

REF: 133

RECRUITMENT PRINCIPLES COMPLAINT TO THE CIVIL SERVICE COMMISSION

FINDINGS OF THE INVESTIGATION

AUTHORITY

1. The Constitutional Reform & Governance Act 2010 outlines the functions of the Civil Service Commission. One of the functions concerns the investigation of complaints made by any person that a selection for appointment has been made in contravention of the legal requirement that selection for appointment to the Civil Service must be on merit on the basis of a fair and open competition.

The Act says:

13 (3) The Commission –

a) May determine steps that must be taken by a person before making a complaint (and those steps must be taken accordingly);

b) Must determine procedures for the making of complaints and for the investigation and consideration of complaints by the Commission;

c) After considering a complaint, may make recommendations about how the matter should be resolved.

OUTLINE OF THE COMPLAINT

2. The complainant applied for various posts in a restructuring exercise at the Insolvency Service (INSS). His complaint related to an email sent to him on 4 February 2015 by the HR team. The email stated:

“I am emailing to confirm that you will not be offered the opportunity to apply for vacancies within F&C arising from the restructure as you did not pass one or more of the core competencies at sift.

Should you have any queries regarding this please discuss with your line manager and/or contact hr.projects in the first instance.”

The complainant considered that this effectively barred him from applying for externally advertised vacancies and that it was a breach of the requirement in the Recruitment Principles that appointment to the Civil Service must be on merit on the basis of a fair and **open** competition.

METHODOLOGY OF THE INVESTIGATION

3. The Commission investigated the complaint through consideration of written evidence supplied by the complainant, his union representative and INSS. Wanda Goldwag was the decision-making Commissioner in this case.

4. The Commission considered the following evidence, in addition to the complainant's original correspondence:

- The 4 February email
- A Civil Service Jobs screenshot
- Emails to and from the complainant, his union representative and INSS
- Grievance and appeal documentation

SUMMARY OF THE EVIDENCE

5. The complainant had been involved in a restructuring exercise at INSS during which he applied for roles in INSS at the internal stage of recruitment. He then received the 4 February email from INSS HR team.

6. He contacted the Commission at the beginning of March 2015 stating that, in his view, the email barred him from applying for roles in INSS that were advertised externally (stage 4).

7. The Commission wrote to INSS confirming that, in order to comply with the "open" requirement in the Recruitment Principles, external campaigns have to be open to anyone who wishes to apply. INSS responded that the complainant had never been advised that he could not apply for a job at stage 4 and that INSS would not advise this as stage 4 jobs are external and open to all.

8. The Commission advised the complainant that he should pursue his complaint with INSS in the first instance and revert to the Commission if he remained dissatisfied.

9. Following the Commission's letter to INSS there was an offer by INSS to the complainant to reopen some internal post competitions for him, but he rejected this "as still illegal"

10. The complainant pursued a grievance and then an appeal relating to this matter. INSS accepted that the email could be misleading and offered an apology, but rejected the grievance. INSS explained that the email should have stated that the complainant, who had been declared surplus because he had not passed the sift for posts applied for in the restructuring exercise, would not be able to apply for any posts at his substantive grade *from the surplus pool*. Emails provided between INSS and the union representative referred to this surplus issue and to INSS HR sending the complainant an email to explain the position. The union representative assumed that the 4 February email related to this surplus issue, but the complainant was not copied into it or a party to these discussions.

FINDINGS AND RECOMMENDATIONS

11. The Commission considered the issues in this complaint in relation to the legal requirement for selection for appointment to the Civil Service to be made on merit on the basis of a fair and open competition and in particular the requirement at paragraph 6:

Open means that job opportunities must be advertised publicly. Potential candidates must be given reasonable access to information about the job and its requirements, and about the selection process. In open competitions anyone who wishes must be allowed to apply.

12. Although the complainant's grievance adjudication says the 4 February email was not intended to bar him from applying for posts at stages 3 (internal) or 4 (external) or to disadvantage or mislead him, without any contextual evidence the Commission believes that the email could do just this. It may well be the case that the email was not a deliberate attempt to prevent the complainant from applying for external roles, but the wording of the email is so loose as to imply that application by way of stage 4 external campaigns will not be permitted.

This is a breach of requirement for openness and hence a breach of the Recruitment Principles.

13. However, it seems clear that the complainant knew that he should be able to apply for externally advertised jobs, hence his original email of complaint to the Commission. The Commission's email to INSS in March 2015 and the reply from INSS (both of which were copied to the complainant) were both clear that this was the case. Subsequently, INSS offered to reopen some internal post competitions for him, but the complainant rejected this offer.

14. The error has been acknowledged, at least to some degree, by INSS as INSS has agreed that the wording of the 4 February email was misleading.

15. Under the circumstances, no further training or action is necessary.

REQUEST FOR REVIEW

16. There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service recruitment complaint case.

17. The Commission will, however, consider representations from complainants, or those complained against, for review of the Commission's decision and recommendations that suggest that it has made factual errors or errors of factual interpretation in its decision making.

18. The Commission will not normally accept a request to review its decision or recommendations if the request is received more than 20 working days after the date of its findings.

Wanda Goldwag
Civil Service Commission
October 2015