

**OFFICE OF THE DIRECTOR OF  
EQUALITY INVESTIGATIONS**

**EMPLOYMENT EQUALITY ACT, 1977**

**EQUALITY OFFICER'S RECOMMENDATION NO: EE 20/2000**

**PARTIES**

**Ms Maura Clarke, Ms Una Kelly and Ms Sadie McGovern  
(Represented by IMPACT and the Employment Equality Authority)**

**AND**

**Minister for Justice, Equality and Law Reform**

*File No: EE30/1998*

## **1. DISPUTE**

- 1.1 The dispute concerns a claim by Ms Maura Clarke, Ms Una Kelly and Ms Sadie McGovern that on 19th March, 1998, the Minister for Justice, Equality and Law Reform discriminated against them within the meaning of Section 2(a) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act when the Land Registry management failed to appoint them to promotional positions of Examiner-in-Charge in the Land Registry.

## **2. BACKGROUND**

- 2.1 The Claimants are employed as Examiners in the Land Registry of the Department of Justice, Equality and Law Reform. On 31st October, 1997 the Land Registry advertised an internal promotional competition from the Examiner grade to fill vacancies for the position of Examiner-in-Charge. Examiners are employed in the Dealing and Copy Maps Sections of the Land Registry. The selection process was based on (a) seniority (b) supervisors' assessments and (c) a Consistory. Eight appointments were made as a result of the competition, seven male and one female. IMPACT and the Equality Authority (referred to in this Recommendation as the Claimants' Representatives) claim that no grounds other than sex can explain the consistently lower marks received by the female candidates in the competition.
- 2.2 The Claimants' Representatives referred a complaint to the Labour Court on 8th July, 1998 under Section 19 of the 1977 Act. The Labour Court referred the complaint to an Equality Officer for investigation and recommendation. Submissions were

received from the parties to the claim and a joint hearing of the complaint was heard on 6th October, 1999. A further hearing was held on 5th April, 2000.

### **3. SUMMARY OF THE CLAIMANT'S CASE**

- 3.1 It is the Claimants' case that the Minister for Justice, Equality and Law Reform discriminated against them in terms of Section 2(a) of the Employment Equality Act, 1977 when it failed to appoint them to the position of Examiner-in-Charge.

Section 2 (a) states that discrimination shall be taken to occur

*'where by reason of his sex a person is treated less favourably than a person of the other sex'*

- 3.2 The Claimants' Representatives state that their case is based on six considerations

"(1) The Department did not comply with the terms of its own Office Notice 12/97 and this breach of procedures materially affected the Claimants' chances of appealing their marks

(2) Female candidates scored consistently lower than male candidates in the Supervisors' Assessments

(3) Staff in the Dealing Section were scored consistently higher than staff in the Copy Maps Section in circumstances where the work of the Dealing Section is more onerous and responsible to that of the Copy Maps Section and in circumstances where the majority of staff in the Dealing Section are male

(4) That the work performance skills ability of female candidates is as good as those of their male colleagues

(5) That comments made by a Supervisor were discriminatory and demonstrated an innate prejudice to job sharers

(6) That the Consistory, having noted a discrepancy between male and female candidates, failed to take action to rectify same."

3.3 The Claimants' Representatives expand on the above arguments as follows:

*Breach of Office Notice 12/97 on merit based promotions*

The Claimants' Representatives refer to several points on which they state the Respondent failed to comply with its own procedures for merit based selection :

- Appendix 3 of the Office Notice sets out the criteria for advancement and states that candidates should be judged on their capability to perform the full range of duties in the current grade. The Claimants' Representatives state that Ms Clarke was informed by her Supervisor that the only explanation he could put forward for her low marks was that she had never worked in a Dealing Section.

- contrary to the procedures, comment boxes were not completed in the case of Ms McGovern's assessment and in the absence of comments were not returned to the assessor for completion as required by the procedures. Ms McGovern was hampered therefore in her attempts to appeal her assessment.

- where a candidate is deemed not qualified for promotion the procedures require that the Supervisor discuss the assessment with the officer concerned so that deficiencies in performance can be addressed. This was not done in the cases of Ms Kelly and Ms McGovern who were initially deemed not qualified by their

Supervisors. However the Manager subsequently reversed these assessments and allowed their applications to go forward.

- the procedures require that completed assessments be shown to the candidate for information and signed by him or her. The Claimants' Representatives state that comments were added to Ms Kelly's assessment after she had signed it.

- Ms McGovern appealed the procedures used but received no satisfactory response from management.

### *Supervisors' Assessments*

In all there were 39 candidates in the competition i.e. 27 males and 12 females. The Claimants' Representatives sought from the Department copies of all of the candidates' assessments identified by gender only and were refused. However the Claimants' Representatives contacted candidates directly and on foot of those enquiries reached certain conclusions in relation to the marking. The Claimants' Representatives state that of 27 male candidates only 1 received a mark below 7 whereas 6 of the 12 female candidates received such a mark. Of the 8 lowest candidates, 7 were female. The Claimants' Representatives state that this cannot be explained by factors such as the length of service or quality of work of the candidates and state that at no stage have any of the candidates been spoken to, admonished or disciplined in relation to the quality of their work.

### *Dealing and Copy Maps Sections*

The Claimants' Representatives state that the work of the Dealing Section involves plotting onto the Land Registry National Record all types of registrations ranging

from individual sites to local authority schemes, shopping centres, utilities etc. Examiners in Dealing Section are required to interpret complex legal documents and would be required to deal with solicitors and local authorities on any problems which might arise. The Copy Maps Section is responsible for the transfer of Registered Boundaries from old scale Ordnance Survey maps to modern metric maps. Examiners may be required to copy maps where records have been destroyed or damaged. Examiners staff the public counters and deal with telephone queries in this section. It is the union's contention that the work in the Dealing Section is more complex, onerous and responsible than that in the Copy Maps Section and that the management structures in each area reflect this i.e. each Dealing Section is supervised by a Regional Mapping Director while Copy Maps Section is supervised by the lower grade of Superintendent. The Claimants' Representatives state that 26% of candidates in the Dealing Section (who were predominantly male) were successful as against 15% for the Copy Maps Section and provides the following table to illustrate its argument:

	<b>Dealing Section</b>		<b>Copy Maps Section</b>		<b>Total</b>
	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	
No. of Staff	17	5	12	8	42
No. of Candidates	15	5	12	7	39
No. Successful	4	1	3	0	8

The Claimants' Representatives contend that there is no objective justification for the divergence of performance between the two Sections, one of which is predominantly staffed by females and the other by males. Appendix 3 contains comparative tables

furnished by the Claimants' Representatives showing average marks by gender for candidates from the two Sections.

- the Claimants' Representatives refer to the backgrounds of the three Claimants, challenges assessments given to them by their Supervisors under various headings having regard to guidelines issued to Supervisors and points to inconsistencies in the assessments themselves.

- the Claimants' Representatives state that in the case of Ms McGovern, her assessment comment box was not completed as required in the assessment procedures but notes that her immediate Supervisor's overall assessment includes the comment "although she is on job-sharing at present she is very experienced in her duties and has achieved a high level of work knowledge and skills". The union contends that the remark is indicative of an innate negative attitude towards job-sharers, the majority of whom are women and is inconsistent with her mark under the heading 'Communications, Skills etc.'.

- the Claimants' Representatives state that the Consistory, having noted the divergence in marks between male and female candidates, failed to take any remedial action e.g. refer the assessments for reconsideration or otherwise make allowances to rectify the imbalance.

3.4 The Claimants' Representatives conclude that the Claimants have been either directly or indirectly discriminated against by the Respondent on the grounds of their gender and believe that the pattern of marks received by the Claimants, together with the other issues raised confirms this to be the case.

#### **4. SUMMARY OF RESPONDENT'S CASE**

- 4.1 The Respondent states that traditionally, selection for promotion in the Land Registry within the grades concerned has been on the basis of seniority, subject to suitability. The promotions which are the subject of the present complaint arose from an Agreed Report No.03/1997 of the Departmental Council under the Civil Service Conciliation and Arbitration Scheme under the PCW Agreement and were to be filled by way of a competitive selection process. A supplementary document dated 6 February, 1997 (included in Appendix 2) sets out the manner in which posts were to be filled on foot of the PCW by agreement with IMPACT. Subsequent to the competition, IMPACT put down a claim at Departmental Council seeking an investigation by the Department into the recent Examiner-in-Charge and Superintendent competitions and the performance of female candidates in the competitions. A copy of the relevant report of the Departmental Council dated 28 May, 1998 was included in the Respondent's submission. The report states that while management noted the Staff Side's concern, they were satisfied that the entire process was open and transparent. It was at this meeting that management stated that the Consistory had considered the generally lower marks of female candidates and concluded that no discrimination had taken place.
- 4.2 The Respondent states that the competition procedures as set out in Office Notice 12/97 (Appendix 1) provides for appeals on grounds of breach of procedures. An appeal against a supervisor's assessment is not allowed. Ms Kelly and Ms Clarke and two male candidates lodged appeals however only one appeal i.e. that of one of the

male candidates, was allowed for hearing. Ms Clarke's appeal was considered to be outside the terms of Office Notice 12/97 and Ms Kelly's was still under review.

4.3 The Respondent states that the selection criteria for the merit based competition were determined through a consultative process which included input from and agreement with the IMPACT representative. The Respondent suggests that the apparent gender imbalance in the competition results is a statistical anomaly and that if the traditional method of promotion by seniority and suitability had been utilised, the same apparent gender imbalance would have arisen and none of the claimants would have been eligible for consideration for promotion. The Respondent addresses issues raised by the Claimants' Representatives in relation to certain aspects of the Claimants' assessments and I will refer to these issues in my conclusions below.

4.4 The Respondent referred to slight inaccuracies in the table of marks prepared by IMPACT (referred to in paragraph 3.3 above). As I have carried out an analysis of the full set of marks for all of the candidates and refer to that analysis in my conclusions below, I do not consider it necessary to detail the differences here. The Respondent rejects the statement by IMPACT that Dealings Section is staffed predominantly by males and Copy Maps Section by females i.e. 17 males / 5 females and 12 males / 8 females respectively. Furthermore, the Respondent points out that only 2 of the female candidates were in the top 50% of candidates in terms of seniority and states that experience in the grade and seniority are factors in terms of placement and in achieving knowledge of the work. The Respondent also points out that no successful candidates came from among the bottom 13 candidates in seniority and states that

staff with more experience, a higher percentage of whom were male, tended to be placed in Dealings Sections.

- 4.5 In relation to the guidelines given to assessors, the Respondent states that the guidelines were indicators only and that candidates might exhibit the attributes listed to a greater or lesser degree, within the range of a particular category, especially in borderline cases. The attributes listed, although detailed, are generic in nature and were used for bench marking to aid consistency in ratings.
- 4.6 Referring to the IMPACT claim that Ms McGovern's supervisor showed an innate prejudice against job-sharers, the Respondent states that the comment in relation to job-sharing is one of fact and there is no statement or implication in the comment which would suggest any reservations concerning Ms McGovern's ability to perform effectively due to job-sharing. On the contrary, the comment in relation to job-sharing must be viewed as one of a positive nature highlighting a commitment to achieving competence in all aspects of the job requirements.
- 4.7 In conclusion therefore, the Respondent states that no discrimination existed or has been shown to have existed in relation to the competition. The fact that male candidates were more successful was a statistical anomaly and a similar but reverse situation existed in a recent Executive Officer competition in the Registries where only one male was among the top 8 candidates. The Respondent argues that none of the issues raised by the Claimants' Representatives relate to gender and suggests that the assessment procedure used in the competition was, almost uniquely, the most open

and transparent mechanism employed in a Civil Service environment and represented a partnership approach with the staff and union.

## **5. CONCLUSIONS OF THE EQUALITY OFFICER**

5.1 The matter for consideration is whether or not the Minister for Justice, Equality and Law Reform discriminated against the Claimants on the basis of their sex in terms of Section 2(a) of the Employment Equality Act, 1977 and contrary to the provisions of Section 3 of that Act. In making my recommendation in this case I have taken into account all of the evidence, both written and oral, made to me by the parties to the case.

5.2 The Claimants' Representatives have identified several aspects of the selection process where they believe the Claimants were discriminated against by the Respondent. A significant dimension to the Claimants' Representatives' case is that the female candidates, for no objective reason that they can ascertain, were scored consistently lower than the male candidates with the result that only one of the eight successful candidates was a woman. Prior to the first hearing, I requested from the Respondents a full listing of the marks awarded to all of the candidates under the three headings of Seniority, Supervisor's Assessment and Consistory, indicating the gender of the candidate and whether they worked in the Copy Maps or Dealings Section. I did not require the names of the candidates to be shown other than those of the Claimants. I subsequently asked the Respondents to label the first and second supervisors, by gender, for each candidate.

## Marking Scheme

10% of the available marks were awarded for Seniority, 60% for Supervisor's Assessment and the remaining 30% for the Consistory.

### *Seniority (10%)*

Seniority marks were awarded as follows:

0 - 2 years	=	0 marks
2 - 5 years	=	0.28 marks per month of service over 2 years
5 years or more	=	10 marks

### *Supervisors' Assessments (60%)*

Supervisors were required to allocate candidates a rating of 1 to 4 under the following six headings:

1. Reliability and organisational ability
2. Work specific knowledge and skills e.g. regulations and office procedures
3. Conduct, co-operation, positive attitude and contribution to solving problems
4. Communication skills and effectiveness in dealing with people including ability to perform as part of a team
5. Capability to perform the full range of duties in the current grade
6. Contribution to setting and seeking to achieve the section's objectives and plans

The rating of 1 to 4 was then converted to marks as follows:

Rating of 1	=	10 marks
Rating of 2	=	7 marks
Rating of 3	=	4 marks
Rating of 4	=	0 marks

### *Consistory (30%)*

The criteria adopted by the Consistory in awarding their marks were (i) the applicant's application, (ii) the supervisor's assessment, (iii) suitability of the applicant for higher duties and (iv) general suitability. The Consistory awarded marks out of 30.

Having examined in detail the marks for all of the candidates, I note that of the 39 candidates, 33 had in excess of 5 years seniority and therefore qualified for the full 10 marks. These included two of the Claimants i.e. Ms Mc Govern and Ms Kelly. Ms Clarke, who had less than two years seniority, received no marks for seniority. In overall seniority terms, none of the Claimants would rank among the first 50% of candidates. I note that the placing of the first 33 candidates follows the order indicated by the marks awarded for supervisors' assessments with the exception of the candidate in 20th place who was one of the 6 candidates with less than 5 years seniority. The Consistory marks follow the general order indicated by the assessment marks although there are several exceptions. In the case of the eight appointees, the Consistory marks reinforced the assessment marks and served to rank the candidates where they received the same assessment mark. It is clear to me therefore that the supervisor's assessment was critical to a candidate's chances of success in the competition.

- 5.3 The Claimants' Representatives claim that of the 27 male candidates only 1 received a mark lower than 7 under any given assessment heading whereas they say 6 of the 12 female candidates received such a mark. The Claimants' Representatives also contended that of the eight lowest candidates overall, 7 were female however the

Respondent corrected this figure and pointed out that only 6 of the bottom 8 were female. The Respondent has stated that experience in the grade and seniority are factors in terms of placement and in achieving knowledge of the work. For the majority of candidates, as I pointed out at paragraph 5.2 above, the seniority mark was nullified by the fact that 33 of the 39 candidates received the same 10 marks. If the seniority mark itself was of little help in distinguishing candidates and taking on board the Respondent's argument that experience and seniority are factors in terms of placement, it follows that experience and seniority should be reflected in the supervisors' assessments. As the Claimants' Representatives have referred to the consistently lower assessment marks awarded to the female candidates, I analysed the average marks awarded to male and female candidates for different levels of seniority. As the seniority of the candidates ranged from less than one year to seventeen years I grouped the candidates into four seniority bands as follows: **Band A** (0 to 4.25 yrs), **Band B** (4.25 to 8.5 yrs), **Band C** (8.5 to 12.75 yrs) and **Band D** (12.75 to 17 yrs). The chart included in Appendix 4 shows the average assessment marks awarded to male and female candidates in each seniority band. The chart shows that while assessment marks generally improved with seniority, the marks awarded to female candidates were consistently lower in each of the seniority bands referred to above and the average marks for the most senior females in Band D i.e. 43, compared closely with the average marks for the most junior males in Band A i.e. 42. The pattern outlined here is sufficient in my opinion to draw an inference that discrimination may have taken place against female candidates in the competition.

5.4 In considering possible bias against female candidates at the assessment stage I sought from the Respondent information in relation to the First and Second Supervisors and their gender, for each of the candidates. There were 12 First Supervisors altogether, 4 females and 8 males. There were 10 Second Supervisors, 2 females and 8 males. I note that of the 12 female candidates, 7 had female First Supervisors and 5 had male First Supervisors. If the Respondent set out to exercise gender bias against female candidates, it would require the co-operation, wittingly or otherwise, of three female supervisors who completed assessments of seven female candidates. I note that the three Claimants had three different First Supervisors, one of whom was female. The table below illustrates the average assessment marks awarded by male and female First Supervisors to male and female candidates:

<b>Supervisor Gender</b>	<b>Male Candidates</b>		<b>Female Candidates</b>	
	<b>No.</b>	<b>Avg. Marks</b>	<b>No.</b>	<b>Avg. Marks</b>
<b>Male</b>	16	47.63	5	40.2
<b>Female</b>	11	45	7	40.29
	27	46.56	12	40.25

I note from the above that male candidates with male First Supervisors were, on average, awarded the highest assessment marks.

5.5 At the first hearing of these complaints I requested from the Respondent copies of individual supervisor assessments for all of the candidates with the candidates' names removed. For reasons of confidentiality, the Respondents indicated that it would only be willing to furnish copies of supervisor assessments where candidates had given their consent to their release. The Respondent wrote to all of the candidates seeking

their consent to the release of a copy of their assessment and subsequently furnished 31 assessments to the Equality Officer, 12 from female candidates (including the Claimants) and 19 from male candidates. The assessments were also copied to the Claimants' Representatives. The Claimants' Representatives pointed out that, contrary to procedures set down for the competition, comment boxes were not filled out by Ms McGovern's First Supervisor with the result that her attempts to appeal her assessment were hampered. I note however from my examination of three other assessments by the same First Supervisor of male candidates that the comment boxes were similarly left blank. While this may have been in breach of the procedures, I consider that male and female candidates were in this respect treated equally by this assessor. The Claimants' Representatives also drew attention to this assessor's overall assessment of Ms McGovern where he wrote:

*'Sadie has performed most aspects of her duties to a satisfactory standard since she joined the Section (2 years). Although she is on job-sharing at present she is very experienced in her duties and has achieved a high level of work knowledge and skills.'*

It is widely accepted that the majority of persons who job-share are females and a reference to job-sharing is therefore more likely to be made in the case of a female candidate. I am not satisfied that the above comment is indicative of a negative attitude on the part of the supervisor towards job-sharers in general, female candidates in general or Ms Mc Govern and there is no evidence that it impacted on Ms Mc Govern's placing in the competition.

- 5.6 The Claimants' Representatives stated that a further breach of procedures occurred when neither Ms McGovern nor Ms Kelly were informed that their First Supervisors

had deemed them 'not qualified' for promotion and that their recommendations were overturned by the Manager. I note from the available assessments that a similar First Supervisor's recommendation was overturned in the case of a male candidate. While procedures may not have been correctly followed in the Claimants' cases, I would consider the Manager's action to be a positive action in the Claimants' favour and do not consider that the action was discriminatory.

5.7 The Claimants' Representatives drew attention to the fact that staff in the Dealings Section scored consistently higher than staff in the Copy Maps Section and contended that the Examiners were predominantly male in the Dealings Section and predominantly female in the Copy Maps Section. The Respondents argued (paragraph 4.4. above) that the gender mix in the two Sections did not justify the contention that the staff in the Dealings Section were predominantly male. The table below shows the gender mix in the two Sections:

<b>Section</b>	<b>Male</b>	<b>Female</b>
<b>Dealings</b>	17 (77%)	5 (23%)
<b>Copy Maps</b>	12 (60%)	8 (40%)

The Respondent has stated that the more experienced Examiners progress to the Dealings Section and I note that when the 39 candidates in the present competition are arranged by seniority, there are 5 females (25%) among the first 20 candidates. This figure correlates closely with the proportion of female Examiners in the Dealings Section. As I have already indicated above, supervisors' assessment marks generally increased with length of service, and it follows from the above that as the more senior staff are assigned to the Dealings Section, their marks will tend to be higher. I

consider that the above trend does not support the claim of discrimination based on gender.

5.8 I closely examined the assessments of the Claimants and compared them with assessments by the same First Supervisors of other male and female candidates. I also compared them with the assessments for the eight appointees. Four of the eight appointees were assessed by female First Supervisors. I found no evidence to suggest that bias against female candidates existed in the marking of the assessments. The Claimants' Representatives argued that the Consistory, having noted the generally lower marks obtained by female candidates should have requested that the assessments be re-examined. However the Respondent has stated that the issue of variances in marking across different sections was dealt with by a variety of means including forum sessions with staff and supervisors, guidelines for marking and a review mechanism whereby the proposed marks for all candidates were supplied, without names on a sectional basis, to the Manager for review. I am satisfied that there is no evidence to support the claim that the Consistory's method of dealing with the assessments discriminated against female candidates. Notwithstanding my comments at paragraph 5.3 above in relation to the overall performance of female candidates in the competition, having examined the marks in detail and having examined the available assessments, I must conclude that there is no evidence of direct or indirect discrimination against the Claimants in the competition to fill posts of Examiner-in-Charge.

**6. RECOMMENDATION**

- 6.1 On the basis of the foregoing, I find that the Minister for Justice, Equality and Law Reform did not discriminate against Ms Maura Clarke, Ms Una Kelly and Ms Sadie McGovern on the basis of their sex in terms of Section 2(a) and in contravention of the provisions of Section 3 of the Employment Equality Act, 1977 when it failed to appoint the Claimants to positions of Examiner-in-Charge.

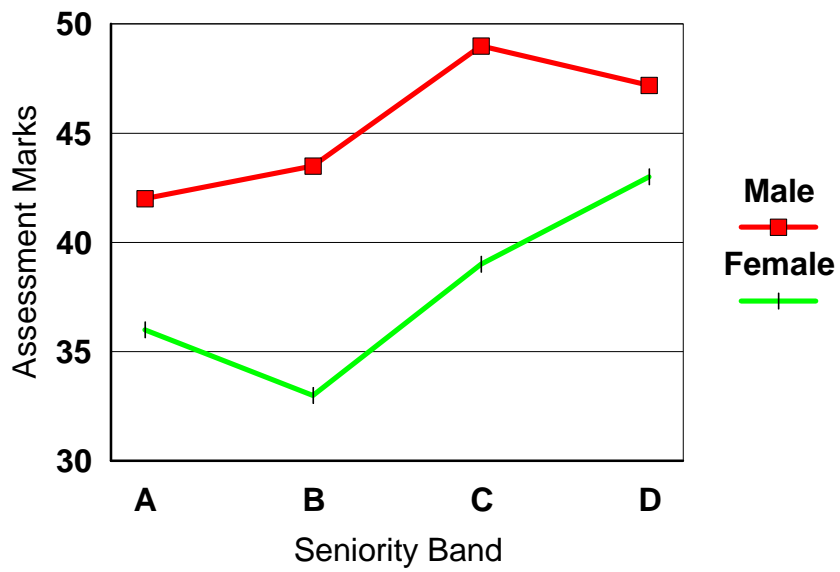
Raymund Walsh

Equality Officer

21 July, 2000

# APPENDIX 4

## Average Marks by Seniority



Numbers in brackets represent the number of candidates in the particular band