

## **Competition: Higher Executive Officer**

### **Complaint:**

The candidate reached the qualifying score for progression in the competition but was not advanced to the next stage. He complained that a second qualifying score had been added to the competition without notifying the candidates. He also complained about the length of time the informal Section 8 review took to complete and the tone and manner of the formal Section 8 reviewer.

### **Recruiter's Actions:**

The competition consisted of three stages. The first stage was an unsupervised Management Scenario Assessment, the second stage involved the selection board screening the eligibility of candidates who progressed from stage one, with the final stage being an interview. It was decided that due to the Covid pandemic, there would only be one round of testing instead of a second round consisting of supervised tests. Following the completion of stage one, every candidate was notified of their score and informed that candidates who had score 69 or above would be called for the second stage. The candidate scored 54 in the first stage.

Regarding the complaint on the review process, the public body confirmed they had to source a number of reviewers and the process of appointing reviewers, *'took little bit longer than usual due to number of requests for reviews received around the same time and also because not all of reviewers were available to conduct a review at the time.'* They tried to accommodate each request and find a reviewer as soon as possible. The complainant was notified of this and a reviewer had been appointed on 19 January. Reminders were sent to the reviewer on 15 and 30 March and the report was sent to the complainant on 31 March. The public body also confirmed that all reviewers were experienced and trained.

### **Secretariat's consideration:**

As part of our examination we reviewed the candidate information booklet and the informal and formal Section 8 reviews. It was stated in the information booklet that, *'applicants must successfully compete and be placed highest, in order to be considered for advancement to the next stage of the selection process'*, and *'the rationale for shortlisting was due to the number of applicants nationally and the high standard achieved.'* The scoring for shortlisting could not be pre-determined and therefore could not be printed in the information booklet, as it was an average calculated based on the results received on the Management Scenario testing.

It is common in public appointments to use a predetermined pass mark and then a qualifying mark for progression to the next stage. The Secretariat is satisfied this is what happened in this case.

While the Secretariat can understand practical difficulties faced by the recruiter in sourcing reviewers, the candidate still experienced a significant and unnecessary delay. We are of the view that these difficulties could have been significantly mitigated by identifying reviewers when the competition is announced rather than when complaints are received.

The complaint also raised issues regarding the tone of the reviewer's formal report. The report, while it details the actions the reviewers took during the review, it does not fully outline the reviewers own considerations of the matters before them. The final sentence in the report does state that the reviewer finds that all procedures during the competition were followed but it is not clear, with reference to the candidates' allegations how this conclusion was reached.

**Decision:**

We find that there was limited clarity on the point that achieving the qualifying mark does not guarantee progression in the competition and that the internal formal review conducted could have been more thorough in considerations of the candidate's allegations. However, in our view these shortcomings were not of a scale that would justify a finding that there was a breach of the Code. While no breach was found, we do have the following recommendations to improve the clarity of these competitions:

1. The information booklet should give more clarity to the fact that scoring above the pass mark does not guarantee progress to the next stage
2. The terminology of, '*you have reached the qualifying standard*' in the result email should be changed to, '*you have passed the Management Scenario Test.*' This should also improve clarity for applicants
3. When planning a recruitment campaign, the public body should identify reviewers in advance of the competition (or at least in advance of the completion of stage one). This is to allow for timely turnarounds of reviews so that any review decision that may alter a candidate's final placing in the competition can be implemented for that competition
4. The public body should also ensure that reviewers are fully trained in the tone, manner and format which should be used when corresponding with complainants

**Outcome:**

Following further correspondence with the public body, the Commission is satisfied that the recommendations have been implemented.

## **Competitions: Law Agent for two separate public bodies**

### **Complaint:**

The candidate was unsuccessful in both competitions and complained with regard to one of the competitions that:

1. The fact there were two separate progression marks for the same role meant candidates were not treated consistently
2. The feedback provided on her participation in the competitions was insufficient

### **Recruiter's Actions:**

The competitions were advertised and selection had been based on the application form submitted by the candidate. On receipt of the application forms, suitable candidates were invited to a preliminary interview for the positions.

Regarding the progression marks, the complainant reached the overall eligibility mark in both competitions but did not meet the specific overall progression marks decided by the boards in both competitions and therefore was not progressed to the final interview stage of either. The progression marks were 215 for one of the competitions and 150 for the other. The reviewer was assured by the recruitment manager that the board's decision to make 150 the cut off mark was based on the candidate pool and the scores achieved by each candidate at the preliminary interview stage. The interview board engaged with the recruitment unit during the preliminary interview process in advance of agreeing the progression mark. The reviewer also compared the overall scores of candidates in the competition. He was satisfied that the cut off score was based on the breadth of scoring achieved by the entire candidate pool. The recruiter conducting the competition also explained that the progression mark varies from competition to competition, depending on the standard of candidates and the number undertaking the preliminary interview. In these cases, the progression marks differed as they were two different competitions even though they were both recruiting for a similar role.

Regarding the feedback, the reviewer had assessed it and was satisfied that it was clear and that it explained the reasoning why the complainant was not progressed to the next stage.

### **Secretariat's consideration:**

The body conducting the competitions provided the candidate information booklet, information on the process carried out in order to apply progression marks and examples of candidate results, (both for those who did progress onto the next stage of the competition and those that did not). The complainant provided the feedback letter for both competitions.

The candidate booklets specified that, while candidates may reach the required standard, only those scoring high enough to be considered for the post would be progressed to final interview. Examination of the assessment sheets for both successful and unsuccessful candidates support a conclusion that only those candidates who scored highest were progressed to final interview. The feedback sheets provided by the complainant broke down the scores she was awarded in each category and confirmed the progression marks that were set by the boards following the interviews. There was also the following final summary included on the feedback sheet, *“At interview, (complainants name) performed satisfactorily across all competencies, however in a competitive field she did not achieve a total score high enough to be part of the smaller group being invited to the final round of interviews.”*

In light of the above, the Secretariat does not consider that there is any evidence to support a conclusion that the difference in progression marks used in both competitions meant candidates were not treated consistently. The Secretariat also considers that the feedback provided to the candidate was reasonable.

**Decision:**

As the Secretariat is satisfied that the assessment stage of the competition was conducted accordingly, no breach of the Code is found. For that reason, no further follow-up action by the public body is required.

**Competition: Home Support Manager**

**Complaint:**

The candidate was unsuccessful in the competition and complained that:

1. He received an initial notification that he was deemed eligible for the role but was later told that an administrative error had occurred and that he was not eligible
2. The documentation he got from the interview board regarding how the decision was reached to deem him ineligible was not very clear in relation to the process

**Recruiter's Actions:**

Regarding the candidate being initially told he was eligible, the reviewer confirmed that the candidate had been told in error that he had been shortlisted for the next stage of the competition when in fact he had not qualified. The reviewer spoke to the Campaign Manager who had reviewed the documentation relating to the eligibility/shortlisting exercise. Through a phone call with the board, the Campaign Manager had misinterpreted that the complainant was eligible for the next stage of the competition. The board were discussing the levels of evidence provided by the complainant in his application form, which led the campaign manager to erroneously believe they were carrying out a shortlisting

exercise. The campaign manager apologised for the error that occurred and the repercussions that followed.

Regarding the documentation on the process, the complainant was provided with a table listing the four areas in which experience was required from the application form. The table stated “yes” or “no” for whether or not a candidate was considered to have the necessary experience for each area. The complainant was deemed eligible in one out of the four areas and the reason why was noted as “*Insufficient depth & breadth of experience as relevant to the role*”. The reviewer found that this feedback provided to the complainant was insufficient as it was not clear and transparent. The reviewer recommended that candidates who were unsuccessful should be provided with an eligibility/shortlisting assessment sheet in order to give greater understanding to the candidate regarding the board’s decision. The reviewer also recommended that the Excel spreadsheet used to document the decisions of the Eligibility/Shortlisting panel be amended to reflect the difference between both stages of the process and provide for more robust and transparent reflection of decisions reached.

#### **Secretariat’s consideration:**

The public body provided the following documentation relating to this case:

- Initial Section 8 complaint submission and review
- Candidate booklet and job specification
- Application form submitted by the complainant as well as by other candidates (both successful and unsuccessful) for comparison
- Excel spreadsheet used for shortlisting
- Clarification of the shortlisting process that was carried out

Having analysed the documentation, including the four criteria under which applications were assessed, the Secretariat is satisfied that the public body examined all the application forms and there is no evidence to suggest that this examination wasn’t appropriately thorough or was inconsistent among and between candidates. There were also no discrepancies to show that the complainant was treated any differently to other candidates. In this regard we see no evidence to justify a conclusion that the shortlisting process was carried out unfairly.

Regarding the clarity of the documentation provided to the candidate, the Secretariat would agree with the reviewer’s recommendation that the eligibility/shortlisting assessment sheets should be amended for future campaigns in order to give candidates a greater understanding of the board’s decision-making.

#### **Decision:**

As the Secretariat is satisfied that the assessment stage of the competition was conducted according to the Code, no breach is found. We liaised with the public body on the

implementation of the recommendations noted in both the formal review and following our own examination. The public body has confirmed the following actions for future campaigns:

1. It has updated the excel spreadsheet layout to aid the shortlisting process for future campaigns
2. The Excel spreadsheet used to document the decisions of the Eligibility/Shortlisting panel has been amended to reflect the difference between both stages of the process and provide for more robust and transparent reflection of decisions reached
3. In order to improve transparency of feedback, the public body is currently working with their team to ensure that the eligibility/shortlisting sheets are completed for each candidate and that there is sufficient feedback given so that they are aware of how a decision was reached in relation to their ineligibility. These sheets will be provided to both unsuccessful candidates and successful candidates for all future campaigns
4. The public body has also addressed the communication issue with regard to the campaign manager's error and the relevant guidance and training has been implemented to avoid reoccurrence

**Outcome:** As the Secretariat is satisfied that the above actions have been implemented or will be implemented in the near future, no further follow-up action is required.

### **Competition: Head of Finance in the Civil Service**

#### **Complaint:**

The candidate was unsuccessful at the shortlisting stage and was not brought forward to the interview stage of the competition. He complained that he did not get feedback on the shortlisting process, and that this lack of feedback meant he was unable to determine if there were grounds for appeal in relation to his application.

#### **Recruiter's Actions:**

The competition was advertised and selection was based on the application forms submitted by candidates. On receipt of the application forms, suitable candidates were invited to a preliminary interview for the position. The complainant was not shortlisted based on his application form and therefore was not invited to interview for the position. The candidate sought a review on the basis he did not get feedback which would give him a basis to decide if he had grounds to appeal the decision not to call him for interview. The public body told him that he did not need to get feedback on his participation in the competition to submit a review and explained he had the choice to submit a Section 7 review based on the outcome of his application or a Section 8 review based on a contended flaw in the recruitment process. The candidate submitted a Section 8 review on the basis that he had not received the feedback he had asked for.

The reviewer was not clear on what element(s) of the Code the candidate contended had been breached so he conducted a general review of the process. The reviewer examined the Candidate Information Booklet, the complainant's request for review and his correspondence with the public body. He assessed the competition and the selection process, and consulted with the recruitment unit responsible for overseeing the competition.

The reviewer confirmed the candidate had been given feedback that he *“displayed evidence of Post Qualification experience but did not provide sufficient evidence of Senior Level Leadership and Management experience at the level required for this senior role relative to those candidates shortlisted.”* He found that the feedback provided to the candidate, which was sent later on the same day that the candidate sought the review, was reasonable as it adequately explained why the candidate had not progressed to the next stage of the competition. The reviewer was also satisfied that the recruitment process implemented for the competition adhered to the principles of probity, appointments made on merit, an appointment process in line with best practice, a fair appointment process applied with consistency, and appointments made in an open, accountable and transparent manner. The reviewer found no evidence that there has been a breach of the CPSA Code of Practice.

**Secretariat's consideration:**

The public body provided the following documentation on the competition:

1. Candidate booklet for the competition
2. The complainants Section 8 complaint submission
3. The complainants Section 8 review result
4. The request submitted by the candidate for feedback and the response provided
5. The shortlisting process and how it was applied in relation to this competition, including information on the composition of the interview board and its deliberations on the competition
6. Correspondence between the complainant and the public body

Analysis of this documentation showed that the candidate booklet explained that candidates did not need to have got feedback to seek a review of the decision(s) made on their application. The Secretariat agreed with the reviewer's finding that the feedback provided to the candidate was reasonable as it adequately explained why the candidate had not progressed to the next stage of the competition. The Secretariat is also satisfied that the board was properly constituted and that the records of its assessment of candidates show that a thorough short-listing process has been undertaken which was structured in line with the Code of Practice.

**Decision:**

As the Secretariat is satisfied that the assessment stage of the competition was conducted according to the Code, no breach is found. While no breach of the Code was found, we made the following recommendation to the public body:

- in future cases where reviewers are not clear on what a candidate has sought in a review, the reviewer should contact the candidate to seek such clarity before the review is conducted

**Outcome:**

As the Secretariat is satisfied that the above recommendation have been actioned, no further follow-up action is required.

**Competition: Head of Finance in the Civil Service****Complaint:**

The candidate was unsuccessful at the shortlisting stage and was not brought forward to the interview stage of the competition. He complained that he did not get feedback on the shortlisting process, including how it was conducted, how his marks were measured against the selection criteria, notes taken by the board in assessing his application and details on relevant qualifications of board members. He complained that this lack of feedback meant he was unable to determine if there were grounds for appeal in relation to his application.

**Recruiter's Actions:**

The competition was advertised and selection was based on the application forms submitted by candidates. On receipt of the application forms, suitable candidates were invited to a preliminary interview for the position. The complainant was not shortlisted based on his application form and therefore was not invited to interview for the position. The candidate sought a review on the basis he did not get feedback which would give him a basis to decide if he had grounds to appeal the decision not to call him for interview. The public body told him that he did not need to get feedback on his participation in the competition to submit a review and explained he had the choice to submit a Section 7 review based on the outcome of his application or a Section 8 review based on a contended flaw in the recruitment process. The candidate submitted a section 8 review on the basis that he had not received the feedback he had asked for.

The reviewer was satisfied that the recruitment process implemented for the competition adhered to the principles of probity, appointments made on merit, an appointment process in line with best practice, a fair appointment process applied with consistency, and appointments made in an open, accountable and transparent manner. The reviewer found no evidence that there has been a breach of the CPSA Code of Practice.

### **Secretariat's consideration:**

The public body provided the following documentation on the competition:

1. Candidate booklet for the competition
2. The complainants Section 8 complaint submission
3. The complainants Section 8 review result
4. The request submitted by the candidate for feedback and the response provided
5. The shortlisting process and how it was applied in relation to this competition, including information on the composition of the interview board and its deliberations on the competition
6. Correspondence between complainant and the public body

Analysis of this documentation showed that the candidate booklet explained that candidates did not need to have got feedback to seek a review of the decision(s) made on their application. The Secretariat agreed with the reviewer's finding that the feedback provided to the candidate was reasonable as it adequately explained why the candidate had not progressed to the next stage of the competition. From reviewing the documentation, the Secretariat is also satisfied that the board was properly constituted and that the records of its assessment of candidates show that a thorough short-listing process has been undertaken which was structured in line with the Code of Practice.

### **Decision:**

As the Secretariat is satisfied that the assessment stage of the competition was conducted according to the Code, no breach was found.

While no breach of the Code was found, the following recommendation was made:

- Candidates should be informed in advance of the possible review processes and the outcomes of each. This could be done through inclusion of a section on the review function in the candidate information booklet for future competitions which could include confirmation that detailed feedback is not required for candidates to seek reviews

### **Outcome:**

As the Secretariat is satisfied that the above recommendation have been actioned, no further follow-up action is required.

## **Competition: Assistant Principal in the Civil Service**

### **Complaint:**

The complainant was asked to confirm her attendance at interview through an email rather than through a notice on her Message Board for the competition. The complainant contended that this put her at a disadvantage as she was communicated with differently to other candidates.

### **Recruiter's Actions:**

The competition was run by a public body who called candidates that had progressed to the interview stage, in batches through posting notices on each candidate's competition Message Board. The complainant had expressed interest in posts in a named county. A vacancy arose in that county which, due to the timing of when the vacancy arose, stood to be filled from the fifth batch of candidates to be called for interview. In light of the complainant's expression of interest, the public body added her to the fifth batch so that she could be considered for the vacancy should she be successful at interview. The act of moving the complainant into the fifth batch led to the administrative error in her being asked by email to confirm her attendance at interview before being initially informed of her progression to interview stage through a posting on her Message Board.

The complainant raised this error with the public body who immediately arranged for the appropriate posting to be put on the complainant's Message Board. The complainant also contended that the fact she was not initially told about her progression to interview meant she did not have enough time to get interview training before her interview. In their review of the complaint, the public body confirmed that their competition booklet stated that it is the responsibility of all candidates to take whatever steps they consider relevant to be adequately prepared for each stage of the selection process. The public body also confirmed that all the other candidates in the fifth batch got at least eight days' notice of their interviews via their Message Boards. While the complainant got her communication through email rather than a posting on her Message Board, the public body confirmed that it scheduled her interview on a date that ensured she got the same eight days' notice that other candidates got. The reviewer apologised to the complainant for the error that occurred in her case.

### **Secretariat's consideration:**

The Secretariat is satisfied the candidate booklet for the competition demonstrated that candidates were told in advance that it was their own responsibility to ensure they were adequately prepared for the different stages of the selection process. In response to a query from the Secretariat, the public body provided records that showed its scheduling of the complainant's interview was the same notice for interview as other candidates called in the same batch. The Secretariat also asked the public body why the apology was not issued

at the time the error was noticed rather than at the end of the review process. The public body replied that it did not apologise when the error was noticed as it was satisfied the issue had been properly resolved at that time.

The Secretariat is satisfied that the information provided by the public body demonstrates that the complainant got similar notice of interview as other candidates, and agrees that the public body properly and promptly resolved the issue once the complainant brought it to their attention. However, while agreeing the issue was resolved, such resolution does not justify any delay in apologising to the complainant for the error that occurred in her case.

**Decision:**

As the Secretariat is satisfied that the complainant got the same notice of interview as other candidates and the same information about candidates being responsible for competition preparation, no breach of the Code is found. While no breach of the Code was found, the Secretariat recommended the following:

- In future cases where errors occur, the public body should apologise to any candidate affected by such errors immediately, rather than awaiting completion of any internal review
- In situations where candidates are being brought forward from later batches, separate communication channels should be used

**Outcome:**

As the Secretariat is satisfied that the above recommendations have been actioned, no further follow-up action is required.

**Competition: Senior Environmental Health Officer**

**Complaint:**

The candidate was told she was successful in the competition and was placed on a panel for appointments but was then told the competition was to be re-run. Following the rerun of interviews, the complainant placed significantly lower on the panel in comparison to the original panel. The complaint complained that:

1. She gave the same competency answers to both interview boards with outrageous variance in the marks she was given
2. Three of the original six interviewers were involved in the re-run competition which meant the five recruitment principles of probity, merit, best practice, fairness and transparency were compromised
3. There was a potential conflict of interest as the reviewer appointed to examine her complaint was the personal assistant to the Assistant Director of HR

### **Recruiter's Actions:**

The public body used several different interview boards due to the number of candidates being interviewed. The results were collated and candidates informed of their placing on the panel. However, the panel was announced in error before the public body had applied the benchmarking process it uses to minimise inconsistency in results between different boards in competitions where multiple boards are used. When the error came to light the public body decided to re-run the competition as it was concerned that inconsistencies due to the absence of benchmarking compromised the integrity of the original results it had announced. The public body reviewer appointed to examine the complaint was satisfied that the complainant's re-run interview was properly conducted and that the board had been given the appropriate training.

The public body was satisfied that the differing score the complainant received between the two interviews resulted from benchmarking not being applied rather than any flaw in how she was interviewed either time. For this reason and to maximise consistency between the two sets of interviews, the public body decided to use the three interviewers from the first set who were also available for the second set. Each of those interviewers were paired for the re-run with people not involved in the first interview to maximise consistency between the two processes.

Regarding the contended conflict of interest, the Secretariat accepted the public body's position that the originally appointed reviewer was appropriately trained for the role and the Assistant Director of HR had no direct involvement in either set of interviews. However, the Secretariat also accepted the candidate's highlighting of a potential conflict of interest. As the review had not been completed when the complaint to CPSA was made, the Secretariat asked the public body to appoint another reviewer to complete the process. The public body agreed to this request and another reviewer completed the review.

### **Secretariat's consideration:**

On the re-running of the competition, the public body explained the rationale for its' use of the benchmarking process and the further process around this. This included all interviewers attending a session where answers to similar questions put to different candidates in interviews were read out from the interview notes. This was so board members could discuss and agree on how such different answers should be marked. A range of examples of candidates displaying varying degrees of quality in answers were reviewed. All boards were also provided with variance sheets which showed the marks given for each competency by each board and how those marks varied from the average across all boards. The public body also explained why it used the three interviewers who were available for both sets of interviews in the re-run, and provided a sample of candidate scores from the interviews to allow for examination of consistency in scoring.

The Secretariat analysed the documentation and the explanations provided, in particular the detail it provided on the benchmarking process and its reviewer's examination of the complainant's re-run interview. Having done so, the Secretariat is satisfied that the public body's decision to re-run the competition was reasonable and that the complainant's second interview was conducted in line with the Code of Practice. The Secretariat is also satisfied that it was reasonable for the public body to use the same interviewers who were available for both interview processes as there is no evidence in the records to support a conclusion that the fluctuation in the complainant's marks was as a result of a flaw in how her interviews were conducted. Regarding the contended potential conflict of interest, the Secretariat is satisfied that the appointment of a different reviewer was a reasonable response on the matter.

**Decision:**

The Secretariat is satisfied that the decision to re-run the competition, the involvement of three interviewers in both processes, and the appointment of an alternative reviewer assessment were reasonable. Accordingly, no breach of the Code was found. While no breach of the Code was found, we made the following recommendations;

- The Commission agrees that it is appropriate that benchmarking should be applied in multi-board competitions. However, training for interview board members should be structured so that any inconsistency in results between different boards in the same competition should be kept to a minimum and staff training implemented to ensure that panels are only realised when it's appropriate to do so
- In future cases, the matter of potential or actual conflict on a reviewer's part should be considered before reviewers are appointed

**Outcome:**

Following the recommendations made in the report, the following actions have been implemented by public body:

- A comprehensive suite of training material has been developed on facilitating a benchmarking session and creating a variance report; and this has been issued to all recruitment team members. Line managers are responsible for ensuring that all members of their team are aware of the importance of the benchmarking exercise and are comfortable in facilitating this stage of the selection process
- Additional checks have been put in place to ensure that all interview board members participating in a selection process have recently completed the mandatory training on the best practice approach to assessing, evaluating and scoring candidates. Board members who do not complete the training cannot sit on an interview board. For large campaigns where multiple boards are running concurrently, the interview training has been updated to include a section which covers the importance of, and the application of, the benchmarking process

- Skeleton schedule templates have been amended so that formal benchmarking sessions are scheduled as standard into all campaigns where more than one interview board is running concurrently. These sessions are used to review a range of examples of candidates displaying insufficient, sufficient, good or excellent evidence. The examples afford interview board members the opportunity to hear the evidence presented to the other boards and the scoring applied. The benchmarking sessions enable the board members and campaign manager to identify and address any inconsistencies in evaluating or scoring, and to maintain a consistent approach where equal marks are given for the same calibre of answer as measured against the behavioural indicators or against the ideal answers for questions on professional knowledge
- Campaign procedures have been updated to highlight the need for the completion and distribution of benchmarking reports on a daily basis. These reports give the board members a visual impression of the variances in the scoring patterns between each of the interview boards. All campaign leads have been informed that they must discuss the variance reports with each board and suggest appropriate actions where necessary if large variances in scoring occur. Guidelines on doing so have been included in the suite of training material developed
- An additional quality assurance mechanism has been implemented post-interview whereby the campaign lead is required to review the orders of merit awarded to successful candidates to ensure that there is equal representation of each interview board in the panel placings before results are issued
- An audit is now carried out on every campaign before the panel is handed over to the panel management team. This allows the line manager to identify any errors or omissions before results are issued and the panel goes live

As the Secretariat is satisfied that the above recommendations have been actioned, no further follow-up action is required.

### **Competition: Senior Environmental Health Officer**

#### **Complaint:**

The candidate was told she was successful in the competition and was placed on a panel for appointments but was then told the competition was to be re-run. Following the rerun of interviews, the complainant placed significantly lower on the panel in comparison to the original panel. She complained that:

1. There was no consistency between her results from the original and the re-run interviews and the score he was awarded was unfairly low
2. The interviewers did not question the full extent of the candidate's examples which clearly demonstrated all of the required competencies which raised questions of the training, qualifications and competence of the interviewers

### **Recruiter's Actions:**

The public body used several different interview boards due to the number of candidates being interviewed. The results were collated and candidates informed of their placing on the panel. However, the panel was announced in error before the public body had applied the benchmarking process it uses to minimise inconsistency in results between different boards in competitions where multiple boards are used. When the error came to light the public body decided to re-run the interviews for the competition as it was concerned that inconsistencies due to the absence of benchmarking compromised the integrity of the original results it announced. The public body reviewer appointed to examine the complaint was satisfied that the complainant's re-run interview was properly conducted and that the board had been given the appropriate training.

### **Secretariat's consideration:**

On the re-running of the competition, the public body explained the rationale for its use of the benchmarking process and described the process it uses in doing so in detail. This included all interviewers attending a session where answers to similar questions put to different candidates in interviews were read out from the interview notes. This was so that board members could discuss and agree on how such different answers should be marked. A range of examples of candidates displaying varying degrees of quality in answers were reviewed. All boards were also provided with variance sheets which showed the marks given for each competency by each board and how those marks varied from the average across all boards.

The Secretariat analysed the documentation and the explanations provided by the public body, in particular the detail it provided on its benchmarking process and its reviewer's examination of the complainant's re-run interview. Having done so, the Secretariat is satisfied that the public body decision to re-run the competition was reasonable and that the complainant's second interview was conducted consistent with the Code of Practice.

### **Decision:**

The Secretariat is satisfied that the decision to re-run the competition and the way the complainant's second interview was conducted were reasonable. Accordingly, no breach of the Code is found. While no breach of the Code was found, we made the following recommendation to the public body:

- The Commission agrees that it is appropriate that benchmarking should be applied in multi-board competitions. However, training for interview board members should be structured so that any inconsistency in results between different boards in the same competition should be kept to a minimum and staff training implemented to ensure that panels are only realised when it's appropriate to do so

## **Outcome:**

Following the recommendations made in the report, the following actions have been implemented by public body:

- A comprehensive suite of training material has been developed on facilitating a benchmarking session and creating a variance report; and this has been issued to all recruitment team members. Line managers are responsible for ensuring that all members of their team are aware of the importance of the benchmarking exercise and are comfortable in facilitating this stage of the selection process
- Additional checks have been put in place to ensure that all interview board members participating in a selection process have recently completed the mandatory training on the best practice approach to assessing, evaluating and scoring candidates. Board members who do not complete the training cannot sit on an interview board. For large campaigns where multiple boards are running concurrently, the interview training has been updated to include a section which covers the importance of, and the application of, the benchmarking process
- Skeleton schedule templates have been amended so that formal benchmarking sessions are scheduled as standard into all campaigns where more than one interview board is running concurrently. These sessions are used to review a range of examples of candidates displaying insufficient, sufficient, good or excellent evidence. The examples afford interview board members the opportunity to hear the evidence presented to the other boards and the scoring applied. The benchmarking sessions enable the board members and campaign manager to identify and address any inconsistencies in evaluating or scoring, and to maintain a consistent approach where equal marks are given for the same calibre of answer as measured against the behavioural indicators or against the ideal answers for questions on professional knowledge
- Campaign procedures have been updated to highlight the need for the completion and distribution of benchmarking reports on a daily basis. These reports give the board members a visual impression of the variances in the scoring patterns between each of the interview boards. All campaign leads have been informed that they must discuss the variance reports with each board and suggest appropriate actions where necessary if large variances in scoring occur. Guidelines on doing so have been included in the suite of training material developed
- An additional quality assurance mechanism has been implemented post-interview whereby the campaign lead is required to review the orders of merit awarded to successful candidates to ensure that there is equal representation of each interview board in the panel placings before results are issued
- An audit is now carried out on every campaign before the panel is handed over to the panel management team. This allows the line manager to identify any errors or omissions before results are issued and the panel goes live

As the Secretariat is satisfied that the above recommendations have been actioned, no further follow-up action is required.

### **Competition: Grade IV Disability Services**

#### **Complaint:**

The candidate submitted an expression of interest for a post in April 2020. He was successful in the competition and progressed to pre-appointment clearance. During the course of the clearance stage he included information about his disability and submitted details of required accommodations at work. After five months of occupational health assessments and correspondence with the recruiter, he received notification of the retraction of the job offer, on 7 October 2020. The complainant alleges that both the process and the delays encountered constitute breaches of the Code of Practice.

Specifically, he alleges that:

1. There was a lack of communication throughout the pre clearance stage which took five months to complete and the procedures followed during this process were unfair to him
2. The communication he received about the retraction of the job offer on 7 October 2020 did not give a clear explanation or justification for the retraction of the post
3. It was unfair to place responsibility on him as a candidate to contact service managers regarding whether or not positions offered to him were suitable with regard to the particular accommodations he needed arising from his disability
4. His Section 8 review was not conducted fully and had short comings

#### **Recruiter's Actions:**

The complainant expressed an interest in the post and successfully placed highest in the order of merit. He confirmed his wishes to proceed to pre-employment clearance stage. During the clearance/contracting stage of the process, the complainant had to receive an occupational health clearance. He also submitted a letter outlining accommodations that he would require in order to be able to work comfortably in the office.

The public body reviewed the specified accommodations and worked on assessing the feasibility in meeting the candidate's requirements. Over the course of summer, the public body investigated the suitability of the designated workplace and the works needed to be carried out to accommodate the candidate. Potential solutions were discussed including the candidate working from home while works could be carried or a change of location for the candidate to work in. However, it was agreed that the position required onsite attendance and the age of the building would require major works which would could not be provided within budget constraints. A suitable alternative building could not be satisfactorily found either. In the meantime, the candidate had agreed a provisional start

date of the 4 August. The candidate had been informed that he should not give notice to his current employer as the position would not be official until the contract had been signed by both parties. Having determine that it was not viable to appoint the candidate, they informed the candidate of the decision in October.

A Section 8 review was requested to the public body, but no breach of the Code was found.

**Secretariat's consideration:**

As part of our examination of this case, we contacted the public body and requested the following;

- Copies of all correspondence with the complainant
- Copies of all correspondence in relation to occupational health checks
- Copies of all correspondence in relation to Section 8 review
- Comment on and/or provide business case used as a base for the decision to retract job offer

We reviewed the correspondence between the public and the complainant, as well as, the correspondence internally in trying to source suitable accommodation for the complainant. We also examined the findings from the formal Section 8 review. We found that the public body made efforts to accommodate the needs of the candidate and explored several avenues in order to facilitate the appointment. We were informed that, after months of trying to find suitable facilities, it was deemed unattainable, as the size of the works needed on the site and the lack of budget for the works made it impossible for them to complete. We established that other sites had been examined and no other viable site could be located either. We note that this is a very disappointing outcome for the complainant, but we accept that the public body made very significant efforts to accommodate his needs. The offer of the position and a provisional start date had been agreed. However, it was noted to the complainant in previous correspondence, that this did not guarantee the job as a full suite of satisfactory clearances needed to be confirmed and the contract had been signed by both parties.

While it is acknowledged that the public body made considerable efforts to accommodate the needs of the candidate, the Commission does not consider that appropriate efforts were made to keep the candidate updated on any developments. The Commission expects regular and meaningful communication with candidates providing explanation of any delays when and if they occur.

**Decision:**

We are not satisfied with the lack of communication in relaying information and updates to the complainant. The complainant had to keep following up for information on the delays

before receiving notification that the offer was being retracted. We feel this was unfair to the complainant as he had come first on the order of merit, accepted the position and agreed a provisional start date. We find that the public body should have stayed in communication with the complainant and offered periodic updates, as well as, enable the candidate to make inputs or help with the accommodation needs.

The Section 8 review conducted by the body does not address the fact that the complainant was not updated regularly on the progress of his appointment. It also did not examine the timeliness of the process and the inconvenience and upset to the complainant.

Having examined them, our view on public body's actions are as follows:

1. We do not find that the public body breached the Code of Practice in retracting the offer and reinstating the candidate back on the panel however the complainant has been signposted to the Office of the Ombudsman if he wishes to make a complaint under the Disability Act
2. We find that the lack of communication from the public body to the complainant to be a breach of the Code of Practice, as per Principle 5 of the Code, which states, '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'
3. We are also not satisfied that the Section 8 review conducted internally addressed the candidate's complaint in relation to communication and timeliness
4. We have resolved that a breach occurred and have recommendations to be followed up on

The Commission recommends that for future competitions where an offer to accept a position is sent to a candidate, the public body follows up to determine what occupational health checks need to be carried out and what accommodation requires are needed by the candidate from the outset. No start date or contract offer should be made until the public body are sure the candidate can be catered for. The public body should continue to do work in the background on securing the right accommodation and should periodically update the candidate on what is being done. This is to give the candidate an opportunity to add their own input.

**Outcome:**

Following the recommendations made in the report, the following actions have been implemented by public body:

- A change to standard operating processes has been made to now include a more regular review of the status of candidates during the Occupational Health Assessment stage, to ensure that where undue delays are experienced or

recommendations made which require further assessment, regular communication is maintained with candidates

- In regard to the Section 8 review the public body stated, *'Upon review of the Section 8 appeal response which was issued, we agree that that this response did not satisfactorily address the point outlined for review and that the review focused solely on the compliance of the decision of the hiring service to retract the conditional offer of appointment. This finding will be brought to the attention of the Appeals Officer who conducted the review to ensure there is absolute clarity on the issue of scope and to ensure that future reviews clearly address all potential breaches of the Code of Practice'*
- The public body advised it is not normal procedure to agree a provisional start date prior to the conclusion of the pre-employment stage and will be addressed through refresher training. *'In order to assess the potential for any required adjustments/accommodations at an earlier stage, an additional question will be included in the communication to candidates who are recommended to proceed to the pre-employment stage of the recruitment process. This question will ask the candidate to identify if they believe accommodations/adjustments will be identified as required by the Occupational Health Unit, which will enable earlier engagement if the response indicates this to be the case'*
- The public body confirmed that a review has been undertaken and a number of steps taken (listed above) to address the issues raised. The public body will seek to establish any accommodation adjustments required at the point of identifying the candidate highest in order of merit who is recommended to proceed to the next stage in the recruitment process for a job. All efforts will be made from this stage to ensure that any and all reasonable adjustments are considered, with the candidate remaining engaged and kept informed of progress

As the Secretariat is satisfied that the above recommendations have been actioned, no further follow-up action is required.