

Decision of the European Ombudsman closing the inquiry into complaint 1881/2014/NF against the European Personnel Selection Office (EPSO)

Decision

Case 1881/2014/NF - **Opened on** 20/11/2014 - **Decision on** 07/07/2015 - **Institution concerned** European Personnel Selection Office (No maladministration found) |

The case concerned the complainant's exclusion from further participation in an open competition organised by the European Personnel Selection Office (EPSO). The Selection Board had made a mistake and erroneously admitted the complainant to the assessment centre stage of the competition concerned. Once it discovered the mistake, the Selection Board revoked its admission decision and excluded the complainant from the competition.

The Ombudsman found that, despite the unfortunate series of events caused by the Selection Board's mistake, EPSO, which is bound by the rules set out in the notice of competition, had no option but to exclude the complainant who did not fulfil the criteria for further participation. The Ombudsman therefore found no maladministration by EPSO.

The background to the complaint

1. The complainant was a candidate in open competition EPSO/AST-SC/01/14 in the secretarial field [1] , which covered two grades, SC1 and SC2. She sat and passed the admission tests of the German language track of the competition for grade SC2.
2. In September 2014, EPSO informed the complainant that she did not meet the eligibility criteria to be admitted to the assessment centre stage of the competition. The complainant made a request for review of the decision not to admit her to the assessment centre.
3. In October 2014, EPSO informed the complainant that, following a re-examination of her file, the Selection Board had decided to admit her to the assessment centre stage for grade SC1. She was informed that the Selection Board considered that the duration of her professional experience was insufficient for grade SC2.
4. Some days later, EPSO informed the complainant that the Selection Board had to revoke its decision to admit her to the assessment centre stage for grade SC1 and that the invitation to the



assessment centre was therefore no longer valid. EPSO explained that, even though the complainant fulfilled the eligibility criteria for grade SC1, she was not among the candidates with the highest marks in the admission tests for grade SC1. All SC1 candidates invited to the assessment centre had obtained a minimum total of 63 points in the admission tests, while the complainant scored 57.833 points. EPSO referred to the applicable procedure for re-assigning candidates between the grades, set out in the notice of competition, and concluded that the complainant did not fulfil the criteria for being admitted to the assessment centre stage of the competition.

5. In November 2014, the complainant requested a review of the decision revoking her admission to the assessment centre. EPSO, however, confirmed the Selection Board's revocation decision.

6. The complainant then turned to the Ombudsman.

The inquiry

7. The Ombudsman opened an inquiry into the complaint and identified the following allegation and claim:

EPSO wrongly excluded the complainant, who had passed all the admission tests, from the assessment centre stage of open competition EPSO/AST-SC/01/14. The complainant claimed that EPSO should admit her to the assessment centre of that competition.

8. The Ombudsman inspected EPSO's file on this case. The Ombudsman also received the opinion of EPSO on the complaint and, subsequently, the comments of the complainant in response to EPSO's opinion. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

The allegation that EPSO wrongly excluded the complainant from the assessment centre stage of the open competition

Arguments presented to the Ombudsman

9. The complainant put forward two arguments to substantiate her allegation that EPSO wrongly excluded her from the assessment centre stage of grade SC1. First, she argued that, according to the notice of competition, EPSO should have invited to the assessment centre approximately 2.5 times the number of successful candidates sought. By inviting only a number of candidates approximately corresponding to the number of successful candidates sought, EPSO failed to comply with the notice of competition. Given the small number of candidates invited, and the fact that she had passed the admission tests, the complainant concluded that



EPSO should have invited her to the SC1 assessment centre.

10. Second, the complainant argued that, at the point in time when she received the invitation to the assessment centre (which was later revoked), EPSO stated on its blog that for the SC1 German language track of the competition, all candidates who had reached the pass marks in the admission tests and who satisfied the conditions for admission were to be invited to the assessment centre. In light of this information, EPSO should have invited her to the assessment centre. In the complainant's view, the fact that EPSO later updated this information by stating that a minimum total number of 63 points was necessary to be invited to the SC1 German language track assessment centre was an arbitrary change of the selection criterion. In her observations on EPSO's opinion, the complainant requested EPSO to provide proof that 63 points had always been the minimum total number of points giving access to the assessment centre in the relevant competition.

11. The complainant also argued that the Selection Board's conclusion that her professional experience was insufficient for grade SC2 was incorrect. She put forward that she had a total of slightly more than 5 years of relevant professional experience at the date of application, as indicated in her online application.

12. In its opinion, EPSO confirmed that all of the grade SC1 candidates invited to the assessment centre in the German language track of the competition had obtained a minimum total of 63 points in the admission tests. EPSO argued that, in accordance with the notice of competition, candidates had to meet four cumulative conditions in order to be reassigned from grade SC2 to grade SC1 and invited to the SC1 assessment centre: They had to (i) rank among the x highest-scoring candidates who could be invited to the assessment centre for grade SC2 (x being approximately 2.5 times the number of successful candidates sought); (ii) not meet the eligibility criteria for grade SC2; (iii) meet the eligibility criteria for grade SC1; and (iv) have obtained a total score in the admission tests that was at least as high as that of the last candidate admitted to the assessment centre for grade SC1. EPSO stated that, according to well-established case-law, the Selection Board was under the obligation to carry out its duties in strict compliance with the wording of the notice of competition as well as with the principle of equal treatment. [2] EPSO put forward that while the complainant met conditions (i) to (iii), she did not meet condition (iv) and she was thus not eligible to be admitted to the SC1 assessment centre. EPSO conceded that, in re-examining the complainant's file, the Selection Board had mistakenly omitted to verify whether the complainant met condition (iv). It therefore arrived at the erroneous conclusion that she could be admitted to the SC1 assessment centre. EPSO stated that the mistake was subsequently discovered and rectified through the Selection Board's revocation of its earlier admission decision.

13. EPSO expressed its regret for any distress caused to the complainant and put forward its most sincere apologies for the unfortunate course of events and the human mistake that caused it.

14. EPSO stated that it would analyse what caused the mistake made by the Selection Board and what measures could be taken to prevent such mistakes in the future.



15. In conclusion, EPSO confirmed that the final decision not to admit the complainant to the assessment centre, for either grade SC2 or SC1, was not incorrect but reflected the correct application of the notice of competition.

The Ombudsman's assessment

On the complainant's qualifications

16. The Ombudsman recalls the wide margin of discretion that the Selection Board enjoys in evaluating a candidate's qualifications and professional experience. [3] It is not the Ombudsman's role to substitute her own assessment for that of the Selection Board. However, on the basis of the information provided to her, the Ombudsman does not find any manifest error by the Selection Board in assessing the qualifications and professional experience of the complainant. The Ombudsman notes that EPSO informed the complainant of the Selection Board's assessment that she did not possess a post-secondary education attested by a diploma in the secretarial field. After a re-examination of her file, the Selection Board confirmed that, while not having sufficient professional experience for grade SC2, the complainant did have 3 years of relevant professional experience, thus fulfilling the qualification criteria for grade SC1.

17. The Ombudsman notes that the notice of competition required candidates who did not have a post-secondary diploma in the secretarial field to have a level of secondary education attested by a diploma giving access to post-secondary education, followed by at least three years of relevant professional experience in the secretarial field. In addition, in order to be eligible to participate in the competition for grade SC2, the notice required that candidates have at least *another* four years of relevant professional experience, gained after obtaining the qualifications giving access to the competition. It follows that candidates participating in the competition on the basis of a secondary education were required to have a total of at least seven years of relevant professional experience in order to be eligible to participate in the competition for grade SC2. It is uncontested that, at the date of application, the complainant had less than the seven years of relevant professional experience required for grade SC2.

On the complainant's exclusion from the assessment centre stage

18. The notice of competition constituted the legal framework for the competition and the Selection Board and EPSO were thus bound by it. [4] EPSO, in organising competitions on behalf of the EU institutions, enjoys broad discretion in determining the rules and conditions under which a competition is organised. [5] Point I.2. of the relevant notice of competition provided for the possibility that candidates, who applied for grade SC2 and obtained one of the highest marks in the admission tests but did not meet the eligibility criteria for that grade, might be reassigned, by the Selection Board, to continue the competition in grade SC1. In case of reassignment, the relevant SC2 candidates' results were compared with those of the candidates for grade SC1. Only those SC2 candidates whose marks matched those of the grade SC1 candidates with the highest marks were invited to the assessment centre tests.



19. In the course of the inspection of the file, EPSO provided the Ombudsman with documents proving that the lowest ranking SC1 candidate invited to the assessment centre had obtained a total score of 63 points in the admission tests. It is uncontested that the complainant scored 57.833 points in the admission tests. Accordingly, she was not among those candidates with the highest marks for the SC1 grade.

20. Although it is clearly regrettable that the complainant was first mistakenly invited to the assessment centre stage of the competition, the Ombudsman finds that the Selection Board was legally required to revoke the decision to admit the complainant to the assessment centre. The Ombudsman notes that EPSO has taken appropriate steps to apologise to the complainant for the mistake made and for any distress caused to her.

21. The Ombudsman welcomes EPSO's commitment to analyse the circumstances that caused the mistake and to look into what measures it could take to prevent the reoccurrence of such errors in the future.

22. The information initially provided on EPSO's blog does not change the above finding that the Selection Board and EPSO were bound by the notice of competition. Indeed, EPSO's blog initially stated that candidates having obtained pass marks in the admission tests were admitted to the SC1 assessment centre. The Ombudsman notes that this information was not, in itself, incorrect. All candidates who participated in the competition for grade SC1, obtained the pass marks in the admission tests, and fulfilled the eligibility criteria provided for in the notice of competition, were invited to the assessment centre. However, the Ombudsman acknowledges that the information on EPSO's blog was provided in general terms and did not address reassignments from grade SC2 to grade SC1. Once the reassignment issue was brought to EPSO's attention, it updated the information on its blog by stating that the minimum score needed to give access to the SC1 assessment centre was 63 points, as obtained by the lowest ranking SC1 candidate invited to the assessment centre. The Ombudsman has decided to address a further remark to EPSO in this regard, encouraging it to ensure that such complete information is provided at the outset in future competitions.

23. Nor is the Ombudsman's above finding changed by the fact that EPSO did not invite approximately 2.5 times the number of successful candidates sought for grade SC1 to the assessment centre. At the inspection of the file, EPSO provided the Ombudsman's inquiry team with documentation proving that it was factually impossible to invite more candidates to the SC1 German language track assessment centre at the same time as respecting Point I.2. of the notice of open competition as regards the requirements for reassignment. The candidates who participated in the competition in grade SC1 and who had obtained pass marks in the admission tests and fulfilled the eligibility criteria provided for in the notice of competition, were so few that they were all invited to the assessment centre. Even together with a small number of candidates benefiting from successful reassignment from grade SC2 to grade SC1 under the conditions set out at Point I.2., the number of candidates invited to the SC1 assessment centre happened to correspond approximately to the number of successful candidates sought for this grade in the German language track of the competition. It thus follows that EPSO applied the notice of



competition correctly also in this regard.

24. On the basis of the above, the Ombudsman finds no maladministration by EPSO.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:

The Ombudsman finds no instance of maladministration by EPSO .

The complainant and EPSO will be informed of this decision.

Further remark

EPSO should see to it that the information provided on its blog, concerning the minimum points needed for candidates to be invited to the assessment centre, is complete and accurate including in the case of candidates benefiting from a reassignment between different grades.

Emily O'Reilly Strasbourg, 07/07/2015

[1] OJ 2014 C 42 A, p. 1.

[2] Judgments in Case F-5/08, *Brune v Commission* , EU:F:2010:111, paragraphs 38 and 39; and Case F-40/09, *Časta v Commission* , EU:F:2010:74, paragraph 56.

[3] Judgments in Case T-244/97, *Mertens v Commission* , EU:T:1999:27, paragraph 44; and Case T-25/03, *De Stefano v Commission* , EU:T:2005:168, paragraph 34.

[4] Judgment in Case F-125/11, *Isabel Mendes v European Commission* , EU:F:2013:35, paragraph 59.

[5] Judgments in Case T-132/89, *Gallone v Council* , EU:T:1990:60, paragraph 27; and Case T-207/95, *Ibarra Gil v Commission* , EU:T:1997:12, paragraph 66.