



November 2018

DECISION NOTICE: PUBLIC BODY APPOINTMENT PROCESS, SOCIAL MOBILITY COMMISSION

1. The Public Appointments Order in Council, November 2016 states that the Commissioner for Public Appointments 'may conduct an enquiry into the procedures and practices followed by an appointing authority in relation to any public appointment whether in response to a complaint or otherwise'.
2. The Commissioner has deemed that complaints should be raised with the appointing department in the first instance. Departments are 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.
3. In this instance, the complainant had applied for a position with the Social Mobility Commission, was not shortlisted for the role, and requested feedback information regarding the names of potential candidates suggested by the chair of the organisation.

METHODOLOGY

4. The Commissioner investigated this complaint through consideration of written and electronic evidence supplied by the complainant and the Department for Education.
5. The Commissioner's role is to examine the appointing process and ensure that it has met the principles outlined in the Government's Governance Code. His role is not to reassess individual applications and ascertain suitability for the role in question, that is the responsibility of departments.

OUTLINE OF COMPLAINT

6. The complainant raised concerns about the process to appoint Commissioners to the Social Mobility Commission (SMC), a public body sponsored by the Department for Education (DFE). The complainant applied for a position as Commissioner, but was not shortlisted. After writing to the department for feedback and evidence of the decision taken, the complainant was dissatisfied with the response provided.

7. The complainant also referred to statements made by the Chair of the SMC to the Education Select Committee in July 2018, when providing evidence to the on the appointment of Commissioners. The chair stated that she had encouraged individuals to apply for the role, using her networks and contacts. She stated that there was a particular aim to increase diversity on the existing board.

SUMMARY

8. The candidate pack for Commissioners was published in July, with a closing date of 25th July 2018. DFE advertised for up to 12 positions, and received 306 applications, 21 of whom applied under the Guaranteed Interview Scheme. The complainant was not shortlisted for interview.
9. The complainant requested feedback and questioned the statement made by the chair, Diana Milburn, to the Education Select Committee- specifically that she had used her networks to encourage applications for the role. The complainant raised concerns that the process was not transparent, as the chair was part of the selection panel and would have had a bias towards the candidates she had contacted.
10. DFE held an investigation into the complainant's concerns and responded on 13 September 2018. The investigation was conducted by a Deputy Director in the department, who had not previously been part of the competition. The Commissioner was provided with a copy of the response, in which the department maintained that all candidates were assessed fairly and consistently, regardless of whether names had been suggested by a minister (as the Governance Code allows) or by panel members. The response also confirms that the chair is able to bring the advertised vacancy to the attention of individuals believed to be suitable for the role.
11. The complainant was informed that the panel had taken a full discussion of each application.
12. In forming a decision, the Commissioner reviewed the following relevant documentation:
 - Emails between the complainant and DFE officials
 - The candidate pack
 - Submissions made to Ministers relating to various stages of the recruitment campaign
 - The shortlisting briefing pack provided to the panel

- The long list record which included conflicts of interests - and an assessment of skills and experience against the published criteria if the candidate had been shortlisted

CONSIDERATION

13. The Commissioner has considered this complaint on the basis that the Governance Code states ‘... the assessment process should be appropriate to the recruitment and reflect the nature and significance of the role. A variety of techniques, both less formal and more expert, may be used to assess the candidates fairly against the published selection for the role’ (5.3).

14. The Code also states that ‘All public appointments should be governed by the principle of appointment on merit. This means providing Ministers with a choice of high quality candidates, drawn from a strong and diverse field, whose skills, experiences and qualities have been judged to meet the needs of the public body or statutory office in question’ (2.1).

15. The Commissioner examined the long list record, in which an assessment appeared for each candidate in a consistent manner. Notable is the strength of the candidate field for this competition, with a high number of candidates demonstrating relevant experience and skills, from a wide spectrum of backgrounds. There is a note in the long list document, of candidates recommended by the Minister, as permitted by the Code. The Commissioner has noted the department had taken steps to identify these candidates, ensure that their assessment in relation to the advertised role was consistent with other candidates, to enable clear advice provided to the minister of each candidate's suitability to the role.

16. The Commissioner has noted that the DFE response to an FOI enquiry from the complainant confirms that names encouraged by the Chair to apply for the role were not retained. The Commissioner does not view this in itself as a lack of transparency. The Code does not prevent the Chair, other panel members or the Department from using all available networks to promote the vacancy, as well as Ministers. What is essential is that assessment of all candidates is conducted against the published criteria, which was evident in this competition.

17. However, the Commissioner has concerns a clearer note of whether any of the candidates were known to panel members was not retained. In future, this should be kept as part of the official longlist, shortlist and interview record. The Commissioner has noted that DFE has already begun this practice with current campaigns.

DECISION

18. This complaint was made on the basis that the complainant believed that by encouraging people to apply, the chair of the Social Mobility Commission and of the interview panel for Commissioners, an unfair assessment had taken place. The complainant felt that the skills and experience demonstrated in the application submitted was not fairly assessed, and bias was given to those who had been encouraged to apply by the serving Chair. It is disappointing that DFE did not make clearer which individuals were known to the panel, however the Commissioner also accepts that board members are able to promote opportunities within existing networks. This can be a way in which diversity can be encouraged, and the opportunity can be brought to the attention of a larger number of suitable candidates. What is clear from the evidence is that all candidates were assessed against the advertised criteria, in a consistent way, and the Commissioner did not find any evidence of undue bias.

19. The long list assessment was undertaken by DFE officials, rather than the panel (standard practice in some large campaigns), against the published criteria. The panel then had oversight of the applications, and provided assurance that the initial assessment was accurate, no candidates were re-assessed and either promoted or demoted in the categories of merit. The Commissioner supports the department's decision not to supply the sift record to the complainant, as it contained confidential details of other candidates and would contravene data protection regulations if shared. (However, it should be noted that the Commissioner has legal permissions to gain access to confidential papers in order to consider a complaint, and as such, the sift record was considered in full).

20. In this instance, the Commissioner has not upheld this complaint on the grounds that it was raised on the basis that an unfair assessment had taken place, however the Commissioner found sufficient evidence to demonstrate a fair and consistent assessment process at the long listing stage. The responses provided by the department, in holding an independent review of the process, was appropriate and delivered in a timely manner so as to provide the complainant with sufficient time to approach the Commissioner. The department also took steps to provide the complainant with clear information about the role of the Commissioner when considering complaints.

Peter Riddell

Commissioner for Public Appointments