

## Managing at arm's length

### **Guidance Note 3**

### **Making appointments to public bodies<sup>1</sup>**

#### **Context**

Most Ministerial Departments are managed using what is known as a 'hub model' of public sector management. This involves a small strategic core surrounded by a number of executive agencies, non-departmental public bodies, independent commissions and other forms of arm's-length bodies that are effectively sponsored by their 'parent department' to undertake certain functions.

Making successful strategic appointments to these bodies is one of the most important elements of a Minister's duties and Ministers are formally responsible for several thousand appointments and reappointments each year. Chair appointments, in particular, are critical for NDPBs, as these people determine the strategic direction of the organisation and shape relationships with the Department. So they are worth taking time and effort to get right. This also means following the rules on how to make public appointments to ensure appointment on merit after a fair, open and transparent process. It is also important to get the balance on the Board right. Boards that have a diverse mix of people and talent can make better and more informed decisions.

The Government is committed to fair and equal representation on the boards of public bodies and has set cross-Government targets for diversity in new public appointments. The current targets are that by March 2011, 50% of all new appointments should be women, 14% of disabled people and 11% from black, minority or ethnic groups, in line with proportions in the working age population.

This paper provides a simple practical guide to Ministerial appointment processes, reflecting advice from both former Ministers and public appointees, and reflecting key aspects of the current Code of Practice published by the Commissioner for Public Appointments. It is not intended to replace the full guidance given in the Commissioner's Code, which applies to all regulated public appointments. As stated in the Commissioner's Code, any guidance produced in order to assist those involved in public appointments processes may not replace or change the provisions in the Code, which take precedence, in the event of any conflict between any such guidance and provisions in the Code.

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<sup>1</sup> This guide applies to the appointment making process for the UK government's arm's length bodies, though many of the considerations are similar in the devolved administrations

## What you are aiming for

Above all, the aim is a process that successfully identifies and appoints individuals with the relevant experience and skills to successfully lead what are often complex public bodies. Achieving this will require:

- A clear expectation upfront about the skills and experience you want
- a broad and diverse range of applicants.
- an appointments process based upon transparency and merit, perceived as fair by citizens and applicants<sup>2</sup>
- the identification of leaders who understand the political and public service context in which they will operate and the expectations, pressures and responsibilities that brings with it.

## Where do problems arise?

- The structures and processes for making Ministerial appointments are far from simple, especially by comparison with private sector practice for Board appointments. Ministers, recruitment specialists and past applicants have complained that the process for regulated public appointments has become too bureaucratic, inflexible and too long. But the framework for regulated public appointments reflects the need to demonstrate integrity of decision-making. The Commissioner for Public Appointments is clear that her regulatory framework does not inhibit efficiency but does provide public assurance of due process and appointment on merit.
- Allegations of party patronage often arise, regardless of which party is in power. In practice, however, the scope for such patronage to take place has been severely diminished by the series of changes introduced since the 1990s following the recommendations of the Committee on Standards in Public Life and the creation of the office of Commissioner for Public Appointments in 1995.<sup>3</sup> While Ministers retain the power to choose between appointable candidates, the degree of their involvement in the appointments process is constrained by the requirements of the Commissioner for Public Appointments' Code of Practice. Ministers are allowed to identify individuals who they would like to be made aware of a specific position (known as 'targetting') but all applicants must respond through the same process and Ministers may not place individuals on either the long or short list.
- Ministers complain that the culture of the civil service still imposes a very narrow definition of 'relevant skills and experience' and that this unnecessarily restricts the pool of eligible talent. This can be overcome by thinking more

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<sup>2</sup> Recent public attitudes research by Ipsos MORI suggests that people with a disability are more likely to feel that the application process is not fair and open.

<sup>3</sup> Recent research suggests that Ministers rarely have either the inclination or the capacity to appoint unqualified individuals, friends or family members to senior public posts. Flinders, M. 2009 'The Politics of Patronage and Public Appointments: Shrinking Reach and Diluted Permeation' *Governance*, 22(4), 547-570.

laterally about the job specification and the balance of skills and expertise needed on boards.

- Parliamentary Select Committees now have increased opportunities to scrutinise key public appointments through 'pre-appointment hearings'. There is no power to veto appointments, but Select Committees can offer their opinion.<sup>4</sup> It is important to ensure the department and the Select Committee share an understanding on which appointments are subject to this process.

## Who does what?

### Managing the appointments process

Appointments to the boards of NDPBs – with the exceptions outlined below - are run by Departments. On some appointments, the Departmental Minister has the final say; others require the agreement of Devolved Ministers in addition; and some need the final sign-off of the Prime Minister.

Appointments to within the sphere of the Department of Health (Chairs and Non-Executive Directors to Strategic Health Authorities, Primary Care Trusts, Special Health Authorities, NHS Trusts and health-related NDPBs and regulators) are made not by Ministers but by the Appointments Commission on behalf of Ministers by way of delegated powers.

Appointments to tribunal NDPBs are the responsibility of the Judicial Appointments Commission.

Non-political appointments to the House of Lords are made by the House of Lords Appointments Commission.

Crown Appointments also need formal approval from the Privy Council.

Appointments to the Supreme Court are made by the Supreme Court Appointments Commission.

### Oversight and regulation

Ministerial appointments to most NDPBs, public corporations, nationalised industries and a range of other public bodies are regulated by the Commissioner for Public Appointments.<sup>5</sup> Some Chief Executive appointments are also subject in statute to approval by the Secretary of State.

Appointments to senior Executive Agency posts (those at senior civil service pay band 2 or above) must be cleared with the Civil Service Commissioners.

Senior staff appointments within NDPBs are a matter for the Board of the organisation and are not within the remit of either OCPA or the Civil Service Commissioners.

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<sup>4</sup>Most such hearings to date have been uncontroversial (although some of those involved have suggested that the process has focused more on the case for the body existing at all than their own credentials for the role of Chair), but the scope for problems to arise is evident from the DCSF Select Committee's refusal to endorse the proposed candidate for Children's Commissioner in autumn 2009: "...our role is closely circumscribed, which limits the value of involving select committees in the process, particularly as we have no means of comparing the preferred candidate with other applicants." The Secretary of State went on to confirm the appointment.

<sup>5</sup> Only Ministerial appointments to the boards of those public bodies set out in a Schedule to the Commissioner's Order in Council or in an Instrument in Writing are regulated by the Commissioner.

### **Public appointments – key information for Ministers**

OCPA's regulatory framework attempts to enforce a transparent and merit-based procedure while at the same time supporting the ultimate responsibility of Ministers to Parliament (not OCPA) and allowing for flexibility and discretion. The summary of the process provided here is inevitably high-level and is not intended to substitute for a full reading of the Code of Practice.

#### ***Stage 1 Planning***

- Departmental officials from the sponsor team responsible for the public body will usually manage the appointment process, seeking advice from OCPA and consulting Ministers and the selection panel (*see below*) as appropriate.
- At the outset, the Minister will be consulted by officials about selection criteria, role specification and the degree to which the Minister wishes to be involved with the appointment, within the limits set out in the Code. The Minister cannot alter the recruitment process once it has started.
- Take a lot of care to get the job specification and person specification right. Ensure it will not exclude candidates you might be interested in, and ensure that you only make “essential” criteria that really are. Asking for previous Board experience will limit your field – important for Chairs but you will want some fresh perspectives on the Board.
- The Minister may at this stage suggest potential applicants to the civil servants running the process.
- Recruitment consultants may be selected to support the recruitment process, including active searching for suitable candidates.
- A selection panel must also be identified, usually including a senior Departmental official with oversight of the sponsor function and always including an accredited Independent Public Appointments Assessor, who is involved from an early stage in the process in order to provide independent scrutiny. Where the appointment is for Board members rather than a Chair, the Panel will almost always include the Chair of the public body; for new bodies, this is likely to mean a ‘staggered’ process of appointments.
- Where a number of departments/ devolved administrations need to approve the appointment, ensure they are involved in the process
- The officials managing the appointments process will also need to ascertain whether the post is subject to pre-appointment scrutiny, and if so, contact the clerk of the relevant Committee so that this element can be factored into the timescale for the process.

#### ***Stage 2: Advertisements***

- Advertisements will be published, often in more than one place. All public appointments must be published on the government's public appointments website and all advertisements for regulated public appointments must display the Commissioner's kitemark. In the case of an appointment made jointly with the devolved administrations, they may also want to publicise in their press. Where you want a diverse field, consider how you make people aware of the opportunity.

- If recruitment consultants are used, they will also use their contacts databases to identify potentially suitable candidates and encourage them to apply. Make clear if you want to them to seek out more diverse candidates, and ask how they plan to undertake a new search.
- At this stage, Ministers may suggest to officials the names of potential candidates who might be invited to apply alongside and in the same way as all other applicants. You can also use your networks to identify potential candidates.

### ***Stage 3: Sifting***

- Applications are judged against the published criteria to reach a longlist and/or shortlist.
- Ministers cannot add people to the short list, nor can they meet with any of the candidates (privately or individually) while the appointment process is underway.
- Ministers can be informed of the progress of the recruitment procedure but all correspondence and Ministerial replies must be copied to members of the selection panel (in accordance with the details set out in the Commissioner's Code of Practice).

### ***Stage 4: Interview***

- All shortlisted candidates must be interviewed by a Panel including the Independent Public Appointments Assessor.
- Ministers cannot sit on the interview panel.

### ***Stage 5: Decision***

- As a general rule, the relevant Minister **must** be offered a choice of at least two appointable candidates for each vacancy. These may be ranked.
- Ministers are permitted to meet appointable candidates identified by the selection panel prior to making a decision on whom to appoint, if they wish. In this event, the Minister **must** meet all candidates deemed appointable and the Independent Public Appointments Assessor **must** be present.
- Ministers can select a candidate or reject the nominations and ask for the interview panel to review their recommendations. The panel may or may not re-offer the same set of candidates.
- If no appointable and acceptable candidate emerges, the process will have to be re-run.
- Under provisions in the Equality Bill, proposed new measures mean that when there are two candidates who are as qualified as each other in terms of their ability, competence and professional experience, it will be possible to take into account whether one of those candidates possesses a protected characteristic (e.g. gender, age, ethnicity, disability, sexual orientation, religion & belief, gender reassignment) that is under-represented.

### ***Stage 6: Confirmation***

- At this point other Ministers may need to be consulted if this is a joint or a Prime Ministerial appointment.
- A pre-appointment hearing by the relevant Select Committee may also be required.

#### **Ministerial responsibility**

*Extract from Code of Practice for Ministerial Appointments to Public Bodies, August 2009*

4.02 The ultimate responsibility for public appointments lies with Ministers as appointing authorities, who are accountable for their decisions. Accordingly, Ministers have a legitimate interest in the conduct of appointments processes in relation to such appointments. Where these appointments fall within the Commissioner's remit, Ministers may be involved in the public appointments processes, provided that the procedures set out in this Code are followed. Any such Ministerial involvement **must** be proportionate, open and transparent so that it is capable of public scrutiny.

Section 3 of the Ministerial Code applicable in England states that "Ministers have a duty to ensure that influence over public appointments is not abused for partisan purposes". It also states that "Public appointments should be made in accordance with the requirements of the law and, where appropriate, the Code of Practice issued by the Commissioner for Public Appointments". Section 7 of the Ministerial Code states also that "Ministers **must** ensure that no conflict arises or could reasonably be perceived to arise between their public duties and private interests, financial or otherwise. It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict taking account of advice received from their Permanent Secretary and the independent adviser on Ministers' interests".

#### **Tips for Ministers**

- Appointments matter - Appointment powers provide a critical tool to ensure the body can deliver what you need. Ensure you are getting the best person for the role. Bad appointments can sow the seeds of organisational failure and collapse.
- Exercise your right to be involved in setting the framework for appointments, voicing any particular requirements e.g. diversity of talent, and be kept informed of how the process is developing ... but respect the selection process that follows. Don't take any actions that could be perceived as undermining the integrity of the process, but do ask questions about progress and aim to ensure speedy decisions.
- Give your officials a clear idea of the skills you want – both the essential and desirable skills and experience, and what is **not** necessary.
- Make sure that this brief is communicated faithfully to any recruitment consultants used.
- Make clear at the outset that you expect to be offered a choice of recommended candidates and whether you want them ranked or not. It is legitimate to appoint individuals who may have at some time had a relationship with your own political party as long as they are clearly 'above the bar' in terms of experience and skills and they have been appointed through the standard public appointments process. However, you need to be clear that they are capable of commanding public support in their new role. Information about political affiliation has to be declared

under OCPA rules and published as part of the press notice announcing the appointment.

- Get to know the individuals you appoint and build a relationship with them. Ensure the department provides them with the training and induction they need.
- Ensure that appropriate performance appraisal arrangements in place for all public appointees.
- If you feel that an existing Chairman or other public appointee lacks the requisite experience, qualifications or determination then you can initiate formal performance management action. Make sure the Department is clear on the legal scope for action before starting.

#### **What to look for in a start-up Chair**

Wisdom, perspective and judgement

Strong interpersonal skills; someone who will work proactively to develop strong relationships and who will manage the Board effectively

Someone who will be a critical friend to the Chief Executive and who will support them in building a top team

A team-worker: someone who establishes a modus operandi with the Chief Executive

Someone who understands Ministers and the nature of political imperative and public perception

Someone with undisputed personal integrity who is highly respected, immediately credible and will present a strong public image

A high level of commitment and resilience: someone who will maintain the confidence and trust of the Board.

#### **What to look for in start-up Board members**

Someone who has started an organisation previously

Someone who knows when to challenge and when not to, and who challenges constructively

Breadth of experience and perspective; someone who can take a step back

A team player with a collaborative approach

A strong communicator, but someone who will listen to the views of others

Solid, well-developed instincts; perceptive and good powers of observation

In general, skills and knowledge should complement those of the Chair.

Source:

[http://www.veredus.co.uk/articles/non\\_departmental\\_public\\_bodies/conclusion/](http://www.veredus.co.uk/articles/non_departmental_public_bodies/conclusion/)Veredus, Right from the start, lessons learned from the start-up of non-departmental public bodies (December 2006)

#### **Tips for Sponsor Units**

- Set a timetable that is realistic, but flexible. Good candidates will be in demand elsewhere and a slow timetable risks losing them.
- Aim for efficiency as well as procedural compliance.
- Think creatively about where candidates might come from – don't create unnecessary barriers to diversity (in the broadest sense) through your person specification.
- When assessing recruitment agencies, focus on evidence of their experience in the field you are recruiting to and their ability to find candidates through search as well as advertisement. Focus on their track record in delivering diversity.

- Involve and engage the recruitment consultancy as early as you can including to get input on the draft advertisement. Even a few extra days can make a big difference in being able to reach more diverse talent pools.
- Manage candidates' expectations throughout the process: provide as much information as possible at the outset about what is involved and the key milestones.
- Keep candidates (and recruitment agencies involved) informed of any changes to the timetable. Candidates unused to public appointment processes will be surprised at how long it can take and may assume they have been unsuccessful unless kept informed.
- Think carefully about remuneration: take into account central guidance and political strictures on senior pay, but be realistic about the cost of expertise and experience. Ideally, there should be a clear Departmental policy on how to determine the pay of new appointees.
- Have a clear strategy for feedback; candidates (particularly from underrepresented groups who may be less networked with others) are often put off applying again for a future opportunity if they do not receive any developmental feedback. The GEO is commissioning a best practice "toolkit" to give Government Department sponsor units access to tools and insights which will help them run a fair and inclusive Public Appointments recruitment process.
- Think also about your strategy for identifying and growing future talent for public appointments which will help you meet objectives for diversity. You can draw on people engaged in regional organisations, in business and the third sector who may not see themselves as candidates for conventional public appointments, and engage with the talent pools on the cross-Government Public Leaders mentoring programmes. You can also communicate with people registered to receive vacancy alerts from your department via the Cabinet Office website.<sup>6</sup>

## **Key messages for sponsor departments: Board appointments**

Do recognise the investment you are making in new Board members; if the right people are appointed, the board will bring substantial benefits to stakeholders.

Do pay as well as you can – low remuneration will turn away a vast proportion of potential board members.

Do think of ways to do more to make the public aware of what your NDPBs and their boards do through innovative communication; this need not be expensive.

Do take the time to work with the board Chair to decide what really matters in terms of skills and experience.

Do review whether the essential criteria are still valid if you are proposing to recycle role specifications.

Do think well beyond the principles of fair selection to build a diverse team.

Do consult with, and involve, the Board Chair from the start of the process.

Source: Gatenby Sanderson, *How broad is your board?* (December 2008)

## **Where to look for support**

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<sup>6</sup> [www.direct.gov.uk/publicappointments](http://www.direct.gov.uk/publicappointments)

Office of the Commissioner for Public Appointments  
[www.publicappointmentscommissioner.org](http://www.publicappointmentscommissioner.org)

Cabinet Office  
[www.direct.gov.uk/publicappointments](http://www.direct.gov.uk/publicappointments)

Government Equalities Office  
[http://www.equalities.gov.uk/what\\_we\\_do/representation\\_in\\_public\\_life.aspx](http://www.equalities.gov.uk/what_we_do/representation_in_public_life.aspx)

### Further reading

OCPA, *Code of Practice for Ministerial Appointments to Public Bodies* (revised August 2009).

Cabinet Office “*Making and Managing Public Appointments*”

Cabinet Office “*Preappointment Hearings by Select Committee: Guidance for Departments.*”

Gatenby Sanderson, *How broad is your board?* (December 2008) and *Whose Board is it anyway?* (2007)

Veredus, *Right from the start: lessons learned from the start-up of non-departmental public bodies* (December 2006)

Common Purpose, *Diversity of representation in public appointments* (March 2009)

IpsosMORI, *Public appointments: awareness, attitudes and experiences* (Jan 2010)

This series of guidance notes has been developed by the Institute for Government and Professor Matthew Flinders of the University of Sheffield, author of ‘*Walking without Order: Delegated Governance and the British State*’.

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