



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Prison Service Voluntary Early Retirement
Scheme: Legal Advice

31 May 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Alban Maginness
Mr Patsy McGlone
Mr Peter Weir

Witnesses:

Ms Brenda Ross	Department of Justice
Ms Moira Doherty	Departmental Solicitor's Office
Mr Ronnie Armour	Northern Ireland Prison Service

The Chairperson: I welcome Moira Doherty, deputy director of the central co-ordination division in the Department of Justice; Ronnie Armour, director of human resources in the Prison Service; and Brenda Ross, an acting director in the Departmental Solicitor's Office. This session will be reported by Hansard. Perhaps we can have an outline of why you have not disclosed the legal advice, and I am sure that Committee members, or a member, will have questions.

Mr Ronnie Armour (Northern Ireland Prison Service): Thank you, Mr Chairman. I appeared before the Justice Committee on Thursday 8 March to brief Committee members on the Prison Service's early retirement scheme. I was asked to share the legal advice that the Northern Ireland Prison Service (NIPS) received about the decision not to preclude prison officers who leave the service as a result of the voluntary early retirement scheme from applying for the post of custody officer. I was also asked to share the legal advice I received about making it a requirement for those who left NIPS under the terms of the scheme to repay some of the money if they were appointed as custody officers.

I outlined the advice received in general terms, and I agreed to provide the Committee with a copy of that advice. However, I did so not realising that, as the information is covered by legal privilege, it would be inappropriate to do so, as I would be acting contrary to departmental and, indeed, wider Executive policy. An explanation as to why that would be inappropriate is provided in the paper that was submitted to the Committee in advance of our attendance today. If it would be helpful, I am happy to talk the Committee through that legal advice again, but I am not in a position to do what I said I would do and share the legal advice with you.

The Chairperson: OK. Mr McCartney, you asked for this session.

Mr McCartney: I understand the position that you are in and that you have been told that you cannot disclose that information. However, in part of the commentary on this issue, it was suggested that the legal advice was that that policy could have led to indirect discrimination against Protestant males.

Mr Armour: That is correct.

Mr McCartney: I understand that, but was there a piece of legal advice that said that, as part of an enhanced package, it would be illegal to say that a person cannot apply, or to advertise that a person who is taking an enhanced package could be debarred?

Mr Armour: I can talk you through the legal advice, Mr McCartney, if that would be helpful, but, in essence, the answer to your question is yes: we were advised that it would not be appropriate to do that. However, I am happy to talk you through that advice.

Mr McCartney: If you are given advice that it is indirect discrimination, you would think it not appropriate. The issue that I am trying to tease out, however, is whether advice was given that it would be illegal or inappropriate to say that a person cannot apply.

Mr Armour: We were told that it would be indirect discrimination, or could lead to that, if we barred people from applying or sought to take compensation payments back off them. That, in essence, is the advice that we got. It could be classed as indirect discrimination.

Mr McCartney: It could be. So it was not precise.

Mr Armour: It was precise enough to lead us to conclude that it would not be the sensible thing to do because we would be very vulnerable to challenge, and the Minister accepted that advice.

Mr McCartney: Is the position that, if an organisation gives people an enhanced package, you cannot tell them that they will be debarred from applying for a post again because of the circumstances?

Mr Armour: The legal advice that we received indicated that it is unlawful indirect discrimination to make a person suffer a detriment by applying a provision, criterion or practice that on the face of it is neutral but that has an unequal impact with regard to gender, age and religion. Such an unequal impact is usually established by making a statistical comparison of the group that is adversely affected.

In our case, we were talking about staff who were over 50 and predominantly Protestant and male. The advice we got with regard to preventing them from reapplying and reducing or taking back a compensation payment was that that would be considered indirect discrimination. Therefore, the lawyers indicated to us that we should not proceed down that road, and we did not.

Mr McCartney: If the people taking the enhanced package were not over 50, Protestant and male, could you, as a service, have said, "If you take this enhanced package, you cannot reapply to the service for five, 10 or 15 years"?

Mr Armour: I would suspect that we may well have been able to do that if there was not a gender or religious element. However, I would not want to give you that answer with confidence. I would need to check that out.

Mr McCartney: I appreciate that. Under Patten, people got a severance package and could not reapply for five years. No one seemed to challenge that as being inappropriate or illegal. I know of people who work for trade unions who take enhanced or early packages, and part of the provision is that they cannot apply for a job within that organisation for a specified period. The health service does that, and I am told that the BBC does it. If someone takes a package, they cannot apply for another job within the BBC for five years.

Mr Armour: I understand that Patten was done under specific legislation to allow the payments to be made. We were making our payments under the Northern Ireland Civil Service provision. The advice we got was that we should not proceed in that way because it would be indirect discrimination, we would be challenged, and the lawyer felt that we would lose that challenge. That is the reason we took the decision.

As I said to the Committee before, and I know it is not an answer to your question, out of the 544 who took the package, only one person reapplied to come back. So, in many ways, it has not been an issue in practical terms but I know that that does not answer your particular question.

Mr McCartney: I appreciate that, but I am talking about the wider circumstance of a public body giving people an enhanced package, and then they can reapply. I think there is an issue around that. People talk about those who retire from the education sector and then take work as substitute teachers. Whether that is good or bad practice is something we have to tease out. In this case, it is more because of the Protestant male issue.

Mr Armour: Yes.

Mr McCartney: If it had not been, the circumstances might have been different.

Mr Armour: I suspect, although I do not know, that that is probably correct.

Mr McCartney: Thank you.

The Chairperson: OK, members. Does anyone else have a question?

Mr Weir: We have not seen the legal advice, but it tends to be the nature of the thing that it points very heavily in one direction. Legal advice is very rarely so black and white that it is 100%, but I suspect the indications are that the Department was strongly advised that it would be very vulnerable, or words to that effect.

Mr Armour: Yes. The Prison Service was strongly advised that it should not do this. We consulted with the Department of Finance and Personnel on this as well; it was not that we did not consult more widely. However, that was the strong legal advice that we got, and we acted on it.

The Chairperson: OK. Thank you very much.