

## **Assembly Section**

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Mr Shane McAteer  
Clerk  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont

Our Ref: CFP1/2011-15

13 June 2011

**Dear Shane,**

### **NICS EQUAL PAY SETTLEMENT**

You wrote to me on 26<sup>th</sup> May on concerning the NICS Equal Pay settlement.

The Committee has asked for a briefing on the concerns raised by various categories of employees omitted from the terms of the NICS equal pay settlement, including PSNI civilian staff, NIO secondees and NICS retirees, with an up to date DFP position in respect of each category. The Committee has also asked for an update on the comprehensive pay and grading review. Officials are due to brief the Committee on pay issues on 22<sup>nd</sup> June.

### **Background**

The equal pay settlement agreed by the Executive and NIPSA at the end of 2009 was negotiated to end all current and potential equal pay claims lodged by NIPSA on behalf of 4,500 female members of staff at AA, AO and EO2 grades using male TG2, TG1 and PTO staff as comparators. The terms of the settlement (attached at Annex A for ease of reference) apply not only to the claimants but to all eligible staff in the affected grades, as well as to those staff who left or retired from the NICS on or after 1 August 2008.

The settlement comprises two main elements – the movement of all eligible staff in post on 1 February 2009 onto new pay scales with effect from that date, and the payment of a lump sum amount calculated on the basis of an individual's length of service in each of the affected grades during the six year period covered by the settlement (1 February 2003 – 31 January 2009).

### **Implementation**

There are approximately 15,900 eligible individuals, all of whom are entitled to receive a lump sum payment which requires individual calculation and verification. 15,094 of those individuals have already received their lump sum payment or are due to receive it this month. In addition around 12,000 of these individuals in post at 1 February 2009 have been moved to the new pay scales.

In order to trigger payment of an individual's lump sum, there is a requirement for the individual to agree to withdraw any equal pay claim currently lodged with the Industrial Tribunal (c. 4,500 claimants) or to sign an agreement stating that no such claim will be pursued (c. 11,500 people). The vast majority of the 4,500 equal pay cases lodged with the Industrial Tribunal have already been withdrawn and following a case management discussion on 10<sup>th</sup> June there are now 68 cases remaining.

### **Funding**

The estimated total cost of the settlement payments is between £125 million and £140 million. The final figure will be known when all the affected individuals have completed the validation of their service history, thereby permitting a precise calculation of their settlement payments, and when they have signed a settlement agreement. The cost to date for lump sum settlement payments processed is approximately £128m. In addition, the movement to new pay scales in March 2010 has resulted in a pay bill increase of approximately £26m annually. The Executive has made provision centrally for funding to departments to cover the costs of the settlement payments and the back pay element of assimilating staff onto the new pay scales with effect

from February 2009 to March 2010. Departments have not been funded separately for the additional costs of paying staff the new rates of pay from April 2010 onwards, which have to be met from within existing budgets.

### **Eligibility**

The Committee has identified a number of issues arising from the settlement relating to eligibility. The current position in relation to these issues is set out below.

#### NIO Group

The NIO was granted delegation for pay and grading matters in 1996, subsequently introducing separate pay and grading arrangements and taking responsibility for determining the pay of seconded staff. As a result, periods of seconded service to NIO are excluded from the terms of the NICS settlement. Following discussions between NIPSA, NIO and the Department of Justice it remains our view that there is no legal basis for extending the NICS Equal Pay settlement to former NIO staff. This position was communicated to DOJ staff in a letter from their Director of Personnel. No settlement payments therefore have been made in respect of NIO service.

However, prior to the devolution of justice on 12 April 2010, the NIO put a 2009 pay offer to NIPSA which included an option for D1 and D2 grades (equivalent to AO and AA respectively) to assimilate onto NICS pay scales at the date of devolution of justice using the formula based on length of service as agreed in the equal pay settlement. This was implemented in March 2011 for DOJ staff.

#### PSNI

The PSNI agreed to apply the assimilation terms (i.e. new pay scales) of the settlement to its civilian staff, and this was implemented in June 2010 with effect from 1 February 2009.

Discussions have been ongoing between the Department of Justice, NI Policing Board (formerly PANI), PSNI and DFP regarding the entitlement of PSNI staff to the lump sum settlement payment. A draft business case was

submitted by the PSNI to DOJ which was then passed to the Department of Finance and Personnel for consideration of the legal arguments put forward by the PSNI. Given the complexity of the issues involved, a rigorous and objective assessment of all the relevant circumstances and documentation available had to be undertaken by officials and the Departmental Solicitor.

Following consideration of the legal arguments in the draft business case, the Department's view is that in 1996 a pay delegation was granted to the NIO pay group (including PANI) and, until devolution of justice on 12 April 2010, it had not been rescinded. Therefore there is no entitlement for police staff to have access to the NICS equal pay settlement, which applies only to those groups of staff for whom the NICS had responsibility for determining pay during the relevant time period.

#### Retired NICS employees

Under equal pay legislation, former employees have six months in which to lodge an equal pay claim with the Industrial Tribunal. The negotiated settlement aimed to settle all equal pay claims lodged by NIPSA and on that basis those who left more than six months before the claims were lodged were excluded from the settlement. This means that staff who left or retired from the NICS before 1 August 2008 are excluded from the terms of the settlement. Apart from the six month period in the current settlement, which has a firm legal basis, there is no particular rationale for any other cut-off period. Going beyond the settlement terms to make payments to people who have no legal right to them would have implications for other spending programmes.

#### Arm's Length Bodies

From the outset of the equal pay negotiations the Department's position regarding Arm's Length Bodies (ALBs) and Non-Departmental Public Bodies (NDPBs) has been that each organisation must determine if there is a legal requirement to implement the NICS equal pay revised pay scales. These bodies will also need to seek legal advice as to the applicability of the settlement payment (in whole or in part) to staff employed within their bodies. Where it is identified that there may be a requirement to apply part or all of the

settlement, each ALB / NDPB will be required to submit a business case through their sponsoring department which will require the approval of DFP Supply.

To date, 16 business cases for the application of revised pay scales have been approved by DFP with two cases currently under consideration. In terms of lump sum payments, 1 business case has been received and rejected by Central Finance Group on the basis that the ALB did not demonstrate there was a legal requirement to apply the lump sum element of the settlement to staff. It is not known how many further business cases may be received through sponsoring departments.

### **Comprehensive Pay and Grading Review**

The third strand of the equal pay settlement is a joint undertaking with NIPSA to engage in a comprehensive pay and grading review of all grades in the NICS.

While the review will cover all staff and grades the initial phase will concentrate on non-industrial staff below the Senior Civil Service. Terms of reference have been agreed with NIPSA – these are attached at Annex B for information. In recognition of the impact the equal pay settlement has had on the EO2 pay scale, examination of the EO2 grade within the NICS pay and grading structures will be prioritised in the review process. The review will also provide the opportunity to identify and address other pay anomalies in the current system and to ensure we have a set of robust pay and grading arrangements in place to support departments in delivering their business objectives.

A Review Team has been formed in Corporate HR which reports to Derek Baker as Senior Responsible Officer. Governance structures are in place, including the establishment of a project board to oversee the work of the Review Team and to be responsible for the overall management of the programme. The Review Team which is currently gathering relevant information from a number of sources has begun to engage with key

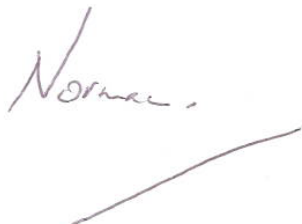
stakeholders and is developing a series of possible options for future pay and grading arrangements.

### **Conclusion**

It has been stressed on a number of occasions that the NICS is committed to correcting any unlawful pay inequalities that exist in its pay and grading structures, and to ensuring that legal obligations are met. The settlement terms satisfy those obligations while attempting to minimise the impact on public services. The cost of the settlement payments contributed to the need to reduce departmental budgets in 2010/11, whilst the additional cost arising from the new pay scales has added to the in-year pressures facing departments.

The Department has been consistent in application of the equal pay settlement terms despite significant pressure to extend eligibility and in consequence the cost. There are no outstanding discussions regarding eligibility for the settlement terms and our position, based on legal advice, has been made clear in every case. The concept of “single source” of pay decisions goes right to the heart of issues surrounding equal pay. The Department’s position in respect of equal pay has always been and remains firmly founded on that concept. Any departure from that concept steps outside the known legal framework and has potentially very significant financial implications.

**Yours sincerely,**

A handwritten signature in blue ink, appearing to read "Norman", with a long horizontal flourish extending to the right.

**NORMAN IRWIN**