

REPORT OF THE CIVIL SERVICE ARBITRATION BOARD
IN RESPECT OF A DISPUTE BETWEEN AHCPS AND DPER OVER THE ACCUMULATION OF FLEXI LEAVE
FOR ASSISTANT PRINCIPAL OFFICERS APPOINTED SINCE THE IMPLEMENTATION OF THE
HADDINGTON ROAD AGREEMENT

SCHEME OF CONCILIATION AND ARBITRATION FOR THE CIVIL SERVICE

CLAIM

The Board has been asked to determine a dispute between the AHCPS and DPER, concerning officers in the Assistant Principal (AP) grade appointed after the implementation of the Haddington Road Agreement. The claim is for this cohort of staff to gain the right to accrue and take leave under the flexible working arrangements (FWA, or “flexi”) scheme.

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 23/7/19 and the finding was given on 29/7/19.

BACKGROUND

The dispute concerns the right of APs to accrue and take flexi leave. In 1982, flexible working hours and the right to accrue flexi leave were first introduced for staff up to the Higher Executive Officer / Administrative Officer grades. In 2000, the flexi scheme was extended to the AP grade, by way of General Council Report No. 1367, which stipulated that it was “a matter for management in each department to decide whether giving Assistant Principals or equivalent grades the option of flexible working hours is appropriate in light of the particular service requirements and management issues facing it”, and providing for “voluntary participation in the scheme and, where appropriate, the exclusion of certain posts”. Some Departments and Offices in the Civil Service allowed some of their APs access to the scheme as a result.

In 2013, the Haddington Road Agreement withdrew flexi for new APs, stipulating that “FWA will not apply to staff at the Assistant Principal Officer (APO) grade and its equivalents in the Civil Service and other sectors, except for those staff who already have this arrangement.” This measure applied to APs appointed from 1 July 2013.

In 2016, the AHCPS submitted a claim at General Council for access to flexi to be granted to this post-2013 cohort of APs. Several bilateral meetings took place to discuss the claim, culminating in the provision of flexible working arrangements for some APs, but not their accumulation of flexi leave.

In July 2018, a disagreed report (General Council Report No. 1547) was adopted that formally reflects the parties' positions, and on 3 August 2018 DPER issued a letter to HR Managers, confirming that the Haddington Road Agreement "is not a barrier to the use of flexible working times but does preclude the build-up of flexitime to be used as leave."

SUMMARY OF THE STATEMENT MADE BY AHCPS

The AHCPS argue that the removal of flexi leave for APs was done for no other reason than an ideological one, and that it specifically targeted management grades as if family friendly policies should not apply to them. They posit that withholding the right to accrue leave from newer APs contravenes natural justice, particularly when no other grade with access to flexi leave accrual was so affected.

The AHCPS contend that employee well-being is intrinsically linked to flexible working hours, and they attach significance to paragraph 2.14.3 of the Public Service Stability Agreement (PSSA), for recognising that flexi can be used to address work-life balance issues that may arise:

In those areas where flexi-time currently exists and, with full regard to service delivery requirements and business needs, arrangements may be made to enable annual leave in excess of the statutory minimum to be used on the flexi-clock to allow staff to reduce their working hours to address work-life balance issues that may arise. This will initially be done on a confined pilot basis, with a view to further extension, subject to a comprehensive assessment of the operational and cost implications.

They make the point that many parents of younger children are often obliged to use personal leave when children are ill or attending medical appointments, and as a result, normal leave is often used, curtailing necessary personal or family holidays. The ability to accrue flexi-leave is claimed to allow an individual to counter-balance such situations and better improve work-life balance.

The AHCPS further claim that difficulties arise from APs without flexi working alongside other APs with flexi, and also from those who previously worked in a flexi-entitled grade, who lose flexi upon promotion to AP. The absence of full flexi for APs is said to have been the difference between some HEOs/AOs on full flexi and on flexi-leave going forward for promotion or not doing so, i.e. the facility to accrue flexi leave is seen as a barrier to promotion.

The AHCPs cite two studies in support of their argument that the lack of flexi leave accrual can deter women from the AP grade. A 2018 study carried out in the Department of Housing, Planning, and Local Government¹ found that twice as many men than women apply for senior management roles, even when women make up approximately half of the eligible cohort. When questioned in a follow-up survey, almost 70% of the women who had decided not to apply cited work-life balance and loss of flexibility as a key factor in their decision.

The ESRI research document *A Study of Gender in Senior Civil Service Positions in Ireland* highlights several potential barriers to promotion that are likely to impact on women. The lack of flexible working arrangements at senior grades was viewed as a crucial issue, with women deterred from or delaying applying for promotion because of the difficulties of balancing work demands with child- or elder-care.

SUMMARY OF THE COUNTER-STATEMENT MADE BY THE DEPARTMENT OF PUBLIC EXPENDITURE AND REFORM

DPER claim that the AP grade is a senior managerial grade in the Civil Service, a critical post in ensuring quality service delivery to the public, and the accrual and taking of flexi leave is not appropriate for such a grade. The AP grade also differs from the lower grades in that it is not an overtime eligible grade. DPER expect that APs should have sufficient autonomy to manage their own working time to fulfil the responsibilities of their role, as is the case with Principal Officers.

In refuting the idea that APs were singled out as if family-friendly policies should not apply to them, DPER point to a range of family friendly policies which apply to the AP grade and are used by APs, including work-sharing, a shorter working year scheme, and flexible working hour arrangements which can be availed of, having due regard to the business needs of the organisation.

DPER argue that the difference in flexi provision for pre- and post-2013 AP entrants arises solely from timing of appointments rather than from discrimination. This has been evident in other aspects of Civil Service employment, including the fact that those appointed since 2013 have a different pension scheme to those appointed previously. Similarly the difference in this case is not a matter of inequality, but rather one of timing. There have been two public service pay agreements since Haddington Road, and neither of these have revoked the Haddington provision regarding AP flexi leave accrual.

¹ Timmons. C. (2018), *Gender in the Department of Housing, Planning and Local Government*, MA. Thesis, IPA

DPER contend that AHCPs has provided no evidence that the lack of accruable flexi leave specifically is a barrier to promotion. The D/HPLG study cited by AHCPs was specifically focused on applications for Principal Officer (PO) promotions, and there was a clear view that taking on a PO role would negatively impact on candidates' time available with their families, primarily due to the demands and responsibilities of the role, rather than flexi leave provisions. While the ESRI report referenced by the AHCPs found a lack of flexible working arrangements was critical in women's participation at senior levels, this concerned the broader issue of flexibility rather than the narrow matter of flexi leave, with other barriers including lack of structured handover and induction, long hours culture, high levels of work intensity, confinement to certain types of role that lack visibility, and lack of self-confidence. DPER cite statistics showing that the proportion of female APs did grow from 42% in 2013, to 48% in 2016, and 50% in 2018. Additionally, an evaluation of the application rates for the last two AP interdepartmental competitions indicate that over 50% of the applicants were female.

Official statistics also show that annual leave at AP level is regularly not taken, with 6793 days sacrificed so far by APs appointed since 2014. DPER argue on this basis that the ability to accrue additional flexi leave each month is not a solution to increasing flexibility at this level, and that the focus should be on exploring other more flexible ways of working.

In outlining alternatives to flexi leave accrual, DPER's submission cites examples of senior management from five Departments availing of flexibility in working arrangements, including flexible working hours, flexibility in start/finish times, and access to remote working. Flexibility of approach to working arrangements broadly has been recognised by the Civil Service Management Board as a means to improve gender balance at more senior levels of the Civil Service, and departments have explored how greater flexibility, and potentially work-sharing, could operate at senior levels.

CONCLUSION OF THE BOARD

The Board thank both parties for their submissions and supplementary contributions during the Hearing on 23rd July last. Having considered the matter in the light of these exchanges, we do not recommend the concession of the AHCPs claim for the re-introduction of Flexi Leave for Assistant Principal Officers in the Civil Service appointed since 2013.


The reasons are as follows. Firstly, the matter at issue was the subject of a specific sentence in 3.18 of the Haddington Road Agreement which stated that "FWA will not apply to staff at the Assistant Principal Officer (APO) grade and its equivalents in the Civil Service and other sectors, except for those staff who already have this arrangement" and this specific restriction was not altered by the terms of the Stability Agreement 2018-2020. Secondly, as evidenced by both parties, accrued Flexi-Leave for


Assistant Principals has not been applied uniformly across the Civil Service. Some Departments recognise and apply this leave, and others quite clearly do not permit such leave. As a result any perceived inequity felt by the Assistant Principal Officers appointed since 2013 cannot be regarded as discriminatory as it is not something that is available to all Assistant Principals employed before that date.

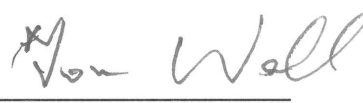
However, in so finding, the Board is making no judgement as to whether the accrual of Flexi-Leave is something that is appropriate to the Assistant Principal Officer Grade and we recommend both parties continue to undertake further research over the coming months on the impact for service delivery in Departments, and any possible impact on the numbers applying for promotion to the Assistant Principal Officer Grade. Such research could inform any subsequent negotiations should this claim be re-introduced as part of the negotiations for a successor to the PSSA in 2020.

The Board so determines.

Dated: 16th August 2019

Signed: 
John Doherty, Chairperson

Signed: 
Gerard Barry, Board Member

Signed: 
Tom Wall, Board Member

