

Department for Regional Development
Appointment of 2 Non-Executive Directors to NI Water
(Monitored Appointment)

Introduction

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

Overall Conclusion

- 2.1 Overall, the quality of the appointments process associated with this competition in terms of compliance with the Code (on a scale of High-Medium-Low) has been assessed as **Low** as a result of the nature of the audit issues identified.

Executive Summary

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

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

- 3.3 The main issues identified in the report are:
 - ❖ The person specification contained details of twelve criteria deemed **essential** for the posts. Effectively however, candidates were only required to meet seven of the twelve listed criteria. Consequently some were clearly not essential.

- ❖ Application forms were unnecessarily long and contained a total of 21 pages.
- ❖ Following shortlisting, only 7 candidates were deemed suitable for interview from a pool of 41.
- ❖ The methodology used to shortlist, resulted in candidates being assessed against various different, but apparently essential, criteria at interview.
- ❖ One candidate, who was ultimately appointed, was the only person assessed against a particular criterion. How therefore could this one criterion have been 'essential' if none of the other candidates were assessed against it?
- ❖ A probity issue arose at interview in relation to one candidate. There is *no clear evidence or record* that this issue was fully explored to identify whether the candidate met the standards required by the principle of probity or what conclusion the Department reached.
- ❖ The Minister was not subsequently advised of the probity issue in the submission and this left him fully exposed to embarrassment had he exercised his right to appoint this particular candidate.

3.4 I would like to thank the staff from the Northern Ireland Water Shareholder Unit for their assistance and co-operation during this particular audit. The manner in which the necessary paperwork was presented was second to none with all documentation fully indexed in chronological order.

Main Stages of the Appointments Process

Stage 1 - Planning

Initial Ministerial Involvement

- 4.1 The Department involved the Minister from the outset of the process. The initial Ministerial submission provided the background to the competition and sought approval for the process and the use of executive search consultants to ensure a high calibre pool of candidates.

Nature and Timescale for the Administrative Process

- 4.2 During the planning stage the Department drew up a firm timetable for the process and requested the use of an OA for the competition. They also applied for, and were granted, the use of the OCPA NI Monitored Kitemark. It was encouraging to note that the Department clearly displayed the Monitored Kitemark on the public advertisement and application form.

Role and Person Specifications

- 4.3 Following initial Ministerial approval of the process to be used, the Department proceeded to consider the appointment criteria and began to draft appropriate documentation.
- 4.4 It was evident however, that although the Department had been developing the role and person specifications and associated documentation, the Minister had not, at that time, agreed the selection criteria for the posts. Code reference 2.3 is clear that “*departments must agree appointment criteria and the process to be followed with Ministers at the outset, to avoid disruption at a later stage*”.
- 4.5 Final Ministerial agreement to the appointment criteria was not actually given until less than 24 hours before the deadline for the advertisement. Had major changes been required it is doubtful whether the Department would have had time to make the relevant changes to the documentation before the deadline and the entire appointment process may well have been delayed.

Priority Rating 2 – DRD must ensure Ministerial agreement to selection criteria at the outset of each appointment process.

- 4.6 Code reference 3.13 outlines that role and person specifications must be produced for each appointment. Departments must ensure however, that they do not contain unnecessary requirements.
- 4.7 In this competition the person specification contained **twelve essential criteria**. By definition, these were therefore **indispensable** and **necessary** requirements of the post. However, candidates were only required to meet five initially and then display competence in just two from the remaining seven. This meant that some of the twelve listed

criteria were clearly not “essential” for this post. The person specification was flawed as candidates were effectively offered a choice of essential criteria which would have serious implications later in the process.

Priority Rating 1 – DRD must ensure that person specifications do not contain unnecessary requirements for posts.

The Role of the OCPA NI Assessor

- 4.8 Code reference 3.32 (c) and (d) make it clear that appointments will not be publicised in any way until the OA has approved the final version of the role description, person specification and information pack to be provided to applicants.
- 4.9 Whilst the Department engaged with the OA regarding this documentation, the final version was not sent to her for approval until after the advert had been issued to the Executive Information Service for publication. If the OA had concerns about the final version of the role description, person specification or information packs, there would have been little time available for the Department to make changes or withdraw the advertisement before publication. Fortunately on this occasion the OA approved the documentation in the limited time available before the advert was publicised.

The Department is reminded to allow sufficient time for the OA to review and approve the final version of the role description, person specification and information packs before adverts are issued for publication.

Stage 2 – Preparation

Publicising Vacancies

- 5.1 The posts were advertised widely. These were high profile posts attracting considerable remuneration and the advertisements were proportionate to the roles. All carried the OCPA NI Monitored Kitemark.
- 5.2 Code reference 2.7 requires Departments to ensure that the appointments process promotes equality of opportunity. It was noted that a decision to publicise the vacancies in the Irish Language newspaper La Nua, was only taken after the advertisement appeared in the Belfast Telegraph, News Letter, and the Irish News. Subsequently the advert appeared in La Nua, one week after it had appeared in the other three papers. Readers of La Nua had less time to apply for the posts than other candidates.

Priority Rating 3- DRD must ensure that all public advertisements are publicised at the same time to provide all potential candidates with equality of opportunity when applying.

Other Sources of Candidates

- 5.3 The Department made use of Executive Search Consultants – PriceWaterhouse Coopers (PWC) - to identify potential candidates for the posts. The documentation supplied to candidates by PWC was the same as that supplied by the Department. Any potential candidates identified by PWC were treated in the same manner as all the other candidates.

Information Packs

- 5.4 The information packs were comprehensive and contained the key information outlined in the Code. It is commendable that they contained Guidance Notes to help candidates when completing the application form.
- 5.5 It was noted that the Role and Person Specification document contained erroneous information in the “Annual Assessment” section which stated “*Further appointments, after the completion of a second term, will only be considered in exceptional circumstances and would normally be subject to open competition*”. Code reference 3.16 states that “*Appointments are restricted to two terms*”. A third term of appointment following an open competition is not permitted.

Priority Rating 1 – DRD must ensure that erroneous information on third terms of appointment is removed from future documentation for all public appointment competitions.

Application Forms

- 5.6 Code reference 3.27 allows Departments to design their own application forms. They should be simple and straightforward and designed in such a way that candidates can easily describe their skills and experience against the criteria.
- 5.7 In this competition the application form was neither simple nor straightforward. As a result of twelve essential criteria and one desirable criterion the application form contained a total of **21 pages**. Whilst it was clear that candidates were required to answer all of the essential criteria questions listed from 1-5, it was not clear if candidates were required to complete all, some or only two of the other essential criteria listed from 6-12. The guidance notes failed to provide any guidance on this matter either.
- 5.8 The application form was very lengthy and there is evidence to confirm that potential candidates did not apply due to the time that would have been required to complete it.

Priority Rating 1 – DRD must ensure that application forms are simple and straightforward and ask only what is required.

- 5.9 It was noted that the “Declaration” section of the application form contained the wording “*I have read the statutory disqualifications relating to this appointment and I am satisfied that my candidacy is legitimate*”. This implied that there was legislation disqualifying certain people from being appointed to NIW.
- 5.10 Code reference 3.26 requires Departments to include full details of the public body in the application pack. This includes any statutory disqualifications that apply. The Guidance Notes contained reference to certain pieces of legislation under which MPs, MEPs and MLAs cease to hold their elected office if they take up appointment to a public body listed in that legislation. These particular pieces of legislation do not however disqualify anyone from appointment to NIW. It is not clear therefore what statutory disqualifications are being referred to in the “Declaration” section.

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

Closing Date for Applications

- 5.11 Application forms were to be returned in hard copy by 5.00pm on Tuesday 20 May 2008. The Department accepted signed hard copies of application forms after the stated closing time and date for applications, provided that electronic versions had been received in time.

5.12 It was noted that there was no reference to the Department's policy for handling electronic applications in the information pack, guidance notes or Departmental procedures. It would be good practice for the Department to ensure that documentation provides information on the handling of electronic applications.

It is recommended that the Department has a written policy on the handling of electronic applications.

Stage 3 – Selection

Selection Panels

- 6.1 The selection panel consisted of four members and included an official from the Department (Paul Priestly), a representative from NI Water (Chris Mellor) an expert member (Brenda McLaughlin) and the OA (Joan Smyth).

Selecting a shortlist

- 6.2 A preliminary sift was conducted by Departmental officials and the OA to determine those candidates who would progress to the formal shortlisting stage. However, the record of this sift was limited and there was nothing to indicate what scoring system had been used to assess applications. Decisions were recorded in relation to just 25 of the 40 candidates assessed. The remaining 15 candidates were judged to have clearly met the criteria however there was no documentary evidence available to support how this conclusion had been reached. Code reference 3.34 states that when selecting a shortlist of candidates, all decisions must be fully documented.

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

- 6.3 The preliminary sift identified 20 candidates deemed eligible to progress to the formal shortlisting stage conducted by the selection panel.
- 6.4 Selection panel members received anonymised applications in advance of the shortlisting meeting and marked candidates on a pro-forma using a marking frame with related descriptors, on a range of 0-6. It was noted that one panel member did not use the pro-forma provided by the Department but documented scores on a hand written sheet of paper. However, this was not signed or dated.

It would be good practice for all panel members to record decisions in the same format.

- 6.5 The selection panel agreed that candidates were required to receive a minimum mark of three, in each the first five essential criteria, and in at least two of the additional seven criteria.
- 6.6 Candidates were initially assessed against the first five essential criteria only and this resulted in 8 candidates meeting the required standards. These candidates were then assessed against the additional criteria and following this scoring process seven candidates were deemed eligible and invited for interview. The selection panel agreed that at interview, candidates would be assessed against the first five essential criteria plus their two highest scoring areas from the remaining essential criteria.

- 6.7 It transpired however that some candidates scored equally highly in more than two of the additional criteria. Sponsor branch officials then used a methodology based on individual panel member scores and the evidence contained in application forms to decide which of the two highest scoring additional criteria would be tested.

Interviews

- 6.8 Interviews were held on 26 & 27 June 2008. As the person specification effectively offered candidates a choice of essential criteria and in light of the methodology used at the shortlisting stage, all candidates were not assessed against the same criteria at interview. One candidate, who was ultimately appointed, was the only one to be assessed against a particular criterion. The Code states that Departments must adopt a clear policy on interviewing, to ensure a **consistent approach** within competitions (Section 3.35) and that the principles of equal opportunity must be inherent within the appointments process (Section 2.8).

Priority Rating 1 - DRD must ensure that all candidates are assessed against the same criteria at interview.

- 6.9 Panel members completed individual scoring sheets for each candidate with an agreed panel mark recorded by the Chair. There was space for panel members to provide justification for any differences between their own mark and the agreed panel mark but this was rarely used. It was also noted that on the Chair's marking sheet, there was space for the agreed panel mark only and no column was provided for him to record his individual mark.

It would be good practice to provide a column to enable Chairs to record their individual marks alongside the agreed panel mark.

- 6.10 In addition to the seven criteria assessed there was evidence that candidates had also been asked if they had any business interests that might be construed as conflicts of interest or if there were any other probity issues which might cause embarrassment if they were raised in public. Two candidates mentioned potential conflicts of interest through membership of another body and offered to resign from those positions if appointed.
- 6.11 It was evident that there was a probity issue relating to one candidate. However, the interview notes fail to demonstrate clearly how and to what extent the panel explored the issue with the candidate, what the responses were, and what conclusion the panel reached regarding suitability for appointment. The candidate achieved the pass mark and his name ultimately went forward to the Minister.

- 6.12 Section 2.3 of the Code states that “*departments must ensure that all candidates put to the Minister for approval meet the criteria and the standards required by the principle of probity*”. Section 2.11 requires Departments to fully explore and **record** any possible probity issues with candidates. This must be done by the panel at interview and the **discussions and decision must be fully documented**. This issue was also highlighted in the last Departmental audit.

Priority Rating 1 - DRD must ensure that all probity and conflict of interest issues are fully explored at interview and that all related discussions and panel decisions are clearly documented.

The Ministerial Submission

- 6.13 Following the completion of interviews three candidates were found to have met the standard for appointment. An internal email between Departmental officials indicates that the panel suggested that the Ministerial submission should refer to two candidates as “highly recommended”. It also stated that probity issues were raised in relation to the third candidate which required further consideration. However, there was no evidence that the Department came to, or recorded, any conclusion on whether the candidate met the standards required by the principle of probity.
- 6.14 The Minister was presented with an unranked list of the three candidates together with pen-pictures and a recommendation. Some rationale for the recommendation was also provided. The submission made no reference however, to the probity issue relating to one of the three candidates found suitable.
- 6.15 Annex C of the Code refers specifically to probity and conflicts of interest and makes it clear that having identified a probity issue or a conflict of interest, such information **must be included** in the submission to ensure that the Minister can make an informed decision on whether or not the candidate should be appointed. The Minister was not apparently advised of the probity issue in the submission and this left him exposed to major embarrassment had he exercised his right to appoint this candidate.

Priority Rating 1 - DRD must ensure that all probity and conflict of interest issues are included in Ministerial submissions to enable the Minister to make informed decisions on appointments.

- 6.16 Code reference 3.35 requires that the OA must see the final draft Ministerial submission prior to it being submitted to the Minister. There was no evidence that this occurred.

Priority Rating 2 - DRD must ensure that final draft Ministerial submissions on appointments are seen by the OA before being sent to the Minister for a decision.

- 6.17 Code reference 3.36 requires that the Validation Certificate completed by the OA must be included in the Ministerial Submission. On this occasion the validation certificate was not included in the submission.

Priority Rating 1 - DRD must ensure that Validation Certificates are included in Ministerial submissions.

Publicising Vacancies

- 6.18 Following the Ministerial decision, the Department contacted the successful candidates who confirmed their willingness to accept the appointment. Section 3.29 requires Departments to issue political activity forms (as set out in Annex F of the Code) to successful candidates for completion once appointments have been made. It was noted that the version of the political activity declaration form completed by both appointees was obsolete and did not conform to that set out in Annex F.

Priority Rating 3 - DRD must ensure that political activity forms conform to Annex F of the Code of Practice.

- 6.19 The Press Release issued on 8 July contained most of the information required by Section 3.42 of the Code. One requirement is that Press Releases include a list of any other Ministerial appointments held by appointees and the remuneration received. If none are held, this should be clearly stated. In this case, neither appointee held any other Ministerial appointments; however the Press Release did not state this.

Priority Rating 3 - DRD must ensure that Press Releases contain the information as required by the Code of Practice.

- 6.20 There was no conclusive evidence of how the OA was informed of the final outcome of the competition as required by Section 3.42 of the Code. This was also highlighted in the previous Departmental audit.

Priority Rating 3 - DRD must ensure that the OA is informed of the final outcome of the appointments process.

Feedback

- 6.21 The Department received a number of requests for feedback both at the shortlisting stage and following the final decision. It was noted that the Department did not provide feedback to candidates until the appointments had been made.

6.22 Consequently, candidates who sought feedback on the reasons why they had not been shortlisted for interview were not responded to immediately and had no opportunity to ask the Department to review its decision. This practice could easily lead to the perception that the process was neither open nor transparent and leaves the Department wide open to complaint.

It would be good practice to provide candidates with feedback upon request.

SUMMARY OF AUDIT RECOMMENDATIONS

1 DRD must ensure that person specifications do not contain unnecessary requirements for posts.

2 DRD must ensure that erroneous information on third terms of appointment is removed from future documentation for all public appointment competitions.

3 DRD must ensure that application forms are simple and straightforward and ask only what is required.

4 DRD must ensure that all candidates are assessed against the same criteria at interview.

5 DRD must ensure that all probity and conflict of interest issues are fully explored at interview and that all related discussions and panel decisions are clearly documented.

6 DRD must ensure that all probity and conflict of interest issues are included in Ministerial submissions to enable the Minister to make informed decisions on appointments.

7 DRD must ensure that Validation Certificates are included in Ministerial submissions.

8 DRD must ensure Ministerial agreement to selection criteria at the outset of each appointment process.

9 DRD must ensure that all shortlisting decisions are fully documented.

10 DRD must ensure that final draft Ministerial submissions on appointments are seen by the OA before being sent to the Minister for a decision.

11 DRD must ensure that all public advertisements are publicised at the same time to provide all potential candidates with equality of opportunity when applying.

12 DRD must ensure that Information Packs contain details of any statutory disqualifications that apply.

13 DRD must ensure that political activity forms conform to Annex F of the Code of Practice.

14 DRD must ensure that Press Releases contain the information as required by the Code of Practice.

15 DRD must ensure that the OA is informed of the final outcome of the appointments process.