

CPANI

The Commissioner
for Public Appointments
Northern Ireland

“Guardian of the Public Appointment Process”

**Report on decision-making by Ministers in Public Appointment
Competitions**

December 2013

Introduction

1. The process to appoint Chairs and members to the boards of public bodies is based on merit.
2. Applicants for public appointment are required to make application and submit themselves to the selection process, which normally consists of several stages including:
 - shortlisting for interview,
 - the interview itself,
 - submission, to the Minister, of a list of candidates deemed eligible for appointment on merit by a selection panel, and
 - selection by the Minister from the list, of the candidate[s] he or she identifies as best suited to the requirements of the board.

Role of Ministers

3. The role of Ministers in the selection process consists of two stages:
 - [I] Early in the process, the Minister is presented with an appointment plan which details the process to be used for selecting the board Chair and/or members and includes a range of documents such as job profile, person specification, timetable for the competition and the requirement for the Minister to decide whether he / she wants the list of appointable candidates to be presented in ranked or unranked form.
 - [II] Having approved the appointment plan, the Minister is not involved in the process again until the final stages, which are:
 - submission, by Departmental officials to the Minister, of the list of appointable candidates, including a 'candidate summary' for each candidate giving the Minister the information on which to make the appointment decision, and
 - the decision on the appointment[s] by the Minister and documentation of the Minister's reasons for appointment of each successful candidate.

4. Increasingly, the role of Ministers in the public appointment process has come under scrutiny, in the press, in a Fair Employment Tribunal and in other legal forums.
5. On occasion, it has been found wanting, with the result that Ministers have been censured, Departments have been criticised, the public appointment system has been discredited, applicants have been judged to have been disadvantaged or discriminated against and potential applicants have expressed their reticence to put themselves forward for public positions.
6. In particular, in response to a Tribunal which found against the DRD Minister [Department for Regional Development] in a discrimination case brought by an applicant for a public appointment, the Commissioner for Public Appointments for Northern Ireland [the Commissioner], and officials from OFMDFM [the Office of First Minister and deputy First Minister] and DRD, engaged in a series of meetings with the Equality Commission, resulting in additions to the Commissioner's 'Code of Practice for Ministerial Public Appointments in Northern Ireland' [the Code] regarding the anti-discrimination obligations on Ministers and their Departments, and a forthcoming guidance document from OFMDFM to assist the Departments in properly discharging their responsibilities.
7. Suggestions have been made that the Ministerial component of the public appointment process should be changed, so that Ministers select only from ranked lists. Some believe that this would be fairer, would be seen to be fairer and would be safer for Ministers, who are exposed to scrutiny every time they make a public appointment decision. However, the current system, in which the Minister can opt for ranked lists [ranked in order of applicant scores] or choose appointees from unranked lists of candidates found by the panel to be appointable [all 'appointable' candidates presented to the Minister without scores] is the one that pertains here and throughout the UK, and in many other countries. These are 'Ministerial public appointments' which, under the legislation covering each of the public bodies for which a Minister is responsible, are for the Minister to make. Any change in the arrangements would be a matter for the N.I. Executive and Assembly.
8. This report deals with the system that currently exists; it is not intended as an argument for or against alternative systems of Ministerial appointment; it examines how well the current system is operated by Ministers and their Departments.

Regulation

9. The public appointment process is controlled and regulated in various ways:
- OFMDFM is responsible for policy on public appointments and, operationally, each Minister and his / her Department is responsible for the conduct of public appointment competitions.
 - the Commissioner is responsible for monitoring the public appointment system across all Departments to ensure that appointments are made on merit and in accordance with his Code.
 - In addition to adhering to the Code, Ministers and their Departments must also ensure that they comply with the anti-discrimination laws applying in Northern Ireland.

The Examination of Ministerial decision-making

10. In the wake of media, public and legal attention focussed on Ministerial decision-making, the Commissioner decided, in the interests of public confidence in the public appointment system:
- [I] to examine how the 'Ministerial component' has been performed over the year since he introduced requirements in his Code regarding the proper documentation of Ministerial decision-making and
 - [II] to produce recommendations for improvement where any weaknesses are identified.
11. It is important to point out that the examination of Ministerial decision-making was not intended to re-assess the decisions made by Ministers on individual candidates. It is the responsibility of Ministers to make those decisions and stand over them. The examination was conducted to ensure that fair and proper processes are in operation, that enable Ministers to make properly informed appointment decisions and generate appropriate records.
12. Departments provided documentation to the Commissioner from the stage detailed at 3 [II] above, ie the 'appointable candidate list' with candidate summaries and the record of the Ministers' decisions. The documentation covered 41 competitions involving 11 of the 12 Government Departments [one Department made no public appointments during the period].

Results

13. Examination of the records of 41 public appointment competitions provided by the Departments has shown that:

- all the Departments examined have ensured that processes are in place for enabling their Ministers, through documented candidate summaries, to make appointment decisions, and for recording those decisions
- no breaches of the CPA NI Code of Practice were identified in the competitions examined
- standards vary across the Departments, with some Departments providing clear and consistent records across all of their competitions and others needing to effect improvements from some of the 'best-practice' examples.

Recommendations for improvement

- [1] Departments must ensure that extraneous information on candidates [ie information gained from sources other than the candidate's application form and the interview or other formal part of the recruitment process] is not used in the candidate summaries. Ministers and their officials must also ensure that, in the reasons they record for appointing candidates, they do not appear to be introducing 'new criteria', i.e. criteria that are additional to the ones identified for applicants in the information packs and application forms for the post and used as the basis for questioning at interview. These issues were identified in the course of the Tribunal referred to in '6' above and it is understood by CPA NI that Departments have taken steps to deal with them. CPA NI will continue to monitor these issues and feed back any concerns to the Departments.
- [2] From the documents examined in this investigation, Departments generally appear to be using the information from the application forms well, to inform the candidate summaries, and thereby the Ministers. However, the use of information gained through candidate interviews is, in some Departments, more patchy.

Departments should ensure that the candidate summaries adequately reflect not only the background and career history of candidates, much of which is gleaned from the application forms, but also reflect the performance of candidates against the criteria for the post, much of which is to be gained from the candidate's answers to questions at interview. This

will entail ensuring that panel members keep informative notes at interview and that comments against the 'moderated' scores for each criterion [ie the score agreed by the panel after discussion] are sufficiently explanatory to be used to demonstrate the skills and strengths of each candidate and the reason for the score he / she has been awarded. Also, the panel members, including the Independent Assessor assigned to the competition by CPA NI, should ensure that, before they 'sign off' the candidate summaries prior to the Minister receiving them, they are content that the Minister is being given sufficient information, sourced from the candidate's application and his/ her performance at interview, to make a fair and objective appointment decision.

- [3] Having received this information, the Minister should ensure that clear reasons for his / her appointment decisions are recorded, drawing the reasons for appointment from the information provided in the candidate summaries. As with the candidate summary, the document containing the Minister's reasons for appointment should not contain extraneous information, and it should not contain any comments that could be construed as being contrary to the requirements of anti-discrimination legislation, eg comments that would appear to favour someone from an under-represented group, if those comments are not based on skills / strengths / background demonstrated in the application form or at interview.
- [4] Subjective and generalised comments about matters such as candidates' 'intellectual capacity' or their 'common sense' should be avoided by everyone in the recruitment process. Candidates are to be assessed through objective analysis of performance against the specific criteria set for each public appointment post, and panel members are unlikely to be able, professionally or objectively, to assess other matters from an application form or a relatively brief interview. Panel members should ensure that such comments are challenged, when presented with the draft ministerial submission containing the candidate summaries.
- [5] The investigation identified some particularly impressive examples of candidate summaries. Whilst the information in them is particular to individual candidates and therefore confidential in nature, it is recommended that the use of anonymised examples, to disseminate best-practice, could be developed, perhaps by the Public Appointments Forum, for dissemination across the Departments. CPA NI will be happy to identify those examples to Departments and the Public Appointments Forum. [The

Forum was set up by OFMDFM, as a cross- departmental group of officials which, among its roles, identifies and shares best-practice in the public appointment process.]

- [6] Officials should ensure that, when the Minister has decided on an unranked list of appointable candidates, comments in the candidate summaries do not, perhaps inadvertently, indicate some form of ranking, perhaps by using a comment like, ‘this candidate achieved full marks in this criterion’. This does not preclude the candidate summaries containing indications of the strength or weakness of candidates against criteria, but it does ensure that the situation does not arise where scores are indicated for some candidates and not for others.

Conclusion

Prior to the insertion, in the CPA NI Code, of the requirement to record reasons for Ministers’ appointment decisions, it was common for no such records to be made. This was clearly a situation that required remedial action. In the year examined in this report, it is apparent that Departments have worked to comply with the new requirement, all of them achieving at least basic compliance but with a clear need, across the Departments, for best practice methods to be shared.

CPA NI hopes that the combined efforts of the individual Departments and the Public Appointments Forum will ensure that the Ministerial component of all public appointment competitions will continue to improve in quality, ensuring fair, transparent and effective treatment of applicants together with the assurance for Ministers that the system enables them to make good decisions in every public appointment competition.

In its ongoing programme of audits of competitions, CPA NI will ensure that the Ministerial component is carefully monitored and that any defects identified are quickly and effectively brought to the attention of the Departments.

John Keanie
Commissioner
December 2013