



## **FINDINGS AND RECOMMENDATIONS: October 2018**

### **CIVIL SERVICE CODE COMPLAINT TO THE CIVIL SERVICE COMMISSION**

**Ref: 906**

### **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 APPEAL**

3. This complaint, which is a direct referral from HSE, alleges an abuse of process in relation to a Stage 4 external recruitment exercise. The complainant, who also applied for this role, alleges that the rules of fair and open competition have not been observed (dealt with separately as an investigation of a potential breach of the Recruitment Principles) as well as

those of integrity, honesty, objectivity and impartiality expected of Civil Servants under the Civil Service Code, being considered here.

4. The complainant alleges that the postholder, Senior Manager, **Person A**, must have known that her husband **Person B** was going to apply for the post in question from the outset and should have declared this. As a Senior Civil Servant, the complainant states that the probity of managing her husband directly or within her line management command should have been explored and cleared in advance, and that she and anybody in her line management chain, should not have had any dealings with any aspect of the recruitment campaign. She also states that advance notice of the presentation topic would have provided a significant advantage compared to other applicants who could not have been tutored.
5. The complainant referred the case to HSE's Nominated Officer. The case was investigated under the Civil Service Code whilst at the same time referring to the Recruitment Principles' requirement for merit-based recruitment after a fair and open process in the case of Stage 4 external competitions. The investigating Officer, **Person C**, interviewed all those involved in the recruitment campaign, had access to all relevant documentation pertaining to the recruitment, and requested searches of the email accounts belonging to **Person A** and **Person A's** Executive Assistant **Person D**.
6. The report of the investigation appears to show the involvement of the post holder, **Person A**, in the campaign to recruit to the post throughout the process. There are also indications that the successful applicant, the jobholder's husband, **Person B**, may have been treated more favourably than other applicants. This aspect concerns potentially favourable treatment at sift, and is being dealt with under the Recruitment Principles complaint. Despite all of these factors, the report finds no case to answer.
7. Upon conclusion of the investigation, the case was referred to the HRD at DWP, HSE's sponsor body, at the suggestion of HSE's Nominated Officer, who in turn recommended that it be referred to the Commission.

## **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.
  - Ian Watmore, First Civil Service Commissioner
  - Jan Cameron, Civil Service Commissioner
  - Margaret Edwards, Civil Service Commissioner
9. The panel based their assessment on an examination of the evidence provided by HSE. The panel tested and assessed this evidence, against the requirements of the Civil Service Code.

## EVIDENCE

10. The panel had access to a range of evidence supplied by both the complainant, and HSE officials. These included in particular:

- A:** Report of the HSE investigation
- B:** HSE Email response to questions asked by CSC
- C:** Notes from CSC visit to HSE
- D:** Further Emails from HSE to CSC

## BACKGROUND

11. Approval to recruit to the role was given on 9 February 2018 and the advertisement for the Stage 4 external recruitment campaign went live on 26 March 2018. According to **Person A**, her partner, **Person B**, first indicated his intention to apply for the role on 10 April 2018.
12. On 11 April 2018, **Person A** sought advice from HR Senior Manager, **Person E** about whether there were any Civil Service rules about working with partners. On 13 April 2018, **Person E** responded stating that **Person A** should not participate in the interview, and if **Person B** was successful, could not line manage him. **Person E** advised **Person A** to step back from the sift of candidates. Whilst the vacancy outcome report indicates that the successful applicant was known to **Person A**, and this is recorded at the end of the recruitment process, there is no written record of how **Person A's** conflict was to be dealt with at any point during the recruitment.
13. After **Person A** withdrew from the process, the sift was undertaken by Senior Manager **Person F** (reporting to **Person A**) and the interviews were conducted by **Person F** and Senior Manager **Person G**. **Person F** led on the recruitment campaign.
14. **Person A** told **Person F** that **Person B** had applied for the role. While **Person F** did not personally know **Person B**, he was aware of his background and relationship to **Person A**, and therefore was able to recognise his application, along with those of internal candidates. **Person F** indicated that this did not influence his decision to put **Person B** through to the interview stage.
15. Given that **Person F** had knowledge of **Person B** and his application it seems reasonable to conclude that this was a perceived conflict of interest and should have been declared, but it was not.
16. Despite indicating that she would withdraw from involvement in the recruitment campaign, there is evidence that **Person A** continued to be active on the sidelines throughout the process and ignored advice that had been given to her by **Person E**, potentially posing a risk to the requirement for civil

servants to behave with objectivity and impartiality. Evidence to support this includes:

17. Once **Person F** completed the sift, he immediately shared the results with **Person A** and asked to speak to her before determining whether to invite any further candidates (over and above the clear four forerunners) to interview. Although **Person A** was not formally on the panel for sift, she remained 'on the sidelines', as confirmed in the HSE report of the investigation.
18. **Person A** shared both the presentation topic and question set she had recently used for recruiting to another role with **Person F**. The presentation topic and a number of questions used were almost identical to the role for which **Person B** applied and was successful.
19. **Person F** informed **Person A** of the outcome of the interviews immediately. Early the following morning, **Person A** emailed **Person D**, her Executive Assistant, indicating that the successful candidate was on a month's notice, and to ensure the process was progressed rapidly to ensure he was in post for 11 June 2018.
20. When **Person B** had been identified as the successful candidate, **Person A** was asked about setting his salary. Although she did indicate a potential conflict, she then went on to provide advice (that her standard approach was to 'at least match current salary').
21. While she was on leave and negotiations with **Person B** were ongoing; **Person A** sent texts to **Person D's** personal mobile, chasing progress.
22. When **Person B** took up his role on 11 June 2018, he was assigned a temporary line manager for pay and leave purposes. However, his posting still fell within the line management command of **Person A**, with **Person A** being his countersigning officer. This is clearly going against the advice that had been provided to **Person A** by **Person E** on 13 April 2018.

#### Unfair Advantage

23. There is evidence to suggest that **Person B** did not reach the required pass mark for one of the competencies at sift stage, yet despite this was allowed to move to interview stage. If this is correct then it may be that he had an unfair advantage in the recruitment process compared with other candidates. This aspect of the complaint is being looked at as part of the Recruitment Principles investigation.

#### **CONSIDERATION OF THE COMPLAINANT'S ALLEGATIONS**

**Person A** must have known **Person B**, was going to apply from the outset and should have declared this.

24. The report of the Departmental investigation states: *There is no evidence to indicate that (**Person A**) knew 'from the outset' that (**Person B**) was going to*

apply. When asked at interview whether she alerted him to the role, **(Person A)** stated that she could not remember. However, she confirmed they did discuss the role a few days before the closing date (approximately 10 April) and their discussion centred around the salary and whether he could apply. **(Person A)** stated that following this conversation she immediately sought advice from **(Person E)**. This is supported by the email **(Person A)** sent to **(Person E)** on 11 April seeking advice about whether there were any Civil Service rules about working with partners, as her partner was '90% certain' he was going to apply and she wished to make sure 'I deal with it properly if/when he does'. It should be noted that this advice was sought before the closing date of 13 April 2018. When interviewed as part of this investigation, **(Person A)** confirmed she did not seek advice from anyone else on this matter.

25. Any evidence of **Person A** alerting **Person B** to the role and having knowledge of his intention to apply for it, other than the email sent on 11 April, is anecdotal. According to the available evidence, **Person A** declared her knowledge of her husband's intention to apply on 11 April 2018 having discussed the role with him 'a few days before the closing date (approximately 10 April)' The evidence available suggests that **Person A** alerted HR of her husband's intention to apply for the role soon after she had knowledge of it.
26. **There is no evidence here to suggest behaviour which would represent a breach of the Civil Service Code.**

The probity of **Person A** managing **Person B** directly or within her line management command should have been explored and cleared in advance.

27. The report of the Departmental investigation points out that **Person A** sought advice from HR Senior Manager **Person E** and was provided with a response before the closing date. **Person E** confirmed that **Person A** would not be able to line manage **Person B** if he was successful in his application. The report goes on to say *There is no evidence to indicate any further action was taken at this time to consider who would line manage (Person A's) partner should he be successful or indeed how any perceived or real risks would be managed.*
28. Clearly there were significant risks involved in the appointment of the partner of a Senior Manager to their chain of management. Although advice was provided to **Person A** that she would not be able to line manage **Person B** if he was successful in his application, no further consideration was given to this either at the time, or subsequently, by **Person A** or by HR, and ultimately he went on to be managed within **Person A's** chain of command. This is unacceptable and points to poor risk management and a failure to take account of factors that have a significant bearing on the requirement for civil servants to observe the requirement to be objective and act with integrity. The Civil Service Code is clear that ***you must not ignore inconvenient facts or relevant considerations when providing advice or making decisions.*** **The failure to address the probity of managing Person B by Person A, represents a breach of objectivity and therefore the Civil Service Code**

**by both Person A and potentially by responsible individuals within HSE HR**

All aspects of the recruitment should not have been handled by Person A or anyone within her line management chain.

29. We have to consider at what point **Person A** became aware that her husband **Person B** was going to apply for the role. We know for certain that she knew about this, on or around the 10 April 2018, so it is from this point on that we consider this aspect of the complaint. We also know that on 11 April 2018 she sought advice from HR Senior Manager **Person E**. On 13 April 2018, **Person E** responded stating that **Person A** should not participate in the interview and if her husband was successful in his application, that she could not line manage him. She also advised her to step back from the sift of candidates.
30. The report of the Departmental investigation states that In relation to the comment that no-one in **Person A's** line management chain should have been involved: *given the nature of the post, only individuals within (Person A's) command would have the technical knowledge and skills to assess a candidate for this role, so no-one else could lead the recruitment.* Although it seems reasonable that there was a need for somebody within the line management command of **Person A** to advise, there should have been somebody independent also.
31. The evidence points to the fact that despite being told that she should step away from the sift of candidates, that **Person A** was involved in some way. Once **Person F** completed the sift, he immediately shared the results with **Person A** and asked to speak to her before determining whether to invite any further candidates. When **Person B** took up his role on 11 June 2018, he was assigned a temporary line manager, for pay and leave purposes. However, his posting still fell within the line management command of **Person A**, with **Person A** being his countersigning officer. These factors point to **Person A** ignoring the advice that had been given to her by HR. **Person A** also provided advice on the starting salary for **Person B**, which is entirely inappropriate. Furthermore, she continued to be involved "on the sidelines" of the campaign. Whilst she had only received explicit advice on sifting, interviewing, and line managing her partner, from HR, it is reasonable to expect a senior civil servant to be mindful of the need to be extremely cautious of the risks involved in this type of situation. The Civil Service Code is clear that in being objective ***you must not ignore inconvenient facts or relevant considerations when providing advice or making decisions.*** It also states that in being impartial, ***you must not act in a way that unjustifiably favours or discriminates against particular individuals or interests.*** **Person A therefore breached the Civil Service Code requirements of impartiality and objectivity because of her involvement in the recruitment campaign that resulted in the appointment of her husband, Person B, within her own line management command.**

Advance notice of the presentation topic would provide a significant advantage to Person B, compared to other interviewees who could not be tutored

32. This is a reasonable assertion especially bearing in mind that **Person A** did have knowledge of the presentation topic. As part of the investigation, **Person A** was asked if she had provided guidance to her partner at any point during the recruitment process. She said that she had not. Likewise, when she was asked whether her partner had requested guidance or advice, she confirmed that he hadn't. However, an email search of **Person A's** account did indicate that when applying for her most recent role, she did seek her partner's advice on 19 March 2018 on two presentation topics, primarily asking whether her presentation answered the question. While this does not provide any evidence that this happened in this case, it does demonstrate that advice had been sought on applications between the two of them previously. **In the absence of any evidence showing that Person A provided privileged information to Person B, it is not possible to show that there has been any breach of the Civil Service Code.**

#### Further Considerations

##### Advice given by HR

33. As mentioned at paragraph 28 above, it is reasonable to expect HR to accept some of the responsibility for the consequences in this case. On 11 April 2018, **Person A** sought advice from HR Senior Manager **Person E**, about whether there were any Civil Service rules about working with partners. On 13 April 2018, **Person E** responded stating that **Person A** '*should not participate in the interview*' and if her husband, **Person B**, was successful in his application, she could not line manage him. **Person E** also advised her to step back from the sift of candidates. However, no further substantive advice was given by HR in order to effectively take control of the situation. The advice should have been categorical that **Person A** should have played no role whatsoever in the process of the recruitment campaign in which her husband had been a candidate. Furthermore she should have been told that she should have no conversation with anybody in connection with the campaign. HR supplied her with no clear guidance at any point apart from that referred to above. **Whilst it is not possible to fully explore or attribute individual responsibility or breaches within the scope of this investigation, the Civil Service Code is clear that *you must not ignore inconvenient facts or relevant considerations when providing advice or making decisions.***

##### The HSE Investigation

34. It is difficult to understand why, despite the considerable amount of evidence pointing to behaviours and actions that are not consistent with observance of the Civil Service Code and the Recruitment Principles, referred to in the report of the HSE investigation, the conclusion was that there was no case to

answer. **Person C**, the Investigating Officer, states in the report, '*Based on the investigation, I conclude that there is no direct evidence to support the complaint. I have considered the circumstantial evidence, and on balance consider there is no case to answer*'. The Commission strongly refutes this. The Code states that civil servants 'must not ignore inconvenient facts or relevant considerations' when making decisions. It would appear from the investigation report, written by **Person C**, that some key facts or relevant considerations were ignored in arriving at the conclusion that there was no case to answer. Furthermore, there is no evidence that there was a decision maker assigned to the case who could have challenged the conclusions of the investigation and this is unacceptable.

35. It should have been clear to HSE that the investigation report's findings were entirely at odds with the evidence that had been considered, and they should not have accepted this.
36. Again, whilst it is not possible to fully explore or attribute individual responsibility within the scope of this investigation, **in reviewing these further considerations, the Commission finds that inconvenient facts or relevant considerations were ignored in contravention of the Civil Service Code.**

## **RECOMMENDATIONS**

37. This case has raised some serious concerns with the Commission about levels of awareness within HSE about the Civil Service Code and its values and the obligations that are placed on civil servants to abide by these values and report perceived contraventions of these values when they occur. The Commission will be making recommendations about how this can be addressed. This will include the Commission providing training on compliance with the Civil Service Code.
38. The Commission will be looking closely at the results of this year's and subsequent years' People Survey in relation to the answers to the Civil Service Code questions provided by HSE staff.
39. 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 2018/19 Annual Report and Accounts.

## **REQUEST FOR REVIEW**

23. The Commission will 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.
24. 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.

25. There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service Code appeal.

**Civil Service Commission**

October 2018