



Northern Ireland
Assembly

**COMMITTEE FOR
FINANCE AND PERSONNEL**

**OFFICIAL REPORT
(Hansard)**

**Equal Pay: Evidence from Civil Service
Pensioners' Alliance**

12 January 2011

NORTHERN IRELAND ASSEMBLY

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FINANCE AND PERSONNEL**

Equal Pay: Evidence from Civil Service Pensioners' Alliance

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Members present for all or part of the proceedings:

Ms Jennifer McCann (Chairperson)
Mr David McNarry (Deputy Chairperson)
Dr Stephen Farry
Mr Paul Frew
Mr Simon Hamilton
Mr Mitchel McLaughlin
Mr Declan O'Loan
Ms Dawn Purvis

Witnesses:

Mr Nixon Armstrong) Northern Ireland Public Service Alliance
Mr Ivan Baxter) Civil Service Pensioners' Alliance
Mr Sam Caul)
Mr Mike Duggan)

The Chairperson (Ms J McCann):

I welcome the representatives from the Civil Service Pensioners' Alliance: Ivan Baxter, the branch secretary; Sam Caul, who is a branch member; Mike Duggan, the general secretary; and Nixon Armstrong, the vice-chair of the Public Service Alliance retired members' branch. I apologise for your having to wait; we are running very late today. Normally, we welcome people and ask them to make an opening statement. I remind members that the issue has been discussed

at length in this Committee and on the Floor of the Assembly, and people have been quite supportive. I hope to ask Department of Finance and Personnel (DFP) officials for an update later, so you are welcome to wait for that. If you want to make some opening remarks, I will then open it up for questions.

Mr Ivan Baxter (Civil Service Pensioners' Alliance):

Thank you for your invitation to address the Committee on the recent equal pay settlement for Northern Ireland civil servants and its consequences for retired staff. Before we begin, we want to extend our condolences to the McAreavey and Harte families on their recent tragic loss. If you do not mind, we feel that it is appropriate to do that.

Let me introduce our team. Mike Duggan is from headquarters. He is the general secretary of the alliance. Nixon Armstrong is from the Northern Ireland Public Service Alliance (NIPSA) retired members' branch, and we also have Sam Caul with us. As you said, I am Ivan Baxter, from the Northern Ireland branch of the Civil Service Pensioners' Alliance.

We are speaking on behalf of our members who lost out as a result of the conditions attached to the recent pay settlement. I know that, by now, you are all familiar with the issue, and a fairly detailed paper setting out our position was circulated to you all, so I will not go into the whole thing again in great detail. I shall briefly recap and set the scene. An agreement was reached between DFP and NIPSA that purported to settle the long-standing dispute about the value of administrative grades AO, AA and EO2. For many years, NIPSA argued about the quality of their work compared with that of certain technical grades, and, in due course and as a result of those representations, the salary scales were adjusted.

In support of the union's claim, a number of staff lodged claims with the industrial tribunal under equal pay legislation. After what we understand were protracted negotiations, to which we were not party — indeed, we did not even know that they were going on — DFP conceded to NIPSA's contention and offered to backdate pay to 1 February 2003. This was accepted by the union after holding a ballot of the grades that were affected, and compensation was paid — it was not actually back pay, but it was calculated as if it was — to the serving staff last year.

The sting in the tail for us was that staff who retired before 1 August were excluded from receiving their arrears on the grounds that it was an equal pay settlement and that they should have lodged a claim with the industrial tribunal within six months of retiring. That condition was clearly impossible for them to fulfil since the entire process had taken place behind closed doors until the offer became public near the end of 2009. The Minister claims that because he used equal pay law as a frame of reference, he has no legal obligation to the retired staff and, therefore, cannot consider them for arrears. That is as we understand it. Our view is that the Minister was inconsistent in his use of the equal pay arrangements, and that that has led directly to the unfair treatment of our members.

Parliament put in place a process for dealing with equal pay. It involved making a claim to an industrial tribunal with supporting evidence; consideration by a tribunal, usually with expert advice; and a ruling. A number of staff had submitted claims to the tribunal. However, in our view, the Minister chose, for his own good reasons, to bypass the court system by conducting negotiations with the union. As part of the settlement, claims to the tribunal had to be withdrawn. That was one of the conditions. The authorised payment of the compensation was made to all serving staff, whether or not they had made a claim; everybody got it. That indicates that, by and large, this was a normally negotiated settlement. Tribunals do not negotiate; they do not make offers to unions which are then subjected to ballot; and they do not make awards to people who have not lodged claims. However, that happened, as we understand it, using the equality law as a frame of reference.

Among the people who lost out in what we regard as a rather eccentric process were officers who did nothing wrong except retire at the wrong time. That is our grievance. Those pensioners are in receipt of the lowest pensions of all Civil Service pensioners because of the grades that they occupied. There are, as far as we can judge, only about 460 of them, and, because many of them would only qualify for modest compensation payments, the sum involved would be relatively small.

I have over 50 years' experience of Civil Service pay deals. I joined the Civil Service in 1957, and I cannot remember any previous occasion when arrears were not paid to retired staff after a pay settlement. After all, they had earned it. That is a dreadful precedent, and it reflects very

badly on an Administration who have sought to convince pensioners that they have their interests at heart.

The Minister once said in the Assembly that opening the issue to consider retired staff would be like opening Pandora's box. I am sure that some of you will recall the Minister saying that. We do not think so. If you recall, when Pandora's box was opened, all the evils of the day — plagues, pestilence, famine, wars, disease and so on — were released into the world. We do not think that we come into that category. We believe that doing the right thing by a small number of pensioners could do nothing but good, which is really the very opposite of the Minister's analogy. The last thing in Pandora's box was hope. We are here in hope. We hope that the Committee will pursue this issue with the Minister so that, in due course, our pensioners will receive the justice that they deserve.

In conclusion, there are a number of things that we would like you to take on board, if at all possible. We would like to know why, when it became clear at the very outset of the process that recently retired staff would lose out, the Department did not look for an option to compensate the retired staff rather than deny them. The Minister claims that he is not legally obliged to pay them, but neither is he under any legal obligation not to pay them. It is simply a matter of his choice.

Secondly, when so many of those staff had given loyal service to the state right through the Troubles — some, I may tell you, in very difficult circumstances — why did their welfare become such a low priority in the Government's overall spending programme? Why is money that they clearly earned — nobody can deny that — being withheld for what appears to us to be the flimsiest of reasons?

Lastly, why are an Administration which claim to have the interests of older and vulnerable people at heart not prepared to admit that those staff, now on modest pensions, can least afford to lose this money? Why can they not do something about that?

In conclusion, a motion for debate by the Assembly has been submitted on this issue. At the moment, it has been signed by Mr McNarry of the Ulster Unionist Party, Ms Lo of the Alliance Party and Mr McDonnell of the SDLP. We believe that it would be helpful for all five main

parties to support that motion. This is not a party political matter; it affects all communities. It would also be helpful if the Minister, perhaps with your persuasion, would discuss this with us. He has never discussed the issue with the Civil Service Pensioners' Alliance. We did ask for a meeting once, but it was refused and he has never invited us over his door. That is all I have to say. Thank you for your patience.

Mr McNarry:

You are very welcome. I am sorry that you have to come here. That is a genuine thought. Some of you know that I find this situation reprehensible. I fully understand how it occurred, but I do not understand how you were left out. That is a major error that needs to be put right. We found out today that the Minister has difficulty in meeting his own Committee, so it comes as no surprise that he cannot find time to meet you.

Mr McLaughlin:

You should not ask to meet him on a Wednesday, anyhow.

Mr McNarry:

Not on a Wednesday, that is for sure. However, I hope that we may be able to take that forward and make representations to the Minister on your behalf.

You say that the number is around 460 people. I understand that perhaps twice as many people outside your membership may be caught in the same situation and subjected to similar circumstances. That is the unknown quantity in this. You are doing your membership proud in taking this forward, and I hope that you will be rewarded. The trick is to enable your legitimate grievances to be recognised. That is the first step: to get recognition that you have genuine, legitimate grievances that should, therefore, be addressed.

Beyond what you have said about the tribunal, there have been suggestions that a legal challenge could unhinge this settlement. I know that legal aid is going to be reduced, because I sit on the Justice Committee, which is considering that separately. Can you tell this Committee whether you have explored or would explore taking out a legal challenge, perhaps as a last-ditch effort? You also say that, in your opinion, a compensation package would be modest. Bearing in

mind the 460 people involved, do you have any ideas of the costs involved in that?

Mr Baxter:

I do not know how much faith you can have in my figures, but based on an average sum of money being paid out over four and a half years, from nought to about £10,000, the figure I came to was about £2.2 million, or slightly less.

Mr McNarry:

For the 460?

Mr Baxter:

Yes, for the 460. Let us say about £2 million. I understand that others have calculated on paying everybody the maximum, whereas I tried to do a graph and staged it backwards. If everybody got the maximum, it would come out at about £4.5 million. That more or less confirms my figure, because if you go back and take an average, the £2 million must be not very far away from it.

Mr McNarry:

Have you a view on a legal challenge?

Mr Baxter:

We thought that that would be, as you say, a last-ditch effort. We thought that the best thing to do was to try to go through the political process first. The point about all this is that we have met no MLA so far who does not have sympathy for us or see that there is a case to be answered, so we were quite optimistic that the political process would see us right. If it does not, then we may look at the legal road as a back marker. However, that costs money. We are a pensioners' organisation and we have to be very careful with our pennies.

Mr McNarry:

My understanding is that DFP borrowed something in the region of £200 million to make the settlement. It is not as if that money was there; the Department had to borrow it. Are you clear in your mind that in that settlement the legitimacy of your claim was not considered in any of those figures?

Mr Baxter:

I would be inclined to think that it was not. If equal pay legislation was used as a framework, as the Minister says it was, it would have been clear from the outset that the pensioners would be excluded. That is written into equality law. If you do not apply within six months of retiring, you are out. If they were basing their figures on the equality law arrangements, they would have known from the very start that the pensioners would have been out.

Mr McNarry:

Would the unions also have known that? Do you retain union membership or affiliation?

Mr Baxter:

No, we are a separate organisation.

Mr McNarry:

Would they have known those figures?

Mr Baxter:

The likelihood is that they would, and the likelihood is that they would not have liked it. I cannot speak on behalf of NIPSA, but I would think that it probably got the best deal that it could out of the authorities. My colleague from NIPSA may have something to say.

Mr Nixon Armstrong (Northern Ireland Public Service Alliance):

The negotiations were very secretive, as those sorts of negotiations are. There was no opportunity for anybody who was retired, other than the people who had retired within the six-month period and lodged a claim. The other thing is that the Department looked on people who had retired as not being members of NIPSA, so it was not thinking of having anything to do with those people because they were retired and not NIPSA members. For that reason, it would have left them out of the loop from the word go.

Mr McNarry:

Thank you very much.

Ms Purvis:

I have said this to you before: what happened was grossly unfair and needs to be corrected. The will to do that lies with the Minister. You said that you are not represented by the trade union, but you must represent a sizeable population of retirees. Do they include people who retired early on medical grounds or disability? Are you representing their views as well in the discussions?

Mr Baxter:

No. By and large we simply represent people who retired in the normal course of events. Our organisation is open to people who are fifty years old and over, so it is possible that some of them have joined us, but they have not made any particular representations to me about having lost money as a result of the settlement.

Ms Purvis:

There is another population that needs to be considered. We have information in our packs that is an answer to a question to the Minister of Finance and Personnel about how many AAs, AOs and EOIs had retired from or left the Civil Service between 1 February 2003 and 31 January 2009. The figure for retirees is just over 1,000 in those three grades, and the figure for leavers is 8,383 for the same period. However, you said that you were basing your figures around the figure of 460.

Mr Baxter:

We wrote to the Department and that was the figure that we got. However, we asked only for the number of people who had retired between 1 February 2003 and 1 August 2008 because those were the four and a half years under consideration. Our figure came out at about 463.

Ms Purvis:

When should the cut-off date be? Should it be from 1 February 2003 to 1 August 2008?

Mr Baxter:

We do not see that we have a greater claim to go back further. According to modern information, many of our people were underpaid for years, but, given that the settlement date was agreed at

that particular date, we would be content with that. If someone offered us more, we would take it; however, that is not going to happen.

Ms Purvis:

Should anybody who worked and left in that period be entitled to the settlement?

Mr Baxter:

I do not know; that is a different question. The people whom we represent had their careers in the Civil Service and then retired. People who left for other reasons may be in much better jobs or may have gone abroad. All sorts of things could have happened to those 8,000 people. I think that we have to confine ourselves to our pensioners.

Mr McLaughlin:

It will come as no surprise that there is significant disquiet about the terms of the agreement, albeit that the negotiated agreement deals with a substantial element of what was a long-standing injustice. However, the fact that it did not include everyone who was discriminated against leaves a very bad taste. I agree that the matter must be addressed.

The industrial tribunal process may not be an obvious option any more for a complaint about the equal pay regime, or, more specifically, the unequal pay regime. However, it may still be an option in respect of the employers' duty of care, because all the evidence that I have heard, and I have not heard a single testimony that contradicts this, indicates that no employee was made aware by their employer of a requirement to lodge a claim as an eligibility test. That was a legal requirement, which is specified in legislation; therefore, it is an issue that should be explored. I understand from a departmental perspective — and officials are listening carefully to this discussion — that they are concerned about the Pandora's box scenario that you addressed; but this is quantifiable, measurable and manageable. Nevertheless, we may need more than just a moral argument to tip the balance.

It was the threat of the industrial tribunal setting a threshold that compelled, rather than convinced, the Department to engage to get a deal arranged. I am concerned that the trades union side did not explore all its options. The Committee followed the process, and it is amazing that so many people with a genuine interest have been excluded from what is expected to be a final and

lasting settlement. The issue will not go away. Almost every month, we get a different facet of it; sometimes, it may be one that we did not anticipate, but it is drawn to our attention. There is considerable disquiet.

The Minister has resisted arguments for an independent arbitration process. We will have to maintain the pressure to get a response to that reasonable and sensible approach. We should examine whether the industrial tribunal process is available to test the question of the duty of care because its consequences have been significant for the cohort of former employees that you represent.

Mr Baxter:

The thing about dealing with older people is that it must be remembered that they are older. They are nearing the end of their lives —

Mr McLaughlin:

I am in the same category. I declare an interest.

Mr Baxter:

The legal path can take years, so some of them may never benefit. However, if the employer, through the political process, can be persuaded to deal with it quickly, those involved will benefit. Legal cases can take years to settle — one industrial tribunal took 11 years. That means that if someone is 60 years of age they will be 71 before they see whether they will get any money. The political process is our preferable route.

Mr McLaughlin:

I understand that, but it took from the early 1970s up to last year to get the settlement enacted here. It probably takes time to resolve all the outstanding issues, particularly as some of them are only now starting to emerge. Perhaps there are some aspects that even the Department did not anticipate. It knew — this is the Pandora's box scenario — that there are many loose ends, and there does not appear to be the political will to do it. Even a unanimous motion in the Assembly would not compel the Minister to do the business the next day. However, the motion will certainly be debated. I am interested to know whether we have been invited to support it because

this is the first that I have heard of it.

Mr Baxter:

I am inviting you.

Mr McLaughlin:

I noted your comments, but it has not happened so far. It is not the best way to go about influencing people and winning friends.

Mr McNarry:

I give everybody an open invitation to go to the Business Office and sign it.

Mr McLaughlin:

We could do that, but hearing about it belatedly sometimes causes other dynamics that we do not need.

Mr O'Loan:

I welcome the witnesses; it is very good that you are here. I took much to do with the equal pay issue as it worked its way through. I was very supportive of the civil servants who are in posts and I am equally supportive of your position. As I understand it, the guidance is that you would not succeed under law. Equally, there is nothing, as you rightly say, to bar the Minister from giving you due and positive consideration. As I have always said, the settlement was guided by the legal entitlement; it did not simply reflect absolutely the legal entitlement. Had the legal route been chosen, the matter could have run its course through the tribunals. However, a decision was made to negotiate. It was unfortunate that your position was not considered fully and properly.

I know that we are short of time, Chairperson, so I will ask only one question. Dame Joan Harbison, the Older People's Advocate, wrote to us and suggested that some recognition of the situation and financial terms could be made, given the financial stringencies at this time, even if a full settlement were not possible. Would that be a useful position for the Committee to adopt? What is your stance on that? Would you take an all-or-nothing view or would you be open to compromise? It may be a difficult question, but I put it nevertheless.

Mr Baxter:

We have never been asked to discuss that issue with the Minister or with officials; therefore, the question of what we would settle for has never arisen. If they ask us to discuss it, we will consider our options.

Mr O’Loan:

Fair enough. That is a better and, no doubt, a useful answer. I will leave it there. Thank you.

Dr Farry;

I welcome our guests and sympathise with them. To resume where Declan left off, we are about to hear from departmental officials, and, in a sense, we members act as intermediaries. You tell us your version of events and then we talk to officials. I know that you are keen to cut out the middleman and have your own meeting with officials. However, since we are about to talk to officials, it would be useful for you to outline the key themes that you wish us to push with the Department.

Mr Baxter:

The questions that I asked at the end of my submission are a steer. When it became evident that retired staff would lose out, which the Department must have known from early in the process, why did it not stop and think again? Did it not anticipate that this would create mayhem among ex-employees? Did it not value the service that those employees gave over the years that they worked? Some of our members worked in very difficult areas. I have been on the phone to some of them at night. They rang me to say:

“Why have they done this to us, Ivan? Our office was bombed three times. We went in the following day. We cleared up glass. We cleared up files. Why are they doing this to us? Have they forgotten the service that we gave?”

Those are the questions that ought to be taken on board when dealing with such an issue. I know that they may not be legal questions, but they are important.

If older people are so important to this Administration and this Administration cannot increase benefits because it is not in its gift to do so — it does little for old people because all such matters are decided at Westminster — here was a golden opportunity to do at least something for a small number of pensioners. Why did the Administration not grasp it?

The Chairperson:

There are no other questions in this session. Thank you for your attendance. We will send a copy of today's Hansard report to the Minister. I can also send a letter requesting him to meet you as a matter of urgency. Members may bring the issues that you raised to our next evidence session. You are welcome to see the reply to that. Thank you for your attendance, and I apologise again that you had to wait.

Mr Baxter:

Thank you.