

2022

# Code of Practice for Appointment to Positions in the Civil and Public Service



Commission for Public Service Appointments

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# Foreword

The Commission for Public Service Appointments was established on 19 October 2004 under the Public Service Management (Recruitment and Appointments) Act, 2004. It is the principal regulator of recruitment and selection in the Irish public service. Its role is to ensure any persons appointed to publicly funded positions are done so fairly, transparently and on the basis of merit.

All appointment processes for positions falling within the remit of the Act are subject to this Code of Practice. When making an appointment, public bodies<sup>1</sup> are required, under the Act, to carry out a full, merit-based selection process, in line with the Code.

The Code sets out six key recruitment principles for a fair selection process. It also sets out the standards expected, when applying these principles, at each stage of the selection process. The six key recruitment principles are:

1. Probity
2. Merit
3. Best practice
4. Consistency
5. Transparency
6. Appointments promoting equality, diversity and inclusion

The Code also establishes procedures for the Commission to audit the recruitment and selection activities of licence holders<sup>2</sup> and provides for appropriate review and appeal mechanisms, for occasions where, following a selection process, a candidate is not happy.

The Commission acknowledges the diversity that exists in appointments across the civil and public service. It also recognises that different approaches are often required, to accommodate for the specific size or nature of an appointment. The Code is therefore intended as a high-level, principle-based framework, from which, public bodies will establish their own internal recruitment and selection procedures. These procedures will adhere to the principles and standards outlined, but be specific to their needs.

## Section 1. The Code of Practice

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<sup>1</sup> A public body in this, and any further instances, is any civil or public service body, falling within the remit of Public Service Management (Recruitment and Appointments) Act, 2004.

<sup>2</sup> A licence holder in this, and any further instances, is a public body who has been granted a recruitment licence, under section of the Public Service Management (Recruitment and Appointments) Act, 2004.

## 1.1 The Commission for Public Service Appointments

The Commission for Public Service Appointments (the Commission) was set up on 19 October 2004 under the Public Service Management (Recruitment and Appointments) Act 2004 (the Act). It is the principal regulator of recruitment and selection in the Irish public service. Its role is to ensure appointments to positions within the civil and public service, falling within its remit, are made fairly, transparently and on the basis of merit.

The Commission has five members, as set out in the Act. These are:

- The Chairperson of Dáil Éireann
- The Secretary General to the Government
- The Secretary General of the Department of Public Expenditure and Reform, Department of Finance
- The Chairperson of the Standards in Public Office Commission
- The Ombudsman

The role of the Commission is to ensure appointments to publicly funded positions are made fairly and transparently. To do this, it is responsible for establishing a number of key recruitment principles that must be followed when carrying out a selection process. These are set out in its Code of Practice. It is also responsible for ensuring all those applying the Code of Practice are committed at all times to the principles set out.

The Commission's key responsibilities are:

- Setting out and promoting good recruitment practice
- Publishing its Code of Practice
- Issuing recruitment licences
- Outlining how to make a complaint or a review a decision
- Examining complaints about alleged breaches of the Code
- Ensuring public bodies comply with the Code
- Auditing recruitment and selection at public bodies
- Helping and guiding public bodies

## 1.2 Where the Code of Practice applies

The Public Service Management (Recruitment and Appointments) Act 2004 (the Act) provides the regulatory framework for fair, transparent and merit-based recruitment in the public service. Where an appointment to a particular position is required to be made under the terms of the Act, it is subject to the Commission's Code of Practice.

Appointments to the following are subject to the Code:

- Positions in the Civil Service
- Positions in An Garda Síochána up to inspector
- Local authority positions to which the Local Authorities Act 1926 applies
- Positions in the Health Service Executive (HSE)
- Positions in the Irish Prisons Service
- Positions in certain public bodies<sup>3</sup>

### 1.3 The Code of Practice

The Code sets out the principles and standards that must be adhered to at each stage of the selection process. It sets out the review and appeal mechanisms open to candidates, where they are unhappy with a selection process. It also sets out the conduct that is expected from candidates during a selection process as well as the Commission’s audit function.

The Commission published its first Codes of Practice in 2004. These were reviewed and reissued in 2007 and 2016. The most recent review took place in 2020, during which the Commission’s five existing Codes were amalgamated into one. The revised Code reflects feedback received through consultation with public bodies, observations from the general public and the Commission’s findings when examining complaints alleging unfair practice or carrying out its audit function.

In drafting the Code, the Commission was cognisant of the diversity that exists in appointments made in the civil and public service. It acknowledged that different approaches are often required, to accommodate for the specific size or nature of an appointment. The Code was therefore drafted as a high-level, principle-based framework, from which, public bodies would establish their own internal recruitment and selection procedures. While public bodies are responsible for their own recruitment and selection procedures, they should be universally designed Equality Diversity and Inclusion(EDI) processes in line with their obligations under Public Sector Duty.\* Any local procedures established should adhere to the principles and standards outlined, but be specific to their needs.

*\*The FAQ document for public bodies on the CPSA website provides advice and best practice from the NDA on developing and implementing universally designed EDI recruitment and selection processes*

The main body of the Code is arranged as follows.

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<sup>3</sup> Where the governing legislation of a public body sets out that staff members of that body will be recruited subject to the provisions of the Act

- Section 2:* Definitions of each of the Code principles and examples of their interpretation and application in relation to the appointment process
- Section 3:* Details of how the audit function of the Commission operates
- Section 4:* Details of responsibility and accountability
- Section 5:* Overview of the review and complaints processes
- Section 6:* Procedure for making and processing an informal complaint
- Section 7:* Procedure for making and processing requests for a review of a decision
- Section 8:* Procedure for making and processing a complaint alleging failures to comply with the Code
- Section 9:* Unreasonable customer conduct and how it should be managed
- Section 10:* An outline of ministerial responsibilities

In addition, Appendix A offers further details on positions for which this Code is not applicable and Appendix B provides definitions of some specific terms used in this Code

#### 1.4 Application of the Code and any specific circumstances

The Code of Practice applies to all appointments<sup>4</sup> to publicly funded positions, as set out above. When making an appointment, a public body is required to:

1. Carry out a fair, transparent, merit-based and universally designed recruitment and selection process
2. Adhere to the principles and standards set out
3. Provide for the review and complaints mechanisms set out

While the majority of appointments will be subject to full compliance with the Code, in a small number of specific circumstances, certain provisions or requirements can be waived. Additionally, in some circumstances, there will be additional requirements on a public body.

The Commission also expects that a fully inclusive selection process is conducted in these circumstances.

These specific circumstances are outlined below.

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<sup>4</sup> 'An appointment' means the filling of a vacancy through an open external selection process or through an internal promotion process. For an internal promotion, the Code applies only if the role involves higher pay and greater responsibility. They do not apply to internal transfers or secondments.

## *Section processes confined to a specified candidate group*

### *1.4.1 Emergency short-term appointments in the HSE*

The Commission acknowledges that there might be times where the HSE will need to make emergency short-term appointments to deal with critical needs. This is if additional, critical staff are needed urgently, however to run a full selection process would delay appointment, significantly impacting the HSE's ability to carry out its functions.

Where it can be demonstrated that a critical need exists, the HSE will be exempt from carrying out a full, merit-based selection process, in line with each of the stages set out in Section 2 of the Code.

While the Commission will expect that any person appointed to such a position will still have demonstrated an ability to effectively carry out the duties and responsibilities of the role, it will allow the HSE to reduce the number of stages in the selection process to a minimum.

The HSE must however:

- 1) Fully document any appointment made to address a critical need under this section of the Code
- 2) Document and retain a valid business case for making an appointment under this section of the Code
- 3) Ensure the decision to make an appointment under this section of the Code has been approved at an appropriately senior level, in advance of appointment
- 4) Be able to demonstrate that the person(s) appointed are suitably qualified and fit for the role
- 5) Ensure that the duration of the appointment is limited to the time required to provide critical cover. Where cover is required on a longer basis, a full selection process must be carried out, in line the principles and standards set out in Section 2 of the Code

Any emergency short-term appointments made under this section of the Code are subject to the review and appeal mechanisms set out in sections 5 to 8, as normal.

### *1.4.2 Specific short-term appointments at a higher grade*

There might be times where a public body will need to appoint a person to a specific short-term position at a higher grade, without delay. This is often referred to as an 'acting appointment'. The Commission acknowledges that, in such cases, to run a selection process

in line with the Code would delay appointment, significantly impacting the public body's ability to carry out its functions.

Where it can be demonstrated that a specific short-term appointment is required at a higher grade, for a duration of less than 12 months, the public body will be exempt from carrying out a full selection process, in line with each of the stages set out in Section 2 of the Code.

While the Commission will expect that any person appointed to such a position will still have demonstrated an ability to effectively carry out the duties and responsibilities of the role, the public body will be allowed to reduce the number of stages in the selection process to a minimum.

The public body must however:

- 1) Fully document any specific short-term appointment made under this section of the Code
- 2) Document and retain a valid business case for making an appointment under this section of the Code
- 3) Ensure that any decision to make an appointment under this section of the Code is signed off at an appropriately senior level, in advance
- 4) Be able to demonstrate that the person appointed is suitably qualified and fit for the role
- 5) Ensure the duration of the appointment is limited to the time required to provide short-term cover. Where cover is required on a longer basis, a full selection process will be required, in line with the principles and standards set out

Any specific short-term appointment is subject to the review and appeal mechanisms set out in Sections 5 to 8 of the Code, as normal.

Appointments should be made under this section of the Code only to address short-term needs. If the role needs to be filled for more than twelve months, or on a permanent basis, a recruitment process should be run as normal.

#### *1.4.3 Section processes confined to a specified candidate group*

The Code of Practice generally promotes the use of open, universally designed, inclusive and unrestrictive selection processes. This supports the principles of fairness, equality and meritbased appointment. However, the Commission acknowledges that it might be necessary, from time to time, for an appointment process to be confined to a specified group of civil or public servants - that is a group of civil or public servants with specific terms and conditions of employment.

Under this section, confining a selection process to a specified candidate group may be allowed if the public body can demonstrate:

- a) A fully inclusive recruitment process should be run for such a recruitment campaign
- b) That the selection process is required to address a well-documented, historic and/or systemic issue relating to equity in terms and conditions of employment
- c) That reasonable efforts were made by the body to address the issue prior to consideration of a confined selection process, with no success and
- d) That a precedence will not be established for the use of confined selection process to address IR or employment related disputes

While a selection process may be confined, the Commission still expects that any person appointed to a position will have demonstrated an ability to effectively carry out the duties and responsibilities of the role. In this regard the public body is expected to carry out an otherwise full selection process in line with the stages set out in Section 2.

The public body must ensure:

- 1) It fully documents and retains a valid business case for the use of restrictive eligibility criteria, for the purpose of confining the selection process
- 2) Any decision to use restrictive eligibility criteria is made at an appropriately senior level, in advance of appointment

Any appointment made under this section is subject to the review and appeal mechanisms set out in Sections 5 to 8 of the Code, as normal.

#### *1.4.4 Specific Campaign for persons with disabilities*

The Disability Act 2005 sets out a legal obligation on public service bodies to take all reasonable measures to promote and support, in so far as possible, the employment of persons with a disability. A disability is that defined in Section 2 of the Disability Act, 2005 as:

*'A substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment'*

To promote the employment of persons with disability, a public body is allowed, under this section of the Code, to;

- a) Confine the candidate pool to persons with a disability, as defined in the Act
- b) Provide any appropriate additional accommodation required for candidates to ensure equity in accessibility and the treatment during the selection process. The

National Disability Authority's guidance and advice on providing reasonable accommodations can be downloaded at <http://nda.ie/publications/employment/employment-publications/>

While a selection process may be confined, the Commission still expects that any person appointed to a position will have demonstrated an ability to effectively carry out the duties and responsibilities of the role. In this regard, the public body is expected to carry out an otherwise full selection process in line with the stages set out in Section 2 of the Code.

Any appointment made under this section is subject to the review and appeal mechanisms set out in Sections 5 to 8 of the Code, as normal.

#### *1.4.5 Selection processes where responsibilities are shared by more than one body*

In the majority of cases, the selection process will be carried out by one civil or public service body. However, the Code of Practice allows for selection processes where recruitment responsibilities are shared. This applies to appointments in An Garda Síochána where the Garda Commissioner is statutorily responsible for the final appointment. This is the appointment of persons as Garda trainees and reserves, where part of the process is run by PAS. Essentially, the main difference between this Code and the Code of Practice to appointments in the positions in the civil service and public service, is there is an additional step in the review process to allow for the joint responsibility.

The Commission acknowledges that the Garda Commissioner is statutorily responsible for the taking of decisions relating to the final appointment of Garda Trainees (Article 5 (2) of An [Garda Síochána \(Admissions & Appointments\) Regulations, 2013](#) as amended by the [Garda Síochána \(Admissions and Appointments\) \(Amendment\) 2020 \(Statutory Instrument 602 of 2020\)](#) and the [Garda Síochána \(Admissions and Appointments\) \(Amendment\) Regulations 2021 \(Statutory Instrument 757 of 2021\)](#), refers) and Garda Reserve Members (Article 5 (2) of the [Garda Síochána \(Reserve Members\) Regulations 2006](#) refers). The Commission also acknowledges that part of the selection process for the recruitment of Garda Trainees and Garda Reserves is run by PAS. Accordingly, the Commission expects the review and complaint procedures outlined in Section 6, 7 and 8 of this Code to be in place in the case of decisions taken by either PAS or the Garda Commissioner. The following Guidelines would apply to such review procedures;

- *The procedures for review as set out in Section 7 apply in cases where a candidate wishes to have an action or decision made in relation to their candidature reviewed by PAS in respect of those aspects of the recruitment and selection process carried out by PAS, and by the Garda Commissioner in respect of those aspects of the recruitment and selection process carried out by An Garda Síochána. The candidate is required to address their Section 7*

*Review to the relevant body (i.e., if a candidate is unhappy with a decision taken by PAS in relation to an aspect of the recruitment and selection process managed by PAS, the candidate must direct their request for review to PAS. If a candidate is unhappy with a decision taken by the Garda Commissioner, they must direct their request to the Garda Commissioner.)*

- *A candidate may believe there was a breach of the Code of Practice by the relevant licence holder (the Chief Executive, Public Appointments Service or the Garda Commissioner) which compromised the integrity of the decision reached in the appointment process. In those cases, the complaint process outlined in Section 8 of this Code apply. The candidate is required to address their complaint to the relevant body, as outlined above.*
- *There is no obligation on the Licence Holder to suspend an appointment process while he/she considers a request for a review. However, the Commission expects that the Garda Commissioner will intervene where possible and take appropriate action in cases where he/she finds that an error is likely to have occurred.*
- *As with the recruitment processes themselves, and within reason, fair procedures should be applied by all parties dealing with requests for review made under this Code.*
- *It is essential for the Licence Holder to have effective systems in place for responding to requests for review. The Licence Holder must keep a full record of all correspondence and any other relevant documentation. This includes minutes of meetings, records of emails and notes of telephone conversations in relation to all candidates who present themselves for any form of assessment whether successful or not.*

#### Right to appeal to the Commission for Public Service Appointments

A candidate may believe there was a breach of the Code of Practice by the relevant licence holder (the Chief Executive, Public Appointments Service or the Garda Commissioner) which compromised the integrity of the decision reached in the appointment process he/she can have it investigated further by the Commission for Public Service Appointments. The complaints process enables candidates (or potential candidates) to make a complaint to the licence holder in the first instance, and to the Commission subsequently on appeal if they remain dissatisfied. The complainant must outline the facts that they believe show that the process followed was wrong. The complainant must also identify the aspect of the Code they believe has been infringed and enclose any relevant documentation that may support the allegation. A complaint may be dismissed if they cannot support their allegations by setting out how the Public Appointments Service or An Garda Síochána has fallen short of the principles of this Code.

## 1.5 Monitoring application of the Code

Section 13 of the Act states that the Commission may audit recruitment and selection policies and practices in order to evaluate and safeguard the standards established in its Code of Practice. The audit function is a key mechanism in ensuring adherence to the principles set out in the Code of Practice. Audits are carried out periodically to determine how the principles are being interpreted and applied. Audits may also focus on issues of particular interest or concern to the Commission (see Section 3).

## 1.6 Interference with the recruitment process

If the Commission believes there may have been interference or attempted interference with an appointment process, it may investigate the matter or authorise a person to investigate on its behalf. Accordingly,

- Office holders have a duty to inform the Commission of any interference or attempted interference with the process.
- Where all or part of a recruitment process covered by this Code of Practice has been delegated to the Public Appointments Service, the Chief Executive of the Public Appointments Service has a duty to inform the Commission of any interference or attempted interference with the process.
- A listed recruitment agency has a duty to inform the recruitment licence holder of any interference or attempted interference with the process.
- A person found guilty of an offence is liable to a fine, imprisonment or both.

## 1.7 Further advice and information

Further advice and information regarding the content and interpretation of the Commission's Code of Practice are available from the Office of the Commission for Public Service Appointments.

# Section 2. Recruitment principles

The Code set out the regulatory framework for such appointment processes and centre on six key recruitment principles. These are:

1. Probity
2. Merit
3. Best practice
4. Consistency

5. Transparency
6. Appointments promoting equality, diversity and inclusion

## 2.1 Probity

A key objective of the Commission is to ensure acceptable standards of probity in all appointment processes. The principles established by the Commission in this Code of Practice are underpinned by the core values that define probity such as integrity, impartiality, fairness, reliability and ethical conduct.

The Commission seeks to nurture a culture based on values of trust, fairness, transparency, diversity, inclusivity and respect for all. It also seeks to ensure that probity standards are subject to consistent, thorough oversight through its audit function.

Office holders must be committed to these values and must ensure that all aspects of the appointment process are managed ethically.

## 2.2 Appointments made on merit

Appointment made on merit means the appointment of the best person to any given post. This is to be achieved through a transparent, competitive recruitment process. The criteria for judging suitability of candidates must be related directly to the qualifications, personal attributes and skills required to fulfil the duties and responsibilities of the post. This is a fundamentally fair and just approach to assessing applicants. It results in the selection of individuals whose competencies, abilities, experience and qualities best match the needs of the organisation. Merit is therefore an integral principle which must underpin all appointment practices.

It is essential to ensure that the selection process does not provide unjustifiable advantage or disadvantage to any particular candidate or group of candidates. The selection process by which appointments are made should embrace genuine equality, diversity and inclusivity of opportunity.

## 2.3 An appointment process in line with best practice

The appointment process should be efficient, cost-effective and in line with best practice. Best practice extends to all aspects of the selection process. This includes defining job and person specifications, marketing the vacancy and selecting appropriate assessment mechanisms. Public bodies must ensure that all recruitment and selection processes are universally designed and that candidates are aware that they can request reasonable accommodations for aptitude test and interviews.

It also includes providing training and supporting management arrangements to ensure the creation and maintenance of appropriate records of the appointment process.

## 2.4 A fair appointment process applied with consistency

The Commission wholly opposes any form of direct or indirect discrimination, whether active or passive. The selection process adopted and the way in which it is applied must be undertaken with full commitment to equality, diversity and inclusivity of opportunity. Office holders have an obligation to treat candidates fairly, to a consistent standard and in a consistent manner.

## 2.5 Appointments made in an open, accountable and transparent manner

Transparency in the appointment process and the openness with which candidates are dealt by office holders will enhance candidate confidence. Open and active communication on the process and the basis for assessment is essential. The Commission also expects universally designed communications that are accessible to everyone. There should also be a full commitment to offering meaningful feedback in a universally designed format to those candidates who seek it.

## 2.6 Appointments promoting equality, diversity and inclusion

Equality and inclusion will be promoted at each stage of the selection process. Candidates will be treated equally and fairly, with individual differences valued and respected throughout. The Commission expects that equality, diversity and inclusion form part of all decisions and processes related to a competition.

## 2.7 Application of the principles

### 2.7.1 *Code of Practice*

The Commission expects compliance with the terms of this Code of Practice and any other guidelines issued by the Commission.

### 2.7.2 *Recruitment licences*

The Commission requires recruiters to adhere to the terms and conditions of the recruitment licence that it may issue.

### *2.7.3 Planning the selection process*

When an office holder or organisation is planning the selection and appointment process, the Commission expects that

- Appointments are made following a competitive, universally designed, meritbased selection process in which all candidates have been treated equally at every stage.
- Recruiters plan how they intend to conduct the appointment process taking into account both the number of vacancies likely to arise and the number of candidates the position(s) may attract. Clear decisions will be made regarding the approach to be adopted in any recruitment campaign.
- Explicit consideration is given to opportunities and measures to promote (or remove possible barriers to) equality, diversity and inclusivity in employment.
- Information on the different stages of the appointment process is made available to candidates in advance in a universally designed format. Advice and best practice on implementing universally designed communications can be found on the CPSA website under FAQ' for public bodies.
- Decisions taken throughout the selection process are based on the qualifications, personal attributes and skills necessary to undertake the duties and fulfil the responsibilities of the post to the required standard.
- Recruiters employ a high-quality selection process that is based on the skills and qualities relevant to the post.
- The criteria on which selection decisions will be made are identified before the process begins.
- Candidates who meet the required standard for the job are placed in order of merit and considered for appointment in that order.
- Recruiters actively focus on foreseeable adverse impact issues, ensuring that they are considered and addressed before recruitment campaigns. Recruiters should also ensure that candidates are aware that they can request reasonable accommodations in advance of any stage of the selection process.
- Appointment processes are monitored and evaluated, and positive solutions are found to any matters arising.
- Appropriate measures are taken to facilitate employment of persons with a disability.
- Reviewers identified and appointed, to ensure no unnecessary delays occur when formal Section 7 reviews are requested.

#### 2.7.4 *Job and person specifications and competency frameworks*

Regarding job and person 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.

#### 2.7.5 *Attracting candidates*

In attracting candidates to a position, the Commission expects that

- Clear, concise and effective marketing designed to target an appropriate applicant field is communicated openly, to afford equality of opportunity.
- Marketing approaches ensure recruitment is from the widest pool of available (and relevant) talent and experience. Information about employment opportunities will be made available to all potentially eligible applicants in formats and media that are accessible to persons with disabilities.
- Marketing techniques do not exclude any particular group within society.

- In the case of internal appointment processes, all eligible staff members have appropriate access to the marketing approaches used.
- All marketing and supporting materials are accessible, unbiased and reflect, where appropriate, the job and person specifications and assessment process that will be followed.
- All reasonable efforts are made to provide an application process which is accessible to all candidates.

### *2.7.6 Assessment methodologies*

Regarding assessment methodologies and mechanisms employed in the selection and appointment process, the Commission expects that

- Assessment mechanisms facilitate the identification and selection of the person or persons who best match the requirements of the post.
- Assessment methodologies are used in line with best practice and consist only of properly validated selection tools and techniques.
- Assessment processes are appropriate to the selection criteria.
- An appropriate means of shortlisting is employed (where shortlisting exercises are carried out).
- Selection tests, where they are used as part of the selection process, are job-related.
- All reasonable efforts are made to accommodate candidates.
- Enhanced facilities and equipment are provided as necessary to enable candidates to perform to the best of their abilities.

### *2.7.7 Selection boards*

With regard to selection boards, the Commission expects that

- Systems are in place to ensure that selection boards carry out the selection process in an open and transparent manner.
- All selection practitioners fully understand their role and have the necessary skills to discharge their responsibilities.
- Members of selection boards understand and fulfil their responsibilities with regard to current freedom of information, data protection and employment equality legislation.
- Members of selection boards are fully informed about disability awareness and equal opportunity policy

### *2.7.8 Eligibility sift*

The Commission expects an “eligibility sift” to be applied to candidates’ applications for a post, and seeks to ensure that

- Adequate checks are in place to ensure that a candidate meets the stated eligibility criteria before an offer of appointment is made.
- Candidates are considered eligible for appointment if they fulfil the stated eligibility criteria and have successfully completed the selection process, in compliance with this Code of Practice.
- Candidates who do not satisfy the stated eligibility criteria are disqualified from the process and notified accordingly.

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### *2.7.9 Communication*

The Commission requires a commitment to open, timely and effective communication with candidates. All enquiries are to be responded to adequately and in an efficient and timely manner.

### *2.7.10 Feedback*

Candidates may seek further explanation (feedback) for a decision made regarding their application. The Commission expects that

- Effective systems are in place to manage the feedback function.
- Clear, specific and meaningful feedback that explains the basis for the decision reached is provided when requested by candidates.

An office holder may choose to supplement the feedback provided to its employees in the course of an internal appointment process with personal development guidance, as part of its general employee relations practices. However, these initiatives are not a requirement under this Code of Practice.

### *2.7.11 Requests for review and complaints alleging a breach of the Code of Practice*

The Commission expects requests for review of a selection decision and complaints that allege a breach of the Code of Practice to be dealt with in an efficient and timely manner and in line with the Code’s procedures.

### *2.7.12 Training*

High quality training for participants is key to preventing foreseeable problems in the selection and appointment process. The Commission seeks to ensure that

- All selection practitioners fully understand their role and have the necessary skills to discharge their responsibilities.
- Training is delivered on a timely basis and is appropriate to the specific assessment mechanism to be employed in the selection process.
- Members of selection boards have undergone sufficient relevant training, delivered on a timely basis and appropriate to the specific assessment process to be employed. If this is not the case, members of selection boards should have sufficient interviewing experience at an appropriate level and have the skills required to properly evaluate candidates.
- The selection technique to be used is only decided by individuals who are qualified to select a test that is valid for a particular purpose.
- Chosen selection techniques are only used by appropriately qualified individuals who have been properly trained in their administration, scoring and interpretation.
- Arrangements are in place to ensure that all those involved in the administering an appointment process have the necessary skills to do so. These participants are to be given appropriate information on the process.
- Training is current, relevant and delivered to an appropriate standard.
- Training covers both the structure of the process and the context of the appointment. Training should include current and forthcoming legislation.
- The effectiveness of training is monitored and evaluated and follow-up action is taken on an ongoing basis.
- Disability awareness training is provided as appropriate.

### *2.7.13 Management systems and quality assurance*

Regarding management systems and quality assurance in the selection and appointment process, the Commission expects that

- Effective management systems are in place.
- Controls are in place to ensure that appropriate processes are adopted and delivered.
- Measures are in place to ensure that policies and practices comply with the Code of Practice.
- Appropriate procedures are in place to assure quality in the selection and appointment process.
- The effectiveness of assessment processes is reviewed and evaluated regularly.

### *2.7.14 Documentation*

The Commission expects careful documentation of the selection and appointment process and requires that

- Fully documented records that clearly support each stage of the process are retained. These will include notes of interviews conducted.
- Documentation supporting assessment stages of the process reflects the selection criteria.
- Documentation that may be audited by the Commission, and information on its use, can be retrieved and accessed.
- Accurate, sufficient and appropriate documentation is issued to candidates. This should include information on how to access this Code of Practice and in particular information about the review and complaint procedures outlined in Sections 7 and 8 of the Code.
- Documentation sets out the specific criteria candidates must fulfil, in line with the requirements of the Act. This means they must
  - have the knowledge and ability to discharge the duties of the post concerned,
  - be of suitable character for the post, and
  - be suitable in all other relevant respects for appointment to the post concerned.

If successful, candidates will not be appointed to the post unless they

- agree to undertake the duties attached to the post and accept the conditions under which the duties are, or may be required to be, performed, and
- are fully competent, available to and capable of undertaking those duties.

#### *2.7.15 Confidentiality*

The Commission requires applications to be treated in strict confidence, subject to the provisions of the Freedom of Information Acts 1997–2014.

#### *2.7.16 Equality*

The Commission would expect adherence to the principle of equality in all selection processes. Where a candidate believes a process has fallen short of this expectation, they have the option to pursue such a complaint under the mechanisms of Equality Legislation.

### 2.8 Legislative requirements

The Commission requires compliance with the following legislation:

- *Public Service Management (Recruitment and Appointments) Act 2004*
- *Public Service Management (Recruitment and Appointments) Amendment Act 2013*
- *Employment Equality Acts 1998–2011*
- *Irish Human Rights and Equality Commission Act 2014*
- *Disability Act 2005*
- *Official Languages Act 2003*
- *Data Protection Act 2018*
- *Freedom of Information Acts 1997–2014*
- *Protected Disclosures Act 2014*
- *Code of Practice for the Employment of People with Disabilities (published by the Department of Public Expenditure and Reform)*

## Section 3: Audit of recruitment policies and practices

### 3.1 The legal position

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.

### 3.2 Application of the audit function

#### *3.2.1 The purpose of the audit process*

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. They may focus on individual office holders. Audits may also be carried out on a thematic basis across all office holders. An audit examination may include a review of specific recruitment programmes.

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.

### 3.3 Audit procedures

Office holders must co-operate fully with all audits undertaken by or on behalf of the Commission. Audits will be undertaken in a professional manner, in a spirit of improvement and with the goal of sharing knowledge and best practice rather than focusing solely on compliance.

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

### *3.3.1 Conducting audits*

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.

### 3.3.2 *Publication of reports following an audit*

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.

## Section 4: Responsibility and accountability

### 4.1 Responsibility for the application of recruitment principles

Responsibility and accountability for appointments rest with the office holder. To maintain the probity of the appointment system, the office holder is responsible to the Commission for ensuring full compliance with the terms and conditions of the recruitment licence (where relevant), this Code of Practice and any other guidelines issued by the Commission. Office holders who are granted recruitment licences may delegate all or part of the task of recruitment to the Public Appointments Service. Where such a delegation is made, the Chief Executive of the Public Appointments Service is responsible, to the extent of the delegation, for adherence to the terms and conditions of the recruitment licence, this Code of Practice and any other guidelines issued by the Commission.

Licence holders may seek the assistance of listed recruitment agencies for some of the tasks connected with selection under the particular recruitment licence held (full details are available from the Commission). However, the licence holder has sole responsibility for the final selection of candidates for appointment and for placing candidates on a panel for appointment. Where the assistance of a listed recruitment agency is sought, it will remain the duty of the licence holder to ensure that that agency complies with the terms and conditions of the recruitment licence, this Code of Practice and any other guidelines issued by the Commission.

An appointment process may be undertaken jointly by two or more organisations. In this case the office holders concerned must agree in advance that one of their number will be responsible and accountable for ensuring full compliance with the terms and conditions of this Code of Practice and any other guidelines issued by the Commission.

### 4.2 Accounting for recruitment decisions

Individuals responsible for recruitment and selection processes must be able to show that they have complied with the Commission's recruitment principles. Accordingly,

- All decisions made about the approach adopted in any appointment process should be clear and evident.

- Selection and appointment processes should be fully documented. Effective management systems and arrangements (including document management) should be in place.
- Those responsible for recruitment should monitor and evaluate their processes and take positive initiatives to tackle any matters arising.
- Records should be managed in accordance with the terms of the National Archives Act 1986 and Data Protection Act 2018
- Office holders – and ultimately the Commission – must be satisfied that appointment processes have been properly carried out.

### 4.3 Responsibility of candidates

#### 4.3.1 *Canvassing*

Canvassing will disqualify candidates and result in their exclusion from the appointment process. (An example of canvassing is a candidate attempting to get additional support from an individual or individuals involved in the selection and appointment process by other means than the specified application route. This could result in an unfair advantage to the candidate.)

#### 4.3.2 *Candidates' obligations*

Candidates in the recruitment process must not

- Knowingly or recklessly provide false information
- Canvass any person, with or without inducements
- Interfere with or compromise the process in any way.

A third party must not impersonate a candidate at any stage of the process.

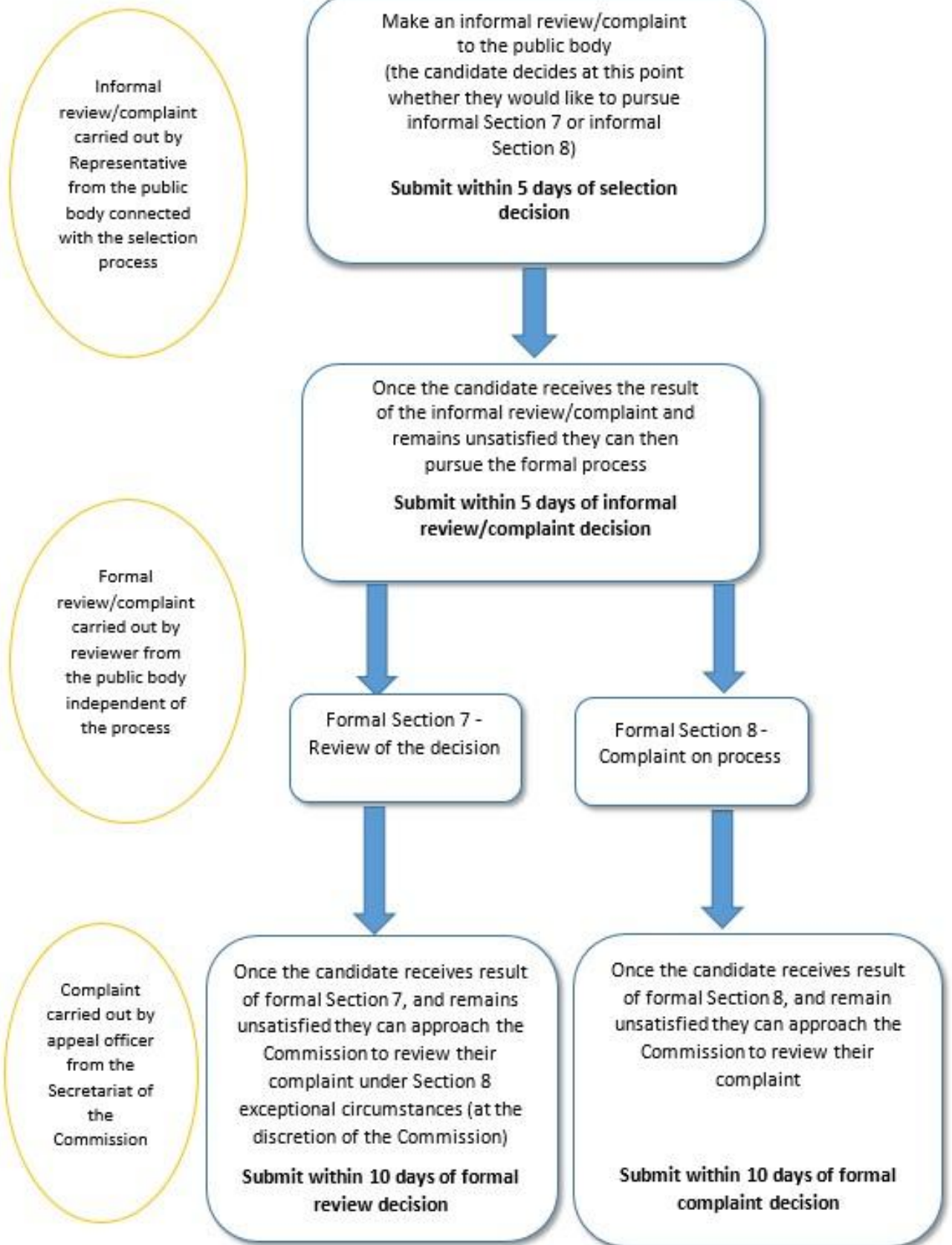
#### 4.3.3 *Penalties for failure to comply with the Code of Practice*

Any person who contravenes the responsibilities and obligations set out in Sections 4.3 of this Code of Practice, or who assists another person in contravening those provisions, is committing an offence. Such a person is liable to prosecution that may result in a fine, imprisonment or both.

If a person found guilty of such an offence is a candidate in a recruitment process, they will be disqualified as a candidate and excluded from the process. If a person found guilty of such an offence has been appointed to a post following the recruitment process in question, they will be removed from that post.



## Review/Complaint Process



## Section 5. Review and complaint procedures

### 5.1 Overview

The Commission has a statutory role to establish and oversee procedures that address candidates' complaints and any requests for review of an appointment process.

If a candidate is unhappy following a selection process, they can **either**:

1. **Section 7** - If a candidate is unhappy with a decision made during a selection process, or they believe it was made on incorrect information or that documented procedure was not followed, they can request a review under Section 7 of the code. The decision may be reversed if it is found to have been incorrect to have been based on incorrect information or as a result of documented procedure not being followed.

**Or**

2. **Section 8** - Make a complaint that the selection process followed was, in itself, unfair

A candidate can follow either one of the two following procedures but **not both**. They must choose between requesting a review of a decision or making a complaint about the process. Before choosing, candidates are encouraged to make an **informal complaint** to the public body in the first instance. By doing this, they can receive additional relevant information on how the decision was made and/or selection process was carried out. This will help to decide whether they are still unhappy following the selection process and if so, the appropriate avenue to follow.

### 5.2 Requests for a review

If a candidate is unhappy with **the final, or any other, decision** made during a selection process, they can ask for a review of the decision under Section 7 of the Code. This is where a candidate believes that the decision was either:

- a) made on the basis of incorrect or misinformation or
- b) that, in making the decision, documented procedure was not followed

The decision may be reversed if it is found to have been incorrect.

Section 7 of this Code sets out the precise manner in which a request for a review of a decision should be made by a candidate. It also sets out how the request should be dealt with.

### 5.3 Complaints about the selection process

If a candidate thinks the selection process itself **was unfair** and in breach of the Code of Practice, they can make a complaint about the process under Section 8 of the Code. This is where a candidate acknowledges the decisions made during the process were on the basis of correct and complete information, however believes the selection process, as set out, was fundamentally unfair.

If the selection process is found to have been unfair, the Commission may make recommendations, offer advice or issue an instruction for an office holder to take account of at a later date or in future appointment processes. The Commission cannot however require an office holder to reverse a decision taken in the course of an appointment process.

Section 8 sets out the precise manner in which a complaint alleging a breach of this Code should be made by a candidate. It also sets out how the complaint should be dealt with.

### 5.4 Choosing whether to request a review or make a complaint

Before submitting a request for review under Section 7 or making a complaint under Section 8, candidates should consider which process is appropriate to their circumstances. Where a review of a recruitment or selection process has taken place under Section 7, a complainant **cannot** seek a further review of the process under Section 8 (other than in the most exceptional circumstances, which will be determined by the Commission at its sole discretion).

Before deciding, candidates are encouraged to make an **informal request for reviewer/informal complaint** to the public body in the first instance. Through this they should be able to receive additional relevant information on how the decisions were made and/or selection process was carried out. This will help them in deciding, if they are still unhappy or the issue is not resolved, whether or not to pursue the formal avenue of appeal to follow.

### 5.5 Exceptional circumstances

Where a selection process is reviewed under Section 7, a candidate cannot then also make a complaint about the same selection process under Section 8, other than in exceptional circumstances. Such exceptions will be determined by the Commission at its sole discretion. In applying its discretion, the Commission will consider the candidate's rationale for first requesting a review under Section 7 of this Code rather than making a complaint under Section 8.

## 5.6 Feedback

A candidate who is simply seeking clarification on the basis for the decision reached about their candidature should obtain this feedback from the office holder in charge of the recruitment process. They do not need to invoke any of the procedures referred to above. It is expected that such feedback will be properly managed by the office holder as an integral part of the appointment process.

## 5.7 Commission discretion in processing complaints

The Commission reserves the right to suspend or cease the examination of a complaint, where it decides that the continued examination could affect the due process of an examination/investigation being carried out by another body. The Commission would have to be satisfied that any postponement was fair to all parties involved and did not prejudice the fundamental rights of any individual or the important public interest objectives fulfilled by the Commission. This decision would be taken on a case-by-case basis, with reference to both the complainant, public body complained of and the other body examining the complaint. The Commission commits to providing a clear and comprehensive explanation to the complainant and the public body the subject of the complaint of its reasons for not continuing its examination of a complaint in such circumstance

# Section 6. Making an informal review or complaint

## 6.1 General information

If a candidate is unhappy following a selection process, they can either request a review of a decision made during the process or make a complaint that the selection process followed was unfair. Before making a decision, candidates are encouraged to make an **informal Section 7 review or an informal Section 8 complaint** to the public body in the first instance. The informal review/complaint process allows a candidate to receive additional relevant information on how the decisions were made in their case and the selection process was

carried out. This should help them decide whether they are still unhappy following the selection process and if so, the appropriate avenue to follow.

This informal review/complaint stage can provide the office holder and candidate alike with an opportunity to review the factors that gave rise to the action taken or the decision reached. If the public body determines that an error occurred during the process they are in a position to intervene quickly, to take corrective action or to seek a suspension of the appointment process.

There is no requirement on a candidate to pursue an informal complaint in the first instance. **It is however strongly recommended.** If a candidate does not want to engage in the informal review/complaint process and proceed directly to the review/complaint, they should make that clear at the outset.

A public body, might also wish, in some cases, to skip the informal complaint stage and proceed directly to the review/complaint stage. This should generally only occur where the public body is certain that the review/complaint cannot be resolved informally and a review/complaint process would be more beneficial. Any decision made by the public body to skip the informal complaint stage must be clearly documented, with the candidate duly informed.

## 6.2 Procedures for making/processing an informal review/complaint

When making an informal review/complaint the candidate must clearly outline the reasons why they believe the selection process was unfair in their case.

### 6.2.1 *Timeframes*

An informal review/complaint must be made within **five working days** of notification of the selection decision.

The timelines outlined in the Code are intended as a guidance for public bodies. The Commission accepts and understands that organisations may not be operating to these exact timings and may develop complaint mechanisms and processes that work best for their candidates and business needs. The Commission does however, expect that all candidates have the opportunity of timely access to complaint mechanisms and natural justice.

### *6.2.2 Examination of the complaint*

The informal review/complaint process primarily serves as an information sharing exercise. It should include a desk-based examination of any available information in relation to the selection process, including an examination of the candidate's recruitment file. Following which it is generally recommended that a face-to-face meeting or telephone conversation is held between the candidate and the representative to discuss the complainant's concerns.

During this, the representative should:

- a) Clarify the specific aspects of the selection process which the candidate is unhappy with
- b) Provide the candidate with relevant additional background information on the selection process in this case, focusing specifically on the areas they are unhappy with
- c) Provide their opinion on whether they believe any errors occurred during the selection process or whether, in their view the selection process was unfair
- d) Provide the candidate with clear information on the review and complaint processes open to them if they are still unhappy and how they can pursue these.

In some cases, particularly in the case of large-scale selection process or those not carried out by the employing organisation, a public body may not be in a position to offer face-to-face meets or telephone conversation. In such cases, the body will establish its own alternative, appropriate mechanisms for the communication.

### *6.2.3 The representative*

The representative selected to deal with an informal review/complaint will be someone who has a close connection to, and good knowledge of, the selection process. However, someone who was not directly involved in the decision-making process. This will normally be a member of the HR unit or someone involved in the administration of the process.

### *6.2.4 The decision*

The public body office holder should examine the informal review/complaint as soon as possible. Communication with the candidate and notification of the outcome should issue no later than five working days from receipt of the complaint. This is to allow sufficient time

for a candidate to access the review process and where appropriate, have a decision overturned.

If a candidate remains dissatisfied following the informal review/complaint process, they can **proceed through the formal process, i.e. informal Section 7 can only be followed by a formal Section 7 or informal Section 8 can only be followed by a formal Section 8.**

1. Formal Section 7 - Request a **review of a decision** made during the process  
**or**
2. Formal Section 8 - **Make a complaint** that the selection process followed was unfair

The procedures for requesting a review of a decision or making a complaint are set out in Section 7 and Section 8 of the Code.

## Section 7. Requesting a review of a decision

Procedures for where a candidate seeks a review of a decision taken in relation to their application

### 7.1 General information about reviewing a selection decision

A candidate may not be satisfied with an action or decision taken by the public body. In this case they may request a review of the decision.

There is no obligation on the public body to suspend an appointment process while it considers a request for a review. However, the Commission expects that it will intervene where possible and take appropriate action in cases where it finds that an error is likely to have occurred.

As with the recruitment processes themselves, and within reason, fair procedures should be applied by all parties dealing with requests for review made under Section 7 of this Code.

### 7.2 Procedures for requesting a review

The candidate must address their concerns about the process in writing to the public body, outlining the facts that they believe show an action taken or decision reached was wrong. A request for a formal review may be refused if the candidate cannot support their request.

### 7.2.1 Timeframes

A request for a formal review must be made within **five working days** of the candidate receiving notification of **either** the original decision **or** the decision on their informal complaint. The public body should issue a written acknowledgement to the candidate within three working days of receipt of the request for a formal review.

This is necessary to ensure the public body can intervene if it considers that an error is likely to have been made in the course of the appointment process.

An extension of the time-frame for requesting a review can be granted in appropriate circumstances. The decision on whether an extension will be granted is at the discretion of the public body.

The timelines outlined in the Code are intended as a guidance for public bodies. The Commission accepts and understands that organisations may not be operating to these exact timings and may develop complaint mechanisms and processes that work best for their candidates and business needs. The Commission does however, expect that all candidates have the opportunity of timely access to complaint mechanisms and natural justice.

### 7.2.2 Requests for a review

A candidate may request a review of a decision made at any stage while the selection process is ongoing. A request for review that relates to an interim stage of a selection process must be received within five working days of receipt of the decision. This is necessary to ensure that the office holder can intervene if it considers that an error is likely to have been made at an interim stage of the appointment process. Where a candidate seeks an informal review, the office holder must carry out the review without delay. The review should be conducted within a period of time that ensures the candidate may still access the formal review procedure within the specified time, should they wish to do so.

### 7.2.3 Role of the reviewer

When a request is received, the role of the reviewer is to determine whether they consider the original decision was made appropriately, on the basis of correct information and in line with documented procedure. The role of the formal reviewer is not to reassess or remark the candidate, but rather to establish, on foot of the available information, whether they consider:

- The procedures set out for the selection process were followed correctly
- The original decision was made on the basis of correct and full information
- The original decision was made appropriately

The formal reviewer should be completely independent of the selection process. The formal reviewer should therefore be someone not connected to the selection process. This will normally be another person within the organisation, outside of the HR/competitions unit, who has an understanding of recruitment and selection and the requirements of the Code of Practice.

In some cases, the formal reviewers may be an individual outside of the organisation. In order to avoid delay in identifying reviewers when complaints are received, the Commission recommends that a panel of appropriate and suitably qualified reviewers be identified and their availability confirmed at the start of each selection process.

#### *7.2.4 The review*

The formal review will be a more thorough examination of all relevant available information. While the particular examination will vary from case to case, formal reviews may include:

- Consultation with the complainant
- Consultation with selection board members
- Consultation with relevant members of the HR unit
- An examination of the candidate's recruitment file
- An examination of the procedures in place supporting the process

The person or people conducting the formal review (the "reviewer" or "reviewers") should consider any written submissions made by the candidate, and all other relevant information. This includes any emails, notes or memoranda held by the public body in respect of the selection process.

Where necessary, the reviewer may consult with staff of the public body involved in the selection process, and with the candidate, to collect further information.

Following an examination of all relevant information the reviewer will issue a decision on the formal review. The reviewer will make a decision as to whether to uphold the original decision or not.

#### *7.2.5 Notification of outcome*

The outcome of the formal review must be notified to the candidate within **twenty-five working days** of the office holder receiving the request. If the investigation does not

produce a decision within this time, the reviewer must keep the candidate informed of the status of the review and the reasons for the delay.

The formal review decision should be issued in writing and should be supported by detailed information outlining:

- The basis of the review request
- How the review process was carried out
- All relevant information taken into account
- The formal decision
- The basis on which the decision was reached

The reviewer's decision will be considered by the administrators of the selection process in the first instance. Where a formal reviewer has decided not to uphold the original decision, a decision must be made by the HR unit on appropriate next steps. The reviewer's decision is final with no further recourse to review from the Office Holder.

#### *7.2.6 Documentation*

It is essential for office holders to have effective systems in place for responding to requests for review. Office holders must keep a full record of all correspondence and any other relevant documentation. This includes minutes of meetings, records of emails and notes of telephone conversations in relation to all candidates who present themselves for any form of assessment whether successful or not.

### **7.3 Exclusion from making a further complaint under Section 8**

Where a formal review of a recruitment and selection process has taken place under Section 7 of this Code of Practice, a complainant may not seek a further review of the same process under Section 8, other than in the most exceptional circumstances that will be determined by the Commission at its sole discretion. In applying its discretion, the Commission will consider the candidate's rationale for first requesting a formal review under Section 7, rather than making a complaint under Section 8.

## Section 8. Making a complaint

Procedures in relation to complaints of breaches of the Code of Practice

### 8.1 General information about making a complaint

A candidate may believe there was a breach of the Code of Practice by a public body that may have compromised the integrity of the decision reached in the appointment process. The complaints process enables candidates (or potential candidates) to make a complaint to the office holder in the first instance, and to the Commission subsequently on appeal if they remain dissatisfied.

There is no obligation on the public body to suspend an appointment process while it considers a complaint. However, the Commission expects that, where possible, the office holder will intervene in cases where it finds that an error is likely to have occurred.

The Commission may find that a public body has not adhered to the standards set out in the principles of this Code of Practice. In this case, the Commission may make recommendations, offer advice or issue an instruction that an office holder must take account of in future appointment processes. **The Commission cannot instruct a public body to reverse a decision taken in the course of the appointment process.**

Allegations of breaches of the Code of Practice should be addressed in writing, and within a reasonable timeframe, to the public body in the first instance. The complainant must outline the facts that they believe show that the process followed was wrong. The complainant must also identify the aspect of the Code they believe has been infringed. A complaint may be dismissed if the complainant cannot support their allegations by setting out how the office holder has fallen short of the principles of this Code.

As with the recruitment processes themselves, and within reason, fair procedures should be applied by all those dealing with complaints.

The Commission will accept a complaint in relation to an alleged breach of the Code of Practice only when it has been examined by the office holder in the first instance and the complainant is dissatisfied with the outcome of that examination.

### 8.2 Procedure for making a complaint

The standards and procedures to be followed by the complainant and the public body in relation to formal complaints alleging breaches of the Code of Practice are as follows.

### *8.2.1 Timeframe*

A formal complaint must be made within **five working days** of the candidate receiving notification of **either** the selection decision **or** the decision on their informal complaint. This is necessary to ensure that the public body can intervene if it considers that an error is likely to have been made in the course of the appointment process.

The public body should issue a written acknowledgement to the complainant within three working days of receipt of the formal complaint.

The timelines outlined in the Code are intended as a guidance for public bodies. The Commission accepts and understands that organisations may not be operating to these exact timings and may develop complaint mechanisms and processes that work best for their candidates and business needs. The Commission does however, expect that all candidates have the opportunity of timely access to complaint mechanisms and natural justice.

### *8.2.2 A breach of the Code of Practice*

A breach of Code of Practice occurs where the selection process is found not to have been carried out in accordance with the principles and standards set out in Section 2 of the Code of Practice. This means that the selection process was not carried out fairly.

### *8.2.3 Complaint*

The complainant should provide details of the allegation and support this with facts that the complainant believes show how the selection process was unfair and how that unfairness impacted them.

### *8.2.4 Role of the reviewer*

When a complaint is received, the role of the reviewer is to determine whether, in their opinion, a breach of the Code of Practice occurred during the selection process. The complaint process should be completely independent of the selection process. The reviewer should therefore be someone not connected to the selection process. This will normally be another person within the organisation, not connected with the selection process, however who has an understanding of recruitment and selection and the requirements of the Code of Practice. In some cases, the reviewer will be an individual outside of the organisation.

### *8.2.5 Examination of the complaint*

The examination of a complaint is a more thorough examination of the relevant available information to determine whether, in their opinion, a breach of the Code of Practice occurred during the selection process.

The person or persons (the “reviewer” or “reviewers”) conducting the examination will consider all information that is material to the complaint. This includes any emails, notes or memoranda prepared by the personnel of the public body, and any relevant documentation provided by the complainant.

The reviewer may consult with or meet with any personnel of the public body relevant to the complaint, and with the complainant, to collect further information.

The examination of a complaint is a more thorough examination of the relevant available information. Is it essential that the reviewer has a clear understanding of the principles and standards set out in Section 2 of the Code of Practice, and what these mean in practice.

When considering individual allegations, the reviewer should consider:

- What standard does the allegation relate to?
- What does the standard mean?
- What actions should the public body have taken?
- What actions did the public body take?
- What safeguards/procedures should the public body have had in place? • What safeguards/procedures were in place

While the particular examination will vary from case to case, examination of complaint may include:

- Consultation with the complainant
- Consultation with selection board members
- Consultation with relevant members of the HR unit
- An examination of the candidate’s recruitment file
- An examination of the procedures in place supporting the process

### *8.2.6 Notification of outcome*

The outcome of the examination of a complaint must be notified to the complainant within **twenty-five working days** of receipt of the complaint. **In cases where the timeframe is required to be extended, the office holder must keep the complainant informed of the status of the review and the reasons for the delay.**

Following an examination of the relevant information the reviewer will issue a decision as to whether a breach of the Code of Practice occurred or not. The decision should be issued in writing and should be supported by detailed information outlining:

- The basis of the complaint
- How the examination process was carried out
- All relevant information taken into account
- The decision
- The basis on which the decision was reached

The decision will be considered by those responsible for the selection process in the first instance. Where a formal reviewer has decided that a breach of the Code did occur, a decision must be made by those responsible for the selection process on the appropriate next steps. Such steps can only be determined on a case by case basis, however will likely include amending selection processes to ensure a breach does not reoccur.

Following this, a copy of the formal decision should issue to the complainant, including additional information on next steps, where relevant.

#### *8.2.7 Appeal of the decision*

When informing the complainant of the outcome of the formal complaint process, the public body should also tell the complainant that they make an appeal, if they remain dissatisfied, by referring the matter to the Commission.

The complainant can make an appeal against the decision made by the public body with regards to the formal complaint. The public body must also clearly state that any such appeal must be made in writing within **ten working days** of the complainant receiving the outcome of the complaint.

#### *8.2.8 Documentation*

Public bodies are expected to facilitate the Commission in its review of alleged breaches of the Code of Practice. They must keep a full record of all correspondence and any relevant documentation in respect of the complaint. This includes minutes of meetings, records of emails, notes of telephone conversations or other meetings, and all documentation provided by the complainant.

### 8.3 Making an appeal to the Commission

A candidate may not be satisfied with the decision the office holder has made regarding the formal complaint. In this case, they may make an appeal to the Commission to review the

decision. The procedures and standards to be adopted by the Commission in handling an appeal, following a complaint that alleges breaches of the Code of Practice, are as follows.

### *8.3.1 Timeframe*

An appeal to the Commission, following a complaint alleging a breach of the Code of Practice, must be made in writing within **ten working days** of the candidate receiving the notification of the office holder's decision about the formal complaint.

The Commission will acknowledge receipt of the candidate's appeal within three working days.

### *8.3.2 Making an appeal*

When making an appeal, details of the grounds for the appeal should be provided. This should include supporting facts or relevant documentation that the complainant believes

- a) shows how the selection process was unfair and how that unfairness impacted them, and
- b) details why they believe the findings of the reviewer in relation to their complaint are unfair

The candidate should also include any documentation provided to them by the public body in respect of the original complaint, and in particular the office holder's report of its examination of the formal complaint, within the specified time.

Any appeal made to the Commission is confined to the allegations made in the original complaint to the public body. Additional allegations will only be considered where the complainant can demonstrate they have arisen out of new information which came to light since submission of the original complaint.

### *8.3.3 Procedures for carrying out an appeal*

On receipt of a valid appeal, an appeal officer from within the Secretariat for the Commission will be assigned to carry out an examination, on behalf of the Commission, of the original allegations as well as the examination process carried out by the public body.

The Commission will make its decision on the basis of any written information available in respect of the matter, or on the basis of any written submissions made to it.

The appeal officer will carry out a thorough examination of all relevant information and documentation relating to the complaint. To facilitate this, the public body is required to facilitate any requests for relevant information and documentation without delay. On

completion of the examination, the appeal officer will determine, on behalf of the Commission, whether:

- a) a breach of the Code of Practice occurred during the selection process
- b) the decision made by the public body should be upheld
- c) any actions are required to ensure a breach does not reoccur

In some cases, referral of an appeal directly to the Commission for decision may be required. All appeals decisions issued will be reported and made available to the Commission.

#### *8.3.4 Outcome of the appeal*

The outcome of the appeal will be notified in writing to both the appellant and the public body. It is not possible to determine a precise timescale for conducting the investigation and completing the written report. However, the Commission will keep the complainant and the office holder informed of the status of the review and the reasons for any delays encountered.

The decision of the Commission is final. The Commission will not consider any further communication from the parties to a complaint in relation to matters it has already investigated, how they were examined or the conclusions reached.

#### *8.3.5 Judicial review*

Decisions made by the Commission may be challenged by way of Judicial Review. The Commission may take whatever action it considers necessary where it considers there has been a failure to comply with the Code of Practice, in accordance with the provisions of the Public Service Management (Recruitment and Appointments) Act 2004. Such action includes revoking a recruitment licence, where appropriate.

The Commission will treat all complaints in confidence. The Commission will not release details of an individual's allegations or its response to these allegations to third parties. However, common themes arising in complaints and the approach the Commission has adopted in dealing with them may be published from time to time on an anonymised basis on the Commission's website: [www.cpsa.ie](http://www.cpsa.ie).

## Section 9. Unreasonable conduct

### 9.1 Introduction

During the selection and appointment process, the Commission and office holders are expected to provide candidates with detailed information in a timely manner. The Commission and office holders must also treat individuals politely. The Commission does not expect that a disproportionate amount of time and resources should be committed to one individual in responding to any one or a series of requests for review of a selection decision. The Commission does not expect office holders or its own staff to tolerate offensive, abusive or threatening behaviours.

## 9.2 Types of behaviour considered “unreasonable conduct”

The types of behaviour that the Commission considers “unreasonable conduct” are:

- **Unreasonable persistence** in pursuing an issue or series of issues with the office holder or the Commission
- **Unreasonable lack of cooperation** in presenting a complaint, for example, by the complainant
- **Unreasonable arguments** being employed by the customer
- **Unreasonable behaviour** by the customer, includes threats of violence, abuse of staff and ruder or aggressive behaviour includes threats of violence, abuse of staff, and rude or aggressive conduct.

## 9.3 Taking action against unreasonable customer conduct

The Commission recognises that classifying someone’s conduct as “unreasonable” could have serious consequences for the individual. Before deciding whether to apply any consequent restrictions to the customer, the Commission or the office holder must ensure

- The original complaint or request for further review has been dealt with fully and in line with the provisions of this Code.
- Any such actions are appropriate and proportionate, having regard to the severity of the behaviours in question.

## 9.4 Procedure for managing unreasonable conduct

When the Commission or public body considers that an individual’s behaviour is unreasonable, it should first inform the person why their behaviour has been found to be unreasonable and advise the customer to change that behaviour. The Commission or public body may also consider possible adjustments to its service that will help the person to avoid further unreasonable behaviour in the future. Such action may include

- Requesting the individual make contact in a particular form, for example by letter only
- Requiring contact to take place with a named officer only

- Restricting telephone calls from the individual to specified days and timeframes
- Restricting access to the offices of an organisation
- Asking the customer to enter into an agreement about their future conduct • Refusal to pursue a complaint or request for a review
- Terminating all contact with the complainant.

The decision to restrict access must be taken at an appropriately senior level, fully documented and taken with the approval of the Chief Executive, Secretary General or equivalent office holder in the organisation.

The Commission or the office holder will inform the customer in writing why their behaviour has been defined as unreasonable, and set out the proposed course of action.

## 9.5 Right of appeal

Customers who are dissatisfied with how the unreasonable conduct policy has been applied by an office holder may refer the matter to the Commission for examination under Section 8 of this Code.

## Section 10. Ministerial responsibility

The relevant government minister is responsible for all matters relating to recruitment. This includes eligibility criteria, terms and conditions and use or knowledge of the Irish language.

## Appendices

### Appendix A - Excluded positions

This Code of Practice is not applicable to a number of positions, including;

- Appointments to posts established under the Constitution of Ireland
- Appointments to those posts included in the definition of “office holder” at Section 2 of the Ethics in Public Office Act 1995, that is
- Ministers of Government and of State
- The Attorney General
- Chairpersons or Deputy Chairpersons of Dáil Éireann and of Seanad Éireann
- Chairpersons of Committees of either House of the Oireachtas
- Chairpersons of Committees of Joint Committees of both Houses of the Oireachtas
- Presidential appointments
- Governmental appointments

- Officer of the Houses of the Oireachtas
- Special Advisor, within the meaning of Section 19 of the Ethics in Public Office Act 1995
- Temporary positions that are made in the public interest
- Positions designated as scheduled occupations under the Act.

## Appendix B - Definition of terms

In this Code of Practice, certain terms have specific definitions that are as follows;

**'The Act'** means the Public Service Management (Recruitment and Appointments) Act 2004. Except where the context otherwise requires:

**'Appointment'** means the selection and employment of a person to fulfil a position within the organisations that are subject to the authority and scope of the Commission.

**'Commission'** means the Commission for Public Service Appointments.

**'Licence holder'** means a person to whom a recruitment licence has been granted.

**'Minister'** means the relevant government minister as set out in Section 58 of the Act.

**'Office holder'** means the head of a department, office, body or organisation.

This Code of Practice was prepared by the Commission for Public Service Appointments in accordance with the provisions of Sections 23 and 24 of the Public Service Management (Recruitment and Appointments) Act 2004.

The Commission may revoke or amend this Code of Practice as it sees fit.

The Commission may take whatever action it considers necessary where it believes there has been a failure to comply with the terms of this Code of Practice.

## Appendix C - List of updates to Code of Practice

- Appointments promoting equality, diversity and inclusion has been added to the key recruitment principles – Forward (page 1) – (updated for publication 09/12/2021)
- Extra points have been added to the Commission's key responsibilities - Section 1.1 (page 2) – (updated for publication 09/12/2021)
- Information on specific campaigns for persons with disabilities has been included – Section 1.4.4 (page 7) – (updated for publication 09/12/2021)

- Section 2 of the Code discusses the 6 principles and best practice for recruitment campaigns – Section 2 (pages 11-19) – (updated for publication 09/12/2021)
- Section 5 of the Code discusses the choice of a review or a complaint – Section 5 (pages 25-27) – (updated for publication 09/12/2021)
- Update of information on shared responsibilities - Section 1.4.5 (page 8) – (updated for publication 18/02/2022)
- Further distinction between review and complaint avenues - (throughout Code) - (updated for publication 18/02/2022)
- Update of infographic - (page 24) - (updated for publication 18/02/2022)

Published in 2022 by the  
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