



Northern Ireland
Assembly

**COMMITTEE FOR
FINANCE AND PERSONNEL**

**OFFICIAL REPORT
(Hansard)**

Equal Pay Issues

30 June 2010

NORTHERN IRELAND ASSEMBLY

**COMMITTEE FOR
FINANCE AND PERSONNEL**

Equal Pay Issues

30 June 2010

Members present for all or part of the proceedings:

Ms Jennifer McCann (Chairperson)
Mr Fra McCann
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Declan O'Loan

Witnesses:

Mr Mark Bailey) Department of Finance and Personnel
Mr Derek Baker)

The Chairperson (Ms J McCann):

I welcome Derek Baker and Mark Bailey from corporate human resources. A briefing paper from the Department of Finance and Personnel (DFP) and one from NIPSA (Northern Ireland Public Service Alliance) are in members' packs. Derek and Mark, did you get a chance to look at the NIPSA paper while you were sitting in the Public Gallery?

Mr Derek Baker (Department of Finance and Personnel):

We have just seen it.

The Chairperson:

I ask you to make some opening remarks, and we will then go to questions. Members are in and out of the Chamber today, and we are concerned about our quorum.

The Committee Clerk:

The quorum is five members for decision-making. We can continue to take evidence with four members present.

Mr Baker:

I will make only one comment, which is that the equal pay cases are still technically sub judice. They are still lodged with the tribunal, and that process is still under way. Until they are withdrawn from the tribunal, I have to be circumspect in some of what I may say and in the answers that I give. However, apart from that, we are at your disposal.

The Chairperson:

That must be the shortest opening statement that the Committee has had.

Mr Baker:

I can make it longer if you wish. *[Laughter.]*

The Chairperson:

There are some outstanding issues, some of which were raised with us by constituents. I accept that you may not be able to answer some of our questions, but we will work through it.

Mr McQuillan:

I want to ask about those people who are just outside the time limit. A lady in my constituency is one day outside the time limit. She thought that she had all the paperwork lodged to cover her for that, but it seems that she is not getting anything. Is there anything that can be done for people such as her who are so close and yet so far away? They have given the biggest part of their life and worked for less pay than they should have got.

Mr Baker:

First, I very much sympathise with people who find themselves in that situation. I can understand how disgruntled they feel. However, the settlement that has been agreed with NIPSA was negotiated long and hard, and it was approved by all concerned — by the Minister, by the Executive, by NIPSA's executive, and by NIPSA members in a ballot. We have formally agreed the settlement. We have used the legal position, as we have been advised, as the frame of

reference for determining the eligible period. If we set aside the legal period, we have absolutely no frame of reference, and one day could become a year or ten years and go on indefinitely. It would be very dangerous to step outside that legal limit. While I sympathise with the situation, the Minister has made his position very clear on such matters as the time frame, and he has held robustly to that.

Mr McQuillan:

I think that the Department should have a moral obligation. It is all very well to talk about legal time frames and so on, but those people have given years of work to the Civil Service and are finding that, through no fault of their own, they have worked for less pay than they should have got.

Mr Baker:

We could get into the morality of the issue, which takes us into the area of philosophy. I could turn the argument around and say that if it was at our discretion to start paying out tens of millions of pounds of taxpayers' money to people who have no legal entitlement to it, I suspect that some of the members here might have sport with me in the Public Accounts Committee. We have adhered strictly to the legal position on the matter. I can understand those people's disgruntlement, but we are going on very clear and unequivocal legal advice.

Mr McQuillan:

I understand that.

Mr O'Loan:

Your paper is very clear and helpful. I note that the NIPSA paper is a lot longer. NIPSA obviously feels that there is a lot more to be said on the matter. I think that a number of the issues are going to run and run.

I also feel very sympathetic to the retired staff. It is very unfortunate that the situation has ended up in such a way. It does appear to be ending up, because the position of the Department is very clear and absolute on the matter. In the context of the negotiations that led to the settlement, was that issue clearly recognised and fully considered at the time? I think that it came to our attention only after the settlement. Was it fully discussed during the negotiations?

Mr Baker:

It was. I have had an opportunity only to briefly scan the NIPSA paper, but it does make reference to it. In fairness to NIPSA, it did make representations to the management side in the negotiations to have a longer period to define the eligible group. However, on the back of our legal advice, we made our own representations in those negotiations. To have stepped outside the legal framework would have placed us in what could be termed a ludicrous situation in that we were trying to negotiate a settlement out of court which potentially would have been more expensive than a settlement which would have been arrived at by a tribunal. We would not have wanted to be in that position. We explored the issue at length. It was discussed at length. The implications were clearly understood. NIPSA understood those implications, and it eventually agreed — with some reluctance and with many misgivings, which it has rehearsed in its paper — to the agreement that we reached.

Mr O’Loan:

I think that it is a very unfortunate place to have ended up.

In relation to seconded staff, I am surprised that the briefing paper states with considerable clarity that:

“periods of service for NICS staff seconded to organisations who were responsible for determining their pay will not count towards the equal pay settlement.”

I do not know how secondments came about, but I imagine that there was a need for staff in other sectors, such as the NIO, the PSNI or the Assembly, and that staff were invited to move across. They have now lost out in relation to that. I am very surprised about that. I have no idea of the legal position, and I am not in any position to challenge it. However, it would seem to follow naturally — even more so than is the situation for retired staff — that NICS staff who were seconded into those other roles would carry the same rights and entitlements.

Mr Baker:

I understand entirely the point that you make. That issue goes right to the heart of the law on equal pay. It goes right to the heart of the single source issue. Our position, which is again based on legal advice, is that, where staff are seconded to or are on loan to a body that has responsibility for determining their pay and conditions, their service during that period is not reckonable for the purposes of equal pay. If we were to concede on that principle and, by extension, on the principle of single source, there would be far wider repercussions for a whole raft of other pay issues. We have taken legal advice; we have adopted that position; and that is the position we hold.

For example, when staff were seconded or sent on loan, which is the technical term that we use, to the Northern Ireland Office, they were put onto different pay scales in a different grading structure. Some members of staff who found themselves in the position of working in the NIO over many years benefited from enhanced pay scales that their former colleagues in the Northern Ireland Civil Service Departments did not benefit from. I suppose that, at one level, I could say that it is swings and roundabouts. This particular issue just happens to be a very big swing.

Mr O’Loan:

I think that NIPSA says that it is still working on that and still challenging it.

Mr Baker:

You are absolutely right to say that this has some way to run.

Mr O’Loan:

I think that the situation relating to arm’s-length public bodies will also run and run.

Mr McLaughlin:

Despite the good and hard work that went into arriving at the settlement, it is evident from the range of representations that have been made that a lot of people feel that an injustice has been done. I accept absolutely the limitations on your ability to respond to that range. You have a position that has been thrashed out, and you have taken legal advice. People are facing into this in a particular way. The extent to which that is a technical option or a point of principle is unclear to me, given the range and the nature of some of the representations that I have experienced. I have met people who were retired out of the Civil Service on sickness grounds long before the equal pay engagement took place. They find themselves left out of the deal. They would have been working in the Civil Service and, in normal circumstances, would have expected to have been included. They did not retire; they were not seconded; they were retired on medical grounds.

It would be a quite remarkable settlement that covered every single circumstance, and herein lies my difficulty, because I do not think that we can have a separate arbitration process for every single nuance or different scenario. However, I do think that adjudication is needed. I wonder to what extent the position that is based on legal advice is, in fact, an immutable one. We should try

to get to the point at which the settlement can be activated as soon as possible. No matter how much the bean counters may wish that that will be the end of it, it may not cover all of it. There is a human story attached to almost every one of the cases. You may not win them all. There may well be a degree of culpability on the part of the trade union side as well as regards how diligently they advised people of their legal responsibilities. It would be hard to concede that none of those cases has merit before there is some kind of day in court when they can be assessed.

I am not going to push you to answer that because I understand that you have a brief, and it is probably more than your career is worth to break from that. I am simply recording, at every opportunity that is available to me, the need to consider some kind of arbitration process that would be seen as independent of either side and would be prepared to examine those cases on their merits to see whether cases that were not resolved, inadvertently or due to lack of timely process, could and should have been resolved. It seems to me that there are people who were entitled to expect to be paid equal pay for equal work who are not going to get it. That may be because of the timing of their leaving the Civil Service or the fact that they had been seconded. Even if their income was enhanced and so on, people probably still regarded the Civil Service as the home to which they expected to return, and they expected that any improvements or resolutions on pay issues would have applied to them equally.

Mr Baker:

I know that you did not ask me a specific question, but you made a lot of very valid points, and I will comment on a couple of them.

You are 100% right. Even though we went through a very hard and intensive negotiation process, I acknowledge that we did not cover all bases in those negotiations. There were always going to be cases that emerged from the woodwork that would confound us. We tried to nail everything down as well as we could, and we did have to put some pegs in the sand. If there are no pegs in the sand, the thing goes on for ever, and what budgets are we going to cut to pay for it? We would be limited only by the extent of our budget and our generosity. That said, ultimately, recourse does exist for individuals who feel hard done by.

You talked about independent adjudication. That would be a very onerous responsibility for any individual or organisation, given the complexities and, indeed, the implications, which could run to many tens of millions of pounds of taxpayers' money. At one level, I could say that the

independent adjudication forum does exist, and that is an industrial tribunal. Each or any of the hard cases out there, which may already have been identified or are yet to be identified, will be adjudicated, I suspect, through a tribunal that will pronounce. Obviously, we will comply with whatever the courts and the tribunals decide. I predict, as Mr O'Loan said, that there will be some legal actions run by individuals or by NIPSA. We will have to await the outcome of those actions.

In respect of the implementation of the settlement, the beginning of the end started yesterday, when Mark attended and ran the first roadshow for staff. That is the process through which we will brief 16,000 people on their legal rights. They will be invited individually to sign a form indicating that they accept the settlement. If they do not sign it, whatever other action they take is their prerogative. Hopefully, those who sign the form will get their settlement in the following month. Interestingly, 297 out of 300 people signed the form at the event yesterday. I do not know what the other three people are going to do. They could decide to take us to a tribunal. We will see what the outcome of the process is.

Mr McQuillan:

Was yesterday the only opportunity they had to sign the form? If they decided to sign it today or tomorrow, could they still do so?

Mr Mark Bailey (Department of Finance and Personnel):

People were not required to sign the form yesterday. The event was facilitated by the Labour Relations Agency, which does not require anyone to sign or not sign; the decision is entirely up to the individual. The three individuals who did not sign yesterday may well sign next week or the week after — that is fine, we have no problem with that — or they may decide to pursue a case.

Mr Baker:

I have no doubt that, at the heel of the hunt, individual cases will be pursued through a tribunal.

Mr McLaughlin:

Why has the withdrawal of cases from the industrial tribunal not happened yet?

Mr Baker:

Has not happened?

Mr McLaughlin:

I thought that you said that —

Mr Baker:

It has not happened. It is NIPSA's responsibility to do that, because it lodged the claims. It is a very complicated process, and it had to be determined and managed in conjunction with the tribunal. We engaged with the Labour Relations Agency to deal with those staff who are affected but have not lodged cases. We had to nail down — as did NIPSA, with its lawyers — what the nature of the compromise agreement — the piece of paper that people would sign — would be and what it would look like. We had to agree that. We had to work in parallel so that the NIPSA members who had lodged claims were doing that at roughly the same time as we were pushing 10,000 people through the briefing process. We had to set all that up.

The main issue on the critical path was that the form that people sign will tell them specifically the amount of money that they are going to get in the lump sum compensation payment. We had to go through a process of investigating the service histories of 16,000 people; identifying them and asking them whether they agreed with our understanding of their service history; notifying them of the amount of money that they could expect to get; determining whether there were any further disagreements and resolving those; and putting that on the form.

It was a huge logistical process. At the outset when we agreed it, I had visions of it going on for years and years, such was its complexity. This may not be the right forum, but I will say this because it is a public forum and it is on the record: I pay huge tribute to Mark Bailey and his team for the work that they have done in giving effect to the settlement so quickly. If NIPSA was being honest with you, its representatives would say that they are shocked and surprised at how quickly we have done this. We hope that the process will be done and dusted by September 2010.

Mr McLaughlin:

Why are the cases still with the tribunal?

Mr Bailey:

I will explain the process. NIPSA has lodged about 4,500 cases. Last week, we produced 4,500 compromise agreements. There is one for each individual, which details their settlement amount

and has the case reference number. NIPSA has those agreements and, in the next two to three weeks, will be sending them out to the relevant individuals along with associated legal advice. The individuals then decide whether they wish to sign and return the agreement or not. If they sign and return it to us, we will effect settlement. That is what will cause the tribunal case to be withdrawn. If they decide not to sign, then, obviously, the case will run. However, NIPSA has stated that, in those cases, it will not be supporting those individuals because they are a part of our core settlement.

Mr McLaughlin:

OK, but if we take the roadshow outcome, in which 1% of the people involved did not sign up, 1% of the industrial tribunal cases is 45 —

Mr Bailey:

No —

Mr McLaughlin:

Well, let me finish. The tribunal will probably take a look at the various individual cases to see whether they can be categorised and perhaps dealt with on the basis of sample cases or class actions. However, if cases remain with the industrial tribunal, what will happen to the roll-out of the settlement?

Mr Bailey:

The roadshow process is for non-claimants. Therefore, anyone who is going to the Labour Relations Agency's roadshows will not have submitted a claim.

Mr McLaughlin:

I am only using it as a comparator. I was not at the roadshow, but 99% is a good result, so you are doing a good job. However, if there were a similar reluctance from people to sign off on the industrial tribunal process, pro rata that could be 45 cases.

Mr Bailey:

That is absolutely possible. You are absolutely right.

Mr McLaughlin:

What are the implications of that? That is what I am trying to get at in my convoluted way.

Mr Baker:

NIPSA has committed to not supporting such cases through a tribunal. Therefore, if individuals decide to run a tribunal case, they will do so at their own expense. NIPSA will not support them. If they decide to run their case through a tribunal, that is their decision, and we will probably fight them. The likelihood is that we will still be fighting them in six years' time.

Mr McLaughlin:

I am sure that there is no cynicism in that answer.

Mr Baker:

I am sorry if that came across cynically, but individuals will take their choices.

The Chairperson:

Derek and Mark, thank you very much.