

# Public service pay talks set to commence on the 'back foot'

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**Talks on a new pay agreement are set to get underway, despite the Public Services Committee of ICTU expressing disappointment at the Minister for Public Expenditure & Reform's response to its call for the repeal of post-financial crash "FEMPI" legislation.**

The PSC chairman, Kevin Callinan, and his colleagues had previously expressed a preference for a "multi-annual" public service agreement, but warned that this wouldn't be possible unless the government side agreed that their concerns regarding FEMPI would be addressed beforehand.

In a terse statement issued on Wednesday, the unions said the minister's statement, that he "*was not aware of any practical impact that the Financial Emergency measures in the Public Interest (No 2) Act, 2009 has on the conduct of normal industrial relations in the public service*" will come "as a surprise to IR practitioners on both the trade union and management sides".

*The level of pre-talks consensus doesn't appear to be at the level required*

The engagement will take place under the auspices of the Workplace Relations Commission, which has (as its predecessor Labour Relations Commission) facilitated public service agreements since 2010.

Entering the talks, however, tension over the FEMPI issue is set to influence the outcome, with the union side saying they will concentrate on "trying to reach agreement on short-term pay measures to address cost-of-living and labour market pressures".

## **ASSURANCE NOT GIVEN**

Last week, the public service unions had written to DPER Minister Paschal Donohoe, seeking clarification on the government's intentions "in relation to outstanding pieces of emergency legislation, in order to focus any negotiations on public service pay".

Noting the minister's preference for a multi-year agreement, they said this would not be possible "while the outstanding pieces of emergency legislation, introduced following the financial crisis, remain in place".

The letter continued: "Specifically, we would like an assurance that the government will take all necessary steps to restore industrial relations in the public service to the position which

applied prior to the enactment of the 2009 emergency legislation,” adding that the minister’s response “will assist the PSC to consider our approach to the discussions envisaged in your invitation and, if necessary, other avenues to address the matter.”

Replying last weekend, Minister Donohoe responded: “I will engage with them, I’ll hear in detail their views in relation to those last parts of the FEMPI legislation and look forward to doing that inside the WRC.”

In a subsequent RTÉ interview, he said: “I don’t believe it’s helpful for me to be laying down preconditions on the eve of heading into negotiations.” But he also said that the trade unions should “take comfort” from his statements.

## **LEGAL ADVICE**

Meanwhile, legal advice obtained by the unions suggests that the capacity of public service employers and their line ministers to secure agreements before presenting these to DPER, has been compromised by the FEMPI Act, 2009, and specifically, section 4 of that same Act.

The legal advice, IRN understands, is that repeal of section 4 would allow for the return of normal pre-2009 discussion and agreement, but the Minister for DPER would retain the right to veto any proposal just as Finance could before the crash.

In essence, the advice – furnished by Cathy Maguire SC on the instructions of Daniel Spring & Co. Solicitors – is that normal industrial relations has been stymied by section 4 of the 2009 Act and that its repeal would free up both management and unions to get business done. But Finance/DPER could still veto any pay deal. (See ‘News’ in this issue)

The trade unions argue that repeal would remove the presence of DPER from face-to-face negotiations, although individual public service employers would, of course, have to be mindful of public service pay policy.

## **WARY OF CHANGE**

PSC chair and Fórsa general secretary, Kevin Callinan, has also said that “mechanisms” are needed to resolve outstanding issues affecting public service grades, groups and categories:

“Multi-annual deals provide a high degree of cost certainty, and stability, for the government. While we’re willing to consider such a deal, we made it clear months ago that any deal would need to contain sufficient flexibility to address issues affecting specific groups of workers.”

But DPER negotiators are likely to be wary of conceding changes that could lead, not just to more pay claims, but a weakening of their ability to influence public sector management approaches in local negotiations.

A further issue causing tension is that prospective agreements, as well as a growing number of binding recommendations – some issued by the Labour Court – have yet to be implemented.

A core feature of all of public service deals, back as far as ‘Croke Park’ in 2010, has been mutual adherence to such decisions as binding in an industrial relations sense, with findings to be implemented as soon as is affordable and practicable. That has been a cornerstone of all the post-crash agreements, but it is looking less solid in recent months.

## **AVOIDING UNREST**

The talks, therefore, will commence on the back foot as it were, though the issue of FEMPI will be on the table. If agreement can be reached on its repeal, then a multi-annual agreement that could include a new process to manage group, category and grade claims is conceivable.

But this outcome would be unlikely if there is an impasse over the FEMPI issue, which would mean a shorter basic pay deal.

Failure could mean industrial unrest at a level not experienced for some time, more akin perhaps to what has occurred in the UK. But the parties to the talks in Ireland have become adroit at finding a path to an agreement and this remains the likely outcome, with the help of the WRC and the Labour Court, the latter being the ultimate arbiter in disputes related to these agreements.

## **SHACKLED?**

As to what the basic pay rises might emerge, it is worth recalling that when Building Momentum (BM) was negotiated in August of last year, the deal was for an extra 6.5% (on top of 1% that remained to be paid under the terms that covered the first two years of BM). In addition, there was a 1% sectoral bargaining element, which at that time hadn’t been applied to all categories. The deal was also weighted in favour of the lower paid.

Inflation may have eroded these increases, but the picture is more complex than that because the majority of public service workers also gain through agreed incremental structures.

They also get the same social supports as everyone else – such as the electricity support payments – and a large chunk of them were awarded the €1,000 Covid special payment.

## **DARKER CLOUDS**

The public service unions will know that with the economic picture not as rosy as it was a year ago, the coalition Government is facing into a general election within a year or so, perhaps even as soon as the spring of 2024.

For the Government itself, only the Taoiseach may know at this stage the most likely date of a general election. Leo Varadkar won't want a row over pay in the lead up to that contest.

The complex backdrop to talks will surely impact on both the substance and length of any final agreement. The going will be heavy at the outset, especially because the level of pre-talks consensus – some would call it choreography – doesn't appear to be at the level required.