



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

NICS Equal Pay Settlement: DFP Briefing

26 February 2014

Abdulla case. So the law changed to allow leavers to take an equal pay claim through the civil courts going back six years.

On the back of that, the Northern Ireland Public Service Alliance (NIPSA) lodged just over 500 writs on behalf of former staff who now had a legal entitlement because the legal position had changed. We have been negotiating with NIPSA on those writs to find settlement terms similar to what happened with the equal pay settlement. We concluded negotiations towards the end of last year and put the settlement terms to the Minister, who approved them.

As a result, we are working with NIPSA to go out to the approximately 450 former staff for whom writs were submitted, although, for various reasons, some writs were invalid. NIPSA contacted those staff in the past week or two, as did Civil Service officials and colleagues of mine. NIPSA is arranging roadshows in March, to which the 450 former staff will be invited.

Mr Girvan: Were those 450 the only ones who came forward and identified themselves to NIPSA? Are there others who were not necessarily part of that initial situation who could well be there but have not come above the radar?

Mr Bailey: Yes. Let me clarify that because there are two parts to that question. The 450 were the ones whom NIPSA put forward; I do not believe that those 450 came to NIPSA. NIPSA, I believe, went through its records and identified former members who would meet the criteria.

Mr Girvan: Are there many who are not members?

Mr Bailey: Absolutely. There are many who are not members, so there are many more leavers. I think that the Committee has had details about the number of leavers of this period, so those 450 are a subset of people who left during the six-year period. They are the individuals for whom a legal entitlement has been established, because the writs were lodged. I will deal with the little extra group as well, because it is pertinent to that. I will briefly finish this first.

In the next few weeks, NIPSA will be running roadshows for those 450 staff to give them legal advice and to recommend to them that they accept the terms of the settlement that it has negotiated with DFP. Following that, we will write to those staff with a compromise agreement, seeking bank details and photo id — the usual. We have to make sure that we are in contact with the right people. Providing that individuals agree, I anticipate that we will start seeing payments coming through in April or May, possibly. It will take some months, but it is up to NIPSA to run the roadshows first. The documentation, that is the 450 writs, has to be in place.

Leavers are an extra group that was agreed in the settlement. Members will be aware of the six-year bar, beyond which individuals cannot go back. We agreed the settlement at the beginning of the year — January 2014. Six years back from January 2014 takes you to January 2008, which is seven months before our cut-off. You will remember that our cut-off for the equal pay settlement was August 2008. From when we agreed this settlement, there is a seven-month window of leavers who could still submit a writ. Anybody who left before January 2008 can no longer submit a writ; that is gone. However, there are the seven months. The Minister also agreed that we would extend the settlement terms to the people in that seven-month window, so we plan to write to those individuals afterwards. We need to deal with the 450; we need to stage this. We will deal with the 450, and then we will write to the other 700 or so who left during the seven-month window. We will write to them to offer them the same settlement terms that we negotiated with NIPSA. That is consistent and in line with the original equal pay settlement.

Mr Girvan: Was there not already an offer made at one stage?

Mr Bailey: No. Throughout all of this — from the original equal pay settlement — we have maintained the same line that, unless there was a legal entitlement, we would not entertain any discussions. That, in effect, is a continuation of the same line with that group; it is just that the law has changed. We are putting in arrangements to deal with the writs that NIPSA has lodged and to deal with the additional staff who could lodge writs. As I said, that is in line with the original equal pay settlement because it actually included six months' worth of leavers, from the effective date of the original equal pay settlement because, at that time, they could lodge tribunal claims. That is an update on the leavers.

I am happy to take questions on leavers before I go on to the PSNI and NIO.

Mr McQuillan: What about anyone who was not a member of NIPSA? How do we deal with them?

Mr Bailey: We are taking the same line, "This settlement is where there is a legal entitlement", and that has been crystallised through a writ. In reference to the previous question, there are groups of staff not included in this. We have extended it to cover the 700 who could take a claim, but there are others for whom the water is now under the bridge. If they left before January 2008, and they are not in NIPSA's list of writs, this settlement does not apply to them.

Mr McQuillan: What if they are in the timescale and left after 2008? Do they themselves have to take a writ?

Mr Bailey: No, because that would add unnecessary cost. We will be writing to that extra 700 or so and offering the same settlement terms.

Mr McQuillan: I am talking about people who were not members of NIPSA and, maybe, do not know anything about this. I am sure that they all know about it now, but I am thinking of those who do not and might end up in our offices some day asking how to get involved in this.

Mr Bailey: Those 700 are not just members of NIPSA. We are writing to everybody. Everybody who left on or after January 2008 will be covered by this.

Mr McQuillan: OK. I did not realise it was everybody.

Mr D Bradley: Good morning. You have accurate records of all former staff who could bring a claim under the new legal position, and you will be contacting them. Are you sure that no one will be left out of the loop?

Mr Bailey: All we can do is write to their last known address. Some of them left six years ago, so the best that we can do is look at the records that we have of their addresses and the date that they left. We will write to them, but I have no doubt that some of them might prove difficult to trace because they might have moved house or they could be in another country. However, we will do all that we can, and that will mean primarily writing to their former address at the last known record that we have. That is about as far as we can take it. We will rely on them to respond because we have no other way of contacting them.

Mr D Bradley: Is there any other way of making people aware that there is this possibility for them?

Mr Bailey: Presumably, you mean what colleagues from the Civil Service Pensioners' Alliance or other groups can do. This is now in the public forum, so there is no issue with people communicating that. We will be making contact, so if there is someone in that window who has moved or who is concerned, they could write to us to tell us their latest address if they have moved. We will do what we can, but, the question is about the reasonableness of the extent that we can go to in contacting them.

Mr D Bradley: Are you happy that, by writing to all known addresses and the degree to which this is in the public arena already, you will net the vast majority of those eligible?

Mr Bailey: We know that there is contact with 450 of them because that is through NIPSA, but, to be perfectly honest, I have no idea how many of the other 700 will respond. I do not know the proportion. Going back to the original equal pay settlement, we wrote to leavers; however, some of them who had left six months previously we did not get in contact with in the end. People move. There will undoubtedly be some that we cannot get, but we will do all that we can.

Mr D Bradley: This has gone on for quite a long time. If people are entitled, it would be ironic now if they were to lose out again due to lack of information. Would it be possible to put an advert in the newspapers and make people aware in that way?

Mr Bailey: I am sure that that could be considered; perhaps I need to reflect on that. It is about what is reasonable for contacting people and what is the proportionate cost of trying to contact them. That is something that we could consider; at the moment, however, our plan is to write to all to see what response we get. The clock has stopped for that group now; it is not as if, in two or three months'

time, they would no longer be offered the settlement terms. They are safe from that point of view, but that is something that we can consider.

Mr D Bradley: Have all outstanding equal pay issues been addressed?

Mr Bailey: Are you talking about the leaver group or more generally?

Mr D Bradley: In general.

Mr Bailey: I would be foolish to say that there will never be another equal pay issue. That would be a dangerous thing to say.

Mr D Bradley: In particular, has the anomaly between Northern Ireland civil servants and home civil servants been resolved?

Mr Bailey: A pay and grading review was undertaken in which I have been involved for the past two years. In fact, the pay award for the Northern Ireland Civil Service last year and the year before completely restructured all the grades, so we have gone to great lengths to try to remove the issues that had existed before. You will be aware that, originally, it was the difference between the technical grades and the administrative grades and the pay differences where they were considered equivalent grades. We now have a very small number where there is a difference in pay where they are considered to be equivalent grades in grading terms, but actually we have robust justifications. There are very few, but there is a small number where they are paid more because there are genuine reasons, for recruitment and retention reasons, for example.

The fundamental problem has been removed, and we are now also looking at a group of industrial staff who are a separate cadre to make sure that there are no issues there. Primarily, I believe that it has been resolved, but we always need to keep an eye on it. You need to be very careful that the grading system is robust and maintains that people and posts are appropriately graded, because the risk is that if you do not and a grade drifts — someone is getting paid more than they are working at — there is always a risk of challenge.

That is why we use job evaluation and grading support (JEGS) as our grading system. That is the primary tool to make sure that all the posts are graded appropriately.

Mr D Bradley: Last week, we got a letter from a Mr Twaites, a former member of the Home Civil Service — he may still be current, I do not know — that we have forwarded to you. In that letter, he states:

"This really is about Equity for all members of the Northern Ireland Office whether they are Northern Ireland Civil Servants or Home Civil Servants."

That was received just last week, which suggests that some issues have still not been resolved.

Mr Bailey: Primarily, it is that issue rather than the leaver issue. We are about to go into the PSNI/NIO issue, which is more akin to the issue outlined in your letter. Regardless of the resolution of this group of leavers, there are groups of staff, current and former, who have not been entitled to anything because they were either PSNI or former NIO. I can come to that in a moment. There are still issues with certain groups of staff.

The Chairperson: Can the Department keep the Committee up to speed over the next few months on the uptake of those who have left?

Mr Bailey: Certainly.

The Chairperson: You said that the clock had stopped for that group. That will be open and there is no deadline, so to speak, for them to apply to the fund.

Mr Bailey: No, there is no deadline.

The Chairperson: Thirdly, the Civil Service Pensioners' Alliance sent us a letter about seven days ago in which it was quite aggrieved and at a loss to know how its pensioners would be affected by the change in direction. It felt that it had not been kept up to speed with discussions between you and NIPSA. Is there any particular reason for that?

Mr Bailey: I was aware that a letter had been sent to the Minister as well, so I presume that the letter that the Committee received is similar. A colleague from the CSPA is sitting behind me, and I was talking to him briefly outside. I am aware of that; CSPA is concerned that NIPSA had negotiated that agreement without its involvement. As far as we were concerned, NIPSA had lodged the writs and, therefore, we would have to negotiate the resolution of those writs with NIPSA. We are happy to update CSPA on the details of the settlement, which are publicly available on the website. I will share those with my colleague afterwards, and if he is willing to meet officials we are happy to do that.

Mr Mitchel McLaughlin: You have dealt with the issue that I was going to address. It would be appropriate to welcome the progress that has been made. I would be surprised if we had picked up on all the issues and their nuances, as we have discovered over the past couple of years. Nevertheless, the fresh approach has picked up some of the outstanding cases, which will be welcomed across the board.

You have control, at least, over the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations and the non-departmental public bodies (NDPBs). Are you confident that that will comb out any outstanding anomalies?

Mr Bailey: TUPE applies to Northern Ireland Water and the Agri-Food and Biosciences Institute (AFBI). That is not a leaver issue; that group has alternative settlements. Members may recall that AFBI and Northern Ireland Water staff left the Civil Service prior to the equal pay agreement; one group left in 2006 and the other in 2007. As far as we were concerned, they were outside our settlement, and we never applied any of our settlement to them. That was a contentious issue at the time.

Mr Mitchel McLaughlin: They had their own legal advice.

Mr Bailey: Precisely. They had their own legal advice and, based on the TUPE legislation, they have agreed their own equal pay settlements, albeit reduced because they are only from the day that their organisations came into existence; it is not a full settlement.

Mr Mitchel McLaughlin: What I am getting at, Mark, is that a silo mentality would not prevent us from taking a look at the overall issue, which had a common origin in the pay structures that existed at a time that was addressed by the 1970 Act. When it came to be implemented, many of those cases were addressed. Of course, in a significant number of cases, people who might have had a reasonable expectation were not included, and but for the Abdulla ruling might never have been addressed. Having reduced it and reduced it and reduced it, can we resolve this without busting the bank and without people retreating to their silos? There is a moral issue, as the Minister has fairly creatively described it.

Mr Bailey: Therein lies the problem. To date, from an official point of view, we are still dealing with legal liabilities. All that I have talked about with the leavers is all within the law, albeit that the law changed.

Mr Mitchel McLaughlin: We understand that.

Mr Bailey: The risk and the concern about moving into a moral or a fairness argument is that I have no idea where it would stop. I have no doubt that if a settlement were agreed for the PSNI and the NIO on a moral basis, I can talk more about those in a minute, a whole raft of others: NDPBs, the former Home Civil Service — the NIO staff that were mentioned — and other groups, such as Northern Ireland courts, as well as other leavers who are not in the legal realm, would be looking for fairness. I have no idea where that would stop. That has always been a concern for officials and why, for the past four years that I have been coming here, we have always maintained that position.

Notwithstanding that, you are absolutely right. The Finance Minister asked us to find a resolution, particularly to the PSNI and NIO problem. The official position still is that, at official level, we cannot find a way of doing that, because there is no legal basis and, under 'Managing Public Money Northern

Ireland', we would need to have a justifiable business case in order to have any such settlement. We cannot find an official way of doing that. Therefore, the only possibility for those other groups on any moral, or other, basis becomes a political decision. Last week during questions for oral answer to the Finance Minister, he made reference to that and the fact that, from a political point of view, he was talking about how it could go to the Executive and seek cross-party arrangement to find a resolution. To my mind and to the minds of officials in DFP and in the Department of Justice, it is a purely political matter. We cannot find an official route to do this because the business case would not stack up. Whatever the agreement, the risk is the repercussions, which is the point that I made earlier. If you were to do something for the PSNI and the NIO on a moral basis, I can see no way that all the other groups — NDPBs, the courts, even AFBI and NI Water and, potentially, some other leavers — would not want a part of it. I do not know where you ring-fence it or draw the line. That is the risk of any such political settlement.

Mr Mitchel McLaughlin: If we were to have agreement that we would address the issue within the bounds of affordability and agreed time limits, then we could approach it.

Mr Bailey: From a political point of view, if the Executive made a decision about creating a group to try to come to a settlement, you would probably be in ministerial direction territory. Of course, we would do whatever we were asked to do, but that is the territory that we would be in. However, that is a matter for the politicians. The risk is where it would stop and where it would be ring-fenced. The danger is that you set aside a pool of money for a certain group, and, all of a sudden, five or six different groups of staff come out of the woodwork and that sum of money grows and grows. I do not know how you would control that. That is the risk.

Mr Mitchel McLaughlin: Yes, but that is an argument for not doing anything. Say you wanted to do something and you came at it from that direction, you could, with a fairly high-visibility advertising campaign, provide the opportunity for people to register an interest so that you start to quantify. You then examine what is affordable and what can be done in whatever terms to address the inequity or the anomaly that has emerged from attempting to resolve the generic legacies that we are talking about. It goes back to a different work culture and time. However, clearly there has to be a limit on it. You would start, I think, without giving a commitment at all, by attempting to quantify what we have to deal with, what is in fact outstanding and the category of people we are dealing with. Are they leavers at this stage? We have picked up, if you like, the organisation anomalies that were there with the NIO, RUC support and so on. It seems to me that we could, on the basis of modelling, work out how much that would cost depending on how far back you want to go. That then determines how far back you can go.

Mr Bailey: It is how far back you go in time and how wide you go with the groups that you include in whatever the arrangement is. I absolutely agree that it is possible for such a political settlement if something were to be agreed at Executive level. All that I am outlining is that there are risks. I am not sure how you ring-fence it either in terms of the breadth and groups that are included or how far back the actual settlement goes.

Mr Mitchel McLaughlin: I know, but if you were going to build a sports stadium, one of the first things that you would do is calculate how many people you want to put in it. I would think that if there were a serious attempt to resolve this issue, we would attempt to find out how many people were affected.

Mr Bailey: The difficulty from my point of view — I do not want to repeat myself — is that if a political decision were made, obviously we would be required to implement that. What we have done so far is very clearly defined and has boundaries around the legal situations. So, for anybody who is outside that, we can say no and explain why we are saying no. They may or may not agree with it. However, there is a logic there. The danger when you move off that into moral territory is that one person's morals are very different from another person's morals and one person's fairness is very different from another person's fairness. When you decide a settlement, I do not know how you would stop other people from saying that they should be part of it and on what basis you could then say no to people. I guess that that is the concern.

Mr Mitchel McLaughlin: Yes, but you could do that if you wanted to. You could say, "Register by such and such a date. After that, no further applications can be considered". On the basis of a definitive statement of how many people have expressed a legitimate interest — of course, that can all be tested as well — you could then establish what is affordable and manageable, so that you are actually reducing it down to its elements and are stepping through the process of resolving it.

Mr Bailey: I agree that that is certainly perfectly possible. I guess that that is why this is in the political realm, rather than the official realm, because politicians would need to decide what they want to do and what their budget is.

Mr Mitchel McLaughlin: Yes, but who are they going to ask to model it for them?

Mr Bailey: They may well come and ask us to model it for them. That is fine. We could do that. However, we could actually only do it based on some parameters of groups and who would be included, and actually only for ones that the Civil Service has access to. For example, I have no access to the PSNI group's records. They are completely separate. It would require the coordination potentially of a number of different parties because they are separate organisations, as are all the NDPBs for example.

Mr McCallister: Following on from Mitchel's point, you probably know that there is still a group of people out there who feel bitterly disappointed. I suppose that that can happen no matter where you draw the line; there will be somebody on the wrong side of it. Certainly, there are civil servants who worked and helped out in the police and feel aggrieved that they probably had some level of risk over the years and they have not been included in this. That is the problem. We have probably all had correspondence from groups and individuals like them who feel very aggrieved that this is going on, they have been left out and their service or the risks that they have taken over the years have not been recognised.

Mr Bailey: I fully understand that. However, this is not about security risk: it is about equal pay. Staff who were in PSNI and NIO received an environmental allowance for security risk. NIO staff were on different pay scales from those of NICS staff. So, it is about equal pay. It is not about risk. I think that that is part of the problem. As we start to try to expand it and accommodate a solution for other staff, you lose the rationale for it. Nothing that we have done on equal pay in the past four or five years has been about security risk. It has all been about differences in pay scales, males versus females and legislation on equal pay. I fully understand and am sympathetic. I am sure that you are all lobbied; we have been lobbied. Plenty of people have been raising the issue and feel aggrieved. For the past four years, we have been standing on the very firm ground of the legal position. To some extent, we are coming to the end of the road from an official point of view with this, and that is why it is totally in the political realm. If a political decision is taken that is different, that is a matter for all of you and for the Northern Ireland Executive ultimately.

Mr McCallister: It is up to them if they want to widen that out and fund it, but you are warning of the risks and asking where that stops.

Mr Bailey: Yes. Where would it stop?

Mr Girvan: The leavers issue has been dealt with by the court decision on the NIPSA claim. Are there not records held on those who have left and are receiving pensions? Those pension details are bound to be easily extractable from the database. That is one area that can be looked at directly.

Mr Bailey: And it is being looked at. Civil Service pensions are a part of corporate HR, so we are liaising with them and, where they have an up-to-date address that we do not have, we will be able to get it from them.

Mr Girvan: There are others who may have gone into another post elsewhere, maybe in the private sector. Those people might be slightly more difficult to chase. That is one area, and that is where the likes of a public advertisement could help. We are dealing with 450-plus and another 700 or 800, so around 1,200 people.

I am sure that you have looked at this, although nobody has said whether you have, but what are the numbers involved in the NIO aspect? There has to have been some work done on the numbers associated with that. Potentially, if we take the same approach, those who have left the NIO would fall into the same window. There cannot be a precedent set for one area and not for another, so you are going to have to deal with that. Has there been any work undertaken to identify the numbers concerned?

There is political will to resolve this matter. Ultimately, we are going to have to say that there was money set aside to deal with that at one stage. If I am not mistaken, £20 million was mentioned at one stage.

Mr Bailey: It was £26 million originally for the PSNI.

Mr Girvan: That was held in abeyance and ring-fenced for that. Do you have those figures, or has any work been done on the understanding that eventually we are going to have to bite the bullet? I appreciate that some people say, "Let this other work its way through, and we'll see how it goes", but we have a moral issue to deal with. Irrespective of that, it is how we deal with people who have given of their time, have probably worked for many long years and feel aggrieved. Due to that grievance, some people feel very hurt. Have you done any figures on that?

Mr Bailey: Where we are able to, we have looked at numbers of staff in the various groups that might be affected. We do not have access to PSNI records, because they are completely separate. However, from indirect sources, I understand that you are probably talking about just under 2,000 people — maybe 1,700 or 1,800 — in the affected grades in the PSNI. I would need the PSNI to confirm that, because I do not know the figures for sure.

Mr Girvan: Chair, can we request that information to get more detailed numbers? We would have to adopt the same window as in 2008. If we are going to do it for one section, you are going to have to look at the other sections.

Mr Bailey: When I mentioned the figure of around 2,000, that was my understanding of the number of people who were affected by the original equal pay settlement. I am not sure about dates. If you start to go back about leavers, that number could grow.

Mr Girvan: NIPSA has set a precedent through those who were dealt with in the previous settlement. So, if you decide to include another sector, that will ultimately come under the same terms, conditions and payouts. So, on that basis, I am saying that we need to know the full figures. We need to get that information.

Mr Bailey: There is the PSNI group. There is also the group of former NIO staff, the number of whom is in the high hundreds. I do not know the exact number off the top of my head, but we looked at the number originally. You are talking about the number of former NIO staff who are now in the DOJ being in the high hundreds. You then need to start to look at all the other groups, and that is part of the problem. There is the group of Home Civil Service staff. I understand from the note that there is only a handful in that group. However, they are completely different. They were employed by the NIO based in London and were not even part of our employment group; whereas, our staff were recruited by DFP and seconded into the NIO, so they were our staff. So, if you were to include the NIO group, you would be stepping outside those staff classed as Northern Ireland Civil Servants. Likewise, again, I do not have access to the records of NDPBs, but, based on what little information I might have, I would hazard a guess that the number is potentially in the high hundreds again, because, as you know, there are a large number of NDPBs.

Mr Girvan: I think that we should look at the breakdown for those sectors. If at all possible, we should have the figures on those sectors to help us to make an informed decision.

Mr Bailey: Absolutely. That is a matter for you. You will need to write to the relevant bodies that have control of those staff records. It is about being aware of the potential for other groups to be included. If we are talking about the DOJ family, there is a whole swathe staff in the Northern Ireland courts who are not even part of this discussion. So, you just need to think about the other groups of staff who, if they are at those grades, may well lobby to be included.

Mr Girvan: I think that there is a point where you draw a line in the sand and say, "This is where we go". At this stage, we are looking at the areas that, up to now, have been brought to our attention.

Mr D Bradley: Mitchel asked some of the questions that I had in mind. You used the term "moral settlement". If you are going to use that term, the settlement would have to be the same as previous settlements or along the same lines in any case. You said that, if we can establish the parameters, from the point of view of the timescale and the groups involved, you could estimate the numbers. Is that right?

Mr Bailey: If they are civil servants and are part of NICS Departments, yes. However, I cannot do so if they are in the PSNI or NDPBs, because I do not have access to those records. You would have to go to the PSNI for its information. Each NDPB has its own staff records. You would have to go to all the NDPBs to understand what their situation is.

Mr D Bradley: But you can do it for the Northern Ireland Civil Service.

Do you have any idea of how many people are in the group from what was called the Home Civil Service?

Mr Bailey: No, other than from what was in the note that you forwarded to me, and I understood that it was a small number. They talked about —

Mr D Bradley: Nineteen.

Mr Bailey: It was something like that. It was a very small number. Again, going back to my previous point, if you start to include and consider that group as a part of this, you will really start to push the boundaries, because you are pushing it outside the employment of any of the Northern Ireland Departments or any arm's-length bodies of the Northern Ireland Departments. This is a completely different employer, which is the NIO. Why, then, would you not — this might sound a bit ridiculous — include all the GB Home Civil Service Departments? You just need a sense of —

Mr D Bradley: That would be a little bit ridiculous.

Mr Bailey: It would be. I did say that.

Mr D Bradley: These people were working in Northern Ireland, and most of them are, as it says in the letter, Northern Irish, so they really did not understand why they were in the Home Civil Service in the first place. In any case, you will respond to that letter in due course.

Mr Bailey: We will be able to respond on behalf of the staff whose records we have access to. I mentioned before that the NIO group and the former NIO group, in particular, had a different pay and grading structure. Going right back to basics about equal pay, it was all about people on the same grade and the same payment arrangements. The NIO staff were on different grades and had different payment arrangements. That is why they were not included in the first place, because they had their own delegation that negotiated separately with NIPSA. This just starts to erode the whole logic of the settlement terms. I have said that three or four times, but that is the worry.

Mr D Bradley: So, basically, what you are saying is that we are moving outside the parameters within which you are working as an official and that it is up to Executive Ministers to get political agreement on that in order to shape a settlement for the future —

Mr Bailey: Yes.

Mr D Bradley: — and to inform you of what shape that will take.

Mr Bailey: Absolutely. The problem that we have from an official point of view is that if we were to put forward any proposal for a settlement for those groups, we would need to have some sort of a legislative basis and a business case basis, and we cannot do either of those. There is no legislative basis because there is no legal entitlement, and there is no business case that we can put together that would hold water. That is our issue. Therefore, it is totally in the political realm.

Mr D Bradley: OK. Thank you very much.

Mr Cree: I am conscious that we have not let you give your update on this area yet.

Mr Bailey: I think that we have covered that.

Mr Cree: Yes, through a litany of questions.

Surely, the PSNI and NIO are quite distinct groups, as opposed to the NDPBs. The difference is that the transfer regulations apply to the NDPBs. Is that not right?

(The Deputy Chairperson [Mr D Bradley] in the Chair)

Mr Bailey: If we are moving to some sort of a settlement on a fairness basis, how do you ring-fence it to those groups? Each of the groups is different. The NIO group is different from the PSNI one, which is different from the NDPBs.

Mr Cree: That is right, but I am drawing a distinction with the NDPBs, which were moved on and had TUPE rights granted to them.

Mr Bailey: You are entering a legal area that I am not fully aware of. What I do know is that, at the time of the equal pay settlement, NDPBs were very keen to be part of it. We contacted the NDPBs and, to my knowledge, all of them have followed the new pay scales. Generally, NDPBs follow NICS pay scales. They had to take their own legal advice, and they were told that they should follow our revised pay scales, but their legal advice was that they were not entitled to the settlement payment for history. There is probably an expectation from people there that they should have been part of it, in the same way that the NIO and PSNI felt that they should have been part of it.

Mr Cree: You cannot have it both ways. They were transferred. That is the difference. In the case of the PSNI, for example, or the Police Authority, as it was then, they had a delegation, but surely they did not exercise the delegation.

Mr Bailey: They did. That is precisely what the court case found. As you know, NIPSA took a court case following the equal pay settlement that it agreed with us. It put a number of County Court test cases, which, as you know, they were defeated on last year, but that was precisely what the judge said. He said that they had a delegation and they had exercised it. They still followed our pay scales, but it was their decision to follow our pay scales. That was the judge's ruling.

Mr Cree: That was the point. The evidence that we took from the PSNI was that it had simply followed the Northern Ireland Civil Service, and, therefore, they expected to get that. It has already been said that there is a moral argument in that. I can probably answer my own question here, but has no work been done yet on what the extra costs would be? Have there been any discussions even with the administration side of the PSNI about the likely parameters?

Mr Bailey: The PSNI had estimated that it would cost £26 million, which was mentioned earlier, if the equal pay settlement was applied to former PSNI staff. I do not know how accurate that estimate was, but it identified it as potentially a £26 million figure. There have not been any follow-up conversations with PSNI on the back of that, but assuming that is correct, that is just for the PSNI group. So, if you were to extrapolate that out for a variety of other groups, you can see how you are very easily into very high tens of millions potentially. The equal pay settlement was £130 million originally for the group in 2009.

Mr Cree: The Minister has said that he thinks that there is a moral argument for that narrower group. I would have thought that some work would be initiated to see exactly what the likely magnitude of the problem would be.

Mr Bailey: The magnitude of the problem would be dependent on the groups that are included. I can only do an accurate assessment on the staff whose records I have access to. I do not have access to the records of most of those staff. Staff from the PSNI and NDPBs are not our staff. So, someone would need to commission from those bodies a piece of work if we were thinking seriously about something, but it is one of those things that, I believe, we should be quite careful about. The Minister has said himself about not unnecessarily raising expectations. As soon as you walk down this path, expectations rise again, and unless you are able to deliver something at the end of it, you are worse than you were before. That is my only word of caution.

Mr Cree: We are on that path at the moment.

Mr Bailey: We have been for four years.

Mr Cree: But hopefully a light has come on now, albeit not a very bright light. It remains to be seen how that works out.

Mr Bailey: Ultimately, it comes to a political decision, and if there is a desire to do something and a budget available to do something, it is about finding a controlled and ring-fenced way to do that. We just cannot see how that would happen at the moment, but, ultimately, it would be a political decision if there is a way of doing that.

The Deputy Chairperson: I refer to paragraph 17 of your paper. Why do the AFBI and Northern Ireland Water equal pay settlements only apply from 2006 and 2007?

Mr Bailey: That is to do with TUPE rights. Those staff transferred from the Civil Service in 2006 and 2007 respectively. Because it was before the cut-off date, they were not entitled to anything from our equal pay settlement, and we did not apply it to any of them. However, they took their own legal advice, which said that, under TUPE, there is an equal pay issue — to put it like that — but it only started on the day those organisations were formed. As a result of that, both of those organisations went into separate negotiations with NIPSA to come up with their own equal pay settlement based on that reduced period. So, it was still a legal basis, but it was a TUPE issue.

The Deputy Chairperson: Why did the transfer of undertakings for those staff not apply retrospectively?

Mr Bailey: Again, you are getting into legal advice. I am not a lawyer, but my understanding is that, from a legal point of view, the TUPE rights cannot apply before the organisation exists. NI Water and AFBI did not come into existence until 2006 and 2007.

The Deputy Chairperson: So, were the staff disadvantaged by being transferred?

Mr Bailey: They have a lesser settlement than other Civil Service staff.

The Deputy Chairperson: Thank you very much, Mark. You have been very clear and helpful this morning, and we appreciate that.