

RESTRICTEDcc Mr Hardy
Mr Scullion

Mr Drummond

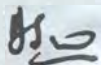
*Mr. W. J. X
Could be drawn & clarify
me on two points 30/6*SCHEME OF COMPENSATION FOR LOSS OF EMPLOYMENT THROUGH CIVIL UNREST

1. We have recently completed a review of this Scheme and I attach a well-researched and helpful minute from Mr Hardy which traces its background and advances a number of options to be considered.
2. The Scheme has been in existence for almost 16 years. Applications have generally been falling, having peaked at around 300 in the 1969/70 period, to the present were only a few applications remain to be dealt with (although in current circumstances some increase would be unsurprising). It is, I believe, appropriate at this time to examine its relevance to present circumstances and the cost-effectiveness of its operation.
3. Mr Hardy's note discusses five options ranging from the complete wind-up of the Scheme to its continuation on an unchanged basis. His recommendation is that it should continue but that a more cost-effective arrangement should be introduced with the Department assuming the primary adjudication rôle and the Tribunal retained as an independent appellate body. The Department already adjudicates on applications failing the basic criteria, such as insufficient length of service, and the extension of this rôle into the more subjective arena of deciding the reason for loss of employment is considered practicable. There is available a considerable body of caselaw which officials can refer to and by retaining the services of the Tribunal members they could be consulted in any case of particular difficulty. This option offers immediate, if small, cost savings in that the Department's rôle would be assumed within existing resources whilst the fees payable to Tribunal members would considerably reduce in their appellate rôle.

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4. NIO has been consulted and support the continuation of the Scheme, subject to a further review in a year's time, and also the preferred option extending the Department's rôle.
5. If you are content that we proceed on the basis as recommended the next stage would be to consult the current Tribunal members to assess if what is proposed is workable. On the basis that this would be affirmed we would then consult CBI and NIC/ICTU before advising the Minister.
6. The opportunity would also be taken to discuss the extra-statutory basis of the Scheme with DFP to regularise arrangements for authorising its continuation.
7. Mr Hardy and I shall be happy to discuss if this would be helpful.



D J WATKINS
Industrial Support Division

27 June 1986

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Mr Watkins

1. Please find aside draft covering minute for your consideration for issue from you to Mr Drummond fronting the paper and appendices on the Scheme of Compensation for Civil Unrest.
2. I have presumed the line you wish to adopt but would be happy to amend or discuss, if you consider appropriate.

D S Hardy

D S HARDY
23 June 1986

NB You will note I am in the office today - pitch unlayable due to rain.

Mr Watkins

SCHEME OF COMPENSATION FOR LOSS OF EMPLOYMENT THROUGH CIVIL UNREST

1. The 1986/87 Management Plan includes a commitment to review the scheme of compensation for employees whose employment is terminated due to civil unrest.

Background

2. The genesis for the Scheme was the serious public disorder in the Autumn of 1969 with resulting loss of employment either because employers' premises were damaged in the disturbances to such an extent that the employer went out of business or because threats to workers or their co-religionists caused them to terminate their employment on grounds of personal safety. The dichotomy was that those who lost their jobs because of the destruction or damage to their employers' premises or any consequential company failure qualified for statutory redundancy payments whereas those who lost their jobs as a result of threats or intimidation did not. The validity of the latter judgment was tested in cases taken to industrial tribunals but all were rejected either on the basis that the employee had been replaced or that the principal reason for termination was not related to any reduction in the employment requirements of the firm.

The Scheme

3. The original Scheme was set up to compensate workers who lost their jobs in the period 1 July 1969 to 30 June 1970. It was subsequently reactivated to cover the period 9 August 1971 to 20 August 1971 and continued for a third time from 21 August 1971 on an open-ended basis. I have attached as Appendix A a note setting out the tenets of the Scheme. In summary, application is made in simple form to a Tribunal comprising an independent chairman and two members representing employer and trade union interests. Basic qualifying criteria is the same as for the statutory redundancy scheme except that the tribunal has to decide if an applicant has lost his employment "through civil disturbance". Additionally unlike the statutory redundancy scheme the amount of compensation is met totally by extra-statutory grant from the Department.

Tribunal

4. The Tribunal is chaired by Mr J McQuitty, QC. The employers' representative is Mr John Dunlop and the trade union counterpart is Mr C J Creaney. There is no fixed term of appointment. The present scale of fees, which took effect from 1 July 1985, is £136 per sitting payable to the Chairman and £50 to each of the members.

Operation

5. A statistical summary of the Scheme since its inception is attached at Appendix B(1). From the summary it can be seen that the number of applications peaked during the early years, but since 1976/77 these have generally been falling and, with the exception of a short term resurgence in 1984/85 and 1985/86, has now fallen back, with only 2 cases decided in the current financial year and 4 pending. The present procedures require that when an application is received it is checked for basic eligibility and only if not rejected at this early scrutiny will the case proceed to be heard by the Tribunal. In early years apparently the Tribunal heard all cases without any preliminary sieving of applications.

Financial Status

6. The Scheme was originally envisaged as a short term measure with a finite life cycle and as a consequence operated on an extra-statutory basis. This status

has not altered and DFP approval was obtained to the present open-ended arrangement. However the mechanics of the operation are somewhat ambiguous, originally involving an annual letter of approval from DFP. This terminated sometime in the late 1970s with approval relying since on allocations made and approved in various Appropriation Orders.

Options

7. There are a range of options to be considered. These and the respective arguments suggested are:-

(a) Wind-up of the Scheme

This is the most drastic option and based on the premise that the need for such a Scheme is diminishing and politically demonstrable as a step towards "normalisation". The contrary argument is that there are still cases which fall within the remit of the Scheme and whilst these remain, and possibly increase as a result of the present post Anglo Irish situation, it would be difficult to justify not retaining some scheme of support for loss of employment in what is in effect a unique NI context. In addition it could be argued that greater publicity to the scheme may well attract an increased number of applications.

(b) Retain the Scheme in its present format

The main arguments in favour of this option are that the scheme is working satisfactorily, attracts little or no criticism and is a demonstrably independent arrangement for providing compensation to workers losing their employment due to civil unrest. The main arguments against are the cost factors and that the present regime is not the most cost effective use of public resources. For illustrative purposes I have attached as Appendix B(2) details of fees paid to the tribunal and related casework data. The figures show a total of £14,705 paid in fees to date and an analysis of the period since 1982/83 indicates that the average cost in fees alone is over £80 per case. Each sitting of the tribunal decides between 2 to 4 cases, rarely lasts more than a few hours and costs £236 per session. In the current financial year the tribunal has decided two cases at a single session, which works out at £118 per case and even if the caseload was increased so that the maximum of 4 cases were dealt with at each session it still arrives at a figure of £59 per decision.

(c) Transfer scheme to the Central Office of Industrial Tribunals

The major argument for transferring responsibility for the scheme to the Industrial Tribunal network is that by standing down the existing tribunal the Department would be acting in line with declared Government policy, that of reducing the number of existing NDPBs. Against this there would be no favourable financial savings as IT costs, £130 per session for chairmen and £60 for members, are marginally higher than the existing tribunals' costs of £136 and £50 respectively. Additionally the IT network already services a large portfolio and the criteria and rules governing the existing industrial related range of Schemes serviced does not bear direct comparison to the rules and, more importantly, the security arguments involved in deciding civil unrest cases. Such a marriage would be unlikely to achieve an enhanced decision making process.

(d) Change the administrative arrangements of the Scheme

This option would be designed to reduce the cost of operating the Scheme in line with the diminishing trend in applications received and offers two

alternatives. In both options the initial decisions would be made by the Department, extending their present role from determining those failing to satisfy the basic eligibility criteria to the more subjective aspects of the evaluation of cases on the grounds of civil unrest. To provide an independent safety net the present Tribunal could be retained as an appellant body or substituted by, for example, the President of the Industrial Tribunals. This latter variant would operate more cost-effectively than retaining a role for the Tribunal but may be less acceptable in the eyes of the general public, given the non-controversial record of the Tribunal.

(e) President of the Tribunal acting alone

This would again offer cost savings in that the services of the two independent members of the Tribunal would no longer be required. The cost of support staff could be further saved if the Chairman undertook to consider all cases, including those not satisfying the basic eligibility criteria. The financial arrangements could be either on the present sessional basis, on a case dealt with basis or by payment of an agreed retainer, say £1,000 per year. The arguments against are that any decisions taken would be without consensus involving trade union and employer interests, savings may be marginal and in any year when no cases or few cases materialised it may well be a more expensive option than the present arrangements.

Other Considerations

8. In reviewing the Scheme the opportunity should be taken to consider its continuance on an extra-statutory basis. At this stage as the Scheme has operated satisfactorily on this basis for some time I see little merit in changing its status. The opportunity for placing the Scheme on a permanent statutory basis should have been taken in the early 1970s, particularly at the time when it was decided to continue it in perpetuity. However the opportunity could be taken, if new arrangements are agreed upon, to regularise this with DFP and agree future arrangements for authorising its funding.
9. Publicity of the Scheme has been somewhat fragmented and a more strategic approach needs to be adopted to ensure that the catchment of potential applicants is fully aware of its existence and the basis of the support provided.

Recommendation

10. It is recommended that the Scheme should be maintained but that new arrangements entered into to reflect a more cost effective operation, in line with the reducing load factor and with adequate independent safeguards for appeal in cases of dissatisfaction.
11. The most attractive option to me is that outlined in paragraph 7(c) with the Tribunal as presently constituted retained as an appellant body, as against the other variant of the President of the Industrial Tribunal performing this role. This would provide cost savings in that the number of appeals, on past records, would be minimal and the Department in reaching judgments would have the benefit of the decisions of the Tribunal and, indeed, by their retention in an independent role have justification for seeking their views in any cases of particular difficulty. Again, however, in view of the existing caseload this should not become a much used route.
12. Any decisions, will of course, have to obtain the Minister's approval, as well as DFP and involve discussions on how best the present Tribunal members would be informed of any such decision.


D S HARDY

BACKGROUND NOTE ON SCHEME OF COMPENSATION FOR LOSS OF EMPLOYMENT THROUGH CIVIL UNREST

1. The Scheme, which is extra-statutory, provides compensation for employees who have suffered involuntary loss of employment through circumstances connected with the civil disturbances in Northern Ireland. It is modelled broadly on the statutory scheme for redundancy payments and compensation payable is calculated on a scale corresponding to payments under the Statutory Scheme.

2. Scope

The qualifying period is similar to that for redundancy payments. It applies to those workers who, after at least 2 years' continuous employment from their 18th birthday, were dismissed by their employer or left employment of their own accord because of threats or other reasons directly attributable to the civil disturbances. The Scheme does not cover temporary cessations of work.

3. Time-Limits for Claiming

Applications, like those for redundancy payments, must be made within 6 months from the date of termination of employment. However the Compensation Tribunal - like an industrial tribunal in redundancy payment claims - has discretion to extend this to 12 months.

4. Administration of Claims

The Scheme is administered by the Department of Economic Development which makes payment of compensation following adjudication by the Compensation Tribunal established by the Department. Application forms are divided into 2 parts. Part 1 for the applicant's completion, whilst the ex-employer is asked to use Part 2 to detail the circumstances known to him, in which the applicant suffered the loss of employment.

5. Adjudication

All applications are decided by the Tribunal, the members of which are an independent legal person who acts as Chairman, together with 2 other persons representing respectively employers and workers. The Tribunal orders its own procedures and decides whether or not an oral hearing in a particular case is necessary. Proceedings are informal as possible. An applicant may bring a friend or legal adviser to assist him in putting his case but the costs of representation are not met by the Department.

6. Compensation

- (i) Entitlement to, and the amount of, compensation is determined on the same basis as would have applied in the case of any redundancy payment which would have been payable under the provisions of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965, if the cause of dismissal or loss of employment had been redundancy within the meaning of the Act.

The provisions under the Act of 1965 are complex but broadly speaking compensation is based solely on length of service up to a maximum of 20 years and is at the following rates:-

<u>Employment between</u> <u>the Ages of</u>	<u>Payment for Each</u> <u>Complete Year</u>
18-21 years	$\frac{1}{2}$ week's pay *
22-40 years	1 week's pay *

(ii) Any payments received by the applicant from any source, public or private, by way of compensation for the loss of his employment, shall be offset against any payment calculated under this Scheme.

(iii) Compensation under this Scheme shall not be payable in any case in which there is an entitlement to a redundancy payment under the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965.

(iv) The Compensation Tribunal will have power to reduce the amount of compensation or reject the application altogether if, having regard to the conduct of the applicant, including his conduct before, during and after the event giving rise to the application, the Tribunal considers it inappropriate that he should be granted the full amount of compensation or any compensation at all.

(v) The Tribunal may award a payment if it appears to it to be just and equitable having regard to the reason shown by the applicant for his/her failure to act within the initial period of 6 months and of all the other relevant circumstances.

(vi) The Compensation Tribunal's decision will be final.

SCHEME OF COMPENSATION FOR LOSS OF EMPLOYMENT THROUGH CIVIL UNREST OR INTIMIDATIONFinancial Summary

<u>Period</u>	<u>Applications Received</u>	<u>Applications Allowed</u>	<u>Compensation Paid</u>	<u>Average</u>
1 July 1969- 30 June 1970	292	32	£ 3,280	£ 102
9 August 1971- 20 August 1971	169	22	£ 4,452	£ 202
(Financial Years)				
1972/73	212	100	£ 15,027	£ 150
1973/74	159	128	£ 34,618	£ 270
1974/75	92	59	£ 20,291	£ 344
1975/76	107	118	£ 37,453	£ 317
1976/77	77	64	£ 33,018	£ 516
1977/78	19	18	£ 8,613	£ 478
1978/79	1	1	£ 651	£ 651
1979/80	1	1	£ 1,325	£1,325
1980/81	2	2	£ 4,022	£2,011
1981/82	8	4	£ 2,368	£ 592
1982/83	2	1	£ 327	£ 327
1983/84	5	-	-	-
1984/85	56	15	£ 14,389.11	£ 959.28
1985/86	38	50	£ 51,681.20	£1,033.62
1986/87 (to 28.5.86)	-	2*	£ 3,409.40	£1,704.70
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	1,240	617	£234,924.71	

* 4 Cases are currently pending

TRIBUNAL COSTINGSTRIBUNAL FEES (EXCLUSIVE OF TRAVEL COSTS)

<u>Period</u>	<u>Cost</u>	<u>No of Cases Dealt with</u>	<u>No of Sittings</u>	<u>Average Cost Per Case</u>
1.7.69-31.3.82	£ 8,569	-	-	-
1982-1983	£ 567	6	3	£94.50
1983-1984	£ 212	1	1	£212.00
1984-1985	£ 1,385	15	7	£92.33
1985-1986	£ 3,736	50	16	£74.72
1.4.86-1.6.86	£ 236	4	1	£59.00
Total Costs	£14,705			

Cost per Case since 1982/83 = £80.74 (£6,136 ÷ 76)

Average No of Cases per session since 1982/83 = 2.7 (76 ÷ 28)

Average Cost at present level of Fees = £87.40 (£236 ÷ 2.7)