



FINDINGS AND RECOMMENDATIONS: NOVEMBER 2015

CIVIL SERVICE CODE

COMPLAINT TO THE CIVIL SERVICE COMMISSION

FINDINGS OF THE INVESTIGATION

Ref: 62

AUTHORITY

1. The Constitutional Reform & Government 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 2010 Act also 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

3. The complainant made an allegation of financial irregularities in relation to an item shown on the organisational finance reports and an attempt by her line manager to cover this up. In the complainant’s view, this was contrary to the Civil Service Code. The complainant made several attempts to have the matter investigated both before and after she was dismissed from the Met Office.

4. This is an unusual case as the Met Office's internal audit team has already concluded there has been a breach of the Civil Service Code. However, the Department's investigation took place after the complainant had been dismissed from her post. She argues that her raising these concerns contributed to the decision to dismiss her.
5. The complainant also raised a number of additional concerns about the way her dismissal had been handled by individuals within the Department. These are Human Resources issues, which are explicitly excluded from the Civil Service Code (paragraph 18) and are therefore out of the scope of the Commission's investigation.

METHODOLOGY OF THE INVESTIGATION

6. The investigation of this complaint was conducted by a panel of Civil Service Commissioners:
 - Kathryn Bishop (Panel Chair)
 - Wanda Goldwag
 - Angela Sarkis

THE CONCERN

7. The Commission investigated the complaint through consideration of written evidence supplied by the complainant and the Met Office, including correspondence from the HR team and the report of the Internal Audit team into the incident.
8. The complainant's concern related to an incident that happened during an annual external audit at the Met Office in 2013.
9. During the audit the complainant was asked to provide documentation to support an item shown on the organisational budget report. The complainant believed that the item had not yet been ordered and that therefore should not have been displayed on the report. She explained this to the auditors and then told her line manager what she had done. The complainant states the line manager was displeased with the information given to the auditors and informed the complainant that she intended to give the auditor a substitute document as evidence.
10. Three months after this incident the complainant started a period of extended sick absence. (This was not the complainant's first period of sick absence, evidence suggests that sick leave had been taken on more than one occasion during the probationary period.) During her absence she raised with HR her concerns regarding what had happened during the audit as a whistleblowing disclosure within a wider grievance raised against the actions of her line manager. The response to this grievance from the senior manager responsible for the complainant and her line manager did not address the concern about what had happened during the audit.

11. In early 2014 the complainant was dismissed from the Met Office on the grounds of capability. The incident with the auditors was mentioned briefly at the dismissal hearing. The complainant was not present and the focus of the dismissal panel's discussion was on the complainant's competence rather than the line manager's behavior.
12. The complainant appealed her dismissal unsuccessfully.
13. A month after her dismissal and prior to the appeal hearing, the complainant e-mailed the Met Office's head of internal audit repeating her concerns about the incident with the auditors. The Head of Audit asked the complainant for further information to inform an investigation; she responded saying she did not feel able to re-set out the issues at the time but would do so in due course; she did not do so, and the Head of Audit did not follow up the matter. As a result, the matter was not resolved.
14. Following the unsuccessful appeal, the complainant raised her concern at official and Ministerial level within the Department for Business Innovation and Skills. As a result of this, the Met Office's Internal Audit team carried out an investigation into the allegations. This was the first time that the concerns were specifically addressed in the context of the Civil Service Code, one year after being raised by the complainant. The investigation team concluded that there was no evidence of fraud but that the comments made by the complainant's manager were *contrary to the standards and behaviours required by the Civil Service Code, a qualified finance manager and a Met Office employee*.
15. The complainant also reported the alleged financial irregularity to the Controller and Auditor General, as a result of which the National Audit Office commissioned an investigation into the matter to determine whether there had been any fraudulent activity. The investigation did not identify any evidence that fraud had taken place.
16. Separately, the complainant submitted a claim to the Employment Tribunal, including a complaint of unfair dismissal in relation to raising a protected disclosure, referring to the incident involving the auditors and the concerns she had subsequently raised about her line manager's actions.

CONSIDERATION AND FINDINGS

17. The Panel considered were four questions:
 - a) was there initially a breach of the Code relating to the line manager's actions during the audit?
 - b) did the Department fulfill its obligation under the Code to consider her concern?
 - c) did the Department fulfill its obligations to make sure she was not penalised for raising her concern?
 - d) was she, in fact, penalised for raising her concern?

Was there initially a breach of the Code relating to the complainant's line manager's actions?

18. The Panel noted the Met Office's Internal Audit have already concluded the Code had been breached and accepts this conclusion.
19. Under the requirements of paragraph 6 of the Code (integrity), civil servants are reminded that they must, among other things:
 - *always act in a way that is professional and that deserves and retains the confidence of all those with whom you have dealings; and*
 - *carry out your fiduciary obligations responsibly (that is make sure public money and other resources are used properly and efficiently);*
20. Similarly, under paragraphs 8 and 9 (honesty), civil servants must, among other things:
 - *set out the facts and relevant issues truthfully, and correct any errors as soon as possible;*
 - *use resources only for the authorised public purposes for which they are intended; and*
 - *not deceive or knowingly mislead Ministers, Parliament or others.*

Did the Met Office fulfil its obligations to consider the complainant's concern?

21. Paragraph 16 of the Code (rights and responsibilities) explains that Departments have a responsibility to make their staff aware of the Code and to consider concerns raised under it.
22. The Panel noted that the Met Office did eventually consider the complainant's concern, but only after she had already been dismissed. By this time she had raised the concern with the Department four times over a five-month period and the investigation was not initiated until she raised the matter with the Met Office's parent Department. An earlier intervention might have meant that the escalation of the complainant's concerns could have been avoided.
23. The panel considered that the Department failed to pick up on the Code concern when it was initially raised, and only dealt with it in a cursory manner at the dismissal hearing, the focus of which was on complainant's behaviour rather than that of the line manager's. Notwithstanding the fact that the incident was eventually investigated a year later, the Panel concluded that the Department breached the requirements of paragraph 16 of the Code.
24. The Department has argued that it is unreasonable for the Commission to expect it to have taken steps to prevent the complainant from being penalised for raising concerns about her colleagues actions because they did not recognise that she was raising a Code concern; they considered her complaint only to have been a grievance about her line manager. The Commission considers that the obligations on all civil servants to uphold the Code mean that

HR teams and line managers ought to pick up on concerns of this nature without the individual specifically mentioning the Code. The Panel is therefore clear that the Department breached the Code by failing to pick up this issue and investigate it effectively when it was first raised.

Did the Department take steps to ensure the complainant was not penalised for raising the concern under the Code?

25. Paragraph 16 of the Code also requires Departments to ensure that staff are not penalised for raising concerns under the Code.
26. Beyond the brief reference to the incident in the dismissal hearing, the Panel found no evidence to suggest that the Met Office considered that there was an issue that required them to look carefully to ensure that the complainant was not being penalised for having raised a Code concern. There is, consequently, no evidence of the Department having taken steps to prevent the complainant being penalised as a result of raising the concern. This, therefore, breached the Code.
27. The Department has argued that it is unreasonable to expect it to ensure an individual was not penalised for raising a concern when it had not been aware that she was raising a concern under the Code and had considered the matter to be solely a grievance about her line manager. The Panel has already concluded that the Department had an obligation to investigate her concern even though it was not specifically flagged as a Code concern. It therefore follows that it should have recognised that the protections of paragraph 16 of the Code should apply and should have taken steps to ensure she was not penalised for raising her concern.

Was the complainant penalised for raising a concern under the Code?

28. The complainant was dismissed from her post and has subsequently alleged in her application to the Employment Tribunal that this was, in part, due to her having raised her concern.
29. The Panel noted, when it was originally considering the case that the matter was also before the Employment Tribunal and considered that the Tribunal was better placed to reach a conclusion on this matter than the Commission. The Panel noted, however, that if the complainant had been dismissed for having raised her concern under the Code, this would have been a further breach of the Code since it would constitute a failure to ensure she was not penalised for raising her concern (paragraph 16).
30. Since the Panel reached this conclusion, the complainant has failed to pay the relevant legal fees within the stipulated timescale and therefore the Employment Tribunal has struck out her claim of unfair dismissal and will not be reaching a verdict on this issue.

31. In the absence of an authoritative judgment by the Employment Tribunal, the Panel noted that it saw no evidence to suggest that raising her concern was the primary reason for the complainant's dismissal and concluded that this did not constitute a breach of the Code.

RECOMMENDATIONS

32. The Act permits the Commission to make recommendations arising from the findings of any Code investigation. In this case the Commission recommends that the Met Office should:
- review its procedures for recognising and investigating concerns raised under the Code.
 - ensure that all staff (particularly those in HR) are aware of the Code requirements to take steps to ensure staff are not penalised for raising concerns under the Civil Service Code.
33. The Met Office should provide a progress report to the Commission by the end of **December 2015**.

REQUEST FOR REVIEW

34. 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.
35. 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.
36. There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service Code complaint case.

**Civil Service Commission
November 2015**