

## **COMPLAINT REGARDING APPOINTMENT OF CHAIR TO THE CONSTRUCTION INDUSTRY TRAINING BOARD – DEPARTMENT FOR EMPLOYMENT AND LEARNING (DEL)**

### **Background**

This complaint relates to the non-selection of an applicant for the interview stage of a competition to appoint the Chair to the Construction Industry Training Board.

The complainant requested an investigation by writing to the Commissioner for Public Appointments for Northern Ireland on 5 May 2008. The letter is summarised as follows:

- DEL issued a letter dated 13 March 2008 notifying the complainant that due to the number of applications received, it was necessary to draw up a short list for interview and that he had not been selected to proceed to the interview stage.
- The complainant wrote to the Department on 31 March 2008 asking in which area he was deemed not to have met the criteria. However he received no response to his query.
- The complainant also stated that he had reason to believe that there were very few applicants. He intimated that someone in the Department may have had a preferred candidate for appointment and his exclusion was one way to ensure that no other well qualified candidate was interviewed.

On 15 May 2008, Martina Hanna from the Office of the Commissioner for Public Appointments Northern Ireland (OCPA NI) contacted the Department to confirm if a response had been issued to the complainant. The Department explained that “due to an administrative oversight no action had been taken”.

On 16 May 2008, the Department sent an email to the complainant apologising for the oversight and stated that the Chair of the panel had been asked to provide written feedback, as a matter of urgency, on the reasons why he had not been put forward for interview. The Department confirmed this to OCPA NI on 23 May 2008.

As a result, the Commissioner wrote to the complainant on 27 May 2008 explaining that the Department had confirmed that they would provide written feedback from the Chair of the panel. The complainant was advised that if he remained dissatisfied with the Department's response, he should request the Commissioner to instigate an investigation.

On 9 June 2008, the complainant again wrote to the Commissioner advising that he had still not received feedback from the Department and the Commissioner decided to investigate the process.

On 27 June 2008, I wrote to the complainant, the Department and the OCPA NI assessor involved in the competition, to advise that I was to investigate the complaint.

On 2 July 2008, 3 months after the complainant first requested feedback and two months after the Department pursued this, the Chair of the panel did write to the complainant with feedback. She explained that the application pack set out the criteria against which each application was judged. She stated that it was in relation to essential criterion (c) "**the achievement of strategic objectives with budget and time constraints**" that the panel held reservations and considered the examples cited were not sufficiently strategic in nature to meet the criterion. This explanation differs significantly from the original reason given to the complainant that he had not been short-listed due to the number of applications received.

On 7 July 2008, the complainant confirmed that he had received the Department's response and remained dissatisfied with the explanation. He

stated that he found it difficult to understand why his application had not substantiated a prima facie case for interview. He also reiterated his concerns that his application had not been fairly treated and that the panel had not dealt reasonably with his submission for the position.

## **Complaint**

The complaint, and the matters to be investigated, can therefore be summarised as follows:

- That the decision of the panel not to shortlist for interview on the grounds that the complainant did not meet criterion c – “The achievement of strategic objectives with time and budget constraints” – was incorrect;
- That the complainant’s application was not treated on an equal basis with those of all other candidates; and
- That there was a predetermined outcome to this appointment competition.

## **Scope of the complaint**

The complaint scope involves reviewing all the documentation relating to the application and short-listing process. This includes the following:

- The iteration of the Code of Practice for Public Appointments that applied to this competition
- OCPA NI’s published complaint handling policy and methodology
- The information pack supplied to all candidates
- Completed application forms for all candidates
- All documentation produced by panel members, including sift notes, in support of their decisions regarding suitability of candidates for interview

- All correspondence between the Department, complainant and OCPA NI in relation to the complaint

## **Methodology**

The paperwork generated before and during the appointments process was not sufficient to enable me to establish if there were grounds for complaint. It was therefore necessary to interview Departmental officials and the OCPA NI assessor to obtain a fuller picture of what led to the complaint.

My investigation to determine whether the complainant's complaint should be upheld included the following steps:

1. A review of the publicised criteria and the guidance provided to candidates to determine whether applicants had been clearly advised that, only those candidates that provided sufficient evidence of sufficient quality to meet the essential criteria, would be considered for interview. This included an assessment as to whether candidates were fully informed about criteria to be used in the event that short-listing was necessary;
2. An assessment of all received applications for the post against the publicised criteria to determine whether they were assessed on an equitable basis;
3. An assessment of all those applications deemed to have satisfied the criteria for the post, together with an assessment of the complainant's application to identify whether it provided sufficient evidence of sufficient quality that he had met the essential criteria for the post and had been treated on an equitable basis with those invited to interview;
4. A review of all paperwork and documentation generated by the Department and panel in support of the short-listing decision to determine if there was a predetermined outcome to this appointment competition;  
and

5. Meetings with DEL officials [REDACTED] and [REDACTED] the OCPA NI assessor involved in this competition.

## **Main Findings**

### **Step 1 - The application documentation**

1. The advertisement outlined four essential criteria for the post. It also stated that full details of the role and further desirable criterion associated with the post were available in the information pack. The advertisement pointed out that if shortlisting was required, the selection panel would use the desirable criteria.
2. The Candidate Information Booklet issued to candidates with the application form re-iterated the same four essential criteria and advised of one desirable criterion.
3. On page 7, under the heading - **Making your application** – the Candidate Information Booklet stated:

*“The application form is designed to ensure applicants provide the necessary information to determine how they meet the competition requirements and the criteria.”*

Applicants were also asked to note that:

*“It may be necessary to draw up a shortlist of candidates.”*

4. On page 8, under the heading – **Criteria Based Interviews** – it stated;

*“Selection panels will design questions to test the applicant’s experience, qualities and qualifications in each of the criteria and award marks*

*accordingly. If short listing is required, the selection panel will use the desirable criteria.”*

5. My review of the Candidate Information Booklet found that it did not make it clear at any stage that only those candidates who provided sufficient evidence of sufficient quality to meet all four stated essential criteria would be considered for interview.
6. Neither did it make it clear as to how and in what circumstances shortlisting would be required. Although candidates were advised on page 7 that it may be necessary to draw up a shortlist of candidates, no additional information was provided to explain clearly in what circumstances this would occur. The shortlisting issue was made more confusing when reference was made to it on page 8 in a paragraph outlining criteria based interviews.
7. The application form consisted of a 13 page booklet to be completed by all candidates. Notes on completion of the form were contained on page 1 but this simply outlined that applications must be made using the appropriate form. Candidates were advised to read the application form and information pack carefully before completing the form, however no additional guidance notes were provided.
8. Section 6 of the application form was titled - **Essential Criteria**. It simply stated:

*“In this section we ask you to assess how, and to what extent, you meet the criteria for the post in which you are interested (by way of examples). Please read it carefully, not only the essential but also any desirable criteria, and then state in each box, why you feel your personal experience, qualities and qualifications make you a suitable candidate.*

*Please provide all relevant information to demonstrate how you meet each of the following criteria:”*

Thereafter, the application form consisted of a full blank page in respect of each of the essential and desirable criteria.

9. My review found that the application form made no reference to the fact that only those candidates that provided sufficient evidence of sufficient quality to meet all four stated essential criteria would be considered for interview. Neither did it make any reference to the circumstances in which shortlisting would occur or the process to be used in that event.

## **Step 2 – Panel Assessment**

10. The competition for the post of Chair was held at the same time as the competition for 7 new Board members (2 employer representatives, 3 employee representatives and 2 Education representatives). The Department separated applications into the appropriate category before assessment.
11. 5 applications were received for the Chair post. On receipt the Department anonymised each application. The sift panel comprising [REDACTED] (DEL), [REDACTED] (DFP) and [REDACTED] (OCPA Assessor) were each issued with anonymised candidate papers and an individual scoring sheet which was to be completed by sift panel members for each candidate prior to the sift meeting. There was no scoring frame or marking guidance provided to sift panel members when assessing individual applications.
12. A meaningful review of the sift documentation to assess if all candidates had been assessed on an equitable basis proved very difficult as the documentation provided by the sift panel was limited, confusing and inconsistent.
13. One panel member used a different individual assessment sheet from the other two members. This provided a breakdown of how the panel member

had assessed each candidate against each criterion and a Yes/No box to indicate if the candidate should be invited for interview. The other two panel members used forms that allowed panel members to state the number of essential criteria that had been met, a general comments box, and a tick box section to indicate if candidates were suitable or unsuitable for interview.

14. Aside from the differences in the individual assessment sheets used, where written comments were provided, these proved totally confusing. Panel members used ticks, crosses, and question marks in various boxes when assessing candidates. On numerous occasions these were crossed out or changed to something completely different without any explanation or comment on why the change has been made. In addition, the changes have not been initialled by the panel members to verify that they had actually made the change.
15. My review also found that one panel member did not sign or date the individual scoring sheet and another panel member dated the individual scoring sheet three days after the sift panel had met together to discuss the applications. Individual scoring sheets were to be completed for each candidate by each panel member prior to the sift meeting on 10 March 2008.

## **Step 2 – The sift meeting**

16. The sift panel met together to consider applications for the Chair and Board member positions on 10 March 2008. The Department has confirmed that applications for the Chair post were dealt with as a separate category to the other Board member positions. The sift panel were joined by [REDACTED] from the Department's Public Appointments Unit who recorded the decisions. No marking frame or scoring guidance was provided. There is no evidence that the panel discussed how each candidate had responded to each particular criterion. It is apparent that

detailed discussion only occurred when panel members were uncertain whether candidates had met a particular criterion.

17. Following discussions the panel agreed whether candidates had, or had not, met the four essential criteria. Those deemed to have met the four essential criteria were invited for interview. The sift panel summary sheet was completed and signed by each of the three sift panel members.
18. The documentation on how the panel arrived at their decisions at the sift meeting was very limited. The sift panel summary scoring sheet simply shows the candidate number, a comments box and a tick box to indicate if the candidate was suitable or unsuitable for interview.
19. The comments box showed that four candidates “met all criteria” and the boxes were ticked to indicate that those candidates were deemed suitable for interview.
20. In the case of the complainant the comments box showed the words “met all” which was subsequently crossed out, followed by “criterion c not met – meeting of strategic objectives not agreed.” A tick in the suitable for interview box was crossed out and replaced with a tick in the unsuitable box.
21. The sift panel summary scoring sheet was signed and dated on 10 March 2008 by the three panel members. The amendments made to wording relating to the complainant have not been initialled or dated to verify that all three panel members were content.
22. The sift panel meeting record document also provided limited documentation regarding the decisions that were taken by the sift panel. It was a general record of the meeting but provided no evidence of the reasoning to support any of the decisions that were taken by the panel. In addition, the meeting record was not signed or dated by any of the sift panel members to indicate that it was a true or accurate record of events.

23. My review found that as there was no scoring frame or marking guidance given to panel members, all decisions on whether a candidate met a particular criterion were purely subjective and open to interpretation.
24. The documentation provided on the individual assessment sheets was inconsistent, limited and confusing. Neither the sift panel summary sheet nor the sift panel meeting record, contained any evidence to support the Department's rationale that candidates had met or had not met the essential criteria for the post.
25. Furthermore, only very brief narrative was recorded to indicate the decision that the complainant was deemed not to have satisfied one of the essential criteria (this resulting in his application being rejected).
26. Whilst it is apparent that all applications were assessed by individual panel members prior to the sift meeting, meaningful discussions between panel members only occurred in relation to whether particular candidates were deemed not to have met certain criteria. **This resulted in some candidates being assessed more closely by the sift panel than others and as such I have concluded that all candidates were not assessed equally.**

### **Step 3 - The complainant's application**

27. Examination of the sift panel summary scoring sheet and the sift panel meeting record shows that the complainant was not shortlisted for interview because he was deemed not to have met all four of the essential criteria.
28. The sift panel summary sheet states "*criterion c not met – meeting of strategic objectives not agreed.*" whilst the sift panel meeting record states "*Panel thought application fell short in essential criteria A,B and C but*

*especially with Criteria C were applicant fell short and did not provide enough evidence to satisfy criteria.”*

29. In the initial correspondence with the complainant, the Department explained that *“Due to the number of applications received, it was necessary to draw up a short list for interview. I hope that you will not be too disappointed to learn that on this occasion you were not selected to proceed to the interview stage.”*
30. The complainant wrote to the Department seeking information as to the criteria he was deemed not to have satisfied. The Department eventually wrote to him **3 months later** advising that ***“It was in relation to essential criterion (c) “the achievement of strategic objectives with budget and time constraints” that the panel held reservations. The panel considered that the examples you cited in support of your application were not sufficiently strategic in nature as to meet this criterion.”***
31. As there was no marking frame provided for the panel and in view of the failure to produce more detailed and specific documentation supporting any decision, it is difficult to understand what measurement was used by the panel to determine that the complainant’s application was not sufficiently strategic in nature as to meet criterion c – “The achievement of strategic objectives with budget and time constraints”
32. In respect of criterion c, the complainant’s application stated in part that :  
*“Throughout my 40 year career, I have been involved in meeting targets for cost, quality and time. When running construction sites for various building contractors, both here and abroad, I invariably had to operate within strict cost limits and tight programmes, and was successful in meeting these.....In my subsequent career in education, a primary focus of my teaching has been the completion of construction projects which meet budgeted costs, specified quality standards and agreed programmes. The delivery of all programmes of education and training*

*entails setting and monitoring time, scope and quality objectives by planning, programming and resource management..... As a Senior Lecturer for the past 23 years, my various roles [REDACTED] [REDACTED] have also required me to play a part in establishing and achieving objectives within tight financial and time limitations.”*

33. I consider that this information does to a certain degree, show the achievement of strategic objectives with budget and time constraints. It is apparent however, from the Department’s correspondence that the panel considered that the examples provided were not sufficiently strategic in nature to meet this criterion. My review found that there is no documentation or written evidence to support how the panel came to the conclusion. In addition, there was no evidence in the advert, information pack or application form to highlight the level of competence the Department required. This meant that assessment of this criterion was very open to interpretation.
34. As the complainant was the only candidate not to meet all four essential criteria for the Chair post, the key question in assessing the validity of the complaint is whether the criterion was applied equally to all applications.
35. I reviewed the applications of the four other candidates who were invited for interview to determine if their evidence in relation to criterion c was stronger than the complainant’s. I am of the view that one other applicant [REDACTED] provided either similar or less evidence in relation to this criterion.
36. The sift panel meeting record for [REDACTED] states *“Panel had some discussion about criteria A and C – applicant mentioned that he was head of a large academic team, but was it a senior management team, did he have board level experience, did applicant demonstrate strategic responsibility, refers a lot to Project management. Panel agreed that applicant provided enough evidence to send to interview.”* My review

found no documentation or written evidence to support how the panel came to the conclusion that [REDACTED] application was sufficiently strategic in nature to meet criterion c.

37. I also reviewed the applications of all five candidates against the four essential criteria for the post. Again, it is difficult to assess the applications without the benefit of a scoring frame or marking guidance, and therefore any judgement is purely subjective. It is questionable however, whether another applicant [REDACTED] provided sufficient evidence of sufficient quality to meet criteria B and D.

38. The sift panel meeting record for [REDACTED] states *“Panel did not agree straight away, some concern around criteria B and D, it was mentioned that applicant may not have demonstrated enough knowledge of Construction Training. After some discussion panel decided that although the application was weak and could have been better, enough was done to pass the applicant for interview.”*

39. My review found no documentation or written evidence to support how the panel came to the conclusion that although the application was weak and could have been better, enough evidence had been provided to meet criteria B and D. [REDACTED] was deemed to have the four essential criteria and was invited for interview.

40. I consider that given the evidence contained in complainant’s application form, the lack of information provided to candidates to identify what the Department were seeking in relation to the criteria and the absence of any scoring frame to measure candidates against, the complainant **did provide sufficient evidence to meet Criterion C – the achievement of strategic objectives with budget and time constraints.**

41. It is also my view that one other applicant provided similar or less evidence than the complainant in relation to criterion C. As this other applicant was

invited for interview, **I have concluded that the complainant's application was not treated on an equitable basis with other candidates.**

#### **Step 4 – A predetermined outcome**

42. The handling of the process and in particular the fact that the Department did not respond to the complainant correctly or adequately, could easily lead to the complainant making an assumption that there was a pre-determined outcome to the process.

**42. My review found no evidence however, that there was a pre-determined outcome to this competition.**

#### **Overall Conclusions**

- Whilst it was implied in the advertisement, candidate information booklet and application form that there were four essential criteria for the post, the documentation did not state explicitly that only candidates that provided sufficient evidence of sufficient quality to meet all four essential criteria, would be considered for interview. The documentation also failed to make it clear, when and in what circumstances shortlisting would occur. This led to confusion for the complainant as the Department advised him that he had not been selected for interview as shortlisting had been applied due to the number of applicants for the post - when in fact he was not invited for interview because the Department deemed that he had not met the four essential criteria.
- There were no guidance notes or information provided to assist candidates when completing their application forms. This meant that candidates were given no indication of the level of competence, skills

or abilities required to enable them to demonstrate how they met each of the criterion.

- There was no marking frame or scoring guidance provided for the sift panel to score candidates against. This resulted in individual assessments being made on a purely subjective basis dependent on each panel member's interpretation of the criteria. Therefore, it is highly questionable whether the same degree of competence was measured by the individual panel members.
- The individual assessment sheets used by panel members were not produced in the same format and leave the Department open to the accusation that candidates were not assessed on an equal basis.
- Following the individual assessment by panel members a joint sift meeting was held. At the meeting, detailed discussion only occurred in relation to whether particular candidates were deemed not to have met certain criteria. This resulted in some candidates being assessed more closely in particular criteria by the sift panel than others and as such I have concluded that all candidates were not assessed equally.
- The individual assessment sheets completed by the panel members prior to the joint sift meeting, contained a series of comments, ticks, crosses and question marks. Many of these have been amended and changed without any rationale for the changes being recorded. I have concluded that any changes were made by the panel members following discussion at the sift meeting and not as a result of any other influence.
- The sift panel summary sheets and the sift panel meeting record lacked clarity and provided no evidence to support the decisions taken to accept or reject candidates. The written documentation provided by

the sift panel does nothing to protect the integrity of an open and transparent process.

- The complainant was the only one of five applicants not to be interviewed. He was deemed not to have met essential Criterion C – The achievement of strategic objectives with budget and time constraints – and thus failed to meet the four essential criteria for the post. I have concluded that although the complainant's application form could have been stronger, it did provide some evidence that he met this criterion.
- One other candidate, who was deemed to have met the four essential criteria and was subsequently invited for interview, provided similar or less evidence to the complainant in relation to Criterion C. Hence I have concluded that all candidates were not treated equally at the sifting stage.
- The Department handled the feedback process very poorly. The initial letter to the complainant stated that due to the number of applications it was necessary to draw up a shortlist. This was a generic letter and did not explain that the complainant had not met the four essential criteria and as such was not eligible for the interview stage.
- When the complainant asked for the reasoning for his exclusion the Department totally failed to respond leading him to complain to the Commissioner. Following intervention from OCPA NI, the Department advised the complainant that written feedback would be provided as a matter of urgency. Despite this assurance it took over 3 months to write to the complainant with feedback. Additionally, the feedback letter failed to explain adequately the reasoning behind the Department's decision.

## **Outcome**

### **My decisions in relation to the complaints are as follows:**

That the decision of the panel not to shortlist for interview on the grounds that the complainant did not meet criterion c – “The achievement of strategic objectives with time and budget constraints” – was incorrect;

#### **This complaint is upheld.**

That the complainant’s application was not treated on an equal basis with those of all other candidates,

#### **This complaint is upheld.**

That there was a predetermined outcome to this appointment competition,

#### **This complaint is not upheld.**

## **Recommendations**

- 1. I recommend that the Department ensures that competition documentation states clearly that only candidates that meet the essential criteria for the posts will be eligible for interview.**
- 2. I recommend that the Department ensures that competition documentation states in what circumstances shortlisting will occur and what criteria will be used in this process.**
- 3. I recommend that the Department issues guidance notes or background information in the application pack. This will assist candidates when completing application forms by indicating the**

**level of competence, skills or abilities they require to meet the criteria.**

- 4. I recommend that the Department uses a scoring frame or marking matrix when assessing candidates against criteria to ensure a consistent level of measurement by panel members.**
- 5. I recommend that the assessment documentation used by panel members is produced in the same format.**
- 6. I recommend that if individual panel members assess candidates prior to a joint panel meeting, no amendments are made to their assessment sheets without verification or a record of the rationale for the changes.**
- 7. I recommend that the Department ensures that the rationale supporting all sift panel decisions is fully recorded. In this competition the scarcity of comments from the panel members left the Department poorly placed to defend or justify its decisions.**
- 8. I recommend that the Department ensures the wording of rejection letters accurately reflects the reasons why a candidate has been unsuccessful.**
- 9. I recommend that the Department ensures that all requests for feedback are handled immediately.**