



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

March 2018

Glossary of Terms

- Code of Practice for Ministerial Public Appointments in Northern Ireland - the Code
- Department of Health - the Department
- Northern Ireland Fire and Rescue Service - the NIFRS

Introduction

1. The complainant applied for a non-executive lay member post on the Board of the Northern Ireland Fire and Rescue Service (the NIFRS). The recruitment process was administered by the Department of Health (the Department).
2. The complainant was informed that in the initial sift process he had not met the required standard in all the essential criteria for appointment and therefore he had not been shortlisted for interview. Following the provision of feedback the complainant submitted a complaint to the Department in accordance with the Code of Practice for Ministerial Public Appointments for Northern Ireland (the Code).
3. 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 24 January 2018. I agreed to investigate the matter.

Summary of Findings and Observations

4. I find that the marking system designed by the Department's Public Appointment Unit was flawed and problematic to the extent that it did not comply with the Code. The marking system lacked a meaningful objective framework upon which the selection panel could base its assessment. As a consequence the assessment process lacked, transparency and proper documentation. I uphold this aspect of the complaint.
5. I find that the failure by the selection panel to properly document the assessment of the complainant's application (an inevitable outcome of the use of the flawed marking system) is a breach of paragraph 3.30 of the Code (keeping of records). This breach meant that the selection panel and the Department were unable to fulfil their feedback obligations resulting in a breach of paragraph 3.48 of the Code.
6. I also find that the lack of recorded justification for the selection panel's assessment of the complainant's application is a breach of the Code's principles of openness and transparency. I uphold these aspects of the complaint.
7. I find that these weaknesses exposed the selection panel to the risk of complaints of abuse of process. I uphold this aspect of the complaint in terms of how the marking system was designed. However, I stress that I found no evidence of any abuse of the assessment process

(in the sense of bias or capricious action) by the selection panel in the documentation relating to the complainant.

8. I find that the response by the Department's Public Appointment Unit to the complaint lodged was such that it suggested a lack of respect towards the complainant and was, therefore, in breach of the Code's principle of respect. I uphold this aspect of the complaint.

The Assessment Process

9. The Department initiated a recruitment process in September 2017 to appoint four non-executive members to the board of the NIFRS. All the necessary documentation for the process including the Appointment Plan was developed by the Department's Public Appointment Unit. A selection panel (the selection panel) comprising a representative from the Department, a representative of the NIFRS and an Independent Assessor allocated by CPANI was established. The Public Appointment Unit provided the selection panel with the documentation and gained its agreement to it. The selection panel proceeded to conduct an assessment of all applications to decide which applicants would progress to the interview stage of the process.
10. There were four essential criteria for the lay member posts.
 - Corporate Governance and Accountability
 - Self-Awareness and Personal Contribution
 - Stakeholder Engagement
 - Strategic thinking
11. Each member of the selection panel performed an individual assessment of all applications awarding a score out of seven for each of the four essential criteria. The identities of the applicants were known to the selection panel members at this point. The selection panel then allocated an agreed panel score for each criterion at its first meeting held on 24 November 2017. Applicants had to achieve a minimum score of four out of seven in all criteria to progress to the interview stage.

12. The selection panel decided that the complainant had not met the minimum required standard in two of the four criteria. Subsequently the complainant was not invited for interview. The complainant was informed of this in a letter dated 20 December 2017.
13. The Department provided the complainant with feedback on his application including copies of the selection panel documentation from the sift exercise. The Chair of the selection panel provided feedback on the process in a phone call with the complainant on 11 January 2018. The complainant remained dissatisfied and submitted a complaint to the Department.

Initial complaint to Department

14. The complainant submitted a complaint to the Department's Public Appointment Unit on 11 January 2018. The original complaint pertained to the scoring process and methodology used by the selection panel. I have summarised and grouped the various elements of the complaint into two separate parts, these are set out below.
 - A. The members of the selection panel had not, in all cases, provided clearly documented evidence to support the score awarded against each essential criterion. The members of the selection panel did not clearly understand the marking process or the requirement to document evidence.
 - B. The complainant argues that the marking system used is subjective, does not define a required standard for each mark awarded and for the marking to be fair the essential criteria can only be marked as binary (for example, has the applicant met the essential criteria for strategic thinking or has he/she not). Applicants are not informed how the evidence is interpreted and marks awarded and that this marking system is open to abuse.

The Department's response

15. The Department's Public Appointment Unit responded advising the complainant that the marking system and methodology had been developed taking full account of the Code. The response set out the full process used for the scoring of applications and advised that this process was standard practice in each DoH competition. The response also pointed to the

training received by the selection panel and the independent scrutiny provided by the Independent Assessor.

16. The complainant replied thanking the Department for outlining the process and stated that the Department had failed to address the points raised in the initial complaint. The complainant asked the Department if they wished to add anything with regards to the specific issues raised in the complaint.
17. The Department advised that the complaint had been reviewed and responded to accordingly and that to take the complaint further it should be raised directly with CPANI.

Complaint to CPANI

18. The complainant remained dissatisfied with the Department's response and submitted the original complaint with additions to CPANI. I have summarised the additions as set out below.
 - C. The assessment process was executed in a way that exposes the board to accusations of bias.
 - D. The original complaint was not taken seriously as none of the issues were addressed in the responses received.

Scope of the Investigation

19. The investigation looked at all elements of the original complaint as well as those raised in the complaint submitted to CPANI.
20. The investigation involved a detailed review of the following documentation.
 - All documentation relating to the selection panel's assessment of the complainant's application.
 - Documentation provided to the selection panel prior to the sift exercise.
 - The Information Pack including the application form.
 - All departmental correspondence with the complainant.
 - The appointment plan

- The marking framework
- Departmental record of the phone call between the complainant and the Chair of the selection panel.

Overall Observations

21. At the outset I want to set out my overall observations on the design of the marking system used in the sift exercise which is at the centre of this complaint. The Department's Public Appointment Unit designed the marking system and provided it to the selection panel for agreement. The purpose of the sift exercise, as earlier referred, was to assess the evidence presented by the candidates in their application forms against the essential criteria. Those who, on the basis of the presented evidence, were deemed to have fulfilled the essential criteria would then be invited to interview.
22. Applicants were assessed against a marking framework (attached at Annexe A of this report) and awarded a score out of seven by the selection panel for each of the essential criteria. The marking framework consisted of seven potential numerical scores (1 being lowest and 7 highest) each accompanied by a one/two line text description. Apart from this very brief description there were no other indicators developed to provide the panel members with any further guidance on how to analyse, differentiate and score candidate evidence.
23. The three members of the selection panel in carrying out the sift exercise had to first individually score each applicant's evidence in accordance with the marking framework and following discussion agree a panel score. The pass mark for each of the essential criteria was four.
24. My view is that a requirement on the selection panel to differentiate across seven different categories the evidence presented by candidates in their application form, is a challenging one. If the Department was convinced that a high level of differentiation was required at this point – I am of the opinion that seven categories is excessive and unnecessary at initial sift stage - then supporting detailed indicators were essential. Indicators are a detailed illustrative description of the kind / level of evidence corresponding to each mark category. The descriptors are not exhaustive but they provide an objective basis for a mark award. The lack of agreed detailed indicators meant that each panel member had for the most part

to decide individually for him/herself what type or level of evidence corresponded to each numerical score.

25. It is my view that the Department's Public Appointment Unit had designed a flawed and problematic marking framework for the sift exercise.
26. These general observations set the context for my considerations of parts A and B of this complaint.

Part A

27. The members of the selection panel had not, in all cases, provided clearly documented evidence to support the score awarded against each essential criterion. The members of the selection panel did not clearly understand the marking process or the requirement to document evidence.

Requirement to document the sift exercise

28. Paragraph 3.30 of the Code states that 'Departments must keep full contemporaneous records of all the assessment procedures, deliberations and outcomes'. This applies equally to all criteria for appointment.
29. One of the main reasons for this requirement is set out in paragraph 3.48 of the Code which relates to the provision of feedback to applicants. The 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. However, feedback must be available for all the criteria addressed by an applicant, and documentary evidence must be recorded against all criteria regardless of the score awarded. In a situation such as this where an applicant is awarded a score out of seven, it is feasible that an applicant could request feedback where they scored a passing mark so as to improve upon this in any future public appointment recruitment processes.

30. The provision of meaningful feedback is a necessary part of a transparent and respectful public appointments system.
31. For this particular appointment process each member of the selection panel completed a 'short-listing assessment form' recording the score they awarded against each criterion. In addition to the requirement for full contemporaneous records being clearly stated in the Code, the form included the instruction that "each panel member must clearly document evidence to support the rating allocated against each essential criterion".
32. The appointment plan for the process stated that panel members must record their rationale supporting all decisions pertaining to the shortlisting of applications. The appointment plan also dictated that where there were variances between panel member's individual assessment the outcome of the discussion and justification for arriving at the agreed overall score were recorded.

Records kept by the selection panel

33. I now turn to the records kept by the selection panel in the assessment of the complainant. I shall refer to the members of the selection panel as member A, member B and member C.
 - i. Selection panel member A individually scored the complainant four out of seven in all four criteria, and therefore considered that the complainant met the required standard in all four criteria. To support this assessment, selection panel member A recorded the word "acceptable" against each criterion.
 - ii. Selection panel member B individually scored the complainant three out of seven in all four criteria and therefore considered that the complaint did not meet the required standard in all four criteria. The evidence documented to support this comprised the following terms.
 - Insufficient information
 - Evidence not shown
 - Insufficient Evidence
 - iii. Selection panel member C individually scored the complainant three out of seven in two criteria and four out of seven in two criteria and therefore considered that the

complainant met the required standard in two of the criteria. This selection panel member recorded evidence to support the score allocated only for the two criteria against which the complainant met the required standard. The evidence recorded here provided specific reasons for the awarded score which directly referenced the brief wording of the criteria.

34. The selection panel subsequently met to collectively consider each application. An agreed panel score was awarded and recorded on a form along with the selection panel's individual scores. The complainant was awarded a score of three out of seven in two criteria and four out of seven in the remaining two criteria. The form included a space for comment on the agreed panel score. No comment was recorded against any criterion. Similarly no record was kept of any discussion or justification for the agreed score even though there existed variances between selection panel members' scores
35. My conclusion is that the recorded evidence of the selection panel in the case of the complainant was at best terse and without detailed supporting indicators was insufficient to provide him with informative feedback. At worst it was non-existent - where the complainant was awarded a pass score, no member of the selection panel member recorded evidence for the decision.
36. I find that the failure to properly document the assessment of the complainant's application is a breach of paragraph 3.30 of the Code (requirement to keep full records). This breach meant that the selection panel and the Department were unable to fulfil their feedback obligations resulting in a breach of paragraph 3.48 of the Code.
37. I also find that the lack of recorded evidence was a breach of the Code's principles of openness and transparency.
38. At this stage of the process the agreed pass mark for each criterion was four out of seven. The appointment plan stated that those applicants who met this agreed standard would be considered for interview. The appointment plan went on to say, however, that if numbers were too great they would invite to interview those applicants who scored highest against the essential criteria. Should this further shortlisting have taken place then the complainant would have failed to meet the required standard in all four criteria. This highlights further the importance of recording evidence against all criteria, this evidence must not solely

demonstrate whether the applicants has met the required standard but must specifically relate to the score awarded, and the reasons to support it.

39. I take this opportunity to reiterate that selection panels and Departments must ensure that documentary evidence is recorded for their assessment of how an applicant has performed against all criteria, including those where they have achieved the required standard.
40. This failure to document decision making is compounded by the fact that in January 2017 I published a report on an audit investigation of the DoH competition to appoint members to the South Eastern Health and Social Care Trust. In this report I highlighted the fact that no comments had been recorded on how a consensus panel score was reached by the selection panel. I made the recommendation in my report that a record be kept of such discussions.
41. It appears that my previous recommendation on the matter has been ignored by the Department and its Public Appointment Unit. I uphold this element of the complaint.

Part B

42. The complainant argues that the marking system used is subjective, it does not define a required standard for each mark awarded and for the marking to be fair the essential criteria can only be marked as binary (for example, has the applicant met the essential criteria for strategic thinking or have they not?). Applicants are not informed how the evidence is interpreted and marks are awarded and that this marking system is open to abuse.
43. I will begin by stating that it is for each individual Department to decide which marking system will be used in each public appointment process. Whichever system the Department adopts must be compliant with the Code and selection must be based on merit i.e. how an applicant's skills, knowledge, experience and other qualities, as displayed throughout the application form, meet the criteria. All parties involved in the process must be committed to the proper implementation of the marking system and every element must be compliant with the Code.
44. The element of individual assessment (outlined earlier in this report) is subjective insofar as the decision is based on the opinion of each individual selection panel member. But this decision must be underpinned by a clear, objective rationale best provided by the use of

agreed, detailed indicators and supported with documented evidence. The selection panel then work as a team to come to an agreed panel decision which the selection panel must equally be able to justify. This is done by recording documentary evidence for any discussion informing the decision and the reasons for the decision. Sufficient documentary evidence to accompany the decision was not kept in this instance as previously dealt with in this report.

Interpretation of evidence

45. In any well run public appointment recruitment process I would expect to see a set of indicative indicators as part of a marking system at both initial sift and interview stage. These indicators describe some of the types of experience an applicant might include in their examples and will be grouped according to how well an indicator fulfils the criterion to which it refers. These indicators should be designed to be used in conjunction with the marking framework and the criteria. Indicators are purely illustrative and are not intended to form an exhaustive or prescriptive list. The indicators should be designed to encapsulate as broad a range of experiences as possible.
46. While these indicators would not be provided to applicants each appointment process must remain compliant with paragraph 3.29 of the Code which requires that when assessing applicants at any stage of the appointment process it must not be assumed that applicants have expertise in the public appointment process and current assessment genres. For this reason I would expect to see guidance in the Information Pack on how to address the criteria for appointment. This guidance should include examples of the types of evidence an applicant could provide to meet the criteria. No such guidance was provided by the Department's Public Appointment Unit.
47. The recommendation to include such guidance in the Information Pack was also included in the audit report mentioned in paragraph 40 of this report.
48. In paragraphs 21 – 26 above I set out my view above that the marking framework for this sift exercise was flawed. In particular the lack of objective, agreed and detailed indicators meant panel members were faced with either developing their own individual indicators to explain their markings or saying as little as possible in explanation. They, perhaps not unsurprisingly, decided on the latter approach.

49. I find that the marking system designed by the Department's Public Appointments Unit was flawed to the extent that it did not comply with the Code. The lack of guidance to applicants around the type of evidence required compounded this non-compliance. I uphold this element of the complaint.

Binary system

50. I take the view that some level of differentiation beyond pass or not pass at the initial sift stage is desirable. It allows the selection panel to conduct a further shortlisting exercise if the number of individuals meeting the essential criteria is disproportionate to the number of positions available.
51. I do not, therefore, agree with the complainant's assertion that to be fair the essential criteria can only be marked as binary.

Part C

Marking system open to abuse

52. The lack or terseness of recorded reasons for marking decisions and the subsequent lack of transparency in the decision making process is no doubt behind the complainant's assertion that this marking system is open to abuse.
53. I find that the marking system lacked a meaningful objective framework upon which the selection panel could base its assessment. As a consequence the assessment process lacked transparency and proper documentation. These weaknesses exposed the selection panel to the risk of complaints of abuse of process.
54. I uphold this aspect of the complaint in terms of how the marking system was designed. However, I stress that I found no evidence of any abuse of the assessment process (in the sense of bias or capricious action) by the selection panel in the documentation relating to the complainant.

Part D

55. The original complaint was not taken seriously as none of the issues were addressed in the responses received.

56. The response from the Department's Public Appointment Unit to the complaint fell short of what I would expect. In response to the complainant officials simply recited the process used and in doing so did not address to a sufficient standard the issues raised in the complaint. In particular the Public Appointment Unit was incorrect when it informed the complainant that the marking system it had devised complied with the Code. With a greater willingness to listen to constructive criticism, learn from previous mistakes and conduct self-scrutiny the Department could have recognised the evident shortcomings of the process.
57. Respect for applicants is a fundamental requirement of the public appointment process and one of the principles underpinning the Code. I find that the substance of the response by the Public Appointments Unit to the complainant was such that it suggested a lack of respect and was, therefore, in breach of this principle of the Code. I uphold this element of the complaint.

Annexe A – Marking Framework

Rating	Brief Descriptor	Level of Evidence provided in respect of Essential Criteria
7	Very Good	The evidence provided substantially exceeds requirements for effective performance in this competency area for Non-Executive Member.
6	Good	The evidence provided exceeds requirements for effective performance in this competency area for Non-Executive Member.
5	Clearly Acceptable	The evidence provided meets and in some cases exceeds the requirements for effective performance in this competency area for Non-Executive Member.
4	Acceptable	The evidence provided meets the requirements for effective performance in this competency area for Non-Executive Member.
3	Less than Acceptable	The evidence provided only partially meets the requirements for effective performance as a Non-Executive Member.
2	Poor	The evidence provided does not meet requirements for effective performance as a Non-Executive Member.
1	Very Poor	The evidence provided falls well below the requirements required for effective performance as a Non-Executive Member.