

COMPLAINT REGARDING APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO THE PUBLIC HEALTH AGENCY – 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 the Public Health Agency (DHSSPS). The complainant requested an investigation by writing to the Commissioner for Public Appointments for Northern Ireland on 2 March 2009.

The complainant was one of sixty-nine candidates who applied for the posts, all of whom were deemed to have met the five essential criteria. Due to the high number of eligible candidates, 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 fourteen desirable criteria deemed satisfied. The Department chose to interview the top scoring 14 candidates, each of whom had scored 11 points or more in the desirable criteria assessment. The complainant was not shortlisted as he was deemed to have met only 10 of the desirable criteria and therefore received a score of ten points.

On receipt of the Department's letter advising that he had not been shortlisted the complainant telephoned the Department to determine which of the desirable criteria that he had not met. He was advised that he did not meet four namely: Finance; HR; Law; and Public Safety including health protection.

Following this phone call the Department and the OA [REDACTED] subsequently reviewed the specific criteria that had not been met and decided that the complainant's score would remain unchanged. The Department then wrote to the complainant outlining the full reasons for the shortlisting decision.

The complainant was surprised to discover that he had not met the "Public Safety, including health protection" criteria and again telephoned the

Department for further clarification of the requirements for this criterion. A verbal explanation of the Department's decision was provided.

The complainant remained dissatisfied with the response. He believed that the information he provided on his application form was sufficient to meet the "Public Safety, including health protection" criterion, and as such he should have been invited for interview.

Complaint

The complaint investigated was:

- That the decision of the panel not to shortlist for interview on the grounds that the complainant did not meet the "Public Safety, including health protection" criterion was incorrect; and he was unfairly treated in comparison to other candidates.

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.
- The completed desirable criteria section of the application form for the complainant and the candidates invited for interview.
- 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 “Public Safety, including health protection” 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 shortlisting process was fair.
3. An assessment of the complainant’s application to identify whether it provided evidence of sufficient quality to indicate that he had met the “Public Safety, including health protection” criterion.
4. An assessment of the desirable criteria section of the application forms completed by those candidates invited for interview to identify whether the complainant’s application had been treated on an equitable basis with those called for interview.
5. Meetings with DHSSPS officials [REDACTED] and [REDACTED] the OCPA NI assessor involved in this competition.

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. Seven of these were to be appointed to the new Public Health Agency (PHA), three as lay members. 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. The Information Pack was reasonably comprehensive setting out the background to the PHA and its functions. The eligibility section 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 “Public Safety, including health protection” or any of the other 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 form to define the meaning or requirements of the “Public Safety, including health protection” criterion.

6. Having reviewed the advertisement, Information Pack, Guidance Notes and Application Form I found that there was no definition of the Department's meaning of "Public Safety, including health protection" or any indication of the competencies required to meet this criterion. **I have concluded therefore that candidates were not clearly advised of the requirements deemed necessary in order to meet the "Public Safety, including health protection" criterion.**

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 panel in support of the shortlisting decision. This was to identify whether the shortlisting process was fair and clearly documented.
8. A total of 69 applications were received for the lay member posts. The eligibility sift was conducted by [REDACTED] (PAU) and [REDACTED] (OA). **It was evident however, that the assessment process was not particularly rigorous and all 69 candidates were deemed to have met the five essential criteria. This created a situation where there was a significant difference in the calibre and quality of candidates ultimately deemed eligible for appointment.**
9. The Department then chose to shortlist for interview by assessing the desirable criteria. Together, [REDACTED] and [REDACTED] ([REDACTED] Public Appointments Unit) reviewed the desirable criteria section completed by all 69 candidates whilst the OA also independently assessed each. One point was awarded for each criterion deemed satisfied. **By adopting a 1-0 scoring system, the panel had no scope to award higher marks regardless of the quality of the examples provided.**
10. A shortlisting candidate summary form was completed for each candidate providing clear documentary evidence of the scores awarded for each of the desirable criteria. In the few cases where any variance in scores had occurred agreement was reached and the final score recorded.

11. My review found that whilst panel members received a comprehensive marking frame to assist when assessing candidates against the essential criteria, there was no detailed guidance agreed or used when assessing the desirable criteria. Consequently, all decisions on whether a candidate met a particular criterion were purely subjective and dependent on how the panel interpreted the requirements of each. This led to an inconsistency of approach with some criteria being assessed very broadly yet others apparently much more strictly defined. It was difficult therefore to establish how the panel had arrived at many of their decisions.
12. It was also noted that for some of the criteria (Finance, Human Resources and Law) professional qualifications were required. However, there was no documentation to indicate what the Department considered a “professional qualification” to be, or which qualifications were deemed acceptable for each criterion. I also found that the Department took no follow-up action to verify that candidates held any of the qualifications indicated in application forms.
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 shortlisting exercise was not fair to all candidates.**

Step 3 – The complainant’s application

14. Examination of the shortlisting scoring frame showed that the complainant was not deemed to have met the “Public Safety, including health protection” criterion.
15. In the desirable criteria section of his application form the complainant stated:

“Whilst I do not have direct experiences with the Fire and Rescue Service or Emergency Planning I did gain useful experience in respect of the Building/Construction Site aspect of public safety

through [REDACTED] membership of the Health and Safety Agency and the Health & Safety Executive Boards. Through this membership I also became aware of and experienced in public safety aspects of environmental health as overseen by Local Authorities”.

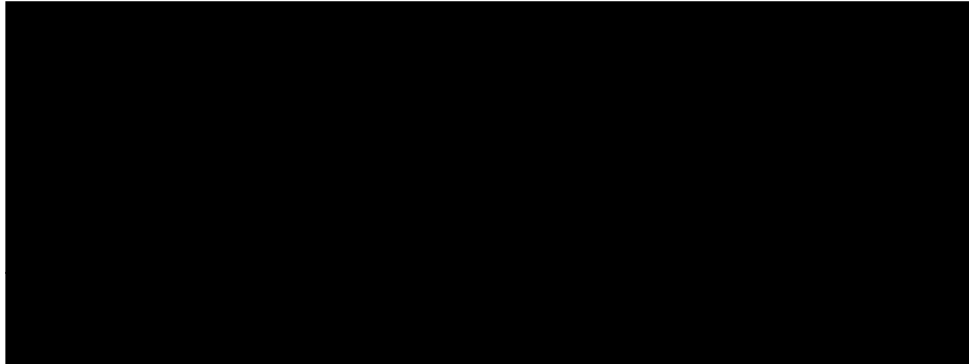
16. In light of the fact that the Information Pack, Guidance Notes and Application Form contained no indication of the requirements for the “Public Safety, including health protection” criterion, it is difficult to understand how membership of the board of Health and Safety Executive for Northern Ireland (HSENI) was not considered acceptable.
17. The business of HSENI is to ensure that risks to public health and public safety from work activities are controlled. HSENI is also the enforcing authority for health and safety in a range of work situations including chemical plants, schools, hospitals, construction sites and fairgrounds amongst others. One of its top priorities is public safety and it maintains close links with local authorities on many issues.
18. Taking account of the complainants membership of the HSENI board and in particular his knowledge around building or construction sites safety and issues around environmental health as overseen by local authorities, I consider that he clearly demonstrated that he had some experience of Public Safety.
19. When I met with Departmental Officials I was informed that the Department had a particular interpretation of the “Public Safety, including health protection” criterion. I was advised that “Public Safety” included issues such as Fire & Rescue, Emergency Planning, Child Protection, District Policing Partnerships and Community Safety Projects. I was also advised that the interpretation of “health protection”, taken from the Health Protection Agency (HPA) in England, was “To protect the community (or any part of the community) against infectious disease and other dangers to health”. This interpretation however, was not included in any of the documentation associated with this competition and thus was not available to candidates.

20. It was interesting to note from the HPA's own website that "other dangers to health" include chemical and radiation hazards. The HPA provides advice and guidance to employers on chemical and radiation hazards. This is a similar responsibility to that of the HSENI who also issue guidance to employers on the use of chemicals. It could be argued that the complainant's role in HSENI gave him some degree of experience in health protection as defined by the Department.
21. **Having thoroughly reviewed the relevant documentation I consider that the complainant's application provided evidence to demonstrate that he had experience of the "Public Safety, including health protection" criterion.**
22. In order to assess whether the complainant had been treated fairly in comparison with other candidates it was necessary to review the desirable criteria sections for those invited for interview. Of the fourteen invited for interview, thirteen were deemed to have met the disputed criterion.
23. I found that nine candidates used headings to identify the separate criteria. Remarkably, three [REDACTED] were deemed to have met the "Public Safety, including health protection" criterion, despite providing no information under this heading. Clearly, they did not expect to meet this criterion; however the panel judged that information contained under different criteria justified the award of a mark.
24. Two other candidates [REDACTED] provided information under this heading but the panel deemed that the information did not merit a mark. These two candidates however, did receive a mark for the disputed criterion because of information contained in other sections of the desirable criteria.
25. These five cases highlight the fact that candidates had little idea of what was required to meet the "Public Safety, including health protection" criterion. This is hardly surprising given that the Information Pack, Guidance Notes and Application Form contained nothing to define the

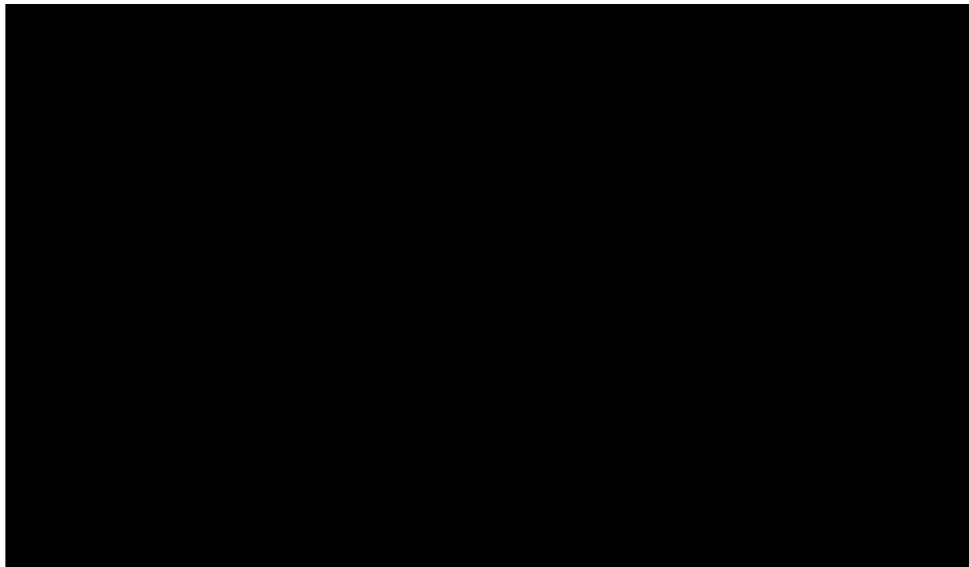
Department's meaning of the criterion or the requirements deemed necessary to meet it.

26. Having reviewed the desirable criteria section completed by the fourteen candidates invited for interview, I found that it was very questionable whether the following candidates had provided stronger evidence than the complainant in relation to the disputed criterion "Public Safety, including health protection".

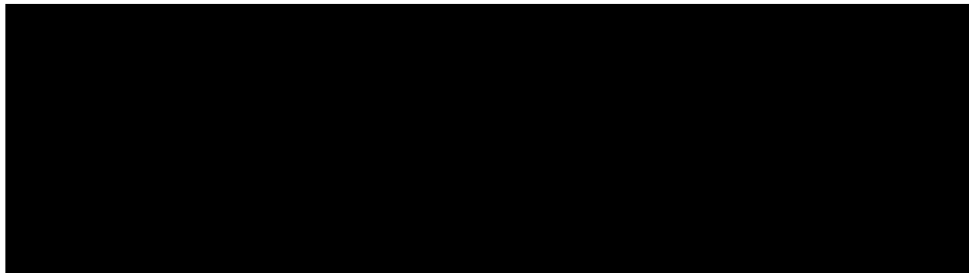
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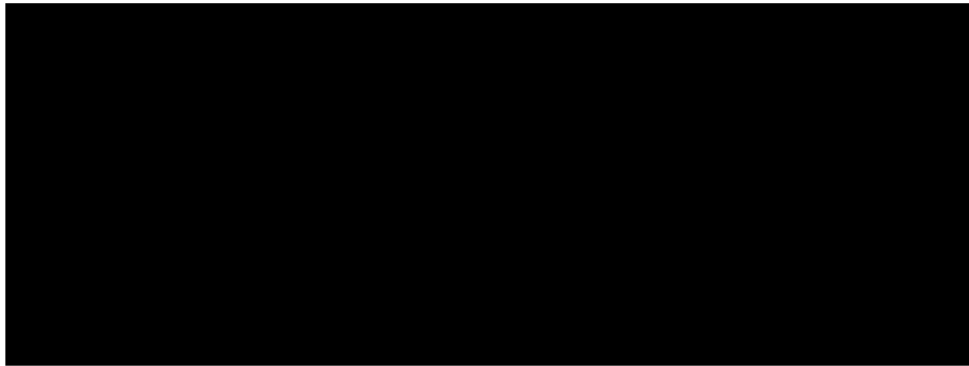


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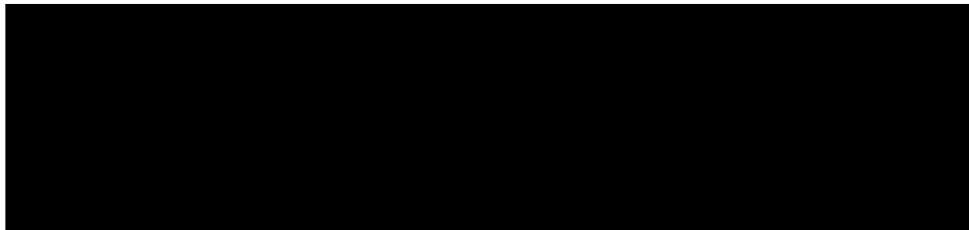




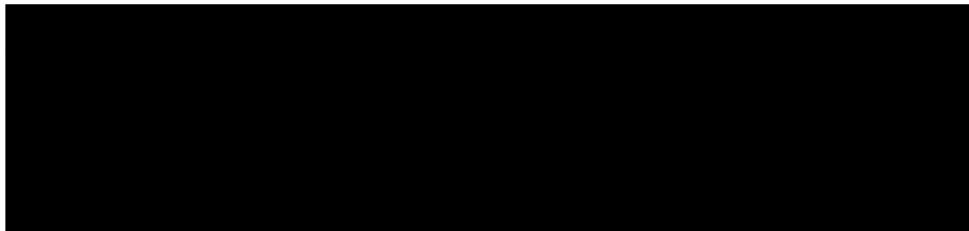
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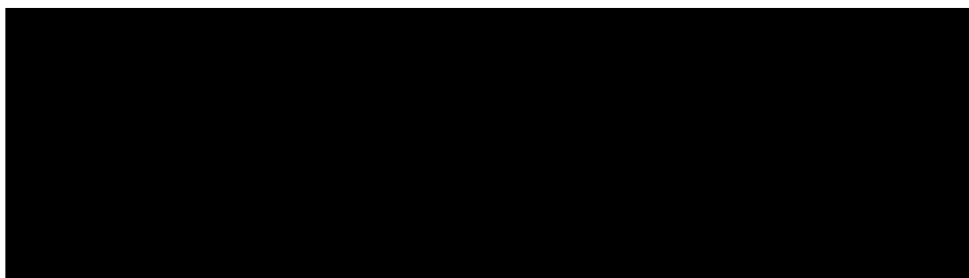
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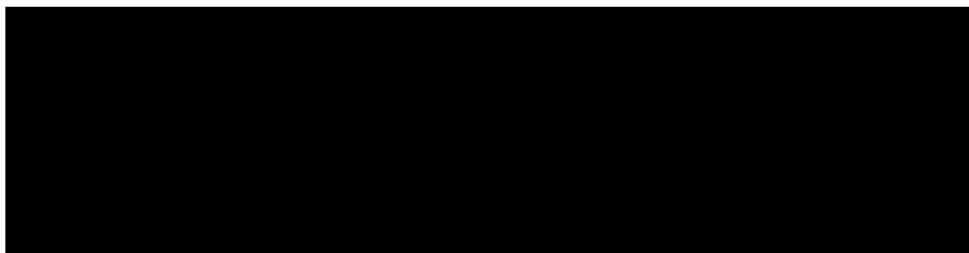
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37. In the absence of clearly defined requirements for the disputed criterion or any supporting rationale to justify the panel scores, it is my view that these candidates provided similar or less evidence than the complainant in relation to the disputed criterion. As such, **I have concluded that the decision not to award the complainant one point for the “Public Safety, including health protection” criterion was unfair, in comparison with other candidates.**

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. All sixty-nine candidates who applied for these posts were deemed to have met the five essential criteria. 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 fourteen listed criteria. Assessment was purely subjective and open to interpretation. Consequently, the desirable criteria were not assessed on an equal basis with some being interpreted very broadly whilst others, e.g. “Public Safety, including health protection”, being much more strictly defined.

- The scoring system used at the shortlisting stage was also 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 the competition.
- 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 that it is fair to all candidates and produces a quality outcome.
- The “Public Safety, including health protection” criterion caused confusion for candidates as the application documentation contained nothing to define the Department’s interpretation of the criterion or the requirements deemed necessary to meet it. Some candidates clearly did not expect to meet this criterion yet remarkably they scored one point on the basis of some evidence provided in relation to other criteria.

- The complainant had been a member of the board of the Health and Safety Executive for Northern Ireland [REDACTED]. He had particular experience of Building and Construction Site safety and was also aware and experienced in public safety aspects of environmental health as overseen by local authorities. As the business of HESNI is to ensure that risks to public health and safety from work activities is controlled, I have concluded that the complainant did demonstrate some experience of the “Public Safety, including health protection” criterion. As such, it is my view that he should have received one point for this evidence and consequently, he should have been shortlisted for interview.
- Of the fourteen candidates invited for interview, thirteen were deemed to have met the “Public Safety, including health protection” criterion. Having reviewed these applications it is my view that ten candidates provided similar or less evidence than the complainant. As these candidates were each awarded one point for their evidence, I have concluded therefore that the complainant was not treated fairly in comparison.

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 “Public Safety, including health protection” criterion was incorrect; and he was unfairly treated in comparison to other candidates.

My decision is that this complaint is 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 is fair to all candidates and 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.**

