

## **Reports for publication as approved by the Commission at the meeting of 13 December 2022**

### **Complaints about a competition in the Education sector**

Two similarly-structured complaints were received about this competition. Given this similarity, the summary below covers all points made across both complaints.

**The complaints:** The candidates were called for but were not successful at interview. They complained that

1. The date of the competition had been pushed out to include many more candidates that should not have been eligible in line with the normal six months acting up period;
2. They were not given the opportunity to display their competence in Irish, and questions about Applied Mathematics was not a relevant means of assessing the level of specialist knowledge and expertise and they believed other candidates were not asked questions on that topic
3. The reviews took too long to complete;
4. there was a conflict of interest between the new reviewer (who was appointed during the review as the original person could not complete the reviews) and the chairperson; and
5. the reviewer did not speak with the complainants and did not address all points raised.

**Recruiter's Actions:** The recruiter told the Commission that the Covid pandemic required the recruiter to prioritise its core functions so there was unavoidable slippage in completing some competitions and reviews, including the Senior Inspector competition. This delay resulted in more candidates being eligible than would otherwise have been the case;

Its candidate booklet listed 7 competencies under the 'Specialist Knowledge and Expertise and Ability' heading and candidates were questioned on those competencies based on the examples in their application forms. This meant that all candidates were asked questions across the 7 competencies generally but the specific questions varied on the basis of the examples provided by each candidate. All candidates had equal opportunity to include examples of their own expertise under the Specialist Knowledge competency. This included proficiency in the Irish language. The questions from the board were generated based on the examples given by the candidates on their application forms but the candidates were also at liberty to include additional information.

One candidate sought a review on 10 December which was completed on 28 January. This included a substitute reviewer being sourced. While the substitute reviewer had worked in the same area as the Chair of the interview board, there was no conflict as the substitute reviewer did not report directly to the Chair.

The recruiter stated that the review conducted was completed in line with the Code and the reviewer determined that he had received sufficient information from the complainant and did not require additional consultation. The public body also stated that the review addressed all of the points that were covered by the Code of Practice and that the complaints had been advised previously through email correspondence of the scope of complaints under the Code which did not include re-visiting or changing the marks of candidates.

**View from the Commission:** The Commission accepts that the Covid pandemic impacted on the performance of the functions of public service providers generally, and in that light is satisfied the recruiter's response is reasonable on this point.

The Commission is satisfied that basing questions on the competency-based examples provided by candidates in their application forms was a reasonable approach for the recruiter to take. Therefore, it sees no issue with candidates being asked different questions within the 'Specialist Knowledge and Expertise and Ability' heading and is satisfied that each candidate was given equal opportunity to highlight their expertise in certain areas under this competency through the application form and in the interview.

The Commission is satisfied that seven weeks is a reasonable timeframe to complete a review, allowing for the unforeseen need to source a substitute reviewer and some inevitable delay due to the Christmas holiday season.

The Commission agrees with the recruiter that a conflict of interest does not arise where a reviewer formerly worked in the same areas as the Chair of the board but did not report directly to that person. The Commission also accepts that the reviewer was not obliged to speak with the complaint. The Commission is also satisfied that the internal review covered all of the points in the candidates' complaint that came under the scope of the Code.

**Decision:** The Commission finds no breach of the Code of Practice in these cases.

**Outcome:** As the Commission is satisfied the competition was conducted in accordance with the Code of Practice, it sees no further action arising on these cases.

## **Complaint about a competition for a supervisory administrative position in the health sector**

**The Complaint:** The candidate complained that

- A panel that had been declared closed was re-opened and another person was appointed from it;
- The interview process was poorly organised;
- there was disregard to CPSA timeframes in conducting the Section 8 review; and
- the Section 8 review had discrepancies

**Recruiter's actions:** The recruiter advertised a competition for a temporary assignment for which the complainant was placed third on the panel. The person who placed first on the panel was appointed to the post, following which the recruiter announced cessation of the panel. Six months after the cessation of the first temporary appointment, a second temporary post became available and the recruiter appointed the person who placed second on the panel for the first temporary post to that second temporary post. The recruiter stated that the panel for the first temporary post had in fact remained open and the communication that it had ceased was an administrative error that should not have happened.

The review sought by the candidate in December 2019 was not completed until January 2022. The recruiter cited the context of the Covid pandemic and the fact it had to source an alternative reviewer when the candidate objected to the original reviewer as reasons for the delay in completing the review.

The reviewer found that the interview process was properly conducted, the board was properly composed and that the summary comments provided to candidates were an accurate reflection of candidate interviews. The reviewer found there were factual errors in some of the reviewer's communication but these did not amount to a breach of the Code. The reviewer recommended that efforts should be made to prevent recurrence of the administrative error in the announcement that the panel had ceased but also that this error did not amount to a breach of the Code.

**View of the Commission:** The recruiter provided records and answered the queries that were put to it. The Commission is satisfied that the reviewer's conclusions on how the competition was run and the factual errors in the reviewer's communication were reasonable. However, we find the awarding of the post to the second-placed candidate when cessation of the panel had been announced and the length of time it took to complete the review to have been poor recruitment practice.

**Decision:** The Commission finds there was a breach of the Code of Practice in this case. It recommends that for all future campaigns the duration of panels is specified in campaign information provided to candidates, that steps are taken to prevent recurrence of the administrative error that happened in this case and that candidates are kept updated on the progress of reviews.

**Outcome:** The Commission has engaged on these recommendations with the recruiter who has specified steps it will take in future campaigns to implement them. Regarding delays in completing reviews in particular, on foot of a Commission finding on a previous competition the recruiter has appointed a full-time reviewer. While this is a different action to that specified by the Commission, as it should address the situation giving rise to the recommendation the Commission is satisfied the action is a reasonable response to it.

The Commission is satisfied taking the steps specified by the recruiter would prevent recurrence of the breach of the Code that arose in this case. Accordingly, it sees no further actions arising in this case.

### **Complaint about a Programme Director competition in the health sector**

**The complaint:** A candidate complained that

- his competencies for the post were not properly assessed;
- scoring sheets for the shortlisting of candidates were not available; and
- there was a delay in conducting the review of his complaint.

**Recruiter's actions:** The recruiter confirmed that evidence of all four required competencies for each candidate were considered by the board, who decided that the candidate did not have the required standard for two of the four competencies. The reviewer was satisfied that the board was appropriately qualified to conduct a proper assessment of the competencies and that its decision on the candidate's competencies was reasonable.

The recruiter confirmed that it did not record scoring sheets for candidates, and provided the Secretariat with a log of its candidate eligibility decisions instead. The recruiter provided a timeline for the different stages of the review process which confirmed the process took just under three months to complete.

**View of the Commission:** The recruiter provided records and answered the queries that were put to it. The Commission is satisfied that the reviewer's conclusions on the competency of the board and on how it assessed candidate competencies were reasonable. However, it finds the absence of scoring sheets for candidate eligibility to have been poor recruitment practice. It also finds the delay in conducting the review was inconsistent with the provisions of the Code.

**Decision:** The Commission finds there was a breach of the Code of Practice in this case regarding the absence of scoring sheets and the delay in conducting the review. On the scoring sheets, the Commission recommends that scoring sheets are prepared and provided to candidates in all competitions when candidate progression from one stage of a competition to the next is based on candidate scores for the different competition stages.

**Outcome:** The Commission has engaged with the recruiter on the provision of scoresheets to candidates who have accepted the recommendation and confirmed it has put steps in place to do so immediately. Regarding delay, on foot of a Commission finding on a previous competition the recruiter has appointed a full-time reviewer. As this action should address the situation giving rise to the recommendation the Commission is satisfied the action is a reasonable response to it.

As the Commission is satisfied the recruiter's actions ensures that it's recommendations have been implemented, no further action arises on this case.

## **Complaint about a competition for an administrative position in the health sector**

**The Complaint:** The complainant applied for a temporary post in payroll administration. He contacted the HR Unit a number of times for an update on the competition and was told that it was still active. The complainant noted that a new advert for a similar permanent role had been published. When he queried this, he was told that the competition had been changed and was now for a permanent contract. When the HR Unit noted that the complainant had not been told he needed to apply separately for the permanent role, it paused the recruitment campaign for that post and arranged for the complainants' original application to be screened for it. Following the screening, the complainant was deemed not to have sufficient knowledge of payroll applications to be considered for appointment.

The complainant contended that the requirements for the permanent position were different to those for the temporary post and that he was told the temporary competition remained open despite the advertisement of the permanent post.

**Recruiter's actions:** The recruiter told the Commission that it got sanction to fill the post on a permanent basis a week after its announced closing date for the temporary post. In light of this development, the recruiter terminated the competition for the temporary post and proceeded with a new competition for the permanent one. It decided that higher levels of

competence and experience were needed for the permanent post compared to those it had sought for the temporary one.

The recruiter accepted it should not have told the complainant it was continuing to proceed with the temporary post and that it should have told him he needed to apply separately for the permanent one. In recognition of this, it paused the selection process for the permanent post (which was at the job offer stage) and arranged for the complainant's application for the temporary post to be screened as an application for the permanent one. When this was done it was considered that the complainant did not meet the eligibility requirements for the permanent post.

The recruiter accepted in erred in its communication with the complainant, it apologised for those errors and reviewed his complaint about how the competition had been conducted. The reviewer found that the complainant had not been disadvantaged as the decision that he was not eligible for the permanent post was reasonable.

**View of the Commission:** The decision to withdraw the temporary post was reasonable but the communication with the complainant on this point was not, and it was reasonable to have more onerous qualifying criteria for the permanent post compared to the temporary one.

The Commission accepts that the decision to pause the competition to consider the complainant's application was made in good faith in an effort to address the communication shortcomings on the recruiter's part. However, the permanent competition had advanced beyond the interview phase and a candidate had initially been made an offer for the role. In light of this, the Commission considers it unacceptable that an ineligible candidate (the complainant) was admitted to the competition at that point as had he been appointed it would have offered him an unjustifiable advantage and been grossly unfair to the other candidate to whom a job offer had been made.

**Decision:** The Commission finds the shortcomings in communication to the complainant in this case to be a breach of the Code. While the complainant was subsequently eliminated at the screening stage, the Commission finds that the initial inclusion of him in the competition was also a breach of the Code.

**Outcome:** The recruiter has confirmed that it now holds weekly meetings in its recruitment decision to ensure that all communication with candidates is accurate and up to date. The Commission is satisfied that this action should reasonably prevent recurrence of the communication shortcomings in this case which, in turn, led to the incorrect late inclusion of the complainant in the competition for the permanent post.

As it is satisfied that the recruiter's action addresses its recommendations, the Commission sees no further actions arising in this case.

## **Complaint about a specialist competition in the health sector**

**The Complaint:** the candidate complained that

- she were not given a scoring sheet from the interview;
- Her marking was too low based on her experience and qualifications;
- she was on leave when the campaign was announced and was not told about it as she should have been;
- she was inappropriately asked about her absences on maternity, carer's and sick leave; and
- she was questioned about her motivation in applying for the post; and
- her interview notes implied that she was responsible for technical issues she had in logging on which resulted in her being late for the interview.

**Recruiter's Actions:** The recruiter provided the Commission with copies of the campaign information given to candidates and responded to our queries on the points raised by the candidate. The recruiter explained that the agency who ran the campaign on behalf of the recruiter no longer retain marking sheets and the candidate was provided with her score in the outcome letter sent to her. The reviewer was satisfied that a review of the candidate's interview notes demonstrated that she was marked fairly based on the answers she provided and that the questioning of her motivation in applying for the role was similar for all candidates. The reviewer told the candidate that it was not a matter for the agency to ensure candidates on leave were informed about competitions. The Chair of the interview board told the reviewer that at the start of their interviews all candidates were asked about any absences they may have had and in their motivation in applying for the post. The recruiter confirmed to the Commission that it considered this response to be unacceptable and was providing training to ensure such questioning does not recur in future. It confirmed that a protocol is in place for dealing with any technical issues candidates may experience and that such issues have no bearing on candidate scores.

**View from the Commission:** Having considered the recruiter's response on how it conducted the process, the view of the Commission is that:

- the response on marking sheets is unacceptable. Candidates generally should be provided with information on how they performed at interview to demonstrate consistency and transparency in the interview process;
- Following review of the complainant and other candidates' interview notes, the recruiter's response on the marking of the candidate and the questioning of her motivation for applying for the role is reasonable;
- The response regarding informing people who are on leave when a campaign is announced is unreasonable as the onus is on recruiters, irrespective of whether or not campaigns are conducted by their behalf by third parties, to ensure potential candidates are informed about competitions for which they may be eligible;

- The recruiter's clarification on the questioning of the candidate's absences, and its commitment to provide training to prevent recurrence, is reasonable; and
- The recruiter's confirmation of the protocol it has in place to deal with technical issues, including that candidates are not penalised when such issues occur, is reasonable.

**Decision:** The Commission finds there were breaches of the Code of Practice in the failure to provide candidates with marking sheets on their performance at interview, the line of questioning on the complainant's sick, carers and maternity leave absences, and the initial refusal to carry out the initial Section 7 review.

The Commission does not consider the failure to inform candidates who were on leave about the campaign to be a breach, but it recommends that there should be measures in place to ensure that staff members who are on leave are informed of campaigns for posts for which they may be eligible.

The Commission does not find a breach of the Code regarding how the candidate was marked or on the questioning of her motivation in applying for the post. It is satisfied the technical issues experienced by the candidate had no impact on how she was marked.

**Outcome:** The Commission has engaged with the recruiter on the recommendations.

On marking sheets, the recruiter is changing its practice so that candidates will get information explaining the mark they got for each competency on which they were questioned. While this information will relate to the mark awarded rather than to the candidate specifically, in the context of the volume of recruitment undertaken by the recruiter the Commission considers it a reasonable response to its recommendation.

On the line of questioning at the interview, the recruiter agrees with the Commission's finding. Since then it has rolled out further bespoke training for interview chairs that is more directional with regard to obligations under the Equality Act. The Commission considers this to be a reasonable response to its recommendation.

Regarding the initial refusal to conduct a section 7 review, the recruiter has confirmed that additional training has been provided and that appropriate escalation measures are now in place in that regard. The Commission considers this to be a reasonable response to its recommendation.

Regarding information candidates of competitions, the recruiter stated that it is not logistically feasible for it to arrange for all potential candidates who may be absent from work to be specifically informed about particular campaigns. However, it also confirmed that it currently operates a skills-based database that can be searched at any time for vacancies in any specified skills area. It also agreed to add a line to future campaign booklets directing potential candidates to the recruitment section of its website as the ongoing source for any campaign or general recruitment information. Again in the context of the volume of recruitment undertaken by the recruiter, the Commission considers it a reasonable response to its recommendation.

**Next Steps:** As the Commission is satisfied with the steps the recruiter has taken and will take to address its recommendations on this case, no further action arises on it.

### **Complaint about a competition for a specialised statistical-based post in the health sector**

**The complaint:** The candidate was interviewed for the post along with two other candidates but was unsuccessful. He complained that the board was not properly constituted on the bases of grade, gender and work location; that the notes of his interview were incomplete and inaccurate; that the scoring matrix for competencies was not properly applied in his case; and that he was not given feedback on his performance at interview. He alleged that these contended flaws demonstrated that there was clear bias in the selection process.

**Recruiter's Actions:** In relation to board members grade, the recruiter confirmed that this was an administrative error and that the board members were of a higher grade than had been communicated to candidates. It also confirmed that the board comprised of three members, two females and a male who was the chair of the board. All three members had input into the scoring of candidates. The recruiter considered it appropriate to have both professional representatives on the board from the same office as there is only one such office in the country.

The recruiter told the Commission that candidate interview notes were intended as a summary rather than a verbatim record of interviews and was satisfied that the candidate's notes reflected this. It acknowledged an administrative error in references in campaign literature to a particular competency but was satisfied that all candidates were questioned on the competency as correctly titled.

The board Chairperson assured the recruiter's reviewer that all candidates were marked for each competency based exclusively on the evidence presented by the candidates over the course of their interviews.

Post-campaign information sent by the hiring body's recruitment agency to candidates stated that "*a candidate's own interview scores and note taking sheets is the only feedback available from the interview*".

**View from the Commission:** Having examined the campaign records provided by the recruiter, the Commission's view on the recruiter's actions are as follows:

- there was a gender balance with the board members who were of appropriate grades. It was appropriate to have both professional representatives from the same Office as members, as it is the only Office in the country.

- There were administrative errors in the interview note and scoring forms for one of the competency titles and in the listing of the grades of the interview board. While it is recommended that these issues are addressed to ensure they are not repeated, they do not consist of a breach of the Code.
- candidates were treated equally in relation to the marking at interview. The onus is on each candidate to provide as much detail relevant to the role, in the time permitted at interview.
- the board reviewed the answers provided by each candidate and marked the scores accordingly. The Commission is satisfied that notes are used as an aide-mémoire and that it would not be practical to record the entire interview.
- Examination of campaign documentation and interview notes for the complainant and other candidates did not reveal any evidence to justify a conclusion that there was bias in the process.
- While acknowledging that candidates are provided with their scores and notes from interview, it remains the case that candidate feedback is required by the Code. While this feedback does not need to provide personal developmental guides for candidates, it should outline the areas in which a candidate did not meet the required standard. The failure to provide such feedback is a breach of the Code.

**Decision:** The Commission finds there was a breach of the Code of Practice in the failure to provide the candidate with feedback as is required by the Code. While the administrative errors regarding the grades of board members and a competency title do not amount to a breach of the Code, it is recommended that the recruiter takes action to prevent recurrence of such errors.

**Outcome:** The recruiter has accepted the recommendations.

Regarding the failure to provide feedback, the recruiter is changing its practice so that candidates will get information explaining the mark they got for each competency on which they were questioned. While this information will relate to the mark awarded rather than to the candidate specifically, in the context of the volume of recruitment undertaken by the recruiter the Commission considers it a reasonable response to its recommendation.

On the administrative errors, the recruiter confirmed that a standard quality check is now in place to avoid similar errors in the future. The Commission also considers this to be a reasonable response to its recommendation.

**Next Steps:** As the Commission is satisfied with the steps the recruiter has taken and will take to address its recommendations on this case, no further action arises on it.

## **Complaint about the Competition for General Manager within the Health Sector**

**The complaint:** The candidate applied for the roles and was considered eligible for both but was not shortlisted for either one. He complained about how the shortlisting criteria were applied and questioned what marking system was used to determine which candidates should be advanced to the next stage of the campaign.

**Recruiter's Actions:** The recruiter's reviewer considered the training and experience of the two board members and was satisfied that both were competent and suitably qualified to sit on the board and carry out the shortlisting and eligibility sift exercise. The reviewer examined the shortlisting criteria for both posts and was satisfied these were properly applied in the candidate's case. The reviewer also spoke to the board member who gave telephone feedback to the candidate and was also satisfied that this had been done correctly in line with the principles of the Code.

**View from the Commission:** On examination of campaign documentation provided to it by the recruiter, the Commission is satisfied that all candidates' applications were treated in the same fair and consistent manner. That documentation included Candidate Information Booklet(s), two successful and two unsuccessful candidate application forms for both campaigns (redacted), the Eligibility assessment sheet for the complainant, and the corresponding eligibility assessment sheet for the two successful and two unsuccessful candidates for both campaigns (redacted).

Regarding the complainant's concerns about the lack of a scoring matrix, the Commission acknowledges that the application of a scoring matrix may not be appropriate or feasible in every case, in particular those involving large volumes of applications. It does not consider the absence of a scoring mechanism at this stage is in itself a breach in the Code of Practice. Having examined the relevant campaign records, the Commission is satisfied that shortlisting criteria applied in this instance were appropriately related to the Job Specification, duties, and requirements for the role. No evidence of unfair treatment of the candidate was found.

**Decision:** The Commission finds no breach of the Code of Practice in this case.

**Outcome:** As no breach was found, the Commission is satisfied that no further action arises in this case.