

NICS EQUAL PAY SETTLEMENT – CFP 218/11-15

From: Judith Finlay

Date: MARCH 2013

Summary

Business Area: Corporate HR

Issue: This paper updates the Committee on issues related to the NICS equal pay settlement ahead of the verbal update by Mark Bailey, Head of Pay and Policy, CHR, which is scheduled for 10 April.

Restrictions: None

Action Required: To Note

BACKGROUND

1. Members will be aware that the NICS equal pay settlement agreed by the Executive and NIPSA at the end of 2009 was negotiated to end all current and pending equal pay claims lodged by NIPSA on behalf of 4,500 female members of staff at AA, AO and EO2 grades using male TG1, TG2 and PTO staff as comparators. The terms of the settlement apply not only to the claimants but to all eligible staff in the affected grades in NICS departments, as well as to those staff who left or retired from the NICS on or after 1 August 2008.
2. The settlement comprised two main elements – the assimilation of around 12,000 eligible staff in post in NICS departments on 1 February 2009 onto new pay scales with effect from that date, and the payment to around 16,000 individuals of a lump sum amount calculated on the basis of an individual's length of service in NICS departments during the six year period covered by the settlement (i.e. 1 February 2003 – 31 January 2009).
3. To date around 15,300 people have received a lump sum settlement amount, at a cost of over £129m; around 780 eligible individuals have not accepted the lump sum offered – this group is comprised mainly of staff or former staff with PSNI and NIO service who appeared to be awaiting the outcome of the NIPSA-backed legal proceedings in the County Court or leavers/career breakers who have not responded to

previous communication. Almost all of the 4,500 equal pay claims have been withdrawn; around 70 equal pay claims or cases related directly to the equal pay settlement remain before the Industrial Tribunal, although these were stayed pending the outcome of the County Court breach of contract claims.

4. The settlement excluded staff who had left or retired from the NICS before 1 August 2008 based on the legal position relating to equal pay legislation at the time the agreement was made, which was that former employees had six months from the date of leaving employment in which to lodge an equal pay claim with the Industrial Tribunal.
5. The settlement also excluded periods of service in the NIO or in the PSNI during the relevant period. This is because those organisations were responsible for determining the pay of NICS secondees.

KEY ISSUES

Retirees/Leavers

6. As noted above, staff who left the NICS before 1 August 2008 were excluded from the terms of the equal pay settlement because they were out of time to lodge an equal pay claim with the Industrial Tribunal. The decision of the Supreme Court in the case of Birmingham City Council v Abdulla established that former employees are now entitled to bring equal pay claims based on breach of contract in the Civil Courts for losses in the previous six years.
7. While this case means that former NICS staff who were excluded from the equal pay settlement may now potentially be entitled to bring claims through the Civil Courts it does not impose a duty on the Department to make payments to staff who have not made claims, nor does it alter the terms of the equal pay settlement, which was a negotiated settlement. Indeed, any claims already made following the 'Abdulla' decision, or any potential future claims, would be based on different circumstances and different timescales and would have to be assessed on their own merits.
8. In July 2012, NIPSA lodged around 295 writs with the High Court on behalf of female former staff. Following the 'Abdulla' decision, NIPSA later lodged around 200 writs on behalf of former male staff. We have begun early engagement with NIPSA to explore whether a negotiated settlement to the 500 or so writs already lodged is feasible.

PSNI/NIO and County Court Judgement

9. The position in terms of eligibility has been clear from the outset of the settlement and has now been upheld in the County Court, which found that the equal pay settlement applied only to periods of service in the 11 NICS departments and did not apply to bodies such as the NIO and PANI/PSNI, who had received delegation for pay matters which was still in effect during the relevant time period covered by the settlement. NIO and PSNI service has therefore lawfully been excluded from the equal pay settlement. NIPSA have confirmed that they will not lodge an appeal against the County Court decision.
10. In response to the Committee's request for clarification regarding the rationale for making lump sum settlement offers to some of the plaintiffs in the County Court action, these offers relate to the equal pay settlement where plaintiffs had periods of service in an NICS department. As noted in the judgement, the plaintiffs fell into four groups, as set out below. Judge Babington's comments, relating to settlement offers having been made to some of the plaintiffs which they have not accepted, relate to those who fall into groups (iii) or (iv) –
 - (i) those with service only in PSNI during the six year period covered by the settlement (2003 – 2009), none of which was included in the settlement so no offer was made by DFP;
 - (ii) those with service only in the NIO during the six year period, none of which was included in the settlement so no offer was made by DFP;
 - (iii) those with service in PSNI and in an NICS department within the six year period; eligible service in an NICS department was included in the settlement so an offer was made based on that period of service;
 - (iv) those with service in the NIO and in an NICS department during the six year period; eligible service in an NICS department was included in the settlement so an offer was made based on that period of service;
11. Approximately 250 individuals, including the County Court plaintiffs with this 'split service' between an NICS department and the NIO or PSNI have not yet accepted their equal pay settlement offer which was based on periods of service in an NICS department only, pending the outcome of the County Court case.
12. The department has maintained a consistent position on NIO/PANI service since the equal pay settlement which has now been upheld by the County Court judgement. As NIPSA have decided not to appeal the decision, any further course of action will be a matter for each individual. However, staff that have an entitlement to a compensation

payment for a period of service within an NICS department will be notified of this by the department and they continue to have the option of accepting the settlement payment.

13. In terms of the position of funding, £26m is held by HM Treasury to meet any liability arising from the PSNI equal pay claim. The funding was ring fenced and HMT indicated that access to this funding would be carried forward into 2013-14 if an appeal was lodged. An appeal will now not go ahead and discussions will continue with HM Treasury.