



**FINDINGS AND RECOMMENDATIONS:**

**April 2020**

**REF: 1330**

**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 –*

- a) 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.** This complaint alleges an abuse of process in relation to an external recruitment campaign for a Band C (HEO) Business Manager Role at MOJ. The complainant (**Person E**) alleged that during the selection for the appointment, the rules of fair, open and merit-based competition had not been observed, as well as those of integrity, honesty, objectivity and impartiality expected of Civil Servants under the Civil Service Code (being investigated separately, but with the same panel, under the Civil Service Code complaints regime).

**3.** Among other issues raised by Person E, the issue in scope for the Commission's consideration concerns the appointment of the post holder (**Person D**) into the Band C (HEO) Business Manager role, as a result of a decision made by a recruiting panel. The chair of the panel (**Person A**), is **Person D's** aunt. The other members of the panel were **Person B** and **Person C**.

**4.** The Recruitment Principles complaint concerns a potential conflict of interest in the makeup of the interview panel which led to the consequent appointment of Person D.

**5.** It is noted that there is a significant time lapse between the recruitment campaign (October 2017) and the Commission receiving the complaint from **Person E** (September 2019). The Commission took the view that this case merited consideration despite it being raised with the Commission outwith the normal time limit.

## **METHODOLOGY OF THE INVESTIGATION**

**6.** The Commission investigated the complaint through consideration of written evidence. The Commission considered the following evidence:

- Complaint from Person E to the Commission;
- Interview scores/panel report;
- MOJ email responses to CSC questions;
- Person E email responses to CSC questions;
- MOJ Informal Investigation Report;
- Home Office PSU Report on Person A;
- Home Office PSU Report on Person B;
- Home Office PSU Report on Person C.

**7.** Isabel Doverty, Margaret Edwards and June Milligan were the decision-making Commissioners.

## SUMMARY OF THE EVIDENCE

8. The Commission received a complaint about issues covered by the Civil Service Code and Recruitment Principles from the complainant, **Person E**, a Civil Servant at MOJ, in September 2019. **Person E** raised multiple issues with the Commission regarding staff practices at MOJ. Those that fall outside the Commission's remit have not been addressed in this report.

9. The complaint incorporates concerns that fall under both the Civil Service Code and the Recruitment Principles complaints regime. The complaint was originally informally investigated within MOJ. Following recommendations from MOJ's informal report, the Home Office Professional Standards Unit conducted investigations into each of the three panel members. The complaint was raised with the Commission on 26th September 2019.

10. In **October 2017**, the recruitment campaign for the Band C Business Manager Role at MOJ went live. The sift stage of the recruitment campaign took place on **10<sup>th</sup> October 2017**, and interviews took place between **1<sup>st</sup> and 2<sup>nd</sup> November 2017**. On **12<sup>th</sup> February 2018** **Person D** started in the role of Business Manager. **Person E** sent an email making a complaint on **6<sup>th</sup> March 2018** (1 month after **Person D** had taken up the role). On **25<sup>th</sup> May 2018** MOJ recommended further formal process as a result of an informal investigation conducted. On **12<sup>th</sup> November 2018**, the Home Office Professional Standards Unit completed individual investigations into each of the three panel members (**Person A, Person B and Person C**), and found a case to answer for **Person A** and **Person B** under the Civil Service Code and the MOJ Resourcing Policy.

11. On **26<sup>th</sup> September 2019** **Person E** sent an email to the Commission raising a complaint about issues covered by the Civil Service Code and Recruitment Principles.

12. It is noted that there is a significant time lapse between the recruitment campaign (October 2017) and the Commission receiving the complaint from **Person E** (September 2019). When asked by the Commission why almost 12 months had lapsed between the conclusion of the Home Office PSU report (November 2018), and the complaint being raised with the Commission (September 2019), **Person E** stated:

*'The reason for the delay is that I was not aware until I recently discussed the issue with one of my trade union representatives (Cc'd) that I could make a complaint to the Civil Service Commission (CSC), nor was I aware of the extent to which recruitment into the Civil Service is governed by statute via the legal requirement in the Constitutional Reform and Governance Act 2010.'*

### Constitution of Panel

13. At the time of the recruitment campaign, **Person B** (Recruitment Manager) was managed by **Person A** (Senior Business Manager).

14. Around May 2017 (as per **Person A's** statement) the decision to advertise the Business Manager Role externally was made. **Person A** informed her niece, **Person D**, that the role of Business Manager was coming up and advised her to apply. **Person A** stated that she did not assist with the application. At this stage, the recruitment panel had not yet been finalised.

15. **Person B** asked **Person A** to be on the recruitment panel. **Person A** asked **Person C** to be the third panel member. **Person A** and **Person B** had recruitment and HR experience, while this was **Person C's** first experience on a recruiting panel. **Person A** and **Person B** were described by **Person C** as "recruitment professionals".

### Conflict of Interest

16. **Person B** was first aware that a candidate might be **Person A's** niece at the shortlisting process, when **Person A** had stated that she might recognise her niece's application. **Person B** stated that because the sift was name-blind she did not think it was a problem. **Person B** further stated that it might be a problem at the interview stage.

17. **Person A** recalled that at sift, when they reached **Person D's** application, she highlighted that it was her niece's and did not take part in deciding whether the application would go on the 'yes' or 'no' pile. **Person A** recalled that they all looked at the individual applications in turn at the same time. As she had read the CV, it was obvious to her that this was **Person D's** application and she told them so orally, highlighting a conflict of interest. There is no record of this conflict being formally declared at sift. **Person A** further stated that she did not think it was a problem, as if **Person B** thought **Person D's** application was 'absolute rubbish' she would tell **Person A**, even though **Person A** is her line manager.

18. **Person C** stated that at the sift stage, **Person A** declared that she knew a candidate, but at this stage **Person C** did not know what the relationship was (i.e. colleague, friend or family). **Person C** stated that **Person A** offered to withdraw, but he is not sure whether she meant from the whole campaign or from the sift stage.

19. **Person B** stated that she 'may' have said to **Person F** (**Person A's** manager) that **Person A's** niece was a candidate and that "*there's a conflict of interest there*". When interviewed, **Person F** said he had no recollection of this. There were no records of senior management being informed of the conflict of interest at any point during the recruitment campaign. **Person B** confirmed that, at interview stage, **Person A** offered to remove herself

from **Person D's** interview, but **Person B** and **Person C** advised her not to. To avoid expressing any opinion on **Person D's** performance, according to **Person B**, the panel agreed **Person A** would award her niece a median score (3 or 4 out of 7).

20. **Person A** confirmed the conflict of interest was not disclosed to anyone outside the panel. She stated that she did not give any score for **Person D's** interview. The only evidence of a declaration of the conflict of interest is on the *interview* panel records, which has "[**Person A**] COI" written at the bottom. Further findings from the records available to us are detailed below.

21. **Person C** confirmed that all applicants were treated in the same way at the interview. **Person C** further stated that he did not know of the familial relationship between **Person A** and **Person D** at interview. When asked if he thought it was appropriate for **Person A** to be on the panel, he said that if he had known at the time that it was a family member, he would have been far less relaxed about it'. **Person C** cannot recall when he became aware that **Person D** was **Person A's** niece, but says it was after the interview.

### **Person D's Appointment**

22. There were 2 roles available following the interview. **Person D** and another candidate were the top scorers, both with an overall score of 6. There is no evidence as to how/whether the panel distinguished between these top two candidates. On the interview notes, both candidates have a 'yes' written under the 'offer' column. It is difficult to decide from the panel comments why **Person D** scored the same mark as the other highest scorer. The notes appear to be a transcription of the interview, rather than any actual assessment of candidates' performances and do not address merit and meeting the criteria for this role. The WCN (recruitment system) record shows the areas to be assessed at interview but no relevant feedback or scores, so this is of no assistance.

23. **Person C** recalled that he may have commented during the process that **Person D** would be "good" in his team, but he had no expectation that she should be assigned to his team.

24. **Person C** received a telephone call after the campaign from the recruiting team advising him that **Person D** had been allocated to the vacancy within **Person C's** team. **Person D** joined **Person C's** team on the 12th February. The tying candidate, **Person G**, was offered the role of Business Manager at the same time as **Person D** was offered this role in **Person C's** team, according to MOJ, although this is still unclear, despite questions to MOJ on this point.

### Conflicting statements

25. It is noted that the panel members provided conflicting statements when interviewed by the Home Office Professional Standards Unit. While **Person A** and **Person B** both state that **Person A** highlighted the fact that her niece was a candidate at the sift stage, **Person C** states that he was unaware that a candidate was **Person A**'s niece until after the interview.

26. Regarding the scoring of **Person D** at interview, **Person C** states that all candidates were treated equally, and each panel member scored every candidate, **Person B** states that there was an agreed process whereby **Person A** would give a median score of "between 3 and 4" for **Person D**, while **Person A** states that she did not provide any score for **Person D**. The Commission has asked MOJ for any evidence relating to this but MOJ has not been able to provide any to date, and as set out in paragraph 27 below, this information does not appear to exist as the documents have been destroyed.

27. It is further noted in the Home Office Professional Standards Unit Report that **Person A**, being **Person B**'s manager, sits close to **Person B** in the office, and would therefore have had a chance to discuss the interviews conducted by the Home Office Professional Standards Unit prior to them taking place. However, there is no evidence on this point.

### Evidence from MOJ

28. It should be noted that attempting to acquire evidence in the way of previous investigations and recruitment campaign documents from MOJ, has not been easy. This may be because of the passage of time; however, it should be noted that sufficient documentation to show appointment on merit following a fair and open appointment should have been kept. We made MOJ aware of the case and asked that it was ensured that all documents were retained. On 27th September the Commission wrote in an email to MOJ the following:

*"As you'll know, the Commission requires that documentation is retained for at least two years after the close of the campaign. This two-year period for this campaign is nearly over, but can you please make sure that none of these documents are deleted now that I have requested them. If you have to get them from the vacancy holder/panel, please make sure that they do not delete them before they are able to send them to you."*

29. On 11th October, the Commission wrote in an email to MOJ the following:

*"We understand you are aware, but just by way of a reminder, please ensure no documents relating to this case and recruitment campaign are deleted until we finish our consideration. We will keep you informed as to when that is."*

30. Due to the conflicting statements surrounding the issue of how **Person A** scored **Person D** at interview, the Commission asked MOJ for individual panel notes, as such notes may be the only evidence to show how **Person D** was scored at interview. Moreover, if it was indeed the case that **Person A** awarded **Person D** a median score of 3 or 4, this would have had an impact on the merit list. However, when asked for this information, MOJ informed the Commission that:

*“The individual interview scores/panel notes for each panellist, for each candidate, are no longer available due to their office having a refurbishment which meant that unfortunately all the paperwork was shredded inadvertently.”*

We are not clear when this information was destroyed.

### **The MOJ Investigation**

31. This investigation conducted by MOJ did not just focus on the issue that the Commission is investigating regarding the appointment of **Person D** into an HEO role. Rather, it concerns all matters raised by **Person E**. The investigation was around the MOJ internal conduct policy and the Recruitment Principles.

32. In matters concerning **Person D**'s appointment, the report highlights the need for further investigation into the reasons behind **Person D** not being appointed to the post for which she applied, further, it is unclear why **Person D** was allocated to an unadvertised post instead of one of two unfilled posts. There is now further confusion from MOJ, claiming she was appointed to the advertised post, although the reserve list provisions do allow for appointment to a similar role, with closely matching essential criteria, in merit order within 12 months.

33. When asked if **Person A** was aware of any conflict of interest declared during the recruitment process, **Person A** confirmed that she had declared that she was **Person D**'s aunt, and did not award **Person D** a score at sift or interview. **Person A** stated this was recorded on the HR system WCN.

34. HR confirmed to the MOJ investigator that it could not provide any details on the scores documented on WCN without the specific permission of the candidate(s). HR also confirmed that, in any event, no conflict of interest was recorded on WCN, nor any evidence to suggest **Person A** had sought advice from HR regarding the conflict of interest.



*“Person C highlighted that the Business Manager Band C post reporting to [Line Manager X] that Person A’s niece was appointed to was not the job that Person A’s niece ended up doing. Person A’s niece was given the vacant position within Person C’s team (under his line management). The Investigator asked Person C why Person A’s niece did not take up the post within [Line Manager X] team. Person C was unclear why [Line Manager X] did not accept the appointment of Person A’s niece into the post advertised. The Investigator asked Person C, has the vacant post been covered. Person C confirmed that the post within [Line Manager X’s] team remains occupied by a contractor.” (MOJ Investigation).*

35. The conclusions of the MOJ informal investigation find that there is no evidence to corroborate Person A’s statement that she declared a conflict of interest on WCN. The report further concluded that unanswered questions remain, specifically why Person D did not take up the advertised position in Line Manager X’s team. MOJ confirmed to us the following:

*“I can confirm that there was no formal action taken. I had a conversation with both of the people who were found not to be following process to set out the findings and to set out next steps should there be any repeat of issues.”*

36. The documents from WCN sent to the Commission showed blank cells where interview scores should have been recorded against the assessed criteria. Hence the only evidence available to assess candidates from interview is the inadequate document already mentioned, which appears to be a transcription of the candidates’ answers at interview.

### **The Home Office Investigations**

37. The Home Office Professional Standards Unit conducted separate investigations into each of the three panel members, following the conclusions of the MOJ informal investigation, which recommended a formal investigation. The Home Office investigations covered the internal conduct policy, the Recruitment Principles and also the Civil Service Code.

### **Person C**

38. The investigation into Person C found that there was no case to answer, given that he was inexperienced in this area and had relied on the experience and guidance of his co-panel members.

39. It is accepted that the decision to place Person D in an unadvertised position in Person C’s team (if this was indeed the case) was made by the recruiting team, not by Person C.

40. The report finds that whilst the MOJ Conduct and Recruitment Policy sets out that a significant relationship should be declared, the onus to declare this lies with the party who has the relationship. Whilst an experienced recruitment professional could reasonably expect to act on such knowledge, the report does not consider **Person C** to have failed in his responsibilities.

41. The report finds that given **Person C's** inexperience in recruitment, and his declaration that he was not aware of the familial relationship between **Person A** and **Person D** until after the interview, he has **no case to answer**.

### **Person B**

42. In her statement, **Person B** confirms that she was aware of the conflict of interest between **Person A** and **Person D** from the onset of the recruitment campaign. The report therefore finds that in line with MOJ Resourcing Policy and the Recruitment Principles, **Person B** had a responsibility to bring the matter of the conflict of interest to the attention of MOJ management and in not doing so did not allow the possibility of campaign oversight to ensure transparency. **Person B** asserted that she may have informed **Person F** in passing it was considered **Person B** did not take sufficient steps to ensure her concerns were raised at an appropriate level outside the panel. The report found that the Ministry of Justice Conduct Policy was not upheld, and therefore there **is a case to answer**.

### **Person A**

43. According to MOJ Conduct Policy, it is noted that as the panel chair, **Person A** was obliged to declare a conflict of interest to someone outside the panel, which she failed to do so. There is no evidence to suggest that **Person F** was informed other than the fact that **Person B** suggests she 'may' have informed him. There is no documentation to support this, nor does **Person F** have any recollection of being informed. The report highlights that the fact that **Person A** had discussions about withdrawing from the panel indicates that she had questioned the appropriateness of her presence, yet did not take the appropriate action required under the Resource Policy and Conduct Policy. This was reinforced by the alleged agreement to change the scoring method, meaning candidates were potentially not treated consistently.

44. The report finds that in consideration of whether procedure was followed and policy was correctly applied, specifically whether **Person B's** behaviour constituted a breach of the MOJ Conduct Policy, there **is a case to answer**.

45. MOJ has confirmed that no formal action was taken against either **Person A** or **Person B**.

# Consideration

## The Legal Requirement

46. The legal requirement is for selection for appointment to the Civil Service to be made on **merit** on the basis of **fair** and **open** competition. All three elements have to be met for the appointment to be lawful.

47. **Merit** means the appointment of the best available person judged against the essential criteria for the role. No one should be appointed to a job unless they are competent to do it and the job must be offered to the person who would do it best.

48. **Fair** means there must be no bias in the assessment of candidates. Selection processes must be objective, impartial and applied consistently.

49. **Open** means that job opportunities must be advertised publicly. Potential candidates must be given reasonable access to information about the job and its requirements, and about the selection process. In open competitions anyone who wishes must be allowed to apply.

**Have the Recruitment Principles been breached because of the failure to declare formally, a conflict of interest?**

50. *“Panel members must declare any conflict of interest including prior knowledge of any applicant. A record must be kept of how any such conflicts were dealt with.”*

51. **Although at interview there is a short note, “Person A COI”, there is no evidence of a formal recording of a declaration of a conflict of interest by any of the panel members on the centralised HR system and no mention of a conflict in the sift documentation seen. There is also no record of how the conflict of interest was dealt with in any of the available records. Therefore, a breach of Paragraph 12 of the Recruitment Principles has been found.**

**Have the Recruitment Principles been breached because of MOJ’s failure to provide documents evidencing that the most meritorious candidates were appointed?**

52. The Commission asked MOJ for any individual panel reports for each member of the panel, which would demonstrate how **Person D** was scored by her aunt, **Person A**, and whether a median score was given. Such records would identify which scoring method was adopted, and how the conflict of interest was handled by the panellists; this is of particular importance given the conflicting statements provided by the panellists in the Home Office

PSU reports. If indeed a median score was given, such records would also demonstrate how a median score may have affected the merit list.

53. When asked by The Commission for this information, MOJ informed the Commission that:

*“The individual interview scores/panel notes for each panellist, for each candidate, are no longer available due to their office having a refurbishment which meant that unfortunately all the paperwork was shredded inadvertently.”*

54. Paragraph 65 of the Recruitment Principles states: *‘Departments must retain, for a minimum of two years, sufficient information on their recruitment to provide evidence that they have complied, and must provide the Commission with any information it reasonably requires.’*

**Paragraph 65 of the Recruitment Principles has been breached, because of a failure by MOJ to maintain accurate records to demonstrate the assessment of candidates, and to evidence appointment on merit.**

## FINDINGS AND RECOMMENDATIONS

55. In investigating this complaint, the Commission has determined that there have been two breaches of its Recruitment Principles – a failure to declare and record how conflicts of interest would be dealt with and a failure to maintain accurate records evidencing the appointment of candidates on the basis of merit.

**56. The interview records are not adequate, with insufficient detail to show appointments on merit or how candidates were assessed. However, the Commission does not believe that this is a case of unlawful appointment; the evidence is not available for such a finding.**

57. The Commission recommends MOJ implements a more robust process for recording conflicts of interest, and delivers relevant training on this.

58. It is noted that in the past, MOJ has been found to have breached the Recruitment Principles because a panel had failed to declare a conflict of interest following a complaint. This case has raised some serious concerns with the Commission about the levels of awareness within MOJ about the requirement to declare conflicts of interest, and to ensure that measures are taken to ensure the **fair** requirement of the Recruitment Principles is not compromised. Further, the case has raised concerns about the extent to which accurate records are being maintained by MOJ. We strongly recommend that these actions include training for HR staff at MOJ, delivered by the Commission, on the Recruitment Principles, to ensure that all HR staff are aware of the requirements of the Recruitment Principles.

59. The Commission considers that this case raises some very serious concerns about due process within MOJ and the Department's compliance with the Recruitment Principles. We expect the Permanent Secretary to take appropriate action in respect of the individuals involved and also in respect of any systemic issues identified and to advise the Commission of the actions taken.

60. This Decision Notice will be published on the Civil Service Commission's website and summary details of this case will be published in the Commission's 2019/20 Annual Report and Accounts.

## **REQUEST FOR REVIEW**

**57.** There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service recruitment complaint case.

**58.** 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.

**59.** 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.

**Civil Service Commission**

**April 2020**