



Northern Ireland
Assembly

**COMMITTEE FOR
FINANCE AND PERSONNEL**

**OFFICIAL REPORT
(Hansard)**

NICS Equal Pay Settlement

28 September 2011

NORTHERN IRELAND ASSEMBLY

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FINANCE AND PERSONNEL**

NICS Equal Pay Settlement

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Members present for all or part of the proceedings:

Mr Conor Murphy (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Mr Paul Girvan
Mr Paul Maskey
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:

| | | |
|--------------------|---|------------------------------------|
| Mr Nixon Armstrong |) | NIPSA Retired Members |
| Mr Ivan Baxter |) | |
| Mr Sam Caul |) | Civil Service Pensioners' Alliance |
| Mr Carson Wilson |) | |

The Chairperson:

We will now receive a briefing from the Civil Service Pensioners' Alliance (CSPA). I remind everyone to turn off electronic devices, as the session is being reported by Hansard.

We have received the following documents: a briefing paper from the CSPA on the equal pay settlement; correspondence from Age Sector Platform and the National Pensioners' Convention on equal pay issues; correspondence from Stuart Denvir on the PSNI equal pay issue; and

correspondence from a member of the public on equal pay issues. The documents are in the tabled papers.

Before we begin, I remind members that the previous Finance and Personnel Committee wrote to the Minister requiring that retired NICS employees should be included in equal pay settlements. It received a response in which the Minister stated that the Department had no legal obligation to include them. I also remind members that the Committee wrote to the Minister on 14 September requesting an estimate of the potential number of staff affected and related costs. The response to that request is due later this week. That was the background of the previous Committee's support for the case of the retired NICS employees and the questions that the current Committee continues to ask.

I welcome the representatives of the Civil Service Pensioners' Alliance. Carson Wilson is the chairperson of the NI branch of the CSPA, Ivan Baxter is the secretary, Sam Caul is a member of the branch and Nixon Armstrong is a member of NIPSA Retired Members. I invite you to make opening statements, after which there will be dialogue with the Committee.

Mr Ivan Baxter (Civil Service Pensioners' Alliance):

Chairperson, I thank you and your members for your kind invitation to address the Committee on the relatively recent equal pay settlement for Northern Ireland civil servants and its consequences for retired staff. You have already introduced our team. I was going to do that, so you have stolen some of my thunder. Although the group is speaking mainly on behalf of the CSPA, we also represent the Age Sector Platform and NIPSA Retired Members.

By way of background, the alliance organises in England, Scotland, Wales, Northern Ireland, and Malta of all places. We have about 65,000 members, of which nearly 4,000 are members of our local branch. We are here to speak on behalf of our members who lost out as a result of the conditions attached to the recent equal pay settlement. By now, I am sure that you will all be familiar with the matter. A detailed paper setting out our position has been circulated. I asked the Committee Clerk to circulate my speaking notes for the previous time we met the Committee. I do not wish to take up your time going over old territory, because you are all reasonably familiar with it. However, if you do not mind, I will recap briefly for newcomers.

Last year, an agreement was reached between the Department of Finance and Personnel (DFP)

and the Northern Ireland Public Service Alliance (NIPSA) which purported to settle a long-standing dispute about the pay of certain junior administrative grades. NIPSA had argued for many years that the quality of work being undertaken by those grades was equivalent to that of certain technical grades which were being paid more, and that the salary scales of the administrative grades should be adjusted accordingly. In support of their union, a number of staff lodged claims with the Industrial Tribunal under equal pay law. We were not party to what we understand to have been protracted negotiations. We did not even know that they were going on. DFP conceded the NIPSA contention and made an offer, which was backdated to 1 February 2003. That offer was accepted by the union.

The sting in the tail was that staff who had retired before 1 August 2008 were excluded from receiving their arrears on the grounds that because it was an equal pay settlement, they should have lodged claims with the Industrial Tribunal within six months of retiring — a condition that was clearly impossible for them to fulfil since the entire process had taken place behind closed doors until the offer was made public at the end of 2009. The Minister claims that because he was using equal pay law as a frame of reference, legally, he has no obligation to retired staff and, therefore, cannot consider them for arrears.

Our view is that the Minister was inconsistent in his use of the equal pay process: he cherry-picked the parts of it that suited him and ignored the rest. That led directly to the unfair treatment afforded to pensioners. If any of you have made representations to the Minister on behalf of one of your constituents who has lost out, you will have received a fairly standard letter, which would appear to suggest that the was engaged in a legal process that would rule out any payment to the pensioners. In our view, that is simply a ploy; a smokescreen. There was no legal process, and there are no legal grounds for ruling out the pensioners.

By way of illustration: the Department negotiated with the union. In legal processes, courts do not negotiate. For the most part, their proceedings are carried out in full view of the public, whereas these negotiations were done, basically, in secret. The Department made an offer to the union. Courts do not do that either: they hand down judgements having considered all of the facts and, if necessary, having taken expert advice. To crown it all, the Minister paid all serving staff whether they had lodged claims to the Industrial Tribunal or not, provided that those who had made claims to the tribunal withdrew them. That is hardly operating within a legal framework. If it is, it is a very flexible one.

To back up our contention that there is no legal reason why the pensioners should not be paid, please have a look at the Minister's letter to Daphne Leahy, which is dated 15 December. I asked the Clerk to circulate it. In the third paragraph, Siobhan Tweedie, on the Minister's behalf, tells Daphne Leahy:

"you are correct that it would not be illegal to include anyone in the settlement who left before that date."

In other words, there is really no reason why the pensioners should not be paid. There is no legal reason at all. The Minister is quite prepared to admit that in writing.

The Minister also claims that there is no rationale for including the pensioners. Surely that argument cannot possibly hold water. If you have been underpaid in your job for years, and that is then recognised by whatever process, surely your employer has a moral obligation to compensate you. Surely staff who gave loyal service over the years and who did nothing wrong except to retire at the wrong time do not deserve to be treated like that. An Administration that claims to care for older people, particularly those who are at the lower end of the income spectrum, should not have been persuaded that they had got it wrong.

I want to make a final point about figures. We have heard all sorts of figures being bandied about. I read the Hansard report of the Committee meeting of two weeks ago, and it was really quite frightening to look at all of the figures quoted. However, so far as the total number of pensioners is concerned, it is fairly clear to us that there are about 900 of them. We submitted to the Committee a further letter, from Declan McCann in DFP, which details figures of those who had retired between 1 February 2003 and 31 July 2008. We requested that information from the Department, and it breaks down the retirees into males and females, Protestants and Catholics, and so on. Those figures are quite useful and they show that approximately 900 people retired in that period.

You will also see from that letter that the retirees are well scattered throughout the constituencies. They are not concentrated in any one particular area, which means that, in a sense, the problem is not just ours. It is yours as well, as you all have constituents who are affected by it.

We believe that the settlement has set a most dreadful precedent which, for the sake of retired workers, we hope will be corrected and never repeated. When I explained the problem to the

Pensioners' Parliament in Blackpool earlier this year, the delegates were aghast. The Pensioners' Parliament is run by the National Pensioners' Convention and brings together about 2,000 pensioners from across England, Scotland, Wales and here. You will also note the letters of support, which I hope you have received, from the Age Sector Platform, the Irish Congress of Trade Unions and the National Pensioners' Convention. Those are all organisations that would not lend their weight to a campaign lightly or frivolously. For us to get their support we needed to go through a process within their organisations, and we hope that their interventions will help our case. Over the past year or so, we have also been supported by a number of MPs and MLAs.

Our hope is that the Committee will pursue the issue with the Minister with vigour, so that in due course our pensioners will receive the justice that they deserve. Martin Luther King once said that people who riot are people who are not heard. I assure you that we have no intentions of rioting, but, nevertheless, we would very much like to be heard. Thank you for your patience.

The Chairperson:

Thank you very much. I will ask you some questions, and I will then bring in some of the other Committee members. There seems to be an ongoing dispute about the figures. The letter from the Minister's private secretary to Mrs Leahy states that the "numbers run to thousands" over that period, whereas your research indicates that it is less than 1,000.

Mr Baxter:

Yes.

The Chairperson:

Do you have any indication of where the Minister has got his figures? You have also said that you consider the amount involved to be modest. Can you put a figure on what that modest amount would be?

Mr Baxter:

We do not think that all of the retirees would qualify for the settlement. Quite a few of them have been retired for five or six years, and any compensation that they would receive would be reasonably minimal. If you calculate the settlement at between £2,000 and £3,000 per head it would mean a total of approximately £2 million, or slightly more than that. That is not a huge sum in comparison with the amount that was already paid out to the serving staff.

Our figures were obtained from Derek Baker's branch in DFP, after we had made an approach earlier in the year. Therefore, we tend to think that the figures are pretty accurate.

The Chairperson:

Do you have a figure of what has been paid out under the overall settlement to date?

Mr Baxter:

No, we do not know that figure.

The Chairperson:

A certain amount of money was set aside in anticipation of meeting the settlement.

Mr Baxter:

I do not have that figure.

The Chairperson:

OK. Fair enough.

Ms Cochrane:

My key concern is the fact that you were asked to apply for the settlement, whereas while some of the current staff had lodged a claim and some had not, they were all paid because they were still in place. To me, pensioners were not in the same position because of their age and because they had retired. Surely, there is an equality issue around the mechanism used.

Mr Baxter:

We were outside the loop, basically, until the settlement was announced. We did not know about any of that. We have never had to make representations or negotiate with the employer. That was never an issue for us. Therefore, we came to this issue initially quite ill-prepared. We have had to go through a pretty steep learning curve to get to this stage.

Once you retire, you lose interest in what is going on. The pensioners did not know that the negotiations were going on. I am not blaming the employer or the union, because pay negotiations have to be conducted behind closed doors. That is the only way to do it. You cannot

do it in public, so no blame is attached to that. However, it is just the way the process worked, as Judith rightly pointed out: we did not know.

The Chairperson:

Do you continue to be members of a union?

Mr Baxter:

No, we are the Pensioners' Alliance. We do not have union membership now.

Mr Nixon Armstrong (NIPSA Retired Members):

I belong to the NIPSA Retired Members. We are not union members as such but we are serviced by the union as a retired members' group. I am the vice-chairman of the group. We are all in the same boat. I am also a member of the CSPA, because quite a lot of our members join the CSPA as soon as they retire.

The situation as we see it is that the lowest paid members of staff were involved: clerical assistants and administrative officers. The feeling of those people, who are mainly female, is that the Minister has created a them-and-us situation. They are now second-class citizens. The people who they sat beside during their working life and who were still employed when the settlement took place got their settlement. Not only that but it enhances their pension.

Those outside the loop because of the Minister's decision will get a settlement only if he decides to give them one. It will never enhance their pension, and because of that they feel that they are second-class citizens in both ways in that it is also age discrimination. Some who I have spoken to immediately break down in tears when they think how they have been treated by a Department that they worked for and gave loyal service to beside people who got a settlement. They feel very bitter and severely disillusioned.

Mr McQuillan:

Thank you very much, gentlemen, for coming along and giving your presentation. Do you feel that NIPSA has let you down a wee bit?

Mr Baxter:

Not really. We were not on the inside track so we do not have much information about how the

negotiations were conducted. However, my understanding is that they got to a certain stage and the Department said to NIPSA: “Take this agreement or we are walking away.” I think it was as bad as that. They had been negotiating for years, had reached a certain stage and the Department said: “Here is an agreement. Sign up to it or it is all over.” I would have thought that a union could not really do anything else.

I think that NIPSA, on reflection, is a bit sorry that pensioners have found themselves in this position. However, the personalities in NIPSA have also changed. At one stage, John Corey was the general secretary; now it is Brian Campfield. The attitudes of people change when they change their jobs, so we are not really blaming NIPSA for what happened. However, it would have been nice if we had been brought in from the outset, because nobody was there representing the pensioners. That was an objection we had when we found out. NIPSA can represent only working people. This settlement affected people who had retired, but the representatives of the retirees were never brought into the negotiations, and we feel a bit sore about that.

Mr D Bradley:

Thank you for your presentation. In the letter to Mrs Leahy, the Minister’s private secretary states:

“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.”

However, you tell us that you were unaware of the six-month period; you were never informed of it; and there was no public notice that this was the case to give you the opportunity to apply.

Mr Baxter:

We asked the Department about this and officials said: why should we? It would mean people putting in claims for additional public money. They did not see it as their role to give pensioners any word about this. Who knows? A settlement might never have been reached. It had been going on for years; it was all very woolly; and then, all of a sudden, it was all over. There was no indication whatsoever.

Mr D Bradley:

I would have thought that, given the circumstances, a number of the pensioners would have had successful claims had they applied within the six-month period.

Mr Baxter:

Some of them did; a very small number.

Mr D Bradley:

Others would have been entitled but, due to lack of information, did not apply. Even though it is public money, I would have thought that the Department had an obligation to inform people of their rights.

Mr Baxter:

When would they have done that? This had been going on for years, not just the six years that is the subject of the claim. It had been going on before that. It would have meant that every person retiring would have had to lodge a claim with the Industrial Tribunal automatically — so, as you went out the door, you would have had to go down to the Industrial Tribunal and lodge a claim. I am not sure that that mechanism would have worked all that well.

Mr Armstrong:

The other thing is that a number of people had retired some time before the settlement was reached, and had been retired over a year, so there was no way that they could have lodged a claim. Only a certain number of people within the six months from retirement could have done so. There was no talk of a settlement over all those years. The Westminster Government did not want to know about this in any negotiations.

Mr McLaughlin:

Hello again. It is a pity that this has taken so long. We started out some time ago.

There are a number of issues that I want to ask about. The equal pay issue was primarily a gender issue. We all understand that a regrading process irons out anomalies. However, the basis of the claim was a gender issue, whereby, in a systemic way, women were being paid less for doing the same work. My focus all along was on that aspect of it. Your letter and presentation clearly set out how those who have a legitimate interest in this were excluded from the process. As an elected representative, that is how I felt about it. As the negotiation proceeded, those issues should have been brought to people's attention, particularly to the attention of those elected representatives who were aware that this matter was proceeding.

There are some issues that we must tie down if we can do so. Following enactment of the original legislation, there was a significant time lag — during which you were all employed — in implementing what had become the law of the land. That seems to me to be an injustice bordering on illegality. Parliament had passed the legislation, and then there was a significant delay in taking it forward and operating it. At that stage, as members of the workforce, you would all have been included.

Mr Baxter:

I remember the legislation coming in, pretty vaguely. Our feeling was that it was aimed at women, for example dinner ladies, who were working in a school where a porter was getting paid more even though it was thought that their job was equal to his. The legislation gave such people the mechanism to take a case. By and large, that is what Parliament had in mind for the legislation: helping small groups of women. It was a gender issue. I do not think that Parliament ever intended this legislation to be used for class settlements, as on this occasion.

We had a system, which the Treasury had, about staff grading, which was called fair comparison and involved something called “looking out of the window”. The idea was that Treasury officials went round various organisations to see what was being paid for various jobs, did a comparison with jobs in the Civil Service, and settled through that mechanism. That was not tied up in legal mumbo-jumbo. At a certain stage, the case went to the union, and you negotiated with them and said that the people in company A got this and the people in company B got that. That is the way that things were done for class settlements. The legislation was, as you quite rightly said, aimed at a gender divide and at trying to raise women’s pay up to the same level as men.

Mr McLaughlin:

I am sure that everyone in the room supports that. My question is designed to isolate and identify another point of leverage in getting the issue resolved.

Reference was made to NIPSA. Is membership of a trade union during the course of employment different to the relationship after retirement? It is very difficult to get active union representation after retirement, because unions represent the workforce and people such as yourselves have retired from the workforce. I am aware of circumstances in disputes, such as unfair dismissal cases, in which it can be quite difficult to get the unions involved because they

quite often interpret their focus as being on the current workforce and not the former workforce. Have you addressed that issue with NIPSA in trying to understand how it negotiated this deal and consulted with the workforce as opposed to the workforce plus those who were previously part of the workforce?

Mr Baxter:

No. We did lodge a letter with NIPSA at the outset saying that it would be nice if they would come and talk to us about it before they signed up to the deal, but I have not had a response, and that was just a year ago.

Clearly, from all NIPSA's evidence, the union, like all trade unions, was focused on the existing workforce. That is just the way it is. Pensioners have to stand up for themselves now; they cannot rely on the unions. Look at the state pension. It is pensioner organisations that push for a better state pension. Unions are beginning to realise that the matter affects their members too and are beginning to come in, but they are coming in on the coat-tails of pensioners who have raised the issue. That is the way things are at the moment. As pensioners, we have realised that unless we stand up for ourselves no one else will.

Mr Armstrong:

The problem is that once you retire from NIPSA — and it is the same with any other union — you are no longer a member. Most unions have retired members' groups, but they are not actually members of the unions to which they are attached. For that reason, if pressure was put on NIPSA to take or leave the deal, the union could not say that we should be included, because the Department would say that we were not NIPSA members. It is a similar situation to that, but they were the Department's employees while they were working.

Mr Baxter:

Most unions will have a retired workers' group, but the likelihood is that they will have very few rights. They will not have speaking rights at annual general meetings or annual conferences and, by and large, they are pretty poorly funded. Unions are not all that prepared to hand out money to pensioners' groups to keep them going. It is not a high priority for unions, at least at the moment, although they may be learning that pensions are really important.

Mr McLaughlin:

I clearly see the issue and what I can only describe as the injustice to former employees. We have heard evidence from a range of people who have been excluded from the deal, including those who were seconded on the basis of direction, rather than having made a choice. They were seconded on the basis that they could return to the mainstream Civil Service at any given time in the future. Their status as a civil servant was not affected by being transferred or being required to work in different divisions or areas. Continuity cannot really be interpreted in a selective way, and neither can the full application of the equal pay legislation. Simply accommodating pay structures to reflect that is, in fact, only a partial application of the law. If there was a period of time when it was not applied or when there was a time lag in introducing the law, there was also an obligation, at some stage, to gather that up and make the necessary arrangements.

The letter to Daphne Leahy makes it quite clear that the number of retirees is known, and you spoke about that, Ivan. The key phrase in the letter is:

“or to all other leavers, whose numbers run to thousands over the same six year period”.

That is the nub of the problem, because that type of language is used nearly to paralyse any consideration or discussion on what can be done to resolve the problem, in the hope that those pensioners will go away. An imprecise figure is given, and perhaps it is quite deliberately imprecise, because it throws open a Pandora’s box — an argument that, effectively, you have rebutted. Collectively, we should attempt to quantify that so that the issue of the financial impact can be addressed. It will have an impact, but if we are going to redress this injustice, we must have the full information, be able to do the sums, straighten our heads out and get it sorted. We all have to work on that.

The lack of progress on this has been frustrating, but, slowly, we are making progress. If we could address the issue, either with the co-operation of the system or without it, and put a reliable number on the table, we could get down to the business of deciding when and in what circumstances this can be resolved. We will get only the one crack at being fully and truly inclusive.

Mr Baxter:

The pensioners are a separate group, and we can identify them. If the issue is to be addressed over a number of years, we would like the pensioners’ issue to be addressed first before seeing what happens to the rest. There are two rationales. The pensioners did not leave the employment

of the Civil Service voluntarily. They came to the end of their working life and left because they had to. Those other people, whoever they are, left voluntarily. They may have gone to other jobs or emigrated. They could be anywhere in the world. They worked alongside people who got settlements. However, we believe that our little group of 900 or so has a separate case with a much stronger rationale than others. I think that they should be first in the queue. I am not saying that others should not get paid at some stage. I just think that there is a different argument.

Mr McLaughlin:

Yes. I did not want to provoke you into saying that, but you have anyway. The point that I made is that this unquantified “others” is used as blockage to dealing with your issue. I think that that is a smokescreen. I have met some of them; for example, people who worked in providing security at RUC bases are also in limbo, and some of them feel very aggrieved. I accept the argument. I think that they have a case.

Mr Baxter:

They have a case, and I know someone who —

Mr McLaughlin:

I am just saying that we should leave it for others to decide who takes precedence.

Mr Baxter:

Well, obviously, we are here to stick up for ourselves. I know someone who worked in local government and who had an equal pay dispute. She had left a number of years previously, and a cheque for her arrears arrived. She did not apply for it; it came automatically because anyone who had been in that particular job got the money. It was not a big cheque; still, it was nice.

Mr Cree:

I think you are being kind to the unions. The correspondence included in our meeting papers refers to pensions being regarded as “deferred pay”, which is a good comment. I would have thought that the unions would at least have advised their recent members that this situation was ongoing. To continue along that line, surely there must be a precedent for such situations. Did people who left as pay claims were pending and ahead of increases being awarded get that payment? Is there a precedent? Finally, the loss of this back pay means that people are enjoying a lower pension than they may be entitled to. Have you calculated the cost of that?

Mr Baxter:

No. Normally, arrears in settlements may be backdated; the maximum period that I can remember is three years, but usually it is a matter of months or a year or two. People who had been in their jobs at the time but had since retired would have got those arrears. That was automatic for a normal settlement. This is not a normal settlement; it is really quite abnormal. It has never been done before, which is one of the reasons why we felt strongly that an equality impact assessment should have been done. It never was. Equality impact assessments are supposed to be done if a new policy is being introduced. The Department said that this was not a new policy; it was simply negotiating with the union. However, our opinion is that it is unprecedented and, therefore, a new policy.

Mr Cree:

If it amounted to negotiating with a union, would that have been the same as normal negotiation?

Mr Baxter:

That would be; yes. The whole thing was done sort of normally but abnormally.

The Chairperson:

Thank you very much. As I said at the outset, the Committee in the previous mandate expressed support for you and your case. To use Mitchel's phrase, this Committee has tried to get to the nub of the problem, which is the vagueness around the figures involved, and that goes across a range of people.

Mr Baxter:

Yes. We understand that.

The Chairperson:

Some estimate of the costs concerned is required. Establishing that would allow us to say, "These are the people that need to be sorted, and this is what it may take." The information we requested on that was due back with us today. Rather than argue in the abstract or deal with some responses in that manner, as was the case with Mrs Leahy, we are keen to have the hard facts and figures so that we can make a case for a settlement.

Mr Carson Wilson (Civil Service Pensioners' Alliance):

Chairperson, will you request that the Committee Clerk send that information to Ivan?

The Chairperson:

I am sure that we can do that. We have asked for information across a range of factors. It may not be specific; it will depend on the information that we get back. If that does not answer all the questions that have arisen during our consideration, we will ask for more, but we will have no difficulty in sharing it.

Mr McLaughlin:

You have reminded me that this is a new Committee. Is it appropriate to reiterate the Committee's support for addressing and resolving this issue?

The Chairperson:

I am happy to take that proposition. Are members content to reaffirm the previous Committee's position?

Members indicated assent.

The Chairperson:

Thank you very much, gentlemen.