

# **EQUALITY COMMISSION FOR NORTHERN IRELAND**

## **FINAL REPORT OF COMMISSION INVESTIGATION UNDER PARAGRAPH 10 OF SCHEDULE 9 OF THE NORTHERN IRELAND ACT 1998**

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Queen's University, Belfast

### **INTRODUCTION**

This complaint concerns the complainant's employment as a member of the clerical staff at Queen's University, Belfast (hereinafter referred to as QUB) and the fact that an "acting up" situation involving the complainant was allowed to continue for in excess of ten years, during which period the complainants salary was frozen at the mid-point of the salary range of the grade she was acting-up to.

The Commission has conducted an investigation into whether or not QUB has failed to comply with its approved Equality Scheme in respect of the following;

- Does the fact that the acting-up arrangement lasted much longer than the six months set out in the QUB Guidelines and that pay was frozen throughout the acting-up arrangement, irrespective of the length of the arrangement, amount to a policy which would therefore be required to be screened under either paragraph 6.2 (existing policies) or paragraph 6.3 (new policies) of QUB's approved Equality Scheme?

- If the matter in question amounts to a policy, has QUB failed in its commitment to screen the policy?

## **BACKGROUND TO THE COMPLAINT**

The complainant had been employed by QUB since 1983, and has worked from the Newforge Lane site since 1992 under the joint auspices of QUB and DARDNI. In March 1995 the complainant, although still a Grade 3 employee, had been asked to act up to a Grade 5 position in order to cover for a colleague who was off on long term sick leave. From October 1995 she began to be paid the Grade 5 salary, at the mid-point of the salary scale in accordance with rules. These are set out in a QUB document titled “Employees Temporarily Undertaking Additional Duties” which was operational at the material time and remains so.

The complainant continued to act up for another two years whilst her colleague’s sick leave continued through until her eventual retirement, leaving the substantive Grade 5 position vacant. She worked under the joint auspices of QUB and DARDNI. The complainant states that just as QUB Human Resources department were preparing to fill the post, the Chief Scientific Officer of DARDNI, Professor McMurray, froze all clerical posts at the Newforge site prior to carrying out a review of all administrative posts within the Science Service, and wanted to include all QUB clerical staff in this review. The complainant advises that this review lasted between six and seven years. Very soon after this review was completed, the O’Hare Report was being compiled (this was a report prepared on DARDNI’s arrangements for the provision of agri-food education, research and development in Northern Ireland).

The complainant, who had by this point been acting up with her salary frozen at the mid-point of the Grade 5 salary scale for over seven years, was advised in December 2002 that any decisions regarding staff acting-up could not be taken until the Minister had made an announcement in respect of the O’Hare Report because the funding arrangements for acting-up posts such as the complainant’s were 100% funded by DARDNI and as a result, QUB were obliged to adopt a joint approach in respect of any staffing/managerial

proposals. It was not until 21<sup>st</sup> May 2005 that the complainant's Grade 5 status was formalised, at which point she was appointed to the post without competition. Throughout this ten year period her substantive grading had remained at Grade 3, with her salary frozen at the mid-point of the salary scale of the grade she was acting-up to.

From the 21<sup>st</sup> April 2005 when the complainant was made a substantive Grade 5 employee, she was entitled to receive incremental pay rises from within the Grade 5 pay scale which commenced on 1<sup>st</sup> September 2005. Bearing in mind the complainant's original date for retirement of 14.05.2008, the consequence of this was that the complainant was unable to work a full 12 months at the top of the Grade 5 pay scale. As a result of this, her pension would have set at a lower rate as it is related to the salary earned during the last 12 months of employment. However, the Investigating Officer has since learned that QUB has altered its retirement policy in light of the recent introduction of the age discrimination legislation. Their new policy states that QUB employees' planned retirement date will be 30th September following their 65th birthday, although existing staff retain the right to retire on their previously agreed retirement should they prefer to do so. This was communicated to the complainant on 17<sup>th</sup> September 2007. In the complainant's case, if she opted to continue in employment until 30th September 2008 it is the Investigating Officer's understanding that she would have accrued the requisite twelve months service at the top of the Grade 5 pay scale in order for to retire on the level of pension she desires. However, the complainant has stated in correspondence that she feels somewhat aggrieved that an additional four and a half month's service is necessary for her to receive the pension to which she believes she is entitled in any event.

Furthermore, the complainant could only make Grade 3 contributions to her pension for the first five years of her acting up. From 2000 onwards she made Grade 5 contributions to her pension but this was at the frozen mid point level. As far as the complainant is aware the employer's contribution to her pension were linked to hers.

## **THE INVESTIGATION**

- 1. Does the fact that the acting up arrangement lasted much longer than the six months set out in the QUB Guidelines and that pay was frozen throughout the acting up arrangement, irrespective of the length of the arrangement, amount to a policy which would therefore be required to be screened under either paragraph 6.2 (existing policies) or paragraph 6.3 (new policies) of QUB's approved Equality Scheme?*

### **QUB's Position**

QUB officials interviewed in the course of the investigation did not accept that QUB had failed to comply with the commitments contained in its approved Equality Scheme as alleged, and made the following points in support of this position;

It was confirmed that there had been no screening in relation to QUB's acting-up arrangements, and officials stated that this was because there was no policy was in operation on the issues raised by the complainant, and that QUB was simply adhering to a set of operational guidelines. Reference was also made to the fact in a collaborative document contributed to by all the tertiary level education providers in Belfast that none of the institutions had identified acting-up as a policy that would be required to be screened. (This document identified policy areas for consideration from an equality perspective, one of which was that of Personnel). The QUB officials accepted that acting up would fall within this particular policy area, but re-iterated their contention that acting up arrangements could not be considered a policy per se.

## **INVESTIGATION CONCLUSIONS**

The Commission does not accept QUB's contention that it did not have a policy in relation to the issues raised by the complainant. QUB policy was that when an employee acted up, they would be automatically placed at the mid-point of the pay scale for the grade they were acting up to, and that pay would be frozen at that point for the duration of the acting up arrangement. Accordingly, employees

who acted up for longer than one year would not receive their annual incremental increase.

In reaching this conclusion, the Commission noted;

- The definition of what is ‘a policy’ in the Guide to the Statutory Duties is extremely wide;

*“... policies is a broad inclusive term. A policy is defined in the New Oxford Dictionary as “a course of action adopted or proposed ...”*

*“... the term policies covers all the ways in which an authority carries out or proposes to carry out its functions...Policies include unwritten...policies”.*

- *It is quite clear that it was a QUB rule that employees who were acting-up would receive the mid-point of the salary range of the higher grade, and that no increments were to be paid. This is stipulated in QUB’s “Guidance Notes on Employees temporarily Undertaking additional Duties”.*
- In the present case, the complainant was one of a group of eight people who were acting up within her department, all of whom had been acting –up for very substantial periods, and all of whom received salary in accordance with the rule set out above. All eight had their acting up grades formalised to be their substantive grades at the same time

## **INVESTIGATION DECISION**

Queen’s University Belfast has failed to comply with Section 6.2 of its approved Equality Scheme by not conducting a screening exercise in relation to its policies on acting-up and remuneration.

## INVESTIGATION RECOMMENDATIONS

In the course of this Investigation, evidence has emerged of acting-up arrangements that were permitted to continue in place for very substantial periods, despite QUB's guidance that such arrangements should not normally exceed six months. The Commission acknowledges that the unusual circumstances that prevailed at the New Forge site, involving the employment of joint staff by QUB and the Department of Agriculture, and the fact that two major reviews took place at the relevant time, may have contributed to these events. Nevertheless, we believe that acting-ups should not be allowed to substantially exceed their normal duration as set out in the employers Personnel procedures. The complainant has pointed to how the operation of the acting-up arrangement impacted on her as a result of her age. However, it would appear to the Commission that the practice of allowing acting up arrangements to persist for extremely long periods would give rise to serious implications across the equality agenda, and could be inconsistent with the merit principle. Indeed, this would appear to have been acknowledged by QUB itself as its Guidance Notes stipulate that acting-up should not normally last beyond 6 months, and that during its operation it should be monitored and reviewed from an equality perspective.

Accordingly, the Commission recommends that:

QUB carry out a screening exercise on its acting-up arrangements with a view to an equality impact assessment in accordance with paragraph 6.3 of their approved Equality Scheme. This would necessarily include a review of any written guidance and actual practice in the area, and cover the duration of acting up, remuneration during the acting-up period, and impact upon pension.

It is further recommended that QUB liaise with the Commission when carrying out same.