

**FEDERAL APPEALS PANEL**

**IN THE MATTER OF AN APPLICATION BETWEEN:**

**ANDY McGUFFIE**

**Applicant**

**-AND**

**JON IRWIN**

**Respondent**

**PRELIMINARY RULING**

CAROLE FORD  
MEMBER of the FAP (Case Manager)  
30 APRIL 2022

**Ruling**

Permission is not granted to proceed to a Case Panel hearing in respect of FAP case 33.

**Reasons**

The grounds for an appeal must satisfy at least one of the following three criteria:

- (a) there was a serious failure of process or reasoning that was likely to render the determination of the complaint unsafe or unsatisfactory in all the circumstances
- (b) relevant evidence, which could not have been adduced at the time of the determination of the complaint, has since come to light which is likely to render the determination of complaint unsafe or unsatisfactory in all the circumstances
- (c) the sanction determined was manifestly excessive or manifestly lenient in all the circumstances.

In consideration of the Applicant's grounds for appeal, I did not find that they met any of the criteria listed above.

**Ground 1**

The Applicant has listed a number of procedural issues before and during the panel hearing: he was unaware of a character reference from Oliver Glover; a mistake in issuing an Expedited Procedure notice instead of the standard procedure notice, which was corrected; the late receipt of the Investigator Report, but in good time for the hearing; the inclusion of

the anonymous witness report despite the witness having withdrawn the complaint, something which may have caused the Respondent more concern. While regrettable, none of these issues individually or collectively can be considered as a serious failure of process which would be likely to render a decision unsafe or unsatisfactory.

#### Ground 2

The Applicant contends that the panel did not consider the substantive complaint of bullying/harassment/intimidation, but only the issue of gender bias. However, the decision notice clearly states that the Investigator report was before the panel and accepted by all parties. In that report the substantive issue is included. The Complainant at the panel hearing, who is the Applicant in this case, both addressed the panel and had the opportunity to answer questions. Further, he took advantage of the opportunity to reply to the evidence from the Respondent. It is therefore clear that the substantive issue was considered in some detail by the panel. The decision notice at paragraph 15 is expansive on the issue of gender but in paragraph 16 it is clear that it is the complaint, previously defined at paragraph 8, which has been dismissed. The complaint, as defined, includes both the issue of bullying/harassment/intimidation and the gender issue. Therefore, I conclude that the panel did consider the complaint in its entirety, and I do not find a serious failure of reasoning which would render the decision unsafe or unsatisfactory.

#### Ground 3

The Applicant highlights a difference between the Investigator's findings and those of the panel. It is the role of the Investigator to examine the evidence and place it before the panel. It is the role of the panel to arrive at a decision based on the Investigator's report, the written evidence and the oral evidence given at the hearing. It is therefore not unusual for a panel to reach a different conclusion to an Investigator, given the difference in evidence available to each party. The Applicant also considers that the panel took little account of the effect of the Respondent's behaviour on the witnesses. If the panel has reached the conclusion that the complaint regarding behaviour has not been upheld due to lack of evidence, as stated in the decision notice, then there can be no logical grounds for the panel to consider the impact of said behaviour.

#### Ground 4

The Applicant considers that the witnesses should have been invited to the panel hearing. The rules state that the Complainant and Respondent may attend, in the sense that they have the right to do so, but that witnesses may attend if appropriate. It is therefore at the panel's discretion to invite a witness or not. Further, the rules clearly state that no new evidence may be introduced at a panel hearing. If the witnesses had further information to impart, in addition to their witness statements, it could not have been considered by the panel in its deliberations. Relying on the written statements without oral evidence is therefore within the rules, and not a serious failure of process which would render the decision unsafe or unsatisfactory.