



Oifig an Choimisiúin um Cheapacháin Seirbhíse Poiblí  
Office of the Commission for Public Service Appointments

Audit of the use of restrictive eligibility  
criteria in promotion process in the Office  
of the Revenue Commissioners

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## Introduction

The Commission for Public Service Appointments oversees recruitment and selection to positions in the civil and public service. These are positions to which the Public Service Management (Recruitment and Appointments) Act, 2004 applies.

Under the Act, a public body can apply to the Commission for a recruitment licence. This allows it to carry out recruitment and selection processes for appointments within the organisation. A recruitment licence is granted subject to ongoing compliance with its terms and conditions. If a body is found to have acted in contravention of the terms and conditions, the licence may be revoked.

When making appointments, licence holders are subject to codes of practice published by the Commission. These set out the regulatory framework for selection and the principles and standards that must be followed when carrying out a selection process.

As part of the Commission's oversight role, audits are undertaken annually of licence holder recruitment and selection activity. These are provided for in sections 43(5) and 13 of the Act. Audits help ensure licence holders have adequate safeguards in place to support candidates being selected fairly and consistently, in line with the codes.

This report has been prepared under section 43(5) and section 13 of the Act. Details of the Commission's audit procedures are set out in Appendix 1.

# Background

## Codes of practice

The code of practices set out the principles and standards which must be followed by a public body when making an appointment.

Section 2.6.4 of the Code of Practice for Appointment to Positions within the Civil and Public Service outlines the standards that are expected when setting the job and person specifications for a role. It states that:

*'Regarding job and persons specifications and competency frameworks, the Commission expects that:*

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

- *Job and person specifications are unbiased and conform to current best practice*
- *Terms and conditions, eligibility criteria and requirement for the use and knowledge of the Irish language are agreed with the appropriate minister before the selection process begins. These will be determined in accordance with the requirements of the job and any statutory (legal) requirements*
- *Person specifications are related precisely to the duties of the post*

## Audit of eligibility criteria for promotion of staff in civil service

In 2011 the Commission carried out an audit of eligibility criteria for promotion to positions in the civil service. In its audit report, the Commission stated that eligibility criteria for positions in the civil service should only reflect the duties and responsibilities of the role.

Having regard to the standards outlined in section 2.6.4, it recommended that:

*'In establishing eligibility criteria for promotion to positions in the Civil Service, the Minister should remove any criteria that may prevent civil servants with the requisite skills, experience and attributes from applying for promotion positions.'*

Official and staff sides, at a sub-committee of General Council, considered the implementation of the Commission's report in 2013. It was agreed that promotion to grades within the civil service would not be restricted to staff serving at the grade below. Instead, eligibility criteria would be unrestrictive and candidates would be eligible to compete for any post once they had two years' general service.

A letter issued to the heads of HR/personnel officers in all civil service departments/offices dated 14 January 2014 from the Assistant Secretary of the Department of Public Expenditure and Reform outlining the civil service's revised position.

## Complaint under section 8

During examination of a complaint received under section 8 of the code of practice against the Office of the Revenue Commissioners (Revenue) in 2019, the Commission's

attention was drawn to the fact that an agreement had been made, in that case, to bypass the revised rules for promotion outlined above. A decision was made to restrict the eligibility criteria for the process to 10 years' experience within the civil service and to those serving at HEO grade or equivalent.

The Commission was told that the decision to restrict the criteria in that case came about as a direct result of adjudication findings resulting from industrial relations disputes. It was also told that the findings in this case had regard to precedence established in a number of previous selection processes arising from similar disputes.

### Purpose of the audit

The purpose of this audit is investigate the use of restrictive eligibility criteria or essential requirements in selection processes for promotion carried out by the Office of the Revenue Commissioners, on foot of agreements with industrial relations bodies, since 2011.

This is with a view to establishing that, in setting eligibility criteria and essential requirements, Revenue is operating in accordance with the codes of practice and those with responsibility for carrying out selection processes fully understand the requirements of the codes.

## Review methodology

The audit focused on a number of selection processes carried out from 2011 to date. These were processes where Revenue confirmed that restrictive eligibility criteria had been applied, on foot of agreements with industrial relations bodies, in order to settle historic disputes. These were selection processes for:

- Promotion to staff officer (2016)
- Promotion to higher executive officer (2018)
- Promotion to assistant principal (2018)
- Promotion to assistant principal legal executive officer (2018)

The audit considered the planning and decision-making processes surrounding the setting of the eligibility criteria and essential requirements in each case. It also considered the general processes and procedures in place in Revenue for the setting of the criteria and requirements.

The audit consisted of a desk-based review of relevant documentation relating to each selection process, an examination of processes and procedures within Revenue in relation to the administration of promotions and discussions with relevant personnel in HR on its decision-making processes.

# Findings

## Recruitment and selection

Revenue's core business is the assessment and collection of taxes and duties. Its mission is to serve the community by fairly and efficiently collecting taxes and duties and implementing customs controls. Revenue currently employs approximately 6,946 staff. Staff are located in 61 offices across the country.

The recruitment and selection activity undertaken by Revenue accounts for a considerable amount of that carried out across the civil and public service as a whole. In 2018, 953 appointments were made to positions within the organisation. Of these, 583 were carried out under Revenue's own recruitment licence. This represented over 8% of total number of appointments made under licence during 2018.

It is relevant therefore to note that the staff appointed through the selection processes under consideration here represent a minor amount of those appointed through promotion processes in Revenue since 2011.

## Eligibility criteria and job specifications

Normal procedure for general service grades is that job and person specifications are agreed by the assistant principal, principal officer and/or assistant secretary in the recruitment unit. This includes setting the eligibility criteria for the post. Where relevant, for specialised posts, additional input is sought from relevant divisions.

Revenue confirmed that all staff members within the recruitment unit are fully aware of their obligations under the Public Service Management (Recruitments and Appointments) Act, 2004 and the codes of practice. On the job training is provided to all relevant staff members either on arrival or when carrying out a selection process. A number of staff in the recruitment unit have also undertaken professional HR training.

Staff members at a senior level within the recruitment unit are cognisant of the decisions previously made by the Commission in relation to the use of restrictive eligibility criteria and the revised civil service policy which issued as a result. As a general rule, in setting eligibility criteria, Revenue conforms to the prescribed criteria of two years' service and a positive rating in previous PMDS reports.

The selection processes under consideration in this case were those not initiated by Revenue, but those carried out specifically as a result of adjudication findings resulting from industrial relations disputes.

## Selection process for staff officer (2016)

On 28 October 2015 an adjudication hearing took place concerning an historic dispute between Revenue and the Civil and Public Service Union (CPSU). The dispute related to the promotion of 23 staff officers to executive officer positions within Revenue.

The CPSU presented that, in promoting these officers, Revenue had suppressed staff officer positions, replacing them with executive officers. It alleged that Revenue had sought to restructure the grade structure within Revenue and effectively eliminate the staff officer grade.

Among the actions requested by the CPSU was the requirement to hold a competition for promotion from clerical officer to staff officer to backfill the 23 staff officer posts. Revenue disputed the allegations made.

## Adjudication findings

In findings of the 29 October, the adjudicator did not uphold the allegation that Revenue had attempted to eliminate the grade of staff officer. He found that Revenue was committed to continuing to appoint staff officers in line with normal workforce planning. He also did not uphold the request to backfill the 23 positions in question.

However, he did note that a concrete expression of Revenue's commitment to filling staff officer positions was needed. On this basis, he advised that Revenue should carry out an internal selection process for appointment to staff officer positions.

## Selection process

On foot of the findings, in October 2016 a selection process for the position of staff officer was advertised. The job notice advised that a panel for positions would be established from which posts would be filled in strict order of merit. A total of 20 posts were to be filled.

The eligibility criteria set for the process included that applicants:

*'Have 25 years' service in the civil service'*

It is noted that while the requirement to have 25 years' service was included, no formal reference was made in the adjudication findings to the confinement of the eligibility criteria to a defined number of years' service.

Revenue advised that the decision to include a requirement to have 25 years' service was made following a meeting with the CPSU in October 2016 and with a view to settling the historic dispute. The decision was also influenced by the impending amalgamation of the staff officer grade into the executive officer grade, due to occur shortly after the panel would be formed. On that basis Revenue set the criteria for this competition to ensure that, in so far as was possible, promotions from CO to SO would be cost neutral.

### Selection processes for higher executive officer and assistant principal (2018)

On 15 February 2018 an adjudication hearing took place concerning an historic dispute between Revenue and the Public Service Executive Union (PSEU). The dispute related to the application of an arbitration board finding of 25 May 2004, which found that 75% of internal promotions to higher executive officer and assistant principal officer grades should be made by means of merit-based selection and 25% by senior subject to suitability.

As Revenue had filled all posts by way of merit-based appointment since 2009, PSEU argued that Revenue had to backfill 74 posts at higher executive officer level and 37 posts at assistant principal level by way of senior subject to suitability. Revenue denied this liability and argued that developments since 2004 rendered the arbitration finding irrelevant.

In making its case, the PSEU noted the provision included in the selection process for promotion to staff officer carried out in 2016, that applicants:

*'Have 25 years' service in the civil service'*

It set out that the eligibility criteria of 25 years' service was similar, in principle, to one of the options for discharging the debts due to promotions by means of senior subject to suitability.

Revenue argued that, the system provided for in the 2004 arbitration ruling had been employed by Revenue in relation to internal promotions of PSEU grades up to 2009 and that no outstanding liability existed. It also noted that in line with the national social partnership agreements (Sustaining Progress 2016) there had been an agreement in relation to moving towards promotions on the basis of merit and suitability.

Revenue also drew reference to the Public Service Agreement 2010-2014, to which the PSEU were party, which agreed that:

*'Merit-based, competitive promotion policies will be the norm'*

Revenue advised that its action plan, on foot of the agreement, stated that:

*'Where it is not already the case, all promotions in Revenue will be made on the basis of competitive merit-based competition, employing the most appropriate screening and selection process for the posts to be filled. Timescale: immediate from 2010'*

Revenue confirmed that it had moved to a position where 100% of promotions are made on the basis of merit-based competitions. This was on the basis of their requirements under the Employment Equality Acts, commitments under various social partnership agreements and the Public Service Agreement 2010-2014.

During the hearing Revenue also noted specifically its requirements under the Public Service Management (Recruitment and Appointments) Act, 2004 and its commitment to merit-based appointment under the codes. Revenue noted that including seniority as a criterion in promotions would contravene the 2004 Act and result in Revenue breaching its legal obligations.

### Adjudication findings

In a report dated 19 February 2018, the adjudicator found that the arbitration finding of 2004 had no continued validity as it had been taken over by the terms of various public service agreements. As a result no debts were due to promotions on the basis of senior subject to suitability.

However, he did find, that it was reasonable to assume that the PSEU expected a discussion on any amended promotion structure, which had not occurred and that a solution should be found to address its expectations.

On this basis he found that:

- *'There should be a special competition to establish a panel to fill eight posts at higher executive officer level, confined to executive officers in the Revenue who have at least 15 years' service in the civil service'*

- *There should be a special competition to establish a panel to fill six posts at assistant principal level confined to higher executive officers and administrative officers in Revenue who have at least 20 years' service in the civil service'*

## Selection process

On foot of the adjudication findings, in May 2018, selection processes for the positions of higher executive officer and assistant principal officer were advertised. The job notices advised that panels for the positions would be established from which posts would be filled in strict order of merit. A total of eight posts were to be filled at higher executive officer grade and six at assistant principal.

The eligibility criteria set for the processes included that applicants have 15 and 20 years' service respectively.

## Selection process for assistant principal legal executive officer (2018)

In 2014, Impact requested that a number of outstanding posts for technical legal grades within Revenue's Solicitors' Office (RSO) be filled. The filling of these posts, which included five vacancies at assistant principal legal executive office grade (APLEO), were subject to an ongoing historic dispute. Revenue agreed to the filing of one post at deputy legal executive officer (DPLEO) grade. It also agreed to carry out a review of the grade structure within RSO with a view to assessing its business needs.

The review suggested there was no business need for any additional legal technical posts within RSO. In June 2017 judicial review proceedings were initiated against Revenue, challenging the findings of its review.

In early 2018, Forsa (formally Impact) requested that, on foot of the recent adjudication ruling in relation to 'seniority' posts, Revenue consider the appointment of the outstanding APLEOs. The matter was considered at Revenue Department Council in June 2018.

The staff side sought an agreement from Revenue that it would fill the APLEO position and that the appointment process would be confined to Revenue staff with considerable experience/qualification.

In April 2018, Revenue conceded to the filling of one APLEO post confined to staff:

- With 10 years' experience within the civil service
- With 2 years' experience working within a legal environment
- Serving at HEO grade or equivalent

### Selection process

On foot of the agreement made, on 19 June 2018, a selection process for the position of assistant principal legal executive officer in Revenue's solicitor's division was advertised. Applications were invited from eligible staff serving at higher executive officer or equivalent grades, with a minimum of ten years' civil/public service experience.

## Conclusions

In each of the selection processes examined, restrictive eligibility criteria were applied, confining candidates to those having served a specified number of years within the civil service and/or at specified grade. This was in contravention of the standards set out in section 2.6.4 of the code of practice and the advice previously issued by the Commission. It was also in contravention of the revised policy for application of eligibility criteria for promotion within the civil service.

In relation to Revenue's general procedures, staff at both a senior and operational level appear to have a clear understanding of their obligations under the codes of practice and the Public Service Management (Recruitment and Appointments) Act, 2004. Normally, Revenue adhere to the revised policy for application of eligibility criteria. Criteria are unrestrictive and candidates are allowed to compete once they have two years' general service and a satisfactory PMDS.

The selection processes examined were those not initiated by Revenue, but those carried out as a direct result of adjudication findings. While the restriction was not specifically provided for in each case, the decisions made were clearly based on an understood responsibility to finalise the matter in dispute.

It is also important to note that the decisions made in these processes were individual, specific decisions, with no general applicability in the future. This alleviates the majority of concerns the Commission would have in relation to use of restrictive eligibility criteria in future.

The Commission is satisfied that Revenue, in setting eligibility criteria and essential requirements, are generally operating in accordance with the codes of practice. It is also satisfied that those with responsibility for carrying out selection processes fully understand the requirements of the codes.

However, the Act sets out the legal basis on which a public body must adhere to the principles of merit-based appointment. In addition, the terms and conditions of a recruitment licence oblige a licence holder to comply at all times with the provisions of the Act. If a body is found not to have complied, its recruitment licence may be revoked.

While a decision might be made, in good faith, through dispute resolution mechanisms, this does not remove the licence holder's legal obligations. Where it recommends that a body restrict the eligibility criteria or essential requirements for a role, it is instructing it

to contravene legal obligation and risk revocation of its recruitment licence. There is also a danger that a precedence will be established where restrictive eligibility criteria will be employed to address industrial relations disputes.

The Commission considers that dispute resolution mechanisms, in recommending actions that result in a licence holder contravening its legal obligations, are acting as a barrier to fair, merit-based appointment. It is recommended that, in future, all relevant parties are made fully aware of Revenue's obligations under the Act and the high level risks associated with it breaching the terms and conditions of its recruitment licence.

# Acknowledgements

The Commission would like to thank staff of Revenue's recruitment unit who gave their time and cooperation to this audit process, in particular Ms Claire Omelia and Ms Rachel McKenna.

## Appendix 1 - Audit protocol

Section 13(1)(c) of the Act states that the Commission may establish procedures to audit the recruitment and selection process for appointment to positions in the Civil Service and Public Service. These procedures are set out in Section 3 of the Commission's Codes

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

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

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

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

- Any new developments in recruitment policy or practice, for example new selection procedures, are consistent with the Code of Practice

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

Audits will be conducted in an efficient manner and the audit steps will be set out and communicated clearly in advance. At the conclusion of an audit, its findings will be discussed with the audited organisation before a report is submitted to the Commission. Those subject to audit will also have the opportunity to comment on audit reports in respect of matters of factual accuracy before such reports are finalised.

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

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