

Reference No: ; **Date:** 01/08/2003

01/08/2003 LP:- Net pay paid to EOs, AOs and Third Secretaries during their contract year
E109/35/01

1 August 2003

To all Personnel Officers

Re: Net pay paid to EOs, AOs and Third Secretaries during their contract year

Dear Personnel Officer,

1. I refer to the existing arrangements for the recruitment of Executive Officers (EOs), Administrative Officers (AOs) and Third Secretaries from open competitions. The existing arrangements (introduced on 22 July 1998 by way of a letter to Personnel Officers) provide for an initial 12 month contract in an unestablished position. At the end of the contract period officers are appointed to established positions subject to meeting certain criteria in relation to satisfactory service.

2. The existing arrangements have given rise to an anomaly whereby, during the contract year, officers are paid less than what they would have been paid under the previous arrangements (before contracts were introduced). A more detailed explanation of the anomaly is attached at appendix 1. (You will recall that a meeting to discuss how the anomaly arose and how the solution set out in this letter should be implemented was held in this Department on 31 July 2003.)

Consideration of the issue by the Department of Finance

3. The issue was considered at length by various sections in this Department. It was agreed that an unintended disadvantage did indeed exist and consideration was given to a number of potential solutions. Various options were examined but found to be unworkable. Details of those options are attached at appendix 2 for your information.

Discussions with the PSEU

4. The PSEU were advised that a number of options were examined and that none of the options was workable. It was pointed out that the anomaly resulted from agreed arrangements covering pay and recruitment.

5. The PSEU responded that they would not have concluded the agreement had they known there could be a loss for the officers concerned. They also indicated that the civil service unions would oppose the introduction of contracts in the event that their members were not compensated for losses incurred. (The subsequent negotiations that lead to Sustaining Progress agreed that one-year contracts will be extended to all new recruits to the Civil Service starting on 1 January, 2004.)

6. Further protracted negotiations were held with the PSEU and a solution was agreed. A copy of the agreed General Council Report is attached at appendix 3.

Solution - ex-gratia payments

7. The interim solution is to pay an ex-gratia payment to make good the losses while the longer-term solution will require a legislative change to remove the established / unestablished distinction. Once the established / unestablished distinction is removed it will be possible to place new recruits on salary scales that pay personal pension contributions and the existing anomaly will not arise. Provision for removal of the distinction will be made in the forthcoming amendment to the Civil Service Regulation Act 1956.

8. It was agreed that officers, who are in the grades of Executive Officer, Administrative Officer and Third Secretary, would be paid an ex-gratia payment, until the legislation is amended, on the following basis:

? €265 to an officer who was not a civil servant immediately preceding recruitment to the contract EO, AO or Third Secretary post

? €900 to an officer who was a Clerical Officer immediately preceding recruitment to the contract EO, AO or Third Secretary post

? €1300 to an officer who was an Executive Officer immediately preceding recruitment to the contract AO or Third Secretary post

9. A step-by-step approach to establishing an officers entitlement is attached at appendix 4.

10. Civil servants, other than those referred to in paragraph 8 above and paragraph 15 below, who were in grades other than the grades of Clerical Officer or Executive Officer immediately preceding recruitment by open competition to EO, AO or Third Secretary will be paid on an ex-gratia basis the actual difference in pay caused by the anomaly. Departments/Offices will be required to establish the exact ?loss? by calculating what the officer was paid on the 19/19 scale and what s/he would have been paid on the 20/19 scale while also making a personal pension contribution.

11. Only one ex-gratia payment will be paid to an officer. In other words, where an officer was recruited on contract to the EO grade and subsequently recruited on contract to the AO or Third Secretary grades, he/she will receive only one ex-gratia payment. The ex-gratia payment is subject to tax and PRSI.

12. It was agreed that individual officers who experienced a loss as a result of the anomaly would be required to apply to their Personnel Section to have their cases examined. A model application form is attached at appendix 5.

13. Ex-gratia payments should only be made to officers who:

- i. were serving in their grade on 1 May 2003 and;
- ii. have satisfactorily completed their contract year and;
- iii. have been appointed to their post in an established capacity.

(Note: a future entrant will be paid an ex-gratia payment on completion of his/her contract year and appointment to his/her established position.)

14. An ex-gratia payment will not be made where an officer

- i. is no longer in the civil service; or
- ii. was promoted to a position higher than the ?contract? position before 1 May 2003; or
- iii. failed to complete the contract year; or
- iv. was not appointed in an established capacity.

15. Existing civil servants who began their civil service careers before April 1995 and who were recruited to the EO, AO/Third Secretary grades by open competition are paid on the modified salary scales. As a result, they do not suffer any loss and should not be paid an ex-gratia payment.

16. Some Departments/Offices have been misapplying the rules on the pay of contract staff by applying the 20/19 scale and deducting personal superannuation contributions leading to overpayments to contract staff. The rules of the established superannuation scheme prohibit unestablished officers from joining established superannuation schemes. This means that the officers will not be entitled to the ex-gratia payment as they have received the extra money in the course of the first year as part of their normal salary.

17. An officer will not be entitled to an ex-gratia payment where the rules on the pay of contract staff were misapplied resulting in the officer being overpaid.

Officers who have moved Departments/Offices

18. This matter was discussed at the meeting with Personnel Section representatives on 31 July 2003. It was decided that officers who have moved/transferred to a new Department/Office should be paid by their new Department/Office.

Job/Work-sharing Officers

19. This matter was also raised at the 31 July 2003 meeting. It was decided that officers would be paid a pro-rata payment, e.g. an officer who worked a 3 day week for the entire contract period should be paid 60% of what he/she would have received had he/she worked full-time.

Enquiries

20. Enquiries regarding this letter should be directed to Mr. Colm Sweeney (01-6045442) or Mr. Maurice Kiely (01-6045739), General Conditions Section at the Department of Finance, 73 79 Lower Mount St., Dublin 2.

Yours sincerely,

Ken Spratt
Personnel and Remuneration Division

Appendix 1

Background

During the "contract year" the officers are not liable to superannuation contributions as the scheme is non-contributory. In order to avoid a situation where, on becoming established and liable for superannuation contributions, the net pay of officers in their second year would be reduced, it was agreed (at the time that the contract arrangements were being introduced) that officers pay while on contract would be the pre-April 1995 (19/19) scale.

These arrangements have given rise to an anomaly whereby the net pay of contract staff, in their "contract year" on the 19/19 scale, is less than their notional net pay would have been if they had been paid on the post-1995 (20/19) scale and paid a superannuation contribution.

The reason for the notional difference is that the 20/19 pay scale is 1/19 greater than the 19/19 pay scale but the superannuation contribution of the post-1995 entrants is less than 1/19 of the post-1995 pay scale.

The Public Service Executive Union (PSEU) raised this issue with this Department and sought the reimbursement of the notional difference for affected officers.

Appendix 2

I. Put staff in their "contract year" on the post-1995 pay scale and make a superannuation deduction from them.

The legislation governing the Pension scheme specifically prohibits unestablished officers from the established pension scheme. Pensions section was unable to change the relevant legislation.

II. Appoint contractors to established positions

Consideration was then given to making contractors established. The advice of the Office of the Attorney General (AG) was sought. That office advised that (i) the definition of unestablished civil servant - "unestablished position" means a position which is not an established position, and includes a position which is held on a temporary basis or for a definite limited period - and (ii) case law precedents would prohibit appointment to established positions on contract.

III. Retrospective establishment of an officer

Consideration was given to retrospective establishment of officers. This would have meant the post-1995 pay scale could have been applied retrospectively on completion of the contract year. Any anomaly identified could therefore be made good. However, the Office of the Attorney General advised that "if an attempt were made to retrospectively establish civil servants this would be contrary to the spirit of the Civil Service Commissioners Act, 1956. This Act imposes stringent requirements regarding the appointment of civil servants and also provides specific exceptions to those requirements whether the position in question is established or unestablished. To proceed as you propose is in my view contrary to the Act."

IV. Put staff in their "contract year" on the post-1995 pay scale and allow them to contribute to a "suspense account" in respect of superannuation deductions. Transfer those deductions into the superannuation scheme on establishment.

Consideration was also given to this. By going this route, we would be linking the post-1995 (20/19) pay scale to an unestablished grade with a non-contributory pension scheme when the scale is specifically for established grades making a personal superannuation contribution.

FUGE represents mainly unestablished grades and it is considered that they could argue that a precedent had been set linking the 20/19 scale to unestablished grades. They could seek equity for their members. FUGE members already pay full PRSI (they are mainly unestablished and could, in the event of becoming unemployed, require access to social welfare benefits). Although such a claim could result in them having to pay a personal pension contribution, the additional 1/19 would actually overcompensate them and they would have the benefit of a lump sum and co-ordinated pension based on the 20/19 scale.

A second issue arises here also in that there could be knock-on claims from the other civil service unions. Pre-1995 civil servants (19/19 scale, non-contributory pension) could argue that they are being denied the advantages of the post-1995 category: paying PRSI entitles officers to welfare benefits if ever needed; and lump sum and co-ordinated pension is greater because it is based on the 20/19 scale. A concession to FUGE (19/19 scale, non-contributory pension, i.e. similar to normal established civil servants) could spark such a claim or claims.

V. Abolition of contracts

Effectively, such a move would be a move back to recruitment to established positions on a two year probationary period. "Delivering Better Government" recommended that civil servants be employed under contracts of employment. That recommendation was implemented and agreed as part of the negotiation process that led to the latest national partnership agreement Sustaining Progress.

VI. Proposal to apply a "net pay parity" formula and establish a new Payscale

It was suggested that a new pay scale could be established to resolve this issue for future cases. The pay side are strongly opposed to the introduction of a "net pay parity" pay scale for the following reasons:

(A) The introduction of a further pay scale for contract officers would mean that there would then be five pay scales, Modified and Full PRSI Standard Scale and Modified and Full PRSI for Higher Scale and any new scale. This would lead to confusion.

(B) Such a scale could lead to repercussive claims from other contract staff, i.e. staff on short term contracts who do not expect to remain in the civil service and who are placed on the modified pay scale at present.

Appendix 3

Agreed General Council Report

Civil Service Conciliation and Arbitration Scheme

General Council Report 1428

(Meetings of 28 November 2001 and 25 June 2003)

Contract Year

Issue

Claim for correction to pay during contract year for those appointed from open competitions.

Background

1. The existing arrangements for the recruitment of Executive Officers (EOs), Administrative Officers (AOs) and Third Secretaries from open competitions (introduced on 22 July 1998 by way of a letter to Personnel Officers) provide for an initial 12 month contract in an unestablished position. Should they satisfactorily complete their contract period, officers are appointed to established positions subject to meeting certain criteria in relation to satisfactory service.

2. In May 2000 the PSEU highlighted the fact that the existing arrangements have given rise to an anomaly whereby, during the contract year, officers are paid less than what they would have been paid before contracts were introduced.

Pay anomaly

3. During the "contract year" the officers are not liable to superannuation contributions as the scheme is non-contributory. In order to avoid a situation where, on becoming established and liable for superannuation contributions, the net pay of officers in their second year would be reduced, it was agreed (at the time that the contract arrangements were being introduced) that officers pay while on contract would be the pre-April 1995 (19/19) scale.

4. These arrangements have given rise to an anomaly whereby the net pay of contract staff, in their contract year on the 19/19 scale, is less than their notional net pay would have been if they had been paid on the post-1995 (20/19) scale and paid a superannuation contribution.

5. The reason for the notional difference is that the 20/19 pay scale is 1/19 greater than the 19/19 pay scale but the superannuation contribution of the post-1995 entrants is less than 1/19 of the post-1995 pay scale.

6. The Public Service Executive Union (PSEU) raised this issue with this Department and sought the reimbursement of the notional difference for affected officers.

Discussions on the matter

7. The issue was considered at length and a number of meetings were held with the PSEU in 2001, 2002 and 2003 to discuss it. It was agreed that an unintended disadvantage did indeed exist and consideration was given to a number of potential solutions. Various options were examined but found to be unworkable.

Proposed Solution

8. There are two parts to the solution: (a) make the necessary legislative change in the Civil Service Regulation Act 1956, which will allow established civil servants to be placed on contracts and (b) payment of ex-gratia payments to affected officers in the interim pending the enactment of legislation.

9. It was agreed that officers, who are in the grades of Executive Officer, Administrative Officer and Third Secretary, would be paid an ex-gratia payment, until the legislation is amended, on the following basis:

€265 to an officer who was not a civil servant immediately preceding recruitment to the contract EO, AO or Third Secretary post

€900 to an officer who was a Clerical Officer immediately preceding recruitment to the contract EO, AO or Third Secretary post

€1300 to an officer who was an Executive Officer immediately preceding recruitment to the contract AO or Third Secretary post

A step-by-step approach to establishing an officer's entitlement will be given to Personnel Officers.

10. Civil servants, other than those referred to in paragraph 9 above and paragraph 15 below, who were in grades other than the grades of Clerical Officer or Executive Officer immediately preceding recruitment by open competition to EO, AO or Third Secretary will be paid on an ex-gratia basis the actual difference in pay caused by the anomaly.

11. Only one ex-gratia payment will be paid to an officer. In other words, where an officer was recruited on contract to the EO grade and subsequently recruited on contract to the AO or Third Secretary grades, he/she will receive only one ex-gratia payment. The ex-gratia payment is subject to tax and PRSI.

12. It was agreed that individual officers who experienced a loss as a result of the anomaly would be required to apply to their Personnel Section to have their cases examined.

13. Ex-gratia payments should only be made to officers who:

- iv. are serving in their grade on 1 May 2003 onwards and;
- v. have satisfactorily completed their contract year and;
- vi. have been appointed to their post in an established capacity.

(Note: a future entrant will be paid an ex-gratia payment on completion of his/her contract year and appointment to his/her established position.)

14. An ex-gratia payment will not be made where an officer

- i. is no longer in the civil service; or
- ii. was promoted to a position higher than the 'contract' position before 1 May 2003; or
- iii. failed to complete the contract year; or

iv. was not appointed in an established capacity.

15. Existing civil servants who began their civil service careers before April 1995 and who were recruited to the EO, AO/Third Secretary grades by open competition are paid on the modified salary scales. As a result, they do not suffer any loss and should not be paid an ex-gratia payment.

16. Some Departments/Offices have been misapplying the rules on the pay of contract staff by applying the 20/19 scale and deducting personal superannuation contributions leading to overpayments to contract staff. The rules of the established superannuation scheme prohibit unestablished officers from joining established superannuation schemes. This means that the officers will not be entitled to the ex-gratia payment as they have received the extra money in the course of the first year as part of their normal salary.

17. An officer will not be entitled to an ex-gratia payment where the rules on the pay of contract staff were misapplied resulting in the officer being overpaid.

18. This agreement addresses the pay anomaly arising for officers during their contract year. There is no link with the fact that the officers move from being unestablished to being established at the end of the contract period. It was agreed that this agreed report will not give rise to any repercussive claims from any of the civil service unions.

19. This report, recording agreement, was adopted on 25 June 2003.

Appendix 4

The following steps will establish an officers entitlement, if any, to an ex-gratia payment.

Step 1

Ex-gratia payments are only payable to officers appointed from an OPEN competition after 22 July 1998. Immediately prior to being appointed to the contract post the appointee must have been either (i) recruited from outside the civil service or (ii) where recruited from within the civil service, paying the Class A rate of PRSI and making a personal pension contribution. Is the officer in one of these categories?
Yes - move to step 2. No - do not pay ex-gratia payment.

Step 2

Were the rules governing pay during the contract year applied correctly?
Yes - move to step 3. No - do not pay ex-gratia payment.

(Note: Some Departments/Offices placed officers on the 20/19 scale and deducted personal pension contributions. The effect of this misapplication of the rules is that such officers did not lose out.)

Step 3

Was the EO, AO, or Third Secretary appointed from an OPEN competition after 22 July 1998?
Yes - move to step 4. No - do not pay ex-gratia payment as the officer has no entitlement.

Step 4

Has the officer completed the contract year and been appointed in an established capacity?
Yes - move to step 5. No - do not pay ex-gratia payment.

Step 5

Was the appointee a serving civil servant immediately prior to being appointed to the contract post?
Yes - move to step 6. No - pay a flat payment of €265.

Step 6

Was the appointee a Clerical Officer immediately prior to being appointed to the contract EO, AO or Third Secretary position?

Yes - pay a flat payment of €900. No ? move to step 7.

Step 7

Was the appointee an Executive Officer immediately prior to being appointed to the contract AO or Third Secretary position?

Yes - pay a flat payment of €1,300. No ? move to step 8.

Step 8

In the event that the appointee was a civil servant but was neither a Clerical Officer nor an Executive Officer immediately prior to being appointed to the contract EO, AO or Third Secretary position, it will be necessary to establish the exact ?loss? by calculating what the officer was paid on the 19/19 scale and what s/he would have been paid on the 20/19 scale while also making a personal pension contribution.

Appendix 5

Application for Ex-gratia Payment in respect of a Contract Year Pay Anomaly

This application form should be completed by all officers who (i) were appointed as a result of an OPEN competition after 22 July 1998, (ii) on or after 1 May 2003 were/are serving in the EO, AO or Third Secretary grades (iii) who have completed their contract year and (iv) have been appointed to the grade in an established capacity. Both parts of the form should be completed and returned to [Name and address of Officer in Personnel Section] as soon as possible.

Part I

Name:

Group/Payroll number:

PPS number:

Work address:

Work phone number:

Part II

Step

- | | Question | Yes | No |
|---|---|-----|----|
| 1 | Were you either (i) recruited from outside the civil service or (ii) where recruited from within the civil service, paying the Class A rate of PRSI and making a personal pension contribution in your previous post? | | |
| 2 | Were you appointed from an OPEN competition after 22 July 1998? | | |
| 3 | Have you completed your "contract year" and been appointed in an established capacity? | | |
| 4 | Were you a serving civil servant immediately prior to being appointed to the contract post? | | |

5 If you were a serving civil servant immediately prior to being appointed to the contract post and were paying the Class A rate of PRSI and making a personal pension contribution, were you a Clerical Officer immediately prior to being appointed to the contract EO, AO or Third Secretary position?

6 If you were a serving civil servant immediately prior to being appointed to the contract post and were paying the Class A rate of PRSI and making a personal pension contribution, were you an Executive Officer immediately prior to being appointed to the contract EO, AO or Third Secretary position?

7 If you were a serving civil servant immediately prior to being appointed to the contract post and were paying the Class A rate of PRSI and making a personal pension contribution, and served in a grade other than the Clerical or Executive Officer grades immediately prior to being appointed to the contract EO, AO or Third Secretary position, then please state the grade.

Signed: _____ Date: _____