



OCTOBER 2018

DECISION NOTICE: PUBLIC BODY APPOINTMENT PROCESS, LOW PAY COMMISSION, EMPLOYEE COMMISSIONER

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 made an FOI request to the appointing department. After being informed that records did not exist, the complainant contacted the Commissioner. The Commissioner had significant concerns about the lack of documentation, and accepted the complaint at this stage.

METHODOLOGY

4. The Commissioner investigated this complaint through consideration of written and electronic evidence supplied by the complainant and the Department for Business, Energy and Industrial Strategy.
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

The complainant raised concerns about the process to appoint Commissioners to the Low Pay Commission (LPC), a public body sponsored by the Department for Business (BEIS). The complainant applied for a position as Employee Commissioner, but was not shortlisted. After writing to the department for feedback and evidence of the decision taken, the complainant was informed that a record of the assessment did not exist,

however was offered the opportunity to speak to the Chair of the panel on how to 'make his application stronger for the future',

SUMMARY

6. Two roles had been advertised for the Commissioners of the Low Pay Commission, one as a representative of employers, the other of employees. The complainant submitted an application for the position of employee Commissioner, with a covering letter and CV. After being informed that the application had not been successful, the complainant submitted a Freedom of Information (FOI) / Subject Access Request (SAR) requesting 'all documents and policies and marking regimes' used in the assessment.
7. The response from BEIS stated that the complainant had 'been assessed against all the criteria for the role and it was agreed that he did not meet the minimum criteria and was not invited to interview'. The response also went on to state that 'there is no individual comment on the applicant on file.'
8. BEIS also explained to the complainant, and to the Commissioner's office, that the sift conducted was 'blind', as such all names were removed so that the panel were unaware of the candidates identity. (For the purposes of this report, this practice will be referred to as 'anonymised').
9. The complainant was informed that the panel had taken a full discussion of each application, however scores or comments for shortlisting were not recorded. The chair of the panel then offered to speak to the complainant to provide his thoughts on how to make future applications stronger.
10. In forming a decision, the Commissioner reviewed the following relevant documentation:
 - Emails between the complainant and BEIS officials
 - The candidate pack
 - Submissions made to Ministers relating to various stages of the recruitment campaign
 - The shortlisting briefing pack provided to the panel
 - A 'candidate log' - a record of political activity, email addresses, and an indication if the candidate had been shortlisted
 - The submission and panel report with details of candidates found appointable
 - Copies of all the covering letters and CVs submitted.

CONSIDERATION

11. 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).

12. 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).

13. There were three documents relating to the sift, submitted by BEIS, at the request of the Commissioner. The first, an 'applicant log' is a record of all those who applied, a brief biography, declarations of any political activity, submission of the diversity monitoring form and whether they had been shortlisted, and subsequently appointable. Only those shortlisted, and then found appointable have an 'X' against their names, there is no further evidence to demonstrate the rationale behind this judgement.

14. The second is the panel briefing pack. The Commissioner was provided with an email trail which indicated that the panel had agreed to the panel report. The report has each candidate listed by number, as the sift had been anonymised. The column marked 'brief biography' is populated with headline details of relevant experience taken from the candidates CV's and supporting statements, however the column marked 'Comments' is blank for all candidates.

15. The final document relating to the sift is a submission to ministers providing details of the candidates shortlisted and due to be interviewed. The panel report attached to this submission states 'Each of the 40 applications was discussed in two separate groups for the Employer and Employee members. After a full discussion it was agreed that the following 10 candidates most closely met the advertised criteria and should be invited for interview'.

16. Similar to the panel briefing pack, there are some brief biography headlines against those shortlisted, and some considerations made by the panel, despite no record of the sift conversations existing. Whilst this clearly meets the requirement of the Code, to inform ministers of each stage of the competition, it is not evidence that an assessment was made of all the candidates at the sift stage, comparing their relative merits and experience of, against the published criteria.

17. This complaint was sent to the Commissioner, and accepted following the department's admission that records of the assessment did not exist. After the FOI request was submitted by the complainant, the Chair of the panel offered the complainant his view on how the application could be made stronger, instead of providing feedback based on a written record of the panel's decision not to shortlist the complainant. As such the Chair was not able to provide formal feedback, based on the official findings taken by the entire panel.

DECISION

18. This complaint was made on the basis that the department was unable to justify its decision not to shortlist one candidate, as it was not able to provide a record of an assessment having been made against the selection criteria published in relation to the role. On these grounds, the Commissioner has upheld this complaint.

19. BEIS did not supply any documentation that, at sift stage, an assessment was made of each candidate, which refers to the selection criteria, and compares each candidate's relative ability and experience against the published criteria. The department has therefore been unable to justify or evidence its decision.

20. The Commissioner has found that several aspects of this campaign are not compliant with key elements of the Governance Code, namely transparency, customer care and the evidence of an assessment made on merit. The Commissioner does not question the judgement made by BEIS, but the absence of an assessment record to support the decision. That absence means that the Commissioner has found BEIS in breach of the Governance Code.

21. In forming the decision, it is not within the Commissioner's remit to ask the department to run this competition again, however, OCPA officials have offered to work closely with BEIS to ensure that the quality of record keeping is improved.

Peter Riddell

Commissioner for Public Appointments