



The Commissioner
for Public Appointments
Northern Ireland

“Guardian of the Public Appointment Process”

Audit Report 2019/2020

Appointment of a Chair and twelve members to the Probation Board for
Northern Ireland

The Department of Justice / Northern Ireland Office

May 2019

Introduction

1. A competition to appoint a Chair and members to the Probation Board for Northern Ireland was selected for audit as part of the 2018/19 audit programme of the Commissioner for Public Appointments for Northern Ireland (CPA NI). This competition was administered by the Department of Justice (DoJ) and the Northern Ireland Office (NIO); the final appointment decision was taken by the Secretary of State in line with the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018.
2. The audit was conducted under the Commissioner for Public Appointments (Northern Ireland) Order 1995 (as amended) and was designed to assess compliance with the 'Code of Practice for Ministerial Public Appointments in Northern Ireland' (the Public Appointments Code), version issued December 2016.
3. The Commissioner is required, by law, to prescribe and publish the Public Appointments Code to regulate the process by which public appointments are made. The Public Appointments Code sets out principles and practices which the Commissioner requires Government Departments to adopt.

Role of Commissioner

4. The role of the Commissioner is to regulate, monitor, report and advise on the way in which Ministers make appointments to the Boards of public bodies in Northern Ireland. The Commissioner's duty is to ensure that public appointments are made in ways that are open, transparent and merit-based.

Diversity in public appointments

5. The Commissioner is concerned about the low level of diversity that currently characterises many of our public Boards. Poor diversity undermines a Board's effectiveness. In particular very few women hold Chair positions and to a lesser extent they are under-represented at member level. People with disabilities are also under-represented and the age profile of membership of public Boards is too restricted. The Commissioner is committed to working to improve this situation.
6. Northern Ireland Government Departments have the responsibility of ensuring that the principles and practices contained in the Public Appointments Code are upheld throughout every public appointment recruitment competition. They are also tasked with improving the low levels of diversity on our public Boards.

Approach

7. This audit report is the result of an examination of the appointment process, from which breaches of the public appointments Code, instances of less than best practice and examples of good practice were identified.
 - For breaches of the Public Appointments Code and identified issues of 'less than best-practice', CPA NI has produced a recommendation which the Departments must address.

- Recommendations are summarised in the report and will be followed up by CPA NI in future competitions for evidence of implementation by the Departments.
- Where instances of good practice are highlighted, it is hoped by CPA NI that all Departments will study these for use in their own competitions.

Acknowledgements

8. The Commissioner would like to thank the officials from the Department of Justice and the Northern Ireland Office for their assistance and co-operation throughout this audit.

Making public appointments in the absence of an Executive in Northern Ireland

9. The absence of an Executive in Northern Ireland since January 2017 means that Northern Ireland Departments are without Executive Ministers to make new public appointments. On 01 November 2018 the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 came into operation. The Act enables Departments to exercise certain departmental functions in the absence of Northern Ireland Ministers to include the making of public appointments. However, a number of important appointments can only be made by a Minister and the legislation specifically enables the Secretary of State for Northern Ireland to make appointments to the Probation Board during the period while there is no Executive.
10. In the absence of Northern Ireland Executive Ministers the obligation to comply with the Public Appointments Code at all stages of an appointment process remains unaltered regardless of who is making the final appointment decision.

Summary

11. The audit of the public appointments competition for a Chair and independent members for the NI Probation Board exposed a number of serious flaws in the competition processes. The most significant of these was the prominent insertion of equality monitoring information on candidates' religion/community background and gender into the briefing documentation for the Secretary of State in the final stages of the appointment process. The advice from officials to the Secretary of State could be read that it was permissible to take this information into account. Moreover it could also be read that it was desirable to do so in order to achieve 'a balanced Board'. The inclusion of the monitoring information and the accompanying advice constitute fundamental breaches of the Public Appointments Code. The breaches have led to a situation whereby, on the basis of the documentation and the appointments outcome, a reasonable person could infer that religion/community background played a role in the Secretary of State's decision making. Furthermore, if that happened the evidence suggests this may possibly have been to the detriment of one or more candidates.
12. In addition to raising the spectre of religion/community background playing a part in the appointment of individuals to serve on our public boards - something that in Northern Ireland we have worked hard to ensure would not happen - the use of monitoring data in this way was a clear breach of the privacy undertaking given by the DoJ to each candidate when asking him/her to

provide such information. The Information Commissioner's Office has accordingly instigated an investigation into the use of personal data in the appointment round.

13. While it was the responsibility of the Secretary of State to ensure her decision making was lawful and compliant with the Public Appointments Code, there is no evidence to suggest that she sought information on candidates' religion or community background. Rather, the Secretary of State was presented with the information and wrongly advised on its use by officials seemingly with the aim of achieving a balanced board.
14. The audit report highlights a number of other weaknesses and breaches of the Public Appointments Code. These include a failure to carry out a skills audit for the new Board appointments in sufficient time to inform the selection criteria. An assessment of the skills and experience needed for the Board was not carried out until the appointment process had commenced and the candidate selection criteria had already been published. The published criteria were very different to the needs highlighted in the skills audit. The comprehensive mismatch between the published criteria and the skills audit indicates that inadequate attention was paid by officials to assessing the actual skills and experience needed on this important public board (paragraphs 60-66).
15. The candidate summaries describing how candidates had performed at interview (also using evidence presented in their application forms) were in some cases inconsistent and inaccurate. Weak candidate summaries can undermine the fairness and robustness of the final appointments decisions (paragraphs 100-114).
16. There was poor record keeping throughout the process. In particular officials did not advise the Secretary of State that she was required to give reasons for her appointment decision and no reasons were recorded (paragraphs 153-161). Poor record keeping undermines the transparency of our public appointment processes.
17. The DoJ managed the application and interview stages; at the completion of interviews the NIO also became involved. It was the role of the NIO to present the candidate information to the Secretary of State for final appointment decisions. The handover process for candidate information and other necessary briefing material from the DoJ to NIO officials was poorly executed: it was at this point that the monitoring information was added to the briefing to the Secretary of State (paragraphs 129 and 145) and important advice was omitted from the briefing (paragraphs 131-135). The mismanagement of the handover of the competition material by the DoJ to the NIO undermined the integrity of the process and led to the provision of wrong advice to the Secretary of State.
18. In summary, the inclusion of candidates' religion/community background (and gender) in the documentation provided to the Secretary of State, the mismatch between skills needed and skills sought, the overall poor record keeping, the inconsistency around the candidate interview evidence presented in the documentation and the lack of reasons provided by the Secretary of State for her appointments decisions, all add up to an appointments process that was seriously flawed.
19. There are a number of important learning points for the Departments involved in this appointment round. Whilst the public appointments system is not overly complex, it does require

those involved in administering it to have a good level of relevant knowledge and skills. The potential misuse of monitoring data for the purposes of achieving a balanced Board shows both a misunderstanding and a narrow interpretation of what is meant when we speak of achieving diversity on these Boards. Balanced Boards are achieved when there is widespread understanding of and respect for the work of our public bodies - aided by Departments giving their relationships with public Boards proper priority- and when candidates for Board positions are confident that their applications will be treated truly on merit with an open mindset that recognises and rejects both conscious and unconscious bias. There can also be a case for taking positive measures to attract candidates from underrepresented groups. This multi layered approach offers the best means of encouraging sufficient numbers of talented people from diverse backgrounds to apply for public Board positions. In this context the method adopted in the latter stages of the Probation Board competition is more likely to undermine confidence in our public appointments system and more widely our public administration.

20. This report does not call into question the suitability of those appointed to the Probation Board during the course of this competition.
21. In mitigation officials from both the DoJ and the NIO have acknowledged the mistakes made, have been transparent in the provision of information to my office and have moved quickly to take remedial steps. The Departments are also now committed to working with my office to develop a training package that will address the weaknesses highlighted in this audit.

List of recommendations

22. The Department must ensure that equal opportunities monitoring information provided by candidates is processed in line with equality law and public law, the General Data Protection Regulations and using best practice for sensitive personal information. Candidate monitoring information must be stored anonymously and must not feature during the shortlisting of candidates or the decision making stage. (Paragraphs 126-127)
23. The Department must ensure that all criteria for appointment are fully and clearly explained for candidates. (Paragraph 51)
24. A detailed appointment plan must be drawn up at the outset of the process and it must be agreed by either the Permanent Secretary or the Minister as applicable. (Paragraphs 54-57)
25. In committing to building better partnerships with their public bodies Departments should take account of the importance of the processes for appointing to the governing boards of those bodies. In particular in consultation with the Board careful consideration of the skills and experience needed on the Board is essential prior to the commencement of any appointment process. (Paragraphs 60-65)
26. The DoJ and the Probation Board should develop its outreach programme targeting groups currently under-represented on the Board. The DoJ and the Board should also take all steps necessary to implement the measures agreed in the NI executive policy on increasing diversity in public appointments. The work should be undertaken as soon as possible and in a sustained way in order to prepare for future appointments. (Paragraphs 71-74)

27. Full contemporaneous records must be kept of all assessment procedures, deliberations and outcomes. (Paragraphs 87)
28. The opportunity for feedback must be clearly conveyed to candidates and the provision of feedback must not be time bound (within reason). (Paragraphs 89-90)
29. When using presentations as part of the interview process Departments must ensure that candidates are aware that the presentation will be assessed only against the published criteria. This is to ensure that candidates do not introduce new skills or experience (other than those covered in the published criteria) to the process. Such skills or experience could not then be considered at the ultimate appointment decision making stage. (Paragraph 93)
30. Candidates must be made aware in very clear terms, of what the appointing Department considers to constitute a public appointment and when this information should be provided in the application form. (Paragraph 107)
31. Those involved in managing a public appointments process and selection panel members should have access to specific training on drawing up candidate summaries as part of a wider public appointments training initiative. (Paragraph 109-113)
32. Where the Secretary of State is making a public appointment the Department managing the competition should ensure that the competition information is transferred to the NIO in the form of the well-established briefing submission to Ministers on public appointments. Permanent Secretaries across Departments have already agreed this recommended handover process with the NIO. (Paragraph 121-123)
33. The Department must ensure that equal opportunities monitoring information provided by candidates is processed in line with equality law and public law, the General Data Protection Regulations and using best practice for sensitive personal information. Candidate monitoring information must be stored anonymously and must not feature during the shortlisting of candidates or the decision making stage. (Paragraph 126-127)
34. The Department must ensure that the mandatory public appointments guidance on ministerial decision making is provided to any minister when making a public appointment. (Paragraph 131-134)
35. The Department must ensure that the reasons for the appointment decisions are recorded. The Department must also hold sufficient information to provide meaningful feedback to unsuccessful candidates. (Paragraph 153-160)
36. The creation of a reserve list is subject to ministerial decision. The Department must ensure that it seeks and follows the decision of the Minister with regards to the creation of a reserve list. (Paragraph 162-164)

Background

37. The Probation Board, set up under the Probation Board (Northern Ireland) Order 1982, is a Non Departmental Public Body (NDPB) of the DoJ. Its primary function is to secure the maintenance of an adequate and efficient probation service. It has a range of devolved policing and justice functions, set out in the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010. The Probation Board describes its purpose as 'Changing lives for Safer Communities'.
38. The main strands of the work of the probation service are to:
 - Assess convicted offenders and annually prepare over 10,000 reports for Courts, Parole Commissioners and others.
 - Supervise over 4,100 offenders subject to a range of court orders and licences at any given time.
 - Deliver behavioural change programmes for offenders in custody and in the community covering areas such as violent offending, sexual offending and drug and alcohol misuse.
 - Provide a Victim Information Scheme to any person who has been the direct victim of a criminal offence where the offender is subject to supervision by the Probation Board.
 - Work alongside statutory and other partners to minimise the risk of harm posed by offenders.
39. The Board is the governing body of the organisation. Its four main activities are: to ensure that the organisation delivers its functions in accordance with Ministers' policies and priorities; to provide strategic leadership; to ensure financial stewardship; and to hold the Chief Executive and senior management team to account.
40. Schedule 3 of the 1982 Order provides for the appointment of the Chair and members of the Board:

"The Board shall consist of a chairman, a deputy chairman, and not less than 10 nor more than 18 other members appointed by the Minister of Justice."
41. At the outset of the competition the Board consisted of a Chair, a deputy Chair (appointed from within the membership of the Board) and ten members. The gender profile at this stage was five women and seven men (42% women representation). The tenures of all sitting Board members were due to expire on 30th November 2018. Existing Board members eligible for a second term could apply for reappointment through this appointment process.
42. In March 2018 the DoJ decided that it was in the public interest to initiate the appointment process and the Permanent Secretary of the DoJ approved the initiation of a public appointment competition to appoint a Chair and twelve members to the Probation Board.

Stage 1 – Initial Planning of appointment process

The selection panel

43. CPA NI allocated an independent assessor at the outset; the assessor was involved in all relevant stages of the selection process.

44. The selection panel consisted of two senior officials from the DoJ one of whom chaired the panel and the independent assessor. All selection panel members were involved in all relevant aspects of the selection process prior to the ministerial decision.

Person specification and role profile

45. The person specification and role profile were developed by the DoJ; these included all the information required by the Public Appointments Code. The responsibilities of the role set out in the role profile related directly to the appointment criteria set out in the person specification.
46. The relevance of the appointment criteria was, however, undermined by the fact they were developed by the DoJ without discussion with the outgoing Chair of the Probation Board or without reference to a skills audit (see paragraph 60-66).

The selection criteria

47. All candidates were required to meet the following four essential criteria.
- Building Effective Relationships
 - Performance Oversight
 - Communication and Negotiation Skills
 - Strategic Thinking
48. In addition candidates for the Chair post were assessed against a leadership criterion.
49. Candidates were also asked to address two desirable criteria which could be used for shortlisting purposes.
- An understanding of the main challenges facing probation services in Northern Ireland
 - Financial management and/or human resource expertise
50. The DoJ chose not to shortlist applicants against the desirable criteria.
51. The wording of the second desirable criterion was unclear. The criterion essentially contained two separate competences both or either of which could have been addressed. It was not made clear to candidates whether demonstrating both of the competences was preferable to selecting either one. The lack of clarity was compounded by the absence of guidance provided against the desirable criteria in the information pack.
52. **Recommendation:** The Department must ensure that all criteria for appointment are fully and clearly explained for candidates.

Competition initiation meeting

53. The selection panel attended a competition initiation meeting on 4th July 2018 at which the panel members discussed several administrative issues, the information pack and details for the sift and

interview assessments. The discussion was recorded in a basic note setting out the key topics discussed.

Appointment plan

54. A submission from DoJ officials requesting approval from the Permanent Secretary for the competition documentation issued on 6th August 2018. The submission contained the person specification and role profile as well as the proposed competition timetable and the draft recruitment advertisement.
55. The selection panel had not reviewed or agreed an appointment plan at this point and the submission did not therefore contain an overall plan for the process. The appointment plan, which did not receive the necessary approval as is required under paragraph 3.2 of the Public Appointments Code (in this case approval by the Permanent Secretary), is an important component of any public appointments process: it sets out the process to be followed throughout and the assessment methods to be used.
56. Officials from the DoJ have subsequently advised the CPA NI audit team that *“the information required to complete the appointment plan was discussed and agreed at the initiation meeting on 4th July. The panel did not formally review and agree the appointment plan.”*
57. There is no evidence based on the note of the 4th July meeting to suggest that the relevant information had been discussed. Although an appointment plan did emerge in the process it was weak across a number of areas. The lack of a well thought through appointment plan at the beginning of the process will have contributed to the overall weakness of this appointment round.
58. **Breach:** The DoJ breached paragraph 3.2 of the Public Appointments Code which requires that a Minister (in this case the Permanent Secretary) agrees the appointment plan in advance of the commencement of the appointments process.

Recommendation: A detailed appointment plan must be drawn up at the outset of the process and it must be agreed by either the Permanent Secretary or the Minister as applicable.

59. No decision was taken at this stage as to how, following interviews, the list of appointable candidates would be presented, that is in a ranked or an unranked list, as it was not then known who would make the final appointment decision.

Lack of consideration of the skills and experience needed for the Probation Board

60. The Public Appointments Code requires that the Department seeks the views of the Chair of the Board on the selection criteria at the beginning of the process. The outgoing Chair of the Probation Board wrote to the Chair of the selection panel on 29th August 2018 (having consulted with the Board members), setting out a consensus Board view of the skills and experience required on the Board. The Chair’s correspondence was issued thirteen days after the launch of the competition and after the publication of the criteria, skills and experience required for the posts. Of the seven different skills and knowledge sets proposed by the outgoing Chair in the letter only one was contained in the list of published criteria for candidates and tested at interview.

61. The comprehensive mismatch between the skills and experience needed on the Probation Board as perceived by the outgoing Chair and members and the skills and experience decided upon by the Department and upon which candidates were recruited, is an unsatisfactory beginning for the new Board. It also demonstrates a lack of partnership and communication between the sponsor Department and the governing body of the Probation Board at least at this critical stage of the creation of a new Board.
62. The need for strong partnerships between sponsor Departments and their public bodies is the subject of a Northern Ireland Code of Good Practice on Partnerships between Departments and Arm's Length Bodies, recently published by the Department of Finance. The purpose of the new Code, which has been endorsed by all Permanent Secretaries, is to help improve our public governance and strengthen delivery of our public services. It states that effective partnerships will be underpinned by the five common principles of leadership, purpose, assurance, value and engagement. The public appointments process is an essential part of this effort and all of these principles are involved when a Department sets out to appoint a new Chair and new membership to a Board.
63. The DoJ chair of the selection panel responded to the skills audit letter on 12th September 2018 thanking the outgoing Chair of the Probation Board and advising that the letter "*will inform my thinking during the interview process.*" This stated intention, if carried through, would have been in breach of the Public Appointments Code. It is now well established law and practice that only the published criteria may be taken into account in the interview and appointment process.
64. The DoJ chair of the selection panel was involved in all stages of the assessment of candidates and went on to brief the Secretary of State ahead of the final appointments decision. Public appointment decisions must be based on merit and on how a candidate's skills and experience allow them to meet the published criteria for appointment. There is nothing in the papers to suggest that the Chair of the selection panel introduced additional skills and experience to the process, however, the statement quoted above could raise concerns that this was the case. Carrying out a comprehensive skills audit at the outset of the process before the person specification was agreed and reflecting the needs identified in the agreed criteria would have negated any such concerns.
65. The letter from the outgoing Chair of the Probation Board setting out the skills and experience needs of the Board referenced only those for Board members. CPA NI has seen no evidence that the DoJ carried out a skills audit for the position of the Chair of the Probation Board. This is a significant omission which undermines the Department's efforts to develop an effective governing body for the Northern Ireland Probation Board.
66. **Breach:** The Department breached paragraph 3.4 of the Public Appointments Code which requires that the Department seek the views of the Chair of the Body on the selection criteria at the beginning of the process.

Recommendation: In committing to building better partnerships with their public bodies Departments should take account of the importance of the processes for appointing to the governing boards of those bodies. In particular in consultation with the Board careful

consideration of the skills and experience needed on the Board is essential prior to the commencement of any appointment process.

Stage 2 - Preparation

Information pack and application form

67. The information pack included all the key components required by the Public Appointments Code.
68. The information pack provided guidance notes for candidates, this included clear simple guidance against each of the essential criteria. The wording throughout the guidance was easy to understand. This approach is helpful to all potential candidates including those with a background in a non-traditional area. Candidates were advised that in addressing the criteria they could use examples from their working or personal life including any voluntary or community work they are or have been involved in. Guidance, however, was not provided for the desirable criteria.
69. The application form was in three parts:
 - Part A – Personal Information
 - Part B – Skills, knowledge and experience
 - Part C – Monitoring information
70. Part A of the application form also contained a privacy notice (which is a key transparency requirement under the General Data Protection Regulation) which informed candidates how the DoJ would process the personal information provided by candidates when submitting an application.

Stage 3 – Encouraging applications

71. The competition launched on 16th August 2018. The vacancy was advertised in the Belfast Telegraph, the Irish News and the Newsletter. The advertisement was posted on the websites of the DoJ and NI Direct, and on the DoJ social media platforms. In addition posters were displayed in libraries.
72. The DoJ advertised the vacancies on a third party website which provides notifications on public appointment opportunities to its subscribers. The DoJ considered that this would cover the range of section 75 groups across the voluntary, community and private sectors. While it may be the case that publicising a vacancy in this way will increase the number of applications from under-represented groups the DoJ should also have its own comprehensive outreach list to include a wide range of groups, organisations and individuals, especially those representative of under-represented groups on public Boards. The DoJ must maintain a comprehensive and up-to-date distribution list for outreach for future competitions.
73. The subsequent make-up of the candidate pool shows that the DoJ and the Probation Board could do more to develop their outreach programmes. Examples of this might include a circular consisting of a personal type letter from a senior representative of the DoJ or the Probation Board describing the interesting and valuable work of the organisation, highlighting the under-representation on the Board and actively encouraging members of these under-represented

groups to apply. In addition, an article written by a current woman Board member published in local media may be helpful in encouraging women to apply. Contacts within the DoJ and the public body can also be utilised to publicise the vacancies at events and meetings.

74. Both the DoJ and the Probation Board should develop a range of initiatives to broaden the pool of women candidates for public appointments to identify obstacles to the participation of women.
75. **Recommendation:** The DoJ and the Probation Board should develop its outreach programme targeting groups currently under-represented on the Board. The DoJ and the Board should also take all steps necessary to implement the measures agreed in the NI executive policy on increasing diversity in public appointments. The work should be undertaken as soon as possible and in a sustained way in order to prepare for future appointments.

Stage 4 - Selection

Processing Applications

76. The closing date for applications was 14th September 2018. Eighty-two applications were received in total comprising of thirty-one women candidates and fifty-one men candidates (38% women / 62% men).
 - Six candidates applied for the Chair post only (one woman and five men).
 - Sixty-one candidates applied for the member posts only (twenty-three women and thirty-eight men).
 - Fifteen candidates applied for both (seven women and eight men).
77. The appointment plan included a procedure for dealing with late applications which stated that late applications would not be accepted and that it was the responsibility of candidates to ensure that their application is with the department on or before the closing date. One late application was received and this was rejected in line with this procedure.

Sift

78. The selection panel attended a sift meeting on 21st September 2018. Anonymous copies of the application forms were provided to the selection panel prior to this.
79. Selection panel members completed an individual assessment form for each candidate. They made a determination as to whether a candidate met each criterion, did not meet each criterion or may meet each criterion, along with supporting comments. A final consensus panel decision was taken following panel discussion as to whether each candidate either met or did not meet the essential criteria for appointment.
80. In carrying out the sift of applications the members of the selection panel did not use performance indicators as part of the marking system. Indicators to describe some of the types of evidence a candidate might include in their examples should have been developed at the same time as the essential criteria. The lack of indicators meant that each selection panel member had for the most part to decide individually what level of evidence would demonstrate that a candidate had met or not met the criteria.

81. The standard of record keeping when carrying out the individual sift of applications varied considerably across the selection panel. The two DoJ panel members recorded comments which included specific reasons for their assessment which referenced the criteria. They also recorded where their individual assessment differed from the consensus panel decision. The independent assessor on the selection panel recorded insufficient evidence to justify their assessment decision. This panel member's initial individual sift decisions were often different to the final consensus decision with little or no comments recorded to explain this.
82. A summary note recording the consensus selection panel decision for each candidate was signed by the selection panel. Consensus comments were not recorded to support the final decision in respect of any candidate. CPA NI would expect to see comments recorded to justify the selection panel's consensus sift decision.
83. Overall record keeping for the sift exercise was poor.
84. A total of forty candidates were invited to interview comprising of seventeen women and twenty-three men (42.5% women / 57.5% men).
- Four candidates were invited for only the Chair post (one woman and three men).
 - Twenty-eight candidates were invited for interview for only the member post (twelve women and sixteen men)
 - Eight candidates were invited for interview for both Chair and member posts (four women and four men)
85. A letter to those candidates who did not pass the sift exercise issued on 26th September 2018. The letter set out the criteria the candidate did not meet. Candidates were advised that if they were "*...dissatisfied with the panel decision or have any queries in relation to your non-selection for interview*" they should write to the DoJ within ten days of the date of that letter.
86. Eight requests for reassessment were received. Two candidates were subsequently advised that the selection panel had met on 10th October to review the decision and following this these candidates were invited for interview.
87. Apart from the letters which went out to candidates following the meeting of 10th October there was no other record of that meeting.
88. **Breach:** The Department breached paragraph 3.30 of the Public Appointments Code.
- Recommendation:** Full contemporaneous records must be kept of all assessment procedures, deliberations and outcomes.
89. Four requests for feedback were received and these were dealt with by way of a letter from a DoJ official. The letter stated that the selection panel had met on 10th October to agree the feedback provided.
90. While the provision of feedback is referred to in the information pack which advises candidates that all requests for feedback are welcome CPA NI do not consider that the wording used in this letter clearly sets out for candidates the right to request feedback. If the intention of the wording

of the letter was to inform candidates of their right to request feedback then it implies that the provision of feedback is time bound. While it is permissible for a Department to limit the time in which a candidate may request reassessment, feedback requests must not be similarly limited. Feedback on a candidate's performance can be requested at any time, within reason. It is preferable for the letter to candidates to refer directly to the facility for feedback.

91. **Recommendation:** The opportunity for feedback must be clearly conveyed to candidates and the provision of feedback must not be time bound (within reason).

Interview

92. A letter inviting candidates to interview issued on 26th September 2018. The letter informed candidates that the essential criteria would be tested at interview.
93. Candidates for the Chair post were advised that they would be required to make a presentation to the interview panel on the topic of *'What skills would you bring to the role of Chairman and how would you use those skills to ensure the effectiveness of the Board'*. No visual aids were allowed although candidates were permitted to bring handouts for the selection panel.
94. **Recommendation:** When using presentations as part of the interview process Departments must ensure that candidates are aware that the presentation will be assessed only against the published criteria. This is to ensure that candidates do not introduce new skills or experience (other than those covered in the published criteria) to the process. Such skills or experience could not then be considered at the ultimate appointment decision making stage.
95. Interviews took place across nine days in October 2018. At interview candidates were awarded a score out of seven against each criterion. In order to pass the interview candidates had to score at least four in each criterion. Indicators of the types of evidence the selection panel might expect to see were in place and panel members then assessed against the 1-7 scoring framework.
96. Each member of the selection panel completed an individual interview assessment booklet for each candidate, recording the evidence provided and a panel member score. The front page of this booklet provided for the selection panel member to record his/her individual scores, the agreed panel score and comments against each criterion. Comments were not recorded here by any selection panel member to support his/her score. This is poor record keeping.
97. A consensus interview assessment form was completed and signed by all panel members. This also recorded the agreed panel score and an overall comment on the candidate's performance. This form did not contain space for the recording of supporting comments for the consensus score against each criterion, nor did it allow for the recording of consensus comments on conflicts of interest or integrity issues. Therefore no such comments were recorded here. This is poor record keeping.
98. The same consensus interview assessment form was completed where a candidate was interviewed for both the Chair and member posts. Given that candidates were assessed against an additional criterion for the Chair post a separate form should be used to record the overall comments for this separate post.

99. At interview a total of thirty-three individual candidates were found to be suitable for appointment comprising of fourteen women and nineteen men.
- Two candidates passed the interview for only the Chair post (two men).
 - Twenty-three candidates passed the interview for only the member post (ten women and thirteen men).
 - Eight candidates passed the interview for both Chair and members posts (four women and four men).

Candidate summaries

100. Candidate summaries were prepared by the DoJ and were reviewed, agreed and signed by the selection panel on 30th October 2018. Each candidate summary included a brief paragraph on the panel assessment of the candidate's skills and experience. It appears that this was based on the comment recorded on the consensus interview assessment form. Also included was a comment against each criterion tested at interview.
101. The candidate summaries agreed by the selection panel were flawed in a number of ways. They did not consistently, accurately and fairly portray how each candidate had performed against the published criteria.
102. The paragraph covering the overall panel assessment of the candidate's skills and experience often comprised nothing more than a description of the scores awarded at interview, which was in some cases inaccurate. The wording of the comments was often contradictory and in some cases confusing. For some candidates it included comments which highlighted the limitations of the candidate's interview performance whereas for other candidates on the same score it highlighted positives. There was a lack of consistency in terms of the wording used across the full list of candidates.
103. At interview individual selection panel members were required to record 'comments for feedback' against each criterion. Although they will not be entirely different in content comments intended to provide feedback have a different focus than a mark justification in that they may focus on less positive aspects of a candidate's performance.
104. It appears that the candidate summary comments against each of the individual criteria were based on the 'comments for feedback' the individual panel members recorded at interview. Due to the lack of a recorded comment for the consensus score against individual criteria there was little else to base this part of the candidate summaries on. CPA NI considers it good practice for a selection panel to record comments for feedback as this will allow the provision of comprehensive feedback to a candidate in terms of how they can improve upon their performance. But this information should not double up as the candidate summary upon which the Secretary of State will make an appointment decision. In this case the comments included in the candidate summary were often quite negative in nature, and highlighted the limitation of the candidate's performance at interview. In addition, the comments were sometimes based on an individual panel members' views on what feedback should issue to a candidate and were not necessarily indicative of the overall panel's assessment of that candidate. These comments when included in the candidate summaries may have an impact on the final appointment decision.

105. The poor record keeping at interview stage weakened the candidate assessment process.
106. The candidate summaries for Chair candidates included a line detailing the panel's assessment of the presentation element of the interview. The presentation topic was not included in the candidate summary nor was the topic always apparent from the wording of the candidate summaries. The Secretary of State was not made aware of the presentation topic. For some candidates this aspect of the summary was therefore meaningless given that the Secretary of State was unaware of the presentation topic to which these comments referred.
107. The candidate summaries included reference to any public appointments currently held by each candidate. This information had been provided by candidates in the application form. There was little consistency across the candidates as to what constitutes a public appointment with the inclusion of some posts which CPA NI would not consider to be a public appointment.
108. **Recommendation:** Candidates must be made aware in very clear terms, of what the appointing Department considers to constitute a public appointment and when this information should be provided in the application form.

Conflicts of Interest

109. The candidate summaries included a section on integrity and conflicts of interest.
110. It is a requirement of the Public Appointments Code that the selection panel must assess whether there is an integrity or conflict of interest issue, and how it will be handled. The panel must document the discussion and conclusions arrived at. The Public Appointments Code also requires that the candidate summary to the Minister must include clear written reference to any perceived, actual or potential conflicts of interest or integrity issues, connected to any candidate put forward as suitable for appointment. It must include sufficient information to ensure that the Minister is fully aware of these matters and can make an informed decision.
111. A review of the selection panel's interview notes show that the selection panel failed to consistently and properly record the discussion and conclusions arrived at in respect of conflicts of interest. In addition it appears that the selection panel failed on occasion to arrive at a consensus decision as to whether a conflict existed, the nature of the conflict or indeed if the conflict was manageable. The panel indicated that one candidate would be required to confirm whether or not a conflict existed in relation to the candidate's current employment; it is unclear given the absence of any written record why the panel failed to do this at interview. The selection panel on one occasion is unsure whether a conflict exists, how this is then covered in the candidate summaries is very different from the discussion recorded in the interview documentation. Where two or more candidates are members of similar public bodies we would expect to see a similar approach taken in terms of determining the existence of a conflict and how it might be dealt with. This was not the case in this appointment process.
112. It is clear that for several candidates there are perceived, potential or real conflicts of interest. The existence of these conflicts may well have been a factor in the final appointment decisions in this process. The lack of a recorded reason for the ultimate decision means, however, that this is not certain.

113. Given the potential for a conflict (perceived, potential or real) to impact on any appointment decision it is important that conflicts are dealt with fairly and consistently. The selection panel and the DoJ must ensure that these are properly discussed and documented and should they be included in the candidate summaries that there is sufficient information to allow a Minister to make an informed decision.
114. **Breach:** The department breached paragraphs 3.38F and 3.42 of the Public Appointments Code.

Recommendation: Those involved in managing a public appointments process and selection panel members should have access to specific training on drawing up candidate summaries as part of a wider public appointments training initiative.

Stage 5 – Appointment

Equal Opportunities Form

115. The application form for the Probation Board public appointments included an equal opportunities monitoring form on which candidates were asked to provide details including their age, gender and their religion/community background. Candidates were advised on the monitoring form that *“This section is for monitoring purposes only.”* The following statement was also included on the monitoring form.

“Please note the information you provide in this monitoring form will be detached from the information on the application form, held separately and will not be available to selection panels or to anyone else involved in the selection process. The information will be used for statistical purposes only and analysed independently by staff in the Northern Ireland Statistics and Research Agency (NISRA) in the strictest confidence.”

116. The information pack, under the heading of data protection stated that,

“As much of the information involved in the appointment process will be of a personal nature, the provisions of Data Protection legislation will be followed. To ensure that you, the candidate, are aware of how and why your personal information is to be used, and with whom it may be shared, a ‘privacy notice’, as required by legislation, is included in the application form for your information and reference.”

117. Candidates for this competition could have legitimately expected that the information they provided in the monitoring form would play no further part in the selection process.

Privacy notice

118. A privacy notice is designed to inform candidates of that action a Department will take in processing the personal information they provide when applying for a public appointment. The inclusion of a privacy notice is required under the General Data Protection Regulation.

119. The privacy notice contained in the application form, however, contradicted the undertaking in the equal opportunities monitoring form and was wrong and misleading. It advised candidates incorrectly that the governing legislation was the Police (NI) Act 2000. The privacy notice stated:
- “Equal opportunities monitoring information is collected in an anonymous form for analysis by the Northern Ireland Statistics and research Agency (NISRA). That information is also taken into consideration by Ministers in making the final candidate selection, as they are required by paragraph 8 of schedule 1 to the Police (NI) Act 2000 to secure that, as far as is practicable, the membership of the Policing Board is representative of the community in Northern Ireland”.*
120. The correct governing legislation is of course the Probation Board (Northern Ireland) Order 1982 which does not contain a provision similar to the one quoted above relating to community representation.

Transfer of documentation to the Northern Ireland Office

121. Following the agreement of the candidate summaries by the selection panel the competition documentation was transferred to the NIO. This is a new process necessitated by the lack of Northern Ireland Executive Ministers and the role of the Secretary of State in making public appointments in Northern Ireland. The candidate summaries were sent by a DoJ official to an NIO official on 30th October 2018.
122. The transfer of documentation was not well executed. The transfer consisted of a brief e-mail dated 30th October 2018 from a DoJ official with the names of the candidates and the respective candidate summaries as an attached annex. The documentation relating to candidates which was transferred with the 30th October e-mail did not at this stage contain the personal monitoring data of the individual candidates. This was transferred between the Departments at a later stage (see paragraphs 126-128).
123. In order to effect a good transfer process DoJ officials should have provided their NIO colleagues with the standard comprehensive briefing submission ordinarily prepared by the sponsor Department for the Minister. This submission would have supported the transfer of candidate information to the NIO and would have contained detailed advice to the Secretary of State on how to conduct the final stage of appointments. The lack of such detailed advice accompanying the transfer of papers between DoJ and NIO played a part in undermining the integrity of the appointment round.
124. **Recommendation:** Where the Secretary of State is making a public appointment the Department managing the competition should ensure that the competition information is transferred to the NIO in the form of the well-established briefing submission to Ministers on public appointments. Permanent Secretaries across Departments have already agreed this recommended handover process with the NIO.
125. The responsibility for presenting the list of candidates found suitable for appointment to the Secretary of State lay with NIO. Ahead of presenting the candidate summaries to the Secretary of State an NIO official requested, by e-mail dated 1st November 2018, information from DoJ on the process to date including details on the overall number of candidates and the number of those interviewed, including the overall gender breakdowns.

Transfer of monitoring information

126. On 12th November 2018, the individual religion/community background and gender of all those candidates successful at interview was requested by an NIO official in a telephone call to a DoJ official and was provided in an e-mail by the DoJ official on the same day. This information was gathered by a DoJ official from the candidates' monitoring forms. The monitoring forms had not been detached from the application process as required. At one stage when preparing the submission to the Secretary of State an NIO official queried with a DoJ official whether the use of personal data in this way was appropriate. The response from DoJ indicated that the gender and religion/community background information could be provided. This advice was wrong and was a substantial breach of the Public Appointments Code.
127. The monitoring information relating to candidates was subsequently provided to the Secretary of State on two separate occasions in two separate submissions relating to the final stages of her appointment decisions. The individual candidate ages were also included in the briefing paper used by officials.
128. **Recommendation:** The Department must ensure that equal opportunities monitoring information provided by candidates is processed in line with equality law and public law, the General Data Protection Regulations and using best practice for sensitive personal information. Candidate monitoring information must be stored anonymously and must not feature during the shortlisting of candidates or the decision making stage.

First submission to Secretary of State dated 16th November 2018

129. A submission issued to the Secretary of State on 16th November 2018 which contained the names of the ten candidates found suitable for appointment as Chair and thirty-one candidates found to be suitable for appointment as a member in the form of unranked lists. The religion/community background (and gender) was annotated beside each individual name. The insertion of the personal data into the briefing for the Secretary of State was a substantial breach of the Public Appointments Code.
130. It appears that this first submission did not contain the necessary relevant information, that is, the candidate summaries although these were provided to the Secretary of State for the meeting with the selection panel chair on 20th November 2018.
131. Neither did the submission contain the departmental guidance on the ministerial decision making element for public appointments. The aim of this guidance, which is ordinarily mandatory for Departments to provide, is to help Ministers make evidence based appointment decisions. It includes the following paragraph:

“This guidance is offered in advance of a Ministerial decision given the significant implications for potential challenge that exist if the unranked list option is chosen. The aim is to help Ministers make sound, non-discriminatory, evidence based decisions on the agreed requirements for the appointment which do not take account of any new criteria; and to protect the Minister against a challenge to their decisions including a claim of unlawful discrimination.”

132. Regarding the legal requirements on an appointing Minister the guidance states that,

“Public appointments fall within the scope of employment law and it is unlawful to discriminate on the grounds of any of the factors covered by the anti-discrimination legislation. Individuals are protected against discrimination on grounds of race, religious belief or political opinion, sex, sexual orientation, age or because of a disability. Legal advice is clear that it is also unlawful to discriminate to “balance” the board of a public body by taking account of such factors. This is the case even where existing legislation requires such factors to be taken into consideration. EU law takes precedence, and the Departmental Solicitor’s Office has stated that any such statutory requirements would be ignored by a Court or Tribunal, even if the statute required consideration of these factors “where practicable”.

133. The guidance is clear about the requirement for an appointing Minister to make appointment decisions based on the published criteria.

“For unranked lists, the Minister should, using the Candidate Summary, make his or her selection from the pool of candidates that have been identified by the selection panel as appointable. It is important that the Minister makes his or her decision only on the basis of the criteria agreed and advertised for the competition. It is inappropriate to introduce additional criteria at this stage in the process, and to do so could lead to a successful challenge.”

134. This was standard and important guidance that was omitted from the briefing provided to the Secretary of State.

135. **Recommendation:** The Department must ensure that the mandatory public appointments guidance on ministerial decision making is provided to any minister when making a public appointment.

136. In the submission of 16th November 2018 a brief description of each candidate’s career background was also included beside each individual’s name, gender and religion/community background. The career descriptors had been drafted by DoJ and NIO officials and were based on the information provided in the application form. The description of an individual’s professional background was not always completely accurate, nor was it always consistent in terms of the amount of information provided against each candidate.

137. The candidates for Chair of the Probation Board were listed alphabetically. The candidates for the member posts were divided into seven professional groupings and listed alphabetically within these groupings. The grouping headings were consultancy, education, policing/justice, political, public service, regulatory/audit and third sector. The submission advised that candidates had been so grouped to allow the Secretary of State to “consider how each can bring the widest breadth of skills and experiences to the Board”. At no stage were the candidates’ scores at interview provided to or seen by the Secretary of State.

138. The decision by the NIO officials to subdivide each candidate into a professional grouping was based on what those officials considered to be the most noteworthy career details they could find in each candidate’s application form. The officials might interpret the career background or job title of a candidate to mean that candidate will bring certain skills and experience to the Board.

However, public appointments must be based on how a candidate meets the criteria for appointment, and the selection panel's assessment. For this reason it is poor practice to focus on an individual's professional title/descriptor.

139. While the submission advised the Secretary of State that *"you will be subject to the requirements set out in existing legislation, including equality duties"* it also advised that *"although not required under legislation you may also wish to ensure, as far as is practicable, that the Board remains balanced in terms of gender and community background"*. This appears contradictory and is unhelpful especially given that the gender and religion/community background of candidates were at this stage known to the Secretary of State, while she had not yet seen the candidate summaries.
140. The submission advised that three of the candidates for the member posts were existing members of the Board eligible for reappointment.

Secretary of State's meeting with the chair of the selection panel of 20th November 2018

141. The submission of 16th November provided information ahead of a meeting between the Secretary of State and the DoJ chair of the selection panel to be held on 20th November 2018. The documentation suggests that the Secretary of State was in receipt of the candidate summaries at this meeting. The special adviser to the Secretary of State and three NIO officials also attended the meeting.
142. The chair of the selection panel (a senior DoJ official) briefed the Secretary of State and provided advice regarding how each candidate performed at interview. A spreadsheet containing the name of the candidate, his/her age, gender, religion/community background, professional background and home address region was used by officials for the briefing. It appears that a shortlisting exercise took place at this meeting.
143. Later on the 20th November, a document containing further information (the second submission) was provided by an NIO official to the Secretary of State. The DoJ and NIO advised the CPA NI audit team that this second submission amounted to a record of the discussions during the meeting earlier that day. The lack of relevant detail in the second submission, however, makes it difficult to ascertain the decision making process behind the short listing exercise that took place at the meeting on 20th November 2018 (paragraph 145).
144. For the Chair post the second submission asks the Secretary of State to confirm that she wished to appoint a Chair from two candidates who appeared to her to be the most suitable for the role.
145. In the second submission the list of candidates for the member posts had been shortened from thirty-one to sixteen (seven women and nine men). In an annex to the second submission the sixteen candidates were grouped into three categories: 'strong candidates'; 'current members who you are minded to reappoint'; and 'other candidates who performed well'. Within these three categories the candidates were divided by both religion/community background and gender.

146. The second submission stated that,

“A key consideration will be to ensure that Board comprises the necessary skills, experience and credibility to provide effective oversight and strategic direction to the Probation Service within NI.”

147. This implies that the appointment decisions were to be made against the criteria for appointment. However the document went on to state that,

“You will wish to ensure, as far as is practicable, that the Board remains balanced in terms of gender and community background”.

(CPA NI emphasis)

148. This is a development from the wording of the original submission dated 16th November 2018 which stated that.

“although not required under legislation you may also wish to ensure, as far as is practicable, that the Board remains balanced in terms of gender and community background”.

(CPA NI emphasis)

149. The change in wording might be perceived as a determination that appointment decisions would be taken to balance the Board and it is for this reason that once again the gender and religious background had been provided to the Secretary of State for a second time for the shortlisted candidates.

150. In the second submission it was highlighted that one candidate may have a potential time commitment issue. There is no record of a time commitment issue being raised or discussed with this candidate at any stage of the appointment process. We must, therefore, surmise that this time commitment issue was raised by officials at the meeting with the Secretary of State on 20th November 2018.

Shortlisting of candidates

151. For the majority of candidates it appears clear, based on the candidate summaries, why they were placed in either the ‘strong’ or ‘performed well’ categories contained in the annex to the second submission. There were, however, a number of deviations from this. Based on the candidate summaries there is at least one candidate in the ‘performed well’ category who appears to have clearly performed more strongly than those in the ‘strong category’. This candidate was not appointed.

152. There are also several candidates who were not shortlisted while others who, it appears from the candidate summaries, did not perform as well did appear on the shortlist. While such decisions might be in part based on other public appointments held or the existence of a conflict of interest be it real, perceived or potential, the lack of any recorded reason for the shortlisting of candidates at this stage means that it is not possible to determine why such decisions were taken.

Secretary of State's decision making and the final appointment list

153. Having identified, with the supporting advice of the Chair of the selection panel, those candidates who fell into the categories 'strong' and 'eligible for reappointment', the Secretary of State was informed in the second submission of the hypothetical balance of the Board in terms of gender and religion/community background were she to appoint all the candidates from these two categories (with two additional vacancies).
154. The second submission stated that if the Secretary of State were to appoint all of the candidates in both these categories she would be appointing six from a Roman Catholic background, three from a Protestant background and one person from neither background. In terms of gender this hypothetical Board, she was advised, would consist of four women and six men.
155. On 22nd November 2018 an e-mail issued from the private office of the Secretary of State to an NIO official with the list of the names of the thirteen appointees decided by the Secretary of State. This e-mail conveyed only the names of those appointed, which included the three candidates eligible for reappointment. No reason or rationale for the appointment decisions was provided at this time although in respect of the three current members of the Probation Board a reason for the reappointment for all three was recorded in the second submission in that this would ensure a degree of continuity on the Board.
156. One candidate from the 'strong' category was not selected for appointment. Three candidates from the 'performed well' category were selected for appointment in preference to three others from this category. The candidate summaries for the three candidates not appointed from the performed well category indicated a better performance than the three candidates appointed from this category.
157. Including the Chair, the resultant Board was balanced in terms of religion/community background, that is, five candidates from a Roman Catholic background, five candidates from a Protestant background and three candidates undeclared were appointed. The gender profile of the resulting appointment list was four women and nine men. The gender profile of the new Board was therefore four women (31% representation) and nine men (69% representation). This represented a lower level of representation of women (down from 42%) on the Board.
158. Paragraph 3.45 of the Public Appointments Code requires that when a Minister has made the decisions on which candidates to appoint, the reasons for those decisions must be recorded. The lack of any recorded reason taken along with the prominent role afforded to the religion/community background of each candidate and the officials' advice that the Secretary of State will wish to ensure that the Board is balanced in terms of gender and religion/community background, creates a situation where a reasonable person could infer that religion/community background played a role in the Secretary of State's decision making. Furthermore, if it happened the evidence suggests that this may possibly have been to the detriment of one or more candidates.
159. In addition to raising the spectre of religion/community background playing a part in the appointment of individuals to serve on our public boards - something that in Northern Ireland we have worked hard to ensure would not happen - the use of monitoring information in this way was a clear breach of the privacy undertaking given by the DoJ to each candidate when asking

him/her to provide such information. The Information Commissioner's Office has accordingly instigated an investigation into the use of personal data in the appointment round.

160. While it was the responsibility of the Secretary of State to ensure her decision making was lawful and compliant with the Public Appointments Code, there is no evidence to suggest that she sought information on candidates' religion/community background. Rather, the Secretary of State was presented with the information and wrongly advised on its use by officials seemingly with the aim of achieving a 'balanced Board'.
161. **Breach:** The Department breached paragraph 3.45 of the public appointments Code.

Recommendation: The Department must ensure that the reasons for the appointment decisions are recorded. The Department must also hold sufficient information to provide meaningful feedback to unsuccessful candidates.

Reserve List

162. The e-mail of 22nd November 2018 which listed the successful candidates also advised officials that the Secretary of State had selected two candidates *"as the reserves if any of the above are no longer available"*. This implies that the Secretary of State placed two candidates on a reserve list to cover the event of an appointment offer being declined. In the event all candidates accepted their offer of appointment. However, all candidates not selected for appointment were informed by letter dated 29th November 2018 that:

"Your name remains on a reserve list and you may be contacted in the event that any unsuspected vacancies arise in the next 12 months."

163. The contradiction in these communications creates an uncertainty as to how many if any candidates' names were placed on a reserve list.
164. On the basis of the documentation provided CPA NI does not consider that the Secretary of State was asked to create a reserve list. It was, therefore, incorrect for the DoJ to advise all those who passed the interview that they were on a reserve list.
165. **Recommendation:** The creation of a reserve list is subject to ministerial decision. The Department must ensure that it seeks and follows the decision of the Minister with regards to the creation of a reserve list.

Announcing the Appointment

166. The successful candidates were informed of their appointment in a letter dated 28th November 2018. All thirteen candidates accepted the offer of appointment.
167. The NIO announced the appointments in a press release dated 29th November 2018.