



FINDINGS AND RECOMMENDATIONS:

December 2016

REF: 337

RECRUITMENT PRINCIPLES COMPLAINT TO THE CIVIL SERVICE COMMISSION

FINDINGS OF THE INVESTIGATION

AUTHORITY

1. The Constitutional Reform & Governance Act 2010 outlines the functions of the Civil Service Commission. One of the functions concerns the investigation of complaints made by any person that a selection for appointment has been made in contravention of the legal requirement that selection for appointment to the Civil Service must be on merit on the basis of a fair and open competition.

The Act says:

13 (3) The Commission –

May determine steps that must be taken by a person before making a complaint (and those steps must be taken accordingly);

b) Must determine procedures for the making of complaints and for the investigation and consideration of complaints by the Commission;

c) After considering a complaint, may make recommendations about how the matter should be resolved.

OUTLINE OF THE COMPLAINT

2. The complainant applied for a Senior Civil Service (SCS) Pay Band 1 role at the Air Accidents Investigation Branch (AAIB). AAIB is a public body of Department for Transport (DfT). The complainant believes the approval and selection process was not conducted as advertised; including a criterion used

at selection and interview stage; the successful candidate did not meet the eligibility requirements, and that there was a conflict of interest with the Civil Aviation Authority (CAA) CEO, who was on the stakeholder engagement panel. The complainant also requested the campaign be paused.

METHODOLOGY OF THE INVESTIGATION

3. The Commission investigated the complaint through consideration of written evidence supplied. The Commission considered the following evidence, in addition to the complainant's original correspondence:
 - Original advert
 - Correspondence to and from DfT and complainant
 - Correspondence to and from Civil Service Resourcing
 - Sift score sheets
 - Invitation to interview and stakeholder engagement exercise
 - Interview score sheets and chair panel report
 - Civil Aviation Regulations 1996

Angela Sarkis and Isabel Doverty were the decision-making Commissioners in this case.

SUMMARY OF THE EVIDENCE

4. The complainant applied for an externally advertised role at DfT. It was advertised on CS Jobs and administered by Civil Service Resourcing.
5. At the end of the campaign, and when a decision had been made on appointment, the complainant formally lodged a complaint with DfT about the recruitment process.
6. The complainant believes the conduct of the selection process was flawed and a criterion was used which was not advertised in the selection process. He argues that evidence of leadership was not in the advertised criteria, but was used in assessing candidates.
7. The complainant believes there was a conflict of interest because the CEO of the Civil Aviation Authority (CAA) should not have sat as a member of the stakeholder engagement panel (SEP) as should not have been part of the process, as the AAIB should be independent of aviation authorities. The complainant raised the issue of a possible bias by the stakeholder from CAA against internal candidates from AAIB. An email had suggested that the CEO would not be involved in this process, although subsequently he was. This email

was seen by the complainant prior to the SEP and interview. This email was not addressed to the complainant and it is not clear how he obtained a copy of this email exchange, to which he was not a party.

8. The complainant refers to a telephone conversation with the chair of the interview panel where he alleges the chair said he had not approved the process, but his predecessor did. The complainant feels that the chair did not fulfil his responsibility to ensure that the selection process was compliant with Recruitment Principles.
9. The complainant argues the successful candidate does not meet the recruitment criteria, including the legal requirements as set out in the Civil Aviation Regulations 1996 and EU Regulation 996. He interprets the Civil Aviation Regulations as meaning the Chief Inspector must be, or must meet the requirements to be, an Inspector of Air Accidents. The complainant believes that while the internal candidates were suitable, the successful external candidate does not meet the legal or recruitment requirements.
10. The complainant requested the campaign be paused.

FINDINGS AND RECOMMENDATIONS

Was there a conflict of interest in appointing an external stakeholder to a recruitment panel?

11. This issue revolves around the CEO of the CAA, a stakeholder, sitting on the SEP. The SEP spoke to candidates before interview and then reported its views to the interview panel. The complainant argues that a stakeholder sitting on the SEP and involved in the selection of the candidate for this role, brings into question the organisational independence of the AAIB.
12. The interview panel chair argued that the independence of the AAIB refers to investigations, not staff appointments. He states legal advice supports this interpretation. It was felt that an external stakeholder is an asset on a SEP.
13. The complainant recounted a difference of opinion during feedback after the SEP and also cited previous professional differences. He considers this amounts to a personal conflict of interest.
14. The interview panellists declared if, and in what capacity, he knew any of the candidates. However, the SEP was not the interview panel. The SEP did not take part in the interview process and it did not decide upon or appoint the successful candidate. DfT stated that the SEP panellist who provided feedback

to the interview panel was a senior member of staff at DfT, not the CEO of the CAA.

15. Paragraph 11 of the Recruitment Principles states: *panel members must declare any conflict of interest...[and]...A record must be kept of how any such conflicts were dealt with.* This refers to the interview panel not the SEP. The perceived conflict concerned the latter and the Recruitment Principles are silent on this.

This is not a breach of the Recruitment Principles

Was the selection process conducted as advertised?

16. The information DfT supplied to candidates stated the following: "The case study exercise comprises a number of senior staff from across the Department for Transport and if you are successful in the role, will be some of your key stakeholders. They will introduce themselves to you on the day of the exercise."
17. The complainant states that, as the stakeholder who sat on the stakeholder engagement exercise panel was not a staff member; the selection process was not conducted as advertised. However, in the Briefing to Candidates, Overview of the Process section, there is clear reference to "a final selection panel interview" and this clearly states who will sit on the panel.
18. DfT argued that it can decide who sits on panels and can appoint stakeholders to SEPs, which are frequently used. The three interview panellists were drawn from DfT. It is clear the interview panel was as advertised, in this regard; the selection process was conducted as advertised.

This is not a breach of the Recruitment Principles in relation to the make-up of the final interview panel.

19. Regarding the SEP, there is clearly an expectation that a stakeholder should sit on a stakeholder engagement panel and CAA is clearly a key stakeholder.
20. The email seen by the complainant, and referred to in paragraph 7 above was not addressed to him. DfT confirmed that it was later agreed that it would be beneficial for the CEO to sit on the panel.
21. The make up of the SEP was described in the interview invitation as: "senior staff from across the Department for Transport". The CAA is a public corporation of DfT and "part of wider DfT family".

This is not a breach of the Recruitment Principles; the CAA comes within the definition of "across the Department for Transport".

Was a criterion wrongly used in the selection process because it was not advertised?

22. The complainant argued that as evidence of leadership was not in the advertised criteria but was used by the interview panel to assess candidates, the competition was not fair.
23. The Person Specification for this role identifies the need for leadership skills. In the Candidate Information Pack there are numerous references to the need for leadership/management skills. For example, in the Person Specification section, giving the criteria, it states the candidate will be able to demonstrate: "a passion for building high performing and skilled teams demonstrated through excellent leadership and management skills." All candidates interviewed were asked questions surrounding leadership and management.
24. In the sift comments on candidates, there is reference to candidates demonstrating leadership and management and skills and in the interview panel questions, there is a section on leadership. All candidates were assessed on leadership/management skills.

This is not a breach of the Recruitment Principles.

Did the chair properly approve the recruitment process in line with Recruitment Principles?

25. The complainant alleges that the interview panel chair "rubber-stamped" the selection process of his predecessor and did not ensure it was compliant with Recruitment Principles.
26. The chair confirmed that while his predecessor had approved the process, he ensured he was "as fully satisfied with the process that had been initiated and was content to continue." There is no reason to believe the chair did not review the recruitment process he inherited, or that he did not properly approve the process.

This is not a breach of Recruitment Principles.

Did the successful candidate meet the selection criteria?

27. The complainant believes the successful candidate and other external candidates did not meet the necessary requirements as set out in the Regulation 8 of (EU) No 996/2010 (tab 20): "For the purpose of carrying out investigations into accidents and incidents to which these Regulations apply, the Secretary of State shall, subject to paragraph (2) below, appoint persons as Inspectors of Air Accidents, one of whom shall be appointed by the Secretary of State as Chief Inspector of Air Accidents."
28. The panel chair stated that all candidates met the necessary legislative requirements and were measured against the relevant criteria. DfT states the

successful candidate met the requirements as set out in the job description. The chair states: "he was the unambiguous choice of the appointment panel as the right person for the job."

29. DfT explained that this role has traditionally been filled by internal candidates. However, there is no requirement for this to be the case. DfT have opened up all SCS recruitment to external candidates. The chair confirmed that all candidates were assessed against and met the legal requirements, stating: "the consistency of both the process and the appointment with our legal obligations has been confirmed by our legal advisers." DfT also referred to supporting legal advice that the appointment was made in line with regulations.
30. DfT confirmed: "*that if an external candidate is appointable as an Inspector of Air Accidents, then he is appointable as Chief Inspector. The two posts are indivisible as regards the professional criteria that need to be met for appointment. DfT confirm this is supported by legal advice.*" The remit of the Commission is to consider whether the recruitment process has complied with the Recruitment Principles. Any matters relating to employment law and other relevant legislation are for the department's consideration, prior to launching the recruitment campaign. This legal issue is not in scope for our consideration and it does not relate specifically to the Recruitment Principles.

This is not a breach of Recruitment Principles.

31. All candidates had to meet the same requirements at each stage of the process as set out in the application pack including experience and competency of civil aviation. The Commission is not able to replay competitions to judge how individuals fared against the criteria for a post in competition with others. However, on examining the relevant papers concerning all of the candidates there is no apparent evidence to support the contention either that the approved candidate did not meet the requirements of the role or that he was not the most meritorious.

This is not a breach of Recruitment Principles.

Should the chair of the recruitment process pause the process because the Recruitment Principles have been breached?

32. The complainant asked the Commission to pause the recruitment process, insofar as there was to be an announcement of the successful candidate and because the Chair of the recruitment process had refused to do so. The chair concluded the selection process has been conducted in line with Recruitment Principles. However, paragraph 31 of the Recruitment Principles states: "If at any point the **chair** believes the Recruitment Principles may be breached, **(s)he** must pause the competition until this has been resolved."

Although we have not found any breaches of the Recruitment Principles in this case the Commission would recommend that to remove any possible ambiguity:

- Regarding conflicts of interest. A record should be made of declarations of potential conflicts of interest, by both panellists and candidates at stakeholder engagement exercise panel stage, to demonstrate fairness.
- Regarding ambiguity about the role of the stakeholder engagement exercise panel. Although the SEP was referenced in the interview document, when planning future recruitment processes, it would be useful for DfT to consider the following:
 - including in the Candidate Information Pack, a reference to any assessment/case study exercise that will be held with a exercise/stakeholder panel;
 - ensuring any references to an assessment/case study exercise/stakeholder engagement panel are consistent throughout all documentation;
 - including in the Case Study Exercise – Briefing for Candidate, a sentence based on this wording: “The exercise/stakeholder engagement panel has no involvement in any final decision making process.”

REQUEST FOR REVIEW

33. There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service recruitment complaint case.
34. The Commission will, however, 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.
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.

Angela Sarkis

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Civil Service Commission
December 2016