



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Equal Pay Claims

15 March 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Lord Morrow (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Lord Browne
Mr Thomas Buchanan
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Mr Kieran Bannon) Northern Ireland Public Service Alliance

Mr David Hughes) Department of Justice
Ms Karen Pearson)

The Chairperson of the Committee for Justice (Lord Morrow):

We welcome Kieran Bannon, assistant general secretary of the Northern Ireland Public Service Alliance (NIPSA). This session will be reported by Hansard. Kieran, I invite you to brief the Committee on the equal pay claims from NIPSA's perspective. You are very welcome.

Mr Kieran Bannon (Northern Ireland Public Service Alliance):

I thank the Committee for the invitation to address members. I will be brief and leave it to

members to ask questions. We have provided a briefing paper, which I hope members have had an opportunity to see.

Our members who worked for many years in the Northern Ireland Office — now in the Department of Justice (DOJ) — and the PSNI held the status of Northern Ireland civil servants. As a result of that, we believe, and our members working in those areas firmly believe, that they are entitled to the application of the full terms of settlement resulting from our negotiations with the Northern Ireland Civil Service (NICS) on tribunal cases that were lodged on behalf of our members to, hopefully, eliminate a gender pay gap that existed in the Northern Ireland Civil Service.

The management sides of the Department of Justice and former Northern Ireland Office, and the Department of Finance and Personnel (DFP), have for some time resisted our efforts to have the terms applied to our members who worked for, or had former service with, the NIO or PSNI. Some progress was made in our representations to the PSNI in that we understand that PSNI management holds similar views to NIPSA about the application of the terms of settlement. However, its sponsoring and funding Department, and DFP, may well have taken a different view. Therefore, progress has been made to some extent, at least with the PSNI, in that the revised salary scales that were negotiated as part of the settlement applicable from 1 February 2009 have been applied to staff who still work in the PSNI.

However, an anomaly still exists for those who had former service with the PSNI and who now work in a Government Department. They had their time with the PSNI excluded from the calculation of their revised salary and lump sum payments under the negotiations. So, the time that they spent as Northern Ireland civil servants in the PSNI was excluded.

The other outstanding issue is that people currently in the PSNI have not attracted the settlement lump sum payment at all. We understand from correspondence from the Minister of Justice following a meeting that that is the subject of discussions with legal representatives and they were to bring the issue to a conclusion. However, we have had no further discussions on that matter.

Our concern is that, throughout our members' careers as Northern Ireland civil servants, there was a free exchange of movement across the PSNI, the NIO and Northern Ireland Civil Service Departments. In other words, their status as Northern Ireland civil servants did not preclude their movement throughout the entire Northern Ireland Civil Service. We believe that, as a result, they are also entitled to the payments.

We understand that the Northern Ireland Office, as a result of discussions that we had with management side prior to the formation of the Department of Justice, would have argued that it formed a separate bargaining unit. We recognise that we have had separate pay negotiations with the Northern Ireland Office, which had a pay delegation since 1997. However, we entered discussions with the head of the Civil Service at the time about the relationship between the Northern Ireland Office operating under those delegations and the Northern Ireland Civil Service because the members there retained the status of Northern Ireland civil servants.

It is clear from our the attachment to our briefing paper that David Fell, the then head of the Civil Service, gave certain assurances. We believe that those assurances were then translated in practical terms within the Northern Ireland Civil Service staff handbook whereby, in particular, we negotiated for what were called interface arrangements, which allowed the continuation of the free movement of Northern Ireland civil servants working in the then Northern Ireland Office across other parts of the Northern Ireland Civil Service.

We have felt bound to pursue the case legally, because there has not been any movement in the progression of settling the issues. I report factually that we have lodged cases at the County Court on behalf of our members in the Department of Justice, the PSNI and those now in Northern Ireland Civil Service Departments with former service in either the Northern Ireland Office or the PSNI to try to secure payments through the legal process. Defences to those cases have been lodged, and we are now in the process of providing better and further particulars on the questions raised by the respondents.

As always, we remain open to negotiations, and we are still open to having further discussions with the respective management sides across the Department of Justice, the PSNI and DFP. As we see it, the difficulty does not rest with the PSNI management; rather, the blockage seems to be

at the Department of Justice, as the funding Department, and potentially DFP.

The Chairperson:

Thanks very much, Kieran. Do the PSNI staff and the DOJ staff have the same case, or do you feel that one has a stronger case than the other?

Mr Bannon:

We believe that they have similar cases and that both are strong. From the point of view of former NIO staff now working in the Department of Justice or in another Northern Ireland Civil Service Department, the difficulty is a point of law. The law states that one cannot seek to rely on a comparison with an entirely separate bargaining unit, which will be defined by a court or a tribunal. I suppose that that was the argument that the Northern Ireland Office used in earlier discussions and is still the position adopted by the DOJ. Normally, that rule of law is accurate.

However, I think that the difficulty for the management side is that the people who have been seconded to those areas are actually employees of the Northern Ireland Civil Service. As such, we believe that holding that status means that they have the right to draw a comparison with Northern Ireland Civil Service technical grade 1 (TG1) and technical grade 2 (TG2), which were the comparator grades for the Northern Ireland Civil Service cases. That is the point on which there is some disagreement and on which our position differs from that of the management side. We believe that the case is the same albeit the law applies slightly differently. Management argues that there is a separate bargaining unit and that the comparison cannot, therefore, be made.

Some case law was established in the Grant case involving the Northern Ireland Office. However, at a pre-assessment hearing in a subsequent case, the McCann case, the person hearing that case believed that that comparison could be made. In other words, the fact that an individual holds the status of being a Northern Ireland civil servant means that there is potential legitimacy. I suppose that that point may be tested in law through the County Court cases.

The Chairperson:

Thank you. Why do you think that PSNI management appears willing to pay its staff a lump sum, but there is not the same willingness on the side of the DOJ and DFP?

Mr Bannon:

It is difficult for me to answer that. Maybe that question would be better put to the management sides of those respective areas. To tell you the truth, I think that there is a reluctance to pay out public funds in cases where people believe that that is not necessary. I suppose that some people in the management structures believe, rightly so, that there needs to be a robust case for spending public money to settle cases. However, we believe that those cases exist, and we have provided all the information that we believe justifies them. Again, the PSNI is slightly different from the Northern Ireland Office in that the comparator grades — technical grades 1 and 2 — that we use for the equal pay cases exist in the PSNI. I suppose that the PSNI management has recognised that and, therefore, the vulnerability in law that it is under, but it is required to have the necessary approvals from its sponsoring Department and DFP at the end of the day. That is where the resistance appears to be.

Mr McNarry:

The withholding of entitlements in the manner in which we are being told about is an absolute disgrace. Elected representatives should have a greater say in what is transpiring, and perhaps should have had that say sooner. How many people are caught up in this issue?

Mr Bannon:

It is difficult to be precise because different people are involved in various elements of it. It would be remiss of me not to point out something that is contained in our briefing paper, which is that we negotiated terms in relation to the establishment of the Department of Justice. There is provision to provide an option for current members of the Department of Justice to assimilate onto the revised Northern Ireland Civil Service pay scales. That is primarily on the basis that they are now part of the Northern Ireland Civil Service; it is not a reserved function any longer.

However, it was agreed to apply that only from the date of the establishment of the Department, which was 12 April 2010. That excludes the lump sum settlement. It is difficult to assess the numbers because there are people who are currently working in Northern Ireland Civil Service Departments who have had former service, so we do not have access to all of that information. However, I am sure that it is information that the management sides could provide.

Mr McNarry:

It would be interesting to see that. It is very unfortunate that it has gone to a legal challenge because this Committee is sitting here as almost a tribunal of a sort to try to get people to come together before we get to that stage. Not that long ago, there was a major debate about having to borrow money from the Treasury — something like £200 million — to sort out equal pay in the first place. However, that deal was done, and these people seem to have been left out of it. Were the people involved informed of any potential complications when they agreed to be seconded?

Mr Bannon:

No. In fact, many of our members have produced the letters of appointment, which make clear that they hold the status of a Northern Ireland civil servant. A number of years back, they would traditionally have been appointed to the Department of Finance and Personnel and seconded. Their letters of appointment would have made that clear. Indeed, at various other stages, they would have been reminded of that. I have alluded to some of that in the documents that I have produced. In fact, legislation was drawn up to make clear that, for example, civilian support staff remained civil servants. Legislation was specifically designed to do that.

Mr McNarry:

Looking at paragraphs 5.6 and 5.7 on the last page of your report, there is a line that states:

“staff, who have retained their NI Civil Service status and are now working in an NICS Department, are being treated less favourably than former NI civil servants who have relinquished that status and are now employees of the PSNI.”

Could you elaborate on that?

Mr Bannon:

I can indeed. The equal pay settlement essentially had two main elements. One was to have a revision of pay scales for the administrative assistant (AA) and administrative officer (AO) grades assimilating onto their comparator grade pay scale, thereby dealing with the equal pay point. That is applicable from 1 February 2009. To assimilate onto those pay scales, we agreed, as part of the negotiations, a formula that would be applied that took account of a person’s service as a Northern Ireland civil servant in their substantive grade at that date.

The PSNI agreed to apply the 1 February 2009 revised pay scales. People were assimilated

onto those revised pay scales with account taken of their full service as a Northern Ireland civil servant, irrespective of whether that was served in a Northern Ireland Civil Service Department or within the PSNI. They had the full terms of assimilation as negotiated applied. What the Northern Ireland Civil Service has done for people currently working in its Departments who have former service with the PSNI is to exclude that service when calculating the point of assimilation under the 1 February 2009 revised pay scales.

The second element relates to the lump sum payment. If the PSNI were to agree to pay the lump sum settlements, as its management side wishes, but as is being resisted by others, it would also be applying the full terms in respect of length of service. Again, however, for people working in Northern Ireland Civil Service Departments who have former service with either the Northern Ireland Office or the PSNI, that service has been excluded from the calculation of lump sum settlement payments.

Mr McNarry:

I have two further brief questions. I am concerned at what has happened. Do you think that that puts in jeopardy, or would put people off, movement around the Civil Service or secondment? Sometimes, people see secondment as a way of getting into another Department at a higher grade and improving their career chances. With all this going on, I am concerned that some people might say, "Hang on a second. No." However, I understand that people need to be shuffled around to fill places. Do you think that people will just say no? Are the contracts not going to be good enough?

Mr Bannon:

That is unlikely now that the reserved function has been removed and it is a matter for the Northern Ireland Assembly and our own Administration. However, we have secondment arrangements in a whole raft of areas and if similar circumstances arise in the future, and people believe that taking a secondment could in some way jeopardise issues of this nature, they may well consider that.

Certainly, the case is absolutely clear for people who were seconded to the Northern Ireland Office and the PSNI. Essentially, they believe that they have been shafted by the management

side in those respective areas. They believe that they provided dedicated service to the public of Northern Ireland while posted in those areas as Northern Ireland civil servants and are now not to receive the entitlements to which they and we believe they are entitled.

Mr McNarry:

Finally, we have been told on a couple of occasions that the Department of Justice has some £26 million set aside to meet the claims. To my mind, that is an indication that they have set that money aside for a specific reason. With the way budgets are at the moment, money of that size is not set aside for just anything. However, there have now been legal challenges, and it is those challenges that are cited as the reason that we cannot get negotiations moving any more: in other words, the cases are holding everything up. You may not be able to answer this, because it deals with how the courts work, but have you any idea how long it might be before those cases will be resolved one way or the other?

Mr Bannon:

I challenge the notion that there can be no negotiations. There can always be negotiations. In court cases, people negotiate right up to the door of the court on the day of a hearing and reach settlements. We are very concerned that that should be presented by the management side. If you look at any of the bulletins and circulars that we put on our websites, you will see that we have made it clear —

Mr McNarry:

Am I right in saying that negotiations have stopped because of the legal challenges?

Mr Bannon:

We have made it clear to the management side that we are still open for discussions. We have felt forced to lodge cases in the County Court because the management side was not properly engaging with us to reach a resolution. We have been forced to go down that route.

We were more than happy to reach a negotiated settlement. The evidence is there to show that we reached an agreement in the Northern Ireland Civil Service cases, rather than pursue the tribunal cases. We would like to contest any notion that we are not open for negotiations. If we

were to walk out of here today and be approached by the management side, we would be prepared to have discussions with them to settle these matters.

However, that has not happened. As I made clear in our briefing, even after our meeting with the Minister of Justice, Mr Ford, and his comments about wanting further discussion about certain aspects, no approach was made to NIPSA to have further engagement with us. That is one area that concerns us.

The matter is now in the legal process. I am not sure how long that will take, because it is in the gift of the courts and the judiciary. Potentially, it could take a further year by the time we get through those processes, lodge hearings, and so on.

Mr McNarry:

If you succeed in court, would your clients be seeking damages and costs?

Mr Bannon:

We would have to consider the position. There are elements that one can attract from a court case that one would not necessarily get out of a negotiation. For example, there was the provision to get interest on payments, had we pursued the equal pay cases at tribunal, although that was not a feature of the negotiated settlement. We would have to consider everything. At the end of the day, we will seek to obtain whatever our legal advisers tell us that our members will be entitled to pursue as a result of the legal case.

Mr McCartney:

Thank you for your presentation. Paragraph 4.2 of your briefing paper states:

“In 1996 the NIO sought and was granted a grading and pay delegation.”

NIPSA resisted that at the time. What was the outcome? What made you say that it was not something that you would recommend to your members? What was the big difference?

Mr Bannon:

At the time, the Northern Ireland Office was seeking a pay delegation. It wanted to have its own pay and grading structure, which did transpire following 1997, and there were different pay and

grading structures. However, the individuals remained Northern Ireland civil servants, and it remained the case that we would negotiate each year. That is why we put weight on the David Fell assurance. The exchange of correspondence with the head of the Civil Service at that time recognised the issues around pay in the context of equal pay. In fact, specific reference was made, and we have quoted from that correspondence in our briefing paper. Specific reference was made to equal pay legislation. It is not something that people were unaware of — they were very much aware of it.

However, the translation of the Fell assurance was negotiated in practical arrangements, such as the interface arrangements to allow the continued free exchange of people working in the Northern Ireland Office, and movement in and out of that. We have members who have been in the Northern Ireland Civil Service: at some point since 1997 they would have worked in the Northern Ireland Office, and at some point they would have been moved back to the Northern Ireland Civil Service Departments. Therefore, there has been a free movement of staff. The same will have applied for the PSNI.

We believe that all of the practical arrangements that we put in place following that delegation were there to protect people's status as Northern Ireland civil servants, and to give them choices about pay matters; for example, which pay scales they would choose to go on or not go on, and how that would be handled.

Mr McCartney:

With regard to the practical outworking, what is the difference between the grades and the terms and conditions?

Mr Bannon:

There is a fairly neat comparison between the grades. The D1s and D2s in the Northern Ireland Office have the same status as AAs and AOs. They had different pay scales, but the 2006 pay negotiations in the Northern Ireland Office brought the NIO pay scales back closer to the range of pay scales with regard to the minimums and the maximums in the Northern Ireland Civil Service. Although we would have negotiated different pay scales, we believe that the only relevance that that may have at the end of the day is that we might have to undertake a separate calculation of

what those people may be entitled to. It may be different amounts than those in the Northern Ireland Civil Service agreement, and we might have to do some calculations based on the Northern Ireland Office pay scales that existed over that period.

That would be the only practical difference, and it would not be in any way insurmountable.

Mr McCartney:

In part of the commentary that we received today, the Department makes the argument that it has no legal liability. Where do you think the liability lies?

Mr Bannon:

We contest whether or not the Department has that legal liability. Again, I have tried to make a distinction between the legal liability arguments that the management side has presented to us, which are different in relation to the PSNI and the Northern Ireland Office. It is clearly the case that there were separate pay and grading structures and separate annual pay negotiations with NIPSA in relation to the Northern Ireland Office. That was not the case with the PSNI. Although I have heard some senior managers argue that the PSNI did have a pay delegation, it may have done something in 1997 stepping out of the Northern Ireland Civil Service pay scales or negotiations for that year, but every year since then it has not had a delegation and it has not had separate negotiations.

There is a slight distinction between the position of the Northern Ireland Office and that of the PSNI. Management side would probably argue that it is more than a slight distinction. The fact that they both retain the status of Northern Ireland civil servants, at the end of the day, centres around the issue of whether or not they have the right to draw a comparison with the comparator grades in the NICS. The PSNI people can do that, because they have TG1s and TG2s in their structure. The former Northern Ireland Office, now DOJ, staff would have to draw a comparison with the TG1s and TG2s in the Northern Ireland Civil Service. We believe that they have the same right as the PSNI to do that, based on the fact that they hold the status of being Northern Ireland civil servants.

Mr McCartney:

You say that there has been no contact with the Minister since the initial contact. Has he stated

publicly that that is because of the court cases, or is he just saying that he can take this no further?

Mr Bannon:

Nobody has come back to us to say that they will not discuss things because of the court cases. There is an attitude within the Northern Ireland Civil Service that, even when you take a tribunal case, which is part of the judiciary at the end of the day, the shutters come down and people stop talking. There is no reason why that should be the case. It is legal people who tell them to do that. There is no reason why management sides cannot sit down with NIPSA and negotiate ways out of this. The Northern Ireland Civil Service did it. We had cases lodged at tribunal for the equal pay claims in the NICS, but that did not stop the NICS management side from negotiating a settlement with us.

Mr McCartney:

Thank you very much.

The Chairperson:

We are stopping there. Thank you for briefing the Committee, Mr Bannon.

Moving on to the other side of this debate, we have with us Karen Pearson, head of personnel and office services, and David Hughes, head of the policing policy and strategy division. You are very welcome. This session will also be recorded by Hansard. Will you update the Committee on the current position on equal pay for the PSNI and the Department of Justice? Just to avoid any confusion, maybe you can clearly outline the situation for PSNI support staff and Department of Justice staff separately. There is a tendency for the two to get mixed up. Keep a clear demarcation line, please.

Mr David Hughes (Department of Justice):

That can be made easier, in that I will be speaking in respect of PSNI support staff and Karen in respect of departmental civil servants.

The briefing has been provided to the Committee, and I will reiterate a number of key points. Civilian support in both the RUC and the PSNI before October 2008 were a mixture of civil

servants and direct recruits, with the direct recruits being on equivalent terms and conditions. In 2008, the support staff became direct employees of the Policing Board under the direction of the Chief Constable, or, as has already been set out, transferred to Civil Service posts elsewhere. So, the relevant period for the equal pay issue was prior to that break.

The equal pay settlement extends to those for whom DFP negotiated pay and conditions. That point was made by Mr Bannon. Civil servants who worked in the police were not included in the negotiation that resulted in the equal pay settlement that Committee members are aware of. That was agreed at the outset by DFP and NIPSA.

A number of equal pay cases have been brought to tribunal by PSNI staff, three of which have been brought against the Chief Constable. There are a number of other cases in the 4,500 or so that have been brought against DFP from police staff.

As was said, unlike the Department, the PSNI staffing structure includes the administrative and technical grades that are the basis of the equal pay claims against DFP. However, there remains a question of liability for any pay inequality. Without a recognised liability, it is not possible for the police and Policing Board to make any payment, so the question of liability remains under consideration by the PSNI, the Policing Board, the Department of Justice and DFP. Those are the salient points.

The Chairperson:

Thank you. To keep it clear, we will now have questions to Mr Hughes and bring in Karen at a later stage.

Mr McNarry:

Good morning. Your colleague Mr Harbinson, who is not here, told the Committee that £26 million was set aside to meet the claims. He wrote to me with the same information. How was that £26 million calculated?

Mr Hughes:

My understanding is that, to ensure that a payment could be made if it needed to be, a calculation

was made by the PSNI, which effectively used the terms of the settlement that DFP had reached, as they would apply to the relevant staff in the PSNI.

Mr McNarry:

Are you able to say how many people that £26 million would be divided among? I am trying to find out how many people are involved.

Mr Hughes:

I must admit that I do not have the specific number in front of me, but it was calculated on the basis of the number of those staff in the PSNI.

Mr McNarry:

It would appear that a sizeable number of people feel aggrieved if a sum of £26 million has been set aside. Perhaps you could furnish us with that information.

Mr Hughes:

Yes, I will.

Mr McNarry:

You were both here when Mr Bannon was speaking. What are the obstacles in the Department to continuing with negotiations while legal challenges are under way?

Mr Hughes:

I was not aware that the fact that legal challenges were being brought was an obstacle to negotiation. However, it is important that there is an agreed understanding of the legal position before any negotiation takes place. As I said, the question of where liability rests is still under consideration because it is a matter of considerable complexity.

Mr McNarry:

Hansard is producing a report of this meeting, so that will correct me if I do not get his words exactly right, but Mr Bannon said that he felt that management, that is you, were not properly engaged with the union. If that is the case, it is unfortunate. Does his argument that you are not

properly engaged with the union stack up?

Mr Hughes:

I draw a distinction. When it comes to police staff, I do not have a role on the management side. Engagement with the union in respect of police staff would be undertaken by the police and the Policing Board not the Department.

Mr McNarry:

They are not in front of me, Mr Hughes; you are. As far as I am concerned, you are in front of this Committee to speak about the problems that exist or do not exist with the PSNI and this settlement. I am trying to tease out whether there is a problem. It would appear that, perhaps, the legal challenges are not the obstacle. Nevertheless, engagement is not taking place at a level at which one might expect it to be, and, rather than being dealt with by the courts — I imagine that people have gone to the courts in exasperation and frustration — maybe we could get that engagement back. Are you in a position to tell me whether that engagement could be retrieved?

Mr Hughes:

That is something that I would need to convey to the police and to the Policing Board, which is the management side for police staff.

Mr McNarry:

I understand that. You are not under oath here, thank goodness. We were told earlier about the almost supportive willingness of the PSNI, yet we have people having to take up a legal challenge. That does not sound like good government to me, nor does it sound as if anything is joined up. I am not alone in my constituency, because an immense number of people have come to see me about this and who lack understanding. I need to advise them of what they can do and how I can help etc; that is our role as MLAs. However, it is extremely difficult to advise them when I now hear that there is no proper engagement. It does appear that there was engagement, but once the legal challenges came in, that stopped. You are indicating to me that that may not necessarily be the case and that engagement could start tomorrow. Could that happen?

Mr Hughes:

I am not aware that the cases that have been lodged in the County Court are, in themselves, the point at which the shutters have come down on engagement between management and unions. I am aware that the process is taking a very long time and that it stems from the degree of complexity that arises from the question of where liability may rest for a pay inequality. Those are questions that have required a lot of care and consideration from a number of angles. In particular, it involves researching and understanding the situation that was reached in the mid-1990s. That has involved considerable trawling of files and considerable examination of —

Mr McNarry:

I understand the difficulties that you may have, but I need to hear from the people who can tell me the facts. I appreciate that you cannot tell me. The paragraph entitled “Case Management” in your Department’s document states:

“It may be some time before the matters are heard in court. A cross-departmental group, consisting of representatives from Departmental Solicitors Office, DOJ Policing Policy and Strategy Division, DFP Corporate HR...and DOJ Personnel has been convened to oversee the management approach to the cases involving the Departments.”

Can you tell me when that group was convened? It would appear that it wants to report before the court matters are finished. If those are going to take some time, as the group thinks they will, when will any such report be ready for this Committee to see?

Ms Karen Pearson (Department of Justice):

That group was convened in response to the court cases being lodged so that we could take a consistent and effective approach to the management —

Mr McNarry:

Could I ask you to speak up a wee bit, please?

Ms Pearson:

I apologise; I have a cold.

Mr McNarry:

OK. I have it as well.

Ms Pearson:

That group was convened in response to the lodging of the court cases, because those cases involve a number of parties, including DOJ, NIO, PSNI and other NI Departments. We wanted to make sure that we were looking at the issues across the piece in a consistent and effective way. This is about the case management of the legal proceedings as opposed to producing a report.

I also share the views expressed by David and Kieran, in that the court cases do not, as a matter of fact, bring negotiations to a halt. From the perspective of the civil servants in DOJ, we had a number of very good discussions with NIPSA before —

Mr McNarry:

I do not want to stray on to the DOJ. The people who spoke to me are what I would call PSNI civil servants, and I need to advise them of their position. I would like to be able to do that, but, quite frankly, I am not getting much advice to pass on to them, and it seems that you are stuck. I would love to be able to tell them that someone is trying to unravel all this.

The Chairperson:

Why are the PSNI and the Policing Board not represented on the group that oversees the management of all this?

Mr Hughes:

The purpose of the group's first meeting was to cast its terms and to decide how it would go forward. The intention is that the PSNI and the Policing Board will be represented in the future, but the purpose of the initial meeting was to ensure that we understood what the group is intended to do, how it would work and the extent of its remit. It is not that those bodies have been deliberately excluded; that group is getting together now.

The Chairperson:

I am not insinuating in any way that those bodies are being deliberately excluded, but for the purposes of good management and a clear understanding from day one, it may have been appropriate to include them. That would have assisted everybody, and there would have been a clear understanding of the expectations, the direction in which things could be taken, where the

group was going and how it hoped to get there. If those bodies were represented, they could have helped in that capacity.

Ms Pearson:

It is absolutely our intention to bring the PSNI into the group. In paragraph 8 of our submission to the Committee, we say that we will supplement the group with input from the Crown Solicitor's Office, the Northern Ireland Office, the PSNI and the Policing Board as and when that was required. It is our clear intention that everyone who is party to the cases that have been lodged will be involved in our group.

Mr Hughes:

You have heard that the issue in connection to police staff and departmental staff is slightly different. Therefore, a distinction was made, not least because it was a different respondent in each case.

The Chairperson:

Have seconded NICS staff in the Policing Board received equal pay settlements?

Mr Hughes:

Sorry, are you referring to seconded civil servants in the Policing Board?

The Chairperson:

Yes.

Mr Hughes:

They have been included in the —

The Chairperson:

Have they received equal pay settlements?

Mr Hughes:

They were included in the DFP settlement.

The Chairperson:

Right, so how is their case different from the PSNI support staff?

Mr Hughes:

There is a question about whether there is a difference. That reflects the complexity of the position of the staff in the Policing Board and in the police.

Mr McNarry:

I want to return to the issue of the £26 million, because it intrigues me. If I was running a business and I felt that someone was going to take a case against me, the advice might be to put some money in the bank in a separate account or a vault just in case. Is there a hint of liability, given that the Department has put that £26 million aside?

Mr Hughes:

There is a question about liability that needs to be absolutely bottomed out, and the fact that it has not been possible to do so conclusively to date indicates that there is an argument in both directions. It was prudent to seek the money to enable payments to be made were that liability demonstrated.

Mr McNarry:

OK, thank you.

The Chairperson:

Mr Hughes, when you answered my question about NICS staff who are seconded to the Policing Board, did you confirm that they received equal pay settlements?

Mr Hughes:

NICS staff who are on secondment to the Policing Board have been included. I do not know the timings of the receipt of payments.

The Chairperson:

Is there not some inference there that PSNI support staff have been disadvantaged and are being disadvantaged?

Mr Hughes:

That depends on whether the status of civil servants who were seconded to the Policing Board is precisely the same as the status of civil servants who were seconded elsewhere.

The Chairperson:

They remained on NICS terms and conditions, but they did not receive the equal pay settlement.

Mr Hughes:

It depends on whether DFP negotiated on their behalf.

The Chairperson:

There is also a strong contention that it was all part of the deal at Hillsborough when justice was being devolved. Do you not accept that?

Mr Hughes:

My understanding is that part of the deal was to ensure that the money would be available if it were required.

The Chairperson:

What is the difference between making money available and then not having an expectation that you are going to pay it out?

Mr Hughes:

There is an approval mechanism for the use of public money. Approval for the use of that money to make payments for the equal pay settlement is dependent on there being a demonstrated liability.

Mr McNarry:

What is DFP's role in this matter? Is it pulling your strings? You keep mentioning DFP, and it comes up in all these reports. Is DFP making the decision?

Mr Hughes:

DFP has the final say in respect of approval.

Mr McNarry:

Has it approved the setting aside of £26 million?

Mr Hughes:

I stand to be corrected, but my understanding is that the £26 million that was identified prior to devolution would be found by the Executive. Therefore, DFP and the Department of Justice have an interest in ensuring that that money is available.

The Chairperson:

We are in danger of straying into another area. You may want to come back to that issue after we have heard from Karen.

Ms Pearson:

I will speak on behalf of the DOJ in respect of civil servants who came to us on 12 April. Mr McNarry asked about numbers. There are 500 AAs and AOs in the DOJ. They are civil servants not PSNI staff. There are a further 250 staff in those grades in the Public Prosecution Service who were in the NIO prior to the devolution of policing and justice.

I absolutely agree with Kieran that, if there are things that we can usefully talk about now, we should do that. We had a number of discussions prior to 12 April, and some discussions after that. From management's perspective, the points that NIPSA raised with us were carefully considered and culminated in a meeting with our Minister. He then wrote to NIPSA to say that he had come to the conclusion that the management position was correct that no legal liability had been established. If there is a point that NIPSA wishes to bring to us now that we have not yet considered, we can by all means meet to discuss that. There is no question about that. It is not

court cases that bring those discussions to a conclusion. We simply feel that we have had the discussions, and there is genuinely no meeting of minds on the question of liability.

I also agree with Kieran that the staff involved in the DOJ maintain their NICS status throughout. That is not the issue for us. The issue on the management side is whether a liability has been established. The pay and grading that was in place, which Kieran referred to, is the issue that will be tested in those cases, whether there is a liability and the role of the Fell assurances, which also Kieran referred to. However, so far, we have not managed a meeting of minds on those questions.

Mr McCartney:

The Department's briefing states:

“no legal liability has yet been established.”

That does not sound like a positive statement; the Department is not saying that it is absolutely right. Therefore, you are almost waiting for a legal case to tell us one way or the other. It strikes me that this should have been tested before we go to the courts.

In 1996, DFP agreed a pay and grading delegation with NIO. Point 5 states:

“On implementation of the delegation, NIO introduced new grades and, as a result, no longer had the grade that the 4500 claimants were using as a comparator in the case against DFP.”

What does that mean in real terms? Were they being paid more or less?

Ms Pearson:

It is difficult to give a general answer, because you have to look at individuals to see whether they were being paid more or less. They were paid differently under remits taken forward by the NIO, under its delegation from DFP. Therefore the overall settlement for NIO staff was different. You would have to look into whether that was up or down on an individual basis.

Your first point related to whether we have satisfied ourselves that there is no liability. We have taken legal advice. We will want to go back over that, if something comes along that we have not thought about or not taken into account.

Mr McCartney:

You say that the pay and grades for NIO staff were different. In the main, were they higher or lower?

Ms Pearson:

It is very difficult to say. You would have to look at it; it is a general statement. It covers more than a decade's worth of pay negotiations.

Mr McCartney:

I cannot understand why we do not know. Did people who moved to the NIO get increased increments as a result of the move? Is it the case that, now that they have transferred back, this has become an issue?

Ms Pearson:

Some individuals got more, and maybe some got less. We can furnish the Committee with details on the pay settlements in the NICS and NIO in the subsequent pay remits. You would have to break that down to individuals and track them through to see whether they had a promotion or what their movement of service was between Departments. It is difficult to track that through on an individual basis.

Mr McCartney:

I understand that if someone moved across to a lesser post they would get less money. In general terms, were civil servants paid more when they worked in the NIO than they were paid when they worked in the Civil Service? Somebody behind you is saying no.

Ms Pearson:

I would like to give you the pay outcomes for the years.

Mr McCartney:

That would help me to understand. There are times when it is difficult to understand, particularly when you read the statement:

“no legal liability has yet been established”.

I do not think that that is a very good position for the Department to put out in public. It more or less invites court cases. A number of court cases are listed. If legal liability is established, and it is found that people are entitled to this, we might find that we have not only wasted all this time, but the court costs as well.

Ms Pearson:

As of today, we are satisfied that there is no legal liability, but we cannot put ourselves in the position of the courts to determine that absolutely. That is what these cases will do. I can assure you that we have considered very carefully with legal advisers all the points that NIPSA has raised with us. There is no meeting of minds with NIPSA on the liability point.

Mr McCartney:

David's point about the £26 million being left to the side almost points to the two-way bet. It is like an each-way bet. It is as if the Department knows that it is right, but it is going to keep money aside in case it is wrong. If you were laying out your budget from the position of knowing that you are correct, you would be saying that that £26 million could be better spent. You are leaving it in reserve in case you lose. I cannot work it out.

Mr Hughes:

There is a distinction between the position that the Department is in and the position that the police have been in. The question of liability in respect of the police staff has involved considerably more consideration, and it is possibly more ambiguous. Therefore, we are in a position where, as Karen says, the Department is confident that no liability exists. However, it is not for the Department to say that conclusively; it is for a court to determine that conclusively. Discussions between lawyers on that liability in respect of the police staff are continuing.

Mr McCartney:

Did this issue feature during the process of ending the NIO and the conception of the Department? I sat on the Assembly and Executive Review Committee, where many of the issues that were part of the transfer were aired. This issue never seemed to feature. Was the Department aware that this would become an issue, or did it come out of the blue?

Mr Hughes:

Do you mean the issue of police staff or of departmental staff?

Mr McCartney:

I mean the staff who were NIO civil servants and became DOJ civil servants and who have an issue over equal pay.

Ms Pearson:

We have proceeded on the basis that there was not an issue with those staff for the reasons that we have explained, which include the pay delegation and so on. It did not feature and, of course, we did not get an NICS settlement until —

Mr McCartney:

So, it was not raised by anyone as an issue for transfer?

Ms Pearson:

No.

The Chairperson:

Is the legal advice that you speak about from DFP?

Ms Pearson:

For the civil servants, legal advice was taken prior to devolution. Our Minister has been very clear that he wants the DOJ itself to be very sure, so we revisited all of our advice since 12 April with the Departmental Solicitor's Office. It remains our view that liability has not been established.

The Chairperson:

That would not be the legal advice that PSNI is getting.

Mr Hughes:

Speaking separately, the PSNI would have taken its own legal advice.

The Chairperson:

Have you seen what that says?

Mr Hughes:

We have engaged considerably with the PSNI on the equal pay issue as it arises in respect of PSNI staff, and we have also engaged with DFP because of its approval role. Legal advice has also been provided by the Departmental Solicitor's Office.

The Chairperson:

Let us spell it out, Mr Hughes. The PSNI legal advice says that there are legal risks and inherent flaws in the pay system, and senior counsel opinion has confirmed that. The PSNI has that legal advice sitting in front of it and reads that daily. Does that give you any concern that you may not be on the right track? I still contend that this is all part of the deal on the devolution of policing and justice, but I am not sure that you think that.

Mr Hughes:

As far as I am aware, it has never been an issue in connection with devolution, because the issue is in connection with the status of police staff, who all became direct employees from 2008. The issue has been around the status of the civil servants who worked in the police prior to October 2008. I am aware that there is legal advice. There are different legal positions on whether or not a liability arises for equal pay among police staff.

Mr McNarry:

One question springs to mind. The Assembly played a major role in the big settlement for Civil Service back pay. How did you exclude the issues that are now arising? Why were they not in the frame, and why were those people left out? That was a big settlement that cost around £200 million. People did not think that they were being left out of it, but, obviously, they were. Why were they excluded? Did no one say that those people should be thought about? I can see that that might have happened, but did it happen?

Ms Pearson:

My understanding is that, because that settlement was negotiated between DFP and NIPSA, it did not include those people. That was known to be the case for the reasons that we have outlined. The civil servants were outside of DFP's remit to negotiate on.

Mr McNarry:

I am well aware of that, Ms Pearson. I am the Deputy Chairperson of the Finance Committee, and we have been through all of that. I understand that, but, if I and the Finance Committee had known that people were being excluded from the settlement, questions would have been raised then. It is only after the event that we find that people were excluded. Was it deliberate, was it the result of neglect or was it that you forgot that those people were left out of what was a major settlement? It only arose when those people found that they were not included in the settlement.

Ms Pearson:

I cannot speak for colleagues in DFP. However, my understanding is that it was a conscious decision that those groups of staff were not included in those negotiations because they were outside DFP's remit.

Mr McNarry:

Say that again.

Ms Pearson:

My understanding is that it was a conscious decision that those groups of staff were not included because they were outside DFP's remit for pay purposes.

Mr McNarry:

So, we really do not have joined-up government? I understand that it is unfair of me to ask you that. It looks like it.

The Chairperson:

I am looking at paragraph 6 of your submission. You state that the position has now been clarified and that DFP asserts that the PSNI was part of the pay and grading delegation that was

granted to NIO. That is more or less what the paper says. Is the Department of Justice now of the same view as DFP? I cannot get that clear. Perhaps, that is more to do with me than you. What is the view of the Policing Board and PSNI on that matter?

Mr Hughes:

The consequences of the position that has been set out by DFP are, obviously, being shared with the police and the Policing Board in discussion with the Department of Justice. Questions remain that the PSNI and the board would like to ask about the position that DFP has set out. It is important that those questions be asked. To repeat what I have said previously, it highlights the difficulty of establishing with absolute clarity what was intended and what was being effected from the mid-1990s. Those discussions are ongoing. Important consequences of including PSNI staff in the delegation need to be worked through.

To answer your second question about what the Policing Board thinks, the board has been actively engaged with the police on the matter, of course. The board would speak for itself; however, it would certainly see the strength of the position that the PSNI has taken.

The Chairperson:

Mr Hughes, what is the position now? We are aware that a number of cases are sitting at the gate of the courts. What will the Department do in the meantime?

Mr Hughes:

Do you mean in respect of police staff?

The Chairperson:

In respect of what we are discussing today. Are we now at the stage when the Department says that, because it is in a court-case scenario, it will just sit and wait and see what happens to those cases? Has that attitude been adopted?

Mr Hughes:

No. Discussion is still active between the Department, the police and the board. In particular, all three parties in that discussion want to see clarification on the significance — the importance in

legal terms — of the difficulties and the particular points that DFP and the police have raised about delegation. Some work still has to be done to bottom out certain questions.

The Chairperson:

Did you hear what Mr Bannon said? You say that activity is still ongoing. I do not want to misquote him, but I believe that he said that the Department has not “engaged”.

Mr Hughes:

Was he not talking about engagement between management and the unions? I am speaking in respect of police staff. Engagement with unions is not a matter for which the Department would be responsible, but rather there is engagement with the Policing Board.

The Chairperson:

Are you engaged fully with everybody and anybody with whom you should be engaged in order to bring that to a satisfactory resolution and not sitting back waiting for other things to happen that might happen as a result of a number of cases that are now under way?

Mr Hughes:

No; certainly not. We want to reach a conclusion.

Mr McNarry:

Can we just clarify a matter in respect of those cases — I know that you cannot mention names — in which, say, Mr or Mrs So-and-so versus PSNI, or DOE and NIO, or DCAL and PSNI? Is the Policing Board in court against that person? Is the DOE in court against that person? Is DCAL in court against that person? Or are all cases being taken against the Department of Justice?

Ms Pearson:

Without wishing to speak for NIPSA, I think that it has tried to pick cases that cover every eventuality, including those involving civil servants who worked only in NIO during the six years covered by the NICS equal pay settlement, staff who worked just in PSNI and the staff who moved between Departments. As Kieran mentioned earlier, one of the concerns is that service in

some parts of the system was discounted.

Mr McNarry:

So, who is in the dock? Is it only the DOJ?

Ms Pearson:

No. It is everyone listed by the claimants here. Within our group, DFP colleagues will, as part of the case management process, represent the interests of the NICS Departments.

Mr McNarry:

So, if the cases succeed, the relevant Departments that are listed will pay for them? So, if the case is against the PSNI, the PSNI and not the Department of Justice will pay for it?

The Chairperson:

The Department of Justice will only be listed on one, is that right?

Mr McNarry:

So, the PSNI is in the dock where it is listed here, and it will pay for it? Will it not come out of the DOJ budget? Inevitably, it will, because it contributes the budget to the PSNI. So, the £26 million is only for the Department of Justice and not for the PSNI, DOE, NIO, DEL or DCAL. Is that right?

Mr Hughes:

The £26 million is in respect of police staff equal pay.

The Chairperson:

Is it true that the PSNI wants to settle but that the Department has said no?

Mr Hughes:

It is true that the police service has set out its understanding of the position for police staff and has identified that it can see the case that is being made. However, there is a necessary approvals stage that includes DFP. Until that stage is concluded, the process will not be finally concluded.

The Chairperson:

So, you are saying that it cannot settle?

Mr McNarry:

We are going round in circles.

Mr Hughes:

It is not possible to use public money for that purpose without approval and without demonstrating liability.

Ms Pearson:

Could I comment on the question about the money? Kieran mentioned earlier that we are waiting for further and better particulars on how the cases will be argued by the claimants. We do not yet know whether they will say that they should have been part of the original settlement or that there is a separate liability. So, until we see how those cases will be argued, it is difficult to envisage where the money will come from if they are lost.

The Chairperson:

Tell me if I am missing something. Is it not that clear that DFP is blocking it? That is coming across to me. Tell me if I have got that wrong.

Ms Pearson:

In the case of the civil servants, I think that DFP would expect us to approach the issues in exactly the same way that it did and to see whether there is a liability. So, in DOJ, we are taking the same line as DFP because we think that the right approach is to see whether there is a liability. There is a separate approval process for the spending of the money at the end, but we are some way away from knowing that there is a liability. That is a matter for the courts.

The Chairperson:

I still conclude that DFP is good at blocking. Will it be good at paying the legal fees when it comes to that?

Ms Pearson:

Again, I am at risk of talking for colleagues in DFP, but I think that they would say that those issues are for the DOJ because they stem from the pay and grading delegation.

Mr McNarry:

You are right, Chairman. We have correspondence from DFP that sets out very clearly that it does not think that there is a case. We are now caught between a rock and a hard place. All I need to know is that people have come to see me — I am sure that colleagues have similar experiences —who think that they are lesser civil servants because of this. They think that, because they are not getting paid what they are entitled to, they are somehow lesser. It does not seem to matter what service they have given and what they have done. I think those are the people the Department needs to sort out and, if it does not, as I said earlier, the Assembly is going to have to do something about it.

The Chairperson:

The PSNI, which is cited in some of the cases, wants to pay.

Mr Hughes:

The PSNI knows that it will be in a position to pay only when its liability has been established.

The Chairperson:

With no disrespect to you, Mr Hughes, that is not exactly what the PSNI is saying. I have a paper in front of me that tells me something slightly different. It is a spending proposals pro forma capital investment paper, and it states:

“Senior counsel opinion has confirmed the legal risk and inherent flaws in the pay system”.

If you were thrown down that sort of legal advice, how would you walk past it? With great difficulty, I would have thought.

Mr Hughes:

It does highlight the difficulty that exists here.

The Chairperson:

It does more than that. The PSNI is sitting at the gate and saying that, on foot of that, it feels that it has to pay. The Department of Justice, and maybe DFP, are saying no, but there is going to be a swingeing legal bill at the end of all of this. If it goes through the system, there will be a massive bill at the end of the day, and I wonder who will pick up that tab. Do you have any idea?

Mr Hughes:

The PSNI has had to set out its understanding of the legal position, and it is incumbent on the Department of Justice to consider that carefully. There are places where it has had to be challenged. That challenge is quite proper when it comes to the prospect of using public money in that way, and we would be criticised if we did not operate that challenge. That dialogue is still going on. I am quite sure that the PSNI would say that it recognises the necessity of establishing the liability before any payment could be made.

The one thing that is not part of the consideration is the possibility of pushing it off because we do not want to have to pay it simply for those purposes, because, as has already been pointed out, money has been identified that could be used to pay it. However, just because money is available, that does not mean that it can be used in that way.

Mr McNarry:

To be specific, that money has been set aside for one specific reason only. It cannot be touched until the matter is resolved.

The Chairperson:

It is ring-fenced.

Mr McNarry:

Yes, “ring-fenced” is the right term.

Mr Hughes:

That underpins the point that we are not being deliberately obtuse because we do not want to pay money out. Rather, we are —

The Chairperson:

Very slow.

Mr Hughes:

I appreciate that it has been a very slow process.

Mr McNarry:

You still cannot calculate the amount. I know that you do not have those things at the tip of your fingers, but £26 million obviously represents some calculation.

Mr Hughes:

Yes, that is the calculation we did previously.

The Chairperson:

Does anyone else have any questions for Mr Hughes or Ms Pearson? If not, we will stop there. I thank you both for coming.