



The Office of the Commissioner for
Public Appointments in Scotland

REAPPOINTMENT REPORT

Report of findings following a review of reappointments made by the Scottish Ministers



Date of report: June 2009

EXECUTIVE SUMMARY

Background to review

- This report sets out the findings of a review of ministerial reappointments to six public bodies. The review assessed the extent to which the Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code) was complied with.

Findings

- The Code requires a review of the person specification prior to reappointment. We found that the Code was **not** complied with in this respect in **50%** of the reappointments we reviewed.
- The Code requires regular and transparent performance appraisal for board members. The Code also states that no one can be reappointed unless there is evidence of effective performance during their current term. We found that the Code was **not** complied with in this respect in **50%** of the reappointments we reviewed.
- If a sponsor team is recommending reappointment to a Minister, it must provide a submission summarising how the member meets the current specification and the member's performance to date. We found that the Code was **not** complied with in this respect in **100%** of the reappointments we reviewed.

Result of review

In relation to these findings we have posed a number of questions for Scottish Government in the body of this report. We have asked the Scottish Government to let us know how and by what date the poor practice and non compliance identified during the review will be rectified.

Contents

INTRODUCTION	4
REASON FOR THIS REVIEW	4
WHAT THE CODE SAYS ABOUT REAPPOINTMENT	5
RESPONSIBILITIES OF THOSE INVOLVED	6
SCOPE OF REVIEW	6
THANK YOU TO SPONSOR TEAMS	6
QUESTIONS ARISING FROM THE REVIEW	7
DETAILED FINDINGS	8

INTRODUCTION

This review assessed compliance with the Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code) in relation to reappointments. It is the first review of reappointments to be conducted under the current Code which came into effect in April 2006. The findings of our review of six separate reappointments rounds are drawn together in this composite report.

REASON FOR THIS REVIEW

As reappointments are not overseen by OCPAS Assessors, retrospective review is the way in which the Commissioner finds out whether the Code is being complied with.



WHAT THE CODE SAYS ABOUT REAPPOINTMENT

29 Re-appointment

29.1 A member may be re-appointed for a second term in the same role without open competition, subject to evidence of effective performance, if he or she possesses the skills, knowledge and personal qualities required on the board at the time of re-appointment. This will require a review of the person specification prior to re-appointment.

29.2 Sponsor departments will ensure that every public body has in place and implements regular and transparent performance appraisal processes, the outcomes of which are recorded and provide the evidence on which to base a decision to re-appoint.

29.3 Performance appraisals are a requirement of re-appointment and the process to be used to appraise performance will form part of the induction provided on initial appointment.

29.4 No-one may be re-appointed unless there is evidence of effective performance during their current term of appointment.

29.5 If recommending re-appointment, the sponsor department will prepare a submission to the Minister which will summarise how the member meets the current person specification, and the member's performance to date.

29.6 Where it does not recommend re-appointment the sponsor department will prepare a submission to the Minister outlining the reasons for this decision.

29.7 There is no requirement for these submissions to the Minister to be reviewed by an OCPAS Assessor. Any such submissions will, however, be available for audit purposes.

29.8 It is for the Minister to decide whether to re-appoint a member who has been recommended for re-appointment by the sponsor department.

29.9 If the Minister chooses not to follow the recommendation of the sponsor department the reasons for this decision will be documented and will be available for audit purposes.

RESPONSIBILITIES OF THOSE INVOLVED

The Code sets out the responsibilities of those engaged in the reappointments process. Briefly, these are as follows:

- The Minister can choose to reappoint people to positions on the boards of public bodies for a second term. Equally, Ministers can choose to fill vacancies through open competition. In each case, the appointing Minister must decide on the skills, knowledge and personal qualities they will require of the people to be appointed or reappointed.
- The chair of the public body is responsible for carrying out regular and transparent board member appraisals.
- Sponsor teams of civil servants within Scottish Government administer the public reappointments process on behalf of the appointing Minister. They must run a Code compliant process and provide the Minister with a submission containing:
 - evidence, generated from performance appraisals, that the individual to be reappointed has performed effectively in their role during their first term of appointment.
 - evidence that the individual meets the current person specification.
- OCPAS Assessors (OAs) do not oversee the reappointment process.

SCOPE OF REVIEW

We reviewed six reappointments rounds and produced individual reports on each one. We agreed the findings as accurate with sponsor teams. The rounds reviewed are listed in alphabetical order at APPENDIX one.

One body from within the portfolio of each Director General was selected for review.

To conduct the review, we examined the records maintained by sponsor teams responsible for administering ministerial public appointments. We also interviewed sponsor team members.

Full details of the scope of the review and the approach used are available from OCPAS.

THANK YOU TO SPONSOR TEAMS

We thank the sponsor teams for the support and co-operation they provided to OCPAS for the purposes of this review.

QUESTIONS ARISING FROM THE REVIEW

1. Was the person specification reviewed at the time that reappointment was being considered?

29.1 A member may be re-appointed for a second term in the same role without open competition, subject to evidence of effective performance, if he or she possesses the skills, knowledge and personal qualities required on the board at the time of re-appointment. This will require a review of the person specification prior to re-appointment.

In 50% of the reappointment records we reviewed, we found that this requirement of the Code was not complied with.

2. Was there evidence that the individuals who were reappointed had performed effectively in their role?

29.2 Sponsor departments will ensure that every public body has in place and implements regular and transparent performance appraisal processes, the outcomes of which are recorded and provide the evidence on which to base a decision to re-appoint.

29.4 No-one may be re-appointed unless there is evidence of effective performance during their current term of appointment.

In 50% of the reappointment records we reviewed, we found that this requirement of the Code was not complied with.

3. Was there evidence from performance appraisal that the member met the current person specification for the role?

29.5 If recommending re-appointment, the sponsor department will prepare a submission to the Minister which will summarise how the member meets the current person specification, and the member's performance to date.

In 100% of the reappointment records we reviewed, we found that this aspect of the Code was not complied with.

Question for Scottish Government

How does Scottish Government propose to ensure in future that

1. The person specification is reviewed at the time that reappointment is considered?
2. The public body has in place and implements regular and transparent performance appraisal processes, the outcomes of which are recorded and provide the evidence on which to base a decision to re-appoint?
3. The performance appraisal process provides evidence of ability against the person specification at the time of reappointment?

DETAILED FINDINGS*

1. Was the person specification reviewed at the time that reappointment was being considered?

29.1 A member may be re-appointed for a second term in the same role without open competition, subject to evidence of effective performance, if he or she possesses the skills, knowledge and personal qualities required on the board at the time of re-appointment. This will require a review of the person specification prior to re-appointment.

The Code advises that the person specification must be reviewed prior to reappointment. We therefore looked for evidence that the person specification was reviewed and if necessary updated prior to the reappointments being made. The findings of this part of the review are set out in Table 1 on the next page.



* For ease of reference, a table on page 19 summarises the detailed findings.

Table 1

Body	Finding	Was the Code complied with?
One	The person specification used for the reappointment lists six essential criteria for the role. It was updated as the criteria are different to those listed in the specification used when the board member was appointed for a first term.	Yes.
Two	The same person specification was used for the reappointment made in 2007 as was used for the original appointment. No review appears to have been carried out of the person specification to assess its continued relevance at the time of reappointment. When open recruitment was carried out a year later the person specification had changed.	No
Three	All four individuals were appointed using an identical person specification in 2004. The specification contained 15 essential and five desirable criteria. The same person specification was used when the individuals were reappointed in April 2008. There was already a new person specification for the board in existence by February 2008. It was significantly more focused. It is not clear why the members were not assessed for reappointment against the requirements in the new specification.	No
Four	We found evidence of significant involvement from the Chair of body and staff in developing the person specification for the role and assessing the existing skills balance across board members.	Yes
Five	As Ministers agreed to delay (until after the elections) the agreement of the future person specification the recommendation for reappointment could not describe how the existing board members met the likely requirements of that specification. The reappointments were made to secure continuity of key business within the sub-committees and to reduce the risk of losing these members. The reappointments had however taken account of the role description and person specification in line with the guidance current at that time.	Yes – to the extent that the specification was reviewed. It was not updated.
Six	No updated person specification was provided in the submissions to the Minister or provided for this review. The submissions made reference to it without attaching a copy*.	No

* The sponsor team offered an explanation for their not providing this document. The guidance in use by Scottish Government at the time did not require the person specification to be attached. The skills matrix was mentioned in the Scottish Government guidance and, in the case of both submissions, the skills matrix was attached.

2. Was there evidence that the individuals who were reappointed had performed effectively in their role?

The Code requires:

29.2 Sponsor departments will ensure that every public body has in place and implements regular and transparent performance appraisal processes, the outcomes of which are recorded and provide the evidence on which to base a decision to re-appoint.

29.4 No-one may be re-appointed unless there is evidence of effective performance during their current term of appointment.

We looked for evidence that the performance of those to be reappointed had been appraised and found to be effective. The findings of this part of the review are set out in Table 2 below.

Table 2

Body	Finding	Was the Code complied with
One	There was evidence of a recent appraisal on file. The assessment documentation reviewed makes it clear that the chair of the body considered this board member to have made an effective contribution to the work of the body with a mark of 'very good' against the majority of areas of assessment.	Yes
Two	<p>In respect of one of the reappointees, an appraisal was carried on 11th May 2006 reflecting service between April 2005 and March 2006. This person was consistently assessed under each section as performing satisfactorily. The appraisal that was available for audit assessment was a 'non-final' mark-up copy with textual changes reflecting some (albeit minor) concerns still tracked in the margins. It was not signed by the member themselves. The Chair comments at the end of the appraisal that "[the board member's] current appointment concludes at the end of March, 2007. It is important that we review performance at about the seven month stage and that an up to date assessment of [their] contribution is available at the time he will be considering reappointment". There is no evidence that this was done or that any of the objectives set in relation to 06/07 were assessed on an interim basis prior to recommendation for reappointment.</p> <p>In respect of another member, an appraisal was carried out by the Chair on 25th April 2006 reflecting service between April 2005 and March 2006. This member was assessed under each section as either 1= very satisfactory or 2= satisfactory. This was a final version of the appraisal report that was signed off by the member and it contained some broad objectives for 2006 / 07. There is no evidence of any interim assessment of performance against the 06/07 objectives before recommendation for reappointment was made by the Chair in November 2006.</p>	No

Body	Finding	Was the Code complied with
Three	<p>Appraisals for all four board members were conducted in September 2007 and were signed and dated on the day of the appraisal or shortly after this by the member and the outgoing chair.</p> <p>All appraisals covered the period between 1st April 2004 and 31st March 2008.</p> <p>The various assessments state that the members were performing, in the main, very satisfactorily, although evidence against each area assessed was limited. Some sections of the assessment documents contained only aspiration as to what the member might achieve in the future. The final section of the assessment documents recommended each of the four members for reappointment.</p> <p>The fact that these appraisals covered the entire period of the members' appointments suggests that regular appraisals had not been conducted in each of the four years of the member's first term. The appraisals also all cover a period of time that has not yet happened – namely between 29th September 2007 and 31st March 2008.</p>	<p>No</p> <p>The Code requires the appraisal of board members to be regular and transparent. It also requires appraisals to provide evidence on which a decision to reappoint is based. In the case of these reappointments, the above requirements were not met.</p>
Four	<p>For the two reappointments made in 2007, the members had each undergone performance appraisal for 2005/06. These were carried out by the outgoing chair. Their performance was identified as very satisfactory and significant narrative detail of achievements was provided. It was not clear however against what specific objectives this appraisal was made. This appraisal was reviewed by the incoming chair. He also conducted his own assessment of the members. He confirmed that it was appropriate for them to be considered for reappointment by the Minister.</p> <p>For the member reappointed in April 2008, the member underwent performance appraisal in May 07 carried out by the new chair. Given any reappointment term would start from April 2008, the chair conducted an interim appraisal with the member so that an up to date evidenced recommendation could form part of the ministerial submission. This was carried out in January 2008 and was clearly based around specific objectives defined for that member.</p>	<p>Yes</p>
Five	<p>Performance appraisals have been completed for the five board members for the period October 2005 to October 2006. Their performance was assessed as "Satisfactory" or "Very Satisfactory" and all five members were assessed as being "suitable for reappointment". The assessments are supported by comments on each individual's performance.</p>	<p>Yes</p>
Six	<p>The performance appraisals for three of the board members recommended for reappointment were not available for review*.</p>	<p>No</p>

* The sponsor team explained that the period of the reappointments straddled the period over which the Scottish Government transferred to an electronic records management system. This affected the retention of the appraisal documents. There was however evidence available of the approach taken to performance appraisals. The sponsor division explained what support they provided and the processes they had in place. They provided evidence of this. A performance appraisal was available for review for the fourth member reappointed.

3. Was there evidence from performance appraisal that the member met the current person specification for the role?

The Code requires:

29.5 If recommending re-appointment, the sponsor department will prepare a submission to the Minister which will summarise how the member meets the current person specification, and the member's performance to date.

Earlier in this report we looked at whether the person specification was updated prior to the reappointment decision being made. We also looked at whether performance in the role was appraised. In this section we review the link between the members' performance in the role and the person specification which was current at the time of reappointment.

For performance appraisal to provide evidence in support of a reappointment decision, the appraisal must be related to the current person specification.

Reappointment can only be justified when the individual concerned:

- has performed effectively in their first term
- has skills, knowledge and personal qualities that continue to meet the current person specification

Thus, the assessment of individual board member performance should determine whether board members have the skills, knowledge and personal qualities outlined in the person specification and whether they apply these effectively.

The findings of this part of the review are set out on the following pages against each of the bodies reviewed.

Body one

Finding

Review of the person specification and the appraisal documentation used shows that assessment is against a set of criteria which differs from those set out in the person specification. For example:

- the board member assessment form makes no mention of essential knowledge held by the board member even though it is contained in the person specification
- the board member assessment form includes a skill which is not included in either the role description or person specifications

The board member assessment document lists five different headings related to performance and further subdivides these into fifteen criteria. These are not the same as:

- the criteria in the original person specification
- the criteria in the person specification used to reappoint the individual
- the criteria used for open competition
- the criteria set out in the skills matrix for board members.

The assessment form makes it clear that the chair of the body considered this board member to have made an effective contribution to the work of the body with a mark of 'very good' against the majority of areas of assessment.

Was the Code complied with?

No.

There must be a clear link between performance appraisal and the requirements of the role and the person specification. Without this, reappointment decisions may be based on an incomplete picture of whether the person to be reappointed has the right skills, knowledge and personal qualities to contribute effectively to the work of the body in the future.

Body two

Finding

Appraisals were carried out for both members using a standard pro-forma “Assessment of board members performance” branded to the body.

Under this system, members are assessed against the following headings / subheadings;

- Attendance and Commitment
- Board meetings
- Knowledge and development of business activity needs
- Contributions to the work of the Board
- Team-working
- Ability to constructively challenge
- Contribution to strategy / policy formulation
- Ability to build constructive relationships outside the organisation and represent the Board
- Contribution to governance issues
- Other issues not covered elsewhere

These areas of assessment do have some level of overlap with the broad requirements contained within the person specification for the role and the board skills matrix. However, there are also significant gaps of assessment on what are deemed to be essential criteria within the person specification that was used for both members to be appointed and later reappointed.

Was the Code complied with?

No.

There must be a clear link between performance appraisal and the requirements of the role and the person specification. Without this, reappointment decisions may be based on an incomplete picture of whether the person to be reappointed has the right skills, knowledge and personal qualities to contribute effectively to the work of the body in the future.

Body three

Finding

Appraisals were carried out for all four members using a standard Scottish Government pro-forma “Assessment of board members performance”.

Under this system, members are assessed against a number of headings and sub headings. These areas of assessment do not fully reflect the requirements of the member detailed in the person specification. Nor do they reflect the requirements of the member as these are set out in the skills matrix.

Was the Code complied with?

No.

There must be a clear link between performance appraisal and the requirements of the role as it develops over time. Without this, reappointment decisions may be based on an incomplete picture of whether the person to be reappointed has the right skills, knowledge and personal qualities to contribute effectively to the work of the body in the future.

Body four

Finding

Reappointment of two board members

Performance assessment was carried out according to a Scottish Government appraisal pro-forma designed for use with public appointees. The version of the pro forma used was issued to sponsor teams in April 2006.

The different areas of assessment are generic. They reflect only some aspects of the person specification under which the first two members who were reappointed were originally appointed.

The broad areas considered in these appraisals did not directly reflect the five essential and four desirable criteria identified in the person specification against which these two members were originally appointed in 2004. There is no evidence as to whether further analysis of the performance of the two members considered for reappointment was carried out against the new person specification that was produced.

Reappointment of a third board member

We did see evidence that the new chair of the body had conducted an interim appraisal with the member most recently reappointed so that an up to date evidenced recommendation could form part of the ministerial submission. This was carried out in January 2008 and was clearly based around specific objectives defined for that member.

The sponsor team and the chair worked together to ensure the updated skills matrix reflected the current needs of the body.

Was the Code complied with?

No for the two earlier reappointments. Yes for the latest reappointment.

It is clear that significant efforts have been made more recently to link performance appraisal to the requirements of the role as it develops over time. However, use of the Scottish Government appraisal pro forma means that the evidence in support of reappointment decisions for the first two members was based on an incomplete picture of whether the people to be reappointed have the right skills, knowledge and personal qualities to contribute effectively to the work of the body in the future.

Body five

Finding

The performance assessments covered broad areas of performance as well as commitment and contribution to the board. These broad areas of performance covered some but not all aspects of the essential criteria within the person specification. This enabled the reappointment decision to take account of the person specification in line with the Scottish Government guidance current at that time. There is evidence that the requirements of the Board, in terms of achieving the right balance between ensuring vitality through rotation of membership and maintaining continuity and stability, have been considered by the chair and Ministers when considering the reappointments and the application pack for the new appointments. The new skills matrix developed in July 2007 to support the open competition showed that the two prospective re-appointees met all of the essential criteria and some of the desirable criteria.

As Ministers agreed to delay (until after the elections) the agreement of the future person specification, the request for reappointment was not able to describe how the existing board members met the likely requirements. The request to reappoint was to secure continuity of key business within the sub-committees and to reduce the risk of losing these members. The reappointments had however taken account of the role description and person specification in line with the guidance current at that time.

Was the Code complied with?

No.

Unless there is a clear link between performance appraisal and the requirements of the role as it develops over time, reappointment decisions will be based on an incomplete picture of whether the person to be reappointed has the right skills, knowledge and personal qualities to contribute effectively to the work of the body in the future. The submission to the Minister in this case clearly failed to describe how the board members to be reappointed met the needs of body going forward.

Although there is no evidence of how the reappointees met the new person specification at the time the reappointment decision was requested, there is clear evidence of their contribution to the continuity of key board business.

Body six

Finding

The one performance assessment that was available covered broad areas of performance and contribution to the board. These broad areas of performance covered some, but not all, aspects of the essential criteria included in the person specification that had been produced in June 2006.

The relevant reappointee's entry on the skills matrix showed that they did not have "politically sensitive" skills. The person specification that had been produced in June 2006 included the essential criteria "The ability to operate in a politically sensitive environment".

The ministerial submission did not include detailed information about the person specification relevant to this reappointment but it did state that the chair had highlighted that the individual demonstrated all of the essential attributes in the board person specification. The ministerial submission also contained information about the individual's specific strengths and contributions to the work of the board and its sub-committees.

For the three board members for whom performance appraisals were unavailable, the skills matrix dated May 2006 showed that they had a range of generic skills and additional knowledge and skills that helped to maintain a balanced board. The ministerial submission explained the need for a balanced board and illustrated the particular areas of expertise the individuals had and how the loss of their particular skills would affect the balance of the board. The entry on the skills matrix for one showed that they did not have "Team Working" skills. "The ability to demonstrate effective team working" was included in the list of generic skills required to maintain a balanced board that was part of the ministerial submission. The submission said that all trustees should have these skills rather than must have these skills.

Was the Code complied with?

No.

Unless there is a clear link between performance appraisal and the requirements of the role and person specification, reappointment decisions will be based on an incomplete picture of whether the person to be reappointed has the right skills, knowledge and personal qualities to contribute effectively to the work of the body in the future. The submission to the Minister in this case clearly failed to describe how the board members to be reappointed met the needs of body going forward.

TABLE SUMMARISING ALL FINDINGS

Body	Was the person specification reviewed at the time that reappointment was being considered?	Was there evidence that the individuals who were reappointed had performed effectively in their role?	Was there evidence from performance appraisal that the member met the current person specification for the role?
One	Yes	Yes	No
Two	No	No	No
Three	No	No	No
Four	Yes	Yes	No
Five	Yes	Yes	No
Six	No	No	No

REAPPOINTMENTS REVIEWED (public bodies listed in alphabetical order)

National Galleries of Scotland – three board members reappointed from October 2006, one from August 2007

Risk Management Authority – one board member reappointed from September 2008

Scottish Ambulance Service – two board members reappointed from April 2007

Scottish Further and Higher Education Funding Council – two board members reappointed from October 2007

Scottish Natural Heritage – two board members reappointed from April 2007 and one from April 2008

Tayside NHS board – four board members reappointed from April 2008