

CPANI

The Commissioner
for Public Appointments
Northern Ireland

“Guardian of the Public Appointment Process”

Audit Report 2017/2018

Appointment of two lay members to the Northern Ireland Judicial
Appointments Commission

The Executive Office

January 2018

Introduction

1. A competition to appoint lay members to the Northern Ireland Judicial Appointments Commission (NIJAC) was selected for audit as part of the 2017/18 audit programme of the Commissioner for Public Appointments for Northern Ireland (CPANI). This competition was administered by The Executive Office (the Department).
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 Code), version issued September 2015.
3. 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

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 Board 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. Responsibility for appointments rests with the relevant Minister(s). 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. These responsibilities are given added emphasis with the NI Executive policy of a target for gender equality at both membership and Chair level by 2020-2021.

Approach

7. This audit report is the result of an examination of the appointment process, from which four breaches, eight instances of less than best practice and three examples of good practice were identified.
 - For each breach of the Code and each identified issue of ‘less than best-practice’, CPANI has produced a recommendation which the Department must address.
 - Recommendations are summarised at the end of the report and will be followed up by CPANI in subsequent audits for evidence of implementation by the Department.
 - Where instances of good practice are highlighted, it is hoped by CPANI that all Departments will study these for use in their own competitions.
8. CPANI carried out a comprehensive review of all appropriate records, as provided by the Department’s North South Ministerial Council (NSMC) Joint Secretariat Branch.

Acknowledgements

9. The Commissioner would like to thank the staff from the NSMC Joint Secretariat for their assistance and co-operation throughout this audit.

Summary

10. This competition commenced in the context of a current Commission which had a significant under-representation of women among its membership. The audit investigation found good work by departmental officials and the selection panel members. However, breaches of the Code and instances of less than best practice were identified and these are addressed throughout the report. Some of these were sufficiently significant to leave the Department open to challenge.
11. There were as indicated above a number of aspects of this process to be commended. First, the guidance was clear and easy to follow and it was open in its approach to the range of eligible experience. Second, the Department and the selection panel identified,

sought the advice of CPANI and addressed a potentially small applicant pool at an early stage. Through additional outreach work the Department ensured a final strong and diverse applicant pool. These were important measures taken by the Department.

12. The audit also revealed a number of areas where the appointment process could be improved and these are the subject of recommendations below.

Background

13. The Commission comprises a Chairman and twelve other members.
 - Chair - the Lord Chief Justice of Northern Ireland,
 - Five judicial members nominated by the Lord Chief Justice (a Lord Justice of Appeal, a judge of the High Court, a county court judge, a resident magistrate and a lay magistrate).
 - A barrister (nominated by the General Council of the Bar of Northern Ireland).
 - A solicitor (nominated by the Law Society of Northern Ireland).
 - Five lay members appointed by way of a ministerial public appointment.
14. At the outset of the competition NIJAC consisted of the Lord Chief Justice as the statutory Chair, five judicial members, two legal profession members and five lay members. The overall gender breakdown at this point was four females and nine males (31% of board membership was female). The breakdown for lay members was three females and two males (60% female representation), the breakdown for judicial and legal members was one female and six males (17% female representation). With this profile NIJAC had a poor gender balance.
15. One lay member resigned from NIJAC with effect from 31 March 2016. In addition one lay member was due to retire upon completion of their first term in October 2016 and a third would complete two terms in June 2017. All three outgoing lay members were female.
16. This competition was initiated to fill these upcoming vacancies

Stage 1 – Initial Planning of recruitment competition

Consultation with the Chair of the Board

17. A skills audit for NIJAC was carried out and the views of the Chair of NIJAC were sought on the selection criteria for the posts and the diversity balance of the Board.

Independent Assessor

18. CPANI allocated an Independent Assessor at the outset; the Assessor was involved in all relevant stages of the selection process. The role of the Independent Assessor included acting as a diversity champion throughout the process.

Diversity letter from CPANI

19. CPANI issued a letter to the Department at the outset of the process which highlighted the significant imbalance between men and women members of NIJAC and advised the Department that positive action to address under-representation and promote diversity must be reflected in the appointment plan and throughout the competition.

The Selection Panel

20. The selection panel consisted of a senior official from the Department who chaired the panel, the Chief Executive of NIJAC and the Independent Assessor. Selection panel members were involved in all relevant aspects of the selection process prior to the ministerial decision.
21. The Department ensured that all selection panel members were fully trained in line with the Code.

Person Specification and Role Profile

22. The person specification and role profile were developed by the Department. These included all information required by the Code. The responsibilities of the role set out in the role profile related directly to the criteria set out in the person specification.

The Criteria

23. Applicants were required to meet the following four essential criteria.
- i. Making an impact with others - Developing and maintaining co-operative working relationships to achieve results.
 - ii. Committing to the Lay member role - Understanding the working environment in which you are making a contribution.
 - iii. Thinking Strategically - Making a significant contribution to the strategic direction and to the success of the organisation.
 - iv. Analytical Thinking - Solving problems in a team and organisational environment.
24. In addition, applicants had to address two desirable criteria should they be required for short-listing purposes.
- v. Experience in Selection and Recruitment - At least two years' experience of conducting selection interviews and assessing candidates for appointment
 - vi. Experience of Corporate Governance - At least two years' experience of effective stewardship and governance to ensure the efficient and effective use of resources.
25. CPANI does not favour the use of any timeframe in the criteria for a public appointment. The focus must be on the quality rather than the length of the experience.
26. **Recommendation:** The Department should remove any timeframe element from the criteria for future competitions.
27. All applicants had to meet both of the following requirements in order to be considered eligible to undertake the lay member role.
- i. Declare on the application form that they are committed to non-violence and exclusively peaceful and democratic means.
 - ii. Have never held a protected judicial office or been a barrister or a solicitor.

Ministerial Authorisation

28. A submission issued from departmental officials requesting ministerial approval to initiate the recruitment competition issued on 03 March 2016. The submission

contained the person specification and role profile, as well as the proposed competition timetable and the draft recruitment advertisement.

29. There is no indication that all three members of the selection panel, who would not meet until 10 March 2016, had reviewed or agreed the person specification and role profile prior to those being issued to Ministers for approval.
30. The submission did not contain the appointment plan for the process; the appointment plan therefore did not receive ministerial approval as is required under paragraph 3.2 of the Code. The appointment plan is an important component of any public appointments competition, it sets out the process to be followed throughout and the assessment methods to be used. The lack of an appointment plan meant that Ministers were not apprised of the steps to be taken to achieve the best possible spread of applicants.
31. The selection panel had not reviewed or agreed the appointment plan at the point the submission went to the Ministers. This would be done at their meeting of 10 March 2016. The delay in reviewing or agreeing the appointment plan may have been the reason the plan was not included in this ministerial submission. Given the fact that the submission did not receive ministerial approval until 25 March 2016, there existed the possibility that the appointment plan could have issued to Ministers following its agreement by the selection panel.
32. **Breach:** The Department breached paragraph 3.2 of the Code.

Recommendation: The full appointment plan must be agreed by the Ministers in advance of each appointment process.

33. The Department advised Ministers that the advertisement had been drafted to take account of the CPANI diversity letter with its request that positive action be taken to address the under-representation of women in public appointments. This letter was included as an annex of the submission. Ministers were also advised that the three outgoing members of NIJAC were female. The advertisement stated that,

“Given the under-representation of women in public appointments, the Department would particularly welcome applications from women”.

34. CPANI commends the inclusion of a reference to the CPANI letter and the statement in the advertisement in the ministerial submission. There should, however, have been further information around the additional steps the Department intended to take to address the under-representation issue.
35. The Code requires that the Department must agree with the Minister how he or she wishes to have the list of 'suitable for appointment applicants' presented in the applicant summary at the end of the process. In this submission the Department proposed that *"the First Minister and deputy First Minister receive an alphabetical (unranked) list of all of the successful candidates for their consideration"*. The Department did not in the submission ensure that the Ministers were aware of the implications of how the list is presented, as is required under paragraph 3.43 of the Code. In approving the submission the Ministers did not specify how they wished the list to be presented, rather it was assumed that the alphabetical list proposal was accepted.
36. **Breach:** The Department breached paragraphs 3.3 and 3.43 of the Code.
- Recommendation:** The Department must consult the Minister to confirm whether he or she requires an alphabetical or merit-ordered list of the pool of candidates deemed suitable for appointment. However the list is presented Departments must ensure that the Minister is aware of the implications of each approach.
37. Following the ministerial approval for the submission, Ministers were not actively involved in the appointment process again until they received the applicant summaries.

Competition initiation Meeting

38. The selection panel attended a competition initiation meeting on 10 March 2016 at which panel members discussed a range of issues including the competition timetable, the competition documentation (appointment plan, person specification and role profile) and the assessment process.
39. The diversity letter from CPANI was discussed at this meeting and a discussion held on the need for positive action to address the under-representation of women. A list of actions were agreed for inclusion in the appointment plan.

Appointment Plan

40. The appointment plan, once agreed by the selection panel, did not include a section on diversity. It was clear from the documentation that the department and specifically the selection panel were conscious of the need to take action to address the diversity issue. They should, however, have ensured that the actions they proposed to take were set out in the appointment plan.

41. **Breach:** The Department breached paragraph 3.6 of the Code.

Recommendation: A section on diversity in the appointment plan is required under the Code. This is required in every case but is particularly important where a significant gender imbalance on a board has been highlighted and there is a CPANI request that the appointment plan sets out effective actions for addressing that imbalance.

42. The appointment plan stated that when dealing with a request for an information pack in an alternative format the closing date for those applicants would be recalculated to allow them the same number of days to return the form as they would have had if they had used the original documentation. This approach was designed to ensure equality of treatment for all applicants.

43. The appointment plan included a section which set out how applicants would be kept informed of the progress and outcome of their application. This section indicated that following the sift and interviews, applicants would receive a letter advised whether or not they would progress to the next stage of the process. It also stated that applicants passing the sift stage would be invited for interview at least two weeks in advance. This section must be developed to show how long after each stage of the process an applicant will be updated on progress, it 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.

44. **Recommendation:** The Department must develop its procedure for keeping applicants informed of the progress and outcome of their application.

45. The procedure for handling queries regarding an applicant's omission from the interview list; and the process to be used for the sifting/shortlisting of applicants were both comprehensive and well planned.

Stage 2 – Preparation

Information Pack and Application Form

46. The Information Pack included all the key components required by the Code.
47. Applicants were provided with comprehensive information on the logistics of holding the lay member position, covering issues such as time commitment and committee membership requirements.
48. The Information Pack provided guidance notes for applicants, this included clear simple guidance against each of the essential criteria, with examples of the type of information that an applicant might include. The wording throughout the guidance was easy to understand. This approach is helpful to all potential applicants including those with a background in a non-traditional area. Applicants 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 was not provided for the desirable criteria; the Department must look to extend the guidance it provides to all criteria.
49. CPANI commend the Department for the provision of this guidance and encourage the Department to continue to develop and improve the guidance for future competitions. This might be done by requesting feedback from applicants.
50. The application form was in three parts:
- Part A – Personal information.
 - Part B – Skills, knowledge and experience.
 - Part C – Monitoring Information.

51. Part B of the application form asked applicants to provide details of all employment currently held, or held after 2006, including relevant dates, title of post, name of employer and description of role. Applicants were advised that,
- “This information is to help ensure that any potential conflicts of interest are highlighted. It will not be used in determining your competence under the selection criteria.”*
52. The Department did not require this information as applicants were asked elsewhere to provide details of any conflicts of interest which might impact upon their appointment to NIJAC. Rather than ask every applicant to provide details of all employment for the past 10 years, applicants should be reminded to consider their current and past employment when providing details on conflicts of interest.
53. Part B of the application form also asked for a list of all current and previous public appointments. Departments are required by the Code to include, in a press release, any current ministerial public appointments held by the successful candidate(s). This does not necessitate the provision by applicants of a list of all previous public appointments held.
54. Paragraph 3.21 of the Code states that application forms should ask only what is truly required, in this instance CPANI does not consider that Part B of the application form is compliant with the Code.
55. **Recommendation:** The Department should remove the sections of the application form requesting details of current and past employment, and previous public appointments held. Applicants should be asked to consider any employment held when providing information on issues of integrity and conflicts of interest.

Monitoring Information

56. The application form stated that,
- “The application form is in three parts. All three parts must be fully completed and returned by the closing date. Failure to do so will mean that the application will not be accepted”*

57. Provision by applicants of monitoring information was treated as mandatory in this process. However advice provided by the Equality Commission (and supported by the Information Commissioner Office (ICO)) is premised on the fact that there is no rule of (equality) law that says that job applicants must complete monitoring questionnaires. The Equality Commission does not recommend rejecting an applicant who does not complete a monitoring form as, according to the ICO, such an approach may constitute a breach of the Data Protection Act.
58. All three parts of the application form, including the monitoring information were stored together. CPANI does not consider this to be good practice and would advise the Department to consult the Equality Commission and the Information Commissioner's Office on how it stores monitoring information received from applicants.
59. **Recommendation:** The Department should consult with the Equality Commission and the Information Commissioner's Office on its practices concerning how it requests and stores monitoring information.

Stage 3 - Encouraging Applications

60. The competition was launched on 04 April 2016. The advertised closing date for applications was 05 May 2016.
61. The vacancy was advertised in the Belfast Telegraph, the Irish News and the Newsletter. The advertisement stated that applications from women would be particularly welcome.
62. It was posted on the websites of the Department and NI Direct, as well as the websites of several outside organisations representative of traditionally under-represented groups. A copy of the advertisement issued to a range of organisations, including those of under-represented groups.
63. At a meeting on 19 April the Department sought CPANI's advice on the low level of applications received, particularly from women. As a result of these discussions the Department extended the closing date for the competition until 16 May 2016. The Department used this extra time to undertake further outreach targeting a substantial number of organisations, with the focus being on groups currently under-represented

in public appointments. CPANI also encouraged applications during two of its public appointments workshops.

Stage 4 – Selection

Processing Applications

64. Following the revised closing date of 16 May 2016 eighty applications were received, comprising of forty-three female applicants and thirty-seven male applicants. This was a very good result in terms of the number of applicants and especially the number of female applicants.
65. CPANI commend all involved for their efforts to ensure a strong and diverse applicant pool.

Sift

66. Selection panel members undertook a sift exercise on 20 and 23 May 2016.
67. Selection panel members completed an individual applicant assessment form for each applicant. They allocated a score out of five for each of the essential criteria, and a determination as to whether or not the applicant met each of the desirable criteria. At the sift meeting an agreed score was allocated and the panel completed a sheet recording a 'summary of short-listing panel member scores and agreed scores'. The selection panel provided comments against those criteria that an applicant failed. This sheet was signed and dated by all selection panel members.
68. Detailed indicators, previously agreed by the selection panel, were in place for the assessment of the application forms.
69. A letter to those applicants who did not pass the sift exercise was issued on 27 May 2016. The letter set out the criteria the applicant did not meet. The information pack stated that *"Feedback in respect of short listing for interview will be communicated automatically to those candidates who fail to satisfy any criteria"*. The purpose of feedback is to provide applicants with useful and pertinent information on their performance. CPANI does not consider that the listing of the criteria failed adequately

fulfils this purpose. The letter did not contain details on how an applicant could request further feedback.

70. **Recommendation:** The Department must ensure that feedback provided to applicants contains useful and pertinent information on their performance.
71. A total of thirty-one applicants, twenty-one female and ten male, were invited for interview.

Interview

72. A letter inviting applicants to interview issued on 27 May 2016. The letter informed applicants that the four essential criteria would be tested at interview.
73. Interviews took place 13, 14, 20, 21 and 27 June 2016.
74. Each applicant was given thirty minutes at interview, this was applied consistently. When an interview ran over the thirty minute limit for example due to a discussion of a conflict of interest issue, an explanation for this was noted by the Chair.
75. In order to pass the interview applicants had to meet the pass mark of 16 out of 25 in each criterion.
76. Each member of the selection panel completed an individual interview assessment booklet for each applicant, recording the evidence provided, a panel member score and justification for that score. Each panel member also recorded the agreed panel score for each criterion.
77. All applicants were asked to identify any perceived, potential or real conflicts of interest and were questioned on integrity issues. They were also asked to confirm their ability to meet the time commitment for the post.
78. 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.”

79. Although the seven principles of public life were mentioned to applicants, applicants were not specifically questioned on these in order to fulfil this requirement of the Code.
80. **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.
81. An interview summary rating sheet was completed by the Chair and signed by all panel members. This recorded the agreed panel score and supporting comments for each criterion, comments on overall performance and comments on conflicts of interest and integrity as well as a determination as to whether or not the applicant would be recommended to the Minister.
82. For each applicant the Chair of the selection panel recorded on a separate sheet any other information relating to the interview. Examples included where an applicant arrived late for interview or an interview ran over the thirty minute limit.
83. One applicant raised two potential conflicts of interest, these were discussed with the applicant and a record of the discussion kept. The selection panel held the view that these issues would not represent a conflict of interest should the applicant be appointed. The Ministers were advised of this in the applicant summary; no details on the potential conflicts were provided. This is an example of good practice in handling an issue of conflict of interest.
84. At interview eight applicants were found to be suitable for appointment; four female and four male.
85. Those applicants found suitable for appointment were informed of the decision in a letter dated 20 July 2016.
86. Those applicants found unsuitable for appointment were informed of the decision in a letter dated 20 July 2016. This correspondence included the offer of feedback on the applicant's performance at interview. One applicant requested feedback at this point and this was provided in a timely manner by the Chair of the panel.

Applicant Summaries

87. Applicant summaries were prepared by the Department and were agreed by the selection panel prior to submission to the Ministers. Each applicant summary included the comments from the interview summary rating sheet - supporting comments for each criterion at interview, the comments on overall performance at interview and comments on conflicts of interest and integrity issues.
88. The selection panel comments were at times not totally reflective of how each applicant had performed at interview based on the score awarded, and how the applicants' performance at interview compared with one another. CPANI is supportive of a selection panel writing an applicant summary which is personal to each applicant but urges selection panels to ensure the comments accurately portray to the Minister how the applicant performed at interview.
89. The applicant summaries also included a pen picture section, this section contained background information on the applicant including details from the examples the applicant had provided against each criterion in the application form. This section was drafted by a departmental official who had not been a member of the selection panel. The wording used in the pen pictures was, for more than one applicant, not reflective of the selection panel comments or score provided for that applicant.
90. The drafting of the applicant summaries could be characterised as less than best practice. Departments and selection panel members must ensure that any information included in the applicant summary accurately reflects the assessment and comments recorded by the selection panel.
91. In most instances the pen picture had also been supplemented with information from the career history section of the application form. See also paragraph 55 which recommends that the Department remove the section of the application form requesting details of current and past employment.
92. **Recommendation:** The Department and the selection panel must ensure that any information included in the applicant summary accurately reflects the assessment and comments recorded by the selection panel and does not introduce extraneous

comments. Difficulties around the drafting of applicant summaries have arisen on several occasions across various competitions in different Departments and CPANI intends to produce guidance on the matter.

93. The applicant summaries were submitted to the Ministers in an alphabetical list on 20 July 2016. The submission contained details of recent changes to the Code, a copy of the CPANI diversity letter and details of the current board membership and its gender breakdown.
94. The submission advised Ministers of their responsibility to record reasons for the decision on which applicants to appoint.
95. The submission recommended that all applicants not appointed be placed on a reserve list for future vacancies, including that arising in June 2017.

Ministerial decision

96. On 06 October the Ministers' private offices advised by e-mail that Ministers had selected two candidates for appointment.
97. The Department was unable to provide a record of the reasons for the Ministers' decision. Following the decision the Chair of the selection panel advised the Ministers' private offices of the Code requirement for the reasons for the decision to be recorded. The Chair requested from the Ministers' private office a note setting out the reasons for appointing the two applicants. No recorded reasons for the Ministers' decision was provided.
98. **Breach:** The Department breached paragraph 3.44 of the Code.
Recommendation: The Department must ensure that the Ministers' reasons for which applicants are to be appointed are recorded and retained as part of the audit trail.
99. Those applicants not selected by the Ministers were informed that their name would be placed on a reserve list in a letter dated 14 October 2016.
100. The two successful applicants were initially informed of the Ministers' decision in a telephone call, this was followed up with a letter and an official minute of appointment dated 17 October 2016.

101. This was the first correspondence with applicants since 20 July 2016. Following the interviews applicants should have been kept apprised of any delay in a timely manner. Failure to do so suggests a lack of courtesy to applicants.
102. **Recommendation:** The Department must keep all applicants informed of any delay affecting their application in a timely manner.

Announcing the Appointment

103. The Department announced the appointments in a press release dated 18 October 2016.

Feedback

104. One reserve list applicant requested feedback on their performance at interview following the public announcement. This was dealt with by the Chair of the selection panel in a timely manner.

Summary of Recommendations

105. The Department should remove any timeframe element from the criteria for future competitions.
106. The full appointment plan must be agreed by the Ministers in advance of each appointment process.
107. The Department must consult the Minister to confirm whether he or she requires an alphabetical or merit-ordered list of the pool of candidates deemed suitable for appointment. However the list is presented Departments must ensure that the Minister is aware of the implications of each approach.
108. A section on diversity in the appointment plan is required under the Code. This is required in every case but is particularly important where a significant gender imbalance on a board has been highlighted and there is a CPANI request that the appointment plan sets out effective actions for addressing that imbalance.
109. The Department must develop its procedure for keeping applicants informed of the progress and outcome of their application.

110. The Department should remove the sections of the application form requesting details of current and past employment, and previous public appointments held. Applicants should be asked to consider any employment held when providing information on issues of integrity and conflicts of interest.
111. The Department should consult with the Equality Commission and the Information Commissioner's Office on its practices concerning how it requests and stores monitoring information.
112. The Department must ensure that feedback provided to applicants contains useful and pertinent information on their performance.
113. 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.
114. The Department and the selection panel must ensure that any information included in the applicant summary accurately reflects the assessment and comments recorded by the selection panel and does not introduce extraneous comments. Difficulties around the drafting of applicant summaries have arisen on several occasions across different competitions and CPANI intends to produce guidance on the matter.
115. The Department must ensure that the Ministers' reasons for which applicants are to be appointed are recorded and retained as part of the audit trail.
116. The Department must keep all applicants informed of any delay affecting their application in a timely manner.