



## **FINDINGS AND RECOMMENDATIONS:**

**February 2018**

**REF: 661**

## **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 –*

*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**

The complainant applied for the role of Policy Advisor on Green Bus Policy, at the Department for Transport (DfT). He was unsuccessful at sift. He considers there was:

- ‘Discrimination and a breach of the Recruitment Principles.’
- Improper application of the Guaranteed Interview Scheme (GIS).
- The process did not meet the fair or meritorious criteria.
- A ‘conflict of interest by the panel member deciding on the short-listing.’ The complainant considers this led to an ‘inherent bias against me.’
- A breach of stated ‘blind’ recruitment policy.’ The complainant considers that ‘questions on the form – namely requiring applicants to state the dates of their qualifications was tantamount to forcing applicants to disclose likely identifiers of probable age.’

## **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 original correspondence:

- Original advert and other supporting campaign documents.
- Correspondence to and from Department and complainant.
- Correspondence to and from Civil Service Resourcing.
- Correspondence to and from Department.
- Sift score sheets.

Rosie Glazebrook and Jan Cameron were the decision-making Commissioners in this case.

## **SUMMARY OF THE EVIDENCE**

3. The complainant applied for an externally advertised role at DfT. The role was advertised on CS Jobs and administered by DfT recruitment team.

4. The complainant sets out in his complaint, ‘redress requirements.’ To summarise:

- The DfT recruitment campaign and interview process be reviewed.
- The DfT apologise and the head of HR at DfT give the reasons for DfT’s current compliance record.
- The CSC should ‘take action given the current poor rating of the DfT.’

5. On 1 December 2017, the complainant was informed that he had been unsuccessful in his application. He asked Recruitment Complaints (RC DfT), why he had not been invited to interview as his sift scores of 4 matched the minimum score of ‘acceptable demonstration’, which was also 4.

6. On the 12 December 2017, RC DfT sent the complainant the results of their investigation. RC DfT explained how they operated the GIS. 'The minimum standard is set at 4 for all essential criteria...so applicants applying under GIS will need to achieve this minimum in order to progress to interview.' They explained that if the panel decides to 'raise the required standard, this would only apply to non-GIS candidates...GIS candidates who met the original minimum of 4...must still be invited to interview...' In this recruitment process, 'the panel made the decision to raise the minimum criteria for non-GIS candidates to a score of 5.'
7. RC DfT stated that the application form gave the complainant the option to state whether he was disabled and he stated he was not. Therefore, he was not progressed to interview because he scored 4 and the required standard was set at 5 for each of the two specified criteria for non-GIS candidates.
8. On the issue of providing dates for qualifications, RC DfT stated: 'there is no requirement to provide the dates of your qualifications.'
9. On 13 December 2017, the complainant replied to RC DfT. He considered their investigation 'grossly inadequate' with 'wrong assertions'. He argued that by requesting candidates to supply the dates of their qualifications, this could compromise the 'blind' application process.
10. On 21 December 2017, RC DfT responded. They stated that they used 'the Civil Service Jobs application platform which is a standardised system...' They stated DfT did not automatically require dates of qualifications but 'as it is a standard form, we are unable to adapt it.'
11. In his complaint to CSC, the complainant states that he 'did not apply under the Guaranteed Interview Scheme (GIS) as I wanted my application to stand on its merits.'
12. The complainant considers the process was discriminatory because RC DfT stated that he was not interviewed because the benchmark had been set at 5 for each criterion. He had been given the opportunity to apply under the GIS. He argues that applicants who 'meet the interview shortlisting criteria but who were not invited to interview were discriminated against purely because they did not ask for an interview under GIS.' He argues that this is a breach of the Equalities Act 2010.

## **FINDINGS AND RECOMMENDATIONS**

### Did DfT panel members discriminate against the complainant?

13. The complainant argues that he was discriminated against because: 'a panel member had a conflict of interest, which led to a bias against him; the recruitment process was not 'blind'; the questions about qualification dates were 'likely identifiers of probable age'.
14. He considers there was further discrimination because he chose not to apply under GIS. Therefore, DfT breached the Equalities Act 2010 by not inviting him to interview.
15. The panel member made four observations on the individual sift score sheet.
  - 'Some DfT + other public sector experience';
  - 'quite fluent';
  - 'No direct experience';
  - 'Have already interviewed this candidate for basically the same post a year ago, when he was unsuccessful.'
16. The panel member's specific comment, which is at issue, is: 'Have already interviewed this candidate for basically the same post a year ago, when he was unsuccessful.'
17. CSC sought clarification from the interview panel member. He states he knew the complainant from having interviewed him for another post, where the complainant was unsuccessful.
18. The panel member recognised the complainant from information in his anonymised application. He informed the other panel member that he had previously interviewed the complainant.
19. The panel member provided information, setting out the reasons behind not inviting the complainant to interview and this appears to relate to the role specification.
20. The panel member signed the DfT panel declaration form, stating that he did 'not have any close relationship with any candidate...' However, the panel member at a later stage, when questioned by CSC, provided further clarification regarding his knowledge of the complainant, including that he had informed the second panel member of the candidate's previous interview, although only in the context that he did not meet the requirements of the role. **This is poor practice.**

21. The nature of the panel member's prior knowledge of the candidate could be construed, under RPs paragraph 11, as constituting a conflict of interest.
22. However, in this case the evidence does not show that the disclosure by the panel member affected the decision not to progress the complainant to interview.

**This is not a breach of the Recruitment Principles.**

The Commission did not consider this issue under the Equalities Act 2010, as this does not fall within the Recruitment Principles remit.

**Did DfT panel members assess candidates against the published criteria?**

23. The complainant's application and personal sift score sheets show that all applications were anonymised at sift and that the process was 'blind'. The candidate's qualifications were not seen by the panel members assessing at sift. In addition to this, the online application specifically states that: 'name blank' is used for all applications at sift stage, which is used to avoid wherever possible, age-based discrimination.
24. The panel member's observations relate to information (CV and personal statement) the candidate provided. They show the candidate was assessed against the published criteria, which was set out in the job advert and person specification. This stated: '...please tailor your CV and Personal Statement to provide evidence...' The final scores in the sift score sheet show that the candidate did not meet the minimum score set, to be invited to interview. The selection procedures were objective, consistent and fairly applied.

**This is not a breach of the Recruitment Principles.**

**Did the DfT panel members assess GIS and non-GIS candidates in accordance with the published criteria**

25. The Guaranteed Interview Scheme is available for those who are eligible, for reasonable adjustments to be made.
26. On 19 December 2017, the complainant received a reply to his FOI request that all shortlisted candidates had a sift score of 10. In response to CSC enquiries, RC DfT stated: 'We arranged for [GIS candidates who met the minimum standard] to be invited for interview. This means that the score for candidates

going through to interview would have been 8 for the GIS candidates and 10 as a minimum for non-GIS candidates.'

27. The complainant states he did not apply under GIS because he wanted his 'application to stand on its merits.' It was his choice not to use the GIS.
28. The evidence shows the selection panel followed the published selection process for all candidates, including the complainant, '*except where they [were] making a reasonable adjustment.*' (Recruitment Principle paragraph 15). The panel followed a fair and consistent procedure.

**This is not a breach of the Recruitment Principles.**

**The complainant requested that the CSC direct DfT to undertake the following 'redress requirements'**

29. The complainant requests that the interviewer, who recognised him, should explain why he did not declare a conflict of interest and recuse himself. The interviewer should explain his comments on the complainant's sift evaluation scores, which he considers show bias.
30. The panel member did declare knowledge of the complainant on the score sheet and in an email. The evaluations on the score sheets do not show evidence of bias.
31. The complainant requests the interviewer should 'be withdrawn from short-listing or interviewing' until he has undergone suitable training. The conduct of the panel member during the recruitment process was compliant with the Recruitment Principles.
32. The DfT 'panel declaration form' is poorly worded, which is not the fault of the panel member. The wording is an example of **poor practice**. The CSC has recommended that the 'panel declaration form' be revised.
33. The complainant requests the DfT should apologise for their breach of Recruitment Principles. 'The Recruitment Principles A Guide to Bringing a Complaint to the Civil Service Commission' section 15, states: '*The Commission **cannot** order: A Government department or agency to apologise to a complainant.*'
34. The complainant requests DfT should state in job advertisements, whether previous applicants are able to apply. In addition, any future application the complainant makes, will comply with the Recruitment Principles. No external

(stage 4) campaign should place restrictions on applications from previous applicants. All campaigns should comply with the Recruitment Principles.

35. The complainant requests 'the head of HR at the DfT explain why the DfT has continued to be rated 'red-amber' for its compliance record with the CSC Recruitment Principles and to set out clearly how the DfT intends to address the on-going issues.' And the CSC should 'take action given the current poor rating of the DfT RAG scores which indicate the DfT is simply ignoring the legal and binding principles the CSC had set out.'
36. The CSC have already explained to the complainant: 'On the point of risk rating...Breaches are reported in the annual report and are taken into account in giving a final end of year rating. Complaints investigated where a breach is found also go into our annual report and all complaints investigated...are set out on our website.'
37. The complaints procedure has been established for candidates to pursue their individual complaints against the process of a particular recruitment campaign. It is not designed to investigate general issues raised by complainants concerning a department's general compliance and processes that are used.
38. The CSC's remit to oversee the recruitment processes of departments/agencies, is achieved by compliance procedures that are separate from the complaints procedure. Compliance procedures consist of both compliance visits and the collection of both qualitative and quantitative recruitment data. Complainants cannot raise general issues concerning compliance, which do not specifically relate to a recruitment campaign.
39. The complainant requests the DfT should 'remove the requirements for applicants to state the dates of their qualifications (unless there are specific reasons which must...be clearly set out).' Paragraph 7 of the Recruitment Principles state: '*Departments are responsible for designing and delivering selection processes which meet this requirement...*'
40. The panel fulfilled the legal requirement and assessed all candidates against the published essential criteria (competences, skills and experience), evidenced through CV and statement of suitability. The final decision was made by the chair of the panel in consultation with other panel members, that the most meritorious candidates were invited to interview.

## **Recommendations**

- DfT should ensure that panel members, when sifting, only record relevant information which is pertinent to the applicant being assessed. Sufficient information should be recorded to clearly justify the sift scores.
- DfT should amend and align their panel declaration form with the Recruitment Principles, as set out in paragraph 11.
- DfT should ensure that where panel members declare knowledge of a candidate, the knowledge shared should only be relevant to an assessment of a possible conflict of interest.
- DfT should ensure measures are in place to identify GIS candidates at the appropriate point in the process.

## **REQUEST FOR REVIEW**

1. There is no mechanism for appealing against the decision of the Civil Service Commission in a Civil Service recruitment complaint case.
2. 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.
3. 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.

Rosie Glazebrook  
Jan Cameron  
Civil Service Commission  
February 2018