

## **Employees Retraining Board’s guidelines on and definition of the term “highest educational attainment” in the course application form Investigation Report**

On 22 June 2021, the complainant made a complaint to this Office against the Employees Retraining Board (“ERB”).

### **The Complaint**

2. According to the complainant, he had attended a course (“Course A”) offered by a training body appointed by ERB from October to November 2016. In June 2022, ERB sent a letter to him, alleging that he had misrepresented his educational attainment in applying for Course A and demanding him to return to ERB the cost of Course A and the retraining allowance he had been granted totalling over \$5,000.

3. As regards his educational attainment, the complainant explained that he enrolled in a part-time bachelor’s degree programme at a university in 2015, but suspended his study in 2016. Subsequently, he completed the programme and obtained his bachelor’s degree in 2019. As he had not yet obtained the degree when enrolling for Course A in 2016, he declared that his “highest educational attainment” was “Diploma to sub-degree”, which was based on his understanding of this term in the general context of study and job search. Nevertheless, ERB referred to the definition of “highest educational attainment” in Note 3 of the course application form, pointing out that it meant “the highest level of full curriculum study that applicants are attending or have attended at schools”, which covered the part-time bachelor’s degree programme that the complainant had taken. Hence, ERB considered that the complainant had misrepresented his educational attainment.

4. The complainant denied having deliberately misrepresented his educational attainment. He questioned the lack of clarity in the guidelines of ERB’s course application form regarding the term “highest educational attainment”, including that:

- (1) ERB had failed to add a note next to the term “highest educational attainment” in the course application form to draw applicants’ attention to its definition.

- (2) ERB had failed to define “full curriculum study”, causing the complainant to take it as full-time education programme. Thus, he did not declare that he had taken the part-time bachelor’s degree programme.

## **Our Findings**

5. On receipt of this complaint, we conducted a preliminary inquiry against ERB. Have scrutinised the information collected, we launched a full investigation against ERB at the end of September 2022.

6. We completed the investigation in November 2022. Our findings are as follows.

### ***ERB’s Service Targets***

7. ERB’s retraining courses and services are provided by the training bodies appointed by the Board. When ERB was established in 1992, its service targets were people aged 30 or above with an education level of Secondary 3 or below. Subsequently in December 2007, ERB extended its service to cover people aged 15 or above with educational attainment at sub-degree level or below.

8. In recent years, ERB has been assigned by the Government to launch the Love Upgrading Special Scheme, which aims to support the unemployed or underemployed by piloting some courses with relaxation or removal of restrictions on educational attainment.

### ***Defining “Highest Educational Attainment”***

9. To ensure that applicants are ERB’s service targets, ERB requires course applicants to declare their “highest educational attainment” in the application form and provide relevant proof of educational attainment. Item 8(ii) of the application guidelines of the application form states that:

*“Applicants should submit proof of highest educational attainment<sup>Note 3</sup> issued by the school/institution concerned.”*

According to Note 3 of the application guidelines:

*“Highest educational attainment refers to the highest level of full curriculum study that applicants are attending or have attended at schools (including cases where the applicants have not completed the study, or are unable to provide proof of educational attainment) ...”*

10. Moreover, according to ERB’s administrative guidelines drawn up for training bodies as internal reference:

*“Full curriculum study refers to a study which, upon completion, an applicant would obtain a specified educational qualification or award; curriculum of which may require a minimum number of subject enrolments.”*

### ***Sequence of Events***

11. When the complainant enrolled for another certificate course under ERB’s Love Upgrading Special Scheme at the end of May 2022, he declared in the course application form that his “highest educational attainment” was “Bachelor’s degree”. Meanwhile, he also submitted an application for amendments to trainee’s particulars, on which he changed the record of his “highest educational attainment” from “Diploma to sub-degree” to “Above sub-degree”.

12. Based on the aforesaid application form for amendments, ERB found that the complainant was doing a part-time bachelor’s degree programme between April 2015 and April 2019 after he completed a sub-degree programme in July 2011. This piece of information was inconsistent with the “highest educational attainment” he declared in his application for Course A in 2016 (i.e. “Diploma to sub-degree”). According to ERB’s definition, the complainant’s “highest educational attainment” should be above the level of “Diploma to sub-degree” when he enrolled for Course A because he was then studying for a bachelor’s degree. Hence, he did not meet the general admission criteria for ERB courses.

13. In early June 2022, ERB wrote to the complainant, pointing out the discrepancy in the information about his “highest educational attainment” in his course applications. ERB considered that, given the updated information, the complainant did not meet the general admission criteria for ERB courses and therefore he should return the cost of training in Course A and the retraining allowance granted to him. ERB also reminded him that misrepresentation for the purpose of gaining admission amounted to

a contravention and the person concerned shall be subject to legal actions taken by ERB.

14. In mid-June, the complainant talked with two ERB staff members on the telephone to explain that he had not completed the bachelor's degree programme when he enrolled for Course A. Therefore, he considered himself not to have attained the level of bachelor's degree and that there was no misrepresentation about his educational attainment. In response, the ERB staff pointed out that the application guidelines already set out ERB's definition of "highest educational attainment", and if the complainant had other supplementary information and documents to prove that he had not misrepresented his educational attainment, he could submit them in writing for ERB's consideration.

### ***ERB's Response***

#### Query (1): Failure to add a note

15. ERB explained that its funding must be used prudently as it is public money, and the training resources should be allocated to the intended service targets. Hence, the "highest educational attainment" has always been a mandatory field in the course application form so that ERB could confirm whether applicants are eligible for its services. ERB's course application form contains a reminder which reads "Please read Application Guidelines thoroughly before application". Besides, the application guidelines include the definition of "highest educational attainment" (see **para. 9**), and indicate that the training bodies would verify the information and documents provided by applicants to prove their educational attainment. By signing the course application form, applicants declare that they have read and agreed to all the terms of the application guidelines and undertake to accept ERB's procedures and criteria for selecting trainees and granting retraining allowances.

16. Moreover, ERB noted the complainant's comment about putting a note at "highest educational attainment" in the course application form. It would consider this suggestion when reviewing the contents of the form in future.

#### Query (2): Failure to explain the meaning of "full curriculum study"

17. ERB pointed out that the application guidelines in the current version of the course application form contains dozens of rules/terms and ten odd notes. Where an item requires further explanation or the applicant's attention, ERB would add a note to

that item as an explanatory note.

18. Applications for course enrolment are processed by respective training bodies. If applicants required more information or had questions about the definition and scope of “highest educational attainment” and/or “full curriculum study”, they could inquire of the respective training bodies. ERB has established administrative guidelines in this regard (see **para. 10**). Where necessary, the training bodies could refer to the administrative guidelines and provide relevant information to applicants.

19. ERB indicated that it would consider giving information about and a clear definition of “full curriculum study” in the course application form when reviewing its contents in the future.

#### Handling of the complainant’s case

20. According to ERB, it has established guidelines and approving criteria to exercise discretion in processing course applications that do not meet the general admission criteria or entry requirements. For applicants holding a sub-degree and having enrolled for a bachelor’s degree programme without completing the study, ERB can exercise discretion in processing their course applications in accordance with the approving criteria. Training bodies would investigate the background of ineligible applicants and exercise discretion in processing their course applications. If the complainant had disclosed the status and suspension of his study when he enrolled for the ERB course in 2016, ERB would have exercised its discretion in approving his course application.

21. ERB has in place established procedures and preventive measures for handling suspected cases of misrepresentation of educational attainment for the purpose of admission to training courses. Besides, such contravention is subject to penalty. Nevertheless, if the person concerned can provide justification and documents of proof, ERB will consider exempting him/her from penalty under the established mechanism.

22. ERB had processed the complainant’s case in accordance with the aforesaid procedures and measures. When the complainant called ERB to defend himself (see **para. 14**), he did not mention he had suspended his study for the bachelor’s degree in 2016 or his mistaking “full curriculum study” for “full-time study”. Nor did he submit any written explanation or document. ERB, therefore, did not have sufficient information to process his case further.

23. Having obtained more information via this complaint, ERB contacted the complainant to follow up on his case. After receiving supplementary documents from the complainant and reviewing his case, ERB agreed that he did not need to return the relevant training cost and retraining allowance.

### *Our Comments*

24. As ERB has pointed out, “highest educational attainment” is a mandatory field in the course application form and it is essential for ERB to confirm whether applicants are among its service targets and the training resources are properly utilised (see **para. 15**). As a matter of fact, it is vitally important that applicants correctly understand and declare their “highest educational attainment” because failure to provide accurate information may result in ERB’s recovering the training cost and retraining allowance granted after the completion of the course. The applicants may even be liable to the penalty set out in the application guidelines.

25. Moreover, ERB’s definition of “highest educational attainment” (see **para. 9**) may be different from ordinary people’s understanding, which is the education level attained after completing a course and obtaining the certificate of the course. If applicants consider it sufficient to adopt the common interpretation of the term without reading the instructions given by ERB, it is possible that they will inaccurately declare their highest educational attainment.

26. After receiving our referral of this complaint, ERB reviewed the case and eventually accepted the complainant’s explanation and exempted him from the compensation or other penalties. This shows that ERB had taken heed. That said, the definition of “highest educational attainment” is of significance and may have great impact on approving course applications, and it may be different from ordinary people’s understanding of the term. In our opinion, ERB should more effectively remind applicants about the requirements and definition of “highest educational attainment” to avoid misunderstanding or even disputes. After examining ERB’s course application form, we have the following views on the complainant’s two queries about the form (see **para. 4**):

#### Query (1)

27. As ERB has already explained the term “highest educational attainment” in

the application guidelines in its course application form, applicants should study each item of the guidelines. However, as mentioned in paragraphs 24 and 25, applicants are obliged to declare accurately their “highest education attainment”. We consider it appropriate for ERB to strategically put a reminder in the course application form to alert applicants to the relevant explanation. The complainant’s suggestion of adding a note next to the term “highest educational attainment” is a feasible way of guiding applicants to read the explanation.

28. The explanation of “highest educational attainment” is provided by means of a note (i.e. Note 3) in very small font, which is neither noticeable nor clear, in the existing application guidelines. For this reason, applicants may miss the explanation. In our view, using bold and bigger font or underlining the words could help alert applicants and make the explanation easier to read.

#### Query (2)

29. According to Note 3 of the application guidelines, “highest educational attainment” refers to the highest level of full curriculum study that applicants are attending or have attended at schools” (see **para. 9**). Nevertheless, ERB has not specified the meaning of “full curriculum study” in the course application form or the application guidelines. It has only offered an explanation in the administrative guidelines issued to the training bodies appointed.

30. It is necessary for ERB to specify the meaning of “full curriculum study” for applicants’ reference because it forms part of the definition of “highest educational attainment”. As “full curriculum study” is not a commonly used term for members of the public, ERB should not assume or expect applicants could understand its meaning. The meaning of “full curriculum study” is only explained in the administrative guidelines issued by ERB to the training bodies (see **para. 10**) while applicants are not provided with the definition of the term. We consider this inadequate.

#### **Conclusion**

31. In light of the analysis in paragraphs 24 to 30, we are of the view that the definition of “highest educational attainment” in ERB’s course application form is unclear. Hence, The Ombudsman considers this complaint against ERB **substantiated**.

## **Recommendations**

32. The Ombudsman recommends that ERB promptly review and amend its course application form and application guidelines to give a clear definition and explanation of the terms “highest educational attainment” and “full curriculum study”. If the application guidelines cannot be exhaustive because of the large number of items to be noted (see **para. 17**), ERB may consider releasing relevant information by other means, such as attaching a supplementary sheet to the application form, publishing the information on its website, engaging the training bodies to remind applicants, etc.

## **ERB’s Views**

33. We have considered ERB’s comments on our draft investigation report and incorporated their views in this final report. ERB had no objection to our comments.

34. Besides, ERB accepted our recommendation in paragraph 32. ERB would amend its course application form and add a note next to the term “highest educational attainment” in bold and underlined font as well as using bold and bigger font for the definition. The course application form would include an explanation of the term “full curriculum study”.

35. To expedite the implementation of our recommendation, ERB would update the course application form available on its website and offer the option of online completion and submission of application form. As printed copies of the form may take time to prepare, ERB would attach a supplementary sheet containing the relevant definitions to the course application form.

36. Furthermore, when ERB evaluates the effectiveness of the Love Upgrading Special Scheme (see **para. 8**) by the end of this year, it will review the definition and description of “high educational attainment” as well.

## **Concluding Remarks**

37. We are pleased to note that ERB has agreed to implement our recommendation



as soon as practicable. We will follow up on the implementation progress.

**Office of The Ombudsman**

**November 2022**

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