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

Our Ref –CFP47/11-15

6 December 2011

**Dear Shane,**

**NICS Equal Pay Settlement Residual Issues arising from evidence sessions**

You wrote to me on 18 November 2011 seeking a written response from the Department to a number of questions relating to residual issues from the NICS equal pay settlement.

The Department's response to these questions is attached.

Yours sincerely,

A handwritten signature in blue ink that reads "Norman".

**NORMAN IRWIN**

# **NICS EQUAL PAY SETTLEMENT RESIDUAL ISSUES**

## **QUESTIONS FROM THE FINANCE AND PERSONNEL COMMITTEE**

### ***1. What is the basis for the PSNI being treated differently to SSA in terms of the pay delegation principle?***

SSA was a named respondent in equal pay claims raised by NIPSA and these had to be resolved. In addition, from the outset of the Equal Pay negotiations, the Department was very clear that SSA was included in the equal pay negotiations and that the NIO Group (which included PSNI) was not. This is explicitly outlined in the minutes of the Central Whitley Pay, Allowances and Grading Committee on 11 November 2009 at paragraph 3.5 “Management Side said that they were not prepared to negotiate on behalf of NIO, PSNI or Court Service”. This position was also reflected in all of the cost estimates produced and shared with NIPSA throughout the equal pay negotiations which included SSA but excluded the NIO Group. Furthermore this position was in line with the approach taken in pay award negotiations for a number of years previously.

### ***2. Following the pay delegation to the SSA, did that Agency have formal, written agreement that pay negotiations would be conducted on its behalf by DFP?***

Following pay delegation to the SSA in 1996 we are not aware of a formal written agreement from the SSA asking DFP to conduct its negotiations but it is clear that this had been the practice over a number of years leading up to the equal pay settlement. Since 2003 pay circulars detailing the pay awards clearly specify that the Social Security Agency decided to mirror the NICS pay award whilst the NIO Group was specifically excluded.

- 3. Did DFP have executive authority in respect of NIO/PSNI civilian staff pay? If this is the case, and in view of the fact that PSNI contend there was no effective pay delegation in place, is DFP not the “determining authority” for decisions on PSNI pay?**

No. Delegation in relation to pay and grading was granted to the NIO group in 1996, to include NIPB (formerly PANI), and this was not rescinded until the devolution of justice in April 2010 by which time PSNI was a separate employer for all of its staff.

- 4. PSNI representatives stated that any attempts to change the terms and conditions of staff were effectively vetoed by DFP, e.g. proposed changes to the grading structure would have resulted in staff being expelled from the pension scheme (PCSPS (NI)). Committee question: Does this not imply a seamless relationship across these bodies in respect of terms and conditions of service?**

No. DFP did not state that to implement the envisaged changes would result in PSNI staff being expelled from the pension scheme (PCSCS(NI)). The relevant document explains that pay and conditions should be set out so that Civil Service Pensions can assure itself of broad comparability. This is not a prohibition on departure from NICS pay scales. In fact such a situation existed within the former NIO which, having delegation of pay, moved to their own pay scales and still remained within PCSCS(NI).

5. *Direct employees of the Policing Board were entitled to the lump sum payment; however, PSNI civilian staff were not, despite also being employees of the Policing Board. Committee question: **What is the difference in status of these two groups of employees?***

There was no difference in the status of these employees. The decision to permit lump sum payments to NIPB staff was made in error and based on incomplete information; information later came to light to change the department's view on their entitlement but payments had already been made to all staff. This does not set a precedent as regards any other staff.

6. ***What constitutes “pay delegation” for legal purposes?***

Where the employer delegates to another party the authority to negotiate and set pay for a group of staff.

7. ***From the information available, would this have applied in practice for both the SSA and the PSNI, particularly where DFP has had a role in sanctioning/authorising pay awards?***

See the answers to questions 1 and 3.

8. *DFP stated that this only crystallised as an equal pay issue in 2008; however, NIPSA contends that Management Side have been fully aware of this since 1998/99. **Given that this appears to have been an ongoing issue for some time, when and why was the decision taken to use the legal framework of equal pay legislation?***

Over a number of years the department was working through successive pay negotiations with NIPSA to remove equal pay vulnerabilities that it had identified in the pay system. In February 2009 NIPSA lodged around 4,500 claims for equal pay at the Industrial

Tribunal. Throughout the equal pay negotiations it was the consistent intention of Management to reach a settlement which would satisfy the legal requirements whilst at the same time minimise the impact on front line services and safeguard the public purse.

9. *CSPA contends that aspects of the equal pay legislation have been cherry picked, and that the legislation was not intended for use as a class action. Lump sum arrears payments were made to all staff in the affected grades within NICS departments, not just those who lodged claims. Is this beyond the pure legal requirements of the legislation, and outside the strict legal framework within which DFP states it was operating?*

The legal position regarding the period within which equal pay claims can be made formed part of the frame of reference against which the equal pay settlement was determined. There was, however, a wide range of other variables which shaped the negotiated settlement, such as the formula used to assimilate staff to the new payscales based on length of service. Whilst the settlement had so far as possible to satisfy the legal requirements, it was by definition a discretionary negotiation between the Trade Union, which had lodged the equal pay claims, and Management, which was seeking to resolve them. The purpose of the negotiated settlement was to avoid litigation and to reach an agreement which would cost less than the likely outcome from contesting the equal pay cases. Staff have the legal right to join or not join a Trade Union and whilst NIPSA only submitted cases on behalf of members, it would be unlawful to resolve the issues only for Trade Union members. The negotiated settlement was not the product of a judicial decision, consequently there was clearly the potential for a wide range of other outcomes in the negotiated settlement. The actual settlement reached and agreed between Management and the Trade Union, and eventually approved by Ministers, was considered at the time to be the most appropriate balance between all the competing pressures inherent in such matters.

**10. Is the payment to all staff in the affected grades within NICS departments not, in effect, a negotiated pay deal rather than an equal pay settlement, based on legal obligations? What is the position of retirees in such circumstances?**

Retirees are not entitled to NICS pay awards unless they retired after the effective date.

The equal pay settlement was specifically negotiated to resolve the equal pay claims lodged by the Trade Union. The settlement offer included all staff who had made a claim and other relevant staff who would have been eligible to make a claim. It is, however, true that the settlement was the product of a negotiation rather than the product of a binding judicial decision.

**11. Does Equal Pay legislation operate on an individual claims basis only?**

Yes, although an application can be made to the Tribunal to join a number of claims to be heard together.

**12. Is the onus on an individual to take a claim, or on an employer to take pre-emptive action to address issues, or both?**

There is an onus on an employer to take action to address issues adversely affecting its pay structures, but there is no requirement for an employer to advise staff of their rights under equal pay legislation when leaving employment.

**13. What were the legal obligations on NICS in respect of equal pay?**

As set out in the Equal Pay legislation.

**14. Did NICS go beyond its legal obligations in agreeing the equal pay settlement?**

See answer to question 9

**15. Concerns have been raised that those leaving the service, particularly retirees, were not advised that it was necessary to lodge an equal pay claim within six months of leaving the service. If, as is contended by NIPSA, this issue had been ongoing for some time, would it not be expected that Departments would have had a duty of care to inform employees in this regard?**

No, there is no onus on an employer to advise staff of their rights under equal pay legislation when leaving employment.

**16. Was there a legal obligation on the NICS to notify its employees of the six-month time limit for lodging equal pay claims during the period between the issues being identified and the equal pay settlement being reached?**

No.