



MEMORANDUM

To: Heather Baggott, Acting Public Service Commissioner

From: Pania Gray, Kororā Consulting

Copies to: Hugo Vitalis, Sandra Preston, Kate Salmond

Date: 15 May 2024

Subject: Te Puni Kōkiri: 2023 Senior Advisor – Māori Capability Recruitment Process

Introduction

1. In February 2024, the Chief Executive of Te Puni Kōkiri (TPK) asked Te Kawa Mataaho Public Service Commission to look into TPK's processes and decision-making relating to a fixed-term appointment for a Senior Advisor – Māori Capability, in the People and Capability Directorate.
2. After discussion, you agreed to carry out an independent assessment of the integrity of TPK's processes, including decision-making processes, related to:
 - the appointment of a certain Senior Advisor - Māori Capability; and
 - the requests for a review during the provisional period.
3. The effective terms of reference for the work were set out in a letter from you to the TPK Chief Executive on 28 February 2024. The subject of this work is TPK as an agency, not the applicant who was employed as a Senior Advisor - Māori Capability, or any other individual in isolation. Consequently, and despite the fact that the name of the employee appointed to the role has been widely reported, I will refer to the employee as 'the applicant'.
4. In March 2024, you delegated your authority¹ to me to lead this work as an external expert, with support from a small team of Te Kawa Mataaho Public Service Commission staff.
5. The time period you have asked me to look into is from the commencement of the recruitment process until the date that the applicant's provisional appointment period came to an end.
6. This memo sets out the findings and conclusions arising from this work. As TPK's Chief Executive has a statutory duty to act independently in employment matters, it is strictly out of scope for me to comment on whether the applicant should have been appointed by TPK. Similarly, I have not made any comment on the suitability of his appointment or otherwise drawn any conclusions as to the appropriateness of his ongoing employment.² It is also not within scope for me to make any recommendations.

Executive Summary

7. The Senior Advisor – Māori Capability recruitment process that led to the applicant being recommended for appointment was conventional and largely sound. The TPK staff involved in the appointment did what they thought was procedurally correct. They sought to act in a fair and unbiased manner, as being found to have committed professional serious misconduct did not –

¹ Schedule 3, clauses 2 to 4 of the Public Service Act 2020.

² 28 February 2024 letter from the Heather Baggott to Dave Samuels.



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in and of itself - preclude the applicant's appointment. However, TPK did not consider the implications of the applicant's factual background³ in sufficient detail.

8. TPK's policies do not provide a clear framework for how and when a professional serious misconduct finding should be considered in a recruitment process. This contrasts with TPK's clear delegation policy for candidates with a criminal conviction and Serious Misconduct as defined in the Workforce Assurance Model Standards.⁴ These scenarios were not in play, in this instance.
9. On promulgation of the applicant's provisional appointment, TPK received eight discrete requests for review.⁵ TPK should have carried out a review of the appointment. TPK should also have notified the applicant about the review requests prior to him starting his employment at TPK.
10. The process that led to the decisions to decline the review requests was not consistent with either the TPK Review of Appointment policy or the system-wide guidance.⁶ In addition, it appears to me that the TPK policies engaged for a review of appointment are internally inconsistent and do not align with the relevant system-wide guidance. TPK has acknowledged that its Review of Appointment policy is overdue for review and that its broader suite of human resources policies needs to be updated. I was advised that this will happen as part of TPK's ongoing human resources policy review work programme.
11. The system-wide guidance states that "a review of appointment process should provide confidence that an agency has integrity in its selection process."⁷ Initiating a review during the promulgation period would have provided an opportunity for an 'independent set of eyes' to take a second look at the recruitment process undertaken and the relationship between the professional serious misconduct finding and the applicant's suitability for the role in the broadest sense, taking into account the points made by the concerned parties. Given that the applicant's professional serious misconduct finding was in the public domain, there were fewer privacy issues than is often the case.
12. In asking you to look into this matter, the TPK Chief Executive advised you that the applicant is the son of a close friend. I have considered the potential for a perceived conflict of interest, as part of my work. Though the applicant listed the Chief Executive as one of his referees in his application for the Senior Advisor – Māori Capability role, on the basis of the representations made to me and other evidence, I am satisfied that the Chief Executive was not inappropriately involved in the process or decision to appoint the applicant. The Chief Executive also took no role in considering the requests for a review of the applicant's appointment.

Summary of Facts

13. Having reviewed the available documentation⁸ and asked clarification questions of TPK officials⁹, these are the substantiated facts in relation to:
 - the applicant's appointment; and

³ The term 'factual background' is used in this report as shorthand for the substantiated facts described in paragraphs 13 – 25, either a specific fact or the full set of facts on which this report is based.

⁴ <https://www.publicservice.govt.nz/assets/DirectoryFile/Model-Standards-Workforce-Assurance.pdf>

⁵ Follow-up requests were counted as a discrete request for review.

⁶ <https://www.publicservice.govt.nz/assets/Public-Service-Agencies-conducting-a-review-of-appointment-process.pdf>

⁷ Page 3, <https://www.publicservice.govt.nz/assets/Public-Service-Agencies-conducting-a-review-of-appointment-process.pdf>.

⁸ Some documents were unable to be located or documentation did not exist.

⁹ As this work was focused on the actions of TPK the agency, I have not conducted interviews or sought information from anyone other than Commission and TPK staff for this work.



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- the requests for a review during the provisional period.
14. In July 2023, the New Zealand Teachers Disciplinary Tribunal (the Tribunal) published its May 2023 decision of a finding of professional serious misconduct against the applicant, relating to his conduct as a teacher in 2018 and 2019. As a result of the finding, the Tribunal ordered the cancellation of the applicant's teacher registration under section 404(1)(g) of the Education Act 1989. The matter drew national media attention.
 15. TPK openly advertised for two 12-month fixed-term Senior Advisor – Māori Capability positions on 27 September 2023; one to be based in Ōtautahi and the other to be based in Kirikiriroa. A Deputy Secretary brought these vacancies to the applicant's attention.¹⁰ He had previously applied for several different jobs at TPK.
 16. Applications closed for the positions on 11 October 2023; there were nine applicants for the two roles.
 17. The shortlisting process was carried out by the 'recruiting manager'.¹¹ As it was their first involvement in a recruitment process, the recruiting manager sought a lot of guidance from their People and Capability Directorate colleagues, including the People and Capability Director, who is the recruiting manager's line manager. Upon learning of the applicant's professional serious misconduct, the recruiting manager did not propose him for the shortlist. This was on the basis of concerns about how the applicant's employment would impact other staff in Ōtautahi and, in turn, what impact that might have on the applicant's wellbeing. After conferring with the People and Capability Director about the proposed shortlist, the recruiting manager revised the shortlist from six to seven (of the nine) applicants, to include the applicant. The recruiting manager was advised that if the applicant would otherwise warrant an interview, then he should be shortlisted; the professional serious misconduct could be considered at a later stage.
 18. A three-person panel interviewed the seven candidates between 3 November and 20 November 2023.¹² The information provided to me clearly demonstrated that the applicant was one of the top two scoring candidates; both were based in Ōtautahi.
 19. On 28 November 2023, TPK contacted the applicant to discuss his proposed referees. He had listed the Chief Executive as one of two referees¹³. Each of the TPK officials I interviewed told me that a candidate listing the Chief Executive as a referee was inappropriate. I was told that during that conversation with the applicant, there was also discussion about the New Zealand Teachers Disciplinary Tribunal finding of professional serious misconduct. TPK carried out two referee checks for the applicant that same day, one with his most recent employer and another with a work associate.
 20. Late in the afternoon of 28 November, the Director of People and Capability, who was also on the interview panel, asked two Deputy Secretaries to approve the fixed-term appointment of the applicant as a Senior Advisor – Māori Capability. They also recommended that, given his professional serious misconduct, he receive a letter confirming TPK's generic behaviour and

¹⁰ This was one of a small number of immaterial interactions that the Deputy Secretary had with the applicant over September 2023 – November 2023.

¹¹ In TPK's Recruitment policy, the term 'recruiting manager' is used to refer to the person/position who the role reports to.

¹² For two of the seven interviews, the panel consisted of two panel members due to diary conflicts. The applicant was interviewed by the three-person panel.

¹³ I note that the applicant had previously listed the Chief Executive as a referee for an earlier 2023 (unsuccessful) Senior Advisor role application.



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conduct expectations of him as a public servant. The memo was silent on the progress of the recruitment process for the other Senior Advisor – Māori Capability role vacancy.

21. The memo noted and appended a dissenting statement from the recruiting manager. They did not support the proposal to appoint the applicant because of concerns about how the applicant's employment would impact other staff in Ōtautahi and, in turn, what impact that might have on the applicant's wellbeing. The Deputy Secretaries told me that they assumed that the memo had been prepared on behalf of the interview panel – with the implication being that they thought only the recruiting manager didn't support the recommendation to appoint. The other (third) interview panel member told us that they did not know about that memo and were not aware of the professional serious misconduct finding until they were asked to sign/approve the interview panel summary record for the applicant, in early December.
22. The applicant was advised that his Senior Advisor – Māori Capability application was successful on 29 November 2023. The applicant counter-signed a conditional¹⁴ offer of fixed-term employment on 11 December 2023. His provisional appointment was promulgated within TPK on 14 December 2023.
23. TPK received eight written requests for a review of the appointment between 15 December 2023 and 5 January 2024. The reasons for the review requests centred around the professional serious misconduct finding, the applicant's suitability for appointment against TPK's values and TPK colleague safety. The People and Capability Director who recommended the appointment also advised on the review requests. The review requests were then put for decision to the same two Deputy Secretaries who had approved the appointment. After considering human resources advice, the Deputy Secretaries declined each review request. That is, no formal review of the appointment was initiated under the TPK Review of Appointment policy.
24. On 8 January 2024, the applicant commenced employment at TPK and was provided a letter of expectation about the generic conduct and behaviour expectations of public servants. On 10 January 2024, the applicant received written confirmation of his appointment to the Senior Advisor – Māori Capability role and the other candidate declined TPK's offer for the other Senior Advisor – Māori Capability role.
25. At a meeting held on 12 January 2024, the applicant was advised that there had been requests to review his appointment.¹⁵

Framework for Analysis

26. To make findings and report on any inadequacies in TPK's processes or decision-making relating to the appointment, I have had regard to both system-wide guidance and agency policies.

What agency guidance has informed this work?

27. I have considered the following TPK policies:
 - Recruitment policy;
 - Human Resource Delegation policy;
 - Review of Appointment policy; and
 - Managing Conflicts of Interest policy.

¹⁴ Acceptance of employment terms and conditions, right to work in New Zealand, criminal conviction history check and a successful promulgation.

¹⁵ Though this occurred four working days after the end of the provisional period (and therefore technically outside the scope of this work), it is a material fact. Therefore, I have included it in this report.



What system guidance has informed the expectations underpinning this work?

28. In addition to the Public Service Act 2020, four discrete Te Kawa Mataaho Public Service Commission guidance documents have informed my analysis:
- A. Public Service Recruitment – Guidance to support Public Service recruiters¹⁶
 - B. Workforce Assurance Model Standards¹⁷
 - C. Public Service Agencies conducting a review of appointment process¹⁸
 - D. Conflicts of Interest Model Standards¹⁹
29. An overarching principle in all of the guidance is the requirement to make appointments on merit²⁰ – giving preference to the person who is best suited to the position. This includes factors such as team fit, cultural and language competency or community connections.²¹
30. I summarise the aspects of the guidance that have been the most influential in forming my conclusions about the adequacy of TPK’s processes. To aid understanding, I also describe the purpose and/or underlying reasoning for the key guidance.

A. Public Service Recruitment – Guidance to support Public Service recruiters

31. The purpose of this guidance is to embed a common recruitment and induction experience across the Public Service.²² It sets out a “Common Process Model” – some key steps to follow - for Public Service recruitment.²³ While each individual recruitment process will usually contain each of the proposed elements (or steps), how they are implemented and by whom will depend on the agency’s recruitment policies and procedures, the role being recruited to and the specific context.

B. Workforce Assurance Model Standards

32. These Model Standards help to ensure the public service workforce continues to meet high standards for integrity and honesty.²⁴ Te Kawa Mataaho Public Service Commission emphasises that the need for integrity and ethical behaviour must be reinforced through recruitment processes.²⁵
33. While I have had regard to this guidance in its entirety, I have drawn most heavily on the referee checks advice in these Model Standards. As all public servants must conduct themselves with integrity²⁶, a candidate’s prior employment history and/or previous indiscretions may indicate that someone does not meet the character standards required of public servants. The guidance states:

“...Referee checks should usually be undertaken by the organisation, preferably the hiring or contract manager....”

¹⁶ <https://www.publicservice.govt.nz/assets/Public-Service-attraction-recruitment-induction-V3-updated-links.pdf>

¹⁷ <https://www.publicservice.govt.nz/assets/DirectoryFile/Model-Standards-Workforce-Assurance.pdf>

¹⁸ <https://www.publicservice.govt.nz/assets/Public-Service-Agencies-conducting-a-review-of-appointment-process.pdf>

¹⁹ <https://www.publicservice.govt.nz/assets/DirectoryFile/Model-Standards-Conflict-of-Interest.pdf>

²⁰ Section 72, Public Service Act 2020: <https://www.legislation.govt.nz/act/public/2020/0040/latest/LMS219481.html>

²¹ <https://www.publicservice.govt.nz/role-and-purpose/principles-and-values/merit-based-appointments#:~:text=Merit-based%20appointments%20matter%20because%20they%3A%201%20maintain%20procedural,by%20supporting%20the%20principle%20of%20political%20neutrality.%20>

²² Page 9, <https://www.publicservice.govt.nz/assets/Public-Service-attraction-recruitment-induction-V3-updated-links.pdf>

²³ Page 8, <https://www.publicservice.govt.nz/assets/Public-Service-attraction-recruitment-induction-V3-updated-links.pdf>

²⁴ Page 1, <https://www.publicservice.govt.nz/assets/DirectoryFile/Model-Standards-Workforce-Assurance.pdf>

²⁵ <https://www.publicservice.govt.nz/guidance/guide-he-aratohu/model-standards/workforce-assurance>

²⁶ <https://www.publicservice.govt.nz/guidance/guide-he-aratohu/standards-of-integrity-and-conduct>



...Referee checks for prospective employees and contractors are expected to be completed prior to any contractual relations being formed, with checks usually happening at the preferred candidate stage. As one of the referee checks, recruiting organisations will conduct referee checks with the candidate's last direct line manager unless it is not able to be done, including for candidates from the private sector...

...Referee checks include questions on whether the candidate has ever, to their knowledge, had a serious misconduct investigation, upheld or currently occurring, or has been dismissed from employment..."²⁷

34. The Model Standards support pack suggests that referees should be asked specific questions about integrity:²⁸

1. Has [candidate's name] been subject to a serious misconduct investigation, either concluded and upheld or currently under investigation, within the last three years?
2. Have they been dismissed from employment?
3. Have you ever had any reason to question their integrity?
 - If so, what was the situation?
4. Would you hire them again?
 - If not, why not?

35. When all recruitment screening checks are completed, there is a requirement to fairly consider that information as part of the decision-making process around appointment. The guidance states:²⁹

Fair consideration

All information gathered through screening checks must be considered by the manager on a case-by-case basis including against the risk profile of the role, the requirements of the position, how recent any integrity or conduct issue was, any counselling, retraining or rehabilitation a person has undergone and the explanation provided by the candidate. The manager should consider whether strategies need to and can be put in place to minimise potential risk to the organisation, co-workers and others the person may come into contact with. Disclosure of serious misconduct does not mean the person cannot be employed.

C. Public Service Agencies conducting a review of appointment process

36. This guidance was published in March 2023 and reflects the requirements set out in section 71 of the Public Service Act 2020:³⁰

Appointments subject to review

Appointments under any of [sections 66 to 69](#) (except appointments of ministerial staff) are provisional pending the outcome of a review under [clause 5](#) of Schedule 8.

37. Clause 5 of Schedule 8 of the Public Service Act states:

Review of appointments

²⁷ Page 2, <https://www.publicservice.govt.nz/guidance/guide-he-aratohu/model-standards/workforce-assurance>

²⁸ Page 5, <https://www.publicservice.govt.nz/assets/DirectoryFile/Model-Standards-Workforce-assurance-support-pack.pdf>

²⁹ Page 4, <https://www.publicservice.govt.nz/guidance/guide-he-aratohu/model-standards/workforce-assurance>

³⁰ Similar provisions existed in section 65 of the State Sector Act 1988.



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- (1) The chief executive of each department ... must put into place a procedure for reviewing appointments made to the public service within that agency that are the subject of a complaint by an employee in that agency.
- (2) The procedure must be approved by the Commissioner and must comply with the guidelines prescribed by the Commissioner ...

38. The March 2023 system guidance replaced earlier guidance, both of which seek to ensure that appointments in the Public Service are based on a foundation of open, merit-based selection that upholds the public's trust.
39. The Public Service Act requires agencies to have procedures in place for reviewing appointments that are the subject of a complaint by an employee of that agency. The procedure must be consistent with the system-wide guidance.³¹ The guidance points out that a review of appointment "...is an opportunity for decision-makers and leaders to gain insight into their agencies. Genuine complaints, raised constructively, provide opportunities for continuous improvement that may otherwise go unnoticed...A review of appointment process should provide confidence that an agency has integrity in its selection process...". Further, it states "...the threshold for determining a request for review is high and, if not appropriately considered, could itself be the subject of a further complaint or external challenge of a decision-maker's actions...".³²
40. Key points in this system guidance relevant to the requests for a review of this appointment are:
- any permanent, fixed term, or casual employee of an agency may seek a review of an appointment made in their agency (except for acting appointments or appointments of ministerial staff);
 - a request to review an appointment should not be dismissed without proper consideration;
 - a review should be undertaken unless the request is frivolous or vexatious;
 - an agency's review procedures should (amongst other things) allow substantive consideration of any complaint and give staff confidence in the appointment process;
 - a review of appointment can relate to any aspect of an appointment - reviews can cover matters of both substance (the merit of the provisional appointee) and process (how the selection process was conducted that led to the appointment);
 - a single reviewer or review committee must be, and must be seen to be, unbiased and fair;
 - reviewers need to look at whether the appointment was made in accordance with good employer principles including diversity and inclusiveness;
 - a provisional employee should be informed of review progress;³³ and
 - if a request for review is lodged, then the provisional employee's appointment should not be confirmed until the outcome of a review has confirmed the appointment.

D. Conflicts of Interest Model Standards

41. The main goal of identifying and managing conflicts of interest is to ensure that all operational decisions are made – and are seen to be made – legitimately, justifiably, independently and fairly.³⁴

³¹ Clause 5, schedule 8 of the Public Service Act 2020.

³² Pages 3 and 7, <https://www.publicservice.govt.nz/assets/Public-Service-Agencies-conducting-a-review-of-appointment-process.pdf>

³³ The TPK Review of Appointment policy at paragraph 15 is more explicit; it requires the TPK recruiting manager to advise the provisional employee when a formal review is lodged.

³⁴ Page 6, <https://www.publicservice.govt.nz/assets/DirectoryFile/Model-Standards-Conflict-of-Interest.pdf>



42. The Model Standards seek to ensure that agencies have integrated policies and processes for managing conflicts of interest within their human resource, employment relations, and operational management systems.³⁵

Findings: The Appointment Process

43. In looking into this matter, I identified a number of process inadequacies; from very minor and technical to some of material significance. Those inadequacies are summarised below.

The Senior Advisor – Māori Capability recruitment process that led to the applicant being recommended for appointment was conventional and largely sound.

44. In many respects, the process followed to recruit to these Senior Advisor – Māori Capability roles was conventional. TPK followed the key stages set out in the TPK Recruitment policy and the Common Process Model, described in paragraph 31. Specifically:

- TPK officials consistently explained the strategic imperatives that led to the two fixed-term roles being established;
- the roles were publicly advertised for a two-week period;
- the recruiting manager assessed all applicants for shortlisting against five role-related criteria;
- shortlisted applicants were interviewed by a panel comprised of the recruiting manager and two other TPK managers;
- the interview panel moderated their independent views of each interviewee's performance against five criteria, to arrive at an interview panel summary score before discussing and agreeing each applicant's suitability for appointment and whether to recommend the applicant for appointment;
- two preferred candidates emerged from the seven applicants interviewed – one of whom was the applicant;
- before being recommended for appointment, two referee checks were carried out for the applicant, including one with his most recent employer; and
- the 'one up' principle³⁶ was followed to secure approval to appoint the applicant to one of the two Senior Advisor – Māori Capability roles.

Some specific features of the Senior Advisor – Māori Capability recruitment process meant that it was not a straightforward application of TPK's Recruitment policy.

45. As the system-wide guidance notes, each recruitment process occurs in a specific context. I set out some of the novel features of this recruitment process to illustrate how it challenged TPK's documented recruitment policies or procedures.

46. The recruiting manager was carrying out their first recruitment process and therefore relied heavily on the People and Capability Director for guidance. For example, discussions between the two led to a change to the proposed shortlist, to include the applicant. The recruiting manager told me that they had not shortlisted the applicant initially because they had concerns about his suitability for the role, specifically 'team fit' issues in light of the New Zealand Teachers Disciplinary Tribunal professional serious misconduct finding. However, after discussion, the applicant was included on the shortlist as the People and Capability Director did not consider the professional serious misconduct finding a relevant consideration at the shortlisting stage.

³⁵ Page 1, <https://www.publicservice.govt.nz/assets/DirectoryFile/Model-Standards-Conflict-of-Interest.pdf>

³⁶ As the manager of the recruiting manager was on the interview panel, it was prudent for the next tier manager to approve the appointment. This was at Deputy Secretary level.



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47. Neither the TPK Recruitment policy nor any other document I was given provides guidance on when and how to consider a professional serious misconduct finding by a professional regulatory body in a recruitment process. The TPK Notification of Interest form requires disclosure of a criminal conviction and the TPK application form seeks consent for the disclosure of any serious misconduct investigations from candidates' prior state services employers. Neither of these forms require a prospective applicant to disclose professional serious misconduct.³⁷

TPK did not explore the risks arising from the applicant's professional serious misconduct finding at his interview.

48. We were told that, at the interview, the panel did not initiate a discussion with the applicant on the professional serious misconduct finding.

49. It is clear that two of the interview panel members – the recruiting manager and the People and Capability Director - were aware of this factual background before the interview. The third panel member told us that they were not aware of this factual background at the time of the interview, nor at the moderation stage. This third panel member told us that they first discussed the professional serious misconduct finding with their interview panel colleagues when they were asked to sign/approve the applicant's interview panel summary form. At this point in time, the two Deputy Secretaries had already approved the applicant's appointment.

50. The professional serious misconduct finding against the applicant was in the public domain and the subject of media coverage just a few months before the Senior Advisor - Māori Capability recruitment process. Against this factual background, I regard the decision not to directly ask the applicant about it at his interview as ill-judged. The applicant was not provided with a full and fair opportunity to put forward his view on the matter.³⁸ Together, the parties could have explored the potential implications of the professional serious misconduct finding in relation to the standards of integrity and conduct expected of public servants, the applicant's ability to effectively discharge all aspects of the Senior Advisor role in Ōtautahi³⁹ if appointed, for the applicant personally if appointed, for prospective TPK staff colleagues if appointed and for TPK more broadly.

The interview panel did not collectively consider the professional serious misconduct finding in assessing the applicant's suitability for appointment during the moderation process.

51. It appears to me that the interview panel concluded the interview process with different understandings. What they did agree on is that none of the candidates interviewed for the role in Kirikiriroa were suitable for appointment and that the applicant was one of the top two scoring candidates. Recollections differed across the panel as to whether the applicant was to be offered a Senior Advisor – Māori Capability role based in Ōtautahi at the same time as another internal candidate (also based in Ōtautahi). The third interview panel member told me that they thought the applicant was being offered the role because the other preferred candidate had not taken the role. The documentation shows that the other preferred candidate did decline the role, but not until 10 January 2024.

52. TPK's Recruitment policy requires that a panel summary document is prepared which records each candidate's interview performance. It also requires panel members to confirm they agree whether they think a candidate is appointable or not. The panel summary form does not include

³⁷ I note that the applicant made a disclosure about breaching the professional standards of teaching in te reo Māori in his application for the Senior Advisor - Māori Capability role.

³⁸ Page 7, <https://www.publicservice.govt.nz/assets/DirectoryFile/Model-Standards-Workforce-assurance-support-pack.pdf>

³⁹ This is the same city in which the professional serious misconduct occurred.



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information from referee checks, as these are usually conducted after the interview panel identifies a preferred candidate(s). The TPK Recruitment policy and the interview panel summary form template is silent on whether interview panel unanimity is required. The relevant excerpt from the TPK Recruitment policy is reproduced below:⁴⁰

g. Panel Summary: A panel summary must be completed for each interviewed candidate, including internal candidates. These are used to record how each candidate responded to the questions and whether the candidate is appointable or not. The panel summary requires the signature of all panel members to confirm they agree the candidate is appointable. Panel summary forms will be provided to recruiting managers by the recruitment team.

53. The recruiting manager did not support the applicant being recommended for appointment due to concerns about team fit. While the memo to Deputy Secretaries seeking approval to appoint the applicant noted a lack of unanimity across the interview panel, it did not clarify that the other (third) panel member had not seen memo (nor that the panel had not collectively discussed the applicant's professional serious misconduct). The recruiting manager was provided an opportunity to write a statement which outlined the concerns they had about appointing the applicant. This statement was appended to the memo.

54. I was told that two offers of fixed-term employment were made in parallel to two candidates based in Ōtautahi. As noted, this does not appear to have been a clearly understood course of action shared by each member of the interview panel, at the conclusion of the moderation process. The rationale for deviating from the two advertised positions – one based in Kirikiriroa and one based in Ōtautahi – does not appear to have been documented.

The potential risks of appointing the applicant were not clearly identified and considered in enough depth during the approval-to-appoint process. This led to insufficient consideration of how the risks associated with the applicant's appointment could be mitigated by both the applicant and TPK.

55. On 28 November 2023, two referee checks were carried out for the applicant. The applicant's referees were not specifically asked about his integrity, as per the suggested line of questioning in the Workforce Assurance Model Standards Support Pack (see paragraph 34). However, both referees talked about the professional serious misconduct in response to other questions that they were asked during the reference checks.⁴¹ Later that same day, the People and Capability Director sought dual Deputy Secretary approval to appoint the applicant.⁴² The memo traversed six key topics in recommending the applicant for appointment:

- experience and capability for the role;
- referee check information;
- risk of repeat incidents (in relation to past conduct);
- the importance of the applicant's disclosure;
- parity of treatment (in relation to other appointees to TPK who have had criminal convictions); and
- the applicant's safety.

56. The Workforce Assurance Model Standards require recruiters to fairly consider all information gathered through screening checks as part of the appointment decision-making process.⁴³ This

⁴⁰ Paragraph 5(g), TPK Recruitment policy.

⁴¹ Page 5, <https://www.publicservice.govt.nz/assets/DirectoryFile/Model-Standards-Workforce-assurance-support-pack.pdf>

⁴² Further to my comments about the third panel member in paragraph 49, they were unaware of what was happening at this point in the recruitment process.

⁴³ Page 4, <https://www.publicservice.govt.nz/guidance/guide-he-aratohu/model-standards/workforce-assurance>



includes "...whether strategies need to and can be put in place to minimise potential risk to the organisation, co-workers and others the person may come into contact with...".⁴⁴

57. The memo identified the potential for the applicant to be subject to bullying and harassment. It did not propose any mitigations to address that risk. The only specific mitigation proposed in the memo was a letter to the applicant confirming TPK's expectations of the applicant in relation to his conduct and behaviour as a public servant. This expectations letter was provided to the applicant on 8 January 2024, when he commenced in the role.
58. The memo did not directly respond to the matters raised in the recruiting manager's dissenting statement, including his comments about team fit. There was no documented consideration of whether any strategies or mitigations might be needed for the applicant's co-workers or others he may come into contact with, in the course of his work, if appointed.

Findings: The Provisional Period

59. The applicant's offer of fixed-term employment was subject to a 10-working day period within which a review of the appointment could be lodged.⁴⁵ In total, eight written requests for a review of the applicant's appointment were lodged with TPK between 15 December 2023 and 5 January 2024. I was told that these review requests were categorised as 'formal' under the TPK Review of Appointment policy.⁴⁶

TPK erred in who presided over the requests to review the appointment.

60. In TPK's Human Resource Delegation policy, TPK's Chief Executive maintains sole delegation for reviews of appointments.⁴⁷ That meant only the Chief Executive could exercise the power to review the appointment. None of the requests for review were put to the TPK Chief Executive for decision. In fact, I was told that the TPK Chief Executive only became aware of the review requests on receiving a letter sent to him and two Deputy Secretaries about the review requests on 22 December 2023. One of the Deputy Secretaries to whom the letter was also addressed informed the Chief Executive that the matter was being dealt with at Deputy Secretary level. The Chief Executive had no further involvement in the review requests.
61. The decisions taken in response to each of the review requests were made by the two Deputy Secretaries who authorised the conditional offer of fixed-term employment to the applicant. This does not appear to have been a conscious decision related to any perceived conflict for the Chief Executive, or for any other reason. It appears that the decision was made at the Deputy Secretary level as this is the general approach taken to operational decision-making at TPK.
62. Notwithstanding that the TPK Chief Executive maintains sole delegation for reviews of appointments, I consider that it posed obvious risks of pre-determination or bias for the same three officials involved in the appointment decision, to also be advising and making decisions about the review requests relating to that appointment.
63. The system-wide guidance for conducting reviews of appointments notes that a reviewer "...must be, and must be seen to be, unbiased and fair...".⁴⁸ Following a 'one up' principle (or at least referring the review requests to another Deputy Secretary in the first instance) would have shown

⁴⁴ Page 4, <https://www.publicservice.govt.nz/guidance/guide-he-aratohu/model-standards/workforce-assurance>

⁴⁵ Paragraph 10, TPK Review of Appointment policy.

⁴⁶ Paragraph 23, TPK Review of Appointment policy.

⁴⁷ Page 8, TPK Human Resources Delegation policy.

⁴⁸ Page 6, <https://www.publicservice.govt.nz/assets/Public-Service-Agencies-conducting-a-review-of-appointment-process.pdf>



tighter alignment to this system-wide guidance principle, and TPK's own policy commitment to maintain the highest standards of trust, confidentiality and integrity in its relationships and work.⁴⁹

TPK should have carried out a review of the appointment.

64. After receiving and relying on advice from the People and Capability Directorate, the two Deputy Secretaries declined each of the eight requests for a review of the appointment.
65. The Public Service Act requires agencies to have procedures in place for reviewing appointments that are the subject of a complaint by an employee of that agency. The procedure must be consistent with the system-wide guidance.⁵⁰ In turn, the system-wide guidance provides for the Chief Executive to consider other appropriate action if a complaint can be deemed vexatious, frivolous or not made in good faith.⁵¹
66. TPK's Review of Appointment policy aligns with the system-wide guidance in that it allows for the Chief Executive to deny a request for review, if, after proper consideration of the facts, the claim can be considered frivolous, malicious or baseless.⁵² There is no evidence that the decision-makers declined each of the review requests on this basis.⁵³ In fact, one of the decision-makers specifically told me that they did not regard any of the review requests as frivolous or vexatious.
67. The procedurally correct and prudent response would have been for TPK to have carried out a review of the appointment. This would have also ensured consistency with the Public Service Commission's Workforce Guidance: Public Service Agencies Conducting a Review of Appointment Process.
68. The opportunity to review the appointment has passed and because the applicant's appointment has been confirmed, it would not be appropriate for TPK to reconsider it.

TPK should have notified the applicant about the review requests prior to him starting his employment at TPK.

69. The TPK Review of Appointment policy requires a provisional employee to be notified when a request for a review of their appointment is lodged.⁵⁴ It appears that the applicant was only advised that there were requests to review his appointment at a meeting held on 12 January 2024, after he had started work at TPK. The timing of this notification meant that the applicant did not have the opportunity to consider whether he still wanted to take up the role at TPK, in those circumstances.
70. The system-wide guidance states that if a request for review is lodged, then the provisional employee's appointment should not be confirmed until the outcome of a review has confirmed the appointment.

TPK's Review of Appointment policy cannot currently be applied in a way that is consistent with the system-wide guidance.

⁴⁹ TPK Managing Conflicts of Interest policy.

⁵⁰ Clause 5, schedule 8 of the Public Service Act 2020.

⁵¹ Page 7, <https://www.publicservice.govt.nz/assets/Public-Service-Agencies-conducting-a-review-of-appointment-process.pdf>

⁵² Paragraph 26, TPK Review of Appointment policy and page 7, <https://www.publicservice.govt.nz/assets/Public-Service-Agencies-conducting-a-review-of-appointment-process.pdf>

⁵³ Paragraph 26, TPK Review of Appointment policy.

⁵⁴ Paragraph 15, TPK Review of Appointment policy.



MEMORANDUM



Te Kawa Mataaho
Public Service Commission

71. As part of this work, TPK has acknowledged that its Review of Appointment policy is overdue for review and needs to be updated, to reflect both the findings of this work as well as to ensure alignment with the March 2023 system-wide guidance.
72. In looking into this review of appointment process, the steps TPK followed suggests that there is a substantive decision point (that is, allowing for a request to be declined) after determining a complaint is not frivolous or vexatious and before initiating a formal review of appointment. This does not reflect the system-wide guidance.
73. Currently, the TPK Review of Appointment policy states that “The decision to conduct a review for a non-applicant employee is at the Chief Executive’s discretion”.⁵⁵ This reads as if it is an unfettered discretion. This is at odds with other parts of this TPK policy. It is also inconsistent with the system-wide guidance.

Findings: Involvement of the TPK Chief Executive in the Appointment and Review Processes

74. Subsequent to the applicant’s employment, some concerns were raised about the TPK Chief Executive having inappropriate involvement in his appointment. The Chief Executive has an historical friendship with the applicant’s father, although I was told that they are not in regular contact. The Chief Executive told me that he does not know the applicant well.
75. The applicant listed the TPK Chief Executive as one of his referees in his application for the Senior Advisor – Māori Capability role. The Chief Executive was aware that the applicant had previously applied to TPK for employment and that the applicant had listed him as a referee for an earlier (unsuccessful) employment application. The Chief Executive also told me that he did not know that the applicant had applied for a Senior Advisor – Māori Capability position or that he had been listed in that application as a referee. It was when the TPK Chief Executive contacted the applicant’s father in late November 2023, for another unrelated purpose, that he became aware that the applicant was in a ‘live’ recruitment process and waiting to hear the outcome.
76. Subsequent to that, the Chief Executive made an enquiry of a Deputy Secretary about the apparent delay in TPK advising the applicant of the outcome of his most recent employment application. In turn, that Deputy Secretary sought a progress update from the People and Capability Director. I do not consider that the Chief Executive’s enquiry had undue influence on the Deputy Secretary’s decision-making role in the applicant’s appointment. By then, the applicant had already been interviewed and had independently emerged as one of the top two scoring candidates.
77. Based on the representations he made to me, alongside other evidence, I am satisfied that the Chief Executive did not act as a referee for the applicant for the Senior Advisor – Māori Capability recruitment process. I am also satisfied that the Chief Executive was not involved in the decision to appoint the applicant to one of the two fixed-term positions being recruited for.
78. None of the requests for review were put to the TPK Chief Executive for decision (despite him holding the sole delegation for reviews of appointments at TPK). As previously noted, I was told that the TPK Chief Executive only became aware of the review requests on his receipt of a letter about the review requests on 22 December 2023.

⁵⁵ Paragraph 28, TPK Review of Appointment policy.



Conclusion

79. The Senior Advisor – Māori Capability recruitment process, that led to the applicant being recommended for appointment, was conventional and largely sound. The TPK staff involved in the appointment did what they thought was procedurally correct. They sought to act in a fair and unbiased manner, as being found to have committed professional serious misconduct did not – in and of itself - preclude the applicant's appointment. However, TPK did not consider the implications of his factual background in sufficient detail during the recruitment process. On promulgation of the applicant's provisional appointment, TPK received eight discrete requests for review.
80. The process that led to the decisions to decline these review requests was not consistent with either the TPK Review of Appointment policy or the system-wide guidance.⁵⁶ In addition, it appears to me that the TPK policies engaged for a review of appointment are internally inconsistent and do not align with the relevant system-wide guidance. TPK has acknowledged that its Review of Appointment policy is overdue for review and that its broader suite of human resources policies needs to be updated. I was advised that this will happen as part of TPK's ongoing human resources policy review work programme.
81. The system-wide guidance states that "a review of appointment process should provide confidence that an agency has integrity in its selection process."⁵⁷ Initiating a review during the promulgation period would have provided an opportunity for an 'independent set of eyes' to take a second look at the recruitment process undertaken and the relationship between the professional serious misconduct finding and the applicant's suitability for the role in the broadest sense, taking into account the points made by the concerned parties.

⁵⁶ <https://www.publicservice.govt.nz/assets/Public-Service-Agencies-conducting-a-review-of-appointment-process.pdf>

⁵⁷ Page 3, <https://www.publicservice.govt.nz/assets/Public-Service-Agencies-conducting-a-review-of-appointment-process.pdf>.