



FINDINGS AND RECOMMENDATIONS:

November 2020

REF: 1514

CIVIL SERVICE CODE COMPLAINT TO THE CIVIL SERVICE COMMISSION

FINDINGS OF THE 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 AND SCOPE OF THE COMPLAINT

3. The Commission received an appeal under the Civil Service Code from Person C (the complainant) on 12th March 2020. The subsequent time delays in the progression of the case were because the Commission asked The Department for International Development (DfID) to further consider the Code Behaviours and other matters requiring discussion at DfID.

4. An investigation under the Civil Service Code and DfID's Code of Conduct Policy had been conducted against two members of staff, Person A and Person B, investigating two similar allegations for each person. Person A was found to have a case to answer with regard to both allegations, under DfID's Conduct Policy and a case to answer under the Civil Service Code for allegation two. Person B was found to have a case to answer to allegation 1, under DfID's Conduct Policy, but not under the Civil Service Code. There was no case to answer under allegation 2 for Person B. The complainant is therefore appealing DfID's decision that Person B was not in breach of the Civil Service Code.

5. The two allegations against Person A and Person B, which were investigated, are as follows:

Person A:

- 1. Failed to escalate significant safety issues with the supplier's contract and to halt activity and alert the country's authorities to the risks from November 2018 onwards.*
- 2. On 12 July 2019, proceeded to approve the payment of Technical Assistance invoice(s) without first consulting Ministers when there was an explicit request to do so.*

Person B:

- 1. Failed to escalate significant safety issues with the supplier's contract and to halt activity and alert the country's authorities to the risks from November 2018 onwards.*
- 2. Proceeded to approve Payment by Results invoice(s) whilst the supplier had failed to achieve targets.*

METHODOLOGY OF THE INVESTIGATION

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

- Complaint from Person C to the Commission;
- Person C complaint submitted to DfID;
- DfID outcome letter sent to the complainant;
- DfID investigation report on Person A;
- DfID outcome letter sent to Person A;
- DfID investigation report on Person B;
- DfID outcome letter sent to Person B;

- DfID email responses to CSC questions;
- DfID Standards of Conduct Behaviour Policy;
- Other reports/statements relating to other staff involved in the case.

7. Jane Burgess, Jan Cameron and Rosie Glazebrook were the decision-making Commissioners.

SUMMARY OF THE EVIDENCE

8. Person A and Person B were working on a project relating to the construction of schools and facilities. Person A was the more senior manager.

9. Issues of significant safety risks were raised from early 2017. There is evidence that both received expert advice on several occasions between November 2018 - November 2019, which highlighted the issues of potential risk to life, and reputational damage to DFID. This was largely due to the fact that the project was not compliant with the country's Building Regulations. Severe warnings containing details that construction plans were not safe were articulated in various reports, information notes and emails to both Person A and Person B during the period.

10. Despite these warnings, neither Person A nor Person B escalated these concerns to a more senior manager nor to the appropriate Ministers, and proceeded with the project.

CONSIDERATION

As Person A was not specifically named in the complainant's Code complaint, should we consider Person A for the same breach as Person B?

11. The complainant was not permitted to see the final investigation outcome report, because of personal data and sensitivity reasons. The complainant was informed that Person A was found to have breached the Code, while Person B was not. The complainant was not given any information beyond this, therefore they did not know that Person A, as we believe, was in fact found in breach only of allegation 2 and they did not raise the complaint about Person A as well, with the Commission.

12. Both Person A and Person B have been investigated under Dfid's Conduct Policy and under the Code for allegations 1 and 2 (as stated in paragraph 5). Both were found to have breached the departmental conduct policy and both were given disciplinary measures because of this. Person A was also found to have breached the Code on allegation 2. The reports and

outcome letters are not entirely clear on the allegations found proven and hence our reference to our belief about what has been found in this case.

13. On receiving the paperwork on the case, it was clear that the complainant does not know all the details of the investigation. Two issues were considered under the Code for Person A and we believe the breach was for allegation 2 which is a different allegation for Person A and Person B. Allegation 1 involves both Person A and Person B. If the complainant had known Person A had not been found in breach for this specific issue they would probably have asked us to investigate Person A too for this. Under these circumstances, the Commission decided to investigate both Person A and Person B. We informed DfID of this.

Is allegation 1 a breach of the Civil Service Code?

14. Allegation 1 which was investigated in the department, and which both parties were found to have a case to answer in respect to the Conduct Policy, is as follows:

Failed to escalate significant safety issues with [the supplier's] contract and to halt activity and alert the country's authorities to the risks from November 2018 onwards.

15. The Civil Service Code (objectivity) states that civil servants must not:

'Ignore inconvenient facts or relevant considerations when providing advice or making decisions.'

16. Both Person A and Person B were aware of serious concerns but did not escalate those concerns or act on them on becoming aware. They received expert advice but did not take account of this. Given that both Person A and Person B were provided with expert advice over the course of 12 months, detailing the potential dangers with the planned building procedures, which could include fatalities, the Commission finds that **this is a breach** of objectivity for both Person A and Person B as inconvenient facts or relevant considerations were ignored.

FINDINGS AND RECOMMENDATIONS

17. We find that both Person A and Person B are in breach of the Code in relation to the first allegations made against them both. DfID did not believe there was a Code breach here because there was no intent. The Commission takes a different view. We believe that for both this is a clear breach of the duty of objectivity. Intent may have a place in any decision on sanctions but not on a decision on a breach of the Code.

18. In relation to the second allegations for both Person A and Person B, although the outcome letter to Person A is not clear on this, we believe that Person A was found guilty of a Code breach in relation to the second allegation. We find no Code breach on allegation 2 for Person B.

RECOMMENDATIONS

19.

- **DfID/FCDO (DfID is now part of FCDO) should consider its Code investigation process and its wording in outcome letters following Code investigations (see below for details).**
- **DfID/FCDO should consider its promotion of the Code, and in particular promote an understanding of the Code and its obligations, to its staff.**
- **Our recommendation is that no further disciplinary action is taken; we support the disciplinary action already taken.**

On the first recommendation, the lack of clarity in the outcome letters to Person A and Person B is unhelpful and does not explain clearly what the decision was. Any future notifications explaining Code outcomes should explicitly state if there has been a breach of the Code.

We would recommend that FCDO/DfID considers its Code processes and puts any suggestions for improvement to the Commission in a timely manner.

On the second recommendation, the complainant raised this matter; we are not aware of any others involved in the project making a Code complaint about these matters. This is a cause of concern for the Commission. Training can be given to FCDO by the Commission to stress that all civil servants have a duty under the Code to raise concerns.

We would recommend that the Commission carries out this Code training as a matter of urgency.

REQUEST FOR REVIEW

22. There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service Code appeal.

23. 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.

24. 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

November 2020