

# COMPLAINT REGARDING APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO THE NORTHERN IRELAND TRANSPORT HOLDING COMPANY – DEPARTMENT FOR REGIONAL DEVELOPMENT (DRD)

## 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 Northern Ireland Transport Holding Company (NITHC). The complainant requested an investigation by writing initially to the Commissioner for Public Appointments for Northern Ireland on 6 July 2008.

At that time he had not raised his complaint formally with the Department for Regional Development, so in line with the Code of Practice I redirected his correspondence to them. The Department subsequently responded to him, but the complainant remained dissatisfied and formally complained to the Commissioner on 30 September 2008.

In this competition the sift panel assessed candidates against six separate criteria, each of which carried a maximum score of 5 marks. They agreed that candidates must score at least 3 marks in two specific criteria namely; ***Experience of, and capacity in, Transport/Industrial/Commercial or Financial matters, or other adequate or suitable experience, at a Senior Management level*** and ***Business Skills***. Candidates were required to score a total of 18 in order to be deemed suitable for interview. The complainant received a total of 16 marks and scored only 2 in both of the criteria in which 3 marks were required. As a result he was deemed not suitable for interview.

The complainant believes that given his given his experience of all aspects of public transport [REDACTED] and having been full time [REDACTED] [REDACTED] for the Transport and General Workers Union, he did have “adequate or suitable experience of transport at a senior level” and deserved more than the 2 marks awarded for this criterion. [REDACTED]

[REDACTED]

## **Complaint**

The complaint and the matters investigated were:

- That the panel did not assess the complainant's application fairly in respect of the criterion, "*Experience of, and capacity in, transport, industrial, commercial or financial matters, or other adequate or suitable experience, at a senior management level*", and in comparison with 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.
- 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 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 of the post.

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 merited a higher score in the disputed criterion - *"Experience of, and capacity in, transport, industrial, commercial or financial matters, or other adequate or suitable experience, at a senior management level"*.
4. An assessment of a sample of the received applications to identify whether the complainant had been treated on an equitable basis with other candidates.

## **Main Findings**

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

1. The advertisement clearly outlined that the Department were seeking highly motivated individuals who had wide experience of, and had shown capacity in transport, industrial, commercial or financial matters or other adequate or suitable experience which would be of value to the Company in the discharge of its functions. It also explained that further information on the essential criteria could be found in the application pack.
2. The application pack contained an application form; guidance notes on completing the application form; a job and person specification; the "Complaints and Conflicts of Interests Information Guidance" leaflet, the NITHC accounts for 2006/07 and a copy of the advert.
3. The job and person specification set out the full requirements for candidates. It made it clear that, in accordance with legislation, members of the NITHC Board were appointed from persons who had

wide experience of and capacity in transport, industrial, commercial or financial matters or other adequate or suitable experience which would be of value to the Company in the discharge of its functions. It further explained that the Department required that individuals should have gained experience at a Senior Management level in one or more of these categories. It also advised candidates to note that for the purposes of this competition there was a need to supplement financial management, risk management and audit competencies of the Board

4. Candidates were also required to be able to demonstrate five additional competencies namely: Strategic Planning; Communication Skills; Interpersonal Skills; Business Skills and Awareness of Public Transport Issues.
5. The application form clearly advised candidates to read the guidance notes before completing the application form and provide practical evidence and examples of how they felt they were suitable for the appointment on the basis of the six criteria outlined in the application pack. It contained a full blank page for each of the six criteria. On the designated page for the disputed criterion candidates were asked specifically to note that competencies and experience in the areas of financial management, risk management and audit were particularly sought.
6. I found the documentation supplied in the application pack to be of a high standard. I have concluded that the requirements of the post were clearly specified and that in relation to the disputed criterion it was very evident that candidates were required to have Senior Management level experience of, and capacity in either transport; industrial, commercial or financial matters, or other suitable or adequate experience that would benefit the Company.
7. The guidance notes provided for candidates were also helpful and informative. I found one area of concern however, in the job and person specification. This related to the section entitled "Annual Assessment of Performance and reappointment procedure". It stated that "*Further appointments, after the completion of a second term, will only be*

*considered in exceptional circumstances and would normally be subject to open competition.*” This statement is incorrect as appointments have been restricted to two terms only with effect from 1 May 2007. [REDACTED]

## **Step 2 – The sifting 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 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.
8. A total of 54 applications were received for the posts. The applications were anonymised and sent to the panel members to score individually prior to a joint sift meeting. A copy of the advertisement, the job and person specification, a suggested scoring system and a marking frame for each candidate were enclosed. The suggested scoring system is set out in the table below.

<b>LEVEL OF KNOWLEDGE AND EXPERIENCE</b>	<b>MARK</b>
Evidence of knowledge and experience at a high level	5
Evidence of knowledge and experience above requirements	4
Evidence of knowledge and experience to meet requirements	3
Evidence of knowledge and experience just below requirements	2
Little evidence of knowledge and experience to meet requirements	1
No evidence of knowledge and experience	0

9. My review found that all four panel members completed and signed an individual marking frame for each candidate prior to the joint sift meeting. It was also evident that panel members had used the suggested marking frame provided when assessing applications

10. The sift panel comprising [REDACTED], Chair (DRD), and members [REDACTED] (DRD) [REDACTED] (NITHC Chair) and [REDACTED] (OCPA NI Assessor) met on 1 April 2008 to agree a shortlist of suitable candidates to be invited for interview.
11. At the outset of the sift panel meeting, it was agreed that that candidates were required to receive a minimum score of 3 in criteria 1 and 5 namely: ***Experience of, and capacity in, Transport/Industrial/Commercial or Financial matters, or other adequate or suitable experience, at a Senior Management level and Business Skills*** and that only candidates with a total score of 18 or above would be eligible for interview. It was also agreed that should there be too many scores of 18 and above, then a further increase in the total score would be applied for shortlisting.
12. I found that the joint sift panel discussed each application and then awarded an agreed panel mark in respect of each criterion. A marking frame for each candidate was completed and signed by all four panel members. An overall marking matrix indicating how each of the 54 candidates had scored was also completed and signed by all four panel members. In addition, the Department also provided some very limited comments for each candidate to support how the agreed mark had been decided.
13. The individual scoring frames, the agreed panel markings and the overall scoring matrix were all clearly documented and I have concluded that all candidates were assessed against the published criteria.

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

14. Examination of the agreed sift panel scoring frame showed that the complainant received a mark of 2 in the disputed criterion - ***“Experience of, and capacity in, transport, industrial, commercial or financial matters, or other adequate or suitable experience, at a senior management level”***. A mark of 2 on the scoring system indicates that the sift panel decided that the level of knowledge and experience provided by the complainant

was just below requirements. It is interesting to note that all four panel members had awarded a score of two on their individual marking frames prior to the joint sift meeting.

15. In relation to the disputed criterion the complainant outlined three separate areas in which he believed he met the requirements. These were in relation to transport, financial matters and value to the company.

16. In relation to transport, he stated *"I have over forty years experience in public transport* [REDACTED]

[REDACTED] *.....During my period of employment as Union shop steward I served on a variety of committees.....I was principle negotiator dealing with terms and conditions....* [REDACTED]

[REDACTED]

17. He went on to outline his experience of financial matters by stating *"I was successful in negotiating a new wage structure for* [REDACTED] *new pension arrangements"* and through *"having responsibility for administration of the Union branch funds"*. He further believed that he could add value to the company in a number of ways. These included using his experience to help the company develop a range of employment policies, bringing a user perspective to the difficulties faced by disabled persons in accessing public transport and through his ability to network and influence.

18. The key question in determining if the complainant merited a higher score than 2, is whether he had provided sufficient evidence of his knowledge and experience to **meet the requirements of the criterion** (a score of 3); be **above the requirements** (a score of 4); or be at a **high level** ( a score of 5). In order to meet the requirements and receive a score of 3, candidates not only had to demonstrate experience of and capacity in one of the categories, but this had to have been gained at a senior management level.

19. The examples provided by the complainant relate to his experience as a bus driver, shop steward or full time Union official rather than a senior manager. Whilst there is no doubt in my opinion that he demonstrated experience of and capacity in transport matters there is no evidence in his application form that this experience was gained at a senior management level. **As such, I agree with the panels mark in this criterion and have concluded that a higher mark was not merited.**
20. In order to determine whether the complainant had been treated fairly in comparison to other candidates it was necessary to carry out an assessment of a sample of other applications to identify whether the panel had marked all candidates consistently and in the same manner.
21. I assessed the responses of eighteen other candidates in relation to the disputed criterion. Five of these also received a mark of 2 from the sift panel, ten scored 3 and three scored 4. The three candidates who received a mark of 4 were all subsequently appointed to the NITHC board.
22. For the five candidates receiving a mark of 2, I found that they did not have experience at a senior management level or that their responses lacked practical examples demonstrating how they met the requirements.
23. I also found that of those candidates assessed who received a mark of 3; all had senior management level experience in one of the necessary categories and demonstrated through their examples that they had skills that would be of benefit to the Company.
24. The three candidates assessed who received a mark of 4, were all senior managers, showed experience of and capacity in at least one of the necessary categories and provided practical examples of their competence and experience in the areas of financial management, risk management and audit, which were particularly sought in this competition.
25. Having reviewed this sample of applications I found that the sift panel had used the agreed scoring system fairly and consistently throughout

the process had assessed all candidates against the published criteria. **I have concluded therefore, that all candidates were treated on an equitable basis.**

### **Overall summary and conclusions**

- The requirements for this post were very clearly set out in the application pack issued to all candidates. It was evident that in relation to the disputed criterion, candidates were required to have experience of, and capacity in either transport; industrial; commercial or financial matters; or other suitable or adequate experience; **gained at a senior management level.**
- The Department produced a logical scoring system which was used by individual panel members to assess candidates prior to the joint sift meeting. This gave panel members a benchmark to assess candidates against and helped to ensure a certain level of consistency in scoring.
- At the outset of the sift meeting the panel agreed the level of scoring required to be eligible for interview and the process to be used should shortlisting be necessary.
- The individual scoring frames, the agreed panel markings and the overall scoring matrix were all clearly documented and easily followed. It was evident that all candidates were assessed only against the published criteria outlined in the application pack.
- The complainant received a mark of 2 in the disputed criterion, which indicates that the sift panel decided that his level of knowledge and experience was just below requirements. In order to meet the requirements of this criterion and receive a score of 3, candidates not only had to demonstrate experience of and capacity in one of the categories, but this had to have been gained at a senior management level.

- Whilst the complainant demonstrated some experience in transport matters there was no evidence that this experience was gained at a senior management level. **I have concluded that as such, his knowledge and experience was just below the requirements for this criterion and that the mark received was fair and in accordance with the scoring system used.**
- Having reviewed a significant sample of applications I found that the sift panel had used the agreed scoring system fairly and consistently throughout the process had assessed all candidates against the published criteria. **I have concluded therefore, that all candidates were treated on an equitable basis.**

## **Outcome**

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

That the panel did not assess the complainant's application fairly in respect of the criterion, *"Experience of, and capacity in, transport, industrial, commercial or financial matters, or other adequate or suitable experience, at a senior management level"*, and in comparison with other candidates.

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