

FINDINGS AND RECOMMENDATIONS: May 2015

CIVIL SERVICE CODE COMPLAINT TO THE CIVIL SERVICE COMMISSION

Ref: 90

AUTHORITY

1. 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

2. The concern relates to how decision makers (DMs) were instructed to record Employment and Support Allowance entitlement decisions on Incapacity Benefit Reassessment cases. The complainant says that DMs were asked to follow a reassessment process contrary to DWP policy and guidance, and to sign false statements when making decisions on these cases.
3. This is an unusual case as the complaint has been investigated by the department, DWP, and has been upheld: the DWP investigation concluded that there was a breach of the Civil Service Code as the complainant has

alleged. However he did not consider that he had received a reasonable response.

METHODOLOGY OF THE INVESTIGATION

4. The complaint was considered for acceptance for further investigation by the First Civil Service Commissioner and the Chief Executive of the Commission.
5. The Commission considered the complaint through examination of written evidence supplied by the complainant and DWP.

THE CONCERN AND HOW IT WAS HANDLED

6. The Complainant had raised his concerns on a number of occasions, and via a number of different routes, between 2012 and Summer 2014. At this stage the concern was not in the context of the Civil Service Code.
7. In June 2014 he contacted the DWP whistleblowing helpline and raised his concerns under the Civil Service Code.
8. The practice that that the complainant was concerned about had ceased about six months prior to this.
9. The initial investigation by DWP fell short of best practice. Originally the complainant was told that he would not be informed of the outcome, as it would be confidential. Finally he was given a three line statement that said that as it was an established and agreed process at the time and in any event was no longer being done that way, there would be no action. There was no reference to the Civil Service Code or the possibility of referring complaints to the Civil Service Commission.
10. The complainant originally approached the Commission in August 2014. After consideration of the evidence supplied at that time the Commission concluded that there had been no investigation under the Civil Service Code. The

Commission contacted DWP and asked the department to investigate the concerns as a Code complaint.

11. The result of DWP's Code investigation was completed in November 2014. The report upheld the complaint and found that there had been a breach of the Code.
12. The investigation report stated: *'The complaint is a historic one, as the disputed actions ceased from December 2013. The remedy is therefore for managers to discuss the matter with the complainant to acknowledge the legitimacy of the complaint, explain the reasons behind the actions in question and apologise for any distress that the complainant may have felt from being asked to sign a false statement.'*
13. The complainant subsequently had a two and a half hour telephone conversation with a DWP manager, having agreed that this was an acceptable way of having this discussion.
14. The complainant did not think that this discussion and the manager's subsequent letter was a satisfactory outcome.
15. In bringing his complaint to the Commission, the complainant is seeking a further explanation of why he was required to make false statements, and an apology from all the managers involved to all the staff who were required to make false statements.

CONSIDERATION

16. It must be acknowledged that DWP fell short in its handling of the complainant's concerns when he raised them through the department's whistleblowing procedures.
17. However, after the intervention of the Commission, the department did recognise that the complainant had raised valid concerns under the Civil

Service Code. The subsequent investigation concluded that there had been a breach of the Code.

18. The recommendations in the report for follow up actions by managers do seem to be a reasonable response, and they were acted upon in a timely manner.
19. The 2010 Act says that after considering a complaint under the Civil Service Code the Commission 'may make recommendations about how the matter should be resolved'.
20. Having considered this case the Commission does not believe that it can make any recommendations that are likely to resolve it. DWP has demonstrated that it has apologised and has tried to provide an explanation. In this DWP has acted in an appropriate manner, though the Commission recognises that the complainant remains dissatisfied. The Commission does not believe that it is reasonable to expect personal apologies from three managers who were following the instructions they had been given.
21. The initial investigation by DWP appears to have fallen short of best practice, certainly in the way that the outcome was communicated to the complainant. Also there was a failure to inform the complainant that he had the right to take his concern to the Civil Service Commission if he did not believe that he had received a reasonable response.
22. However when the matter was referred back to the department after the complainant's original approach to the Commission, there was a proper investigation that concluded that there had been a breach of the Civil Service Code. DWP recognised the shortcomings of the original investigation and took appropriate action.

FINDINGS AND RECOMMENDATIONS

23. DWP has acknowledged that there was a breach of the Civil Service Code.

24. The Commission makes no recommendations regarding the breach of the Code as the practice that was the subject of the complaint has ceased.

25. The Commission does recommend that DWP reviews its handling of Civil Service Code complaints raised via its whistleblowing helpline to ensure that complainants are given proper feedback on the outcome of the investigation of their complainant; and that all complainant are advised of their right to take their complaint to the Civil Service Commission if they do not consider that they have received a reasonable response.

REQUEST FOR REVIEW

26. 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 or errors of factual interpretation in its decision making.

27. 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.

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

Civil Service Commission

May 2015