



FINDINGS AND RECOMMENDATIONS: April 2016

REF: 207

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 a Director (SCS 1) post at the Competitions Market Authority (CMA) as part of an external recruitment campaign. At sift stage his application was not progressed and believes that the legal requirements of fairness and merit for recruitment into the Civil Service have not been complied with in his case. He also feels his application was disqualified on the grounds of his disability.

METHODOLOGY OF THE INVESTIGATION

3. The Commission investigated the complaint through consideration of written evidence supplied by the complainant. Kathryn Bishop and Sarah Laessig were the decision-making Commissioners in this case.

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

- Original vacancy details, candidate pack and panel information
- Longlisting report from search consultants
- Correspondence from HR Director to complainant

SUMMARY OF THE EVIDENCE

5. The complainant applied at stage 4 for the SCS 1 (Director) vacancy at CMA which was advertised on CS jobs and managed by a contracted search consultancy firm, Veredus.

6. For this particular campaign there was no application form- candidates were asked to submit their CVs, a covering letter (setting out how they meet the experience criteria in the Person Specification) and an Equal Opportunities Monitoring Form.

7. The complainant submitted the Equal Opportunities Monitoring Form to Veredus along with the other material. However unlike a standard application form the monitoring form does not have a specific question "Do you wish to apply for this role under the Guaranteed Interview Scheme", so even though CMA were using the GIS scheme for this campaign the mechanism for making the request relied on Veredus highlighting to CMA any candidates who had completed the monitoring form and declared a disability.

8. The complainant was known to one of the panel members on this particular campaign who declared a conflict of interest. This conflict was not recorded as part of the meeting outcomes.

9. At long listing stage the complainant's application was not progressed as the panel felt he did not meet the minimum requirements for the role. However, another candidate with the same score (**B**- Marginal fit to the Person Specification) was

invited for interview. No notes of the discussion with CMA panel and Veredus were made. The complainant believes that the panel member who was known to him spoke to Veredus about the application without the knowledge of the panel chair.

10. CMA has investigated the initial complaint and he was provided with two full responses from the HR Director. CMA have noted that they have breached the Recruitment Principles by not recording the conflict of interest declaration by the panel member. However, the complainant remains dissatisfied.

11. CMA do operate the GIS but at no point were the panel made aware of the request from the complainant. Veredus did not share the information that had been declared on the Monitoring Form with CMA. It is commendable that diversity data was kept quite separate from the candidate's application and used for monitoring purposes only but in this instance there was no other mechanism for making a request. CMA issued the final candidate pack to Veredus for this competition, at the planning meetings the text relating to Equality and Diversity section should have been addressed, particularly the process of making a GIS request. This should have been clarified.

12. One of the panel members had previously worked with the complainant at another civil service department. The Recruitment Principles require any conflicts to be declared and for the appointing organisation to decide how to proceed. A record should be kept of how any such conflicts were dealt with. In one of the HR Director's responses it is explained that after the panel member made his conflict of interest declaration known the panel Chair directed that he should not take part in the discussion of that particular application. However, a record of this declaration was not made. There is no evidence of the panel member contacting Veredus without the knowledge of the panel chair to discredit the complainant's application.

13. At longlisting stage 18 candidates were assessed by Veredus. The complainant received a score of B, along with 7 others. 10 others received higher scores. The panel discussed all the "B" graded candidates including the complainant. Seven candidates in total were invited for interview, 6 from the A list and 1 from the B list. Notes of this discussion were not made and the impartial assessment process for putting 6 "A" candidates and 1 "B" candidate through but not any of the others is not available for review.

FINDINGS AND RECOMMENDATIONS

The legal requirement¹

The legal requirement is for selection for appointment to the Civil Service to be made on merit on the basis of fair and open competition. All three elements have to be met for the appointment to be lawful

Merit means the appointments of the best available person judged against the essential criteria for the role

¹ Recruitment Principles, April 2015

***Fair** means there must be no bias in the assessment of candidates. Selection processes must be objective, impartial and applied consistently.*

***Open** means potential candidates must be given reasonable access to information about the job and its requirements, and about the selection process.*

15. CMA do not have to operate the GIS, however if they do, as in this case, they need to be consistent and fair in their approach². The process for an application to be considered under GIS should be user friendly from the candidate's perspective. It is then the hiring organisation's responsibility to review any requests to be considered under the GIS at the point of drawing up the list of those candidates being progressed through to interview. The rules are clear that the applicant has to meet the minimum criteria for the post in question to be eligible for interview but candidate's requests should be visible to the panel. **This is a breach of the Recruitment Principles in relation to fairness and openness.**

16. Recording the outcome of the recruitment process is the responsibility of the panel Chair. This includes making a record of any conflict of interest³. This has not happened in this instance. **This is a breach of the Recruitment Principles in relation to fairness.**

17. It is also the Chair's responsibility to provide an audit trail to show the assessment stages⁴. CMA (and Veredus) cannot provide any evidence to show why only 6 out of the 9 candidates who were initially graded A and 1 out of the 7 candidates who were initially graded B were put through to interview stage There are also no records of the panel discussion that judged "on balance and compared with other candidates" that the complainant's evidence was less strong and that he did not meet the required standard for the role. **This is a breach of the Recruitment Principles in relation to merit.**

18. The responsibility for the recruitment process lies with the hiring organisation, in this case CMA, regardless of whether some or all of the administration was being dealt with by Veredus.

19. CMA should undertake a review of their contract management in relation to recruitment work carried out by engaged search consultants. At the point of engagement and at all stages in the planning process CMA staff should make the search consultants aware of their responsibilities under the Recruitment Principles. This includes use of GIS and retention of auditable material to give transparency to the recruitment process.

20. CMA have already highlighted a deficiency in their record keeping for conflict of interest purposes and procedural guidance is under review. Panel members, particularly the chair, should be made fully aware of their responsibilities under the Recruitment Principles.

² Para 5 Recruitment Principles April 2015

³ Para 11 Recruitment Principles April 2015

⁴ Para 13 Recruitment Principles April 2015

21. CMA to provide a report to the Commission by end of June 2016 on improvements made to their recruitment processes.

REQUEST FOR REVIEW

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

23. 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.

24. 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.

Kathryn Bishop

Sarah Laessig

Civil Service Commission
April 2016