

## **Commissioner for Public Appointments decision notice: public body appointments process for Pension Protection Fund administered by Department for Work and Pensions**

1. The Public Appointments Order in Council (OIC) November 2019 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. Under the Governance Code, complaints should be raised with the appointing department in the first instance. Departments are responsible for having effective complaints handling procedures, for making applicants aware of their right to complain and for referring them to the Commissioner's complaints procedures. If, after investigation by the department, the complainant remains dissatisfied, they may bring their complaint to the independent Commissioner for Public Appointments.

### **Background and methodology**

3. The complainant had applied for the competition to recruit the next Chair of the Pension Protection Fund (PPF). The complainant later discovered that their application had not been received, and they made a complaint. DWP investigated the complaint and found they had no record of receiving the application. They concluded their investigation by apologising and making changes to their application process. The complainant, remaining unsatisfied, then contacted OCPA.
4. The Commissioner considers complaints which meet a number of conditions. They must relate to appointment competitions that have concluded within the last 12 months, and that relate to either an individual's experience as an applicant, the way a department or other responsible organisation has handled an appointments process or if it appears that the Governance Code may not have been followed.
5. In this case, it was the Commissioner's view that the complainant's experience of being an applicant in this competition required investigation. The Commissioner informed the complainant and DWP that he would investigate on 21 May 2021, and requested documentation from both parties. DWP supplied their documentation on 3 June 2021 which included details of the competition stages and administration, and the complainant on 23 May supplied their emails to and from DWP.

### **Outline of complaint**

6. The complainant maintains they submitted their application for the role to DWP's central appointments mailbox, and their subsequent emails asking about the progress of their application were ignored. Later, the complainant found another contact point within DWP who said the application had not been received, and if

submitted now, was too late to be considered for shortlisting. The complainant believes they have been denied the opportunity to be considered for the role through no fault of their own. They also complained that no alternative means of communication was advertised to candidates in the candidate pack for the role, and disputed that it was too late to consider their application once it was received, believing an interview could be accommodated if the Panel had considered it appropriate.

7. DWP has already made changes to their application systems in light of the complainant's experience. They have added an alternative contact point to their candidate packs and clarified to all applicants that if they do not receive an email receipt when emailing the central DWP public appointments mailbox, that means the email has not been received. The Commissioner welcomes these changes.

## **Consideration**

### *'Lost' application*

8. The Commissioner notes that the complainant first made contact with DWP via the central DWP public appointments email address for applying, which was listed in the candidate pack. They asked for information on the role, and a DWP official responded, and they later had a conversation about the role on 19 March. A week later, on 26 March, the complainant sent in their application to the central email address. The Commissioner is satisfied that the complainant had included all the required forms and documentation in their application, and it was sent to DWP a few hours before the closing date.
9. The candidate received no response to their application email. To chase, they emailed the official they had spoken with on 8 and 14 April (not the central DWP public appointments mailbox), but no response was received. On 20 April, the complainant rang the official, and that official brought the 'lost' application to the attention of DWP's central public appointments team.
10. On 20 April, an official from DWP's central appointments team contacted the complainant, and after exchanging emails, the complainant sent their application directly to this official, and the central DWP mailbox, from two different email addresses, and asked for it to be considered. The DWP official confirmed the application had now been received by DWP's public appointments team.
11. It appears from the complainant's and DWP's records that emails sent from one of the complainant's two different email clients, on several but not all occasions, were not received by DWP's public appointments mailbox over March and April. On 19 and 20 April, after being alerted about the 'lost application', DWP officials conducted a search of their email inboxes and found no trace of the application sent by the complainant on 26 March. DWP's IT department was asked to investigate further. They report that a log showed that the complainant's most recent email from one of their email clients had reached DWP's email system, but that it had been put straight into security quarantine as the email appeared to be from a spoofed address, therefore not reaching an inbox for DWP officials to access. They advised that emails

placed into quarantine are routinely deleted after 14 days. This suggests that the complainant's application on 26 March, and their chasing emails on 8 and 14 April, all sent from this same email client, may have been similarly quarantined, and would have been automatically deleted, unbeknownst to DWP officials and the complainant.

12. The Code's section on candidate care (para 7.5) states:

"Departments are responsible for engaging with candidates and providing a good service to individuals who have applied for appointments."

That the complainant's application was not received by DWP's public appointments team appears to the Commissioner to be an unfortunate and unforeseen IT issue, for which neither party is responsible. It is unfortunate that the complainant was not aware that not receiving an automated response to emails sent to the DWP public appointments mailbox was a sign the application had not been received, and the complainant's chasing emails following the submission of their application were also likely never received. The Commissioner has determined DWP has not met the 'good' standard of service as defined in the Code on this occasion through no obvious fault.

13. The Commissioner commends DWP for taking immediate steps to ensure that applicants to all their future public appointments competitions know to expect an automated reply, and they have listed alternative DWP contact details in all their candidate packs so applicants with any concerns have another way to stay in touch. The Commissioner is satisfied that these simple changes will help all future candidates applying and/or corresponding with DWP's public appointments mailbox to know what to expect. He also notes DWP has apologised to the complainant for the handling of their application.

#### *Consideration of an application after the deadline has passed*

14. Para 7.5 of the Code goes on to state:

"Candidates should be kept in touch with progress of competitions and, where possible, be informed of key dates (sift, longlist, interview) ahead of time."

15. Each advertisement for a public appointment role therefore should include a timeline for the stages of the competition. The dates for the sift of this competition were listed as "w/c 29 March 2021 (TBC)" and the interview, "27 & 28 April 2021 (TBC)". The complainant, in their initial complaint to DWP, and later to OCPA, has maintained that according to the 'TBC' dates above, their application received on 20 April should have been considered for shortlisting as interviews were yet to be held. DWP informed the complainant that when their application was finally received, on 20 April, it 'cannot be considered at this stage.'

16. Once a panel has shortlisted, the Code places the onus on ministers to agree to those on the shortlist for interview. Further, Para 5.4 states:

"Ministers should feel free to put names forward to the Advisory Assessment Panel for interview. If a panel does not think it appropriate to interview such a

candidate, the panel chair must inform the Minister of the reasons for this before informing the candidate of the rejection.”

17. In this case, material from DWP provided to the Commissioner shows the pre-sift was held on 30 March and the full sift on 1 April. DWP officials provided the shortlisted candidates to ministers on 12 April and asked for any suggested changes by 14 April. There is no record of a ministerial response following this submission. DWP explained to the Commissioner that their submissions at the shortlist stage do not require a formal response unless ministers wish to change the course of action outlined in the submission. In this case, ministers made no response, and thus officials continued with the process as indicated in the submission, which was to invite the shortlisted candidates for an interview. Interviews were held on 27 April.
18. The Commissioner has determined therefore that ministers’ tacit approval for the shortlisted candidates was given on 14 April, six days before the complainant’s application was actually received and seen by DWP officials, but two weeks after the complainant had first sent it.
19. The Code’s Principle of Fairness (H) states:

“Selection processes should be fair, impartial and each candidate must be assessed against the same criteria for the role in question.”
20. The complainant has maintained that his application should have been considered separately by the Panel after the formal shortlisting and had they been successful, been added to the list of interviewees. The Commissioner is not privy to the timetabling details of the panel’s shortlisting and interview meetings and it is not his place to judge whether scheduling an extra meeting to discuss the complainant’s application was practically possible.
21. It was within DWP’s discretion whether to advise the Panel to consider this late application, which would have required another submission to ministers to approve the revised shortlist if the complainant had been successful.
22. DWP also had the option to present the complainant’s application to ministers directly for their consideration, who then, under Para 5.4, could have brought the application to the attention of the Panel. There is no compulsion to use Para 5.4 in any competition; it is entirely optional.
23. It is the Commissioner’s view that departments are also within their rights to set hard deadlines for applications and refuse to consider applications not received on time. It is arguable that it would be in fairness to others, who had been unable to meet the deadline, to refuse to consider the application outside of the agreed process. To refuse to consider this application is not a breach of the Code in the Commissioner’s view, and it is not reasonable to routinely expect that an application received by a department after a deadline should be considered like others received on time. DWP in this case has taken this last view.
24. It appears from the material supplied to the Commissioner that consideration of the application once received was dismissed swiftly, despite DWP having the option to

take a different decision, and a clear reason for its approach in this case was not supplied to the complainant.

## Decision

25. The Commissioner finds in this case the Code has been breached in that the complainant did not receive a 'good' service (Para 7.5) in that their application was not received when originally sent and **upholds this part of the complaint**. The Commissioner notes the immediate steps DWP have taken to reduce the risk of applications 'going missing' again. He suggests other departments learn from this unfortunate incident and make sure that potential applicants are given good information in their candidate packs about what to expect too.
26. The Commissioner does not find DWP in breach of the Code in that they declined to consider the complainant's application late, and with the shortlist already agreed by ministers. DWP had discretion to do so, but declined on this occasion, which is Code compliant. **The Commissioner therefore does not uphold this part of the complaint**. However, the Commissioner believes in this case, where it appeared an IT security measure had thwarted the receipt of the complainant's application without either party's knowledge, it would have been consistent with the principles of the Code and candidate care to have considered it once it was received, and if not practically possible, this should have been explained to the complainant. He reminds departments to be mindful of the discretion they have with applications and to recognise the balance between fairness and candidate care. He recommends all departments should give clear messages to potential applicants how their applications will be handled, including when they are not received on time. Departments should make clear the dates for each stage of a competition, and the nature of ministerial sign-off on each stage, to manage expectations.