

# **Governance Code on Public Appointments**

December 2016

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## **Statutory basis for this Code**

This Governance Code is published by the Minister for the Cabinet Office in line with the Public Appointments Order in Council 2016.

The regulation of public appointments against the requirements of this Code is carried out by the Commissioner for Public Appointments. The Commissioner is appointed by the Queen and is independent of the Government and the Civil Service. The Commissioner's functions are set out in the Public Appointments Order in Council 2016. The Order in Council also sets out which appointments are covered by this Code.

# 1. Introduction

1.1 Public appointees play an important role in public life on the boards of public bodies and in statutory offices. Public appointments processes should be designed to ensure that the best people, from the widest possible pool of candidates, are appointed to these roles.

1.2 This Code sets out the principles that should underpin all public appointments, including those appointments that Ministers have delegated to others. The Commissioner for Public Appointments provides independent assurance that public appointments are made in accordance with these principles.

1.3 This Code will come into effect on a day notified by the Minister for the Cabinet Office to the Privy Council and Commissioner for Public Appointments<sup>1</sup>.

# 2. The Principles of Public Appointments

2.1 The Principles of Public Appointments apply to all those involved with public appointments processes.

**A. Ministerial responsibility** - The ultimate responsibility for appointments and thus the selection of those appointed rests with Ministers who are accountable to Parliament for their decisions and actions. Welsh Ministers are accountable to the National Assembly for Wales.

**B. Selflessness** - Ministers when making appointments should act solely in terms of the public interest.

**C. Integrity** - Ministers when making appointments must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

**D. Merit** - All public appointments should be governed by the principle of appointment on merit. This means providing Ministers with a choice of high quality candidates, drawn from a strong, diverse field, whose skills, experiences and qualities have been judged to meet the needs of the public body or statutory office in question.

**E. Openness** - Processes for making public appointments should be open and transparent.

**F. Diversity** - Public appointments should reflect the diversity of the society in which we live and appointments should be made taking account of the need to appoint boards which include a balance of skills and backgrounds.

Public appointment competitions which are open and/or have not completed on the day notified should continue to run to completion under the previous Code of Practice published by the Commissioner for Public Appointments.

G. **Assurance** – There should be established assurance processes with appropriate checks and balances. The Commissioner for Public Appointments has an important role in providing independent assurance that public appointments are made in accordance with these Principles and this Governance Code.

H. **Fairness** – Selection processes should be fair, impartial and each candidate must be assessed against the same criteria for the role in question.

### 3. The role of Ministers

3.1 Ministers are responsible and accountable to Parliament for public appointments. Welsh Ministers are accountable to the National Assembly for Wales. Departmental officials must ensure that Ministers are engaged early on in the planning process for appointments and that they are involved at every stage of a competition. This means that:

- Ministers must be consulted before a competition opens to agree the job description for the role, the length of tenure and remuneration. Advice to Ministers must include information on the make-up and diversity of the current board. Any requests to Ministers for reappointments must also include this information and must be submitted early into planning processes. Reappointments should only be made on merit.
- Ministers should agree how the post will be advertised and the selection process to be used. Assessment and selection processes should be proportionate to the appointment in question and may vary between roles and bodies.
- Departments must seek Ministerial agreement on the use of recruitment consultants. The Cabinet Office should also be consulted on the use of recruitment consultants<sup>2</sup>. Departments should provide information on the need and value for money case of using recruitment consultants, which should be by exception, and should consider alternative methods of identifying and attracting a potential pool of candidates. Where recruitment consultants are used, Ministers should be offered the opportunity to meet with them and officials must ensure that the consultants are aware of Ministers' views at all stages of the process.
- Ministers must agree the composition of Advisory Assessment Panels and how they will actively inform Ministers of progress at every stage throughout the competition.
- Before a competition opens, Ministers and other stakeholders should be asked for names of individuals who should be approached. As a competition closes, Ministers should be consulted on the quality and diversity of the field and whether a competition should be extended. Ministers should also be invited to provide their views to the Advisory Assessment Panel on candidates at all stages of a competition.
- Departments should ensure there is sufficient opportunity for Ministers to engage with the Chair of the board the role is being appointed to. Chairs are well placed to advise on the skills and experience needed to ensure the board, as a whole, is effective

<sup>2</sup>This does not apply to Welsh Ministerial appointments

- At the end of the process, Ministers should be provided with a choice of appointable candidates. Panels must not rank candidates unless the Minister has specifically asked for this. Ministers may choose not to appoint any of the candidates and re-run the competition.
- Ministers must be given an opportunity to meet candidates before and/or after interviews.
- Ministers may, where they have the power to do so, choose to delegate responsibility for certain appointments to the appropriate body in question to run and make appointments. This should be agreed with the Cabinet Office<sup>3</sup> and the Commissioner for Public Appointments, along with any exemptions from this Code as necessary.

3.2 Ministers should consider the advice of Advisory Assessment Panels but are not bound by their views. Ministers may therefore reject a panel's advice on the merit of candidates and choose to re-run a competition with a new panel. Ministers may choose to appoint someone who is not deemed "appointable" by the Advisory Assessment Panel. In this case, they must consult the Commissioner for Public Appointments in good time before a public announcement and will be required to justify their decision publicly.

3.3 In exceptional cases, Ministers may decide to appoint a candidate without a competition. They must make this decision public alongside their reasons for doing so. They must consult the Commissioner for Public Appointments in good time before the appointment is publicly announced.

## **Reappointments**

3.4 Reappointments and extensions require the agreement of Ministers. Departments should build sufficient time into their planning for Ministers to decide against making a reappointment or extension and holding a process to appoint a successor. There is no automatic presumption of reappointment; each case should be considered on its own merits, taking in to account a number of factors including, but not restricted to, the diversity of the current board and its balance of skills and experience.

3.5 Ministers may reappoint or extend the terms of public appointees or statutory office holders subject to:

- Any such reappointment or extension being made in accordance with the law relating to the particular public body or statutory office; and
- No reappointment or extension being made without a satisfactory performance appraisal, evidence of which must be made available to the Commissioner on request.

## **Length of tenure**

3.6 Subject to any statutory provisions relating to the body to which the appointment is being made, it is for Ministers to decide on length of tenure. However there is a strong presumption that no individual should serve more than two terms or serve in any one post for more than ten years. In exceptional cases, Ministers may decide an individual's skills and expertise is needed beyond such a tenure. Such exceptional reappointments/extension should be notified to the Commissioner for Public Appointments ahead of announcement.

<sup>3</sup>With the exception of Welsh Ministerial appointments



## 4. The role of the Commissioner for Public Appointments

4.1 The Commissioner for Public Appointments is the independent regulator of public appointments. The Commissioner's statutory functions are set out in the Public Appointments Order in Council 2016. The Order in Council also sets out those bodies and posts that are within the Commissioner's regulatory remit. The Commissioner's primary role is to provide independent assurance that public appointments are made in accordance with the Principles of Public Appointments and this Code.

### **Monitoring compliance and improving capability**

4.2 The Commissioner should publish an annual report reporting on the overall state of public appointments covered by the Order in Council. This should examine compliance with the Public Appointments Principles and this Code, should include statistical information on appointments and track progress on increasing diversity. The Commissioner may conduct an audit of departments to provide the data required to produce this analysis.

4.3 The Commissioner may conduct spot checks or respond to any concerns raised about a public appointments process. Departments and Ministers should be encouraged to engage with the Commissioner upfront and early in the process on exceptional cases or any potential compliance issues.

4.4 The Commissioner should consider complaints made about a public appointments process. Complaints should be raised with the appointing department in the first instance, which is responsible for having effective complaints handling procedures, for making applicants aware of their right to complain and for referring them to the Commissioner's complaints procedures. If, after investigation by the department, the complainant remains dissatisfied, they may bring their complaint to the Commissioner for Public Appointments.

4.5 The Commissioner may conduct thematic reviews focussing on different elements of process to help inform best practice. The Commissioner may advise departments and the Centre for Public Appointments on elements of best practice aimed at the continuous improvement of the quality of public appointments processes and systems.

### **Diversity**

4.6 The Commissioner for Public Appointments should be an active advocate for diversity and work with departments and the Centre for Public Appointments in encouraging good candidates from a diverse range of backgrounds to consider applying for a public appointment.

## 5. The role of Advisory Assessment Panels

5.1 Ministers should be assisted in their decision making by Advisory Assessment Panels. The Panel should include a departmental official and an independent member. For competitions recruiting non-executive, non-chair members of a board, the panel should also include a representative from the public body concerned. Ministers must agree the composition of the Panel and the Panel chair.

5.2 The independent member of an Advisory Assessment Panel will be satisfied by an individual who is independent of the department and of the body concerned. This does not preclude individuals who are non-executive Chairs or members of a different arms length body of the department acting as independent members. Ministers should also consider whether there are relationships or circumstances which are likely to affect, or could appear to affect, the panellist's judgement. For significant appointments the independent element of a panel will be the Senior Independent Panel Member (see 6. below).

5.3 The Advisory Assessment Panel should agree with the Minister its assessment strategy for determining merit against the selection criteria that the Minister has agreed. The assessment process should be appropriate to the recruitment and reflect the nature and significance of the role. A variety of techniques, both less formal and more expert, may be used to assess candidates fairly against the published selection criteria for the role.

5.4 Each panel must be made familiar with the Minister's requirements and views at every stage including after the long and short lists are determined. The departmental official on the panel is responsible for representing and making other members aware of the Minister's views throughout the process. Ministers should feel free to put names forward to the Advisory Assessment Panel for interview. If a panel does not think it appropriate to interview such a candidate, the panel chair must inform the Minister of the reasons for this before informing the candidate of the rejection.

5.5 In undertaking their assessment of candidates the role of the Panel is to decide, objectively, who meets the published selection criteria for the role, in other words, who is appointable to the role. The names of all appointable candidates must be submitted to Ministers. It is then for Ministers to determine merit and make the final appointment.

## **6. The role of Senior Independent Panel Members**

6.1 A list of 'significant appointments' should be agreed by Ministers and the Commissioner for Public Appointments and published. These competitions must have a Senior Independent Panel Member (SIPM) on their Advisory Assessment Panels. A SIPM is an individual who is familiar with senior recruitment, the Public Appointments Principles and this Governance Code. SIPMs should be independent of the department and of the body concerned and should not be currently politically active<sup>4</sup>.

6.2 Ministers must agree who the SIPM should be for each competition and should consult the Commissioner for Public Appointments ahead of the process commencing. Sufficient time should be built in for the Commissioner to discuss with either or both of the Minister or SIPM before the competition goes live.

6.3 The SIPM should have specific responsibilities, set out in an appointment letter to highlight any material breaches of this Governance Code that occur during the appointments process. The appointment letter must be copied to the Commissioner for Public Appointments. A model letter is attached to this Code.

<sup>4</sup> Politically active is defined as an individual being employed by a political party, holding significant office in a party, standing as a candidate for a party in an election, having publicly spoken on behalf of a political party or having made significant donations

or loans to a party. Significant loans and donations are those of a size which are reported to the Electoral Commission, in line with a central party's reporting threshold.

## 7. The role of Departments

7.1 Departments are responsible for running processes that enable Ministers to make appointments in a way that complies with this Code and the requirements of the Commissioner for Public Appointments. Departments must also ensure they comply with all relevant legislation<sup>5</sup>.

### Departmental appointments teams

7.2 Every department should have an official of appropriate seniority overseeing their public appointments processes. A specific central team or unit should be established so expertise is retained and capacity built in one place. Clear delegations for decision making authority should be in place. This should be extended to the arms length body concerned if the running of an appointments process is outsourced to it, so that Ministerial authority is retained throughout.

7.3 At the conclusion of every public appointment covered by the Order in Council, the relevant accounting officer or a senior representative must certify that the appointment has been made in accordance with this Code. This should be agreed with the members of the Advisory Assessment Panel. Details of the process followed should be recorded and made available on request to the Commissioner for Public Appointments.

### Diversity

7.4 To be truly effective public bodies must bring together a mix of people with different skills, experience and backgrounds to serve on their boards. It is therefore important that departments design and implement public appointments processes with diversity<sup>6</sup> in mind. This should include:

- Ensuring that job specifications focus on key skills necessary for the role in question and are written in plain English<sup>7</sup>, avoiding jargon.
- Emphasising ability over previous experience in job specifications and selection processes.
- Providing information to Ministers about the diversity, skills and experience of the existing board at the start and end of each recruitment campaign.
- In addition to advertising all public appointments on the Cabinet Office Public Appointments website, considering other ways of raising awareness amongst different groups and networks.

<sup>5</sup> This includes legislation relating to the particular public body or statutory office and the Equality Act 2010, or equivalent legislation, which prohibits discrimination, harassment and other unlawful conduct because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation where an individual applies for a public appointment.

<sup>6</sup> Diversity should be considered in its broadest sense and go beyond gender, disability or race, to include wider characteristics such as sexual orientation, gender identity and social background.

<sup>7</sup> All appointments made by Welsh Ministers should comply with the requirements of the Welsh Language (Wales) Measure 2011, specifically the requirements of their Welsh Language Standards on recruiting and appointing. Other Ministers making appointments to organisations operating wholly or mainly in Wales should be in compliance with their statutory requirements, either under the Welsh Language Standards or Welsh Language Schemes.

## **Customer care**

7.5 Departments are responsible for engaging with candidates and providing a good service to individuals who have applied for appointments. Candidates should be kept in touch with progress of competitions and, where possible, be informed of key dates (sift, longlist, interview) ahead of time.

7.6 All candidates should be offered constructive feedback if unsuccessful following interview by phone call where this is possible. Departments should encourage strong candidates who are not appointed to consider applying for other roles and should retain a list of candidates who should be considered for future roles.

7.7 Where a vacancy occurs within 12 months of the conclusion of a previous appointments process, and the role and person specification for both posts are the same, departments may put forward appointable candidates from the reserve list from the first competition to the Minister for appointment to the new vacancy.

7.8 Ideally, the aim should always be to conclude the process within three months of a competition closing. To achieve this, the assessment and selection process should not normally start until a pool of potentially appointable candidates has been identified. Officials should also identify the relevant stakeholders at the start of the process and keep them engaged, as appropriate, throughout the process.

## **8. Transparency**

8.1 Transparency is an important part of public appointments which departments should factor in to the design and planning of their systems and processes. Publically available information on public appointments processes helps to provide assurance that Ministers and departments have complied with the Public Appointments Principles and this Governance Code.

8.2 Departments should publish contact details of their public appointments team and those public appointments that their Ministers are responsible for making. All public appointments should be advertised openly. For all competitions there should be full transparency of the appointee's details, the Advisory Assessment Panel and the selection process. Any exceptional appointments, alongside the rationale for appointment, should also be published.

8.3 Departments should also publish "real time" data on the progress of individual processes. This will enable effective scrutiny and act as a mechanism to hold departments to account for the time taken to run an appointments process. This information will also inform any audit arrangements that the Commissioner for Public Appointments establishes.

## **9. Standards in public life and handling conflicts**

9.1 It is important that all public appointees uphold the standards of conduct set out in the Committee on Standards in Public Life's Seven Principles of Public Life and are expected to adhere to the Code of Conduct for board members of public bodies<sup>8</sup>. The Advisory Assessment Panel must satisfy itself that all candidates for appointment can meet these standards and have no conflicts of interest that would call into question their ability to perform the role. Candidates must be asked to declare potential conflicts of interest in their

<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/409604/code-of-conduct\\_tcm6-38901.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409604/code-of-conduct_tcm6-38901.pdf)

application. All potential conflicts of interest and how they might be managed must be discussed with an individual at interview. A potential conflict should not preclude a candidate from being shortlisted/appointed provided that appropriate arrangements are made. The departmental official on an Advisory Assessment Panel is responsible for seeking advice within their department and/or the Cabinet Office on handling any conflicts, which should be included in the final advice to Ministers. If the appointment is subject to a Parliamentary preappointment hearing, the advice to the Select Committee should cover the handling of any conflicts of interest.

9.2 Political activity should not affect any judgement of merit nor be a bar to appointment or being a member of an Advisory Assessment Panel, with the exception of Senior Independent Panel Members. It should be publicly disclosed however if a panel member, or a successful candidate, has, in the last five years, been employed by a political party, held a significant office in a party, has stood as a candidate for a party in an election, has publicly spoken on behalf of a political party, or has made significant donations<sup>9</sup> or loans to a party.

## 10. Pre-appointment Scrutiny

10.1 Where an appointment is subject to a pre-appointment hearing by a Parliamentary Select Committee, this must be clearly stated in all publicity relating to the post. Ministers should advise the Parliamentary Select Committee of the selection process, selection criteria and publicity strategy. The Cabinet Office Guidance on pre-appointment scrutiny by House of Commons Select Committees<sup>10</sup> sets out the process and the list of public appointments subject to pre-appointment hearings.

<sup>9</sup> Significant loans and donations are those of a size which need to be reported to the Electoral Commission, in line with a central party's reporting threshold.

<sup>10</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/410932/Guidance\\_publication.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/410932/Guidance_publication.pdf)

# Annex 1 Model letter for Senior Independent Panel Members

Dear [ ]

I am writing to thank you for agreeing to act as the Senior Independent Panel Member (Senior IPM) for the recruitment of [ ] and to set out what this role entails.

The Senior IPM fulfils a vital role both as a member of the Advisory Assessment Panel and as a guarantor that the process of appointment is made in line with the Principles of Public Appointments (see below).

## **The role of the Advisory Assessment Panel**

The Advisory Assessment Panel's role is to assist Ministers in making Public Appointments. The Panel's role is not to choose candidates for the appointment in question but to provide Ministers the candidates who are capable of undertaking the appointment - from which Ministers can make their selection for appointment.

In undertaking their role, the Advisory Assessment Panel should:

- agree the assessment strategy for determining merit against the selection criteria.
- be familiar with the Minister's requirements and views at every stage and decide, objectively, who meets the published selection criteria for the role, in other words, who is able to do the job and therefore is appointable to the role.

As the Senior Independent Member of the Advisory Assessment Panel for this competition your role is to provide an independent perspective to the Panel. For this reason, you should be independent both of the department and of the public body concerned, and should not be currently politically active (see paragraph 6.1 of the Governance Code).

## **Principles of Public Appointment and Governance Code**

Public Appointments must also be carried out in line with the Principles of Public Appointments (as set out below). You should familiarise yourself with these Principles and the Governance Code for Public Appointments as part of this process. At the conclusion of every appointments process, you and the other Advisory Assessment Panel members must certify that the appointment has been made in accordance with the Governance Code.

The Public Appointments system is regulated by the Commissioner for Public Appointments, currently Peter Riddell. The Commissioner provides independent assurance that public appointments are carried out in accordance with the Governance Code and Public Appointment Principles.

As the Senior Independent Panel Member it is your duty to highlight any material breaches of the Governance Code or Public Appointment Principles. In the first instance any concerns should be raised with a senior Departmental official, however if you feel it is appropriate you may speak directly to myself or the Commissioner for Public Appointments who is always available to discuss any matters arising in respect of the Governance Code and the Public Appointments Principles.

If you would like to discuss any aspect of the process with me or the Commissioner ahead of the competition commencing you should feel free to do so. The Commissioner can be reached at: 020 7271 8938.

I look forward to working with you throughout this process. Please don't hesitate to contact me should you have any questions or concerns.

I am copying this letter to Peter Riddell, the Commissioner for Public Appointments.

### **Principles of Public Appointments**

1. **Ministerial responsibility** - The ultimate responsibility for appointments and thus the selection of those appointed rests with Ministers who are accountable to Parliament for their decisions and actions;
2. **Selflessness** - Ministers when making appointments should act solely in terms of the public interest
3. **Integrity** - Ministers when making appointments must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
4. **Merit** - All public appointments should be governed by the principle of appointment on merit. This means providing Ministers with a choice of high quality candidates, drawn from a strong, diverse field, whose skills experiences and qualities have been judged to meet the needs of the public body or statutory office in question.
5. **Openness** - Processes for making public appointments should be open and transparent.
6. **Diversity** - Public appointments should reflect the diversity of the society in which we live and appointments should be made taking account of the need to appoint boards which include a balance of skills and backgrounds.
7. **Assurance** – There should be established assurance processes with appropriate checks and balances. The Commissioner for Public Appointments has an important role in providing independent assurance that public appointments are made in accordance with these Principles and this Governance Code.
8. **Fairness** – Selection processes should be fair, impartial and each candidate must be assessed against the same criteria for the role in question.