



The Commissioner
for Public Appointments
Northern Ireland

“Guardian of the Public Appointment Process”

Audit Report 2016/2017

Appointment of three non-executive directors to the Board of the South
Eastern Health and Social Care Trust

Department of Health

January 2017

Introduction

- 1.01 A competition to appoint members to the Board of the South Eastern Health and Social Care Trust (the South Eastern Trust Board) was selected for audit as part of the 2016/17 audit programme of the Commissioner for Public Appointments for Northern Ireland (CPA NI). This competition was administered by the Department of Health (the Department), then known as the Department of Health, Social Services and Public Safety.
- 1.02 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 Code), version issued May 2015.
- 1.03 The Commissioner is required, by law, to prescribe and publish the Code to regulate the process by which public appointments are made. The Code sets out principles and practices which the Commissioner requires Government Departments to adopt.

Role of Commissioner

- 1.04 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

- 1.05 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 Board Chair positions and to a lesser extent they are underrepresented at member level. People with disabilities are also underrepresented and the age profile of membership of public Boards is too restricted. The Commissioner is committed to working to improve this situation.
- 1.06 Responsibility for appointments rests with the relevant Minister. Northern Ireland Government Departments have the responsibility of ensuring that the principles and practices contained in the Commissioner's 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

- 2.01 This audit report is the result of an examination of the appointment process, from which fifteen breaches of the Code, seventeen instances of 'less than best-practice' and two instances of good practice were identified.
- For each breach of the Code and each identified issue of 'less than best-practice', CPA NI has produced a recommendation which the Department must address.

- Recommendations are summarised at the end of the report and will be followed up by CPA NI in subsequent audits for evidence of implementation by the Department.
 - 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.
- 2.02 CPA NI carried out a comprehensive review of all appropriate records, as provided by the Appointment and Business Support Branch.

Acknowledgements

- 3.01 The Commissioner would like to thank the staff from the Appointment and Business Support Branch for their assistance and co-operation throughout this audit.

Summary

- 4.01 Many of Northern Ireland's health and social care services are delivered through the mechanism of a public body and the Department of Health is the department with responsibility for the largest number of public bodies (18 out of 88 regulated bodies). Accordingly, how the Department manages its public appointments to the corporate Boards of these bodies has a major impact both on the delivery of Northern Ireland's health services and on the operation of the public appointments process.
- 4.02 Overall the appointment process to the South Eastern Trust Board was of a poor standard. There were many weaknesses in procedure and departmental practice with consequent breaches of the Code (fifteen breaches of the Code and seventeen instances of less than best practice)
- 4.03 The gender breakdown of the South Eastern Trust Board at the outset of the competition was two females and five males (29% of Board membership was female with a male Chair). This represented a poor diversity/gender balance. At the end of the appointment process the diversity/gender balance of the Trust Board remained unimproved. This lack of diversity should give the Department and the Trust Board grounds for concern about the overall effectiveness of the Board.
- 4.04 This audit has identified significant issues around the use of composite panels, and their impact on applicants. This includes inconsistencies between different panels when assessing the same applicants, and the logistics of interviewing applicants for a number of different posts in a short timescale.
- 4.05 The applicant summaries for this competition were of a particularly poor standard. This is evidenced by the absence, in several cases, of important information (for example, relating to conflicts of interest), and the selection panel's use of inconsistent language to describe an applicant's performance. Most concerning was the fact that the applicant summaries for applicants to the Northern and Southern Trust Boards were largely based on the findings of the selection panel for the South Eastern Trust. Ministers are reliant on the applicant's summaries

providing them with an objective analysis of each applicant's skills and experience based on the selection panel's assessment of that applicant. The applicant summaries failed in a number of instances to do this.

- 4.06 Prior to this audit the Commissioner had seen evidence that the Department did not appear to plan effectively for its public appointments and nor did it seem to have the capacity in place necessary to ensure that once commenced, the appointments process was effectively managed. The findings in this audit confirm the Commissioner's concerns.
- 4.07 The Commissioner had raised her concerns with senior departmental officials at an earlier stage separate to this audit process. In this report the Department is again requested to take effective steps to address the weaknesses in its public appointments processes: it needs to put in place much stronger planning processes so that vacancies on Boards are filled promptly and the opportunity used to refresh Board and Chair membership; the use of composite panels should be reviewed; and it should ensure that those managing the public appointments processes have the skills and the commitment necessary to deliver an effective and Code compliant process that takes full cognisance of the diversity targets set by the Northern Ireland Executive.
- 4.08 The Department must ensure that all necessary steps are taken to address the recommendations included in this report.

Background

- 5.01 At the outset of the competition the South Eastern Trust Board consisted of a non-executive Chair and six non-executive directors. The terms of the six non-executive directors had previously been extended by the then Health Minister with three due to finish on 30th September 2015, and three due to finish on 31st March 2016. This competition was to replace these six non-executive directors; it was also to be used to fill one pre-existing non-executive director vacancy.
- 5.02 The overall appointment process comprised of three separate selection panels, with appointments also being made to the Northern and Southern Health and Social Care Trust Boards. The vacancies on all three Trust Boards were advertised simultaneously and applicants could apply for a position on all three by submitting a single application form. Each selection panel acted independently of one another in assessing applicants.
- 5.03 This composite approach to public appointments is rarely used and as this audit report indicates its use raises problematic issues.

Stage 1 – Initial Planning of recruitment competition

Consultation with the Chair of the South Eastern Health and Social Care Trust

- 6.01 Paragraph 3.4 of the Code requires Departments to seek the views of the Chair of

the public body on issues such as selection criteria and the balance of the Board. This early consultation should constitute a meaningful skills audit. The skills audit should form the basis of a comprehensive person specification and role profile.

6.02 The Chair of the South Eastern Trust Board, who was a member of the selection panel, does not appear to have been consulted in accordance with the requirements of the Code. The Chair received the appointment plan, the person specification and role profile only after these had been approved by the then Minister.

6.03 The skills audit is an essential early element of any appointment process. The Chair of the relevant Board must an active role in the formulation of the skills audit and should take the views of other Board members during the process. The skills audit must be agreed by the Department.

6.04 **Breach: The Department breached paragraph 3.4 of the Code.**

Recommendation: The Department must ensure that it seeks the views of the Chair of the public body on issues such as selection criteria and the skills and diversity balance of the Board. This consultation should be at the beginning of the process and constitute the skills audit. The skills audit should form the basis of a comprehensive person specification and role profile.

Independent Assessor

6.05 CPA NI allocated an Independent Assessor on 26th May 2015. This was four days after the submission requesting ministerial agreement for the appointment plan, person specification and role profile. It is good practice for the Independent Assessor to be given the opportunity to review and comment on this competition documentation before it is agreed by the Minister.

6.06 **Recommendation: The Independent Assessor must be allocated at the outset of the competition and should be given the opportunity to review and comment on the competition documentation prior to its approval by the Minister.**

The Selection Panel

6.07 The selection panel consisted of a senior official from the Department who chaired the panel, the Chair of the South Eastern Trust Board and the Independent Assessor.

6.08 All selection panel members signed a confidentiality form.

6.09 The Department ensured that all panel members were fully trained in line with the Code.

6.10 The selection panel were not offered the opportunity to meet prior to the sift meeting held on 6th August 2015. It is good practice for the selection panel to hold a

competition initiation/planning meeting prior to the launch of the competition.

- 6.11 **Recommendation: It is good practice for the selection panel to hold a competition initiation/planning meeting prior to the launch of the competition.**

Person Specification and Role Profile

- 6.12 The person specification and role profile were developed by the Department. These included all the information required by the Code. However these were based on a limited skills audit. See recommendation at paragraph 6.04.
- 6.13 Seven non-executive director posts were available on the South Eastern Trust Board, six non-executive lay directors, and one non-executive finance director. Four of the appointments, including that of the finance director, would be effective from 1st October 2015, the remaining three from 1st April 2016.
- 6.14 There was no specific role profile for the financial director post. The role profile describes the nature, purpose and responsibilities of a role in the context of the public body. The person specification for the financial director position included one additional criterion; it therefore follows that this role would include additional responsibilities to those of the lay director. This must be reflected in the role profile to provide potential applicants with an accurate description of what their duties and responsibilities will be should they be appointed.
- 6.15 **Recommendation: The Department must prepare a role profile for each separate position available on the Board.**

The Criteria

- 6.16 Applicants for both positions were required to meet the following four essential criteria.
- I. **Business Sense** - Exercising judgement and critical thinking about, issues that the HSC Trust Board considers as a matter of course, for example issues of business planning, resource allocation, risk management and organisational performance.
 - II. **Corporate Governance** - Working at or close to board level within a framework of corporate governance, demonstrating personal awareness of the importance of effective governance, including effective differentiation between executive and non-executive roles and the role of non-executive directors in holding executive directors to account.
 - III. **Stakeholder Engagement** - Promoting effective relationships within and without organisations, for example between investors or funders and managers or in partnerships between different organisations.
 - IV. **Self Awareness and Personal Contribution** - Maintaining a conscious sense of self and authority in a group in a way that mitigates 'group-think'.
- 6.17 The first observation to make is that the criteria would have benefitted from the provision of clearer explanation and guidance for applicants. In particular, without

clear explanation the Self Awareness and Personal Contribution criterion may be confusing for applicants. CPA NI has received feedback from applicants to this effect. This is considered in more detail at paragraph 7.05 of this report.

6.18 Second, these essential criteria are routinely used by the Department across their different arms length bodies many of which bodies have different functions and require different skill sets on their Boards. This uniformity suggests an absence of meaningful consideration of the requirements of the Board at that given time.

6.19 The third observation is that two of the criteria overlap significantly. The examples used in the Business Sense criterion are key aspects of corporate governance which is set as a separate criterion.

6.20 Applicants for the finance director post had to meet one additional essential finance criterion.

V. **Financial Management Responsibility and Experience** - Applying financial management principles in an organisational setting with a financial turnover of greater than £10m per annum.

6.21 The criteria were identical for the vacancies on all three Trust Boards.

6.22 It is unclear how the Department decided on the £10million threshold for the financial criterion. There is no legislative basis for its application and the lack of a specific role profile means its inclusion is not supported by any specific duties or responsibilities of the role.

6.23 Paragraph 3.5 of the Code states,

“The criteria must not contain unnecessary or unjustifiable conditions or standards”

The application of this £10million threshold without reference to specific duties or responsibilities of the role on the face of it is non-compliant with paragraph 3.5 of the Code, which requires criteria to be necessary and justifiable.

6.24 **Breach: The Department breached paragraph 3.5 of the Code.**

Recommendation: The Department must ensure that the criteria do not contain unnecessary or unjustifiable conditions or standards.

6.25 There is a further related aspect to this criterion which raises concern. The financial criterion favours applicants whose experience has been gained in an organisational setting with a financial turnover of greater than £10million per annum.

Paragraph 3.5 of the Code also states that,

“When drawing up criteria for a public appointment, those involved must recognise the validity of non-traditional career paths, to encourage applications from as

diverse a range as possible.”

An applicant who has gained experience outside of such a setting would not be considered for appointment. The criterion is advantageous to applicants who have followed a more traditional career path and, accordingly it mitigates against a more diverse applicant pool.

- 6.26 Given the high financial turnover of the South Eastern Health and Social Care Trust it is legitimate for the Department to seek applicants with an appropriate level of responsibility and experience in applying financial management principles. However CPA NI would question whether the successful applicant’s ability to apply financial management principles needs to have been demonstrated against a predetermined level of turnover. Applicants with relevant financial experience, against any level of turnover should be allowed to apply. They can be encouraged to demonstrate in the application form and at interview how their ability and experience could be applied to the responsibilities of the non-executive financial director post and the high levels of turnover this would involve. Other Departments have successfully adopted this more flexible approach. This may have the effect of widening the pool of applicants.
- 6.27 **Recommendation: The Department should remove the financial threshold requirement and instead encourage applicants to demonstrate how their ability and experience would be suitable to meet the requirements of the post.**

Ministerial Authorisation and the Appointment Plan

- 6.28 A submission containing the appointment plan, person specification and role profile issued to the then Minister on 22nd May 2015, and was approved on 26th May 2015. The then Minister requested an unranked alphabetical list of candidates suitable for appointment.
- 6.29 The appointment plan did not contain the content of the publicity to be used. The submission stated that “the person specification will be used as the framework for the public advertisement”. The content of the publicity for any competition plays an important role in encouraging members of the public to apply. It must be included in the appointment plan for agreement by the Minister.
- 6.30 **Recommendation: The Department must ensure that the full content of publicity is included in the appointment plan.**
- 6.31 The then Minister could not be provided with full details of the composition and names of the selection panel in the appointment plan submitted to him because the Independent Assessor for the South Eastern Trust Board competition had not been allocated at that stage. Full details of the selection panel were provided in respect of the Northern and Southern Trust Board competitions.
- 6.32 **Breach: The Department breached paragraph 3.6 of the Code of Practice which states that the appointment plan will include the composition and names of the**

selection panel.

Recommendation: The Department must ensure that the appointment plan includes the composition and names of the selection panel.

- 6.33 The appointment plan stated that in arranging interviews, consideration would be given to where an applicant lives, to avoid an early start for applicants who live a long distance from the interview location. CPA NI commends the Department for this positive approach.
- 6.34 Paragraph 3.6 of the Code requires Departments to prepare an appointment plan, which will include,
- “an indication of how applicants will be informed of the progress and outcome of their application”.*
- 6.35 The relevant section of the appointment plan explained how receipt of each application would be acknowledged, and set out the timescales for this acknowledgement. It also indicated that applicants would be advised whether they had progressed at each stage of the process and what information such communication would provide, but did not provide a timescale for this communication. This is insufficient. Timescales must show how long after each stage an applicant will be updated on the progress of their application. This section of the appointment plan should also include potential measures to be taken by the Department to keep applicants informed in the event of a delay, setting out a maximum length of time applicants must wait before contact from the Department.
- 6.36 This is an important part of treating applicants with respect. In the event applicants were subjected to an excessive delay in being informed of the outcome of their application.
- 6.37 **Recommendation: The Department must prepare a comprehensive procedure for keeping applicants informed of the progress and outcome of their application.**
- 6.38 In a situation where an applicant requests the competition documentation in an alternative format the appointment plan stated that to ensure equal treatment, a new response date for such an applicant would be calculated. This would allow them the same number of days to return their form as they would have if using the original documentation. CPA NI welcomes and commends this positive approach to dealing with requests for documentation in alternative formats.
- 6.39 The ministerial submission contained some basic administrative errors such as listing incorrect remuneration details for the posts and the inclusion of an additional incorrect criterion for the financial director post. Although these errors were relatively minor and had no adverse effect on the process, the ministerial submission containing the appointment plan, person specification and role profile is an important document which forms the basis for the ministerial approval for the

entire appointment process. The Department must ensure that it is accurate.

Stage 2 – Preparation

Information Pack and Application Form

- 7.01 The Information Pack included all the key components required by the Code.
- 7.02 The information provided on the Trusts was useful and comprehensive; it included information on the personal liability for non-executive directors.
- 7.03 Applicants were informed that the Department would carry out an Enhanced Disclosure Check for the appointment of non-executive directors. This check would be undertaken by Access NI.
- 7.04 The Information Pack provided basic details on the appointment process.
- 7.05 The Information Pack did not, however, include guidance on how to address each specific criterion, nor did it provide examples of the types of evidence an applicant could provide to meet the criteria. The lack of explanation of criteria is a barrier to applicants, in particular to those unfamiliar with public sector terminology. This mitigates against a more diverse applicant pool.
- 7.06 **Recommendation: The Department must provide a clear explanation for each criterion, avoiding jargon and in clear language link the explanation to work, skills and experience both inside and outside the public sector (including the voluntary sector).**
- 7.07 The Information Pack provided details on the process for shortlisting should this be required. It explained that applicants would be ranked numerically, and that the panel would then identify a sufficient number of applicants to be invited for interview, whilst ensuring that it is proportionate to the number of posts being filled.
- 7.08 The Information Pack must describe clearly and in detail how the selection panel will shortlist proportionately to the number of posts being filled. It is preferable for the Department to have in place an accurate predetermined mechanism for shortlisting.
- 7.09 Paragraph 3.27 of the Code states that the merit principle must not be abandoned to fit a predetermined timetable for interviews or other Departmental restrictions. While shortlisting was not required in this instance, the Department's approach could potentially have resulted in a breach of paragraph 3.27.
- 7.10 Applicants were given basic guidance on how to complete the Application Form. The guidance advised that applicants may use examples from their working or personal life, including any voluntary or community work.

7.11 Applicants were asked to,

“If possible, quantify/qualify your accomplishments.”

This instruction is vague and potentially confusing for applicants, it should be made clear to applicants that they must quantify/qualify their accomplishments against the criteria for the post for which they are applying.

7.12 **Recommendation: The Department must ensure that when asking applicants to qualify/quantify accomplishments, it is clear that this must be done against the specific criteria for the post.**

7.13 The Information Pack contained several basic administrative errors. This included three different phone numbers being listed as the contact number and using the wrong name for the CPA NI guidance leaflet on conflicts of interest, integrity and how to raise a complaint. In the Application Form, applicants were asked to declare that they had completed section nine of the form in relation to integrity and conflicts of interest, this information was actually provided by applicants in section seven of the eight section form. These are relatively minor issues however CPA NI would encourage the Department to ensure that the information included in the Information Pack is as accurate as possible.

7.14 The Application Form was otherwise clear and straightforward.

7.15 Applicants were asked to provide their National Insurance Number on their Application Form. There appears to be no job related reason for asking this. This request for a National Insurance Number is less than best practice as highlighted in paragraph 10D.7 of the Equality Commission for Northern Ireland’s *Unified Guide to Promoting Equal Opportunities in Employment*, which states,

“It is also good practice to omit questions relating to age, date of birth and national insurance number, unless these are relevant to objectively justifiable job selection criteria”.

7.16 **Recommendation: All information requested from applicants should be relevant to the vacancy.**

Current Employment

7.17 Sections four and five of the Application Form asked applicants to provide details on their current employment and voluntary work including relevant dates, the organisation and the position/main responsibilities. Applicants were advised that,

“Current employment and voluntary work plays no part of the selection process, however this information is used to identify any potential disqualifications and/or conflicts of interest only.”

7.18 Paragraph 3.21 of the Code of Practice states that Application Forms should ask

only what is truly required, in this instance CPA NI does not consider that sections four and five of the application form are compliant with the Code.

- 7.19 The Department did not require this information as applicants were asked, in section seven of the Application Form, to provide details of any real, perceived and potential conflicts of interest which may exist. The Information Pack also advised applicants that they may wish to take note of the disqualifications section of the information pack.
- 7.20 Rather than ask every applicant to provide details of current employment and voluntary work, applicants should be reminded to consider their current employment and voluntary work when providing details on conflicts of interest. The Department may also consider asking applicants to confirm that they have familiarised themselves with the disqualification criteria and ask them to provide details should any apply.
- 7.21 **Recommendation: The Department should remove the section requesting details on current employment and voluntary work from the Application Form. Applicants should be asked to consider this information, along with the disqualification criteria when providing information on issues of integrity and conflicts of interest.**

Monitoring Form

- 7.22 Applicants were asked to complete an equal opportunities monitoring form.

Stage 3 - Encouraging Applications

- 8.01 The competition was launched on 18th June 2015.
- 8.02 The vacancy was advertised in the Belfast Telegraph, the Irish News and the Newsletter. The press advertisement recognised that women, people under thirty years of age, members of ethnic minorities and people with disabilities were under-represented on health and social care bodies and welcomed applications from members of these groups.
- 8.03 It was posted on the websites of Action on Hearing Loss, the Department, Disability Action, the OFMDFM Central Appointments Unit, the South Eastern Trust, the Public Health Agency and the Royal National Institute of Blind People. It also featured on the departmental social media accounts.
- 8.04 A copy of the advertisement issued to a wide range of under-represented groups by way of an e-mail advising of the vacancy. Experience shows that a more focused outreach programme actively identifying members of under-represented groups and encouraging them to apply will make outreach even more effective. This might simply constitute the Department issuing a more informative letter to interest groups or it might involve the Department meeting with key network organisations.

- 8.05 **Recommendation: The Department could consider developing its outreach programme targeting groups currently under-represented on their Boards. This could involve, rather than a basic e-mail, a more detailed and personal type letter from the Department highlighting the under-representation and actively encouraging members of these under-represented groups to apply.**

Stage 4 – Selection

Processing Applications

- 9.01 The closing date for applications was 9th July 2015. Fifty-seven applications were received, comprising of twenty-six female applicants (46% of the applicant pool) and thirty-one male applicants (54% of the applicant pool). Ten applicants (three female and seven male) applied for both the lay director and finance director positions.
- 9.02 This was a promising result in terms of the number of female applicants.
- 9.03 Receipt of each application was acknowledged within five working days.
- 9.04 One late application was received; this was not accepted in line with the procedure for handling late applications.

Sift

- 9.05 Selection panel members attended a sift meeting on 6th August 2015. Copies of all Application Forms were provided to the selection panel prior to this, these were not anonymised.
- 9.06 Selection panel members received all sections of the Application Form, including sections four and five giving details of any current employment and voluntary work. As detailed in paragraph 7.17 of this report applicants were advised that this information would play no part in the selection process.
- 9.07 Paragraph 3.27 of the Code states that selection must be based on merit i.e. on how an applicant's skills, knowledge, experience and other qualities, meet the criteria. Job titles can have an unjustified importance and relevance attached to them. The provision of this information to the selection panel at this stage of the selection process seems to contradict the undertaking given by the Department (see paragraph 7.17) and is an example of poor practice. There is no evidence however to suggest that the selection panel considered any information other than that provided by the applicants against the criteria.
- 9.08 **Recommendation: Information which purportedly plays no part in the selection process must not be provided to the selection panel at any stage of the selection process.**
- 9.09 Each member of the selection panel completed a confirmation of independence

form on which they declared any of the applicants known to them, in what capacity, for how long and noted any recent contact. The panel members confirmed that this *'knowledge would not impinge on their ability to objectively assess their performance at interview in any way that would compromise the appointment process'*.

- 9.10 The selection panel then signed a collective statement of independence on which they declared that they had openly declared knowledge of applicants, that no conflicts of interest existed, and that they were happy to continue with the selection process.
- 9.11 Each member of the selection panel individually assessed the applications, and allocated a score against each criterion, along with comments. A consensus panel score was later agreed. The panel completed a consensus form for each applicant recording the individual selection panel member's scores, the agreed panel score and a determination on whether the applicant would be invited for interview. No consensus panel comments were recorded on this form.
- 9.12 **Recommendation: Paragraph 5.3 of the Code requires that a complete audit trail is readily available and this necessitates that a record is kept of how a consensus panel score was reached by the selection panel.**
- 9.13 A summary sheet of the sift meeting was completed. This recorded the total number of applications, and which applicants would be invited for interview and which would not. This summary sheet was signed and dated by all selection panel members.
- 9.14 In order to pass the sift exercise applicants had to meet the pass mark of four out of seven in each criterion.
- 9.15 Applications for a post on more than one Trust Board were assessed and scored separately and independently by the relevant selection panel.
- 9.16 A total of thirty-three candidates, twelve female and twenty-one male, were invited for interview for the lay director position. Of the ten applicants for the financial director position, four of these, all male, were also invited for interview.
- 9.17 At this stage the female representation in the applicant pool decreased from 46% to 36%, while the figure for male applicants increased to 64%. It is noted that the decrease in terms of female representation was reversed following the interview stage but this was insufficient to effect any improvement on the final diversity balance of the new board. CPA NI encourages the Department to monitor these figures and be mindful of any underlying reasons for these shifts.
- 9.18 A letter to those applicants who did not pass the sift exercise was issued on 14th August 2015. The letter listed the criteria the applicant failed along with the scores awarded, and provided contact details for applicants should they require further

information or have queries in relation to their non-selection for interview. Applicants were asked to write to the Appointments Unit within ten working days from the date of this letter clearly stating what additional information they require. While this process undoubtedly covers requests from an applicant for feedback or to have their application reassessed, the letter is not worded as such. The opportunity for feedback and reassessment must be clearly conveyed in the letter.

- 9.19 The letter should also be clearer with regards to the process for reassessment, if an applicant wishes to request reassessment they do not need to state what additional information they require, similarly if they require feedback they need only request this. Applicants requesting feedback should not be time bound by a ten day time limit from the date of the letter. Feedback on an applicant's performance can be requested at any time, within reason.
- 9.20 **Recommendation: The Department must explain clearly and fully the feedback and reassessment procedures to unsuccessful applicants.**
- 9.21 No requests for reassessment were received.
- 9.22 Three requests for feedback/information were received following the sift.
- 9.23 One applicant requested feedback following the sift. This applicant had failed to meet the required standards in respect of criterion IV – self awareness and personal contribution and asked for an explanation as to which competency the selection panel were specifically seeking to measure against this criterion. Feedback was provided by the Chair of the selection panel. The feedback was provided eleven working days following receipt of the feedback request.
- 9.24 Two applicants, invited for interview for one of the Trust Boards, but unsuccessful for the two other Boards, queried the lack of commonality of approach across the selection panels. The Department responded providing the information requested and explained that each selection panel had operated independently of one another and provided details on the process used for sifting. Whilst there may be an explanation for such inconsistency in terms of the deliberations of different panels, this does raise questions on the use of separate panels in a composite competition. Their use highlights and exaggerates any inconsistencies between panel scores for the same applicants, and the Department must be mindful of this.

Interview

- 9.25 A letter inviting candidates to interview was issued on 24th August 2015, eleven working days after the sift meeting. There is no clear explanation for the delay in issuing these letters.
- 9.26 Interviews began on 7th September 2015; the delay in issuing the invite letters meant that some candidates received only ten working days notice for their interview date. The interview dates remained as published in the Information Pack, and while this is encouraging, the Department must ensure that interview invites

are issued as promptly as possible to allow candidates the maximum amount of preparation time.

- 9.27 **Recommendation: The Department must ensure that candidates are advised of their interview dates in a timely manner to allow the maximum amount of preparation time.**
- 9.28 Three candidates withdrew from the appointment process prior to the interviews.
- 9.29 One candidate was unavailable on the published interview dates. The appointment plan stated that in such a case, the selection panel would make a decision on whether or not to reconvene for further interviews. There is no evidence to show that the panel was consulted on this, nor that they took such a decision. The candidate was not offered an alternative date. The Department must ensure that any procedures set out in the appointment plan are followed accurately.
- 9.30 **Recommendation: The Department must ensure that any procedures set out in the appointment plan are followed accurately and that decisions of this nature are taken by the appropriate people.**
- 9.31 Interviews took place on 7th, 8th, 9th, 10th and 11th September 2015.
- 9.32 Eight of the candidates for the South Eastern Trust Board were interviewed for all three Trust Boards. One candidate for the South Eastern Trust Board was interviewed for one additional Trust Board. Of these nine candidates only one had the interviews for the different trusts on separate dates, the remaining eight had at least two interviews on the same date. One candidate had three interviews on the same date. Two candidates attended two interviews on the same date with only a fifteen minute break between the two.
- 9.33 It is uncertain whether the close proximity of multiple interviews represents an advantage or a disadvantage to the candidates involved. Departments must give consideration, in any similar situation to staggering the interview dates so as not to advantage or disadvantage any candidate. This situation is another argument against the use of multiple selection panels in a composite competition.
- 9.34 All candidates were questioned on the four essential criteria, as well as the financial criterion if appropriate. A pass mark of four out of seven was in place for all criteria.
- 9.35 Each selection panel member completed an individual interview assessment booklet for each candidate, to record the evidence provided by the candidate against each criterion. All candidates were asked to identify any conflicts of interest and were questioned on integrity issues and their ability to meet the time commitment for the post. Selection panel members recorded an individual assessment as to whether there were any conflict of interest, integrity or time commitment issues which would prevent them from recommending the candidate for appointment.

9.36 The individual interview assessment booklet contained an interview assessment form on which an individual panel member score was recorded, along with overall comments for each criterion, and the total marks awarded. The selection panel members were also asked to complete a section entitled “*General Observations/explore any potential Conflict of Interest/Probity Issues:*”. The selection panel member also recorded their overall opinion on whether or not the candidate should be recommended as suitable for appointment.

9.37 Paragraph 3.38b of the Code states that,

“the selection panel must determine whether each applicant is aware of the standards of behaviour required of public appointees and can demonstrate his or her understanding of the issue.”

Candidates were not questioned on the standards of public life. This omission constitutes a breach of the Code.

9.38 **Breach: The Department breached paragraph 3.38b of the Code.**

Recommendation: The Department must ensure that the selection panel determine whether each applicant is aware of the standards of behaviour required of public appointees and can demonstrate his or her understanding of the issue.

9.39 A summary sheet recording an agreed panel score was completed and signed by all panel members. Summary evidence for the agreed score was provided for each criterion. The selection panel also recorded a written applicant summary including a written determination on what skills and knowledge each individual would bring to the role.

9.40 The selection panel were advised on the summary sheet that the written applicant summary should,

“...provide the Minister with an objective analysis of the applicant’s skill and experience, based on the information provided by each applicant during the appointment round and the selection panel’s assessment of the applicant to include any integrity or conflict of interest issues.”

Despite identifying conflict of interest issues for a number of candidates, details of these were not recorded here.

9.41 At interview twenty candidates were found to be suitable for appointment to the lay director position. Of these twenty candidates, eight were female (40% of candidate pool) and twelve were male (60% of candidate pool). In addition, three of the male candidates were also found suitable for appointment as the financial director.

- 9.42 Those candidates found suitable for appointment were informed of the decision in a letter issued 12th October 2015. The letter advised candidates that their name would be among those being presented to the Minister.
- 9.43 At this time, as part of an ongoing political situation, the then Minister had resigned. Candidates were informed of this and advised that this being the case no appointments could be made. The letter advised candidates that as soon as the uncertainty had been resolved the Department would move forward at the earliest opportunity.
- 9.44 Those candidates found unsuitable for appointment were informed of the decision in a letter issued 9th October 2015.
- 9.45 This was the first correspondence with all candidates since the interviews in early September. Given that appointment were due to be made from 1st October 2015, the delay in informing candidates about the outcome of the interviews is unacceptable.
- 9.46 **Breach: The Department breached paragraph 3.25 of the Code.**
- Recommendation: The Department must ensure that all candidates are kept informed of the progress of their application.**

Applicant Summaries

- 9.47 Applicant summaries were prepared by the Department.
- 9.48 Paragraph 3.41 of the Code states that the applicant summary must be agreed by the selection panel prior to submission to the Minister. This did not take place. Failure to do so is a significant breach of the Code. The Department's response stated that "This was not a requirement at that point". The Department's response adds to CPA NI concerns regarding DoH officials' unfamiliarity with the Code.
- 9.49 **Breach: The Department breached paragraph 3.41 of the Code.**
- Recommendation: The selection panel must agree the applicant summary prior to submission to the Minister.**
- 9.50 The applicant summaries were submitted to the then Minister in an alphabetical list on 4th November 2015.
- 9.51 Each applicant summary included a verbatim lift of the comments from the applicant summary section of the selection panel's interview summary sheet. It also included a section entitled 'Pen Picture' which provided some background information on the applicant, and a section with details of other public appointments held by the applicant.
- 9.52 The applicant summaries themselves did not contain reference to any perceived,

actual or potential conflict of interest or integrity issues. These issues were covered elsewhere in the main body of the submission to the then Minister. At least four applicants had a conflict of interest issue discussed at interview which was not included anywhere in the applicant summary or in the wider ministerial submission.

9.53 Paragraph 3.38f of the Code states that

'The applicant summary to the Minister must include clear written reference to any perceived, actual or potential conflicts of interest, or integrity issues, connected to any applicant 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.'

The selection panel, as stated in paragraph 9.40, did not record the details of any actual, perceived or potential conflicts of interest on their interview summary sheet. The Department in drafting the applicant summaries should have ensured that all interview documentation was checked for reference to any conflicts of interest. Had the selection panel been given the opportunity to review and clear the applicant summaries prior to approval by the then Minister this issue may not have arisen.

9.54 **Breach: The Department breached paragraph 3.38 of the Code.**

Recommendation: The Department must ensure that it has in place a robust and well defined procedure for identifying and recording any actual, perceived or potential conflicts of interest, details of which must be included in the applicant summary. Everyone involved in the appointment process must be fully aware of their responsibilities regarding conflicts of interest.

9.55 The language used by the selection panel to describe their assessment of each candidate, did not always correlate with the score they awarded to that candidate. For example, four candidates, despite achieving the same score at interview, were individually described as '*a good candidate*', '*a sound candidate*', '*a strong candidate*' and '*a consistently strong candidate*'. Another candidate, whom the selection panel awarded two marks less than these four candidates, was also described as '*a strong candidate*'.

9.56 These applicant summaries did not accurately convey to the Minister the selection panel's assessment of the candidates. This is especially important where a Minister has requested an unranked list and is reliant on the applicant summaries to provide accurate information to allow them to make an informed decision on which candidates to appoint.

9.57 **Breach: The Department breached paragraph 3.42 of the Code which states that the applicant summary should provide the Minister with an objective analysis of each applicant's skills and experience, based on the information provided by each applicant during the appointment round and the selection panel's assessment of**

that applicant.

Recommendation: The selection panel must ensure that their assessment of each candidate is accurately reflected in the comments they provide, in a consistent manner.

9.58 In what appears to have been administrative error the applicant summary for one candidate did not accurately reflect the selection panel's comments. This candidate was described in the applicant summary as a 'good strong candidate'. The panel comments actually describe the candidate as a 'good candidate'.

9.59 **Breach: The Department breached paragraph 3.42 of the Code which states that the applicant summary should provide the Minister with an objective analysis of each applicant's skills and experience, based on the information provided by each applicant during the appointment round and the selection panel's assessment of that applicant.**

Recommendation: The Department must ensure that the applicant summary accurately reflects the selection panel's assessment of each candidate.

9.60 The pen picture section of the applicant summary for some of the candidates included details taken from the current employment and voluntary work sections of their Application Forms. The Application Form stated that,

"Current employment and voluntary work plays no part of the selection process, however this information is used to identify any potential disqualifications and/or conflicts of interest only."

9.61 **Breach: The Department breached paragraph 3.42 of the Code.**

Recommendation: The Department must ensure that any background information on the candidates must be taken from evidence provided by the candidate against the criteria for the post.

9.62 Some of the applicant summaries contained inaccurate information in respect of other public appointments held by the candidates. Details of other public appointments held by some candidates were omitted entirely, for one candidate this included membership of the Boards of two DoH public bodies.

9.63 Overall the applicant summaries provided to the then Minister were of a poor standard. In addition to the issues highlighted there are instances of inaccurate and contradictory information being provided for candidates. There are several examples of the applicant summaries being vague and lacking required detail. In general the applicant summaries were poorly drafted, inconsistent and in some cases potentially unfairly advantageous to some candidates.

9.64 Applicant Summaries for the Northern and Southern Trust Boards were included in

the same submission to the Minister. Nine candidates were interviewed and were found suitable for appointment to more than one trust (which included the South Eastern Trust), for these candidates the applicant summaries for the separate trusts were identical. The wording was taken from the selection panel documentation for the South Eastern Trust Board. This is another example of the difficulties that may arise through the use of multiple selection panels in a composite competition.

9.65 The Department acknowledged that this was an administrative oversight and stated that no candidate was disadvantaged in any way.

9.66 The marks awarded show that there was, in some cases a wide variation of overall marks awarded by the different selection panels. For one candidate the difference in marks awarded by two of the panels was as high as seven marks. This level of confusion and inconsistency is unacceptable in a public appointment process. To some extent it can be attributed to the use of multiple selection panels.

9.67 **Breach: This is a serious breach of paragraph 3.42 of the Code.**

Recommendation: The Department must ensure that it has in place the appropriate capacity to administer a public appointment process effectively.

9.68 The submission to the then Minister contained pen pictures for all current Chairs and directors of the Northern, Southern and South Eastern Trust Boards, two of whom were deemed suitable for appointment for a post on one of the other Trusts (not the South Eastern Trust Board). These pen pictures contained additional information to that included in the applicant summary.

9.69 Whilst this approach in helping to identify skills gaps in the existing Board can be a useful aid to the Minister, as a matter of good practice the Department must ensure that when existing Board members are also candidates for appointment, information extraneous to that provided by them in their application or at interview is not included.

9.70 **Recommendation: The Department must not include information extraneous to that in the applicant summary, for any candidate sitting on the Board of a body related to their application. This may be perceived as unfairly advantageous to those candidates.**

9.71 The submission asked the then Minister, following the selection of the successful candidates, to agree that all remaining candidates are placed on a reserve list.

Ministerial Decision

9.72 The then Minister extended the terms of appointment of the three existing non-executive directors whose terms were due to finish on 30th September 2015. This was to cover the delay in making appointments from this competition.

9.73 On 30th January 2016 the then Minister selected three candidates for appointment.

9.74 Despite the then Minister being in receipt of guidance on Ministerial Choice, the recorded reasons for the ministerial decision were insufficient to allow the Department to provide meaningful feedback to unsuccessful candidates. This situation constitutes a breach of paragraph 3.45 of the Code which requires that when the Minister has made the decisions on which candidates to appoint, the Department hold sufficient information to provide meaningful feedback to unsuccessful candidates.

9.75 **Breach: The lack of sufficient recorded reason for appointment constitutes a breach of paragraph 3.45 of the Code.**

Recommendation: Following the ministerial decision the Department must hold sufficient information to provide meaningful feedback to unsuccessful candidates.

9.76 The record of the ministerial decision did not reference a reserve list. While CPA NI is satisfied from other evidence that a reserve list was in fact put in place (ie candidates not selected for appointment were informed of the decision by letter dated 9th March 2016 in which they were advised that their name had been placed on the reserve list), this should be clearly demonstrated in the record of the Minister's decision.

9.77 The appointment of the three successful candidates was confirmed by letter dated 8th March 2016.

9.78 This was the first correspondence with candidates since 12th October 2015. This unacceptable delay represents a breach of paragraph 3.25 of the Code, as well as a breach of paragraph 2.9 of the Code which states.

"Throughout the public appointment process, candidates should be treated with respect; this applies from the first contact with the Department through to completion of the appointments process."

Following the interviews, candidates should have been kept apprised of the situation in a timely manner. Failure to do so in this case demonstrates a lack of respect for the candidates.

9.79 **Breach: The Department breached paragraphs 2.9 and 3.25 of the Code.**

Recommendation: The Department must ensure that all candidates are kept informed of the progress of their application.

Announcing the Appointment

9.80 The Department announced the appointments in a press release. The announcement did not include details of any remuneration received for other Ministerial public appointments held by appointees.

9.81 **Breach: The Department breached paragraph 3.50 of the Code which states that**

public announcements must include a list of all other Ministerial public appointments held by the appointee and details of any remuneration received.

Recommendation: The public announcement for all appointments must include details of any remuneration received for other Ministerial public appointments held by the appointee.

9.82 The Department did not inform the Independent Assessor of the then Minister's final decision prior to the public announcement.

9.83 **Breach: The Department breached paragraph 3.45 of the Code which states that the selection panel members must be informed of the Minister's final decision before any public notification of the appointment is made.**

Recommendation: The Department must ensure that members of the selection panel are informed of the Minister's final decision before any public notification of the appointment is made.

Summary of Recommendations

- 10.01 The Department must ensure that it seeks the views of the Chair of the public body on issues such as selection criteria and the skills and diversity balance of the Board. This consultation should be at the beginning of the process and constitute the skills audit. The skills audit should form the basis of a comprehensive person specification and role profile.
- 10.02 The Independent Assessor must be allocated at the outset of the competition and should be given the opportunity to review and comment on the competition documentation prior to its approval by the Minister.
- 10.03 It is good practice for the selection panel to hold a competition initiation/planning meeting prior to the launch of the competition.
- 10.04 The Department must prepare a role profile for each separate position available on the Board.
- 10.05 The Department must ensure that the criteria do not contain unnecessary or unjustifiable conditions or standards.
- 10.06 The Department should remove the financial threshold requirement and instead encourage applicants to demonstrate how their ability and experience would be suitable to meet the requirements of the post.
- 10.07 The Department must ensure that the full content of publicity is included in the appointment plan.
- 10.08 The Department must ensure that the appointment plan includes the composition and names of the selection panel.

- 10.09 The Department must prepare a comprehensive procedure for keeping applicants informed of the progress and outcome of their application.
- 10.10 The Department must provide a clear explanation for each criterion, avoiding jargon and in clear language link the explanation to work, skills and experience both inside and outside the public sector (including the voluntary sector).
- 10.11 The Department must ensure that when asking applicants to qualify/quantify accomplishments, it is clear that this must be done against the specific criteria for the post.
- 10.12 All information requested from applicants should be relevant to the vacancy.
- 10.13 The Department should remove the section requesting details on current employment and voluntary work from the Application Form. Applicants should be asked to consider this information, along with the disqualification criteria when providing information on issues of integrity and conflicts of interest.
- 10.14 The Department could consider developing its outreach programme targeting groups currently under-represented on their Boards. This could involve, rather than a basic e-mail, a more detailed and personal type letter from the Department highlighting the under-representation and actively encouraging members of these under-represented groups to apply.
- 10.15 Information which purportedly plays no part in the selection process must not be provided to the selection panel at any stage of the selection process.
- 10.16 Paragraph 5.3 of the Code requires that a complete audit trail is readily available and this necessitates that a record is kept of how a consensus panel score was reached by the selection panel.
- 10.17 The Department must explain clearly and fully the feedback and reassessment procedures to unsuccessful applicants.
- 10.18 The Department must ensure that candidates are advised of their interview dates in a timely manner to allow the maximum amount of preparation time.
- 10.19 The Department must ensure that any procedures set out in the appointment plan are followed accurately and that decisions of this nature are taken by the appropriate people.
- 10.20 The Department must ensure that the selection panel determine whether each applicant is aware of the standards of behaviour required of public appointees and can demonstrate his or her understanding of the issue.
- 10.21 The Department must ensure that all candidates are kept informed of the progress

- of their application.
- 10.22 The selection panel must agree the applicant summary prior to submission to the Minister.
- 10.23 The Department must ensure that it has in place a robust and well defined procedure for identifying and recording any actual, perceived or potential conflicts of interest, details of which must be included in the applicant summary. Everyone involved in the appointment process must be fully aware of their responsibilities regarding conflicts of interest.
- 10.24 The selection panel must ensure that their assessment of each candidate is accurately reflected in the comments they provide, in a consistent manner.
- 10.25 The Department must ensure that the applicant summary accurately reflects the selection panel's assessment of each candidate.
- 10.26 The Department must ensure that any background information on the candidates must be taken from evidence provided by the candidate against the criteria for the post.
- 10.27 The Department must ensure that it has in place the appropriate capacity to administer a public appointment process effectively.
- 10.28 The Department must not include information extraneous to that in the applicant summary, for any candidate sitting on the Board of a body related to their application. This may be perceived as unfairly advantageous to those candidates.
- 10.29 Following the ministerial decision the Department must hold sufficient information to provide meaningful feedback to unsuccessful candidates.
- 10.30 The Department must ensure that all candidates are kept informed of the progress of their application.
- 10.31 The public announcement for all appointments must include details of any remuneration received for other Ministerial public appointments held by the appointee.
- 10.32 The Department must ensure that members of the selection panel are informed of the Minister's final decision before any public notification of the appointment is made.