



APRIL 2018

**DECISION NOTICE : PUBLIC BODY APPOINTMENT PROCESS, EQUALITIES
AND HUMAN RIGHTS COMMISSION**

AUTHORITY

1. The Governance Code on Public Appointments dated December 2016 states that the Commissioner for Public Appointments should consider complaints made about a public appointments process.
2. Complaints should be raised with the appointing department in the first instance, which is responsible for having effective complaints handling procedures, for making applicants aware of their right to complain and for referring them to the Commissioner's complaints procedures. If, after investigation by the department, the complainant remains dissatisfied, they may bring their complaint to the Commissioner for Public Appointments.

METHODOLOGY

3. The Commissioner investigated the complaint through consideration of written, verbal and electronic evidence supplied by the complainant and the Department for Education/ Government Equalities Office (GEO).

OUTLINE OF COMPLAINT

4. The complainant applied to the position of Non Executive Commissioner with the Equality and Human Rights Commission (EHRC). The complainant submitted an application, and was not selected for interview. The complainant believes that an assessment was made using previously undisclosed selection criteria.

CONSIDERATION

5. The complainant approached the Commissioner on the grounds that the campaign conducted by the Department for Education/ Government Equalities Office did not meet the principles of 'openness' and 'fairness' as defined in the Government's Governance Code 2016.
6. The complainant applied for a position as a Non Executive Commissioner, under the Guaranteed Interview Scheme. After not being selected for interview, the complainant requested feedback. The response from GEO at first did not make it clear that the assessment panel did not find that the candidate's experience met the minimum essential criteria for the role.
7. The complainant challenged this reply, by way of complaint. GEO issued an apology on the ground that the response did not include an adequate explanation. It went on to say that the application had been assessed again, and whilst the complainant scored better this time round, the candidate did not meet more than one of the essential criteria for the role. The response also indicated that the application failed as the complainant provided examples of regional and localised board level expertise, rather than national level. The response went on to say that national experience would be more relevant to the role of EHRC.
8. The complainant maintains that the candidate pack did not specify national experience, therefore GEO had breached the principles of openness, fairness and transparency. Furthermore, the complainant asserts that evidence of national board involvement was provided.
9. In forming a decision, the Commissioner reviewed the candidate pack, as provided by the complainant. Whilst the supporting information makes it clear that EHRC is a national body, the essential criteria did not ask for experience of an equivalent national organisation. The criteria was as follows:
 - The ability to operate collaboratively as Board level, whilst also bringing a strategic mind-set, an understanding of the context in which the Commission operates and impartially to steer the Commission's work.
 - The ability to build constructive relationships and influence at the highest level, and to act as an ambassador for the Commission..'
 - A commitment to, and knowledge of experience of, equality and/or human right and an understanding of how the Commission might effectively uphold shared values of tolerance and respect to others..'
10. The complainant has raised concerns with GEO and with the Commissioner that in requiring candidates to have national board level experience, instead of comparable experience, candidates from under-represented groups are adversely affected, by not being offered opportunities based on their relative experience. This, in the view of the the complainant, would seem contrary to

the aims of the Commissioner to make the boards of public bodies more diverse.

DECISION

11. It has been noted that the complainant did provide evidence of working at significant, strategic levels, however it is not the role of the Commissioner to re-evaluate or assess applications and it is not within the Commissioner's remit to request that GEO to run this competition again.
12. The Commissioner has found that the essential criteria for this role did not specifically state that experience of national boards was required for this role. The criteria to 'influence at the highest level' could be gained from a variety of comparable roles, not necessarily in bodies with a national remit. The Commissioner has found that this criteria could have been more explicit and clearer.
13. The complainant raises a valuable point in that departments should carefully consider the evidence presented, and assess whether there is comparable experience gained from other influential bodies. There is evidence which suggest that groups with protected characteristics such as BAME and disability are under represented at senior levels, and this will only be addressed by offering equality of opportunity and recognising potential.
14. However, there is no evidence that the complainant was treated differently to any other applicant. Although best practice has not been followed, as detailed above, it is for the interview panel to evaluate each application. Therefore the Commissioner does not believe there has been a breach of the Governance Code and does not judge that the competition failed to reach the required standard of openness or fairness.

Peter Riddell

Commissioner for Public Appointments