

Summary of LOWI opinion 2015-12

The Petitioner applied for funding on behalf of a consortium. The application was rejected on the advice of the assessment panel. After the Petitioner's objection was found valid, the application was reassessed and once again rejected. The Petitioner then complained about the Interested Party, one of the members of the assessment and reassessment panel. The Board ruled that the Interested Party had acted contrary to the principles of research integrity by failing to report two co-authorships with a competing applicant and by passing on information to a journalist in contravention of his confidentiality agreement. The Board saw no reason to impose a sanction and ruled the rest of the Petitioner's complaint unfounded. The Petitioner then submitted a detailed petition to the LOWI, citing various procedural and substantive grounds.

The procedural grounds included the following:

- the complaint procedure took too long;
- the Petitioner was not given the opportunity to amend the minutes of the hearing;
- the Board should have included the European Code of Conduct for Research Integrity in its review;
- the Research Integrity Committee (RIC) should not have referred to the appeals advisory committee's grounds and was not authorised to rule on whether a new reassessment was required.

The substantive grounds included the following:

- his relationship with a competing applicant should have disqualified the Interested Party from assessing funding applications;
- the assessment panel rejected the funding application based on invented claims, and its instructions were misleading;
- while the Petitioner did communicate with the journalist who had approached the Interested Party, he is not responsible for the Interested Party's violating his duty of confidentiality;
- the Interested Party failed to point out the inaccuracies in referee report B, was biased in his reassessment, and deliberately misquoted the Petitioner.

The text below reports the most relevant points of the LOWI's ruling. Its main conclusion is that the assessment and reassessment of funding applications (as in this case) can be characterised as scientific practice.

Regarding the procedural grounds:

- a ruling by the LOWI concerning a Board's compliance with procedural rules is not a ruling on a researcher's research integrity;
- Title 9.1 of the General Administrative Law Act (Awb) applies in the case of the Petitioner's complaint; the complaint procedure took longer than permitted in Article 9:11 of the Awb. The petition is well founded on this point;

- The remaining procedural grounds are unfounded. The Board is not required to give party or parties an opportunity to amend the minutes of a hearing and may suffice with a summary report. The European Code of Conduct for Research Integrity is not a generally accepted code that must be included in a review. Although the RIC was indeed not authorised to rule on whether a new reassessment was necessary, that is no reason to doubt the correctness of its decision. The RIC was, however, perfectly within its rights to refer to the appeals advisory committee's grounds. The committee had, after all, reviewed the case in the light of certain principles of administrative law that have an analogous substance and effect in the domain of research integrity.

Regarding the substantive grounds:

- the Interested Party was not obliged to withdraw from the assessment of the competing applicant, but the panel's chairperson should have ordered him to do so after he reported being the competing applicant's supervisor. The Interested Party's failure to withdraw voluntarily was not scrupulous, but his conduct is not so reprehensible as to constitute a violation of the principles of research integrity. Importantly, there is no plausible reason to assume that the Petitioner was disadvantaged;
- the errors and negligence that marred the assessment/reassessment of the funding application are not so serious as to qualify as a violation of the principles of research integrity, nor can they be attributed to the Interested Party alone. After all, an opinion issued by an assessment or reassessment panel is a collective responsibility and cannot be ascribed to one individual member. Such an assertion can only be made if there is specific, plausible evidence that this member deliberately or actively pressured the other panel members towards a ruling that he knew or should have known was improper but that the other members did not. There are no such indications here;
- although the Interested Party was negligent in failing to report the error in referee report B during the assessment, this is not a violation of the principles of research integrity. There is no plausible evidence that the funding application was rejected because of referee report B or the error it contained;
- the Board's comment about the Petitioner's communication with the relevant journalist is factually correct;
- the claim that the Interested Party was biased during the reassessment must be substantiated by factual evidence. There is no such evidence. What the Petitioner claims is largely speculative in nature. The formal deficiencies that marred the assessment were corrected during the reassessment. This did not alter the substance of the ruling, but that is not unusual in objection proceedings. The claim that the Interested Party deliberately misquoted the Petitioner's material has not been substantiated.

The LOWI considers the petition valid insofar as it concerns the duration of the Board's complaint procedure. The remainder of the petition is unfounded. The LOWI has advised the Board to uphold its preliminary decision unaltered and to amend the Complaint Procedure or Procedures so that the time

limits are the same as those prescribed in the General Administrative Law Act. On 28 October 2015, the Board issued a decision in line with the LOWI's opinion.