



FINDINGS AND RECOMMENDATIONS:

February 2017

REF: 343

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 the Department for Transport (DfT). The complainant believes two or possibly three of the candidates selected for interview, including 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. He also believed the way he was informed that he had been unsuccessful at sift stage, was also a breach of the Recruitment Principles. The complainant requested the campaign be paused and rerun.

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 and other supporting campaign documents.
- Correspondence to and from DfT and complainant.
- Correspondence to and from Civil Service Resourcing.
- Correspondence to and from DfT.
- 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 two or possibly three of the candidates selected for interview, including the successful candidate, did not meet the eligibility requirements to become an Inspector of Air Accidents and therefore cannot be considered for the role of Chief Inspector.
7. The complainant believes that 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) and 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.

8. The complainant argues that the successful candidate does not meet the recruitment criteria, including the legal requirements as set out in the UK 1996 Air Accident Regulations and EU Regulation 996. He interprets the Civil Aviation Regulations as meaning that 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.
9. The complainant requested that the campaign be paused and rerun.

FINDINGS AND RECOMMENDATIONS

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

10. 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.
11. The interview panel chair argued that the independence of the AAIB refers to investigations, not staff appointments. He states that legal advice supports this interpretation. DfT felt that a stakeholder is an asset on an exercise panel.
12. The interview panellists declared if, and in what capacity, they knew any of the candidates. However, the SEP was not the interview panel. DfT confirmed that the SEP did not take part in the interview process and it did not decide upon or appoint the successful candidate. DfT stated the SEP panellist who provided feedback to the interview panel was a senior member of staff at DfT, not the CEO of the CAA.
13. 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.
14. 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.
15. 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”.

Did the successful candidate meet the selection criteria?

16. The complainant believes the successful shortlisted candidates and other external candidates, did not meet the necessary requirements as set out in the UK 1996 Air Accidents Regulations. “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.”
17. The panel chair stated that all shortlisted 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.”
18. 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.
19. 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.
20. 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.

Was there a breach of confidentiality because the complainant was informed of the result of their application by the outgoing Chief Inspector?

21. There is nothing to suggest that the way the complainant was informed of the outcome of his application, was anything other than an intention to give the news in a more personal manner. This is not a complaint about the Recruitment Principles.

If the complainant has a complaint regarding the use of his personal data, he should pursue this with the Information Commissioner.

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?

22. 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.

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." The chair concluded that the selection process had been conducted in line with the Recruitment Principles.

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 panellists, at stakeholder engagement exercise panel stage, to demonstrate fairness.
- Regarding ambiguity about the role of the stakeholder engagement exercise panel. Although the stakeholder engagement exercise panel was referenced in the interview document, when planning future recruitment processes it might be useful for DfT to consider the following:
 - include in the Candidate Information Pack, Recruitment Process section, a reference to any assessment/case study exercise before an exercise/stakeholder panel;

- ensure any reference to an exercise/stakeholder panel is referred to in the same terms in all relevant documents;
- include in the Case Study Exercise – Briefing for Candidates, a sentence based on this wording: “The exercise/stakeholder panel have no involvement in any final decision-making process.”

REQUEST FOR REVIEW

1. There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service recruitment complaint case.
2. 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.
3. 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

Isabel Doverly

Civil Service Commission

February 2017