

**GUIDANCE BY THE DEPARTMENT OF FINANCE AND PERSONNEL
ON MAKING APPOINTMENTS
TO
THIRD PARTY ORGANISATIONS (TPOs)**

Introduction

1. This guidance sets out the key principles which must underpin appointments to the Boards of TPOs (as defined in the DFP Memorandum of Reply dated 18 July 2006 to the Westminster PAC Report) which are bodies set up by, and significantly funded by a public body to deliver public services or used as a vehicle to disburse public funds. This guidance is drawn from the Code of Practice issued by the Commissioner for Public Appointments for Northern Ireland.
2. DFP has compiled a list of TPOs, as defined, and shared this with the Office of the Commissioner for Public Appointments (OCPA NI) (Annex A). Where a department wishes to have a new organisation included on the list or an existing organisation removed from the list, a case should be made in writing from the Permanent Secretary to DFP, Central Finance Group, Rathgael House, who will advise OCPA NI accordingly.
3. OCPA NI has established a monitoring scheme, for those organisations listed as TPOs. This scheme will enable those organisations to demonstrate commitment to these principles through the use of an OCPA NI “Monitored Kitemark” when advertising appointments. Use of the monitored scheme and its kitemark will enhance public confidence in the appointment process by:
 - publicly highlighting that the Department follows a set standards for appointments to TPOs to ensure fair, open and transparent procedures;

- providing independent scrutiny of the process through the allocation of an OCPA NI Assessor (OA); and
- providing an independent mechanism for auditing compliance with the standards and dealing with complaints.

All appointments must be made on merit

4. Departments must ensure that all appointments should be made solely on the basis of merit. Appointment on merit means appointing the best person through a transparent and competitive process. This can be achieved by ensuring that the criteria for judging and suitability can be related to the qualifications, attributes and skills required to fulfil the duties and responsibilities of the TPO. The selection process should embrace issues of inclusiveness, diversity and equality of opportunity, and these issues should be an integral part of the manner in which appointments are made. It is important that the process should not provide an unjustifiable advantage or disadvantage to any particular applicant or group of applicants. As these are not Ministerial appointments Departments should define at the outset the requirements for the appointment and as such all appointments should be made in merit order.

Appointment processes should be in line with best practice

5. Appointment processes and practices should be efficient, cost effective and in line with best practice. They should also be proportionate, i.e. appropriate given the nature of the appointment and the size and weight of its responsibilities.

Appointment processes must be fair and applied consistently

6. The appointment process and the manner in which it is applied must be undertaken fairly and with real commitment to equality of opportunity. Selection must be based on relevant criteria applied consistently to all applicants. Selection techniques must be reliable and guard against bias. The appointment process must comply with current legislative requirements for office holders and any form of discrimination, whether direct or indirect, active or passive, is unacceptable.

Appointments must be made in an open, accountable and transparent manner

7. Applicants must be given equal and reasonable access to adequate information about the appointment and its requirements. Appointment process guidelines must be clear and understandable. Open and active communication in relation to the appointment process and the basis for selection should be adopted and there should be real commitment to offering meaningful feedback must be given to applicants who seek it. It is **mandatory** that any appointments made must be publicised through a press release and this should include:

- a short description of the body to which the appointment has been made and its functions;
- a brief summary of the appointee's career/experience;
- length of appointment and whether or not it is a paid post. If paid, the amount should be given;
- a list of other appointments held and any remuneration received. If none this should be clearly stated;

- a statement that the appointment(s) have been made within the spirit of the OCPA NI Code of Practice; and
- a statement that “All appointments are made on merit and political activity plays no part in the selection process. However, in accordance with the original Nolan recommendations, there is a requirement for the political activity of appointees (if any declared) to be published.” This statement should be followed by details of the appointee’s response to the political activity question. If no political activity has been declared, this should be made clear.

Probity and standards

8. The very highest standards of conduct and behaviour are expected of those appointed to the Boards of third party organisations. The appointment process must ensure that applicants demonstrate their commitment to the principles and values of public life. Any private or business interests that could give rise to a conflict of interest, real or perceived, must be fully explored and resolved before any appointments are made. Further detail is attached at section 11.

Role of the OCPA NI Assessors and Fees

9. In order to add the element of independent scrutiny, an OA, allocated by the Office of the Commissioner for Public Appointments for Northern Ireland, must be used for all Board appointments to those bodies listed. Departments should use the appropriate pro-forma to request an OA and submit it to OCPA NI. Once this pro-forma is received by OCPA NI the Department will be contacted regarding the allocation of an OA and will be entitled to use the Monitored Kitemark when advertising the appointments. OAs’ will be paid in accordance with the scale rates set by OCPA NI.
10. The OA will observe the appointment process, in order to ensure that the procedures employed by the department are transparent, fair and applied consistently to all candidates. The OA will scrutinise the advert and application pack

to ensure both conform to Spirit of the Code of Practice. The OA will play a scrutiny role in the shortlisting section of the process. The purpose of this will be to observe process to ensure that each candidate is treated on a fair and equal basis in the Spirit of the Code. The OCPA NI OA should be present to observe the interviewing panel but to take no part in scoring or assessing candidates. The OA should pose the questions regarding probity and conflict of interest. This will allow the panel to consider fully the answers given and give the panel members an opportunity to question further or challenge the candidate if necessary. The panel members (not the OA) should then make an assessment on whether there is a probity or conflict of interest issue, and if so how it will be dealt with. The panel should document any decisions. If the conflict is irreconcilable the candidate must be withdrawn from the competition.

Annual Audit

11. The Commissioner will undertake a percentage audit of all appointments made to TPOs each year. The results of the audit will be reported back to Permanent Secretaries and will be included in the Commissioner's Annual Report. The Commissioner will deal with any complaints arising from TPO competitions which cannot be resolved by the department or organisation making the appointments.

Handling of Complaints

12. 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, he or she may then ask the Commissioner to consider initiating an investigation. Details of the complaints procedure is attached at Annex B.

The “Probity” Principle

13. *“Probity – Board members of NDPBs and HPSS bodies must be committed to the principles and values of public service and perform their duties with integrity”*

This is one of the Commissioner for Public Appointments’ principles and is a cornerstone of the appointments process. All candidates who put themselves forward to be considered for appointment to a Third Party Organisation must be committed to the principles and values of public service. The Commissioner’s Code of Practice states that it is the responsibility of Departments to ensure that the individuals they appoint can demonstrate that they meet the probity principle. This is highlighted in paragraph 2.3 of the Code, which states:

In the Spirit of the Code of Practice it is important that the candidate’s commitment to the probity principle for is tested rigorously and assessed at interview.

In 1995, the Committee on Standards in Public Life defined seven principles, which should underpin the actions of all who serve the public in any way and which support the probity principle cited above. A copy of these is attached at Annex C.

Conflicts of Interest

14. One of the issues which may arise is that of a conflict of interest. Public Appointments require the highest standards of propriety, involving impartiality, integrity and objectivity, in relation to the stewardship of public funds and the oversight and management of all related activities. This means that any private, voluntary, charitable or political interest which might be material and relevant to the work of the body concerned must be declared.

There is always the possibility for real or perceived conflicts of interest to arise. Both are a problem, as the appearance of a conflict could be as damaging as the existence of a real conflict.

It is important, therefore, that prospective candidates are asked to identify any potential conflicts of interest, whether real or perceived, at the beginning of the process. This should be included as a question on the application form.

Even if a candidate does not declare a conflict of interest in their form, the Panel must raise this matter at interview. There are two reasons for this:

- Some time may have elapsed since the form was completed and the candidate's circumstances may have changed;
- It is possible that a candidate may not recognise a potential conflict. The Panel, however, with their wider knowledge of the work of the body, could identify a potential conflict, based on the information provided in the application form. In all cases, they must explore the issue with the candidate.

The interview provides a good opportunity to cover such issues openly and in a robust manner.

A Guide for Candidates

The information to be included in candidate information packs is set out in Annex D.

ANNEX A

REVISED LIST OF TPO's – OCTOBER 2008

SPONSOR DEPARTMENT	THIRD PARTY ORGANISATION
DARD	Nil
DCAL	Nil
DETI	Action Renewables NI Science Park (NISP) NI Public Sector Enterprises Ltd (Ni-CO)
DE	Nil
DEL	Nil
DFP	Nil
DHSSPS	Nil
DOE	Nil
DRD	Nil
DSD	Nil
OFMDFM	Community Relations Council

Note

Third Party Organisations are bodies set up, and significantly funded, by a public body to deliver public services or used as a vehicle to disburse public funds.

ANNEX B

COMPLAINTS PROCEDURE

The Commissioner will not deal with any complaint relating to an appointment made more than 1 year previously i.e. from the date specified in the letter of appointment, other than in exceptional circumstances.

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 is flawed.

The Commissioner has **no remit** to investigate complaints relating to non-selection or non-reappointment, unless it appears that the selection process has breached the Spirit of the Code of Practice.

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

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, he or she may then ask the Commissioner to consider initiating an investigation.

It is, therefore, essential for departments to have effective systems in place for handling complaints.

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.

Complaints Handling

Once the decision to investigate a complaint is taken, OCPA NI will:

- a) Contact the Department concerned asking for all papers related to the appointment to be submitted for examination by OCPA NI.
- b) Within ten working days' of receipt OCPA NI will acknowledge the complaint and give the complainant an estimated date for completion of the investigation. If the estimate proves inaccurate OCPA NI will write to the complainant with a revised schedule for completion.
- c) write to the department concerned:
 - setting out the complaint and asking if they wish to add further background to the case;
- d) write to the OA:
 - setting out the complaint and asking for their comments,

Reporting the Commissioner's Findings

The Commissioner's findings will be communicated to the complainant, the Permanent Secretary of the relevant department and the OA involved in the competition, 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 light of the investigation.

Ongoing Complaints

It is possible that the complainant may not be content with the outcome of the investigation. In such situations:

- **OCPA NI will not** enter into protracted discussion with the complainant about the outcome of the investigation; and
- **OCPA NI will only reopen** the investigation, if, in the Commissioner's opinion relevant new evidence has come to light;

The Final Report to the Complainant

The guiding principle here is that, whilst both the complainant and the department may be justified in challenging the factual accuracies in a case, it is not for them to judge the Commissioner's conclusions.

The complaint investigator's 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.

What Should the Department Receive?

The Permanent Secretary will receive a letter from the Commissioner, setting out the findings and the reasons behind them. It will draw extensively on the conclusions in the auditors' report.

Remedial Action by the Commissioner

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 concerned.

Contacting OCPA NI
Office of the Commissioner for Public Appointments for Northern Ireland
Room A5.34
Castle Buildings
Stormont Estate
Belfast
BT4 3SR
Telephone 02890 528187
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Website www.ocpani.gov.uk

ANNEX C

THE SEVEN PRINCIPLES OF CONDUCT UNDERPINNING PUBLIC LIFE

The seven principles are:

- Selflessness** Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or other friends.
- Integrity** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- Objectivity** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- Accountability** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Openness** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- Honesty** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- Leadership** Holders of public office should promote and support these principles by leadership and example.

ANNEX D

A GUIDE FOR CANDIDATES

The following information should be included in candidate information packs:

Areas Where a Conflict Could Arise

The Commissioner for Public Appointments for Northern Ireland has identified a few examples of what might constitute a conflict of interest which could lead to real or apparent conflict:

- relevant financial or other interests with the organisation concerned
- relationships with other parties/organisations which could lead to perceived or real split loyalties
- perception of rewards for past contributions or favours
- membership of some societies or organisations.

Some examples of potential, real or perceived conflicts of interest are:

- a candidate is the director of a building firm and the board to which he/she is seeking appointment conducts regular procurement exercises for building materials – *they could benefit personally from decisions taken by the board.*
- a candidate is a manager in a voluntary organisation, whose funding applications are considered by the board to which they are seeking appointment – *the body for which they work could benefit financially from decisions taken by the board.*
- a candidate is the director of a pharmaceutical company and the board to which he/she is seeking appointment will be directing policy on medical

research - *their company could have access to information which would give it a commercial advantage over its rivals*

- a candidate has, in the past, contributed or lent significant funds to the political party to which the appointing Minister belongs – *the appointment could be viewed as a reward for past favours.*
- the candidate and a member of the Selection Panel are both members of an organisation whose membership is kept secret - *the appointment could be viewed as the “old boy network” in operation.*

These are examples only. Please remember that **declaring a conflict does not necessarily preclude a candidate from appointment.** The selection panel should consider carefully the individual circumstances to gauge whether or not a real or perceived conflict might exist and discuss it in more detail with the candidate if he/she is successful in reaching interview stage. The panel must take appropriate steps to deal with unworkable conflicts e.g. they can withdraw a conflicted candidate from the competition.

Departments should note that candidates must be assessed on merit and not treated more or less advantageously because of the activities, associations or employment of a partner or friend, nor must that relationship influence their actions, if appointed. Again, such relationships should not automatically preclude appointment, but departments must be sensitive to a situation that might create an actual or perceived conflict of interest.

General Principles in relation to handling Conflicts of Interest

The following general principles should be adhered to when handling the issue of conflicts of interest:

- Recognition and declaration at the earliest possible opportunity;
- Openness and transparency in discussing the conflict;
- Individual accountability and a clear reporting chain;
- Appropriate procedures for segregation of individual involvement on projects.

Handling a Declared Conflict of Interest

If a candidate declares a conflict, but otherwise meets the selection criteria, they should be invited to interview. However, the Panel will be required to explore with the candidate the potential consequences of the conflict and assess whether or not it is serious enough to warrant withdrawing them from the competition. If the Chair believes that the issue will take some time to explore, the candidate should be asked if he/she would return at a mutually agreed time, to discuss the issue further.

If the Panel believes that the conflict is manageable, and the candidate is found suitable for appointment, their name should go forward. It is then for the Department to agree with the candidate any measures which will need to be taken to handle this conflict, in the event of them being appointed. No appointment should be made until this action has been carried out.

The Panel must ensure that all discussions about conflicts of interest are **fully** documented.

Where a panel believes such a conflict to be unworkable or in breach of the Principles of Public Life that candidate will be withdrawn from the competition