



Northern Ireland
Assembly

**COMMITTEE FOR
FINANCE AND PERSONNEL**

**OFFICIAL REPORT
(Hansard)**

**NICS Equal Pay Settlement:
Evidence from PSNI**

19 October 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Conor Murphy (Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Mr Paul Girvan
Mr David Hilditch
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:

Mr Michael Cox) Police Service of Northern Ireland
Mr Joe Stewart)

The Chairperson:

We are joined by Joe Stewart, director of human resources for the PSNI; and Michael Cox, deputy director. You are very welcome to the Committee. We have taken evidence from a range of people on the equal pay settlement and how it has affected some, but not others. We are content to hear from you this morning. I invite you to make some opening remarks, and then, if members have any questions, they will be able to ask them of you.

Mr Joe Stewart (Police Service of Northern Ireland):

I would be delighted. I am most grateful for this opportunity. I formally thank you, Chairman, for the invitation to attend the Committee on the subject of equal pay to give the Police Service of

Northern Ireland's senior management view on the matter. I can see from the previous Hansard reports that your Committee has spent some considerable time on the issue, as you have said.

The matter continues to give serious concern to many staff within the Police Service of Northern Ireland. I, and the command team as a whole, have considerable sympathy with those staff who feel themselves excluded by the settlement reached between NIPSA and the Northern Ireland Civil Service. As a command team, we are entirely satisfied as to the righteousness of the staff claim, both on moral and legal grounds, albeit that the evidence you have heard from departmental officials leans towards the former as opposed to the latter.

We are desperately conscious of the longevity of service of our staff. In many cases, they have served for more than 40 years, in good times and in bad. The Police Service is deeply appreciative of their loyalty and sense of service to the Police Service and the community at large, and we recognise that this has manifested itself in their attendance at work no matter what the circumstances.

It must be fully understood that many of those staff applied for jobs within the Northern Ireland Civil Service in the first instance, and ticked an options box stating that they were prepared to work at a police station. When I arrived in 1995, as the then chief executive of the Police Authority for Northern Ireland, direct recruits were the exception. Virtually all my staff were seconded civil servants, as were my senior management team. As far as I am concerned, until October 2008, when a formal break was made from the Northern Ireland Civil Service, there was no break in continuity of arrangements pertaining to seconded civil servants. When that break occurred, staff were assured that they would be no less favourably treated as direct employees of the Chief Constable than had they remained as direct employees of the Northern Ireland Civil Service.

The Police Support Staff (Transfer of Employment) Regulations (Northern Ireland) 2008 transferred all the powers, duties and liabilities of the employer to the Policing Board, and, via the Policing Board, to the Chief Constable. I draw your attention to the fact that the idea that staff should be entitled to benefit from the agreement entered into between NIPSA and the Department of Finance and Personnel has never been an issue of contention between NIPSA and us. Although the staff work under the direction and control of the Chief Constable, their employer, in law, is the Policing Board. That is important, as the Policing Board has already sought and

gained approval for the payment of the compensation element of the NICS consolidated agreement to staff within Waterside Tower. The position now is that some employees have received payment while others have been excluded.

Significantly, the fact that the Police Service, the Northern Ireland Policing Board and the Northern Ireland Office, as was — now the Department of Justice — recognised that a liability existed is reflected in a letter issued to the First Minister and deputy First Minister in October 2009 by the then Prime Minister Gordon Brown. That letter, which paved the way for the devolution of policing and justice powers to the Assembly, made specific reference to equal pay liability. Reference was made to the granting to the Assembly of several army bases and the underwriting of their value by Her Majesty's Treasury in respect of that liability. In my experience, that approach is entirely unique.

For the avoidance of doubt, and because there seems to be some confusion in previous evidence that was given to the Committee, it is important to set the record straight. The Police Service of Northern Ireland has submitted a business case in respect of the relevant staff to the Department of Justice through the Northern Ireland Policing Board. The Northern Ireland Policing Board endorsed that case and forwarded it on. That business case seeks authority to pay our relevant staff lump sums in arrears of pay to which we believe they are entitled. That business case was informed by the opinion of senior counsel that the appropriate grades of PSNI staff could not be distinguished from those who were covered by the settlement. The basis of the case was that there was a single source of pay, because there was no effective delegation in place. However, that business case was rejected by the Department of Finance and Personnel and the Department of Justice. In such circumstances, having rejected our business case, I find it hard to reconcile how the Department of Justice or DFP is “agnostic”, as was stated to you in a previous Committee hearing in June.

Evidence before you refers to the issue of pay delegation, which was given exercise by the Northern Ireland Office in or around 1996 or 1997. However, that was never extended to the Police Authority for Northern Ireland or to the Police Service of Northern Ireland. All the evidence that we have supports the fact that if such a delegation had existed it was never exercised. In other words, to all intents and purposes, the terms and conditions of relevant staff were covered by Central Whitley negotiations from 1995 to the present.

Any attempt that was made either by the then Police Authority for Northern Ireland or latterly by the Police Service of Northern Ireland to change staff terms and conditions of employment was effectively vetoed by the Department of Finance and Personnel. That occurred as late as 2008, when, in transferring staff to the employment of the Northern Ireland Policing Board and the Police Service of Northern Ireland, we sought to introduce a new staff grading structure and to move away from the prevailing structure.

Those proposals were at a very advanced stage when the Police Service of Northern Ireland was advised by DFP that to implement the envisaged changes would result in Police Service of Northern Ireland staff being expelled from the principal Northern Ireland Civil Service pension scheme. As a direct consequence of that threat, our approach was abandoned, and terms and conditions remain analogous to Central Whitley to this day.

Furthermore, you have been advised that lawyers acting for DFP and the PSNI have agreed that there was effective pay delegation. I can tell you that that is not correct — there has been not been any meeting of minds on that matter. Far from agreement being reached, it was, and remains, a point of serious contention. We are convinced that there was absolutely no delegation and separate legal opinion, again from senior counsel, supports that view. The main point of contention is that the delegation that was allegedly given to the NIO in 1996 included the staff of the Police Authority for Northern Ireland. The decisions taken by DFP down the years confirm the position that, if any such delegation did exist, it was in name only.

Executive authority has always remained with DFP, and Mr Baker seemed to confirm that reality in his evidence to you on Senior Civil Service pay on 22 June, when he stated that DFP:

“takes receipt of all business cases for all pay awards in all public sector bodies and approves or rejects those.”

The result, therefore, is a seamless connection back to Northern Ireland Civil Service pay and grading systems, which is the main plank of the single source of pay argument that you have heard. Consequently, as the Police Service of Northern Ireland, we find ourselves in a most peculiar situation. We believe that the case for qualifying staff is unanswerable and that their status cannot be distinct from those who are covered by the agreement. We are satisfied that there was no delegation and we seek the authority to pay our staff. However, we have been refused permission to do so.

We thank the Committee for taking the time to consider this matter.

The Chairperson:

Thank you very much. That was a very straightforward briefing, and it probably answered many of the questions that Committee members will have had. Hansard is reporting this session and it may be useful if Committee members study the written text of what you have presented to us. Much of what you said has been refuted if not through the direct evidence that has been given to us by DFP officials, then by the impression that they have given to us. That is of interest.

You said that the business case that you presented to DFP covered relevant staff. Does that cover all staff members who feel aggrieved? On the Civil Service side, some staff members are deemed relevant while others are not. Does your business case cover all of those who have retired and who will not have submitted claims in the six-month period, yet whom you consider to be entitled?

Mr Stewart:

We were focusing primarily on serving staff — those who currently work for the Chief Constable and the Policing Board, who continue to serve, and who were formerly Northern Ireland civil servants at the relevant time, but whose status has changed. We have not dealt with the issue of retired members because it has not really been drawn to our attention. Is that correct, Michael?

Mr Michael Cox (Police Service of Northern Ireland):

That is right, yes.

The Chairperson:

So none of your retired members have made a case to you for them to be included in the equal pay settlement?

Mr Cox:

Not specifically, so far.

The Chairperson:

You said that your business case was rejected by both DFP and DOJ. What role did DOJ have in assessing the business case?

Mr Stewart:

My impression is that DOJ was initially supportive of our business case, but that it seemed to meet with objection from DFP, and it seemed that its view then changed. We made a very comprehensive business case based on comparability. It was the comparability bit that DFP refused to accept, leading DOJ to suggest that we head in a different direction and not pursue that matter. Is that correct, Michael?

Mr Cox:

That is right. I just want to correct one thing: there has been one IT case lodged by a seconded civil servant around three years ago, who has since retired, so there is a bridge of some sort there. However, in general, there have not been representations in respect of retirees. As Joe said, the position is that we try to argue for our staff alone, based on the arguments that we have set out. That was rejected by DOJ, having consulted DFP, as we understand it.

Mr McLaughlin:

It is a very interesting piece of evidence that we have heard today, and it probably merits careful study. I am particularly interested in the question: when is a civil servant not a civil servant? We had firewalls in relation to delegated authority, or not. You appear to have examined that in a particular way, with the advice of senior counsel. I assume that you have shared that with the Department in support of your business case.

Mr Stewart:

We have shared senior counsel's opinion with the Department of Justice, which, we believe, in turn, has shared it with the Department of Finance and Personnel. In fact, one of the suggestions from DOJ in the early days of the matter was that we should, as an organisation, obtain that senior counsel's opinion to see what view that counsel would take on the comparability of the cases. That is why we took the initiative to take senior counsel's opinion, and we have now taken that from two separate counsel on two occasions, bearing on two separate parts of the argument. The first was on the issue of whether there is comparability of staff within the grades and continuity of service between NICS staff and our staff. The other counsel's opinion was on the question of whether there was effective delegation from DFP through NIO and subsequently to the Police Authority for Northern Ireland, as it was at that time — now the Policing Board and Police Service of Northern Ireland.

Mr McLaughlin:

We will explore that ourselves. If you have put that into the system, we might have the benefit of being able to explore that documentation as well. I commend the approach that you have taken, because it seems to me that you have exercised a duty of care in relation to the rights and entitlements of people who are working for your organisation. I will not speak on behalf of the Committee, but I am far from convinced that that has been demonstrated across the board. We may have addressed many outstanding grievances in relation to the equal pay issue, but we may also have compounded the sense of grievance of others, particularly retirees. We have to try to find a way through that conundrum.

On the issue of delegated authority, what awareness could we expect a secondee to have of the status of that? Would they understand that it was their duty to register an interest or claim?

Mr Stewart:

It is hard for me to say, but it is important for the Committee to understand, and I am sure that members do already, that the people we are talking about are those at the lowest end of our pay scales. They are those for whom I have the greatest concern in respect of paying them a decent wage. That is why, in 2008, in the Police Service of Northern Ireland, we sought to compress the grades, as I mentioned. We wanted to lift up the bottom grades to give people a more expanded role and responsibility, and pay them that bit better, albeit with having fewer staff. That was our theory and approach. Michael worked on that for an extended period before we came up against the roadblock of removal from the Civil Service pension scheme.

The difficulty for a lot of those staff is that they joined the Civil Service and they were posted to work in police stations. They could have been posted to the Department of Agriculture or to DFP itself; but, over time, they were sent to work in police stations. As far as they were concerned, until 2008, they were all civil servants. In 2008, a choice was exercised, whereby people had the opportunity to return to the mainstream Civil Service or to become employees of the Policing Board and the Chief Constable. The vast majority exercised a decision to stay, and that is the first time that they had given any real thought to their status. Until then, they had been covered by all the Civil Service terms and conditions. All the bargaining over wages and the negotiations were not conducted by Michael and I, or any of our staff. It was conducted centrally and we applied it, because that was the process that we had followed religiously over the years.

Mr McLaughlin:

So the reasonable working assumption, particularly for the employee working in those lower grades, was that they were operating on the same status as mainstream civil servants.

Mr Stewart:

Absolutely.

Mr Cree:

Good morning, gentlemen. Thank you very much for the interesting evidence you have given us. It seems to me that an injustice has been done. You mention that the people affected are at the very lowest grades. It is most unfair that that should be the case. With respect to the pay delegation upon which the whole exercise hinges, can you recall any instance where that pay delegation was exercised?

Mr Stewart:

In the papers that I have read, there seems to be evidence — Michael can correct me if I am wrong, as he has read those in greater detail than I have — that, in 1995-96, the Northern Ireland Office exercised a delegation in respect of its own staff. There seems to have been some move to assimilate some grades with those of Home Office civil servants in Whitehall. You will recall that there was considerable movement at that time between the NIO in Belfast and the staff in Whitehall. So the NIO sought to assimilate its grades with those of the Home Office. That was never replicated in the Police Authority of Northern Ireland, or in the RUC, as it was at that time, for staff working there.

As far as I can see, there may have been delegation exercised at the level of the cadre of staff working in Stormont or in Whitehall, but that was very much a minority of those covered by the umbrella of the NIO. The vast majority of the staff, probably some 3,500 at that time, were in the service of the Police Authority of Northern Ireland and the delegation never extended to them. What seems to have happened is that, while there was an attempt to issue delegation, there were so many changes happening in policing at that time that the decision was taken not to pursue the matter further. That is the evidence on the matter that I have at my disposal.

Mr Cree:

Are you aware of any other areas of the Civil Service that had a pay delegation, but were awarded

the settlement? Do you have that information?

Mr Stewart:

Not directly, but I understand that agencies such as the Social Security Agency had full pay delegation and never exercised it, but were covered by the umbrella of this settlement.

Mr Cree:

Finally, I want to ask about the whole case of retired personnel. The evidence so far suggests that no one told retirees that they had a right to claim within six months. It seems that neither management nor the unions told them. Did the PSNI advise retirees that, if there was a pay settlement pending, they would have to make that claim within six months?

Mr Stewart:

No, we did not.

Mr McQuillan:

I am sorry that I missed your evidence, Joe. You mentioned that the staff changed from being civil servants to Policing Board employees in 2008. Was an incentive given at that time to change over? What way did people perceive the change?

Mr Stewart:

No incentive was given. My big incentive would have been to look at how we paid people and how, from an efficiency point of view, we could make their jobs more rewarding and more beneficial to us. It is one of my frustrations that we were not able to do that. A lot of our work went to the side. However, the incentive was an assurance that they would be no worse off. The regulations enacted guaranteed that.

We worked very closely with NIPSA and had a very positive working relationship with it and its officials. They were actually part and parcel of our change team. So it was not as though we were fighting with the unions over the changes that we wanted to make. Rather, we took the union with us every step of the way, and it was content with the changes that we wished to make. I hasten to add that there would not have been an additional charge to the public purse. There would have just been a simple reconstruction of our pay grades to open those up a wee bit more. So they had that assurance.

I also believe that, because the staff had worked in a police environment for so long, they closely identified with that environment, with the police officers and with the service provided. They very much saw themselves, in some cases, as the engine room of that service, because they did a lot of the work that enabled the police officers to do their jobs in support of communities.

There were no financial incentives. However, there was that assurance that they would not be less favourably treated. Personally, one of the things that grates on me considerably is that it is almost as if there has been a breach of faith with the staff. Some of those staff feel that I have breached faith with them, but I have not. That is why we are very grateful for the opportunity to put this on the record this morning.

Mr McQuillan:

Following on from that, if the staff decided that they were part and parcel of the engine room of the Police Service or the RUC, whichever it was at that time, is there not an onus on the police to make good on the back pay?

Mr Stewart:

The point is that we believe that that liability exists. In my opening remarks, which unfortunately you missed, the Chief Constable and the rest of us in the command team believe that we have a legal and moral obligation to those staff to make that payment. We, as a management team, are not in the business of throwing public money around willy-nilly. However, where there is a moral and legal obligation, we believe that we should be making restitution. DFP has refused to accept any liability in that regard and has refused to let us make the payment, even though the funds to do so were set aside separately as a result of the agreement that brought about the devolution of policing and justice here.

The Chairperson:

Are you at liberty to say how much you put down in the business case? Did you estimate how much it would cost the Policing Board?

Mr Cox:

Our best guess at the minute is that it would cost about £26 million. That figure is in the public domain.

The Chairperson:

Thank you very much for your evidence. I am sure that we will want to study what you have told us this morning, through Hansard and the material that you have given us. The Committee has heard evidence from DFP and from those who have been left out the settlement and feel aggrieved. We have been trying to find a way forward. Speaking on behalf of the Committee, there is certainly sympathy for those who have found themselves on the wrong side of that settlement. From your perspective, you have put the case to DFP, and it has said no, so there is nowhere else for you to go with it. Is that right?

Mr Stewart:

We have been asked to prepare a different type of case that looks at internal comparators. However, we believe that the appropriate comparator is with the conciliated settlement that has already been established. To a certain extent, if we accept going down a different route, we are accepting that our staff were not party to the NICS agreement. As a management team, we do not accept that that was the case. We are pursuing every avenue that we can to try to assist those staff, regardless of whether or not those avenues look to be fruitful.

The Chairperson:

There are just two more brief questions.

Mr McLaughlin:

When I was pursuing a particular line of questioning, I just noted something. It was about the impasse when DFP indicated that people could be expelled from the pension scheme and you then decided to step back. Does that not indicate that there was a seamless relationship, which your application at that time was going to change fundamentally? In other words, they said there would be a consequence. Was that not an admission?

Mr Stewart:

That is why we are querulous as to why DFP is taking the line that it is apparently taking with our staff, because the Department was very clear that we could find ourselves put outside the door of the pension scheme if we changed anything significantly. Given that we wanted to ensure that our staff were no less favourably treated, and the extent of liability that would then be visited on police accounts as a consequence of that, we clearly could not go down that road. So that was

game, set and match as far as I was concerned with DFP on the matter. We could not proceed any further.

Mr Cox:

Just to supplement what Joe said, NIPSA has lodged papers with the County Court, and the case for breach of contract is due to come to court on, I think, 10 January 2012. That gives us the backdrop to this. Our difficulty in this conversation is that, for all the reasons that have been set out, our defence for any such court case is, to say the least, somewhat shaky. Therefore, it will come to a conclusion one way or the other early in the new year.

Mr Girvan:

I see this as very much a moral issue in how the matter went forward, and what seems to be right and what does not. You mentioned having included the figure of £26 million in your business case to address the issue. At what stage was DFP or other Departments aware that that was in your business case, and at what stage was that presented?

Mr Cox:

We have been making provision in our accounts since this started. I was going to say that this has been an open secret but it is not even that, because provisions have been made down the years. As Joe said, the Prime Minister's letter to the First Minister and deputy First Minister back in October 2009 acknowledged that. We tried to work out as best we could at that time what the cost was likely to be. For understandable reasons, DFP would not tell us its methodology because it was in negotiation with NIPSA at the time and did not want to let that out of the bag.

Those figures were largely available from early on, and certainly within the relationship between the Police Service, the Policing Board and the NIO, as was in those days — the Department of Justice as is. So they have been about for a long time. This is not a surprise in financial terms to anybody.

Mr Stewart:

Michael has been engaged in continuing discussions over a considerable period with the DOJ and on a tripartite basis with DFP around the liability issue.

Mr Cox:

Yes: since this first raised its head, which is now nearly three years ago.

Mr Girvan:

The issue is that the individuals we are dealing with up until then believed that they were going to have the same rights as other staff. They had no involvement, and it was a political decision. At the end of the day, it has all come about — the position we are in today — because of a political decision.

Mr Stewart:

It has been said to me on occasion that, if there is that liability, why do we not have a whole host of industrial tribunal claims. Frankly, I do not want a whole host of industrial tribunal claims. I would have thought that that would not be an effective use of public funds because I have to answer — and appoint lawyers to answer — every case and we have to get into the trenches with our staff, which is not where we need to be. At the same time, I think that the staff, because of their focus on the organisation, did not feel a need to lodge a whole host of industrial tribunal claims against the organisation because they believed that, as civil servants, and the relevant civil servants at the relevant period, they would be encompassed within the terms of that agreement.

Mr Girvan:

There is the letter of the law and there is the spirit of the law. That is an issue here.

The Chairperson:

OK. Thank you very much. The Committee will want to study your evidence. We still have some outstanding questions on this matter, including one that is pending a response from the Minister on the question of when a civil servant secondee is not a civil servant. We will have a Hansard report of your evidence, and I will ask the Committee staff to consider that with a view to questions that we may want to ask as a consequence of your evidence. Thank you.