

COMMITTEE FOR FINANCE AND PERSONNEL

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Dear Norman

NICS Equal Pay Settlement: Residual issues arising from evidence sessions

At its meeting on 16 November 2011, the Committee for Finance and Personnel considered residual issues arising from the evidence heard in relation to Equal Pay.

The Committee agreed that the issues attached at Annex A be forwarded to the Department for a written response to inform the Committee's further deliberations on these important matters.

I would be grateful for a response by 30 November 2011.

Yours sincerely

Shane McAteer
Committee Clerk

Annex A

NICS Equal Pay Settlement: Key Issues Arising from Evidence Sessions

Background

1. The Committee has taken evidence on the NI Civil Service (NICS) equal pay settlement from a range of stakeholders, including senior Departmental officials and representatives from the NI Public Service Alliance (NIPSA), the Civil Service Pensioners' Alliance (CSPA) and the Police Service NI (PSNI).
2. Three key residual issues arising from the evidence received are set out below.

Key Issues

Single Pay Source

3. The Department has stated that a single pay source is “at the heart” of this issue; in respect of equal pay legislation the key issue is *“who is the determining authority for the purposes of pay; what is the source of decisions on pay?”*¹

Committee questions:

- **What is the basis for the PSNI being treated differently to SSA in terms of the pay delegation principle?**
 - **Following the pay delegation to the SSA, did that Agency have formal, written agreement that pay negotiations would be conducted on its behalf by DFP?**
 - **Did DFP have executive authority in respect of NIO/PSNI civilian staff pay? If this is the case, and in view of the fact that PSNI contend there was no effective pay delegation in place, is DFP not the “determining authority” for decisions on PSNI pay?**
4. The Committee has heard that many of those excluded from the terms of the settlement were seconded to other bodies on joining the NICS; however, it is generally accepted that these employees were covered by NICS terms and conditions of employment.

¹ D Baker, 7 September 2011.

- PSNI representatives stated that any attempts to change the terms and conditions of staff were effectively vetoed by DFP, e.g. proposed changes to the grading structure would have resulted in staff being expelled from the pension scheme (PCSPS (NI)). Committee question: **Does this not imply a seamless relationship across these bodies in respect of terms and conditions of service?**
- Direct employees of the Policing Board were entitled to the lump sum payment; however, PSNI civilian staff were not, despite also being employees of the Policing Board. Committee question: **What is the difference in status of these two groups of employees?**

The Committee also seeks a response on the following key questions:

- What constitutes “pay delegation” for legal purposes?
- From the information available, would this have applied in practice for both the SSA and the PSNI, particularly where DFP has had a role in sanctioning/authorising pay awards?

Use of Equal Pay Legislation

5. DFP stated that this only crystallised as an equal pay issue in 2008; however, NIPSA contends that Management Side have been fully aware of this since 1998/99.
 - Committee question: **Given that this appears to have been an ongoing issue for some time, when and why was the decision taken to use the legal framework of equal pay legislation?**
6. CSPA contends that aspects of the equal pay legislation have been cherry picked, and that the legislation was not intended for use as a class action.
 - Lump sum arrears payments were made to all staff in the affected grades within NICS departments, not just those who lodged claims. Committee question: **Is this beyond the pure legal requirements of the legislation, and outside the strict legal framework within which DFP states it was operating?**

- Committee question: **Is the payment to all staff in the affected grades within NICS departments not, in effect, a negotiated pay deal rather than an equal pay settlement, based on legal obligations? What is the position of retirees in such circumstances?**

The Committee also seeks a response on the following key questions:

- Does Equal Pay legislation operate on an individual claims basis only?
- Is the onus on an individual to take a claim, or on an employer to take pre-emptive action to address issues, or both?
- What were the legal obligations on NICS in respect of equal pay?
- Did NICS go beyond its legal obligations in agreeing the equal pay settlement?

Duty of Care to retirees

7. Concerns have been raised that those leaving the service, particularly retirees, were not advised that it was necessary to lodge an equal pay claim within six months of leaving the service. DFP has advised, both in oral evidence and written correspondence, that it was under no obligation to do so, or indeed that *“it would not be a sensible stance for an employer to take”*.²

- Committee question: **If, as is contended by NIPSA, this issue had been ongoing for some time, would it not be expected that Departments would have had a duty of care to inform employees in this regard?**

The Committee also seeks a response on the following key question:

- Was there a legal obligation on the NICS to notify its employees of the six-month time limit for lodging equal pay claims during the period between the issues being identified and the equal pay settlement being reached?

² D Baker, 22 June 2011