

CPANI

The Commissioner
for Public Appointments
Northern Ireland

Complaint investigation and report on a public appointment process for
the Northern Ireland Fishery Harbour Authority

Department of Agriculture, Environment and Rural Affairs

November 2020

Introduction

1. In August 2020 the complainant applied for the posts of Chair and member of the Board of Northern Ireland Fishery Harbour Authority (the Board). The selection process was administered by the Department of Agriculture, Environment and Rural Affairs (the Department).
2. The complainant, having made his application, was informed by the Department that in the initial sift process he had not met the required standard in all the published selection criteria and, therefore, he had not been shortlisted for interview. The complainant requested a reassessment of his application; this was carried out by the selection panel which upheld their original decision.
3. The complainant submitted a complaint to me as Commissioner on 16 October 2020. I agreed to investigate the matter.

Nature of the Complaint

4. The complainant, having unsuccessfully contested the selection panel's decision not to invite him to interview, has requested a formal investigation into the reasons for his exclusion.
5. He believes that the decision of the selection panel not to invite him to interview was unjustified. The complainant's view is that on the basis of his application, and the additional information he provided for his review request, he met all the selection criteria.
6. The complainant believes that the information he provided to the selection panel for the reassessment of his application may not have been properly managed by either the Department and /or the selection panel.
7. The complainant believes some form of bias may have influenced the decision of the selection panel and/or the actions of the Departmental officials managing the administration of his application.
8. My investigation, looks at whether any aspect of the public appointments code was breached in the course of the assessment of the complainant's application; whether the selection panel's decision in respect of the complainant was based on anything other than the evidence presented by him against the published criteria and whether there is any evidence of bias or inconsistency in the decision making or administrative process in relation to his application.

Summary of Findings and Observations

Methodology

9. I have examined all papers relevant to my investigation of the application and sift processes for this appointment. This includes:
 - All candidate applications (anonymised) for the Chair post,

- All the selection panel's individual and collective comments and markings for each candidate for the Chair post including the complainant's application and its assessment.
- All applications for the member posts (anonymised).
- All the panel's comments and markings both individual and collective for each application for the member posts including the complainant's application and its assessment.
- The original communication from the Department informing the complainant he had been unsuccessful in his application.
- The documentation and correspondence relating to the complainant's request for a review of the panel decision and the panel's response.
- All other communications between the Department and the complainant.
- The information provided by the Department to candidates – contained mainly in the Candidate Information booklet.
- The complainant's communication with me and my office which included my telephone discussion with the complainant in which we were able to discuss in detail the elements of his complaint.
- The Department and selection panel responses to requests from my office for clarification around processes.
- The appointment plan for the competition.

My findings

10. The assessment process undertaken by the Department and the selection panel was generally well planned, comprehensive, and well recorded. There are, however, a number of areas where I have highlighted scope for improvement.
11. The selection criteria, which were objective and relevant, were the sole grounds used for selection assessment. All candidates including the complainant were assessed consistently against the selection criteria.
12. The Department and the selection panel correctly applied the reassessment procedure in not accepting any new and additional information provided by the complainant in the course of his request for a reassessment. However, the Department's communication with the complainant around the management of his request for reassessment was insufficiently clear about the approach adopted.
13. I find no evidence of bias or inconsistency, by the selection panel or the departmental officials administering the appointment process, in the handling or assessment of the candidate's application or his request for reassessment. Nor do I find any irrational or

unjustifiable aspect to the assessment process in decision making either by an individual panel member, by the panel acting collectively or by officials administering the process.

14. The language in the original letter informing the candidate that his application was unsuccessful should have been worded in a more positive way with more detailed feedback. A fuller, more aware response by the Department at this stage may have alleviated some of the complainant's concerns. An unsuccessful applicant should not have to apply to receive meaningful feedback - it should be provided to them in the initial letter of decision from the Department. The Department should amend its procedures to ensure this in future.
15. The initial letter from the Department did not inform the applicant how to seek further feedback nor had the provision of feedback been addressed in the Information Pack for the selection process. These were unhelpful omissions. The Department should ensure in future competitions that information on availability of feedback is adequately conveyed to candidates.

My observations

16. It is clear from my discussion with the complainant and to some extent from the additional information he provided for the sift reassessment, that he has had substantial experience in the fishing industry and is a person with business and leadership skills and a strong desire to serve his community. I recognise that the complainant feels genuinely aggrieved and disappointed that his application for the position of Chair and member of the NIFHA was unsuccessful. He made clear in his conversation with me that he had wished only to have the opportunity to be called for interview. Unfortunately, the complainant's original application for these important posts did not represent his experience and skill set in a manner that would have enabled the selection panel to objectively or fairly justify a decision to pass his application and call him to the interview stage of the process.
17. My findings in this case shows that there continues to be a need to provide potential public appointment applicants with guidance on how to present their application in a manner that will fully reflect the skills and experience they possess. This is particularly so when applicants are not overly familiar with the public appointments process. Such guidance is not only in the interests of the applicant but also in the public interest in attracting a strong and diverse field. My office has been providing free workshops aimed at familiarising people with the public appointments process but has temporarily had to halt them because of Covid restrictions. We are looking at ways of resuming the service.
18. My findings also show that meaningful feedback by the Department to applicants in a timely manner is a way of ensuring that those applicants who are unsuccessful will feel respected, can find positive learning in their public appointment experience and may be encouraged to try again.

Background

19. The Northern Ireland Fishery Harbour Authority (the Authority) is a statutory body established in 1973 under the Harbours Act (Northern Ireland) 1970 and the Northern

Ireland Fishery Harbour Authority Order (Northern Ireland) 1973. The primary functions of the NIFHA are:

- to improve, manage and maintain the three fishery harbours and harbour estates of Ardglass, Kilkeel and Portavogie;
- to operate such facilities as may be provided at the harbours;
- to dredge and maintain the harbour berth, channels and entrances;
- to lease, dispose of or develop land vested in the Authority; and
- to construct, alter or extend any tidal work (subject to regulatory consent).

20. The Authority is managed by the Board consisting of the Chair and between four and eight other members. The Chair and members are appointed by the DAERA Minister and have overall responsibility for the corporate strategy and governance of the Authority and for setting aims and objectives.

The Selection Process

21. The Department initiated a selection process in August 2020 to appoint a Chair and four members to the NIFHA Board. A selection panel comprising two senior officials from the Department and an Independent Assessor allocated by CPANI was established.

22. All applicants were asked to demonstrate in the application form, how they met the following essential criteria.

- I. Project Management
- II. Financial Planning and Management
- III. Strategic Thinking and Direction
- IV. Corporate Governance and Accountability
- V. Communication and Teamwork

23. Applicants for the chair post addressed one additional criterion.

- VI. Leadership

24. Anonymous copies of the application forms were provided to the panel members. Selection panel members conducted an individual sift of all applications completing an assessment form for each candidate. A scoring framework of one to seven was in place for the sift of applications. The selection panel attended a sift meeting on 09 September 2020. The selection panel compared individual assessments and awarded a final consensus score for each criterion.

25. The selection panel decided that the complainant, who had applied for both the Chair and member posts, had not met the minimum required standard in four of the six criteria. Subsequently the complainant was not invited for interview. The complainant was informed of this in a letter dated 11 September 2020; the letter advised the complainant

which criteria he had not met. The letter advised the complainant that should he wish to contest the decision not to shortlist him for interview he could do so within ten days. The Department's reassessment procedure was attached to the letter.

26. The complainant requested that his application be reassessed and this was carried out by the selection panel which upheld the original decision.

Findings and Observations

The sift of applications

27. The process to be used to sift applications was clearly set out in guidance provided to selection panel members. Selection panel members were reminded of the need to agree common marking standards beforehand. Panel members were advised that individual assessments must be conducted before the sift meeting where a collective decision would be taken and supporting consensus comments recorded.
28. When assessing the complainant's, and other applicants', application forms at the sift stage of the process the individual comments recorded by selection panel members to substantiate the scores awarded were comprehensive and meaningful.
29. These individual comments for the complainant related directly to the information provided against the criteria in the application form. The comments correlated with the scores awarded and referred to areas where the complainant could have strengthened his application. These comments were a sound basis for the provision of clear and pertinent feedback to the complainant.
30. The consensus comments recorded by the selection panel were less detailed but reflected the individual comments; in general the wording for the former followed the generic descriptors for the score awarded taken from the scoring framework.

Regrets letter and Feedback

31. The Department informed the complainant that he would not be invited for interview in a letter dated 11 September 2020. The letter advised the complainant which criteria he had failed to meet, using the wording from the consensus comments, as set out below.
- Selection Panel concluded that partial evidence only was supplied.
 - Selection Panel concluded that insufficient evidence only was provided.
32. The consensus comments were used in the regrets letters to all applicants to describe the selection panel's decision. The letter did not provide details on how further feedback could be sought, nor had the provision of feedback been addressed in the Information Pack for the selection process.
33. The Public Appointments Code states that feedback must be based on the contemporaneous records kept by the panel of its assessment of an applicant. Feedback is an essential part of the public appointment process; the Code states that the purpose of feedback is to provide applicants with a clear, informative explanation of their

performance. The provision of feedback is most important where an applicant has failed a criterion as it will allow them to identify areas where they can improve should they apply for future public appointments. The provision of meaningful feedback is a necessary part of a transparent and respectful public appointments system.

34. The Department should have provided meaningful feedback with the regrets letters to all applicants. Specific feedback, based on the individual panel comments, explaining a score helps an applicant understand the reasons for the score awarded. In this case it could have alleviated the complainant's concerns.

Reassessment

35. The regrets letter stated that should an applicant wish to contest the decision not to short-list them for interview they should do so within 10 working days of receipt of the letter. Attached to the letter was the departmental procedure on the reassessment of applicants. This reassessment procedure sets out the approach to be taken by the selection panel where an applicant, such as the complainant, challenges the decision not to invite them for an interview.
36. The departmental reassessment procedure was included in the appointment plan for the process which had been approved by the DAERA Minister on 11 July 2020.
37. The departmental reassessment procedure states that a selection panel can be asked to reassess their decision to omit an applicant from the short-list for interview. It further states that the applicant may highlight information contained in his or her original application form that is relevant to the decision not to short-list, but should not introduce new information that was not in the original application. Information of this nature will not be put in front of the selection panel.
38. Following receipt of the regrets letter the complainant advised the Department that he intended to request reassessment and requested clarification on the reassessment procedure, specifically where it states that *"information will not be put in front of the selection panel"*. The complainant queried who would decide what was put in front of the panel, and asked for confirmation on whether the person/persons taking that decision would have access to the complainant's application beforehand.
39. In response the Department stated that no *"new information can be submitted at the reassessment stage"* and that *"the Public Appointments Unit will consider your submission and decide what information can be forwarded to the panel for the reassessment. This is an important part of the reassessment process as it is essential that no new information is submitted."*
40. The Department also advised the complainant that *"Reassessment of your original application form and any material you submit is carried out by the original panel who made the decision to exclude you based on the evidence provided in your application form."*

41. The complainant responded on 16 September raising two concerns.
- a) *"I understand that panel only received part B of application. However by the very nature of my professional involvement with church and education I would be very easily identified by the content of my application."*
 - b) *"Also I have concern that the panel who will deal with this will have to be censors, the system in place ensures this. In my own mind I ask the question will the panel, who excluded me, ever get to read what I present? They will of course get to read it after appointments are made, but that will be too late for me."*
42. The complainant also provided information he considered demonstrated his suitability for appointment.
43. On 18 September the complainant submitted a letter to the Department contesting the decision not to invite him to interview. In this letter the complainant provided notes that in his view demonstrated that he met the relevant criteria.
44. Receipt of this letter was acknowledged by a departmental official who advised the complainant that *"I will pass your details on to the selection panel for consideration and advise you of the outcome as soon as possible"*.
45. The departmental official subsequently informed the selection panel that the complainant had requested a reassessment. The departmental official maintained the anonymity of the complainant as at this stage the process was still anonymous. The departmental official transposed most of the information provided by the complainant in his letter of 18 September onto an anonymous document. The official redacted four pieces of information which they considered to be obviously new/irrelevant information¹. This included references to the names of individuals. The official presented the selection panel with the remainder of the information provided, to enable the panel to take the decision as to what could be considered in the reassessment of the complainant's application. The official also included some information from the complainant's e-mail of 16 September which contained information relating to that provided by the complainant in the application form.
46. The selection panel reassessed the complainant's application on 24 September 2020. The note of this meeting advises that *"the reassessment of [the complainant] was considered against the detail provided in relation to the request for a reassessment. The candidate had failed 4 of the 6 essential criteria for both positions. After careful consideration of the supporting details provided in relation to the essential criteria, the panel concluded that the original assessment would remain the final decision of the panel. This candidate will not progress to the interview stage of the appointment process."*
47. The Chair of the panel in response to this investigation stated that *"The panel reviewed the reassessment request (editor's note: this included the information provided by the departmental official, paragraph 45) in conjunction with the original application form, the*

¹ The complainant has since been provided with details of the redacted information.

original scoring template. The panel considered that the reassessment request further expanded on the original application and thus only information that was included in the original application form and repeated in the reassessment request was permitted to be included in the reassessment by the panel”.

48. Therefore the panel could not take into account the additional information provided by the complainant in his reassessment request.

49. A letter issued to the complainant on 26 September advising him that the selection panel had upheld the original decision. The letter included the following.

“Following your e-mail requests for reassessment received on 13th – 16th September 2020 and consideration of your supporting letter received on 18th September 2020, I can now confirm the selection panel have considered your submission and reassessed the criteria in question.

Having considered the evidence provided in your emails and the letter received on 18th September, alongside the information provided in your application form, the panel are satisfied with their original decision not to invite you for interview in respect of these positions.”

50. The wording of this letter might have led the complainant to believe that his previous correspondence had been issued to the selection panel in its entirety, and taken into account in its entirety. In fact several redactions were made in the first instance by the departmental official and when it went before the panel, any information provided by the complainant in his reassessment request that the panel considered new information was not taken into account.

51. The purpose of such a rule against provision of new information at reassessment stage is to ensure a level playing field for all candidates and a consistency of treatment of candidates. The documentation and procedure described above indicates that the selection panel correctly applied the rule around no new information being permissible on reassessment. However, there was a lack of clarity in the communication of this to the complainant which may have added to the latter’s concerns.

52. My findings in this case shows that there continues to be a need to provide potential public appointment applicants with guidance on how to present their application in a manner that will fully reflect the skills and experience they possess. This is particularly so when applicants are not overly familiar with the public appointments process. Such guidance is not only in the interests of the applicant but also in the public interest in attracting a strong and diverse field. My office has been providing free workshops aimed at familiarising people with the public appointments process but has temporarily halted them because of Covid restrictions. We are looking at ways of resuming the service.

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