

Civil Service Conciliation and Arbitration Scheme

General Council Report 1357

(Meeting/s of 31 March 1999, 26 May 1999, 30 June 1999, 28 July 1999)

That all professional and technical staff be indemnified by the State, as employer, against all costs of defending legal actions in cases of alleged negligence in the performance of their work and against any damages awarded as a result of any such action.

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(Meetings of 31 March, 26 May 1999, 30 June and 28 July 1999).

Claim that all professional and technical staff be indemnified by the State, as employer, against the costs of defending legal actions in cases of alleged negligence in the performance of their work and against any damages awarded as a result of such action.

1. The Staff Side said that the current situation whereby officers were not indemnified in advance in respect of legal proceedings that might be taken against them as a result of allegations of negligence etc arising during the course of their work was creating difficulties for them. Some officers were expressing concerns that they would be unwilling to undertake certain types of work out of fear of being sued and not knowing, in advance, what their position would be in relation to any costs or damages arising from any legal proceedings taken against them personally. If they were employed in the private sector, they would be covered by their employers insurance. However, because the State carried its own insurance, this did not apply in the civil service. The Staff Side said that some officers had been threatened with being sued to intimidate them. They also referred to the specific indemnification arrangements that had been agreed for Data Controllers.

2. The Official Side pointed out that it was not normal policy to grant advance indemnities to civil servants in respect of legal actions taken against them arising from the performance of their duties - the usual practice was to await the conclusion of an action before taking decisions on the recoupment of costs (if any) incurred by the Officer concerned. While the State does not guarantee its support before the facts of a case are established, in practice, once the legal proceedings are completed, claims for recoupment of expenses are dealt with in a supportive and sympathetic manner. The Official Side also said that the Data Controllers had been treated differently as an exceptional arrangement because of their particular status

under the Data Protection Act.

3. However, in view of the concerns raised by the Staff Side in support of the claim, and the fact that very few cases actually arise, mainly because third parties normally hold the State liable for the manner in which an individual officer carries out his/her duties, the Official Side said that they would be prepared to respond positively to the claim.

4. They indicated that they would draw up a suitable form of indemnity, which, subject to consultation with the Attorney General's Office, would be broadly along the lines of the indemnity for Data Controllers.

5. The form of indemnity is set out in the Appendix to this report. The Staff Side said that they accepted the offer and this report recording agreement was adopted on 20 October 1999.

Noel Gorman William McIntosh
Secretary Secretary
Official Side Staff Side

Appendix to General Council Report No. 1357 - Indemnity

1. A civil servant shall be indemnified against any reasonable legal expenses necessarily incurred by him/her and against any damages and/or costs awarded against him/her in the event of civil proceedings being taken against him/her arising out of the manner in which s/he discharges his or her duties, provided that an examination of all the circumstances (including the outcome of such proceedings) establishes that s/he acted bona fide in the execution of his/her duties and did not act with gross negligence or gross neglect of his/her duties.

2. This indemnity is subject to the following conditions :-

(a) the officer concerned must immediately notify his/her
Department of the receipt by him/her of any claim, and

(b) in appropriate cases, the Chief State Solicitor will act for the civil servant. Where the Chief State Solicitor's Office is so acting, that Office, if necessary after consulting the Attorney General, shall have full discretion as to how the proceedings are addressed including, if it considers it to be the most prudent course of action, the right to settle any cases arising in advance of or during any Court proceedings. Where it has been decided that it is not appropriate for the Chief State Solicitor's Office (CSSO) to act, but the officer satisfies the conditions referred to in paragraph (1) above, the reasonable legal expenses necessarily incurred by him/her in instructing his/her own solicitor will be recouped in such amount as the Minister for Finance, having consulted the Attorney General, deems reasonable. (For this purpose the officer will instruct his/her solicitor to furnish the Chief State Solicitor with such information as is required by the Attorney General for the purpose of calculating the legal expenses).

This report was adopted on 20 October 1999