



THE CIVIL SERVICE CODE

**A GUIDE FOR DEPARTMENTS
SUBJECT TO A COMPLAINT
TO THE CIVIL SERVICE
COMMISSION**

OCTOBER 2010

1. Introduction

This Guide is for departments when a member of their staff has brought a complaint to the Civil Service Commission under the Civil Service Code. It explains the complaints process and the likely outcomes.

Departments may also wish to refer to *The Civil Service Code: A Guide to bringing a complaint to the Civil Service Commission* which is written to assist civil servants who are considering bringing a complaint to the Commission. The Commission also publishes *Civil Service Code: Policies and Procedures* which outlines, among other things the legal basis for the Commission's role; delegated responsibilities; service standards that the Commission works to; and the Commission's policy on vexatious and unreasonable complaints.

The Civil Service Commission aims to investigate complaints in an efficient and responsive way that is sensitive to the circumstances of the particular individual and situation.

The Commission's investigation of a complaint will be fair and objective and governed by an independent, honest, confidential and impartial approach.



2. What is the Civil Service Code?

The Civil Service Code is issued by the Minister for the Civil Service, as required by part one of the Constitutional Reform and Governance Act 2010. The Act establishes some minimum requirements for the Code, including the requirement for civil servants to serve a duly constituted administration, whatever its political complexion, with integrity, honesty, objectivity and impartiality.

The Code outlines these core values of the Civil Service and gives illustrations of the standards of behaviour expected from civil servants.

It also explains the duties of departments to make civil servants aware of the Code and its values. Departments must consider concerns raised by civil servants under the Code and must ensure that civil servants are not penalised for raising concerns. The Code is part of the contractual relationship between a civil servant and their employer.

The Civil Service Code is sometimes confused with the Civil Service Management Code which is issued by the Cabinet Office and deals with the management of the Civil Service, terms and conditions of employment etc.

The Civil Service Code is also sometimes confused with the Civil Service Commission's Recruitment Principles (which replaced, in April 2009, the Civil Service Commissioners Recruitment Code). The Recruitment Principles set out the Commission's interpretation of the principle of appointment on merit on the basis of fair and open competition.

Every organisation faces the risk that something will go badly wrong and ought to welcome the opportunity to address it as early as possible. Whenever such a situation arises, the first people to know of the risk will usually be those who work in or for the organisation. Yet while these are the people best placed to raise the concern before damage is done, they often fear that they have most to lose if they speak up.

British Standards Institute: Whistleblowing Arrangements Code of Practice PAS 1998:2008 0.2



3. What is the Civil Service Commission?

The Civil Service Commission is independent of Government and of the Civil Service.

The Commission consists of the Civil Service Commissioners and our staff. Civil Service Commissioners are recruited on merit following public advertisement and a fair and open selection competition. From our different careers and interests we bring experience of the public, private and voluntary sectors, and a clear and independent perspective.

You can find out more about us and our work on the Commission's website <http://civilservicecommission.independent.gov.uk/>

4. What does the Civil Service Commission do?

The Civil Service Commission has two primary functions, as detailed in the Constitutional Reform and Governance Act 2010.

First, the Commission is responsible for upholding the principle that selection to appointments in the Civil Service must be on merit on the basis of fair and open competition.

Second, the Commission can hear and determine complaints raised by civil servants under the Civil Service Code.

We also work with departments to help them promote the Code and the core values of the Civil Service that it describes.

5. Who can make a complaint under the Civil Service Code?

A civil servant may bring a complaint to the Civil Service Commission when they believe they have been asked to behave in a way that goes against the values in the Civil Service Code or have witnessed such behaviour from another civil servant.

We will normally expect a civil servant to have raised their concern within their own department before bringing it to the Commission. The Commission can take a complaint direct without the issue being raised within the department. We explain in this guide the circumstances that might lead us to accept a complaint direct.

The Commission is not a body that can hear complaints from members of the public about the behaviour of civil servants.



6. What is a valid complaint under the Civil Service Code?

The Civil Service Code outlines the core values of the Civil Service: Integrity; Honesty; Objectivity; Impartiality. It describes the standards of behaviour expected of civil servants against each of these four values.

If a civil servant is asked to do something which conflicts with the values in the Code, or is aware that another civil servant is acting in conflict with the values, he or she should raise a concern within their own department.

If they have raised their concern within their own department and do not receive what they consider to be a satisfactory response they may bring a complaint to the Civil Service Commission. The Commission may also take a complaint direct. In section 9 of this Guide we outline situations where we might decide to take a complaint direct (without it being first investigated by the department).

The Code does not cover 'human resources management issues'.



7. Why are human resources issues not covered by the Code?

The Civil Service Code states that the Civil Service core values:

support good government and ensure the highest possible standards in all that the Civil Service does. This in turn helps the Civil Service to gain and retain the respect of Ministers, Parliament, the public and its customers.

The Code is concerned with the outward-facing roles of civil servants rather than their internal relations. There will therefore be a public interest dimension to a concern raised under the Code.

Departments will usually have their own mission and values statements that explain the standards expected in relations between civil servants. In addition, the relationship between a civil servant and their employing department will be subject to employment legislation. These are inward facing relationships and do not have a public interest dimension. Departments will have a grievance procedure for raising such concerns.

The Commission recognises that it is not always easy to make this clear cut distinction between a human resources management issue and a concern under the Civil Service Code. Situations which primarily touch on an individual's employment may also have a public interest aspect.

However we will need to be convinced that there is a demonstrable and significant public interest relating to any individual human resources grievance before we consider it under the Civil Service Code.



8. Does a concern have to be raised within the department first?

The Civil Service Commission believes that in most cases it is better that concerns are dealt with within the department in which they arise. If a department can address and resolve concerns itself then it can learn from the process.

The Commission would expect a civil servant, in most cases, to raise their concern within their own department and to allow the department time to carry out a full investigation.

However there may be circumstances in which the Commission would take a complaint direct (without internal departmental processes having been fully followed).

9. In what circumstances would the Commission take a complaint direct (without it having been raised within the department first)?

There may be a number of reasons why it would be appropriate for the Commission to hear a complaint direct.

This will depend upon the individual facts of the case but these might include:

- Situations where the managers above the civil servant are involved in the matter of concern.
- Situations where the Permanent Secretary, or Chief Executive, are involved in the matter of concern.
- Situations in which the issue of concern is time-limited, urgent and serious.
- Situations where the Commission believed that the civil servant may have suffered a detriment as a result of raising a concern or is likely to suffer a detriment in future.

10. How should departments deal with concerns that are raised under the Civil Service Code?

It is for departments to decide what processes they have to allow staff to raise concerns and how they are publicised. They must however be compliant with the 2010 edition of the Civil Service Code.

In 2007 a working group of Civil Service Commissioners and Permanent Secretaries produced a Best Practice Checklist for promotion of the Civil Service Code by departments. The Commission urges departments to test their own practices and policies against the Checklist.

Departments should have clear routes for raising concerns and these should be regularly and effectively promoted to staff.

Departments need to consider how they will distinguish between concerns under the Civil Service Code, and human resources grievances. Staff will not always quote the Civil Service Code when raising an issue of concern; and will often not be clear themselves whether they are raising a grievance or an ethical concern. But managers, HR professionals and Nominated Officers should be able to determine whether a concern relates to HR issues (a grievance) or to the Civil Service values as described in the Civil Service Code.

A civil servant should normally raise a concern by talking to their line manager or someone else in the line management chain.

If for any reason this would be difficult, they can raise the matter with one of their department's Nominated Officer. Nominated Officers are appointed within each department to advise staff on the Code. If your department is not sure how to select and support your Nominated Officers you should contact, in the first instance, the Propriety and Ethics team in the Cabinet Office.

If a civil servant has raised a concern within their department but do not receive what they consider to be a reasonable response, they may bring a complaint to the Civil Service Commission.

Departments are required to report to the Commission the number and nature of concerns that have been raised and dealt with within the department each year. These are concerns that have been resolved within the department and have not therefore been brought to the Commission as complaints. The Commission gives an aggregate report of these concerns in its Annual Report.



11. What is the objective of the complaints process?

The Commission will be investigating whether there has been a breach of the Civil Service Code.

If a department has already investigated a civil servant's concern we will consider the outcome of that investigation. We are not principally concerned with process. Our focus is on upholding the Civil Service values and the right of civil servants to raise concerns. We may however make recommendations to a department on how it might improve its processes in future.

If we conclude that there has been a breach of the Code we will be making recommendations to address the situation and to ensure that it is not repeated.

Ultimately the Commission is upholding the effectiveness of the Civil Service by providing an independent and objective element to the investigation of concerns. We also provide a strong independent voice to try to ensure that those who raise concerns are not penalised for doing so.

12. What will happen if the Commission accepts a complaint from a civil servant in my department?

When the Commission accepts a complaint from a civil servant they will normally write to the Permanent Secretary or Chief Executive of the department or agency to inform them.

The letter will briefly outline the nature of the civil servant's concern.

The letter will probably indicate in general terms how the Commission intends to go about the investigation.

Usually the initial letter will ask the department for information in response to the information that has been presented to the Commission by the civil servant. In most cases this will include information relating to the department's own consideration of the civil servant's concern.

13. How will the complaint be investigated?

We do not have a rigid approach to our investigations. We tailor our approach to the particular circumstances of each case.

Generally the investigation and testing of the evidence will in the first instance be carried out by the staff of the Commission. We usually then appoint a panel of Civil Service Commissioners, usually three of us, to consider the complaint.

The panel is presented with an analysis of the facts of the case produced as a result of the investigations of the Commission's staff. The panel members will decide whether on the evidence presented to them there has been a breach of the values and standards in the Civil Service Code. The panel may call upon the services of outside experts to help them.

As part of the panel's consideration of the complaint, the civil servant may be asked to meet the members of the panel, who will question them on their concerns. This is not a formal process. The Commissioners will usually be seeking to understand the concerns more and to ask questions that have arisen from the panel's consideration of the information supplied. The panel may also want to talk to representatives of the department. This will be done at a separate session.

The method of investigation will vary according to the facts of the case. Some cases are decided on an examination of written evidence alone.



14. What does the Civil Service Commission expect of departments?

A healthy organisational culture, coupled with good management, should allow a department to resolve most concerns that arise. If this is done within an open and trusting working environment then the department will also be able to learn from the experience of resolving the issue.

However, there will be times when a department has failed to appreciate that a breach of the Civil Service Code has been discovered or that its actions in investigating a concern have been deficient. In these circumstances it may take the intervention of the Civil Service Commission to bring the matter to a conclusion.

The Commission expects departments to engage fully with the process of a complaint investigation. A Civil Service Code complaint investigation is not a legal process and should not be approached in a defensive or over legalistic mind-frame.

Some of the behaviours that the Commission would expect to see demonstrated by departments include:

- Responses to requests for information and other communications within the timeframe indicated by the Commission for response. If this is not possible an early notification with a realistic estimate of when a response can be expected.
- An attitude that recognises that whatever the history of a particular complaint or individual, the process of investigating concerns under the Code is a healthy one and one that the department may learn from.
- An open engagement in the process seeking ways to expand the Commission's understanding of the area of concern rather than a narrow approach that provides what is asked for and no more.
- Sustained engagement in the complaint process from senior figures within the department and access to a senior designated contact.

15. What can my department expect from the Commission?

The Commission aims to operate a complaints investigation regime that is efficient open, fair, honest and clear.

The behaviours that departments can expect to see from the Commission include:

- Timely confirmation that the Commission has accepted a complaint request. (The Commission will not inform departments that a concern has been raised if it is not accepted as a complaint by the Commission.)
- Timely and clear information on a complaint that has been accepted by the Commission direct (without going through the department's internal procedures). The Commission will provide as much information to the department as it can, within the limits of its responsibility to the civil servant bringing the complaint, on the reasons why it has agreed to take a complaint direct.
- An investigation that is concluded as quickly as possible consistent with a fair and thorough examination of the case.
- Where recommendations are made as result of investigating a complaint, clear expression of what the recommendations are and a timetable that the Commission would expect to be followed for implementation.

If the Commission upholds a complaint it will provide the department with the reasons for its findings and details of any recommendations it will make.

There will also be situations where the Commission does not uphold the complaint but nevertheless believes that the investigation has produced evidence that the department should consider further. It may be that there has been no breach, but the policies and procedure in place in the department are in some way short of good practice. In these circumstances the Commission will feed back its observations to the department to allow the department to learn and revisit its approach in light of this experience.

16. How long will the investigation take?



The length of the complaints procedure will depend on the nature of the concern, its complexity, and the amount of documentation involved. The Commission aims to deal with all enquiries and complaints in a timely manner.

Given the wide variety of complaints it is not possible to give a precise timetable for an investigation. However, we will seek to establish good and regular communications with the department to keep you informed of progress of an on-going investigation.

The service standards the Commission aims to work to are described in the Commission's *Civil Service Code: Policies and Procedures*.

17. Can a civil servant withdraw a complaint?

The Commission believes that it is better that concerns about the Civil Service values are dealt with within the department in which they arise, if that is possible.

The Commission will be investigating whether there has been a breach of the Civil Service Code. But we also see the complaints process as one which allows departments to continuously improve: acknowledging where things may have gone wrong and learning lessons for the future. The Commission will therefore support a mutually agreed conclusion to a complaint process at any stage of the investigation. Neither civil servant, nor department, should feel that they are locked into an adversarial contest from which there is no escape.

However the Commission is concerned that at no stage should a civil servant feel that they are being pressured not to bring a complaint or to withdraw one. If a civil servant seeks to withdraw their complaint we will wish to satisfy ourselves that this is done freely and is not as a result of any kind of pressure or coercion.

18. What are the outcomes of bringing a complaint?

The Constitutional Reform and Governance Act 2010 states that the Commission 'after considering a complaint, [under the Civil Service Code] may make recommendations about how the matter should be resolved'. There is no specified restriction on the recommendations that the Commission may make.

The nature of the recommendations that the Commission might make in upholding a complaint will depend upon the individual circumstances of the complaint. If a complaint is upheld the Commission will in effect be agreeing that in some way and to some degree the values in the Code have been compromised.

The Commission does not have any powers to award compensation.

The Commission will want assurance that effective steps have been taken to ensure that a breach of the values is unlikely to reoccur. If the breach was to do with systems and processes, the Commission may recommend changes to those systems and processes. If the breach was due to human error, the recommendations are more likely to focus on management and training. It may be that one of our recommendations is a simple apology.

There may be situations where we have accepted a complaint direct due to the urgency and seriousness of the alleged breach of the Code, and our investigation will prevent the breach occurring. But in most situations the breach will have occurred some time in the past. In these circumstances we see the primary outcome of our investigation as preventing a future reoccurrence. First, because the department will recognise where the breach occurred and will learn from that; and second, because we may make practical recommendations to ensure that it does not happen again.

In some cases our recommendation might be that another body should look at the issue. It may be that another regulator would be more experienced and be better equipped to investigate the matter. Or we might conclude that, where appropriate, the concerns should be looked at by a parliamentary body or an independent enquiry.

When we uphold a complaint we return to the department later to ensure that our recommendations have been implemented. If we were not satisfied that our recommendations had been followed we would raise the matter with the Permanent Secretary or Agency Chief Executive concerned and, if judged necessary, with the Cabinet Secretary.



19. How are the results of complaints reported?

We will send the report of our investigation to the appellant and to the department in confidence.

The outcomes of all settled complaints are included in the Commission's Annual Report, which is usually published in July. The name of the department and the name of the civil servant who brought the complaint are not given in the Annual Report. Only a summary is given of the nature of the complaints.

We believe the complaints process works best when civil servants and departments understand that it is intended to be confidential. All sides can share information and, where appropriate, admit to errors.

The Civil Service Commission is mindful of the legal constraints that preclude an absolute assurance of confidentiality, for example, the Freedom of Information Act 2000. We do however believe that confidentiality is important and we will argue this to the Information Commissioner and other relevant authorities.

We might consider making more details public where this appears to us the only, or best, way to prevent further breaches of the Code.

20. What if the department does not agree with the Commission's conclusions or recommendations?

There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service Code complaint case. General public law remedies may be relevant in some cases.

The Commission will consider any representations from civil servants or departments for review of the Commission's decision and recommendations that suggest that we have made factual errors or errors of factual interpretation in our decision making. We will not normally accept a request to review our decision or recommendations if it is received more than 20 working days after the date of our decision.

The Commission does not believe that it is constructive to continue a protracted conversation with a civil servant or department about a decision made by the Commission. If we have reviewed our decision on factual grounds, having received a request to do so, we will seek to bring discussion of that complaint to a conclusion.

21. What happens to civil servants who bring complaints?

The Commission recognise that some civil servants may feel nervous about raising a concern and bringing a complaint to the Commission. A civil servant may be worried that they will be seen as a trouble maker and that their career may suffer.

The Civil Service Code is clear that civil servants should not suffer a detriment as a consequence of raising a concern:

'If you believe that you are being required to act in a way which conflicts with this Code, your department or agency must consider your concern, and make sure that you are not penalised for raising it.' (para. 15)

The Commission believes that departments should encourage their staff to raise concerns and should actively support them in doing so.

The Commission will take very seriously any suggestion that a civil servant has been penalised for raising a concern. We would want any civil servant to approach us if they believe this is the case at any time. We would be prepared to use all the remedies available to us to prevent and rectify any penalisation.





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