



FINDINGS AND RECOMMENDATIONS: Date November 2020

REF: 1644

RECRUITMENT PRINCIPLES COMPLAINT TO THE CIVIL SERVICE COMMISSION

FINDINGS OF THE INVESTIGATION

AUTHORITY

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

1. The complainant applied to the Pay Band 1 campaign (external) for Deputy Directors, in the Senior Civil Service (SCS1 grade) across government. This campaign introduced unadvertised testing as part of its process. The complaint relates primarily to this and also to the arrangements put in place for GIS/Disability Confident (DCS) candidates.

METHODOLOGY OF THE INVESTIGATION

2. The Commission investigated the complaint through consideration of written evidence supplied. The Commission considered the following evidence, in addition to the complainant's correspondence:

- Sift documentation
- Correspondence between the Commission and Government Recruitment Service (GRS) and Cabinet Office/Civil Service HR (CSHR).

3. Joe Montgomery and Rosie Glazebrook were the decision-making Commissioners in this case.

SUMMARY OF THE EVIDENCE

4. Five Civil Service Commissioners were involved in discussions around 2 bulk external campaigns to be run by GRS, appointing to roles across a number of government departments at SCS1 and SCS2. The SCS2 campaigns are ongoing and are chaired by these Commissioners. Neither of the Commissioners adjudicating on this complaint was involved in the discussions that relate to this complaint, nor is either chairing any of the SCS 2 competitions.

5. On both campaigns, the Commission and Commissioners' advice was requested. This was because CS HR/ GRS was proposing to introduce testing to reduce the applicant field as such a large number of applicants was received for both campaigns. **Tests were not advertised in the original candidate pack.**

6. The SCS2 campaign, in the end, did not use the testing, by agreement with the Chairing Commissioners and the departments, who wanted to move forward without further delay. The Commissioners did consider the proposal of additional tests under the provision below, and agreed that it would be compliant as a second sift stage with the Recruitment Principles (RPs). The RPs state this:

17. Departments must follow the published selection process for all candidates,

except where they are making a reasonable adjustment for a disabled candidate or where a genuine difficulty arises.

There is an exception in the RPs for this situation (as here) in this footnote to that paragraph as set out here:

For example if a panel member becomes unwell, or a deadline needs to be extended to secure a stronger field of candidates or if the panel decides to undertake a fuller assessment of a strong field of candidates in order to establish the merit order.

As these SCS 2 competitions were chaired by Commissioners, tests would have been a second stage if used in the SCS2 competition.

7. For the SCS 1 competition, Commissioners recommended the use of the tests as a second stage only, again using the provision above. Two options were offered to GRS and Option 1 was recommended (see here for extract):

Option 1 - Introduce a second sift stage using the tests

The Commission has considered that tests could be introduced as a new element of the advertised process under Paragraph 17 of the Recruitment Principles, to enable departments to make a fuller assessment of a strong field of candidates. In communications you have referred to the footnote or paragraph 17, and we consider this to meet the intention behind that addendum. Taking this option forward should include:

- *A written explanation to all candidates graded as 'A' from the first sift, to explain the additional stage and the importance of the tests, to encourage them to complete them.*
- *The panel being presented with test data for review at a second sift. This will assist to further reduce the numbers.*

8. The Commissioners reserved the Commission's right to take complaints, but did not suggest that the campaign would be paused if Option 2 was used.

9. The complaint is on this exact point, that is the use of unadvertised tests; the complaint also mentions the issue of GIS/DCS. GRS decided to use a version of Option 2 from our letter. Below is set out Option 2 as Commissioners expressed their recommendation. However, this is not how Option 2 was actually used (see below):

"Option 2 – Use the tests at the first sift stage, but they should be weighted in a way that reflects the advertised essential criteria of the roles and ensures they are not applied in a pass/fail manner"

This means that the weighting must allow;

- An A candidate with poor tests scores to get through,
- A B candidate with excellent test scores to get through.
- No C candidate, regardless of test scores, to get through,

We consider that the tests relate primarily to only one of seven essential criteria and therefore should be weighted accordingly. For example, the maximum score for experience could be 84/100 (A= 84/100, B = 72/100, C = <50/100) and the maximum score for the 2 tests is 16/100. This weighting and composite scoring allows an A candidate with low test scores to be directly compared to a B candidate with high test scores. Scoring quartile performance rather than using raw T scores allows for some inconsistency in performance and ensures that one single point isn't a deciding factor..... Again, there are parts of the process that remain a concern. These are:

- *The manner in which all candidates will be informed of how the tests fit into the assessment process.*
- *How to manage candidates who refuse to take the tests at this stage*
- *How to present the data on experience to the panel in a manner that allows the panel to take the final decision (dip sampling of A, B and C categories?)*
- *How to ensure that, at the end of the process, with all the effort and resource involved, it is not found that the candidates selected at panel are actually interested only in permanent roles, whereas the job they are being considered for is a Fixed Term Appointment."*

10. GRS subsequently confirmed to Commissioners that it planned to do this:

We have opted to progress this campaign as a 'pilot' and invite all candidates to take both the numerical and verbal tests (in line with your Option 2). We have informed candidates of how the tests fit into the shortlisting process i.e. to derive a merit order and that should they not wish to take one or both of the tests, we will consider them to have withdrawn from the process. We have signposted practice tests and reasonable adjustment guidance. We will derive a weighted composite score and merit order with recommendations to the Governing Board and sift panels of where

to set the benchmark for invitation to the stage two assessments. The Governing Board and sift panels will make the final decision following a dip sample of applications.

11. Our *recommendation* (Option 1) had always been to use the tests as a second stage.

12. GRS has confirmed what it actually did; an extract follows:

Everyone who applied was invited to sit the test. This was necessary to create a composite score for each candidate and to satisfy the principle of fairness.

The consensus (sic) decision was to progress with the following rules:

First level decision rule

Overall Pass into talent pool n= 390 (overall 587)

Application sift score of 'good'

Verbal reasoning score of 2nd percentile or higher

Numerical reasoning score of 2nd percentile

Second level decision rule

Overall Pass - progress immediately n= 197

Application sift score of 'good'

Verbal reasoning score of 2nd percentile or higher

Numerical reasoning score of 78th percentile or higher

Therefore GIS/DC candidates had to score 'A' rating at sift and score at 2nd percentile or higher in order to be shortlisted.

13. A later email confirms: *the pass marks were indeed the same for all candidates whether DCS/GIS or not.*

14. GRS confirmed to the complainant as follows:

That it had received a large number of enquiries about this campaign and "the Governing Board and Civil Service Commission agreed to pilot the inclusion of the Civil Service Numerical Reasoning and Civil Service Verbal Reasoning tests....."

The Commission has received other complaints about this campaign.

15. We saw the sift documentation; this showed that A candidates with poor scores did not pass sift and neither did B candidates with excellent scores (as per the Option 2 recommendation). All candidates had to reach second level decision scores to be offered an interview. The original comments at paragraph 12 above were correct in relation to going into the talent pool, but to be offered an interview, the second level decision scores had to be attained. GRS has confirmed that the talent pool will be in existence for 18 months with the expectation that those candidates will be progressed to assessment and interview.

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16. It appears that the numerical tests were the direct indicator of success here after an initial sift score on the application and this is not in line with Commissioners' recommendations for Option 2. All candidates were however, treated consistently throughout the campaign and had to follow the same tests process and achieve the same standard to progress in the campaign. There is no evidence that the merit principle has been compromised.

17. The Commission was approached to approve the proposals of additional testing, and was happy to give recommendations on the SCS1 campaign, as the regulator. The backdrop of this campaign was that it was high profile and required to move at pace to meet the challenges of the COVID 19 pandemic. The Commission aimed to provide 2 options in order to provide departments with flexibility, whilst remaining compliant with the Recruitment Principles. However, the Commission's advice does not appear to have been followed and the numerical tests were used in a pass/fail manner. **This is poor practice** and we would not want to see this happening again in a situation where the tests were not originally advertised.

18. On the GIS/DCS point, it appears that GIS/DCS applicants had to reach the same standard as the other candidates. Although this is not strictly in our remit, as long as all candidates applying under the scheme were treated consistently, this does not appear to be in the spirit of the GIS/DCS.

19. Our advice has always been to set a minimum benchmark for those candidates applying under the GIS/ DC scheme at the outset, and ensure that those candidates meeting the minimum are progressed accordingly. **The Commission is not clear why disability data was requested in relation to candidates declaring as GIS/DCS candidates if the pass mark was the same for all candidates.** It may not always be the case that GIS/DC candidates can meet a lower pass mark than non GIS/DCS candidates, but often the schemes are used in this way to put GIS/DCS candidates on a level playing field. Part of the rationale for using additional tests was to bring about a diverse outcome - diversity was a key objective for this competition - and the operation of the GIS/DCS in this competition does not

support this aim. **We recommend that the use of GIS/DCS is considered more carefully in all future campaigns, in relation to the criteria to be met to proceed to interview.**

REQUEST FOR REVIEW

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

21. 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* in its decision making.

22. 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.

Joe Montgomery

Rosie Glazebrook

Civil Service Commission

November 2020