

Department of Enterprise, Trade and Investment
Appointment of 8 members to the Board of Invest Northern Ireland
(Regulated Appointments)

Introduction

- 1.1 The audit of the public appointments process for the appointment of eight members to the Board of Invest Northern Ireland, forms part of the Commissioner for Public Appointments' Audit Programme in respect of 2007-08. This competition was administered by the Department of Enterprise, Trade and Investment (DETI).
- 1.2 This audit process was conducted under the Commissioner for Public Appointments (Northern Ireland) Order 1995 and the Commissioner for Public Appointments (Amendment) Order (Northern Ireland) 2001 and included an assessment of the extent to which relevant recommendations from previous Departmental audits have been taken forward.
- 1.3 The applicable guidance in force was the 'Code of Practice for Ministerial Appointments to Public Bodies' May 2007 (the Code), issued by the Commissioner for Public Appointments for Northern Ireland.

Overall Conclusion

- 2.1 Overall, the quality of the appointments process associated with this competition in terms of compliance with the Code (on a scale of High-Medium-Low) has been assessed as **HIGH** as a result of the nature of the audit issues identified.
- 2.2 I would like to thank the staff from the Public Appointments Unit (PAU) in DETI for their assistance and co-operation during this particular audit.

Executive Summary

- 3.1 The format of this audit report is based on an examination of the main stages of the appointments process, from which a number of audit issues were identified. These are set out in detail within the report and a summary of the recommendations is contained at **Appendix 1**.
- 3.2 Each recommendation has been given a priority rating which reflects the level of risk that DETI is exposed to, as follows;

Priority 1	High Risk
Priority 2	Medium Risk
Priority 3	Low Risk

3.3 The main issues identified in the report were:

- ❖ The lack of adequate records to support decisions of the shortlisting and interview panels; and
- ❖ The need to review the Department's process and policy in handling electronic applications to ensure equality of opportunity for all candidates.

Main Stages of the Appointments Process

Stage 1 - Planning

Initial Ministerial Involvement

- 4.1 The Department consulted the Minister early in the planning stage of the appointment process. The initial Ministerial submission provided the background to the competition and sought agreement to a draft Information Pack which included selection criteria, and a draft press advertisement.
- 4.2 The submission also provided the Minister with the opportunity to suggest the names of possible candidates to be invited to complete an application form, and asked for instructions on how he wished the final selection submission to be presented.
- 4.3 The Minister subsequently approved the selection criteria contained in the information pack, the draft press advertisement and confirmed how he wished the final selection submission to be presented. Although the Minister indicated that he may suggest the names of possible candidates in due course, there was no evidence from the documentation that he actually did so.

Nature and Timescale for the Administrative Process

- 4.4 During the planning stage the Department drew up a firm timetable for the process and requested the use of an OCPA NI Assessor (OA) for the competition. This was a "Regulated" appointment and it was encouraging to note that the Department clearly displayed the "OCPA NI Regulated" Kitemark on the public advertisement and information pack.

Consultation with Invest NI

- 4.5 As part of the planning stage the Department regularly consulted with the Chair of Invest NI on issues such as, the skills and competencies of Board members, the role and person specification for the posts, selection criteria, information packs and application forms.

The Role of the OCPA NI Assessor

- 4.6 The OA was directly involved in the planning stage. The Department consulted regularly with her regarding the person specification, selection criteria and Information Pack. In accordance with Code reference 3.32(d) the OA approved the final version of the Information Pack prior to the posts being advertised publicly.

Role and Person Specifications

- 4.7 It was evident that the Department gave careful consideration to the selection criteria from the outset and consulted with the Chair of Invest NI on the job specification. Candidates were required to meet four essential criteria and in doing so, needed to demonstrate a knowledge and understanding of business and economic development. No specific academic qualifications were required for the posts.

Stage 2 – Preparation

Publicising Vacancies

- 5.1 The posts were advertised in the Irish News, News Letter, Belfast Telegraph, and Irish Times. It was also noted that in an effort to ensure maximum publicity, the Department issued a letter to selected business, community and voluntary organisations advising where and when the advertisement would be appear in the press. As these were high profile posts attracting considerable remuneration the advertisements were proportionate to the roles. All carried the OCPA NI Regulated Kitemark.

Information Packs

- 5.2 The information pack was detailed and contained the key information outlined in the Code. It is commendable that it contained comprehensive information on the corporate responsibilities of Board members, probity and conflicts of interest.
- 5.3 It was also good to note that within the Person Specification section, the Department provided helpful guidance for candidates by outlining the behaviours associated with each of the four essential criteria. A copy of the booklet “Make Your Mark – A Guide to Public Appointments in Northern Ireland” was also issued to all candidates for reference.

Application Forms

- 5.4 Code reference 3.27 allows Departments to design their own application forms. In this competition the application form was straightforward. Candidates were asked to demonstrate by practical examples how they met each of the four essential criteria and were advised that where possible, the examples should demonstrate knowledge of business and economic development. It was clearly stated that those which demonstrated this in more demanding work settings would be given greater weight in the scoring mechanism to be used at the shortlisting stage.
- 5.5 Code reference 3.27 also requires Departments to ensure that application forms advise candidates that, if successful, some of the information they supply will be placed in the public domain. However, it was noted that the application form used for the competition did not contain this particular advice.

Priority Rating 3 – DETI must ensure that application forms advise candidates, that if successful, some of the information supplied will be placed in the public domain.

- 5.6 It was noted that Section 4 of the application form dealt with Conflict of Interest. Candidates were asked to tick a yes/no box if they, or their

immediate family, had any interests which might be construed as being in conflict with appointment to the posts.

- 5.7 Although the Department had issued the OCPA NI leaflet “Complaints and Conflicts of Interest Information Guidance” and additional Departmental Guidance on probity, it is possible that candidates may not have read these documents when they came to complete this section of the application form. In light of this, it would be good practice to draw specific attention to the relevant guidance immediately before the Conflicts of Interest question is asked.

It is recommended that the Department includes a statement at the Conflict of Interest section of application forms along the following lines:

“Before completing this section, it is important that you read the leaflet - Complaints and Conflict of Interest Information Guidance - which is included in your information pack”.

- 5.8 Code reference 3.26 requires Departments to include full details of the public body in the information pack. Any statutory disqualifications that may apply to that body should also therefore be included.
- 5.9 It was noted that the “Declaration” section of the application form contained the wording *“I have read the guidance notes and understand my responsibilities in relation to statutory disqualifications and public appointments”*. However, the information pack contained no guidance notes making reference to any responsibilities relating to statutory disqualifications that may have applied and consequently, the inclusion of this statement had the potential to cause confusion for candidates.

Priority Rating 3 – DETI must ensure that Information Packs contain details of any statutory disqualifications that apply.

Closing Date for Applications

- 5.10 The closing date for the return of application forms was noon on Thursday 7 February 2008. Six applications were received after this time but none were accepted as the Department did not believe there were extenuating reasons for doing so.

Electronic Applications

- 5.11 It was noted that all six late applications were sent electronically via email. DETI’s policy is to make application forms available for download from the Departmental website. Candidates who send application forms electronically must do so by email and are required to meet the closing deadline for receipt in the same way as others. The time of receipt is defined by the Department’s server and not the time and date sent. There is presently no facility to allow candidates to complete application forms “on-line”.

- 5.12 In this competition, four of the “late” applications were actually transmitted **before** noon on 7 February 2008. For some reason however, they were not received by the Departmental server until after the closing deadline. The apparent times of transmission and receipt are as follows:
- Transmitted 17.46 - 6 February - Received 4.43 - 8 February
 - Transmitted 9.24 - 7 February - Received 13.26 -11 February (over 4 days later)
 - Transmitted 10.54 - 7 February - Received 13.26 - 7 February
 - Transmitted 11.47 - 7 February - Received 19.43 - 7 February.
- 5.13 In contrast to the 11.47 transmission made on 7 February which was received at 19.43, it was noted that another electronic transmission was made at 11.48 on that day. This application however, was received by the Department’s server before the noon deadline and was consequently accepted as being on time.
- 5.14 Code reference 2.8 requires that the principles of equal opportunity must be inherent in the appointments process. However, DETI’s current process for handling electronic applications via email does not do that. It was evident that the receipt of electronic application forms was a matter of pure chance dependant on factors outside the control of the candidate.
- 5.15 A process that can exclude candidates for providing late applications, when those same applications have clearly been transmitted **hours before** others which have been accepted, cannot be considered to have treated all candidates equally.

It is recommended that the Department reviews its process and policy on handling electronic applications to ensure equality of opportunity for all candidates

Priority Rating 3 – DETI must ensure equality of opportunity for all candidates.

- 5.16 It was also noted that the candidates who were judged to have submitted late applications were advised of the decision by email. This identified the exact time when the Departmental server received the application form. However, the Department had no such records to verify the exact time of receipt of applications received in hard copy. Presently, hard copies are merely date stamped according to the day that they are received.
- 5.17 This is very significant as a large number of applications in hard copy were date stamped as having been received on 7 February. The Department however has no evidence to verify that any of these were actually received before the noon deadline. This leaves the Department open to complaint from those candidates rejected because

their electronic applications were not received by the Department's server until after the deadline.

In light of this, it is recommended that the Department records the time when all application forms are received.

The Department could also explore methods used by other sections of the Civil Service e.g. Recruitment Service/HR Connect and Central Procurement Directorate, to ensure such issues with the Department's server do not discriminate against candidates.

Monitoring Forms

- 5.18 The application form contained a monitoring section which was removed by PAU before it was seen by the sift or interview panels. Code reference 3.28 states that "... candidates should be encouraged to supply the information requested in the monitoring section of the application form.... Candidates who not complete the monitoring section initially should be given a second opportunity to do so. If this is not completed, however, the Department should not reject the application but should ensure that the request and refusal is recorded."
- 5.19 It was noted that four candidates had not fully completed the monitoring section of their forms. There was no evidence however, that the Department had given these candidates a second opportunity to do so, in accordance with the Code.

Priority Rating 3 – DETI must ensure that candidates who do not complete the monitoring section of application forms initially are given a second opportunity to do so and that any request and refusal is recorded.

Stage 3 – Selection

Selecting a Shortlist

6.1 One hundred and four applications were received before the deadline. An anonymised shortlisting sift was conducted by Noel Lavery (Deputy Secretary, DETI) and Jean Haworth (OA) to ascertain which candidates met the essential criteria and who should be invited for interview. Prior to the sift meeting they made their own individual assessment of each application in adherence with a scoring framework as follows:

- 18-20 Strong example in a more demanding setting
- 15-17 Satisfactory example in a more demanding setting
- 12-14 Strong example in a demanding setting
- 10-11 Satisfactory example in a demanding setting
- 0-9 Fails to meet the criterion

6.2 Although this scoring framework was used, there was no evidence that guidance was issued to help panel members differentiate between a satisfactory example and a strong example, or what constituted a demanding or more demanding setting. It was evident that on several occasions, the panel members had interpreted the requirements quite differently, given the wide variation of the scores awarded. A more comprehensive scoring framework would have helped to ensure consistency in the marking system.

It is recommended that the Department issues comprehensive scoring frameworks to panel members to ensure consistency of approach.

6.3 At the sift meeting, the panel members agreed a final score in each criterion for every candidate. Where discrepancies in individual scores occurred, the panel members considered the evidence together before agreeing the final score.

6.4 As noted above, there was a wide variation in some of the individual scores awarded. In one particular case, one panel member assessed a candidate as providing a strong example in a more demanding setting whilst the other initially assessed him as failing to meet the criterion. In another case, the variation ranged from providing a satisfactory example in a more demanding setting to failing to meet the criterion. It was noted that both of these candidates were ultimately appointed to the Board.

6.5. Sift panel decisions were recorded on an overall marking frame. This recorded the agreed panel scores and provided specific comments on the reasons why candidates had failed to meet criteria. There was no record however of the discussions that took place when discrepancies in individual scores occurred, or what rationale was used to support how the agreed final score had been concluded.

- 6.6 As such, there was nothing to support how the sift panel finally agreed that two particular candidates were each deemed to have provided a satisfactory example in a more demanding setting, when one panel member had initially assessed that they failed to meet that particular criterion. Code reference 3.34 requires that all decisions must be fully documented. This issue was also raised in the previous Departmental Audit Report.

Priority Rating 2 – DETI must ensure that all shortlisting decisions are fully documented.

- 6.7 Following the sifting process, fifty-four candidates were deemed to have met all four essential criteria. They were placed in merit order and the Department shortlisted by inviting the twenty-one highest scoring candidates for interview.

Interviews

- 6.8 Interviews took place on 5, 6 and 7 March 2008. The panel consisted of Chair, Noel Lavery, and members Dr Aideen McGinley (Permanent Secretary, Department for Employment & Learning) and Jean Haworth. Stephen Kingon, Chair of Invest NI, was also scheduled to act as a panel member, however due to unforeseen family circumstances he had to withdraw from the entire interview process at short notice.
- 6.9 The documentary evidence associated with the interviews was comprehensive and it was evident that all candidates had been assessed against the published criteria. Each panel member completed an interview rating sheet providing a mark for each criterion, the evidence produced by the candidates and the rationale for the mark awarded. Performance indicators, relating to each criterion, were also provided for panel members and it was evident that this led to consistency in the marks awarded. An overall rating sheet was completed for each candidate indicating the agreed panel score with supporting comments.
- 6.10 Individual and agreed panel marks were usually recorded clearly. In one case however it was apparent that two panel members had altered their initial marking for a particular criterion. Although both panel members did initial the changes made on their individual rating sheet, it was not clear when and for what reason this was done.
- 6.11 Additionally, the agreed panel mark on the overall rating sheet was also altered from C (*fails to meet the criterion*) to B (*meets the criterion well*). Again, it was not apparent at what stage and for what reason this change was made. It was also noted that the alteration was not initialled by any of the panel members.
- 6.12 This change of mark was particularly significant in that had it not been made, the candidate would have been unsuitable for appointment. As

it was, he was considered suitable and was ultimately appointed by the Minister. It was also noted that he was one of the two candidates mentioned at paragraph 6.4 over whom there had been a large variation in marking of the same criterion at the shortlisting stage.

- 6.13 In order to gain public confidence the workings of the appointments process must be clearly visible. Code reference 3.35 requires that all decisions arising from interviews must be fully documented. In this instance however, it was not clear how, why and at what stage the alterations to the marking frame were actually made.

Priority Rating 2 – DETI must ensure that all decisions arising from interviews are fully documented.

- 6.14 It was good to note that all candidates were tested on their commitment to, and understanding of, the value and importance of the principles of public service. It was evident that each candidate had been asked to identify any real or perceived conflicts of interest and how they believed that these could be managed.
- 6.15 Potential conflicts of interest were identified by some candidates due to business interests and in each case the panel clearly recorded what action those candidates would take to ensure the situation was managed correctly. No probity or conflict of interest issues were identified that would have prevented appointment.

Other Considerations

- 6.16 The Department sought and received two references for all candidates found suitable for appointment. It was also good to note that prior to the submission being sent to the Minister for his decision, the Department carried out a check with Central Appointments Unit to identify if candidates held any other Ministerial appointments.
- 6.17 Where other appointments were held, contact was made with the sponsoring Department to check if there were any apparent performance or probity issues that would have impacted on appointment to Invest NI.

The Ministerial Submission

- 6.18 Thirteen candidates were found suitable for appointment at interview. In accordance with his wishes, the Minister was presented with an unranked list together with supporting background which highlighted the skills and experience that each candidate would bring to the Board. Of the thirteen candidates, three were “highly recommended” on the basis of their performance at interview.
- 6.19 It was good to note that the Ministerial submission drew attention to the fact that satisfactory references had been obtained for all suitable candidates. It also confirmed that no probity or performance issues had been identified following checks with other Departments.

- 6.20 The Minister was also advised that in the specific instances where the individuals had business interests which dealt directly with Invest NI, a follow up discussion had taken place and there were no stumbling blocks to appointment.
- 6.21 The Ministerial submission included the Validation Certificate completed by the OA. Code reference 3.36 requires that the validation certificate must be included in the Ministerial submission and copied to OCPA NI. There was no evidence however, that it was copied to OCPA NI as required.

Priority Rating 3 – DETI must ensure that completed Validation Certificates are copied to OCPA NI.

Publicising Appointments

- 6.22 The Minister chose eight of the thirteen suitable candidates for appointment. Following his decision, the Department wrote to each of the successful candidates who declared their acceptance of the appointment on the basis of the terms and conditions set out for them. A political activity form was also issued to, and completed by, each appointee.
- 6.23 The Department announced the appointments through a Press Release which contained the requisite information outlined in the Code of Practice. It was noted that OCPA NI and the OA were sent a copy of the press release on the day it was issued.

Feedback

- 6.24 The Department received a number of requests for feedback. In each case this was provided in a timely manner either by telephone or at a meeting with the candidate.

SUMMARY OF AUDIT RECOMMENDATIONS

1. DETI must ensure that all shortlisting decisions are fully documented.

2. DETI must ensure that all decisions arising from interviews are fully documented.

3. DETI must ensure that application forms advise candidates, that if successful, some of the information supplied will be placed in the public domain.

4. DETI must ensure that Information Packs contain details of any statutory disqualifications that apply.

5. DETI must ensure equality of opportunity for all candidates.

6. DETI must ensure that candidates who do not complete the monitoring section of application forms initially are given a second opportunity to do so and that any request and refusal is recorded.

7. DETI must ensure that completed Validation Certificates are copied to OCPA NI.