

## Reports for publication as approved by the Commission at the meeting of 28 June 2023

### Complaint about a competition for a vacancy in Employee Assistance position

**The Complaint:** The complainant alleged that:

- There was a lack of documented procedure on the part of the recruiter. Namely, the reviewer was not furnished with a copy of the shortlisting briefing document that was presented to the interview board.
- There was an inordinate delay in the process of the review carried out by the recruiter. It took 74 working days for the candidate to receive the outcome. The review was lodged on 13 December 2022, however, a response was not received until 3 April 2023.

**Recruiters actions:** The recruiter ran a campaign for the post of Employee Assistance Service. The complainant requested a review under Section 7 (Formal) of the Code of Practice. The reviewer's finding was that there was no clearly documented process for conducting the presentation stage of the shortlisting process. According to the reviewer, there should have been a clear process and marking guidelines, more clarity for the candidate on what competencies would be measured during the process and training/guidance for personnel conducting this type of assessment. It is the reviewer's opinion that "documentation may be restricted to boards and not the candidates (as happens with interview guides), but it should exist". The reviewer found there was limited feedback and notetaking during the shortlisting process.

**View of the Commission:** The Commission notes that while there is no stipulation within the Code that documents pertaining to shortlisting briefing be retained and retrievable, it would be good practice to do so. The Commission cannot overlook the length of time the report took to issue to the complainant. Having initially requested the review on 13 December 2022, we find it unacceptable that the final report was issued to the complainant on 3 April 2023.

**Decision:** The Commission finds there was a breach of the Code regarding the timelines of the internal review. The recruiter previously gave assurances that HR would engage with reviewers so that candidates would be kept aware of any particular reason for delay. The Secretariat is satisfied that such engagement in this case would have resulted in the delay arising from the input from competition section being communicated in good time to the candidate. The onus is not on the candidate to seek updates on the status of his review.

**Outcome:** The Commission requests the recruiter implement the following recommendations: Put mechanisms in place to ensure all future complaints under Section 7 are processed in a timely manner. Ensure, whenever appropriate, that all documentation

pertaining to the briefing of interview boards in relation to shortlisting be retained and retrievable in line with the Public Bodies Data Protection Policy, and that a scoring system should be used to distinguish between candidates at shortlisting stage.

## **Complaint about a competition for a Regional Mapping Director position**

### **The Complaint: The complainant alleged that:**

- He should have been allowed to apply for vacancies in all 3 advertised locations rather than just one;
- The candidate briefing on the oral presentation phase of the competition was confusing;
- Candidate cv qualifications should have been included in candidate assessment;
- The recruiter should have communicated to candidate personal as well as work emails;
- There was inconsistency between the candidate's manager's assessment and that of the board;
- The external reviewer appointed by the recruiter was a potential employer of the candidate and therefore not appropriate;
- One of the competencies should have included a component on ethics;
- That a former line manager and a member of the interview board canvassed against him;
- His interview notes were inaccurate and incomplete;
- HR leaked personal information about him;
- There was a delay in completing his internal review.
- CPSA should consider his as a section 7 complaint (which allows for a change in outcome);

**Recruiters actions:** The reviewer's findings was that there was no evidence to suggest that the CV element of the Application form was excluded from the papers issued to the Board and therefore the information contained therein is available to the Board members in determining a candidate's suitability for the role. There are no specific formal qualifications required for candidates to fulfil the duties and responsibilities of the post. In this instance, the criteria by which candidates were to be judged suitable, related to the personal attributes and skills required to fulfil the duties and responsibilities of the post. Having examined the paperwork and having had conversations with the Board Member and the trainer who delivered the 'Getting Competition Ready' course, the Reviewer was satisfied that the recruiter specifically required candidates to restrict themselves to competency examples from within their current roles. It was advised to candidates in the aforementioned training course that their examples should relate to relevant and recent

achievements if possible and this would, in many instances, relate to their career with the recruiter. However, she states that it appears to be entirely up to the candidate to select any example which, in their opinion, best demonstrates their expertise under any particular competency. Regarding the communications and timings of the competition, the Reviewer noted that all candidates were subject to the same timing of communication of all aspects of the competitive process. She stated that the job and person specifications are clearly defined, the vacancy was advertised widely within the recruiter and felt that appropriate assessment mechanisms were utilised. Training was offered to all candidates and also provided to the Board Members. Appropriate records of the appointment process were maintained as is required by the provisions of the Code of Practice.

The Reviewer noted that the process of sending emails to a person's work email address is understandable for an internal competition, she noted that it is advisable for HR to specify this in their competition documentation so as not to leave the matter open to incorrect interpretation by candidates.

She also notes that the timetable for the interviews is arranged in conjunction with the Board members and the time slots available are allocated to candidates by means of a draw. The Board members are tasked with assessing the presentations and it is a matter for them to form an objective opinion on the content and delivery of same. The Reviewer acknowledges that there was an error in the Candidate Information Booklet, however the error was corrected by email and gave sufficient time to allow candidates the opportunity to submit a presentation.

The Reviewer noted that the training was provided at a late stage in the competition preparation. However, the provision of relevant training was done in good faith. She advised that going forward, the organisation could endeavour to arrange training for candidates as far as possible in advance of the requirement to submit a presentation.

The reviewer states that many of the statements made by the complainant regarding the breaches to the confidentiality of his candidature are hearsay. She feels that if there was truth to these statements, it would have not influenced the outcome of the competition. However, it is strongly advised that the recruiter remind those involved in any competitive process that it is not permitted to discuss or disclose any information in relation to candidates with any other party.

**View of the Commission:** The complainant states that he feels the magnitude and seriousness of his complaint warrants this Office to examine his complaint under Section 7 & 8 of the Code of Practice. The complainant made his complaint to the recruiter under Section 8 of the code and as such this office would not consider his complaint under Section 7.

The position for Regional Mapping Director was advertised in 3 different areas, Waterford, Dublin and Roscommon. In his complaint to this Office, the complainant states that he applied for the Dublin office but had also expressed an interest in the Waterford Office. The complainant feels that it was discriminatory to be excluded from the two other panels. As is stated in the H.R Office notice 07 of 2022, Candidates should only indicate on the

application form one location they would be prepared to work. All candidates were made aware of this entering the competition, no discrimination was displayed by the recruiter by asking candidates to pick one location for the position in which they were applying for.

The complainant claims that 'the confusing wording of the brief for the presentation gave rise to concern that unless a summary of the latter (CV) information was included in the presentation, that same would not be before the interview board, which influenced the outcome of the presentation, at least in my case'. The Office notice clearly states that the title of the presentation will be 'The role of the RMD in delivering an excellent customer centric service'. There was an error made in the Office note as it directs applicants to Paragraph 4 & 5 when it should have read Paragraph 3, however, the recruiter corrected this error by email prior to interview and apologised for the confusion. The Commission finds no breach occurred, the information regarding the presentation was clear and concise and all candidates were notified of the error made.

The complainant feels that the 'Omission of the CV from the competition selection methods any stage of the competition was unfair and in breach of requirements for probity, merit, transparency etc. under the code, whether at shortlisting or at any other stage of the competition'. The recruiter's application form requested all the information contained in a CV such as Academic and professional Qualifications and Career History. The CV was part of the competition, no shortlisting occurred based on the CV/application form and the CV was provided to the interview board. The Commission does not direct public bodies as to how to use CV's or applications in the recruitment process, however it does ensure that a public body carry out a fair, transparent, merit-based and universally designed recruitment and selection process. The Office Notice sent to all candidates clearly sets out the application process, the Commission finds no breach of the code regarding this point.

The complainant states that the recruiter failed to send an email regarding the presentation to his personal email, it was only sent to his work email. As a result, he says he lost 4 out of 7 days to prepare for his presentation. He was the first interviewee and feels that others were at an advantage as some presented/interviewed 3 days later. Similarly, the complainant states that the recruiter requested an extension for the Formal Review decision and advised that it would have a response by the 31 December 2022. The complainant was on sick leave and by the 2 January 2023, had still not received a response. He emailed HR and was advised that a response had been sent to his work email only, on the 29 December 2022. The recruiter has advised that communication for this internal competition was through work email addresses. However, if a message was sent to a candidate and an Out of Office was noted, then an email was sent to their home email address. The Commission recommends that as the recruiter had requested on the application form both applicants work and home email addresses that all correspondence should be sent to both email addresses or the recruiter clarifies with applicants what email address will be used.

The complainant states that at interview, the board demanded that certain answers be based on his experience of working within the recruiter. He felt that this precluded his formal qualifications and external work experience. It is not within the Commissions remit to direct public bodies on how and what questions should be asked for any competition

once all candidates are treated in the same manner. The Commission has been advised that the interview board were fully trained. The Commission examined the complainant's interview notes as well as two sample interview notes for successful and unsuccessful candidates and can find no difference between the line of questioning taken with the complainant and that taken with other candidates.

The complainant states that there is inconsistency between his Manager's assessment and that of the board. While the board have access to the Manager's assessment, an interview is based on a candidate's overall performance on the day. The board had been fully trained and as such the Commission finds no issue that the board had a differing opinion than the candidates' manager.

The recruiter appointed an external Reviewer to conduct the formal review. The complainant was unhappy with this appointment as the Reviewer was from an Office that he had been successful in reaching a panel on for a separate competition. The complainant found this to be 'intimidatory victimizing behaviour'. The recruiter has confirmed that the Reviewer was trained appropriately in conducting reviews and has extensive experience in recruitment processes. As such, the Commission finds that the appointment of an external Reviewer was appropriate and can find no evidence to dispute the Reviewers findings.

Regarding 'The candidate Information published in respect of a relatively concurrent role to that in HR Notice 07/2022 in HR Notice 09/2022 confirms that that competition was being run using "50% seniority and suitability and 50% on merit" base criteria,' This is information given in HR Notice 09/2022 'Competition for progression to the Higher Scale in relation to grades represented by Forsa', this is a separate competition and has no relevance to the post of Regional Mapping Director.

The complainant is unhappy that his formal qualifications were not considered by the recruiter. He questions 'how on earth can a Management post within the Civil / Public service be made in the first instance without the requirement to have any formal qualifications in the 21st century?'. This is not a question that the Commission can answer. It is up to the public body to determine what qualification, if any, are required for the post.

The complainant suggests that the competency 'Drive and commitment to public Sector Values' should include ethics. This is not a matter for this Office to examine or comment on.

The complainant has complained of a pattern of intimidatory, victimising behaviours during the competition process. He alleges that his 'former line manager and a member of the interview board appeared to be engaging in canvassing against my appointment to the role'. Unfortunately, other than the complainant's allegation, there is no evidence to support this claim.

The complainant feels that there were inaccuracies in the note taking during his interview. He says that the interview board had access to only incomplete accounts of what he had said during both presentation and interview. Note taking at interviews will generally summarise applicants responses however as with the above issue, the board were fully

trained. The Commission has seen no evidence that the board did not carry out its function correctly.

The complainant makes a number of references to his personal information being shared with other staff and the 'leakage of information and documentation from the competition process including to those other than the interview board/authorised persons' It is not within the Commissions remit to examine or determine if this occurred. The Data Protection Commissioner would be better placed to examine this allegation.

Having reviewed the informal decision, the Commission finds that the Reviewer examined all of the issues raised in the complaint and explained the reason for her findings clearly to the complainant. While the Reviewer contacted the complainant a number of times by phone to discuss his case, the decision was made over a month later, outside of the timeline as set out in the Code of Practice and as such, constitutes a breach of the Code.

**Decision:** The Commission finds there was a breach of the Code regarding the timelines of the internal review. The Commission notes that while both work and personal email addresses were requested, only work addresses were used. This was unclear to the complainant.

**Outcome:** The Commission recommends that the recruiter put a mechanism in place to ensure it adheres to the timelines in the Code on completing reviews of complaints received from candidates. The Commission recommends that if both personal and work email addresses are requested, both should be used.

## **Complaints about a competition for Internal Assistant Principal position**

### **The complaint: The complainant alleged that:**

The complainant applied for the internal position for promotion to Assistant Principal (AP) within a public body with an original closing date for applications. He received an email advising that an initial review had shown that some candidates had exceeded the word limit in the competencies section. It advised that application forms should be reviewed for word count and updated applications. Following communication with the recruiter, the candidate was initially told that updated applications would only be accepted from candidates who had originally exceeded the word count but it was later confirmed that all candidates could resubmit their forms if they wished. The candidate complained that this meant candidates who originally exceeded the word count had more time to resubmit their applications than other candidates. He was then informed by HR that the revised closing date was not due to a word count matter but for other reasons.

He felt that the wording in the candidate booklet made it seem that the criteria was not set out before the process began. He also felt the information provided in the booklet regarding shortlisting was not accurate as online testing was conducted and shortlisting was not used.

He felt there was inconsistent communication regarding the presentation stage of the competition, with candidates being told a visual presentation would not be required but yet the board wanted to see the candidate presentations advance. The lack of clarity and the fact candidates were communicated with at different times gave some candidates an advantage over others. Candidates were told they would be questioned on their presentation at the start of the interview but at his interview the Chair told him that questioning would take place during the interview proper as part of competency questioning.

He raised concerns regarding communication telling him that candidates were required to reach a qualifying minimum standard of the 20th percentile in each of three tests seemed very low to the candidate and caused him to query whether this criterion had been set before or after testing.

**Recruiters actions:**

The complainant received a response stating that they understood an informal Section 8 had already been completed by phone on 21 September 2022, and that they would be in touch regarding the next steps. The candidate was not made aware that this was deemed his informal review.

The complainant submitted his Section 8 Formal complaint. The complainant received an email from the recruiter advising that a reviewer had been identified to carry out his Section 8 Informal Review. He queried this, as he had been informed that his informal review had already occurred, and had requested a formal review. He received an email clarifying that it was indeed a Formal Review.

The complainant requested to make additions to his formal complaint and he submitted his updated complaint form. He received a phone call from the reviewer. During this phone call, the reviewer apologised for the delay in processing the review. On a number of dates after the complainant received emails from the reviewer apologising for the delays. In March 2023, the complainant received a notification that his complaint was not upheld. The reviewer found that regarding the time extension given to candidates who had exceeded the word count, there was no evidence of unjust or prejudicial treatment as the recruiter responded in a timely and positive manner to the complainant's queries.

The candidate complained that on a phone call with a staff member in the recruiter, he was advised that the additional time given was not to do with the word count but for a separate reason that had been discussed with CPSA which could not be disclosed to the complainant. The reviewer found that as the competition was still ongoing at that stage, the non-disclosure to candidates and the contents of conversations between competition holder and the CPSA is justifiable and reasonable.

Regarding the complainant's suggestion that the criteria was not set prior to the running of the campaign, the reviewer concluded that the information provided contains information on the different possible stages of the appointment process. The complainant notes that the Directive provides for shortlisting if more candidates apply than would be practicable. He

states that he was advised that no shortlisting took place although he feels that there was a large amount of applicants based on the fact that online testing was conducted at Stage 2. The reviewer found that the candidate had expressed his opinion and the complaint was therefore hypothetical and as such there was no decision for him to make.

The complainant alleged that the requirement to have a copy of his presentation was only communicated after candidates had been advised that one was not required. The reviewer found that the fact that some candidates knew before others was 'beyond any remit or responsibility of the HR Section' and that there was no evidence of a breach of the Code of Practice. Regarding the presentation questioning, the reviewer found that the instructions were not consistent with the written criteria, (the criteria indicated there would be seven minutes questioning on the presentation at the beginning of interview) and may have caused confusion for candidates, however, he found that as it was not intentional it is not evidence of a breach of the Code of Practice.

The complainant stated that the qualifying minimum standard of 20th percentile seems extraordinarily low. The reviewer found that the complainant '*seeks information and gives observations on specific criteria rather than actually having any grounds on which a complaint is specifically based in contravention of the Code of Practice*'. As such, he concluded there was no decision to make regarding this issue.

### **View of the Commission**

The Secretariat examined the documentation relating to the competition and put queries to the recruiter regarding the issues raised in the complaint.

Regarding the extended deadline, the Secretariat finds that there were failings on the part of the recruiter in communicating with candidates. The candidate had to raise a formal objection with the recruiter for it to take action to allow all candidates update their application and, further still, the candidate had to request that recruiter inform all candidates of this information. The recruiter advised the Secretariat that it spoke with the complainant and explained that the above was an administration error and that the misinformation provided was corrected within the hour.

The recruiter advised that it contacted CPSA to get information regarding the issues that they had with the extended deadline. They state that they were advised that there was no reason why they couldn't proceed as normal as it had done everything possible to rectify the problem. The Secretariat finds no issue with the recruiter contacting CPSA for advice. The complainant did not need to be informed of the content of this conversation as the competition was ongoing and the recruiter had already rectified the problem.

The Directive provides a list of selection processes that may be used during the competition. The Secretariat does not believe this is evidence that the recruiter had not already selected what process it was going to use and as such finds there was no breach of section '2.7.3 Planning the selection process' of the Code of Practice.

The decision to shortlist is up to the recruiter. The fact that it was not used despite the process being set out in the candidate booklet does not demonstrate that 'this may have led



to candidates' applications being formulated in a way designed to appease an assessment which never took place'. The Secretariat finds no issue with this aspect of the complaint.

Regarding the presentation, the complainant was advised that he would be unable to display the presentation on screen during the interview. However, five days later he received an email advising 'the interview board has requested a copy of your presentation in advance of your interview'. The complainant claims that some candidates were aware of this requirement before others. However, the communication, which issued to all candidates, contained the same information so the complainant was not disadvantaged. In relation other people being informed of this requirement before he was, the allegation that this information was likely leaked from candidate to candidate, is beyond any remit or responsibility of Human Resources or of the CPSA.

In the same email, the complainant was also advised that 'There will be a requirement to present for approximately seven minutes (to include questioning) which will be at the beginning of the interview.' At Interview, the complainant stated that he did not get questioned after his presentation but was advised that questions would be asked at the end of the interview. When questioned by the CPSA, the recruiter advised that a senior Psychologist sat in on a number of interviews. The senior psychologist advised from her recollection and without reviewing paperwork that "candidate did the presentation at the start of the interview rather than at the end of the interview and they were questioned on the presentation directly afterwards. Then the interview board members and candidates moved on to the competencies."

The qualifying standard for competitions is not within the remit of the CPSA. It is also noted by the Secretariat that the review process did not run smoothly for the complainant.

### **Decision**

The Commission found there was no breach of the Code in this case.

### **Outcome**

The Secretariat finds that communication with candidates should be improved by the recruiter. The Code of Practice states that 'Open and active communication on the process and the basis for assessment is essential'. While the Secretariat acknowledges that the recruiter responded quickly and positively to the complainant's correspondence on all issues, it should not be a candidate's responsibility to contact the recruiter to get clarification on an issue that ought to have been noted by the body. Recruiters should also provide campaign information at the same time to all candidates.