



FINDINGS AND RECOMMENDATIONS: November 2018

REF: 971

RECRUITMENT PRINCIPLES COMPLAINT TO THE CIVIL SERVICE COMMISSION – MINISTRY OF HOUSING COMMUNITIES AND LOCAL GOVERNMENT

FINDINGS OF THE INVESTIGATION

AUTHORITY

1. The Constitutional Reform & Governance Act 2010 outlines the functions of the Civil Service Commission. One of the functions concerns the investigation of complaints made by any person that a selection for appointment has been made in contravention of the legal requirement that selection for appointment to the Civil Service must be on merit on the basis of a fair and open competition.

The Act says:

13 (3) The Commission –

- a) May determine steps that must be taken by a person before making a complaint (and those steps must be taken accordingly);*
- b) Must determine procedures for the making of complaints and for the investigation and consideration of complaints by the Commission;*
- c) After considering a complaint, may make recommendations about how the matter should be resolved.*

OUTLINE OF THE COMPLAINT

2. This was a direct referral complaint from HR at the Ministry for Housing Communities and Local Government (MHCLG). The complaint concerns the Stage 4 external competition for a Grade 7 role. Shortly after a successful candidate had

been identified, but before appointment, an anonymous complaint was received by MHCLG HR. The allegations cited breaches of impartiality and therefore also the Civil Service Code, and also that the recruitment process was not open or fair. The Department decided to refer the complaint to the Commission.

3. Most of the aspects of the anonymous complaint were either beyond the scope of the Commission to investigate, or cannot be investigated because there is no evidence available to corroborate the allegations. Allegations of breaches of the Civil Service Code cannot be applied to Ministers (who are not bound by it) nor somebody who has not yet taken up post as a civil servant.

4. In assessing the case file that MHCLG HR supplied the Commission with when asking that the complaint be considered, the Commission identified areas of considerable concern associated with compliance with the Recruitment Principles, and it is these that formed the basis of the investigation.

METHODOLOGY OF THE INVESTIGATION

5. The Commission investigated the complaint through consideration of written evidence supplied by MHCLG. The Commission considered the following evidence:

- Anonymous complaint
- Job advertisement
- Successful Candidate's CV
- Interview Spreadsheet
- Email chain between MHCLG and CSC
- Comments from Panel Chair in email
- Briefing note from CSC to panel on Ministerial meetings
- CSC note of Ministerial meeting
- Email from CSC representative, providing detail of Ministerial meeting

6. Rosie Glazebrook and June Milligan were the decision making Commissioners.

SUMMARY OF THE EVIDENCE

7. The role for the Grade 7 post was advertised for two weeks in July 2018.

8. Fifty six applications for the role were sifted against the lead competency, by two panel members, which went to a second sift, resulting in seven candidates being invited to interview. Interviews were conducted over two days.

9. In an email to HR Manager **Person C**, from the Panel Chair, **Person D**, dated 25 September 2018, it was confirmed that '*Four candidates are above the threshold for the grade – although one is a standout, and two are quite close*'. The email goes on to say '*We agreed that three candidates would meet the Minister and the Civil Service Commissioner next week on Tuesday between 5 and 6 in the House of Commons*'. The standout candidate was **Person A**.

10. MHCLG Recruitment contacted the Commission and a meeting was arranged for the three candidates to meet the Minister on 11 September 2018 with Commission representative **Person E**, and panel member **Person F** (a Private Office staff member) in attendance.

11. On 19 September 2018 Panel Chair **Person D** states in an email to the Recruitment Team, *'Attached is a readout from the Minister's session with the candidates and the Civil Service Commissioner. The panel have subsequently spoken about the recruitment exercise and can confirm that **Person A** has finished top of the shortlist. I have spoken to **Person A** and have offered her the role on a provisional basis'*.

12. A provisional offer was made by email via the Recruitment Team and accepted by **Person A**, of a permanent role on 20 September 2018. A conditional offer was sent to **Person A** by HRSS.

13. On 26 September, the Commission was contacted by **Person C** at MHCLG asking that we urgently look at the case after an anonymous complaint was raised with them. A copy of the complaint together with the file on the recruitment exercise was passed to the Commission. In assessing the file, the Commission came to the conclusions at paragraph 3 above. However additional concerns about the exercise's compliance with the Recruitment Principles were identified by the Commission, specifically:

- There is no evidence of any interview or other process to identify the preferred candidate having taken place between the Ministerial meeting on 11 September, when they met the three shortlisted candidates, and the email from Panel Chair **Person D** on 19 September, stating that **Person A** was the successful candidate and had been offered the role.
- Four candidates had been identified as being above the line at interview, yet only three were invited to meet the Minister on 11 September. The fourth, **Person G**, was not.
- In reviewing the file, the Commission had access to **Person A's** CV. This showed a history of working in a political environment. This raised concerns with the Commission as to how the candidate's ability to perform the role of a civil servant with impartiality and objectivity was tested and recorded by the panel, as is required by the Recruitment Principles.

14. The Commission put questions to the Department in respect of the above and the Panel Chair **Person D** replied:

15. In respect of **Person A's** ability to perform impartially and objectively, **Person D** stated: *'at the start of each interview I introduced the role and made it explicit that this was a civil service position working closely with the Minister, but that this is explicitly not a political role. All of the candidates understood this. I also reminded candidates that a senior civil servant would line manage the post and the expectation was that the successful candidate would work hand in glove to deliver the departments objectives.'*

16. On the matter of the fourth above the line candidate who did not meet the Minister, **Person D** states: *'following each interview the Panel scored candidates in a consolidated spreadsheet. Following the final interview we revisited the scoring of all the candidates and discussed the merit order. This was a very competitive high calibre campaign and the Panel felt that four candidates met the Grade 7 benchmark. Given the limited slot in the Minister's diary during recess we could only put forward 3 candidates to the next stage. Given the Panel's scoring we decided to use the merit order above and did not invite **Person G** to the next stage'*

17. On the process to identify the successful candidate following the Ministerial meeting, **Person D** states: *'the Panel agreed that the feedback from the Civil Service Commissioner's representative reflected our own findings at interview. The strongest candidate, based on our scoring, appeared the strongest candidate based on the feedback we received. Given this, the Panel unanimously agreed that it was not necessary to have a second interview. As a result we offered the position to **Person A** provisionally and subject to reference checks and CTC clearance'*.

18. This account from Panel Chair **Person D**, caused the Commission further concerns, particularly around why the fourth above the line candidate **Person G** was not invited to meet the Minister (the Recruitment Principles are clear that all shortlisted candidates must be seen) and more worryingly how Panel Chair, **Person D**, interpreted the role of the Commission. It is not the Commission's role to express a view about candidates. The Commission asked for further clarification about how the panel understood the purpose of the candidates' meeting with the Minister. The Commission asked for written confirmation of this including a statement as to how the successful candidate was finally identified.

19. Panel Chair **Person D** confirmed in his response:

On the Purpose of the Ministerial Meeting:

- For the Minister to discuss their priorities for the role and expectations
- For the Minister and Commissioner representative to probe candidates on their CV and their suitability against role profile
- For the Commissioner Representative and Minister to provide feedback and general reflection to the Panel to inform the Panel's final decision.

20. He goes on to comment further on issues regarding Impartiality and Objectivity

- I felt it was important to restate that this was an impartial civil service role and that this was clearly understood by both candidates (who had a political background) to avoid any doubt.
- That although this role would work closely with the Minister – it was important that advice and support remained impartial and objective – based on a full consideration of the facts, the evidence and supported departmental objectives. Again, I thought it was important to reiterate this and assess how they responded.

- On the specific targeting of the questions to the two candidates (who had a political background) – I wanted to reassure myself that both candidates could use evidence and facts to make arguments and policy recommendations and that this was their starting point. I also wanted to probe whether they exhibited any obvious ideological pre-dispositions that might jeopardise their impartiality (either consciously or unconsciously). Neither gave that impression at the interview.

21. In addition to the above, the Commission also received statements from the other two panel members.

22. Panel Member **Person H** stated:

*'We discussed all candidates after we interviewed them as part of the first stage of the interview process and agreed a merit order for candidates to determine who should go forward for the ministerial part of the process. **Person D** shared with me the commissioner's note after the ministerial conversation which set out their views - I was not directly involved in this bit of the process as I had not started in my new role then although I had agreed to be part of the interview panel. **Person D** updated me on the order following the ministerial part of the process and the successful candidate and copied me into the email to HR and recruitment'.*

23. Panel Member **Person F**, stated:

*'After the meetings with the Minister, **Person D** and I spoke. A merit order had been agreed following the initial interview stage, and **Person D** and I agreed that following the meetings with the minister, and the feedback from the representative from the Civil Service Commission, this order was still correct. **Person D** said that he had also discussed this with **Person H**, who was also in agreement that the outcome of the meetings with the Minister confirmed the merit order, which followed the initial interviews. Given that the results of the panel interviews and the meetings with the Minister were consistent, it was decided that the candidates did not need to be asked anything further'.*

24. The Commission notes that there appear to be some inconsistencies in the Panel Chair (**Person D's**) account of the agreement that was reached by the panel members for an appointment to be made following the meeting with the Minister (paragraphs 11, 17 and 22 above).

Consideration

THE LEGAL REQUIREMENT

25. The legal requirement is for selection for appointment to the Civil Service to be made on **merit** on the basis of **fair** and **open** competition. All three elements have to be met for the appointment to be lawful.

26. **Merit** means the appointment of the best available person judged against the essential criteria for the role. No one should be appointed to a job unless they are competent to do it and the job must be offered to the person who would do it best.

27. Fair means there must be no bias in the assessment of candidates. Selection processes must be objective, impartial and applied consistently.

28. Open means that job opportunities must be advertised publicly. Potential candidates must be given reasonable access to information about the job and its requirements, and about the selection process. In open competitions anyone who wishes must be allowed to apply.

Have the Recruitment Principles been breached due to a failure to test and record the successful candidate's ability to perform with impartiality and objectivity.

29. Paragraph 29 of the Recruitment Principles states: *Where a candidate has previously engaged in political activity, the selection panel must satisfy itself that the candidate understands the requirement to operate objectively and impartially if appointed and must record how this has been done. It is for the panel to decide the most appropriate and proportionate way to achieve this, taking into account the nature and seniority of the role.*

30. The successful candidate, **Person A**, clearly had a history of working in a political environment. Whilst Panel Chair **Person D** states that he questioned candidates extensively at interview in a way to assess ability to perform with impartiality and objectivity, there is very little record of this, apart from a brief mention in the interviews spreadsheet. There was also a note about another candidate's political history, **Person G**, who had worked for a political Party. **Person G** was the fourth shortlisted candidate who was not invited to meet the Minister. **Whilst we would prefer to see more recorded evidence of how the successful candidate's ability to perform with impartiality and objectivity was tested, it was noted for both Person A and Person G, so this does not amount to a breach of the Recruitment Principles.**

Have the Recruitment Principles been breached due to a failure to ensure that all above the line candidates met the Minister?

31. Four candidates interviewed were clearly identified to be above the line and appointable, and correctly placed in merit order. However, only three were invited to attend the Ministerial meeting. The reason given for this by the Panel Chair was *'Given the limited slot in the Minister's diary during recess we could only put forward 3 candidates to the next stage. Given the Panel's scoring we decided to use the merit order above and did not invite Person G to the next stage'*.

32. Paragraph 41 of the Recruitment Principles states: *'The Minister may meet each of the shortlisted candidates, to discuss his or her priorities and the candidates' approach to the role, and feed back to the panel, views on any issues the Minister wants the panel to test at interview. Meetings between the Minister and candidates must be attended by a representative of the Civil Service Commission'*.

33. Where it has been decided that there will be Ministerial involvement in a competition, and the Minister wishes to meet the candidates, it is important that **all**

shortlisted candidates are invited. The fact that one candidate was excluded from this process, due to Ministerial availability, is not acceptable. The fourth candidate, although last on the merit list, was still appointable. **This is a breach of paragraph 41 of the Recruitment Principles.**

Have the Recruitment Principles been breached due to a failure to ensure due process following the meeting with the Minister / Was the successful candidate identified in a way that was not compliant with the Recruitment Principles?

34. Paragraph 41 of the Recruitment Principles states: *'The Minister may meet each of the shortlisted candidates, to discuss his or her priorities and the candidates' approach to the role, and feed back to the panel, views on any issues the Minister wants the panel to test at interview. Meetings between the Minister and candidates must be attended by a representative of the Civil Service Commission'*.

35. Paragraph 42 of the Recruitment Principles states: *'The Minister may not be a member of a selection panel and may not add or remove candidates from a competition. The panel must assess the merits of the candidates using the best possible evidence and testing any issues raised by the Minister. The panel must recommend the best candidate for appointment'* **There is no breach of the Recruitment Principles here, but see paragraph 37 below.**

FINDINGS AND RECOMMENDATIONS

36. The Commission has some very serious concerns over the panel's and HR's understanding of the Recruitment Principles in relation to Ministerial involvement and the process that was followed. The exclusion of one of the candidates from the Ministerial discussions renders the process unfair and for that reason and as a result of demonstrable lack of due process thereafter it is considered that the competition is not yet satisfactorily concluded

37. **The Commission asks MHCLG to confirm the steps it proposes to take to conclude this competition or whether it intends to run a fresh competition.**

38. The Commission stresses the importance of understanding the limits of the role of Ministers as part of a recruitment campaign to appoint civil servants. It is clear that senior HR staff, the panel, the panel chair, and the Minister's Private Office staff have not understood the purpose and the processes around candidates meeting with Ministers. Similarly, senior HR staff, the panel and Private Office do not appear to understand the role of the Civil Service Commission when they attend Ministerial meetings. As a result:

- **the Commission requires that the HR team, panel Chair and Private Office undertake training, no later than 31 December 2018, led by the Commission to address the significant gaps in knowledge around the Recruitment Principles;**

- senior HR staff should in future ensure that in all recruitment campaigns that are to include candidates meeting with Ministers, that the panel and Private Office staff at the time, understand the role of the Minister and at which point in the process such meetings may take place;
- the Commission will specifically review adherence to paragraphs 39 to 43 of the Recruitment Principles 2018 as part of future compliance audits of the Department.

REQUEST FOR REVIEW

39. There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service recruitment complaint case.

40. 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.

41. 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.

Rosie Glazebrook, Civil Service Commissioner
June Milligan, Civil Service Commissioner

November 2018