



**FROM MAs TO TLRs:
END OF SAFEGUARDING AND OTHER ISSUES
GUIDANCE FOR NUT DIVISIONS AND ASSOCIATIONS**

UPDATED NOVEMBER 2008

This updated NUT guidance advises on issues likely to arise as the implementation of TLR payments is completed and safeguarding for Management Allowances (MAs) ends on 31 December 2008. In particular, it considers:

- NUT advice to members who lose MA safeguarding that they should not be required to undertake any responsibility for which they previously received an MA unless an appropriate TLR payment is made;
- NUT advice that all teachers expected to undertake additional responsibilities should be paid appropriately and in accordance with the revised statutory guidance in the 2008 STPCD; and
- the procedures to be followed by schools wishing to amend previously agreed TLR structures, either before or after their implementation, and the position of teachers affected by such reorganisations.

The NUT is seeking to make it clear to members facing the loss of safeguarding that they should not be expected to continue to undertake any responsibilities for which they have received MA or TLR payments if payment for those responsibilities is discontinued. Similarly, the NUT is advising all members who undertake additional responsibilities about the criteria for payment of TLRs.

The NUT nationally continues to be committed to supporting members against cuts in pay or loss of employment due to implementation of TLR payments. The final section of this guidance outlines the NUT's preferred approach to such situations, based on a collective response.

BACKGROUND

Every school in England and Wales was required, by 31 December 2005 in England and by 31 March 2006 in Wales, to review its staffing structure and agree a structure based on TLR payments. Schools were permitted to implement their revised structures at any date between 1 January 2006 and 1 January 2009. While some schools have not yet implemented their revised structures, all must do so by 1 January 2009.

In all schools, information should have been provided by 31 December 2005 on the form of the revised structure and on how and when it would be implemented (although not necessarily information on teachers' own personal position under any new structure).

PROVISIONS FOR MA SAFEGUARDING

Any teachers who did not receive TLR payments equal to their former MAs, or did not receive TLR payments at all, were protected by a system of three year safeguarding.

Safeguarding for MAs for all teachers ends on 31 December 2008.

This safeguarding may already have been lost by some individuals in specific circumstances, in particular:

- Teachers who have been **promoted since 1 January 2006** have lost safeguarding for MAs either in whole or in part. Where teachers move to leadership group, AST or Excellent Teacher posts, they lose MA safeguarding regardless of the pay rate for the new post. Where teachers are awarded new or higher TLR payments due to promotion, they lose MA safeguarding in full if the consequent pay increase is worth more than the safeguarded sum. Where the consequent pay increase is worth less than the safeguarded sum, the safeguarded sum is reduced by that amount.
- **Temporary promotion**, however, will have led only to temporary removal of safeguarding, due to NUT representations, with payment of safeguarding being restored when the temporary promotion ends.
- Teachers may also have lost safeguarding due to pay increases accruing from the **annual pay increase and/or incremental progression**. Safeguarding is removed when the total pay increase since 1 January 2006 due to the annual increase in pay scales and/or incremental progression exceeds the safeguarded sum. Safeguarding is not, however, removed from teachers who do not make incremental progression.

The pay losses for teachers affected by the end of MA safeguarding are significant. Set out below are some examples of such pay losses:

- a teacher formerly paid MA1 who does not have a TLR loses £1,638;
- a teacher formerly paid MA2 who does not have a TLR loses £3,312;
- a teacher formerly paid MA4 who has the minimum TLR2 loses £5,411;
- a teacher formerly paid MA5 who does not have a TLR loses £10,572;

The NUT should continue to seek to protect members against pay cuts from loss of safeguarding through use of **recruitment and retention payments** to maintain pay at the same level as previously. Such payments are legally permissible, since the governing body's decision will be that the payment is necessary to retain the teacher and avoid the risk that they will look for employment elsewhere as a result of the loss of safeguarding. Such payments are limited to three years in the first instance but may be renewed on the same basis.

Detailed NUT advice on MA safeguarding and other forms of safeguarding is available on Hearth and at www.teachers.org.uk. This incorporates the points of guidance set out below and may be provided to members who have queries on safeguarding.

SECURING APPROPRIATE PAYMENTS FOR RESPONSIBILITIES

As noted earlier, the NUT's position is that teachers who lose MA safeguarding should not be required to undertake any responsibility for which they previously received an MA unless an appropriate TLR payment is made.

Some teachers will have known since December 2005 that they will lose their MA safeguarding and will not receive a TLR payment. They may or may not have known that they will be expected to carry on with those responsibilities. Some teachers will only now encounter proposals to reorganise staffing structures and withdraw TLR payments, either before or after they start to be paid. In all such situations, casework may arise.

The Union is advising such members - ***“Don't Work for Free”***.

STPCD criteria for payment of TLRs

The 2008 STPCD contains, at paragraph 65 of the Part 3 statutory guidance, on page 168, additional guidance on the relationship between additional responsibilities and payment of TLRs, as follows:

“Teachers are expected to contribute, both orally and in writing as appropriate, to curriculum development by sharing their professional expertise with colleagues and advising on effective practice. This does not mean that they can be expected to take on the responsibility of, and accountability for, a subject area or to manage other teachers without appropriate additional payment. Responsibilities of this nature should be part of a post that is in the leadership group or linked to a post which attracts a TLR on the basis set out in paragraph 22.”

The NUT has welcomed this guidance which addresses an issue on which the NUT has consistently called for further guidance since the inception of the TLR payment system in 2006.

This guidance should be used in support of casework on behalf of members who are being expected to continue to carry out, without payment, responsibilities for which MAs were formerly paid. It should also be used in support of casework on behalf of members who have never received payment for additional responsibilities.

Reviewing work previously undertaken in return for MA safeguarding

The STPCD provides that teachers paid safeguarding worth more than £500 can be required to undertake additional work in return for that safeguarding.

Teachers in receipt of safeguarding for an MA which has been removed or replaced by a lower value TLR could, therefore, be required to carry out that former responsibility as long as safeguarding remains in place.

Whenever the amount of MA safeguarding is removed or reduced, however, the additional work must be removed or reduced commensurately. When MA safeguarding ends, the teacher cannot be required under that provision to carry on undertaking that responsibility.

In such cases, therefore, schools must consider whether and how these duties will continue to be undertaken and rewarded.

The NUT advises that schools should consider whether the work in question still needs to be carried out and, if the answer is “yes”, consider the following options:

- whether a new TLR post should be established in the school staffing structure in order that the teacher concerned may receive a TLR payment in return for continuing to carry out this work; or
- whether another teacher (or teachers) should take on all or part of the work in return for an appropriate TLR or leadership scale payment which reflects the revised level of responsibility.

Such schools should, of course, have looked ahead and made any necessary changes to their staffing structures with effect from 1 September 2008. Any necessary changes to structures can, however, be made from 1 January 2009 in the same way as revised structures based on TLR payments will be introduced in many schools with effect from 1 January 2009.

Teachers not in receipt of any responsibility payment

The STPCD guidance should also be used to resolve the situation of teachers who undertake additional responsibilities for which TLR payments should, according to the terms of the guidance, be paid.

Schools should again review the position of such teachers and determine either that an appropriate payment be made or that the responsibilities should be discontinued or transferred to another post holder who is appropriately paid.

Teachers with additional responsibilities should receive appropriate additional payments and should not be expected to undertake this work for free.

Teachers on UPS3

Some head teachers continue to argue that UPS3 teachers can be required to undertake additional work without appropriate TLR payments, simply because they are on UPS3. This is simply not the case.

The professional responsibilities for classroom teachers on the Upper Pay Scale are identical to those for teachers on the Main Scale. There is no provision which permits greater demands to be made upon classroom teachers on the basis of their position on the pay scale, be that M6, UPS1 or UPS3. The criteria for payment of TLR payments apply equally to all classroom teachers so that any responsibility should attract the same level of additional payment whoever undertakes that responsibility.

No teacher, therefore, may be required to undertake additional responsibilities without an appropriate TLR payment simply on the basis they are on UPS3 or the Upper Pay Scale.

PROCESS FOR COMPLETING IMPLEMENTATION

Even where implementation was deferred to 1 September 2008 or 1 January 2009, governing bodies should have agreed and published the school's staffing structure and implementation plan before 31 December 2005. The 2008 STPCD provides at paragraph 14, pages 154-55, that the staffing structure and implementation plan should be published as part of the school's pay policy.

The implementation plan should have explained how existing teachers will transfer across to the new structure. Where the proposed structure differs from the existing structure, it should have explained how teachers would be slotted into the posts available, including any ring-fencing process, interviews, etc.

Given that implementation must in all cases be completed by 1 January 2009, the NUT expects that this work should, at the very latest, have been completed by 31 October.

FURTHER RESTRUCTURING

Some schools have already sought to review their revised structures, proposing either an increase or a decrease in the number of TLRs payable within the school, either before or after implementation.

In such cases, the NUT expects full consultation with union representatives on proposed revisions to the structure, however minor. The NUT considers that the same principles of consultation set out in the Education (Review of Staffing Structure) Regulations 2005 should apply, a position shared by RIG as set out below.

How do schools review structures at a later date?

The review of the whole school staffing structure must have been concluded by the deadline of 31 December 2005 and the final structure and implementation plan published. Schools are free to make further changes to their structure at any time after that date, provided that they follow a similar process including consultation with staff and representatives of recognised unions, but should give very careful consideration to the current review in order to minimise the need for future change, as constant review will have an adverse effect on staff morale and induce greater uncertainty. In cases where a radical restructuring takes place in the future, a similar lengthy period of consultation should be undertaken, but where such changes are less significant, consultation may be carried out in a much shorter timeframe or even confined to those directly affected, providing that there is on all occasions consultation with the unions.

RIG guidance, Q65B www.teachernet.gov.uk/docbank/index.cfm?id=9200

The general requirements on disclosure of information for collective bargaining purposes set out in ss.181-182 of the TULR(C) Act 1992 and those in the Information and Consultation of Employees Regulations 2005 also apply.

The NUT believes that the timetable for union representatives to consider and respond to proposals, and for governing bodies to consider representations and take final decisions, should be no shorter than the timetable set for the 2005 review of staffing structures. There should also be appropriate consultation with the individual teachers and other staff members affected. The form and extent of the consultation may, however, vary according to the extent of the structural changes proposed.

Schools where TLR payments have been introduced

In such cases, teachers will already be in receipt of TLR payments under the revised structure. Teachers who lose TLR payments or see their payments reduced will be protected by the system of three year safeguarding set out in the STPCD.

Schools where TLR payments have not yet been introduced

The position in such schools will be less clear, since teachers will not yet actually be in receipt of TLR payments on the proposed structure. The issue to be resolved will be whether it is possible to establish entitlement to a payment, and to safeguarding for that payment, where it is removed or reduced before it begins to be paid.

The following information would need to be gathered.

- What had caused the governing body to change the proposed structure?
- Did the original proposed structure identify individual teachers to particular posts and identify the TLR payments which those individuals would receive?
- Were the individual teachers concerned told they would be paid specified TLR payments and did they receive anything in writing to that effect?

Advice on the specific case could then be considered in the light of that information.

OTHER COMMON PROBLEMS

The following situations continue to cause problems in some schools and the NUT's advice is, accordingly, restated below.

Part time teachers

There is no prohibition on part time teachers occupying promoted posts or undertaking additional responsibilities. Where two part time teachers share an additional responsibility, payment for this responsibility can be given proper effect by means of job sharing. Separate NUT guidance has been made available, following the publication of new provisions for part time teachers' pay from 1 September 2008, to help ensure that individual part time teachers who undertake the totality of an additional responsibility are fully compensated for that responsibility.

Safeguarding for Assimilation, SPA and ILS

Some other forms of safeguarding also end on 31 December 2008. These are: assimilation safeguarding; social priority allowance safeguarding; and Inner London Area supplement safeguarding. These forms of safeguarding are explained in the separate NUT guidance on safeguarding. Should there be any cases where members have undertaken additional responsibilities in relation to safeguarding paid for these elements, then the advice given above in relation to MA safeguarding also applies.

Rotating TLR payments

All TLR payments must now be awarded in respect of responsibilities which are a permanent part of schools' staffing structures and attached to specific posts on those structures. Where a teacher is awarded a TLR payment, the teacher will hold that payment on a permanent basis unless the teacher is covering the temporary absence of another teacher. "Rotating" payments, paid because the school is unwilling to meet the full costs of teachers' additional responsibilities, are not permitted.

'Honoraria'

The 2008 STPCD provides clearly at page 152, paragraph 4, that 'honoraria' payments are not permitted. Additional payments must conform to the STPCD's requirements in respect of TLR payments or recruitment/retention payments.

SUPPORT TO MEMBERS

The Union's approach to supporting members in relation to problems arising out of TLR implementation remains as originally outlined in NUT Circular 05-160, published on 3 November 2005, which is available on Hearth at:

<http://www.hearthcommunity.teachers.org.uk/files/active/0/05-160-CCU.doc>.

The Union's preferred option is for individual concerns to be pursued as part of a collective response on behalf of all members. The overwhelming majority of issues will be capable of being pursued in this way. Individual members are entitled to pursue concerns via grievance procedures but the Union does not promote the use of such procedures as a solution in preference to a collective response. Advice on collective and individual responses can be found in the above NUT circular.

National Union of Teachers
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