



The Commissioner
for Public Appointments
Northern Ireland

Complaint investigation and report on a public appointment process for the
Northern Ireland Fire and Rescue Service

Department of Health, Social Services and Public Safety

May 2016

Glossary of Terms

Department of Health, Social Services and Public Safety - The Department

Code of Practice for Ministerial Public Appointments in Northern Ireland - The Code

Northern Ireland Fire and Rescue Service - NIFRS

Introduction

1. In February 2015 the complainant made an application for a non-executive district council member post on the Board of the Northern Ireland Fire and Rescue Service (NIFRS). NIFRS is an arm's length public body the sponsor Department of which is the Department of Health, Social Services and Public Safety (DHSSPS). The Minister responsible for making appointments to the Board of the NIFRS is the DHSSPS Minister. The public advertisement for the post indicated that there were three district councillor posts vacant on the Board.
2. The complainant (who is a serving district councillor) having made his application and having been interviewed by the selection panel (set up by the Department) was found suitable for appointment to the NIFRS Board. His name was accordingly included on the list of six candidates found suitable for appointment and submitted to the then DHSSPS Minister for consideration. On 05 May 2015 the then Minister made three district councillor appointments from the list to the NIFRS Board. The complainant was not selected and was informed of this in a letter from the Department dated 10 June 2015. By this point a new Minister was in post. A subsequent letter dated 27 July 2015 informed the complainant that his name had been placed by the then Minister on a reserve list: *"I would like to inform you that you have been placed on a reserve list for the above named competition. Should a position arise within twelve months, the Minister may make an appointment from the reserve list."*
3. The complainant became aware of a current vacant district council post on the NIFRS Board. He wrote to the current Minister on 09 February 2016. The Department replied to him on 14 March 2016 to inform him that the vacancy was to be filled through open competition, and not through an appointment made from the reserve list.
4. He submitted a complaint to the Department in accordance with the Code of Practice for Ministerial Public Appointments in Northern Ireland (the Code).
5. The complainant was not satisfied with the response from the Department and wrote to me as the Commissioner for Public Appointments for Northern Ireland (CPANI) on 15 March 2016 submitting a complaint. I agreed to investigate the matter.

Summary of Findings and Observations

6. I find that the delay of four weeks between informing the applicant that he was not appointed and that he was placed on a reserve list was poor practice on the part of the Department.
7. I find that the short timeframe between informing the complainant that he was on a reserve list and the Ministerial decision not to use the list constitutes a breach of paragraph 2.5 of the Code. This breach is material to the complaint.
8. I find that the failure to inform the complainant of the Ministerial decision in August 2015 not to appoint him constitutes a breach by the Department of paragraph 3.25 of the Code
9. I find that in providing the Minister with an inadequate applicant summary in relation to the complainant the Department breached paragraph 3.42 of the Code.
10. I find that the lack of a recorded reason for not appointing the complainant from the reserve list meant that the Department held insufficient information to provide meaningful feedback to the complainant and accordingly was in breach of paragraph 3.44 of the Code.
11. My findings lead me to observe that during this public appointment process the principles of transparency and respect which underpin the Code were not adhered to as fully as they ought to have been.

Appointment Process

12. A public appointment process to appoint three non-executive district council members to the Board of the NIFRS ran in early 2015.
13. The appointment process involved a selection panel which comprised a senior official from the Department, an expert panel member and a CPANI Independent Assessor.
14. Under the Fire and Rescue Services (Northern Ireland) Order 2006, four of the ten board members appointed by the Department shall be members of district councils. Applicants for the non-executive district council member posts were required to undergo the full public appointment selection process. This included the submission of an application form and an interview by the selection panel. Suitable candidates were required to be serving district councillors and to meet each of the following four essential criteria.

- Business sense.
 - Corporate governance.
 - Stakeholder engagement.
 - Self awareness and personal contribution.
15. Each applicant had to provide evidence in his/her application form and be examined by the selection panel against all four criteria. Six applicants were found suitable for appointment by the selection panel. The list of names and associated applicant summaries of those found suitable was provided to the Minister in alphabetical order, that is, without merit ranking.
 16. On 05 May 2015 the then Minister selected from this list three individuals for appointment to the Board and placed the remaining three applicants, including the complainant, on a reserve list.
 17. On 11 May 2015 a new Minister was appointed to the DHSSPS portfolio.
 18. On 10 June 2015 the complainant was informed by a letter from the Department that whilst he had been successful at interview and his name presented to the Minister he had not been selected by the Minister for appointment.
 19. On 29 June 2015 a district councillor vacancy on the NIFRS Board arose.
 20. On 27 July 2015 the complainant received a further letter from the Department stating that he had been placed on a reserve list and that if a vacancy arose within twelve months (from the Ministerial decision on 05 May 2015) the Minister may make an appointment to the NIFRS Board from that list.
 21. On 31 July 2015 the Minister was informed by officials of the district councillor vacancy on the NIFRS Board and advised of the reserve list available for appointment to fill the vacancy.
 22. On 13 August 2015 the Minister informed officials he was not content with the reserve list and he requested further advice.
 23. On 05 September 2015 the Minister conveyed to officials his final decision not to fill the vacancy from the reserve list and instead to proceed to fill this and two other non-district councillor posts on the NIFRS Board by way of open competition to take place in early 2017.

Nature of the Complaint

24. The complainant wrote to the Minister alleging that the decision to fill the vacancy through open competition was a waste of public resources. The complainant asserted that the Minister's course of action created a situation where the complainant was not given a fair opportunity. The complainant asked the Minister to review the situation and advise on how the Minister intended to proceed.
25. The Department responded on behalf of the Minister advising the complainant that the final decision for such appointments rests with the relevant Minister. The Department confirmed that the district councillor Board vacancy would be filled through an open competition that would include the other two non-councillor Board vacancies.
26. The investigation therefore looked at whether the decision by the Minister not to fill the district councillor vacancy from the reserve list, and the process through which this decision was made, were compliant with the Code.

Scope of the Investigation

The investigation involved a detailed review of the following documentation.

- The Appointment Plan for the competition.
- The Information Pack.
- Details of the board membership.
- Submission to the previous DHSSPS Minister containing the applicant summaries for all candidates found suitable for appointment.
- Submission to the DHSSPS Minister containing applicant summaries of those on the reserve list.
- Written record of the Minister's decision not to make an appointment from the reserve list.
- Selection Panel summary statement (including applicant summary) for each candidate on the reserve list.
- Selection Panel interview notes for each candidate on the reserve list.

- Letter of 10 June 2015 informing the complainant that he had not been selected for appointment.
- Letter of 27 July 2015 informing the complainant that his name had been placed on the reserve list.

Findings

27. The complainant was informed on 10 June 2015 by the Department that whilst he had been successful at interview and his name was presented to the Minister for consideration, he had not been selected for appointment. At this time the Department was aware that a reserve list had been created by the outgoing Minister and that the complainant's name was on the list. The complainant was not informed, however, until 27 July 2015 some four weeks later in a further letter from the Department, that he had been placed on a reserve list. It seems that the delay was a result of an administrative oversight. Under paragraph 3.25 of the Code the complainant was entitled to be kept informed in a timely and courteous manner of the progress and outcome of his application. A delay of four weeks as in this case at the least reflects poor practice. Good practice requires that applicants are informed about whether they are on a reserve list at the same time as they are informed they have not been appointed.
28. The delay between informing the applicant that he was not appointed and informing him that he was placed on a reserve list was poor practice on the part of the Department.
29. A vacancy for a district councillor post on the NIFRS existed from 29 June 2015 and was known about by the Department for a period of time before that date. On 27 July 2015 officials wrote to the complainant informing him that he was on a reserve list. *"I would like to inform you that you have been placed on a reserve list for the above named competition. Should a position arise within twelve months, the Minister may make an appointment from the reserve list."*
30. Paragraph 3.52 of the Code provides that *"A Minister may wish to create a reserve list of one or more candidates, to cover a situation where the appointed candidate does not take up the post or where an unforeseen additional vacancy on the Board arises within twelve months. This avoids costly and unnecessary further recruitment rounds. In such circumstances, reserve candidates must be notified, at the same time as unsuccessful*

candidates are notified of their result, that their names have been placed on a reserve list for one year from the date of the Minister's decision.

During that one year period, the Minister can, without a further recruitment process, make appointments to the Board from the reserve list, subject to the requirements on recording of process, decision making and public announcement as detailed in the Code.”

31. On 30 July 2015 officials advised the Minister on the use of the reserve list to fill the district councillor vacancy on the Board. This was the first time the Minister had been advised of the existence of such a list. Applicants, therefore, were informed they were on a reserve list without the Minister being aware they were being so informed. This led to a situation where the initial Ministerial decision made on 13 August 2015 not to appoint anyone from the reserve list followed a mere two weeks from the complainant and the other two applicants being informed they were on a reserve list.
32. It is a Minister's right not to appoint from a reserve list. However, it was foreseeable that the timeframe described above had the potential to create concern on the part of applicants. Accordingly those involved should have taken extra care to ensure the decision making process was as transparent as possible. A decision not to use the reserve list such a short time after informing applicants that they were on it raises issues around transparency and rationality of the decision making process. Paragraph 2.5 of the Code requires that the practices employed by Departments at every stage in the appointment process must be transparent and consistent with the principles of open government.
33. I find that the short timeframe between informing the complainant that he was on a reserve list and the Ministerial decision not to use the list constitutes a breach of paragraph 2.5 of the Code. This breach is material to the complaint.
34. The complainant was not informed by the Department of the Ministerial decision not to appoint him until 14 March 2016 and only then because he had raised the issue in an email to the Minister dated 09 February 2016.
35. I find that this failure of the Department to inform the complainant that he was not to be appointed to the new vacancy constitutes a further breach of paragraph 2.5 of the Code. It also involves a breach of paragraph 3.25 of the Code under which the Department was

required to inform the complainant of the ultimate outcome of his application in a timely and courteous manner.

36. The Code requires that the Department must provide the Minister with an 'applicant summary' containing relevant information on candidates deemed suitable for appointment. This applicant summary must be agreed by the selection panel prior to its submission to the Minister and should provide the Minister with an objective analysis of each candidate's skills and experience, based on the information provided during the appointment round and the selection panel's assessment of that candidate. (Paragraphs 3.40, 3.41 and 3.42 of the Code)
37. The applicant summaries for the individuals on the reserve list from this competition included a brief 'pen picture' of each one (taken from the individual's application form), information on any other public appointments they held and entries under two headings 'Panel comments' and 'What skills and knowledge will the individual bring to the role'. The content included under both these headings was lifted verbatim from the panel summary statement completed, agreed and signed by the selection panel at the time of interview.
38. The applicant summaries for the individuals on the reserve list as provided to the Minister in this case were inadequate in that they did not fulfil their purpose as required under the Code. The summaries contained little or sometimes no reference to the essential criteria for the post or the candidates' performance against these criteria throughout the process. As a result the selection panel and the Department failed to provide the Minister with an objective analysis of each applicant's skills and experience based on the information the applicant had provided.
39. An examination of the selection panel's interview notes shows that sufficient information had been recorded at interview which would have allowed for a comprehensive and relevant applicant summary to be produced in relation to the complainant.
40. Accordingly I find that in providing the Minister with inadequate applicant summaries for the individuals on the reserve list including in relation to the complainant the Department breached paragraph 3.42 of the Code.
41. Paragraph 1.2 of the Code makes clear that responsibility for appointments rests with the relevant Minister. Having been provided by Departmental officials with the reserve list of applicants suitable for appointment and the related (inadequate) applicant summaries the

Minister chose not to make an appointment from the list. That is a choice that the Minister is entitled to make.

42. There was no reason recorded for the Minister's decision not to use the reserve list in order to fill the vacancy on the NIFRS. The Code does not specifically state that a Minister must record reasons for not appointing an applicant who has been found suitable for appointment by the selection panel. This is the case even where a Minister has decided to appoint no one from the list presented to him/ her.
43. Paragraph 3.44 of the Code does, however, state that,

“When the Minister has made the decisions on which candidate(s) to appoint, the reasons for those decisions must be recorded. The Department must also hold sufficient information to provide meaningful feedback to unsuccessful candidates.”
44. The decision not to make an appointment does not relieve the Minister of his part of the duty under paragraph 3.44 to ensure that the Department holds enough information to enable it to meet its feedback obligations to unsuccessful candidates. On this occasion the decision itself was the sole record.
45. Although the communication from the complainant to the Department did not use the phrase 'seeking feedback' I am taking the view that the complainant, in writing to the Minister/Department, was in effect seeking feedback on the Minister's decision not to appoint him to the most recent councillor vacancy on the Board.
46. The obligation on Departments to ensure meaningful feedback is an important part of the public appointment process for all applicants. In addition to being a direct requirement under paragraph 3.44 the obligation is also a feature of the principle of respect which underpins the Code.
47. The complainant had undergone the full public appointment process and had been found suitable for appointment by the selection panel. His name was placed on a reserve list by the then appointing Minister for consideration if a vacancy arose. He was first informed that his name was on a reserve list in July 2015 when the current Minister was in post. Under the Code the reserve list remains live for one year. As it happened a vacancy arose within two months of creation of the reserve list. The complainant could justifiably have had an expectation that there was clear reasoning behind the decision not to make an appointment

from the reserve list and that meaningful feedback as to why his candidacy had been unsuccessful could be provided. The absence of any recorded reason for the decision of the Minister and the consequent inability of the Department to provide the complainant with meaningful feedback is contrary to the requirements of the Code under paragraph 3.44. These omissions are also out of keeping with the Code's principles of transparency and respect.

48. I find that the lack of a recorded reason for not appointing the complainant from the reserve list meant that the Department held insufficient information to provide meaningful feedback to the complainant and accordingly was in breach of paragraph 3.44 of the Code.