

COMPLAINT REGARDING APPOINTMENT OF BOARD MEMBERS TO THE HEALTH AND SAFETY EXECUTIVE FOR NORTHERN IRELAND – DEPARTMENT FOR ENTERPRISE, TRADE AND INDUSTRY (DETI)

Background

This complaint relates to the non-selection of an applicant for the interview stage of a competition to appoint Board members to the Health and Safety Executive for Northern Ireland (HSENI). The complainant requested an investigation by writing to the Commissioner for Public Appointments for Northern Ireland on 8 July 2008.

The complainant was not shortlisted for interview as the sift panel deemed that whilst he met two of the essential criteria for the post, he did not meet the Corporate Governance/Risk Management criterion for the following reason:

“No evidence provided by way of worked through examples of understanding of corporate governance issues”.

On receipt of this decision, the complainant revisited all the relevant advice and information in respect of his application. This included the OFMDFM booklet “make your mark”, paragraph 39 of the DETI information pack, the guidance notes on completion of the application form and his response to the Corporate Governance/Risk Management criterion.

Having reviewed the documentation the complainant was at a loss to understand the Department’s decision and wrote to the DETI Permanent Secretary complaining about the selection process.

The DETI Permanent Secretary subsequently reviewed the complainant’s application and upheld the original decision that the complainant did not meet the disputed criterion.

Complaint

The complaint, and the matters 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 the Corporate Governance/Risk Management criterion, was incorrect.

Scope of the complaint

The complaint scope involved reviewing all the documentation relating to the application and short-listing process. This included 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 complaint should be upheld included the following steps:

1. A review of the publicised criteria for the post and the guidance provided to applicants to ascertain whether or not candidates were clearly advised of the requirements deemed necessary in order to meet the Corporate Governance/Risk Management criterion.
2. A review of all paperwork and documentation generated by the Department and panel in support of the short-listing decision, to identify whether the marking/scoring process was clearly documented, and whether candidates were only assessed against the criteria outlined for the post.
3. 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.
4. Meetings with DETI officials, [REDACTED] and [REDACTED] and [REDACTED] the OCPA NI assessor involved in this competition.

Main Findings

Step 1 - The application documentation

1. The advertisement clearly outlined that appointments would be on merit from those individuals who satisfied the essential criteria, namely Corporate Governance/Risk Management, Strategic Thinking and Communication. It also explained that more details on the criteria and the selection process were set out in the information pack.
2. The Information Pack stated that a criteria-based approach would be used in selection. It also made it clear that candidates were required to provide specific practical evidence and examples of how they met the requirements reflected in the essential criteria. It stated in paragraphs 34-36 that:

“The application form is an essential element of the process and is designed to allow applicant's to give specific examples of past performance to demonstrate their ability or competence.....The

information that you provide will be used for shortlisting, assessment and selection purposes. Make sure that you provide specific practical evidence and examples of how you feel you are suitable for this appointment. It is strongly recommended that you read the enclosed booklet "make your mark" as it contains very useful information on criteria-based selection and completion of your application form".

3. Paragraph 39 of the information pack reiterated that candidates were expected to demonstrate their ability, by way of specific examples, to meet all three essential criteria. It identified certain requirements for each criterion. In relation to the requirements for **Corporate Governance/Risk Management** it stated "***Experience of the principles of corporate governance, including either audit or risk management, and of working effectively as part of or to a non-executive team or board***". Additional information was provided outlining that successful candidates would be expected to rigorously apply the principles of corporate governance/risk management to all every day decisions which impact on the role of HSENI and ensure that these principles were fully complied with throughout the organisation.
4. Application forms were issued to candidates together with the information pack. An additional page providing guidance on the completion of the application form advised candidates to read the guide "make your mark" before completing the form and suggested a model to help structure examples and express them in a logical manner.
5. The first three pages of the application form dealt with personal details, employment history and other public appointments. Thereafter the application form consisted of a designated page for each of the essential and desirable criteria.
6. I found that the requirements identified for the Corporate Governance/Risk Management criterion in the application form were significantly different from those in the person specification outlined in the information pack. Whilst the information pack defined the requirements as "***Experience of the principles of corporate governance, including either audit or risk management, and of***

working effectively as part of or to a non-executive team or board”
the application form stated: ***“Corporate Governance/Risk Management – Understanding and applying the principles of corporate governance and risk management. (see paragraph 39 of the Information Pack for further information)”***.

7. Demonstrating experience of the principles of corporate governance, **including either audit or risk management** is a completely different requirement from **understanding and applying the principles of corporate governance and risk management**. I have concluded therefore that candidates were not clearly advised of the requirements deemed necessary in order to meet the Corporate Governance/Risk Management criterion.

Step 2 – The sifting exercise

8. The next stage of my investigation focused on the paperwork and documentation generated by the Department and the sifting panel in support of the short-listing decision. This was to identify whether the marking/scoring process was clearly documented, and whether candidates were only assessed against the criteria outlined for the post.
9. A total of 56 applications were received for the posts, of which three were received after the stated deadline. Of these, one was accepted as the panel subsequently agreed that extenuating circumstances had existed. The applications were anonymised and sent to the panel members prior to a joint sift meeting to agree on which of the applications met the published criteria. A copy of the advertisement and a copy of the information pack were enclosed for reference.
10. In preparation for the meeting, the sift panel comprising [REDACTED] (DETI) [REDACTED] (HSENI Chair) and [REDACTED] (OCPA NI Assessor) were asked to make an assessment of the essential criteria for each application, on a marking grid that was provided. The marking grid provided a Yes/No box for each of the three essential criteria and space for panel members to provide rationale for their decisions.

11. I found that panel members received no marking frame, scoring guidance, or benchmark indicators to assist them when making assessments of the applications forms. Consequently, all decisions on whether a candidate met a particular criterion were purely subjective and dependent on how they interpreted the requirements of each criterion. Given the fact that the requirements for the Corporate Governance/Risk Management criterion were not clearly defined for candidates, there was also potential for panel members to interpret this criterion in different ways.
12. It was evident from the individual marking frames that panel members had indeed interpreted the Corporate Governance/Risk Management criterion quite differently. One panel member [REDACTED] appeared to assess candidates on whether they had demonstrated both corporate governance and risk management, whilst another [REDACTED] appeared to consider experience of corporate governance principles including audit or risk management and whether candidates provided evidence of working to a board.
13. I also found very limited documentation to support any of the decisions made by individual panel members. For those candidates deemed to have satisfied certain criteria panel members simply marked a Y in the Y/N box. No additional comments were made to support the rationale for these decisions. When a candidate was assessed as not having met a specific criterion, panel members provided only very brief comments, for example, no evidence; no clear risk management examples; tactical; or no evidence of specific role etc.
14. The panel members met together at a joint sift meeting on 22 May 2008 and were joined by [REDACTED] DETI Public Appointments Unit, who acted as Secretary. From my interviews with Departmental officials and the OCPA NI Assessor I found that, at the commencement of the sift meeting, the panel had a robust discussion about the requirements that candidates would be expected to demonstrate in order to meet the Corporate Governance/Risk Management criterion. It was **decided that candidates would need to demonstrate, through**

worked examples, that they could understand and apply the principles of both Corporate Governance and Risk Management.

15. This was significantly different from the criterion defined in paragraph 39 of the information pack and as such **I have concluded that candidates were not assessed against the requirements outlined for the post in the person specification.**
16. The panel considered each application and [REDACTED] completed a marking grid indicating the agreed panel assessment on a Y/N basis for each of the three essential criteria for all candidates. Where it was deemed that candidates had not met certain criteria there was space for comments to be used for feedback.
17. My review found that the agreed sift panel marking grid provided very limited documentation regarding the decisions that were taken. Again there was no marking frame to benchmark candidates against and it is difficult to know what measurement the panel used to determine whether candidates did or did not meet the criteria. No comments were provided to substantiate why candidates had met the criteria and only brief comments were made in relation to the criteria that had not been satisfied for example; ***“No evidence provided by way of worked through examples of understanding of corp gov issues”*** and ***“No evidence of experience of corporate governance – example was all about risk management”***.
18. The absence of a marking frame or detailed documentation providing rationale for the assessments made by the panel left the Department poorly placed to defend or justify its decisions.
19. Of the 54 candidates assessed, **38 did not meet the criterion, Corporate Governance/Risk Management. This is hardly surprising given the lack of clarity over the requirements deemed necessary to meet this criterion.**

Step 3 – The complainant’s application

20. Examination of the joint sift panel scoring frame showed that the complainant was not shortlisted for interview as he was deemed not to have met the Corporate Governance/Risk Management criterion. The narrative on the scoring frame noted “**No evidence provided by way of worked through examples of understanding of corp gov issues.**”

21. In relation to the disputed criterion the complainant provided three specific examples of how he thought he met the criteria. His first example stated:

“During one of my terms as [REDACTED] [REDACTED] I had concerns about arrangements for the management and accountability of our allocated budget [REDACTED] There was a robust system for Annual External Audits but this would not draw early attention to any possible irregularities. I discussed my concerns with the Chairperson and Administration manager, suggesting that advice should be taken. As a result of my intervention and subsequent discussion an Internal Audit Committee, (including the Local Authority’s Finance officer and myself), was set up and went on to establish a system of Finance Management”.

22. In a second example he described how in the early stages of [REDACTED] Chairmanship of the [REDACTED] he had concerns that a particular course of action would compromise the Board’s responsibilities. He explained that he arranged for a small team to be established to consider the way forward and how he worked with the team on a proposal which was adopted at the next Board meeting. In his last example he stated that he had recently completed 3 separate days training with the Chartered Institute of Public Finance and Accountancy (CIPFA) on “How Good is your Governance”, “Strategy, Risk and Performance Management” and “Achieving Excellent Performance through Good Governance”.

23. Taking these examples into account, I consider that the complainant’s application did provide clear practical examples of sufficient quality to

demonstrate how he met the requirements reflected in the essential criteria as stated in the person specification of the information pack. **As such I have concluded that the decision of the panel not to shortlist on the grounds that the complainant did not meet the Corporate Governance/Risk Management criterion, was incorrect.**

24. As I pointed out earlier, the panel did not use a marking frame and their failure to produce more detailed and specific documentation supporting their decisions makes it difficult to understand what measurement was used to determine how the complainant's application was rejected and others were accepted.

Overall summary and conclusions

- The requirements identified for the Corporate Governance/Risk Management criterion in the application form were significantly different from those in the person specification outlined in the information pack. Demonstrating “experience of the principles of corporate governance, including either audit or risk management and of working effectively as part of or to a non-executive team or board” as defined in the information pack is a totally different requirement from “understanding and applying the principles of corporate governance and risk management” as outlined in the application form. This meant that the requirements for this criterion were unclear for both candidates and panel members alike.
- There was no marking frame, scoring guidance, or benchmark indicators to assist individual panel members when making initial assessments of the candidates. All decisions on whether a candidate met a particular criterion were purely subjective and dependent on how they interpreted the requirements of each criterion.
- It was evident from the individual marking frames that panel members had interpreted the requirements of the Corporate Governance/Risk Management criterion quite differently. As such there was no

consistency in the assessments made by individual panel members prior to the joint sift meeting.

- The sift panel agreed on the requirements for the Corporate Governance/Risk Management at the start of the joint sift meeting. Their interpretation was significantly different from that defined in the information pack. This resulted in candidates being assessed against different requirements from those outlined in the person specification for the post.
- The marking grids outlining the decisions taken by individual panel members and the joint sift panel lacked sufficient detail. No comments were provided to substantiate why candidates had met criteria and only brief comments were made in relation to the criteria that had not been satisfied. In the absence of a marking frame to benchmark candidates against it is difficult to know what measurement the panel used to determine whether candidates did or did not meet the criteria. This left the Department poorly placed to defend or justify its decisions.
- Of 54 candidates assessed, 38 did not meet the criterion, Corporate Governance/Risk Management. This is an unusually high proportion of rejections but is hardly surprising given the lack of clarity over the requirements for this criterion.

Outcome

The complaint in this case was:

That the decision of the panel not to shortlist for interview on the grounds that the complainant did not meet the Corporate Governance/Risk Management criterion, was incorrect.

My decision is that this complaint is upheld.

Recommendations

- 1. I recommend that the Department ensures that the requirements deemed necessary to meet essential criteria remain consistent throughout all documentation.**
- 2. I recommend that the Department ensures that the requirements deemed necessary to meet essential criteria are clearly defined and easily understood.**
- 3. I recommend that the Department ensures that candidates are assessed against the published criteria only.**
- 4. I recommend that the Department uses a scoring frame or marking matrix when assessing candidates against criteria to ensure a consistent and more objective level of measurement by panel members.**
- 5. 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.**

