



## **FINDINGS AND RECOMMENDATIONS: February 2019**

### **CIVIL SERVICE CODE COMPLAINT TO THE CIVIL SERVICE COMMISSION Ref: 694 FINDINGS OF THE PANEL OF INVESTIGATION**

#### **AUTHORITY**

1. The Constitutional Reform & Governance 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 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 APPEAL**

3. This appeal under the Civil Service Code, from a former Economic Adviser at the Department of Health and Social Care (DHSC), raises concerns that a submission in respect of the Accelerated Access Review (AAR) – a set of policy proposals relating to the pricing and reimbursement of medical technologies including pharmaceuticals – had knowingly misled Ministers, and was therefore in breach of the Civil Service Code.

4. A preliminary investigation by DHSC reported to Director of People and Capability, Human Resources (**Person A**) in January 2017 and found that there were grounds for concern that the submission had breached the Civil Service Code, and identified further causes for concern in the culture of DHSC relating to the reporting of impacts regarding pharmaceuticals in the context of the Civil Service Code and also the withholding of evidence to HMT. The scope of the investigation also encompassed developments in the AAR policy, and reporting of its likely impacts to Ministers, which occurred after the original complaint.
5. In March 2017, the Permanent Secretary commissioned a full investigation into the issues, led by Director General, Global and Public Health, (**Person B**) and Director, Care and Transformation (**Person C**). The investigation reported in January 2018. The complainant felt that the matters raised in the original complaint that he made, and encompassed in the scope of the enquiry, were not properly investigated and referred the matter to the Commission on appeal in February 2018.
6. Since raising the original complaint, the complainant also reported concerns about the conduct and propriety of the National Institute for Health and Care Excellence (NICE), the agency responsible for determining whether new pharmaceuticals receive mandatory funding in the NHS. Some aspects of these issues were addressed in the investigation. The complainant believed there were outstanding urgent concerns that NICE may have been subject to undue influence by the pharmaceutical industry. However, NICE is not a Government Department / Agency and does not employ civil servants. For this reason these aspects of the complaint are excluded from the scope of this appeal as they are outwith the remit of the Civil Service Code.

## **METHODOLOGY OF INVESTIGATION**

7. The investigation of this complaint was conducted by the Commission's secretariat and adjudicated on by a panel comprising three Civil Service Commissioners.
  - Isabel Doerty, Civil Service Commissioner
  - Rosie Glazebrook, Civil Service Commissioner
  - Kevin Woods, Civil Service Commissioner
8. The panel based their assessment on an examination of the evidence provided by DHSC. The panel tested and assessed this evidence, against the requirements of the Civil Service Code.

## EVIDENCE

9. The panel had access to a range of evidence supplied by both the complainant, and DHSC officials. These included in particular:
- A:** Appeal from the complainant detailing the case
  - B:** Result of initial scoping exercise undertaken by **Person A**
  - C:** Report to the Permanent Secretary on full investigation
  - D:** Correspondence between complainant and **Person A** and others pertinent to the investigation
  - E:** Correspondence between complainant and line management
  - F:** Ministerial submissions from 2017 and 2018
  - G:** Complainant's narrative concerning Ministerial submissions
  - H:** Email correspondence between complainant and Commission
  - I:** Extensive correspondence between DHSC officials and Commission

## BACKGROUND

10. The original complaint, raised in November 2016, highlighted two central issues in respect of a submission to Ministers (on October 14<sup>th</sup> 2016) regarding the Accelerated Access Review (AAR). These were:
- That the submission knowingly omitted to report the findings of a substantial and mature body of evidence and analysis which showed the policy measures proposed under the AAR were likely to impose significant costs on the NHS budget, likely amounting to £billions pa, and that there were particularly severe risks around a proposal for 'Managed Access' by which new drugs would gain reimbursement before demonstrating effectiveness;
  - That the submission actively suggested the policy could be cost-neutral, in contradiction of a large body of evidence and analysis which showed clearly that cost-neutrality could not reasonably be expected.
11. In respect of the first of these central issues, the Departmental investigation concluded that the submission did not breach the Civil Service Code. The main justification for this finding was that the evidence of the likely impacts, costs and risks of the AAR proposals were presented in other ways – *'As the submission was not the only vehicle for advice to Ministers and Ministers did receive advice on briefing and costs, we judge that it did not breach the Civil Service Code.'*
12. The complainant states that, to his knowledge, the only report to Ministers relating to costs of the AAR proposals was made in a previous submission, referenced in the evidence he provided to the investigation (and which was itself, in his view, misleading). The costs referred to in that previous submission he says, only related to a part of the impact (the effect of bringing spend on new drugs forward). Since that submission, a large body of analysis had been carried out, with the AAR team and a widened group of analysts, to

evaluate the cost impacts more fully – in particular to consider the likely effect of the measures on prices of drugs. This more complete analysis showed that additional significant cost impacts were to be expected through increased drug prices – and that one aspect of the proposals in particular, the ‘Managed Access’ scheme, carried extremely significant risks as it would allow companies to gain NHS reimbursement without demonstrating evidence of effectiveness.

13. This evidence, the complainant points out, was provided in his submissions, and clearly discussed in the report of the preliminary enquiry. However the Departmental investigation report does not specifically refer to any of this analysis or evidence although it is the main focus of the original complaint. The report concludes that analysis and evidence were communicated to Ministers through other means beyond the submission in question.
14. In respect of the second of the central issues above, relating to the submission’s implication that cost neutrality of the proposals was a reasonable prospect, the complainant states that he had expected the investigation to examine whether Ministers would have been likely to interpret the submission as saying that cost neutrality was to be expected, and whether that interpretation was justified by the evidence. However the Report does neither of these things he says, and does not substantially address the concern that the submission misled Ministers by implying that the AAR proposals and objectives could be achieved cost-neutrally.

#### Withholding evidence from HMT

15. As well as the question of whether Ministers were misled by the submission, the investigation considered whether ‘relevant analysis or evidence was deliberately withheld from HMT’. In addressing this question the report states that the investigation ‘found no evidence to substantiate the specific issue of whether evidence was deliberately withheld from HMT’.
16. However the evidence submitted to the investigation by the complainant included an email from the AAR policy lead explicitly stating that she had ‘managed to duck a promise of sharing the requested analysis’ with HMT.
17. This email is not mentioned in the report, states the complainant. Nor is any evidence provided showing that the analysis was ever provided to HMT. The complainant does not consider therefore, that a proper investigation was carried out of the question of whether evidence was withheld from HMT.

#### Wider investigation around culture of DH reporting

18. The preliminary enquiry by DH also considered the culture surrounding the reporting of analysis and evidence in respect of pharmaceuticals. Consideration of these potential issues in DH culture from the perspective of the Civil Service Code was also included in the scope of the Investigation.

19. The complainant provided evidence relating to the above, which appeared to him to raise concerns about the adherence to the Civil Service Code. This evidence included:
- An email from his Line Manager advising him that the Civil Service values of Honesty and Integrity were ‘trumped’ by that of Impartiality which implied the need to ‘serve the current Government no matter what’.
  - That he was marked down in his performance appraisal for being ‘intransigent’ in respect of reporting and analysis of evidence and was told that he was ‘too honest’ with ministers.
  - That his Line manager stated on record that he had been instructed to suppress reporting of important aspects of evidence relating to the value for money of pharmaceuticals.

#### Further Developments

20. Due to the issues being live at the time of the investigation with a Government response being imminent, the investigators agreed to extend the scope of the investigation to the full life of the AAR.
21. In October 2017, a year after the Submission cited in the original complaint, a further submission relating to the Government response to the AAR was made to Ministers regarding the final proposal for measures to be taken in response to the AAR report. The complainant’s Director, **Person D**, asked for his view of the final Impact Assessment, and the reporting of evidence and analysis in the submission.
22. The submission was, in the view of the complainant, grossly misleading to Ministers. For example, it stated that an ‘extreme’ scenario would be expected to lead to additional NHS costs of £60m pa – when even the most optimistic possible scenarios of which he was aware would entail far higher costs, and despite interventions from other policy colleagues pointing out that impacts of over £1bn pa were possible. Had this not occurred in the context of an existing whistleblowing complaint, the complainant points out, he would have felt compelled to report this submission as a potential serious breach of the Civil Service Code in its own right.
23. The complainant drew the investigator’s attention to the issue and she intervened in the process of the submission. As a result of this intervention, the submission was changed dramatically, although the analytical underpinnings were the same. A large amount of new material was added which identified and emphasised some of the significant risks associated with the policy.
24. To the knowledge of the complainant, the original version of this submission had been fully signed off by all relevant officials and would have been received by Ministers if it had not been for the intervention. The fact that the reporting of evidence and analysis changed so dramatically in response to the

intervention would therefore seem to indicate a persistent concern that Ministers are at systematic risk of being misled, suggests the complainant.

25. The investigator acknowledged the significance of the difference between the two versions, and agreed to include the events around the submission in her investigation. However the investigation report only mentions that revisions took place in response to her intervention. It makes no comment or conclusion on whether these events raise any concerns about the communication of analysis and evidence to Ministers.

Has the Complainant suffered a detriment as a result of raising concerns?

26. As a part of assessing an appeal under the Civil Service Code, determining whether a complainant has been penalised for raising concerns is normal procedure. The complainant did not indicate that he had been disadvantaged as a result of raising his concerns, but the Commission did ask him if in fact this had been the case. His response was as follows:

27. *'I have no reason to believe I have been so disadvantaged – at least in respect of the whistle-blowing complaint per se – and I am not making that claim. For what it's worth I would probably say that my career prospects have been restricted in a more general way – because of my 'intransigence' and, as I see it, refusal to breach the Civil Service Code. However the damage to my career was not an explicit part of my complaint – although these aspects of my performance management emerged in the DH preliminary investigation as part of the consideration of the wider culture. I'd be happy to discuss this to clarify further, if that was helpful'.*

28. Given that the treatment of the complainant by the Department in respect of his having raised concerns does not form part of his complaint / appeal to the Commission, this will not form a part of the appeal. However, in its communications with the Department, the Commission has pointed out the requirement placed on Departments under the Civil Service Code, to ensure that complainants are in no way disadvantaged or penalised as a result of them raising concerns. The Department has acknowledged that there are lessons to be learnt as a result of the way that this case was investigated and handled, which include the way that the complainant was dealt with.

### **The DH Position / Investigation Findings and Recommendations**

29. The key findings of this investigation are as follows:

30. The submission on October 14th did not emphasise the full weight of evidence from the initial impact assessment and could have done more to signpost evidence and remaining evidence gaps and queries.

31. No evidence was found of any intention to mislead Ministers in the submission of October 14th. As the submission was not the only vehicle for advice to

Ministers and Ministers did receive advice and briefing on costs, it was judged that it did not breach the Civil Service Code.

32. The process by which the pipeline of advice was put together was not always clearly signposted to Ministers and the conclusions of earlier discussions or advice on risks and costs were not always recapped in the subsequent submission.
33. Witnesses described that with political and official level of turnover and changes in direction from No.10, the AAR did not follow a linear policy development process. Whilst it is not uncommon for policy development in a review to reflect a changing context, effective practice suggests that advice should nevertheless aim to recap the key issues and place each submission as part of the overall decision making process.
34. In the period following publication of the AAR, there was some evidence of improvements to the process of collaborative working between analysis and policy development but there remained still some issues with final clearance. However the issue of shortcomings in the process of signposting and linking to the information relating to costs in the impact assessment was identified again in the final stages of preparation of advice to Ministers on the Government's response in November 2017.
35. No evidence was found to substantiate the specific issue of whether evidence was deliberately withheld from HMT, and additional materials provided and covered in the interviews suggested that HMT receive relevant information. Witnesses set out how HMT were instrumental in the final formulation of the AAR recommendations to secure agreement to cost neutrality.
36. The complainant did not receive feedback on how his concerns were escalated or responded to via the analyst line management chain. This left him with on-going concerns about the integrity of the advice and the process. These could have been more actively addressed by his line manager. It is concluded that if the complainant had received effective engagement and response to his concerns from the outset, this would have resulted in either faster escalation or resolution through transparent and open debate.
37. There is an inherent tension in policy objectives, for example in promoting the importance of the pharmaceutical industry for the UK and in minimising costs to the NHS and the UK taxpayer. While unusual, this type of tension is not unique in the Civil Service or in DHSC. Working effectively in these circumstances and navigating the tension is an understood task of the policy profession. However, there is no evidence that civil servants have been influenced by improper pressures from the pharmaceutical industry.
38. Inconvenient facts or relevant considerations were not ignored in presentation to Ministers. However, the presentation of evidence was at times not adequately signposted and could be improved.

39. The interviews showed that there were varied views on whether there is openness to different views and voices; it was not universally accepted nor universally rejected. There is evidence that there were not strong feedback loops to address issues when they were raised both within and between the directorates and between policy and analysis.
40. Systematic approaches are needed to navigate the policy and analytical tensions, rather than relying on individuals. This also protects against personnel changes and loss of corporate memory.
41. There is evidence that the line manager of the complainant gave contradictory messages up and down the line management chain. As a member of the SCS, the line manager should have taken more responsibility in both responding to the complainant's concerns and working with policy and analytical colleagues in a more open way.
42. The report has the following to say about the complainant raising his concerns:
43. We believe that the complainant has acted with integrity in raising concerns, without malice, after considerable thought and after a number of attempts to be heard. The complainant therefore should receive full engagement from managers in the issues raised. The complaint also gives the organisation an opportunity to learn from the findings and address the recommendations on the specific issues, but also to apply the learning more widely across the organisation.

#### **Further Questions for DH to answer**

44. In assessing the considerable amount of evidence that had been presented to it, the Commission still considered that there were questions that needed to be answered by Department and it drew up a list of these in agreement with the complainant and presented them to the Department. The key questions that it asked were:
  - Why did the submission not mention the Department's analysis of the likely costs and potential risks of the AAR proposals?
  - On what basis did the submission imply that the AAR objectives could be achieved cost neutrally, given the analysis of the proposals that the AAR team had been provided?
  - Were Ministers advised that the cost neutrality/HMT requirement included in the submission of 14 October 2016 were removed from the published version of the report?
  - When was the decision made to remove from the final published version of the report any reference to cost neutrality?
  - Who made this decision?
  - If the argument for key information in the submission being missing is that it had been presented to Ministers in other ways, could you explain how this was done and the rationale for it?



- Was the Department's analysis and evidence of the likely costs and risks of the AAR proposals ever explained to Ministers?
45. The Commission received a lengthy response from the Department, which in its opinion, did not add anything new. It discussed the response with complainant who agreed.
46. The Commission contacted DHSC and explained that in the opinion of the complainant, the questions had not been adequately answered in order for us to draw any firm conclusions and that the Commission was minded to agree with this analysis. The Commission posed a further set of questions agreed with the complainant. **In response, a DHSC HR official expressed surprise, during a phone conference call with Commission staff, that we had shared their responses with the complainant and the Commission was given the definite impression that if they had known that this might happen, they may have answered differently, although the department has a different recollection.**
47. The Commission found this response unacceptable and not in the spirit of a Civil Service Code investigation and pointed this out to the Department. However they agreed to respond to this latest set of questions although they requested what the Commission thought was an unacceptable deadline by which to respond and we agreed a more acceptable one. The key points in their response are set out below:
- As a result of the whistleblower's action, in the course of the investigation, the investigators intervened on the policy advice so that it was improved and formally agreed between the three relevant Directors, including the Chief Analyst. We continue to be grateful to the complainant for bringing this to our attention and note the direct impact this had at the point of the Government response to the AAR being agreed.
  - Whether the analysis was flawed and misleading, and which scenarios were most realistic, are disputed between witnesses. This is not unusual in the policy making process, particularly in controversial areas; and the Impact Assessment as signed off by the Chief Analyst is the method for agreeing the range of options with costs and benefits. Significant discussion and debate on early drafts of an Impact Assessment is not unusual and is of course helpful in developing the most robust case possible before Ministers take a decision. This is what happened in this case between the publication of the independent AAR and the Government's response.
  - Regardless of the quality of the advice, which we agree needed improvement, and indeed was improved, we can find no evidence that individuals deceived or knowingly misled Ministers. Both in our investigations and concerns raised by the complainant we can find no evidence that would lead us to conclude there was a breach of the Code on this point.
  - The scope of the investigation also covered other relevant parts of the Code on honesty and objectivity: 'You must set out the facts and relevant issues truthfully, and correct any errors as soon as possible' and '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’

- Again, we could find no evidence of a breach on these points. The report and our previous response to the Commission sets out and quotes some of the relevant briefing. While the response to the complainant from the line manager was at times inappropriate, the investigation did not find that this was a breach of the Code and recommended that line management capability needed improvement.
- The report concluded that development of policy was not perfect and could have been improved in important aspects. It made recommendations for this specific policy area to improve the working between the relevant teams and policy and analysis; as well as lessons for the wider Department. The Department has taken this action.
- The additional questions you raise about quality of the submissions continue to be pertinent, but this does not add or subtract from the issue of whether this relates to the Civil Service Code. The Department’s investigation report and accompanying documents that have been provided to the Commission. The report was evidenced throughout by the documents from the complainant, additional documents provided by the witnesses, and by witness interviews. If the Commission has any evidence of the intention to mislead or any breach of the Civil Service Code, this would be very gratefully received. We look forward to receiving the Commissioner’s view on this matter.
- On the specifics, the complainant’s response implies that we previously said that cost neutrality was not critical to the case or in scope. We would like to point out that in our first response, it was the sequence of HM Treasury and Chairs’ discussions and advice to Ministers that was not critical to case. As is normal in many areas of policy following an independent report, the officials began the process of developing the government response to that report. As previously set out, detailed options and costings were then developed and presented to Ministers before the Government response.
- Finally, we believe the complainant acted with integrity at all times and has done the Department a service in raising this issue. We hope that this can now be taken forward with the Commissioner and look forward to their views on the matter.

### **Referral to Commissioners to take a view**

48. There is no doubt that this is a highly complex case and the contested points very subjective in nature. Whilst the Commission felt the complainant made some very pertinent observations, and the Department by its own admission, conceded that the case highlights some important issues, the Commission felt the matter as to whether a line has been crossed in complying with the values in the Civil Service Code, would need to be determined by somebody who had had experience working with Ministers at this level in the Civil Service. Normally Commission staff would make a recommendation to adjudicating Commissioners as to whether there has been a breach of the Code, but in this case felt that it was not possible. For this reason, Commissioners were asked to take a view early on in the case.

49. In their deliberations, Commissioners commented that it was understandable why the complainant had concluded that Ministers had been misled but were not able to corroborate this view with any evidence that had been presented to them thus far, despite the considerable amount of material that they had considered. They indicated that they felt that the Department should be afforded a final opportunity to answer some key questions before they reached their decision. These questions were set out in a letter to the Department, the key paragraphs of which are set out below:
50. *The theme central to this appeal is how the Department advised Ministers in connection with the Accelerated Access Review and presented the financial implications for NHS budgets. More specifically, whether the 2016 submission accurately presented the level of risks as identified by research in which the complainant had been engaged.*
51. *The Commissioners acknowledge that the final October 2017 submission to Ministers and associated annexes sets out a range of financial consequences as identified by analysts, of whom the complainant was one. However they feel that much of this information could have been presented at least a year earlier, and attempts to get these arguments in front of Ministers were only facilitated as a result of the investigation prompted by the complainant.*
52. *The Commissioners are therefore minded to conclude that information presented to Ministers in 2016 had the potential to mislead. They are not however able to conclude whether this was as a result of inexperience, optimism bias or whether there was a deliberate attempt to conceal relevant facts. They do however understand how the complainant might have come to his conclusion that there had been a deliberate attempt to mislead. Commissioners have considered much of the evidence presented where witnesses have stated they were pressurised to put a positive spin on their work.*
53. *Commissioners therefore have concluded that Ministers did not get the full picture until October 2017 and would like to better understand why this might be the case. They have therefore asked that the Department provide some more information in answer to the following questions:*
- If the full range of financial consequences presented to Ministers in October 2017 could have been made available to them a year earlier, why did this not happen?
  - If, as the Department suggests, they could have signposted better, the financial consequences of the AAR, why did they not do this?
  - In mid 2016, Economist **Person E** seemed to have some very significant concerns over figures that were or were not being presented to key decision makers, but he then seems to disappear from the commentary on the AAR. Could you explain why this was?

- The Department has pointed out several times in correspondence with the Commission that there were 'other vehicles' for advice that was given to Ministers. Could the Department clarify precisely what these other vehicles were?

## **Conclusions**

54. DHSC officials responded to the questions above, The view of the Commissioners was that their response only added some additional pertinent information and the Commissioners convened to adjudicate on the case and their findings are set out in the following paragraphs:
55. The complainant had raised his concerns as early as June 2014. His concerns do not appear to have been well handled or addressed, and certainly not to his satisfaction. He continued to raise concerns through 2015, about the extent to which objective analytical advice was taken on board by senior policy officials. It was against this background that the independent AAR moved towards publication during 2015/16.
56. In May 2015 the complainant was considering how to conduct an Impact Analysis (IA) on the then draft AAR. In April 2016 an initial IA to which the complainant had made a major contribution, was considered by the Senior Review Committee who approved it; it showed a potential cost of £3.7 billion. The complainant was told that the Minister had been told of this, but there appears to be no record of this.
57. In March 2016, the complainant raised concerns with his line manager that he was being asked to provide a more positive narrative. In June 2016, the Chief Analyst raised concerns that the initial IA was not being taken into account in discussions about the emergent AAR. The complainant believed that throughout the summer of 2016, pressure grew to talk up the positives and talk down the cost risks. The complainant raised these concerns, but the policy team decided not to present a paper to the Treasury.
58. In August 2016, a submission was sent to the Secretary of State on the publication of the AAR. It mentioned an estimate of the partial costs of the proposals reported in an initial IA, although it wrongly referred to them as representing a worst-case scenario.
59. In September 2016 the complainant continued to tell policy officials that the cost risks had not been adequately acknowledged. In September 2016, a senior policy official recorded, 'she had ducked promise' to share a paper on the AAR and its risks with the Treasury. In October 2016, the complainant set out his concerns that policy officials were, 'trying to bias the analysis to make the policy more favourable'. An economist responded on the same day to say, 'we think the risks are important to highlight'. Subsequently the complainant saw a proposed submission to Ministers which he believed was, 'seriously misleading' as its 'implication is that the proposals are cost neutral'.

60. In October 2016, a submission was made to Ministers seeking clearance on the publication of the AAR. It did not refer to the initial IA and was primarily concerned with the communications around the publication of the review. Later that month, the AAR was published, and government committed to publish a formal response to it. This led to work throughout 2017 to develop the government response. Email exchanges throughout this time showed the difficulty the Department appeared to have in bringing policy and analytical considerations together.
61. In April 2017, Ministers were told of progress on the preparation of the response to the AAR. They were told, 'there remains a risk of upward cost pressures that will make cost neutrality difficult if safeguards fail...we will include further advice ... a full impact analysis will also be provided for your approval'.
62. The conclusion of this work led to the preparation of submissions in draft on 06/10/17 and as issued on 13/10/17, including the definitive IA at which point Ministers were told about the cost risks and their possible mitigation. The finalisation of this advice was preceded by the intervention of the DH inquiry team seeking confirmation that the relevant directors were all agreed on the advice.

## **Commissioners' Findings**

### **On the Complainant's Allegations**

63. It is clear that there has been a failure by the Department to effectively integrate policy perspectives and analytical perspectives. This failure was serious and sustained and although progress was made, these were not fully resolved until the final submission to Ministers.
64. The concerns of the complainant about the place of his analysis and the analytical contributions of others, do not appear to have been addressed adequately by his line managers and others within the Department. There also appears to have been some divergence of views about when an IA should be presented to Ministers; the complainant thought it should be as the AAR emerged; others that it should be presented once the government response to the AAR was ready for ministerial sign off.
65. Whilst there were numerous meetings/discussion between Ministers, their offices and officials, it is not possible to know with certainty what the content of all of the exchanges were. The deficiencies in the co-ordination and reconciliation of policy and analytical perspectives, make it understandable that the complainant should have concerns about whether Ministers were receiving the information he believed they should. The advice on the risks of implementing the AAR were however, finally set out clearly in a Ministerial submission in October 2017.
66. There is no doubt that the issues that underpin this case, and that have given rise to the complainant's concerns, are serious, and point to policy

advice being provided in a sub optimal manner, and against the backdrop of a culture that should have been far more supportive of the complainant as he tried to pursue his concerns. The volume of evidence, the amount of time that has elapsed since the case, and the lack of some key pieces of evidence however, make it impossible to show that there was any deliberate intention to mislead, without reopening the investigation and interviewing all key witnesses, which would not now be feasible. The Commission would also like to point out, that it is reassured by the steps that have been taken by the Permanent Secretary since the Departmental investigation, to tackle the problems that have been highlighted by this case. The Commission also acknowledges the role of the complainant, his persistence in ensuring his concerns were heard, and the importance of his actions as a Civil Servant raising concerns under the Civil Service Code. The Commission commends the complainant for the service he has done. **Taking into account all of the above, it is concluded that the Department's policy/analytical integration practices and its handling of the complainant's concerns by DHSC officials before he became an official complainant, were deficient. The Department has acknowledged and addressed these matters. It is not possible to conclude that there has been a breach of the Civil Service Code as Ministers were not misled at the point when they had to make decisions about Government policy about the implementation of the independent AAR, but we can well understand the complainant's concerns.**

#### On the Treatment of the Complainant and the Conduct of the Department's investigation

67. Whilst the complainant did not make his treatment by the Department a feature of his complaint to the Commission, part of assessing an appeal under the Civil Service Code is determining whether a complainant has been penalised for raising concerns.

68. The Commission has some very serious concerns about the approach that the Department took to this investigation, from the time when the complainant very first raised his concerns with his line management in 2014, through to and including, its co-operation with the Commission when it took the case on appeal in early 2018.

69. The Commission has even more serious concerns over the approach that the Department took, early on in the case, to the Civil Service Commission's role in the investigation, and the extent of its remit, as set out in the Constitutional Reform and Governance Act 2010.

#### **RECOMMENDATIONS**

70. The Commission wishes to satisfy itself that the Department fully understands its obligations and responsibilities when it is subject to a Civil Service Code investigation and the spirit in which an investigation should be conducted, and that it addresses urgent training needs in this area for management, staff and

HR teams. The Commission will be in touch to assist with these training needs.

## **REQUEST FOR REVIEW**

71. 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 in its decision making.
72. 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.
73. There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service Code appeal.

**Civil Service Commission**  
February 2019