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**LESSONS FROM EU OF
RECRUITMENT AND SELECTION
PROCEDURES – PRODUCT 2
DIALOGUE BRAZIL- EU ON
PUBLIC ADMISSION IN THE
FEDERAL CIVIL SERVICE**

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1. INTRODUCTION

The Brazilian public administration achieved success in the process of eliminating patronage and ensuring equality in terms of delivering impartial and fair recruitment and selection into its public service. This is considered a major victory in the transformation that Brazil has undergone in its consolidation of democracy and economic growth over the last two decades.

However, while the patronage system has been conquered – a significant achievement - issues and problems remain in the selection and recruitment system.

These issues can be summarised as follows:

There are high instances of individuals or groups seeking redress from failure in the examination process through the courts.

Recruitment bodies try to simplify the process to avoid lawsuits but end up neglecting important aspects that should be considered at the entry point

The image of the federal government is tarnished through instances of fraud (real or alleged) in the admission system

The competency requirements of future public servants are not always considered in the recruitment process.

Once appointed, there remains a relatively high turnover of staff, partly because civil servants apply through other public exams, to attain a position with a higher salary and/or don't identify themselves with the current job. There appears to be many instances of jobs of an equal character and responsibility having a higher salary attached.

In 2010, the OECD conducted a review of the public administration in Brazil and published its findings and recommendations in a paper entitled, OECD Reviews of Human Resource Management in Government: Brazil 2010, Federal Government. The paper was well received in Brazil and serves as very useful document for the medium to long term reform and development within the public service.

As part of the EU funded, Brazil – EU dialogue project, the Ministry of Planning requested assistance and services to discern lessons and experiences that might be useful in the short to medium term in changes to recruitment and selection within the public service. This assistance was requested within the framework of three projects that the Ministry is conducting.

Within the context of the projects there are two considerations.

Firstly, over the next 3-5 years it is estimated that some 60% of the personnel will retire. This provides a window of opportunity to change procedures and regulations and practice with respect to recruitment and selection. But secondly, as Brazil has a rather rigid legal system and the process of legal change can take a considerable period of time (minimum two years – unless there is sufficient political momentum for change), reforms and

changes that can be implemented would need to be possible within the existing legal framework. This does not preclude the possibility of legal change and there are drafts of legislation related to public service reform – proposed by both the government and political parties being lodged in parliament.

During a week long mission in Brasilia, at the outset of this project, the Ministry of Planning organised a series of briefings and presentations to explain the current position with regard to recruitment and selection in the public service.

This proved to be invaluable both in terms of providing background over the current state of the recruitment and selection process and also to discern the limits of change that would be possible.

While it is interesting to know what is going on within public administrations in Europe and probably elsewhere, more pertinent is what can be done in Brazil to improve matters in relation to the issues mentioned above, without recourse to legal change – and also taking into account the ‘culture’ in Brazil.

Therefore, this paper will provide an overview of what is going on in relation to recruitment and selection in the public service in the EU and then go on to provide a series of specific measures that could be introduced in Brazil that would help to tackle the immediate issues. Mention will also be made of one or two broader issues that affect public administrations, particularly the institution involved in trying to bring about the change. Given the paper published by the OECD on Brazil and its recommendations that appear to be relatively comprehensive for the medium to long term, this paper will concentrate more on perhaps less strategic, but more incremental steps that can be taken to improve the recruitment and selection process.

It is worth mentioning at the outset that most public administrations in the EU are undergoing a period of some change and restriction – brought about through the debt and credit crisis. Thus, the overall macro-economic environment within the EU is somewhat different from that in Brazil. In Brazil it appears that the process is trying to build upon a period of success. The conditions for reform and change may be somewhat different. Nevertheless, there are some useful examples that could be deployed in Brazil that could move the process forward and bring greater efficiency.

After a brief look at the dynamics and patterns of recruitment in the EU, this paper will look at a type of administrative system that could be adopted by Brazil. The adoption of such a system or elements of it could reduce significantly the number of court cases that are currently being lodged and lead to greater efficiency in the recruitment and selection process. We will also assess the internet and its utility – in a variety of different directions in the recruitment process.

Once, it comes to final selection, the probationary period will be examined with some thoughts given as to how this might be utilised in a pro-active manner. Finally, some considerations will be given to what might be termed cross-cutting issues on the recruitment and selection process with respect to data, the role of middle management and the position of the central organisation in charge of the whole process.

2. OVERVIEW OF SELECTION PROCEDURES IN EU STATES

Selection procedures in the civil service or public service systems of EU states tend to depend upon whether they are career or job based systems. However, all share the characteristics of trying to combine two key principles. These are:

- the right to equal access of every qualified citizen to the civil service
- recruitment of the best available candidates for the civil service.

In some cases both principles are required by the constitution of the country. However the balance between the two principles varies somewhat with some leaning more towards one principle than the other.

In countries more influenced by the classical French concept of public administration such as Spain, Portugal, Italy, and of course France, the focus tends more towards the equal access principle, whereas in other countries Netherlands, the Nordic countries and the United Kingdom the focus favours more the merit based selection system.

2.1 TYPES OF CIVIL SERVICE

Member States with career based systems (Austria, Belgium, Germany, Spain, Greece, France, Ireland, Luxembourg, Portugal) offer a career until retirement, with security of tenure. This is normally on a statutory basis. The selection method is normally by open competition.

In Member States with job-based systems (Czech Republic, Denmark, Estonia, Finland, Hungary, Sweden, Slovakia and the United Kingdom), employment is contract based. Pre-selection is based on documents supplied by candidates (curriculum vitae, motivation letter, diplomas, references, etc.) followed by a recruitment interview based on competence, skills and professional experience. Other Member States (Italy, Lithuania, Netherlands and Slovenia) use a mixed career and job-based system.

2.2 CENTRALISED/DECENTRALISED STATES

Most EU states now deploy a decentralized system where the ministry or agency is responsible for recruitment, using their own particular procedures within an overall framework. This is the case in Austria, Germany, Denmark, Estonia, Finland, Italy, Portugal, Czech Rep., Hungary, Lithuania, Latvia, Netherlands, Sweden, Slovenia and the United Kingdom.

In France and Spain the system is centralised in a ministry, while in Belgium, Cyprus, Greece Ireland, Malta, Poland, and Slovakia there is an independent office or commission in charge of the recruitment and selection process. In Luxembourg recruitment is either

centralised within the Civil Service Ministry or decentralised within the various administrations, depending on the nature of the post.

2.3 MINIMUM CONDITIONS FOR RECRUITMENT

All EU states have some minimum requirements to enter the civil or public service. This would include, for example a clean criminal record. With membership of the EU, the nationality requirement in the domestic state has disappeared for most positions, although some places are reserved only for nationals of the respective state, particularly in foreign affairs and security.

For higher level positions in the civil service a university degree is normally required. Most EU states have abolished age limits and in general the minimum age for entry is 18, although Slovenia and Finland allow entry from age fifteen. Some EU states have a legal requirement to prove mastery in the state's official language. This is the case in Austria, Belgium, Finland, Luxembourg and the Netherlands.

2.4 SELECTION CRITERIA

Based upon the principle of transparency, all vacancies in civil services are accessible to all citizens. In most states, job vacancies must be published at least in the official journal. In addition they are advertised in the recruitment section of national newspapers and through the national employment agency. Also, most states now use the internet to advertise positions either through a government portal, the agency/ministry responsible for recruitment or through employments agencies.

The principle of equal opportunity applies in all EU countries. However, there are differences in applying equal treatment for all candidates. Austria and Sweden use incentives to increase the number of women in management grades. In Belgium and the United Kingdom there are special arrangements to give the best possible access to disabled and ethnic minorities (the latter in the case of the UK). Most states now allow online applications with paper based registration. Similarly the right of access to documents relating to the selection procedure varies according to the country.

2.5 NATURE OF THE TESTS

All EU states have some form of competitive selection through a number of different stages. Greece, Lithuania and Slovakia have a pre-selection phase where documents are examined, such as curriculum vitae, motivation letter, diplomas, references, while Germany uses computerised pre-selection for diplomats. This a form of screening before examinations take place.

All countries – applying the principles of equality and transparency have open competitions. These combine written and oral tests. The first stage is normally the written test. Increasingly the internet is used to test and evaluate knowledge, aptitude and personality. This is the case in Belgium, Germany, Ireland, Luxembourg and the United Kingdom. Written tests are used to reduce the overall number of candidates and only those candidates who reach the agreed standard proceed to the next stage.

The final stage is usually the oral test or interview. The oral test is used to assess suitability to undertake the duties of the post being filled. Some states also use psychological tests and assessments. This is the case in Austria, Belgium, Germany, Luxembourg, Portugal and Slovakia. Where a recruitment interview is the sole selection mechanism this mainly covers a candidates' professional experience and reasons for applying for the job. Interviews are normally conducted by selection boards. They generally comprise officials of a grade higher than or at least equal to that of the vacancy. In Hungary psychologists form part of the boards.

2.7 EU RECRUITMENT

It is worth mentioning how recruitment and selection takes place at the EU level. The European Personnel Selection Office (EPSO) was established in 2002 to organise and manage recruitment for positions within the European civil service. Before that, each EU institution was responsible for its own selection competitions and for recruitment of staff. Successful candidates could, in principle, only be recruited to the institution for which that competition was valid. EPSO was established to harmonise and rationalise the selection process and bring greater professionalism into selection procedures. EPSO has the responsibility of selecting officials while the mandate of recruitment still rests with each individual institution. As an EU body, EPSO's management board is made up of one representative from each EU institution and three staff representatives. This board approves the rules governing the running of EPSO and approves the principles governing selection policy.

EPSO organises open competitions by publishing a notice of the relevant competition. This notice defines the purpose of the competition and its relevant organisation. The notice of competition is accepted as the "law" for the competition and must include:

- the nature of the competition;
- the kind of competition (on the basis of either qualifications or tests, or both);
- the type of duties and tasks involved in the posts to be filled as well as the function group and grade offered;
- diplomas and other evidence of formal qualifications or previous professional experience required;
- in the case of competitions based on tests, the nature of the tests (multiple-choice pre-selection tests, written, practical and oral tests) and the marks to be allocated to each;
- where applicable, the knowledge of languages required;

- the maximum number of candidates who may be invited to participate in the different stages of the competition;
- the number of successful candidates, to be listed in alphabetical order and/or by merit group;
- the closing date for applications.

All applicants must be a citizen of an EU member state, have full rights as a citizen, meet character requirements and have fulfilled any obligations imposed on them by the laws on military service. Applicants must also fulfil the specific criteria set out in the competition notice for the specific job to be filled. This is in relation to educational qualifications and/or professional experience. They must also satisfy specific language requirements. Normally there is a requirement for fluency in one EU working language and a very sound knowledge of two other EU working languages. In the case of competitions for linguists more competence in languages is required.

Where tests are used, EPSO decides whether or not the tests and examinations are held simultaneously, organises the date and place of the tests, arranges for the test papers to be translated and printed, for invigilation during the competitions and for assistance with marking (by means of optical scanning in the case of the tests).

The first stage of a selection process is the preliminary selection tests for admission to the competition. These must be taken in a language other than the candidates first language and normally consist of multiple choice questions to assess:

- knowledge of the EU, its Institutions and its policies;
- general ability, usually verbal and numerical reasoning skill.

The second stage is the comprehensive written test in the particular skill areas specified as necessary to perform the duties of the post and set out in the competition notice. Only candidates who succeed in the preliminary selection tests are invited to undertake the written test. If the preliminary and written stages have been taken together only the written tests of candidates who succeed in the preliminary tests are assessed.

The final stage of selection consists of an oral examination to complete the assessment of the candidate's suitability to carry out the duties.

At each individual stage of selection a 'cascade system' system is used. This means that only the highest scoring candidates proceed to the next round of selection. Candidates who have succeeded in the tests and examinations are eligible for inclusion on the reserve list subject to the maximum laid down in the notice of competition.

A selection board is appointed for each competition. EPSO appoints each selection board, while the members are drawn from the administrations of the institutions, and by the staff committees. These boards are made up of an uneven number of members. They oversee the selection procedures, under the guidance of a chair and within the framework defined

by the competition notice. If a board consists of more than four members, it must comprise at least two members of each gender. EPSO is also responsible for proposing a sufficient number of persons to enable the selection board to appoint assessors/markers for written examinations, and for organising oral tests (scheduling and arranging for interpreters to be present if necessary).

If a competition covers a number of different areas, EPSO may nominate a selection board for each. The boards are bound by the published competition notice and must exercise their powers of discretion within the legal framework set out in that notice. However the boards have wide powers of discretion particularly in relation to the content of tests, as they are responsible for selecting the tests used in the competition. The composition of each board is published in the EU's official journal and on the EPSO website before the date of the tests. For each competition, EPSO designates a coordinator and a secretariat to assist the Selection Board in all its work. Correspondence with candidates is almost exclusively electronic and is handled by EPSO on behalf of the Selection Board at every stage of the competition.

At the end of the competition, the Selection Board transmits the records, its report and the list of successful candidates to EPSO, which then informs the candidates of the results and transmits the list of successful candidates to the various institutions for their recruitment needs.

3. ADMINISTRATIVE SYSTEMS

Within EU states there are now fairly sophisticated systems in place to administer the recruitment and selection process. Whether in centralised or decentralised systems, there is a body in place that provides an oversight role. Such a body may be part of government, but increasingly is independent of government. This is the case in order to demonstrate that the civil service is not subject to political interference.

Moreover, states also wish to demonstrate that recruitment and selection is fair. Thus, the overall commission in charge of recruitment maybe separate from those actually conducting the recruitment. A particular case on point is the Civil Service Commission in the UK.

It has two main roles. These are to:

- uphold the principle that selection to appointments in the civil service must be on merit on the basis of fair and open competition.
- hear and determine complaints raised by civil servants under the Civil Service Code, the ethical code which forms part of the terms and conditions of every civil servant.

Whether a state retains these functions inside government or through an independent body maybe up to its political culture. However, there are features of the system that are useful for Brazil to consider as it seeks to make its selection and recruitment processes more efficient within its existing legal framework.

There are two main areas where there are currently discernable differences between the practice in many EU states and Brazil. This involves the application process and how complaints are dealt with and secondly the integrity of the entrance examination process and their quality.

3.1 COMPLAINTS

To stop large numbers of court cases, EU states have built in administrative procedures to deal with complaints. By having internal procedures within the system, states have found that recruitment becomes more efficient, less costly overall, and quicker. As long as there is confidence in the system, then most candidates that feel that if they do have a grievance that it has been sufficiently investigated and accept the result. This, of course, does not prevent them from subsequently using the courts if they sincerely believe that they have a genuine case. Within Europe as well there is the European Court of Human Rights that may be used as a court of last resort.

Complaints can be divided in to different categories.

Where a complaint is concerned with a particular entrance exam – where a candidate may be feel a grievance against their results or connected with it, this would normally in the first instance be handled by the relevant examination board or agency. A feature of EU states is that where possible, complaints should be dealt with at the earliest instance and by the responsible agency. If the complaint is not settled at this level, the candidate may lodge a complaint with the overall body responsible for the overall process. Thus, in the case of the United Kingdom this is the Civil Service Commission. At this level, the complaint will be considered less on the individual level (i.e., it will not look at whether an examination score is correct or not) but more at whether the process of the examination etc., was conducted fairly and within agreed rules and regulations.

An example of the process is provided by the British civil service fast track system. The website: <http://faststream.civilservice.gov.uk/How-do-I-apply/Complaints-Procedure/> provides details of how the complaint procedure works, what an applicant can complain about and the relationship between the fast stream service and the Civil Service Commission. Similarly, the Civil Service Commission website: <http://civilservicecommission.independent.gov.uk/civil-service-recruitment/complaints/> lays out the complaints that it deals with, in relation to the Civil Service code and principles. There is also a guide on how to take out a complaint and what will happen¹. Ireland has a similar system and the website <http://www.cpsa.ie/Default.aspx?SID=40&SSID=0> sets out the details.

A similar process exists at the EU level. Recruitment for entry into the EU level civil service is conducted by the European Personnel Selection Office (EPSO), http://europa.eu/epso/index_en.htm. At this level, the notice of competition sets out the types of procedures through which the results of a competition may be challenged. An applicant can request a review, if they consider there is a case. This is considered by EPSO and where appropriate transferred to the chair of the selection board, if it is within their remit. Responses should be made within fifteen working days. If dissatisfied, an applicant can lodge a complain under Article 90(2) of the Staff Regulations (to which EPSO must respond) or an appeal to the Civil Service Tribunal (where the legality of the decision is considered). An applicant if unsatisfied with the decision may appeal to the European Ombudsman. This office was established under the Maastricht Treaty to consider complaints about maladministration by EU institutions. The Ombudsman cannot annul or amend a decision adversely affecting a candidate. However if he finds maladministration has occurred he requests the institution concerned to take appropriate action. If the institution does not take the recommended action the Ombudsman can make a special report to the European Parliament.

While, acknowledging that Brazil does have a complaints process in place for the exams, it maybe wish to differentiate between complaints against the results and the process. It

<http://civilservicecommission.independent.gov.uk/wp-content/uploads/2012/04/Guide-to-Recruitment-Principles-Complaints-Feb-121.pdf>

may also wish to seek methods to deal with more complaints within the administrative system. This could be achieved by a two stage process. Complaints could be firstly considered by the agency administering the exams. The Ministry of Planning or some delegated commission or board could act as an overseer of the process by considering complaints at the secondary level. The objective would be to ensure that as many complaints as possible are handled successfully within the administrative system, thus reducing the number of cases that go to court. Annex One provides an example of a generic complaints form.

3.2 INTEGRITY AND QUALITY CONTROL

As noted in the introduction, an issue facing the public examination process is that too many people, often of the wrong calibre, are entering the public service. This suggests that there is an issue with the level and quality of the examinations themselves. Brazil is not alone with this particular problem. During the 2000s in the UK there was consistent criticism of the school examination process leading to university entry. This came about because there was a view that as the Labour government of the time had a policy of increasing access to university, so the examinations for entry had become easier. That is to say that examination boards felt under pressure to make the exams easier in order to increase the numbers of people eligible to gain a place at university.

Also it has been noted in Brazil that some of those conducting the exams do not always follow the correct procedures and rules, and have faced charges of corruption or malpractice. This in turn has put into some question the integrity of the process and places the government in a poor light.

Most examinations in Europe whether for public examinations or for university entrance etc., have a quality control system that can assure that the examinations are a rigorous test, suitable for assessing an applicants capability to perform the future work and retain the appropriate standard. Such quality systems maybe internal to the particular examination board or external, or a combination of both. While it would normally be expected that an agency or organisation conducting an examination would have such control systems in place, this may not always be the case.

In a sense the public examination system can be seen as part of the whole public service delivery process. That is to say that delivering quality examinations is a part of the delivery of services to the public.

A quality control system has two advantages. Firstly, it can ensure that the examinations remain relevant as tests for entrance into the public service. If there is a periodic audit or inspection of the public exams, the central body responsible for recruitment, along with the ministry or agency that is seeking to recruit along with the organisation conducting the examination can more accurately determine whether changes need to be made either to the process or to content of the examinations. Secondly, conducting such audits or inspections helps to engender more public confidence in the process. This is particularly the case if the findings are made public.

As with the complaints system, an area that would need to be considered, is the degree of independence that the quality control system would have. It is likely that to begin with at least, in Brazil such a system would be managed and organised by the ministry of planning. Moreover, it is probably wise to pilot such an initiative with one or two examination agencies and organisations to determine how the process can work and to see the effect that it makes.

Quality control could be carried out as an audit conducted by the central agency or through an independent inspectorate, or possibly a combination of the two.

3.3 CODE OF CONDUCT

In states where the recruitment process has been decentralised or where the administration aspects such as the conduct of the examinations has been outsourced, a code of conduct has been introduced. In essence, this might be seen as less a legal document but a codification of the process involved, the standards to be maintained, and the regulations that the agency/organisation agrees to abide by. Such a code of conduct can be particularly useful in helping to set standards and provide a common approach.

The overall body in charge of recruitment would draft the code of conduct, but if it is produced in association with the agencies, there are clear advantages as they can buy into the process.

Such a code of conduct helps to provide integrity to the process and increase public confidence in the public examination system and those administering the system. Thus, over time it ought to lead to a reduction in the number of cases going to court.

A good example of the three issues, complaints, quality assurance and codes of conduct is provided from Ireland. Of interest maybe the fact that Ireland introduced these features and actually reorganised its recruitment and selection processes following a review from the OECD in 2008.

Ireland has a career-based system civil service system and now has a decentralised recruitment system. Recruitment is managed by the Public Appointment Service (PAS). The service is independent of the government but reports to it and has established complaints procedures and quality control through audits. It has produced an overall code of conduct for recruitment and selection and any body that receives a licence to conduct examinations or recruitment signs up to the code of conduct or has a specific one.

Annex Two provides an example of a generic code of conduct that encompasses complaints, quality control or audit and the relationship between the central body and those involved with recruitment and selection.

3.4 OTHER ISSUES

Under the current arrangement in Brazil, applicants pay a fee to enter a particular examination and then proceed through the various components that the specific examination has. At the same time the agency as well as the Ministry of Planning publicise, mainly through billboards and in newspapers, the announcement of the public examination.

While this process enables everyone to know that the examination will take place, the procedures of it has led to among other things to:

- Large numbers of people applying for entry, many of whom may not really be eligible.
- Large numbers of people applying because they receive a fee-waiver – due to their economic condition
- Significant numbers of court cases being filed – generating an ‘industry’ of appeals

The consequences are that the examination process has slowed down and at times grinds to a halt while waiting for the courts to adjudicate on particular cases.

Experience from EU countries suggests that there are measures that could be introduced that would speed up the process and reduce the number of applicants. Such measures could be introduced without recourse to further legislation, but might require codification through administrative regulation.

3.4.1 SELF-TESTING

A number of countries use the internet to provide opportunities for applicants to discern whether they are likely to succeed or not in the examination process. Thus, an applicant can take online tests to see whether they would be likely to succeed or not. A particularly good example of this is the UK’s Civil Service Fast Stream system. (www.faststream.civilservice.gov.uk/). Here a potential applicant can take tests to see whether they have the potential skills and knowledge for a position in the system.

Such tests can be organised either to capture information about the potential applicant or left for self-analysis. An advantage of using this sort of system is that enables the publishing of the type of profile that the positions require and can be adapted to allow for online applications to be made. Ultimately of course the process can be extended to allow for online examinations.

Brazil may find that this is a very useful tool in reducing the number of applications made. The more people can find out about the position/examination process that they are entering the better and it enables them to make more informed choices. Additionally, clearly people will not spend their money on entering an examination process, if they can clearly see that they have neither the skills required or the knowledge to either pass the exam or perform the duties required in the position.

A method to introduce self-analysis would be to select one or two areas for piloting and assess over 1- 2 years whether the system is providing benefits. As it is likely that it would, it could then be rolled out across all public examinations.

As Brazil will obviously increasingly use the internet for recruitment and selection purposes, it is as well to decide upon the appropriate organisational method.

One example that could be followed is that of Ireland where its www.publicjobs.ie website provides what could be termed a one-stop shop for recruitment purposes. The service brings together recruitment for the Civil Service, the Health Sector, the Police and other emergency services, Local Authorities, European and International Organizations and the Education Sector. (See later suggestions regarding the examination process). The French also have a more portal site for recruitment and the examination process <http://www.fonction-publique.gouv.fr/>. The EU itself has a central website for all civil service recruitment. As mentioned before this is organized by EPSO.

3.4 2 ADVERTISING THE RECRUITMENT PROCESS

Currently Brazil uses newspapers, billboards and posters as its main methods of advertising public examinations. A list of the public examinations is also on the ministry website. The internet, however, provides a much more powerful medium for advertising the examinations. As with providing pre-tests, using the internet more for recruitment purposes would allow for a number of initiatives to advertise the public examinations. Most EU states now use the internet, probably as one of the main methods for announcing and publicising exams and for the recruitment process.

The internet provides many advantages. Firstly, all the information surrounding the public examination can be cheaply and comprehensively made available. Also profiles of the type of position can be placed. This can be done in terms of the generic job description and perhaps more interestingly by profiling people already in the position. The civil service in the UK uses this latter technique, see <http://faststream.civilservice.gov.uk/Fast-Streamer-Profiles/Emma-Reed/> as an example. By providing such profiles, potential applicants can see more clearly whether they would be interested in the work and also perhaps whether they are genuinely capable. Clearly the UK uses such a technique as a way to try and attract those of a high calibre that it wishes and also to ward off those who really shouldn't apply. The whole of the faststream.civilservice.gov.uk website is worth looking at in detail as it provides many useful ideas for how Brazil could enhance the pre-examination process.

Most of the techniques could be introduced without recourse to any changes in legislation, as they are providing examples, methods and awareness of the entry requirements; the types of job and work and the type of people likely to be recruited.

3.4.3 CONTRACT AND APPLICATION

Currently in Brazil, applicants pay a fee to take the public examinations. However, there does not appear to be a specific application form, and even if there is, it is not tied to any type of notions of contract or application. As such, therefore, there is no administrative mechanism to bind people to the rules and regulations governing the examination process. At the same time the courts in Brazil have recognized that the rules for each examination published in the official gazette are binding. However, introducing a formal application form would be a method to bind the applicants to the rules and regulations governing the process. This could include that applicants must follow the administrative complaints and review procedures in place before going to court. This would not affect an individual's right to go to court overall, but would help to minimise the current practice whereby most people use the courts if they feel there is something wrong. It would be a step forward if people view the courts as a last resort.

3.4.4 SPECIFIC GROUPS

Currently people who are determined to be 'poor', if eligible, have their examination fees waived. Although the figures may be uncertain, that this has led to a significant increase in applicants and that many are not up to the minimum standards. Without wishing to prejudice the equality of opportunity principal that lies at the heart of this, it may be possible to reduce the numbers through a simple measure. Rather than make the process completely free, the examination fee could be considered as a loan that, if the applicant is successful, would be repaid overtime once employment is secured. For those that fail, the fees should of course still be waived. However, introducing the notion of a loan might mean that those who are genuinely interested and likely to succeed would apply.

4. PROBATIONARY PERIOD

All EU states use a probationary period, normally combined with a training period. The length of the probationary varies. In Brazil the understanding is that the probationary period is seldom used as a method to determine whether an employee is really up to performing the tasks required of the position. In this it is not alone.

The purpose of the probationary period is to provide the government with an opportunity to evaluate an individual's conduct and performance on the job to determine if an appointment to the civil service should become final. Until the probationary period has been completed, a probationer is legally normally still an applicant for an appointment. In theory they still have the onus to demonstrate why they should be appointed to the civil service. Once an appointment is finalized, the probationer becomes an employee who is given a considerable level of protection in almost all EU countries. In Brazil, as was mentioned on many occasions during the briefing week, a job in the civil service is perceived as a job for life.

However, until the appointment is finalized, a probationer should only have limited job protection. That stated, the reality is somewhat different. A survey conducted in the USA among the civil service in the federal government in 2005 found that that the probation period was hardly used, being merely seen as a period for confirmation of full time employment². At the same time, when the survey asked managers whether they should positively certify whether someone on probation should be made permanent, over 70% said yes. Also 50% of those surveyed said they would not recruit the individual again if they had the chance, with over 80% being unsure. Tellingly at that time only 1.6% of those on probation were not taken on as permanent staff.

There are few figures available for EU countries. However, it is safe to assume that the situation is a similar. However, there is a trend towards placing civil servants on shorter term contracts, particularly in countries where there has been significant public administrative reform. Also it needs to be borne in mind that many countries of the EU are undergoing austerity programmes, that are leading to retrenchment in the public administration. Such factors will bear upon the degree to which the probationary period is used. At the same time as most EU states conduct some form of personality/psychological testing and include interviews, perhaps the probation period is less crucial as they feel that they have found the right person for the job.

In the United States, the findings of the survey resulted in a change in legislation and the enactment of new guidelines in the use of the probationary period. Instead of an employee's contract automatically becoming permanent, now there needs to be some form of appraisal made. While some regulations and laws required changing, equally

The Probationary Period: a critical assessment opportunity. Washington DC: US Merit Systems Protection Board, 2005.

important was a series of recommendations to change the way in which the probation period was perceived and used. In Brazil, law n 8112/90 states that during the probation period performance evaluations should be made regularly and taken into account when making an employee permanent. However, it seems that very little effort is put into such evaluations. Supervisors aren't always prepared for this task and there is a lack of knowledge about what should be considered a good performance.

These can be summarised as follows:

- Ministries and agencies should create a culture in which probationers are treated with respect as candidates for an appointment, but not as employees with finalized appointments. The probation period in the United States may vary between one to two years. However, the point is to change the culture so that managers realize that they have opportunities during the probation period that they may not have hitherto considered possible.
- Performance appraisals for supervisors should include an evaluation of how thoroughly they have used the probationary period as an assessment tool. Supervisors should be held accountable for using the probationary period fairly, fully, and in the best interest of the government. This should be considered as an intrinsic part of their existing responsibility to thoroughly assess their subordinates and take action when appropriate.
- Supervisors should receive training in their responsibilities to the agency, the civil service, and the probationer. They should be made aware when they have hired a probationer and be reminded that their role is to assess the individual for appointment as well as to supervise the performance of work towards organizational goals.
- Policies should treat unsuccessful probationers differently from employees with finalized appointments. They should ensure that probationers receive clear guidance and a full understanding of performance expectations, as well as the appropriate level of training for an individual with their level of experience. However, they should also ensure that probationers and their supervisors recognize that probationers are not similarly situated to other employees and are not entitled to the same level of investment or opportunities for rehabilitation.
- Probationers should be notified, before accepting a job offer, that they will be probationers and what that means. Human resources staff and supervisors should ensure that probationers are aware they have been offered an opportunity to demonstrate on the job why finalizing their appointment would be in the best interests of the agency and the entire civil service—but that a finalized appointment is not guaranteed.
- In their discussions with a probationer, before and after the individual begins work, supervisors should reinforce the message that probationers are still applicants and the probationary period is an extension of the examining process, prior to finalizing probationers' appointments.

- Agencies should use the probationary period to terminate probationers who fail to demonstrate the appropriate level of performance and conduct.
- Agencies should support supervisors in their efforts to use the probationary period and avoid sending any messages that could inappropriately discourage supervisors from taking action. For example, if supervisors believe that the authorization or funding for spaces would be lost if they terminated probationers, they may be less likely to terminate marginal/unsuccessful probationers. Supervisors should be given the opportunity to recruit for the right fit, rather than being put in the position of having either the marginal/unsuccessful probationer or nobody at all.
- Supervisors should establish performance standards for probationers that address both organizational performance goals and their own expectations for their probationers. Trainees should be measured by both the performance of short-term goals as well as their demonstrated potential to advance to the full-performance level. Standards should be set based upon what could reasonably be expected of a new employee, and those standards should not be modified around the individual. Rather, the individuals should be measured against the standards.
- Supervisors should provide clear instructions to probationers as well as guidance and training in order to give probationers a fair opportunity to demonstrate why it is in the public interest to finalize an appointment to the Federal service. If, after this instruction, a probationer is not fully fit for the position, in both performance and conduct, supervisors should terminate the probationer.

The Ministry of Planning might consider conducting a similar type of survey across the federal government to discern how the probation period is currently used and the perception of it by hiring and line managers. Not only would this be useful for in terms of finding out about the probation period but would also start of a process of communication and consultation with human resource and middle managers across the federal public service. See the discussion on middle management below.

As it is likely that the survey results may prove similar to those in the United States, the Ministry of Planning might consider drafting a set of guidelines that ministry human resource and line managers can use during the probationary period.

5. TRANSFER ACROSS/WITHIN THE CIVIL/PUBLIC SERVICE

The Brazilian public service appears to suffer from two mutually connected issues. Firstly there appears to be quite a high turn over of staff, because employees continue to seek higher salaries. This they do by entering another examination process. Secondly as competencies are not always defined for a particular job, there appear to be many instances where the 'wrong' person ends up occupying the position.

The reason why people keep moving maybe mostly due to the lack of a sufficient vertical career structure within organisations and also the fact that there are jobs of a similar standard, but with a higher pay scale. Thus, there is an incentive to enter a new examination in order to fill a similar position but with higher pay. There is nothing intrinsically wrong with people moving around the system, if that change results in better people entering the positions. However, as the evidence suggests such movement is not really resulting in improvements, there is clearly a problem.

It is not easy to see that there is a simple solution to this. The main problem seems to be that there is such a high degree of can be termed job fragmentation. Over the years it seems that ministries and agencies have classified a job in a particular way. This has led to similar jobs in reality being classified as different and the fact that these have been codified in law makes it difficult to change in the short term. The fact that jobs of a similar type have different salaries attached to them clearly encourages people to keep moving around.

What seems to need to happen is a rationalisation of job classifications and categories. However, this is going to take time to take place as it is unlikely that existing staff would voluntarily allow their position to be reclassified with a possible resulting pay cut. That stated, as a high percentage of the overall workforce in the federal service is coming towards retirement over the next three – five years, as an individual retires, the job should be evaluated and placed into a broad category before being re-filled.

The OECD Reviews of Human Resource Management in Government: Brazil 2010, Federal Government provides a number of examples from the EU and elsewhere of how other countries have attempted to categorise and classify jobs across the civil and public service. Possibly the best example is provided by Spain, which like Brazil has a centralised recruitment process. Spain's reforms that started in 1984 and continued in 2007 have brought greater coherence and flexibility into the system.

In 1984 Spain introduced reform to provide flexibility into its civil service. This involved merging a number of corps (civil servant officials), and adopting a mixed system based on positions and the corps. The main objectives were to make the system more open and flexible and to reduce the power of the corps. This was achieved by making the position a key element of personnel management. This system now coexists with the previous career system that was organised by corps. The system now allows for external recruitment based in the corps and internal promotion open to the different corps. The Basic Statute of the Public Employee (EBEP), from 2007, allows public administrations to recruit alternatively for positions and not necessarily for corps. An important element of the system is the requirement for developing inventories of positions in order to provide a common framework for internal recruitment and mobility.

In general, posts are no longer assigned to a particular corps. In principle, members of any corps can apply for any job if they possess the required educational level (and in some cases the specific degree needed to exercise a profession, such as a doctor or an architect).The corps influences entry into the public administration, but no single corps can self-manage the recruitment examinations, as it previously could.

Corps that performed similar functions have been merged. For example, several corps of tax controllers have become one corps. Corps are considered either “general” inter-ministerial corps, assigned to the Ministry of Public Administration or “special”, when related to a specific profession and assigned to the relevant ministry.

The administrative career is now based on positions. Civil servants can apply internally for higher positions. After two years in the same position, the level of the position becomes the grade. A civil servant cannot be assigned to a position lower by two levels than his/her consolidated grade. When occupying a position of lower level than his/her grade, he/she will be paid the salary supplement corresponding to the consolidated grade.

The Basic Statute for the Public Employee (EBEP) (2007) requires the public administration to structure its organisation through an inventory of positions (Relaciones de Puestos de Trabajo) or other similar instruments. These inventories should include for each position:

- name of the position;
- group or groups of civil servants who can apply for the position (groups defined by the educational level needed to access the civil service);
- in specific cases, the corps which can apply for the position;
- system of internal selection (competition or free designation);
- level of the position (in the 30-level scale); accordingly a level supplement is to be added to salary;
- position supplement to be added to salary.

Through positions, organisations try to avoid rigidities by using a legal provision which allows public administrations to assign civil servants functions, tasks and responsibilities different from those corresponding to their positions.

Thus, now an individual can join the civil service either from the outside or through internal movement. External access to the civil service takes place through competitive examinations which are different for each corps. Civil servants can compete to join a different corps in a closed process with some posts reserved for career civil servants (a process called internal promotion).

Internal movement takes place under a provision called position filling (internal recruitment among civil servants after entry level). Positions to be filled are internally advertised and a competition based on merit is held to choose among the candidates. For top civil service positions and for other very specific positions it is possible to choose freely among civil servants. The selection criteria and the system to be used are set out in the inventory of positions.

As we can see from the Spanish example, bringing some rationalisation to the job classification system not only allows for greater flexibility, but also enables internal movement in the system, without recourse to another entrance examination. The example shows a possible combination of external competitions for certain positions and internal competitions for others. Such processes, which exist in many EU countries, are merit-based, with transparent and objective selection procedures. They are usually overseen by a public service appointments commission of some sort and there is usually an avenue of appeal in case of dissatisfaction with the process.

This brings us on to a discussion of the role of the central organisation in the recruitment process.

6. THE ROLE OF THE CENTRAL MINISTRY/AGENCY

Currently Brazil still has a fairly centralised recruitment and selection process. While the examination process has been outsourced successfully, the ministry still keeps a tight reign on overall recruitment. This is essentially because it retains the budgetary responsibility for HR across the federal government. However, while retaining formal control over recruitment and selection, over the years, there has been the fragmentation of job categories and classifications as indicated above. This has been due to the particular pressure that ministries, agencies and unions acting in particular capacity. Thus, while the ministry has the overall responsibility for recruitment and selection, it has perhaps found it increasingly difficult to manage this process. Following the outsourcing of the examination process and ministries and agencies deciding for themselves on job classifications and categories – or at least being in a position to modify the overall context, the situation seems to be sufficiently fractured that alternative models for the ‘central’ agency could be considered.

What seems to be important in this context is to separate out certain issues. The ministry of planning, as the central authorised organisation needs to retain responsibility for budgeting, monitoring the implementation of government policy and requires information with regard to annual and future planning. At the same time it may not need to retain responsibility for the implementation of recruitment and selection. Why?

Examples from the EU and elsewhere show that separating out implementation of recruitment and its budgeting may lead to more successful results. In Brazil the ministry has so to speak both ‘the carrot and the stick’. This means that it is responsible for helping other ministries and agencies to abide by rules, regulations and practices and encouraging better practices on the one hand, while on the other it has the overall responsibility in budgetary terms for determining the recruitment process. For example in Belgium, recruitment criteria are agreed between Selor (the federal selection office), and the recruiting organisation, and the skills and types of employees the organisation wants to recruit are specified. Selor advertises the position, receives applications, vets the applicants for formal requirements, conducts tests and examinations, and draws up a ranked list of applicants who have passed the selection process and are eligible for tenured public service.

Selor’s main advantages are its professionalism and its independence from the recruiting organisations. It is a modern recruitment agency using state-of-the art methods. It has developed competence in competency and methodology certification. It has invested in modern facilities and equipment, is actively developing its use of the Internet, and has developed e-supported recruitment processes. While in French and Dutch, its website www.selor.be is worth examining. Selor is funded from the federal budget but is independent of the government.

Another example is provided by Ireland. As mentioned previously Ireland has a career-based system with a decentralised recruitment system. Recruitment of tenured civil servants in the government administration is managed by the Public Appointment Service (PAS). The process is similar to Belgium's. Testing has shifted from abstract tests to more job-simulation tests, strategic exercises, competency tests, and to a lesser extent, the examination of achievements. The process generates a ranked list of approved candidates, who are offered employment as vacancies become available. Employers have limited possibilities to choose whom to pick, or applicants to choose where to go.

PAS also carries out competitive examinations for senior levels in the local government sector, the health sector (including specialist doctors, managers, nurses and clerks), police and other agencies of the state. It also carries out executive searches, with tailored recruitment.

Ireland differs from Belgium in having a framework for decentralisation. Departments and government bodies can handle their own recruitment, provided that PAS has found them sufficiently competent, and provided that they observe the government's Code of Practice for recruitment. PAS is an agency that works in effect for the government but is independent of it.

A characteristic in Europe is to have some type of body that is responsible for recruitment and selection that is to some degree independent of the government. There are a number of advantages to this. Firstly, such an agency or commission may have more integrity and attract more public confidence being seen to be independent of the government. Secondly, such an agency allows for the concentration of professionalism and expertise in recruitment. Thirdly such a body can help in enforcing common standards across the recruitment process and agree codes of conduct with the bodies and agencies carrying out the examination processes. Such a body can also help in the process of attempting to set more standardised job categories and classifications across the system. This is because it would be seen as a professional body there to help all institutions to recruit the best staff, rather than a competitor in the system.

However, the creation of such a body in Brazil would no doubt, entail the enactment of new legislation and thus maybe something to look at over the medium term. Nevertheless, in the shorter term it could be considered to establish such an agency or commission for the DAS system. As the positions there are more flexible and subject in many cases to political appointment, a more independent body could help in moving towards a more talent and merit based system.

Following discussions on the presentation of this report in its initial draft in Brasilia, it became clear that at some stage in the process of change, the role of the central ministry, i.e., the role of the Ministry of Planning will need to be considered. As a first step in this process, the ministry would be well advised to consider its own position and have a clear strategy of its way forward. Once the ministry is clear about what it does, what it is responsible for and what it ought to be responsible for, so it will be easier for others to adjust and bring themselves into line with the ministry's position. This discussion needs to revolve around whether a central agency or ministry can adequately help others within the system on the one hand and on the other still retain the budgetary responsibility over those that it is seeking to help, without being constrained by particular pressures that derive

from the political process. At the heart of the process, the Ministry of Planning is seeking that the best people are recruited to particular positions on the one hand and also wishes to ensure that there is greater flexibility and standardization across the federal service – thus in recruitment and selection terms wishes to ensure that the most modern and professional mechanisms are used in this process, and yet on the other hand it is continually pressurized by the political system in its various guises, to compromise from this position in order to meet short term and particular political imperatives. While it is beyond the scope of this specific project to advise on this, there is clearly a tension and the question arises about how best to address this. As indicated from the examples provided, there appears to be a view that separating out the the requirement for efficiency and professionalism from the budgetary process may lead to better results. This maybe because there is a realization across the system that improvements in the way people are recruited and how to derive efficiency is one process and the budgetary system that may well constrain the development of the former is another. In essence, the current method in Brazil is to try and correlate a longer term process – i.e., the planning and implementation of recruitment and its professionalization on the one hand, within the restraints of a budgetary system that has many short term constraints on the other. A creative tension between two separate institutions may lead to more beneficial results rather than keeping it within the same organization. That stated, it is clearly something to think about and is something for the medium term, as the various project underway within the Ministry of Planning and elsewhere within the government are being considered.

7. MID LEVEL MANAGERS

Whatever changes that Brazil adopts in the recruitment and selection process and also with respect to workforce planning (the subject of product 4), the role of middle managers will be crucial. These people are often neglected, yet remain crucial to bring about the changes required. This observation is not only mentioned in the literature in public sector processes (perhaps under-emphasised) but is also the experience from a number of projects designed to bring about change in the public sector.

Projects are often designed by senior managers or donors with respect to international assistance projects and the people that are responsible for delivering the change expected are often ignored throughout the whole initial process. Yet, middle managers are crucial to bring about the change that is desired. This is self-evident, as they stand between senior management and the overall project or reform idea and the people that will be responsible for implementing the change.

Middle managers in the public service, in particular, can be an immense block upon change. Their allegiance can lie in two directions. Some maybe be keen upon reform, change and efficiency. They look towards senior management, indeed maybe seeking to become part of senior management themselves. They see themselves as reformers, change agents and so on. On the other hand having got themselves into such a position, some middle managers maybe very resistant to change, preferring a quiet life. Any aspect of change can be perceived as a threat whether apparent or real. This can be more accentuated in the public sector rather than the private sector. In the latter case, there will

be less job security, the profit motive etc., that, irrespective of the predilection of the individual will force through the change, despite the resistance.

According to a 2007 [Accenture survey](#) of middle managers around the world, 20% reported dissatisfaction with their current organization and that same percentage reported that they were looking for another job. In the same survey, the biggest frustration was not being appreciated enough by their employer. Yet at the same time as pointed out by Thomas Colligan, from the Wharton Business School: 'Many companies are seeing significant turnover in middle management ranks, and with significant turnover, they don't have the ability to execute strategy. Top management can spend all their time creating strategy, but without someone there to implement it, where are you at the end of the day?'

Whether in the public or private sector five areas have been identified to encourage greater engagement and performance from middle management.

These are:

- Training - Despite the importance of excellent middle managers, few have a management qualification. Helping them to acquire the skills they need benefit an organisation and increase employee engagement.
- Coaching and mentoring - Personal development is a big attraction for managers at all levels.
- Clear career progression - Most managers want to advance in their careers.
- Involvement – organisations need to be human orientated, not machine like. Involving middle managers and allowing them to participate in a change decision, design and implementation will lead them to have more buy-in and ownership so when they have more accountability.
- Communication - Middle managers are essential conduits in getting strategy from senior managers to everyone else. Any strategy initiative will need to go through them, so communication is key and should be clear.

In Brazil it is possible that the DAS system can be a block on career progression for managers. This is because managers, even down to a middle level may come from the DAS system and consequently be dismissed following a particular contract or term of office of a government. Nevertheless, efforts probably need to be made where possible to facilitate career progression for those managers within the civil service.

Obviously, the Ministry of Planning can only do so much in this area as the overall body responsible for human resource issues in the public service. At the same time, as the ministry is embarking upon a further round of reform in recruitment practice and work force planning it could consider ways in which it can engage more with middle managers across the federal government. This paper provides one or two starting points with respect to conducting surveys and eliciting data. In addition, the workshops conducted for the experts with representatives from other ministries and agencies are also something that could be continued. The more that middle managers know about what the reform efforts and the more they are included in the process – including during the initial phases of determination, the more likelihood there is that there will be a greater 'buy in' to the reforms and changes proposed.

8. DATA CONSIDERATIONS

During the first mission as part of this project, there was a lot of anecdotal evidence of the need for change and improvement and also a fair amount of what might be termed macro data. Many of the presentations extrapolated that there was a particular issue based upon one or two examples. These may have been used for illustrative purposes or possibly suggest an issue that needs some consideration. Also it was pointed out that the current data sources within the public administration are old and it is difficult to extract little more than general overall figures.

The presentation on the final day in relation to workforce planning and the results of a survey conducted to see the nature of human resources across the federal government also bear upon these remarks.

As the central ministry for planning and in this case for recruitment and selection, clearly the ministry requires a lot of data and also needs to be able to interpret the data that it collects or is collected elsewhere but that it has access too. It was pointed out during the final presentation that many ministries and agencies now have adapted the central system or deploy their own systems. Thus, the results of the survey conducted were uneven. If the ministry is to keep its central role as the controller of human resources it clearly needs to develop a system whereby it is collecting and receiving data that it can use for planning and allocation purposes.

From the survey data presented and based upon one of the underlying issues of this and other projects, namely that a high proportion of the civil service will retire over the next five years, there is in fact an anomaly. Under Brazilian legislation, employees have a grace period within which they can retire that stretches over a number of years – dependent upon the number of years of service they have done. Thus, while it is estimated that some 60-70% may retire over the next five years, this may stretch over a ten year period. At the moment there is no method for collecting precise data, as the decision to retire – within the period stipulated - rests with the individual concerned and HR departments are not feeding trends of retirement practices to the ministry. Thus, at the moment, while the overall figure may be a reasonable estimate, it appears not to be based upon a sufficient level of specificity.

The fact that the system currently used is old and cumbersome is perhaps an advantage for the ministry, as there is likely to be an awareness that the overall system needs to be changed. It is understood that a new system is being designed and one of the issues is to ensure that the old data can be transferred to the new. At the same time there needs to be a realisation that, overtime, more and more functions of the ministry are likely to be decentralised. Such is the trend and this makes rigid data capture that much more problematic. At the same time, given technological advances and the openness of database software – this should not prove to be an insurmountable problem.

Often it is felt that changing a system such as human resource planning and recruitment is impossible, as there are too many entrenched systems and practices. However, given technological advances and open systems, it may actually be more practical to introduce data systems, rather than trying to continue with old ones.

Thus, it may be useful for the Ministry of Planning to clearly determine what type of data it needs to collect. A working group could be established within the ministry for this purpose and it could broaden to include representatives from other ministries and agencies. The process could start with a consideration of precisely what data the ministry requires from those that conduct the examinations. This could then move on to determine what data is required for planning purposes from the other ministries and agencies across the federal government.

The issue of data requirements is beyond the remit of this particular exercise (although it will be considered again the paper on workforce planning), but is mentioned here, as there may be opportunities that exist that have as yet not been fully considered by the ministry.

9. CONCLUSIONS AND RECOMMENDATIONS

The OECD in its in depth review of the public administration provided many recommendations for medium to long term reform. The purpose of this paper, produced under the auspices of the Brazil-EU Dialogue, is to provide advice and guidance of incremental change that could be considered. Following a week long series of meetings and presentations in Brasilia in early July 2012, it was agreed that what would be most useful for the Ministry of Planning at this stage is to see whether there are techniques and examples from Europe and elsewhere that might be incorporated into the current methods of recruitment and selection in the public service in Brazil, without recourse to new legislation.

Therefore this paper has attempted to find examples and initiatives that can be considered to bring greater efficiency into the system.

The experience from EU states, particularly those that have undergone reform in recent times, is that there is a need to have robust quality control systems in place for the examination boards and that these need to be backed upon with reliable complaints procedures and codes of conduct for those administering the process. The more public confidence there is in the process and the more that examination bodies adhere to common standards, so the likelihood is that the examination process will be more efficient and reliable. Moreover, with more sophisticated administrative procedures in place complaints and issues can be dealt with more quickly and satisfactorily leading to less of a requirement for individuals to use the courts.

While difficult to introduce in the short term, consideration might be given to the establishment of an independent agency or commission to oversee the recruitment and selection process. Again this will assist in bringing in more public confidence into the process and also help in establishing common standards of approach. Moreover, as a major exercise is needed to standardise job categories and classifications across the federal service, this might be best carried out by a professional human resource team in such an independent body. Such a categorisation and classification seems urgent given the degree of job fragmentation that has taken place in recent years. This in a sense has led to inequality between jobs of the same type and has led to individuals continuing to

move around the system and take further exams in the process, in the search of higher pay. The fact that many people are coming towards retirement provides a window of opportunity here, provided that it is well planned and executed.

An area that clearly needs to be looked at is the use of the probationary period. Currently it appears that it is not readily used as a method to consider finally a person's suitability for the job, but as a bureaucratic impediment to permanent employment. It would appear that the dynamic needs to change, where everyone is aware that the probation period is an extension of the recruitment process and is not a guarantee of permanent employment. To bring about such a change will require much greater engagement from middle and line managers who would normally have the final say over recruitment.

Again clearly, the Ministry of Planning and indeed the whole government will wish to consider the longer term restructuring and reform as suggested in the OECD report. At the same time, it is hoped that the areas indicated in this paper and the examples provided might also prove useful in the shorter term as Brazil seeks to modernise and bring greater efficiency and quality into its recruitment and selection procedures.

In the end all public administrations are going through change and modernisation. The attempt to find the best people for the right job and to ensure that the job fits the overall requirements of the particular organisation is never as straightforward as it might seem in theory. It becomes particularly difficult when reform is introduced within a rather rigid legal and cultural framework. However, some small incremental steps can make a considerable difference and it is hoped that will be the result in this case.

ANNEX 1: SAMPLE COMPLAINTS FORM

RECRUITMENT BREACH COMPLAINT FORM

To be completed by the Complainant

This form can be completed electronically and submitted to the xxxx at:

Email address, Or by post to:

Personal Details

Name of Complainant:

Address:

Postcode:

Home Telephone No.

Daytime/Mobile Telephone No.

E-mail

Please give details of the recruitment competition that forms the basis of your complaint:

Name of department or agency:

Grade/pay band of advertised post:

Name of advertised post:

Date of competition:

Complainant Assurances & Declaration

1. The xxx will only hear complaints where you have first complained to the relevant department or agency and, having completed their complaints procedure, remain dissatisfied with their response.

2. The xxx will not hear a complaint concerning issues which are currently the subject of an application to an employment tribunal.

Declaration

I confirm that I wish to request that the xxx investigates my complaint as detailed in this form. In lodging this complaint with the xxx I also confirm that:

- I have completed the complaints procedure of the relevant department or agency and have received a response from them. I remain dissatisfied with their response.
- the subject of this complaint is not currently the subject of an application to an employment tribunal, nor am I currently awaiting a judgement based on this complaint.
- I give my consent for the Ministry to use my personal data, in confidence, when considering my complaint.
- I consent to the Ministry making enquiries in order to investigate this complaint.

Signature:

Date:

Please provide a summary of your complaint. In doing so please explain how you consider that the above recruitment exercise breached the regulations. Please attach copies of your correspondence with the relevant department or agency, especially their final response to your complaint. (Please note that this section can be expanded if necessary)

If your complaint is upheld and it is found that there had been a breach of the Regulations, what in your view would be a satisfactory conclusion?

- An apology from the department or agency
- An explanation from the department or agency
- An assurance from the Ministry that the relevant department or agency has taken appropriate action to prevent a similar breach taking place in future competitions.
- Other

Please ensure that copies of any relevant information are sent to the Ministry with a copy of this completed form.

Thank you.

ANNEX 2: SAMPLE CODE OF CONDUCT

The Ministry of Planning was established on xxx under the terms of the law xxx.

As the principal regulator of recruitment and selection processes within the public service, the Ministry has a statutory role to ensure that appointments in the organisations subject to its remit are made on merit and as the result of equal, fair and transparent appointment processes.

Appointment processes for recruitment to all positions within the remit of the Law are subject to Codes of Practice published by the Ministry. The Codes set out the regulatory framework for such appointment processes and centre on five recruitment principles. Examples of each principle in practice illustrate the Ministry's views on their application and indicate the areas the Ministry will seek to review through its audit function. The Codes also set out requirements in relation to the conduct of candidates in the selection process, thereby ensuring that a standardised approach to recruitment is adopted by all participants.

The Ministry recognises that recruitment practices need to evolve in response to changing work and social environments and to keep abreast of good practice in every sense. The Codes therefore reflect the Ministry's contemporary views on the various elements of the appointment process and provide a principle-based approach that acknowledges and encourages the dynamic nature of recruitment systems.

This Code of Practice sets out the principles to be observed in respect of both external and internal

SECTION 1

1.1 The Ministry of Planning

The Ministry of Planning has overall responsibility for recruitment and selection in public service independent body. The mandate for the Ministry is set out in law.....

1.2 What is the Ministry's statutory remit?

The law... governs appointments to positions in the Public Service, etc to which the law ... applies.

The purpose of the law is to provide a modern and efficient framework for public service recruitment that allows for increased flexibility while maintaining high standards of probity and fairness. It provides the Ministry with responsibility for establishing and safeguarding standards in the recruitment and selection of appointees as well as the powers necessary to enforce those standards, which include the power to amend the terms of a recruitment licence issued to a body, or to revoke the licence in extreme cases, but which do not include the power to alter a recruitment decision once made.

The standards established by the Ministry must be made publicly available in Codes of Practice and must be observed by office holders.

1.3 What does the Ministry do?

The Ministry establishes standards of probity, merit, equity and fairness to be observed in the appointment of persons to positions in the bodies subject to its remit.

The ministry discharges its responsibilities by:

- Publishing and maintaining Codes of Practice which set out the standards to be observed in relation to appointments in the public service
- Auditing and evaluating recruitment policies and practices to safeguard these standards and to establish whether or not its Codes of Practice are being observed
- Granting recruitment licences and revoking same where necessary
- Issuing instructions and advices to licence holders
- Establishing and setting down appropriate appeal procedures
- Reporting to the parliament and the government, and providing information to ministers on the operation of recruitment and selection processes
- Carrying out its powers and duties under the Law.

The Ministry has responsibility for the protection of the public interest in relation to recruitment and selection matters and uses its audit function to ensure that those operating its Codes are at all times committed to the principles set out in them.

The Ministry contributes to the development of an effective and impartial public service by carrying out the duties imposed on it by the law. It provides an assurance to the public that appointments are made on merit and equality. This means that office holders select, from those candidates available, the best person for the job for the purpose of ensuring, as far as reasonably possible, that the duties of the job will be carried out as effectively as possible.

1.4 What are the Ministry's Codes of Practice?

The Codes of Practice set out the Ministry's core recruitment and selection principles and inform their interpretation and application. These standards must be observed by all those involved in the appointment processes under the Ministry's remit. This principle-based approach is intended to maintain and enhance consistency, fairness, transparency, accountability and diversity in recruitment practices. As such, the Codes reflect the Ministry's responsibilities with regard to protecting the public interest.

The Codes provide office holders with a clear and concise guide to the approach they must take to ensure a fair, open and transparent appointment process that produces a quality outcome and commands public confidence. They are intended to contribute to the development of best practice in the field of recruitment and selection.

The Codes provide a flexible framework based on the Ministry's recruitment principles. They recognise that office holders require flexibility to deal efficiently and effectively with the diverse range of appointments they make. Accordingly, the Codes enable office holders to adopt strategies and develop processes to implement the principles effectively. All appointments made under each Code must also comply with relevant employment and equality legislation.

Each Code also sets out the procedure in relation to requests for review and cases of failure to comply with any provision of that Code.

1.5 When does this Code apply?

This Code applies to both external and internal appointments to:

list

1.6 Structure of this Code

This Code of Practice details the core principles of probity, equity and fairness, selection based on merit, and best practice, which should be applied to all recruitment processes. The Code, takes account of observations from office holders and the general public alike, reflects a changing work and social environment, the different business needs that this has placed on those operating the Code, and the consequent necessity for flexibility, subject to the principles, in recruitment practices. The main body of the Code is arranged as follows:

Section 2: Definitions and interpretations of each of the Code principles in relation to the appointment process

Section 3: Details of how the audit function operates

Section 4: Details of responsibility for the application of the principles

Section 5: Details of the obligations placed on candidates

Section 6: Details regarding investigations by the Ministry

Section 7: The procedure for processing requests for review made to an office holder

Section 8: The procedure to be followed by the office holder and by the Ministry in reviewing allegations of failure to comply with this Code of Practice

In addition, appendices offer further details on positions for which this Code is not applicable and definitions of the terms used in this Code.

1.7 Monitoring the application of the Codes

Section xx of the law/regulation provides that the Ministry may audit recruitment and selection policies and practices in order to evaluate and safeguard the standards established in its Codes of Practice.

The audit function is a key mechanism to ensure adherence to the principles set out in each Code of Practice. Audit programmes 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 Ministry (see section 3).

1.8 Further advice

Advice and information regarding the content and interpretation of the Ministry's Codes of Practice are available from xx, or such officer(s) as may be nominated by the xxx.

SECTION TWO

Definitions and interpretations of each of the Code principles in relation to the appointment process

2.1 Probity

A key objective of the ministry is to ensure acceptable standards of probity in all appointment processes. The principles established by the Ministry in this Code of Practice are underpinned by the core values that define probity such as integrity, impartiality, fairness, reliability and ethical conduct. The ministry is concerned to nurture a values-based culture of trust, fairness, transparency and respect for all, and to ensure that probity standards are subject to consistent, rigorous 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.

Examples of this principle in practice include:

Code of Practice

- Compliance with the terms of this Code of Practice and any other guidelines issued by the Ministry.

Recruitment licence

- Adherence to the terms and conditions of the recruitment licence.

Respecting confidentiality

- The treatment of applications in strict confidence, subject to the provisions of the xxx and any other provisions that have been clearly identified in the published documentation.

Legislative requirements

- Compliance with relevant legislation xxxx.

2.2 Appointments made on merit

Appointment on merit means the appointment of the best person for any given post through a transparent, competitive recruitment process where the criteria for judging suitability of candidates can be related directly to the qualifications, attributes and skills required to fulfil the duties and responsibilities of the post. This fundamentally fair and just approach to dealing with applicants results in the selection of individuals whose competencies, abilities, experience and qualities best match the needs of the organisation

in question. Merit is therefore an integral principle which must underpin all appointment practices.

Throughout any merit-based process, 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 should embrace genuine equality of opportunity, and this should be integral to the processes by which appointments are made.

Examples of this principle in practice include:

Attracting candidates

- Clear, concise and effective marketing designed to target an appropriate applicant field is communicated openly to afford equality of opportunity.
- Marketing approaches ensure that recruitment is from the widest pool of available (and relevant) talent and experience.
- Opportunities are accessible to all potentially eligible applicants and are in formats and media that are accessible to persons with disabilities.
- Marketing techniques do not exclude any particular group within society.
- All eligible staff members have appropriate access to the marketing approaches used in the case of internal appointment processes.

Job and person specifications/competency framework

- Job specifications/competency role profiles identify relevant criteria against which candidates can be measured throughout the selection process and can be justified in accordance with relevant legislation.
- Person specifications are related accurately and precisely to the duties of the post.
- Selection process
- A high-quality selection process based on the skills and qualities relevant to the post.
- Job and person specifications/competency profiles are reflected consistently throughout the selection process.

Criteria for selection are based on the essential requirements of the post, promoting the principle of equality of opportunity.

- An active focus on ensuring that adverse impact issues are considered and addressed in advance of recruitment campaigns.
- Appointment processes are monitored and evaluated, and positive solutions are found to tackle any matters arising.
- Clear decisions are made regarding the approach to be adopted in any recruitment campaign, and explicit consideration is given to opportunities and/or measures to promote (or remove possible barriers to) equality of opportunity, as part of the planning of a selection process.
- Assessment mechanisms

- Assessment mechanisms facilitate the identification and selection of the person or persons who best match the requirements of the post.
- Applications are considered on the basis of abilities, qualifications and suitability for the post in question.

Eligibility

- Adequate checks are in place to ensure that a candidate meets the eligibility requirements before an offer of appointment is made.
- Only candidates who fulfil the eligibility criteria and who have successfully completed the selection process (including compliance with this Code of Practice) are deemed eligible for appointment.
- Candidates who do not satisfy the eligibility criteria are disqualified from the process and notified accordingly.

Appointments

- Appointments are made following a competitive, merit-based selection process in which all candidates have been treated equally at each stage. Merit relates to the abilities, experience and qualities of individuals who best meet the requirements of the particular job.
- Information on the approach that will be adopted to determine the order of merit is communicated to candidates at the outset.
- The criteria on which selection decisions will be made are identified in advance.
- Decisions taken throughout the selection process are based on the qualifications, attributes and skills necessary to undertake the duties and fulfil the responsibilities of the post to the required standard.
- At the final stage, candidates who meet the required standard for the job are placed in order of merit and considered for appointment in that order.

2.3 An appointment process in line with best practice

All appointment processes should be efficient, cost-effective and in line with best practice. Best practice extends to all aspects of the appointment process, including defining job and person specifications, marketing the vacancy and selecting appropriate assessment mechanisms. It also includes providing training and supporting management arrangements to ensure the creation and maintenance of appropriate records.

Examples of this principle in practice include:

Determination of job criteria

- Requirements are not unduly restrictive and reflect what is necessary to perform the duties of the position. Non-essential requirements, which could have the effect of excluding persons with disabilities, should not be specified.
- Desirable criteria, where identified, are not regarded as a prerequisite for the job.
- Terms and conditions, eligibility criteria and the use and knowledge of the Irish language are agreed with the appropriate minister at the outset, in accordance with the requirements of the job and/or any statutory requirements.

Language proficiency

- Provision in relation to the award of additional credit for proficiency in xxx languages is made in line with government policy, in accordance with the requirements of the job and/or any statutory requirements.

Job and person specifications

- The job specification and person specification, being the foundation of the selection process, are considered and endorsed at an appropriate senior level within the employing organization in advance of commencing the process.
- Substantive elements of the job and person specifications are consistently reflected throughout the selection process.
- A well-thought-through approach to recruitment is evident with a real focus on the requirements of the job and the skills needed.

Appropriate measures are taken in relation to flexibilities which might be employed to facilitate persons with a disability.

Marketing

- Specific marketing channels appropriate to the position under consideration and to the potential applicant pool are used with supporting rationale for the approach adopted.

Application process

- All reasonable efforts are made to provide an application process which is accessible to all candidates.

Documentation

- Accurate, sufficient and appropriate documentation is issued to candidates, including information on how to access this Code of Practice and in particular information in relation to review procedures as outlined in sections 7 and 8 of this Code.
- Fully documented records, which clearly support each stage of the process, are retained, including notes of interviews.
- Documentation supporting assessment stages of the process reflects the selection criteria.
- Documentation and information on its use, which are open to audit by the Ministry, can be retrieved and accessed.
- Documentation sets out, in line with the requirements of the Act, the specific criteria candidates are obliged to fulfil, i.e. they must:
 - have the knowledge and ability to discharge the duties of the post concerned
 - be suitable on the grounds of character
 - be suitable in all other relevant respects for appointment to the post concerned;

and if successful, they 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
- are fully competent and available to undertake, and fully capable of undertaking, the duties attached to the position.

Assessment mechanisms

- Assessment mechanisms are used in line with best practice.
- Assessment processes are appropriate to the selection criteria.
- Selection processes are underpinned by objectively written and effective job and person specifications, focusing on the purpose of the job, its main accountabilities and the essential skills needed to perform the job effectively.
- Selection processes consist only of properly validated selection tools and techniques.
- Written tests, where they are used as part of the selection process, are job related.
- All reasonable efforts are made to accommodate candidates, with no unnecessary obstacles placed in their way.
- Enhanced facilities and equipment are provided as necessary to enable candidates to perform to their optimum.

Shortlisting

- An appropriate means of shortlisting is employed (where shortlisting exercises are carried out).

Management systems and administration

- 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.
- The effectiveness of assessment processes is reviewed and evaluated regularly.

Training

- 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 process being deployed.
- Chosen selection techniques are only used by appropriately qualified individuals who have been properly trained in their administration, scoring and interpretation, and who are qualified to select a test which is valid for a particular purpose.
- Disability awareness training is provided as appropriate.

Quality assurance procedures

- Appropriate procedures are in place to quality assure the appointment process.
- The effectiveness of assessment processes is reviewed and evaluated regularly.

2.4 A fair appointment process applied with consistency

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

Examples of this principle in practice include:

Job and person specifications

- Job and person specifications are free from bias or poor practice.
- Job and person specifications are consistently reflected throughout the selection process.

Marketing

- All marketing and supporting materials are accessible, free from bias and reflect, where appropriate, the job and person specifications and assessment process that will be followed.
- Clear, concise and effective marketing designed to target an appropriate applicant field is communicated openly to afford equality of opportunity.
- Marketing approaches ensure that recruitment is from the widest pool of available (and relevant) talent and experience.
- Opportunities are accessible to all potentially eligible applicants and are in formats and media that are accessible to persons with disabilities.
- Marketing techniques do not exclude any particular group within society.
- All potentially eligible staff members have appropriate access to the marketing approaches used in the case of internal appointment processes.

Documentation

- All documentation and the use of such documents comply with relevant employment legislation, Freedom of Information laws and equality legislation and guidelines.

Assessment mechanisms

- Assessment tools comply with requirements for fairness and freedom from bias.

Selection process

- Shortlisting criteria are job related and applied consistently across all candidates.
- Reasonable consideration is given to equality principles when constituting selection
- boards, where practicable, e.g. gender representation is taken into account.
- Systems are in place to ensure that selection boards carry out the selection process in a fair and consistent manner.
- All appropriate and reasonable accommodations are provided to candidates with disabilities thereby ensuring that they have the best opportunity to perform to their optimum.

Management arrangements

- The effectiveness of assessment processes is regularly reviewed and, where necessary, appropriate action is taken.
- Appropriate monitoring arrangements are in place and follow-up actions are adopted.
- Mechanisms are in place to collect feedback from all those participating in the appointment process.
- Controls are in place to ensure that appropriate processes are adopted and delivered.

Training

- Arrangements are in place to ensure that appropriate training, including disability awareness training, is available and delivered.
- Arrangements are in place to ensure that all those participating in an appointment process have the necessary skills and are provided with appropriate information on the process.
- Training is delivered to an appropriate standard and updated as necessary.
- Training covers the structure of the process and the appointment context, including current and forthcoming legislation.
- Effectiveness of training is monitored and evaluated and follow-up action is taken on an on-going basis.

2.5 Appointments made in an open, accountable and transparent manner

Transparency in the appointment process and the openness with which candidates are dealt with by office holders will enhance candidate confidence. Open and active communication on the process and the basis for assessment is essential. There should also be a real commitment to offering meaningful feedback to candidates who seek it.

Examples of this principle in practice include:

Marketing

- Marketing and supporting materials are accessible to all candidates.

Application process

- All reasonable efforts are made to ensure an application process which is accessible to all candidates.

Documentation

- Documentation and the use of all documents support a commitment to offer open feedback to candidates.

Management arrangements

- Arrangements are in place to ensure effective candidate communication throughout an appointment process.
- Appointment processes are not subject to undue delays, with reasons for any delay recorded.

Selection process

- The criteria for selection promote the principle of equality of opportunity.
- There is an active focus on ensuring that adverse impact issues are considered and addressed in advance of recruitment campaigns.

- Appointment processes are monitored and evaluated, and positive initiatives are employed to tackle any matters arising.

Clear decisions are taken on the approach to be adopted in any recruitment campaign, and explicit consideration is given to opportunities and/or measures to promote (or remove possible barriers to) equality, as part of the planning of a selection process.

Selection boards

- Systems are in place to ensure that selection boards carry out the selection process in an open and transparent manner.
- Members of selection boards have regard to their responsibilities under the freedom of information, data protection and employment equality legislation.
- Members of selection boards are briefed on disability awareness and equal opportunity policy.

Communication

- There is a commitment to open, timely and effective communication to candidates.
- Enquiries are dealt with in an efficient and timely manner.

Feedback

- Clear, specific and meaningful feedback is provided when requested by candidates.
- Effective systems are in place to manage the feedback function.

Requests for review

- Requests for review of a selection decision are dealt with in an efficient and timely manner and in line with the Code procedures.

Complaints alleging a breach of the Code of Practice

- Allegations of a breach of the Code of Practice are dealt with in an efficient and timely manner and in line with the Code procedures.

Retention of records

- Appointment processes are fully documented at all stages.
- Records/papers are retained for a reasonable period of time and only then disposed of in accordance with xxx.

SECTION 3

3.1 The legal position

Section xx of the law provides that the Ministry may establish procedures to audit the recruitment and selection process.

3.2 Application

3.2.1 The objective of the audit process is to ensure that recruitment policies, practices and support systems are designed and operated in accordance with the Code of Practice. Audits may examine any part of the appointment process and 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 individual recruitment programmes.

3.2.2 The audit function is a key mechanism enabling the ministry to safeguard standards. It aims 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 ministry.

3.3 Audit procedures

3.3.1 Office holders must co-operate fully with all audits undertaken by or on behalf of the Ministry. 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.

3.3.2 Advance notice will be given of the intention to carry out an audit. This will provide sufficient time to prepare all necessary documentation and statistics and will enable the review to take place with the minimum possible disruption.

3.3.3 Audits will be conducted in an efficient manner and the audit steps will be set out clearly in advance.

3.3.4 At the conclusion of an audit, the findings will be discussed with the audited body before a report is submitted to the Ministry. 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.

3.3.5 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.

3.3.6 When conducting audits, the Ministry's mandate is to ensure that:

- Appointment processes are operated in accordance with the Code of Practice
- There is no scope for patronage
- Office holders' instructions and guidance, including (in the case of licence holders) guidance on the use of listed recruitment agencies, are consistent with the spirit and letter of the Code of Practice
- All those with responsibility for organising appointment processes understand the Ministry's requirements
- Those serving on selection boards have either undergone training delivered on a timely basis and appropriate to the specific assessment process deployed or have sufficient interviewing experience at an appropriate level
- Those administering selection techniques are appropriately qualified individuals who have received proper training

Action has been taken to correct any instances uncovered by internal monitoring where the Code of Practice has not been followed, and any new developments in recruitment policy or practice such as new selection procedures are consistent with the Code.

3.4 Publication of reports

3.4.1 The Ministry will publish a report of the outcome of each audit on its website. The Ministry will also publish an account of its audit activity in its annual report.

SECTION 4

RESPONSIBILITY FOR THE APPLICATION OF THE RECRUITMENT PRINCIPLES

4.1 Responsibility for the application of the principles

4.1.1 Responsibility and accountability for appointments rest with the office holder. To maintain the probity of the appointment system, an office holder is responsible to the Ministry 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 Ministry.

4.1.2 Office holders who are granted recruitment licences may delegate all or part of the task of recruitment. Where such a delegation is made, the Ministry, rather than the office holder concerned, 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 Ministry.

4.1.3 Licence holders may seek the assistance of listed recruitment agencies (details available from the Ministry) in respect of some of the tasks connected with selection under the recruitment licence held. Notwithstanding this, 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 procured, 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 Ministry.

4.1.4 Where an appointment process is undertaken jointly by two or more organisations, the office holders concerned must agree in advance that one of their number will be responsible and accountable to the Ministry for ensuring that the terms and conditions of this Code of Practice and any other guidelines issued by the Ministry are fully complied with.

4.2 Accounting for recruitment decisions

Those responsible for recruitment and selection processes need to be able to demonstrate that they have complied with the Ministry's recruitment principles. Accordingly:

- All decisions on the approach adopted in any appointment process should be clear and evident
- Appointment processes should be fully documented and effective management systems and arrangements (including document management) should be in place
- Those responsible for recruitment need to monitor and evaluate their processes and take positive initiatives to tackle any matters arising
- Records/papers should be managed in accordance with the terms of the xxx
- Office holders – and ultimately the Ministry – need to be satisfied that appointment processes have been properly carried out.

SECTION 5

APPOINTMENT TO POSITIONS IN THE CIVIL SERVICE AND PUBLIC SERVICE

5.1 Canvassing

Candidates should note that canvassing will disqualify them and will result in their exclusion from the appointment process.

5.2 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 personate a candidate at any stage of the process.

5.3 Penalties for failure to comply

5.3.1 Any person who contravenes the above provisions, or who assists another person in contravening the above provisions, is guilty of an offence. A person who is found guilty of an offence is liable to a fine and/or imprisonment.

5.3.2 If a person found guilty of such an offence was or is a candidate in a recruitment process, then:

- Where he/she has not been appointed to a post, he/she will be disqualified as a candidate
- Where he/she has been appointed subsequent to the recruitment process in question, he/she shall forfeit that appointment.

SECTION 6

INTERFERENCE WITH THE RECRUITMENT PROCESS

Where the Ministry is of the opinion that there may have been interference or attempted interference with an appointment process, it may investigate the matter or cause it to be investigated by a person authorised on its behalf. Accordingly:

- The office holder has a duty to inform the Ministry 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, the xxx has a duty to inform the Ministry of any interference or attempted interference with the process
- A listed recruitment agency has a duty to inform the licence holder of any interference or attempted interference with the process
- A person found guilty of an offence is liable to a fine or imprisonment, or both.

OVERVIEW OF REVIEW / APPEALS PROCEDURES

The Ministry has a statutory role to establish and set down procedures to address candidates' requests for review and candidates' complaints in relation to an appointment process.

There are two distinct procedures and they are mutually exclusive.

Section 7 sets out the precise manner in which a request for a review of a decision relating to an appointment process should be made by a candidate as well as the manner in which the request should be dealt with once made.

Section 7 review procedures apply in cases where a candidate is unhappy with an action or decision in relation to his/her candidature and wishes to have that decision reviewed, in circumstances where the candidate, while unhappy with the action or decision, does not believe it to have amounted to a breach of the Code of Practice. A section 7 review is carried out by, or on behalf of, the office holder. The Ministry has no role in a review process conducted under this section.

Section 8 sets out the precise manner in which an allegation of a breach of this Code of Practice should be made by a candidate, as well as the manner in which the complaint should be dealt with once made.

Section 8 review procedures apply in cases where a candidate believes that there has been a breach of the Ministry's Code of Practice. Allegations of such breaches should be addressed to the office holder in the first instance. If a candidate is dissatisfied with the outcome of the office holder's review, he/she may then request the Ministry to undertake an examination of the alleged breach.

A candidate seeking feedback relating to his/her candidature should obtain this from the office holder in charge of the recruitment process and need not invoke any of the procedures referred to above. It is expected that such feedback will be managed by an office holder as an integral part of the appointment process.

Before submitting a request for review, candidates should determine which procedure is appropriate to their particular circumstances. Office holders are advised to satisfy themselves, as far as is practicable, that the appropriate procedure has been invoked by the complainant when accepting a request for review.

The review procedures allow for matters to be resolved on an informal basis and the Ministry recommends that the office holder, subject to the agreement of the candidate, should endeavour where feasible to avail of the informal process before making use of the formal review procedures.

It is important to note that where a selection process is reviewed under section 7, a complainant may not then seek a further review in respect of the same matter under section 8, other than in exceptional circumstances, as may be determined by the Ministry in its sole discretion.

SECTION 7

REVIEW PROCEDURES WHERE A CANDIDATE SEEKS A REVIEW OF A DECISION TAKEN IN RELATION TO HIS/HER APPLICATION

General information

7.1 The review procedures established and set down in this section (section 7) apply in cases where a candidate wishes to have an action or decision in relation to his/her candidature reviewed. The procedures and standards to be followed by the complainant and the office holder in the handling of requests for review are set out below.

7.2 As with the recruitment processes themselves, and within reason, fair procedures should be applied by all bodies dealing with requests for review made under this section.

7.3 The Ministry has no remit to investigate complaints from candidates which do not amount to a breach of the Code of Practice.

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

7.5 Each office holder should appoint a decision arbitrator (a person at a senior level unconnected with the selection process) who will adjudicate on requests for review in cases where a candidate is not satisfied with the outcome of an initial review. The office holder may appoint a suitably qualified external decision arbitrator if he/she so wishes.

7.6 The review procedure comprises two stages.

The first stage involves a review by a person in the recruiting body referred to as the "initial reviewer". Where a candidate remains dissatisfied following this initial review, he/she may seek to have the conduct of the initial review examined by a "decision arbitrator".

As an alternative to the above, it is open to a candidate to seek to have the matter resolved on an informal basis, as set out below. If a candidate remains dissatisfied following any such discussion it is open to him/her to seek a formal review.

Informal process

7.7 When a request for a review of a selection decision is received from a candidate, the Ministry recommends that every effort should be made by the office holder, subject to the agreement of the candidate, to resolve the matter on an informal basis before making use of the formal review procedures set out below. Should the candidate remain dissatisfied following any such discussion, or not wish to have the matter dealt with informally, then he/she may adopt the formal procedures in accordance with the process set out below.

7.8 The informal process may be availed of within 5 working days of notification of the initial decision, and should normally take place between the candidate and the person who communicated the decision (or such other person acting on behalf of the office holder as may be appropriate depending on the circumstances).

7.9 Where the decision being conveyed relates to an interim stage of a selection process, the request for informal review must be received within 2 working days of the date of receipt of the decision.

7.10 The office holder must carry out the informal review without delay and within a period of time that enables the candidate to avail of the formal review procedures within the specified timelines should he/she so wish.

7.11 Where a candidate remains dissatisfied following any such informal discussion, he/she may adopt the formal procedures set out below. If the candidate wishes the matter

to be dealt with by way of a formal review, he/she must do so within 2 working days of the notification of the outcome of the informal review.

Formal process: Initial review

The procedures and standards to be followed by the complainant and by the office holder in the handling of requests for review are set out below.

7.12 The candidate must address his/her concerns in relation to the process in writing to the office holder, setting out those aspects of the action or decision in relation to his/her candidature that he/she wishes to have reviewed.

7.13 A request for review must be made within 10 working days of the notification of the initial decision. Where the decision relates to an interim stage of a selection process, the request for review must be received within 4 working days. This is necessary to ensure that delays in the recruitment process are avoided.

7.14 Any extension of these time limits will only be granted in the most exceptional of circumstances and will be at the sole discretion of the office holder.

7.15 The review procedure:

- Upon receipt of the request for review, the office holder should issue an acknowledgement within 3 working days.
- The case should be reviewed by a person other than any individual directly associated with the decision in question.
- The person(s) conducting the initial review (the “initial reviewer(s)”) should consider any written submissions made by the candidate, and all other relevant information, including any emails, notes or memoranda held by the office holder in respect of the selection process. Where necessary, the initial reviewer should meet with the personnel of the office holder involved in the selection process and/or the candidate for the purpose of eliciting further information. Subject to any statutory (or other relevant) restrictions on disclosure, the initial reviewer shall provide the candidate with any relevant and material emails, notes or memoranda held by the personnel of the office holder in respect of the selection process, on request.
- The outcome must generally be notified to the candidate within 20 working days of receipt of the complaint or request for review. Where the investigation does not allow a decision within this timeframe, the initial reviewer must keep the candidate informed of the status of the review and the reasons for the delay.
- In communicating the outcome to the candidate, which will be done by means of a written report, the initial reviewer should indicate that the candidate may seek to have the outcome of the initial review reviewed by referring the matter to the decision arbitrator. The initial reviewer must further state that a request to do so must be made in writing within 7 working days of receipt of the outcome of the initial review.

Review by the decision arbitrator

7.16 Should a candidate be dissatisfied with the outcome of the initial review, he/she may request a review by a decision arbitrator of the conduct of the initial review.

7.17 The role of the decision arbitrator is to assess whether the initial review has been carried out in line with proper procedures.

7.18 The decision of the decision arbitrator in relation to such matters is final.

7.19 A request made to the decision arbitrator must be received within 7 working days of the notification of the outcome of the initial review.

7.20 The review procedure:

- Upon receipt of the request for review, the decision arbitrator should issue an acknowledgement within 3 working days.
- The outcome of the investigation must be notified to the candidate in the form of a written report within 10 working days.
- The decision of the decision arbitrator in relation to such matters is final. The decision arbitrator will make his/her decision on the basis of any written information available in respect of the matter, or written submissions made, and will not generally conduct interviews, although he/she may do so if warranted by the particular circumstances of individual cases.

7.21 Where a review of a recruitment/selection process has taken place under this section 7, a complainant may not seek a further review of the same matter under section 8 other than in the most exceptional circumstances (which will be determined by the Ministry in its sole discretion).

SECTION 8

REVIEW / APPEALS PROCEDURES IN RELATION TO ALLEGATIONS OF A BREACH OF THE CODE OF PRACTICE

General information

8.1 The review/appeals process enables persons to seek a review by the office holder in the first instance, and by the Ministry subsequently on appeal, when they believe that there was a breach of the Code of Practice by an office holder. Allegations of such breaches should be addressed in writing, setting out the basis for the complaint being made, to the office holder in the first instance. The Ministry has no remit to investigate complaints relating to non-selection or non- appointment unless it appears reasonable to conclude from the information provided to it that the selection process may have breached the Code of Practice, save where the complaint relates to an alleged failure to conduct a review under section 7 or 8 in accordance with the requirements of section 7 or 8.

8.2 As with the recruitment processes themselves, and within reason, fair procedures should be applied by all bodies dealing with complaints and requests for review.

8.3 A complaint in relation to an alleged breach of the Code of Practice will be accepted by the Ministry 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.

Informal process

8.4 When an allegation of a breach of the Code of Practice is received from a complainant, the Ministry recommends that every effort should be made by the office holder, subject to the agreement of the complainant, to resolve the matter on an informal basis before making use of the formal review procedures set out below. Should the complainant remain dissatisfied following any such discussion, or not wish to have the matter dealt with informally, then he/she may adopt the formal procedures in accordance with the process set out below.

8.5 The informal process should normally take place between the complainant and the person acting on behalf of the office holder. The office holder must carry out the informal review without delay.

8.6 Where a complainant remains dissatisfied following any such informal discussion, he/she may adopt the formal procedures set out below. If the complainant wishes the matter to be dealt with by way of a formal review, he/she must do so within 2 working days of the notification of the outcome of the informal review.

Formal review by the office holder

8.7 The standards and procedures to be followed by the complainant and the office holder in relation to allegations of breaches of the Code of Practice are set out below.

- A complaint in relation to a breach of the Code of Practice must be made in writing to the office holder without delay. Details of the allegation should be provided in writing, together with any relevant documentation which the complainant feels might support his/her allegations.
- Upon receipt of the complaint, the office holder should issue an acknowledgement within 3 working days.
- The complaint should be reviewed by a person other than any individual directly associated with the appointment process in question. The person(s) conducting the review (the “reviewer(s)”) will have regard to all information which is material to the complaint, including any emails, notes or memoranda prepared by the personnel of the office holder, and including also any relevant documentation provided by the complainant. Where necessary the reviewer will meet with personnel of the office holder relevant to the complaint and/or the complainant for the purpose of eliciting further information. Subject to any statutory (or other) restrictions on disclosure etc. the reviewer shall provide the complainant with any relevant and material emails, notes and memoranda held by the personnel of the office holder in respect of the appointment process in question.
- The outcome must generally be notified to the complainant within 20 working days of receipt of the complaint. Where the investigation does not allow a decision within this timeframe, the complainant must be kept informed of the status of the review and the reasons for the delay.
- In communicating the outcome to the complainant, the office holder should indicate that the complainant may seek a further review by referring the matter to the Ministry by way of an appeal of the review of the office holder. The office holder must further state that any such appeal must be made in writing within 10 working days of receipt of the outcome of the office holder’s review.

8.8 In order to facilitate the Ministry in its review of alleged breaches of the Code of Practice, office holders must keep a full record of all correspondence and any relevant documentation, such as minutes of meetings, records of emails and notes of telephone conversations or meetings, as well as all documentation provided by the complainant in respect of the complaint.

Formal review by the Ministry

8.9 The Ministry may take whatever action it considers necessary where it deems there to have been a failure, on the balance of probabilities, to comply with the Code of

Practice, in accordance with the provisions of the xxx, including the revocation of a recruitment licence, where appropriate.

8.10 The procedures and standards to be followed by the Ministry in the handling of complaints of alleged breaches of the Code of Practice are set out below.

- An appeal to the Ministry in relation to an alleged breach of the Code of Practice must be made in writing within 10 working days of receipt of the notification of the decision of the office holder. Details of the grounds of appeal, together with any documentation supporting such grounds, and any documentation provided to the office holder in respect of the original request for review, should be provided in writing to the Ministry within this timeframe.
- Acknowledgement of receipt of the request will be made within 3 working days.
- The complaint will be examined by the Ministry.
- The outcome will be notified, in the form of a written report, to the party making the complaint and the office holder within 25 working days. Where the investigation does not allow a decision within this timeframe, the Ministry will keep both parties informed of the status of the review and the reasons for the delay.
- The Ministry 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, and will not generally conduct interviews, although it may do so if warranted by the particular circumstances of individual cases.
- The decision of the Ministry is final.

