

## **Decision in case 1943/2017/NF on how the European Personnel Selection Office handled a complaint about a technical problem in a selection procedure for recruiting translators**

Decision

**Case 1943/2017/NF - Opened on 29/11/2017 - Decision on 13/12/2018 - Institution concerned** European Personnel Selection Office ( Settled by the institution ) |

The complainant experienced a technical problem when sitting an exam as part of a selection procedure for recruiting translators for the EU civil service. He contended that the European Personnel Selection Office (EPSO) had not dealt with his subsequent complaint properly. As a consequence of EPSO's poor communication with the complainant, he had also missed the deadline for making an administrative complaint about his results.

The Ombudsman inquired into the issue and found that EPSO had dealt with the complaint about the technical problem in an appropriate manner. In the course of the inquiry, EPSO also agreed to deal with an administrative complaint from the complainant and EPSO has since taken its decision on that complaint. The Ombudsman thus considered the case to be resolved and closed her inquiry.

However, the Ombudsman suggests to EPSO that it revise its information manual for candidates.

### **Background to the complaint**

1. The complainant participated in a selection procedure for recruiting Irish-language translators for the EU civil service [1] , which was organised by the European Personnel Selection Office (EPSO). [2] During the tutorial before a translation exam, he experienced technical difficulties as his keyboard did not work. He had to wait for more than an hour at the test centre before the problem was resolved and he could take the exam without any further disruption. While waiting, the complainant was not allowed to leave the test centre (he had to stay in the waiting area of the test centre) and he did not have access to food or drinks, other than water and the refreshments he had brought himself.

2. The complainant subsequently wrote to EPSO, arguing that the incident had negatively



affected his performance.

3. EPSO immediately contacted the complainant and offered him the possibility of retaking the exam. The complainant, however, declined the offer.

4. Subsequently, EPSO informed the complainant that he had failed to obtain the necessary pass mark in one of the tests that made up the translation exam, which meant that he was excluded from further participation in the selection procedure. The complainant asked that his results be reviewed and that the problem he faced when sitting the exam be taken into account in the review.

5. The Selection Board re-examined his tests and found no errors in how they had been marked, and that the procedural rules had been correctly followed.

6. The complainant replied to EPSO expressing concern that, in its review, the Selection Board did not appear to have taken into account the problem he had had with the keyboard and asking for clarification on this. EPSO confirmed to the complainant that it had forwarded his request for clarifications to the Selection Board.

7. At the end of August 2017, the complainant asked EPSO for an update on his request for clarifications. EPSO responded that the Selection Board's final decision would be made available in September.

8. In mid-October 2017, the complainant again asked for an update. EPSO responded that the reply it had sent at the end of August was not correct. It said that it had, in fact, sent the complainant a response already on 18 August 2017, in which it clarified that the Selection Board's decision on the review request had taken account of the issues raised by him.

9. In subsequent correspondence with EPSO, the complainant contested the statement that the decision of the Selection Board had addressed the problem he had had with the keyboard on the day of his exam. He also noted that he had now missed the deadline for challenging his translation test results through an administrative complaint [3] , and argued that this was due to the erroneous response sent by EPSO at the end of August 2017.

10. The complainant turned to the Ombudsman at the end of October 2017.

## **The inquiry**

11. The Ombudsman opened an inquiry into the complainant's concern that EPSO had not handled his complaint about the keyboard problem properly and that, as a consequence of EPSO's poor communication, he had been unable to challenge his translation test results by making an administrative complaint.

12. In the course of the inquiry, the Ombudsman's inquiry team held a meeting with EPSO and



inspected its file on this case. Also in the course of the inquiry, EPSO agreed to deal with the complainant's administrative complaint (see below). EPSO subsequently sent the Ombudsman a copy of its decision on the administrative complaint, and the complainant's comments on that decision. The complainant did not make any comments on the Ombudsman's report on the inspection and the meeting.

## Arguments presented to the Ombudsman

**13.** At the meeting with the Ombudsman's inquiry team, EPSO explained how it had dealt with the complaint about the complainant's keyboard initially not working and whether this could potentially have had a negative impact on the complainant's performance. As an immediate response, EPSO had offered the complainant the possibility of retaking the exam, but the complainant had declined this offer. EPSO had then informed the Selection Board about the keyboard problem so that the Selection Board could take so-called corrective measures when marking the complainant's translation tests. The Selection Board had decided not to penalise the complainant for an unfinished text of less than 12 lines. Notwithstanding this corrective measure, the complainant had not obtained the necessary pass mark in one of the tests.

**14.** EPSO expressed regret for the technical problem encountered by the complainant. However, it also stated that, in the 'Computer-Based Test Manual' provided to those sitting the exam, candidates are advised to plan for potentially longer stays at the test centre, in case of unexpected delays of up to two hours. Candidates are also informed that no refreshments are provided at the test centre but that they may bring their own food and drinks for consumption in the waiting area.

**15.** EPSO's view was that it had dealt with the complainant's complaint about the keyboard problem in an efficient manner. However, it acknowledged that it had not properly explained this to the complainant. Standardised text was used to formulate the Selection Board's decision on the complainant's request for review. [4] As a result, there was no proper explanation of how the Selection Board had handled the complainant's issue.

**16.** EPSO also acknowledged that, due to a technical issue, the e-mail it claimed to have sent on 18 August 2017, which was intended to give clarifications on the complainant's question regarding the Selection Board's review, was never sent. Due to human error, this mistake was not spotted and the e-mail was sent to the complainant on 31 August 2017, erroneously stating that his complaint was still being assessed.

**17.** In order to resolve the complaint before the Ombudsman and to remedy the fact that the complainant had, due to the above miscommunication, missed the deadline for making an administrative complaint about his translation test results, EPSO agreed to treat the complainant's reply to the review decision as an administrative complaint.

**18.** The complainant argued that neither the offer to retake the exam, nor the corrective measure was an appropriate way to address the negative impact that the keyboard problem had



had on his performance. He also pointed out that the information in EPSO's 'Computer-Based Test Manual', advising candidates to plan for potentially longer stays at the test centre in case of unexpected delays of up to two hours, is phrased in a way that it refers exclusively to the 'case study', a different type of written exam.

## The Ombudsman's assessment

**19.** The technical problem undoubtedly created additional stress for the complainant on the day of his exam. While this is regrettable, the Ombudsman's inspection of the file and the information provided by EPSO confirm that EPSO took timely action to address the situation. EPSO offered the complainant the possibility of retaking the exam, which he declined. It also informed the Selection Board of the situation, which decided to apply a corrective measure to the marking of the complainant's exam. The Selection Board enjoys a wide margin of discretion in deciding what kind of measures to take to address irregularities that occur in a selection procedure. [5] The corrective measure that the Selection Board applied when marking the complainant's exam is clearly within that margin of discretion. The Ombudsman therefore takes the view that EPSO handled the potential impact of the keyboard problem on the complainant's performance in an appropriate manner.

**20.** However, EPSO failed to explain to the complainant how the Selection Board had handled the issue. While it is generally justified for EPSO to make use of standardised formulations when communicating with candidates, EPSO should make sure to use individualised formulations where the standardised text would not allow candidates to understand whether, and if so how, their issues were dealt with. The Ombudsman trusts that it will do so, going forward.

**21.** By miscommunicating with the complainant, due to both technical and human errors, EPSO also created confusion, which led the complainant to miss the deadline for making an administrative complaint to challenge his translation test results. However, during the course of the Ombudsman's inquiry, EPSO has remedied this matter by agreeing to deal with the complainant's e-mail in response to the review decision as an administrative complaint. EPSO has taken its decision on the administrative complaint.

**22.** Given that the complainant wished for his Ombudsman complaint to lead to EPSO agreeing to deal with an administrative complaint from him, the Ombudsman considers this case to be resolved.

**23.** This notwithstanding, the complainant is correct that the relevant part of EPSO's 'Computer-Based Test Manual', which advises candidates to plan for potentially longer stays at the test centre, refers to the 'case study' exam only. While this fact had no bearing on how EPSO dealt with the complainant's situation, the Ombudsman is of the view that EPSO should take out the reference to the case study exam to make it clear that unexpected delays may occur for any type of computer-based test.



## Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion :

**By agreeing to deal with an administrative complaint from the complainant about his translation test results, the European Personnel Selection Office has resolved this case.**

The complainant and EPSO will be informed of this decision .

## Suggestion for improvement

**The Ombudsman suggests that the European Personnel Selection Office take out, in its 'Computer-Based Test Manual', the reference to the case study exam, to make clear that unexpected delays may occur for any type of computer-based test and that candidates should prepare accordingly.**

Emily O'Reilly

European Ombudsman

Strasbourg, 13/12/2018

[1] EPSO/AD/326/16 — Irish-language (GA) Translators (AD 5)  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:205A:FULL&from=EN> [Link]

[2] The EU institutions recruit civil servants through selection procedures, usually referred to as 'open competitions'. EPSO organises the selection procedures on behalf of the EU institutions. The check of candidates' eligibility to take part in a selection procedure and the assessment of their performance in the different tests is done by a Selection Board, which is made up of civil servants already working in the EU institutions. Candidates who are successful in the selection procedures are placed on 'reserve lists' and may then be recruited by the various EU institutions to become EU civil servants.

[3] Under Article 90(2) of the Staff Regulations, within three months of a decision, an individual can submit an administrative complaint where they consider that the decision affects them adversely. Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 1962 L 45, p. 1385.



[4] This is an efficiency measure, and EPSO carries out random quality checks to ensure that the decisions are of the desired standard.

[5] See, for example, judgment of the Court of First Instance of 2 May 2001, *Caprile and Others v Commission*, T-167/99 and T-174/99, ECLI:EU:T:2001:126, paragraph 58.