

nipsa

***NICS EQUAL PAY
SETTLEMENT***

***BRIEFING TO THE
COMMITTEE FOR
FINANCE AND
PERSONNEL***

PRODUCED BY NIPSA

AUGUST 2011



NORTHERN • IRELAND • PUBLIC • SERVICE • ALLIANCE

COMMITTEE FOR FINANCE AND PERSONNEL

UPDATE ON EQUAL PAY IN RESPECT OF

DEPARTMENT OF JUSTICE/FORMER NIO SERVICE,

PSNI/FORMER PSNI SERVICE

AND

RETIRED CIVIL SERVANTS

1. DOJ/Former Service with NIO

- 1.1** Following the negotiated settlement of the NICS equal pay claims the then NIO Management, in agreement with NICS Management, resisted the application of the terms of settlement to NIO staff. That remains Management Side's position.
- 1.2** As part of the arrangements for establishing the Department of Justice it was agreed staff would be given the option of assimilating to the revised NICS rates of pay negotiated as part of the equal pay settlement. However, Management insist the effective date of assimilation is to be 12 April 2010, the date the Department came into being, not 1 February 2009 as provided for under the negotiated terms of settlement.
- 1.3** NI Civil Servants working in NICS Departments having former service with the NIO have had that period of service categorized by NICS Management as non reckonable. This means former service as a NI Civil Servant in the NIO has been excluded from the calculation of the point of assimilation to the 1 February 2009 revised rates of pay and in respect of the settlement (lump sum) payments.
- 1.4** NIPSA met with the Minister of Justice, Mr David Ford on 26 October 2010, making representations to secure application of the full terms of settlement for DOJ/former NIO and PSNI/ former PSNI staff. Following that meeting the

Minister wrote to NIPSA (24 November 2010). In that correspondence the Minister stated that the legal advice he had obtained indicated the Department (DOJ) had no legal liability in terms of the NICS equal pay settlement. The Minister also referred to those who had former service with both the NIO and the NICS during the period 1 February 2003 to 31 January 2009. He believed every effort should be made to resolve that matter and asked his Officials to work with Corporate HR (DFP) with a view to resolution.

- 1.5 There was no effort made, following the Minister's correspondence, on the part of Officials from either Department to engage in discussions with NIPSA to find a resolution to the matters.
- 1.6 In former submissions to the Committee for Finance and Personnel NIPSA has detailed the basis on which payment of the full terms of the NICS equal pay settlement should be made to DOJ/former NIO staff (copy of relevant extracts attached). In the absence of a negotiated resolution NIPSA has lodged breach of contract cases at County Court through our union solicitors seeking:
 - (a) the application of the settlement (lump sum) payments to those now working in the DOJ;
 - (b) the application of the 1 February 2009 revised rates of pay being applied from that date to those working in the DOJ; and
 - (c) the 1 February 2009 revised rates of pay and settlement (lump sum) payments being recalculated in respect of former NIO staff now working in an NICS Department, taking full account of their career history as a NI Civil Servant, irrespective of it having been served in the NIO or a NICS Department.

2. PSNI/Former Service with PSNI

- 2.1 Prior to the Police Support Staff (Transfer of Employment) Regulations (Northern Ireland) 2008, civilian support staff held the status of NI civil servants, seconded to the PANI and subsequently PSNI (a number of staff appointed after 2001 were direct recruits but attracted the same pay/terms and conditions of service as their NI Civil Servant colleagues). Indeed since 2008 those staff (who were formerly NI Civil Servants) remaining with the PSNI have also retained NICS pay and terms and conditions of employment.
- 2.2 A similar set of circumstances pertains in respect of PSNI/former PSNI staff as in the case DOJ/former NIO staff (although not exactly the same). In negotiations with the PSNI Management some progress was made in that the PSNI agreed to assimilate staff to the 1 February 2009 revised rates of pay, from that date, taking account of full service history irrespective of it having been served in the PSNI or in a NICS Department.

- 2.3** However, those staff working in a NICS Department having former service as a NI Civil Servant with the PSNI have had that period of service categorized by NICS Management as non reckonable. This means that former service as a NI Civil Servant in the PSNI has been excluded from calculation of the point of assimilation to the 1 February 2009 revised rates of pay. Former service as a NI Civil Servant in the PSNI was also excluded by NICS Management when calculating the settlement (lump sum) payments for those now working in an NICS Department.
- 2.4** In discussions with PSNI Management there appeared a willingness on their part to also pay to its staff the settlement (lump sum) payment. However this was resisted by the funding Department, DOJ and presumably DFP. Following further representations the DOJ eventually submitted a business case to DFP, for discussion, in respect of applying the settlement (lump sum) payments to PSNI staff.
- 2.5** Issues relating to PSNI/former PSNI staff were also raised with the Minister for Justice at the meeting referred to above. In his written response to NIPSA the Minister indicated that the respective legal representatives for PSNI/DOJ and DFP were considering a number of points. He also indicated he had encouraged them to bring their considerations of these matters, ie application of the settlement (lump sum) payments, to a conclusion. It is NIPSA's understanding that PSNI has received independent legal advice indicating that a liability exists.
- 2.6** Following the Minister's correspondence there has been no further engagement by Management with NIPSA. The difficulty in securing the application of the settlement (lump sum) payments appears, from NIPSA's analysis, to relate to the position adopted by the DOJ as the funding Department and DFP, not that of PSNI Management. Indeed we are advised £26m has been set aside to meet these claims.
- 2.7** In the absence of a negotiated resolution NIPSA has lodged breach of contract cases on behalf of its members at the County Court through our union solicitors seeking:-
- (a)** the application of the settlement (lump sum) payments to staff in the PSNI; and
 - (b)** the 1 February 2009 revised rates of pay and settlement (lump sum) payments being recalculated in respect of those having former service in the PSNI who now work in an NICS Department, taking full account of their career history as a NI civil servant irrespective of it having been served in the PSNI or an NICS Department.

3. Current Position

- 3.1** Following submission of cases to the County Court legal representatives on behalf of the respective respondents have submitted notice of defenses. A

request for Further and Better Particulars has been submitted to NIPSA's solicitors which has been responded to.

4. Former (retired) NI Civil Servants

- 4.1** Following protracted negotiations and Ministerial approval, an offer was extended to NIPSA proposing terms of settlement of equal pay claims in respect of Administrative Assistant (AA), Administrative Officer (AO), Executive Officer II and their related grades. Despite the fact that NIPSA throughout the negotiations sought provision within the settlement terms that would benefit those who had left the NICS on or after the retrospective date for back payments i.e. 1 February 2003, there was only an extremely limited provision within the proposed settlement terms for former employees. This provision related only to those with at least 2 years of service leaving on or after 1 August 2008. The legal requirement is for a person to have lodged a tribunal application within 6 months of leaving service. The 1 August 2008 date was approximately 6 months prior to NIPSA having lodged cases with the Industrial Tribunal Office.
- 4.2** In considering the detail of the proposed offer, the NIPSA Civil Service Group Executive Committee recognised that while a number of objectives for Trade Union Side were not reflected in the proposals, it nonetheless represented a significant settlement. The ballot held to consult members in the affected grades authorised NIPSA to proceed to have the proposed terms of settlement implemented albeit that not all our objectives (including that relating to former/retired civil servants) were achieved. Even if tribunal cases had been pursued successfully, the tribunal outcome would not have resulted in the terms of settlement being applied to former employees prior to the date that currently pertains i.e. 1 August 2008.
- 4.3** Notwithstanding this, the public statement by the Finance Minister in May 2008 was reported to have referred to settlement of claims which would include retired civil servants in terms of back payments. In addition Ministers, in Assembly debates, have referred to the NI Executive meeting its moral obligations as much as its legal obligations. Following the evidence given by NIPSA at the Committee for Finance and Personnel session on 27 January 2010, the Committee recognised the complexities and competing considerations in respect of the issue. The Committee also indicated it would welcome efforts from NICS Officials and NIPSA to actively explore the feasibility of finding a constructive way forward. NIPSA has sought to do so but there is not a willingness on the part of the NICS Management to engage on the matter.
- 4.4** In reality NICS Management is unlikely to do so without Ministerial approval and therefore a "political" will needs to exist and be acted upon to see progress in this area. NIPSA believe strongly that a moral case exists. It must be recognised that retired civil servants have given many years dedicated service (up to 30), including during the period of the equal pay terms of settlement (1 February 2003 – 31 January 2009). Their service to the public during that period, like existing NI Civil Servants, should be acknowledged. They too suffered the inequality over

the period of settlement, however, due to limited/poor legislative protections they are treated in this fashion. NICS Management has sought to promulgate the narrow point of statutory time limits to pursue a legal redress as a means of refusing to compensate in any way those retired civil servants who for decades had suffered an inequality in their rates of pay.

- 4.5** Having read the Hansard report on the 22 June 2011 session of the Committee for Finance and Personnel, NIPSA detected sympathy from some members for the retired civil servants. Indeed there was hints of looking at alternative, innovative approaches beyond the much relied upon obstacle of time limits for pursuing a legal redress used by NICS Management. In conclusion one of the Officials appearing before the Committee stated *“Any change to the approach taken towards groups of staff will be a piling decision for Ministers... You will understand that I have to take my policy lead from the Minister. That is the position that obtains at present and will do until Ministers take a different policy decision”*.
- 4.6** The time limit argument for pursuing a legal redress is just that. It does not of itself prevent NICS Management and/or Ministers agreeing to address the fundamental point that NI civil servants in the affected grades, over decades, suffered an inequality. NIPSA has indicated for some time that it is prepared to enter further discussions to achieve some level of compensation for these members albeit not the full terms of settlement. This would of course be on the basis that NICS Management is authorised (by Ministerial direction) to reach an agreement.

5. CONCLUSION

- 5.1** NIPSA believe that NICS Management should be asked to cost the finance required to settle the outstanding matters as referred to at 1.6 (a) – (c) and 2.7 (a) and (b) above. Having regard to the fact that £26m appears to have been set aside to settle the PSNI cases.
- 5.2** NIPSA also believe Ministers should authorise further negotiations to bring these matters to a conclusion without the need to expend public funds on pursuance of County Court defenses.
- 5.3** NIPSA would call on Ministers to authorise negotiations on a compensatory payment to former (retired) NI civil servants in recognition of the inequality they suffered over many years of dedicated public service.

Appendix 1

EXTRACT FROM BRIEFING TO COMMITTEE FOR FINANCE AND PERSONNEL

SUBMITTED JUNE 2010

4. Northern Ireland Office

4.1 Prior to 1997 the grading and pay structure in the Northern Ireland Office (NIO) was that which pertained across all Departments in the NICS. The NIO however was a reserved function under the control and governance of Whitehall. With the exception of a few individuals, NIO staff working in Northern Ireland were recruited directly to the NICS appointed as NI civil servants to the Department of Finance and Personnel (DFP) and subsequently seconded to the Northern Ireland Office.

4.2 In 1996 the NIO sought and was granted a grading and pay delegation. NIPSA attempted to resist this but was not successful in that quest. At the time NIPSA entered an exchange of correspondence, relating to the delegation, with Mr David Fell, the then Head of the NI Civil Service. In response to our representations David Fell wrote to NIPSA's General Secretary on 25 October 1996. The content of this letter became known as the "**Fell assurance**". In particular the letter stated:-

(a) ***"I can also reassure you that it is my intention that NICS staff in the NIO should be treated no less favourably than staff covered by the DFP agreement*."***

(b) ***"no less favourable treatment when taken in the round" was defined as - "at level of group/settlement not individual level but that we have a clear sighted view that although the terms and conditions of individual staff could be different in a Department to which a delegation has been given, significant disparity should not emerge. Differences may result from delegation and pay proposals for change would need to be considered against equal pay legislation."***

*the NICS pay agreement.

4.3 In addition to the above assurances, which contained an acknowledgement of the relevance of equal pay legislation, terms were agreed relating to transfers between the NIO and the NICS ie, *Interface Arrangements Between The Northern Ireland Office and Northern Ireland Departments*. These arrangements form part of the NICS Staff Handbook and relate to how a NI civil servants pay would be determined in such transfers. It clearly establishes the link between NICS pay and NIO delegated pay in the context of the Fell assurance and the fact that the staff have always been NI civil servants, irrespective of their posting

in the NIO or a NICS Department. *(added note August 2011: Prior to the delegation and associated Interface Arrangements referred to above, there was a free movement of staff between the NIO and NICS Departments).*

- 4.4 There are 521 D1's (NICS AO equivalents) which represents approximately 26% of NIO staff and 227 D2's (NICS AA equivalent) representing approximately 11.5% of NIO staff. Combined these equate to roughly 38% overall of the number of staff working in the NIO (now part of DOJ). NIPSA believe that to argue **these NI civil servants** should not attract the full terms of the equal pay settlement that their NI civil service colleagues working in a NICS Department received (albeit that separate calculations may be required), is flawed. It most certainly does not honour the Fell assurance of no less favourable treatment, "*in the round*" or otherwise.
- 4.5 It should be noted that NIO staff have been assimilated to the revised NICS pay scales as contained in the terms of settlement but only at the point of establishing the Department of Justice, 12 April 2010. Discussions are on-going with the NIO about those rates of pay being applied to NIO staff (who have always been NI civil servants) back to the 1 February 2009 and for the application of the settlement payment (lump sum) consistent with the treatment of their NI civil service colleagues in the affected grades working in a NICS Department. To date this has been hotly resisted by NIO Management.

5. **POLICE SERVICE OF NORTHERN IRELAND (PSNI)**

- 5.1 Staff who worked in the PSNI (formerly PANI), prior to the Police (Northern Ireland) Act 2000, were recruited as NI civil servants appointed to DFP and seconded to the PANI (and continued on secondment in the PSNI). They were therefore recruited as Northern Ireland civil servants and importantly the PSNI (and its predecessor the PANI) did not have a grading and pay delegation. PANI/PSNI members have always been covered by the pay negotiations undertaken through the NICS Central Whitley arrangements in respect of NI civil servants below the Senior Civil Service grades..
- 5.2 In terms of the status of NI civil servants working in the PSNI we need to have regard to the relevant pieces of legislation. Particular attention is drawn to the following:-

(a) **Police (Northern Ireland) Act 2000**

"Part II 4. Police Support Staff

- (4) *The Board may make appointments for administrative, secretarial or other assistance to be provided for the police by persons employed in the civil service."*

"Schedule 2 Transfer of Seconded Staff

- 5 (1) *This paragraph applies to a person who immediately before the transfer date is engaged in the pursuance of arrangements under section 3(4) of the 1998 Act in providing assistance to the Authority.*
- (2) *If, immediately before the transfer date a person to whom this paragraph applies was a member of the police service staff of the Authority, he shall be treated as a member of the police support staff engaged in the pursuance of the arrangements under section 4(4).*
- (3) *In any other case, he shall be treated as a person engaged in providing assistance to the Board in pursuance of arrangements under paragraph 13 (2) of Schedule 1.”*

(b) The Police Support Staff (Transfer of Employment) Regulations (Northern Ireland) 2008.

“Interpretation

2. *In these Regulations –*

“relevant person” means a person to whom section 5 of the Police (Northern Ireland) Act 2000 applies “the prescribed date” means 1 October 2008.

Transfer of Staff

3. (1) *Each relevant person shall on the prescribed date transfer to, and become an employee of, the Board.*
- (2) *A contract of employment by which a relevant person is employed in the civil service shall have the effect from the prescribed date as if originally made between that person and the Board.*
- (3) *Without prejudice to paragraph (2) above –*
- (a) *All the rights, powers, duties and liabilities of the employer under, or in connection with, a contract to which that paragraph applies shall, by virtue of this Regulation, be transferred to the Board on the prescribed date:*
- (b) *Anything done before the prescribed date by, or in connection to, the employer in respect of that contract or that employee, shall be deemed from that date to have been done by, or in relation to, the Board.*

- (4) *Paragraphs (2) and (3) are without prejudice to any right of a relevant person to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employed affected by this Regulation.*
- (5) *For the purposes of this Regulation, if a relevant person is employed in the civil service on terms which do not constitute a contract of employment –*
- 1. That person is to be treated as employed in the civil service by virtue of a contract of employment;*
 - 2. The terms of that employment are to be regarded as constituting the terms of that contract.*

- 5.3 Although some staff in the PSNI were directly recruited to the PSNI post the Police (Northern Ireland) Act 2000 their pay, terms and conditions of employment were those of their PSNI seconded NI civil service colleagues. In the lead up to the Police Support Staff (Transfer of Employment) Regulations (Northern Ireland) 2008, seconded NI civil servants were given the choice of continuing to work in the PSNI or to transfer to a NICS Department, thereby retaining their NI civil service status.
- 5.4 For those who remained in the PSNI, they have been entirely excluded from the equal pay settlement terms by the NICS. Those who were posted to a NICS Department, subsequent to the Regulations referred to above, have attracted some equal pay settlements from the NICS for that service only thereby excluding their service as a NI civil servant while posted in the PSNI.
- 5.5 Separate negotiations with the PSNI have taken place in relation to it applying the equal pay terms of settlement in the absence of NICS Management agreeing to do so. PSNI has agreed to apply the 1 February 2009 revised rates of pay and the associated arrears to that date for their staff. These monies will be paid in PSNI June salaries. Discussions are on-going in relation to the application of the settlement payment, (lump sum). However it makes no sense whatsoever in accepting their staffs former NI Civil Service status while posted in the PSNI in respect of only one element of the settlement i.e. 1 February 2009 revised pay scales, while excluding the element related to lump sum payments. It is also worth noting that the PSNI has TGI/TGII comparator grades within its structures.
- 5.6 Although former NI civil servants now working in PSNI, as a PSNI employee, are to be assimilated to the revised 1 February 2009 pay scales having taken account of their period as NI civil servants while working in the PSNI this is not the case for those who decided to retain their NI Civil Service status by transferring from the PSNI to an NICS Department. For those members wishing to retain their NI Civil Service status, the NICS is still insisting that their service

while working in the PSNI is excluded from the calculation of their equal pay entitlements. So staff, who have retained their NI Civil Service status and are now working in an NICS Department, are being treated less favourably than **former** NI civil servants who have relinquished that status and are now employees of the PSNI.

- 5.7 All service as an NI civil servant irrespective of it having been while posted in the PSNI should be taken into account in applying the full terms of settlement irrespective of the individual now working in the PSNI or having transferred to an NICS Department.