



FINDINGS AND RECOMMENDATIONS: JUNE 2015

CIVIL SERVICE CODE

COMPLAINT TO THE CIVIL SERVICE COMMISSION

056

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 a Minister on plans to modernise and rationalise Border Force maritime capability. The complainant argues that senior officials in Border Force breached the Civil Service Code requirements to act with honesty and objectivity by making statements that were untrue and not supported by the facts.
3. The complaint relates to a submission sent to the Minister for Immigration and Security in February 2015. In the submission, there are two statements that the complainant alleges are untrue:
 - a) That a plan to [REDACTED] [REDACTED] would align with the UK National Strategy for Maritime Security (UKNSMS).
 - b) That Border Force was 'already considering furloughing one vessel whilst essential maintenance took place on the fleet'.

4. The complainant believes both of these statements are untrue:
 - a) In the first instance, because he argues that the UKNSMS states (page 35, paragraph 5.30, footnote 53) that changes should not be made to the fleet of 5 cutters without detailed analysis, and no such analysis had taken place.
 - b) In the second instance, because he was not aware of any intention to lay up a vessel for essential maintenance and considers, given his role, that he would have been aware of any such plan had there been one.

METHODOLOGY OF INVESTIGATION

5. The investigation of this complaint was conducted by a panel of Civil Service Commissioners:
 - Andrew Flanagan (Panel Chair)
 - Adele Biss
6. The complaint was investigated through consideration of written evidence supplied by the complainant and a senior official in the Border Agency.

EVIDENCE

7. In addition to the complaint submitted by the complainant, the panel considered the following documents:
 - A: Submission sent to Minister
 - B: The UK National Strategy for Maritime Security (UKNSMS)
 - C: Statements from a senior Border Force official

CONSIDERATION OF THE EVIDENCE AND FINDINGS

8. The Civil Service Code requires civil servants to act with honesty (*“you must set out the facts and relevant issues truthfully and correct any errors as soon as possible”*; *“you must not deceive or knowingly mislead Ministers, Parliament or others”* – 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”*; *“you must not ignore inconvenient facts or relevant considerations when providing advice or making decisions”* – paragraph 10 and 11 of the Code).
9. The Panel considered the evidence presented and the complaint made. In its view, an assessment of the honesty and objectivity of the statements that were the subject of the complaint, depended on:
 - I. The degree to which the text of footnote 53 formed part of the UKNSMS and therefore (in the eyes of a reasonable reader) created a public commitment

that detailed analysis would be carried out before changes to the cutter fleet could be made.

- II. Whether the evidence about maintenance plans for the Cutter fleet, supplied to the Commission by a senior Border Force official as part of the investigation of this complaint, was consistent with the information given to the Minister in the submission.
10. Having considered these questions, the panel then considered whether the statements in the submission, that its recommendations were ‘wholly consistent with the Government’s wider maritime security strategy’ and that Border Force ‘was already considering furloughing one vessel whilst essential maintenance took place on the fleet’, were in breach of the honesty and objectivity requirements in the Code.

The panel considered the evidence and made the following findings;

Did footnote 53 form part of the strategy, to the extent that a reasonable reader would assume that the strategy contained a public commitment that detailed analysis would be needed before further reductions could be made to the cutter fleet?

11. The UKNSMS sets out the UK Government’s over-arching aims in providing maritime security and describes the approach to this. This includes a brief reference to the cutter fleet in paragraph 5.3, which states [excerpt]:
“Border Force is responsible for securing the UK border and facilitating the legitimate movement of goods. This is achieved by carrying out immigration and customs controls for people and goods entering the UK, with Border Force officers working at 140 sea and air ports across the UK and overseas. The three Royal Navy Offshore Patrol Vessels (OPVs) and five Border Force fast patrol ships (Cutters) are the main contributors to the protection of the UK’s Marine Area, carrying out reconnaissance, deterrence and interdiction at sea.”
12. Footnote 53, which links to the above excerpt of paragraph 5.30 states:
“Future Coastal and Offshore Maritime Enforcement Surveillance and Interdiction Study, RUSI/Dstl, dated 26 July 2013, demonstrated that the UK is doing more with fewer homeland based maritime assets when considered against international partners or comparable nations. Although the report was favourable on the output of our UK based forces and agreed that current levels were commensurate with current risk, it recommended that further reductions should not be made without detailed analysis.”
13. The complainant argues that, in light of footnote 53, it was dishonest for the submission to advise Ministers that the proposal was consistent with the UKNSMS because no mention was made of further detailed analysis being required by Footnote 53.

14. The panel considered that this aspect of the complaint hinged on whether footnote 53 expressed a commitment or otherwise created an obligation to conduct further detailed analysis before any changes were made to the cutter fleet. Put another way, it hinged on whether footnote 53 was an integral part of the strategy and whether a reasonable reader would therefore have assumed that a commitment was being made to such further analysis.
15. In the panel's view, the strategy sets out how the UK will use its assets efficiently and that the current levels of deployment are concurrent with risk levels in 2013. It does not suggest that the UK could not be more efficient or that risk levels would remain static. The panel did not see anything that bound Border Force to always having five cutters deployed in the way outlined in the strategy or that meant that alternative approaches could not be considered.
16. The panel noted that reference in the footnote hinted that a reduction might be possible but that the RUSI/DSTL report had not conducted the analysis necessary to enable the authors of that report to make recommendations about it. The panel considered that such a statement is qualitatively different to a commitment within the body of the strategy that explicitly stated that further analysis would be carried out before the size of the cutter fleet was changed.
17. The panel concluded that footnote 53 did not form part of the Strategy and that a reasonable reader would not therefore have assumed that there was a commitment to conduct detailed analysis before changes could be made to the cutter fleet. It was therefore not dishonest to omit reference to the footnote in the submission to the Minister.
18. The panel further noted that even if it had concluded that the footnote was an integral part of the strategy, it would not necessarily have followed that the complaint should be upheld. The evidence supplied by the senior Border Force official as part of this investigation suggests that preliminary but quite detailed analysis had, in fact, already been carried out. The submission to the Minister also stated that further more detailed analysis would be undertaken in advance of a longer-term recommendation.

Should these points have been made in the submission to the Minister? Were any 'inconvenient facts' ignored?

19. The submission to the Minister indicated that a measure of detailed analysis had been undertaken. This, together with an assessment of present risk, formed the basis for what was clearly an interim recommendation which would be reviewed and possibly revised in the light of further analysis and change in circumstance. A mention of the footnote might have added completeness to the submission but would not have altered the fact that, in the panel's view, there was no public commitment to carry out further detailed analysis.

20. The panel was therefore satisfied that there was nothing material missing from the submission to the Minister and there was therefore no breach of the Code requirements on honesty in this matter.

Were the maintenance plans for the Cutter fleet, supplied to the Commission by a senior Border Force official, consistent with the information given to the Minister in the submission?

21. The submission said that Border Force was ‘...was already considering furloughing one vessel whilst essential maintenance took place on the fleet.’
22. The complainant stated there ‘never has been the intention to lay up a vessel for essential maintenance’ and claimed that, given his role, he would have known about any plans that existed.
23. The evidence supplied by the senior Border Force official shows that although there was no intention to lay up a single ship permanently, there was an intention to lay up one ship out of five on a rolling basis. That official admitted to the Commission that this point could have been more clearly made in the submission.
24. In reaching a view as to whether an untrue statement was made in the submission, as alleged by the complainant, the panel has considered whether the facts as set out in the evidence supplied by the senior official in Border Force represent a different set of facts to that which is described in the submission.
25. Both the submission and the subsequent evidence demonstrate that there were plans that meant that cutter capacity would be affected for some considerable time. Whether it was a single cutter out of action for the long-term or individual cutters temporarily out of action in series amounts to the same thing, in the panel’s view, for the purposes of the Minister taking a decision about available capacity and deployment.
26. The panel therefore concluded that the facts supplied in relation to Border Force’s maintenance plans for the cutters, do not indicate a different set of facts to those given to the Minister in the submission.
27. By the Border Force official’s admission, it would have been possible to express these facts more clearly in the submission. The panel agreed with this assessment, but, in view of its conclusion above, did not consider that the wording of the submission breached the honesty requirement of the Code.

Is there any evidence of intention to deceive or mislead Ministers in presenting information in this way?

28. The panel did not find evidence of an intention to deceive or mislead Ministers in presenting the information in this way.

Were the statements in the submission, that its recommendations were ‘wholly consistent with the Government’s wider maritime security strategy’ and that Border Force ‘was already considering furloughing one vessel whilst essential maintenance took place on the fleet’, in breach of the honesty and objectivity requirements in the Code?

29. It was clear to the panel that the proposal was not taken in isolation but was part of a wider package of measures designed to increase maritime security, including an increase in the productivity of the deployed vessels and a much greater co-ordination with the work of other law enforcement agencies. It was this collective package of improvements that Ministers were advised was consistent with the wider maritime security strategy.

30. Given this, and the other points listed above, the panel concluded that the Civil Service Code requirements for civil servants to act with honesty and objectivity had not been breached in this instance. The complaint has not been upheld.

RECOMMENDATION

31. Although no breach of the Code was identified, this case illustrates the importance of officials taking – and having – the time to proof-read submissions to Ministers to ensure there are no ambiguities and that statements of fact are not open to misinterpretation on account of lack of completeness or poor drafting.

REQUEST FOR REVIEW

32. 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.

33. 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.

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

Andrew Flanagan
Civil Service Commissioner and Panel chair
June 2015