

**Office of the First Minister and Deputy First Minister
Commissioner for Victims and Survivors Competition
(Regulated Appointment)**

Terms of Reference

- 1.1 The audit of the public appointments process for a Commissioner for Victims and Survivors, administered by the Office of the First Minister and Deputy First Minister (OFMDFM), forms part of the Commissioner for Public Appointments' Audit Programme in respect of 2006-07.
- 1.2 This audit process is 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 (**Appendix 1** refers).
- 1.3 The audit was carried out through separate consideration of the two 'phases' of this public appointments process – **Phase 1**, up to the provision of the initial list of candidates deemed appointable, which was then extended into **Phase 2**, following which a combined list was drawn up of individuals deemed appointable both by the initial interview panel and, after the extended process, by an interview panel comprising different members.
- 1.4 The applicable guidance in force was the 'Code of Practice for Ministerial Appointments to Public Bodies' August 2005 (the Code), issued by the Commissioner for Public Appointments for Northern Ireland.

Executive Summary

- 2.1 The main aim of the Commissioner for Victims and Survivors is to promote the interests of both these groups. The Commissioner's role is based upon the range of functions ascribed to it under The Victims and Survivors (Northern Ireland) Order 2006.
- 2.2 By way of background, in November 1997, the then Secretary of State for Northern Ireland, Marjorie Mowlam commissioned Sir Kenneth Bloomfield to "...examine the feasibility of providing greater recognition for those who have become victims in the last thirty years as a consequence of events in Northern Ireland" – this culminated in the publication of 'We Will Remember Them' in May 1998, with its recommendations accepted in full by the Government. Subsequent developments included a Minister for Victims, a Victims' Liaison Unit within the Northern Ireland Office and following devolution, in June 2000, a Victims' Unit within OFMDFM. Also, during 2003 and 2004, a consultation process was carried out by Angela Smith, the then Minister with responsibility for victims' issues.

- 2.3 The decision to establish the post of Commissioner for Victims and Survivors was announced in March 2005 by Paul Murphy, the Secretary of State at that time. Following a period of consultation, the appointment of an Interim Commissioner from October 2005 was announced by Peter Hain (Secretary of State), to carry out preliminary work over a defined period from December 2005. Work also began on establishing a legislative basis for a Commissioner for Victims and Survivors, with an Order-in-Council introduced in November 2006. Phases 1 and 2 of the public appointments process in relation to the Commissioner post were undertaken during 2007, culminating in the appointment of four ‘Commissioners designate’ in January 2008, subject to the necessary legislation being introduced to create the Victims’ and Survivors’ Commission. The Office of the Commissioner for Public Appointments (OCPANI) was involved in a series of discussions which fed into certain aspects of Departmental decision-making relating to this public appointments process during this period.
- 2.4 The format of this audit report is based on an examination of the main stages of the appointments process within Phases 1 and 2. The main issues identified are:
- ❖ (a) the Best Practice Guide issued by OFMDFM’s Central Appointments Unit (CAU) includes wording for a final ‘Declaration’ section on the application form on applicants’ understanding of their responsibilities in relation to statutory disqualifications, and that certain elements of the information provided may be disclosed in the public domain (a Code requirement at Section 3.27). However, it was noted that the wording used in the **Phase 1** application form referred to statutory disqualifications but included no further explanation elsewhere to clarify the extent of these and applicants’ responsibilities in relation to them. In addition, there was no reference made to the range of circumstances when disclosure of applicant information might apply.
 - ❖ (b) the observations set out at (a) also applied to the Declaration section on the application form used in **Phase 2** of the appointments process. In addition, it was noted that there was (1) an outdated reference to guidance which had been reissued in a revised form by OCPANI since Phase 1 (and issued as part of the Information Pack); and (2) a reference to the need to raise any issues related to probity or conflict of interest during the term of a public appointment with the Secretary of State – as the appointment was now to be made by the First Minister and deputy First Minister, this reference should have been revised accordingly
 - ❖ (a) the Best Practice Guide also provides a specimen Political Activity Form for use and the Code requires that the format of the wording is not amended in any way. However, the form used in **Phase 1** made no reference to the relevant legislation in force;

failed to draw applicants' attention to the need to avoid identifying political party allegiance in providing information in support of their application; did not draw attention to the fact that details provided would be published with announcement of the appointment; and made no provision for formal sign-off in order to endorse the information provided

- ❖ (b) the same observations as at (a) above applied to the Political Activity Form used for **Phase 2**, except that the Guidance Notes in this case did draw applicants' attention to the fact that "you should be aware that if you are successful in being appointed to this post, the details of political activity will be included in any press release or similar announcing your appointment" – this inclusion reflected written advice received from OCPANI
- ❖ (a) the Code requires Departments to make "*a determined effort*" to ensure that applicants complete the Political Activity Form. It was noted in **Phase 1** that 4 applicants had initially failed to complete a form, however there was no evidence of a determined effort by the Department to rectify this or to note a refusal at an early stage. Although only 1 of these 4 applicants was shortlisted for interview, this individual was subsequently included on the appointable list drawn up at the end of Phase 1 which formed part of the Ministerial Submission. As a result of this, Section 3.36 of the Code was also breached (this non-compliance remained at the end of Phase 2 of the process, when a further Ministerial Submission was prepared)
- ❖ (b) during **Phase 2**, it was noted from papers held by the Department that one of the applicants had initially failed to complete the Political Activity Form. However, again there was no evidence found to suggest that '*a determined effort*' had been made to rectify this or to note a refusal, either before the shortlisting process or the interview of this candidate took place
- ❖ (a) in relation to the provision of Equal Opportunities monitoring information during **Phase 1**, there was a lack of provision for applicants to sign the Monitoring Form, in order to endorse the details provided before they were separated from the application form
- ❖ (b) Equal Opportunities monitoring information was obtained using the same form in both Phases, therefore in **Phase 2**, the issue identified at (a) remained relevant
- ❖ there was a presentation element which formed part of the assessment of one of the essential criteria at interview during this competition. While the arrangements for this could reasonably have been expected to demonstrate good practice, in terms of a consistency of approach across each phase in this single (but extended) appointments process (referred to in Section 3.35 of the

Code), this was not found to be the case - **Phase 1** candidates received notice of the presentation topic in their Invitation to Interview letter, while those in **Phase 2** were notified 20 minutes in advance of their interview slot. At a meeting held in October 2007 between OCPA NI, the First and the Deputy First Ministers and Departmental officials, it was agreed that the panel members for **Phase 1** should meet the panel members managing **Phase 2**. The purpose of the meeting was to ensure consistency in approach to the two elements of the competition. The Department chose to ignore this decision.

- ❖ (a) the Code requires a copy of the advertisement produced in relation to a public appointments process to be sent to OCPANI, however in respect of **Phase 1** there was no evidence to suggest that this took place or was followed up by OCPANI for receipt
- ❖ (b) in **Phase 2**, the Department did not formally send a copy of the final public readvertisement to OCPANI as required under the Code
- ❖ while omissions in some of the application forms received had been identified at an early stage in **Phase 1**, there was no evidence of follow-up by the Department with applicants – these included the Probity section of an application not being included by one applicant (not shortlisted) and no referee details provided in the case of two others, one of whom was subsequently shortlisted for interview
- ❖ the Code acknowledges that there may be occasions when an Independent Assessor (IA) knows one or more competition candidates, noting that: “...*this is not a problem, as long as the IA declares the relationship and it is recorded...*”. As the eligibility sift for **Phase 1** had been completed using anonymised criteria sections, the IA declared a link with one candidate which became apparent at interview. While there was no associated conflict of interest, the IA asked for this declaration to be formally recorded. However, there was no evidence to suggest that this had been done
- ❖ (a) there was no evidence found to suggest that a copy of the Validation Certificate, once completed by the IA at the close of **Phase 1** was forwarded by the Department to OCPANI, as required under Section 3.36 of the Code
- ❖ (b) in **Phase 2** there was again no evidence found to suggest that a copy of the Validation Certificate had been forwarded by the Department to OCPANI, in line with the Code
- ❖ following a proposal by the Commissioner for Public Appointments, the First Minister/deputy First Minister (FM/dFM) had agreed that OCPANI would provide the Department with a means of securely storing the papers generated in the first phase of the competition until the process was complete, in order to promote transparency (in

line with Section 2.16 of the Code). However, it was found that the papers relating to the administration of **Phase 1** of the process had, in fact, remained in the Department's possession up to the point when these were requested for audit purposes. Whilst individual candidate papers were passed to OCPANI for storage, the papers relating to the administration of Phase 1 actually contained references to individual candidates involved.

- ❖ in **Phase 2**, the panel Chair completed a Summary Rating Sheet for each candidate. This was endorsed by all panel members, bringing together comments and ratings by criterion, with an overall indication as to whether a candidate was deemed suitable for appointment. However, in contrast to Phase 1, the format of this document made no provision for probity and conflict of interest outcomes and agreed action to be summarised and, as such, did not promote consistency throughout the process, either in terms of record keeping, or in the completeness of the audit trail as required under Section 4.2 of the Code
- ❖ the methods for assessing and concluding on candidate responses used by the selection panels during each phase of criteria-based interviews were considered, and while the approaches used could reasonably have been expected to demonstrate good practice, in terms of producing a consistent level of empirical evidence over the duration of a single (but extended) appointments process (referred to in Section 3.35 of the Code), this was found not to have been the case (*raised as an audit issue in a previous Departmental competition*)
- ❖ Annex I to the Code requires that the IA's role in an appointments process is formally appraised by the panel Chair immediately after its close, with submission of a pro-forma feedback form to OCPANI within two weeks. However, in respect of **Phase 2**, there is no evidence to suggest that this took place, neither was there any follow-up by OCPANI in order to pass this appraisal on to the IA for comment
- ❖ Section 3.42 of the Code notes that *"in keeping with the principle of openness and transparency, all appointments to public bodies must be publicised in an appropriate way, for example, through a press release"* and provides a list of the elements which should be included. As OFMDFM has indicated that technically the process has not yet concluded which would activate this Code requirement, a Further Action Issue has been raised to ensure that this is observed
- ❖ Section 3.35 of the Code requires the Department to *"provide the IA with a copy of the Minister's final decision on who is appointed (for example, through the issue of the Press Release)"*. As OFMDFM has indicated that technically the process has not yet concluded

which would activate this Code requirement, a Further Action Issue has been raised to ensure that this is observed

- ❖ Section 3.43 of the Code notes that OCPANI “*must be provided with a copy of the publication of the appointment (generally, the Press Release)*”. As OFMDFM has indicated that technically the process has not yet concluded which would activate this Code requirement, a Further Action Issue has been raised to ensure that this is observed.

Overall Conclusion

- 3.1 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 **Medium**, as a result of the nature of the audit issues identified.

Main Stages of the Appointments Process - PHASE 1

(1) Planning and Preparation

- 4.1 Phase 1 of this public appointments process was administered by the Victims' Unit within OFMDFM. There were three members on the selection panel – a Grade 3 in OFMDFM (Chair); a Chief Inspector from Department of Health Social Services and Public Safety and an Independent Assessor (IA), acting on behalf of the Commissioner for Public Appointments. As this was a regulated appointment, the IA would expect to be involved from the earliest stage of the process, which Departmental files indicate was the case.
- 4.2 At the outset of the appointments process in December 2006, the Secretary of State, when presented with the available options in the initial Ministerial Submission, had asked to have the candidates presented as ‘Suitable/Unsuitable’ (as opposed to ‘Merit Order’). Consequently, the Ministerial Submission presented at the end of Phase 1 which provided an appointable list of candidates would not include individual candidate scores. This Submission also set out the selection criteria which would be applied to the process, for approval.
- 4.3 The application form developed for this appointments process was acceptable either handwritten or in electronic format and the stipulation that no additional pages should be included was observed by applicants. A fixed date and time after which applications would not be accepted was also clearly indicated – there was no indication that any of the applicants had failed to observe this deadline.
- 4.4 The Information Pack issued to all applicants included a copy of the press advertisement for the post; background to the appointment; an application form, Political Activity and Equal Opportunities Monitoring

Forms, with guidance notes on their completion; a job description and person specification and a copy of the Victims and Survivors (Northern Ireland) Order 2006. It also included relevant guidance from OCPANI – ‘Probity and Conflicts of Interest – A Guide for Candidates’ and the OCPANI Complaints Leaflet for applicants’ information, in accordance with the Code (also referred to within the Guidance Notes).

- 4.5 It was also noted that details of this competition were included in the Central Appointments Unit’s (CAU) relevant six-monthly list of forthcoming vacancies, as required by the Code if vacancies are publicly advertised.
- 4.6 While the Code does not currently set down any requirements with regard to the handling of electronically submitted application documentation, Section 1.8 does refer to complementary guidance available on “*adopting best practice in appointment procedures – CAU’s Best Practice Guide*”. The CAU Guide at Paragraph 4.4.2 notes that “some applicants may also find it convenient to return their completed application form online...when making application forms available online, consider specifying if names on e-mails or scanned signatures are acceptable or whether you expect to receive a hard copy of the application form as well. Alternatively, consider obtaining a manuscript signature when candidates attend for interview”. Departmental papers indicate that the policy in place was that “electronic applications must be signed by the applicant if and when he or she is called to interview”.

Issues Arising

- 4.7 Section 1.8 of the Code makes reference to CAU’s Best Practice Guide as complementary guidance. However, it was notable that for **Phase 1** of this public appointments process, OFMDFM did not apply the best practice contained in its published Guide, insofar as:

(a) the Guide includes wording for a final ‘Declaration’ section on the application form which, inter alia, raises the issue (1) of an applicant understanding their responsibilities in relation to statutory disqualifications; and (2) that certain elements of the information provided may be disclosed in the public domain for various reasons (a Code requirement at Section 3.27). However, it was noted that while the wording of the Declaration used referred to statutory disqualifications, there was no further explanation within the Guidance Notes to clarify what these were and applicants’ responsibilities in relation to them. In addition, there was no reference made to the range of circumstances when disclosure of applicant information might apply - **ISSUE.**

(b) the Guide provides a specimen Political Activity Form for use and makes reference to its completion (a Code requirement at Section 3.29, where “...the format of the question...must not be amended in any

way”). However, it was noted that the form used for Phase 1 of this appointments process was, firstly, not exactly as prescribed, for example, omitting the reference to the relevant legislation in force. Secondly, the form should (and did) indicate that candidates with relevant experience through political activity could make reference to this in providing information in support of their application. However, it should also have included the wording that “*you should not however include in the application form the name of the political party with which you have gained this experience*” – as this was not included, it was not observed as required by all candidates. Thirdly, applicants’ attention was not drawn to the fact that details provided would be published with the appointment announcement, and fourthly, there was no provision made for this form to be signed and dated by applicants to endorse the information provided (then separated from the application form on submission, in line with the Code) – **ISSUE.**

(c) in relation to the provision of Equal Opportunities monitoring information it was noted that there was no provision for applicants to sign the monitoring form, thereby endorsing the details provided (which was then separated from the remainder of the application form in line with the Code) – **ISSUE.**

4.8 Section 3.29 of the Code also requires that “*Departments must make a determined effort to ensure that applicants complete the question [on the Political Activity Form] and any refusal to do so must be recorded*”. It was noted from Departmental papers that 4 applicants had initially failed to complete this form - however, there was no evidence found to suggest that ‘*a determined effort*’ had been made to rectify this or to note a refusal prior to the shortlisting process for interview taking place. While only 1 of these 4 applicants reached the interview stage, this individual was subsequently included on the appointable list, drawn up at the end of Phase 1, within a Ministerial Submission. As a result, the Department also failed to comply with Section 3.36 of the Code, as there was no indication that “*before the Ministerial Submission, departments which have not already done so, must ensure.... that all the monitoring information, including that on political activity, has been provided*” (this non-compliance remained at the end of Phase 2 of the process, when a further Ministerial Submission was prepared) – **ISSUE.**

4.9 Section 3.23 of the Code requires a copy of the advertisement produced in relation to a public appointments process to be sent to OCPANI. However, there was no evidence to suggest that the Department had forwarded a copy of this to OCPANI or that it was followed up for receipt – **ISSUE.**

(2) Selection

4.10 The selection process followed on from the submission of written application forms. When received, these were checked for

completeness by two Victims' Unit staff and any omissions noted. This was followed by an initial eligibility sift of the now anonymised eligibility criteria sections of each application (carried out by two other Victims' Unit staff, checking for general eligibility) and preceded a formal eligibility sift carried out by the selection panel.

- 4.11 During this formal sift, the information provided in anonymised eligibility criteria sections from each of the 46 applications was examined and considered against the criteria set down in the person specification, in order to determine whether each criterion had been 'met' or 'not met'. The outcomes from the eligibility sift were formally recorded and signed off by the panel members to produce a shortlist of 14 candidates deemed eligible for formal interview. One candidate withdrew prior to the interviews for personal reasons, therefore 13 candidates attended for interview.
- 4.12 At interview, each panel member was required to complete a Rating/Evidence Sheet for each candidate covering the set criteria. Each criterion was marked out of 10, with a minimum mark of 5 to be achieved in each (the Panel agreed to follow this approach, having sought advice from OCPANI, reflecting an anticipated update of the OCPANI Code of Practice, which was to specify the use of scoring systems for interviews). One of the criteria was partially assessed through a 5-minute presentation on the topic '*What do you see as the main challenges facing a Commissioner for Victims and Survivors in the first 6 months of taking up the post?*', which was notified to candidates in advance in their 'Invitation to Interview' letter. The assessment sheets also included a section for recording the outcomes of questioning on probity and conflicts of interest.
- 4.13 The panel Chair completed a Summary Rating Sheet for each candidate which all panel members endorsed, bringing together the comments and scores by criterion and indicating overall whether or not a candidate had met the criteria. As noted in Paragraph 4.2, it had been agreed that a list of candidates deemed 'Suitable' for appointment at the end of the process would be provided in the Ministerial Submission, therefore individual candidate scores would not be included.
- 4.14 It was also noted from the interview documentation that, in accordance with the Code, all panel members had fully completed each of the sections. This was also the case in relation to the area of probity and conflicts of interest, with 7 of the 13 candidates having declared potential issues in their application, while at interview, issues arose in respect of one further candidate. The panel documentation provided clear evidence of the outcomes of exploratory questioning and, importantly at this stage of the process, the corresponding action which candidates confirmed would follow to manage the issues raised, should they subsequently be offered the appointment. These details were also

contained within the Summary Sheets prepared by the panel Chair and endorsed by all panel members.

- 4.15 While not an existing Code requirement, formal recording by all panel members as to whether or not any candidates in the appointments process were known to them (and in what capacity) would have represented a good practice approach utilised by other Departments, in the event of a conflict of interest issue being raised at any stage.
- 4.16 OFMDFM's policy on taking up references following the interview stage is dependant on the circumstances relating to an individual competition. Although details of two referees were required as part of the application process, it would appear that a panel decision was made not to take these up, although this had not been formally recorded in any of the Departmental papers examined. Also, while some applicants indicated that they held other public appointments, there was no evidence to suggest that Performance Assessments relating to these were followed up. The Code currently places no requirement on Departments to carry out and document follow-up on the Performance Assessments with regard to new appointments.

Issues Arising

- 4.17 It was noted from the application forms and initial eligibility sift documentation examined that omissions in some of the application forms received had been identified, but there was no evidence of follow-up with applicants – these included the Probity section of an application not being included by one applicant (not shortlisted) and no referee details provided in the case of two others, one of whom was subsequently shortlisted for interview – **ISSUE**.
- 4.18 The Code at Annex H acknowledges that there may be occasions when an IA knows one or more candidates in an appointments process, noting that: “...*this is not a problem, as long as the IA declares the relationship and it is recorded. However, if there is likely to be a conflict of interest, the Assessor should declare it and may have to step down*”. As the eligibility sift had been completed using anonymised criteria sections, the IA declared a link with one candidate which became apparent at interview. While there was no associated conflict of interest, the IA asked for this declaration to be formally recorded. However, there was no evidence to suggest that this had been done - **ISSUE**.

(3) Post-Selection

- 4.19 This stage of the process related to the preparation of the Ministerial Submission for consideration and approval (to include an appointment process Validation Certificate signed-off by the IA), along with the

provision of feedback to the IA on their role in the process as a whole and feedback to candidates in Phase 1 where this had been requested.

- 4.20 It had been anticipated at the outset of the process that a First Minister and deputy First Minister (FM/dFM) would be in office by the time of appointment and, accordingly, it would be their joint decision. The Secretary of State therefore, in response to the initial Ministerial Submission received from the Department, had indicated that the final Ministerial Submission containing an alphabetical appointable list of candidates should be addressed to the FM/dFM.
- 4.21 A Validation Certificate was completed and endorsed by the IA prior to submission to the Department for inclusion in the Ministerial Submission, to certify approval with the process to date. This included approval of the ‘candidate assessment summary’ contained within the submission.
- 4.22 A feedback form on the IA’s role in the competition was also completed by the panel Chair and submitted to OCPANI in line with the Code.
- 4.23 Requests for feedback received from candidates not on the appointable list were held over until after Phase 2 in the extended competition, when the appointments process was concluded.

Issues Arising

- 4.24 There was no evidence found to suggest that a copy of the Validation Certificate, once completed by the IA was forwarded by the Department to OCPANI, as required under Section 3.36 of the Code – **ISSUE**.

Proceedings between Phases 1 and 2 of the Appointments Process

- 5.1 A series of discussions took place within the Department, with Ministers and with OCPANI during the period of months between the end of the interview process of Phase 1 in late March 2007 and the commencement of Phase 2, the extended public appointment process in mid-October 2007. These led to a series of outcomes, including:
- (1) provision of a list of 6 appointable candidates in a Ministerial Submission to the FM/dFM in May 2007
 - (2) a request from the FM/dFM in July 2007 for consideration of the commencement of a fresh public appointment competition “firmly grounded in the new dispensation and which would enjoy the confidence of the entire community” and seeking legal opinion on this possible course of action
 - (3) the generation and consideration of a range of options following receipt of the legal opinion, with a decision note issued in October

2007 by the FM/dFM to confirm that the appointments process would be reopened; the post would be readvertised with the same selection criteria in place and the original list of appointable candidates would be carried forward into the extended process (if agreeable to the individuals concerned). There was also to be the introduction of a presentation element by all appointable candidates at the end of the extended process, involving the FM/dFM

- (4) a joint Ministerial Statement issued by FM/dFM on 8 October 2007 setting out the elements within the decision note, announcing an extension to the appointments process, in order that “the post would be more firmly grounded in the new political environment and the person who was appointed would have broad support”
- (5) a proposal from the Commissioner for Public Appointments in October 2007 regarding the operation of Phase 2 in the extended competition, in terms of appointing a new selection panel (in the event of candidates reapplying to the competition); papers from Phase 1 being stored by OCPANI on behalf of the Victims’ Unit until the extended process was completed and consideration of involving different staff to oversee the administrative elements of Phase 2
- (6) legal advice in October 2007 which lent support to the Commissioner for Public Appointments’ proposal as a means to secure approval of OCPANI to the extended process and to address the handling of any reapplying candidates, in contributing to a transparent process. The elements of the proposal in (5) above were endorsed by the FM/dFM at a meeting with the Commissioner for Public Appointments following the receipt of legal advice
- (7) all candidates interviewed in Phase 1 being contacted by Victims’ Unit staff with regard to their current status in the competition, with the 6 candidates on the appointable list being invited to indicate their agreement in writing to remaining on this list and being involved in the closing stages of Phase 2 (presentation to the FM/dFM). This resulted in 1 individual withdrawing and the remaining 5 candidates indicating their agreement to remain on the appointable list.

5.2 At a meeting with the FM/dFM during September 2007, the Commissioner for Public Appointments had agreed to undertake an audit of this public appointments process as soon as it had concluded and the appointee was chosen.

Main Stages of the Appointments Process - PHASE 2

(1) Planning and Preparation

- 6.1 In preparation for Phase 2 of the appointments process in mid-October 2007, a new selection panel was appointed – the Chair was a Grade 3 from OFMDFM, with other members comprising a Deputy Secretary from DCAL and an IA representing the Commissioner for Public Appointments. The Victims' Unit also drew up a Ministerial Submission for the FM/dFM setting out the planned arrangements for Phase 2 and obtained approval for these. The role of the Panel was defined at its first meeting – to prepare a list of names in alphabetical order of those deemed suitable for appointment (including the names of those deemed suitable by the first selection panel and carried forward from Phase 1 of the competition). Advice to Ministers on the final stage of the selection process (the presentation to the FM/dFM) was to be dealt with by OFMDFM staff outside the Victims' Unit.
- 6.2 A draft Information Pack (closely mirroring the Phase 1 documentation) was circulated by the Victims' Unit to the relevant individuals for comment before approval, with its issue following the publication of the readvertisement in the media. The Information Pack included a covering letter; press advertisement; background to the appointment (readvertised); an application form, Political Activity and Equal Opportunities Monitoring Forms, with Guidance Notes on their completion; a job description and person specification; a copy of the Victims and Survivors (Northern Ireland) Order 2006 and a copy of the revised OCPANI guidance – 'Complaints and Conflicts of Interest: Information Guidance' (effective from April 2007). The Information Pack also included a copy of the Joint Statement issued by the FM/dFM on 8 October 2007 indicating their intention to extend the appointment process and readvertise the position.
- 6.3 The inclusion of additional wording in the advertisement for Phase 2 noted that *"other candidates who submitted applications in response to the original advertisement for this post can reapply"*. The application form noted that *"if you have previously applied for the post of Commissioner for Victims and Survivors you MUST complete this application form in full as any information which you may have provided in any previous application will not be taken into account. You must not refer in this application form to any previous application you have made for this post or to any interview you may have attended previously. Your application may be rejected if you do not comply with these instructions"*. The closing date for receipt of applications for Phase 2 was 5PM on 7 November 2007.
- 6.4 Applications were again accepted in handwritten or electronic format and no additional pages were to be included. There was no indication that any of the applicants had failed to observe the submission deadline. Also, it is recognised that the timing of this competition would

not have allowed for details of the readvertisement to be included in the CAU's six-monthly list of forthcoming vacancies, as required under the Code.

- 6.5 It was noted from Departmental papers relating to Phase 1 of the appointments process that “electronic applications must be signed by the applicant if and when he or she is called to interview”. In Phase 2, application forms received from two of the shortlisted candidates required a manuscript signature at interview, one of which had been submitted unsigned. However, there was no indication that follow-up had taken place with these interview candidates in line with the policy set out. As this is not a Code requirement, it not being raised formally in the Audit Issues Grid, however the Department might consider determining the means by which this policy could be better administered for future public appointment processes.
- 6.6 The selection criteria in place for Phase 1 were retained for Phase 2, while it was also agreed that the lead questions used would not be exactly the same as those used previously, but still meet the set criteria, in order to provide equality of opportunity for all candidates. The format of a 5-minute presentation at interview was agreed, with 20 minutes on the day of interview for candidates to prepare for this – the agreed title was: *“At the end of your first year as Commissioner for Victims and Survivors, what would you expect to have achieved and how would you measure success?”*

Issues Arising

- 6.7 During October 2007 following a proposal by the Commissioner for Public Appointments, the FM/dFM had agreed that OCPANI would provide OFMDFM with a means of securely storing the papers generated during Phase 1 of the competition until the process was complete, in order that a transparent process could be seen to be operating (in line with Section 2.16 of the Code). However, when the audit of Phase 1 commenced in January 2008, it was found that the papers relating to the administration of this part of the process had, in fact, remained in the Department's possession until requested for audit purposes – **ISSUE**.
- 6.8 Section 1.8 of the Code makes reference to CAU's Best Practice Guide as complementary guidance. However, it was again notable that for **Phase 2** of this public appointments process, OFMDM did not apply the best practice contained in its published Guide, insofar as:
- ❖ (a) the Guide's suggested wording for a final 'Declaration' section on the application form, inter alia, raises the issue of (1) an applicant understanding their responsibilities in relation to statutory disqualifications; and (2) the fact that certain elements of the information provided may be disclosed in the public domain for various reasons (a Code requirement at Section 3.27). It was again noted that

the wording of the Declaration used referred to statutory disqualifications but no further explanation was included in supporting documentation as to what these were and applicants' responsibilities in relation to them. There was also no reference made to the range of circumstances in which disclosure of applicant information might apply. It was further noted that the wording used included an outdated reference to guidance which had been revised by OCPANI since Phase 1 (and issued for applicants' use); and a reference to the need to raise any issues related to probity or conflict of interest during the term of a public appointment with the Secretary of State – as the appointment at the conclusion of Phase 2 was to be made by the First Minister and deputy First Minister, this reference should have been reworded accordingly – **ISSUE**.

- ❖ (b) the Guide provides a specimen Political Activity Form for use and makes reference to its completion (a Code requirement at Section 3.29, where “...*the format of the question....must not be amended in any way*”). As in Phase 1, it was again noted firstly that the form used for this competition was not exactly as prescribed, for example, omitting the reference to the relevant legislation in force. Secondly, while the form did indicate that candidates with relevant experience through political activity could make reference to this in their application, additional wording should have been included - “*you should not however include in the application form the name of the political party with which you have gained this experience*”. Thirdly, there was no provision made for this form to be signed and dated by applicants to endorse the information provided (then separated from the application form on submission, in line with the Code) – **ISSUE**.
- ❖ (c) in relation to the provision of Equal Opportunities monitoring information it was noted again that there was no provision for applicants to sign the monitoring form, thereby endorsing the details provided (then separated from the remainder of the application, in line with the Code requirement) – **ISSUE**.

6.9 Section 3.29 of the Code also sets down the requirement that “*Departments must make a determined effort to ensure that applicants complete the question [on the Political Activity Form] and any refusal to do so must be recorded*”. It was noted from papers held by the Department that one of the applicants had initially failed to complete this form - however, there was no evidence found to suggest that ‘a *determined effort*’ had been made to rectify this or to note a refusal, either before the shortlisting process or the interview of this candidate took place - **ISSUE**.

6.10 The fact that a presentation element formed part of the assessment of one of the essential criteria at interview during this competition has already been noted (see paragraphs 4.12 and 6.6). However, while the arrangements for this could reasonably have been expected to demonstrate good practice, in terms of a consistent approach across

each phase in this single (but extended) appointments process (referred to in Section 3.35 of the Code), this was not found to be the case, with Phase 1 candidates receiving notice of the presentation topic in their Invitation to Interview letter, while those in Phase 2 were notified 20 minutes in advance of their interview slot – **ISSUE**.

- 6.11 Section 3.23 of the Code requires a copy of the advertisement produced in relation to a public appointments process to be sent to OCPANI. However, there was no evidence to suggest that the Department had forwarded a copy of this readvertisement directly to OCPANI once this was published, or that it was followed up for receipt – **ISSUE**.

(2a) Selection

- 6.12 The selection process again followed on from the submission of application forms. When received, these were checked for completeness by one member of staff from the Victims' Unit staff and any omissions noted. The initial eligibility sift process used in Phase 1 which involved other staff in the Victims' Unit was set aside for Phase 2 to minimise involvement by the same staff.
- 6.13 A formal eligibility sift of the now anonymised eligibility criteria sections of each of the 42 applications was carried out by the selection panel at a formal meeting, first individually and then for agreement as a panel [of these applicants, 4 had applied for a second time]. Applications were examined against the criteria set down in the person specification as for Phase 1, in order to determine whether each criterion had been 'met' or 'not met'. The outcomes from the sift were formally recorded and signed off by the panel members, as required by the Code, to produce a shortlist of 15 candidates deemed eligible for interview [including 2 of the candidates who had applied for a second time]. All candidates were then notified by letter regarding the outcome of their application. One candidate withdrew prior to their interview, therefore 14 candidates attended for interview.
- 6.14 At interview, each panel member was required to complete a Rating/Evidence Sheet for each candidate covering the set criteria. In Phase 2, each criterion was rated on a four-point scale covering a range from 'little evidence', 'some evidence' and 'strong evidence' to 'very strong evidence'. It was agreed by the panel prior to the interviews that:
- (1) any candidate who was deemed to have provided 'little evidence' against any of the essential criteria at interview would not be recommended as suitable for appointment; and
 - (2) only candidates providing 'strong' or 'very strong evidence' at interview in at least five of the criteria and 'some evidence' in the remaining two criteria would be recommended as suitable for appointment.

These assessment sheets also included a section for recording the outcomes of questioning on probity and conflicts of interest at interview, which was addressed by the IA.

- 6.15 In relation to probity and potential conflict of interest issues, 3 of the 14 candidates declared these in their application form, while at interview, a potential issue arose in relation to one further candidate. The panel's Rating/Evidence Sheets noted that conflicts of interest were deemed not to be an issue in the case of two candidates, with a third candidate setting out the action they would follow to manage the issues which they had identified, if the appointment was offered to them. The fourth candidate's potential conflict of interest, while raised and noted by the panel at interview, was not concluded upon, either individually or collectively by the panel members, in terms of the candidate's agreed action to manage this, if offered the appointment – to do so would have represented a continuation of the good practice approach adopted during Phase 1. However, this is not being raised formally as an audit issue, as the candidate did not proceed beyond the interview stage, at which point the Department would have been required to ensure that a course of action was agreed with the candidate to manage the issue identified, prior to the Ministerial Submission being finalised.
- 6.16 As noted for Phase 1, while not an existing Code requirement, formal recording by all panel members as to whether or not any candidates in the appointments process were known to them (and in what capacity) would have represented a good practice approach utilised by other Departments, in the event of a conflict of interest issue being raised at any stage.
- 6.17 Details of referees were again sought in applications from Phase 2 candidates, but the undocumented panel decision from Phase 1 prevailed, and these were not followed up. Again, a number of candidates indicated that they held other public appointments, however there was no evidence to suggest that Performance Assessments relating to these were followed up. The Code currently places no requirement on Departments to carry out and document follow-up on Performance Assessments with regard to new appointments (although some Departments do so as a good practice measure).

Issues Arising

- 6.18 In Phase 2, the panel Chair completed a Summary Rating Sheet for each candidate, which all panel members endorsed - this brought together the comments and ratings by criterion, with an overall indication as to whether a candidate was deemed suitable for appointment. It was noted, however, (in contrast to Phase 1) that the format of this document made no provision for probity and conflict of interest outcomes and agreed action to be summarised and as such, did not promote consistency throughout the process, either in terms of

record keeping, or in the completeness of the audit trail as required by Section 4.2 of the Code – **ISSUE**.

- 6.19 The methods for assessing and concluding on candidate responses used by the selection panels during each phase of criteria-based interviews are set out in paragraphs 4.12 and 6.14. While the approaches used could reasonably have been expected to demonstrate good practice, in terms of producing a consistent level of empirical evidence over the duration of a single (but extended) appointments process (referred to in Section 3.35 of the Code), this was found not to have been the case ***(this was raised as an audit issue in a previous Departmental competition) - ISSUE***.

(2b) Selection – Final Element

- 6.20 OFMDFM staff outside the Victims' Unit liaised directly with the FM/dFM in agreeing the arrangements for the final stage of the selection process, a formal presentation by all appointable candidates identified from each of the phases of the competition.
- 6.21 Following the interview process and provision of a Ministerial Submission to the FM/dFM (see paragraph 6.25) which detailed the interview outcomes in respect of all 8 appointable candidates, these individuals were contacted in writing by the Private Office and advised of the format for the final presentation element in the selection process. The topic was: *'The Victims' Commissioner will have to show leadership in establishing a new office and setting up a Victims and Survivors Forum. What leadership qualities would you bring to this work, how would you approach it and how would you engage with key stakeholder groups?'*
- 6.22 It was agreed that there would be no discussion with candidates during or following the 10-minute presentations and only one question would be asked: *'What do see as being the most immediate challenge of the post?'* The FM/dFM; both OFMDFM Junior Ministers and the OFMDFM Accounting Officer would be in attendance. The presentations would not be scored and their content and delivery considered by the FM/dFm, along with the candidate information provided supplied by the selection panel, when making their decision. The FM/dFM also indicated that it would not be necessary to have a representative from OCPANI present at this final element and any announcement on the appointment of a Commissioner would be made to the Northern Ireland Assembly in the first instance.
- 6.23 Prior to the final presentation, one of the candidates deemed appointable withdrew due to personal circumstances, therefore the 7 candidates remaining made their presentations to the FM/dFM during December 2007.

(3) Post-Selection

- 6.24 This stage of the process related to the preparation of the Ministerial Submission for consideration and approval (to include a Validation Certificate on the appointment process, signed-off by the IA); provision of feedback to the IA on their role in the process as a whole; feedback to candidates, where requested; and the publicising of the appointment in accordance with Code requirements.
- 6.25 Following the completion of the interview stage for Phase 2, a Ministerial Submission was prepared for the FM/dFM detailing the appointments process to date. Agreement had already been reached that the candidate list to be provided would exclude individual candidate ratings. Information on the 8 candidates deemed suitable for appointment as a result of the two Phases (5 from Phase 1 and 3 from Phase 2), therefore took the form of an alphabetical ‘candidate assessment summary’, detailing interview performance against each of the essential criteria for the post. The submission also included a Validation Certificate signed off by the IA on the processes of Phase 2 to date, as required by the Code (including approval of this summary). OFMDFM then began to progress the final element of the selection process (as set out in paragraphs 6.21 and 6.22), while candidates unsuccessful at interview were informed in writing.
- 6.26 Oral and written feedback had been provided during Phase 2 to some candidates who had not been shortlisted. The panel had agreed that there should be no interview feedback until the appointments process had been concluded in full with an appointment – requests for feedback were handled accordingly.

Proceedings between the end of the Selection Process and Appointment announcement

- 6.27 Following the presentations and when the FM/dFM considered all the information available on the appointable candidates, they indicated to OFMDFM that they would like to appoint 4 Commissioners to work for victims and survivors. OFMDFM, in conjunction with the Private Office, was tasked with making contact with the appointable candidates selected by the FM/dFM to ascertain if they would be willing to accept appointment, in principle, on the basis of a four-post Commission to be created (in due course), following a period of public consultation, through an amendment to The Victims and Survivors (Northern Ireland) Order 2006. As alluded to in a joint Ministerial Statement made to the Assembly on 28 January 2008 (see paragraph 6.29), the FM/dFM consulted with the Commissioner for Public Appointments on this (at a meeting held on 11 January), who indicated her contentment with the approach being proposed.
- 6.28 Papers made available for audit scrutiny indicate that 5 candidates were approached in the process of gaining acceptance of the

appointment terms by 4 'Commissioners Designate', first in principle, as papers indicated that appointments could not be offered in advance of Assembly approval to the course of action envisaged. Letters were also issued to inform the 2 remaining candidates that they had been unsuccessful and that a Ministerial Statement to the Assembly would be made on this appointment on 28 January 2008. During the final stages of the audit, one of these two candidates informed the Commissioner for Public Appointments that, in advance of receiving this formal written notification, they were informed verbally by an individual outside the Northern Ireland Civil Service who knew that they had not been successful.

- 6.29 In this joint Ministerial Statement to the Assembly, the First Minister reiterated the basis on which the appointments process had been extended, leading to a combined list of appointable candidates and presentations to the FM/dFM. The First Minister went on to say that *“the impact of the quality and delivery of those presentation, coupled with the candidates’ drive and enthusiasm to make a real difference, had a profound effect on our thinking and our approach to this highly sensitive and complex issue. Following the presentations, we came to the conclusion that we should take advantage of all the skills and experience that we could possibly bring together to chart the future for all those who have been neglected for so long. Our firm belief is that a team of four commissioners working together – in essence, a victims’ commission – is the best way forward.....Accordingly, I am pleased to announce that, in response to an invitation, four of the candidates on the list of those considered suitable for the post of commissioner have indicated their willingness to act in a joint capacity as commissioners designate in a new victims’ and survivors’ commission...We anticipate that the commission will have the same functions as the post of Victims’ Commissioner described in the Victims and Survivors (Northern Ireland) Order 2006. It is our intention to make formal appointments in due course, but we must first introduce the necessary legislation to create the victims’ and survivors’ commission that I have described today. A Bill to provide for the establishment of the commission will be introduced as soon as possible. Subject, of course, to the decision of the Assembly, we will wish to proceed with the formal appointments as soon as possible thereafter”*.
- 6.30 In response to questions following the Ministerial Statement, the deputy First Minister indicated that *“After the presentations....we deliberated....at that stage we decided that the appointment of a number of commissioners was the sensible way to proceed. We took legal advice on the matter, and that confirmed our view that we were within our rights to do so. **We also, in the course of our deliberations, consulted Felicity Huston at the Office of the Commissioner for Public Appointments, and she declared herself content with our approach**”* and *“As far as openness, transparency and the principle of merit are concerned, **it is clear to me that the whole appointments process, including the initial stage that was***

conducted under direct rule, was overseen and certified by the Commissioner for Public Appointments, whom the First Minister and I met on a number of occasions. We are very satisfied with the process and its outcome.

Issues Arising

- 6.31 While a Validation Certificate was completed and endorsed by the IA, certifying approval with the process up to the Ministerial Submission and included within that document, there was no evidence found to suggest that a copy had been forwarded by the Department to OCPANI, as required under Section 3.36 of the Code - **ISSUE.**
- 6.32 Annex I to the Code sets out the requirement for the IA's role in an appointments process to be appraised by the panel Chair. This should take place through the completion of a pro-forma feedback form immediately after the competition's close, for submission to OCPANI within two weeks. However, there is no evidence to suggest that this took place, neither was there any follow-up by OCPANI in order to forward this appraisal on to the IA for comment – **ISSUE.**
- 6.33 Section 3.43 of the Code sets out the requirement that OCPANI "*must be provided with a copy of the publication of the appointment (generally, the Press Release)*". There is no evidence that the Department provided OCPANI with this – **ISSUE.**

APPENDIX 1

Previous audit recommendations considered as part of 2006-07 competition audit

- ❖ Was consistency in handling late applications apparent?

PHASE 1: No late applications received

PHASE 2: No late application received

- ❖ Were standardised shortlisting and interview practices/procedures apparent?

PHASE 1: YES

PHASE 2: YES

- ❖ Were conflict of interest and probity issues tested at interview?

PHASE 1: YES – thoroughly tested, based on interview documentation examined on OFMDFM files

PHASE 2: YES – although no overall conclusion reached on one candidate

- ❖ Was there individual scoring and narrative assessment by each Panel member to substantiate feedback prior to a consensus being reached, summarised and signed off by each Panel member and were all decisions fully documented?

PHASE 1: YES

PHASE 2: YES and NO – narrative assessment was used, but the 'scoring' mechanism was more qualitative than quantitative and different from the first phase of the same process

- ❖ Did the Panel Chair co-ordinate consensus decision-making at shortlisting and interview?

PHASE 1: YES

PHASE 2: YES

- ❖ Were all relevant details included in the Press Release?

PHASE 1: N/A for Phase 1

PHASE 2: NO – a joint Ministerial Statement was made to the Assembly in lieu of a Press Release, but this did not include all the elements required as set out in the Code

Other general departmental audit recommendations arising which are pertinent to this competition

❖ Was there early IA involvement in the process?

PHASE 1: YES

PHASE 2: YES

❖ Was a detailed Information Pack made available?

PHASE 1: YES

PHASE 2: YES

❖ Was there a late applications policy in place?

PHASE 1: YES

PHASE 2: YES

❖ Was a specific closing date and time for applications adhered to?

PHASE 1: YES

PHASE 2: YES

❖ Was a pro-forma for sifting/shortlisting/interviewing used?

PHASE 1: YES

PHASE 2: YES

❖ Was the IA notified of the outcome?

PHASE 1: NO – no evidence that this took place, eg through the issue of a copy of the joint Ministerial Statement which had been made

PHASE 2: NO – no evidence that this took place, eg through the issue of a copy of the joint Ministerial Statement which had been made.