



Northern Ireland
Assembly

**COMMITTEE FOR
FINANCE AND PERSONNEL**

**OFFICIAL REPORT
(Hansard)**

**Corporate HR Issues Including NICS
Absenteeism, Equal Pay and Pensions**

12 January 2011

NORTHERN IRELAND ASSEMBLY

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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 Derek Baker) Department of Finance and Personnel
Mr Mark Bailey)

The Chairperson (Ms J McCann):

I welcome Department of Finance and Personnel officials, Derek Baker, director of personnel in corporate HR, and Mark Bailey, who is on the Department's pay and grading review team. I invite Derek or Mark to make a few opening remarks, after which we will go straight to questions.

Mr Derek Baker (Department of Finance and Personnel):

Thank you, Chairperson. The Committee invited me to deal with four issues, so I will not make an opening statement on any of those, rather I will deal with them as they arise and in the order

that the Committee wishes me to address them.

Ms Purvis:

In our previous session, representatives from the Civil Service Pensioners' Alliance asked some pointed questions, the first of which was about when it became clear — from the outset of negotiations with NIPSA — that retirees would be excluded from the pay deal. What consideration was given to looking at an option to compensate retirees for loss of pay?

Mr Baker:

It did not become clear at the outset of negotiations, which were lengthy and complex; the details arising from those negotiations were nailed down only at the eleventh hour after a great deal of skirmishing and a kind of phoney war in the lead-up. Furthermore, it was not a pay award and we were not involved in pay negotiations; the negotiations were around a legal case based on 4,500 claims that were submitted to an industrial tribunal. Negotiations focused on the removal of those 4,500 claims from the tribunal, so it was a legal process and not a normal pay award, and that legal process provided the frame of reference for the shape of the settlement that was ultimately agreed. Hence the decision to go back six months from the submission date of the claims, in February 2009, to include people who had been in employment from August 2008.

If the claims had gone through an industrial tribunal, which was always an option — the Executive could have decided to fight them and let them roll through the industrial tribunal — there would have been no question of any staff being included in the terms of a settlement beyond six months of the date of their retirement. It would not even have entered the equation. That was the frame of reference that was used in negotiations with NIPSA to settle the claims.

I will be frank with the Committee: I was involved; in fact, I fronted the negotiations with NIPSA. It was not an easy process, and the negotiations were very difficult. Obviously, I was operating under political direction. In conducting those negotiations, part of my remit, as I saw it, was, as far as possible, while meeting legal obligations, to constrain the cost of the settlement, because the cost was absolutely massive, certainly in the context of the Northern Ireland Budget. On the one hand, we were balancing legal obligations; on the other, we were balancing the potential damage to other public services in Northern Ireland; damage that was felt in the course of the past financial year when a significant amount of money was taken out of the Budget to help to pay for the settlement. That was the rationale for not going back beyond the six-month frame

of reference. If we had gone back beyond that and set aside the six-month period, there would have been no frame of reference.

I have heard the proposal that we should go back six years to August 2003 and include in the settlement people who retired during that period. There is absolutely no rationale for doing that. The significance of six years to equal pay is relevant only to the calculation of how much money is due to an individual who is deemed eligible for a settlement. The significance of six years does not relate in any way to determining the pool of eligible people. Therefore, if you went back to August 2003, you would have no rationale for not going back to July 2003, August 1993 or August 1983. There would be no end point, no rationale and no defence for doing it. The logical, or illogical, conclusion is that you go back to the Equal Pay Act 1970 and include each and every member of staff who has worked in those grades since then or, if they are deceased, their estate. I know that that is extreme and sounds a bit ludicrous, but that is where it could lead you.

Ms Purvis:

You can make a rationale for it.

Mr Baker:

You can make a rationale for it, but that is a political decision.

Ms Purvis:

You could make the rationale for it because it is in the interests of fairness and of people who have told us that they earned that salary over that period. They were not awarded that salary when others were awarded it, and they have lost out because of a six-month cut-off date. The argument could be made to award those retirees what they should have been getting when they were working.

Mr Baker:

I could make a rationale for a six-month period because there is a legal frame of reference. Quite honestly, I could not construct a rationale for a six-year period. I could say that there is a rationale for six years, but I could not sit here and defend it because I do not have a clue what that rationale would be. I would have to concoct something, but I could not honestly, off the top of my head right now, think what that would be. Why is six years more relevant than 10 years, 20 years or 25 years?

Ms Purvis:

You paid six years' worth to staff who had submitted claims; that six years' worth was part of the pay deal. The award was calculated on those six years. You concocted that; the Civil Service is good at concocting things.

Mr Baker:

We did not concoct that.

Ms Purvis:

Where did that come from?

Mr Baker:

An industrial tribunal, in making an equal pay award, will require the employer, if the employer loses the case, to go back six years and look at the salary that the individual would have earned over that period and compensate him or her accordingly. As I said, however, that six-year period is relevant to the calculation of the amount of money, not for the identification of an eligible individual.

Ms Purvis:

You just provided a rationale for why you can pay people who retired within those six years.

Mr Baker:

If you go back to August 2003, following the legal frame of reference, the question would be whether you would go back six years before that to calculate how much money such people would be owed.

Ms Purvis:

With the will to do so, you can create the conditions to show that those people have been treated unfairly and should be compensated on an equal pay footing. The case can be made. I take your point that it is a political decision, but we are asking you, as departmental officials, to consider that and to explore ways in which, perhaps, the retirees could be compensated for the pay that they have lost. We are not saying that it is impossible. We are saying that, perhaps, the political will is absent, but as a Committee, we are asking you to explore options. Perhaps you should

meet the Civil Service Pensioners' Alliance to see whether a compromise can be reached on a settlement. Like the majority of the Committee and other Assembly Members, I believe that the equal pay agreement that was reached with NIPSA has excluded a sizeable number of retirees from receiving pay to which they were entitled.

Mr Baker:

I agree entirely that political will is an issue. I am operating under political direction. My Minister has made his position very clear publicly and in correspondence with individuals, MLAs, MPs and this Committee, to which he wrote in February 2009. The Minister has not wavered from that position.

I can speak personally here. I know that many friends and former colleagues are sitting behind me. I feel a bit like Caligula or Attila the Hun sitting here, because I can feel their eyes boring into my back. *[Laughter.]* I fully understand that individuals feel disgruntled about being excluded from the settlement; I have no difficulty with that sentiment, nor do I have a difficulty with the strength of feeling. We have not been totally heartless in the matter, but we are operating within certain financial and legal realities. There are other issues as well.

I believe that there is no firm rationale for stopping at August 2003; it could open the gates to going back much further. However, there is another issue. The group that made a presentation earlier represents people who have retired.

In the three grades affected there are about 1,000 such individuals; the figure of 460 was mentioned, but that relates to just one grade. The total figure is about 1,000. However, if we are to include retired civil servants during any given period — be that six years, four years or 10 years — there would be no rationale for excluding people who have left the service or leavers. There is turnover; people leave to work in other places all the time. To give some context, the number of leavers during the six-year period is upwards of 9,000. Before you know it, there are 10,000 people in the loop. Some of them may have had short service in the Civil Service and, therefore, the amounts involved may not be large. However, each and every case would have to be investigated. That is almost as big as the existing Civil Service equal pay claim that we settled with NIPSA, which would have to be done all over again. Those are some of the practical considerations at play. If retirees are included, I see absolutely no rationale for excluding other leavers.

I watched the earlier part of the meeting on the television outside the room, and I agree entirely with Ivan that pensioners do not constitute all the evils that came out of Pandora's box; however, something of a Pandora's box is involved. Where does this end?

Ms Purvis:

I have two questions. Are you prepared to meet the Civil Service Pensioners' Alliance, and are you prepared to explore options?

Mr Baker:

In answer to your first question, I will meet anybody, any time, and am more than happy to meet the alliance. In answer to your second question, I will take my lead from my Minister.

Ms Purvis:

Can you put that to him?

Mr Baker:

I have conversations with the Minister all the time.

Ms Purvis:

I have one other question on the pay and grading anomaly around the EOII grade. I have received e-mails from people in that grade, as I am sure many of my colleagues have, setting out how badly done by some of them have been. What is the situation with the pay and grading for EOII's? Will those anomalies be resolved? One man sent me an e-mail saying that he would earn more if he asked to be demoted.

Mr Baker:

No he would not; it does not work like that. However, you are absolutely right that there is an overlap between the maximum of the administrative officer grade and the minimum of the EOII grade. The equal pay settlement exacerbated that overlap, because part of the settlement involved lengthening the top of the scale for administrative officers. I understand why executive officer grade IIs feel aggrieved, as some of the people whom they supervise earn more than they do.

Overlaps are not uncommon between other grades in the Civil Service. For example, a senior

civil servant at grade 5 could be paid significantly less than someone at grade 6, which is the grade below. It happens, it is uncomfortable and it is part of the anomalous structure of Civil Service pay scales.

As part of the equal pay settlement we committed ourselves to a pay and grading review. Mark will lead on it and I will be responsible for it. We have committed to completing that review by the end of this calendar year and have started work on it. We want to carry out the review with NIPSA, and that anomaly is one of the issues that we have to look at.

In the past, we have dealt with pay anomalies through annual pay awards, where we have tried to restrict growth in the maximum of pay scales and raise the minima of pay scales. Subject to decisions on the current pay award, which we need to negotiate now with NIPSA, we will try to do that again to reduce such anomalies. We will do that within the context of normal pay awards. However, it is also an issue that we have committed to addressing as a priority in the comprehensive pay and grading review that was part of the equal pay settlement.

Ms Purvis:

I want to read you something that was sent to me by an employee:

“I worked with a female colleague over 10 years ago. We were both top of the AO pay scale earning the same yearly figure. I got promoted to the EOII grade while my colleague remained in the AO grade. My colleague is top of the AO pay scale and earns approximately £2,000 per year more than me. If I was demoted, I would earn more than I do now.”

Mr Baker:

I do not think that that is right. If someone was demoted, I do not think that they would get a pay rise. Nobody has a right to demotion; that is at the discretion of management. People cannot demand to be demoted. However, if anybody was demoted, they would not get a pay rise; we would not allow that anomalous situation to arise.

Ms Purvis:

What if they were demoted from EO2 to the top of AO?

Mr Baker:

Yes, but they would not be. You would not be demoted and get a pay rise. That just would not happen. However, I understand the point that is being made: someone is aggrieved that someone at a more junior grade is earning more. They are absolutely right: those circumstances exist, and

that is one of many anomalies in our pay structure that we have to sort out as part of a pay and grading review.

Mr McLaughlin:

Those anomalies that will be dealt with through the pay and grading review process — what caused them in the first place? Are there too many grades at each level? Is it too complex?

Mr Baker:

It is not as simple as that. We have a pay structure that is a legacy of various things. Pay was delegated from the Treasury to the Northern Ireland Civil Service in 1996. We inherited a pay system which itself was the product of lots of different pay agreements between the Government and lots of different pay groups — technical, professional and general administrative staff. There were anomalies in that. Over the years, we tried to work those out of the system. By and large, unless you are going to cut somebody's pay, which is difficult to do legally — in fact, you would probably be guilty of unlawful deduction of earnings if you cut somebody's pay without their agreement — dealing with those structural anomalies costs money. You either level somebody up or whatever.

The quantum of pay remits provided for in Government pay policy year on year was too little to take any big-bang approach to working those structural anomalies out of the system, so we have been doing that incrementally. We have done some, and have made progress. One thing that we have to do to remove age discrimination vulnerabilities is to reduce the length of our pay scales. We do that usually every year by lopping the bottom point off a pay scale. We have been doing that year on year. A number of years ago for a given grade we may have had a pay scale that was 15 points long. Now, the pay scale for the same grade may be nine points long. That is still too long, and we need to get it down even lower. That is the kind of thing that we have been doing, but it is really a legacy of the past.

Mr McLaughlin:

Is it the case that anomalies can be dealt with only as they arise rather than removing the source of the anomalies?

Mr Baker:

A pay and grading review will hopefully identify all the anomalies once and for all and make

proposals for dealing with them once and for all. I really do not want to find myself, if I am still in this job, in the same position that I was in two years ago when the equal pay issue arose, because it was no place to be, and it was a bad place to be for the Northern Ireland Civil Service. If we do, I will have been criminally negligent not to do anything about it. Hence our commitment to a pay and grading review.

Whether there is the money to address all those anomalies in one big-bang approach will depend on the anomalies we find and the measures that we propose to fix them. That is why we need to do it with the trade unions, so that there is responsibility on both sides to fix those anomalies in a reasonable and affordable way. Some are easy to fix and some may not be so easy to fix, but we need to do the piece of work and come up with the recommendations.

Mr McLaughlin:

Are you saying that you cannot fix it unless you get negotiated agreements? If you move from one grade to the next as a function of promotion, do you necessarily get an increase in salary, or does that then open up progression to the nine-point scale at that grade? How do you remove a self-perpetuating problem?

Mr Baker:

In simplistic terms, it would be nice to get to a pay system with short pay scales and clear blue water between each grade. At present, we do not have that. We have long pay scales and an overlap at each grade.

We have a pay on promotion policy which means that any individual getting promoted from one grade to the next will either go to the bottom of the pay scale for that grade or a 9% pay rise, whichever is the higher. Somebody getting promoted will always get a pay rise. They will certainly not get a pay cut just because they have been promoted. That is our pay on promotion policy.

The consequence of that is that someone who is at the top of their pay scale and receives a 9% pay increase on promotion will jump quite far up the pay scale of the next grade, if there is an overlap. They could leapfrog someone who has been in the next higher grade and has been there for quite some time. That latter individual would feel a bit aggrieved because the new promote, who has much less experience, has leapfrogged them up the pay scale. That is why the clear blue

water between the pay scales is important for us: to stop that leapfrogging effect. Those are the kinds of structural things that we will want to address in a pay and grading review.

Mr McLaughlin:

I accept that a lot of history is involved and that overlapping negotiations perhaps have unintended collateral consequences. I will not pursue that, but it is clear that, at some stage, we have to decide to bring that to a halt, even if that ends up being a two- or three-term strategy to achieve the outcome, which it almost certainly will.

I want to go back to the equal pay settlement. We talked about rationale and whether we could establish a basis for discussion. A number of cases were lodged with the industrial tribunal, but not every serving civil servant was associated with those. However, the rationale emerged, if I can put it that way, to include them. It seems that even if the frame of reference that we have been told about is used, there is a benefit in discussions with the stakeholders — those who have retired, those who left, those who, for one reason or another, have been left out of the package. There has to be a time frame to make a settlement possible. That, in itself, could be the basis on which we achieve the political will to do something about it.

If the dangling Pandora's box, which goes back to 1970, is all that is available, people will not do what they should do. Perhaps the first discussion is whether we can set a datum point, because there is one in the present arrangement. We took the date of the industrial tribunal claims and calculated back six months. Everyone proceeded on that basis. Pandora's box was dealt with and a rationale was found. We should consider how to establish what the quantum is that has to be dealt with in terms of the number of individuals who are living with an injustice that started a long time ago and the cost to the Administration and Assembly of dealing with that. No one denies that it is an injustice that has not been resolved.

Mr Frew:

I will change tack. Will you give us an update on the equal pay settlement and the 2009 pay award with regard to PSNI civilian staff? They are the one out of the 1,000 who are still left. Discussions have been ongoing between the Department of Justice, DFP and the PSNI. Will you give us an indication of when that will be resolved?

Mr Baker:

I will do my best. I will probably have to be a bit vague out of necessity. You are right: of the 15,900 or so staff who we identified as being due a lump sum, we have paid out to about 15,000. However, there is a core left, who probably fall into three groups. Believe it or not, there is a group of staff whom we just cannot reach or track down despite writing to them, cajoling them, chasing them and saying that there is money for them. It is like somebody who has won the lottery but will not cash in their ticket. There is a group of staff in what was the NIO, now the Department of Justice, who feel that they may resist signing a compromise agreement because there may be something coming down that route. However, that avenue is being closed down to them and the Department of Justice has taken a very clear stand.

There is also a group of staff who had service in the PSNI. As you probably know, the PSNI has submitted a business case to the Department of Justice. The Department of Justice has shared that business case with DFP, and lawyers are looking at that. There are a number of technical legal issues in and around that business case, and the negotiations are quite intensive and quite detailed. It would be remiss of me to give any clue now as to the way in which those negotiations are going to go, because it is outwith my remit and the amounts of money involved are, potentially, very large.

We are very conscious of the need to nail that issue down, not least because we want to close the equal pay issue as soon as possible and do not want those loose ends hanging about. I am afraid that I am not going to give you a satisfactory answer as to the timescale. However, it is a live issue, a lot of intensive discussions are going on and, hopefully, it will be resolved sooner rather than later. It is in everybody's interests to do that.

Mr Frew:

I appreciate that the negotiations will be complicated. However, is there any mechanism or device that could be put in place to put a time limit on it and put pressure on the bodies involved to, as you said, quickly resolve the issue to your satisfaction, as a Department, and to the satisfaction of the individuals who are deserving of the award?

Mr Baker:

There is no mechanism in place to put a time limit on the negotiations. Everybody realises that they want this done as quickly as possible, which is in everybody's interest. Having this hanging

around is no good for anybody.

At some stage, we will have to pull the shutters down on the wider issue of the equal pay settlement that we negotiated with NIPSA. We cannot let that drift indefinitely. However, that is something that we would probably have to agree with NIPSA, because it was a joint agreement. For example, we could not unilaterally decide that that is it, that three months from now we are pulling the shutters down and that anybody who has not signed is going to lose out and can take their chances at tribunal. We are not about to do that immediately. Again, that would be a political decision. It probably would concentrate minds a little, but it would be a bit artificial and perhaps a little unfair at this stage. However, I am sure that our Minister will turn his mind to that at some stage. It is probably of no reassurance to tell you that we want to sort this out quickly with the DOJ and the PSNI.

The Chairperson:

In reply to some of Dawn's questions on equal pay, you said that that is obviously a political decision for the Minister. The previous group giving evidence said that the Minister had not even met them. As Chairperson, I will be writing to the Minister to ask for that meeting. Hopefully, some sort of mechanism can be found to try to look at the issue in detail.

A number of issues were raised around sickness absence in the Civil Service. The audit report was mentioned, along with your assessment of what steps have been taken on that, and also the Senior Civil Service pay review. We are running behind time, so, if it is OK, we will write to you with those questions and get that information from you.

Thank you very much for coming along.