

SUMMARY REPORT OF COMMISSIONER'S FINDINGS

Report Reference OCPAS 525/2007

28 February 2007



INTRODUCTION

NAME OF DEPARTMENT: HEALTH

NAME OF PUBLIC BODY: BORDERS NHS BOARD

NATURE OF APPOINTMENT: CHAIR

NATURE OF EXAMINATION:

This examination was initiated because a complaint made by an unsuccessful applicant was not dealt with to that complainant's satisfaction by the sponsor department.

Background and statement of complaint

This complaint was about the non-selection of an applicant for the interview stage of an appointments round to the board of NHS Borders.

The complainant requested this investigation by writing to the Scottish Executive and, following receipt of the response, by visiting the OCPAS office. The complainant also wrote to OCPAS to clarify his concerns. The complainant's statement of complaint, established in writing and at interview, is:

1. he wishes to complain about the handling of his application for appointment as the Chair of NHS Borders board; and
2. the instructions provided to potential applicants are not sufficiently specific about the way in which applications will be assessed by the selection panel; and
3. he infers from discussions with the department, following advice that he had not been selected for interview, that the intervention of the OCPAS Assessor may have been pivotal in the decision that his application did not merit an interview; and
4. the decision not to invite him to interview was based on an unreasonable conclusion as to the evidence he provided on his application; and
5. the process of considering his application for the post has not, therefore, been conducted fairly or reasonably; and
6. should the panel's decision not to invite him to interview be a code[†] compliant one then the process itself has the practical effect of screening out some applicants who are prima facie (on the first view; at first sight; (of evidence)*) suitable.

[†] The Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code)

* Definition from Chambers Dictionary

Findings

1. Complaint about the handling of the application for appointment as the Chair of NHS Borders board.

The Commissioner has found that the application was handled in a way that complied with the Code of Practice and that the application was treated in exactly the same way as other applications submitted for the role.

2. The instructions provided to potential applicants are not sufficiently specific about the way in which applications will be assessed by the selection panel.

The Commissioner agrees with the view of the complainant that the term "hints" is not sufficiently explicit at page two of the guidance. The Commissioner is also of the view that the introduction to part two of the form that applicants are required to complete could be revised to provide further clarification as to what the evidence requirements are. However, pages one and three of the guidance for applicants are explicit about what is required for an application to merit interview. Still more explicit information about what is required is provided on the information for applicants document. The complainant's view that nothing else in the guidance for applicants would lead an applicant to complete their form in accordance with the "hints" is not upheld. The Commissioner agrees that an applicant may not know whether the quality / amount of evidence provided by them will ensure an interview but this does not detract from the fact that applicants are instructed to and must provide qualitative evidence in order to be considered for interview at all. It is clear from the instructions that failure to provide any evidence that the essential criteria are met will mean that an applicant will definitely not be invited to interview.

3. Inference from discussion with the department, following advice that the applicant had not been selected for interview, that the intervention of the OCPAS Assessor may have been pivotal in the decision that the application did not merit an interview.

The Commissioner has found that the application was ruled out because it did not provide evidence that each of the essential criteria for the role were met. This was the individual view of each of the selection panel members, which they arrived at independently, and also the view reached by the panel when it met to agree which applicants should be shortlisted. The inference is, therefore, an inaccurate one.

4. The decision not to invite to interview was based on an unreasonable conclusion as to the evidence provided on the application form.

The Commissioner has found that the application was ruled out because it did not provide evidence that the essential criteria for the role were met. This verified the findings of the selection panel. Some information that the applicant might have anticipated would be taken into account, such as the provision of a job title that they had worked in previously, does not constitute evidence in and of itself as this is prohibited by the Code.

5. The process of considering the application for the post has not, therefore, been conducted fairly or reasonably.

The Commissioner has found that the application was ruled out because it did not provide evidence that the essential criteria for the role were met. The application was treated in exactly the same way as others submitted for the role and, hence, fairly. The application was ruled out in accordance with the requirements of the Code. The complaint is therefore effectively a complaint that the requirements of the Code itself are unreasonable.

6. The second strand of the complainant's complaint is that, should the panel's decision not to invite him to interview be a Code compliant one then the process itself has the practical effect of screening out some applicants who are prima facie (on the first view; at first sight; (of evidence)) suitable.

The requirements of the Code do have some practical effects on what can and cannot be taken into consideration by the panel in the assessment of applications. The primary effect of the Code's requirements in this context is to rule out the following:

- selection panel members' prior knowledge of an applicant, that would lead to that applicant's selection for interview regardless of whether their application form merited such selection, being taken into account.
- selection panel members' knowledge of a given role or job performed by an applicant being taken into account.

It is the Commissioner's view that the complainant's application cannot be considered "prima facie" suitable for a board member role. All applicants are treated equally in this process by virtue of the fact that they must provide evidence on their application form as to their merit in relation to the publicised role. An applicant can only be considered "prima facie" suitable if the evidence provided on their application is such that the conclusion to invite to interview would be drawn without reference to prior knowledge of the candidate or prior knowledge of a given role or job that the applicant carried out. Applicants who presume, because they performed previously in a given role or do so currently, that this in and of itself will be considered sufficient evidence that they will be able to perform as a board member will not be successful in their application. These requirements of the Code have been introduced for a specific reason. Selection panels are made up of a senior civil servant, a representative of the body itself (usually the Chair) and an OCPAS Assessor. Inevitably, the panel will therefore have knowledge of the work of senior civil servants and what that entails. The panel will also have knowledge of other roles such as serving as the Chair of an NDPB. Occasionally, panel members will also recognise applicants from their applications because they have served in one or other of such roles. Were the Code to allow such knowledge to be taken into account in the assessment of applications then this would automatically advantage individuals who had served in such roles or who were known to the panel members. The converse of this is that it would disadvantage anyone who had not served in such roles or who was not known to the panel. Additionally, having served in a role will not, in and of itself, represent evidence of effective performance in that role.

The requirement for all applicants to provide evidence of their suitability for a given role on an application form provides a level playing field for applicants. The application form, and the requirement to provide evidence on it, allows all applications to be assessed on a like for like basis.

Taking all of the above into account, the complaint is not upheld.

Recommendations[†]

- The department will be asked to review the information provided to applicants and to consider replacing the word hints with instructions on the document entitled guidance for applicants.
- The department will be asked to review the information provided to applicants and to consider clarifying the instructions at the introduction to part two of the form.
- The department will be asked to review the information provided to applicants and to consider including a statement to the effect that job titles or positions held will not, in and of themselves, be considered as meeting the evidence requirements of the criteria for a given role.

[†] The Commissioner has found that this appointment round has been Code compliant. The force of these recommendations, as they do not relate to compliance with the Code, is not statutory.