest that a government approved pay policy must be adopted when it need not.

I now expect that you will retract all references in the DfE Information document to unlawfulness and write to schools to inform them of the mistakes in this document. Should you not do so, the NUT reserves all its legal rights

Yours faithfully,

A handwritten signature in black ink that reads "Clive Romain". The signature is written in a cursive, slightly slanted style. Below the name, there is a short horizontal line.

Clive Romain
Senior Solicitor
National Union of Teachers