

OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE14/2000

PARTIES

MS. CLAIRE BRESLIN
{Represented by O'Mara Geraghty McCourt, Solicitors}

AND

MINISTER FOR EDUCATION & SCIENCE

&

DEPARTMENT OF EDUCATION & SCIENCE

File No: EE 40/1998

1 DISPUTE

1.1 This dispute concerns a claim by Ms Claire Breslin that the Department of Education & Science and the Minister for Education & Science discriminated against her on the grounds of her sex in terms of Section 2 of the Employment Equality Act, 1977 and in contravention of Section 3 of the Act in relation to promotion.

2 BACKGROUND

2.1 Ms Breslin is employed as a District Inspector (Primary Sector) in the Department of Education & Science. In May/June 1997 she took part in a competition for promotion to the post of Divisional Inspector. There were 33 male and 3 female candidates. Ms Breslin was placed 13 on the panel of 15 established by the interview board. Ten candidates, nine males and one female, were promoted over the lifetime of the panel.

2.2 In September, 1998 Ms Breslin referred the dispute against the Department of Education & Science and the Minister for Education & Science to the Labour Court. The Court on 24 September, 1998 referred the case to an Equality Officer for investigation and recommendation.

2.3 The Equality Officer subsequent to the receipt of written submissions from the parties to the case was informed that a legal practitioner would be acting on behalf of Ms Breslin. A joint hearing was held with the parties in May, 1999. Arising from the hearing further submissions were received from the parties. The last correspondence received in relation to the case was in March, 2000.

3 SUMMARY OF THE COMPLAINANT'S CASE

- 3.1** Ms Breslin submits that she was discriminated on the grounds of her sex in terms of Section 2(a) and in breach of Section 3 in relation to promotion to the position of Divisional Inspector.
- 3.2** The complainant submits that three of the four topics introduced by the Interview Board coincided with her specialist areas of work, the questions asked throughout the interview were impersonal and requirement answers of a hypothetical nature in the future/conditional tense. Ms Breslin claims that no question required an answer in the past tense "i.e., no question referred to my previous experience professional or was designed to illicit information regarding that experience as was required by the *Criteria for Selection.*"
- 3.3** Ms Breslin claims that the topic of gender equality was one of the four main topics of the interview and it was introduced by the third interviewer with the statement "I know that you no longer wish to be associated with Gender Equality". The complainant states that she regards this statement as manifestly untrue and she considers that the Interview Board were effectively told that she had no interest in, or commitment to, an area in which she was about to be questioned. She further states that this effectively negated this whole section of the interview and undermined her record of twelve years of professional experience in this area. She asserts that this was particularly upsetting

because she had discussed in detail with this interviewer, approximately one year before the competition, her reasons for leaving the Gender Equality Committee. She adds that the reason she left the Committee was to give a colleague a chance to represent the Primary Inspectorate on the Committee.

3.4 Ms Breslin submits that she was very disappointed that the history of twelve years of committed work which formed a major part of her professional experience was not addressed in any way as was required by the Criteria for Selection, that no discussion was possible in this section of the interview and that there was a lack of scope to impart the knowledge and experience which she had gained in this area.

3.5 The complainant maintains that she was more qualified in education than a number of more successful candidates. She points out that she has a Master's Degree (Honours) in Education, as distinct from some successful candidates who have a B.A. Degree (Pass) completed over thirty years ago. She adds that she was very much more experienced across a far wider range of specialist areas than some more successful candidates and has a record of high achievements in all these areas.

Ms Breslin asserts that she has undertaken far more extensive, high-level and up-to-date career development courses than a number of more successful candidates. She further asserts that she has a greater work load and level of responsibility than some more senior colleagues and has a very wide knowledge of the education system due to her informal preparation for registration in a Ph. D. Programme.

3.6 Ms Breslin maintains that a significant number of more successful male candidates had a relatively narrow range of experience and a number of these candidates were involved in one or two specialist areas e.g. as an ordinary member of an NCCA curriculum committee. These candidates, she asserts, had no equivalent experience of management, Whole School Inspection, the production of major document on an individual basis, interviewing, negotiations with outside bodies or high level presentations. The complainant alleges that, since she had full responsibility for a School District in addition to all the areas outlined in her C.V., she had a greater workload and level of experience than these male candidates.

3.7 The complainant points out that in recent months she served on several interview boards in the Inspectorate, which were chaired by members of management and that in all cases relevant qualifications were included as a major criterion for selection. She states that it appears, therefore, that an exception was made in the competition in question.

3.8 The complainant explains that in November, 1997 she met the Chairperson of the Interview Board, the Chief Inspector, in relation to feed back on her interview performance. The Chief Inspector made many positive comments on her performance. He stated that the difference between the candidates in ranking was minuscule. Ms Breslin submits that it is clear *"that every question counted in discriminating between candidates at this level and that minor differences in interview performances resulted in major results in*

terms of financial rewards and professional status."
She further submits that she feels very certain that she extracted the maximum possibilities from all the questions asked and that her "*less successful performance, as perceived by the Interview Board, was due to factors outside my control, i.e. the lack of scope given to impart my knowledge and experience.*"

- 3.9 The complainant states, at her feedback interview with the Chief Inspector, that no feedback in relation to the Criteria for Selection was given that would satisfy the requirement of transparency. In a subsequent meeting with an Assistant Secretary of the Department he informed her that it was no the practice to give such feedback.

4 SUMMARY OF THE RESPONDENTS' CASE

- 4.1 The respondents refute Ms Breslin's allegation that she was discriminated against in the competition because of her sex and was thereby deprived of promotion.
- 4.2 The Department explains that the particular appointments in question relate to Divisional Inspector (promotion outlet from Primary Inspector - recruitment grade). The applicants totalled 36 (3 female and 33 male). The appointments were made by interview competition. As a result of the interviews a panel of 15 (2 female and 13 male) was formed. The complainant was placed 13 on the panel. The candidates placed in the first ten on the panel were promoted.
- 4.3 The interview board consisted of the Chief and Deputy Inspector (Primary Sector), the Department's Personnel Officer and a Lecturer in Education from Maynooth

College. In relation to the interview itself, the Department states, a formal record was not kept. The respondent states that in Ms Breslin's case, her responses to the first two interviewers were longer than norm. The topics related mainly to SMI and Performance Management and the complainant's answers were particularly lengthy and wide-ranging.

4.4 The respondents states that following the interview and again at the final assessment, Ms. Breslin's interview was considered at length and concern was expressed in relation to her answering in the earlier part of the interview. The Board agreed that she demonstrated very wide knowledge of the areas covered, it was considered by some Board members that she displayed some difficulty in focusing on the questions asked within a reasonable time frame.

4.5 The Department submits that the interview Board agreed that Ms. Breslin was fully qualified for promotion and she was accordingly placed on the relevant panel. Ms. Breslin's placing was agreed by all members of the Board. The Department further submits that the placing reflected the slight concerns expressed. The respondent adds that the standard of all those placed on the panel was considered to very high and the order of merit was difficult to determine.

4.6 In relation to the complainant's claim that she had better qualifications than successful male candidates, the Department submits, is not relevant. The Department maintains that qualifications were not among the criteria employed by the interview board in assessing candidates and were not a factor in their

decision. Qualifications are a factor in the recruitment of Inspectors only, thereafter, members of the inspectorate may or may not acquire further qualifications as each one voluntarily decides. The respondent adds that achieving qualifications does not in itself indicate whether a person is suitable for promotion and therefore they are not regarded as relevant.

4.7 The criteria for appointment do not list experience as such but clearly the experience of the candidates is interwoven into the abilities which each can display at interview and the extent to which they can demonstrably meet the criteria. For a finding that one candidate had lesser experience than another, the Department submits, it would have to be demonstrated that a candidate was demonstrably deficient in some way which the other candidate was not. The complainant, who while having a wide range of valuable experience was one only of a group with such experience.

4.8 The respondents submits that the interview board in this case operated in a fair and objective manner; that it applied stated criteria during the course of the interview; that the claimant, because of her many qualities, was appropriately placed number 13 in a panel of 15 drawn from 36 candidates; that her overall performance at interview did not merit a higher ranking and that the gender of the claimant played no role whatever in the decision of the interview board.

5 CONCLUSIONS OF THE EQUALITY OFFICER

5.1 I note that Ms Breslin's in her complaint referral form to the Labour Court gives the date of discrimination as

June 1997, the date of the result of the competition, and 7 April, 1998, the date she was informed her appeal was unsuccessful. In the submissions I received from the parties I can find no reference to procedures to appeal the findings of the Interview Board. In the complainant's initial submission she refers to "feedback interviews" and that on 7 April, 1998 she had such an "interview" with an Assistant Secretary of the Department. At the hearing held the complainant's representative stated that the claim before me related to the competition interview.

5.2 As the issue I am asked to address by the complainant concerns events that took place months outside the time limit for making a claim under the Act of 1977 I feel it is proper to make reference to the matter. However, having regard to provisions of the Act, as set out at Section 19(3) and the views of the Supreme Court in *Aer Lingus* and the Labour Court on the acceptability of a claim, I consider that I am obliged to investigate and make a recommendation on the case before me.

5.3 It seems to me that in an interview situation the performance of the candidate to convince the board that s/he is the person best able to undertake the duties of the post, is a very important factor in deciding who should be appointed to the post. This situation causes certain problems in an investigation of an allegation of discrimination as the information presented during the investigation by a complainant concerning his/her ability may be more impressive than that presented to the interview board.

- 5.4 In my opinion even an unbiased interview system does not guarantee that the person best able to do the job will be selected or even that the same person would have been selected by a different board. Accordingly, whether or not an Equality Officer believes that the best person was selected is not relevant; what is relevant is whether there were significant reasons why the complainant should have been selected and whether the board had reasonable and non-discriminatory reasons for not selecting the complainant.
- 5.5 It may be useful here to recall that the complainant, in the present case, was placed 13 on a panel of 15 from 36 candidates (33 male and 3 female) and that those placed in the top 10 were appointed to posts. The complainant's representative submits that the central issue for consideration "*is whether or not the Interview Board conducted its proceedings in a manner which was fair and objective and free from any form of gender bias.*" In support of her case of discrimination the complainant maintains that she had better qualifications and more experience across a wider range of specialist areas than a number of more successful males.
- 5.6 At the outset I should state that in the course of the hearing held I enquired as to whether or not notes were taken by members of the Board. The Department indicated notes were taken by individual members of the Board but these were no longer in existence. In the course of the hearing held I raised with the respondents the procedures adopted in regard to the interview process. In this regard the Department, *inter alia*, stated that:

the members of the Board had a preparatory meeting before the interviews took place

at this meeting procedures were agreed

the members of the Board were given an information pack in advance of the interviews

the information pack included CVs and assessments in respect of all the candidates, job specification, list of sample questions and the criteria for selection

each candidate was allotted 40 minutes approximately

after 3/4 interviews the members of the Board reflected on the interviews and the performance of the candidates was discussed

at the end of each day of the performance of the candidates interviewed that day was reviewed

at the completion of the interviews the candidates were ranked one to fifteen

I note that the selection criteria was drawn up by Senior Management in the Department in consultation with the Chief Inspector and that the criteria document is headed "Competition for Post of Divisional Inspector/Senior Inspector/Senior Psychologist." On the evidence available to me on the selection criteria and procedures adopted by the Board I cannot hold that

of themselves they point to or infer unlawful discrimination.

- 5.7 The complainant takes no issue with the respondents description of the format of her interview which was given as follows:

Opening remarks and questions - the Chairman of the Board (Chief Inspector)

Questions on current developments - the Personnel Officer

Questions relevant to the particular experience of the candidate - Deputy Chief Inspector

- 5.8 I note *"The claimant would also refute in the strongest possible terms the suggestion in the Department's response that she 'displayed some difficulty in focusing on the questions within a reasonable time frame'. This, she submits, could not be further from the truth.* However, I note from the assessment on her dated 26 April, 1997, that the assessor, who was not a member of the Interview Board, inter alia stated *"can be over-elaborate and detailed in her written and oral reports. May have blind spots in the interpersonal area."* I am not in possession of any assessments on other candidates nor I am in a position to state if this assessor carried out other assessments. However, having regard to this "independent" information, it is my opinion, that it does not lend support Ms Breslin's case here.

5.9 It is clear that the Ms Breslin's complaint on her actual interview relates to the third section i.e. the performance of the Deputy Chief Inspector. I note that the complainant states, in her first submission, that she *"was interviewed on four main topics; there was scope for discussion on two topics and, to a minor extent, on a third topic. There was no scope for discussion on the fourth topic."* At the hearing Ms Breslin identified modern languages in primary schools as the third topic and the fourth as Gender Equality.

5.10 I note that Ms Breslin's states that the Deputy Chief Inspector introduced his topics with the remark 'I know that you no longer wish to be associated with Gender Equality'. Notwithstanding that the complainant responded that 'on the contrary, I merely wished to extend my brief' she considers that the Deputy Chief Inspector's remark negated this whole section of the interview. Ms Breslin adds that the remark referred to the reasons she left the Gender Equality Committee, which was approximately one year before the competition. She states that she informed the Deputy Chief, at the time, the reason she resigned was in order to give a female colleague a chance on the committee.

The Deputy Chief Inspector, at the joint hearing, stated that he introduced the topics of modern languages and gender equality, on the basis that the complainant had experience in both these areas. On the evidence available to me I am not in a position to express a view on the impact of any comment by the Deputy Chief Inspector had on the other members of the interview board. However, in my opinion, in order for

me to place any relevance on a comment by a board member I would have to attach to it an inference of unlawful discrimination. In relation to the remark attributed to the Deputy Chief Inspector the evidence is not such that I can take an inference of unlawful discrimination from it.

5.11 I note that Ms Breslin states that her twelve years on the Gender Equality Committee formed '*a major part of my professional experience*'. I further note that the Deputy Chief Inspector pointed out, at the hearing, that she was not the only person to do good work in the area of gender. In the course of the hearing another female was identified as being very much involved in projects and programmes etc in regard to gender issues in the primary sector. Ms Breslin, in the course of questioning from the Equality Officer, stated that this female colleague, like herself, possessed a Master Degree but that she, the complainant, had a wider range of experience than her. The female here, I was informed by the complainant, was placed somewhere in the top five on the panel.

It seems to me that neither this female's short time on the committee or her inferior experience to that of the complainant appears to have harmed her candidacy. Accordingly, I take the view that her performance at interview played a major role on her high placement on the panel.

5.12 I note that the selection criteria document contains nine criteria and it includes "*number of years' satisfactory service in present grade or analogous grade*". A copy of the criteria is at Appendix 1. I

note that no candidate with less service than the complainant was placed in front of her on the panel and that only three, two males and the female, matched her service. I further note that the two candidates placed after her on the panel had more service than her.

5.13 I recognise that length of service is not the same as experience. I note that Ms Breslin places great emphasises on her experience vis a vis five specified male candidates, however, as already stated the more successful female colleague was not hindered by her inferior experience to that of the complainant. On the evidence available to me I cannot hold that the value placed on experience by the Board or the absence of the inclusion of experience in the selection criteria infers that the complainant was treated less favourably because of her sex.

5.14 In relation to "qualifications", another area which Ms Breslin focuses on, I note that the Department maintains that there were unsuccessful male candidates who had better academic qualifications than the complainant or the more successful female. In regard to qualifications I could not take an inference from the evidence available to me that the complainant was treated less favourably than males on the grounds of her sex.

5.15 I have considered the case of Wallace -V- South Eastern Education and Library Board (1980, IRLR 193), which the complainant's representative submits is relevant in the present case. In that case the Industrial Tribunal stated a case on three points to the Northern Ireland Court of Appeal and I note that the Tribunal had found

that Ms Wallace was the superior candidate to the male appointee. I consider that the case cited would only have any relevance here if I found that the complainant should have been placed within the top ten on the panel. On the evidence available to me I am not in a position to so find.

5.16 I have considered the case of Orla National School (EE 02/99) which the Ms Breslin's representative refers to in support of her case. I note that in the aforementioned case that the Equality Officer considered that an inference of unlawful discrimination was raised by the fact that the interview Board did not comply with the Guidelines for Boards, in regard to the procedures for selecting teaching staff. I consider that the present case is different in that the evidence available to me is that a selection criteria was drawn up by higher management of the Department and copied to all candidates before the competition.

5.17 Ms Breslin's representative also referred, in the context of relevant qualifications, to the case of County Laois V.E.C. (EE 15/96). It appears in that case that the claimant held the post on an acting capacity for three years before it was advertised as a permanent post and three candidates, a male and two females, applied for the post. I note the Equality Officer established that the interview board in the "Laois" case had no pre-determined selection criteria.

I note that it is claimed on behalf of Ms Breslin that the three female candidates, in the present case, had higher qualifications than the five specified candidates, however, the Department points that that

there were unsuccessful male candidates who had better academic qualifications than either the complainant or the more successful female candidate. In the circumstances in the present case I could not take an inference that females were treated less favourably than males.

5.18 Having regard to the views that I have expressed in the preceding paragraphs I am satisfied that there was no unlawful discrimination against the complainant. Accordingly, I find that the respondents did not discriminate against Ms Breslin in contravention of Section 3 in terms of Section 2 of the Employment Equality Act, 1977. In reaching my conclusions in this case I have taken into account all the submissions both oral and written made by the parties.

6 CONCLUSIONS OF THE EQUALITY OFFICER

6.1 In view of my conclusions in the preceding paragraphs, I find the Minister for Education and Science and/or the Department of Education and Science did not discriminate against Ms Claire Breslin contrary to the provisions of the Employment Equality Act, 1977.

Jim Clerkin,
Equality Officer.

6 April, 2000.