

## **Decision in case 535/2014/JAS concerning the European Personnel Selection Office's alleged discrimination against candidates without doctoral diplomas in a call for research contract agents**

Decision

**Case 535/2014/JAS - Opened on 06/05/2014 - Decision on 26/09/2016 - Institution concerned** European Personnel Selection Office ( No maladministration found ) |

The case concerned a selection procedure for contract agents organised by the European Personnel Selection Office (EPSO) in 2013. Candidates in such selection procedures must first meet certain eligibility criteria. Candidates who meet these eligibility criteria are then evaluated on the basis of selection criteria. The best candidates are then placed on a reserve list.

The complainant met the eligibility criteria, which included the need to have either a doctoral diploma or at least five years professional experience as a researcher. However, he was excluded from the competition after his application was compared with other candidates on the basis of the selection criteria. He then complained that the selection criteria had favoured candidates with a doctoral diploma, while the Call for Expressions of Interest had implied that a doctoral diploma would be treated as equivalent to five years of professional experience.

The Ombudsman inquired into the issue and concluded that there had been no maladministration. Eligibility criteria establish a minimum threshold that all candidates must meet. Selection criteria then serve to allow the selection board to identify the best candidates from amongst the eligible candidates. It is clearly within an institution's discretion to decide which selection criteria to use as long as they are not manifestly inappropriate. The Ombudsman concluded that the choice of selection criteria in this case had been perfectly reasonable. As regards the complainant's argument that the selection had not been transparent, the Ombudsman noted that the selection criteria had been set out clearly in the Call.

### **The background to the complaint**

1. The complainant participated in a selection procedure for researchers organised by the European Personnel Selection Office (EPSO) [1] in 2013.
2. EPSO first drew up a list of candidates who fulfilled the Call's **eligibility requirements**. To be eligible, the Call required candidates to have at least five years relevant professional experience **or** a doctoral diploma in one of the relevant scientific fields. EPSO then evaluated the eligible candidates in a pre-selection, based on information provided by the candidates. This



evaluation was based on three criteria: relevant doctoral diploma, relevant publications in peer-reviewed journals, and relevant academic and/or professional experience. A selection panel weighted each criterion from 1 to 3, reviewed the candidates' answers and assigned them points from 0 to 4. A candidate's final score was the sum of points for each answer multiplied by the corresponding weighting. The 3 600 candidates with the best scores were then invited to sit the computer-based test (known as the 'CBT').

3. The complainant does not have a doctoral diploma. He fulfilled the eligibility criteria because he had 10 years professional experience. During pre-selection, he was awarded 4 points for professional experience. As professional experience was given a weighting of 3, he obtained a score of 12 for that criterion. However, as he did not have a PhD or relevant publications, he obtained no additional points. After the evaluation of all eligible candidates, the best 3 600 were chosen to go forward to the next stage of the competition, which was the CBT. These candidates obtained a score of at least 15. The complainant was thus not invited to take the CBT.

4. The complainant contested this result. EPSO however replied that the evaluation had been correct. He then submitted a complaint under the EU Staff Regulations [2] . EPSO rejected this complaint. The complainant then turned to the Ombudsman.

#### **The inquiry**

5. The Ombudsman opened an inquiry into the following allegations and claims:

#### **Allegations:**

1) The talent screener used for CAST/S/5/2013 favoured candidates with a doctoral diploma. This was in contradiction to the Call for Expressions of Interest and thus also in breach of the principle of transparency.

2) EPSO wrongly rejected the complainant's complaint under Article 90(2) of the Staff Regulations as inadmissible.

#### **Claims:**

1) EPSO should acknowledge that the way in which the talent screener was applied in CAST/S/5/2013 was discriminatory and breached the principle of transparency.

2) EPSO should invite those candidates without doctorates who scored the maximum points for work experience to sit the next stage of the selection procedure.

3) EPSO should reply to the substance of the complainant's Article 90(2) complaint.

6. In the course of the inquiry, the Ombudsman received EPSO's reply to the complaint and the comments of the complainant in response to EPSO's reply. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

#### **Allegation that the talent screener favoured candidates with a doctoral diploma**



## Arguments presented to the Ombudsman

7. In his complaint, the complainant argued that the Call had been misleading. To the complainant, the Call had implied that, for the purpose of pre-selection, five years of professional experience would be considered as **equivalent** to possessing a doctoral diploma. However, when he was informed of the results of the pre-selection, he noted that this had not been the case. The complainant argued that, contrary to what the Call implied, candidates with doctoral diplomas enjoyed an advantage in the selection process. That breached the principle of transparency and constituted discrimination of candidates without such diplomas.

8. EPSO noted that the complainant most likely had misunderstood the procedure described in the Call. The two possibilities—doctoral diploma or at least five years of professional experience—were treated as fully **equivalent for the purposes of assessing the candidates' eligibility only** (governed by point IV. of the Call). However, the Call did not provide that a doctoral diploma and at least five years of professional experience must necessarily also be treated as equivalent for the purposes of the pre-selection based on qualifications (governed by point VI. of the Call). Such a selection implied that the different parameters of the candidates' professional and academic background needed to be assigned different values, depending on their perceived importance for the posts to be filled. This was expressed through the choice of selection criteria set out in point VI. of the Call and through the weighting factors assigned to these criteria.

9. EPSO said that the choice of selection criteria and the scoring method imposed by the Call had provided a certain advantage to candidates who possessed both a doctoral diploma and some relevant work experience. Such candidates could obtain scores under all three criteria (doctoral degree, publications and work experience). Candidates without such a diploma could score under two criteria only, namely publications and professional experience. However, EPSO argued, there was nothing unlawful about that. On the contrary, that merely reflected the purpose of the pre-selection stage, which was to select the candidates best suited for the jobs to be filled. It had been entirely appropriate and within the Institutions' discretionary preference to take the view that the best candidates would be those who could offer a full range of both high academic achievement and practical experience.

10. The complainant responded that, without an explicit statement to the contrary, it could reasonably have been assumed that the equivalence of a doctoral diploma to five years of professional experience would hold throughout the process. However, the complainant claimed, the procedure gave candidates with a doctoral diploma an "unfair advantage". He also questioned whether the criteria applied truly selected the best candidates, taking into account that candidates without doctoral diploma or publications had no possibility of passing the pre-selection stage.

## The Ombudsman's assessment



11. First, the Ombudsman does not agree with the complainant's argument that the Call implied that a relevant doctoral diploma and at least five years of professional experience would be treated as equivalent **throughout** the selection procedure.

12. As is clear from the Call, this equivalence—set out under point IV., “Eligibility Requirements”, of the Call—was meant to assess candidates’ **eligibility only**. Candidates who met one of these two **minimum conditions**, together with the general conditions, would be eligible for the subsequent selection procedure. The Call clearly states that pre-selection would then take place based on three separate criteria set out under point VI., “Selection Procedure”, of the Call. These were: holding a relevant doctoral diploma; having relevant publications in peer-reviewed journals; and having relevant academic and/or professional experience.

13. The Ombudsman notes that eligibility requirements serve only to set certain **minimum** requirements that all candidates need to meet to participate in a selection procedure. Eligibility criteria are not used, however, to carry out a **comparative assessment** of candidates, in this case a comparative assessment aimed at finding out who were the 3 600 best candidates.

14. As regards these selection criteria, Point VI. of the Call stated clearly that the “*selection panel will weight each criterion according to a scale ranging from 1 to 3*”. This wording explained that the selection panel could and would treat criteria—such as having a relevant doctoral diplomas or relevant professional experience—differently depending on their perceived importance to the needs of the services. At the same time, the Call explained that the selection panel would assign the candidates’ answers points from 0 to 4. The selection board therefore compared the candidates based on the requirements set out in the Call.

15. The Ombudsman does not agree with the complainant's argument that the procedure “unjustifiably” favoured candidates with a doctoral diploma. The Call expressly stated that candidates would be selected based on three separate criteria. Thus, EPSO was required to give all candidates who met those criteria points for each criterion. The fact that this might favour candidates who met all three criteria simply reflects the core purpose of the Call, which was to identify the candidates who best met the selection criteria. It was thus entirely appropriate to give more points to those candidates who fulfilled all three criteria.

16. The complainant seems to disagree with the institutions’ preference for candidates with both a doctoral degree and professional experience. The Ombudsman considers that it is clearly within an institution’s discretion to decide which selection criteria to use. The Ombudsman could only ever question the choice of selection criteria if they were manifestly inappropriate. Awarding candidates points for a holding a PhD, alongside the fact that they have relevant professional experience and publications, is, the Ombudsman notes, a perfectly reasonable decision.

17. Finally, the complainant argued that candidates with extensive relevant professional experience, but no doctoral diploma or a publication record, had no possibility of advancing to the CBT. Since the threshold for passing to the next round in the competition was 15 points, and a candidate who had professional experience only could have obtained a maximum of 12



points, the complainant was correct in this regard. Such a candidate could not have advanced to the next round. Likewise, a candidate who had a PhD, but no relevant publications and no professional experience, could not have obtained more than 12 points. However, these outcomes are simply the expected consequence of comparing the relative merits of all eligible candidates. Many such eligible candidates (at least 3 600 candidates) must have obtained points for at least two of the three selection criteria. The institutions were entirely justified in using these three selection criteria and in taking due account of the points obtained for all three.

**18.** In any event, the Ombudsman notes that it was mathematically possible for a candidate without a PhD to obtain up to 16 points and to advance to the CBT (provided he or she obtained 3 or 4 points for professional experience and for publications [3] ).

**19.** In view of the above, the Ombudsman concludes that the allegation—that EPSO wrongly favoured candidates with doctoral diplomas—is unfounded. There was thus no maladministration by EPSO.

**Allegation that EPSO wrongly rejected the complainant’s Article 90(2) complaint**

**20.** EPSO originally rejected as inadmissible the complainant’s complaint made under the Staff Regulations. EPSO says it did so because it understood the complaint to be directed against the Call, rather than against the decision excluding the complainant from the procedure.

**21.** The Ombudsman notes that EPSO has now, in its reply to the Ombudsman, addressed the complainant’s various arguments. EPSO has thus met the complainant’s claim that it should deal in substance with his complaint.

**Conclusion**

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

**There was no maladministration by EPSO.**

The complainant and EPSO will be informed of this decision.

Emily O’ Reilly

European Ombudsman

Strasbourg, 26/09/2016

[1] EPSO/CAST/S/5/2013. The Call for Expressions of Interest is available at: [http://europa.eu/epso/doc/call-cast-jrc-s5-2013\\_en.pdf](http://europa.eu/epso/doc/call-cast-jrc-s5-2013_en.pdf) [Link]

[2] Article 90(2) of the Staff Regulations (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 45, p. 1385).

[3] This criteria had a weighting of one.