

**Commissioner for Public Appointments decision notice: public body appointments process for Human Rights Commission, administered by Northern Ireland Office.**

1. The Public Appointments Order in Council (OIC) November 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. Under the Governance Code, 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 independent Commissioner for Public Appointments.

**Background and methodology**

3. The complainant made an application to the Northern Ireland Office to become a Human Rights Commissioner (NIHRC). The Northern Ireland Office was recruiting 6 new Commissioners. Applications closed on 26 June 2020 and the sift was conducted by the Advisory Assessment Panel on 3 July 2020. The complainant was told they were unsuccessful on 21 July. They made a complaint to the NIO on various aspects of the competition, and the NIO made their final response to the complainant on 28 July. The complainant remained unsatisfied and contacted OCPA on 5 August 2020.
4. The Commissioner only considers complaints which meet a number of conditions. They must relate to appointment competitions that have concluded within the last 12 months, and that relate to either an individual’s experience as an applicant, the way a department or other responsible organisation has handled an appointments process or if it appears that the Governance Code may not have been followed.
5. The complainant had a number of concerns with the campaign, including their non-selection. The Commissioner dismissed most of these concerns, as there was no suggestion the Governance Code had not been followed in the composition or standing of the Panel, the crafting of the criteria, or the Panel’s assessment of their application. The Commissioner is assured from the record of the Advisory Assessment Panel at sift and at interview that candidates were assessed fairly on merit, in line with the published criteria.

6. The complainant did raise concerns with the application of the Disability Confident Scheme to the competition. This issue has been subject to a previous decision notice from the Commissioner regarding the NIO and Equality Commission for Northern Ireland. The Commissioner considered this concern to be in scope under the Code's principle of Fairness and informed the complainant and the NIO on 12 August 2020 that he would investigate this aspect of the competition.
7. The Commissioner requested the Northern Ireland Office provide information about how the Disability Confident Scheme was used during the sift of the applications for the competition. He also required consent from the complainant to use the correspondence they had provided to OCPA in making their complaint in the course of the investigation. NIO supplied the requested information on 17 August and the complainant provided their consent on 13 August 2020.

### **Outline of complaint**

8. The complainant was concerned that the Disability Confident Scheme had been misapplied, having been informed by the NIO that the minimum criteria set for applications to be sifted through to interview was 'A' graded applications. Applications graded A were assessed as 'Strong – exceeds minimum essential skills requirements across all criteria'.

### **Consideration**

9. NIO is a level 3 (Leader) Disability Confident employer. One part of the Disability Confident Scheme is offering an interview to disabled people<sup>1</sup> who meet the minimum criteria for the job. This is designed to give disabled applicants an opportunity to demonstrate their skills and abilities at interview. This is a form of positive action which promotes equal opportunities for disabled people. This scheme does not mean that all disabled people are entitled to an interview, but that they must meet the minimum criteria for the job.
10. The Scheme also allows for limitations on the number of disabled people offered an interview (as with all candidates) when it is not practical to do so, such as when there are a large number of applications. In these cases, the guidance allows employers to "limit the overall numbers of interviews offered to both disabled people and non-disabled people. In these circumstances the employer could select the disabled candidates who best meet the minimum criteria for the job rather than all of those

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<sup>1</sup> Applicants to public appointments roles are asked to fill out a Diversity Monitoring Form. In this, they are asked to declare their disability status. Those declaring a disability are referred to in this notice as 'disabled applicants/candidates'. However, this is a reference only to those who have declared their disability, and there may be other applicants in the competition who consider themselves disabled, but did not declare so on the form.

that meet the minimum criteria, as they would do for non-disabled applicants.”<sup>2</sup>  
(Emphasis added.)

11. The candidate pack informed candidates that the NIO would be applying the Disability Confident Scheme interview provision to the competition and that “they would offer an interview to a fair and proportionate number of disabled applicants that meet the minimum criteria for the job.”<sup>3</sup> They acknowledged that if receiving a high volume of applications, they may need to limit the overall numbers of interviews offered, and this could include the number of interviews offered to disabled people that meet the minimum criteria for the job, as the Guidance above specifies.
12. The NIO received 129 applications for the roles on offer. The Advisory Assessment Panel decided to set the minimum criteria at ‘A’, described as ‘Strong – exceeds minimum essential skills requirements across all criteria’. It was also made clear to the complainant that only those graded A were interviewed.
13. The Commissioner’s previous decision notice into the NIO’s handling of the 2019 competition for NI Equality Commission found that the Department had set the minimum criteria at ‘A’ (‘exceeds criteria’), and had made no provision to allow for a fair and proportionate number of disabled applicants to be interviewed if none had made that minimum grade. The Commissioner ruled that:
  - a. “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.”<sup>4</sup>
14. The Commissioner notes that in this case, a number of disabled candidates made it through the sift on merit and were interviewed. He considers that the limitation on the number of candidates - including disabled candidates - taken through to interview due to the volume of applications is in keeping with the Governance Code’s principle of Fairness and the Disability Confident Guidance quoted above. Further, the candidate pack was clear as to how the Disability Confident scheme may work in practice for this competition. It is clear in this case the NIO took those disabled candidates that best met the minimum criteria through to interview.

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Disability Confident Employer Guidance, including offering an interview to disabled people who meet the minimum criteria for the job. Accessed 12 August 2020.  
<https://www.gov.uk/government/publications/disability-confident-guidance-for-levels-1-2-and-3/level-2-disability-confident-employer>.

<sup>3</sup> Candidate Pack for Northern Ireland Human Rights Commission, Commissioners competition June 2020.  
<https://publicappointments.cabinetoffice.gov.uk/wp-content/uploads/2020/06/NIHRC-Candidate-Information-Booklet-final-1.docx>. Accessed 12 August 2020

<sup>4</sup> OCPA complaint investigation decision notice, August 2019  
<https://39h2g54dv7u74bwyae2bp396-wpengine.netdna-ssl.com/wp-content/uploads/2019/08/2019-08-14-Decision-Notice-NIO-ECNI-1-1.pdf> Accessed 12 August 2020.

15. However, the Commissioner made inquiries to the NIO as to how they had planned to take a 'fair and proportionate' number of disabled candidates through to interview if none had made the 'A' grade at the initial sift. This was to ensure that the Scheme's purpose - to allow for a fair and proportionate number of disabled applicants to show their skills and abilities at interview - would have been fulfilled if no disabled candidates had scored 'A' at sift, and been either 'B' or 'C' graded. 'B' was described as 'meets minimum essential skills requirements across all criteria' and 'C' as 'does not meet all essential skills requirements'.
16. The Panel report shows that in advance of the shortlisting, the Panel agreed to interview six candidates who had declared a disability and who had met the minimum essential skills requirements across all criteria.
17. Following the sifting process, the Panel "reviewed the agreed interview list and noted that six of the twenty applicants who had declared a disability had been assessed as providing sufficient evidence to demonstrate relevant skills and experience for each of the selection criterion set out in the essential skills section and would be invited to interview. The panel agreed that this was a fair and proportionate number in comparison to the overall number of candidates invited to interview and consistent with the NIO's Disability Scheme Requirements." The review of the shortlist also led to the Panel adding another woman candidate to the shortlist. 36 candidates in all were taken through to interview.
18. The Commissioner is assured that the Panel had the necessary understanding of the Disability Confident Scheme to, using this reviewing step described above, consider B candidates if the Panel thought more candidates meeting the minimum criteria should be considered to make a fair and proportionate number of disabled candidates to take to interview.

## Decision

19. The Commissioner is therefore satisfied that the NIO and the Advisory Assessment Panel in this competition limited the number of disabled interviewees in a fair manner in keeping with the Disability Confident Scheme's guidance, by taking the highest scoring candidates only. He is satisfied that the NIO and Panel had a robust sift review process in place to use the Scheme to interview B graded ('minimum criteria met') disabled candidates if this had been necessary, having originally set the minimum criteria at 'A'.
20. The Commissioner therefore **does not uphold the complaint**. He finds no breach of the Governance Code. He encourages all Departments to be clear in their correspondence with candidates how setting a minimum criteria will be managed in large volume campaigns, for all eventualities.