

**COMPLAINT REGARDING APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO THE PUBLIC HEALTH AGENCY, THE HEALTH AND SOCIAL CARE BOARD & THE BUSINESS SERVICES ORGANISATION – DEPARTMENT OF HEALTH, SOCIAL SERVICES & PUBLIC SAFETY (DHSSPS)**

**Background**

This complaint relates to the non-selection of an applicant for the interview stage of a competition to appoint non-executive directors to three new health bodies namely; the Public Health Agency (PHA), the Health and Social Care Board (HSCB) and the Business Services Organisation (BSO). The Department of Health, Social Services and Public Safety (DHSSPS) were responsible for these appointments. The complainant requested an investigation by writing to the Commissioner for Public Appointments for Northern Ireland on 6 March 2009.

As part of the overall restructuring of the Health Service following the Review of Public Administration, the Department established four new health bodies with effect from 1 April 2009. The Public Appointments Unit DHSSPS managed the four competitions simultaneously using the same generic essential criteria for each. Applicants were permitted to apply for more than one position if they wished. In this case, the complainant applied for the lay membership of the three new bodies named above. She did not apply for the Patient Client Council (PCC).

The complainant had applied last year for the post of Chair to the BSO and the PCC. She met the essential criteria for both posts and was interviewed for each although she was not appointed. On this occasion, the complainant was again deemed to have met the essential criteria for the posts however, due to the high number of eligible candidates for each body; the Department assessed the desirable criteria in order to shortlist for interview.

A scoring system was used to award one point for each of the desirable criteria deemed satisfied. For the PHA, fourteen desirable criteria were listed. The Department chose to interview the top scoring 14 candidates, each of whom had scored 11 points or more. For the HSCB, a slightly amended

fourteen criteria were listed and those scoring 10 points or more were shortlisted for interview. In the case of the BSO, 17 desirable criteria were listed and those scoring 9 points or more were invited for interview.

The complainant was not shortlisted for any of the bodies as she was deemed to have met only 6 of the desirable criteria and therefore received a score of six points in each competition.

On receipt of the Department's letter advising that she had not been shortlisted for any of the three competitions applied for, the complainant e-mailed a complaint to the Commissioner. In accordance with the Code of Practice the complaint was forwarded to the Department for a response.

The complainant remained dissatisfied with the response. She believed that in order to be shortlisted for interview, candidates had to meet a minimum of 11 desirable criteria for the PHA, 10 for the HSCB and 9 for the BSO. As at least four of the desirable criteria for each body were related to health issues, the complainant felt that only those with previous quango experience or those with direct experience of working in or for the Health Service were likely to meet the desirable criteria to be shortlisted for interview.

The complainant also expressed concern that the essential and desirable criteria for the Chair and lay member positions were identical with one exception, and asked if it was normal to carry the same criteria for different competitions?

## **Complaint**

The complaint investigated was:

- That only those with previous quango experience or with direct experience of working in, or for, the health service were likely to meet sufficient desirable criteria to be invited for interview.

## **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.
- Application forms completed by all candidates for each of the three competitions.
- 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 investigation was initiated on the basis that the facts required to establish whether there were grounds for complaint could be gathered by a review of the audit trail (i.e. the paperwork produced up to, and including the shortlisting process) and 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 to meet each of the desirable criteria.
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 shortlist was compiled on the basis of merit.
3. An assessment of the completed application forms to identify if only those with previous quango experience or direct experience of working in

or for the health service met sufficient desirable criteria to be invited for interview.

## **Main Findings**

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

1. The advertisement outlined that the Department was seeking to appoint thirty-eight non-executive directors to four new Health and Social Care bodies with effect from 1 April 2009. The advertisement also identified the five essential criteria for the posts. However, the advertisement contained nothing to indicate what the desirable criteria were or in what circumstances they would be applied.
2. Separate Information Packs were produced for each competition. They were reasonably comprehensive setting out the background to the bodies and their functions. The essential criteria were generic across the three competitions. The eligibility sections outlined the five essential criteria and contained seven pages of detailed explanation of the competencies required to meet each.
3. Only one page was devoted to the desirable criteria section. In stark contrast to the detailed explanation of the competencies required for each the essential criteria, there was no information provided to indicate the competencies required to meet any of the desirable criteria.
4. It was also evident that Guidance Notes were issued to candidates to assist them when completing application forms. These contained helpful information on the requirements of the essential criteria, but again there was nothing to indicate the requirements for any of the desirable criteria.
5. Application forms were issued to candidates with the Information Pack. The first page dealt with personal details. Thereafter the form consisted of a page for each of the essential criteria and a separate page for candidates to demonstrate how and to what extent they met the desirable criteria outlined in the Information Pack. Again, there was

nothing in the application forms to define the meaning or competency requirements of the desirable criteria

6. Having reviewed the advertisement, Information Packs, Guidance Notes and Application Forms **I have concluded that candidates were not clearly advised of the requirements deemed necessary to meet any of the desirable criteria.**

## **Step 2 – The shortlisting exercise**

7. The next stage of my investigation focused on the paperwork and documentation generated by the Department and the sifting panels in support of the shortlisting decisions. This was to identify whether the shortlists were compiled on the basis of merit.
8. I found that the eligibility assessment used by the Department was not sufficiently rigorous to ensure that the best candidates necessarily progressed to the interview stage of these competitions. It was designed when the Department operated a database of potential candidates for public appointments. All sixty-nine candidates who applied for the lay member posts at the PHA were deemed to have met the five essential criteria and similarly all 52 who applied for the BSO were also deemed eligible. Of the 71 candidates who applied for the HSCB, only five failed to meet the essential criteria. Remarkably one of these five also applied for the PHA using an identical application form and was considered to have met the essential criteria and was subsequently shortlisted for interview!!
9. The approach used to test eligibility meant that in all three competitions, assessment of the desirable criteria became the crucial factor in determining which candidates were subsequently invited for interview. In light of this, **I have concluded that the Department should consider an urgent review of their sifting process to ensure that it remains fit for purpose and that only the best candidates progress to interview.**
10. I also found that assessment of the desirable criteria was not sufficiently rigorous. The panels had no assessment frameworks to identify the

requirements or competencies deemed necessary to meet the criteria listed for each body. Assessment was purely subjective and open to interpretation. It was evident that some criteria were interpreted very broadly whilst others appeared to be more strictly defined.

11. The scoring system used at the shortlisting stage was very restrictive. The panels had no scoring frameworks for guidance and there was no qualitative assessment of the evidence provided. Candidates simply received a score of one or zero based on their examples. By using this scoring system the panels had no scope to award scores based on the quality of the evidence produced. I have concluded therefore that those invited for interview were not necessarily the strongest candidates in these competitions.
12. I found that professional qualifications were required for some of the desirable criteria (Finance, HR and Law). However, there was nothing to determine what the Department considered a “professional qualification” to be, or which qualifications were deemed acceptable for each criterion. Again, this meant that scores were awarded on a purely subjective basis with no qualitative measurement. More remarkably, the Department took no action to verify that candidates held any of the qualifications claimed. Consequently, the scores awarded for these criteria are highly questionable.
13. Taking account of the inconsistent approach to the interpretation of the desirable criteria, the lack of a qualitative assessment in the scoring process and the failure to ensure that the requisite professional qualifications actually existed, **I have concluded that the Department should carry out an urgent review of its shortlisting process to ensure that it produces a quality outcome**

### **Step 3 – The complainant’s application**

14. Examination of the shortlisting scoring frames showed that the complainant was deemed to have met six desirable criteria namely; Living in Northern Ireland, Management, Law, Representing Clients, Health and Social Care and being a User of the Health Service. She

received a score of six for each competition however this was not sufficient to warrant an interview for any of the bodies applied for. For the PHA, 14 candidates were shortlisted each of whom scored 11 or more, 21 were shortlisted for the HSCB having scored 10 or more, and 24 were shortlisted for the BSO having scored 9 or more.

15. The basis of this complaint was that it was unlikely that anyone without quango experience or direct experience of working in, or for, the health service would be shortlisted for interview. It was interesting to note however, that the complainant was deemed to have met two of the four health related criteria (Health and Social Care and User/Carer) without direct experience of working in or for the health service. Had she satisfied the remaining health related criteria, she would have received a total score of 8. This would not have been sufficient to warrant an interview for any of the competitions.
16. In order to assess if only those with previous quango experience or direct experience of working in or for the health service met sufficient desirable criteria to be invited for interview, it was necessary to review all application forms.
17. I found that of the 14 candidates shortlisted for the PHA, 4 had no quango experience or direct experience of working in or for the health service. 6 of the 21 shortlisted for the HSCB and 7 of the 24 shortlisted for the BSO had no quango experience or direct involvement with the health service. As such it was evident that it was not necessary to have this experience in order to be shortlisted.
18. I also found that a significant number of those who were not shortlisted for interview were former non-executive directors of other health bodies. It was clear therefore, that previous quango experience relating directly to the health service had little bearing on which candidates were shortlisted for interview in any of the competitions.
19. **Having reviewed all application forms submitted for these three competitions I have concluded that it was not necessary to have previous quango experience or direct experience of working in or**

**for the health service in order to meet sufficient desirable criteria to be invited for interview.**

### **Overall summary and conclusions**

- The eligibility assessment used by the Department was not sufficiently rigorous to ensure that the best candidates necessarily progressed to the interview stage of this competition. It was designed when the Department operated a database of potential candidates for public appointments. This meant that assessment of the desirable criteria became the crucial factor in determining which candidates were subsequently invited for interview. I have concluded that the Department should consider an urgent review of their sifting process to ensure that it remains fit for purpose and that only the best candidates progress to interview.
- Similarly, assessment of the desirable criteria was not sufficiently rigorous. The panel had no assessment framework to identify the requirements or competencies deemed necessary to meet each of the listed criteria. Assessment was purely subjective and open to interpretation. It was very evident that in numerous cases criteria were satisfied on the basis of very generous or tenuous interpretations of the evidence provided.
- The scoring system used at the shortlisting stage was very restrictive. The panel had no scoring framework for guidance and there was no qualitative assessment of the evidence provided. Candidates simply received a score of one or zero based on their examples. By using this scoring system the panel had no scope to award scores based on the quality of the evidence and I have concluded that those invited for interview were not necessarily the strongest candidates in these competitions.
- Professional qualifications were required for some of the desirable criteria (Finance, HR and Law). However, there was nothing to determine what the Department considered a “professional

qualification” to be, or which qualifications were deemed acceptable for each criterion. Again, this meant that scores were awarded on a purely subjective basis with no qualitative measurement. More remarkably, the Department took no action to verify that candidates held any of the qualifications claimed. Consequently, the scores awarded for these criteria are highly questionable.

- Taking account of the inconsistent approach to the interpretation of the desirable criteria, the lack of a qualitative assessment in the scoring process and the failure to ensure that the requisite professional qualifications actually existed, I have concluded that the Department should consider an urgent review of its shortlisting process to ensure it produces a quality outcome.
- A number of those shortlisted in each competition had not worked in, or for, the health service nor had they any experience of quangos. I have concluded therefore that it was not necessary to have such experience in order to meet sufficient desirable criteria to be invited for interview.
- It was also evident that a significant number of those who were not shortlisted for interview were former non-executive directors of other health bodies. It was clear therefore, that previous quango experience relating directly to the health service had little bearing on which candidates were shortlisted for interview in any of the competitions.

## **Outcome**

### **The complaint in this case was:**

- That only those with previous quango experience or with direct experience of working in, or for, the health service were likely to meet sufficient desirable criteria to be invited for interview.

**My decision is that this complaint is not upheld.**

## **Recommendations**

- 1. I recommend that the Department considers an urgent review of the eligibility assessment process to ensure that it is fit for purpose and that only the best candidates progress to interview.**
- 2. I recommend that the Department considers an urgent review of the shortlisting process to ensure that it produces a quality outcome.**
- 3. I recommend that the Department issues guidance notes and background information relating to desirable criteria. This should clearly identify the skills, abilities or requirements for each criterion and will assist candidates when completing application forms and panel members when making assessments.**
- 4. I recommend that the Department uses a qualitative scoring frame when assessing candidates against desirable criteria. This will assist the panel to ensure a fairer and more consistent scoring process.**
- 5. I recommend that where “Professional Qualifications” are required the Department clearly identifies what is acceptable and takes follow-up action to verify that these qualifications are actually held.**