

OCPA NI

***COMMISSIONER
FOR PUBLIC
APPOINTMENTS
FOR NORTHERN IRELAND***

Seventh Report 2001 - 2002

OCPA NI

The Commissioner for Public Appointments for Northern Ireland Seventh Report 2001-2002

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Introduction

The Seventh Annual Report covers Dame Rennie Fritchie's second full year in office as Commissioner for Public Appointments for Northern Ireland. One of her main themes for the work of the Office this year was "regulation revisited" and as part of this, a revised Code of Practice for Ministerial Appointments to Public Bodies was drawn up. This Code, which replaces the original 1996 OCPA Guidance on Appointments, provides the regulatory framework for the appointments process. As part of the exercise to develop the new Code, the complaints process was also re-examined, with a view to making improvements. The Code was issued to Departments in May 2002, which is outside the period of this report, and the Commissioner is pleased to note that initial feedback has been very positive. OCPA will continue to review and develop the Code in the light of its practical application.

When considering the way in which Departments conduct the public appointments process, the Commissioner assigns it to one of three categories: best practice, acceptable practice, or unacceptable practice. OCPA encourages and helps Departments, where possible, to achieve best practice and to this end, the Commissioner has been working with the Central Appointments Unit in the Office of the First Minister and Deputy First Minister, with a view to producing a Best Practice Guide for Departments. This follows the very successful production of a document by the Cabinet Office, which provides a practical and helpful Guide to Departments in Great Britain on the process of making public appointments. Both the Commissioner and her auditors felt that it would be helpful to have a Guide which was developed specifically for use by the Northern Ireland Departments and which would complement (but not replace) her mandatory Code, which sets out the basic ground rules. The Central Appointments Unit is now working on this project.

During this year, the Commissioner began a programme of visits to Departments to meet Permanent Secretaries. This gave her the opportunity to outline her aims for the appointments process and to highlight ways in which she believed that, working with Departments, the process could be improved. Dame Rennie was keen to emphasise that she sees her role not just as one which polices the process, but which is pro-active in

improving procedures. She highlighted a number of issues which she felt could usefully be addressed, including the centralisation of the Independent Assessors, the widening of her remit to include advisory non-Departmental public bodies and ways of increasing diversity and developing potential. These meetings also allowed Permanent Secretaries to discuss any problems which their Departments had encountered. Many of the same issues were raised by different Departments, with advice being sought on the application of the proportionality principle and on the performance appraisal process for board members. These discussions have helped inform OCPA NI's future plans and we will be examining some of the issues raised by Departments, with a view to assessing how improvements can be made. It became apparent from these meetings that there are areas which would benefit from a cohesive, Service-wide approach and Dame Rennie will be raising this with the Permanent Secretary Group.

The Commissioner received further insight into the detailed administration of the appointments process, during a meeting in May 2001 with Departmental representatives, who carry out the process on a day-to-day basis. Some of the issues identified related to insufficient time and too few resources being allocated to appointments issues. Newer Departments also highlighted a lack of experienced staff, which made it difficult to get guidance from within their own organisation. The Commissioner undertook to pass on their concerns to senior officials and indeed, many of these issues have now been addressed, or plans are underway to do so. For example, several Departments are now drafting detailed internal guidance on appointments, which will expand on the Code of Practice.

The Commissioner has stated that her general theme for the coming year is "professionalism and quality". By focussing on this in every aspect of its work, OCPA aims to continuously improve its performance. We believe that, with the continued co-operation and enthusiasm of staff in the NI Departments, we will be able to consolidate the work carried out so far in making the appointments process in Northern Ireland a fair, open and transparent one. Our thanks go to everyone in the NI Departments and in the wider community, who have contributed to the successful implementation of this process.

REVIEW OF THE YEAR

The Committee of the Centre

One of the earliest events of the year was the Commissioner's appearance before the Committee of the Centre on 16 May 2001. Dame Rennie had previously met Mr Edwin Poots, the Chair of the Committee, to discuss the appointments process generally. This appearance gave the members of the Committee a chance to ask more detailed questions on matters in which they were particularly interested. Some of the areas covered were merit and diversity, under-representation of groups such as women and young people and the performance of the Departments since devolution. The Commissioner was pleased to be able to present her views to the Committee and agreed to provide some follow up information on appointments in the wider, GB context.

Meeting of Departmental Representatives

Later that month, Dame Rennie chaired a meeting of 14 representatives from the Northern Ireland Departments, all of whom were closely involved in the day to day administration of the appointments process. This meeting was held in a conference room in the Disability Action Building. A number of items were discussed, including the introduction of the OCPA NI kitemark and the proposal to centralise the management of independent assessors. However, the main focus of the meeting was to allow those attending to discuss any areas of concern with the Commissioner and to highlight issues which they felt should be addressed. The meeting also gave OCPA NI the opportunity to gain some feedback on how the process works in practice and the problems which Departments encounter.

A number of general issues were raised and discussed by the representatives, including the need to:

- get the person specification right and not simply recycle earlier ones, without considering how the needs of the body may have changed;

- develop and share best practice;
- arrange more training for staff working in this area;
- identify new independent assessors;
- change the focus from "advertising" appointments to "publicising" them; and
- ensure consistency and clarity in the language used in advertisements and application forms.

Dame Rennie then chaired a question and answer session, where she gave advice on specific queries from the representatives.

The last session of the day was a talk by Monica Wilson, Chief Executive of Disability Action, who outlined some of the work of her organisation and gave a very valuable insight into the problems which confront those people with a disability who might be interested in applying for a public appointment. Her contribution gave emphasis and clarity to some of the issues the group had explored earlier. The representatives welcomed the opportunity to hear, at first hand, how they might consider improving their procedures to make it easier for those with a disability to navigate the process.

Everyone agreed that it had been a very productive day. The Commissioner and her staff gained a great deal of insight into the practical problems facing those who managed the appointments process, which would be valuable when work began on the revision of the Code of Practice.

Meeting with the Deputy First Minister

On 22 March 2002, Dame Rennie met the Deputy First Minister, Mark Durkan (the First Minister was unable to attend due to prior commitments). The Commissioner welcomed the opportunity to discuss her aims and the work on which she had concentrated since becoming Commissioner. They then discussed some specific issues, including:

- whether remuneration was a diversity issue;
- whether organisations or companies could be encouraged to release younger people to enable them to take up an appointment; and

- the independence and diversity of Independent Assessors.

The Commissioner stated her concern that, while appointment processes in England, Scotland and Wales were evolving and progressing, those in Northern Ireland had remained static, mainly because decisions on the future of public appointments, including the role of the Commissioner's Office, had yet to be taken by the devolved administration. Dame Rennie believed that there were areas which could be developed in the meantime, which would not prejudice the outcome of such decisions. Mr Durkan agreed that it would not be good for Northern Ireland to tread water while elsewhere processes improved and moved on. Dame Rennie cited the following areas of concern:

- that her remit should be extended to cover advisory non-Departmental public bodies;
- in some Departments, the day-to-day running of the appointments process rested with junior staff, who do this infrequently and alongside other competing priorities. This can mean that no core experience is built up;
- Ministers were not involved in the process early enough. The purpose of a body and the role of the Board should be reviewed and restated at the outset of a new appointments exercise, with the Minister's agreement. This would give some clarity to the skills and competences required by the non-executive members for a particular Board.

Dame Rennie suggested that:

- a best practice guide to public appointments in Northern Ireland should be produced; and
- there should be centralisation of the appointments process, on the lines of the proposed new Scottish model, whereby a central unit would be responsible for managing all appointments processes on behalf of sponsor teams (except for Health appointments). The Commissioner believed that this would lead to an efficient and effective method of handling the appointments process, whilst leaving the specification and ultimate choice with Departments.

Dame Rennie planned to meet all the Northern Ireland Ministers in the next few months, to hear their views on the appointments process and to discuss any issues of concern with their Departments. Mr Durkan said that the discussion had brought home the need to look at all these issues.

Meetings with Permanent Secretaries

The Commissioner met a number of Permanent Secretaries of Northern Ireland Departments this year, including Culture, Arts and Leisure, Health, Social Development, Employment and Learning and the Office of the First Minister and Deputy First Minister. This gave Dame Rennie the opportunity to outline her approach to the appointments process and also to hear about any issues or problems that Departments were facing. She also met Gerry Loughran, the then Head of the Northern Ireland Civil Service, to discuss generally the role of OCPA NI.

The Commissioner's Revised Code of Practice

One of the most important pieces of work undertaken by the Commissioner's Office during the year was the revision of her Code of Practice and Guidance. The original guidance was drawn up in 1996, but it was generally agreed that, as appointment processes developed and became more complex, a new set of guidelines was required, which would give Departments a more contemporary set of procedures to follow.

Under the existing system, the Code of Practice consisted of a leaflet explaining the seven principles, with a separate Guidance booklet. The Commissioner decided that the new Code of Practice should embody both the principles and the guidance, in one document. Work began on a draft in the summer of 2001 and the first version was issued for consultation in September. Responses were received by the end of November and the Code was revised further in the light of comments received. Work on the Code of Practice was delayed somewhat, as staff resources had to be diverted to the production of the Sixth Annual Report, but the Commissioner was pleased to be able to issue the new Code of Practice on 1 May 2002.

The new Code has been produced in a loose leaf binder and includes a new section covering frequently asked questions. The Commissioner hopes that this will be a living document, which can be refined as necessary and as such, will be a more useful resource. Dame Rennie would like to record here her appreciation for the helpful contributions made to this exercise by the Northern Ireland Departments.

How Are Departments Doing? The Audit Reports

Audit Arrangements

The Commissioner is required to audit policies and practices of Departments in making public appointments, to establish whether her Code of Practice is being observed. In 2001-02, PricewaterhouseCoopers continued in their role as OCPA NI's independent auditors.

The 2001-2002 Audits

During this year, the auditors visited, on the Commissioner's behalf, four Northern Ireland Departments. Three of these were the next in the series of planned visits, while the fourth had been audited last year and the auditors were commissioned to carry out a follow up audit, to check if the problems which had been identified had been subsequently addressed. Some 205 appointments were examined.

The objective of the visits was to evaluate whether Ministerial public appointments, which fall within the Commissioner's remit, were made in accordance with the Code of Practice and Guidance. The visits involved:

- reviewing any Departmental guidance; and
- testing all those appointments made by these four Departments during 2001/02 for compliance.

Although the new Code of Practice was issued to Departments in draft form for comment, it did not come into force until May 2001 (outside the period of this report). The audit, however, gave consideration to the new Code, to ascertain if Departments were already working towards it, or where they might need to consider changing, or developing, their processes, to ensure compliance in the future. Each Department audited received a detailed report, giving the results of the audit.

In addition, the auditors considered the effectiveness of the process, by reference to best practice, in order to identify any areas for improvement or further consideration. They then produced a summary report, the objective of which was to provide all Departments involved in the appointments process with details of the issues identified during these reviews, in order that lessons could be learned and where required, improvements could be made to the process.

Compliance with the Code of Practice - Departmental Guidance

Many Departments have put in place their own Departmental guidance to supplement the OCPA Code of Practice. However, in some cases, the detailed Departmental guidance has yet to be finalised; and, in other cases, it has not been updated for some time. This represents a significant weakness in the overall appointments framework, and increases the risk of inefficiency in undertaking public appointments and the risk of non-compliance with the requirements of the Code of Practice.

Of the four Departments audited, one did not have its own procedures, but used those of another Department, together with the Cabinet Office's Best Practice Guide to Making Public Appointments. Two other Departments had Departmental procedures, but the auditors recommended that these should be comprehensively revised and updated to reflect developments since the original OCPA Guidance was produced in 1996. The fourth Department was commended by the auditors, as their procedures contained detailed and robust processes, which were the model of best practice and which already complied with the new Code.

The Central Appointments Unit are currently working on a Best Practice Guide to Making Public Appointments in Northern Ireland. When it is complete, it will be a valuable tool in assisting Departments to revise and improve their Departmental procedures.

Compliance with the Code of Practice - issues arising from the review of individual appointments

The following issues were noted as a result of the auditors' detailed review of the appointments made by the Departments, which were subject to audit in 2001/02.

Planning and duration of process

There were two instances where a lack of planning meant that the process took a very long time to complete. In one case, almost a year elapsed, including a delay of three months between the interviews and the appointments being made. There was nothing on file to explain why this delay took place and candidates were not kept sufficiently informed of the progress of the competition. A second competition did not build in sufficient time to accommodate the nomination process, within the advertised timetable. This delay inconvenienced those people who had put themselves forward for consideration and potentially caused some difficulties for the bodies in question.

Recommendations

- Sponsor Branches in Departments must begin planning sufficiently far in advance to allow the process to be completed, before the outgoing appointees have finished their terms of office. This should obviate the need to seek extensions of appointments;
- candidates should also be kept informed about any delay in the timetable and the reasons for it. They should also be told when they might expect to hear the Minister's decision.

Scoring systems

Scoring systems are commonly used to produce a shortlist for interview and at interview, to decide who should be recommended to the Minister. This is an effective and fair

method of assessment when correctly applied; however, there were a number of instances during the year where scoring systems were not applied consistently, for example:

- in several competitions, scores were awarded to candidates, but there was no narrative to support the scores and indicate how they had been reached;
- in one case, scores were used to group candidates into best suited, suitable and not suitable. However, candidates with the same scores appeared in both the best suited and suitable categories, with no supporting information to explain how this had come about. A conversation with the Chair indicated that the Panel had held a discussion, before finally allocating candidates to categories and had concluded that some candidates were more suitable than others, despite the similarity in their scores. There was no record of these discussions on file;
- in another competition, where groupings had also been used, a candidate was moved from one group to another, with no explanation;
- in one competition, there were inconsistencies on the emphasis placed on interview scores. A Sponsor Branch advised that, in certain parts of the process, the scores were only considered as "indicative", when allocating candidates to broad categories. These same scores were, however, used as part of the decision-making process in the submission to the Minister.

Recommendations

If a scoring system is to be used, it must be agreed in advance, with a clear rationale for the method of awarding marks and must be applied consistently throughout the process. During interviews, the Panel must provide and record comments to support the marks awarded to each candidate.

Criteria

In one competition, where several candidates met the generic criteria for the posts, the Panel decided to consider whether they had experience in business and/or finance and

a community development/activity background. This was relevant to the needs of the Board in question, as serving members who had the required experience were standing down. This additional information was given great emphasis in the submission to the Minister, but had not been considered in any other part of the process. A slightly different approach was taken in another Department, which had included four, equally desirable, criteria in the role specification. However, in the ministerial submission, one of the criteria was given a greater prominence, although this had not been a consideration at any other stage of the process.

Recommendations

Sponsor Branches in Departments must carefully consider the needs of the relevant Board, when drawing up the criteria for appointment. It is essential to identify any skills gaps that will result from the retirement of serving members and adjust the criteria accordingly. If one is of particular importance, the information pack should state this. The Panel should also consider how the scoring system should reflect this, for example, should candidates receive higher marks for experience in this area? This should be dealt with at the very outset of the process, so that candidates can make the most of their experience or knowledge in the preferred area on their application forms and then at interview.

Appointments for a third term

The Code states that appointments for a third term will be rare and can only be made if the individual has been considered alongside other candidates in open competition and has proved to be the most suitable candidate. Departments can take into account if the individual has particular skills or experience necessary to the efficient functioning of the body, or will provide continuity during a period of change.

The auditors identified an instance where a candidate was appointed for a third term. Although they had applied through the open process, the candidate in question had a lower score than others who were not recommended for appointment. It would appear

that, in this competition, scores were used on an indicative basis only, but there was nothing on record to explain why this candidate's experience was considered "exceptional" enough to warrant a further term on the Board.

Recommendations

While the auditors did not challenge the correctness of the Panel's decision, nor the quality of the Board member's work during the previous term, they emphasised the importance of recording the reasons why the decision to re-appoint was made.

Performance Assessment

The auditors have identified a number of problems in this area. In some cases, there is no Departmental approach to performance assessments, with Sponsor Branches being left to devise their own approach to this. This leads to inconsistencies within Departments. It is rare for appraisals to be carried out annually, with assessments being completed only when a candidate is being considered for reappointment. Even then, many assessments have proved to be incomplete, sometimes relating to attendance only, or simply covering the member's involvement on a sub-committee. In one case, performance appraisals were completed, but were not held by the Sponsor Branch, but by a senior official and the auditors had some difficulty gaining access to this documentation. This is not good practice.

Recommendations

The Code is very clear on this point: a performance assessment should be carried out annually for each Chair and board member. These must be fully recorded and documented and the papers should be held with the other appointment papers in the Sponsor Branch. This is to facilitate both the audit and the investigation of complaints. No-one can be re-appointed, unless they have performed satisfactorily during their current term.

Record Keeping

In addition to the above case, where appraisals were not held with the rest of the appointment papers, the auditors identified a number of other deficiencies in this area. These included a lack of documentation to support decision-making at various stages of the process and Panel members who do not record their comments, which support their assessment of candidates at interview. The most serious problem was noted in two Departments, where interview papers from some of the Panel members were completely absent from the files. On further enquiry, the auditors were informed that the Panel members felt that this information was confidential and had retained it personally.

Recommendations

The auditors have recommended that clear and transparent records be kept on file, so that there is visible documentation of decisions at every stage of the process, particularly to record the decision-making process at the shortlisting and interview stages. There is also a need to retain all documents at one source within the Department for easy and ready access. The Chair of the Panel should be asked to ensure that all documentation from the interviews is passed to the Sponsor Branch for safe-keeping.

Follow-Up Audit

The auditors carried out a follow-up audit of one Department, in which various areas of non-compliance had been identified last year, with a view to assessing how far these had been addressed. It was disappointing to note that a number of issues highlighted in competitions last year, were repeated in different competitions this year. Neither the report produced by the auditors last year, nor their summary report, was circulated to Sponsor Branches within the Department, so they were unable to learn from the problems identified then. The Commissioner was very concerned about this and met the Minister to discuss the problem. The Minister agreed that these issues needed to be addressed, but explained that there were mitigating circumstances - severe pressures in other areas of work had meant this was not a priority in the Department. The

Commissioner said that she appreciated the problems which the Department had faced, but stressed that it is essential that problems within the appointments process are given early attention. The Minister agreed and is committed to making improvements in their processes this year.

Good Practice

The auditors have also identified a number of areas of good and indeed, best practice across the Departments reviewed. Several Departments were commended for the general pro forma drawn up for use during competitions. One Sponsor Branch was singled out for its excellent application form, which was designed to correlate with the role specification and its general candidate documentation, which met best practice standards. Another was commended for its very professional information pack. In general, Panel members were well briefed at an early stage; again, this is in line with best practice. One Department conducted a formal evaluation following the competition and identified a series of changes to be made to forthcoming appointment processes. These are just some of the areas where Departments are performing well.

Conclusion of the auditors' review

The auditors have concluded that, despite some of the issues of concern set out above, Departments are, in general, complying with the Code of Practice. The implementation of their recommendations should serve to strengthen systems in Departments and help to remedy some of these concerns.

COMPLAINTS

The Commissioner is required to investigate complaints and regards an easily accessible complaints system as being a fundamental part of an open and transparent appointments process. Members of the public who have a complaint about an appointment to a particular body - whether about the process by which it was made or the way in which they, as an applicant, were treated - should first contact the Department concerned. In such cases, the Commissioner expects to receive notification of the complaint from the Department, in the form of copies of the correspondence, once the complaint has been dealt with. Only when the complainant has been through the Department's own complaints procedure and is still not satisfied with the outcome, can they write to the Commissioner and ask her to look into the appointment. The Commissioner replies personally to all complaints made directly to her. Whilst she can deal with complaints about the appointments process, she cannot deal with complaints about a body itself or how it is run, the actions of its members, or the levels of remuneration.

During the period covered by this report, the Commissioner was notified of only three complaints from individuals and organisations which were addressed directly to Northern Ireland Departments over the year. This is an excellent result, given the very high number of appointments made.

The Commissioner is also pleased to report that, for the second year running, no written complaints were formally addressed to, and investigated by her. The Office did deal with a number of letters with concerns which questioned various aspects of the process, but these did not result in a formal investigation.

The complaints procedure was revised this year, as part of the work on the new Code of Practice. It sets out in detail the steps taken when a complaint is made. The new process is set out below and is taken from Chapter 5 of the Commissioner's Code of Practice.

Complaints Process

- 5.1 Complaints about any particular appointment process must be made within 1 year of the appointment having been made.
- 5.2 Subject to this time limit, the Commissioner will investigate all complaints relating to the appointments procedure that concern:
 - i) an individual's experience as an applicant;
 - ii) the way a Department has handled an appointment's process; or
 - iii) a challenge to the appointment of the successful candidate only if it appears that the process has been breached.
- 5.3 The Commissioner has **no remit** to investigate complaints relating to non-selection or non re-appointment, unless it appears that the selection process has breached the Code of Practice.
- 5.4 The Commissioner **does not deal** with complaints relating to the way in which a public body is run, the actions of its members, or remuneration.

Complaints to Departments

- 5.5 As a general rule, all complaints must be dealt with first by the Department concerned. Therefore, providing it is appropriate, any complaints made directly to the Commissioner will be redirected to the Department concerned. If a complainant is dissatisfied with the

Department's response, they may then ask the Commissioner to consider initiating an investigation.

- 5.6 It is, therefore, essential for Departments to have effective systems in place for handling complaints.
- 5.7 Departments must also keep a full record of all correspondence and any relevant documentation, such as minutes of meetings and telephone conversations. These must be available for audit, if required.
- 5.8 For the purpose of recording in the annual report, OCPA NI must be notified of the precise number and the broad details of complaints that a Department has received over the relevant period.

Complaints to the Commissioner

- 5.9 If the Commissioner has agreed to investigate a complaint, it will be dealt with in one of two ways. OCPA NI may carry out the investigation alone or, in exceptional circumstances, may seek the assistance of the independent auditors. The procedures followed will be fundamentally similar in either case, but for clarity are set out individually, and in full, below:

Complaints investigated by OCPA NI

Initial action

- 5.10 Once the decision to investigate a complaint is taken, OCPA NI will:
 - a) send a 'statement of complaint' to the complainant. This will:

- set out the issues that fall within the Commissioner’s remit and make it clear that these are the only features of the complaint that will be dealt with;
- make clear the extent of the Commissioner’s remedial powers, in the event that the complaint is upheld;
- confirm that OCPA NI has approached the Department on this basis and when a reply is expected; and
- what the next stage will be (see paragraph 5.11).

b) write to the Department concerned:

- setting out the complaint;
- asking for all papers relating to the appointment for examination by OCPA NI; and
- setting a deadline for these to be provided. The Department will be asked to notify OCPA NI immediately, if it feels that this deadline cannot be met.

Factual accuracy timeline

5.11 Once a reply has been received from the Department, where relevant, OCPA NI will produce a **factual accuracy timeline**, annotated with all the relevant factual information. This will be sent out simultaneously to the complainant and Department and both will be invited to comment on the accuracy and completeness of the record, within 15 working days. At the same time they will also be informed that the Commissioner would normally expect to notify them of the findings, within 15 working days of their **mutual agreement** on the factual accuracy timeline.

5.12 Disagreements between the parties will be resolved as speedily as possible. All telephone conversations will be documented and both parties' final agreement will be required in written form.

Reporting the Commissioner's findings

5.13 The Commissioner's findings will be communicated to both the complainant and the Department in the form of individual letters setting out:

- the key conclusions and the reasons behind them; and
- any action that the Commissioner intends to take, or recommends the Department should take, in the light of the investigation.

Ongoing complaints

5.14 It is possible that the complainant may not be content with the outcome and/or the way that the investigation was handled. These two areas are entirely separate and, accordingly, will be treated differently:

- **OCPA NI will not** enter into protracted discussion with the complainant about the outcome of the investigation; and
- **Will not reopen** the investigation, unless relevant new evidence comes to light;
- However, OCPA NI **will** clarify points raised in relation to the Commissioner's reply and respond to questions raised about the way the complaint has been handled.

5.15 If the complainant remains dissatisfied, a **final** letter will be sent to them, making it clear that this is the case.

Complaints involving OCPA's independent auditors

5.16 OCPA NI recognises that some complaints are particularly complex and/or require specialist skills. However, prior to the final decision to use the auditors, OCPA NI will speak to the complainant, to clarify the issues within the complaint and to ensure that it qualifies for exceptional treatment. Thereafter;

Terms of reference

5.17 OCPA NI will produce tightly drafted Terms of Reference, prior to the start of the investigation. These will:

- set out the complaint;
- set out the key issues to be investigated;
- describe the work to be performed; and
- outline a timetable for the investigation and reporting.

5.18 The Terms of Reference will be for **internal use only**. OCPA NI will draw up a "statement of complaint", based on the terms of reference and outlining the issues. This will be sent to both the complainant and the Department.

Reporting

5.19 The **auditors** will then draw up a **factual accuracy timeline**. This will relate strictly to matters of "who did what and when", and does not include matters of judgement. This procedure will help to speed up the process

and will afford demonstrably fair and equal treatment to both complainant and Department.

5.20 OCPA NI, **not** the independent auditors, will **manage** the process of agreeing factual accuracy:

- the auditors will draw up a factual accuracy timeline, which will be sent to OCPA NI;
- OCPA NI will send this out to both complainant and Department, at what will, effectively, be the draft report stage. The complainant and the Department will be invited to comment on the accuracy and completeness of the record, within 15 working days.

5.21 Once the factual accuracy has been checked, the draft conclusions should be discussed with the Department.

The final report to the complainant

5.22 The guiding principle here is that, whilst both the complainant and the Department are justified in challenging the factual accuracies in a case, it is not for them to judge the Commissioner's conclusions, based on the agreed facts.

5.23 The auditors' report is for the Commissioner only. The Commissioner's formal response to the complainant will draw heavily on the auditors' report. It will be in the form of a letter, setting out the key conclusions of the investigation and any subsequent action that OCPA NI intends to take. This will include the Commissioner's recommendations to the Department on the action it should take.

Remedial action by the Commissioner

- 5.24 If a complaint is upheld, the Commissioner cannot require that an appointee be removed from their post. The Commissioner may, however:
- require a Department to make changes to its processes to ensure that another such complaint does not arise;
 - name the Department in the complaints section of her annual report;
 - in exceptional cases, the Commissioner may air the issue in public, naming the Department and Minister concerned.

What should the Department receive?

- 5.25 The Department will receive a letter from the Commissioner. This letter will set out the findings and the reasons behind them. It will draw extensively on the conclusions in the auditors' report.

Further courses of action open to the complainant

- 5.26 If a complainant is not satisfied with the results of the Commissioner's investigation, the only recourse open to them is to seek a judicial review. The Assembly Ombudsman is not empowered to investigate complaints regarding the appointments process.

STATISTICAL TRENDS

Appointments & Re-appointments

During the period of this report, a total of 438 appointments and re-appointments were made. This is an increase of 162% over last year's total of 167. The figures this year have been skewed somewhat by the reconstitution of the Education & Library Boards, which account for 174 of the total (some 40%). In addition, twice the number of appointments were made to Health Bodies and Trusts, compared with last year (193 in 01/02). Clearly, it is difficult to make comparisons with previous years, when the total figures are so different, but we have given last year's figures for illustrative purposes. *Please note that percentages may not add up to 100, due to roundings.*

First and Second Re-appointments

Of the total number of appointments made, 145 were reappointments (33%); these break down into 94 first reappointments and 51 second reappointments (i.e. third terms of appointment). This second figure is surprisingly high – 11% of all appointments made. The majority of these (43) were third term appointments to the Education & Library Boards (ELBs); they accounted for about a quarter of all appointments to the ELBs. Although it is not, strictly speaking, non-compliant under the Commissioner's Guidance to make second re-appointments, OCPA NI has always discouraged them, even when made through an open competition. The Commissioner encourages the appointment of new members in order to bring new skills, experience and ideas to the body. It is also best practice to stagger appointments, if possible, as this means that the Board will always include both new and experienced members. The new Code of Practice states explicitly that second appointments should only be made in exceptional circumstances and includes the

caveat that they must be notified in advance to OCPA NI. The Commissioner will expect this to be adhered to in the coming year. **{See Table 7}**

Extensions

In addition to the new appointments made, 53 appointments were extended, but these are not included in these overall statistics. An extension to an appointment is not granted lightly by OCPA NI; each case is considered on its merits and it depends very much on the circumstances whether the extension is granted. This year, extensions were granted for a variety of reasons:

- in order to provide continuity for a Board, from which a large number of members were retiring at the same time;
- an organisation which had gone through major changes, including restructuring and a change of premises, so an extension was granted to provide some stability for the Board during this process;
- pending legislation to set up a new body, into which the original body was to be subsumed, an extension was granted for one member;
- because a complaint held up the appointments process for new members, an extension was granted for existing members.

Note

When interpreting the statistics, it is useful to bear in mind two points:

- The figures stated refer to appointments and re-appointments made during 2001-02 to bodies that fall within the

Commissioner's remit (i.e. to Executive NDPBs and HPSS Trusts). Statistics on the total number of public appointments (i.e. those which are both within and outside the Commissioner's remit) are published in the Annual Report on Public Appointments, produced by the Central Appointments Unit in the Office of the First Minister and Deputy First Minister; and

- Statistics are collated to monitor diversity only; this information plays no part in the assessment of suitability for a public appointment. This is explained in the information packs provided to candidates and allows them to give full information, in the knowledge that it is not seen by the Selection Panel.

Diversity

Gender

Overall, the total number of appointments of women dropped from 37% in 2000/01 to 33% in 2001/02. However, the number of women attaining Chair posts rose slightly during this period from 30% to 32%. Despite this, the Commissioner considers this a disappointing result overall. The large number of appointments to NHS bodies and the reconstitution of the Education & Library Boards would have provided an opportunity for women to become involved in public appointments, as these are less specialized areas. However, only one third of the 174 appointments made to the Boards went to women. This could be explained partly by the large number of re-appointments to these bodies. The Commissioner will be recommending to the Department of Education that it should consider how it might encourage more women to take part in the process during the next reconstitution. In contrast, of the 193 appointments

made to NHS bodies, 42.5% went to women, which is a much more encouraging result. **{See Tables 1&2 & Chart 1}**

Age

The range of ages of appointees to Chair posts was similar to last year, with only 10.5% of posts going to those who were 45 and under, compared with 10% last year. Member posts achieved by this age group have decreased slightly from 30% last year to 27% this year. Candidates who were 66 and over accounted for 12% of the total appointments made, compared with 8% last year. At the other end of the scale, candidates under 35 achieved 6% of the total appointed, compared with 4% last year. There were no Chairs appointed from this age group. **{See Table 3 & Chart 3}**

Community Background

The Commissioner's Guidance makes it clear that information on community background is required for monitoring purposes only and does not form part of the selection procedure. After last year's audit, the Commissioner wrote to Departments to emphasise the absolute necessity to have procedures in place to ensure that this information was handled with the necessary confidentiality and, in particular, that there was no opportunity for selection panels to have access to this information. The Commissioner is pleased to report that this year's audit has confirmed that these procedures are in place and are working effectively.

The percentage breakdown by community background is 45% Roman Catholic, 52% Protestant and 4% Other - this reflects the breakdown of both Chair and member appointments overall, compared with 47%, 44% and 9% respectively in last year's

appointments. Chair appointments break down into 58% Roman Catholic and 42% Protestant, compared with 50% for both last year, while members appointments are split into 44% Roman Catholic and 52% Protestant. **{See Tables 4,5 & 5A & Chart 4}**

Ethnic Minorities

Two people from ethnic minority groups were appointed this year, which is the same figure as last year. **{see Tables 5 & 5A}**

Disability

This year, 28 appointees declared themselves to be disabled, which is a significant increase over last year, when only 4 appointees did so. This represents 6% of the overall total, compared with just over 2% last year.

Political Activity

The Commissioner's Code of Practice makes clear that the underlying intention of collecting data on political activity is systematic record keeping and monitoring of the political activity of candidates, insofar as this is a matter of public record. This could mean obtaining office as a local Councillor, an MP, an MLA or an MEP, standing as a candidate for one of these offices, speaking or canvassing on behalf of Party or candidate, acting as a political agent, or holding office in a local branch of a Party. For monitoring purposes, candidates are asked to state the name of the party concerned. Candidates are not expected to divulge private membership of, or association with a political party, or their voting habits. Their right to privacy in these matters must be respected. The Commissioner's view is that political

activity carried out in public in support of a political party should neither be a requirement for, nor a barrier to, public appointment.

There was a large increase in the number of appointees declaring that they had carried out some form of political activity, with 1 Chair and 137 members doing so; this compares with no Chairs and 23 members last year. The increase is partly due to the reconstitution of the Education and Library Boards, which have a statutory requirement to appoint a certain number of district councillors.

{see Tables 5 & 5A}

Multiple Appointments

The Commissioner's Code states that there is no limit to the number of appointments which a person can hold at any one time. However, it is the responsibility of Departments to satisfy themselves that a candidate will have time to carry out their duties properly, before offering an appointment to a candidate who already holds a public appointment.

Of the total number of those appointed this year, 53 (12% of those appointed) held more than one post. Of these, 37 held one additional appointment. The Commissioner was surprised to note, however, that 4 people appointed this year each held 4 additional appointments.

{see Table 6}

Statistical Annex

Abbreviations

The following abbreviations are used in the Statistical Annex:

- All - Alliance
- DUP - Democratic Unionist Party
- P - Protestant
- RC - Roman Catholic
- SDLP - Social Democratic Labour Party
- SF - Sinn Fein
- UUP - Ulster Unionist Party

Note

Please note that percentages may not add up to 100, due to roundings.

Table 1: Total appointments, broken down by gender

	Appointments	Gender	
		Male	Female
Chairs:			
2000/01	20	70%	30%
2001/02	19	68%	32%
Members:			
2000/01	147	63%	37%
2001/02	419	67%	33%
Total:			
2000/01	167	64%	36%
2001/02	438	67%	33%

Chart 1: Total Appointments by Gender

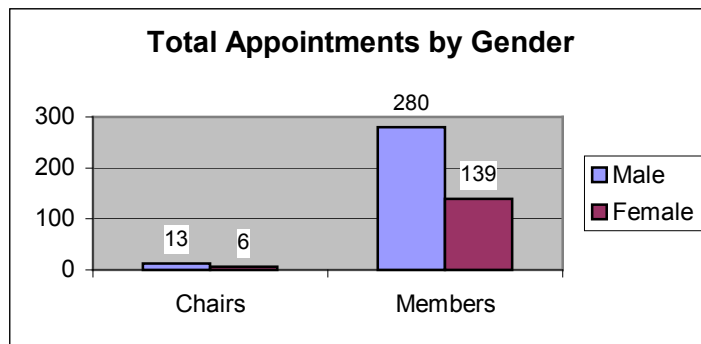


Table 2: Total Appointments by gender, broken down by remuneration band

Remuneration band £	Total	Chairs				Total	Members			
		M	F	M%	F%		M	F	M%	F%
50,000+	-	-	-	-	-	-	-	-	-	-
20,000-49,000	3	2	1	11%	5%	-	-	-	-	-
10,000-19,999	9	6	3	32%	16%	8	7	1	2%	0.2%
5,000-9,999	7	5	2	26%	11%	57	35	22	8%	5%
less than 5,000	-	-	-	-	-	15	6	9	1%	2%
Unpaid	-	-	-	-	-	339	232	107	55%	26%
TOTAL	19	13	6	68%	32%	419	280	139	67%	33%

Chart 2: Total Appointments by Remuneration Band

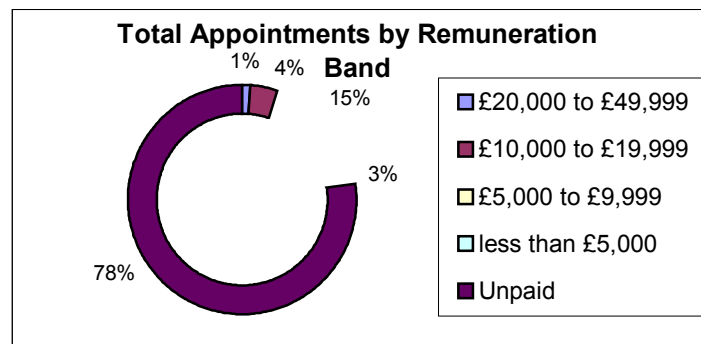


Table 3: Age of Appointees

Age Band	Chair				Members			
	M	%	F	%	M	%	F	%
66+	3	16%	1	5%	37	9%	13	3%
56 - 65	5	26%	1	5%	88	21%	36	9%
46 - 55	5	26%	2	11%	81	19%	51	12%
36 - 45	-	-	2	11%	54	13%	32	8%
35 and under	-	-	-	-	20	5%	7	2%
Total	13	68%	6	32%	280	67%	139	33%

Chart 3: Total Appointments by Age

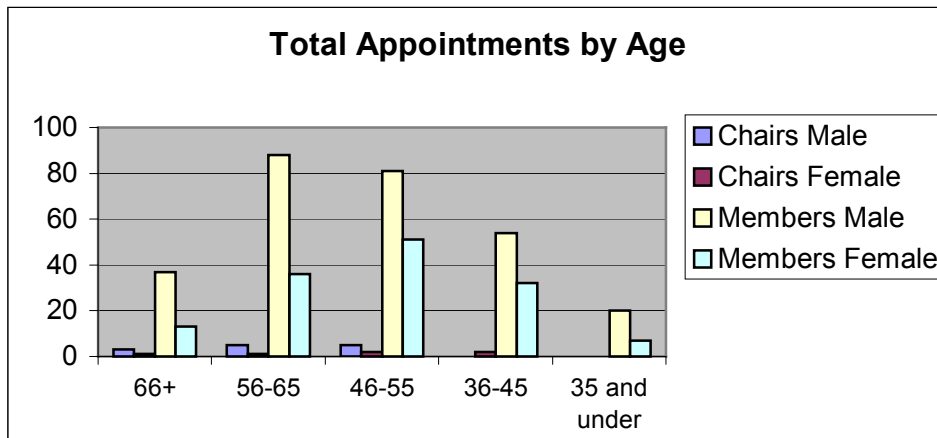


Table 4: Total Appointments by Community Background and declared political activity

	Community Background			Declared political activity						
	RC	P	Other/Not Known	All	DUP	SDLP	SF	UUP	Other	Total
Chairs:										
2000/01	50%	50%	-	-	-	-	-	-	-	-
2001/02	58%	42%	-	-	-	-	-	1	-	1
Members:										
2000/01	47%	44%	9%	1	1	6	2	7	6	23
2001/02	44%	52%	4%	10	23	31	21	49	3	137
Total:										
2000/01	47%	44%	9%	1	1	6	2	7	6	23
2001/02	45%	52%	4%	10	23	31	21	50	3	138

Chart 4: Total Appointments by Community Background

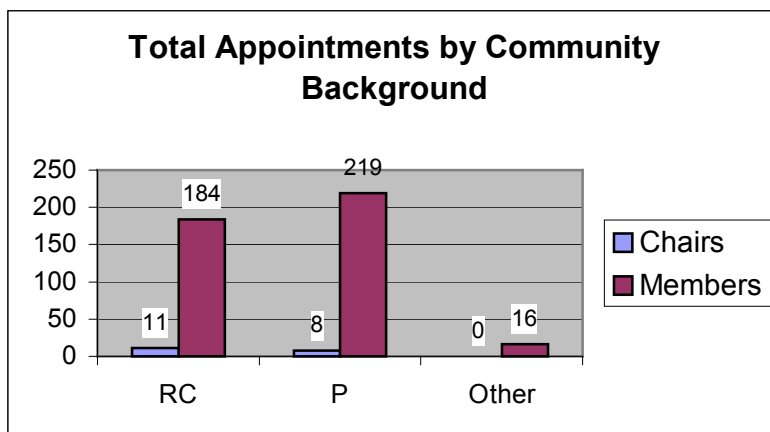


Table 5: Chairs: Ethnic minorities, community background and declared political activity

Salary Band £	Appoint ments	Ethnic Minority		Community Background			Declared Political Activity								
		No.	%	RC	P	Other	All	DUP	SDLP	SF	UUP	Other	Total	%	
50,000+	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
20,000-49,999	3	-	-	3	-	-	-	-	-	-	-	-	-	-	-
10,000-19,000	9	-	-	6	3	-	-	-	-	-	-	-	-	-	-
5,000-9,999	7	-	-	2	5	-	-	-	-	-	1	-	1	5%	
less than 5,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Unpaid	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	19	-	-	11	8	-	-	-	-	-	1	-	1	5%	

Table 5a: Members: Ethnic minorities, community background and declared political activity

Salary Band £	Appoint ments	Ethnic Minority		Community Background			Declared Political Activity								
		No.	%	RC	P	Other	All	DUP	SDLP	SF	UUP	Other	Total	%	
50,000+	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
20,000-49,999	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
10,000-19,000	8	-	-	4	3	1	-	-	-	-	-	-	-	-	-
5,000-9,999	57	-	-	25	25	7	2	1	2	-	3	-	8	2%	
less than 5,000	15	-	-	8	7	-	1	-	-	-	-	-	1	0.5%	
Unpaid	339	2	0.5%	147	184	8	7	22	29	21	46	3	128	31%	
TOTAL	419	2	0.5%	184	219	16	10	23	31	21	49	3	137	33.5%	

Table 6: Additional Posts Held

	Number of Additional Posts Held					Total
	1	2	3	4	More than 4	
Chairs	4	1	1	-	-	6
Members	33	8	2	-	4	47
Total	37	9	3	-	4	53

Table 7: Reappointments

	Number of Reappointments Made		
	Total	1st	2nd
Chairs	8	5	3
Members	137	89	48
Total	145	94	51

Historical data

Total annual appointments and re-appointments to public bodies within the Commissioner's remit, categorised by gender, community background and ethnic minority

Chairs	Number of Appointments/Re-appointments	Gender		Community Background			Number of Ethnic Minorities
		M	F	RC	P	Nk/Other	
1996/97	11	91%	9%	27%	73%	-	0
1997/98*	16	63%	37%	31%	69%	-	0
1998/99	15	73%	27%	19%	69%	12%	0
1999/00	21	86%	14%	24%	67%	9%	0
2000/01	20	70%	30%	50%	50%	-	0
2001/02*	19	68%	32%	58%	42%	-	0

Members	Number of Appointments/Re-appointments	Gender		Community Background			Number of Ethnic Minorities
		M	F	RC	P	Nk/Other	
1996/97	104	63%	37%	42%	45%	13%	0
1997/98*	272	62%	38%	44%	49%	7%	3
1998/99	131	67%	33%	39%	55%	6%	0
1999/00	134	65%	35%	34%	44%	22%	1
2000/01	147	63%	37%	47%	44%	9%	2
2001/02*	419	67%	33%	44%	52%	4%	2

*** Figures for 1997/98 and 2001/02 were skewed because of the reconstitution of the Education and Library Boards. The latter year was also disproportionate because of the large number of appointments to NHS bodies.**

Annex 1

The work of the Commissioner for Public Appointments for Northern Ireland

The Commissioner's role

The post of Commissioner was established in 1995 in response to a recommendation by the Nolan Committee¹, to provide effective external scrutiny of the public appointments' process and to introduce a mechanism for issuing guidance to, and reviewing the work of, individual Departments. The Government of the day accepted this recommendation and subsequently created two posts: one to cover Northern Ireland and an equivalent post for Great Britain. Dame Rennie Fritchie currently holds both posts and her role is to monitor, regulate and provide advice on Departmental appointments procedures for ENDPBs and HPSS bodies. The Commissioner is independent of the Government.

During the period of this report, 68 ENDPBs and HPSS bodies, together accounting for 812 Ministerial appointments, fell within the Commissioner's remit. The Commissioner has no powers in relation to advisory bodies and tribunals, although she is willing to give advice, if requested.

The Code of Practice and Guidance for Public Appointments

A Code of Practice was published by the first Commissioner, Sir Len Peach, on 1st July 1996. It reflected the recommendations made by the Nolan Committee in its First Report and is based on seven principles. These are set out in Annex 3. Dame Rennie has produced a revised and

1 Standards in Public Life, First Report of the Committee on Standards in Public Life (Cm 2850, May 1995)

updated version of the Code of Practice and Guidance which was issued on 1 May 2001, (See 'Review of the Year'). The principles remain the same and the Code is still the cornerstone of the drive to create and maintain an efficient and transparent process of public appointments, which produces appointments made on merit and holds the confidence of the general public.

The Commissioner's publications

Code of Practice for Public Appointments Procedures July 1996

OCPA (NI) Guidance on Appointments to Executive
Non-Departmental Public Bodies and HPSS Bodies July 1996

Revised Code of Practice (including Guidance) May 2002

Office of the Commissioner for Public Appointments:

Who is the Commissioner? What does he do? How can he help?

September 1996

Commissioner for Public Appointments for Northern Ireland:

- First Report, December 1995 - June 1996 November 1996

- Second Report, July 1996 - March 1997 July 1997

- Third Report, April 1997 - March 1998 August 1998

- Fourth Report, April 1998 - March 1999 September 1999

- Fifth Report, April 1999 - March 2000 January 2000

- Sixth Report, April 2000 - March 2001 December 2001

Complaints Leaflet August 2000

Annex 2

Profile of Dame Rennie Fritchie DBE

Dame Rennie Fritchie was appointed as Commissioner for Public Appointments for Northern Ireland on 1st December, just prior to devolution. This was envisaged as a temporary measure, pending an Assembly decision on the future of the post. No decisions have yet been taken and so her term of appointment has been extended and will expire officially on 28th February 2003, but she has agreed to stand down at an earlier stage, should the Assembly and Executive Committee so decide before that date. Dame Rennie also holds the post of Commissioner for Public Appointments in Great Britain and is a Civil Service Commissioner.

Dame Rennie has wide experience of recruitment practices in both the public and private sectors. A former Chair of Gloucester Health Authority and of the South West and Regional Health Authority, she has also served on the NHS Policy Board and the Selection Panel for Gloucester Police Authority.

Alongside her appointments as Commissioner, Dame Rennie continues to hold a number of positions on boards of educational and health institutions. She is visiting Honorary Professor of Creative Leadership at York University, Non-executive Director of the Stroud and Swindon Building Society and Pro- Chancellor of Southampton University.

The Commissioner has a particularly strong interest in social issues. This is reflected in her work as President of the Pennell Initiative for Women's Health in Later Life and patron for the Meningitis Trust.

The area of conflict resolution has involved active research over five years. Dame Rennie is co-author of a number of books and publications on the subject, the most recent being "*Resolving Conflict in Organisations*".

Annex 3

The Commissioner's Seven Principles

The Principles

All appointments to Executive Non-Departmental Public Bodies (ENDPBs) and Health and Personal Social Services (HPSS) bodies must be based on the following seven principles. A list of those bodies which fall within the Commissioner's remit can be found in Annex 4.

Ministerial Responsibility

The ultimate responsibility for appointments is with Ministers.

Merit

All public appointments should be governed by the overriding principle of selection based on merit, by the well informed choice of individuals who through their abilities, experience and qualities match the needs of the public bodies in question.

Independent Scrutiny

No appointment will take place without first being scrutinised by an independent panel or by a group including membership independent of the Department filling the post.

Equal Opportunities

Departments should sustain programmes to promote and deliver equal opportunities principles.

Probity

Board members of ENDPBs and HPSS bodies must be committed to the principles and values of public service and perform their duties with integrity.

Openness and Transparency

The principles of Open Government must be applied to the appointments process, its working must be transparent and information must be provided about appointments made.

Proportionality

The appointments procedures need to be subject to the principle of "proportionality", that is, they should be appropriate for the nature of the post and the size and weight of its responsibilities.

Annex 4

Executive non-Departmental Public Bodies and HPSS Bodies in Northern Ireland which fall within the Commissioner's remit

Department of Agriculture & Rural Development

Agricultural Research Institute of Northern Ireland
Agricultural Wages Board for Northern Ireland
Livestock and Meat Commission for Northern Ireland
Fishery Harbour Authority (Northern Ireland)
Pig Production Development Committee

Department of Culture, Arts & Leisure

Arts Council of Northern Ireland
Fisheries Conservancy Board for Northern Ireland
National Museums and Galleries of Northern Ireland
Northern Ireland Museums Council
Sports Council for Northern Ireland

Department of Enterprise, Trade & Investment

General Consumer Council for Northern Ireland
Local Enterprise Development Unit
NI Tourist Board
Health & Safety Executive for Northern Ireland

Department of Education

Council for Catholic Maintained Schools
Education and Library Boards:
 Belfast Education and Library Board
 North Eastern Education and Library Board
 South Eastern Education and Library Board
 Southern Education and Library Board
 Western Education and Library Board
Northern Ireland Council for the Curriculum, Examinations & Assessment
Staff Commission for Education and Library Boards
Youth Council for Northern Ireland

Department of the Environment

Local Government Staff Commission for Northern Ireland
Northern Ireland Local Government Officers' Superannuation Committee

Department for Employment & Learning

Construction Industry Training Board
Enterprise Ulster
Labour Relations Agency
Ulster Supported Employment Ltd

Department of Health & Social Services & Public Safety

Fire Authority for Northern Ireland
Health and Social Services Boards:
 Eastern
 Northern
 Southern
 Western
Health and Social Services Councils:
 Eastern
 Northern
 Southern
 Western
Health and Social Services Trusts (*19 bodies*)
Mental Health Commission for Northern Ireland
National Board for Nursing, Midwifery and Health Visiting for Northern
Ireland
Northern Ireland Blood Transfusion Service Agency
Northern Ireland Central Services Agency
Northern Ireland Council for Post Graduate Medical and Dental Education
Northern Ireland Guardian Ad Litem Agency
Northern Ireland Health Promotion Agency
Northern Ireland Regional Medical Physics Agency
Northern Ireland Social Care Council

Department for Regional Development

Northern Ireland Transport Holding Company (*reclassified as a Public Corporation*)

Department for Social Development

Laganside Corporation
Northern Ireland Housing Executive