

**REPORT OF THE CIVIL SERVICE ARBITRATION BOARD IN RESPECT OF A DISPUTE BETWEEN
AHCPS/FÓRSA AND THE DEPARTMENT OF PUBLIC EXPENDITURE NATIONAL DEVELOPMENT PLAN
DELIVERY AND REFORM (DPENDR) REGARDING A CLAIM IN RESPECT OF TEMPORARY
DEPLOYMENT OF ONE LEARNING AND SENIOR PUBLIC SERVICE (SPS) STAFF FROM DPENDR TO THE
INSTITUTE OF PUBLIC ADMINISTRATION (IPA)**

SCHEME OF CONCILIATION AND ARBITRATION FOR THE CIVIL SERVICE

CLAIM

The Board has been asked to determine a dispute between the Association of Higher Civil and Public Servants (AHCPS)/FÓRSA and DPENDR concerning a claim in respect of the temporary deployment of One Learning and SPS staff from DPENDR to the IPA.

TERMS OF REFERENCE

The claim was submitted to the Arbitration Board in accordance with the provisions of the Scheme of Conciliation and Arbitration (C&A Scheme) for the Civil Service.

The claim was considered by the Arbitration Board on 18/04/2024 and the finding was given on 10/5/2024.

BACKGROUND

The dispute concerns a claim regarding a decision by DPENDR management to transfer the functions of One-Learning and SPS to the IPA, including the proposed transfer of several of the current staff membership.

The Staff Side are concerned at the alleged '*cavalier approach by Management*' to this matter, noting that it has impacted negatively and unnecessarily on staff wellbeing. The Staff Side contend that related decisions were made initially and communicated directly to the targeted staff without any consultation or engagement with the relevant trade unions, and that several of the affected staff are wondering what the future holds for them. The Staff Side contend that this has led to an unnecessary

level of anxiety. The Staff Side contend that the proposed temporary transfer of OneLearning/SPS to the IPA should only be on a voluntary basis, in accordance with the principles of the agreed Secondment Policy.

The Official Side contend that as part of the Civil Service strategic ambition to provide a best in class professional learning and leadership development strategy serving the interests of the wider Civil and Public Sector, that in February 2023 DPENDR informed stakeholders that the learning and development functions of SPS and OneLearning would transfer to the IPA. The Official Side contend that this is part of a wider restructuring of the IPA and a major programme of transformation that is aligned to the IPA's 5 year strategy (A New Era for Learning: 2022-2027), and that the overall purpose of this is to establish a recognised centre of excellence for the Public Sector in the IPA by providing an enhanced offering of accredited courses, qualifications and professional awards to all staff in the sector. The IPA aims to build on the success of the SPS and OneLearning by expanding the established leadership and professional development programmes.

The Official Side contend that given the varied complexities of this transformation project, of which staff resourcing forms one integral part, it is critical that current staff transfer skills, operational knowledge and service delivery functions to the IPA. The Official Side contend that it is also essential to ensure business continuity of learning and development courses to colleagues in the wider civil service. In view of this, it was clear that the existing secondment arrangement would not be appropriate. The Official Side state that Bespoke Temporary Deployment Terms were devised to facilitate the release and movement of SPS and OneLearning staff to the IPA, with the assurances that the current employment status, terms and conditions remain unchanged.

The Official Side contend that the context of the transformation project was clearly outlined to all stakeholders, which included SPS, OneLearning staff, AHCPs and FÓRSA on a number of occasions from February 2023 onwards, and that after protracted engagement the Official Side made every effort to clarify and resolve all of the outstanding queries which proved successful. The Official Side note that however, the 'involuntary' nature of the arrangement could not be agreed at local level and remained unresolved.

SUMMARY OF STATEMENT BY AHCPs/FÓRSA

The Staff Side claim that the proposed temporary transfer by the Management Side of OneLearning/SPS staff to the IPA, should only be on a voluntary basis, in accordance with the principles of the agreed Secondment Policy.

The Staff Side note that the IPA is a non-Civil Service organisation operating under the aegis of the DPENDR.

The Staff Side argue that the Civil Service Secondment Policy provides that staff apply for secondment, and the only element of compulsion envisaged in it is that a staff member would not be released for business reasons.

The Staff Side argue that it is the reasonable assumption of the unions that in keeping with general practice, secondments should be voluntary in the first instance with various terms and conditions attaching to the transfer thereafter.

The Staff Side contend that the decision of Management to persist with its proposal to compel several union members attached to SPS/OneLearning to transfer to an organisation outside of the Civil Service is an unprecedented and unwelcome breach of the general thrust, spirit and intent of the agreed Civil Service Secondment Policy.

The Staff Side argue that this approach is despite assurances provided to the Civil Service unions via General Council that the transfer would be achieved in accordance with the 'principles of secondment', the central tenet of which the Staff Side consider is the voluntary/non-compulsory factor.

The Staff Side argue that members of both unions are adversely affected by this proposed action, and that, if the transfer proceeds as is currently proposed it will lead to the transfer of several staff to the IPA, against their will in some instances and, with the following unnecessary consequences:

- Demotivation and alienation of affected staff
- It will potentially change their terms and conditions of employment as a very loose arrangement is suggested concerning their optional return after a suggested 2-year period. As we understand it, they will in effect have to make a choice to follow the work and remain within the IPA which is outside the Civil Service and not governed by Civil Service Policies and Agreements.

- Alternatively, should they choose not to remain in the IPA they are not guaranteed positions within DPENDR and may be required to go on a redeployment list with the associated uncertainties. All of this is fundamentally unfair treatment and extremely disappointing for the staff concerned who have given good and loyal service to DPENDR.
- Less optimal outcome for all concerned.

The Staff Side argue that this approach was unprecedented and irregular in their view outside of a legislatively provided for circumstance.

The Staff Side contend that seeking to create what is in their view a new mechanism to mandatorily transfer Civil Service staff involuntarily outside of the Civil Service, had and has the potential to set a serious and most undesirable precedent. The Staff Side contend that the proposal, if it were to be allowed to proceed, clearly has potential for application right across the Civil Service and to suggest that the issue is confined to and/or only impacts on the DPENDR, is not credible.

The Staff Side contend that if they were to accept the Management assertion in relation to the substantive issue, the case could possibly be considered moot at this point as almost all the affected staff membership (with the exception of three they believe) have now opted for and been reassigned. The Staff Side argue that this factor does not dilute the issue of concern the Unions still have with the manner and consequences of the proposed transfer in question.

The Staff Side argue that as this proposal has impacted and will continue to impact on Learning and Development services across the entire Civil Service, this matter should have been notified to General Council in the first instance and also to DPENDR Departmental Council. Neither occurred until the Staff Side raised it and it was only after an attempt by the Official side not to allow it on the agenda for General Council and insistence on the Staff Side part, did General Council receive a presentation on the proposal.

The Staff Side believe that the substantive issue at the centre of this dispute is a fundamental one which could potentially impact on the employment status and terms and conditions of all Civil Servants.

The staff side are further concerned that the proposed involuntary transfer of officers outside of the Civil Service will create a precedent for further involuntary transfers of Civil Servants at the behest of management.

The Staff Side contend that while there is precedent for the transfer of civil and public servants between different employers, such transfers have been grounded in legislation, which has in turn been subject to full consultation, pre-legislative scrutiny and the legislative process.

The Staff Side contend that neither the AHCPs nor FÓRSA have ever sought to undermine the right of DPENDR to redeploy staff or be able to move the right people with the right skills into the right roles to meet the demands of public service adaptability and enable better public services, but that they are insisting however that the obvious and relevant principles of the existing secondment agreement are adhered to.

The Staff Side contend that seeking to compel any element of any workforce to do something it does not want to is not the ideal way forward. The Staff Side believe that a more collaborative and consultative approach by Management from the outset in this instance would have led to a more optimal outcome for both sides. Both unions were and remain available to engage on that basis once the general principles, spirit and intent of the agreed Secondment Policy are acknowledged and adhered to.

The Staff Side's request is that the Board find in favour of the affected membership on this issue.

SUMMARY OF COUNTER-STATEMENT BY DPENDR

The Official Side contend that the proposed temporary deployment of the SPS and OneLearning staff to the IPA is not a secondment within the terms of the Secondment Policy. As such, the Secondment Policy was reviewed and bespoke temporary deployment arrangements developed to fit the particular circumstances where the work of the SPS and OneLearning was being transferred to the IPA.

The Official Side do not dispute the AHCPs and FÓRSA reference to the 'voluntary principle' of the Secondment Policy. However, the Official Side argues that, in this case, the temporary deployment of staff cannot be managed in line with all of the principles of the Secondment Policy.

The Official Side argue that due to the critical nature of the transformation project, the bespoke Temporary Deployment Terms provided the necessary assurances to staff while minimising the risk to the overall project.

The Official Side seeks to clarify and rectify some points raised by AHCPs and FÓRSA in their joint statement, as follows:

- DPENDR disagrees with the assertion that there was a '*cavalier approach by management*'. DPENDR takes this matter seriously and the staff are, and have been, a priority throughout this transformation project. A Programme Hub, comprising SPS, OneLearning and IPA staff was set up to lead and manage the core components of the design and implementation plan for the project. The teams developed the steps and sequences of those steps to provide for a smooth transition and effective change management. DPENDR has delivered on the commitment to communicate regularly with staff and all stakeholders throughout this project. An email to staff (dated 27 July 2023) acknowledging the significant progress and effort of those involved clearly demonstrates this.
- A dedicated Employee Relations team was set up to ensure that there is one point of contact for queries to/from DPENDR HR, AHCPS and FÓRSA. DPENDR has not received any reports of 'demotivation' or 'alienation'. The HR Strategy Unit ensured the required supports are on offer to staff in order to minimise any concerns.
- Staff have been assured that their terms and conditions of employment will remain unchanged. On 30 May 2023, those staff who are assigned to move temporarily received a letter along with a copy of the Temporary Deployment Terms which clearly set out the provisions of the temporary deployment arrangement.
- Temporary Deployment Terms are not in any way a 'loose arrangement'. DPENDR has informed staff, AHCPS and FÓRSA that they will have options to consider at the end of the two year period. Staff will have ultimate choice to remain with the IPA or return to a post in DPENDR and/or Civil Service Department/Office. The HR Strategy Unit will endeavour to assign staff to a suitable role in DPENDR in the first instance and/or in another Department in the Civil Service.
- The statement '*...fundamental unfair treatment ...*' of staff is totally untrue. DPENDR's staff are central to the success of this project and every effort was made to provide assurances and minimise concerns throughout this transformation project.
- DPENDR welcomes and acknowledges AHCPS and Forsa acceptance that the Department reserves the right to deploy staff.

The Official Side contend that the Temporary Deployment Terms is a bespoke temporary arrangement and it is critical to the success of the project.

The Official Side contend that DPENDR reserves the right to move the right people with the right skills into the right roles to meet future demands to enhance public service flexibility and enable better public services.

The Official Side requests that the management position is upheld.

CONCLUSION OF THE BOARD

The Arbitration Board thanks the parties for their submissions and supplementary contributions during the Hearing of the substantive matter in this case of 18th April 2024.

The Board is of the view that the proposed temporary redeployment of Senior Public Service (SPS) and OneLearning staff in this case does not fall within the Secondment Policy in that the planned movement of staff is not to be achieved on a voluntary basis nor have other staff been afforded the opportunity to self-select for the redeployed positions. In this case the work of the SPS and OneLearning is moving to the IPA as part of the transformation agenda whereas under the Secondment Policy, staff apply for and volunteer to move to particular posts. The proposed temporary deployment arrangements are bespoke to this case.

The Institute of Public Administration (IPA) is a hybrid body under the auspices of DPENDR. Its staff are not civil servants. In this instance, a unique set of circumstances occur in that DPENDR propose that the staff with the requisite knowledge, experience and skills from the SPS and OneLearning Sections will be mandatorily deployed on a temporary basis for a period of two years. The Board consider that Management within DPENDR are exercising a right in doing so in the particular circumstances.

Those circumstances pertain to the fact that the terms and conditions of the staff concerned are fully protected for the duration of the temporary deployment. No one in effect loses out as a consequence of the move. The move is driven by the transformation agenda in National Agreements over many years including the envisaged seamless inter-changeability between the Civil Service and Public Service.

The Arbitration Board so determines.

Dated this 10th May, 2024.

Signed: 

Loughlin Quinn, Chairperson

Signed: 

Angela Kirk, Board Member

Signed: 

Patricia Coleman, Board member