

**MINISTRY OF DEFENCE**

**NON-STATUTORY INQUIRY**

**INTO ALLEGATIONS OF INSTITUTIONAL BULLYING  
FROM FORMER GROUP CAPTAIN RECRUITING AND  
SELECTION**

**“THE RAF RECRUITING AND SELECTION NSI”**

<b>Report Title:</b>	Inquiry into Allegations of Institutional Bullying from Former Group Captain Recruiting and Selection.
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<b>Accepted by:</b>	D Com Cap RAF

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## 1. INTRODUCTION

1.1 On 4 August 2022 the former Gp Capt Recruiting and Selection (F/Gp Capt R&S) wrote a letter<sup>1</sup> resigning from her post<sup>2</sup>. She said that prior to her arrival clear acts of positive discrimination had taken place; and that during her tenure she had endured relentless institutional pressure to carry out overt acts of positive discrimination which she believed to be immoral, unethical and illegal. She alleged that the pressure that she and her staff had endured amounted to institutionalised bullying. She also said that because the targets that she was required to achieve for female and Ethnic Minority (EM) inflow were not informed by societal or scientific evidence, she was being set up for failure; and that the overzealous pursuit of unrealistic Levels of Ambition (LOA) had created a sense of disillusionment across her organisation. She said that she felt compelled to challenge the toxic culture of chasing statistics, and that she therefore felt forced to resign from her role.

1.2 This NSI was convened<sup>3</sup> by D Com Cap RAF to investigate the allegations made by F/Gp Capt R&S. The panel was drawn from retired senior Army staff with experience of investigating and determining complex service complaints. The NSI panel was deliberately intended to be entirely separate from the RAF chain of command, and transparently independent.

1.3 The NSI was conducted in accordance with JSP 832, Guide to Service Inquiries, dated October 2008; and Army Command Standing Order (ACSO) Number 3207, Conduct and Management of Service Inquiries and Non-Statutory Inquiries, issued October 2021.

### TERMS OF REFERENCE

1.4 The Terms of Reference<sup>4</sup> of the NSI were agreed on 14 October 2022. The Inquiry was directed to consider the range of the allegations made by F/Gp Capt R&S over the period from the start of recruiting year 2020/21 to the present day, and specifically to:

a. Investigate the allegations of "Institutional Bullying" made in F/Gp Capt R&S letter of 4 August 2022 to D Com Cap. This should include specific examination of events immediately prior to 4 August 2022 but should not be limited to that period.

b. In so far as it is related to the allegations made by F/Gp Capt R&S, investigate the culture within R&S and throughout the Chain of Command, to include the management bodies (boards and committees) of the RAF. Within this the panel is invited to comment on how far the RAF sought and incorporated constructive challenge into policy making and direction.

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<sup>1</sup> A410-1.

<sup>2</sup> The period of her tenure in the appointment was 31 March 2021-4 August 2022.

<sup>3</sup> B112.

<sup>4</sup> B110.



- c. Investigate the impact of any recruitment targets or levels of ambition set on those charged with delivering the ambition/targets. This should include reporting of performance and the behaviour or direction that was associated with achieving those targets.
- d. Investigate why F/Gp Capt R&S states that positive acts of discrimination took place. The panel is not expected to reach a determination on the lawfulness of any matter brought to their attention, but is invited to comment on the handling of the legal (and any other SME) advice as well as how challenges up and down the command chain were handled.
- e. Make recommendations to address any ongoing concerns within R&S.
- f. Make recommendations to minimise the potential for recurrence of any issues identified.

1.5 In addition, we took into account the comments made by the Chief of the Air Staff (CAS) and the Secretary of State for Defence (DS) at the Air Force Main Board on 7 September 2022. CAS stated that his intent was to commission the NSI "to better understand the circumstances and culture that resulted in the delay in addressing concerns raised by the Head of Recruitment and Selection"; and DS welcomed the proposed NSI to do that.<sup>5</sup>

1.6 We applied the principles set out in JSP 832 and ACSO 3207 that "the purpose of an NSI is to establish the facts of a particular matter, and to make recommendations to prevent recurrence. It is an internal fact-finding investigation primarily to assist in maintaining operational effectiveness."<sup>6</sup> We followed the direction that NSIs should be candid and open internal investigations which avoid explicit attribution of blame or liability<sup>7</sup> <sup>8</sup>. In this regard we further noted the direction in our TORs that "The panel is not expected to reach a determination on the lawfulness of any matter brought to their attention"<sup>9</sup>. The Convening Authority guidance to the Panel was that the RAF sought to learn from any mistakes made in the spirit of a "Just Culture".<sup>10</sup>

## PROCESS

1.7 The Panel met for the first time virtually on 17 October 2022; met F/Gp Capt R&S on 25 October 2022; visited R&S at RAF Cranwell on 26 October 2022; and visited RAF High

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<sup>5</sup> C003-4.

<sup>6</sup> JSP 832, Guide to Service Inquiries, Paragraph 1.3.

<sup>7</sup> Ibid, Paragraphs 1.4 and 1.13.

<sup>8</sup> ACSO 3207, Conduct and Management of Service Inquiries and Non-Statutory Inquiries, Issued October 2021, Paragraph 84.

<sup>9</sup> B110.

<sup>10</sup> The term "Just Culture" is commonly used in aviation. "The aim of a Just Culture is to promote continuous learning from previous mistakes and to encourage pilots to openly and freely share essential safety related information". See <https://www.caa.co.uk/general-aviation/the-ga-unit/just-culture/>.



Wycombe on 27 October 2022 and 7 November 2022. We interviewed 13 witnesses, and gathered and considered over 2000 pages of evidence.

1.8 In considering the TORs the Panel defined F/Gp Capt R&S's chain of command for the duration of her tour as Gp Capt R&S as the respective 1\*, 2\* and 3\* officers as detailed in Paragraph 5.36. The Panel defined the Senior Leadership Team as the members of the RAF Executive Committee (ExCo). A full Glossary of Terms is included at the end of the Report.

1.9 Early on, a number of individuals were identified as being Potentially Affected Persons (PAPs) because there was potential that their character or professional reputation could be affected by the findings. We recognise that those individuals had limited time from being designated as PAPs, and to consider the initial evidence pack, before interview with the Panel. They were given an opportunity to be supported by an assisting officer (AO), or to be legally represented at their own expense. Guided by 'Regulation 18'<sup>11</sup> (applied as a matter of policy) safeguards were established for them to ensure that they had the opportunity to comment on and respond to evidence given by other witnesses which affected them. The draft report was shared with them through the Disclosure process and they were given time to comment upon it and to identify any errors, or raise specific questions in relation to the evidence from other witnesses. However, because we did not conduct a hearing, they were not given the opportunity to question other witnesses directly.

1.10 During the investigation another individual was identified as potentially affected and was notified and offered the safeguards, but declined that opportunity. After the investigation stage was complete and during the drafting of the report, one more individual was considered to warrant the safeguards as a PAP, and they were notified and treated accordingly. The draft report was also shared with F/Gp Capt R&S, who was given the opportunity to comment on it in the same way as the PAPs.

1.11 Following Disclosure, we received comments on the draft report from each of the PAPs and from F/Gp Capt R&S, and carefully considered each issue raised. Where we considered it appropriate, we amended the report.

1.12 We were made aware on 16 November 2022 that [REDACTED] and this information did not alter our approach.

1.13 We appreciated the openness and honesty of the individuals we interviewed. We recognise that in giving evidence many recounted incidents and direction involving their chain of command; expressed opinions as to the appropriateness of actions and initiatives with which they were tasked; and gave evidence as to the impact of those tasks on themselves and others. Some individuals expressed concern as to whether their evidence would be accessed by individuals in their chain of command, and we have addressed this in Recommendation 1.

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<sup>11</sup> Of the Armed Forces (Service Inquiries) Regulations 2008 - B113.



## **APPROACH**

1.14 In this report, Section 4 describes as factually as possible the key events in the period from the start of Recruiting Year (RY) 20/21 until the present day.

1.15 Our analysis of those events is in Section 5, and the key issues are addressed by answering the following questions:

### **BULLYING**

1. Was the former Gp Capt R&S "set up to fail" by being set unachievable targets?
2. What impact did the targets have on those charged with delivering them?
3. Did the pressure on the former Gp Capt R&S and her staff amount to Institutional Bullying?

### **POSITIVE DISCRIMINATION**

4. Why did the former Gp Capt R&S state that acts of positive discrimination took place?
5. Was the former Gp Capt R&S instructed to carry out acts of positive discrimination?
6. Was legal advice on positive discrimination properly shared?

### **HOW ISSUES WERE MANAGED IN THE CHAIN OF COMMAND**

7. What cultural factors in the RAF chain of command contributed towards the issues raised by the former Gp Capt R&S?
8. Were the concerns that the former Gp Capt R&S raised about the direction to draw forward female and EM candidates considered appropriately and in a timely manner?
9. Was the former Gp Capt R&S's resignation a reasonable and justified course of action?



## 2. CONCLUSIONS

### BULLYING

**2.1 Q1: Was the former Gp Capt R&S "set up to fail" by being set unachievable targets?** We found that the Diversity and Inclusivity (D&I) Levels of Ambition (LOA) fairly reflected a strategically important Departmental policy priority. However, the LOAs were translated into targets and personal objectives for staff including the former Gp Capt R&S, for which they were insufficiently science based. We determined that although the Senior Leadership Team<sup>12</sup> intended the LOA to be demanding, when presented with compelling evidence they were prepared to amend those targets; and that the former Gp Capt R&S did not appear to have been disadvantaged by not achieving her LOA objective. We therefore concluded, on the balance of probabilities, that although the former Gp Capt R&S was set an unrealistic objective, she had not been set up to fail.

**2.2 Q2: What impact did the targets have on those charged with delivering them?** We found that the additional, intense and consistent pressure placed on those charged with delivering the LOAs - through micro-management, removal of delegated authority, and excessive requests for information - had a significant impact on team morale and stress levels. It also affected the ability of the team to deliver their other outputs, and we understand led others aside from the former Gp Capt R&S to consider leaving the Service. We found that the chain of command and the Senior Leadership Team had not recognised the cumulative pressure they were imposing on the staff at R&S, or the contribution that they and other parts of the Service needed to make to increase diversity.

**2.3 Q3: Did the pressure on the former Gp Capt R&S and her staff amount to Institutional Bullying?** We found that the pressure that the former Gp Capt R&S was subject to was significant, and at times unreasonable; but that it did not amount to institutional or individual bullying.

### POSITIVE DISCRIMINATION

**2.4 Q4: Why did the former Gp Capt R&S state that acts of positive discrimination took place?** We determined that prior to the former Gp Capt R&S's appointment, 161 Ethnic Minority and female candidates had been pulled forward onto Phase 1 training ahead of other candidates. We found that concerns were raised at the time by R&S staff; but that those who led the initiatives believed that they were "pushing the boundaries" of positive action rather than acting unlawfully. We found that the former Gp Capt R&S received legal advice in May and June 2022 that indicated that the pull forward of candidates based on protected characteristics was contrary to the Equality Act 2010, which provided reasonable justification for the former Gp Capt R&S to state that acts of positive discrimination had taken place in RY20/21.

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<sup>12</sup> I.e. the RAF Executive Committee (ExCo).



**2.5 Q5: Was the former Gp Capt R&S instructed to carry out acts of positive discrimination?** We found that there were occasions on which the former Gp Capt R&S was told to consider initiatives which had been the subject of legal advice indicating to her that they would be unlawful. However, after consideration all but one of those initiatives were discounted. One was directed, but was not put into effect because of the former Gp Capt R&S's refusal.

**2.6 Q6: Was legal advice on positive discrimination properly shared?** We found that the legal advice of June 2022 which led the former Gp Capt R&S to say that she was being instructed to act unlawfully, was clear and unequivocal and had been appropriately shared at the time; but was either not seen, or not understood, at 2\* and above.

#### **HOW ISSUES WERE MANAGED IN THE CHAIN OF COMMAND**

**2.7 Q7: What cultural factors in the RAF chain of command contributed towards the issues raised by the former Gp Capt R&S?** Cultural factors in the RAF chain of command contributing towards the issues raised by the former Gp Capt R&S included the accessibility of the senior leadership to recruiting subject matter experts; the interpretation of forecasting in recruiting; perceived openness to challenge on D&I LOA; the relationship between R&S and Air Command; the fact that D&I improvement was not managed as a programme; and the focus on legal risk.

**2.8 Q8: Were the concerns that the former Gp Capt R&S raised about the direction to draw forward female and EM candidates considered appropriately and in a timely manner?** We found that the chain of command's reaction to the former Gp Capt R&S's concerns was overly defensive, and had not properly considered whether she might have been justified in what she said regarding previous acts of positive discrimination, or the legality of what she was asked to do; and that insufficient effort had been made to determine the facts. We found that the delay in acknowledging that candidates had been pulled forward in Recruiting Year 2020/21 contributed to the former Gp Capt R&S's decision to leave the Service; and also resulted in the Senior Leadership Team missing the limited window of opportunity to intervene and to identify suitable employment for the former Gp Capt R&S, which may have retained her in the RAF.

**2.9 Q9: Was the former Gp Capt R&S's resignation a reasonable and justified course of action?** We determined that the former Gp Capt R&S's resignation letter included fair criticisms, which were later proved to be justified; and that her decision to resign was both understandable and reasonable, given her earlier commitment to those under her command. We also agreed that her resignation was potentially avoidable as there were other courses of action open to her to resolve her concerns.



### 3. RECOMMENDATIONS

3.1 We make the following recommendations, which are listed in the order that they are raised within the report.

3.2 **Recommendation 1.** That in order to protect them from any detriment, certain individuals who have given evidence to this inquiry are to be treated in accordance with the MOD Whistleblowing Policy. Further, suitable protection should be put in place to ensure that individuals presented to Promotion and Appointment Boards cannot be potentially disadvantaged by the make-up of the membership of those Boards as a result of the Findings of this Inquiry. This applies to any person who, in giving evidence to this Inquiry, has expressed concern or criticism, explicitly or implicitly, of actions taken by others who either were or are in their chain of command or line management, or had or has a relevant working relationship with them.<sup>13</sup>

3.3 **Recommendation 2.** That a clear distinction be drawn between Levels of Ambition and targets; and that Levels of Ambition should not be linked directly to the personal objectives set for individual service personnel.<sup>14</sup>

3.4 **Recommendation 3.** That the Senior Leadership Team apologises to the former Gp Capt R&S and the staff at R&S for the cumulative pressure that they experienced over the period April 2021 - August 2022.<sup>15</sup>

3.5 **Recommendation 4.** That the Senior Leadership Team prioritises the internal and external communication of the benefits of improving diversity and inclusivity within the Service, and of the fair and lawful routes by which those improvements will be achieved.<sup>16</sup>

3.6 **Recommendation 5.** That guidance on what constitutes unlawful positive discrimination and what constitutes lawful positive action in recruitment and selection be published, and regularly updated.<sup>17</sup>

3.7 **Recommendation 6.** That the Senior Leadership Team ensures that subject matter expert caveats and confidence levels on forecasts are included in senior briefings.<sup>18</sup>

3.8 **Recommendation 7.** That the Senior Leadership Team considers the avenues by which the Executive Committee and its members are open to constructive challenge, the means by which the Shadow Board's views are championed, and the accessibility of the Executive Committee to subject matter experts, to ensure that all issues remain open to

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<sup>13</sup> Paragraph 1.13.

<sup>14</sup> Paragraph 5.17.

<sup>15</sup> Paragraph 5.31.

<sup>16</sup> Paragraph 5.32.

<sup>17</sup> Paragraph 5.54.

<sup>18</sup> Paragraph 5.74e.



challenge, including command priorities of strategic importance.<sup>19</sup>

3.9 **Recommendation 8.** That the Senior Leadership Team considers whether the R&S function best sits under a policy lead, or elsewhere.<sup>20</sup>

3.10 **Recommendation 9.** That the Senior Leadership Team considers whether to manage D&I Improvement as a Programme.<sup>21</sup>

3.11 **Recommendation 10.** That when assessing future recruiting initiatives, the Senior Leadership Team considers how much weight should be given to their innate fairness and alignment with core values.<sup>22</sup>

3.12 **Recommendation 11.** That the staffing of allegations that affect the reputation of the RAF be reviewed in order to ensure that initial consideration is given to the possibility that the allegations may be proven, and that sufficient time and space is given to investigate the facts before announcements are made.<sup>23</sup>

3.13 **Recommendation 12.** That service personnel are reminded of the confidential routes open to them to bring to the attention of the chain of command concerns about actions that go against the Values and Standards of the Services or the Civil Service code, or might be considered unlawful, with examples drawn from recent experience.<sup>24</sup>

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<sup>19</sup> Paragraph 5.75f.

<sup>20</sup> Paragraph 5.76f

<sup>21</sup> Paragraph 5.77f.

<sup>22</sup> Paragraph 5.78g.

<sup>23</sup> Paragraph 5.91.

<sup>24</sup> Paragraph 5.100.



#### 4. SEQUENCE OF EVENTS

##### BACKGROUND

4.1 R&S was established at RAF Cranwell in 1992, with responsibility for the process of attracting, recruiting, selecting and loading onto training courses both officer and enlisted aviator recruits. It originally sat under the command of 22 Group<sup>25</sup>, which runs the training, but for several years it has operated under COS Pers and ACOS WRR<sup>26</sup> within Air Command. Although R&S conducts selection, it is not responsible for setting selection standards, which are owned and set by the individual heads of profession<sup>27</sup>.

4.2 Historically, the primary metric by which R&S performance was judged was the Into Training Requirement (ITR), a measurement of how many individuals who achieve the appropriate standard are fed into training places at 22 Group to meet the workforce demand signal, which is set annually by WRR and Head Resources and Plans (RP)<sup>28</sup>. Additionally, targets have been set for other priority recruitment issues including pinch points and rejoiners<sup>29</sup>.

##### ESTABLISHMENT OF DIVERSITY AND INCLUSIVITY (D&I) TARGETS

4.3 The Defence Diversity and Inclusion Strategy 2018-2030 set the goal of increasing representation of under-represented groups at all levels<sup>30</sup>. In August 2020 the Chiefs committed to delivering the policy, process and behavioural changes necessary to achieve the Front Line Commands' (FLC) Levels of Ambition (LOA)<sup>31</sup>. Noting that "Defence is neither sufficiently diverse nor as inclusive as it needs to be", the Chiefs made a clear commitment, stating that "Improving our diversity is not only morally the right thing to do, it is mission critical. If we are to ensure that the most talented people are recruited and retained, if we are to harness the diversity of thought, skills and talent within the nation we serve and safeguard our nation's security, stability and prosperity, we must do more."<sup>32</sup> Evidence presented to the House of Commons Defence Committee Women in the Armed Forces Inquiry in November 2022, said that the LOA of 30% women by 2030 was an ambitious baseline against which the single services had developed their individual plans. That figure was based on research suggesting that 30% represents a critical mass from which minority groups can impact organisations.<sup>33</sup>

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<sup>25</sup> K017.

<sup>26</sup> Workforce Requirements and Recruiting.

<sup>27</sup> K010, K020.

<sup>28</sup> K003, K018.

<sup>29</sup> K106.

<sup>30</sup> J021.

<sup>31</sup> J002.

<sup>32</sup> J092.

<sup>33</sup> J044.



4.4 Set in the context of Astra, the programme to develop the shape of the RAF for the future<sup>34</sup>, the RAF Executive Committee (ExCo) set in 2019 a strategic aim to access the best talent available and become the most inclusive organisation it can be<sup>35</sup>. ExCo's ambition was to go further than the Chiefs' 30% with their own inflow aspiration of 40% women, 20% Black Asian and Minority Ethnic (BAME), and 5% Lesbian Gay and Bisexual (LGB) by 2030.<sup>36</sup> The annual LOA for the recruiting years from 20/21 to 29/30 for Ethnic Minorities (EM) inflow were established with reference to the proportion of the British population from ethnic minority backgrounds<sup>37</sup>. Incremental increases for female and EM inflow were applied from 2020 as follows<sup>38</sup>:

Inflow	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30
Women	20%	22%	25%	27%	30%	32%	34%	36%	38%	40%
EM	10%	12% <sup>39</sup>	14% <sup>40</sup>	15%	18%	18%	18%	19%	19%	20%

4.5 In addition, LOA percentages were established for all RAF military personnel (i.e. the whole force rather than inflow) of 20% female, 10% BAME and 5% LGB by 2030; with percentage LOA for 1\* and above of 15% female and 10% BAME by 2030<sup>41</sup>.

4.6 The D&I LOA were passed down from ExCo through D Com Cap, COS Pers, ACOS WRR, to Gp Capt R&S in Financial Year (FY) 2020/2021. They became targets in the Command Plan, and were included in those individuals' SOAR<sup>42</sup> and OJAR<sup>43</sup> objectives<sup>44</sup> that year. COS Pers said that "the advice given by my legal colleagues has been that discussing quotas or targets carries greater legal risk than talking about ambitions. As such, the terminology of LOA is preferred, although over time the LOAs have become in-year targets as they are embedded in the Command Plan and have been linked to personal objectives."<sup>45</sup> In recruiting year 2020/2021 (RY 20/21), Gp Capt R&S was therefore given an objective<sup>46</sup> of achieving 20% female and 10% EM entrants into training, plus or minus 1%. R&S were not involved in the process of setting that target.

<sup>34</sup> See <https://www.raf.mod.uk/news/articles/astra-campaign-to-build-the-next-generation-royal-air-force;>  
<http://data.parliament.uk/DepositedPapers/Files/DEP2018-0426/RAF-Strategy.pdf>.

<sup>35</sup> K117.

<sup>36</sup> J095.

<sup>37</sup> A524.

<sup>38</sup> B62.

<sup>39</sup> Later adjusted in year to 9%.

<sup>40</sup> Later adjusted in year to 12%.

<sup>41</sup> J095.

<sup>42</sup> Senior Officer Appraisal Report.

<sup>43</sup> Officers' Joint Appraisal Report.

<sup>44</sup> K051, K055, K119.

<sup>45</sup> K118.

<sup>46</sup> K107.



## PROGRESS AND CHALLENGES IN RY 2020/21

4.7 The R&S D&I targets for RY 20/21 were generally considered to be challenging<sup>47</sup>, especially the 10% EM target. Analysis done by the [REDACTED] concluded that "we could not meet the target using those candidates within the in-year pipeline and that to meet the target we would have to forward load candidates profiled to be loaded into Ph1 training during the first quarter of the next recruitment year (21/22). The downside was that this action would present an even greater challenge for 21/22, given the drawdown of EM and Women candidates from the recruitment pipeline. This was explained in detail to ... [ACOS WRR] (who agreed) and verbally briefed to ... [D Com Cap]. It was also briefed consistently via the R&S fortnightly and monthly update reports."<sup>48</sup> The direction he said he was given by D Com Cap at the time was "to exploit all possible interventions to maximise our BAME inflow in-year, even at the expense of next year's loading, taking risk and pushing the boundaries of PA<sup>49</sup> where we can."<sup>50</sup> R&S were told that the achievement of the EM and female ratios were the Chief of the Air Staff's (CAS) highest priority after operations<sup>51</sup>.

4.8 In line with that direction, a plan was made in August 2020 to pull forward up to 221<sup>52</sup> EM and female candidates, and in most cases hold them as Service personnel Awaiting Trade Training (SATT). What that meant in practice was that individuals, who were all volunteers<sup>53</sup>, were made an offer of employment and went to RAF Halton for Phase 1 training, after which they were held on strength as supernumeraries for up to 274 days<sup>54</sup> until a space on the appropriate Phase 2 training course became available. This policy saw 7 EM and 22 female candidates drawn forward in RY 19/20, and 63 EM candidates and 69 female candidates in RY 20/21<sup>55</sup>. One of the consequences was that in some instances only BAME and female candidates were accepted onto certain courses, and white male candidates were not<sup>56</sup>. An R&S officer wrote to members of his team on 18 February 2021 saying "As you are currently doing, only BAME and female candidates should be allocated to the remaining spaces on BRTC<sup>57</sup> 676 and BRTC 677. We will review the loading of other candidates when we have no more BAME or female candidates to load."<sup>58</sup>

4.9 The core legal advice document which R&S and the chain of command were working to, which it was believed supported the drawing forward of female and EM candidates as

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<sup>47</sup> K040, K118.

<sup>48</sup> K108.

<sup>49</sup> Positive Action.

<sup>50</sup> A292, L028.

<sup>51</sup> F036, L042.

<sup>52</sup> A058.

<sup>53</sup> A289.

<sup>54</sup> F033.

<sup>55</sup> B94. In total 161 candidates (70 EM and 91 women) were pulled forward based on their protected characteristics.

<sup>56</sup> K061.

<sup>57</sup> Basic Recruit Training Course

<sup>58</sup> L009. Underlining by the originator. See also K061, L090 and L431 for other instances.



positive action (PA), was a guidance note dated 16 June 2020<sup>59</sup>. That advice was written based upon an understanding, subsequently determined to be incorrect, that loading onto Phase 1 training was distinct from the recruitment process<sup>60</sup>. We noted that legal advice had also been sought about some specific initiatives during this period<sup>61</sup>; and that in March 2020 a briefing was given to staff to clarify the boundaries of positive action<sup>62</sup>. The [REDACTED] said "I was directed (verbally) to push the boundaries of positive action to the absolute limit... Where we thought there was a marginal gain to be exploited, we sought legal advice, and acted within the legal advice received."<sup>63</sup> ACOS WRR at the time said "We were working to the best legal advice we had at the time and all understood that we had legal agreement to do that and that it had been done before, in previous years. I was briefed regularly by [REDACTED]<sup>64</sup> [REDACTED] Exec<sup>65</sup> team regularly about this and their engagement with Legal and 22Gp<sup>66</sup> and we had many conversations about the legal boundary because there were multiple workstrands running to improve EM and female inflow at that time. We were very conscious of EA10 throughout."<sup>67</sup>

4.10 However, there was also unease at the time regarding these initiatives.

a. The staff at R&S who dealt with candidates expressed concern that SATT personnel would not be gainfully employed while waiting, that the experience might be demotivating<sup>68</sup>, and that the measure would create a deficit in the first part of the following year<sup>69</sup>.

b. Concerns were also raised by staff who were uncomfortable about the fairness of the policy<sup>70</sup>. A senior non-commissioned officer (SNCO) in an AFCO wrote: "What triggered me to investigate at the time were the amount of phone calls we received from white male candidates on the internal commissioning scheme asking why they weren't loaded to MIOT but their female friends were. The unfortunate aspect being colleagues talk to each other post OASC<sup>71</sup> and do discuss recommendations which puts us in a tricky situation to try and explain on behalf of OASC the reason behind it."<sup>72</sup> A Junior NCO (JNCO) in the same AFCO recounted on

<sup>59</sup> L099-104.

<sup>60</sup> K133-4. It was only in May 2022 when SO1 Legal consulted with an officer in R&S that he learned that a space on a Phase 1 training course "equated to a single "job"/recruitment. This being the case there was no doubt that we must apply s159 of the Equality Act 2010".

<sup>61</sup> L041, L044.

<sup>62</sup> L460-78.

<sup>63</sup> K108.

<sup>64</sup> Group Captain.

<sup>65</sup> Executive.

<sup>66</sup> 22 Group.

<sup>67</sup> K039.

<sup>68</sup> K025: "EM and Women who were pulled forward early would be sitting waiting in a crew room somewhere without a proper role, and that seemed wrong". L038: "there is a danger that when we increase holds to this extent they de-militarize/become disillusioned and leave in any case."

<sup>69</sup> A160, K017, L004.

<sup>70</sup> L061-69, L071-4, L081, L090, L116, L429.

<sup>71</sup> Officer and Aircrew Selection Centre.

<sup>72</sup> L429.



25 January 2021 being told by a JNCO in R&S that white males were not being allocated to a course and "she needed to be careful what is said in emails as this could potentially blow up down the line for discrimination"<sup>73</sup>. An officer in WRR said "I recall that going into the final quarter, around December 2020, it was clear we were going to fail to hit the targets. There was a discussion on legality of the direction, but ... [ACOS WRR] was content that the lawyers has given a thumbs up [sic]. My personal perspective was that we appeared to be offering earlier employment to people because of their ethnicity or gender; it didn't seem fair."<sup>74</sup>

c. An R&S officer raised concerns and said he was told that legal advice endorsed these initiatives.<sup>75</sup> On 24 May 2021 he wrote: "I would like a clear discussion with LEGAD about the policy of prioritising BAME and women candidates ahead of white males at every stage of the assessment and selection process, when we are supposedly running a first past the post system. I would also like to check the legitimacy of placing BAME and women candidates into trg<sup>76</sup> ahead of other applicants, especially if there is no trade place on the SDB<sup>77</sup>. The last element is not just a PA v PD issue, but a general bad practice as it artificially inflates the numbers of BAME/women in-yr, leaving us at a disadvantage in the following RY."<sup>78</sup> COS Pers raised concerns with DLS on 18 August 2020 in relation to an instruction from D Com Cap's office "that this direction is sitting in a grey area, somewhere between PA and PD. Any advice or support for a gentle push-back/realignment is welcome."<sup>79</sup>

4.11 During this period the chain of command maintained significant pressure on R&S to hit the targets through regular holding to account meetings, and requests for data in the form of slide packs and dashboards for a fortnightly update to ExCo through D Com Cap, and a quarterly management report to COS Pers<sup>80</sup> and CDP<sup>81</sup>.

4.12 In the same financial year, for budget management reasons and in order to fund the RITS programme, the R&S Marketing budget was cut in year<sup>82</sup>. Because some spending was already contractually committed, this left little room for manoeuvre to retarget the remaining budget<sup>83</sup>.

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<sup>73</sup> L081.

<sup>74</sup> K092.

<sup>75</sup> K017, K022, L147.

<sup>76</sup> Training.

<sup>77</sup> Strategic Drafting Brief, the document which directs how many individuals are required for each specialisation in Phase 1 training.

<sup>78</sup> L011, L151.

<sup>79</sup> A383. DLS responded the same day with "I have passed this onto ... [DDLS], who has been in touch with ... [REDACTED] to support."

<sup>80</sup> COS Pers stated that her approach was different to others' in that she sought quarterly returns to meet a mandatory reporting requirement to CDP; whereas the 2 weekly reports were required by D Com Cap for ExCo until the end of January 2022, and continued by the A/COS Pers until early May 2022.

<sup>81</sup> K109.

<sup>82</sup> D033, K108-9, K121.

<sup>83</sup> K109.



4.13 **End of Year LOA Achievement.** At the end of RY 20/21 R&S achieved 9%<sup>84</sup> EM against a 10% target (+/- 1%) and 19.1%<sup>85</sup> females against a 20% target (+/- 1%). D Com Cap, visited R&S in March 2021 at the end of the recruiting year, thanked the [REDACTED] [REDACTED] for his achievements, and said that this was the baseline to be exceeded in RY 21/22.<sup>86</sup>

#### **PROGRESS AND CHALLENGES IN RY 2021/22**

4.14 F/Gp Capt R&S took over her appointment as Gp Capt R&S on 31 March 2021, at the very start of RY 21/22. During her takeover she was briefed that she was inheriting a significant challenge due to the pull forward of female and BAME candidates the previous recruiting year, and she flagged this up to both D Com Cap and COS Pers during her arrival telephone conversations<sup>87</sup>.

4.15 Early in F/Gp Capt R&S's tenure, after visiting all 27 locations under her command and finding that in her words "The feeling amongst the staff at R&S was that what had happened was both morally and legally wrong, many felt disenfranchised and several wanted to leave"<sup>88</sup> she made a commitment to the R&S team "that R&S would not undertake any actions that would undermine the values of the Service or that were outwith the Equality Act 2010."<sup>89</sup> She also asked the RAF legal advisory team to provide staff briefs on the distinction between PA and PD.<sup>90</sup> In addition, in May 2021 an exercise was undertaken across R&S to gather staff experiences of occasions when they thought that R&S might previously have strayed into positive discrimination.<sup>91</sup>

4.16 RY 21/22 was particularly challenging for R&S a number of reasons:

- a. The Covid lockdown impacted the ability of R&S staff to recruit in the way they were set up to do, especially in the Armed Forces Careers Offices (AFCOs); and also affected the target audience's ability to connect face to face with the recruiters. On the other hand, the lockdown did encourage some who had recently left the Service to rejoin, including pilots who had only recently left for the civilian airline industry<sup>92</sup>.
- b. Q1 RY 21/22 had been stripped of female and EM candidates by the pull forward conducted in RY 20/21.<sup>93</sup>

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<sup>84</sup> D006.

<sup>85</sup> D004.

<sup>86</sup> K002.

<sup>87</sup> K002.

<sup>88</sup> K002.

<sup>89</sup> K003, K025, L004.

<sup>90</sup> K003.

<sup>91</sup> A162, L429-35.

<sup>92</sup> K120.

<sup>93</sup> A313.



- c. R&S was introducing during 2021/22 a new IT system known as the Joint RN/RAF Recruiting Information Technology System (RITS). The introduction of this system required recruiting to be suspended for 2 months from January 2022<sup>94</sup>, and around 7000 records to be transferred manually from the old system onto RITS<sup>95</sup>. The system went live in March 2022<sup>96</sup>.
- d. The R&S Marketing budget had been reduced from £10.8M in FY19/20 to £6.3M in FY20/21, and to £5.7M in FY21/22. Part of the reduction was to pay for RITS implementation<sup>97</sup>.
- e. R&S was also preparing for the introduction of the Armed Forces Recruiting Programme (AFRP), a tri-service programme to introduce a new recruiting system, including new IT, from 2025.<sup>98</sup>
- f. The outsourcing of medical and fitness tests had seen high failure rates amongst EM and female recruits.<sup>99</sup>
- g. R&S was in the process of instituting a reduction of 65 posts, around 15% of the workforce<sup>100</sup>; and restructuring the 27 AFCOs into 9 regional hubs.<sup>101</sup>
- h. The D&I target for RY 21/22 was more demanding than for the previous year, set at 22% (+/- 2%) for women and 12% (+/- 1%) for EM<sup>102</sup>.

4.17 In September 2021 ACOS WRR, in post from June 2021, reported that R&S were 80% confident of achieving 10% EM inflow, and 100% confident of achieving 9%<sup>103</sup>. On 4 November 2021 F/Gp Capt R&S was given an update by her staff on the allocation of EM and women to the ITR<sup>104</sup>. That brief indicated that there was significant risk against the LOA targets, and that the best that could be achieved was 8.7% EM and 22.5% women (but strongly caveated that the remaining available places were in trades that were less attractive to EM and women). On 9 November 2021, F/Gp Capt R&S reported to COS Pers and ACOS WRR that R&S predicted that they would hit 23% inflow for women and 9% for EM<sup>105</sup>. COS Pers said that "I was told that there was over 90% confidence in these predictions".<sup>106</sup> COS Pers consulted with ExCo<sup>107</sup> in December 2021 "using the same 'over

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<sup>94</sup> K005.

<sup>95</sup> A071.

<sup>96</sup> M012.

<sup>97</sup> D033.

<sup>98</sup> A337-50.

<sup>99</sup> A072.

<sup>100</sup> A110.

<sup>101</sup> K006.

<sup>102</sup> A075.

<sup>103</sup> K055, K073.

<sup>104</sup> I053-058.

<sup>105</sup> K073, K131.

<sup>106</sup> K121.

<sup>107</sup> A165.



90% confidence' language"<sup>108</sup>, and in response ExCo reduced the RY 21/22 EM target to 9%<sup>109</sup>.

4.18 On 16 December 2021 ACOS WRR departed to attend the Higher Command and Staff Course (HCSC), returning to her post on 3 May 2022. During this period [REDACTED] stood up as [REDACTED].

4.19 On 13 January 2022 COS Pers visited R&S<sup>110</sup> and was briefed that the latest data indicated that in the Fourth Quarter (Q4) of RY21/22, achievement against D&I targets sat at 5.7% for EM and 19.7% for women<sup>111</sup>. F/Gp Capt R&S also explained the impact of the demanding LOA on the R&S team<sup>112</sup> and the additional measures being taken under the title of Operation DELIVER to make good shortfalls<sup>113</sup>.

4.20 On 26 January 2022 F/Gp Capt R&S attended a meeting with D Com Cap and COS Pers in High Wycombe to discuss potential ways to improve performance against targets. Various options were discussed including a suggestion to accelerate the entry of Foreign and Commonwealth candidates, and whether to change the security and aptitude requirements for engineers<sup>114</sup>. [REDACTED] said that D Com Cap "was proposing ideas, and ... [F/Gp Capt R&S] was generally saying that her team had already tried them or that they simply wouldn't work based on her teams experience."<sup>115</sup> The meeting became frictional and was called to a close by COS Pers<sup>116</sup>.

4.21 D Com Cap stood down from his role at the end of January 2022, and COS Pers stood in as Acting D Com Cap (A/D Com Cap) until May 2022. ACOS Pers Pol stood in as Acting COS Pers (A/COS Pers) over the same period.

4.22 At the Air Force Main Board (AFMB) on 9 February 2022, a Non-Executive Board Member said that although the EM target had reduced from 12% to 9%, it would still be a considerable success if achieved. A/D Com Cap responded that it was currently tracking at 5.7%, 3.3% below the 9% target<sup>117</sup>, and committed to bring an action plan to the March 2022 ExCo meeting.<sup>118</sup>

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<sup>108</sup> K122.

<sup>109</sup> G030.

<sup>110</sup> A064-123.

<sup>111</sup> K148.

<sup>112</sup> A077.

<sup>113</sup> A078-81, K148.

<sup>114</sup> K010.

<sup>115</sup> K090.

<sup>116</sup> The meeting is analysed in greater detail at Paragraph 5.37 below.

<sup>117</sup> The AFMB minutes show that it was tracking at 3.3%, but the Panel agreed with COS Pers (M013) that this was a misunderstanding by the writer of the minutes.

<sup>118</sup> A194.



4.23 [REDACTED] 119

4.24 **End of Year LOA Achievement.** At the end of RY 21/22, R&S achieved inflow into training of 5.4%<sup>120</sup> EM against the reduced target of 9%, and 18.2%<sup>121</sup> women against a target of 22; and 98% against the ITR.<sup>122</sup>

4.25 **30 March 2022 ExCo Meeting.** Progress towards D&I targets was discussed at the ExCo meeting on 30 March 2022<sup>123</sup>.

- a. At A/D Com Cap's direction [REDACTED] wrote a paper for ExCo to set out the many initiatives in hand at R&S, and to bring some statistical evidence to the debate. It also provided some context, and consideration of the factors outside R&S's control that could impact the ability to meet LOA targets<sup>124</sup>.
- b. Prior to the meeting, the Shadow Board and some individual board members had been briefed by F/Gp Capt R&S<sup>125</sup> and [REDACTED] on the paper<sup>126</sup>. The Shadow Board feedback to the ExCo was that the EM recruitment target was unrealistic, and they stressed the need to understand why people from EM backgrounds did not consider applying to join the RAF.
- c. In the ExCo meeting CAS expressed his disappointment at the failure to reach even the revised 9% EM target. He said that the organisation (R&S) had been less than candid about course loading and its ability to meet the target, and had been ineffective in driving the change needed. He noted that course loading for the first three months of RY 22/23 implied an achievement of only 6% again. CAS encouraged greater positive action and a greater sense of ambition and urgency.
- d. A/D Com Cap echoed CAS's disappointment and said that she would hold R&S to account for delivery<sup>127</sup>.
- e. CAS directed that the EM target for RY 22/23 should be 12% rather than 14% as originally planned.
- f. Director Legal Services (DLS) took an action to ensure that the approach to positive action in recruitment remained within legal boundaries.

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<sup>119</sup> K052, K150.

<sup>120</sup> D006.

<sup>121</sup> D004.

<sup>122</sup> K006

<sup>123</sup> A518-532.

<sup>124</sup> I008-21, K090.

<sup>125</sup> K005.

<sup>126</sup> I022-48.

<sup>127</sup> Discussed in more detail at Paragraph 5.28.



- g. An action was placed on F/Gp Capt R&S to develop an Air Cadet recruitment plan.
- h. D Com Ops took an action to develop a 3\* sign-off process for Phase 1 training with 22 Group demanding the appropriate flow from R&S.

#### INITIATIVES AND ADVICE APRIL-JULY 2022

4.26 In April 2022 F/Gp Capt R&S considered A/COS Pers's proposal for further opportunities to improve recruiting of female and EM candidates by establishing a "Fast Track" Positive Action Pathway for them, which arose out of a suggestion made by a senior warrant officer<sup>128</sup>. F/Gp Capt R&S suggested how it could be done while staying the right side of the PA/PD line, getting EM and women to initial gate potentially faster and supporting them through the process through positive action, whilst still putting them through the same selection process<sup>129</sup>.

4.27 This "fast tracking" discussion led R&S to seek further legal advice<sup>130</sup> from SO1 Legal<sup>131</sup> on 19 April 2022,<sup>132</sup> whose advice was that "the 'Time of Flight' is a crucial factor as to whether a job is offered or not. This would in my view be considered to be part of the recruitment process and the tie-break provisions would apply. This [fast tracking proposal] would, on the available info, be positive discrimination which you have already identified is not lawful in the UK".<sup>133</sup> An R&S officer informed F/Gp Capt R&S and said "... [SO1 Legal] has clarified that both fast-tracking based on Protected Characteristics (PCs) and any type of 'quota' activity constitute **direct discrimination** and are therefore unlawful in the UK. This is key to our stance and must be highlighted to the ExCo."<sup>134</sup>

4.28 Following this, SO1 Legal prepared more detailed advice in the form of a note to ACOS Pers Pol dated 9 May 2022<sup>135</sup>. In preparing that note he consulted with a member of R&S staff to clarify the precise relationship between Phase 1 training and recruitment, and it was "explained to me in detail the phase 1 training and recruitment process, and that a space on a phase 1 training course equated to a single "job"/recruitment, this had not been clear previously. This being the case there was no doubt that we must apply s159 of the Equality Act 2010, and both ... [REDACTED] and DDLS were content that the advice was correct. I believe that the advice was communicated to DLS at the time by DDLS and was included in the legal advisory teams fortnightly UPREP<sup>136</sup> to DDLS/DLS".<sup>137</sup> On 11 May 2022 and 1 June 2022 SO1 Legal provided further clarifying advice to ACOS Pers Pol, ACOS WRR

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<sup>128</sup> B38-40, K046.

<sup>129</sup> B37.

<sup>130</sup> K031.

<sup>131</sup> The main legal advisor on this issue for the period covered by this Inquiry.

<sup>132</sup> G041-44.

<sup>133</sup> G042.

<sup>134</sup> G041. Emboldened by the originator.

<sup>135</sup> G156.

<sup>136</sup> Update Report.

<sup>137</sup> K134.



and F/Gp Capt R&S <sup>138</sup>.

4.29 The advice of 9 May 2022 was significant because it was informed by a better understanding of the recruitment process, and because it made it clear that "any proposal which refers to advancing a quota of persons sharing a protected characteristic, fast-tracking them through the recruitment process, or otherwise favours them to the detriment of those not sharing the protected characteristic without adherence to the tie-breaker provision will be unlawful."<sup>139</sup> This was a significant change, including to advice given only weeks earlier to ACOS Pers Pol by DDLS.<sup>140</sup>

4.30 Following up on the ExCo action on 22 Group to establish a 3\* sign off for course loading, on 20 April 2022 [REDACTED] set an action on 22 Group, ACAS (Plans), COS Pers and DLS to develop a process to decide whether a course should go ahead if there were less than 12% EM.<sup>141</sup> On 6 June 2022 SO1 Legal wrote legal advice on this proposal to ACOS WRR and F/Gp Capt R&S <sup>142</sup>. The advice was that setting a female/EM quota for a course, or treating EM and women more favourably in connection with recruitment or promotion, was contrary to EA10. This advice was sent to ACOS WRR on 6 June 2022 and passed by her to COS Pers' office on the same day<sup>143</sup> with the words "As discussed, please add this to the ... [COS Pers's] pack-up for the H2A tomorrow. I have a follow-on meeting with ... [SO1 Legal] tomorrow, so I can take forward any RFIs/points of clarification that COS Pers may have. I have also asked ... [SO1 Legal] to ensure DLS and D/DLS have visibility in case COS Pers wishes to engage at her level [sic]."<sup>144</sup> COS Pers said "I did not see that advice at the time. It is possible that it went into a briefing pack for the meeting I had with F/Gp Capt R&S and ACOS WRR on 7 June but I don't recall seeing it and my attention was certainly not drawn to it as an important topic by any of my staff ... If the advice of 6 June had been brought to my attention, I would have discussed it with DLS in the first instance, as a trusted 2\* colleague"<sup>145</sup> The course quota proposal was not put into effect, although it is not clear whether the legal advice or push back from 22 Group<sup>146</sup> was the deciding factor.

4.31 On 7 June 2022 F/Gp Capt R&S and ACOS WRR briefed COS Pers that R&S had already loaded 77% of the officer course places for RY 22/23, and 53% of Enlisted Aviator (EA) course places. Of the remaining places the majority were in the RAF Regiment and engineering trades, which were historically less attractive to both female and EM candidates<sup>147</sup>. Of the candidates already loaded, 18% were female and 7% were EM, falling significantly short of the LOA of 25% and 12% respectively<sup>148</sup>. COS Pers said that "It was at

<sup>138</sup> A506. The Panel noted that this advice was not shared with COS Pers.

<sup>139</sup> G156.

<sup>140</sup> F039.

<sup>141</sup> F042.

<sup>142</sup> A027-29.

<sup>143</sup> D025.

<sup>144</sup> A026.

<sup>145</sup> K125.

<sup>146</sup> K010.

<sup>147</sup> K091.

<sup>148</sup> I072.



the meeting that I realised for the first time how difficult it would be to deliver the in-year diversity targets in 22/23.”<sup>149</sup> F/Gp Capt R&S said that “The pull forward proposal, and slowing down white males, was discussed on 7 June 2022, at a meeting I attended with ACOS WRR and COS Pers (legal were not present). ACOS WRR led that meeting and she had her set narrative. I know ... [REDACTED] had previously spoken to COS Pers and said she should not authorise that measure and I said the same. I did ask ... [ACOS WRR] if COS Pers had all the available information, including the legal advice of 6 June.”<sup>150</sup>

4.32 On 8 June 2022 COS Pers said that she had discussed with CAS the incompatibility of the ITR and the diversity LOAs, and that CAS was supportive of “bending the ITR out of shape” to generate the diverse inflow that ExCo were aiming for<sup>151</sup>, and recruiting over the workforce requirement in areas which were more attractive to female and EM candidates. SO1 Legal provided written legal advice to ACOS WRR indicating that this would be contrary to EA10.<sup>152</sup>

4.33 On 15 June 2022 COS Pers gave direction to ACOS WRR to slow down filling the ITR unless it was a candidate from an under-represented group<sup>153</sup>. F/Gp Capt R&S sought legal advice from SO1 Legal on 15 June 2022, and was advised that the direction to fill the ITR only from an under represented group would be “directly contrary to EA10 s159”.<sup>154</sup> ACOS WRR told R&S that in order to give the Senior Leadership Team (SLT) some decision space and opportunity to discuss at the Air Force Main Board (AFMB) Awayday, conscious choices needed to be made as to whether to make an offer of employment<sup>155</sup>. In the absence on leave of COS Pers, ACOS WRR therefore directed that course loading be paused for all candidates<sup>156</sup>. This course loading pause ended on 7 July 2022<sup>157</sup>. From that date a 2\* approval process was applied by which COS Pers personally approved the loading of each initial training course. This oversight system continued into September 2022 during which time every request submitted was approved by COS Pers.<sup>158</sup>

4.34 On 11 July 2022 D Com Cap chaired a Holding to Account (H2A) meeting in preparation for the 7 September 2022 Main Board Awayday, principally focusing on branch and trade adjustments<sup>159</sup>. COS Pers, DDLS, F/Gp Capt R&S and SO1 Legal attended. One of the “bending out of shape” options discussed at that meeting was whether to create an additional 196 Personnel Operations (Pers Ops) posts in the Service above the ITR, in part because these roles were historically attractive to both female and EM candidates<sup>160</sup>. It was made clear by ACOS WRR that the total cost of this would be around £11M, and gaps would

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<sup>149</sup> K124.

<sup>150</sup> K149.

<sup>151</sup> B52.

<sup>152</sup> K136, G120-122.

<sup>153</sup> B012.

<sup>154</sup> C040-41.

<sup>155</sup> G101.

<sup>156</sup> K057.

<sup>157</sup> H003.

<sup>158</sup> K125.

<sup>159</sup> K149.

<sup>160</sup> K007, K126.



be created elsewhere in the front line. SO1 Legal reiterated his advice that creating additional ITRs in order to improve the RAF's statistics would be contrary to EA10<sup>161</sup>. At D Com Cap's direction the proposal was not pursued further<sup>162</sup>.

#### **EVENTS LEADING UP TO THE FORMER GP CAPT R&S'S RESIGNATION**

4.35 In the context of the 2\* course loading approval process, on 1 August 2022 ACOS WRR offered COS Pers three potential Courses of Action (CoA) to make offers of employment to candidates awaiting initial training, with the recommended CoA being to load 18 x EA (of whom one was EM) and 4 officer candidates (of whom one was female).<sup>163</sup> Following discussion, on 3 August 2022 COS Pers agreed to load those candidates and, believing all candidates in the pool to be "equally qualified and thus could be legally pulled forward under the tie break clause, based on their protected characteristics, as a positive action measure"<sup>164</sup>, she also directed that any remaining women or EM candidates in those priority professions who were ready should also be loaded, even if the EA candidates were not "first past the post". ACOS WRR discussed this direction with F/Gp Capt R&S on 2 August 2022<sup>165</sup>, and F/Gp Capt R&S said that she responded that it was "unlawful and out with the Equality Act 2010, reminding her that we had seen extensive legal advice from the DLS team on this matter... I restated my red line regarding this unlawful order, and that there would be consequences if this order was passed to R&S, i.e. I would not delegate it further to my team to action."<sup>166</sup>

4.36 On the afternoon of 2 August 2022 ACOS WRR emailed COS Pers with the draft direction to R&S to "Course Load the 18 EA and 4 Offrs plus any remaining Women and EM in those priority Professions that are ready, even if the EA Candidates are not 'first past the post'"<sup>167</sup>. She suggested to COS Pers that "you may wish ... [REDACTED] to staff this/your revised DRAFT via Legad, M&C<sup>168</sup> and the Secretariat on your behalf. Unsure if you would also like to tip your hat to DCom Cap"<sup>169</sup>. COS Pers responded "Draft words agreed – DCom Cap is in the loop already".<sup>170</sup> On 3 August 2022 ACOS WRR passed on the agreed direction to R&S with the covering words "Sent on behalf of ... [COS Pers]".<sup>171</sup> ACOS WRR then spoke to F/Gp Capt R&S within 30 minutes.<sup>172</sup>

4.37 On 3 August 2022 an R&S officer specifically sought advice from the Legal Advisory team on whether the direction given by COS Pers was contrary to the legal advice given by SO1 Legal on 9 May 2022 and 6 June 2022, highlighting where the direction conflicted. The

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<sup>161</sup> K136.

<sup>162</sup> K057.

<sup>163</sup> D015-18

<sup>164</sup> K126.

<sup>165</sup> F/Gp Capt R&S had been on leave the previous week. K006.

<sup>166</sup> K011.

<sup>167</sup> D011.

<sup>168</sup> Legal Advisor and Media and Communications.

<sup>169</sup> D011, K058.

<sup>170</sup> D011.

<sup>171</sup> A046.

<sup>172</sup> A032, K012, M39.



response sent on the morning of 4 August 2022 was: "The Advisory team have provided legal advice to the chain of command on this issue. We can't now provide the advice you request based upon the direction made by the chain of command because that would present a conflict of interest for the team."<sup>173</sup>

4.38 F/Gp Capt R&S was in High Wycombe on 4 August 2022 and responded by email to COS Pers's instruction, as disseminated by ACOS WRR, saying that she had taken the action to make offers of employment to the 18 x EA and 4 officers but that the direction to do likewise for additional women and EM candidates solely on the basis of their protected characteristics in preference to non-EM men who have successfully passed all selection criteria ahead of them was contrary to the Equality Act 2010 (EA10). She said: **"This is unlawful. As Gp Capt R&S, I am not prepared to delegate or abdicate the responsibility of actioning that order to my staff."**<sup>174</sup>

4.39 F/Gp Capt R&S's email was forwarded to COS Pers, who requested urgent advice from DLS<sup>175</sup>. DLS's deputy, [REDACTED] and SO1 legal advisers who had been dealing with the issue were absent on leave<sup>176</sup>. DLS responded personally saying that the issue hinged on what "qualified" means, and whether time spent waiting since application was included in qualifying criteria.<sup>177</sup> On the understanding that all qualified candidates were of equal merit, she concluded that in a profession where a protected characteristic is under-represented, loading women and EM candidates ahead of those who have been waiting longer is likely to be considered proportional and be legally defensible<sup>178</sup>.

4.40 DLS's advice was copied to F/Gp Capt R&S on the afternoon of 4 August 2022. F/Gp Capt R&S submitted her resignation letter<sup>179</sup> in person to D Com Cap's office at RAF High Wycombe the same day. D Com Cap was not in the office that day, so F/Gp Capt R&S handed her sealed letter to his [REDACTED], explaining the purpose of the letter. [REDACTED] said that D Com Cap would not see it until the following day, suggested that F/Gp Cap R&S might want to consider further, and offered her the opportunity to speak to D Com Cap when he was back in office<sup>180</sup>. F/Gp Capt R&S declined, sent her letter electronically later the same day, and spoke to ACOS WRR later that afternoon.<sup>181</sup>

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<sup>173</sup> G170.

<sup>174</sup> A031. Emboldened by the originator.

<sup>175</sup> A031.

<sup>176</sup> K058.

<sup>177</sup> M018: DLS stated that "legal advice is based upon the instructions provided by the client. This instance was no different and it was the instructions given which provided the understanding that is then referenced."

<sup>178</sup> A045.

<sup>179</sup> A410.

<sup>180</sup> M055.

<sup>181</sup> K012.



## EVENTS FOLLOWING THE FORMER GP CAPT R&S'S RESIGNATION

4.41 After tendering her resignation and speaking to D Com Cap, F/Gp Capt R&S stepped away from R&S on Friday 5 August 2022.

4.42 On 8 August 2022 an R&S officer emailed ACOS WRR pointing out that placing women and EM into training ahead of white men on the basis that all successful candidates were equally qualified (therefore using their protected characteristic as a "tie-breaker"), was inconsistent with the fact that all candidates were in fact scored in both their Defence Aptitude Assessment (DAA) and Interview (although those scores were not being used to create an order of merit).<sup>182</sup> Later the same day, ACOS WRR visited R&S to meet with the executive team, and D Com Cap also joined the meeting virtually. The meeting included discussion of the legal advice provided to R&S on 6 June 2022, which D Com Cap had not seen<sup>183</sup>. As a consequence, DLS visited R&S on 10 August 2022. ACOS WRR states that DLS, having gained a better understanding of the recruitment and selection process, informed D Com Cap, COS Pers and herself by telephone that her advice had changed; and that COS Pers's instruction of 3 August 2022 "should not have been issued"<sup>184</sup>. DLS confirmed that she spoke to those individuals<sup>185</sup> and "explained the clarified instructions and resultant comprehensive advice", and that she followed up with an email on 11 August 2022 setting out her advice in more detail.<sup>186</sup>

4.43 On 17 August 2022 CAS wrote to the Chief of the Defence Staff (CDS) and Permanent Under Secretary (PUS) with an update on diversity inflow and levels of ambition. He said that "to date positive action has not been utilised to bring forward applicants with a Protected Characteristic", and that R&S was working with DLS to ensure that all proposed interventions were in line with the legal boundaries of positive action rather than positive discrimination. He added that media reporting had been inflammatory and inaccurate, but it had reflected to an extent the cultural challenge of changing longstanding R&S practice; that the team had been consistently excellent at recruiting overall, but that experience was that active Board-level intervention was necessary in order to move the dial on diversity recruiting<sup>187</sup>.

4.44 D Com Cap spoke to F/Gp Capt R&S on 5 August 2022<sup>188</sup> and wrote to her on 23 August saying that he was determined to make sure that the concerns she had raised were properly considered and addressed. He also said that he hoped that if she had brought those concerns to him before resigning, a way could have been found to address those concerns that would have given her the assurance she deserved. He said that he had not seen evidence that white men had been disadvantaged or that there had been positive

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<sup>182</sup> A044, K061.

<sup>183</sup> K012, K061.

<sup>184</sup> K061.

<sup>185</sup> M019.

<sup>186</sup> M019, M49-54.

<sup>187</sup> E37-8.

<sup>188</sup> K012.



discrimination in favour of those with protected characteristics, but that the issues raised were serious and not ones that CAS and the Air Force Board would be comfortable with<sup>189</sup>.

4.45 The AFMB on 7 September 2022<sup>190</sup> included an agenda item on recruitment which was briefed by ACOS WRR.

a. CAS said that he had asked the Chief of Defence Personnel (CDP) to conduct a swift review of the RAF's recruiting practices, and that the review had concluded that no evidence of actual discrimination had been found, however direction had been given which if acted upon would have left the RAF exposed to a high level of risk of successful legal challenge.

b. CDP said that it had taken Air longer than it perhaps should to act on the concerns raised by F/Gp Capt R&S; that the initial direction was based on the misunderstanding that all candidates who had successfully passed selection could be considered to be of equal merit; that this direction was not implemented due to F/Gp Capt R&S's challenge, and was abandoned entirely as soon as it became apparent that data was available to allow more accurate differentiation between candidates.

c. CAS stated his intent to commission a NSI to understand better the circumstances and the culture that resulted in the delay in addressing concerns raised by F/Gp Capt R&S. He noted that Air needed to improve communication of its intent, both internally and externally, about diversity and why it was so important to operational effectiveness, culture, and behaviour both now and in the future.

d. The AFMB agreed to retain its "stretching LOA" of inflow into the Service of 40% women and 20% EM but recognised that this aspiration should not be linked directly to individual in-year objectives. Acknowledging the marginal gains to be made from positive action in recruitment, AFMB members agreed that a greater proportion of effort would now be placed upstream on the pre-recruitment "attract" phase, with a renewed emphasis on social mobility.

e. The Secretary of State for Defence (DS) welcomed the NSI and said that the RAF leadership needed to engage directly with F/Gp Capt R&S.

4.46 On 28 October 2022 the [REDACTED] wrote on behalf of CAS to DS with a further update on historical initiatives to increase diversity in RAF recruiting<sup>191</sup>.

a. The note said that EM and female candidates had been brought forward in the period July 2019-August 2022, and that although at the time this had been thought to be legally permissible, it was now clear that these initiatives fell outside

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<sup>189</sup> A412-3.

<sup>190</sup> C001-5.

<sup>191</sup> L444.



what the law allowed.

b. The note also stated that F/Gp Capt R&S was right in her contention that what she had been asked to do was contrary to legal advice, but that it appeared possible that the written legal advice may not have reached all relevant parts of Air Command, who therefore may have continued wrongly to think that the practice was lawful.

4.47 After her resignation from post, F/Gp Capt R&S spoke to D Com Cap on 5 August 2022. She says that D Com Cap suggested that she take planned leave. Later she spoke to the Air Secretary's team and said that she was thinking of leaving the Service<sup>192</sup>. After returning from leave, she was told that "there was project work but no jobs until 2023"<sup>193</sup>. It was clear that no thought had been put into my future at all. I therefore decided that I had no trust in the chain of command, had been put in a position from which there was no way back and I have therefore now terminated my service."<sup>194</sup>

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<sup>192</sup> K013.

<sup>193</sup> K128.

<sup>194</sup> K013.



## 5. ANALYSIS

### BULLYING

#### **Q1: WAS THE FORMER GP CAPT R&S "SET UP TO FAIL" BY BEING SET UNACHIEVABLE TARGETS?**

5.1 In her resignation letter<sup>195</sup>, F/Gp Capt R&S said that the LOA for diversity in the Service that she was asked to achieve were over inflated and not informed by societal or scientific evidence. As a result, she felt that she had been "set up for failure by the Air Force Board Executive". She said that many of the control levers, such as security and educational policy, were outside of her control. She concluded that the overzealous pursuit of unrealistic LOA had distorted the whole process of recruitment and created a sense of disillusionment across her entire organisation.

5.2 We discussed the strategic context in which the LOA were set. We found that there was clear Departmental direction, summarised in the Chiefs' Commitment of June 2020<sup>196</sup>, to improve diversity and inclusivity both in order to reflect society better and in order to enhance capability. We agreed that the RAF's ambition accurately reflected this strategy; that CAS and the RAF ExCo placed high priority on achieving it<sup>197</sup>; a priority reflected in the decision making of commanders and staff in the Personnel Operations team.

5.3 The original RAF LOA proposed an incremental route to achieve the aspiration of 40% female entrants and 20% EM entrants by 2030<sup>198</sup>. We heard that the annual percentage targets were at that time based on broad brush percentages of the population rather than science or expert opinion: ACOS Pers Pol said that "In my opinion no one had the requisite level of expertise in the RAF for such analysis. The team was directed to conduct a straight-line analysis to meet the end state of matching the RAF population to the UK population."<sup>199</sup> ACOS Pers Pol recalled that "the original [EM] LOA were only deemed suitable (within 19/20 and 20/21) by the staffs on the assumption that the HQ enabled a change to policy to allow overseas recruiting"<sup>200</sup>, something that did not occur<sup>201</sup>.

5.4 We considered whether, at the time that the LOA were established, the chain of command knew that they were difficult or impossible to achieve in the timescale proposed. We agreed that the chain of command knew that the LOA were aspirational; but lacking

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<sup>195</sup> A412.

<sup>196</sup> J092-3.

<sup>197</sup> L042.

<sup>198</sup> B062.

<sup>199</sup> K037.

<sup>200</sup> K038.

<sup>201</sup> K112: The [REDACTED] said that pre-pandemic, he was directed to scope a proposal to send recruiters to St Vincent and the Grenadines to recruit F&C candidates. This plan was shelved due to the pandemic. See also L121-2, L154-162.



expert advice<sup>202</sup>, had not realised just how difficult they would be to achieve at pace. As [REDACTED] pointed out, "because of the way that percentages were used there seemed to be a tendency amongst the Senior Leadership Team to miss the scale of the challenge faced by R&S. The jump from 3% to 6% may seem small at only 3 percentage points, but it's a doubling or a 100% increase in real terms; I'm not sure that this was considered in assessing their performance or resource allocation."<sup>203</sup>

5.5 Actual achievement against targets in recent years has been as follows:

Inflow	19/20	20/21	21/22	22/23
<b>Women</b>				
-Target	NA	20%	22%	25%
-Achieved/(projected)	17.1	19.1%	18.2%	(18%) <sup>204</sup>
<b>EM</b>				
-Target	NA	10%	12%	14%
-Target reduced in year	-	-	9%	12%
-Achieved/(projected)	6.1%	9.0%	5.4%	(6%) <sup>205</sup>

5.6 A range of witnesses explained the barriers to attracting and recruiting women and EM into the Armed Forces, and particularly into a largely technical profession such as the RAF.

a. ACOS Pers Pol summarised the difficulty in achieving the LOA targets when explaining the outcome of Dstl research looking at the credibility of the long-term targets which reported in the summer of 2022<sup>206</sup>: "The policy constraints on recruitment, including medical, residency, were an issue, but key was the attractiveness of RAF trades to females. Looking at the breakdown of trades within the RAF, 40% - 60% are technical (depending on how you slice the data). Girls are not studying STEM subjects in schools in sufficient numbers and until that is addressed the supply will not be there. This is a long-term issue, it will take 10 – 15 years for any policies in this area to impact on recruitment."<sup>207</sup>

b. F/Gp Capt R&S said that "A fundamental issue to D&I recruiting is that certain professions are preferred by EM and female candidates: Personnel, Logistics, Medical and Policing. However, the ITR for some of these professions are decreasing proportionally, yet LOAs are increasing. The greatest percentage of the ITR is against technical trades and RAF Regiment: this accounts for approximately 60% of the ITR; these are the very areas that were not attractive to EM or females."<sup>208</sup>

<sup>202</sup> K037. In June 2021 ACOS Pers Pol tasked Dstl to look at whether the LOA were credible, and they reported in the summer of 2022.

<sup>203</sup> K090.

<sup>204</sup> K129.

<sup>205</sup> K129.

<sup>206</sup> L425-8.

<sup>207</sup> K038.

<sup>208</sup> K011.



c. [REDACTED] highlighted that "The RAF Regt<sup>209</sup> will not have 40% women by 2030; we have less than ten women now; and the Regiment comprises almost 2,500 of the total RAF."<sup>210</sup>

5.7 We also learned that cultural factors affect the attractiveness of the Service to EM candidates. An occupational psychologist working for the RAF said: "There are individual differences between genders and cultures which need to be taken into account"; and: "Looking at EM, the first generation typically look for careers with a status which they recognise and also one with good financial reward. All this needs to be taken into consideration. We already have a higher percentage of female pilots than the commercial airline industry. You need to understand what women and EM want, and then to concentrate your resources on attracting people. It takes time to nurture the next generation."<sup>211</sup>

5.8 The R&S team were frustrated that they had not been able to communicate these issues adequately to the senior leadership, or to suggest the ways most likely to overcome them, for example by focusing on the Attract<sup>212</sup> function through more and better focussed marketing<sup>213</sup>. We concluded that the paucity of early consultation with those in the Recruiting space had reduced opportunities to make the diversity strategy successful<sup>214</sup>. ACOS Pers Pol summarised that "The LOAs were not grounded in science and the evidence available now confirms that they were unrealistic. The RAF and politicians had committed to LOAs (that became targets) and while they were challenging but broadly manageable in my time<sup>215</sup>, we knew they would get increasingly unrealistic – and we believed strong evidence would be needed to persuade Snr<sup>216</sup> stakeholders of the need to change them."<sup>217</sup>

5.9 Several witnesses explained that although R&S was responsible for recruiting and selection, they were not responsible for the input standards which were set by others; including medical standards, security or residency requirements<sup>218</sup>. However, we heard that R&S had over several years been asked to take action in those areas to achieve greater diversity. ACOS Pers Pol said "A key issue R&S faced was that they were the custodians of everyone else policies; they were responsible for delivering in accordance with eligibility

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<sup>209</sup> RAF Regiment.

<sup>210</sup> K091.

<sup>211</sup> K080-1.

<sup>212</sup> K025, K033.

<sup>213</sup> G041: On 20 April 2022 an officer at R&S sent an email to F/Gp Capt R&S saying "With the current high levels of interest and ExCo pressure, the R&S marketing budget must reflect the fact that this is our only controllable legal recruitment tool for increasing LOA achievement. Give us a big pot of cash to spend on marketing/engagement and we might reap benefits in years to come. The result will not be immediate." See also H102.

<sup>214</sup> A572: At their meeting on 7 September 2022, the AFMB "agreed that a greater proportion of effort would now be placed upstream on the pre-recruitment "attract" phase."

<sup>215</sup> At that time ACOS Pers Pol was serving as ACOS WRR.

<sup>216</sup> Senior.

<sup>217</sup> K043.

<sup>218</sup> K010, K020, K146.



policies on, for example, medical standards or residency, but did not own those standards and thus were not the authority to change them. I gave them top cover to challenge those policies. Ideally others in HQ Air would have taken ownership of reviewing all those policies; but that is not how the responsibility for change was seen in the HQ."<sup>219</sup> We agreed that the D&I strategy required action in all areas of the Service, not just R&S, to achieve the desired outcome.

5.10 It is not disputed that once the LOA were established they became targets in the Command Plan<sup>220</sup>; and were reflected in the personal objectives of those in the command chain who were expected to deliver them (specifically D Com Cap, COS Pers<sup>221</sup>, ACOS WRR, and F/Gp Capt R&S). We agreed that best practice for personal objectives is that they should be SMART (Specific, Measurable, Achievable, Relevant, and Time-Bound); and that the reasonable aspirational targets which the LOA began as, had seamlessly been translated into targets and objectives, which have now been shown to be too demanding to meet the requirement of being "Achievable"<sup>222</sup>. We noted that at their meeting on 7 September 2022, the AFMB gave direction that LOAs should not be linked directly to individual in-year objectives<sup>223</sup>.

5.11 We looked specifically at whether F/Gp Capt R&S had been disadvantaged in her appraisal report by being given very demanding targets which she did not achieve. We noted that she believed that although her appraisal was focused on achieving the ITR, there was no acknowledgement of everything R&S had delivered and that she was "judged for not cooking the books to give an appearance of meeting D&I targets/LOA"<sup>224</sup>. We found that her mid-year appraisal in November 2021 said that she had energised the AFCOs, including regarding recruitment against women and BAME<sup>225</sup>. Her 2021/22 appraisal (OJAR), which included an objective of "striving to achieve CP diversity LOAs of 9% BAME and 22% women"<sup>226</sup> was a strong report with no mention that targets were not achieved. In our judgment her Second Reporting Officer (2RO) report from COS Pers was outstanding, with a clear recommendation to 1\* and "on track to be a COS Pers of the future".<sup>227</sup> Overall, we found no evidence that not achieving the LOA targets had been reflected with criticism in her report.

5.12 We discussed the events of November-December 2021, when F/Gp Capt R&S briefed COS Pers that the 12% BAME target was not achievable, but that 9% could be; after which COS Pers had agreed with ExCo that the RY21/22 target should be reduced to 9%<sup>228</sup>. We considered whether this in year adjustment demonstrated that ExCo did not intend to set

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<sup>219</sup> K040-1.

<sup>220</sup> K037.

<sup>221</sup> C029-032; K119; K122.

<sup>222</sup> D001.

<sup>223</sup> K128-9.

<sup>224</sup> K008.

<sup>225</sup> C037-9.

<sup>226</sup> C045.

<sup>227</sup> C027.

<sup>228</sup> A165, K118, K148.



unachievable targets, or whether it was recognition of realism at the end of the financial and recruiting year. In her statement, COS Pers said that "If I had been advised by... [F/Gp Capt R&S] that the end of year forecast was going to be nearer to 6% (as it turned out to be), I would have asked the ExCo for a greater reduction in the target."<sup>229</sup> We noted that COS Pers said that "This year (22/23) the inflow target on the glidepath (to achieve 20% by 2030) should have been 14% but ExCo have kept the target at 12%, following my intervention and representation of the facts at the March 2022 meeting."<sup>230</sup> We agreed that the Senior Leadership Team were prepared to amend targets when presented with compelling evidence.

5.13 We debated the meaning of the phrase "setting up to fail". We agreed that there are circumstances when setting an unachievable task falls into that category. We agreed that what occurs after such a non-achievement is critical as to whether an individual has been wronged; and that for a person to be wronged, there must be evidence that those alleged to have "set them up for failure" have subsequently sought to use the perceived failure to the person's detriment. In this case, we found that F/Gp Capt R&S had been the subject of implied criticism by ExCo in March 2022 after R&S failed to achieve 9% EM inflow. However, we also found that no mention was made of her failure to meet D&I targets in her May 2022 Second Reporting Officer's report, which effusively praised her successes and gave strong recommendations for promotion.<sup>231</sup> We found no evidence that F/Gp Capt R&S's chain of command had sought to use her failure to achieve the D&I targets against her.

5.14 We also noted the evidence given by COS Pers that in her opinion the EM target was "challenging rather than unrealistic"; and that although it was often assessed as 'red' in the Command Plan, "it was not the only 'red'. There are 'reds' in other areas of the Command Plan that remain 'red' on a long-term basis and will not be easily met, but that doesn't mean that we shouldn't remain firmly focussed and do everything we can to meet the challenge".<sup>232</sup>

5.15 We further considered the position of the other officers set the same challenging D&I targets as F/Gp Capt R&S within their OJARs (D Com Cap, COS Pers and ACOS WRR, the first two of whom were members of the Senior Leadership Team). As all were set the same targets, all were invested in achieving those targets; however, we do not consider that this entire chain of command was collectively 'set up to fail'.

5.16 **Finding.** We found that the Diversity and Inclusivity Levels of Ambition (LOA) fairly reflected a strategically important Departmental policy priority. However, the LOAs were translated into targets and personal objectives for staff including the former Gp Capt R&S, for which they were insufficiently science based. We determined that although the Senior Leadership Team intended the LOA to be demanding, when presented with compelling evidence they were prepared to amend those targets; and that the former Gp Capt R&S

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<sup>229</sup> K122.

<sup>230</sup> K118, A524.

<sup>231</sup> C027.

<sup>232</sup> K119.



did not appear to have been disadvantaged by not achieving her LOA objective. We therefore concluded, on the balance of probabilities, that although the former Gp Capt R&S was set an unrealistic objective, she had not been set up to fail.

5.17 **Recommendation 2.** That a clear distinction be drawn between Levels of Ambition and targets<sup>233</sup>; and that Levels of Ambition should not be linked directly to the personal objectives set for individual service personnel.

**Q2: WHAT IMPACT DID THE TARGETS HAVE ON THOSE CHARGED WITH DELIVERING THEM?**

5.18 Witnesses told us that the percentage of their time that they gave up to pursuing the LOA targets was disproportionate. F/Gp Capt R&S said that "There was a relentless, repetitive and nugatory staffing requirement for statistics and initiatives (that had already been implemented) that might move the diversity dial, but none of these would really have an effect in the timeline the CoC demanded. I don't think she [ACOS WRR] understood the disproportionate workload that was being generated; I was working 7 days a week and there was no respite."<sup>234</sup> [REDACTED] said "I think well over half my time as [REDACTED] was spent on work relating to D&I targets during my time as [REDACTED]; the issue dominated my time."<sup>235</sup> An officer at R&S said that "Up to 80% of my time was spent on LOAs and staffing work to Air for either briefings or papers, I was frustrated because AFRP was and is the biggest change programme that recruiting will ever see and I did not feel it was getting the time and attention it warranted."<sup>236</sup>

5.19 We heard several accounts of the quantity of staff work required from R&S to support senior leadership decision making on improving diversity. F/Gp Capt R&S said that in addition to regular quarterly management reports, she was held to account every two weeks on the LOA<sup>237</sup>; while delivering 98% of the ITR and running several change programmes including support to the AFRB, bringing in RITS, phasing out 65 regular posts over two years, and restructuring the AFCOs into 9 regional hubs<sup>238</sup>. ACOS Pers Pol said: "The pressure to deliver the LOAs as 'targets', and our inability to meet them easily, created a demand for overbearing oversight."<sup>239</sup> An officer at R&S said "I routinely work 11-12 hour days because of the sheer volume of work associated with delivering RITS and supporting AFRP RFIs on top of my primary role, and uniformed SO1 colleagues work similar hours for different reasons, amongst which is the need to deal with the constant staffwork surrounding EM and women recruiting."<sup>240</sup> Another officer at R&S said "The constant requirement for an update on numbers, almost on a daily basis, was distressing to watch.

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<sup>233</sup> Paragraphs 4.11, 4.16.

<sup>234</sup> K009.

<sup>235</sup> K089.

<sup>236</sup> K100.

<sup>237</sup> H2A reduced from every fortnight to monthly from May 2022. M40.

<sup>238</sup> K003-4.

<sup>239</sup> K044.

<sup>240</sup> K020.



The SO1s were run ragged, they could not do the day job.”<sup>241</sup>

5.20 We also noted the frequency of 3\* direct oversight of R&S. F/Gp Capt R&S described how D Com Cap would bypass the chain of command and come direct to her; that she was receiving 3\* calls weekly, and more frequently when quarterly reports were due<sup>242</sup>. F/Gp Capt R&S also said that when COS Pers visited, “she implied that she wasn’t aware of the 3\* direct engagement, nor the pressure I was under.”<sup>243</sup> When D Com Cap stood down, the direct 3\* reporting requirement he had driven ceased<sup>244</sup>. However, ACOS Pers Pol as A/COS Pers required fortnightly reports from February to May 2022<sup>245</sup>, and 2\* approval of course loading began in July 2022. The overall staffing burden on R&S remained significant throughout.

5.21 Staff working at R&S during this period explained the stress that they felt as a result of the D&I targets which they were striving to achieve. We heard of 3 individuals (aside from F/Gp Capt R&S) who had decided to leave the Service as a result of the demands placed upon them and their perception of how the chain of command had acted. An officer at R&S said that “I could see the pressure on the Gp Capt and colleagues and the frustrations this caused, and I shared their anger that our seniors were not getting the message that their expectations were unrealistic and having a corrosive effect on unit morale.”<sup>246</sup> Another said that “The workload was ridiculous” and that one of my subordinates “was also upset as a result of the pressures when we reported the truth, but this was not the answer the SLT wanted.”<sup>247</sup> She added “it feels like we are on operations, it is unbelievable being in recruitment and working circa 60-hour weeks. There are several people off sick due to stress and the significant pressure.”<sup>248</sup> ACOS WRR said “R&S were working very hard and it just didn’t seem to be recognised. Despite everything that R&S delivered, especially performance against the macro ITR, the focus became all about diversity inflow.”<sup>249</sup>

5.22 We discussed the removal of delegated authority for R&S to load candidates onto courses. One of the officers at R&S said “a course loading process which had been delegated to an NCO became a 2\* approval process.”<sup>250</sup> F/Gp Capt R&S said that she thought this was symptomatic of a lack of trust and empowerment, and that she didn’t feel supported by her chain of command<sup>251</sup>. We noted the considerable staff effort involved in seeking 2\* agreement for each course<sup>252</sup>. Another officer at R&S said: “It was a significant waste of time for multiple people involved in the process. COS Pers seemed to take pride in how

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<sup>241</sup> K025.

<sup>242</sup> K004-8.

<sup>243</sup> K009.

<sup>244</sup> M007.

<sup>245</sup> K041.

<sup>246</sup> K019.

<sup>247</sup> K102.

<sup>248</sup> K102.

<sup>249</sup> K055.

<sup>250</sup> K026.

<sup>251</sup> K005-7.

<sup>252</sup> K098.



quickly she was responding to the requests with no appreciation for the amount of work that went into each brief."<sup>253</sup> She added that "My workforce also started to indicate to me that they were stressed as a result of the need to seek 2\* approval for offers of employment, which directly affected them and their work on a daily basis. No longer empowered to carry out their usual duties, people were demoralised and dejected".<sup>254</sup>

5.23 Additionally, witnesses said that some staff at R&S had felt angry and disappointed by the pull forward of female and EM candidates in RY 20/21, because they believed that the decisions taken then had been morally and legally wrong; were not in the spirit of the values and standards of the Service; nor in the interest of the candidates themselves<sup>255</sup>. At grass roots level, this direction reportedly resulted (at least in one AFCO) in only EM and women being given appointments, so that no white men were tested and offered employment in that period.<sup>256</sup> F/Gp Capt R&S explained the leadership challenge that this presented on her arrival, and her subsequent commitment to the staff not to undertake any actions that would undermine the values of the Service or contravene EA10.<sup>257</sup>

5.24 One of the officers at R&S said "I had a particular frustration with the fact that we were repeatedly told it was not our decision whether to do this or not, that the SLT could "choose to take legal risk" regardless of the legal advice. On multiple occasions I voiced my concerns to the 1\*, feeling it was not within the SLT's gift to take risk that involved the staff of a large organisation having to act in a way they know to be unlawful in the UK....[ACOS WRR] advised it was not my decision whether to take legal risk, that was for the SLT to decide." She added "I felt very disappointed at the way the advice was received and the way the situation was handled as a whole. It has affected my confidence in the senior leadership, and the lack of integrity displayed by some has saddened me."<sup>258</sup> They added that "I found it very difficult to be a part of multiple meetings from around mid-May onwards, where we were often warned that we needed to be careful when emailing information on the topic of EM and Women recruitment, that emails should be marked OS LIMDIS. The discussions were veiled with a shroud of secrecy and a requirement to "protect each other". In one such meeting I voiced that if we were having to tread so carefully, we probably already knew what was being discussed or proposed was wrong. Though discussing ideas in order to exclude those that are wrong or unlawful might be necessary, the repeated pushing of proposals that contravened the legal advice was uncomfortable for me. In an earlier meeting I recall... [ACOS Pers Pol] saying that "you have to ask the lawyers the right question to get the answers you want". In my opinion, this attitude felt endemic in the SLT."<sup>259</sup> ACOS Pers Pol reflected that he would have said "you have to ask the lawyers the right question to get the answers you need".<sup>260</sup>

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<sup>253</sup> K029.

<sup>254</sup> K033.

<sup>255</sup> K025, L038.

<sup>256</sup> K061, L009, L090.

<sup>257</sup> K002.

<sup>258</sup> K031.

<sup>259</sup> K034.

<sup>260</sup> M001.



5.25 Staff at R&S expressed their severe disappointment when they read the minutes from the ExCo meeting in March 2022: F/Gp Capt R&S said that she felt that it was "a public lambasting" for R&S, which "had a real detrimental effect on both myself and the R&S team". She said that "It felt as though none of the other terrific work that R&S was doing counted; everything was focussed on D&I targets", and "no one had the courage to challenge CAS and COS Pers comments, or to listen to the reflections of the Shadow Board"<sup>261</sup>. One of the staff at R&S said: "When I saw those minutes I felt really disappointed. The perception of the SLT chasing unachievable numbers has meant that I have just not enjoyed this role as I had hoped."<sup>262</sup> Another said that "The ExCo meeting occurred shortly after COS Pers had written to Gp Capt R&S to say well done for our performance and all of the hard work we were doing. For COS Pers then to endorse CAS' critical comments rather than fighting our corner was extremely disappointing." He added that "When COS Pers visited R&S on 23 Aug to talk about what had happened, she started off by saying how impressed CAS was with our work, and was clearly shocked when I produced a copy of the note from CAS and challenged her on the incoherent messaging from the SLT. I found these examples of the way the SLT speak about R&S very hurtful, knowing how much passion and skill there is within the organisation to do the best job possible on behalf of the RAF."<sup>263</sup>

5.26 [REDACTED] said "For me it was fairly stressful, but I was less emotionally connected as a fleeting visitor to the challenge. I certainly picked up stress and frustration of the R&S team. They felt attacked from all fronts, and I felt that the weight of effort applied this one subject was disproportionate to its relative importance. For R&S, it subsumed an overwhelming proportion of their time and finances."<sup>264</sup>

5.27 ACOS WRR described the situation in February 2022 when she was on HCSC and was contacted by F/Gp Capt R&S and [REDACTED]: "[F/Gp Capt R&S] described the immense pressure she was under, but she did not want me to intervene, as she was confident A/COS Pers... would 'put up the umbrella to protect them'. Now entering Q4, ... [F/Gp Capt R&S] messaged me to say she felt the targets were unachievable and did not feel supported by the CoC. ... [REDACTED] tried to help, ... [A/COS Pers] was in support but I believe... [F/Gp Capt R&S] still felt as if she was in the firing line. I was considering how I could help alleviate the pressure for... [F/Gp Capt R&S]. I went to HCSC to reflect and in early May 22, I felt like I was returning to a firefight. There was incessant pressure on R&S, the LOAs were unachievable, and I tried to provide top cover; it was a very difficult time and I felt under immense personal pressure as well."<sup>265</sup> An officer at R&S also states "Comments made by the 1\*... [ACOS WRR] ... led me to believe the pressure on her was also intense"<sup>266</sup>. ACOS WRR further gives evidence that she contested the proposal to recruit an additional 296

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<sup>261</sup> K005-7.

<sup>262</sup> K026.

<sup>263</sup> K021.

<sup>264</sup> K092.

<sup>265</sup> K056.

<sup>266</sup> K033.



people into the Pers Ops profession and she states that "I had drafted [REDACTED] should the decision have been to proceed with this 'bend the ITR out of shape' initiative"<sup>267</sup>.

5.28 COS Pers said that "[F/Gp Capt R&S] was under a lot of pressure to deliver; she had the most challenging set of strategic objectives at Gp Capt level across my 18 OF5s and B2s, and I reflected that in her most recent OJAR. There was (and still is) a lot of ExCo attention on diversity, and significant senior level interest in her performance and outputs as a result. I understand that she felt she was under a lot of pressure, and I tried to help her in this regard on several occasions."<sup>268</sup> With respect to the March 2022 ExCo minutes, she said that "I echoed CAS's disappointment in the ExCo because I was genuinely disappointed and really frustrated that I had been given misleading information by...[F/Gp Capt R&S] which had resulted in making assurances to the ExCo on 14 December 2021 that were not delivered upon"<sup>269</sup>. I implicitly trusted my staff to give me trustworthy advice, and I felt that I had been undermined by...[F/Gp Capt R&S] and her team"<sup>270</sup>. Regarding the 2\* approval process for course loading, she said that it "made people in R&S feel frustrated and disempowered, although I was not made aware of that at the time by... [F/Gp Capt R&S]. As mentioned earlier, R&S has a process, a system that they like to continue to operate, at times irrespective of the strategic ambitions of the organisation. That said, I did not realise how frustrated they were until later, when I visited on 23 August 2022, after... [F/Gp Capt R&S] had left."<sup>271</sup> COS Pers added that she was "trying very hard to deliver exceptionally clear AFMB and ExCo 4\* strategic direction whilst dealing with an over-bearing 3\* line manager and simultaneously leading and protecting my team."<sup>272</sup>

5.29 We also considered the evidence of the [REDACTED], who was also under pressure to deliver the LOA when he was in that role. He said that "For the majority of the second half of my tour, I was under sustained and consistent levels of pressure. I am a pretty robust individual. It was not affecting my health or my time with my family, or my sleep patterns. But it was intense at times. Towards the back end of my tour, the reporting routine was significant: H2A with...[ACOS WRR], 2 weekly H2A with the 3\*, plus providing slides to ExCo every 2 weeks.... A significant amount of time was sucked up in providing report after report, which diverted me (and many of my team) from commanding a geographically disparate team of c480 across some 28x separate AFCO locations".<sup>273</sup> He added: "my executive team were all experienced and capable OF4s. They were all under a similar degree of pressure and stresses, but I did not detect any of them that were particularly struggling."<sup>274</sup> It was, however, evident that the R&S staff were frustrated by

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<sup>267</sup> K058.

<sup>268</sup> K127.

<sup>269</sup> F/Gp Capt R&S acknowledged that she had briefed in November 2021 that the 9% was achievable (K148). On 13 January 2022 the data pack used to brief COS Pers showed that achievement against D&I targets sat at 5.7% for EM and 19.7% for women (A073).

<sup>270</sup> K124.

<sup>271</sup> K125.

<sup>272</sup> M004.

<sup>273</sup> K109.

<sup>274</sup> K109.



the "long screwdriver" applied from above<sup>275</sup>. We agreed that the targets the [REDACTED] was aiming at were slightly less challenging, and that because they were very nearly achieved, the scrutiny was likely less than that faced by his successor. His evidence suggested to us that the level of staffing pressure faced by R&S in his time was demanding, but broadly manageable.

**5.30 Finding.** We found that the additional, intense and consistent pressure placed on those charged with delivering the LOAs - through micro-management, removal of delegated authority, and excessive requests for information - had a significant impact on team morale and stress levels. It also affected the ability of the team to deliver their other outputs, and we understand led others aside from the former Gp Capt R&S to consider leaving the Service. We found that the chain of command and the Senior Leadership Team had not recognised the cumulative pressure they were imposing on the staff at R&S, or the contribution that they and other parts of the Service needed to make to increase diversity.

**5.31 Recommendation 3.** That the Senior Leadership Team apologises to the former Gp Capt R&S and the staff at R&S for the cumulative pressure that they experienced over the period April 2021 – August 2022.

**5.32 Recommendation 4.** That the Senior Leadership Team prioritises the internal and external communication of the benefits of improving diversity and inclusivity within the Service, and of the fair and lawful routes by which those improvements will be achieved.

**Q3: DID THE PRESSURE ON THE FORMER GP CAPT R&S AND HER STAFF AMOUNT TO INSTITUTIONAL BULLYING?**

**5.33** Referring to the pressure she was put under to by her chain of command, F/Gp Capt R&S said in her resignation letter that "The pressure that my staff and I have had to endure amounts to institutionalised bullying." In her statement to this inquiry, she said that the factors that contributed to her feeling that she was subject to institutional bullying were<sup>276</sup>:

- a. Receiving frequent calls at all hours from both 1\* and 3\*.
- b. Superiors not recognising the limits of R&S's responsibilities.
- c. Being subject to a 2\* approval process for course loading, implying lack of trust.
- d. Her chain of command not representing the true picture to senior leadership.

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<sup>275</sup> N018, N019, N030, N060.

<sup>276</sup> K008-09.



- e. A lack of recognition of R&S's achievements, expressed in disingenuous comments and briefings.
- f. A relentless staffing requirement for statistics and initiatives.

We noted that the dated events she referred to occurred in the period November 2021-August 2022.

5.34 Bullying is not legally defined, but it is characterised in Part 1 to JSP 763, Paragraph 2.33 as: 'unwanted behaviour from a person or a group that makes someone feel uncomfortable, including feeling frightened (intimidated) or less respected (degraded) upset (humiliated).' We note that intent is not required in this definition but remains relevant. Relevant examples of bullying behaviour include ridiculing or demeaning someone, picking on them (for example because of their accent or hair colour) or setting them up to fail; overbearing supervision or other misuse of power or position; deliberately undermining individuals by overloading and constant criticism; publicly undermining someone's authority; labelling someone who has made a complaint of bullying or harassment a 'troublemaker', or retaliating against them.

5.35 There is also no agreed definition of Institutional Bullying. After discussion we determined the term to mean bullying by more than one person in the chain of command, which is either organised, or is a product of the organisation's prevailing culture.

5.36 We summarised who was in F/Gp Capt R&S's chain of command while she was in post as Gp Capt R&S, and considered their role in the events she described.

Post	Level	Name	Dates in Gp Capt R&S's CoC
ACOS WRR	1*	Air Cdre Burns	Mar-Jun 21
ACOS WRR	1*	Air Cdre Lincoln	Jul-Dec 21, May 22-Present
			Dec 21-May 22
COS Pers	2*	AVM Byford	Mar 21-Feb 22, May 22- Present
A/COS Pers	Acting 2*	Air Cdre Burns	Feb-May 22
D Com Cap	3*	AM Turner	Mar 21-Jan 22
D Com Cap	3*	AM Knighton	May 22- Present
A/D Com Cap	Acting 3*	AVM Byford	Feb-May 22

5.37 Having reviewed all the events that took place in the period in question, we specifically considered in detail the 26 January 2022 meeting attended by D Com Cap, COS Pers, F/Gp Capt R&S and [REDACTED]. Various potential D&I recruiting initiatives were discussed at that meeting, and all who spoke about it agreed that it became heated.

- a. [REDACTED] said "From my perspective, it seemed that... [D Com Cap] and COS Pers... felt... [F/Gp Capt R&S] was being obstructive and defensive, and the more they felt that, the more they challenged her. I think...[F/Gp Capt R&S] felt criticised and she seemed to get quite emotional. It was very early into my time as [REDACTED]



and a bit of an eye opener for me.”<sup>277</sup> He added: “I remember that...[F/Gp Capt R&S] became quite agitated and I felt that COS Pers politely drew the meeting to an early close to prevent it boiling over”.<sup>278</sup>

b. F/Gp Capt R&S said that “[D Com Cap] got irritable and looked frustrated when I refused; he didn’t listen when I explained the impact on future years... [COS Pers] said ‘what is the problem – just do it’. I still refused. I had worked to build trust with my team and promised that I would not ask them to do anything unlawful. I felt my CoC was telling me to cook the books, and that was the culture - hitting EM and female targets at all costs.”<sup>279</sup>

c. COS Pers said that at the meeting on 26 January 2022, “In the context of that particular discussion...[F/Gp Capt R&S] was not sticking to her own script on a number of the initiatives that R&S were pursuing. She was not being coherent in presenting the information and...[D Com Cap] became frustrated. During the discussion I reflected back to how emotional she had been at our meeting at RAF Cranwell and how this had impacted on the way she delivered her message. I had also seen this previously a few times: briefings would be well planned in advance with a structured slide-deck but she didn’t keep to the pre-planned structure. As a result, the meeting became increasingly heated between...[F/Gp Capt R&S] and... [D Com Cap], and I took the decision to break it up in order to protect...[F/Gp Capt R&S], by physically standing up and drawing it to a close.”<sup>280</sup>

We discussed the accounts of this meeting, which in some respects typified the behaviour that F/Gp Capt R&S complained about, and we considered whether it amounted to bullying, either institutional or otherwise. We agreed that F/Gp Capt R&S had “fought her corner”, to the point that D Com Cap became frustrated; and that the meeting was called to an end by COS Pers because it was not making progress. We determined that although it was a heated exchange, in our view it was not an instance of individual or institutional bullying.

5.38 We considered F/Gp Capt R&S’s experience and seniority, and discussed what sort of demands from the chain of command she should reasonably have expected in that role. Several witnesses told us that the post was recognised as a demanding Command appointment for an AD, commanding 450 geographically dispersed personnel and working direct to Air Command; and that it was very much in the limelight. [REDACTED]

[REDACTED], he did so in the knowledge that there “was always a reputation around the Gp Capt R&S post as something of a poison chalice across the People Ops Profession. I knew that previous gp capt’s had been under varying degrees of pressure to deliver, and was aware that my [REDACTED], although I did not know the full extent of the details.”<sup>281</sup> F/Gp Capt R&S

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<sup>277</sup> K090.

<sup>278</sup> K089.

<sup>279</sup> K010.

<sup>280</sup> K123.

<sup>281</sup> K105.



volunteered for the post, and was interviewed in a competitive selection process by D Com Cap, COS Pers, and ACOS WRR. We agreed that F/Gp Capt R&S could reasonably have been expected to manage a demanding workload; including dealing with a closely engaged chain of command which she knew was focussed on improving the D&I input, resolving complex issues, and also managing all the issues that go with the command of 450 personnel.

5.39 We also looked at whether F/Gp Capt R&S received any advice or support from her chain of command. We found in F/Gp Capt R&S's November 2021 Mid Year Appraisal Report (MPAR)<sup>282</sup> that ACOS WRR recognised her achievements and gave advice, including "Just be careful when something crosses your values/protect your team and you want to be defensive. It is about winning the war, not each battle"; "Don't accept the craziness – offer alternative deadlines and prioritisation choices"; and "don't spread yourself too thin or burn out (**first is personal and family health and wellbeing**, then Gp Capt R&S and then see what time you have left)"<sup>283</sup>. We agreed that this was evidence of ACOS WRR offering supportive and appropriate advice. ACOS WRR said "I was always encouraging her to look after herself and ensure her health and her family came first. I felt I was exceptionally supportive of her in my role as her line manager"<sup>284</sup>. ACOS WRR refuted that she made 'frequent' out of hours calls to F/Gp Capt R&S, stating that she replied to the messages she received from F/Gp Capt R&S and "On a very limited number of occasions with urgent RFIs, I have messaged her (Gp Capt R&S) outside of core hours to ask if she was free to chat"<sup>285</sup>.

5.40 COS Pers said that when she visited F/Gp Capt R&S at RAF Cranwell on 13 January 2022, "She reported to me that she felt under direct pressure from...[D Com Cap] and we had several conversations that day about using my office as a buffer between her and D Com Cap. Her 1\*... [ACOS WRR], had recently departed to undertake HCSC and I offered to be her 'human shield'. However, I also stressed that it would require her cooperation not to deal directly with his office and to communicate via my outer office, otherwise I would not be able to protect her from the pressure that she felt she was under... [F/Gp Capt R&S] and I had several counselling conversations around this time and in subsequent months as I was keen to help her find a way to navigate her high-pressure OF5 Command role, and to balance her strategic priorities more effectively."<sup>286</sup>

5.41 We heard a range of views from witnesses on whether the pressure that F/Gp Capt R&S was subject to amounted to bullying. One of her officers said "I think that people above me were bullied by the pressures above them."<sup>287</sup> [REDACTED] said "I certainly did not feel bullied but did feel the pressure. As I said before, I think if you add together the ExCo RODs, the level of scrutiny over this one particular issue, the 2 weekly reviews, 3\* intervention and 2\* course loading, I can see how...[F/Gp Capt R&S] may have felt bullied."<sup>288</sup>

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<sup>282</sup> C037.

<sup>283</sup> C038. Emboldened by the originator.

<sup>284</sup> K052.

<sup>285</sup> M040.

<sup>286</sup> K123.

<sup>287</sup> K026.

<sup>288</sup> K094.



5.42 Referring back to the characterisation of bullying and institutional bullying above, we considered whether the intense cumulative pressure which was felt by F/Gp Capt R&S crossed that threshold. We agreed that there were periods when the pressure she felt was intense and sustained, that she felt that she lacked support from her chain of command, and that the LOA objective she had been set was unachievable.

5.43 We discussed whether any of the examples of bullying behaviour set out in JSP 763 had been met – i.e. whether she had been ridiculed, picked on, set up to fail, subject to overbearing supervision, deliberately undermined, or labelled as a trouble maker. We referred back to our conclusion to Question 1 above that F/Gp Capt R&S had not been “set up to fail”. We also carefully considered whether she had been subject to overbearing supervision through the 2\* approval process, and by constant requests for information. We agreed that the evidence did not support an argument that this amounted to overbearing supervision; and we concluded that none of the examples given in JSP 763 applied.

5.44 We also considered whether it was sufficient only for F/Gp Capt R&S to have felt uncomfortable or upset by the behaviour of her chain of command for the characterisation of institutional bullying to be applicable. We bore in mind her considerable experience and strength of character, the fact that she volunteered for the role knowing it to be demanding, and had been selected against competition by those in her chain of command. We agreed that operating at AD level there is a reasonable expectation, both by the individual and by their chain of command, that there will be periods of intense work under pressure, and complex negotiation around “wicked problems” which have no simple solution. We agreed that in that context, feeling uncomfortable or upset would not be a sufficient or appropriate description of being bullied.

5.45 **Finding.** We found that the pressure that the former Gp Capt R&S was subject to was significant, and at times unreasonable; but that it did not amount to institutional or individual bullying.

#### POSITIVE DISCRIMINATION

##### **Q4: WHY DID THE FORMER GP CAPT R&S STATE THAT ACTS OF POSITIVE DISCRIMINATION TOOK PLACE?**

5.46 As described above, evidence shows that 7 EM and 22 female candidates were pulled forward in preference to other candidates who were ahead of them during RY19/20, and a further 63 EM and 69 female candidates were pulled forward in RY20/21. So in total 161 candidates (70 EM and 91 women) were pulled forward based on their protected characteristics. Volunteer candidates went to RAF Halton where they were held on strength as supernumeraries for up to 274 days<sup>289</sup> until a space on the appropriate training course became available.

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<sup>289</sup> F033.



5.47 We found that although it has been acknowledged<sup>290</sup> that some EM and women had been pulled forward in preference to other candidates, the scale of the numbers of candidates involved did not appear to be well known within the chain of command<sup>291</sup>.

5.48 We saw evidence of some specific occasions on which white males had not been given an offer of employment in order to pull forward a woman or an EM candidate<sup>292</sup>.

5.49 We considered the direction that the [REDACTED] had been given to "push the boundaries of positive action to the absolute limit"<sup>293</sup> and his statement that he had "sought advice from DLS' team and DLS' team briefed the executive on the difference between positive action and positive discrimination"<sup>294</sup>. We noted ACOS Pers Pol's statement (when he was ACOS WRR) that "We were working to the best legal advice we had at the time and all understood that we had legal agreement to do that and that it had been done before in previous years. I was briefed regularly by [REDACTED] Exec team regularly about this and their engagement with Legal and 22Gp and we had many conversations about the legal boundary because there were multiple workstrands running to improve EM and female inflow at the time."<sup>295</sup> He added "From my teams' perspective, we were content at the time that what we were doing was legal."<sup>296</sup> We noted that R&S was indeed seeking and receiving legal advice in relation to the boundaries of PA in the period July 2019-June 2021, with the specific aim of ensuring "that we are still operating properly"<sup>297</sup>. We reviewed the DLS guidance note on positive action dated 16 June 2020<sup>298</sup>, and found that because of the language in the note, more than one interpretation was reasonably possible. However, we also agreed that some of the actions that were taken (such as accepting only EM and women onto some courses<sup>299</sup>) should have been identified at the time as being outside that guidance.

5.50 COS Pers said that "It was described to me as positive action that was permissible within a legal framework. DLS (or DDLS in her absence) sits on the ExCo and was party to all the discussions; I therefore had no reason to doubt that it was a legally permissible thing to do. It appeared to be accepted, lawful practice that you could pull forward EM and female candidates based on their protected characteristics, as part of legally permissible positive action." She added that "it was a balance of the legal probability and legal likelihood (i.e. the probability that the RAF would be challenged versus the likelihood of a successful challenge)."<sup>300</sup>

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<sup>290</sup> L444.

<sup>291</sup> K009: F/Gp Capt R&S says that COS Pers appeared unaware of 132 special characteristic candidates being brought forward in RY20/21.

<sup>292</sup> L050, L081, L429, L431, L437.

<sup>293</sup> K108.

<sup>294</sup> K110.

<sup>295</sup> K039.

<sup>296</sup> K040.

<sup>297</sup> N104-110 and N066-077. Also F035.

<sup>298</sup> L099-101.

<sup>299</sup> Examples given at K061, L009, L090 and L431.

<sup>300</sup> K121.



5.51 We agreed that those who encouraged the pulling forward of female and EM candidates at the time thought that they were “pushing the boundaries” of positive action, but believed that they were still operating within the law<sup>301</sup>.

5.52 However, as explained in Section 4 above, there were concerns expressed at the time. These included concerns that the recruits would not be gainfully employed while waiting and would become demotivated; that there would be a detrimental impact on the following recruiting year; that the policy was in principle unfair; and that the actions they were taking were straying into positive discrimination<sup>302</sup>. F/Gp Capt R&S stated that “I consider the pull forward to have been an unlawful act of positive discrimination (this point was reaffirmed in the legal advice I received during my tenure, from RAF Legal when the CoC asked me to carry out such actions in RY21/22)”<sup>303</sup>. We agreed that the legal advice (explored in detail below) and the extent of concerns in different parts of the R&S organisation, fully justified F/Gp Capt R&S’s commitment not to undertake “any actions that would undermine the values of the Service or that were outwith the Equality Act 2010.”<sup>304</sup>

**5.53 Finding.** We determined that prior to the former Gp Capt R&S’s appointment, 161 Ethnic Minority and female candidates had been pulled forward onto Phase 1 training ahead of other candidates. We found that concerns were raised at the time by R&S staff; but that those who led the initiatives believed that they were “pushing the boundaries” of positive action rather than acting unlawfully. We found that the former Gp Capt R&S received legal advice in May and June 2022 that indicated that the pull forward of candidates based on protected characteristics was contrary to the Equality Act 2010, which provided reasonable justification for the former Gp Capt R&S to state that acts of positive discrimination had taken place in RY20/21.

**5.54 Recommendation 5.** That guidance on what constitutes unlawful positive discrimination and what constitutes lawful positive action in recruitment and selection be published, and regularly updated.

#### **Q5: WAS THE FORMER GP CAPT R&S INSTRUCTED TO CARRY OUT ACTS OF POSITIVE DISCRIMINATION?**

**5.55 Legal Complexity.** We found that whether specific recruiting initiatives should be considered as Positive Action or Positive Discrimination turned on relatively fine points of complex employment law, being applied to a recruitment process which was itself complex. We noted that legal advice was refined as the legal advisers’ understanding of the recruitment process developed through iteratively received briefs dealing with the details of the process.

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<sup>301</sup> A289, L099-104, L041, L044, L460-78, K108, K039.

<sup>302</sup> A160, K017, L004, L011, L151, L061-69, L071-4, L081, L090, L116, L429.

<sup>303</sup> Paragraphs 4.29, 4.30.

<sup>304</sup> K003, K025, L004.



5.56 **Fast Tracking.** We considered the events of April 2022 when ACOS Pers Pol pursued a suggestion to establish a "fast track" Positive Action Pathway to get EM and women to initial gate faster<sup>305</sup>. SO1 Legal's advice was that this would be positive discrimination<sup>306</sup>. We noted that SO1 Legal and F/Gp Capt R&S both suggested ways by which the approach could be adjusted to stay the right side of the PD/PA line<sup>307</sup>. We agreed that legal advice indicated that the initial proposal, if enacted, would have been discriminatory; but it was not enacted because appropriate legal staff checks were undertaken.

5.57 **Course Quota.** We discussed the April/ May 2022 proposal which came out of an ExCo action to develop a 3\* approval process to decide whether a training course should go ahead if there were less than 12% EM loaded onto it.<sup>308</sup> SO1 Legal's advice was that setting a female/EM quota was contrary to EA10. The course quota proposal was not put into effect.

5.58 **Loading ITR only from Under-Represented Groups.** We discussed the 15 June 2022 direction given by COS Pers to ACOS WRR to slow down filling the ITR unless it was a candidate from an under-represented group<sup>309</sup>. We agreed that this direction would have been contrary to the legal advice given on 6 June 2022 by SO1 Legal<sup>310</sup>. However, COS Pers' direction was not passed to F/Gp Capt R&S by ACOS WRR, who in COS Pers' absence on leave paused all course loading "to retain some flexibility for the SLT"<sup>311</sup>. Subsequently the decision was taken to apply instead a process of 2\* approval of all course loading.

5.59 **Bending the ITR Out of Shape.** We also discussed the "bending the ITR out of shape"<sup>312</sup> proposal of June/July 2022 to create an additional 196 Personnel Operations posts, which would have been attractive to both female and EM candidates. SO1 Legal provided written advice to ACOS Pers Pol that this would be contrary to EA10<sup>313</sup>. We noted that the proposal was considered by D Com Cap on 11 July 2022 and was pursued no further thereafter. ACOS WRR said that she "[REDACTED] should the decision have been to proceed with this 'bend the ITR out of shape' initiative. I do not know if CAS understood what he was asking COS Pers to do, but it took an additional month of hard work and analysis to combat that idea".<sup>314</sup>

5.60 **Preferential Loading of Women and EM.**

- a. We considered the direction given by COS Pers on 1 August 2022 that "I have highlighted on the table below where there are further candidates pending

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<sup>305</sup> B38-40.

<sup>306</sup> G046.

<sup>307</sup> G046, B037.

<sup>308</sup> F042

<sup>309</sup> B012.

<sup>310</sup> A027.

<sup>311</sup> G101.

<sup>312</sup> B052, K126.

<sup>313</sup> G120-122.

<sup>314</sup> K058.



allocation who are from under-represented groups – I would like them to be offered places in preference to those who are “in line” as demonstrations of positive action.”<sup>315</sup> After checking the wording of the direction that COS Pers wanted to give to R&S, and asking if she wanted to check it with Legad, ACOS WRR subsequently emailed F/Gp Capt R&S on 3 August 2022 passing COS Pers’ direction as follows: “Sent on behalf of... [COS Pers]: “Course Load the 18 EA and 4 Offrs plus any remaining Women and EM in those priority Professions that are ready, even if the EA Candidates are not “first past the post.” ”<sup>316</sup>

b. In response to this direction, F/Gp Capt R&S said on 4 August 2022 that “To do this would require a course of action contrary to the Equality Act 2010 (EA10) s159(4)(b); specifically, constituting a policy of treating persons who share a Protected Characteristic (PC) more favourably in recruitment than persons who do not share it. **This is unlawful. As Gp Capt R&S I am not prepared to delegate or abdicate the responsibility of actioning that order to my staff**”.<sup>317</sup>

c. When COS Pers saw F/Gp Capt R&S’s response, she immediately sought further legal advice from DLS who told her that the action was “likely to be considered proportional and be legally defensible”. Her advice was qualified in that she set out her understanding of how the selection and prioritisation process worked<sup>318</sup>.

d. When we asked COS Pers if she had any concerns at the time that the action might not have been lawful, she said “No, not at all; quite the opposite as this had been the basis of a conversation between DLS and I earlier that week. Furthermore, she reinforced her verbal advice to me in an e-mail on 4 August.”<sup>319</sup>

e. We considered why COS Pers had sent this direction. ACOS WRR said that “COS Pers said she wanted to bring forward EM and women and that there needed to be a bold move to make a difference. The legal advice of 6 Jun had been sent to [REDACTED] in preparation for the H2A on 8 Jun, but COS Pers inferred that R&S/I were creating blockers and said that she was prepared to accept the legal risk.”<sup>320</sup> COS Pers said “Based on my discussions with DLS, my understanding was that all candidates in the pool were equally qualified and thus could be legally pulled forward under the tie break clause, based on their protected characteristics, as a positive action measure. As a result, I gave the direction to pull EM and female candidates forward, as I genuinely believed that this was a legitimate and proportionate action.”<sup>321</sup> We determined that the difference in legal advice

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<sup>315</sup> A047.

<sup>316</sup> A046.

<sup>317</sup> A046. Emboldened by the originator.

<sup>318</sup> A045. Her understanding of that process changed after her visit to R&S on 10 August 2022.

<sup>319</sup> K126. Underlining by the originator.

<sup>320</sup> K058.

<sup>321</sup> K126.



represented in SO1 Legal's notes of 9 May 2022 and 6 June 2022 had either not been seen or had not been fully recognised by DLS and COS Pers.

f. We agreed that F/Gp Capt R&S was subsequently proved to be justified in her opinion, in that DLS later agreed that if the RAF was legally challenged on a decision to bring forward EM and female candidates in preference to white males, there was a "VERY HIGH" risk of that challenge being successful.<sup>322</sup> We also found that the instruction had not been carried out because of F/Gp Capt R&S's intervention. However, we accepted that COS Pers had reason at the time to believe that she was not giving an instruction to carry out an act of positive discrimination.

**5.61 Staffing Process.** We discussed the routine staffing process by which initiatives and ideas are assessed. We agreed that it was reasonable for proposals to be considered from all angles, and then in some cases rejected because valid objections were raised and taken into account. We agreed that several of the initiatives above could be described as being in that category. We noted the statement of one of the officers serving at R&S that "Though discussing ideas in order to exclude those that are wrong or unlawful might be necessary, the repeated pushing of proposals that contravened the legal advice was uncomfortable for me."<sup>323</sup>

**5.62 Where Risk was Held.** We also considered the question of where the chain of command believed that the risks of not achieving the ITR, or of legal challenge, were carried. We noted that F/Gp Capt R&S and the R&S staff were told that the risks were held by CAS and ExCo<sup>324</sup>. We agreed that F/Gp Capt R&S was not asked to accept the risk.

**5.63 Finding.** We found that there were occasions on which the former Gp Capt R&S was told to consider initiatives which had been the subject of legal advice indicating to her that they would be unlawful. However, after consideration all but one of those initiatives were discounted in the staffing process. One was directed, but was not put into effect because of the former Gp Capt R&S's refusal.

#### **Q6: WAS LEGAL ADVICE ON POSITIVE DISCRIMINATION PROPERLY SHARED?**

**5.64** We agreed that the significant change in legal advice regarding recruiting and selection occurred in May 2022. Prior to that, the legal advisory team had understood that Phase 1 training was distinct from the recruitment process. However, when SO1 Legal consulted with an officer at R&S, he said that it was "explained to me in detail the phase 1 training and recruitment process, and that a space on a phase 1 training course equated to a single "job"/recruitment, this had not been clear previously. This being the case there was no doubt that we must apply s159 of the Equality Act 2010, and both... [REDACTED] and DDLS were content that the advice was correct."<sup>325</sup> The key pieces of advice from SO1 Legal

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<sup>322</sup> M052, K061.

<sup>323</sup> K034.

<sup>324</sup> K010, K031, K058.

<sup>325</sup> K134.



which followed were dated 9 May 2022<sup>326</sup>, 6 June 2022<sup>327</sup> and 13 June 2022<sup>328</sup>.

5.65 We found that the 9 May 2022 advice was addressed to ACOS Pers Pol<sup>329</sup>. We noted that SO1 Legal briefed [REDACTED] and DDLS on this advice. He said "I believe that the advice was communicated to DLS at the time by DDLS and was included in the legal advisory teams fortnightly UPREP to DDLS/DLS as would all other advice. I recall discussing with... [REDACTED], and my understanding was that DLS had been informed"<sup>330</sup>. We found that the importance of the change in advice represented in this note was well understood in R&S, but that its significance appeared not to have been recognised throughout Air Command despite being well circulated at the 1\* level and within the legal advisory team<sup>331</sup>.

5.66 We noted that the 6 June 2022 advice was sent initially to ACOS WRR and F/Gp Capt R&S. It was forwarded to COS Pers' [REDACTED] by ACOS WRR<sup>332</sup> on 6 June 2022 with the words "As discussed, please add this to the AVM's pack-up for the H2A tomorrow. I have a follow-on meeting with...[SO1 Legal] tomorrow, so I can take forward any RFIs/points of clarification that COS Pers may have. I have also asked...[SO1 Legal] to ensure DLS and D/DLS have visibility in case COS Pers wishes to engage at her level."<sup>333</sup> We agreed that this advice should therefore have been seen by COS Pers and DLS. COS Pers said that the note might have gone into her briefing pack, but she didn't see it; and that if she had seen it, she would have discussed it with DLS<sup>334</sup>. She said that she was surprised that SO1 Legal had not raised it with her in a meeting he attended with her on the 11 July 2022<sup>335</sup>. ACOS WRR and F/Gp Capt R&S believed that this advice had not been shown to D Com Cap before 8 August 2022.<sup>336</sup>

5.67 SO1 Legal said that on 7 June he discussed the 6 June 2022 advice with ACOS WRR F/Gp Capt R&S and [REDACTED] and "All who discussed the advice were in agreement with the content. My recollection is that the advice was to be discussed with COS Pers by... [ACOS WRR], and F/Gp Capt R&S, I do not recall being present for this"<sup>337</sup>.

5.68 We found that the 13 June 2022 advice<sup>338</sup> was sent initially to R&S and shared within the legal advisory group. SO1 Legal said that this advice "was sent to replace the previous note of 16 June 2020<sup>339</sup>. The substantive changes related to deleting the examples, which

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<sup>326</sup> G156.

<sup>327</sup> A027.

<sup>328</sup> G103.

<sup>329</sup> G123-6.

<sup>330</sup> K134.

<sup>331</sup> K134.

<sup>332</sup> K061.

<sup>333</sup> A026.

<sup>334</sup> K125.

<sup>335</sup> K134. We noted that the 11 July 2022 meeting was principally focussed on the "bending out of shape" proposal to add 196 Ops Pers posts.

<sup>336</sup> K061, K012.

<sup>337</sup> K134.

<sup>338</sup> G103-5.

<sup>339</sup> L99-101.



appeared to indicate that quotas of ethnic minority personnel in recruitment could be lawful."<sup>340</sup>

5.69 With regard to DLS's advice of 4 August 2022<sup>341</sup>, we noted from several witnesses that on that day the legal advisers who had been dealing with R&S, specifically SO1 Legal and [REDACTED], were absent on leave; and that DLS had not been able to consult with them<sup>342</sup>. Her advice was circulated to ACOS WRR and to F/Gp Capt R&S. We noted that on the same day a junior legal advisor had sent a response to a request for advice from an officer at R&S asking whether COS Pers' direction was contrary to the advice given on 9 May 2022 and 6 June 2022. The junior legal advisor's response was that "The Advisory team have provided legal advice to the chain of command on this issue. We can't now provide the advice you request based upon the direction made by the chain of command because that would present a conflict of interest for the team."<sup>343</sup>

5.70 We found there was a dislocation between the advice known and understood at the 1\* level and the advice known and understood at the 2\* level. We further found that F/Gp Capt R&S received and understood the advice<sup>344</sup>; that the advice was also received and understood by ACOS WRR, who passed it to COS Pers' office highlighting its importance<sup>345</sup>. COS Pers stated that she did not see the advice<sup>346</sup>, and evidence suggested that D Com Cap did not see it<sup>347</sup>. We considered where the responsibility lay for the dissemination and awareness of legal advice. We determined that the advisors producing the legal advice would deliver it to those who asked for it, and make it available within the legal chain, but were not in our judgment responsible for sharing that advice throughout the chain of command to which the advice may be relevant or for ensuring that advice was understood at every level of it. We concluded that the clear and unequivocal advice was not sufficiently highlighted and considered at 2\* and above.

5.71 **Finding.** We found that the legal advice of May and June 2022 which led the former Gp Capt R&S to say that she was being instructed to act unlawfully, was clear and unequivocal and had been appropriately shared at the time; but was either not seen, or not understood, at 2\* and above.

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<sup>340</sup> K134.

<sup>341</sup> A030.

<sup>342</sup> K022, K058.

<sup>343</sup> G170.

<sup>344</sup> G171, K011-12, K136.

<sup>345</sup> A026, D025, K058.

<sup>346</sup> K125.

<sup>347</sup> K012, K021, K061.



## HOW ISSUES WERE MANAGED IN THE CHAIN OF COMMAND

### Q7: WHAT CULTURAL FACTORS IN THE RAF CHAIN OF COMMAND CONTRIBUTED TOWARDS THE ISSUES RAISED BY THE FORMER GP CAPT R&S?

5.72 We grouped our analysis of this question under six headings, set out below.

#### 5.73 **Accessibility of the Senior Leadership to Recruiting SMEs.**

a. We found that there was a perception amongst those charged with delivering the D&I LOAs that there had not been sufficient consultation with the scientific or subject experts at the time when the LOAs were first set<sup>348</sup>. We also heard that those experts felt disenfranchised from the discussions held by ExCo on the achievability of those LOA targets, and how best to set about meeting them<sup>349</sup>. ACOS Pers Pol said that "at the macro level there was limited access to ExCo, the SLT and CAS. Intermediaries interpreted CAS intent: "CAS won't like that" etc."<sup>350</sup>

b. We learned that the ExCo does not generally draw upon subject matter experts to brief during their meetings.

c. We read that the AFMB Awayday on 7 September 2022 had been crucial in setting the way forward, partly because there was more evidence, but also because the key staff were able to brief the SLT directly, in front of the NEDs<sup>351</sup>.

d. We noted that following consideration of the issues in September 2022, which we heard that ACOS WRR had briefed at drawing on Dstl data<sup>352</sup>, D Com Cap wrote a note to CDP which set out the scientific and expert basis for the proposed targets to be included in the AFRP contract<sup>353</sup>. We agreed that note established both the D&I LOA and associated targets on a more scientific footing going forward.

e. **Finding.** We found that more open access for subject matter experts to inform ExCo and its members could have improved understanding within the senior leadership regarding the deliverability of D&I LOAs.

#### 5.74 **Approach to Forecasting in Recruiting.**

a. **Uncertainty.** We heard from subject matter experts that forecasting the numbers of candidates with specific protected characteristics is particularly difficult,

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<sup>348</sup> K037-9, K090.

<sup>349</sup> L018, K030.

<sup>350</sup> K048.

<sup>351</sup> K062.

<sup>352</sup> L425-8.

<sup>353</sup> D001-3.



because it depends on individuals beginning the recruiting process<sup>354</sup>; and because there are unpredictable losses at every stage in the process through failed interviews, aptitudes, fitness tests and medicals.<sup>355</sup> We agreed that excessive confidence was being placed in forecasts.

b. **Optimism Bias and Caveats.** We noted a tendency both at R&S and in the chain of command towards excessive optimism with regard to D&I forecasts<sup>356</sup>. In RY 21/22, R&S continued to forecast achieving 9% EM inflow until January 2022<sup>357</sup>. Percentages were rounded up<sup>358</sup>, and the caveats that were put on those numbers at the start of the process were often not carried up through the chain. This may have led senior staff to think that there was more certainty in those numbers than the originator intended<sup>359</sup>.

c. **Satisfying the SLT.** We noted that evidence from RY20/21 (prior to F/Gp Capt R&S's tenure) indicated efforts to satisfy the SLT through portraying recruiting data in the best possible light and seeking to "deflect attention" from R&S<sup>360</sup>. While we consider this understandable from a team under pressure to deliver challenging outcomes, it did not aid understanding nor highlight the magnitude of the challenge.

d. **Finding.** We found that the limitations of forecasting in recruitment were not understood throughout the chain of command, and that this hampered understanding and led to optimism bias within the Senior Leadership Team.

e. **Recommendation 6.** That the Senior Leadership Team ensures that subject matter expert caveats and confidence levels on forecasts are included in senior briefings.

#### 5.75 Openness to Constructive Challenge of D&I LOA.

a. Witnesses said that in their careers they had found that the RAF chain of command was open to constructive challenge if properly approached. For example, [REDACTED] said "I always felt that I was free and welcome to challenge, question and discuss all issues with both my 1 and 2 up [ACOS WRR and COS Pers]. It is a really good working environment in that respect."<sup>361</sup> He also said "I remember going to brief... [COS Pers] in person; I said the gains would be very limited and that there was legal risk. An hour or so later she came back to me with very clear direction – don't

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<sup>354</sup> K026: "My team were quite open with me that the targets were not achievable because the applications were just not there."

<sup>355</sup> K032, K146.

<sup>356</sup> K147.

<sup>357</sup> K073, A317.

<sup>358</sup> A054 vs K131.

<sup>359</sup> A053-7 heavily caveated, vs K073.

<sup>360</sup> N005.

<sup>361</sup> K088.



do it."<sup>362</sup> The [REDACTED] said that "[REDACTED] I was able to challenge my immediate CoC".<sup>363</sup> An officer at R&S said "I was certainly comfortable challenging...[F/Gp Capt R&S], she would welcome it and listened to our point of view. I am also comfortable raising issues with the 1\*"<sup>364</sup> COS Pers said that "I openly welcome challenge, from within and outside my area of responsibility; it aligns with my professional responsibilities as an externally regulated healthcare clinician, and my ethos as a human being."<sup>365</sup>

b. However, we also noted that many thought that openness to challenge did not apply when it came to questioning the deliverability of the D&I LOA. [REDACTED] said: "I had the sense that there was no chance that we could challenge the 40% and 20% strategic targets for recruitment of women and EM by 2030."<sup>366</sup> An R&S officer said: "On some issues around Ethnic Minorities and Women it felt like the CoC above the Gp Capt did not welcome an SME perspective, if the narrative was not what they wanted to achieve their goal."<sup>367</sup> Another officer at R&S said "My experience prior to working in R&S was that if you approached it the right way, then constructive challenge is well received; but my experience here has been different."<sup>368</sup> She went on to explain that when she challenged the pulling forward of EM and women candidates, with updated legal advice from SO1 Legal and [REDACTED], "we presented the case that the proposals would be unlawful. We thought that we were in a good place as a result, but the advice was not well received, and it was very clear that 'no' was not an acceptable answer".<sup>369</sup>

c. Evidence regarding the use of the Shadow Board (SB) indicated that the SB was intended to act as a sounding board for ExCo decisions, and was viewed by witnesses positively<sup>370</sup>. We noted that the SB was generally briefed by subject matter experts on key agenda items prior to the ExCo meeting, was well established, willing to ask difficult questions<sup>371</sup>, and made considered judgments<sup>372</sup>. We agreed that this provided a clear mechanism for incorporating a degree of constructive challenge into policy making at ExCo level. However, we noted that when SB feedback on D&I LOAs suggested that the LOAs were not achievable, the SB's view appeared not to have been acknowledged by ExCo. [REDACTED], who as [REDACTED] briefed the SB, said: "With hindsight, I believe the SB were right in their concerns, and I think the press coverage supports that view; perhaps we should review how we use their advice."<sup>373</sup>

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<sup>362</sup> K093.

<sup>363</sup> K107. CoC is "Chain of Command".

<sup>364</sup> K140.

<sup>365</sup> K120.

<sup>366</sup> K088.

<sup>367</sup> K140.

<sup>368</sup> K031.

<sup>369</sup> K031.

<sup>370</sup> K043.

<sup>371</sup> K090.

<sup>372</sup> I022-48.

<sup>373</sup> K090.



d. However, we also noted that when in December 2021 R&S had briefed COS Pers that the 12% EM target was not achievable but 9% was achievable, she had sought and gained ExCo's agreement to reduce that target to 9%; and in March 2022 ExCo had agreed to a 12% EM target rather than the 14% previously planned<sup>374</sup>. We agreed that although these changes may have been partly driven by acceptance of realism, they did suggest that the SLT was not as closed to challenge on LOAs as it was perceived to be.

e. **Finding.** We found that while in general the RAF chain of command was considered open to constructive challenge, there was a widespread perception amongst staff charged with the delivery of D&I targets that those targets were not open to challenge. We also found that the views of the Shadow Board, an established mechanism for challenge at ExCo, were not sufficiently taken into account on this issue.

f. **Recommendation 7.** That the Senior Leadership Team considers the avenues by which the Executive Committee and its members are open to constructive challenge, the means by which the Shadow Board's views are championed, and the accessibility of the Executive Committee to subject matter experts, to ensure that all issues remain open to challenge, including command priorities of strategic importance.

#### 5.76 Relationship between Air Command and R&S.

a. We heard that there had been over several years a historic lack of trust between R&S and its chain of command, in part perhaps owing to their geographical separation. There was also a view that R&S had developed a "victim mentality"<sup>375</sup>, which on occasion led to a defensive response to criticism or change from some staff<sup>376</sup>.

b. ACOS Pers Pol said that: "For context R&S have been under intense scrutiny over the last 10+ years on failure to deliver across whatever was the issue of the day; failure to deliver 100% against ITR, failure to deliver pinch points, then on failure to meet rejoinder targets, then it was failure to meet EM and female targets."<sup>377</sup>

c. An R&S officer said that "There has always been pressure on R&S to maximise results and a perception that the SLT does not recognise our achievements. For example, according to... a previous Gp Capt R&S, the chain of

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<sup>374</sup> A524.

<sup>375</sup> L019, K041.

<sup>376</sup> K088.

<sup>377</sup> K040.



command viewed R&S as "moribund and useless".<sup>378</sup>

d. [REDACTED] said "I realised there was a considerable amount of expertise in R&S, but I think they struggled at times to have their narrative heard; principally, in my view, because they adopted a defensive and overly sensitive approach to evolving the business and increasing throughput. Also, the fact that R&S had been recently relocated from AOC 22 Gp's AoR<sup>379</sup> into COS Pers' AoR meant there was little recruitment experience within the wider 2\* AoR, and not helped by R&S being located at RAF Cranwell, some 149 miles from HQ Air."<sup>380</sup>

e. [REDACTED] gave another perspective: "I was really impressed by the innovation, drive and genuine passion for recruiting in R&S. I think because they are based at Cranwell, you only get that sense when you really delve into their work. They were constantly refreshing how they did their business and I think because they had done so much and explored so many ideas, their response to 'new' ideas or initiatives from above was commonly perceived as blocking or resistant because they had already done it."<sup>381</sup>

f. We agreed that the separation of R&S and Air Command, geographically and functionally, required a higher-than-normal number of regular visits in each direction, which Covid had made harder; and that some of those in the chain of command had managed this better than others<sup>382</sup>.

g. Staff at Air Command were sometimes irritated at the quality of staff work provided by R&S<sup>383</sup>. However, witnesses pointed out that R&S is established as a delivery organisation, and a command of over 450 personnel; yet it was often expected to fulfil the functions of a 2\* staff branch for which it was not well structured or manned<sup>384</sup>. This exacerbated the impact of D&I LOA staffing demands.

h. We agreed that at a more personal level, the relationship between F/Gp Capt R&S and both ACOS WRR and COS Pers, her 1\* and 2\* reporting chain, suffered from a lack of trust<sup>385</sup>. We viewed this factor as particularly relevant when it came to seeking to resolve the issues<sup>386</sup> in the period 2-4 August 2022.

i. **Finding.** We found that there was a dislocation between Air Command and R&S in terms of: geography, in that distance undermined mutual understanding;

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<sup>378</sup> K017.

<sup>379</sup> Area of Responsibility.

<sup>380</sup> K107.

<sup>381</sup> K088.

<sup>382</sup> K113, K120.

<sup>383</sup> K088.

<sup>384</sup> K109.

<sup>385</sup> K007, K009, K059, K123.

<sup>386</sup> I.e. the contrary views of what was permissible regarding pulling forward EM and female candidates.



function, in that a delivery organisation was expected to perform as a staff branch for which it was not resourced; and strategic perspective.

j. **Recommendation 8.** That the Senior Leadership Team considers whether the R&S function best sits under a policy lead, or elsewhere.

5.77 **D&I Improvement not Managed as a Programme.**

a. We heard that responsibility for delivering the D&I changes sought by ExCo as part of Astra fell largely upon R&S; and that the LOA targets were almost exclusively reflected in the objectives of the R&S chain of command, and little elsewhere within the Service<sup>387</sup>. [REDACTED] said "It felt that the sole achievement of the inflow targets rested primarily on the R&S team. It was largely viewed as just a recruitment problem that was exclusively R&S's problem to resolve. It should be everyone's responsibility and all should consider what they can do to assist in achieving the macro recruitment challenges."<sup>388</sup> However, COS Pers said that she "repeatedly made the point at the ExCo that recruiting was only part of process to improve the representation of women and EM in the Service".<sup>389</sup>

b. We also heard that R&S was on occasion held responsible for matters outside their control, including medical standards, residency qualifications<sup>390</sup>, and security<sup>391</sup>. An officer at R&S said: "The blame for failing to deliver against EM and women targets always seemed to be focussed on R&S, when very often we did not own the policy levers that needed to be adjusted if they were to be achieved, such as residency and nationality constraints<sup>392</sup>. And others within the system were not put under comparable pressure – for example, we were not aware of any efforts to improve the retention of female and EM personnel within the wider Service, and I understand that the outflow rate for EMs is worse than that for white men, which needs to be addressed."<sup>393</sup>

c. Another R&S officer said: "The other point is retention. Without retention we will not meet the LoAs for inflow – as in particular it has been proven in numerous research that Ethnic Minorities need to see themselves at a senior level in an organisation before they would consider applying. The spotlight has never been on retention."<sup>394</sup>

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<sup>387</sup> K122.

<sup>388</sup> K113.

<sup>389</sup> M008.

<sup>390</sup> L229.

<sup>391</sup> K004, K146.

<sup>392</sup> L264. R&S note saying that there was a lack of readiness in the wider RAF to deal with the consequences of a change in residency and security for Commonwealth recruits. See also L278.

<sup>393</sup> K020.

<sup>394</sup> K101.



d. **Communicating Change.** We noted that the communication of the need for D&I change, internally and externally, has been identified as an area for greater effort going forward<sup>395</sup>. We saw evidence that this had been addressed from September 2022<sup>396</sup>.

e. **Finding.** We found that the unreasonable pressures under which R&S were placed could have been reduced, and progress towards achievement of D&I targets improved, if the SLT managed D&I improvement as a Programme, engaging the full range of stakeholders across the Service.

f. **Recommendation 9.** That the Senior Leadership Team considers whether to manage D&I Improvement as a Programme.

#### 5.78 Focus on Legal Risk.

a. We noted concern in R&S that the chain of command was highly focussed on whether it could accept the legal risk of a challenge to the initiatives being pursued. An officer at R&S said "I had a particular frustration with the fact that we were repeatedly told it was not our decision whether to do this or not, that the SLT could "choose to take legal risk" regardless of the legal advice. On multiple occasions I voiced my concerns to the 1\*, feeling it was not within the SLT's gift to take risk that involved the staff of a large organisation having to act in a way they know to be unlawful in the UK... [ACOS WRR] advised it was not my decision whether to take legal risk, that was for the SLT to decide." She added "I felt very disappointed at the way the advice was received and the way the situation was handled as a whole. It has affected my confidence in the senior leadership, and the lack of integrity displayed by some has saddened me."<sup>397</sup>

b. We also took into account the views expressed by some of the more junior staff involved in executing recruitment policy, such as an [REDACTED] at AFCO London who recounted on being told by another [REDACTED] that white males were not being allocated to a course and "she needed to be careful what is said in emails as this could potentially blow up down the line for discrimination"<sup>398</sup>. We found that the more junior staff who were charged with delivering the policies<sup>399</sup> felt that they were being directed to take actions which they believed to be contrary to the legal advice that had been explained to them<sup>400</sup> - actions which some perceived to be innately unfair<sup>401</sup>, and therefore not in keeping with the core values of the Service<sup>402</sup> in

<sup>395</sup> A527. See Recommendation 4, Paragraph 5.32.

<sup>396</sup> C003.

<sup>397</sup> K031.

<sup>398</sup> L081.

<sup>399</sup> Including F/Gp R&S.

<sup>400</sup> K031, K034, K092.

<sup>401</sup> L061-69, L071-4, L081, L090, L116, L429.

<sup>402</sup> [https://recruitment.raf.mod.uk/recruitment/media/3897/20200703-](https://recruitment.raf.mod.uk/recruitment/media/3897/20200703-raf_ap1_2019_rev_3_page_spreads.pdf)

[raf\\_ap1\\_2019\\_rev\\_3\\_page\\_spreads.pdf](https://recruitment.raf.mod.uk/recruitment/media/3897/20200703-raf_ap1_2019_rev_3_page_spreads.pdf): Respect, Integrity, Service, Excellence.



particular Integrity<sup>403</sup>. F/Gp Capt R&S summarised: "The feeling amongst the staff at R&S was that what had happened was both morally and legally wrong, many felt disenfranchised and several wanted to leave".<sup>404</sup>

c. COS Pers said in relation to the pulling forward of EM and female candidates that "As explained to me by DLS there were shades of legal risk; it was a balance of the legal probability and legal likelihood (i.e. the probability that the RAF would be challenged versus the likelihood of a successful challenge). After...[F/Gp Capt R&S]'s resignation I was still receiving guidance from DLS, including on the day of the resignation, that although there was legal risk, it was within tolerable limits. The ExCo and CAS were prepared to defend these risk judgements because of the lack of diverse representation across Service [sic], and the pressing need to make change."<sup>405</sup>

d. We considered the context of the strategic priority afforded to D&I improvement across the Services, which the Chiefs had said was "not only morally the right thing to do, it is mission critical"<sup>406</sup>; and which R&S were told was CAS's top priority after operations<sup>407</sup>. We noted the very considerable effort put in by individuals at many levels to deliver what was an important Departmental priority; and also noted COS Pers' view that "I do not believe that any person in the organisation genuinely set out to do anything wrong; everyone has tried to do what is best for the Royal Air Force."<sup>408</sup>

e. We agreed that it was appropriate for legal advice on these issues to focus primarily on the legal risk of proceeding, but we determined that, in making a decision, the Senior Leadership Team also had a responsibility to consider other aspects such as moral and ethical considerations, and fairness.

f. **Finding.** We found that when considering whether to pursue certain initiatives to meet the D&I LOA, the chain of command was focussed on whether it could accept the legal risk of a challenge to initiatives that pushed the boundaries of positive action. We did not see evidence that the ethical and moral considerations were considered on equal terms.

g. **Recommendation 10.** That when assessing future recruiting initiatives, the Senior Leadership Team considers how much weight should be given to their innate fairness and alignment with core values.

<sup>403</sup> [https://recruitment.raf.mod.uk/recruitment/media/3897/20200703-raf\\_ap1\\_2019\\_rev\\_3\\_page\\_spreads.pdf](https://recruitment.raf.mod.uk/recruitment/media/3897/20200703-raf_ap1_2019_rev_3_page_spreads.pdf):

<sup>404</sup> K002.

<sup>405</sup> K121.

<sup>406</sup> J092.

<sup>407</sup> F036, L042.

<sup>408</sup> K130.



**5.79 Overall Finding on Culture.** Cultural factors in the RAF chain of command contributing towards the issues raised by the former Gp Capt R&S included the accessibility of the senior leadership to recruiting subject matter experts; the interpretation of forecasting in recruiting; perceived openness to challenge on D&I LOA; the relationship between R&S and Air Command; the fact that D&I improvement was not managed as a programme; and the focus on legal risk.

**Q8: WERE THE CONCERNS THAT THE FORMER GP CAPT R&S RAISED ABOUT THE DIRECTION TO DRAW FORWARD FEMALE AND EM CANDIDATES CONSIDERED APPROPRIATELY AND IN A TIMELY MANNER?**

5.80 We noted that F/Gp Capt R&S raised her concerns about the instruction to draw forward female and EM candidates initially on a Skype call with ACOS WRR on 2 August 2022, when she had sight of the draft order<sup>409</sup> which was to come from COS Pers on 3 August 2022. F/Gp Capt R&S said that she believed the instruction would contravene EA10 and referred to the advice given by SO1 Legal. ACOS WRR went back to COS Pers on 2 August 2022 to check her intent and whether she wanted to clear her instructions to R&S through legal advisors. COS Pers responded the same day endorsing the wording of the instruction, and saying that D Com Cap was "in the loop already"<sup>410</sup>.

5.81 On 3 August 2022 an officer at R&S sought legal advice on whether COS Pers' direction was contrary to the advice given on 9 May 2022 and 6 June 2022. As discussed above, a junior legal advisor had responded that "The Advisory team have provided legal advice to the chain of command on this issue. We can't now provide the advice you request based upon the direction made by the chain of command because that would present a conflict of interest for the team."<sup>411</sup>

5.82 F/Gp Capt R&S raised her concerns again in her email to ACOS WRR (copied to COS Pers' office) on Thursday 4 August 2022<sup>412</sup>, and then finally in her resignation letter written to D Com Cap on the same day<sup>413</sup>. The letter was not copied to others in her chain of command, and when we interviewed ACOS WRR weeks later she had not seen that letter.

5.83 When COS Pers received F/Gp Capt R&S's email on 4 August 2022, she had immediately sought legal advice on its contents from DLS<sup>414</sup>, and received a response less than two hours later. That advice said that if women or EM were equally qualified as other candidates, it would be reasonable to call them forward first in order to address under-

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<sup>409</sup> A032. The instruction was: "COS Pers thanks R&S for their analysis and she would like R&S to Course Load the 18 EA and 4 Offrs plus any remaining Women and EM in those priority Professions that are ready, even if the EA Candidates are not 'first past the post'".

<sup>410</sup> D011.

<sup>411</sup> G170.

<sup>412</sup> A046.

<sup>413</sup> A410-11.

<sup>414</sup> A045.



representation within the Service<sup>415</sup>. COS Pers took the advice to be confirmation that her instruction was legally justifiable<sup>416</sup>.

5.84 On 8 August 2022, the following week, an R&S officer said<sup>417</sup> that COS Pers had misinterpreted DLS's advice because DLS had not understood that the selection process, which gave candidates Defence Aptitude Assessment (DAA) scores and interview scores, did not leave all candidates equally qualified (as had been explained by SO1 Legal<sup>418</sup>). DLS saw that officer's response, and in an email to COS Pers on 8 August 2022, DLS set out the principles to be applied dependent on whether or not there were criteria by which to distinguish candidates, and concluded that "If the executive ask R&S to do this it would constitute in my view a lawful order – there is a recent case from the Courts-Martial appeal court which states that even where there is a risk civil law may be broken (and this is by no means certain here) it does not stop the activity being lawful for the purposes of an order – the legal and reputational risk is borne by the RAF and CAS – not the individuals in R&S".<sup>419</sup>

5.85 During the VTC between Air Command and R&S on Monday 8 August 2022 the discrepancy between the advice given by SO1 Legal to F/Gp Capt R&S and that given by DLS to COS Pers became evident<sup>420</sup>. DLS's visit to R&S on 10 August 2022 led to her stating: "I consider that the chance of the RAF being subject to legal challenge if it brings forward the EM and female candidates is LOW. However, if challenged, I consider there is a VERY HIGH risk of that challenge being successful".<sup>421</sup> We found that from 10 August 2022 the chain of command should therefore have been aware that F/Gp Capt R&S had justification for believing that the instruction she had been given would have contravened EA10.

5.86 We discussed how the chain of command had dealt with F/Gp Capt R&S's concerns, and whether the chain of command should have regarded F/Gp Capt R&S as a whistleblower. We found that the concerns she raised met the MOD criteria: "Whistleblowing occurs when a person raises a concern about past, present or imminent wrongdoing"<sup>422</sup>; and that either F/Gp Capt R&S or her chain of command could have identified the opportunity to manage her concerns through that route; which would have included protection against any detriment to her as a result of raising concerns, in accordance with the MOD Whistleblowing Policy. We noted that CDP had suggested to CAS that treating the matter as whistleblowing was one way forward, and a NSI was another; and that the chain of command had chosen the latter<sup>423</sup>.

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<sup>415</sup> A045.

<sup>416</sup> K126.

<sup>417</sup> A044.

<sup>418</sup> G125.

<sup>419</sup> A043.

<sup>420</sup> K021, K061.

<sup>421</sup> M052.

<sup>422</sup> A473.

<sup>423</sup> A508.



5.87 We noted that attention was given to providing F/Gp Capt R&S with welfare support through RAF Cranwell<sup>424</sup>. Regarding the management of F/Gp Capt R&S's career after her resignation, alternative short term employment opportunities were limited and when she had a meeting with her Air Secretary representative, she was offered project work until she could be considered for longer term roles in 2023. She said that "It was clear that no thought had been put into my future at all. I therefore decided that I had no trust in the CoC, had been put in a position from which there was no way back and have therefore now terminated my service."<sup>425</sup> COS Pers said that she had met twice with F/Gp Capt R&S and had encouraged her to stay<sup>426</sup>. We agreed that there had likely been an opportunity to retain F/Gp Capt R&S in the Service, but that this was lost in part owing to the relationship between her and her chain of command.

5.88 We considered the passage of information about F/Gp Capt R&S's concerns. We noted that CAS had written to CDS and PUS on 17 August 2022, saying that applicants with protected characteristics had not been pulled forward<sup>427</sup>. Additionally, D Com Cap had written on 23 August 2022 that he had not seen evidence that there had been positive discrimination in favour of those with protected characteristics<sup>428</sup>. The AFMB meeting on 7 September 2022 was also told that "no evidence of actual discrimination had been found, however direction had been issued which, if acted upon would have left the RAF exposed to a high risk of successful challenge."<sup>429</sup> The more detailed investigation by this NSI has revealed that these three statements were not accurate regarding what occurred in RY 20/21.

5.89 It was not until 28 October 2022 that the record was corrected by the [REDACTED] [REDACTED] by saying that EM and female candidates had been brought forward<sup>430</sup>. We noted that the data were available from R&S, and were found the same day that we asked the question<sup>431</sup>, although it was apparent that awareness of the data had been lost in the changeover of key staff appointments. We discussed whether the chain of command and their staff had discounted too early the possibility that F/Gp Capt R&S had been correct when she said that prior to her arrival clear acts of positive discrimination had taken place; and we determined that insufficient effort had been taken to investigate that allegation before reporting to senior leaders.

5.90 We considered the impact on F/Gp Capt R&S of the delay in the senior leadership acknowledging that candidates had been pulled forward in RY 2020/21. We agreed that this undermined her trust in her CoC, accentuated her feeling that she "had been put in a position from which there was no way back"<sup>432</sup>, and contributed to her decision to leave the

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<sup>424</sup> K061.

<sup>425</sup> K013.

<sup>426</sup> K128. Meetings on 23 August 2022 and 10 October 2022.

<sup>427</sup> E037-8.

<sup>428</sup> A412-3.

<sup>429</sup> A571.

<sup>430</sup> L448-50.

<sup>431</sup> B094, H003-6.

<sup>432</sup> K013.



Service. The delay also resulted in the Senior Leadership Team missing the limited window of opportunity to intervene and to identify suitable employment for the F/Gp Capt R&S, which may have retained her in the RAF<sup>433</sup>.

5.91 **Finding.** We found that the chain of command's reaction to the former Gp Capt R&S's concerns was overly defensive, and had not properly considered whether she might have been justified in what she said regarding previous acts of positive discrimination, or the legality of what she was asked to do; and that insufficient effort had been made to determine the facts. We found that the delay in acknowledging that candidates had been pulled forward in Recruiting Year 2020/21 contributed to the former Gp Capt R&S's decision to leave the Service; and also resulted in the Senior Leadership Team missing the limited window of opportunity to intervene and to identify suitable employment for the former Gp Capt R&S, which may have retained her in the RAF.

5.92 **Recommendation 11.** That the staffing of allegations that affect the reputation of the RAF be reviewed in order to ensure that initial consideration is given to the possibility that the allegations may be proven, and that sufficient time and space is given to investigate the facts before announcements are made.

#### **Q9: WAS THE FORMER GP CAPT R&S'S RESIGNATION A REASONABLE AND JUSTIFIED COURSE OF ACTION?**

5.93 In considering whether F/Gp Capt R&S was justified in her decision to resign from her role we began by reviewing the accuracy of the claims she made in her resignation letter. As has now been recognised<sup>434</sup>, she was correct in saying that prior to her appointment EM and female candidates had been pulled forward from the following recruiting year based on their protected characteristics. We agreed that at the time those involved believed that what they were doing was within the bounds of positive action. We also found that that F/Gp Capt R&S was correct in light of the legal advice she had received in saying that she was asked to carry out further acts which would have amounted to positive discrimination if enacted.

5.94 A key theme of F/Gp Capt R&S's resignation letter was the pressure that she and her staff were under to deliver the LOA. As discussed above, it is clear that this was considerable, and that its cumulative effect had not been understood by the chain of command. F/Gp Capt R&S's personal loss of confidence in her chain of command and the SLT was another factor which she highlighted, and we agreed that there had been a breakdown in the relationship between her and her reporting officers.

5.95 We noted the evidence from one of her officers that F/Gp Capt R&S announced her intention to resign at a Management Board meeting on 3 August 2022<sup>435</sup>: "She said that she had told the recruiting force when she arrived that she would not cross the line with regard

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<sup>433</sup> K047.

<sup>434</sup> L444.

<sup>435</sup> K012.



to pulling forward EM and female recruits against the legal advice, and that if she was now being asked to do that she would resign."<sup>436</sup> Another officer said "I do not believe that she would have resigned had her concerns been listened to, she wanted her chain of command to realise that they were forcing her to "do her job with 2 hands tied behind her back".<sup>437</sup>

5.96 We noted that both COS Pers and ACOS WRR said that they were aware that F/Gp Capt R&S had considered resignation from her post previously, in January 2022 and in March 2022<sup>438</sup>; and COS Pers said that "I was aware that she was unhappy in the role from her conversations with me and others. I did offer her the opportunity to stand down from role on more than one occasion, including when I visited R&S in January 2022."<sup>439</sup>

5.97 ACOS WRR said that "I believe that...[F/Gp Capt R&S]'s resignation could have been averted... I asked her whether she wanted to change her approach and see if she could change the direction given rather than go for the nuclear option, but she didn't want to."<sup>440</sup> COS Pers said "I was disappointed that she [F/Gp Capt R&S] did not talk to me or her Line Manager... [ACOS WRR], on the day of her resignation... I would have welcomed a conversation with her before she made the decision to resign as I believe in open and honest dialogue to try to resolve concerns and problems."<sup>441</sup>

5.98 We discussed whether, before resigning, F/Gp Capt R&S had exhausted all alternative ways to resolve her concerns. We agreed that she had indicated to ACOS WRR in emails and in telephone conversations that there were "red lines" that she would not cross, and that on 2 August 2022 F/Gp Capt R&S had made it clear to ACOS WRR that she was not going to ask her team to do something that she believed amounted to positive discrimination<sup>442</sup>. We noted that F/Gp Capt R&S said that "If... [the former D Com Cap] had still been in post, I would have spoken to him directly before I resigned as I had a working relationship with him due to previous roles... [The current D Com Cap] was too new and it was clear that after numerous concerns raised to the 1\* and noting her unwillingness to challenge the 2\*, that I had no other option but to submit a formal letter of resignation to address the pursuit of the unlawful order."<sup>443</sup>

5.99 We discussed the position in which F/Gp Capt R&S found herself, correctly believing that she was right on the question of whether the 3 August 2022 direction was contrary to advice she had seen regarding the application of EA10, thinking that her chain of command was not listening to her justifiable concerns, and that she had "no voice"<sup>444</sup>. We found that her decision to resign at that moment was both understandable and justifiable from her perspective; particularly in light of the commitment she had made to her team when she

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<sup>436</sup> K021.

<sup>437</sup> K034.

<sup>438</sup> K052, K114.

<sup>439</sup> K127.

<sup>440</sup> K059.

<sup>441</sup> K127.

<sup>442</sup> K011.

<sup>443</sup> K012.

<sup>444</sup> K013.



took up her post not to do anything that crossed the line of positive discrimination. We also discussed the other options open to her to resolve her concerns, including speaking personally to key leaders and outer office staff and, if necessary, the whistleblowing hotline. We noted that when she tendered her resignation letter she was offered the opportunity to meet with D Com Cap when he was back in office, but declined<sup>445</sup>.

**5.100 Finding.** We determined that the former Gp Capt R&S's resignation letter included fair criticisms, which were later proved to be justified; and that her decision to resign was both understandable and reasonable, given her earlier commitment to those under her command. We also agreed that resignation was potentially avoidable as there were other courses of action open to her to resolve of her concerns.

**5.101 Recommendation 12.** That service personnel are reminded of the confidential routes open to them to bring to the attention of the chain of command concerns about actions that go against the Values and Standards of the Services or the Civil Service code, or might be considered unlawful, with examples drawn from recent experience.

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<sup>445</sup> M055.



**CHRONOLOGY OF EVENTS**

Date	Event	Reference
Jul 17	Air Cdre Burns assumed appointment as ACOS WRR	K036
26 Mar 18	██████████ assumed appointment as ██████████	K105
2018	Defence Diversity and Inclusion Strategy 2018-2030 published	J021
2019	RAF D&I Levels of Ambition set as part of the ASTRA programme Inflow aspiration of 40% women and 20% BAME by 2030	K117 J095
24 Feb 20	AVM Byford assumed appointment as COS Pers	K116
By Mar 20	Inflow recruiting targets for EM and Women set for first time for RY 2020/21: EM 10%(+/-1%), Women 20% (+/-1%)	K107
16 Jun 20	DLS Guidance on Positive Action (PA) issued to Senior Leadership Team	L99-101
Nov 20	██████████ and Air Cdre Burns (then ACOS WRR) references to D Com Cap's intent: exploit all positive interventions 'take risk and push boundaries of PA'	K108 A292
10 Dec 20	Positive Action letter issued by AM Turner (D Com Cap) to Commanders and WOs, covering DLS Guidance on Positive Action	L98 L99-101
26 Feb 21	SO1 Legal advice in respect of using 23 TG8 (Gunner) spaces for BAME and female candidates	F035
RY 20/21	EM and Female candidates pulled forward to RY 2020/21	K110 H003-04
Mar 21	EM and female targets (10% and 20%) met RY 2020/21	K109/K002 D006/D004
Mar 21	RY 2021/22 targets set at 12% EM (+/- 1%) and 22% Women (+/- 2%)	B62
RY 20/21	EM target included assumption of overseas recruiting which did not materialise	K038
31 Mar 21	██████████ assumed appointment as Gp Capt R&S	K001 K105
Jun 21	Air Cdre Lincoln assumed appointment as ACOS WRR Air Cdre Burns assumed appointment as ACOS Pers Policy	K050 K036
May 21	R&S internal exercise to clarify PA vs PD including internal challenge to call forward enacted in RY 20/21	A160-2
20-21 Sep 21	HQ R&S briefed EOY forecast of performance against targets at 9% EM and 23 % Female. Passed by Air Cdre Lincoln (ACOS WRR) to AVM Byford (COS Pers)	K073
Oct 21	██████████ (F/Gp Capt R&S) received MPAR from Air Cdre Lincoln (ACOS WRR)	C37
8 Nov 21	AM Turner (D Com Cap) visited HQ R&S - EOY forecast of performance against targets at 9% EM and 23 % Female	A126 K141



1 Dec 21	Air Cdre Lincoln (ACOS WRR) briefed EOY forecast of performance against targets at 9% EM and 23 % Female	G004
14 Dec 21	AVM Byford (COS Pers) briefed ExCo that 9% EM was achievable ExCO reduced EM target from 12% to 9%	A165 G030
Dec 21	Air Cdre Lincoln (ACOS WRR) departed on HCSC [REDACTED] stood up as [REDACTED]	K050 A008
13 Jan 22	AVM Byford (COS Pers) visited HQ R&S. Briefed that LOAs unachievable; EOY forecast of performance against targets at 5.7% EM and 19.7 % Female	A075 A065-123 K141 K032
26 Jan 22	Meeting attended by AM Turner (D Com Cap), AVM Byford (COS Pers), [REDACTED] (F/Gp Capt R&S) and [REDACTED]	K009-10 K089-90 K122-23
End Jan 22	AM Turner left appointment as D Com Cap	K123
Feb - May 22	AVM Byford stood up as A/DCom Cap	K123
c14 Feb – 3 May 22	Air Cdre Burns stood up as A/COS Pers	K036
Feb 22	At AFMB AVM Byford (A/D Com Cap) acknowledged that 9% would be a considerable success if achieved but noted that EM inflow was tracking at 3.3% significantly below the 9% target	A012-3
4 Mar 22	[REDACTED]	K052 K150
End Mar 22	[REDACTED]	K052 K150
Mar 22	Pull forward of EM and Female candidates to boost IY performance considered and rejected by AVM Byford (COS Pers) SO1 legal advice (in discussion) that this was not compliant with EA10	K093
5 Apr 22	Mar 22 ExCo Minutes released: performance against EM target deemed 'a disappointment' RY22/23 EM target to hold at 12% (vice planned 14%)	A524
5 Apr 22	[REDACTED] (F/Gp Capt R&S) email to [REDACTED], cc Air Cdre Burns (ACOS Pers Pol) re March 22 ExCo RoD	E005-6
25 Apr 22	DDLS email to Air Cdre Burns (ACOS Pers Pol) saying, with caveats, that pulling forward BAME and Females, and holding places back for priority candidates, is 'proportionate means of addressing under-representation'.	F039-40
28 Apr 22	AFMB considered D&I recruitment; lack of progress on EM was a 'disappointing setback'. Away Day set for Sep 22	A185
Early May 22	Air Cdre Lincoln returned as ACOS WRR, [REDACTED] reverted to [REDACTED]	K050
May 22	AM Knighton appointed D Com Cap	



May 22	██████████ (F/Gp Capt R&S) received OJAR 20/21	C026
May 22	SO1 Legal deep dive into R&S processes. Outcome was change in understanding of when a 'job offer' was made leading to significant change in advice	K134 K031
9 May 22	Legal advice Positive Action in Recruitment issued to Air Cdre Burns (ACOS Pers Pol)	B004-07
May-Jun 22	RN, Army and RAF submissions to Centre on LOA glidepath to 2030	B102-109
6 Jun 22	SO1 Legal advice Positive Action and the Front Loading of EM and Female candidates issued to Air Cdre Lincoln (ACOS WRR) and passed to ██████████/AVM Byford (COS Pers) cc ██████████ (F/Gp Capt R&S)	B008-10 D025 K135
7 Jun 22	R&S holding to account	K120 K010-11
8 Jun 22	AVM Byford (COS Pers) email to Air Cdre Lincoln (ACOS WRR) confirming that 'CAS is supportive of bending the ITR out of shape for the next 3 years to generate the diverse inflow that we are aiming for'	B52
8 Jun 22	SO1 Legal issued advice that the 'over recruitment proposal' was unlawful	G120-122 K136
13 Jun 22	DLS Guidance on Positive Action updated by ██████████ (SO1 Legal)	G103-5
14 Jun 22	AOC 22 Group sent Air ExCo 22-013 D&I Recruiting Strawman to CAS	A243-7
15 Jun 22	AVM Byford (COS Pers) issued direction to 'slow down filling the ITR unless it's a candidate from an under-represented group'	B15
15 Jun 22	██████████ (F/Gp Capt R&S) requested legal advice on AVM Byford's (COS Pers) direction	C41
16 Jun 22	SO1 Legal advised that the direction would be 'contrary to EA10'	C40 K136
20 Jun 22	Pause on course loading for all personnel directed by Air Cdre Lincoln (ACOS WRR). AVM Byford (COS Pers) on leave. F/Gp Capt R&S direction to R&S team	G110-11 K010-11
7 Jul – Sep 22	Course loading subject to 2* approval Initial 2* loading brief from Air Cdre Lincoln (ACOS WRR) to AVM Byford (COS Pers)	K032 G130-31
11 Jul 22	R&S holding to account Additional ITR allocation of 196 personnel to People Ops discounted	B061-66 K007 K149
27 Jul 22	Email Air Cdre Lincoln (ACOS WRR) to AVM Byford (COS Pers): R&S predictions at Q1 optimistic (9% EM and 20% women) Recommended projection 6.7% EM and 17.3% women	D019
29 Jul 22	Dstl Report: 'RAF D&I LOA: Recruitment Pool Analysis', sent to Air Cdre Burns (ACOS Pers Pol)	F022-29



1 Aug 22	AVM Byford COS Pers direction to Air Cdre Lincoln (ACOS WRR) to: Ignore first past the post process Offer places to under-represented groups in preference to those who are 'in line'	D015 D014
2 Aug 22	Air Cdre Lincoln (ACOS WRR) shared draft order from AVM Byford (COS Pers) to pull forward EM and Female candidates with [REDACTED] (F/Gp Capt R&S)	K011
2 Aug 22	Air Cdre Lincoln (ACOS WRR) sent draft order to AVM Byford (COS Pers) and advised M&C, Sec and legal consultation. AVM Byford (COS Pers) agreed wording and noted AM Knighton (D Com Cap) in the loop	D011
3 Aug 22	Order to pull forward EM and female candidates issued by AVM Byford (COS Pers) via Air Cdre Lincoln (ACOS WRR)	E023
3 Aug 22	[REDACTED] (F/Gp Capt R&S) declared intention to resign at R&S Exec Meeting	K012 K021
3 Aug 22	An R&S officer requested legal advice on AVM Byford (COS Pers) direction as believed it to be contrary to SO1 Legal advice. A junior legal advisor declined to respond substantively, explaining it was due to 'conflict of interest'.	G160 G170
4 Aug 22	[REDACTED] (F/Gp Capt R&S) emailed Air Cdre Lincoln (ACOS WRR) stating she would not implement said order as it was unlawful	E022
4 Aug 22	DLS view that call forward was legally defensible under positive action	E020-21
4 Aug 22	[REDACTED] (F/Gp Capt R&S) hand delivered letter of resignation to AM Knighton (D Com Cap)	A410-11
8 Aug 22	An R&S officer emailed Air Cdre Lincoln (ACOS WRR) challenging DLS legal advice	E019
8 Aug 22	DLS response to the R&S officer's email of 8 Aug affirming action was defensible	A278-280
8 Aug 22	Air Cdre Lincoln (ACOS WRR) visited HQ R&S: meeting with Execs, with AM Knighton (D Com Cap) online	K060-61
11 Aug 22	AVM Jennings (DLS) visited HQ R&S and, following Exec briefing, gave updated legal advice	K061
17 Aug 22	CAS note to CDS and PUS. RAF Diversity Inflow LOA Update: 'active Board level intervention is necessary if we are ever to move the dial on diversity recruiting' Note shared widely in RAF	D009-10 E033
23 Aug 22	AM Knighton (D Com Cap) response to [REDACTED] (F/Gp Capt R&S)	A412-13
7 Sep 22	CDP Review of RAF Recruiting practice, policies and direction report	A506-11



~~OFFICIAL SENSITIVE LIMDIS~~

7 Sep 22	AFMB: CAS stated he would commission an NSI to understand the circumstances and culture that resulted in a delay in addressing F/Gp Capt R&S concerns LOA retained but would no longer be linked to individuals' objectives	C001-5
23 Sep 22	AFRP: RAF LOA 2030, AFRP contracted targets lower than LOA.	D001-8

~~OFFICIAL SENSITIVE LIMDIS~~



**KEY INDIVIDUALS**

Rank	Name	Appointment	Dates
AM	R Knighton	Deputy Commander Capability Air Command (D Com Cap)	May 22 - Date
AM	A Turner	Deputy Commander Capability Air Command (D Com Cap)	May 19 – Jan 22
█	█	Non Executive Board Member – Air Force Main Board	Not Known (NK)
AVM	M Byford	Chief of Staff Personnel (COS Pers)	Feb 20 - Date
AVM	M Byford	Acting D Com Cap	Feb – 3 May 22
AVM	T Jennings	Director Legal Services (DLS)	Sep 18 - Date
Air Cdre	A Burns	ACOS Workforce Requirements and Recruiting (ACOS WRR)	Jul 17 – Jun 21
Air Cdre	A Burns	ACOS Personnel Policy (ACOS Pers Pol)	Jun 21 - Date
Air Cdre	A Burns	Acting COS Pers	c14 Feb – 3 May 22
Air Cdre	J Lincoln	ACOS Workforce Requirements and Recruiting (ACOS WRR)	Jun 21 - Date
Air Cdre	M Phelps	Deputy Director Legal Services (DDLs)	Oct 20 - Date
█	█	█	Sep 19 - Date
█	█	█	Dec 21 – Apr 22
█	█	█	Mar 18 – Mar 21
█	█	█	Mar 21 – Aug 22
█	█	█	NK
█	█	█	Aug 21 - Date
█	█	█	2018 - Date
█	█	█	Sep 21 - Date
█	█	█	NK – Sep 21
█	█	█	Aug 20 - Date
█	█	█	Sep 21- Date



**GLOSSARY OF ABBREVIATIONS**

1*/2*/3*	Air Cdre/Air Vice Marshal/Air Marshal
2RO	Second Reporting Officer
ACAS	Assistant Chief of the Air Staff
ACSO	Army Command Standing Order
ACOS Pers	Assistant Chief of Staff Personnel
AD	Assistant Director, usually Gp Capt or equivalent
AFCO	Armed Forces Careers Office
AFMB	Air Force Main Board
AFRP	Armed Forces Recruiting Programme
Air ExCo	Air Executive Committee
Air Cdre	Air Commodore
AM	Air Marshal
AVM	Air Vice Marshal
B2	Civil servant grade, broadly equivalent to Gp Capt
BAME	Black, Asian and Minority Ethnic
BAU	Business As Usual
BRTC	Basic Recruit Training Course
CAS	Chief of the Air Staff
CBAT	Computer Based Aptitude Test
CoA	Course of Action
CDP	Chief of Defence Personnel
CDS	Chief of the Defence Staff
COS Pers	Chief of Staff Personnel
CoC	Chain of Command
DAA	Defence Aptitude Assessment
D Com Cap	Deputy Commander Capability and Personnel
D&I	Diversity and Inclusivity
DLS	Director Legal Services



DDLS	Deputy Director Legal Services
DS	Secretary of State for Defence
EA	Enlisted Aviator
EA10	Equality Act 2010
EM	Ethnic Minority
ET	Early Terminate
ExCo	Executive Committee of the Royal Air Force
Exec	Executive (Team)
F&C	Foreign and Commonwealth
F/Gp Capt R&S	Former Group Captain Recruiting and Selection
FLC	Front Line Commands
GC	Group Captain
Gp Capt	Group Captain
H2A	Holding to Account
ITR	Into Training Requirement
HCSC	Higher Command and Staff Course
IY	In Year
JNCO	Junior Non Commissioned Officer
JSP	Joint Services Publication
Legad	Legal Advisor
LGB	Lesbian Gay and Bisexual
LOA	Level of Ambition
MPCT	Military Preparation College for Training
NCO	Non Commissioned Officer
NED	Non Executive Director
NSI	Non-Statutory Inquiry
OASC	Officer and Aircrew Selection Centre
OF4	Officer Grade 4, i.e. Wg Cdr
OF5	Officer Grade 5, i.e. Gp Capt
OS-LIMDIS	Official Sensitive, Limited Distribution



PA	Positive Action
PAP	Potentially Affected Person
PD	Positive Discrimination
PWR	Personnel Workforce Requirements
PUS	Permanent Under Secretary
Q1, Q2 etc	First quarter of the year, second quarter, etc
RAF	Royal Air Force
RITD	RN/RAF Recruiting Information Technology System
RITS	Recruiting Information Technology System
RFI	Request for Information
RN	Royal Navy
RP	Resources and Plans
R&S	Recruiting and Selection
RY	Recruiting Year
SB	Shadow Board
SDB	Strategic Drafting Brief
SATT	Service personnel Awaiting Trade Training
SLT	Senior Leadership Team (defined by the Panel as members of ExCo)
SNCO	Senior Non Commissioned Officer
SO1/2/3	Staff Officer Grade 1/2/3
Sqn Ldr	Squadron Leader
TOR	Terms of Reference
UPREP	Update Report
WF	Workforce
Wg Cdr	Wing Commander
WORAF	Warrant Officer of the Royal Air Force
WR	Workforce Resilience
WRR	Workforce Requirements and Recruiting
XO	Executive Officer