



Northern Ireland
Assembly

COMMITTEE FOR
FINANCE AND PERSONNEL

OFFICIAL REPORT
(Hansard)

Equal Pay

27 January 2010

We finalised the negotiations on 23 November 2009, when a formal offer of terms of settlement were formally put to NIPSA. Subsequently, we embarked on a fairly comprehensive ballot exercise, not only of the 5,000 claimants for whom we have lodged equal pay rights tribunal cases but of everyone who will be affected by the terms of the settlement. Those 5,000 claimants were female NIPSA members, because it is a sex discrimination taint, which justifies the equal pay claim being lodged at tribunal. All our male members and the other members, who may be female, who were not claimants, will be also affected by the situation. We felt it necessary to consult all such individuals about the terms of the settlement. We had a significant return to that ballot exercise and a comprehensive indication from our members to proceed with taking forward those terms of settlement with the Northern Ireland Civil Service.

We are in discussion with the management side about the implementation of the settlement, which will require a further process to be gone through. That will take several months to complete. The sheer nature of what is involved will necessitate that length of time. We are talking to the management side about data cleansing of career histories, after which people will validate whether their career history is correct. That is required so that we can correctly apply the terms of the settlement against grades, because it depends on the substantive grade and the length of time that the individual has been in that grade.

Once the career histories are validated, we have to validate with individuals that the amounts that it is anticipated will be paid to them are correct for their circumstances. At both stages, they should be given the opportunity to query their career history or the amount of money that relates to their individual circumstances.

We are also considering how to withdraw the cases from tribunal, but that will require a compromise agreement process to be taken forward. That will mean that each claimant will have to be contacted individually, because, as many of you will know, the tribunal claims were not lodged by NIPSA; they are claims that were made by individuals, and only those individuals have the right to withdraw the cases. Therefore, a process will be gone through with those individuals.

The Civil Service has informed us that it is also its intention to seek all staff who will be offered the settlement. It will be expecting all of them to sign an agreement to accept those terms. That will involve around 13,000 members of staff. To compile career histories and calculate the

amount of money involved for each individual will take quite a time to work through.

There are two main elements to the settlement. The first is to get the people put onto the proper pay scales, which, subsequently, will deliver equal pay to our claimants and other staff in the affected grades. The second is the lump sum compensation payment for a six-year period, which people would have been entitled to under law in pursuing their cases. Both elements have to be taken forward. That is the current state of play with the processes that we have got through and our attempt to get the terms of the settlement implemented.

Ms Lucia Collins (Northern Ireland Public Service Alliance):

The administration process is lengthy.

Mr Weir:

Thank you for the information that you have given us. You mentioned the implementation process, particularly that which involves data cleansing, and you also mentioned the need for an individual agreement on the waiver, either by withdrawal or by taking industrial action, with everyone who is affected. Can the two processes run parallel, or will the implementation side of it have to take place before people can be contacted individually?

Mr Bannon:

We are trying to minimise the timescale. Our members have waited for a long time. Although the negotiations have been ongoing for 18 months or more, they have been underpaid and faced a pay gap for decades, mostly under direct rule Ministers. We have finally reached this point. Even as we were balloting members on the offer, we worked with senior civil servants to try to speed up the process.

Mr Weir:

To use a phrase that has been used elsewhere, it is a twin-track process.

Mr Bannon:

We are trying a twin-track process. Data cleansing has been ongoing behind the scenes by a team comprising representatives from various Departments. It was interesting to listen to some of the previous session about the shared service centres, because, oddly enough, we want the deal implemented without the involvement of HR Connect. Despite the comments that the

representatives from the Department made to the Committee earlier, there are still problems with HR Connect. The responses that our members gave to the surveys would be given today as much as they were a few months ago, and we know that a number of departmental officials hold that view, even though a three-line whip sometimes applies to people who are speaking in their official capacities. We wanted to minimise the impact of the involvement of HR Connect, and, therefore, a team has been set up to deal with the data-cleansing process, which was going on behind the scenes.

We are also in discussions with the management side to see how we might get some of the moneys paid. For example, we want to know whether there a process through which people can be put on to the revised rates of pay immediately and before the compromise agreements are signed. We are looking at those processes in the hope that that twin-track approach can be taken.

Mr Weir:

You mentioned the slightly sinister sounding phrase “data cleansing”. What does data cleansing entail for an individual civil servant, Joe Bloggs for example?

Mr Bannon:

Claims were lodged for three grades: administrative assistant, administrative officer and executive officer II (EOII). Those are three quite separate and independent cases in law, and terms of settlement had to be put to each of the grades. Each of them will be assimilated onto a separate, revised pay scale, and each of them will receive a separate compensation lump-sum payment for the six-year period. That payment is in direct reference to comparable grades. For example, the comparator grade for equal pay purposes for an administrative assistant is technical grade II. Therefore, even the compensation lump-sum payment has been calculated with reference to that comparator grade pay scale over the six-year period.

Data cleansing is carried out because, at any time over the retrospective period, individual members of staff could have served as an administrative assistant and been promoted to administrative officer or EOII, or been promoted out of the affected grades to a higher grade in the Civil Service.

Mr Weir:

Does that mean that there is a degree of apportionment?

Mr Bannon:

Yes. A matrix figure for the compensation payments has been produced for individuals in each of the grades depending on their length of service in their substantive grade. If Lucia were a claimant, for example, she may have to be paid a sum of money for her service as an administrative assistant, and a further payment over that retrospective period as an administrative officer. The process will cleanse the data to ensure that the information about how much time individuals served in each grade is correct, because it will directly affect the amount of money that is paid.

Mr Weir:

This is a live issue. I appreciate that a settlement that covers Northern Ireland Civil Service employees has been reached with the Finance Department. What is the union's position on the discussions with the Northern Ireland Office that deal with civil servants who are either in the Northern Ireland Office or who have been seconded there?

Mr Bannon:

We certainly pursued such cases. However, the Northern Ireland Office is only one of several bodies that used Northern Ireland civil servants; some were also seconded to the PSNI during the period of time in question. We believe that those individuals are covered.

We also have members who work in non-departmental public bodies. Traditionally, they have automatically received Northern Ireland Civil Service rates of pay under the terms of each year's pay settlement. Separate pay negotiations do not take place for them. For example, the Equality Commission and the Labour Relations Agency go through the formal processes to pay their employees Northern Ireland Civil Service rates of pay. Had the correct rates of pay been in place over the years, our members in those bodies would have benefited.

Mr Weir:

Are you saying that those people should be covered?

Mr Bannon:

We believe that they should be. The offer, however, was extended by the management side only for Northern Ireland Civil Service Departments. Therefore, we did not ballot our members in

those other areas because we could not ballot members on an offer that was not extended to them. However, we are making approaches to the Northern Ireland Office and a number of other bodies to have the terms of the settlement applied to our members who are in those bodies.

Mr McLaughlin:

Is the settlement regarded as a precedent in dealing with NIO employees?

Mr Bannon:

We had some initial discussions with the Northern Ireland Office in the lead-up to the offer of the terms of settlement. There has been some resistance from the Northern Ireland Office management side about the application of the terms. However, those discussions are ongoing, and it has committed to having separate discussions with us.

Even if the Northern Ireland Office accepted the principle that the individuals who work there are Northern Ireland civil servants, a separate calculation would have to be made because they have been on a separate pay arrangement and grading structure since 1997 under a delegated authority. The amounts of money may be different to those that are —

Mr McLaughlin:

I understand that.

Mr Bannon:

As far as we are concerned, the individuals are Northern Ireland civil servants and should benefit from the settlement.

It is also important in the context of the important discussions that have been ongoing in recent days. We have tried to ensure that the Northern Ireland Office and other bodies that have been in the position of having Northern Ireland civil servants, have not, over the years, moved far away from Northern Ireland Civil Service pay structures because, particularly in recent times —

Mr McLaughlin:

Sorry; they have not or they have?

Mr Bannon:

We were trying to stop them moving away from Northern Ireland Civil Service pay structures. We were not always successful, but there has been a change. Last year, during the normal pay negotiations, we were able to get the Northern Ireland Office to move back more towards the Northern Ireland Civil Service pay structures. Their minimum and maximum pay points are the same as those of the Northern Ireland Civil Service. That was undertaken with a view to the potential for the Department of justice to be created, if that is not too sensitive an issue to talk about at the moment.

Mr McLaughlin:

Not at all. Everyone else is talking about it.

Mr Bannon:

We were in those sorts of discussions in the hope and with the realisation that that should happen. From our perspective, it would seem odd to have Northern Ireland civil servants on the brink of going into a Department — the functions of which will no longer be a reserved matter — and not being on the same rates of pay as the rest of the Northern Ireland Civil Service. They will, in any event, have to be assimilated into those revised rates of pay when the Department is created.

Mr McLaughlin:

I suppose that we can assume only so much about how things might work in the immediate future, although let us hope that it works out positively. By the way, let me congratulate all who were involved in negotiating that package. I am not surprised that it got such a strong endorsement by your members. It was a good bit of work.

Clearly there are issues, and we are dealing with those who are exploited or fall outside that package. In the interests of fairness as well as affordability, it is important to see what can be done by way of natural justice. There is an acceptance that there was a gender imbalance in the rates of pay. Indeed, Peter Robinson, as the Finance Minister, brought that to the Assembly's attention a number of years ago and said that it was an issue that must be addressed and that it fell to the Assembly to address it.

The settlement, although it was across a substantial body of workers, did not pick up everyone. I am exploring that with you. Has NIPSA taken legal advice as to whether a legal

precedent would inform the tribunal or would require that arrangements are put in place to deal with any current employees or those who have retired in the past six months to put them on the same basis?

Mr Bannon:

A number of categories are encapsulated into the area to which you refer. None of our members in the affected grades in Northern Ireland Civil Service Departments should be excluded. We have a level of comfort on that issue. We have engaged senior counsel along with our own union solicitors, and we have been having regular meetings and briefings with our legal team about the issues that are being taken forward and what the position is.

Ministerial statements have created an expectation. A former Finance Minister, in comments about settling these matters, referred to past employees. In a Budget debate in the Assembly in last year, I believe that Nigel Dodds, when he was Finance Minister, spoke about the moral obligations as much as the legal obligations being met. From our perspective, I am not sure that all the moral obligations have been met by the terms of this settlement. However, there are legal provisions that say that people who have left service have to have lodged a case within a certain period in order to be covered. Management side would argue that they are offering everything that is required of them by law. However, various statements created an expectation, particularly for members who have left service.

There are discussions on the moral aspect of the settlement. We presented the moral arguments to the management side about saying to a former member of staff who may have given 30 years' service, including during the six-year retrospective period, that he or she was getting nothing despite those years of dedicated service. We presented all those arguments. However, the management side presented that offer, and we put it to our members.

We are still pursuing the matter for the others who may be in areas such as the Northern Ireland Office or non-departmental public bodies. We believe that they may well have a legal entitlement, and we are taking further legal advice. We intend to continue to pursue that matter if we find resistance from those areas in paying either the revised salary scales or the lump-sum compensation payments. It does, though, depend on the advice that we receive. That is work in progress.

Mr McLaughlin:

You will hardly be surprised if the management side's position depends on the legal requirement and threshold. MLAs face quite an active lobby on the matter. We need to be clear on NIPSA's position. If you have a formal position or view as to how the matter can be addressed, it would be useful to hear it. A moral argument will certainly not produce the money. If we were to encompass everyone who would be affected, it is quite clear that the Executive's entire budget would struggle to cope with that. We should all explore the question of how natural justice can be addressed. It might take all sides, including the trade union, to put forward suggestions on how that can be brought forward.

Mr Bannon:

It is an interesting point because, sometimes, our members and individuals rely too much on law. There is a difference between the legal provision and justice. Obviously, I do not necessarily find the two to be the same. Such issues give rise to difficulty.

We are clear that there is legal requirement for a person to have lodged a case within six months of having left service in order to pursue the case through legal channels, such as a tribunal. It is on that premise that the management side's has made its offer, which includes the six months prior to 1 February 2009, which is the effective date of the agreement. Therefore, management side's offer has been extended to people who have left service since 1 August 2008. That is why the management side believes that it has met its legal obligations.

As I said, we cannot challenge the legal position of that six-month requirement. However, we made representations on behalf of former members and ex-civil servants because we believe that, as you mentioned, an issue of natural justice needs to be addressed. How that is overcome, and in what way, is more problematic. We are still open to further discussions with the management side if it is willing to enter those negotiations.

The Chairperson:

Are there any outstanding claims from people who left prior to 1 August 2008? If so, how many?

Mr Bannon:

We received authorisations from members who were leaving service after that date. At present, all claims are outstanding as none have been withdrawn. We have lodged cases on behalf of

people whose claims are outstanding who retired during that period. However, the fact that the management side's offer has been extended to that entire six-month period means that all those individuals' cases should be captured.

Mr Weir:

I am sorry to interject. I am not sure that you entirely understood the question, which was, presumably, whether you are aware of anyone who retired prior to August 2008 who has lodged a claim. I appreciate that certain people retired during those six months. Are you aware of any cases that were lodged for anyone who retired prior to August 2008?

Mr Bannon:

Sorry. We are not aware of anyone who has lodged a case prior to that date.

Mr McLaughlin:

What is the significance of February 2009, which is when the tribunal claims were lodged?

Mr Bannon:

In May 2007, we started a process by lodging the statutory questionnaires about those claims, which management side did not answer. We received signals that the management wanted to settle the claims by negotiation and arranged a series of meetings with management during December. Management attended the first meeting, but then told us that they could not schedule the other dates with us. We scheduled a further series of five dates in January 2009 to progress the negotiations, but management postponed the first meeting the evening before it was due to take place and gave no commitment to proceed with the other meetings. Therefore, we felt that there was no genuine commitment on the part of senior civil servants to enter negotiations in a meaningful way.

Mr McLaughlin:

Is that when the process of taking it to a tribunal started?

Mr Bannon:

Yes. We got the impression that management were palming us off. We had our members' legal entitlements to protect, and, as we felt that management was not serious about negotiations, we lodged the cases with the tribunal in February 2009.

Mr McQuillan:

I had a meeting with a lady who retired on 31 July 2009, and is missing out on the back pay by one day. What moral obligation does the Department have to her?

Mr Bannon:

The Department has a moral obligation to all members of staff who were affected.

Mr McQuillan:

Yes, but the other staff members will receive a payment. She will not receive anything.

Mr Bannon:

It is a very unfortunate and difficult situation, but on entering into any agreement, including annual pay agreements, immovable effective dates are applied and people will fall either side of that. If the case of the lady in question was allowed to proceed on the basis that she was only a day out, those who retired on 29 July will also ask to be considered and so on. There must be an effective date in any agreement, and that must be operative, which means that people will fall on either side of it. It is difficult to tell a person who is one day on the wrong side that they will miss out for the sake of a day, but that will inevitably be the case when there is an effective date, and there must be an effective date at some point.

Mr McQuillan:

Is no road open to that lady?

Mr Bannon:

No; not with respect to the legalities.

Mr O'Loan:

I do not want to go back over the negotiations about the EOII grade, because I understand those. However, what stage is the comprehensive pay and grading review for people in that grade at? When is it likely to produce results?

Mr Bannon:

That is an important point. The commitment is to enter that process urgently. The

comprehensive pay and grading review involves all the pay and grading structures of the Northern Ireland Civil Service, and is, therefore, a considerable exercise. The EOII situation remains unsatisfactory as some people are getting paid almost the same as or less than those who they are supervising or managing. We did not want that issue to get lost in the overall review and have, therefore, asked for it to be treated as a matter of urgency.

The current focus is in setting up the processes that will implement the terms of the settlement, but we are also setting up a central Whitley pay and grading meeting — the negotiating forum — on 5 February 2010. At that meeting, we hope to have further discussions with management about their continued actions about the EOII issue. We must agree terms of reference and a timetable, but we want the EOII pay and grading situation dealt with immediately during the first part of the overall review.

The management side was very quick to pull out of negotiations about equal pay when they wanted to conduct a review of the comparator TGI and TGII grades, and we questioned why that was the case. The management side was also quick enough to get that done in and around a three-month period, and we expect the same level commitment for the review of the EOII grade. It will be a slightly bigger exercise for the EOII grade, as relationships for the grades above and below must also be examined, but we do not expect it to take any more than three to six months.

Mr O’Loan:

Do you think that management might agree to consider that as a separate issue, or will it insist on looking at the whole picture?

Mr Bannon:

Absolutely not. It is an explicit term of the settlement that it will deal with that as a priority and as the first stage of that.

Mr O’Loan:

That is grand.

I want to endorse the points that were made about those who have retired or moved on before the critical date of 1 August 2009. They are being treated most unfairly. I am certainly not a lawyer, but I wonder whether they might have a legal case separate from what was going on in

the negotiations. The negotiations are done and dusted, and an offer has been made. There is an acceptance by the employer that people have been underpaid, and they are now going to be paid. It seems to me that there is a prima facie case in that someone who left before that date can say that the employer has now accepted that they should have been paid more. Do you see the beginnings of a legal case for such individuals?

Mr Bannon:

We are still taking further legal advice about members in that position to see whether any avenue is open to them outside of the equal pay settlement. To be included in the equal pay settlement, individuals must be members of staff because there has to be comparator. They, and those in the comparator grades, have to be on the payroll so that the equal pay case can be formulated. The moral arguments and those based on justice all exist. We are still trying to look at what other avenues may be open and we have received representations from political parties, including your own. We are engaged in meetings because we are aware of the lobbying that is taking place. We have encouraged our members to lobby to try to move this forward.

Mr O'Loan:

I am wholly persuaded by the moral arguments of the case and it is something that the Committee should take up. I want the Committee to discuss that after it has concluded this evidence session.

You spoke of a process lasting several months. When might it begin to produce back payments?

Mr Bannon:

You refer to the back payments, but two elements are involved. The first is the assimilation onto the proper pay scales to get the correct pay rates for today and from now on, which involves backdating it to 1 February 2009. The second is the compensation lump-sum payment. We are trying to see how we can get some money into our members' salaries as soon as possible, so we are in discussion with the management side to see whether there is something we can do to get the pay rates implemented as soon as possible.

Although no explicit timetables are set, there is the potential for some moneys coming through towards March 2010. Others might take longer because of the processes that have to be gone through. As I understand it, we are working towards the validation exercises commencing in

February 2010 and getting those completed as soon as possible, which would then lead to a process of setting up arrangements to get the moneys paid. The union wants it done as soon as possible. We hope that we can persuade the management side to have moneys coming through potentially from March 2010 onwards. We would like to see the process completed in the first half of this year.

The Chairperson:

Just before Mitchel addresses a related point, I want to go back to an earlier point. I realise that Adrian wanted in on that issue. Did you say that no one lodged a claim prior to August 2008?

Mr Bannon:

I am not aware of any.

The Chairperson:

Can you explain that? It is bizarre; this has been ongoing for years. As Adrian asked, what of those who were on the payroll until 31 July 2008? Would such individuals not already have lodged that complaint or made that claim?

Mr Bannon:

The issues were being taken forward in negotiations in the Civil Service. We did not proceed to lodge claims for anyone until February 2009. We sent out a form in August 2008 asking members whether they wanted us to pursue the claim by the dispute resolution procedures that apply in Northern Ireland but which have been removed in GB. Those procedures require someone to undertake an internal grievance procedure before a case can be pursued at tribunal.

We sent authorisation forms to members who wanted us to pursue that route for them. In signing that form, members were also authorising us to proceed, if necessary, with lodging a case at tribunal if the internal grievances were unsuccessful. That process commenced in August 2008. We issued our bulletin on 5 August 2008, but the terms of the agreement go back to 1 August 2008.

The Chairperson:

Did you also notify ex-members?

Mr Bannon:

Yes; a number of people who cases were lodged for were picked up by that route.

Mr McLaughlin:

Prior to devolution, would the issue have fallen to Whitehall and been applied across all the regions?

Mr Bannon:

Yes, that raises a number of issues. We have always felt that our members were treated less favourably than their counterparts elsewhere. When Peter Hain was Secretary of State for Northern Ireland, we raised with him our concerns about the levels of normal pay increases that he was authorising for the Welsh Office, in his capacity as Secretary of State for Wales, which were higher than those he was insisting on for the Northern Ireland Office.

Prior to 1994, there was a parity arrangement for pay, under which we had exactly the same rate of pay as everyone else. Under the Tory Administration in 1994, Departments and agencies were given the authority to enter into their own pay arrangements, which resulted in pay becoming very disparate, even across Departments and agencies in GB. Ever since, we have fallen further and further behind.

Mr McLaughlin:

That would be the case for everyone other than senior civil servants.

Mr Bannon:

Yes, and that was part of our claim, because they fell under a parity arrangement by the Senior Salaries Review Body. Although senior civil servants were not covered by the Senior Salaries Review Body, secretaries of states and direct rule Ministers extended the parity arrangement to them.

The difficulty was that GB Departments addressed the equal pay issue a number of years ago. As a result, some pay leads were generated. We always put to the management side here the need to look at and deal with equal pay, and they refused to do so. Over the years, I have been disappointed in those senior civil servants who were not even prepared to raise the issue with direct rule Ministers. Over the years, those senior civil servants have done our members a

disservice.

Mr McLaughlin:

I wanted to give you the opportunity to set that argument out, because the Committee came across the issue in its work on the pay structures of senior civil servants.

I want to raise one last issue, which may be worth exploring and get us past the natural justice threshold. However, it may not; I understand the constraints as well as the positives that have resulted from the legislation. Have pay reviews been conducted since the enactment of the equal pay legislation. If so, and they did not take account of what was, at that point, a legal requirement, could a legal challenge be explored? You can be seen to be depending on the six-month rule for lodging an appeal, but, since the enactment of the legislation, a statutory requirement was being ignored in the periodic pay review.

Mr Bannon:

There has been a knowledge — if I can put it that way — of equal pay not being delivered in the Civil Service. A number of senior civil servants would admit that the issue has been going on for decades. There have been annual pay negotiations in which the rates of pay were looked at, and there has been knowledge about the absence of equal pay. We lodged equal pay claims on behalf of our members in the Northern Ireland Civil Service in 1999.

Mr McLaughlin:

Do you have a paper trail that can demonstrate that the issue was going on before February 2009?

Mr Bannon:

Yes; back to 1999.

Mr Hamilton:

Like others, I am glad that there has been a resolution to the equal pay claim dispute. Sadly, it seems that the result has acted as a metaphor for other issues — you do not always get everything that you want out of negotiations. Is NIPSA content that the Northern Ireland Civil Service's legal obligations have been met in respect of the claim?

Mr Bannon:

That is for legal people to say. We are content that an offer has been made, we put it to our members, and they agreed that it is acceptable as a settlement. Therefore, the claims are to be withdrawn once we go through the processes to do that. We are content that equal pay will be delivered in the Northern Ireland Civil Service by the revised rates of pay that are being introduced. There is always the potential that going down a legal route may have produced a different result one way or the other, but, as far as we are concerned, we have negotiated what we believe is the best that we can achieve out of negotiations with the management side. We reached that point and put it to our members, who are the claimants. It was for the claimants to decide whether it was acceptable to them, and they decided that it was.

Mr Hamilton:

I am well aware of the issue around civil servants who retired or left before 1 August 2008. People who left the Civil Service or retired on 31 July 2008 probably have every right to blow their tops at this moment in time. That is entirely understandable, and I am well aware of that problem from the lobbying that goes on. In fact, when you were talking earlier, it sounded very like a letter that I read yesterday. Nevertheless, NIPSA must have been well aware of the six-month rule. That legislation has been in place for a long time. Regardless of morals and natural justice, the legal position is clear as far as the logic of making a claim within six months of having left the Civil Service is concerned. If people had not lodged a claim within six months, it appears that there was very little chance for them legally, and, as Mitchel said earlier, the management side was always going to cling to the minimum legal requirement.

Mr McLaughlin:

The management side was probably obliged to do that.

Mr Hamilton:

Yes. We would probably be going for their throats if they had done anything else. As Peter Weir said, they either did what they legally had to, or they could have been fair to everyone and had natural justice and paid everyone every penny that they were entitled to, but where would that end, and what would it cost? The point is that NIPSA knew that the six-month rule was in place, therefore, it encouraged members to lodge claims in February 2009. That became the operative date from which to work back six months. I accept that people were working in an environment with unequal pay for many years, but, whether right or wrong and within the legal parameters,

there was very little that could be done.

Nevertheless, is there a possibility — and I cannot see how — of doing something for those people? That is going to be immensely difficult, and legally it appears that the management side does not have to do anything. NIPSA must have known that it was always going to be difficult to go back beyond that date to get anything, unless people on the management side did something out of the goodness of their hearts.

Mr Bannon:

It is a bit more than the people on the management side simply doing it out of the goodness of their hearts. They failed those individuals over those years. It cannot simply be explained away by talking about doing it out of the goodness of their hearts. There was no goodness of heart in not paying people their right and just levels of pay.

Mr Hamilton:

I am talking about the legal position.

Mr Bannon:

You extended the conversation to include “goodness of heart”; therefore, I am responding to that.

It was Government Ministers who said that there was a moral obligation to individuals and that claims would be settled, including those of people who had left service. Even at that time, some press statements linked that resolution to a six-year period. We did not create that expectation. Our responsibility was to deliver equal pay.

An important aspect of the equal pay claim is an understanding of what equal pay is. An equal pay case deals with an issue that exists today under the law. A case cannot be lodged for something that happened six years ago. The six-year retrospective period is a by-product of winning a legal case as of today. Based on a taint of sex discrimination, people are being underpaid. That is the equal pay case that has to be won. Everything else is a by-product of that. The six years’ backdated pay is a by-product of winning the case as it stands today. That case has to be won before anyone can access the six-year backdated money.

You are right to say that there is a distinction between the law and everything else. We

acknowledge the legal aspect of the six-month retrospective period going back to 1 August 2008. We are not disputing that. However, we think that that is unfair. We were in negotiations around a settlement in exchange for not pursuing the legal route of a tribunal. It was just and right in those circumstances and through negotiations not to pursue the legal case through tribunals and to look at the range of people affected by the issue. Undoubtedly, those people were affected because they were underpaid and were not attracting equal pay for those years. The management side has made its offer, we have put that offer to our members and, to some extent, we are where we are. We still feel bad for ex-civil servants from the affected grades, and, if there was anything that we, the Committee or the political parties could do to address that, we wish to pursue it. However, I have covered the legal issue that exists.

Mr Weir:

The equal pay problem dates back perhaps 20 years, and mention was made of there being at least some realisation of the problem during the 1990s. Let me play devil's advocate on behalf of some of those retired people: if the problem was known in the 1990s, why did NIPSA not lodge claims then? Is there an argument that, to some extent, NIPSA and the unions fell down on the job by waiting until 2009 to lodge claims?

Mr Bannon:

We have been in negotiation with the management side to try to settle those claims and there is a process, which we were going through, by which to achieve that. Some of the equal pay claims that we lodged with the management side were being dealt with. There were other mechanisms for those grades, which we were involved in with the management side, and we were taking negotiations forward as a way to try to sort out the problem. For example, we were in negotiations back then which led into the 2002-03 negotiations on a new single pay agreement, and, in taking that forward, we were trying to deal with equal pay issues. We were involved in negotiations with the management side around a new single grade. We got to the point of having a new job description, which picked up on the difficulties for the people in the grades that were affected and on their pay. The management side was prepared to sign off on that; however, it then refused to implement it. We pursued that, and we were in negotiations to deal with issues to resolve those problems without the need to lodge tribunal cases at that time. We entered those negotiations in good faith, but the rug was pulled from under us at a time when we thought that some of the issues could have been resolved. We eventually arrived at the point of having to lodge those cases in 2009.

Mr Weir:

Overall, you got the best deal possible for your members. You, as facilitators, offered that to your members as the best deal available. However, to play devil's advocate again, none of us can wash our hands of the responsibility to protect people who had retired. If everyone was looking after the retired members as much as possible, you would not have signed up to the deal until a package for them was put in place. With the best will in the world, the union, the management side and the Assembly, which endorsed that deal through the Budget, have accepted the legal position and that nothing else can be done. If we all cared enough about the situation of those retired civil servants, that issue would have been a deal-breaker, and a deal would not have been done on that basis. How would you react to that accusation?

Mr Bannon:

The management side may well have called that a deal-breaker if we had insisted on it. Our perspective as a trade union is that there are 13,000 civil servants in those affected grades who are existing NIPSA members. They are the claimants. The settlement is being achieved only because there are claimants for equal pay. If there were no claimants, there would not have been any offer or settlement.

Mr Weir:

The argument could be made that, if claimants had appeared earlier, some people may have been covered by that. That may be another point.

Mr Bannon:

Yes, it is. The point is that an offer was made by the management side, and we were obliged to put that to our members and certainly to the claimants. It was for those individuals to decide whether it is acceptable. That is not to say that we do not think that something should have been done for ex-civil servants. The extent of what could be done is a moot point. We do not know what the outcome would have been had the management side been willing to consider a settlement that included those individuals. I do not know whether the offer would have been exactly the same as the one that has been made.

Ex-civil servants have been totally excluded, which is a big concern for us. We know the legal position. Unfortunately, the nature of industrial relations has changed, because people are

now managed by law. The position of the management side has nothing to do with what is right. I have made the distinction between what is right and what the legal provisions are. They are not the same thing whatsoever. We believe that employers have obligations that are not covered by law.

Discrimination is defined only in certain respects in law. That, however, does not mean that people cannot be discriminated against in other regards; it simply means that certain forms of discrimination are not realised in law. For example, we now have the Disability Discrimination Act and age discrimination legislation. Just because such legislation was introduced relatively recently does not mean that it was OK to discriminate against people prior to its introduction. It simply means that the law recognised the problem only at a particular point in time.

We address situations based on what is right. If the law can assist us to deliver that, that is all well and good. If it cannot, we should still argue those points with the employer, because that is the right thing to do. Employers should take the right decisions. Unfortunately, management run and hide behind the law. Unless we can take them to court, they are not prepared to do anything.

Mr Weir:

With respect, we all have a degree of culpability because we all have certain levels of concern and feel that people have not received the justice that they should have. None of us — the union, the management side or those of us who endorsed the settlement — were sufficiently concerned to make a public call to NIPSA members to reject the package and say that the offer is unacceptable until it covers the people who had retired. I appreciate that management is culpable from a moral point of view, but everyone is ultimately culpable. If we are talking about moral absolutes, we cannot entirely pass on the responsibility.

Mr Bannon:

Had members taken that stance, we would have been pursuing tribunal cases. An equal pay case is quite a lengthy process. Even if we had won those cases, the individuals who you are talking about would still not have been covered by the terms of the settlement in pursuing claims through the court. If the offer had not been accepted, we were all going to an industrial tribunal, and the retired civil servants would never have been legally covered in any event.

The Chairperson:

Thank you for coming along, Kieran and Lucia. We may get in touch with you again to give us an update when the discussions are over.