



CPANI

The Commissioner
for Public Appointments
Northern Ireland

Annual Report

2010-2011



FELICITY HUSTON

Commissioner for Public Appointments for Northern Ireland

The Commissioner's Foreword

For the last five years I have shared my views on the Public Appointments system in Northern Ireland.

This year I'll let applicants share their comments with you (and remember these are the ones who were interested enough to fill in the application form):

- *I don't believe my application was treated with enough consideration.*
- *The language used to ask questions is full of jargon.*
- *After short-listing the process is unclear and apparently unaccountable.*
- *Application form.....laborious in the extreme to complete and a complete waste of time when it was so obviously disregarded in the interview process.*
- *The process appears to be designed by lawyers to avoid litigation and not to recruit the best people.*
- *The interview.....was conducted as a 'time trial'*
- *The competence based approach is so generic that the interview could have been for anything.*
- *The process is disjointed, costly and has little to no regard for the people who are putting themselves forward.*
- *Reply.....very disappointing as it refused to give further feedback and advised I could not appeal.*
- *My requests for information on failure to be shortlisted have been brushed aside.*
- *I was interviewed in November 2009 and the first communication I received from the Department was in May 2010.*
- *Complete absence of communication.*
- *Complete absence of courtesy when I pursued enquiries.*
- *It's a complete waste of time and effort.*

CPA NI Team

- Pat Neeson joined CPA NI in November 2009 as the Commissioner's Compliance Advisor. Pat was formerly Head of Business Services in the Northern Ireland Assembly and spent a number of years in the Private Office of the Deputy First Minister. Prior to this Pat worked for the Commissioner for Children and Young People in the Legal and Complaints team.
- Patrick Longmore joined CPA NI in June 2010 as the Office Manager, previously working within Environmental Policy for the Department of the Environment (DOE) for the past six years.

Previous Team Members

- Until March 2011 Martina Hanna was the Commissioner's Policy Advisor, after almost 5 years in post she left to join OFMDFM – Equality, Good Relations and Economic Policy Division. I would like to take this opportunity to thank Martina for all of her support and the large part she played in improving the public appointments system.

Survey of Applicants for Public Appointments

In the summer and autumn of 2010 we carried out a survey of applicants for the following appointments.

DSD	NIHE Members
DE	ESA Members and Chair
OFMDFM	ILEX Members
DCAL	NI Screen Chair, Vice Chair and Members
DARD	Agri-Food and Biosciences Institute Members
DFP	Northern Ireland Buildings Regulation Advisory Committee Members

DOE were asked to supply the necessary contact details for us to survey applicants for the Historic Buildings Council but failed to do so.

458 questionnaires were issued and 213 returned. A 46.5% response rate. The survey was carried out in-house. No consultants were used.

I am very grateful to all the applicants who replied to our survey and particularly so to the great many who took the time to elaborate on their experiences.

Applicants were asked, amongst other things, about their overall experience, the quality of the information sent out, and whether they would consider applying for another appointment.

The majority of public appointments are unpaid. Those that are paid are very rarely remunerated at a commercial rate.

See my foreword for a sample of applicants' responses - and these aren't the worst.

Review of the Year, Progress and Developments

CPA NI OFFICE AND RESOURCES



Costs 2010/2011

Due to the difficulties with the accounting information we receive, which amongst other things included a cheque from DFP made out to CPA NI for £10,685 (we do not have a bank account), I have decided not to include office costs in this report. It is not possible to compare the figures accurately with previous years, or even be certain they are final.



CODE OF PRACTICE FOR MINISTERIAL PUBLIC APPOINTMENTS IN NORTHERN IRELAND

The new code was implemented on 1st February 2010, and this has been its first full year of operation.

Key changes in the Code

While the code continues to be underpinned by the same seven key principles, as a result of our ongoing work the following changes have been made.

The Minister's Decision - The Minister may choose to meet the applicants suitable for appointment prior to making the appointment decision. I have highlighted in the Code how this is particularly appropriate where the Minister is familiar with some but not all of the candidates. Once the decision is made, the reasons for this will be recorded, and will form the basis for feedback. This is in order to ensure that the entire appointments process complies with the principles of openness, transparency and open government.

I have taken legal advice on this change and the opinion is that this paragraph does not fetter Ministerial choice. **Code ref: 3.45**

Extension to Term of Appointment - Due to the large number of reviews etc of public bodies, we received a number of requests for extensions to appointment terms. As appointments are the responsibility of Ministers, I have assumed that such extensions are being made by Ministers, who judge them to be in the best interests of the relevant public body. If the Minister is satisfied that an extension is required, then the Department no longer needs to write to me in advance to seek permission.

Such extensions must comply with paragraphs **3.49, 4.1, 4.2, 4.3, 4.4 and 4.5.**

The Department must, of course, keep full records of the reasons for the extension and the Minister's decision on the matter. **Code ref: 1.10**

Information Packs - I have recently discovered that many applicants were unaware that Ministers can and do receive an unranked list of appointable candidates from which to choose. Applicants have assumed that, like the process operated by the Civil Service Commissioners and many employers, the Minister always receives the names of those judged appointable in merit order reflecting the scores awarded at interview.

For the sake of clarity and openness, the form in which the Minister has requested the final list will be included in the information pack.

Code ref: 3.21

Independent Participation - Departments must now, in ensuring there is an independent element to the competition, be able to prove that all necessary and appropriate checks, assessments and tests have been done.

Code ref: 3.7

Feedback - If an applicant requests feedback, this will now be provided by the Chair of the selection panel. If in exceptional circumstances the Chair is unable to do so, another member of the panel may be substituted. This feedback will be based on the records kept by the panel of its assessment of the candidate.

Code ref: 3.47

Feedback - The provision of feedback must not be delayed until the end of the process for administrative convenience. A candidate does not need to use the term feedback in their request; in this instance feedback must still be provided if it is clear that this is what has been requested.

Code ref: 3.48

GUIDANCE ON THE CODE OF PRACTICE

As a result of the many issues raised throughout our work over the course of this year, the following guidance has been issued to the Departments. All of this guidance is available on our website at the address below:

www.publicappointmentsni.org/index/Departmental_guidance.htm

Guidance re paragraphs 2.6 and 3.39 of the Code of Practice for Ministerial Appointments - Issues of Independence and Integrity

This guidance will assist Departments in meeting the requirements set out in the Commissioner's Code of Practice at paragraphs **2.6** and **3.39**.

It is not exhaustive and when handling issues of independence, integrity etc those involved in the process should bear in mind the principle of proportionality as well as those of openness and transparency.

It may be helpful to understand the context in which such guidance is issued. CPA NI carry out audits and investigations of appointment processes across all Government Departments. We also investigate complaints. We come across non-compliance with the Code and bad practice on a regular basis e.g.

- A panel Chair failed to disclose to other panel members a recent quasi-business relationship with an applicant selected for interview. That applicant was subsequently appointed to the public body.
- A panel member knew an applicant in various capacities. Although the panel member disclosed this, the nature and extent of the relationship was not explored by the Chair or Department. The applicant failed to be shortlisted for interview.
- Names of potential 'independent panel members' are supplied to Departments by OFMDFM Central Appointments Unit, but Departments fail to test the individual's genuine independence or keep records of such tests. **Code ref: 1.7**

As a result of our investigations etc, changes are made to the Code or guidance is

issued.

Demonstrable Independent Participation throughout the Assessment Process

To ensure compliance with the above Departments must ensure that any so called 'independent panel member':

- Has no recent employment, advisory, contractual arrangement (either directly or by way of company association) or other operational history with the Department whose Minister is responsible for making the appointment.
- Has no recent connection with any of the public bodies sponsored by the Department.
- Has been able to play a full and active part in the assessment of applicants, free from dependence on or unnecessary control by the Department running the public appointment competition.

The Department must also have the evidence to prove that all necessary risks to such independence have been assessed and dealt with appropriately.

Selection Panel Members - Circumstances where recusal may be required.

Section 3.39 of the Code of Practice tasks the selection panel to ensure that integrity and issues of conflict of interest have been both explained to and explored fully and robustly with any applicant.

It is therefore essential that the same standards are met by selection panel members.

Departments will ensure that all panel members declare any conflicts of interest that may be relevant to their participation as panel members. This is particularly pertinent where panel members know applicants. In such cases the panel member will disclose the nature of the relationship or knowledge of the applicant. Where such a relationship or knowledge is judged significant enough to have an impact on the outcome of the process or the public perception of the outcome, the panel member will recuse himself or herself as necessary.

The Chair of the panel has responsibility for dealing with these matters and will ensure that all such issues are dealt with in an open and proportionate manner to protect the integrity of the process. If the potential conflict of interest relates to the Chair the

matter should be dealt with by the panel as a whole. No panel member is to be kept in the dark about such issues, unless the matter is genuinely of such a personal nature that it would cause grave embarrassment if shared.

Applicants may also request the recusal of panel members if the circumstances merit it. Such a request will be discussed, and decided upon in an open, proportionate and timely manner by the whole selection panel.

Guidance re Paragraph 3.22 of the Code of Practice for Ministerial Appointments – Application Forms

As Departments will be aware, CPA NI have been reviewing application forms. We have also carried out research on applicants' experiences of the appointments process and are dealing with an increasing number of complaints. As a result of all this we are issuing the following guidance.

Application forms are long complex documents which can often take hours to complete.

Many applicants are not familiar with the competency based assessment system currently in vogue with the NICS and can be put off applying by the number and nature of the criteria.

However many potential applicants never even get that far because of the other extraneous information demanded on application forms.

The public appointments process should be about encouraging applicants – not frightening them off.

Code of Practice 3.22

Departments must remember that applicants may not be familiar with completing application forms. Therefore all application forms must be simple, straightforward and ask only what is truly required.

When designing the application form for your Ministerial appointment we recommend that you ask the following questions:

- Is there anything on this form we are asking for out of habit rather than necessity?
- Are we asking for information which may discourage an applicant e.g. dates and details over a long number of years - 'your working life' which may be 40 years+ or similar?
- Is this information actually needed to assess the applicant against the published criteria or to allow us to interact with him or her to run the process?
- Why are we asking for the applicant's town or country of birth? What relevance does this information have to the selection criteria?
- Why do we need the applicant's national insurance number? What relevance does it have to the selection criteria?
- Why are we asking for referees and how are we going to use any reference received?
- How will a reference be used to assess the candidate against the published criteria in a competency based scenario?
- What does wording such as this mean? ... "You will be required to provide names and addresses of two referees who are in a position to comment on your suitability for the post. References will not form part of the interview process, and the contents of references will be used only in the final stage of the competition to confirm a proposed selection decision".
- What information will you provide to the referee to enable him or her to provide such comments? What is this final stage?
- Why are we asking for qualifications (including on occasion GCSEs and similar) if these are not part of the selection criteria or a requirement of the post?
- Why are we asking for employment history if this is not part of the selection criteria?
- How will we use this information in the assessment process?
- Might such information actually enable the panel to identify candidates in an 'anonymous' process?
- Why are we asking for a history of all public appointments held? What are we going to do with this information? What do we mean by the term 'public

appointment'?

- How many addresses do we need for the applicant - other than a correspondence address - and what are we going to do with them?

We hope the above will act as an aide memoir when designing applications forms. The questions posed are not exhaustive. Your own experience of previous competitions and applicants' comments may also influence the design and content of future application forms.

Self- Assessment for everyone involved – Guidance on Diversity

To ensure that everyone is conscious of the diversity principle throughout the assessment process here are some questions to ask when drawing up criteria, assessment procedures, assessing applications and asking questions at interview:

- Underlying assumptions

What underlying assumptions am I making about potential applicants and those who have applied? What assumptions do the questions I plan to ask make about the person answering this question? Are any of these assumptions [culturally] biased?

- Bias

Do the criteria I am setting and/or the questions I am asking suit some applicants more than others? Can I offer alternatives?

- Stereotyping

Do the planned questions portray certain groups uniformly in having certain aptitudes, interests, occupations or personality traits?

- Terminology

Is the terminology used acceptable?

As always these questions are not exhaustive, and awareness of diversity should not be limited to these issues only. (Many of the points may have been covered in training)

Helpful hints and reminders for the Code of Practice

The Selection Panel - Paragraph 3.10

By January 2011 Departments must have evidence to show that they are complying with this paragraph proving that the panel members have received training on:-

- The requirements of the Code of Practice
- Diversity and Equality issues
- Current interviewing techniques

***Publicising Appointments (CPA NI Logo) - Paragraph 3.14**

A copy of the advertisement must be sent to CPA NI at the time of publication.

Integrity - Paragraph 3.39

Departments must have evidence to show that they are complying with this paragraph proving that those assessing candidates are familiar with how Conflicts of Interest and Integrity can affect the workings of a public body.

***Public Announcement - Paragraph 3.50**

The public announcement will be issued as a press release but must be copied to CPA NI at the time of issue.

***Re-appointment - Paragraph 4.3**

Departments must remember to publicise all re-appointments and send a copy of the press release to CPA NI.

***Compliance Statement - Paragraph 5.2**

The Compliance statement should be completed and submitted to CPA NI by the 30th June following the end of the financial year to which it applies.

Monitoring Compliance - Paragraph 5.3

The Department will keep all records pertaining to the public appointment process for a period of two years from the date of completion of the competition.

***Complaints - Paragraph 5.16**

An annual return of the number of complaints received between 1st April and 31st March each year will include:

- I. official complaints received;
- II. challenges to decisions made (anytime throughout the process);
- III. complaints regarding the standard of service an applicant has received from a Department throughout the process.

The annual return referred to in this paragraph will be forwarded to the Commissioner by the following 1st September.

NB - Those items above marked with * are items or information that must be submitted to CPA NI in order to meet the terms of the Code of Practice.

OVERSIGHT OF PUBLIC APPOINTMENT COMPETITIONS 2010/11

The following competitions commenced in the 2010/11 period

Department	Regulated Competitions
DARD	Agri-Food and Biosciences Institute – Members
DCAL	Advisory Group on Architecture and the Built Environment – Chair and Members
	Armagh Observatory and Planetarium Board of Governors – Member
	Armagh Observatory and Planetarium Management Committee – Members
	Sport NI Board – Members
DE	Transitional Education and Library Boards – Council Nominations
	General Teaching Council - Members
DEL	Governing Bodies of FE Colleges – Members
	Governing Body – Southern Regional College – Chair
DETI	Health and Safety Executive NI (HSENI) – Chair
	General Consumer Council NI – Deputy Chair and members
DFP	NI Authority for Utility Regulation (NIAUR) – Members
DHSSPS	NI Fire and Rescue Service Board – Chair and Members
	NI Ambulance Service HSC Trust – Members
	Patient and Client Council – Chair

	Patient and Client Council – Locally elected representatives
	NI Social Care Council – Chair
	NI Blood Transfusion Service Agency – Members
	Southern Health and Social Care Trust – Chair
	NI Practice & Educational Council for Nursing and Midwifery – Chair
	NI Practice & Educational Council for Nursing and Midwifery – Members
	NI Medical & Dental training special HSC Agency – Chair
	NI Social Care Council - Members
	NI Blood Transfusion Service Special HSC Agency – Trade union Representative Member
DOE	Local Govt Staff Commission – Chair and Members
	NI Local Government Officers Superannuation Committee (NILGOSC) – Trade Union representative
DOJ	Northern Ireland Policing Board – Independent Members
DRD	Belfast Harbour Commissioner – Members
	Londonderry Port and Harbour Commissioner – Members
	NI Water – Chair and Members
	NI Transport Holding Company – Chair
DSD	Charities Advisory Committee – Chair and Members

OFMDFM	Older Peoples Commissioner
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AUDITS

In line with my legislation - The Commissioner for Public Appointments (Northern Ireland) Order 1995 requires me to “audit appointment policies and practices pursued by appointing authorities, to establish whether the Code of Practice is being observed by the appointing authority”. Since the new Code was launched in February 2010 I have carried out three audits or compliance reviews.

Department of the Environment (DOE) – Local Government Staff Commission

The Department of the Environment was selected for one of this year’s audits. The overall objective was to evaluate whether Ministerial appointments to the Local Government Staff Commission were in accordance with the Code.

This was the first competition run by DOE under the new Code of Practice and the evidence provided demonstrates the Department in most instances had complied with the Code. Most documentation was kept in order and the material sent to CPA NI was well laid out. However a crucial part of the competition i.e. pen pictures did not meet the requirements and could have left the Department and Minister in a vulnerable situation when it came to choosing appointable candidates.

Department for Regional Development (DRD) - Interim Non-Executive Directors to Northern Ireland Water Board

My objective in reviewing the Appointment of Interim Non-Executive Directors to NIW was to evaluate whether the principles of my Code had been applied. Having given the Department an exception to my Code of Practice for Ministerial Public Appointments, this exception did not negate the principles being applied.

Unfortunately I found myself in a position where I was unable to form a view on whether the process was compliant with the principles of my Code as the record-keeping was so sparse and had so many gaps. Therefore the only firm conclusion I could reach was that paragraph 3.31 of my Code of Practice for Ministerial Appointments – *full contemporaneous records of all assessment procedures, deliberations and outcomes must be kept* - had not been complied with.

Department for Regional Development (DRD) - Northern Ireland Water Board

The Department for Regional Development (DRD) was selected as one of this year's audits because of the results of a previous review into the process to appoint interim Non-Executive Directors to the Board. That review determined that record keeping was so poor that an overall judgment on the actual process could not be made.

The objective of this exercise was to evaluate whether the Ministerial appointment of Chair to Northern Ireland Water complied with the Code.

This was the first competition run by DRD under the new Code of Practice and the evidence provided demonstrates that the Department, in most instances, complied with the Code. However, I am concerned about how the Department is handling monitoring forms. Applicants may be as surprised as I was to learn that they are kept "intact" with original application forms. The Equality Commissions Monitoring Guidance states that monitoring forms should be kept separate from application forms. I have referred the Department to both the Information Commissioner's Office and the Equality Commissioner for advice on this issue.

Full audit reports for the above competitions can be found on my website.

COMPLIANCE

As well as comprehensive audits, we have carried out a number of compliance reviews.

Application Forms

I have reviewed six application forms from the following Departments:

DFP – Utility Regulator

DEL – Further Education Colleges

DEL – Southern Regional College

DHSSPS – Northern Ireland Practice and Education Council

DOJ – Northern Ireland Policing Board

DRD – Northern Ireland Water Interim Appointment Process

Some of the issues arising from the reviewing of these forms were:

- Arbitrary restrictions on the use of technology.
- Asking for qualifications which are not a requirement of the post.
- Guidance missing from information packs.

Following these reviews I issued guidance to Departments to enable them to draft application forms which are simple, straightforward and ask only what is truly required. See pages 11 and 12 for guidance.

Advertisements

We have continued to monitor advertisements placed by Departments and have challenged where necessary.

Compliance Statements

Under my Code the Departmental Permanent Secretaries must complete a statement confirming that all relevant public appointment processes conducted have complied with my Code. All Departments made their returns, with three Departments highlighting non-compliance. These issues had already been picked up by my office and addressed accordingly by the relevant Department.

DEL – Further Education College - Discrepancy between information requested in Application Form and details of information required in Guidance Note.

DE – Education and Library Boards General Members – Advertising restricted to OFMDFM website and DE websites. Education and Library Boards Councillors – submission included the political party that each Councillor represented.

DRD – NI Water Interim Chair – Exception to the Code; Warrenpoint Harbour Authority – there was no independent involvement in process.

COMPLAINTS

During 2010/11 we received ten complaints and numerous enquiries about aspects of the appointment process. Not all of these complaints were dealt with under our formal complaints procedure; some were dealt with informally as appropriate. The complaints ranged from candidates being unaware that a Minister received unranked lists of suitable candidates, to a perceived conflict of interest and the lack of feedback to candidates.

These complaints lead to the issuing of guidance from my office to address issues raised. See pages 9 – 15.

DOJ	-	3
DHSSPS	-	2
DSD	-	2
DRD	-	2
OFMDFM	-	1

INDEPENDENT PARTICIPATION

A More Thorough and Robust Approach Required across all Departments

As previously stated on my website I wrote to all Permanent Secretaries in line with my Code asking that all public appointment competitions include a demonstrable element of independent participation in the assessment of applications. Having received generic responses, I then wrote to several Departments asking for further documentary evidence to support these responses.

Departments failed to produce any documentary evidence to prove independence. In some instances conversations were had with independent panel members but no records of these conversations were available to CPA NI. After further consultation with CPA NI, Departments have been informed that a more thorough and robust approach should be taken to determine independence, to enable them not to breach **paragraph 2.6** of my Code.

PUBLIC ACCOUNTS COMMITTEE

I was invited as a witness on 17th June 2010 to provide an update to the Public Accounts Committee on the progress on these specific recommendations and the overall effect on the process of making Public Appointments. I told the Committee that whilst some progress has been made other recommendations have not been implemented. I explained to the Committee that it is the responsibility of Ministers and their Departments to implement the changes needed.

Appendix 1 Abbreviations used in this report

The following abbreviations are used in this Report:

DARD	Department of Agriculture & Rural Development
DCAL	Department of Culture, Arts & Leisure
DE	Department of Education
DEL	Department of Employment & Learning
DETI	Department of Enterprise, Trade & Investment
DFP	Department of Finance and Personnel
DHSSPS	Department of Health, Social Services & Public Safety
DOE	Department of the Environment
DOJ	Department of Justice
DRD	Department for Regional Development
DSD	Department for Social Development
OFMDFM	Office of the First Minister and Deputy First Minister
NIAO	The Northern Ireland Audit Office
NICS	The Northern Ireland Civil Service
NIO	The Northern Ireland Office
TPO	Third Party Organisation
CAU	Central Appointments Unit