



**THE CIVIL SERVICE CODE: A
GUIDE FOR DEPARTMENTS
SUBJECT TO AN APPEAL TO
THE CIVIL SERVICE
COMMISSION**

June 2017

1. Introduction

This Guide is for departments when a member of their staff has brought an appeal to the Civil Service Commission under the Civil Service Code. It explains the appeal process and the likely outcomes.

Departments may also wish to refer to *The Civil Service Code: A Guide for civil servants bringing an appeal to the Civil Service Commission* which is written to assist staff who are considering bringing an appeal to us.

The Civil Service Commission aims to investigate appeals in an efficient, and responsive way that is sensitive to the circumstances of the particular individual and situation.

The Commission's investigation of an appeal will be fair and objective and governed by an independent, honest, confidential and impartial approach.

2. What is the Civil Service Code?

The Civil Service Code outlines the core values of the Civil Service and gives illustrations of the standards of behaviour expected from civil servants.

It also explains the duties of departments to make civil servants aware of the Code and its values. Departments must consider concerns raised by civil servants under the Code and must ensure that they are not penalised for raising them.

The Code is issued by the Minister for the Civil Service and is part of the contractual relationship between a civil servant and their employer.

The Civil Service Code is sometimes confused with the Civil Service Management Code which is issued by the Cabinet Office and deals with the management of the Civil Service terms and conditions of employment etc.

3. Who can make an appeal under the Civil Service Code?

A civil servant may bring an appeal to the Civil Service Commission when they believe they have been asked to behave in a way that goes against the values in the Civil Service Code or have witnessed such behaviour from another civil servant.

We will normally expect a civil servant to have raised their concern within their own department before bringing it to the Commission. In exceptional circumstances the Commission may be able to take a concern direct, but this would be decided on a case by case basis. The Commission reserves the right to exercise its discretion when deciding whether to take a complaint direct.

The Commission is not a body that can hear complaints from members of the public about the behaviour of civil servants.

4. What is a valid appeal under the Civil Service Code?

The Civil Service Code outlines the core values of the Civil Service: Integrity; Honesty; Objectivity; Impartiality. It describes the standards of behaviour expected of civil servants against each of these four values.

If a civil servant is asked to do something which conflicts with the values in the Code, or is aware that another civil servant is acting in conflict with the values, he or she should raise a concern within their own department.

If they have raised their concern within their own department and do not receive what they consider to be a satisfactory response they may bring an appeal to the Civil Service Commission.

The Code does not cover 'human resources management issues'

5. Why are human resources issues not covered by the Code?

The Civil Service Code states that the Civil Service core values: *'support good government and ensure the highest possible standards in all that the Civil Service does. This in turn helps the Civil Service to gain and retain the respect of Ministers, Parliament, the public and its customers.'* The Code is concerned with the outward-facing roles of civil servants rather than their internal relations. There is likely to be a public interest dimension to a concern raised under the Code.

Departments will usually have their own mission and values statements that explain the standards expected in relations between civil servants. In addition, the relationship between a civil servant and their employing department will be subject to employment legislation. These are inward facing relationships and usually do not have a public interest dimension to them. Departments will have a grievance procedure for raising such concerns.

The Commission recognises that it is not always easy to make a clear cut distinction between a human resources management issue and a concern under the Civil Service Code. Situations which primarily touch on an individual's employment could in some circumstances have a public interest aspect to them.

However we will need to be convinced that there is a demonstrable and significant public interest relating to any individual human resources grievance.

6. Is there a time limit for bringing an appeal under the Civil Service Code?

The Commission would expect to be notified of a request to hear an appeal under the Civil Service Code within twelve months of the conclusion of the investigation into the concerns by the Department.

7. Does a concern have to be raised within the department first?

The Civil Service Commission believes that in most cases it is better that concerns are dealt with within the department in which they arise. If a department can address and resolve concerns itself then it can learn from the process.

The Commission would expect a civil servant, in most cases, to raise their concern within their own department and to allow the department time to carry out a full investigation.

8. In what circumstances would the Commission take a complaint direct?

There may be reasons why it would be appropriate for the Commission to hear a complaint direct, although this would only be in exceptional cases.

This will depend upon the individual facts of the case but these might include:

- Situations where the Permanent Secretary, or Chief Executive are involved in the matter of concern
- Situations in which the issue of concern is time-limited, urgent and serious
- Situations where the Commission believes that the civil servant may have suffered a serious detriment as a result of having raised a concern or is likely to suffer a serious detriment in the future.

The Commission reserves the right to exercise its discretion when deciding whether to take a complaint direct.

9. How should departments deal with concerns that are raised under the Civil Service Code?

It is for departments to decide what processes they have to allow staff to raise concerns and how they are publicised. They must however be compliant with the Civil Service Code.

Departments should have clear routes for raising concerns and these should be well signposted and effectively promoted to staff.

Departments need to consider how they will distinguish between concerns under the Civil Service Code, and human resources grievances. Staff will not always quote the Civil Service Code when raising an issue of concern; and will often not be clear themselves whether they are raising a grievance or an ethical concern. But managers, HR professionals and Nominated Officers should be able to determine whether a concern relates to an HR issues (a grievance) or to the Civil Service values as described in the Civil Service Code.

A civil servant should normally raise a concern by first talking to their line manager or someone else in the line management chain.

If for any reason this would be difficult, they can raise the matter with one of their department's Nominated Officers. Nominated Officers are appointed within each department to advise staff on the Code. If your department is not sure how to select and support your Nominated Officers you should contact, in the first instance, the Propriety and Ethics team in the Cabinet Office.

If a civil servant has raised a concern within their department but do not receive what they consider to be a reasonable response, they may bring an appeal to the Civil Service Commission.

10. What is the objective of the appeal process?

The Commission will be investigating whether there has been a breach of the Civil Service Code.

If a department has already investigated a civil servant's concern we will consider the outcome of that investigation. Our focus is on upholding the Civil Service values and the right of civil servants to raise concerns. We may however make recommendations to a department on how it might improve its processes in future.

If we conclude that there has been a breach of the Code we will be making recommendations to address the situation and to ensure that it is not repeated.

Ultimately the panel of Commissioners who investigate Code concerns are upholding the effectiveness of the Civil Service by providing an independent and objective element to the investigation of concerns. We also provide a strong independent voice to try to ensure that those who raise concerns are not penalised for doing so.

11. How will the appeal be investigated?

We do not have a rigid approach to our investigations. We tailor our approach to the particular circumstances of each case.

When the concern is submitted to the Commission in writing we acknowledge receipt and then aim to make a decision as to whether the concern falls within our remit to investigate within 15 days. We may need to ask the complainant or the department for further information in order to arrive at this decision.

If the Commission decides that the concern does fall within its remit it will be carefully considered by a panel of up to three Commissioners, supported by the Commission secretariat.

The panel is presented with an analysis of the facts of the case produced as a result of the investigations carried out by our staff. The panel members will decide whether, on the basis of the evidence presented to them, there has been a breach of the values and standards in the Civil Service Code. The panel may call upon the services of outside experts to help them.

As part of the panel's consideration of their appeal, the civil servant may be asked to meet the members of the panel, who will question them on their concerns (although this is rare). This is not a formal process.

The Commissioners would be seeking to understand their concerns more fully and to ask questions that have arisen from their consideration of the information supplied. The panel may also want to talk to representatives of the department. This would be done at a separate session.

The method of our investigation will vary according to the facts of the case. Most cases are decided on an examination of written evidence alone.

When the panel have reached a decision on the case, the complainant and the department will be sent a copy of the Decision Notice. They will both be given 20 days to comment on its **factual accuracy**. After this, the Decision Notice will be published on our website. The complainant is not named in the Decision notice but the department will be. See our website for examples of published Decision Notices:

<http://civilservicecommission.independent.gov.uk/civil-service-code/complaints-to-the-commission/>

12. What does the Civil Service Commission expect of departments?

A healthy organisational culture, coupled with good management, should allow a department to resolve most concerns that arise. If this is done within an open and trusting working environment then the department will also be able to learn from the experience of resolving the issue.

However, there will be times when a department has failed to appreciate that a breach of the Civil Service Code has been discovered or that its actions in investigating a concern have been deficient. In these circumstances it may take the intervention of the Civil Service Commission to bring the matter to a conclusion.

The Commission expects departments to engage fully with the process of an appeal investigation. A Civil Service Code appeal investigation is not a legal process and should not be approached in a defensive or legalistic mind-frame.

We ask departments to respond to requests for further information within the timeframe indicated, and if this is not possible to provide us with an early notification of when a response can be expected.

We seek an open and honest engagement with departments throughout the investigative process. We will likely request access to a senior designated official within the department with whom we can work throughout the investigation.

13. What can the department expect from the Commission?

The Commission aims to operate an appeals investigation regime that is efficient, open, fair, honest, and clear.

We will provide timely and clear information on the progress of a Civil Service Code appeal to both the appellant and the department. In the rare situation where we have agreed to take a complaint direct, we will provide as much information to the department as we can within the limits of our responsibility to the complainant, given the circumstances of why we have agreed to take the concerns direct in the first place.

We aim to conclude an investigation as quickly as possible, consistent with a fair and thorough examination of the case.

Where recommendations are made as a result of us investigating an appeal, a clear expression of what the recommendations are will be made, with a timetable that the Commission would expect to be followed for implementation, together with a commitment to work with the department on improving their Code investigation processes.

There will also be situations where the Commission does not uphold the appeal but nevertheless believes that their investigation has produced evidence that the department should consider certain matters further. It may be that there has been no breach, but the policies and procedure in place in the department are in some way short of best practice. In these circumstances the Commission would feed back its observations to the department, to allow it to learn and revisit their approach in light of this experience.

14. How long will the investigation take?

The length of the appeals process will depend on the nature of the concern, its complexity, and the amount of documentation involved. We aim to deal with all enquiries and appeals in a timely manner.

Given the wide variety of cases we see, it is not possible to give a precise timetable for our investigation. However, we will seek to establish good and regular communication with the department to keep it informed of the progress of an ongoing investigation.

15. What are the outcomes of bringing a Civil Service Code appeal?

The Commissioners 'may hear and determine appeals' under the Civil Service Code and 'may make recommendations'. There are no specific restrictions to the recommendations that the Commission may make.

The nature of the recommendations that the Commission might make if we uphold an appeal will very much depend upon the individual circumstances of the appeal. If an appeal is upheld, the Commission will in effect be agreeing that in some way and to some degree the values of the Civil Service Code have been compromised.

The Commission does not have any powers to award compensation.

The Commission's focus will be to ensure that the department has taken effective steps to ensure that such a breach of the values is unlikely to recur. If the reason for the breach was to do with systems and processes, the Commission will recommend that changes be made to those systems and processes. If the breach was due to human error then the recommendations are more likely to focus on management and training issues. It might be that one of our recommendations is a simple apology. It will depend upon the facts of the case.

There may be situations where we have accepted a complaint direct due to the urgency and seriousness of the alleged breach of the Code, and our investigation will prevent the breach from continuing. But in most situations the breach will have occurred at some time in the past. In these circumstances we see the primary outcome of our investigation as preventing a future recurrence. First, because the department will recognise where the breach occurred and will learn from that; and second, because we may make practical recommendations to ensure that it does not happen again.

In some cases our recommendation might be that another body should look at the issue. It may be that another regulator would be more experienced and be better equipped to investigate the matter. Or we might conclude that, where appropriate, the concerns should be looked at by a parliamentary body or an independent enquiry.

When we uphold an appeal we return to the department later to ensure that our recommendations have been implemented. If we were not satisfied that our recommendations had been followed we would raise the matter with the Permanent Secretary or Agency Chief Executive concerned and, if judged necessary, with the Cabinet Secretary.

16. How are the results of appeals reported?

Once the investigation is concluded we will publish a Decision Notice on our website (the appellant is not named but the Department is). We may also refer to the case in our Annual Report and Accounts, but we will not identify individuals, only the department. We believe that the publication of Decision Notices is an important part of the appeals process, ensuring transparency, and giving people the opportunity to see what types of concerns are raised under the Code, and the steps taken by the Commission to address them.

17. What if the department does not agree with the Commission's conclusions or recommendations?

There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service Code appeal case. General public law remedies may be relevant in some cases.

Before publication of the Decision Notice, the appellant and the department concerned are given 20 days in which to comment on any factual errors. We will not normally accept a request to review our decision or recommendations if we receive comments more than 20 working days after the date of our decision.

The Commission does not believe that it is constructive to continue a protracted conversation with a civil servant or department about a decision made by the Commission. If we have reviewed our decision on factual grounds, having received a request to do so, we will seek to bring discussion of that appeal to a conclusion.

18. What happens to civil servants who bring appeals?

The Commission recognises that some civil servants may feel nervous about raising a concern and bringing an appeal to us. A civil servant may be worried that they will be seen as a trouble-maker and that their career may suffer as a result.

The Civil Service Code is clear that civil servants should not suffer a detriment as a consequence of raising a concern:

'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.' (para. 15 of the Civil Service Code.)

The Commission believes that departments should encourage their staff to raise concerns and should actively support them in doing so.

The Commission will take very seriously any suggestion that a civil servant has been penalised for raising a concern. We would want any civil servant to approach us if they believe this is the case at any time. We would be prepared to use all the remedies available to us to prevent and rectify any penalisation.