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RE: BM SNA Contract Review Issues for Discussion

Dear Mark,

Following on from the initial contract review meeting of Thursday the 27th of October, please find below details of the items we wish to formally discuss as promised. The issues are categories into main headings, which may encapsulate several sub-issues or sub-headings. We have adopted this approach as many of the items are interconnected and an effect on one, may have knock on for another.

Review of the SNA redundancy scheme / Allocations

We believe that there is no longer any legitimate rationale to retain the current model of the SNA redundancy scheme and subsequent model of allocations.

Year on year, SNAs endure hardship, angst and difficulty awaiting for the allocations to be announced so that they can determine whether they have a position / job, for the coming year. Year on year, the pain has been further exasperated by the announcement on allocations becoming later and later, leading to significant frustration and stress. This is likely to be particularly pronounced now that we have had to contend with several years where allocations were frozen on foot of the pandemic.

We believe the above system is no longer fit for purpose and does not appropriately consider the fact that we have seen SNA allocations increase year on year, so that there are additional positions within the system, the question being where?

We believe it possible to put a robust transfer scheme in place, to allow an SNA who is deemed to be no longer required in the location they are presently employed, to transfer to another school within a particular geographical radius, without the need for further interview or to recommence their employment status again as schools are associated employers, with the Department as the common paymaster.

Such a system is already in place in ETBs and functions without issue in the main. By allowing SNAs to transfer in such a manner it brings with it several benefits as follows:

- Ensuring that SNAs with hands on experience are retained in the system and can be deployed to areas of need. This will have the knock on of ensuring new classes and schools can be staffed using experienced staff where available and will benefit the children for whom they care for.
- Safeguarding the payment of an unnecessary redundancy payment. We know the SNAs who take redundancy often sub for a period before coming back into the system once the time provisions allow, by allowing an SNA to transfer in the manner requested could mean that such a redundancy payment is never paid, as such generating a saving to the exchequer.
- It avoids schools of having to undertake the onerous process of holding interviews during the summer break, when many are off. This will save both time and money.
- Aligning with Government objectives of a singular and streamlined public service, where existing resources can be deployed to areas of new service demand.

SNA Redundancy Scheme

This would need to be maintained for SNAs who may not wish to transfer from their present employment but will likely be utilised far less, provided there are posts within a certain geographical area of where the reductions in posts are. We may also need to consider the impact / effects of any newly proposed allocations model in this regard.

Probationary Period

We do not believe the current clauses relating to probation ensure that staff are treated fairly and in accordance with S.I. 146 of 2000, Industrial Relations Act 1990 Code of Practice on Grievance and Disciplinary Procedures (Declaration) Order 2000 taking account of the position of SNAs who have successfully completed probationary periods in previous schools.

We believe that once probation has been served satisfactorily in an associated employer, there should be no requirement for the staff member to serve it again, unless they break their service. Employers have recourse to appropriate policies to manage staff in the event issues do arise, equally there should be no differentiation to the procedures used regardless of whether a staff member is on probation or not. As such maintaining the provision for staff to undertake further probation, is entirely pointless and only serves to create unnecessary administrative burden on employers and staff members affected,

Garda Vetting Requirements

This may be covered by the items detailed above, however in the event it is not, we wish to ascertain if it will be possible to centralise necessary vetting arrangements to facilitate flexibility for vetted Substitute SNAs to work across different schools and for staff to participate in summer provision across different schools. The current system is overtly complex and serves as a debarment to flexibility and buy in to substitute or undertake summer provision, as there can be significant complexity and angst for individuals to get their vetting in order.

Minimum Education Qualification / Accreditation

Minimum Qualification

We believe that to properly conduct a robust review of the contract, it is essential to also review the minimum education qualification for SNA's. When any employer is designing a contract, the spine or core

of that process will be based on the qualifications required for the role and the level of responsibility it holds.

The minimum education qualification for SNAs stands as follows:

1. A FETAC level 3 major qualification on the National Framework of Qualifications, OR
 2. A minimum of three grade Ds in the Junior Certificate,
- OR 3. Equivalent

The qualifications have not been reviewed in some 43 years, having been set in 1979. However special education and the roles and responsibilities of an SNA. Have evolved exponentially since.

The outdated qualification fails to appropriately reflect the role and responsibilities of staff supporting children with special educational needs.

The role of the SNA is unique as it covers both the health and educational needs of the children they support. There is an ever-growing requirement for SNAs to carry out a range of complex procedures or duties throughout the course of their employment despite the qualification being set so low, whilst in healthcare settings counterparts carrying out such procedures would require a higher qualification.

Consistent recruitment evidence demonstrates that the reality is schools recruit SNAs with much greater qualifications than the current minimum entry requirements.

We believe it imperative for this to be completed as part of the review, to ensure the viability of any outcome. The qualification and the contract must appropriately reflect the complexities of the role and the responsibilities it holds, going forward and it is impossible to do either in isolation.

Accreditation of UCD Course

We welcome the recent announcement by the minister that there is an agreement to accredit the National Training Programme for SNAs as delivered by UCD in the coming weeks.

However, we do have concern that there is no detail on the process, or level of accreditation announced as of yet. We note that UCD have confirmed in their own internal assessment that it is their belief that the course meets the standard of a Fetac QQI Level 7 Certificate on the National Framework of Qualifications. Fórsa believe that UCD are best placed to determine the level of accreditation the course warrants as it is within their area of specialist expertise to do so, the union would not have such in house expertise in this field.

Should the Department not agree with the UCD view, then Fórsa would suggest an independent expert review, carried out by specialists in this field who have the appropriate professional skills and competencies to make a fair and balanced determination as to the level they believe the course should be accredited at.

The misuse of the 72 Hours obligation & June Working

72 Hours

Fórsa has compelling evidence, both historical and recent that the 72 Hours obligation is widely misused by many Schools.

The evidence obtained demonstrates that the hours are often abused, either in the manner of which they are being scheduled, extending the working day / week, or the type of duties that staff are being requested to undertake, not being in any way related to supporting students with additional care needs or appropriate to an SNA.

Whilst we have much historical evidence that the hours have been openly abused and SNAs are regularly requested to do duties that would not be appropriate to their role or related to SEN provision, the issue took a renewed prevalence during the pandemic.

This was particularly apparent at the point where the union requested a pause of the hours on a non-prejudicial basis for the following reasons:

- We were at the worst period of Covid, case numbers were spiralling, death rates were increasing and there was no vaccine protection at that point.
- There was still a degree of uncertainty about what we were dealing with.
- Members were not being supplied medical grade masks, despite their role.
- Absenteeism on foot of Covid was spiralling.
- The provision of education was a priority, given schools had been closed.

The Departments unreasonable response, dismissed all the above, instead citing the 72 hours were compulsory and must be undertaken by all. The response further stated that if there were issues in this regard the disciplinary policy was available to employers.

This position was and remains at odds with the provisions of the agreed circular 71/2011 and has only served to exasperate the issue to where it is today as Schools / BOMs now believing the hours are compulsory and must be completed has only furthered the widespread abuse and emboldened negative positions. It has led to a situation where there is no real consideration to how best to utilise the hours for the benefit of supporting students with additional care needs.

Instead SNAs have been asked to take on duties that were not appropriate, used instead to displace work that should be undertaken by secretaries, caretakers or cleaners, or hours just lazily and hastily scheduled to get them done, with no real thought given to their benefit at all, or the provisions of the circular. Hours can often be scheduled in a time bound fashion with SNAs on premise with nothing to do.

In tandem to this we have seen an increase in cases where there is a reluctance or reticence to use the hours for items that are appropriate (such as the UCD training course) as we have examples of SNAs being informed they can only use a minimal amount of the hours for such items, with employers instead seeking to utilise the hours in ways as outlined above and potentially offset costs.

The constant issues with the hours highlight that local employers cannot be left to use them appropriately and as such, they must be removed in totality. It is unfair to expect SNAs to continue to undertake the obligation which was introduced under the Croke Park Agreement amid the recession, when all other recession measures have been withdrawn, which has seen the most senior civil and public servants have their working time reduced from July 01st this year, including Department officials.

June working

The obligation in respect of Post Primary Staff for attendance in the month of June has also caused significant concerns which appear to increase year on year, much in the same vein as the issues experienced on 72 Hours.

The SNA contract sets out that the SNA working hours are classroom hours with a period before and after, as per the nationally agreed SNA contract. Classroom hours do not exist in June, as there are no classes scheduled and students are not on site, as such, June must be considered different, hence it's unique inclusion in the contract.

However, the circumstances whereby there are no students with additional care needs on site and where there is no suitable work for SNAs results we have seen consistent examples of staff being assigned inappropriate and sometimes deeming tasks which fall outside the remit of the statutory framework for allocating SNAs to schools or asked to report on site in a time bound fashion, effectively doing inappropriate tasks and then waiting on a clock to strike a certain time before they can leave.

It is our belief that the continuation of the 72 hours and June obligation(s) will not benefit students of staff in any way. The obligation(s) serves as a barrier to staff development which invariably must be undertaken by the SNA in addition to this block of hours / work.

Fórsa believes that both obligations need to be abolished based on the above.

Holiday periods

The clause on holiday periods should be revised in the light of the outcome of discussion on the 72 hour obligation and the obligation to be available for work in Post Primary schools during the month of June.

Nature of work to be performed

Nature of the work to be performed

There is a serious need to tighten and clarify the provisions in the contract regarding appropriate work.

It is all too common to receive reports of SNAs being asked to undertake duties that are not SEN related, not appropriate to the role of the SNA. We also have concerns that these requests can often lead to the displacement of work of another grade. There are consistent examples of SNAs being asked to stand in for secretaries, or undertake clerical admin duties such as photocopying, scanning or shredding, or being asked to carry out duties that would be appropriate to that of a caretaker cleaning bins, lockers, move furniture, or carry out duties that would be more appropriate to a cleaner such as clean or mop, large areas / sections of the school.

This became more prevalent throughout Covid, where SNAs were regularly asked to clean bins and lockers, refill sanitising stations, clean, Hoover or mop large areas of the school.

More concerningly this continued to happen despite the fact that there was additional funding available, specifically for cleaning.

We believe the new contract needs to cite the prevailing Circular (currently 0030/2014).

Whilst the Union side accepts that duties may be allocated to staff by the principal, we will be seeking to ensure that such work is always appropriate to the grade and the role of the SNA. We believe that the contract needs to be stronger in emphasising this clearly and that the current "at the discretion of the principal" term is too broad and open to abuse.

Disparities in Working Hours / Breaks / Certain Leave Entitlements

Working Hours

There needs to be further clarity that the working hours of an SNA is not 32 hours and that the hours are set as per the provisions of the nationally agreed contracts. Once again it appears to have gained currency that the working weekly hours of an SNA are 32. There have been a multitude of IR issues with employers in recent weeks, where they seek to use 32 hours to determine the working hours of SNAs. This issue appears even more prevalent in ETBs.

Equally the period before and after school needs to be more clearly defined and strengthened. We have had numerous instances where employers utilise this period to get SNAs supervising children in yards or common areas. This is not what should be expected of them in this time but more importantly this is not appropriate to the role of the SNA at any time, given that SNAs are not paid for supervision, whereas teachers receive an allowance for same.

It is not appropriate for employers to abuse this provision in the contract and utilise it to have SNAs supervising children in common areas or yards, whilst not extending the supervision allowance to them. The contract wording should be altered to state that the period before and after classroom hours should be used specifically for preparation / arrival and tidying / dispersal, to avoid further abuse.

In instances where this issue persists, the union will pursue a claim for the supervision allowance on behalf of members in that employment.

.83 of a post

Separate correspondence has issued with regards working hours and in particular the issue of SNAs in Junior Schools being considered .83 of a post and not full time.

Breaks

The existing contract is ambiguous and does not specify how the terms of the Organisation of Working Time Act will be met. This creates difficulty in workplaces where SNAs receive less break entitlements than teaching colleagues and are openly treated unfairly. The term 'normal break times' should be replaced and made clearer, also highlighting the break need not be taken solely on school premises.

Whilst covered under a separate point, the issue of supervision needs to be considered here. We have numerous examples where SNAs are asked to supervise, either as part of "yard duty" or in common areas through breaks. We have examples where SNAs are rostered to do this. In many instances, teachers may not be present, or present sporadically over the time.

Again this creates issue given that teachers receive a specific allowance for supervision which SNAs do not have access to.

SNAs should not be left to supervise in yards or common areas without a teacher present for any extended period of time, when they do not receive an allowance for same.

Teachers must be present within the location save for brief instances such as going to the toilet, or to another class for a moment.

SNA Special Leave

Consideration needs to be given to the multitude of claims where there are disparities in leave provisions which see SNAs treated less favourably than other education colleagues or indeed counterparts across the civil and public service. These items have formed part of separate claims which have been lodged and would include but are not exclusive to as follows:

- EPV or training days
- Study leave
- Paid Family Illness leave
- Sitting on a national board or body
- Representing Ireland at a Sporting Event
- HS leave for pregnant SNAs

These items need to be given appropriate consideration and the disparity removed where there is no legitimate justification for maintaining same.

SNAs are public servants and should not be precluded from benefits enjoyed by colleagues across the wider public service.

Unpaid days – SNAs can have difficulty in obtaining unpaid days, given that the requirement in the circular is that they can be taken in exceptional circumstances. This statement is too broad and subjective opens the doors for variation in treatment and inconsistency in application. The definition of exceptional to one principal may be wholly different to that of another. We would like a less subjective provision ensuring that SNAs do have access to such days throughout term for family occasions etc. that may be in excess of the provisions outlined in paragraph 2 – 4 of the aforementioned circular.

Equally we would like consideration given to the quantity of 10 days, which was reduced from 20 days originally. Whilst 10 days would be sufficient in most circumstances, there are instances where it may not. Particular consideration should be given to extending the entitlement in instances where people require further time off for educational purposes. E.g. An SNA undergoing placement in order to obtain a teaching qualification.

Due account should also be taken of any potential changes to special leave entitlements such as bereavement leave which may result from various referrals to the Workplace Relations Commission.

Review of policies and circulars

There are a multitude of policies and circulars which need reviewing to bring them up to date and in line with changes in legislation and modern practices. There are some such as carers leave where there is no circular in place at all, this is not acceptable.

We have had instances where members employers have been informed that they should just follow the teachers provisions, this is wholly unacceptable, as Fórsa were not part to those negotiations and as such, the outcomes do not apply to our members in the same manner that teachers have a wide range of benefits that the Department will not automatically apply to SNAs.

Examples of some of these circulars and the rationale as to why they require review are below, these examples are not exhaustive.

We would suggest that these reviews could be channelled through the IR forum, with 2 circulars being reviewed at a time and small subgroups convened to carry out the negotiations in order to streamline the process.

Grievance and Disciplinary Procedures

There is an urgent need to review the existing procedures to ensure compliance with S.I. No. 146 of 2000, Industrial Relations Act 1990, Code of Practice on Grievance and Disciplinary Procedures (Declaration) Order 2000. Any review of the existing SNA contract should include provision for a clause in the contract confirming both the employer and the employee are obliged to adhere to the dispute resolution procedures within prevailing national pay agreements.

There are far too many examples of school employers refusing to attend the WRC on industrial relations issues, or where they seek to engage through legal representation from the off on issues, despite the issue not being in dispute at that juncture. These stance flies in the face of what would be considered as good industrial relations practice but also contrary to the provisions of the prevailing national agreements.

This issue also sets education apart from other sectors of the civil and public service, who engage on such industrial relations issues locally and informally to try and resolve issues in the first instance but failing that have no issue with engaging through the states recognised dispute resolution mechanisms, ensuring compliance with the prevailing national pay agreements.

SNAs are part to these pay agreements and bound by all the clauses within, the Department as the key stakeholder to the agreement on the employer side has an obligation to ensure that school employers understand their responsibilities and comply with the provisions equally. The current situation cannot continue, with unnecessary legal cases and employers adopting a pick and mix approach to IR, SNAs and Fórsa as a union cannot be expected to be bound by the provisions on the ground if the local employers and management are not.

We believe it incumbent on the Department, as the key stakeholder from the management side, to bring this to task. Equally it cannot be a case of the Department acting like an employer when it comes to certain circulars or issues, but stating they are not an employer and have no control in issues such as this.

Sick Leave

The clauses in sick leave need to be updated to reflect current public service entitlements including the critical illness protocol and the availability of temporary rehabilitation pay. The recent changes to the provisions for a phased return to work should also be cited.

Carers Leave

No circular is in place for SNAs at present. There is a particular need to look at this in the context of an SNA being able to undertake shorter working hours within their own school whilst meeting the caring obligations at home and availing of the provisions within the circular. All of which is provided for within the legislation with the agreement of the employer.

Job Sharing

The job-sharing circular commits to a review by end of year 2015, yet this has never happened.

The circular refers to a 16-hour week across primary and post primary, which is obviously a reference as a pay-divisor, given the working hours across primary and post-primary differ. However, this reference has led to employers seeking to implement job-sharing on the basis of the working hours for a 50% post are 16 and other arrangements pro-rata.

This leads to instances whereby job-sharing SNAs are working longer working hours pro-rata than their full-time permanent counterparts, in turn treating them less favourably than their full-time permanent counterparts and breaching the appropriate legislation – The Protection of Employees (Part-Time Work) Act 2001.

Miscellaneous updates to terms required

Summer Provision

The revised contract should make clear that the agreed national rates of pay will be available where Schools offer a programme as part of summer provision and that SNAs will also be entitled to EPV days on the same basis as teaching colleagues who participate in the same programme.

Pension Entitlement and Retirement Age

The clauses relating to pension entitlements should be updated and should include reference to the public service retirement age(s).

Working away from School Premises

This section of the contract should make clear that the normal civil service rules will apply in respect of travel and subsistence expenses. It should also highlight that the role of the SNA does not alter or change in such instances and outline the protocols in the event an issue or emergency arises.

Kind regards



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