



1 April 2020

Commissioner for Public Appointments decision notice: public body appointments process for Civil Procedure Rule Committee, administered by Ministry of Justice

1. The Public Appointments Order in Council states that the Commissioner for Public Appointments 'may conduct an enquiry into the procedures and practices followed by an appointing authority in relation to any public appointment whether in response to a complaint or otherwise'.
2. The Commissioner has deemed that complaints should be raised with the appointing department in the first instance. Departments are responsible for having effective complaints handling procedures, and for making applicants aware of their right to complain. If, after investigation by the department, the complainant remains dissatisfied, they may bring their complaint to the Commissioner for Public Appointments.
3. The complainant first contacted OCPA over this competition via email on 5 September 2019. They said they had made an application to the Ministry of Justice (MOJ) for the competition for a non-judicial member of the Civil Procedure Rule Committee, which concluded on 4 April 2019.
4. In this email the complainant attached a letter they received from the MOJ on 16 May 2019 detailing that they had no record of their application for the competition. The complainant asked MOJ to investigate their complaint on 4 September, and provided more information to MOJ on 12 and 14 September, with evidence that their application had been received by the Department.
5. In response, the MOJ replied to the complainant on 20 September outlining how they had made a mistake in the information provided on 16 May, and they now believed they had received, then subsequently misfiled, the complainant's application. The complainant forwarded this email to OCPA asking the Commissioner to consider this as a breach of the Code as he remained unsatisfied.

Methodology

6. The Commissioner considered whether he would take on the complaint in regards to the two preliminary conditions that must be fulfilled before a complaint will be considered for investigation:

- If the appointments process in question took place within the preceding 12 months
- The complainant has made a complaint to the Department responsible and that process has been completed.

7. The appointments process in question concluded on 4 April 2019, and the response from the MOJ to the complainant on 20 September showed the MOJ complaint process had now concluded. Therefore the Commissioner considered that the complaint fulfilled both preliminary conditions and could now be considered.

8. The Commissioner believed the complaint was in his scope to investigate because it related to an individual's experience as an applicant (para. 10, OCPA regulatory framework).

9. The Commissioner's role is to examine the appointing process and ensure that it has met the principles outlined in the Government's Governance Code. His role is not to reassess individual applications or override the decisions of Advisory Assessment Panels nor ministers.

10. The Commissioner outlined his decision to begin to investigate the complaint in a letter to the complainant on 24 September, which also specified the scope of the investigation and the OCPA complaints process. A copy of this letter is Annex A of this decision notice.

11. Further emails between the complainant and OCPA outlined the timing of OCPA's investigation and data protection obligations. OCPA committed to not publish a decision notice on the complaint before 1 April 2020 and informed the Department of the complainants' request on this point.

12. The Commissioner then began the investigation with the complainant's consent on 30 September by requesting documentation from the MOJ relating to the appointment as outlined in Annex A of his regulatory framework (See Annex B of this decision notice). MOJ supplied the requested information to OCPA on 14 October. Further documentation was requested by OCPA from MOJ on 8 January 2020 and was received on 30 January 2020.

Outline of complaint

13. The Commissioner investigated this complaint through consideration of evidence supplied by the complainant and the Ministry of Justice regarding the competition for the Civil Procedure Rule Committee (non-judicial member). Emails between the complainant and the Department, and documentation relating to the competition were sent to OCPA to examine. These documents form the basis of the following findings.

14. The complainant maintained that they had applied to the department for the competition to recruit a member of the Civil Procedure Rule Committee, within the application deadline. They maintained their application was acknowledged after it was received by MOJ, and their references had been approached. The complainant

maintained it appeared that their application was not put to the Advisory Assessment Panel for consideration alongside other applications, taking away their opportunity to become a member of the CPRC.

Summary Of Civil Procedure Rule Committee application process

15. The Ministry of Justice launched the campaign for this role in October 2018. Six applications were received, including one from the complainant. The Panel decided at the sifting stage that they should not move to interview due to the quality of applicants. The Panel recommended that the competition be suspended and to be relaunched with revised essential criteria to attract more and better quality applicants. Ministers took this course of action and the competition was relaunched on 3 December. Nine applications were received by the new closing date of 4 January 2019, including from the complainant. The Commissioner is satisfied that the complainant supplied all the documents that were required to make an application to the role.
16. The advertisement for the role stated that applicants would receive a receipt of their application. The complainant has confirmed they received an email confirmation of their application on 7 December 2018 from one of the MOJ public appointments team. MOJ have explained that it is usual practice for members of their PAT to acknowledge all applications from the shared mailbox and move the applications to the correct folder for each competition.
17. A pre-sift took place on 11 January 2019 by the sponsor team in the Department. Seven of the nine applicants were indicatively scored, with the complainant missing and another applicant removing themselves from the competition at this point. The Commissioner is satisfied from the evidence provided from the department that the complainant was not the withdrawn candidate. Therefore it appears to the Commissioner the complainant's application goes missing at some time between it being received and the pre-sift on 11 January.
18. The results of this pre-sift were shared with senior officials in the Department in order to obtain agreement to close the competition, and it is listed that there were eight applications to the role (rather than nine), with one male candidate withdrawing from the competition leaving the field at seven.
19. The panel sift took place on 14 January 2019. Eight candidates were included in the sift despite only seven being pre sifted. It appears from the notes of the Panel sift that the candidate who had withdrawn by this point was inadvertently put through the sift. However, the submission to the minister on the result of the sift does not include the withdrawn candidate's name.
20. The complainant's name was not present in the reports from the Panel of their sift against the criteria, nor in the submission to ministers on the result of the sift.
21. The complainant's referees were approached on 30 January, so their application was retrieved for this purpose. It appears the Department did not realise when

approaching referees that the complainant had not been included in the pre-sift or Panel sift process earlier in that month.

22. It was stated at the pre-sift that the diversity of the applicant field was 3 women, 4 men; 1 BAME; 0 declaring a disability. The submission to the minister of the result of the shortlist described the diversity of the application field as 1 woman, 6 men, 1 BAME and 1 declaring a disability. Later, in the submission to ministers following the interviews, the field is described again 5 men (one withdrawn), 3 women, 1 BAME, 1 declaring a disability. It is not clear that these different diversity statistics were made in response to candidates' changing their declarations during the course of the campaign, or whether candidates' declarations were mistakenly reported in the campaign records, compounded by one candidate withdrawing from the competition and another's application being lost.
23. Interviews were held on 8 February 2019. The successful candidate was announced on 4 April 2019. The complainant contacted the Department on 18 April to enquire about their application as they had not received any information since receiving an acknowledgment email on 7 December 2018. They also queried the suitability of the appointed candidate for the role.
24. The Secretary to the Civil Procedural Rule Committee replied to the complainant's email of 18 April in a letter dated 16 May, explaining the selection criteria for the appointment and the suitability of the appointee in relation to that criteria. They told the complaint that 'having spoken with the Panel Chair, I can confirm that they did not receive an application from you'. The complainant, in their complaint to OCPA, said they did not receive this letter. The Department have confirmed that the complainant is correct, and the letter, whilst written, was not sent to the complainant at that time.
25. The complainant wrote again to the Department on 4 September 2019 asking for information about their application and the suitability of the successful applicant.
26. The Department replied to the complainant the same day and attached the letter dated 16 May which addressed the complainant's points. The complainant sent further emails to the department on 12 and 14 September asking MOJ to investigate their complaint that their application appeared to have been lost, and therefore the information in the letter of 16 May was incorrect, citing the acknowledgement email they had received upon submitting their application and that to their knowledge, their references had been contacted.
27. The Department investigated the complaint. They wrote to the complainant on 20 September 2019 saying they had conducted extra searches of files relating to the competition which confirmed that they did receive the complainant's application for the role on 5 December 2018. The Department said it was misfiled and therefore was not put in front of the Advisory Assessment Panel alongside the other applicants. The Department acknowledged the complainant's referees had been approached. The Department was unable to explain how this had happened, and apologised to the complainant for its mistakes and the inconvenience caused to the complainant.

Decision

28. The Commissioner has upheld this complaint. Principle H of the Governance Code states that the 'selection processes should be fair, impartial and each candidate must be assessed against the same criteria for the role in question.' It is the Commissioner's view that the complainant was not treated fairly in this competition. The complainant's application was lost after it was submitted, before the pre-sift by department. It was then not put to the Panel for sifting for interview. The department has not been able to explain how the complainant's referees had been contacted on 30 January despite being missing from the sifting that same month. As such, the Commissioner will report this as a breach of the Governance Code and will record it in his next annual report.
29. The department appeared to have confused the number of applications received during points of the campaign, and appears to not have recorded the diversity of applicants in a consistent manner. Further, the department did not immediately recognise its mistake that the application had been misfiled when contacted by the complainant in April 2019 when the successful candidate was announced. It appears to the Commissioner that as the Civil Procedure Rule Committee Secretariat was not informed of the complainant's application, as it was misfiled by the PAT, its letter of 16 May to the complainant saying no application had been received was regrettably misinformed.
30. However, the Commissioner notes that during the investigation of the complaint in September 2019, at the complainant's request, the department did find their application, admit the error and apologise for the mistake and the inconvenience caused. The department committed to reviewing their administrative processes as a result of the complaint, to ensure that similar mistakes do not happen again. The Commissioner acknowledges the department has tried to make things right and encouraged the complainant to speak with MOJ officials on future competitions.
31. Departments are responsible for providing a good service to individuals. MOJ has failed to meet the required standard in this case. As such, the Commissioner recommends that MOJ review its processes for application filing to ensure that applications in the future are not misfiled, as they have committed to do. Further, he asks MOJ to review the recording of diversity statistics to ensure that the candidate field is being recorded consistently, in line with candidates' original declaration, or any revisions candidates make to their original declarations.
32. The Commissioner reminds candidates that his remit does not allow him to ask or compel departments to run a competition again, ask or compel ministers to appoint particular people, nor to remove successful appointees from their posts. This decision notice does not contradict nor override the decisions of Ministers or the Advisory Assessment Panel in this competition, and has no bearing on the assessment of the

complainant's future applications. This decision notice is the Commissioner's final statement on this complaint.

Peter Riddell

Commissioner for Public Appointments

Annex A

Letter from OCPA to complainant on investigating the complaint

24 September 2019

Dear [REDACTED],

We acknowledge your complaint to the Commissioner for Public Appointments in regards to the Ministry of Justice recruitment campaign to the Civil Procedure Rule Committee, received on 23 September 2019. We can use the information provided in your emails to consider this rather than the MS Word form on our website.

The Commissioner for Public Appointments has the power to consider complaints which concern 'the way a department or other responsible organisation has handled an appointments process'. From the documentation you have provided so far, in earlier emails to the Commissioner, the Commissioner has determined your complaint falls into this category. The Commissioner only considers complaints where the complainant has first complained to the organisation responsible for the public appointments process concerned and, having completed their complaints procedure, received a response to the complaint. Having received a copy of the letter you have received from the Ministry of Justice to your complaint, dated 20 September 2019, the Commissioner is satisfied you have fulfilled that condition. As these two conditions have been met, the Commissioner will begin to consider your complaint under the terms provided by the Governance Code for Public Appointments.

Please consider this letter a formal acknowledgement that we will investigate your complaint and as such, this letter will be shared with the Ministry of Justice, as the department concerned. If you would like to remain anonymous, we can redact your name from this letter and remove [REDACTED]. Let us know as soon as possible if you would like us to do this.

Please note the Commissioner's remit does not allow him to ask departments to run a closed competition again. Neither does he have the remit to ask Ministers to appoint particular people nor remove successful appointees from their posts. You can read more about the Commissioner's regulatory framework and the process he uses to consider complaints on his website, here:

<https://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2019/01/OCPA-Regulatory-Framework-1.pdf>

In our last correspondence (6 September 2019), we discussed how the Commissioner may require information from you to investigate, and how it might be best to make your official complaint to the Commissioner [REDACTED]. As you have subsequently requested us to consider this complaint, we will [REDACTED].

consider your complaint in line with our standard procedures [REDACTED]. The Commissioner considers complaints relating to an appointments process within a 12 month window, so any delay runs the risk your complaint would fall out of scope. We trust that for these reasons you understand that we will consider your complaint now. [REDACTED]

The next steps for the Commissioner will be to request documentation from the Ministry of Justice in regards to your application for the Civil Procedure Rule Committee in December 2018. We will not consider matters or documentation that falls outside of this. Please note the Office for the Commissioner for Public Appointments has a team that considers complaints and will not require any outside assistance from other organisations. If the Commissioner requires more information from you about your complaint, we will contact you. We will also notify you when we publish our decision notice.

I hope this letter explains the Commissioner's remit and role in relation to your complaint satisfactorily. Please do visit our website if you want to read more about the role of the Commissioner.

Best wishes,

Further correspondence with complainant

27 September 2019

Dear [REDACTED],

Thank you for your email about the timescales of our investigations.

The Commissioner is minded to complete investigations in a timely manner in order to uphold the Governance Code, but we understand your concern [REDACTED] [REDACTED] publication before April 2020. We will undertake our investigation into your complaint and we will not publish any decision notice relating to the complaint before April 2020, as you have requested, in the interests [REDACTED].

With complaints made to the Commissioner, our process is to publish the decision notice on our website and inform the relevant Department of the decision. We also notify complainants that the decision has been published. This will allow you to choose whether to access the decision notice or not. We cannot prejudge the outcome of our investigation, so we will publish our decision notice at or after April 2020 regardless of whether the complaint is upheld or not.

Please be assured that we never name the complainant in any of our decision notices and we use gender neutral pronouns to keep the complainant fully anonymous.

I trust that this timetable and approach to our decision notices is satisfactory for you, please do let us know if you have further questions.

Best wishes,

Annex B

Letters from the Office of the Commissioner to MOJ to request information to investigate the complaint

Dear [REDACTED],

We have been contacted by a complainant over a matter relating to the competition for the Civil Procedural Rule Committee, concluded in April 2019.

The complainant has asked for their name to be redacted from the letter attached which outlines our decision that the complaint is within OCPA's scope. You will find that attached.

The Commissioner's role in considering this complaint is to examine the process of this competition and ensure that it has met the principles outlined in the Governance Code. His role is not to reassess individual applications, nor can he ask Departments to run competitions again.

So the Commissioner can begin, we require the following documentation, which is outlined in our regulatory framework (in Annex A), for the Civil Procedural Rule Committee competition, reference PAT150059.

- A list/record of all applicants, including the dates the applications were received
- Longlist note with details of those candidates sifted through to the next stage, with panel comments
- Shortlist note with details of candidates invited to interview, including comments from the Panel
- Submissions to Ministers at campaign closing and shortlisted candidates stages, including any due diligence if conducted at these stages.

Further, the Commissioner requires:

- any documentation relating to those applicants making requests to use the Guaranteed Interview Scheme for the above competition
- any documentation relating to the minimum criteria used to assess applicants making a request to use the Guaranteed Interview Scheme for the above competition

Please supply the above documents within 10 working days of this request – that is, Monday 14 October 2019. I will then review and come back if the Commissioner requires anything further.

The Commissioner will draft a decision notice, which will be sent to you for review of factual inaccuracies. The final version will be published on OCPA's website.

If you have any questions about the Commissioner's complaint processes, please drop me a line and I will come back to you as soon as possible.