

**EMPLOYMENT EQUALITY ACT, 1977**

**EQUALITY OFFICER'S RECOMMENDATION NO: EE 44/1999**

**PARTIES**

**PATRICK JORDAN**

**AND**

**DEPARTMENT OF JUSTICE, EQUALITY and LAW REFORM**

**File No: EE 10/1999**

**1 Dispute**

- 1.1** This dispute concerns a claim by Mr. Patrick Jordan that the Department of Justice, Equality and Law Reform discriminated against him on the grounds of his sex in terms of section 2(a) of the Employment Equality Act, 1977 and in contravention of section 3(2) of the Act in relation to promotion.

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## **2 Background**

**2.1** In February 1998 the Department of Justice, Equality and Law Reform advertised a competition for promotion to the post of Clerk grade 11. Mr. Jordan, a prison officer, was one of the 173 applicants. In total 166 candidates, 125 male and 41 female sat the written examination. Those who passed the written competition advanced to the interview stage of the competition. Mr Jordan was interviewed. The result of the interviews, announced in October, 1998, was that 18 males and 13 females were placed on the promotion panel. Mr Jordan was not placed on the panel.

**2.2** Mr Jordan points out that some 54% of female candidates were successful as compared to 28% in respect of male applicants. He believes that the outcome of the competition amounts to discrimination against him on the grounds of his sex.

**2.3** In April 1999 Mr Jordan referred the dispute against the Department of Justice, Equality and Law Reform to the Labour Court. The Labour Court referred the case an Equality Officer to investigate and issue a recommendation. Subsequent to receipt of submissions from both parties the Equality Officer held a joint hearing with the parties on 15 September 1999. Subsequent to the hearing the Equality Officer received a further submission from the complainant and a response to it from the Department.

## **3 Summary of the Case**

**3.1** The complainant largely relies on statistical evidence in support of his case that the Department of Justice, Equality and Law Reform discriminated against him on the grounds of his sex in relation to the Clerk 11 competition. The competition consisted of two stages. The applicants who were successful in a written examination, the first stage, were invited to the next stage an interview. The relevant details in relation to the competition are as follows:

	<b>Male</b>	<b>Female</b>	<b>Total</b>
<b>Applicants</b>	<b>132 (76%)</b>	<b>41 (24%)</b>	<b>173</b>

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<b>Interviewees</b>	<b>64 (73%)</b>	<b>24 (27%)</b>	<b>88</b>
<b>Successful</b>	<b>18 (58%)</b>	<b>13 (42%)</b>	<b>31</b>

**18 out of 64 males promoted: - 28% success rate**

**13 out of 24 females promoted: - 54% success rate**

- 3.2 The Department accepts that the percentage of females who were successful at interview in the 1998 competition is somewhat higher than the percentage applicable to males. The Department adds that the trend throughout the competition appears to have been fairly equal between both genders and accordingly the Department does not see that this fact is indicative of a policy of discrimination against either gender.
- 3.3 In relation to previous competitions, details furnished, the respondent submits that it appears that both genders fared reasonably well and again this fact does not indicate any policy of discrimination on the part of the Department. The respondent also points out that proportionately more males than females appear to be in the promoted ranks does not indicate a policy of promoting more females than males, as indicated by the complainant.
- 3.4 Mr Jordan considers that he was unfairly marked by the interview board under some(identified) assessment headings. He also considers that two areas of questioning of him by the board was in contravention of the board's instructions on "Equality and Related issues". The Department maintains that the board acted fairly in relation to the marks it awarded and it was not in contravenation of the guidelines.
- 3.5 The complainant states that a number of the successful female candidates are currently job-sharers and that this has cost advantage for the employer. He goes on to state that the respondent "discriminated against me in the competition on the following grounds.

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**3.6** The Department rebuts Mr Jordan's aforementioned assertions. It points out that only three of the females placed were job-sharers and on promotion to Clerk 11 two are still job-sharers, and the other has resumed full-time duty. The Department contends that the fact that 23% of all job-sharers in the Prison service are male further undermines the complainant's viewpoint that females alone are interested in job-sharing.

#### **4 Conclusions of the Equality Officer**

**4.1** The complainant's case of direct discrimination against him by the respondent on the grounds of his sex revolves around the fact that an examination of statistics in relation to the 1998 Clerk 11 competition shows that females had a higher success rate than males. In my opinion, statistics can often be useful in deciding whether or not there is an inference of discrimination. However, statistics alone are seldom sufficient to establish a claim of discrimination.

**4.2** I note that the complainant feels that the interview board did him an injustice in both the marks awarded and in its line of questioning him. I now propose to comment on these issues.

Mr Jordan states that there were questions asked of him that breached the interview board's instructions as outlined in the document headed "Equality and related issues", Appendix 1. He points out that he was asked about experience in different prisons compared to St Patrick's (heading 6) and questions which referred to the P.C.W. agreement (heading 10). As these questions are clearly unrelated to sex I could not hold that they infer a bias against him on the grounds of his sex.

In regard to the marks awarded to him I note that the total of the complainant's marks were such that both male and female candidates scored much higher than him. In these circumstances I cannot find that the marks awarded by the board give rise to an inference of sex discrimination.

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Mr Jordan states that there were questions asked of him that breached the interview board's instructions as outlined in the document headed "Equality and related issues", Appendix 1. He points out that he was asked about experience in different prisons compared to St Patrick's (heading 6) and questions which referred to the P.C.W. agreement (heading 10). As these questions are clearly unrelated to sex I could not hold that they infer a bias against him on the grounds of his sex.

In regard to the marks awarded to him I note that the total of the complainant's marks were such that both male and female candidates scored much higher than him. In these circumstances I cannot find that the marks awarded by the board give rise to an inference of sex discrimination.

**4.3** I note that the complainant in support of his case of discrimination argues that as some of the successful female candidates were job-sharers "it was less viable

**3.6** The Department rebuts Mr Jordan's aforementioned assertions. It points out that only three of the females placed were job-sharers and on promotion to Clerk 11 two are still job-sharers, and the other has resumed full-time duty. The Department contends that the fact that 23% of all job-sharers in the Prison service are male further undermines the complainant's viewpoint that females alone are interested in job-sharing.

#### **4 Conclusions of the Equality Officer**

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for the Department to promote" him. I have given this contention consideration and it seems to me as only three of the applicants were job-sharers and as only two of the successful females remained as job-sharers that the cost implications in the context of the prison pay bill is minuscule. I should state that the complainant's argument on "costs" applies equally to all non job-sharers applicants, regardless of their sex. I do not consider that there is any merit in Mr Jordan's argument here in the context of the 1977 Act.

- 4.4 When I put it to Mr Jordan, in the course of the joint hearing held - had he any case to make in relation to the written stage of the competition ? he replied in the negative. However, in a submission subsequent to the hearing, he pointed out that an unsuccessful candidate, such as himself, could have had a better written examination result than a promoted candidate. He added that "a written examination tests a candidates numeracy and literacy - both important for a senior clerical position."

I note and accept the Department's statement that the written competition was a means to qualify to the interview stage of the competition. I further note that the complainant's argument here are sex neutral in that it could apply equally to male and female candidates.

- 4.5 I have looked at the details of the outcome of the written stage and I note that the female applicants outperformed the male applicants i.e. 64 males from 132 were successful (48%) and 24 females from 41 were successful (58%). I should point out that the identities of applicants were unknown to the paper markers as only examination numbers appeared on their answer papers. It seems to me as females performed better than males in the written stage that this outcome does not lend support to the complainant's case of unlawful discrimination.

- 4.6 I recognise, as Mr Jordan points out, that there are some differences in the figures furnished by the Department to his Union compared to those supplied in the course of this investigation. However, I consider these differences so slight as to make them irrelevant to my investigation.

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It is quite clear from the statistical evidence, in respect of those who advanced to the interview stage, that the female applicants had a better success rate at 54%, as compared to 28% in respect of male applicants. In the absence of any real case in support of Mr Jordan's claim that the "statistical" outcome of the competition amounts to unlawful discrimination it is my opinion the statistics here alone are not such that I could find that they establish or infer discrimination.

- 4.7 In the course of the joint hearing I raised with the complainant the question of whether or not he should have been placed on the promotion panel but for the alleged discrimination. He responded to the effect that he could not say one way or the other. I should state here that the Department informed me that that there were male and female applicants who scored higher marks than Mr Jordan who were not placed on the promotion panel. I therefore cannot hold, even if I had found that the competition was discriminatory, that Mr Jordan should have been included on the successful panel.

## 5 **Recommendation**

- 5.1 In view of my conclusions in the preceding paragraphs, I find that the Department of Justice, Equality and Law Reform did not discriminate against Mr Patrick Jordan contrary to the terms of the Employment Equality Act, 1977.

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Equality Officer.  
10th. November, 1999

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