

The Office of the Commissioner for Public Appointments in Scotland Audit Report 2006-2007

Public Transport Users' Committee for Scotland - Convener

Report No. 4

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Ranking of areas of non compliance in terms of priority

Priority	Definition
One	Non compliance arising from failure to document or evidence the basis of a decision on a candidate's or applicant's suitability OR where there has been a significant breach of the requirements of the Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code).
Two	Non compliance arising where evidence does not fully document or evidence the basis of a decision on a candidate's or applicant's suitability.
Three	Non compliance arising from failure to fully record or evidence a step in the appointment process required by the Code or PAT guidance but which is not related to a decision as to a candidate's or applicant's suitability.

Statement of Responsibility

Our report has been prepared solely for the Office of the Commissioner for Public Appointments Scotland (OCPAS) in accordance with the terms and conditions set out in our engagement contract. We do not accept or assume any liability or duty of care for any other purpose or to any other party. This report should not be disclosed to any third party, quoted or referred to without our prior written consent. Our work is subject to the inherent limitations set out at Appendix 1.

Introduction and summary of findings

Introduction

- 1.01 Our review of the processes implemented for the selected appointment round for the Convener of the Public Transport Users' Committee for Scotland (PTUC) was performed as part of the OCPAS audit plan agreed with the Commissioner.
- 1.02 This report has been prepared solely for the Office of the Commissioner of Public Appointments Scotland (OCPAS) in accordance with the terms and conditions set out in our engagement contract. We do not accept or assume any liability or duty of care for any other purpose or to any other party. This report should not be disclosed to any third party, quoted or referred to without our prior written consent.
- 1.03 Our audit work has been designed to assess compliance with the Code and with any supplementary guidance issued by OCPAS and / or the Scottish Executive Public Appointments Team as to compliance with that Code. It therefore addresses the processes implemented to ensure that the appointment round meets these requirements. Our observations and findings are designed to inform a programme of continuous improvement and do not challenge any decisions regarding the selection of appointable candidates.

Background

- 1.04 OCPAS is responsible for regulating the processes used and procedures followed by Scottish Ministers in the making of public appointments, to ensure that these appointments are made fairly and openly, and are based on merit. In light of this requirement, the Commissioner has developed a Code to regulate the process to be followed, which was published in April 2006. Independent OCPAS Assessors support the Commissioner and are assigned to appointment rounds to ensure compliance with the Code. Compliance with the Code should ensure equality of opportunity and treatment and ensure that all appointments made are merit-based, with evidence generated and retained to support each part of the decision making process.
- 1.05 The management of the public appointments process is the responsibility of the relevant Scottish Executive Department's sponsor team. The team is responsible for initiating the process and managing it through to its conclusion. It is also responsible for generating appropriate documentation at each stage of the appointment round which records decisions taken regarding the selection, or otherwise, of individuals to go through to the next stage of the process.

- 1.06 Within the Scottish Executive, there is a centralised team, entitled the Public Appointments Team (PAT), which is responsible for the Scottish Executive's overall policy in relation to public appointments. PAT acts as the main point of contact within the Scottish Executive for OCPAS. PAT also provides advice and support to sponsor teams with any queries or problems being encountered throughout each appointment process. The PAT guidance states that key documents such as the role description, person specification and publicity for the role must be provided by the sponsor team to PAT for review.
- 1.07 To assist the sponsor teams in conducting the appointments process, the PAT has produced a detailed guidance document (entitled Making Public Appointments in the Scottish Executive) that sets out the steps to be followed at each stage of the appointment round, and includes standard documents for use by sponsor teams. The PAT guidance used for the 2006/07 appointment rounds was not fully compliant with the new Code although there is no evidence that this affected the appointment rounds subject to audit. Following a review of the guidance by the Commissioner, in relation to the requirements of the Code, actions were agreed with Public Appointments Team to amend certain information and advice contained in the guidance. The guidance has now been updated and was re-issued in May 2007.
- 1.08 OCPAS Assessors play a key role through providing assurance that the processes used to make appointments to the boards of public bodies conform to the principles and practices contained in the Code. At the end of each appointment round, the OCPAS Assessor must complete a validation statement confirming that each element of the round that they participated in complied with the Code.
- 1.09 In terms of adherence to the Code we would also highlight the importance of the role of the senior official within the sponsor division who is responsible for ensuring:
- The process fully complies with the Code;
 - The criteria submitted to the Minister for approval meets the needs of the body and its board and are testable; and
 - The Minister is provided with all the information that he/she needs in order to make a decision on appointment that is based solely on the criteria.
- At the end of the process, it is the senior official who must provide a formal statement of assurance to the Minister that the process is both Code compliant and meets the relevant requirements of the PAT guidance.

Approach

- 1.10 The overall objective of our review was to consider whether the Code was complied with during the appointment round for the Convener of the Public Transport Users' Committee for Scotland (PTUC). We have considered each of the stages of the appointment process (as described in more detail at appendix 1):
- Stage 1: Planning
 - Stage 2: Encouraging Applications
 - Stage 3: Processing Applications
 - Stage 4: Interview

- Stage 5: Selection
- Stage 6: Post Appointment

1.11 Our approach consisted of a review of paper files and files stored within the electronic system (eRDM); as well as interviews with key staff involved in the process.

Summary of Findings

1.12 The matters arising from this review are noted below. An appendix listing areas for development, to address instances of non compliance, will be included within the annual summary report for the year ended 31 March 2007. For each of the instances of non compliance we have allocated a risk rating based on our evaluation of the impact of the finding in terms of meeting the requirements of the Code and PAT guidance.

Instance of non compliance with the Code

- While a meeting note documented the panel's decision reached for each applicant during shortlisting, we noted it was very brief with only single line statements as to the standard of the application form. Individual panel members' documents relating to the shortlisting and interview stages were not retained. The collective decisions of the selection panel should be sufficiently detailed to evidence the decisions made by the panel and provide a basis for the provision of feedback, if requested (**Code paragraphs 19.4, 19.5, 19.8 and 22.10**) – **Priority Two**.

Areas of variance from PAT guidance¹

- The file of evidence provided did not fully record certain parts of the appointment process. Missing evidence included the approval of the press release (**Scottish Executive Guidance paragraph 4.16.12**) - **Priority Three** and the individual panel members' documents relating to the shortlisting and interview stages were not retained (**Scottish Executive Guidance paragraph 4.14.22 and 14.5.3**) – **Priority Two**.

Other observations noted

- Feedback was offered to all candidates invited to interview; however it was noted that these letters were actually sent five days after the last date stated in the covering letter sent out with the original information pack for obtaining feedback. It would appear that the appointment timetable did not take into account the time required to conclude the appointment round, particularly around the Christmas period. A holding letter should have been sent to all candidates interviewed to ensure that they were kept informed of the progress and the delays being encountered.

¹ Whilst the April 2006 guidance was used as the reference document for the 2006/07 audit process, we have referenced the above areas of variance to the latest PAT guidance, of May 2007, to support future compliance. The primary purpose of PAT guidance is to ensure that the processes adopted during each appointment round are compliant with the Code. Although following all parts of the guidance is not mandatory for sponsor teams (it is only mandatory to follow those parts of the guidance that fully reflect the requirements of the Code) it does provide a framework which promotes consistent application of the Code through the provision of information on the minimum requirements for each round, together with advice on what is considered to be good practice.

Good Practice noted

- A significant level of time was invested in developing the person specification, with the results of a consultation paper from PTUC and the views of the Minister both being taken on board during the drafting of the specification.
- As well as advertising the post, the sponsor team also issued a letter to a large number of organisations informing them of the vacancy.
- The Minister met with the candidates to ensure he was as fully informed as possible prior to making his decision. A record of the meetings was retained along with the reasons behind the Minister's choice for the appointment. This was the only instance, within our sample of appointment rounds, where the basis of the Ministerial decision was recorded as evidence within the file.

Acknowledgements

- 1.13 We would like to thank all staff involved in this review for their co-operation and assistance.

Detailed findings and observations

Stage 1: Planning

- 2.01 The appointment round for the Convener of PTUC commenced in July 2006, with the appointment intended to be made by February 2007. An OA was assigned to the appointment round on 27 July 2006.
- 2.02 As the PTUC is a new organisation and the Convener was to be the first appointment to the board, the development of the person specification and role description was different to that of existing boards. A consultation exercise had previously been undertaken regarding PTUC and its role. The results of this consultation informed the sponsor team on the range of skills and knowledge expected of the Convener and members of the board. A meeting was also held with the Minister to discuss certain areas of PTUC and the appointment. Using this information and the sponsor team's experience with other similar appointments, the person specification and role description were drafted. There was clear evidence that the OA was heavily involved in this process. The first Ministerial submission, which included the role description and person specification, was provided to the Minister on 14 September 2006 and was subsequently approved.

Stage 2: Encouraging Applications

- 2.03 Adverts were placed in both national and regional papers on 28 September with a closing date of 31 October. This was complemented by a strategy of informing specific organisations of the vacant post. Letters were emailed to all Local Authorities, Health boards, Regional Transport Partnerships, as well as any organisation that replied to the original consultation exercise on PTUC. The advert was also placed in the Metro, Big Issue and Disability Now Extra to encourage as diverse an audience as possible to apply.

Good Practice noted

- The decision taken to approach specific organisations to notify them of the post was a cost effective means of ensuring a wide audience was encouraged to apply for the post. While not undertaken for the Convener appointment round, it is also acknowledged that the source of applications was reviewed after advertising the members' positions, to help inform future appointment rounds.

Stage 3: Processing Applications

2.04 Seventeen applications were received for this post. Due to the small number of applications, no initial sift was conducted and all applications were submitted to the selection panel for shortlisting which took place on 16 November 2006. A record of each selection panels' shortlist evaluation form for each applicant was not retained in the file of evidence. A note of the shortlist meeting was retained as evidence of the panel's collective decision for each candidate. While this meeting note documented the decision reached for each candidate, we noted it was very brief with only single line statements as to the standard of the application form.

Instance of non compliance with the Code

- The Code requires that all selection panel members record their assessment of each applicant and their decision on which to invite to interview. It is important that these papers are retained in the file of evidence for future reference. The collective decision of the selection panel should be sufficiently detailed to evidence the decisions made by the panel and provide a basis for the provision of feedback, if requested. **(Code paragraphs 19.4, 19.5 and 19.8).**

Area of variance from PAT guidance

- The Code requires that all selection panel members record their assessment of each applicant and their decision on which to invite to interview. It is important that these papers are retained in the file of evidence for future reference. **(Scottish Executive Guidance paragraph 4.14.22).**

Stage 4: Interview

2.05 The interviews for this appointment round took place on 7 December 2006, the date noted within the covering letter to the application pack. We noted that the selection panels' candidate interview evaluation forms were not retained in the file of evidence. A selection panel summary evaluation form was completed for each candidate deemed suitable for appointment, with a separate report produced with information on the candidates not deemed suitable.

2.06 During the interviews, discussions were held as to the time commitment stated within the advert and role description. It was agreed between the candidates and selection panel that the time initially stated may be unrealistic, with more time required to fulfil the Convener role. At the time, this suggested a potential breach of the Code as candidates would not have been able to make an informed decision based on the publicity material. However, the sponsor team has confirmed that the time commitment originally stated was accurate.

Instance of non compliance with the Code

- The Code requires that all selection panel members record their evidence-based assessment of each candidate's performance at interview. It is important that these papers are retained in the file of evidence for future reference. **(Code paragraph 22.10).**

Area of variance from PAT guidance

- The Code requires that all selection panel members record their evidence-based assessment of each candidate's performance at interview. It is important that these papers are retained in the file of evidence for future reference. **(Scottish Executive Guidance paragraph 4.15.3).**

Stage 5: Selection

- 2.07 Two candidates out of the four interviewed were assessed by the panel as being suitable for appointment. The summary evaluation forms for each of these candidates were included in the second submission to the Minister. In addition, a separate report was provided outlining why each of the unsuccessful candidates was assessed as 'not suitable for appointment', along with the signed Statement of Validation. This was submitted on 17 December 2006.
- 2.08 Given the respective but differing strengths of the two appointable candidates the Minister met with the candidates, with the OA as observer. These meetings took place on 24 and 25 January 2007, following which the Minister made his choice as to the candidate to appoint. A record of the meetings was retained along with the reasons behind the Minister's choice for the appointment.

Good Practice noted

- As entitled to by the Code, the Minister decided to meet with the two candidates deemed suitable for appointment prior to making the final appointment decision.

Stage 6: Post Appointment

- 2.09 The successful candidate was contacted to request completion of a short CV for inclusion in the press release. Unsuccessful candidates were notified in advance of the press release, including the second candidate interviewed by the Minister who was contacted by telephone in advance of the press release.
- 2.10 The letters sent to the candidates not deemed suitable for appointment included the reasons behind the decision made by the selection panel, providing some initial feedback and offering further feedback if required. However, it was noted that these letters were actually sent five days after the last date stated in the covering letter for obtaining feedback. It would appear that the appointment timetable did not take into account the time required to conclude the appointment round, particularly around the Christmas period.

Good Practice noted

- The letters sent to unsuccessful candidates were noted as including some feedback and reasoning behind the decision made regarding their interview and application, helping provide timely feedback to these individuals.

Area of variance from PAT guidance

- The process followed to obtain an approved press release should be recorded within the evidence file to verify that it has been suitably approved and cleared for factual accuracy. (**Scottish Executive Guidance paragraph 4.16.12**).

Other observations noted

- Feedback was offered to all candidates invited to interview; however it was noted that these letters were actually sent five days after the last date for obtaining feedback as stated in the original covering letter for the information pack. A holding letter should have been sent to all candidates interviewed to ensure that they were kept informed of the progress and the delays being encountered.

Other Comments

Evidence in Support of Decisions

- 3.01 One of the seven principles which underpin the Code is that of openness and transparency. This principle is defined in the Code as: *'the practices employed at every stage in an appointment round must be transparent. Decisions taken at each stage will reflect this Code of Practice and be fully documented.'* This highlights the importance of ensuring that there is appropriate evidence retained to support the decisions made throughout the process.
- 3.02 In relation to this appointment round concern was raised as to the evidence retained to support decisions. This was mainly as a result of the Minister's decision to meet with the two candidates. It was noted from discussions that the panel chair had intended to expand on the completed summaries, but was unable to find time to do so before they had to be submitted to the Minister. The Code allows for the Minister meet with candidates identified as suitable for appointment as long as he or she meets with all considered suitable.
- 3.03 We noted that the completed candidate summaries contained a reasonable amount of information, and certainly contained more than that reviewed for other appointment rounds. The summaries were noted as being approved by the panel as a whole, including the OA, with no comments given as to the level of detail contained. We understand that there were extenuating circumstances making the Minister's decision more difficult, leading to the decision to meet with the candidates.
- 3.04 Some issues were identified in relation to the evidence retained to support the decisions at the interview and selection stages of the round. It has already been noted that the shortlist report prepared as evidence to support the decisions made at the shortlisting stage was not sufficient as the report contained only a very brief statement on each applicant. Individual panel members' assessments of applicants and candidates were also missing from the file.

Appendix 1: Background information for each stage

Stage 1: Planning

It is important that the planning starts in good time, with appointments taking on average 6 months to complete. An appointment timetable must be produced, which will assist in the planning of the appointment round, setting deadlines for various stages of the process.

A key part of the planning process is to identify the skills, knowledge and personal qualities that are required to complement existing members of the board in question. The skills, knowledge and personal qualities identified will be used in both advertising the position, and also to assess the quality of applicants at both the application stage, and candidates at the interview stage. It is therefore important that an appropriate amount of effort is put in to identifying these requirements. The relevant Scottish Minister is ultimately responsible for public appointments, and it is therefore important that they are involved in this stage. The Minister is required to agree the specific requirements of the board and organisation in question, the role description, the person specification and the appointment timetable.

An OCPAS Assessor (OA) is assigned to each appointment round to ensure that it complies with the Code throughout the process. Early involvement of the OA is advised to allow time to take into account any comments raised.

Stage 2: Encouraging Applications

The information contained within advertisements should enable readers to make an informed decision as to their suitability for the appointment. Consideration also has to be given to the approach to publicity to encourage the largest number of suitable candidates from a wide and diverse audience to apply. As with the development of the person specification, it should be ensured that the advertisement is not discriminatory in any way, either through language or methods of publicity used.

The Minister may be asked to provide the name of any potential applicants or avenues to identify applicants. All suggestions of potential applicants are welcomed as a means of improving diversity and obtaining a satisfactory number of applicants. However any such individuals can not be favoured, and will be treated in the same way as all other applicants.

Stage 3: Processing Application

This stage involves a review of the applications received to select the candidates found to demonstrate the skills and knowledge stated in the person specification. A requirement of the Code, which differs in this respect from the Code that preceded it, states that the consideration of application forms must be anonymous, with all personal information separated from the main body of the application form. The process of selecting candidates suitable for interview can be a two stage process, starting with an initial sift undertaken by the sponsor department if a significant number of applications are received. The remaining applicants, or all applicants if an initial sift is not conducted, will then be considered by the selection panel to produce the shortlist of candidates to interview.

There must be documentation as to why decisions were taken at this time, so that feedback could be provided if requested, or so there is appropriate evidence should a complaint be received. Applicants should be kept informed and receive timely notification of the outcome of their application.

Stage 4: Interview

The interview stage of the process gives the selection panel the opportunity to further evaluate the suitability of candidates against the person specification. It is important that questioning is consistent across the candidates to ensure that the selection panel are able to provide assessment of each candidate on an equitable basis. The questioning should therefore be agreed in advance of the interviews taking place. As with the processing applications stage, it is essential that there is appropriate documentation retained as evidence to support any decision as to the suitability of the candidate. Feedback must be offered to any unsuccessful candidates, based on the evidence retained from the interview.

Stage 5: Selection

The ultimate decision to appoint is the responsibility of the Minister. The Minister should make this decision based on a candidate summary received from the selection panel, which should provide an objective analysis of each candidate's suitability for the appointment based on information obtained throughout the process. So as not to influence the Minister, the information on candidates in the summary must not be provided in any form of ranked order, allowing the Minister to make an objective decision as to who to appoint. The decision made by the Minister of who to appoint must be recorded along with the reasons for the decision.

Stage 6: Post Appointment

The evidence retained throughout the process should be used but to provide any feedback requested by any unsuccessful applicants or candidates. Any individuals that were found suitable to appoint but who were not appointed should receive additional feedback provided by the Minister as to their decision.

In the event that, pursuant to a request which OCPAS has received under the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002, it is required to disclose any information contained in this report, it will notify PricewaterhouseCoopers (PwC) promptly and consult with PwC prior to disclosing such report. OCPAS agrees to pay due regard to any representations which PwC may make in connection with such disclosure and OCPAS shall apply any relevant exemptions which may exist under the Act to such report. If, following consultation with PwC, OCPAS discloses this report or any part thereof, it shall ensure that any disclaimer which PwC has included or may subsequently wish to include in the information is reproduced in full in any copies disclosed.

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