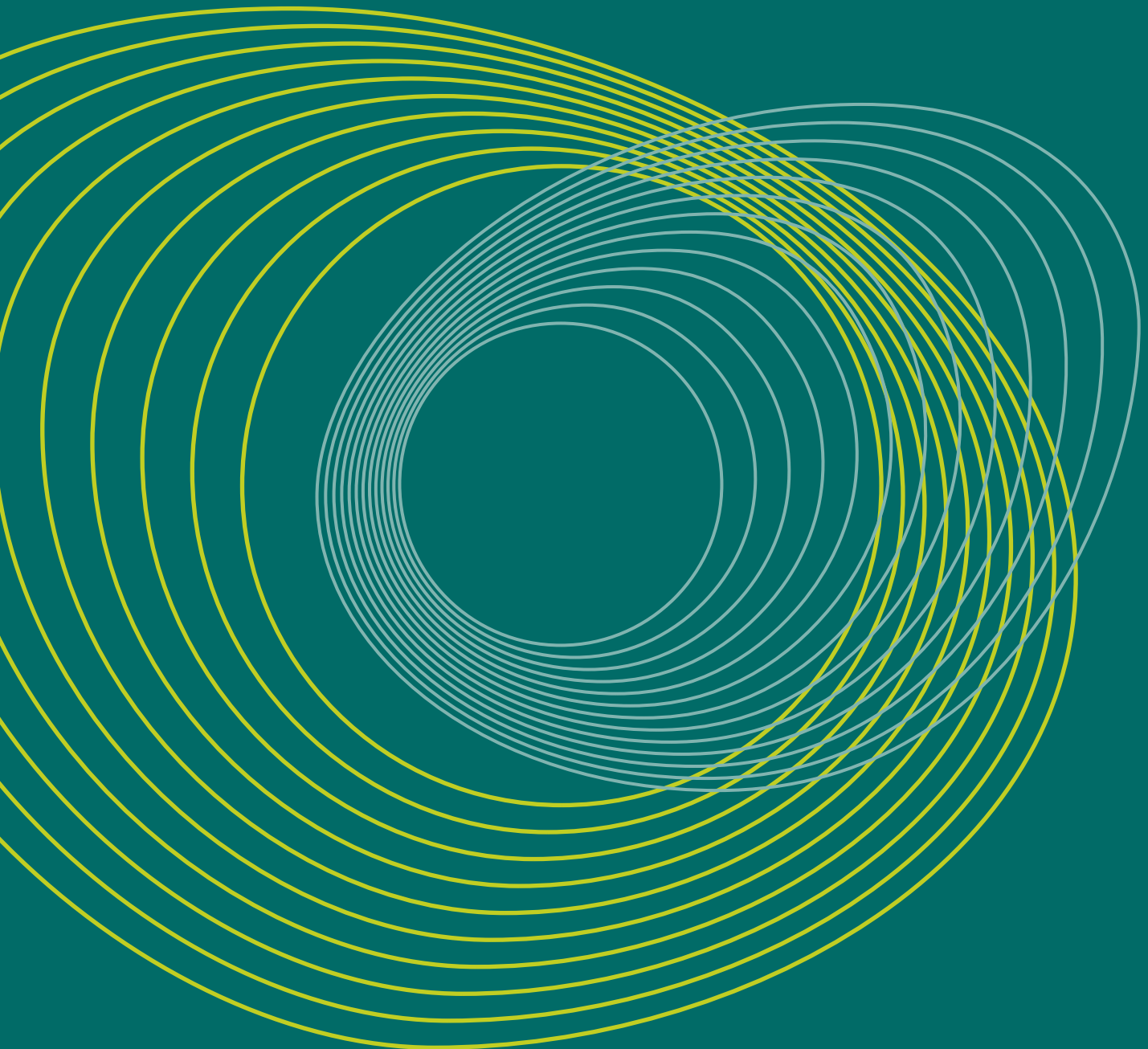




An Coimisiún um Cheapacháin Seirbhíse Poiblí
Commission for Public Service Appointments

CODE OF PRACTICE

Emergency Short-Term
Appointments to Positions in
the Health Service Executive



FOREWORD

The Commission for Public Service Appointments was established on 19 October 2004 under the terms of the Public Service Management (Recruitment and Appointments) Act 2004.

The Commission is the principal regulator of recruitment and selection processes within the public service. It has a statutory role to ensure that appointments in the organisations subject to its remit (that is, those that fall under the authority and scope of the Commission) are made on candidates' merit and as the result of fair and transparent appointment processes.

Appointments to all positions in the Health Service Executive are subject to the provisions of the Public Service Management (Recruitment and Appointments) Act 2004 and to the Codes of Practice published by the Commission for Public Service Appointments. The Codes set out the regulatory framework for such appointment processes and centre on five recruitment principles. These are

- Probity
- Merit
- Best Practice
- Fairness
- Transparency

Examples of the principles in practice are provided in each Code. These illustrate the Commission's views on the application of the principles.

The Codes of Practice also set out requirements in relation to the conduct of candidates in the selection process. This ensures that a standardised approach to recruitment is adopted by all participants.

The Commission recognises that recruitment practices need to evolve in response to changing work and social environments and to keep in line with best practice. It does not wish to limit the HSE and other public service bodies by prescribing a fixed process it has to follow for each and every appointment. The dynamic nature of recruitments systems is acknowledged and appropriate responses encouraged.

The Commission's Code of Practice "Appointment to positions in the Civil Service and Public Service" sets out the principles to be observed in respect of external and internal recruitment and selection procedures and practices for appointment to most positions in the Health Service Executive. However, the Commission accepts that it may be necessary from time to time for the Health Service Executive to make emergency short-term appointments to specific positions in the Health Service Executive to meet critical needs. The Commission accepts that in such circumstances standard recruitment and selection approaches may not be appropriate to address such needs.

This Code of Practice sets out the principles to be observed in respect of recruitment and selection procedures and practices for appointment to specific positions on an emergency short-term basis in the Health Service Executive.

CONTENTS

Foreword

Section 1

Introduction

1.1	The Commission for Public Service Appointments	7
1.2	What is the Commission's statutory remit?	7
1.3	What does the Commission do?	8
1.4	What are the Commission's Codes of Practice?	8
1.5	When does the Code of Practice for Emergency Short-Term Appointments to Positions in the Health Service Executive apply?	9
1.6	Structure of the Code of Practice for Emergency Short-Term Appointments to Positions in the Health Service Executive	9
1.7	Monitoring the application of the Codes	9
1.8	Further advice and information	10

Section 2

Recruitment Principles

2.1	Probity	11
2.2	Appointments made on merit	12
2.3	An appointment process in line with best practice	13
2.4	A fair appointment process applied with consistency	14
2.5	Appointments made in an open, accountable and transparent manner	15
2.6	Examples of the interpretation and application of the principles in practice, in relation to the appointment process	16

Section 3

Audit of Recruitment Policies and Practices

3.1	The legal position	23
3.2	Application of the audit function	23
3.3	Audit procedures	23
3.4	Publication of reports following an audit	25

Section 4	
Responsibility and Accountability for the Application of the Recruitment Principles	
4.1 Responsibility for the application of the principles of the Code of Practice	26
4.2 Accounting for recruitment decisions	26
Section 5	
Responsibility of Candidates	
5.1 Canvassing	27
5.2 Candidates' obligations	27
5.3 Penalties for failure to comply with the Code of Practice	27
Section 6	
Interference with the Recruitment Process	28
Overview of Review and Complaint Procedures	29
Section 7	
Request for a Review. Procedures Where a Candidate Seeks a Review of a Decision Taken in Relation to Their Application	
7.1 General information about reviewing a selection decision	31
7.2 Informal review process	32
7.3 Procedure for formal review of a selection process	33
7.4 Exclusion from making a further complaint under Section 8 of the Code of Practice	34
Section 8	
Making a Complaint. Procedures Where a Candidate Makes an Allegation of a Breach of the Code of Practice	
8.1 General information about making a complaint	35
8.2 Informal complaint process	36
8.3 Procedure for making a formal complaint to the Director General	37
8.4 Procedure for making an appeal to the Commission regarding the Director General's decision about a formal complaint	38

Section 9

Unreasonable Customer Conduct

9.1	Introduction	40
9.2	Types of behaviour considered “unreasonable customer conduct”	40
9.3	Considerations before taking action against unreasonable customer conduct	42
9.4	Procedure for managing unreasonable customer conduct	42
9.5	Review of restrictions imposed for unreasonable customer conduct	44
9.6	Right of appeal against the procedure for managing unreasonable customer conduct	44

Section 10

Ministerial Responsibility

45

Appendices

A	Excluded Positions	46
B	Definition of Terms	46

“The Commission has a statutory role to ensure that appointments in the organisations subject to its remit are made on merit and as the result of fair and transparent appointment processes.”

SECTION 1

INTRODUCTION

1.1 The Commission for Public Service Appointments

The Commission for Public Service Appointments (“the Commission”) is an independent regulatory body. The authority for the Commission to carry out its duties is set out in the Public Service Management (Recruitment and Appointments) Act 2004 (“the Act”). The Commission consists of five members (“the Commissioners”), selected because of their positions in other relevant organisations. They are the

- Chairperson of Dáil Éireann (An Ceann Comhairle)
- Secretary General to the Government
- Secretary General to the Department of Public Expenditure and Reform
- Chairperson of the Standards in Public Office Commission
- Ombudsman

1.2 What is the Commission’s statutory remit?

The Public Service Management (Recruitment and Appointments) Act 2004 governs appointments to certain positions in

- The Civil Service
- An Garda Síochána
- The Health Service Executive
- Any other public body to which the application of the Act has been extended on foot of primary legislation or by order of the Minister for Public Expenditure and Reform
- Those positions in the local authorities to which the Local Authorities (Officers and Employees) Act 1926 applies

The purpose of the Act is to provide a modern and efficient framework for public service recruitment. It gives the Commission responsibility for establishing and safeguarding high standards in the recruitment and selection of people for appointment to posts. The Act also provides the Commission with the powers necessary to enforce the standards set out, such as the power to amend the terms of a recruitment licence issued to a public body or to revoke the licence in extreme cases. However, **the Commission does not have the power to alter a recruitment decision once made.**

The standards established by the Commission must be made publicly available in Codes of Practice and must be observed by the Director General.

1.3 What does the Commission do?

The Commission establishes standards of probity, merit, equity and fairness to be observed in the appointment of people to positions in the organisations subject to its remit. The Commission discharges its responsibilities by

- Publishing and maintaining Codes of Practice that set out the standards to be observed in relation to appointments in the public service
- Auditing and evaluating recruitment policies and practices to safeguard the standards set out and to establish whether or not the Codes of Practice are being observed
- Granting recruitment licences and revoking them where necessary
- Issuing instructions and advice to licence holders
- Establishing appropriate appeal procedures
- Reporting to the Oireachtas and the government, and providing information to ministers on the operation of recruitment and selection processes
- Carrying out its powers and duties under the Act

The Commission is responsible for protecting the public interest in relation to recruitment and selection matters. It uses its audit function to ensure that those operating its Codes of Practice are at all times committed to the principles set out.

The Commission contributes to the development of an effective and impartial public service by carrying out the duties required of it by the Act. It provides an assurance to the public that appointments are made on candidates' merit. This means that the Director General select the best person for the job from those candidates available to ensure, as far as reasonably possible, that the duties of the job will be carried out as effectively as may be.

1.4 What are the Commission's Codes of Practice?

The Codes of Practice set out the Commission's core recruitment and selection principles and inform their interpretation and application. The standards set out must be observed by all those involved in the appointment processes under the Commission's remit. This principle-based approach is intended to maintain and further enhance consistency, fairness, transparency, accountability and diversity in recruitment practices. As such, the Codes reflect the Commission's responsibilities with regard to protecting the public interest.

The Codes provide a flexible framework based on the Commission's recruitment principles. The Commission recognises that the Director General requires flexibility to deal efficiently and effectively with the diverse range of appointments they make. Accordingly, the Codes allow the Director General to adopt strategies and develop processes to implement the principles effectively. All appointments made under each Code must also comply with relevant employment, equality and human rights legislation.

Each Code also sets out the procedure in relation to requests for a review of selection and appointment processes and in cases of failure to comply with any provision of a Code of Practice.

1.5 When does this Code apply?

This Code of Practice applies to the recruitment and selection processes for appointment to positions in the Health Service Executive where it is necessary to make an emergency short-term appointment to a position to meet critical needs.

1.6 Structure of the Code of Practice for Emergency Short-Term Appointments to Positions in the Health Service Executive

This Code of Practice details the five core principles of probity, merit, best practice, fairness and transparency that should be applied to all recruitment processes' (see Section 2).

This Code reflects a changing work and social environment, the different business needs that this has placed on those operating the Code, and the consequent necessity for flexibility, subject to the principles, in recruitment practices. The main body of the Code is arranged as follows:

- Section 2:** Definitions of each of the Code principles and examples of their interpretation and application in relation to the appointment process
- Section 3:** Details of how the audit function of the Commission operates
- Section 4:** Details of responsibility and accountability for the application of the principles
- Section 5:** Details of the obligations placed on candidates
- Section 6:** Details about investigations that may be carried out by the Commission in the case of interference with the process
- Section 7:** The procedure for processing requests for review made to the Director General
- Section 8:** The procedure to be followed by the Director General and by the Commission in reviewing allegations of failure to comply with the Code of Practice
- Section 9:** Unreasonable customer conduct and how it should be managed
- Section 10:** An outline of ministerial responsibilities.

In addition, Appendix A offers further details on positions for which this Code is not applicable and Appendix B provides definitions of some specific terms used in this Code.

1.7 Monitoring the application of the Codes

Section 13 of the Act states that the Commission may audit recruitment and selection policies and practices in order to evaluate and safeguard the standards established in its Codes of Practice. The audit function is a key mechanism in ensuring adherence to the principles set out in each Code of Practice. Audit programmes are carried out periodically to determine how the principles are being interpreted and applied. Audits may also focus on issues of particular interest or concern to the Commission (see Section 3).

1.8 Further advice and information

Further advice and information regarding the content and interpretation of the Commission's Codes of Practice are available from the Office of the Commission for Public Service Appointments.

SECTION 2

RECRUITMENT PRINCIPLES

2.1 PROBITY

Principle 1

A key objective of the Commission is to ensure acceptable standards of probity in all appointment processes. The principles established by the Commission in this Code of Practice are underpinned by the core values that define probity such as integrity, impartiality, fairness, reliability and ethical conduct.

The Commission seeks to nurture a culture based on values of trust, fairness, transparency and respect for all. It also seeks to ensure that probity standards are subject to consistent, thorough oversight through its audit function.

Office holders must be committed to these values and must ensure that all aspects of the appointment process are managed ethically.

2.2 APPOINTMENTS MADE ON MERIT

Principle 2

Appointment made on merit means the appointment of the best person to any given post. This is to be achieved through a transparent, competitive recruitment process.

The criteria for judging suitability of candidates must be related directly to the qualifications, personal attributes and skills required to fulfil the duties and responsibilities of the post. This is a fundamentally fair and just approach to assessing applicants. It results in the selection of individuals whose competencies, abilities, experience and qualities best match the needs of the organisation. Merit is therefore an integral principle which must underpin all appointment practices.

It is essential to ensure that the selection process does not provide unjustifiable advantage or disadvantage to any particular candidate or group of candidates. The selection process by which appointments are made should embrace genuine equality of opportunity.

2.3 AN APPOINTMENT PROCESS IN LINE WITH BEST PRACTICE

Principle 3

The appointment process should be efficient, cost-effective and in line with best practice.

Best practice extends to all aspects of the process. This includes defining job and person specifications, marketing the vacancy and selecting appropriate assessment mechanisms. It also includes providing training and supporting management arrangements to ensure the creation and maintenance of appropriate records of the appointment process.

2.4 A FAIR APPOINTMENT PROCESS APPLIED WITH CONSISTENCY

Principle 4

The Commission wholly opposes any form of direct or indirect discrimination, whether active or passive. The selection process adopted and the way in which it is applied must be undertaken with full commitment to equality of opportunity.

Office holders have an obligation to treat candidates fairly, to a consistent standard and in a consistent manner.

2.5 APPOINTMENTS MADE IN AN OPEN, ACCOUNTABLE AND TRANSPARENT MANNER

Principle 5

Transparency in the appointment process and the openness with which candidates are dealt by office holders will enhance candidate confidence.

Open and active communication on the process and the basis for assessment is essential. There should also be a full commitment to offering meaningful feedback to those candidates who seek it.

2.6 Examples of the interpretation and application of the principles in practice, in relation to the appointment process

2.6.1 Code of Practice

The Commission expects compliance with the terms of this Code of Practice and any other guidelines issued by the Commission.

2.6.2 Recruitment licences

The Commission requires recruiters to adhere to the terms and conditions of the recruitment licence that it may issue.

2.6.3 Planning the selection process

When an office holder or organisation is planning the selection and appointment process, the Commission expects that

- Appointments are made following a competitive, merit-based selection process in which all candidates have been treated equally at every stage
- Recruiters plan how they intend to conduct the appointment process taking into account both the number of vacancies likely to arise and the number of candidates the position(s) may attract. Clear decisions will be made regarding the approach to be adopted in any recruitment campaign
- Explicit consideration is given to opportunities and measures to promote (or remove possible barriers to) equal opportunity for employment
- Information on the different stages of the appointment process is made available to candidates in advance
- Decisions taken throughout the selection process are based on the qualifications, personal attributes and skills necessary to undertake the duties and fulfil the responsibilities of the post to the required standard
- Recruiters employ a high-quality selection process that is based on the skills and qualities relevant to the post
- The criteria on which selection decisions will be made are identified before the process begins
- Candidates who meet the required standard for the job are placed in order of merit and considered for appointment in that order
- Recruiters actively focus on foreseeable adverse impact issues, ensuring that they are considered and addressed before recruitment campaigns

- Appointment processes are monitored and evaluated, and positive solutions are found to any matters arising
- Appropriate measures are taken to facilitate employment of persons with a disability

2.6.4 Job and person specifications and competency frameworks

Regarding job and person specifications and competency frameworks, the Commission expects that

- The job specification and person specification, as the foundation of the selection process, are considered and endorsed at an appropriate senior level within the employing organisation before the selection process begins
- The selection processes employed are underpinned by objectively written and effective job and person specifications. The specifications will focus on the purpose of the job, its main accountabilities and the essential skills and personal attributes needed to perform the job effectively
- Job specifications and competency profiles for roles identify relevant criteria against which candidates can be measured throughout the selection process. The criteria may be justified in accordance with relevant legislation
- Key elements of the job and person specifications are consistently reflected throughout the selection process
- Criteria for selection are based on the essential requirements of the post, promoting the principle of equal opportunity for employment
- Requirements for the post are not unduly restrictive. Specifications reflect what is necessary to perform the duties of the position. Non-essential requirements that could have the effect of excluding persons with disabilities will not be specified
- Job and person specifications are unbiased and conform to current best practice
- Terms and conditions, eligibility criteria and requirement for the use and knowledge of the Irish language are agreed with the appropriate minister before the selection process begins. These will be determined in accordance with the requirements of the job and any statutory (legal) requirements
- Person specifications are related precisely to the duties of the post

2.6.5 Sourcing candidates

In attracting candidates to a position, the Commission expects that

- Efforts must be made to maximise the pool of potential candidates
- Specific marketing/communications channels appropriate to the position under consideration are used with supporting rationale for the approach adopted
- All marketing and supporting materials are accessible, unbiased and reflect, where appropriate, the job and person specifications and assessment process that will be followed

2.6.6 Assessment methodologies

Regarding assessment methodologies and mechanisms employed in the selection and appointment process, the Commission expects that

- Assessment mechanisms facilitate the identification and selection of the person or persons who best match the requirements of the post
- Assessment methodologies are used in line with best practice and consist only of properly validated selection tools and techniques
- Assessment processes are appropriate to the selection criteria
- An appropriate means of shortlisting is employed (where shortlisting exercises are carried out)
- Selection tests, where they are used as part of the selection process, are job-related
- All reasonable efforts are made to accommodate candidates
- Enhanced facilities and equipment are provided as necessary to enable candidates to perform to the best of their abilities

2.6.7 Selection boards

With regard to selection boards, the Commission expects that

- Systems are in place to ensure that selection boards carry out the selection process in an open and transparent manner
- All selection practitioners fully understand their role and have the necessary skills to discharge their responsibilities
- Members of selection boards understand and fulfil their responsibilities with regard to current freedom of information, data protection and employment equality legislation

- Members of selection boards are fully informed about disability awareness and equal opportunity policy

2.6.8 Eligibility sift

The Commission expects an “eligibility sift” to be applied to candidates’ applications for a post, and seeks to ensure that

- Adequate checks are in place to ensure that a candidate meets the stated eligibility criteria before an offer of appointment is made.
- Candidates are considered eligible for appointment if they fulfil the stated eligibility criteria and have successfully completed the selection process, in compliance with this Code of Practice
- Candidates who do not satisfy the stated eligibility criteria are disqualified from the process and notified accordingly

2.6.9 Communication

The Commission requires a commitment to open, timely and effective communication with candidates. All enquiries are to be responded to adequately and in an efficient and timely manner.

2.6.10 Feedback

Candidates may seek further explanation (feedback) for a decision made regarding their application. The Commission expects that

- Effective systems are in place to manage the feedback function
- Clear, specific and meaningful feedback that explains the basis for the decision reached is provided when requested by candidates

An office holder may choose to supplement the feedback provided to its employees in the course of an internal appointment process with personal development guidance, as part of its general employee relations practices. However, these initiatives are not a requirement under this Code of Practice.

2.6.11 Requests for review and complaints alleging a breach of the Code of Practice

The Commission expects requests for review of a selection decision and complaints that allege a breach of the Code of Practice to be dealt with in an efficient and timely manner and in line with the Code’s procedures.

2.6.12 Training

High quality training for participants is key to preventing foreseeable problems in the selection and appointment process. The Commission seeks to ensure that

- All selection practitioners fully understand their role and have the necessary skills to discharge their responsibilities
- Training is delivered on a timely basis and is appropriate to the specific assessment mechanism to be employed in the selection process
- Members of selection boards have undergone sufficient relevant training, delivered on a timely basis and appropriate to the specific assessment process to be employed. If this is not the case, members of selection boards should have sufficient interviewing experience at an appropriate level and have the skills required to properly evaluate candidates
- The selection technique to be used is only decided by individuals who are qualified to select a test that is valid for a particular purpose
- Chosen selection techniques are only used by appropriately qualified individuals who have been properly trained in their administration, scoring and interpretation
- Arrangements are in place to ensure that all those involved in the administering an appointment process have the necessary skills to do so. These participants are to be given appropriate information on the process
- Training is current, relevant and delivered to an appropriate standard
- Training covers both the structure of the process and the context of the appointment. Training should include current and forthcoming legislation
- The effectiveness of training is monitored and evaluated and follow-up action is taken on an ongoing basis
- Disability awareness training is provided as appropriate

2.6.13 Management systems and quality assurance

Regarding management systems and quality assurance in the selection and appointment process, the Commission expects that

- Effective management systems are in place
- Controls are in place to ensure that appropriate processes are adopted and delivered
- Measures are in place to ensure that policies and practices comply with the Code of Practice

- Appropriate procedures are in place to assure quality in the selection and appointment process
- The effectiveness of assessment processes is reviewed and evaluated regularly

2.6.14 Documentation

The Commission expects careful documentation of the selection and appointment process and requires that

- Fully documented records that clearly support each stage of the process are retained. These will include notes of interviews conducted
- Documentation supporting assessment stages of the process reflects the selection criteria
- Documentation that may be audited by the Commission, and information on its use, can be retrieved and accessed
- Accurate, sufficient and appropriate documentation is issued to candidates. This should include information on how to access this Code of Practice and in particular information about the review and complaint procedures outlined in Sections 7 and 8 of the Code
- Documentation sets out the specific criteria candidates must fulfil, in line with the requirements of the Act. This means they must
 - » have the knowledge and ability to discharge the duties of the post concerned
 - » be of suitable character for the post, and
 - » be suitable in all other relevant respects for appointment to the post concerned
- If successful, candidates will not be appointed to the post unless they
 - » agree to undertake the duties attached to the post and accept the conditions under which the duties are, or may be required to be, performed, and
 - » are fully competent, available to and capable of undertaking those duties

2.6.15 Respecting confidentiality

The Commission requires applications to be treated in strict confidence, subject to the provisions of the Freedom of Information Acts 1997–2014

2.6.16 Legislative requirements

The Commission requires compliance with the following legislation

- Public Service Management (Recruitment and Appointments) Act 2004
- Public Service Management (Recruitment and Appointments) Amendment Act 2013
- Employment Equality Acts 1998–2011
- Irish Human Rights and Equality Commission Act 2014
- Disability Act 2005
- Official Languages Act 2003
- Data Protection Acts 1988 and 2003
- Freedom of Information Acts 1997–2014
- Protected Disclosures Act 2014
- Code of Practice for the Employment of People with Disabilities (published by the Department of Public Expenditure and Reform)

SECTION 3

AUDIT OF RECRUITMENT POLICIES AND PRACTICES

3.1 The legal position

Section 13(1)(c) of the Act states that the Commission may establish procedures to audit the recruitment and selection process for appointment to positions in the Civil Service and Public Service.

3.2 Application of the audit function

3.2.1

The purpose of the audit process is to ensure that recruitment policies, practices and support systems are designed and operated in accordance with this Code of Practice. Audits may examine any part of the appointment process. An audit examination may include a review of specific recruitment programmes.

3.2.2

The audit function is a key mechanism enabling the Commission to safeguard standards. It seeks to ensure that the core principles set out in the Code of Practice are maintained and, where relevant, that the Director General operates the recruitment licence in accordance with the terms and conditions set out by the Commission.

3.3 Audit procedures

3.3.1

The Director General must co-operate fully with all audits undertaken by or on behalf of the Commission. Audits will be undertaken in a professional manner, in a spirit of improvement and with the goal of sharing knowledge and best practice rather than focusing solely on compliance.

3.3.2

Advance notice will be given of the Commission's intention to carry out an audit. This will provide sufficient time for the Director General to prepare all necessary documentation and statistics. Advance notice will also enable the review to take place with the least possible disruption.

3.3.3

Audits will be conducted in an efficient manner and the audit steps will be set out and communicated clearly in advance.

3.3.4

At the conclusion of an audit, its findings will be discussed with the audited organisation before a report is submitted to the Commission. Those subject to audit will also have the opportunity to comment on audit reports in respect of matters of factual accuracy before such reports are finalised.

3.3.5

Where an audit identifies shortcomings in a particular area of recruitment, recruitment policy or recruitment practice, recommendations will be made to address the fault. The emphasis will be on providing assistance and support.

3.3.6

When conducting audits, the Commission's purpose is to ensure that

- Selection and appointment processes are operated in accordance with this Code of Practice
- There is no possibility of patronage or privilege influencing any part of the process
- Instructions and guidance for the Director General, including guidance on the use of listed recruitment agencies (in the case of licence holders), are consistent with both the spirit and the letter of the Code of Practice
- Those with responsibility for organising appointment processes fully understand the Commission's requirements
- Members of selection boards have undergone training delivered on a timely basis and appropriate to the specific assessment process deployed. If this is not the case, then selection board members must have sufficient interviewing experience at an appropriate level and have the necessary skills to properly evaluate candidates
- Individuals administering the selection techniques are appropriately qualified and have received recent, relevant training
- Action has been taken to correct any instances uncovered by internal monitoring where the Code of Practice has not been followed
- Any new developments in recruitment policy or practice, for example new selection procedures, are consistent with the Code of Practice

3.4 Publication of reports following an audit

3.4.1

The Commission will publish a report of the outcome of each audit on its website: www.cpsa.ie. The Commission will also publish an account of its audit activity in its annual report.

SECTION 4

RESPONSIBILITY AND ACCOUNTABILITY FOR THE APPLICATION OF THE RECRUITMENT PRINCIPLES

4.1 Responsibility for the application of the principles of the Code of Practice

Responsibility and accountability for appointments rest with the Director General. To maintain the probity of the appointment system, the Director General is responsible to the Commission for ensuring full compliance with the terms and conditions of the recruitment licence (where relevant), this Code of Practice and any other guidelines issued by the Commission.

4.2 Accounting for recruitment decisions

Individuals responsible for recruitment and selection processes must be able to show that they have complied with the Commission's recruitment principles. Accordingly,

- All decisions made about the approach adopted in any appointment process should be clear and evident
- Selection and appointment processes should be fully documented. Effective management systems and arrangements (including document management) should be in place
- Those responsible for recruitment should monitor and evaluate their processes and take positive initiatives to tackle any matters arising
- Records should be managed in accordance with the terms of the National Archives Act 1986 and Data Protection Acts 1988 and 2003
- The Director General – and ultimately the Commission – must be satisfied that appointment processes have been properly carried out

SECTION 5

RESPONSIBILITY OF CANDIDATES

5.1 Canvassing

Canvassing will disqualify candidates and result in their exclusion from the appointment process. (An example of canvassing is a candidate attempting to get additional support from an individual or individuals involved in the selection and appointment process by other means than the specified application route. This could result in an unfair advantage to the candidate.)

5.2 Candidates' obligations

Candidates in the recruitment process must not

- Knowingly or recklessly provide false information
- Canvass any person, with or without inducements
- Interfere with or compromise the process in any way.

A third party must not impersonate a candidate at any stage of the process.

5.3 Penalties for failure to comply with the Code of Practice

5.3.1

Any person who contravenes the responsibilities and obligations set out in Section 5 of this Code of Practice, or who assists another person in contravening those provisions, is committing an offence. Such a person is liable to prosecution that may result in a fine, imprisonment or both.

5.3.2

If a person found guilty of such an offence is a candidate in a recruitment process, they will be disqualified as a candidate and excluded from the process. If a person found guilty of such an offence has been appointed to a post following the recruitment process in question, they will be removed from that post.

SECTION 6

INTERFERENCE WITH THE RECRUITMENT PROCESS

If the Commission believes there may have been interference or attempted interference with an appointment process, it may investigate the matter or authorise a person to investigate on its behalf. Accordingly,

- The Director General has a duty to inform the Commission of any interference or attempted interference with the process
- Where all or part of a recruitment process covered by this Code of Practice has been delegated to the Public Appointments Service, the Chief Executive of the Public Appointments Service has a duty to inform the Commission of any interference or attempted interference with the process
- A listed recruitment agency has a duty to inform the recruitment licence holder of any interference or attempted interference with the process
- A person found guilty of an offence is liable to a fine, imprisonment or both

OVERVIEW OF REVIEW AND COMPLAINT PROCEDURES

The Commission has a statutory role to establish and oversee procedures that address candidates' complaints and any requests for review of an appointment process.

However, the Public Service Management (Recruitment and Appointments) Act 2004 states explicitly that the Commission cannot instruct the Director General to change a decision taken in the course of an appointment process. Even in cases where it finds that the Director General has fallen short of the principles set out in the Code of Practice, the Commission cannot require an office holder to reverse a decision taken in the course of an appointment process.

Following an examination of a complaint, the Commission may make recommendations, offer advice or issue an instruction for an office holder to take account of at a later date or in future appointment processes.

A candidate who is not satisfied with the selection and appointment process, or part of it, may follow either one of the two following procedures but **not both**.

1. Request a review of the process

A candidate may seek a review from the Director General of an action or decision taken in regard to their application that does not amount to a breach of the Code of Practice. Section 7 of this Code sets out the precise manner in which a request for a review of a decision should be made by a candidate. It also sets out how the request should be dealt with.

The Commission has no role in a review process conducted under Section 7 of this Code.

2. Make a complaint alleging a breach of the Code of Practice

A candidate may believe that there has been a breach of the Commission's Code of Practice. Section 8 sets out the precise manner in which a complaint alleging a breach of this Code should be made by a candidate. It also sets out how the complaint should be dealt with. Allegations of such breaches should be addressed to the Director General in the first instance. If a candidate is dissatisfied with the outcome of the Director General's review, they may then make an appeal to the Commission to examine the alleged breach and review Director General's decision.

A candidate who is simply seeking clarification on the basis for the decision reached about their candidature should obtain this feedback from the Director General in charge of the recruitment process. They do not need to invoke any of the procedures referred to above. It is expected that such feedback will be properly managed by the Director General as an integral part of the appointment process.

Before submitting a request for review under Section 7 or a complaint under Section 8, candidates should determine which procedure is appropriate to their circumstances.

Where a review of a recruitment or selection process has taken place under Section 7,

a complainant may not seek a further review of the same process under Section 8 (other than in the most exceptional circumstances, which will be determined by the Commission at its sole discretion).

The Director General should satisfy themselves, as far as is practicable, that the appropriate procedure has been invoked by the complainant when accepting a request for review or a complaint.

The review and complaint procedures allow for problems to be resolved on an informal basis. The Commission recommends that the Director General, subject to the agreement of the candidate, should try to satisfy the complainant through an informal process before making use of the formal review procedures.

It is important to note that, where a selection process is reviewed under Section 7, a candidate cannot then also make a complaint about the same selection process under Section 8, other than in exceptional circumstances. Such exceptions will be determined by the Commission at its sole discretion. In applying its discretion the Commission will consider the candidate's rationale for first requesting a review under Section 7 of this Code rather than making a complaint under Section 8.

SECTION 7

REQUEST FOR A REVIEW. PROCEDURES WHERE A CANDIDATE SEEKS A REVIEW OF A DECISION TAKEN IN RELATION TO THEIR APPLICATION

7.1 General information about reviewing a selection decision

A candidate may not be satisfied with an action or decision taken by the Director General. In this case they may request a review of the decision.

7.1.1

The procedures for review as set out in Section 7 apply in cases where a candidate wishes to have an action or decision made in relation to their candidature reviewed by the Director General. The procedures and standards to be adopted by the person requesting the review and the Director General follow.

7.1.2

There is no obligation on the Director General to suspend an appointment process while it considers a request for a review. However, the Commission expects that the Director General will intervene where possible and take appropriate action in cases where it finds that an error is likely to have occurred.

7.1.3

As with the recruitment processes themselves, and within reason, fair procedures should be applied by all parties dealing with requests for review made under Section 7 of this Code.

7.1.4

The Commission has no remit to investigate complaints from candidates that do not amount to a breach of the Code of Practice.

7.1.5

It is essential for the Director General to have effective systems in place for responding to requests for review. The Director General must keep a full record of all correspondence and any other relevant documentation. This includes minutes of meetings, records of emails and notes of telephone conversations in relation to all candidates who present themselves for any form of assessment whether successful or not.

7.2 Informal review process

7.2.1

When making a request for a review, the candidate must support their request by outlining the facts they believe show that the action taken or decision reached was wrong. A request for a review may be refused if the candidate cannot support their request.

7.2.2

The Commission recommends that, subject to the agreement of the candidate, where the Director General considers the matter could be resolved they should first seek to engage on an informal basis, before making use of the formal review procedure.

7.2.3

This informal stage can provide the Director General and candidate alike with an opportunity to review the factors that gave rise to the action taken or the decision reached. If the Director General determines that an error may have occurred they should be in a position to intervene quickly, to take corrective action or to seek a suspension of the appointment process. The Commission recommends that this informal stage involve a meeting or telephone conversation between the candidate and a representative of the Director General who had played a key role in the selection process.

7.2.4

A request for an informal review of the selection and appointment process must be made within five working days of notification of the decision.

7.2.5

A candidate may request a review of a decision made at any stage while the selection process is ongoing. However, a request for review that relates to an interim stage of a selection process must be received within two working days of receipt of the decision. This is necessary to ensure that the Director General can intervene if it considers that an error is likely to have been made in the course of the appointment process.

7.2.6

The Director General must carry out the informal review without delay. The review should be conducted within a period of time that ensures the candidate may then also access the formal review procedure within the specified time, should they wish to.

7.2.7

If a candidate remains dissatisfied following any such informal discussion, they may adopt the formal procedures set out in Section 7. If the candidate wishes the matter to be dealt with by way of a formal review, they must request this within two working days of receiving notification of the outcome of the informal review.

7.3 Procedure for formal review of a selection process

A candidate may request a formal review of a selection and appointment process. The procedures and standards to be followed by the complainant and by the Director General with regard to requests for formal review are as follows:

7.3.1

The candidate must address their concerns about the process in writing to the Director General, outlining the facts that they believe show an action taken or decision reached was wrong. A request for a formal review may be refused if the candidate cannot support their request.

7.3.2

A request for a formal review must be made within 10 working days of the candidate receiving notification of the selection decision. However, where the decision relates to an interim stage of a selection process the request for a formal review must be received within four working days. This is necessary to ensure that the Director General can intervene if it considers that an error is likely to have been made in the course of the appointment process.

7.3.3

An extension of the given time limits will only be granted in the most exceptional of circumstances and at the sole discretion of the Director General.

7.3.4

The Director General should issue a written acknowledgement to the candidate within three working days of receipt of the request for a formal review.

7.3.5

The case should be reviewed by a person who has not been associated directly with the decision in question.

7.3.6

The person or people conducting the formal review (the “reviewer” or “reviewers”) should consider any written submissions made by the candidate, and all other relevant information. This includes any emails, notes or memoranda held by the Director General in respect of the selection process.

7.3.7

Where necessary, the reviewer may speak with the personnel of the Director General involved in the selection process, and with the candidate, to collect further information.

7.3.8

The outcome of the formal review must be notified to the candidate within 25 working days of the Director General receiving the request. If the investigation does not produce a decision within this time, the reviewer must keep the candidate informed of the status of the review and the reasons for the delay.

7.4 Exclusion from making a further complaint under Section 8 of this Code of Practice

Where a formal review of a recruitment and selection process has taken place under Section 7 of this Code of Practice, a complainant may not seek a further review of the same process under Section 8, other than in the most exceptional circumstances that will be determined by the Commission at its sole discretion. In applying its discretion the Commission will consider the candidate’s rationale for first requesting a formal review under Section 7, rather than making a complaint under Section 8.

SECTION 8

MANAGING A COMPLAINT. PROCEDURES IN RELATION TO ALLEGATIONS OF A BREACH OF THE CODE OF PRACTICE

8.1 General information about making a complaint

8.1.1

A candidate may believe there was a breach of the Code of Practice by an office holder that may have compromised the integrity of the decision reached in the appointment process. The complaints process enables candidates (or potential candidates) to make a complaint to the Director General in the first instance, and to the Commission subsequently on appeal if they remain dissatisfied.

8.1.2

There is no obligation on the Director General to suspend an appointment process while it considers a complaint. However, the Commission expects that, where possible, the Director General will intervene in cases where it finds that an error is likely to have occurred.

8.1.3

The Commission may find that an office holder has not adhered to the standards set out in the principles of this Code of Practice. In this case, the Commission may make recommendations, offer advice or issue an instruction that an office holder must take account of in future appointment processes. **The Commission cannot instruct an office holder to reverse a decision taken in the course of the appointment process.**

8.1.4

Allegations of breaches of this Code of Practice should be addressed in writing, and within a reasonable timeframe, to the Director General in the first instance. The complainant must outline the facts that they believe show that the process followed was wrong. The complainant must also identify the aspect of the Code they believe has been infringed. A complaint may be dismissed if the complainant cannot support their allegations by setting out how the Director General has fallen short of the principles of this Code.

8.1.5

As with the recruitment processes themselves, and within reason, fair procedures should be applied by all those dealing with complaints.

8.1.6

The Commission will accept a complaint in relation to an alleged breach of the Code of Practice only when it has been examined by the Director General in the first instance and the complainant is dissatisfied with the outcome of that examination.

8.2 Informal complaint process

8.2.1

A candidate may wish to make a complaint alleging a breach of the Code of Practice. If the complaint is received within a reasonable time frame, and where the Director General considers that the matter could be resolved, the Commission recommends that the Director General should try to engage with the complainant on an informal basis before making use of the formal complaint procedure set out in Section 8.

8.2.2

This informal stage can provide the Director General and complainant alike with an opportunity to review the manner in which the appointment process was conducted. If the Director General's informal reviewer determines that an error may have occurred, it may be able to intervene quickly to correct or seek a suspension in the appointment process. There is no obligation on the Director General to suspend an appointment process while it considers an informal complaint. However, the Commission expects that the Director General will intervene in cases where it finds that an error is likely to have occurred.

8.2.3

The Commission recommends that this informal stage involve a meeting or telephone conversation between the complainant and a representative of the Director General. The Director General's representative should be an individual who played a key role in the selection decision. The Director General must carry out the informal review without delay.

8.2.4

Where a complainant does not wish to pursue an informal process or remains dissatisfied following any such informal discussion, they may adopt the formal procedures set out in Section 8. If the candidate wishes the matter to be dealt with by way of making a formal complaint, they must do so within two working days of receiving notification of the initial decision (or the outcome of the informal complaint procedure).

8.3 Procedure for making a formal complaint to the Director General

A candidate may not wish to follow the informal complaints process, or they may be dissatisfied with the outcome of the informal examination of their complaint. In this case, the candidate may make a formal complaint. The standards and procedures to be followed by the complainant and the Director General in relation to formal complaints alleging breaches of the Code of Practice are as follows:

8.3.1

A formal complaint in relation to a breach of the Code of Practice must be made in writing to the Director General without delay. The complainant should provide details of the allegation and support this with facts that the complainant believes show how the principles of the Code have been infringed.

8.3.2

The Director General should issue a written acknowledgement to the complainant within three working days of receipt of the formal complaint.

8.3.3

The complaint should be reviewed by an individual who is not associated directly with the appointment process in question. The person or people conducting the review (the “reviewer” or “reviewers”) will consider all information that is material to the complaint. This includes any emails, notes or memoranda prepared by the personnel of the Director General, and any relevant documentation provided by the complainant. The reviewer may speak with or meet with any personnel of the Director General relevant to the complaint, and with the complainant, to collect further information.

8.3.4

The outcome of the Director General’s investigation of a formal complaint must be notified to the complainant within 25 working days of receipt of the complaint. **If the investigation does not produce a decision within this time, the office holder must keep the complainant informed of the status of the review and the reasons for the delay.**

8.3.5

When informing the complainant of the outcome of the formal complaint process, the Director General should also tell the complainant that they can seek a further review if they remain dissatisfied, by referring the matter to the Commission. The complainant can make an appeal against the decision made by the Director General with regards to the formal complaint. The Director General must also clearly state that any such appeal must be made in writing within 10 working days of the complainant receiving the outcome of the Director General's decision regarding the complaint.

8.3.6

The Director General is expected to facilitate the Commission in its review of alleged breaches of the Code of Practice. The Director General must keep a full record of all correspondence and any relevant documentation in respect of the complaint. This includes minutes of meetings, records of emails, notes of telephone conversations or other meetings, and all documentation provided by the complainant.

8.4 Procedure for making an appeal to the Commission regarding the Director General's decision about a formal complaint

A candidate may not be satisfied with the decision the Director General has made regarding the formal complaint. In this case, they may make an appeal to the Commission to review the decision. The procedures and standards to be adopted by the Commission in handling an appeal, following a complaint that alleges breaches of the Code of Practice, are as follows:

8.4.1

An appeal to the Commission, following a complaint alleging a breach of the Code of Practice, must be made in writing within 10 working days of the candidate receiving the notification of the Director General's decision about the formal complaint.

8.4.2

When making an appeal details of the grounds for the appeal should be provided, along with the supporting facts or relevant documentation that the complainant believes show how the principles of the Code have been infringed. The candidate should also include any documentation provided to them by the Director General in respect of the original complaint, and in particular the Director General's report of its examination of the formal complaint, within the specified time.

8.4.3

The Commission will acknowledge receipt of the candidate's appeal within three working days.

8.4.4

The Commission's secretariat will inform the complainant of the expected timeframe for its examination of the original complaint within a further two weeks.

8.4.5

The outcome of the Commission's examination of the original complaint will be notified in writing to the complainant and the Director General. It is not possible to determine a precise timescale for conducting the investigation and completing the written report. However, the Commission will keep the complainant and the Director General informed of the status of the review and the reasons for any delays encountered.

8.4.6

The Commission will make its decision on the basis of any written information available in respect of the matter, or on the basis of any written submissions made to it. The Commission does not generally conduct interviews but it may do so if it considers them necessary to the particular circumstances of a case.

8.4.7

The decision of the Commission is final. The Commission will not consider any further communication from the parties to a complaint in relation to matters it has already investigated, how they were examined or the conclusions reached.

8.4.8

Decisions made by the Commission may be challenged by way of Judicial Review.

8.4.9

The Commission may take whatever action it considers necessary where it considers there has been a failure to comply with the Code of Practice, in accordance with the provisions of the Public Service Management (Recruitment and Appointments) Act 2004. Such action includes revoking a recruitment licence, where appropriate.

8.4.10

The Commission will treat all complaints in confidence. The Commission will not release details of an individual's allegations or its response to these allegations to third parties. However, common themes arising in complaints and the approach the Commission has adopted in dealing with them may be published from time to time on an anonymised basis on the Commission's website: www.cpsa.ie.

SECTION 9

UNREASONABLE CUSTOMER CONDUCT

9.1 Introduction

9.1.1

“Customers” referred to in Section 9 may be

- Candidates or potential candidates for positions
- Individuals requesting a review under Section 7 of this Code of Practice
- Individuals making a complaint under Section 8 of this Code of Practice

9.1.2

During the selection and appointment process, the Commission and the Director General are expected to provide candidates with detailed information in a timely manner. The Commission and the Director General must also treat customers politely.

9.1.3

The Commission appreciates that candidates invest a considerable amount of time, effort and energy in preparing for the different stages of an appointment process, and may find the experience stressful. In most cases, customers interact with the Director General and with the Commission in a reasonable and professional manner. Unfortunately, a minority of customers may adopt an unreasonable approach in pursuing their complaint or requests for review.

9.1.4

The Commission does not expect the Director General or its own staff to tolerate offensive, abusive or threatening behaviours.

9.1.5

The Commission does not expect that a disproportionate amount of time and resources should be committed to one individual in responding to any one or a series of requests for review of a selection decision.

9.2 Types of behaviour considered “unreasonable customer conduct”

The types of behaviour that the Commission considers “unreasonable customer conduct” are as follows:

9.2.1

Unreasonable persistence in pursuing an issue or series of issues with the Director General or the Commission, for example by the customer

- Insisting that an issue be reviewed again by another officer
- Re-framing an issue to present it as a fresh complaint
- Persevering with an argument that has previously been addressed
- Taking up a disproportionate amount of the Commission's or the Director General's time and resources with manifestly unreasonable or identifiable pattern of communication

9.2.2

Unreasonable lack of cooperation in presenting a complaint, for example, by the complainant

- Persistently presenting information in a disorganised manner
- Failing to identify the complaint clearly
- Presenting unnecessarily large amounts of material for examination
- Expecting immediate responses to requests or communications
- Changing the complaint while the review or investigation of the complaint is ongoing

9.2.3

Unreasonable arguments being employed by the customer, for example by

- Exaggerating issues
- Presenting irrelevant or illogical arguments to the Director General or the Commission
- Placing too much emphasis on small, unimportant details
- Insisting their version of events be accepted as fact where there is no objective evidence to support this
- Refusing to consider counter-arguments put forward by the Director General or the Commission
- Making statements that the candidate cannot prove or otherwise support
- Unfairly or inappropriately disputing the honesty and integrity of other individuals

9.2.4

Unreasonable behaviour by the customer, including

- Verbal abuse of the office holder, their staff or that of the Commission
- Impolite or aggressive conduct
- Threats of violence
- Threats to self-harm

9.3 Considerations before taking action against unreasonable customer conduct

The Commission recognises that classifying someone's conduct as "unreasonable" could have serious consequences for the individual. Before deciding whether to apply any consequent restrictions to the customer, the Commission or the Director General must ensure

- The original complaint or request for further review has been dealt with fully and in line with the provisions of this Code
- Any such actions are appropriate and proportionate, having regard to the severity of the behaviours in question

9.4 Procedure for managing unreasonable customer conduct

9.4.1

When the Commission or office holder considers that a customer's behaviour is unreasonable, it should first inform the customer why their behaviour has been found to be unreasonable and advise the customer to change that behaviour. The Commission or office holder may also consider possible adjustments to its service that will help the customer to avoid further unreasonable behaviour in the future. Such adjustments to the services may include:

- Requesting the individual make contact in a particular form, for example by letter only
- Requiring contact to take place with a named officer only
- Restricting telephone calls from the individual to specified days and timeframes
- Restricting access to the offices of an organisation
- Asking the customer to enter into an agreement about their future conduct

9.4.2

If the unreasonable behaviour continues, the Commission or office holder may take action to restrict the customer's contact. The decision to restrict access must be taken at an appropriately senior level. Such action may include

- Requesting the individual make contact in a particular form, for example by letter only
- Requiring contact to take place with a named officer only
- Restricting telephone calls from the individual to specified days and timeframes
- Restricting access to the offices of an organisation
- Asking the customer to enter into an agreement about their future conduct
- Refusal to pursue a complaint or request for a review
- Terminating all contact with the complainant

9.4.3

A decision to terminate all contact with a customer must be fully documented and taken with the approval of the Chief Executive, Secretary General or equivalent office holder in the organisation.

9.4.4

The examples of options for restriction given in Section 9.4.2 are not exhaustive. Often local or other factors will be relevant in deciding the appropriate action to be taken.

9.4.5

The Commission or the Director General will inform the customer in writing why their behaviour has been defined as unreasonable, and set out the proposed course of action.

9.4.6

Regardless of the customer's behaviour, staff are expected to act respectfully towards the complainant and impartially with regard to the matter raised.

9.5 Review of restrictions imposed for unreasonable customer conduct

When imposing a restriction on an individual's access to an organisation, the Commission or office holder will specify a date for review of the situation. Restrictions will then be lifted, unless there are grounds to extend them further.

9.6 Right of appeal against the procedure for managing unreasonable customer conduct

Customers who are dissatisfied with how the unreasonable conduct policy has been applied by an office holder may refer the matter to the Commission for examination under Section 8 of this Code.

SECTION 10

MINISTERIAL RESPONSIBILITY

The relevant government minister is responsible for all matters relating to recruitment. This includes eligibility criteria, terms and conditions and use or knowledge of the Irish language.

APPENDICES

Appendix A Excluded Positions

This Code of Practice is not applicable to a number of positions, including

- Appointments to posts established under the Constitution of Ireland.
- Appointments to those posts included in the definition of “office holder” at Section 2 of the Ethics in Public Office Act 1995, that is
 - » Ministers of Government and of State
 - » The Attorney General
 - » Chairpersons or Deputy Chairpersons of Dáil Éireann and of Seanad Éireann
 - » Chairpersons of Committees of either House of the Oireachtas
 - » Chairpersons of Committees of Joint Committees of both Houses of the Oireachtas
 - » Presidential appointments
 - » Governmental appointments
 - » Officer of the Houses of the Oireachtas
 - » Special Advisor, within the meaning of Section 19 of the Ethics in Public Office Act 1995
 - » Unestablished positions that are made in the public interest
 - » Positions designated as scheduled occupations under the Act

Appendix B Definition of Terms

In this Code of Practice, certain terms have specific definitions that are as follows:

“The Act” means the Public Service Management (Recruitment and Appointments) Act 2004.

Except where the context otherwise requires:

“Appointment” means the selection and employment of a person to fulfil a position within the organisations that are subject to the authority and scope of the Commission.

“Commission” means the Commission for Public Service Appointments.

“Licence holder” means a person to whom a recruitment licence has been granted.

“Minister” means the relevant government minister as set out in Section 58 of the Act.

“Office holder” means the head of a department, office, body or organisation.

This Code of Practice (No. 02/2017) was prepared by the Commission for Public Service Appointments in accordance with the provisions of Sections 23 and 24 of the Public Service Management (Recruitment and Appointments) Act 2004.

The Commission may revoke or amend this Code of Practice as it sees fit.

The Commission may take whatever action it considers necessary where it believes there has been a failure to comply with the terms of this Code of Practice.

