

August 2019

## **DECISION NOTICE: PUBLIC BODY APPOINTMENT PROCESS, EQUALITY COMMISSION FOR NORTHERN IRELAND**

1. The Public Appointments Order in Council, April 2019 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 Equality Commission for Northern Ireland using the Guaranteed Interview Scheme offered to disabled candidate. The complainant was not shortlisted for the role, and felt that his application had not been assessed fairly.

### **METHODOLOGY**

4. The Commissioner investigated this complaint through consideration of written and electronic evidence supplied by the complainant and the Northern Ireland Office.
5. The Commissioner's role is to examine the appointment 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 the Advisory Assessment Panel, with the recruitment process overseen by the department.

### **OUTLINE OF COMPLAINT**

6. The complaint to the Commission raised two concerns about the process to appoint a Deputy Chief Commissioner and members to the Equality Commission for Northern Ireland. The first was the balance of skills and experience in the essential and desirable criteria. The second was the approach taken by the department, when offering the Guaranteed Interview scheme.
7. The complainant raised these concerns with the Northern Ireland Office (NIO), but was dissatisfied with the response, and so asked the Commissioner to consider the complaint. The complainant maintains that the purpose of pursuing the complaint was to examine how the Guaranteed Interview Scheme (GIS) was applied to this

competition, and to question how disabled candidates applying under the GIS had been assessed throughout the process, using the published selection criteria.

## SUMMARY

8. The candidate pack for Commissioners was published in January 2019, with a closing date of 15th February 2019. The recruitment campaign sought applications for both the Deputy Commissioner role and seven members. The sift summary supplied by the NIO stated that 127 applications had been received, one was subsequently withdrawn before the sift meeting. 30 candidates were invited for interview.
9. The complainant had applied for, but not shortlisted for, either of the roles that had been advertised. As the complainant applied using the GIS scheme, feedback was requested along with an explanation as to how the GIS scheme had been applied. In doing so, the complainant has also questioned the selection criteria, which had experience of, or working on disability, race/ethnicity, LGBT or women's issues, as a desirable criterion. The complainant has suggested that this criterion should have been essential, rather than desirable, for a body such as the Equality Commission for Northern Ireland. The complainant also raised concerns about the way in which the desirable criterion was taken into account throughout the assessment.
10. The complainant was informed by the NIO that the panel had taken a full discussion of each application. In considering the complaint, the Commissioner has not reviewed any applications or taken a view on whether candidates were suitable for the role. Neither does the Commissioner take a view on whether the disability confident scheme, or Guaranteed Interview scheme is effective in their aims. The consideration focuses on whether each scheme has been reasonably applied, following the guidance available, and whether a fair assessment took place in respect of all candidates in respect of, and relative to, all candidates
11. In forming a decision, the Commissioner reviewed the following relevant documentation:
  - The complaint raised, in writing by the complainant, both to the Commissioner and the NIO
  - The response provided by the NIO in relation to the complaint
  - The candidate pack
  - Submissions made to Ministers relating to various stages of the recruitment campaign
  - The long list notes from the panel and the long list summary documents
  - Guidance on the Disability Confidence scheme, published by the Department for Work and Pensions.

## CONSIDERATION

### The Selection criteria

12. The candidate pack published in January 2019 outlined the key responsibilities for the role, and under the Person Specification stated 'Outstanding individuals are sought to become members of the Commission; people who understand the considerations that influence the environment in which it works and can command the confidence of all sides of the community in Northern Ireland, work constructively with others, think strategically and make clear and well informed judgements.'

13. The candidate pack asked candidates to demonstrate the following essential criteria:

- That they understand the needs and interests of those affected by the Commission's work on equality and good relations
- That they could make a personal contribution to the strategic direction of the Commission and assist it in carrying out its functions
- That they can build productive and respectful relationships with fellow Commissioners, colleagues and the communities which are impacted by the Commission's work and decisions; and
- A reputation for personal integrity, professional conduct and credibility, with an exceptional sense of propriety

14. The candidate pack also included the following, as desirable criteria:

- Experience of business, and/or working on disability, race/ethnicity, LGBT, or woman's issues is particularly desirable.

15. For the role of deputy Commissioner, candidates were also asked to demonstrate 'a strong track record of leadership in the private, public or voluntary sectors and a commitment to the principles of good governance'.

16. There are two elements to this part of the complaint raised. The first is the concern that experience of/ or working with disability, race/ ethnicity or women's issues had been included as desirable criteria, when it should have been included as an essential criterion for the role for an organisation such as the Equality Commission for Northern Ireland.

17. The second is how that desirable criterion was taken into account by the panel. The final panel report does not make reference to the desirable criterion in respect of the candidates found appointable. The report focuses clearly on providing advice to the appointing minister on the candidate's performance at interview against the essential criteria published in the candidate pack.

## DECISION

18. In relation to the first element, whether such a criterion should be desirable or essential, the Commissioner states that is not within his remit to decide on the appropriateness of criteria for board positions for any of the regulated organisations. This is for the recruiting department to decide with the public body.

19. The supporting evidence suggests that the department met with the Equality Commission for Northern Ireland to decide on the appropriate criteria for the Deputy Commissioner and members. The evidence does not explain whether the current board had a membership with experience of representing those with protected characteristics, but this was not considered an essential criterion.

20. Neither the Commissioner or the complainant are aware of the balance of skills or experience currently represented on the board. As this would involve exposure of the protected characteristics of current members, it would not be appropriate for the Commissioner to investigate this further.

21. In examining the candidate pack, the Commissioner considered both the first essential criterion and the desirable criterion.

*-That they understand the needs and interests of those affected by the Commission's work on equality and good relations'*

*-'Experience of business, and/or working on disability, race/ethnicity. LGBT or woman's issues is particularly desirable'*

23. The response from the NIO states that due to the volume and strength of the candidate field, the panel took the decision to only use the essential criteria only was during the sifting process, and to disregard the desirable criterion.

24. However, whilst the panel stated that they had disregarded the desirable criterion which refers specifically to protected characteristics, the sift notes refer to experience or knowledge of protected groups. For example, against some candidates are comments such as 'mostly race examples, or 'mostly women's issues'. These comments are a direct reference to the desirable criterion, rather than the essential, which does not make specific mention of protected characteristics.

25 The Commissioner has found that the two criteria are difficult to distinguish from each, and could easily be confused. The evidence suggests that the assessment by the panel was not clear and consistent. Therefore Commissioner has upheld the complaint. The NIO did not demonstrate a clear approach to the use of the desirable criteria for this campaign. The Commissioner would recommend that a review is taken on the use of desirable criterion, and whether it is necessary to include in the candidate pack.



### **The Guaranteed interview scheme (GIS)**

26. The NIO offered GIS for this campaign. The Department as a whole has adopted the disability confident scheme at level 2 (Employer), and public appointment processes are not exempt from this. This policy is designed by the Department for Work and Pensions (DWP) to encourage and support employers to attract, recruit and retain disabled people. It is interesting to note that under the Disability Confident scheme, the term GIS no longer exists, instead departments sign up to the commitment that '***Employers would offer an interview to disabled applicants who meet the minimum criteria for a job vacancy and consider them on their abilities.***'

27. Disability Confident is a relatively new scheme, and the application into working practice seems to differ from department to department. In this case, the decision to offer GIS, as well as work under the umbrella of the Disability Confidence scheme, again seems a little confused. Though the terminology differs very slightly in both schemes, the purpose remains the same, both are designed to encourage positive action for disabled people, by offering assurance that if they meet the minimum criteria, they are provided with the opportunity to demonstrate their skills and experience at interview.

28. The statement in the candidate pack for the Equality Commission for Northern Ireland states: *Under the scheme, a disabled candidate will be selected for interview **'if they meet the minimum criteria decided by the selection panel at the shortlist stage. To ensure fairness, the panel will not be informed of who has applied under the scheme until they have set the minimum criteria at the start of the shortlist meeting.'***

29. It goes on to state:

*'If you have a disability and require reasonable adjustments to help you attend the interview then you may wish to contact the competition co-ordinator about your requirements at the interview stage should you proceed in the process.'*

30. In the response to the candidate, the NIO stated that the selection process was in line with the department's policy for GIS. This states:

*'We guarantee to interview anyone with a disability whose application meets the minimum criteria for the post. By 'minimum' criteria we mean that you must provide us with evidence in your application summary form which demonstrates to the selection panel that you generally meet the level of competence required for any of the qualifications, skills or experience as set out in the candidate's information pack for the post).'*

31. Under either the Disability Confident scheme or GIS, the department making the assessment must establish what the minimum criteria is, before the assessment takes place. The guidance offered by the disability confident scheme states that *'if an employer advertises a vacancy receives a high volume of applicants ...they will*

*make a decision about the overall number of interviews offered. Of these, they should ensure that a proportionate number of interviews are offered to applicants that meet the minimum criteria.'*

32. In this case, the NIO stated that a decision on the minimum standard for GIS candidates was made prior to examining applications. The panel met to shortlist, and decided to set the minimum standard as consisting of all the essential criteria, and that only those candidates who scored 'A' were shortlisted for the role.

33. The panel's decision to set the bar high, and only accepting 'A' candidates, shows a misunderstanding of both the GIS scheme Disability Confident. By not accepting a minimum criteria for candidates who wished to apply under either scheme, it is questionable whether either scheme can make any positive impact at all.

34. The NIO has provided information that 9 candidates applied using the GIS scheme. The NIO has also informed that Commission that the panel is not informed which candidates applied under GIS, until the sift had taken place. Feedback is also offered after the shortlisting stage to all candidates, even though Code only requires departments to provide feedback after the interview stage.

#### **DECISION IN RELATION TO THE GIS SCHEME**

35. The complaint was made on the basis that the NIO had not applied the GIS scheme fairly. The Commissioner reiterates that an assessment of the complainant's application has not been made, and the following comments are not in relation to the strength of the application submitted, the NIO has stated that the complainant did not meet the criteria, and has provided reasons for that. The Commissioner's decision remains on the how the GIS scheme has been applied to the assessment.

36. It has already been stated that the Disability Confident scheme is run by the Department for Work and Pensions, and when questioned by the Commissioner, the NIO stated that it did not seek advice on how to apply the scheme, before including the logo in the application pack. Officials did however verbally advise the panel on the use of GIS, using the NIO's guidance which has already been referred to in paragraph 31.

37. The aim of the GIS scheme is to provide disabled candidates with the opportunity to demonstrate their abilities beyond the application stage, if they have met the minimum criteria. In this case, the application of the GIS scheme seems to have been misunderstood, with a minimum set of criteria set at a high level so that in practice, GIS candidates are not offered the opportunity to meet a minimum level. Whilst the eventual outcome of appointments may have been representative in terms of disability, this was not due to a consistent and transparent use of the GIS scheme. The Commissioner has therefore upheld this part of the complaint.



## **Conclusion**

38. The NIO chose to use the GIS and Disability Confident scheme for this campaign, without full consideration of how it would be applied to a high volume of applicants. The Commissioner would recommend that advice is taken on how to apply the Disability Confidence scheme, in particular to a large campaign, and that advice applied.

**Peter Riddell**

Commissioner for Public Appointments