

The Office of the Commissioner for Public Appointments in Scotland Audit Report 2006-07

Scottish Natural Heritage – Members

Report No. 3

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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 members to the board of Scottish Natural Heritage 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 Scottish Natural Heritage. 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

- There was no record of the reason for the Minister's decision in relation to the appointment of the four board members from the eight suitable 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

- There was no record on file of approval being received from the appointed candidates for the information contained in the press release. **(Scottish Executive Guidance paragraph 4.16.12) – Priority Three**

Other observations noted

- The person specification was deliberately formulated to be relatively open in order to attract a wide field of candidates. A review of the appointment round conducted by the sponsor team at the end of the process identified that whilst a high number of applicants had been received and the most suitable candidates had been appointed with regards to the person specification, they did not necessarily fully address the skills gap on the board. **(Code paragraphs 5.2 to 5.4 and 7.1).**

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.

- The confusion surrounding the OA approval of the initial submission to the Minister arose mainly due to continuity problems when key members of the sponsor team were on leave. This may have been avoided by more effective use of the Scottish Executive's record management system.

Good Practice Noted

- The sponsor department invested time to develop a detailed project plan. This set out the key tasks in the process, allocated each to a named individual, estimated the amount of time of sponsor team involvement in each task, and indicated the dates when each would occur. The sponsor team also identified risks that might delay the process and implemented mitigating actions. In addition, the actual days spent on each task were recorded to identify areas of potential slippage.
- The posts were advertised in a range of publications including the national Scottish newspapers and the regional newspapers. This ensured that a wide range of potential applicants was reached.

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 four members to the board of Scottish Natural Heritage commenced at the end of August 2006, seven months prior to the end of the second appointment terms for three existing board members. An OCPAS Assessor (OA) was requested on 6 September 2006 and was duly assigned. The person specification and role description were then developed by the Chair and Chief Executive of SNH in conjunction with the sponsor department, and approved by the OA during September and October 2006. The first ministerial submission was provided to the Minister on 23 October 2006 and was subsequently approved.
- 2.02 The OA raised a concern in the feedback form that the documents had been submitted to the Minister without her approval. She had asked for a number of changes to be made to the documents before submission. Whilst these changes were actually made before the submission, the incorrect earlier version of the documents had been sent to the OA. As a result the OA asked for the submission to be recalled pending her approval. She subsequently cleared the documents for submission having been satisfied that they did in fact incorporate her changes.

Good Practice Noted

- The sponsor department invested time to develop a detailed project plan. This set out the key tasks in the process, allocated each to a named individual, estimated the amount of time of sponsor team involvement in each task, and indicated the dates when each would occur. The sponsor team also identified risks that might delay the process and implemented mitigating actions. In addition, the actual days spent on each task were recorded to identify areas of potential slippage.

Other observations noted

- The person specification was deliberately formulated to be relatively open in order to attract a wide field of applicants. A review of the appointment round, conducted by the sponsor team at the end of the process, identified that whilst a high number of applications had been received and the most suitable candidates had been appointed with regards to the person specification, they did not necessarily fully address the skills gap on the board.
- The confusion surrounding the initial submission to the Minister arose mainly due to continuity problems when the members of the sponsor team were on leave. This may have been avoided by more effective use of the Scottish Executive's record management system.

Stage 2: Encouraging Applications

- 2.03 The advertising strategy for the SNH 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, as well as specialist magazines, between 9 and 11 November 2006 with a closing date of 15 December 2006. In addition, the advert was posted on the Greenspace Scotland website in response to a request from the Minister to encourage applicants with a background in urban greenspace.

Good Practice Noted

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

Stage 3: Processing Applications

Scottish Natural Heritage Members

- 2.04 Ninety one applications were received. An initial sift was undertaken by the sponsor team between 27 and 29 December 2006. This resulted in 31 applications being submitted to the selection panel for shortlisting which took place on 10 January 2007. The OA asked to review a sample of every third rejected application. Due to personal circumstances the OA had to withdraw from the appointment round at that stage of the process. A new OA was appointed who subsequently received the forms the day before the shortlisting. After review of these forms he made the decision to recommend reinstatement of one of the rejected applications for the shortlisting meeting.
- 2.05 During the shortlisting meeting each applicant was discussed and consensus reached on which candidates to select for interview. A candidate shortlist evaluation form was completed for each applicant and signed off by all panel members. Seventeen applicants were shortlisted for interview, including the applicant whose application was originally sifted out and later reinstated by the selection panel.

Stage 4: Interview

- 2.06 The interviews for the SNH appointment round took place between 31 January and 2 February 2007. This was consistent with the dates notified in the application pack. The selection panel consisted of the Head of Rural Affairs at the Scottish Executive, the Chair of SNH, and the OA. Each panel member completed a candidate interview evaluation form for each candidate to record the evidence presented against each of the criteria. A selection panel summary evaluation form for each candidate was then compiled by the sponsor team and subsequently agreed by the panel.

Stage 5: Selection

- 2.07 Eight candidates from the seventeen 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 were assessed as not suitable for appointment was included. This was submitted on 7 March 2007 with the Minister's final decision being received on 29 March 2007. This stated the four names to be appointed. The delay in the decision was due to the Minister originally suggesting that only two members be appointed and a further appointment round conducted for the remaining two positions. This suggestion was withdrawn once the timescales and cost of an appointment round were made clear.

Area of non compliance with the code

- There was no record of the reason for the Minister's decision in relation to the appointment of the four board members out of the eight suitable candidates **(Code paragraph 24.5)**.

Stage 6: Post Appointment

- 2.08 Feedback on request was offered to all unsuccessful applicants and candidates invited to interview. Two applicants who were not invited to interview took up this offer. The press release was cleared with the Minister, the PAT, the Communications team and all members of the Selection Panel before being released to the press.

Area of variance from PAT guidance

- There was no record on file of approval being received from the appointed candidates for the information contained in the press release. **(Scottish Executive Guidance paragraph 4.16.12)**.

Other Comments

Proportionality

- 3.01 One of the seven principles which underpin the Code is that of proportionality. This principle is defined in the Code as: *'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 OCPAS Assessor initially involved in this appointment round noted that the sponsor department indicated that OCPAS's involvement and the requirements of the Code were not proportionate.

For example - clarification concerning the final OA approval of the initial Ministerial submission. Review of the formal record, and discussion with the sponsor team, revealed that this was mainly due to the extent of transfer of documents back and forth amongst all related parties during the process of drafting and securing approval. Due to the time pressures involved the sponsor team had not considered it necessary to obtain final clearance from the OA after they had incorporated her changes.

- 3.03 The remainder of the appointment round continued relatively smoothly. The feedback completed by the sponsor department on the OA did not raise any significant concerns.
- 3.04 It is a requirement of the Code that the OA must review the final version of the role description, person specification, appointment plan and application pack before publication to ensure that they are Code compliant and to offer any advice as to best practice. It is not a requirement that they are involved in the drafting of these documents although their input may be of value. As the level of involvement of the OA is essentially determined by the sponsor team we do not consider this to be an issue of proportionality.

Administration

- 3.05 The Code specifies certain administrative requirements that sponsor departments must comply with at each stage of the process. One of these, is that the OA has final approval of certain documents before the vacancy is publicised. Concern was raised by the OA in the feedback form that these documents had been

submitted to the Minister without her final clearance, and in particular that changes had been made by PAT which she had not seen. As noted above, after recalling the submission for review, the documents were subsequently cleared and it was resubmitted.

- 3.06 The original submission had in fact incorporated the changes made by the OA. The issue arose due to a breakdown in communication when the contact at the sponsor team went on leave. More effective use of the Scottish Executive's record management system would have enabled the sponsor team to have a clearer position regarding the status of the appointment round at that stage.
- 3.07 Whilst it was not strictly necessary, as per the Code, for the OA to clear the amendments made by PAT before submission to the Minister, final approval of the documents is required before the vacancy is publicised.
- 3.08 The sponsor team also raised the issue that the focus of the appointments rounds now seems to be on demonstrating that the correct process has been followed rather than the key goal of finding the most suitable candidates for the positions. Whilst we acknowledge the time pressures faced during an appointments round it is important that all decisions are seen to be, and evidenced as being, open and transparent.

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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