



**The Commissioner for
Public Appointments**

Rt Hon Peter Riddell CBE
Commissioner for Public Appointments
G/07, 1 Horse Guards Road, London, SW1A 2HQ

JULY 2018

DECISION NOTICE : PUBLIC BODY APPOINTMENT PROCESS, DEFENCE NUCLEAR SAFETY COMMITTEE

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.

METHODOLOGY

3. The Commissioner investigated this complaint through consideration of written, verbal and electronic evidence supplied by the complainant and the Ministry of Defence.
4. 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

5. The complainant raised concerns about the process to appoint members to the Defence Nuclear Safety Committee (DNSC), a public body sponsored by the Ministry of Defence (MOD). Specifically, the complaint centred on the Advisory Assessment Panel's examination of the specialist skills required for these roles.

CONSIDERATION

6. The complainant approached the MOD after being considered for a member position with the DNSC. The complainant was concerned that the questions asked at interview did not fully explore the specialist knowledge, specifically in nuclear security, required for the role. Neither did the interview focus on the requirements for the role published in the candidate pack. The complainant raised this with, both verbally and in writing with MOD, and subsequently felt that the response provided by the MOD did not fully address the points raised.
7. The complainant then brought the complaint to the Commissioner on the grounds that the selection process for this campaign did not take into account the experience and skills required, therefore the assessment process did not meet the principle of 'Fairness' in the Governance Code.
8. In forming a decision, the Commissioner reviewed all of the following relevant documentation:
 - The candidate pack
 - Documents relating to the shortlist
 - The panel report with details of candidates who had been found appointable, contained in submissions to Ministers
 - Submissions to Ministers at every stage
 - Relevant email exchanges between officials
 - A transcript (and formal record) of the teleconference between members of the assessment panel and the complainant to discuss complaint
 - Emails and correspondence to the complainant

DECISION

9. In reviewing this case, the Commissioner noted that the candidate pack published in relation to the role asked for the following 'essential qualities':
 - Held a senior post in the field of nuclear security
 - Understanding of armed and physical protection of nuclear facilities and installations

- Experience of the design and delivery of nuclear security at civil or defence related establishments
- Ability to effectively communicate with Committee Members, senior officials in MOD, and the Royal Navy, Ministry of Defence Police and senior managers in the Defence Nuclear Enterprise

The candidate pack also asked for 'Highly desirable qualities' :

- Capacity to absorb and analyse large volumes of complex information
- Ability to understand the interrelationships between a series of large, technically sophisticated, organisations
- Awareness of what it is to represent the public interest
- Ability to be an effective member of a team of highly skilled and professional individuals

The Commissioner questions the departure from usual practice to ask for 'essential criteria' and 'desirable criteria' in relation to an advertised role, which makes it easier for candidates to assess their own experience, knowledge and skills against the requirements for a role. It is unclear what the distinction between 'essential qualities' and 'highly desirable qualities' was, and how, for example 'knowledge of the safety of nuclear weapons throughout lifecycle' is a quality, rather than a measurable criteria.

10. An overall sift record was not supplied by MOD, instead sample of sift sheets was provided and an email which showed that candidates were scored against four competencies- whether these were the 'Essential qualities' or the 'Highly desirable qualities'- is unclear. From the records supplied, the Commissioner was unable to establish how many candidates originally applied, which competencies candidates were sifted against or the scoring mechanism used. The final submission to Ministers in March 2018 states that 14 applications were received, the email supplied shows that only 7 were sifted. The exercise progressed six candidates for interview, the complainant was among them. The Commissioner is unable to confirm that the principles of merit and fairness were upheld at this early stage in the competition, and has therefore found the MOD in breach of the Governance Code.
11. The Commissioner was not supplied with any evidence which demonstrates that candidates were asked to declare conflicts of interests at application stage, and whether these were explored. The final panel report similarly did not confirm whether this had taken place. The Commissioner advises that the department should retain clear records of any due diligence checks made or any conflicts declared; and that both the sift and panel reports should make reference that declarations were invited and considered.

12. The final panel report contained feedback on each candidate interviewed, however the relative strengths of each candidate as demonstrated at interview were brief. In particular, the performance at interview for three candidates was not commented on, and instead purely focussed on experience and technical ability or experience.
13. The final panel report, sent to Ministers with the submission requesting to appoint did not refer to the 'essential qualities' or 'highly desirable qualities' as published in the candidate pack for all candidates. However, a supplementary document provided at the second request from the Commissioner, provided evidence of the questions asked at interview. One question addressed the technical skills in relation to this role. The MOD has asserted that the technical skills required for this role could be evidenced through a candidate's CV, and the Commissioner has agreed. In which case, and although it is difficult to see what was taken into account at the initial sift, the technical element of the role was tested at both sift and interview the process. The Commissioner has concluded that it is the duty of the Advisor Assessment panel to decide what can be tested through written evidence or through interview.
14. The Commissioner has also considered that technical knowledge of the nuclear industry represented only two out of eight 'qualities' necessary for this board position. The other broader skills relating to stakeholder management, communication and analytical skills were explored interview. The MoD endeavoured to do this and went on to explain this to the complainant.
15. The panel report also contained a score for each candidate. The Governance Code states that candidates must not be ranked, unless requested by the Minister, however MoD acknowledged this at the point of supplying the report and are already taking steps to ensure that this does not occur again with subsequent appointments.
16. The complainant was found appointable for this role, although his relative merits in relation to the role and in relation to other candidates are difficult to ascertain. The panel report contains a description of technical experience for the complainant, with no comment on the other 'qualities' published on the candidate pack. Although the interview did test some of these skills, this information was not provided to the Minister. The Minister's selection therefore seems to have been made on specialist or technical knowledge only.

Decision

The complaint centred on the assertion that technical skills had not been fully considered in making this appointment. On this basis, the Commissioner has not

upheld the complaint. However, due to the inconsistencies and absence of key documents, making this process very difficult to follow, the Commissioner has found that the appointments process for this role was not transparent and did not present the Minister with a full assessment of the candidates interviewed. The Commissioner has therefore found the MOD in breach of the Governance Code.

The Commissioner has also noted that the appointments to the roles in relation to this complaint have been made, although no formal announcements are in the public domain. On balance, the Commissioner does not believe that there is a case for reopening this competition at this stage, however the Commissioner will expect his comments to be taken into consideration and the Commissioner's secretariat will work with MOD to improve the quality and consistency of competitions, particularly in record keeping.

The Commissioner will publish this decision on his website and draw it to the attention of the Defence Select Committee of the House of Commons.

Peter Riddell

Commissioner for Public Appointments