



FINDINGS AND RECOMMENDATIONS: October 2014

CIVIL SERVICE CODE

COMPLAINT TO THE CIVIL SERVICE COMMISSION

AP000113

FINDINGS OF THE PANEL OF INVESTIGATION

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 complaint concerns advice provided to Ministers on the implementation of a new policy (an employment allowance) being proposed in the 2011 Budget. The complainant argues that a senior official in HM Treasury breached the Civil Service Code requirements to act with honesty and objectivity by not presenting implementation of the employment allowance in 2012-13 as a viable option to Ministers.

METHODOLOGY OF INVESTIGATION

3. The investigation of this complaint was conducted by a panel of Civil Service Commissioners:
 - David Normington (Panel Chair, and First Civil Service Commissioner)
 - Wanda Goldwag
 - Peter Blausten
4. Although the alleged breach took place some time ago (in 2011) and the complainant is no longer a civil servant, the Commission considered that it could hear the complaint as the alleged incident took place when the complainant was a civil servant. The Commission also accepted the complainant's contention that he

did not bring this complaint earlier as the matters involved were the subject of an Employment Tribunal hearing and that he had been advised to wait for the conclusion of that process first.

5. The complaint was investigated through consideration of written evidence supplied by the complainant and the senior HMT official concerned.

EVIDENCE

6. The panel considered the following documents:

- A:** 19 June 2014 and onwards: Original and subsequent e-mails containing complaint
- B.** 16 July 2014: Statement of evidence from complainant and supporting material
- C:** 25 July 2014: Employment Tribunal findings provided by complainant
- D:** 8 October 2014: Statement of senior Treasury official

APPROACH TO INVESTIGATION OF THE COMPLAINT

7. The panel considered the evidence presented and agreed that whether there was a breach hinged on the extent to which implementation of the proposed employment allowance in 2012-13 really was a viable implementation option. In other words, if implementation in 2012-13 was viable, then not presenting this option to Ministers, or as the complainant alleges, willfully withholding the option, could be a material breach of the Code requirements for civil servants to act with honesty ("*you must set out the facts and relevant issues truthfully; you must not deceive or knowingly mislead Ministers*" – paragraphs 8 and 9 of the Code), and objectivity ("*you must provide information and advice, including advice to Ministers, on the basis of the evidence, and accurately present the options and facts*" – paragraph 10 of the Code).

CONSIDERATION OF THE EVIDENCE AND FINDINGS

8. Both the related Employment Tribunal findings and the senior official concerned's statement make clear that the prevailing view amongst senior officials in both HM Treasury and HMRC (to whom implementation of the policy would fall) was that implementation in 2012-13 could not be proposed to Ministers with any confidence. After considering this evidence the panel considered that this issue amounted to a difference of views between officials and furthermore that the view of the more senior official appears to have been consistent with the view of HMRC officials and therefore not personal opinion but the majority view.
9. In the circumstances, the panel considered that the senior official, who had lead policy responsibility in this area, was justified in presenting the advice to Ministers as they did. The panel therefore concluded that the Civil Service Code requirements for

civil servants to act with honesty and objectivity had not been contravened in this instance.

REQUEST FOR REVIEW

10. 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.
11. 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.
12. There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service Code complaint case.

Civil Service Commission
October 2014