

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

sportscotland – Members

Report No. 1

Contents

Section	Page
Introduction and summary of findings	3
Detailed findings and observations	7
Other Comments.....	11
Appendix 1: Background information for each stage	12

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 members to the board of **sportscotland** 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 members to the board of **sportscotland**. 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.

Instances of non compliance with the Code

- Whilst it is acknowledged that the decision to seek the appointment of three members, rather than two, was in response to a change in requirements, there was no record of the rationale behind the decision to accommodate the resignation of a further board member within the current appointment round or evidence that this was discussed and agreed with the Commissioner or OA. The Code requires all vacancies to be appropriately publicised. **(Code paragraphs 13.2 and 13.3) – Priority Two.**
- There is no record of the reason for the Minister’s decision in relation to the appointment of the three board members out of the five appointable candidates. In this respect, we would highlight the swift action taken by the Cabinet Secretary for Finance and Sustainable Growth to address this failure. A guidance note to all Cabinet Secretaries and Ministers was issued by the Cabinet Secretary for Finance and Sustainable Growth on 18 July 2007 introducing them to their role and responsibilities in relation to the public appointments process. Among other things, this note made it clear that they are expected to record the reason for their decisions in relation to appointments. **(Code paragraph 24.5) - Priority One.**

Areas of variance from PAT guidance¹

- The two candidates considered suitable for appointment by the selection panel, but who were not appointed, were provided with feedback on their performance at interview. However there is no record of feedback being provided on the Minister’s decision. **(Scottish Executive Guidance paragraph 4.16.18) – Priority Two.**

Other observations noted

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.

- It should be considered best practice to ensure that there are no gaps between the terms of existing members ending and new appointments commencing. We acknowledge that the time interval in this instance was not significant and did not cause any disruption to the conduct of board business. PAT guidance suggests that appointment exercises should be completed at least four weeks before the appointment term ends, particularly if any members are not being re-appointed.
- The interview dates were agreed by all panel members before the initial submission to the Minister in August. Rather than regarding the interview dates as final, the panel members, other than the OCPAS Assessor, assumed that these could be changed at a later date if required.
- The summary of the shortlisting meeting was sent to all panel members. However there was no evidence on file to validate that this represented the collective decision of the panel as no formal approval from the panel members was retained.

Good Practice Noted

- Collaboration between **sportscotland** and the sponsor department in the drafting of the role description and person specification ensured that the appointments process was focused on securing the most suitable candidates to further the aims and objectives of **sportscotland**.
- The difficulty surrounding the first change of interview dates was resolved in a timely manner with clarification being sought from OCPAS to ensure the decision taken was compliant with the Code.
- The posts were advertised in a range of publications. Scottish Disability Sport was also contacted to advertise the positions.
- The successful candidates were asked to review and approve the press release prior to it being approved internally. This ensured that all details contained within the press release were factually accurate.

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 appointments round for two members to the board of **sportscotland** commenced on 14 June 2006, six months prior to the end of the second appointment term for two existing board members. An OCPAS Assessor (OA) was requested on 27 June 2006, and was assigned the following day. The person specification and role description were then developed by the Chair of **sportscotland** in conjunction with the sponsor department and approved by the OA during July. The first ministerial submission was provided to the Minister on 11 August 2006 and was subsequently approved.

Good Practice noted

- A skills matrix was developed by the Chair of **sportscotland** not only to identify the skills gap that would arise on the departure of the existing board members but also to highlight other skills that would help to bring balance to the board.
- Collaboration between **sportscotland** and the sponsor department in the drafting of the role description and person specification ensured that the appointments process was focused on securing the most suitable candidates to further the aims and objectives of **sportscotland**.

Other observations noted

- According to SEPAT Guidance, the appointments process should be timetabled to conclude four weeks before the retiring members' appointment terms end. In this instance, two of the board members were due to retire on 14 December 2006. However, the appointments plan was scheduled to conclude with the appointment of the new board members on 15 January 2007. This left a gap of one month between the existing two members retiring and the new members taking up post. In addition, a further board member submitted their resignation in December 2006, leaving three vacancies on the board. We acknowledge that this does not demonstrate non-compliance with the Code, and that the appointment round commenced six months prior to the end date of the two retiring members' terms. However, it should be considered best practice to ensure that there are no gaps between appointments. PAT guidance suggests that appointment exercises should be completed at least four weeks before the appointment term ends, particularly if any members are not being re-appointed.

Stage 2: Encouraging Applications

- 2.02 The advertising strategy for the **sportscotland** appointment round was formulated by the sponsor department. The strategy used in a previous appointment round within the department was used as a guideline as this had generated a wide range of applicants. Adverts were placed in both national and regional newspapers on 25 August with a closing date of 6 October 2006. In addition, Scottish Disability Sport was notified of the vacancy at this time and encouraged to disseminate the advert amongst interested parties.

Good Practice noted

- The advertising strategy ensured that a wide range of potential applicants was reached, including those with a specific interest in the positions.

Stage 3: Processing Applications

- 2.03 Thirty five applications were received in total. However, it was determined that an initial sifting stage was not required. All applications were submitted to the selection panel for shortlisting which took place on 2 November 2006. During the shortlisting meeting each applicant was discussed and consensus reached on whom to select for interview. A summary of the panel's collective decision in relation to each applicant, with a brief paragraph outlining how this decision was reached, was recorded in a note. This complies with the Code but not with the SEPAT guidance.

Other observations noted

- The summary of the shortlisting meeting was sent to all panel members. However there was no evidence on file to validate that this represented the collective decision of the panel as no formal approval from the panel members was retained.

Stage 4: Interview

- 2.04 The interviews for the **sportscotland** appointment round took place on the 23 and 29 November 2006. This was a departure from the original interview dates, as notified in the application pack, of 29 and 30 November 2006. This was due to the Chair of **sportscotland** being unable to attend the original date as she would be out of the country at that time. This change was agreed with the OA and all applicants were notified. A further change of dates was requested by the Chair of the selection panel on the 24 October 2006. This request was denied by the OA, after consultation with the Commissioner, on the grounds that a change had already been made and the request conflicted with the principle of the Code that respect is given to all those involved in the process. In the event the Chair of the selection panel was able to attend the revised interview dates.
- 2.05 The refusal to change the interview dates a second time was viewed as excessively 'rigid' by both the Chair of **sportscotland** and the Chair of the panel. They asked that the OA include comments in the feedback form to OCPAS, expressing reservations as to the rigidity of the process and the timetable being set before the advert was publicised. The feedback form completed by the Chair of the selection panel also noted that it was unrealistic for the dates to be inflexible when set so far in advance and that the Code allowed little room for pragmatism.

Good Practice Noted

- The difficulty surrounding the interview dates was resolved in a timely manner with clarification being sought from OCPAS to ensure the decision taken was compliant with the Code.

Other observations noted

- The interview dates were agreed by all panel members before the initial submission to the Minister in August. Rather than regarding the interview dates as final, the panel members, other than the OCPAS Assessor, assumed that these could be changed at a later date if required.

Stage 5: Selection

- 2.06 Five candidates from the eight 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 summary paragraph outlining why each of the unsuccessful candidates was assessed as not suitable for appointment was included. Due to the resignation of a further board member in December the second submission requested the Minister to appoint three, rather than two, board members. This was submitted on 21 December 2006 with the Minister's decision received on the 9 January 2007. This merely stated the names of the three to be appointed.

Instances of non compliance with the Code

- Whilst it is acknowledged that the decision to seek the appointment of three members, rather than two, was in response to a change in requirements, there was no record of the rationale behind the decision to accommodate the resignation of a further board member within the current appointment round or evidence that this was discussed and agreed with the Commissioner or OA. **(Code paragraphs 13.2 and 13.3).**
- There is no record of the reason for the Minister's decision in relation to the appointment of the three board members from the five suitable candidates. **(Code paragraph 24.5).**

Stage 6: Post Appointment

- 2.07 The newly appointed board members were sent drafts of the press release for approval. The press release was then approved by the Public Appointments Team, the Communications team, the Chair of the selection panel and the Minister before being released to the press. The unsuccessful candidates were notified three weeks prior to the press release.
- 2.08 Feedback on request was offered to all unsuccessful applicants and unsuccessful candidates interviewed. Verbal feedback was provided by the Chair of the selection panel to the three unsuccessful candidates. Written feedback was provided on request to one applicant who was not invited to interview.

Good Practice Noted

- The successful candidates were asked to review and approve the press release prior to it being approved internally. This ensured that all details contained within the press release were factually accurate.

Area of variance from PAT guidance

- The two candidates considered suitable for appointment by the selection panel, but who were not appointed, were provided with feedback on their performance at interview. However there is no record of feedback being provided on the Minister's decision. **(Scottish Executive Guidance paragraph 4.16.18).**

Other Comments

Proportionality

- 3.01 One of the seven principles which underpins the Code is that of proportionality. This principle is defined in the Code as follows: *'the practices employed during each appointment round will be appropriate for the specific post and the nature and function of the public body concerned'*. In practical terms this involves balancing the requirements of the Code with a pragmatic and cost effective approach. Whilst it is important for the Code to be followed for each appointment, there is scope for the practices applied at each stage to vary in proportion to the size and purpose of the public body, and the posts to be filled.
- 3.02 The feedback form completed by the Scottish Executive in relation to this appointment round raised concerns over lack of flexibility of the Code, particularly around interview dates. It also stated that there was 'little room' for pragmatism and common sense. The fact that interviewers were tied to interview dates relatively far in advance was cited as an example. The OA feedback form included comments made by both the Chair of **sportscotland** and the Chair of the selection panel in relation to the process being too rigid, particularly with reference to the interview dates being set at the time of advertisement.
- 3.03 Following the comments made in the feedback forms a particular focus of this review was on the issue of proportionality. From our review it appears that this issue has arisen mainly in relation to the refusal to change interview dates for a second time, after all potential applicants had already been notified of the first change. This would have involved contacting all applicants for a second time with changes to interview dates. The Scottish Executive, in commenting on the first draft of this report, advised that interview dates and any other dates listed in the appointment plan are usually final and observed wherever possible and practicable. The Executive's view is that it should be accepted by all parties that they may be subject to change if necessary. It is our view that the Code does allow for flexibility and that the OA demonstrated flexibility by allowing for a first change of date during this appointment round. We therefore do not believe it was unreasonable for the OA to refuse the second date change.
- 3.04 A further comment was raised by the sponsor team in relation to the amount of forms that need to be completed at each stage of the process. However, these forms are required by the guidance issued by the Public Appointments Team as part of their quality assurance processes to meet the requirements of the Code. The Code itself is less prescriptive about the way in which evidence must be recorded than the SEPAT guidance.
- 3.05 From our review of the process, including investigation of the issues raised by the panel members, we do not consider there to have been any material issues in relation to proportionality.

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.

©2007 PricewaterhouseCoopers LLP. All rights reserved. PricewaterhouseCoopers refers to the United Kingdom firm of PricewaterhouseCoopers LLP (a limited liability partnership) and other member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.