



FINDINGS AND RECOMMENDATIONS: February 2017

CIVIL SERVICE CODE

COMPLAINT TO THE CIVIL SERVICE COMMISSION

Ref: 135

FINDINGS OF THE PANEL OF INVESTIGATION

AUTHORITY

1. The Constitutional Reform & Governance Act 2010 requires the Minister for the Civil Service to publish a code of conduct for the Civil Service (known as the 'Civil Service Code'). The Act also prescribes the minimum requirement for this Code, namely that:
 - a. civil servants must carry out their duties to assist the administration they are employed to serve, whatever its political complexion;
 - b. civil servants must "carry out their duties with integrity and honesty; and with objectivity and impartiality".
2. The Constitutional Reform & Governance Act 2010 outlines the functions of the Civil Service Commission. It gives as one of the functions, in relation to the Civil Service Code:

9 (5) The Commission –

 - a) Must determine procedures for the making of complaints and for the investigation and consideration of complaints by the Commission;*
 - b) After considering a complaint, may make recommendations about how the matter should be resolved.*

OUTLINE OF THE COMPLAINT

3. The complaint was submitted by a member of staff working at Public Health England (PHE) and concerned allegations that relate to misuse of safety procedures required by the Genetically-Modified Organisms (Contained Use) Regulations 2014 (the Regulations), allegations of bullying and harassment and an allegation that an investigation by PHE into the complainant's concerns was not carried out properly.

4. The key requirement of the Regulations is *'to assess the risks of all contained uses and to ensure that any necessary controls are put in place'*. The Regulations also require risk assessments of contained use involving genetically modified organisms to be completed by the responsible individual and reviewed by a committee. The overall 'competent authority' for England and Wales is the Health and Safety Executive (HSE) and the Secretary of State for the Environment and Rural Affairs.

Treatment of the complainant

5. The complainant raised concerns in his department in December 2013, which were investigated in April 2014. Dissatisfied with the response from the department he raised the matter with the Commission who recommended that he should raise his complaint formally as a Code issue with PHE in the first instance as they had a duty to investigate. In December 2014 the complainant wrote to the Cabinet Secretary who referred the case back to PHE to investigate.
6. PHE advised the complainant in January 2015 that they had decided to treat him as a whistle-blower and began an investigation, completed in July 2015.
7. The complainant brought an appeal under the Civil Service Code to the Commission in August 2015.

METHODOLOGY OF INVESTIGATION

8. The investigation of this complaint was conducted by the Commission's secretariat and adjudicated on by a panel comprising three Civil Service Commissioners:
 - Jan Cameron, Civil Service Commissioner
 - Kathryn Bishop, Civil Service Commissioner
 - Kevin Woods, Civil Service Commissioner
9. Having carefully considered the evidence provided, the panel also asked further questions of staff at PHE involved in the complainant's whistle-blowing concerns.

EVIDENCE

10. The panel had access to a large volume of evidence supplied by the complainant and PHE, including PHE's investigation report into the complainant's whistle-blowing concerns.

CONSIDERATION OF THE EVIDENCE AND FINDINGS

11. The panel considered the evidence and made the following findings:

Did the behavior of the Committee constitute a breach of the Code?

12. A requirement of the Regulations is that advice on risk assessments for work involving genetically modified material should be obtained either from an individual or a committee, and due to the nature of its work PHE relies on advice from a committee. The committee acts as an advisory body, and the HSE is the regulator.
13. A further requirement of the Regulations is that anyone intending to construct or handle genetically modified organisms must obtain the agreement of the committee that the intended activity is safe and adequately contained.
14. The complainant alleged that there was misconduct on the part of the committee chair and another of its members, and that the chair had sought to prevent a number of the complainant's proposals from being discussed at the committee. The complainant further alleges that minutes from committee meetings were mis-recorded and contained errors and factual inaccuracies.
15. The complainant argues that the conduct of the committee chair and another of its members breached the core values of integrity, honesty, objectivity and impartiality. The Code defines these core values as follows;

Integrity

- *You must fulfill your duties and obligations responsibly;*
- *always act in a way that is professional and that deserves and retains the confidence of all those with whom you have dealings;*
- *keep accurate official records and handle information as openly as possible within the legal framework; and*
- *comply with the law and uphold the administration of justice.*

Honesty

- *You must set out the facts and relevant issues truthfully, and correct any errors as soon as possible.*

Objectivity

- *You must provide information and advice, including advice to Ministers, on the basis of the evidence, and accurately present the options and facts;*
- *take decisions on the merits of the case; and*
- *take due account of expert and professional advice.*

You must not:

- *ignore inconvenient facts or relevant considerations when providing advice or making decisions.*

Impartiality

- *You must carry out your responsibilities in a way that is fair, just and equitable and reflects the Civil Service commitment to equality and diversity.*

You must not:

- *Act in a way that unjustifiably favours or discriminates against particular individuals or interests.*
16. The panel found no evidence that the complainant's proposals were ignored by the committee, the minutes record that the complainant's proposals were considered before they were eventually signed off.
 17. The panel also considered the complainant's allegation that the minutes of some of the committee meetings contained omissions and factual inaccuracies. The panel noted that the minutes had been examined independently as part of an investigation by PHE in 2014 and no errors had been identified, and the panel also noted that minutes had previously been corrected when the complainant did not agree with them.
 18. The panel at paragraphs 14 and 15 above found no evidence that the behavior of the committee, specifically the chair and one other member, had breached the Code in the way they conducted their committee business. The panel also took into account the view of the regulator HSE who undertook an independent assessment of the committee and its work and found that although there were some areas of concern, these were not serious and easily rectified and there were no breaches of the law that warranted immediate action.

Was PHE operating without the necessary derogations (permissions)?

19. The Regulations require that all class 2 contained uses and above are notified to the HSE before the contained use can begin. The regulations also state that:
'derogations from containment measures can also be sought after the contained use has been notified and for those contained uses that do not require notification i.e. class 1 work with GMM's. In these cases, users should contact the competent authority to apply for the derogation supplying justification and a revised risk assessment to support the request together with the appropriate fee.'
20. The complainant alleged that activities had been wrongly classified and that PHE has been carrying out activities without the appropriate consent in contravention of the Regulations and that by failing to seek the necessary derogations PHE had breached the Code value of integrity which states:

Integrity
 - *You must comply with the law and uphold the administration of justice.*
21. The panel considered the evidence from the complainant, PHE and HSE who concluded that although there were some irregularities and shortcomings **there was no evidence that PHE were operating without the necessary derogation.** The panel agreed that although they lacked the expertise to make a finding on the technicalities of the derogation and the highly specialised work it covers, they were entitled to rely on the findings and evidence from the HSE as regulators, who at no

point in their correspondence with the complainant or PHE indicated that facts were concealed or that work was being carried out illegally without the necessary derogation.

Did PHE investigate the complainant's concerns properly under the Code?

22. The complainant first mentioned 'whistleblowing concerns' to his line manager in November 2013, and in December 2013 he raised concerns about the committee that were investigated by PHE (no report was produced). The panel noted that PHE did not consider his concerns under the Code but did conclude that although they could find no errors in the committee minutes HSE should review the way the committee conducted its business as part of their next scheduled visit. Before PHE had communicated the results of their investigation the complainant emailed them mentioning a campaign of harassment against him. These concerns were not investigated at the time.
23. The complainant raised the same concerns, again to his line manager in writing in November 2014, they were not investigated. It was only after the complainant had written to the Cabinet Secretary in December 2014 that PHE agreed to investigate his concerns under their whistle-blowing policy in January 2015. The investigation finished in July 2015 and the complainant then bought his appeal to the Commission.
24. The panel considered the delay and difficulty in getting PHE to investigate the complainant's concerns under the Code, and that an earlier intervention might have meant that an escalation of the complainant's concerns could have been avoided. The panel has concluded that the delay was a breach of the requirements of paragraph 16 of the Code, a failure to investigate the concerns when they were first raised and investigate them effectively.
25. The Commission considers that the obligations on all civil servants to uphold the Code mean that HR teams and line managers ought to pick up on concerns of this nature without the individual specifically mentioning the Code.

Did the PHE investigation into the complainant's concerns contain factual inaccuracies thereby breaching the Code?

26. The complainant alleged that the final report into his concerns contained various inaccuracies as follows:
 - that the investigator's statement in his report that the complainant had failed to provide a clear overview or summary of his concerns or the events giving rise to them was false;
 - that the statement that all his concerns had been known to the previous investigator was false;
 - and that the statement in the report that a derogation issue had been resolved by telephone the complainant also believed to be untrue.

27. The complainant alleges that the author of the investigation report has therefore breached the Code values of honesty and objectivity as follows;

Honesty

- *You must set out the facts and relevant issues truthfully, and correct any errors as soon as possible.*

Objectivity

- *You must set out the facts and relevant issues truthfully, and correct any errors as soon as possible and you must not ignore inconvenient facts or relevant considerations when providing advice or making decisions.*

28. The panel noted that the investigation was carried out by a senior member of staff at PHE who as part of his investigation interviewed the complainant and asked him specifically what his concerns were. He also interviewed other witnesses before arriving at his conclusions that the complainant's concerns were not substantiated, which was supported by senior staff at PHE and HSE.

29. The panel concluded that the investigator had taken account of all information made available to him and there was no evidence that any evidence supplied by the complainant as part of the investigation was ignored. The panel also noted that the complainant did not appeal the decision by PHE on the grounds that any relevant information was ignored.

30. The panel also concluded that the statement made by the investigator in the report that the complainant had provided no clear overview or summary was a matter of opinion and one that he was entitled to make. The derogation issue is discussed further at paragraphs 19 to 21.

31. The panel concluded that the complainant's allegation that the second investigation report contained a number of factual inaccuracies is not recorded as a breach of the Code.

Did PHE breach the Code by not employing experts in microbiology to lead both investigations?

32. The complainant alleged that both investigations into his concerns breached the Code value of objectivity as neither was carried out by, or supported by a microbiologist who would have understood the relevant regulatory framework. The Code value states:

Objectivity

- *You must take due account of expert and professional advice.*

33. The panel noted that both investigations were carried out by senior members of PHE staff with the help of other scientific staff, witnesses and the HSE as the regulator and competent authority. The panel concluded that it was reasonable

to expect staff involved with the work of the committee, senior scientists working at PHE and the regulator, whose responsibility it is to ensure that PHE comply with the GM regulations to understand the regulatory framework, which is at the core of the complaint. The fact that a specialist led neither investigation does not amount to a breach of the Code.

Was the complainant victimised as a result of raising concerns under the Code?

34. The complainant had his access to a particular laboratory restricted for less than a month and alleges that the restriction was a punitive measure taken against him because of the concerns he had raised about the propriety of what was happening in the committee.
35. The complainant was asked to 'step down' from the committee at the end of 2014, he was told that although he could continue to submit proposals for consideration he was no longer invited to attend the committee. He alleges that this was part of a campaign of harassment against him.
36. Finally, in 2015 PHE began a separate disciplinary process against the complainant, which he alleges was prompted by his disclosures to the Commission. PHE cite reasons relating to HR matters, entirely separate to the complainant's whistleblowing concerns.
37. The complainant alleges that his laboratory restriction, being asked to step down from the committee and the later grievance against him are part of a general campaign of harassment against him because he raised whistle-blowing concerns. The Code requires departments to ensure that individuals are not penalised for raising concerns under the Code:

Rights and responsibilities

- 16. Your department or agency has a duty to make you aware of the Code and its values. If you believe that you are being required to act in a way which conflicts with this Code, your department or agency must consider your concern, and make sure that you are not penalised for raising it.*
38. The panel considered the complainant's allegation that his restriction to a certain laboratory had been restricted as part of a campaign of harassment. PHE, in a letter to the complainant gave the reasons for his restriction as taking into consideration the levels of stress that the complainant had been experiencing, this was not conducive to the complainant continuing to work in a higher containment laboratory. PHE agreed with the complainant that the restriction would be temporary and one month later he was reinstated.

39. The complainant alleges that his restriction was a punitive measure taken against him because of the concerns he had raised, and he did not accept PHE's explanation that his access had been restricted for health and safety reasons as he was still permitted to work on the same pathogens but in a different laboratory.
40. The panel considered that the letter from PHE to the complainant restricting his access to the laboratory was supportive and provided a clear and reasonable explanation as to why his access should be restricted. The panel found no evidence that the temporary restriction caused the complainant a detriment and considered that it was a reasonable action of the department to carry out their duty of care to the complainant and others in such a high-risk environment.
41. In considering whether the complainant being excluded from the committee meetings was part of a campaign of harassment against him the panel noted that the complainant was still able to submit his proposals to the committee for consideration. The panel asked PHE for clarification on the reasons for asking the complainant to step down and were told that a view had been taken that being a member of the committee was clearly distressing the complainant and its meetings had become subject to excessive and unnecessary conflict which was having a deleterious impact on its ability to transact business. The panel considered that the evidence submitted, which included minutes from committee meetings and follow up emails supported the Department's view.
42. The panel considered whether the separate disciplinary process taken out by the department against the complainant was a consequence of raising a whistle-blowing concern. They noted that complainant was first notified of the disciplinary case against him shortly after the complainant raised his Code concerns with the Commission.
43. The panel concluded that the evidence supplied by the complainant and department support the fact that the disciplinary case against the complainant was a culmination of events going back over two years and concerned HR matters.
44. In summary the panel concluded that the complainant's laboratory restriction, his being asked to 'step down' from the committee and the separate disciplinary case against him do not amount to a campaign of harassment against him (either individually or taken together) and therefore do not amount to a breach of the Code.

RECOMMENDATIONS

45. The law requires civil servants to comply with the Code and the values set down by Parliament: honesty, integrity, objectivity and impartiality. The Code provides a mechanism for individuals who are concerned that these are being breached to raise these concerns privately, within their own Department and – if necessary –

then to the Commission. It is in everyone's interests – including the wider national interest – that those working in particularly sensitive areas should feel confident that they can raise concerns without penalty and that those concerns will be taken seriously.

46. The Commission's finding is that PHE breached the Code in not investigating the complainant's concerns under the Code as soon as they were raised and we recommend that the complainant receives an apology for the delay in considering his concerns. It is noted that PHE revised their whistle-blowing policy in March 2016 and that there had been an improvement in PHE staff responses to the questions on the Civil Service Code in the 2016 annual People Survey compared to 2015. The Commission will continue to monitor the survey for evidence of further improvement.
47. This Decision Notice will be published on the Civil Service Commission's website and summary details of this case will be published in the Commission's 2016/17 Annual Report and Accounts.

REQUEST FOR REVIEW

48. There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service Code complaint case.
49. The Commission will, however, consider representations from complainants, or those complained against, for review of the Commission's decision and recommendations that suggest that it has made factual errors in its decision-making.
50. The Commission will not normally accept a request to review its decision or recommendations if the request is received more than 20 working days after the date of its findings.

Civil Service Commission
February 2017