

# Merit Instruction 9

## Disclosure of information relating to misconduct, or unsatisfactory performance

### Disclosure by an applicant

An applicant should disclose to the Chairperson of the selection panel in the first instance at the time of application if they:

- have previously been, or are currently, the subject of a disciplinary process that resulted in, or is likely to result in, disciplinary action;
- have previously been the subject of a process for managing their unsatisfactory performance that has led to a sanction being imposed on them;
- are currently the subject of process for managing their unsatisfactory performance;

If an applicant makes such a disclosure, the chairperson, in consultation with the Ethical Conduct unit must determine whether that disclosure is relevant to the applicant's ability to undertake the requirements of the vacancy and the applicant's suitability to be appointed.

Where it has been determined as relevant an applicant's disclosure of previous incidents of misconduct or pending disciplinary processes, previous incidents of proven unsatisfactory performance, or pending processes for the management of unsatisfactory performance, the panel will be informed and must seek as much information as possible about the conduct in question. This information must be weighed against all other relevant considerations in assessing the suitability of the applicant for a vacancy. Advice must be sought from the Ethical Conduct unit.

### Ongoing processes

Where disciplinary processes are ongoing, and/or the imposition of a disciplinary sanction is still pending, the panel must allow the applicant to make a submission as to the matter in relation to the vacancy and their suitability to fill it. Similarly, where processes for managing unsatisfactory performance are pending, the panel must allow the applicant to make a submission on the matter in relation to the vacancy and their suitability to fill it.

In addition, the panel must obtain further details, including the name and contact details of the manager responsible for managing the process and contact that manager for comment. The panel must then determine the relevance of the information to the applicant's ability and suitability to undertake the requirements of the vacancy prior to shortlisting. Where such information is sought it must be recorded in the panel report.

Where the panel recommends the applicant for the position, and the formal conduct inquiry is unresolved and ongoing, the panel report must provide a statement about this to assist the Chief Executive or delegate in determining whether or not to accept the recommendation.

### Disclosure by a manager, delegate or officer

If comment on an applicant's unsatisfactory performance or misconduct is sought by a panel, it must be provided by the relevant officer, manager or delegate.

Where such information is disclosed, the panel must determine its relevance to the applicant's ability and suitability to undertake the requirements of the vacancy and as a public sector employee generally. The panel should do this through further referee contact and by offering the applicant an opportunity to comment on the information provided.

Panellists are reminded that all information gathered as a part of a selection process is confidential and may not be disclosed to any unauthorised person. It is the responsibility of all panellists to ensure the integrity and security of information to

### Ethical Conduct Unit

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