

**THE HIGH COURT
JUDICIAL REVIEW**

[2024] IEHC 2

Record No.: 2023/875JR

Between:

STEPHEN CLARKE

Applicant

- and -

THE MINISTER FOR HOUSING, LOCAL GOVERNMENT AND HERITAGE

- and -

THE PUBLIC APPOINTMENTS SERVICE

Respondents

Judgment of Mr Justice Cian Ferriter dated 11th January 2024

Introduction

1. In March 2023, the applicant applied to the second respondent (“PAS”) for the position of Senior Executive Engineer in local government (“the position”). He was told in late April 2023 that he was successful in that application, subject to clearance on various matters, including his satisfaction of the eligibility criteria for the position. The information booklet for the competition stated that successful candidates must hold “*an honours degree (level 8 in the National Framework of Qualifications) in Engineering*” (“the engineering degree requirement”). The applicant holds a Bachelor of Science (Honours) Degree in Construction Management from Waterford Institute of Technology (now the South East Technological University – “SETU”). PAS took the view that this degree did not meet the engineering degree requirement and the applicant was informed that he could not be

regarded as eligible for the position thereby bringing his candidature to an end (“the eligibility decision”).

2. The applicant sought and received an informal review of the eligibility decision. The informal review upheld the decision. He then sought a formal review of the eligibility decision pursuant to Section 7 of the Code of Practice for Appointment to Positions in the Civil and Public Service (“the Code”). The formal review also upheld the eligibility decision (“the formal review decision”).
3. The applicant in these judicial review proceedings now seeks orders quashing the eligibility decision and the formal review decision. He does so principally on the basis that his right to fair procedures was breached in the decision making process which led to these decisions. He says that he should have been invited by PAS to address the eligibility concerns before the eligibility decision was taken. He also challenges as unlawful the reliance by PAS, in arriving at the eligibility decision and the formal review decision, on advice previously provided by the department of the first respondent (“the Minister”) to the effect that a degree with the same title as that of the applicant’s (but from a different university) did not satisfy the engineering degree requirement for an earlier competition for the position of senior executive engineer in local government.

The applicant

4. Since completing his education in 2000, the applicant has worked in a variety of engineering roles in the private and public sectors both in the State and in New Zealand. He lived and worked in New Zealand from 2008 – 2012. After returning to Ireland, the applicant worked in the private sector before moving into employment with Wicklow County Council in 2020 where he has held his current post of Executive Engineer since 2021, having been promoted from the position of Assistant Engineer. The applicant says that the position of Senior Executive Engineer is the natural career progression for him within local government.
5. The degree held by the Applicant is registered in the Irish Register of Qualifications maintained by Quality and Qualifications Ireland (“QQI”) as being a Level 8 qualification in the National Framework of Qualifications (“NFQ”) and as being in the “Major” award

class in the “Building and civil engineering” field of learning. His degree has been at all material times accredited for obtaining the registered professional title of Associate Engineer (AEng) with Engineers Ireland, the professional body for engineers in the State. The applicant is firmly of the view that his degree satisfies the engineering degree requirement and has tendered affidavit evidence from Dr. Kevin Graham of SETU to that effect. As we shall see, Dr. Graham also provided a letter of support to the applicant which was put before PAS as part of the review process.

6. While not advanced as a ground of challenge in these proceedings, the applicant also points out that the same engineering degree requirement was a condition of eligibility for his current job as executive engineer with Wicklow County Council and Wicklow County Council clearly regarded his degree as satisfying that requirement. (PAS were not involved with the recruitment process for the applicant’s current job).

The PAS, the Code and the competition

7. The recruitment process for the position in issue is being conducted by PAS pursuant to its statutory functions as set out in s.34 of the Public Service Management (Recruitment and Appointments) Act 2004. The eligibility criteria for the competition were set by the Minister. Section 160 of the Local Government Act 2001 is headed “qualifications for employment” and provides that the appropriate minister may declare qualifications of such classes and descriptions as he or she thinks fit for a specified employment under a local authority (s.160(1)(a)) and that a person is not to be appointed to any employment under a local authority for which qualifications are for the time being declared under the section unless he or she possesses those qualifications (s.160(1)(c)). A section 160 declaration was made on 28 April 2017 by a delegated officer of the Minister in relation to the qualifications required for the position of senior executive engineer in local government. This declaration provided that candidates shall hold “an honours degree (level 8 in the national framework of qualifications) in engineering” i.e. the engineering degree requirement.
8. PAS announced in 2022 that a recruitment competition would be held for the position with a closing date for the competition of 31 March 2022. The candidate information booklet for the competition published by PAS (“the information booklet”) set out the engineering

degree requirement as an essential requirement for the position. The information booklet states (at page 12) that *“until all stages of the recruitment process have been fully completed a final determination cannot be made nor can it be deemed or inferred that such a determination has been made.”*

9. The information booklet has a section headed “review and complaint procedures under the code of practice for appointments to positions in the civil and public service” i.e. under the Code. This section provides that if a candidate is unhappy following the outcome of any stage of a selection process, they can either request a review of a decision made during the process or make a complaint that the selection process followed was unfair. The first option refers to a review under Section 7 of the Code. The information booklet then provides that when making a request for such a review the candidate must support their request by outlining “the facts they believe showed that the action taken or decision reached was wrong”. The review options include an informal review and a formal review. The informal review is described in the information booklet as consisting of “a desk based examination of any available information in relation to the recruitment process and the decision taken regarding the candidate’s application”. The information booklet further provides that where a candidate remains dissatisfied with the outcome of the informal review, he or she can request a formal review.
10. Section 7 of the Code details the procedures governing the review process. The Code notes at para 7.2.1 that a request for a formal review must be made within five working days of the candidate receiving notification of either the original decision or the decision on their informal complaint and that this is necessary “to ensure the public body can intervene if it considers that an error is likely to have been made in the course of the appointment process”.
11. The breadth of the review procedure is indicated by para 7.2.3 of the Code headed “role of the reviewer”:

“When a request is received, the role of the reviewer is to determine whether they consider the original decision was made appropriately, on the basis of correct information and in line with documented procedure. The role of the formal reviewer is

not to reassess or re-mark the candidate, but rather to establish, on foot of the available information, whether they consider:

- *The procedures set out for the selection process were followed correctly.*
- *The original decision was made on the basis of correct and full information.*
- *The original decision was made appropriately.*

The formal reviewer should be completely independent of the selection process. The former reviewer should therefore be someone not connected to the selection process. This will normally be another person within the organization outside of the HR/competitions unit, who has an understanding of recruitment and selection and the requirements of the code of practice.” (emphasis in original)

12. The Code notes at para 7.2.4 that the formal review will be a more thorough examination of all relevant available information and may include consultation with the complainant. This also notes that the person conducting the formal review should consider any written submissions made by the candidate and all other relevant information. It notes that where necessary, the reviewer may consult with staff of the public body involved in the selection process and with the candidate to collect further information.

How the applicant’s application for the position was handled

13. Following his application for the position, the applicant proceeded through the various stages of the competition successfully and was told by e-mail of 19 April 2023 that he was under consideration for appointment as senior executive engineer (at that time, to Dun Laoghaire-Rathdown County Council) and was requested to forward various clearance information including a copy of his degree.
14. On 25 April 2023, the applicant received an e-mail from PAS telling him he was being offered the position of senior executive engineer in Wicklow County Council. The applicant confirmed he was happy to proceed with that position and the clearance process commenced. The clearance process involved the applicant submitting various documentation to PAS, including a copy of his degree, which he provided on 2 May 2023. On 3 May 2023 he was asked to provide a copy of his course transcripts and he sent these

to PAS by email of 5 May 2023. The course transcripts set out the various modules in each of the four years of his degree course and the results he obtained in each module.

15. The “clearance team” in PAS considered the copy of the degree furnished by the applicant and took the view that it was apparent from that degree that he did not meet the engineering degree requirement. The clearance team escalated the matter to the “Submissions Group” (“the submissions group”). While the submissions group is not expressly referred to in the information booklet, it was explained by PAS on affidavit in these proceedings that this group is put in place to provide additional assurances and senior level input into significant decisions made during the clearing process. The relevant affidavit explained that the submissions group is a group of experienced senior recruitment managers within PAS who are called upon as part of the pre-employment checks process to determine a candidate's eligibility or suitability for a particular role *“in cases where the information provided in relation to that candidate is complex, requires some analysis or weighting of different factors, and/or requires senior level approval.”*

16. The submissions group met on 8 May 2023. PAS exhibited a note of the meeting of the submissions group which considered the applicant's case. The group consisted of five assistant principal personnel i.e. staff at a senior level. The group considered the transcript of the applicant's degree, his application and the information booklet and the documentation furnished by the applicant in support of his application. Having considered that material, the group decided that the applicant did not hold the required degree and therefore should not be allowed to continue with the clearance process.

17. It was averred on behalf of PAS that:

“The Applicant’s degree was considered by PAS not to be an honours degree (level 8) in Engineering, having regard to the degree transcript and based on its previous experience of having assessed similar qualifications and on advice received from the Department. The Department had previously advised in relation to a similar qualification namely a Bachelor of Science (Honours) in Construction Management from a different third-level institute, that this qualification did not meet the eligibility criteria in circumstances where the individual held a level 8 degree in another discipline.”

18. The advice in question consisted of an e-mail (sent in June 2022) from an official in the Department to a staff member in PAS. It stated as follows:

“The qualifications for the Senior Executive engineer role declared in 2017 which applied at the time of the 2019 SEE competition states that candidates must hold an honours degree (level 8 in the National Framework of Qualifications) in Engineering - I have attached a copy of the qualification [this copy was not before the Court].

From the information that you have furnished it appears that the candidate does not hold a level 8 in engineering but rather holds a level 8 in another discipline. On this basis it appears that the candidate cannot fulfill this particular eligibility criterion. This conclusion is based solely on the information that you have furnished.”

19. By email of 11 May 2023 the applicant was informed that his academic qualifications did not meet the eligibility criteria for the role as he did not hold an honors degree to level 8 NFQ in engineering.

20. The applicant then applied for an informal review under the Code. In support of his informal review, the applicant supplied links to the degree of construction management in SETU on the QQI website and to a list of Engineers Ireland accredited programs which included this degree. He also attached a letter from Dr. Brian Graham of SETU who is the course leader of the Bachelor of Science honours degree in construction management and engineering in SETU. This letter confirmed the fact that under the national framework of qualifications the degree held by the applicant is a major award at level 8 in the building and civil engineering field of learning and was at the time the applicant completed the course accredited by Engineers Ireland.

21. The informal review was conducted by a PAS staff member who decided that the original eligibility decision should stand. The applicant was notified of the outcome of the informal review by a short e-mail of 23 May 2023. This e-mail did not detail why the evidence the applicant had presented in support of the informal review was rejected.

22. The applicant then invoked his right to a formal review pursuant to the Code. He put in a four page document in support of the formal review including links to the QQI database

which categorized his degree in construction management as being within the building and civil engineering field of learning, the letter from Dr. Graham referred to earlier and the academic transcripts from his degree. He also included a screenshot from the Engineers Ireland accredited programs April 2023 document which showed that holders of his degree are accredited to associate engineer status by Engineers Ireland and pointed to his previous Engineers Ireland membership gained as a result of his degree qualification. The formal reviewer was asked by the applicant for confirmation that his degree did meet the eligibility criteria for the position of senior executive engineer.

23. By letter dated the 4 July 2023, Ms. Lindsay Moore, Formal Reviewer in the Corporate Compliance and Quality Assurance Unit of PAS (“the formal reviewer”) upheld the eligibility decision. This letter stated as follows:

“Where it appears that the qualifications submitted by a candidate does [sic] not meet the essential requirements, an internal process is followed where details of the candidate’s application, a transcript all of their qualifications and any other relevant information is supplied to a group of experienced senior recruitment managers within PAS, called the Submissions Group. The Submissions Group weigh up all available evidence and determine if the candidate’s qualification can be deemed to meet the essential requirements of the post. During the consideration of your candidature, I find that your application was presented before the PAS Submissions Group. In view of the information provided, the Submissions Group were of the view that the Level 8 qualification you had provided did not meet the specified requirements in the Candidate Information Booklet, based on confirmation received from the Department of Housing, Local Government and Heritage in regard to this.”

“...I must advise you that the Department (of Housing, Local Government and Heritage) have previously clarified to PAS that to be eligible for the Senior Executive Engineer competition candidates must hold an honours degree specifically in Engineering and that candidates who hold an honours degree in any other disciplines are not eligible for this competition.”

24. The applicant expressed his dissatisfaction with the outcome of the formal review. He was then sent an e-mail on 10 July 2023 by a corporate governance and compliance manager

within PAS which stated that, while there was no recourse to further review under the Code, she had examined the documents he had submitted to the formal reviewer and the file compiled by the formal reviewer as part of her investigations as a quality assurance measure. This e-mail noted the point made by the formal reviewer that the department had previously clarified to PAS that to be eligible for the senior executive engineer competition an applicant must hold an honours degree specifically in engineering and that candidates who hold an honours degree in any other discipline are not eligible for this competition. The e-mail referred to “in-depth” consultations with the department regarding the requirement that the qualification must be specifically in engineering and that the Bachelor of Science degree in construction management did not meet the requirement. She stated she was assured that there was no scope for PAS to consider qualifications that may be considered equivalent as the department had confirmed that only a degree in engineering as stated met the requirement set.

25. After the applicant had issued these proceedings, the respondents convened an “independent review board” facilitated by an independent chairperson to consider the question of whether the applicant's qualification was a level 8 degree in engineering. The members of this review board (who were all senior academics in the engineering field) met to discuss that question and unanimously concluded that the applicant’s degree was not an engineering degree. The applicant was not invited to participate in this review exercise. The respondents tendered affidavits in these proceedings from Professor Padraic O'Donoghue (Emeritus Professor of Civil Engineering at University College Galway) in which Professor O'Donoghue expresses his opinion that the applicant’s degree is not a level 8 honours degree in engineering. Dr Brian Graham tendered an affidavit in support of the applicant in which he takes issue with Professor O’Donoghue’s conclusions emphasizing the fact that the applicant’s degree is classified as a level 8 degree within the “Building and Civil Engineering” field of learning on the NFQ.

The applicant’s pleaded case

26. While the applicant’s case as originally pleaded sought to emphasize the alleged irrationality of the decisions, and, indeed, went so far as to seek a declaration that the applicant’s degree was a degree in engineering within the criteria set for the post in question, the applicant’s case at hearing was very much a case in fair procedures. Counsel

for the respondents expressed concern that the fair procedures case sought to be made at hearing was not sufficiently grounded in the pleadings. The relevant part of the original statement of grounds that might be said to have addressed fair procedures pleaded as follows:

“17. that the “Submissions Group” came to a view in relation to the eligibility of the degree held by the Applicant without inviting or receiving any submissions or gathering any evidence from the Applicant. If they had done so, the Applicant would have been able to demonstrate to the Submissions Group that his degree is, in fact, a Level 8 honours degree in engineering, as is evidenced by the categorisation applied to it by QQI as being in the “Building and civil engineering” field of learning and by the fact that it qualifies for the registered professional title of Associate Engineer.

18. It appears that the Submissions Group came to a view in relation to the eligibility of the Applicant’s degree by reference to criteria set by the First Named Respondent’s Department that were unknown and unavailable to candidates as they were not contained in the Candidate Information Booklet.”

27. On the basis that the respondents had been able to put all relevant factual evidence before the court in relation to the fair procedures issues, and had been able to deal with the fair procedures case in their written submissions, I ruled that the applicant was entitled to make his fair procedures case and that I would proceed to determine the telescoped application by reference to the fair procedures case advanced by the applicant. Counsel for the respondents then made full oral submissions on the fair procedures case.

28. I also granted leave to the applicant at the hearing before me to amend his statement of grounds to add an additional ground to the effect that PAS unlawfully had regard to an irrelevant consideration when arriving at its decision *“in that its decision was based on ‘advice’ previously received from the Minister’s Department in respect of another, unrelated individual holding a degree of the same title as the Applicant’s degree but awarded by a different third level institution. The ‘advice’ specifically provided that it was based upon the information then supplied, which information has not been disclosed by the Respondents. Moreover, the Applicant was unaware that PAS intended to rely on this (wholly irrelevant) ‘advice’ and did not have sight of the same and only obtained sight of same during the course of these proceedings.”*

29. While as correctly pointed out by counsel for the applicant, the concept of having regard to irrelevant considerations is often categorized in the jurisprudence as being a sub head of irrationality, it can also arise as a more general defect in fair procedures. As is clear from the terms of the applicant's pleaded case on this point as set out above, the applicant sought to lay emphasis on this issue as part of its fair procedures case. For completeness, I will address both the irrationality and fair procedures aspects of this issue.
30. Given that the applicant's case as run before me was focused on the alleged lack of fair procedures in the process leading to the eligibility decision and the formal review decision, it does not seem to me that I should have regard to the outcome of the independent review board exercise or the affidavit evidence tendered in these proceedings by either Professor O'Donoghue or Dr. Graham but rather should confine myself to the factual position as it obtained up to and including the formal review decision.

Summary of the parties' positions

31. It is useful to set out at this point a high level summary of the parties' cases as argued before me.
32. The applicant maintains that he should have been invited by the submissions group to address the eligibility concerns before the eligibility decision was taken. He was never told about the existence of, or role played by, the submissions group; the first he became aware of any concern in relation to the eligibility of his degree was when he received the decision of 11 May 2023 notifying him that he was not eligible for the position such that his candidature was at an end. He also challenges as unlawful the reliance by PAS, in arriving at the eligibility decision and the formal review decision, on advice previously provided by the Minister's department in respect of a different senior executive engineering competition. He contends that there was both a breach of fair procedures in failing to notify him of the intended reliance on that previous advice before arriving at the eligibility decision and, further, that this previous advice was an irrelevant consideration in circumstances where the degree the subject of that previous advice was from a different university and therefore ought not to have been taken into account in any event.
33. The respondents contend that there was no obligation to disclose to the applicant the internal process involving the submissions group; that, in any event, as the information

booklet makes clear, the decision making process for the competition is a single overall process including the informal and formal review elements of that process and that it cannot be said that the applicant was denied fair procedures when viewing the process as a whole. They also submit that the previous advice was perfectly legitimately drawn upon by the PAS staff as part of their institutional memory or knowledge (it was not before the submissions group in document form as such but its content was known to members of the group) and that it was not an irrelevant consideration given that it went to a precedent as to the proper scope of the engineering degree requirement in competitions for the appointment of senior executive engineers.

Discussion

Justiciability of the decisions in issue

34. I proceed on the basis that both the eligibility decision and the formal review decision are justiciable, given that they are decisions of a statutory body in a process conditioned by a statutory declaration order under section 160 and governed by the provisions of a statutory code.
35. However, the fact that a particular process is amenable to judicial review does not mean that the court is compelled to intervene in any particular aspect of the process which a participant in the process is unhappy with. It is clear that the question of fair procedures must be assessed in context. It was emphasized by Barrett J in *Grange v Commission for Public Service Appointments* [2014] IEHC 303 (“*Grange*”) (a case which concerned Section 8 of the Code and an appeal to the Commission on Public Service Appointments) that the extent of fair procedures to be afforded in any given case is inherently fact sensitive and that procedural perfection is not required (paras 40 and 41). Barrett J. in *Grange* (para. 41) quoted from Denham J. (as she then was) in *Dellway v NAMA* [2011] IESC 14 at para 114 “[*W*]hat is sought is fairness, which will depend on all the circumstances of a case, and vary from one type of procedure to another.” Accordingly, the relevant question is whether the process as a whole was fair in its context.

Applicant entitled to be informed of Submissions Group and to make representations to that group?

36. The applicant contended, in reliance on *Stefan v Minister for Justice, Equality and Law Reform* [2001] 4 IR 203 (“*Stefan*”), that the operative adverse decision made against him was the decision of the submissions group, of whose existence he was never made aware and to whom he was not afforded the right to make any submissions, and that this unfairness was not and could not be cured by the review process. *Stefan* involved an application for refugee status where the first instance decision was made in breach of fair procedures (as it resulted in a decision against the applicant on information which was incomplete) and where the applicant availed of a right to appeal the first instance decision. The Supreme Court there held that the applicant was entitled to both a primary decision in accordance with fair procedures and an appeal from that decision, Denham J. (as she then was) stating that “a fair appeal does not cure an unfair hearing” (at p.218).
37. However, the context here is very different. The context here is not one which involves the determination of fundamental human rights such as the right to refugee status or international protection. Nor is it a context involving, for example, a disciplinary process with adverse findings that are enforceable after a first instance stage, subject only to a right of appeal. Rather, the decision making process here relates to an application for a job. Applicants are informed in the information booklet relating to the job competition that “*until all stages of the recruitment process have been fully completed a final determination cannot be made nor cannot be deemed or inferred that such a determination has been made.*” The information booklet contemplates a review, including a formal review, being invoked at any stage of the procedure (such as after an interview). The phrase “All stages of the recruitment process” referenced above clearly covers the stages of an informal review and a formal review where those mechanisms are invoked by an applicant for the position. Accordingly, I do not think that it is appropriate to approach the question of fair procedures in this matter by focusing on any one stage of the process (such as the decision of the submissions group) in isolation from the process as a whole. It follows, in my view, that in assessing whether there was any breach of fair procedures in this case, it is necessary to look at the decision making process as a whole which culminated in the decision of the formal reviewer.
38. For those reasons, in my view the applicant’s reliance on *Stefan* is misplaced. This was not a situation where there was an unfair hearing at submissions group stage which could not be cured by a fair hearing at review stage. Rather, the appropriate question is whether the

process as a whole identified to the applicant the view of PAS that he did not meet the engineering degree requirement and whether the applicant was afforded every reasonable opportunity to make submissions on that view before PAS finalized its position on his application. In my view, the process when viewed in that way was not unfair to the applicant. He was informed that PAS was of the view that he did not meet the engineering degree requirement and was given two opportunities (at both informal and formal review stage) to challenge that view and to put forward any material he wished in the course of those reviews to support his case.

Unlawful reliance by PAS on previous advice?

39. In relation to the previous advice furnished by the department to PAS in the context of a separate competition for appointment of a senior executive engineer to local government, counsel for the applicant criticised reliance by the PAS on this e-mail (or its contents) on the basis that it was qualified by the statement that the conclusion was based solely on the information which had been furnished, which information was not before this court and that, in any event, it was confirmed on affidavit by PAS that it did not relate to the applicant's particular degree but rather a degree from a different third level institution. It was further submitted that it was wrong of PAS to rely on this document (or the advice contained in it) in rejecting his application without at the least giving the applicant an opportunity to address it.
40. In my view, it was permissible for PAS (both the submissions group and the formal reviewer) to have regard to this previous advice as a relevant consideration. It was open to PAS to take the view that the previous advice had clarified in effect that the Minister's department was of the view that the engineering degree requirement was confined to engineering degrees proper and did not include degrees in adjacent fields which might, on one view, be regarded as materially equivalent to an engineering degree. I cannot hold that the fact of a similar issue arising in respect of an identical earlier competition was not something which PAS could have regard to. This was information within the knowledge of members of the submissions group, who, after all, were assembled to bring their experience to bear on the application and the eligibility requirement issue which arose within it. While the applicant complains that the degree in issue there was awarded by a different university, the point remains that the group were aware from their experience of a precedent in relation

to a local government senior executive engineer position where the department would not accept a degree which was not an engineering degree in terms. This was not a situation (as occurred on the facts of *Gormley and Scott v Minister for Agriculture, Food and Marine (No 2)* [2014] IEHC 313) where the eligibility criteria for a public sector position applied to a specified degree or to a relevant qualification “which is acceptable to [the department in question] as equivalent” (or, indeed, which could be deemed acceptable as equivalent by PAS). Accordingly, in my view, PAS did not have regard to an irrelevant consideration such as to vitiate the lawfulness of its decision.

41. As regards the question of whether the applicant should have been notified of this prior advice and given an opportunity to address it, in my view, he had no such right. Counsel for the respondents was correct to characterise this advice as part of the institutional knowledge of the experienced PAS personnel who sat on the submissions group. It cannot be the case that PAS during a recruitment process is required to revert to an applicant when having regard to information relevant to the selection process which that applicant may not have in their possession or be aware of. The applicant says that if he had known about this previous advice and the fact that PAS intended to rely on it in ruling him ineligible for the position, he would have been in a position to make submissions as to its irrelevance and why PAS should have taken the view that his degree met the eligibility requirements. However, this submission really comes back to the contention that the applicant's degree should have been accepted by PAS as satisfying the engineering degree requirement and/or that he should have been afforded a greater right to make submissions on the question of his eligibility for the position. The material point is that the applicant had an opportunity to make submissions in the context of the process as a whole on this core question of whether his degree satisfied the engineering degree requirement and he availed of that opportunity by furnishing at both informal review and formal review stage the bundle of material which he said supported his case. In truth, it is difficult to see what much more he could have said to PAS, over the course of the process as a whole, on that question; the real difficulty for him lay in the fact that PAS did not agree with his case that his degree was an engineering degree which met the engineering degree requirement.

42. Ultimately, it seems to me that it was reasonably open to the PAS to take the view it did as regards the engineering degree requirement. The department had stipulated the requirement of an honours degree to level 8 in engineering and had not, as it might have done, qualified

or extended that requirement by stipulating that a materially equivalent degree to the department's satisfaction could also be acceptable. Over the course of the process as a whole, the applicant was fully heard as to his position on the question of whether his degree matched the engineering degree requirement. PAS did not ultimately agree with him. I can find no breach of fair procedures or want of lawfulness in the decision-making process in the circumstances.

43. I might observe for completeness that the applicant made the point in his affidavits that it was difficult to see why PAS or the department would not accept his qualifications and experience as being appropriate for the position in circumstances where local government is struggling to attract talent for engineering posts because of an abundance of better paid opportunities in the private sector. While the applicant may well have a valid point in relation to the need for greater flexibility being applied to the qualification requirements for such positions, this is a matter of policy which the court cannot enter upon.

Conclusion

44. While I have sympathy for the situation the applicant found himself in as a result of the eligibility decision, the Court's role is confined to assessing the lawfulness of the process by which PAS arrived at the decision that his qualification did not meet the eligibility requirements. In my view, the applicant has not demonstrated any unlawfulness in that process. Accordingly, while the applicant raised an arguable case in respect of his fair procedures case which would have been sufficient to get leave to apply for judicial review, his case is not such as to warrant the grant of any relief by way of judicial review and I must therefore refuse his application for substantive relief.