

**Department for Social Development
Northern Ireland Housing Executive Board Members Competition
(Regulated Appointment)**

Terms of Reference

- 1.1 The audit of the public appointments process for the Members of the Northern Ireland Housing Executive Board, administered by the Department for Social Development (DSD), forms part of the Commissioner for Public Appointments' Audit Programme in respect of 2006-07.
- 1.2 This audit process is conducted under the Commissioner for Public Appointments (Northern Ireland) Order 1995 and the Commissioner for Public Appointments (Amendment) Order (Northern Ireland) 2001 and included an assessment of the extent to which relevant recommendations from previous Departmental audits have been taken forward (**Appendix 1** refers).
- 1.3 The applicable guidance in force was the 'Code of Practice for Ministerial Appointments to Public Bodies' August 2005 (the Code), issued by the Commissioner for Public Appointments for Northern Ireland.

Executive Summary

- 2.1 The Northern Ireland Housing Council is made up of one representative from each of the 26 local Councils. The Housing Council had a statutory right to three places on the Housing Executive Board, until the Minister's decision in September 2005 to increase this to four places to enable all the major political parties to be represented. This meant that, for the first time, the Housing Council nominated a number of individuals in order that the Minister had a choice of appointees. Statutorily, this was effected by invoking Article 130(3) of the Housing (NI) Order 2003, whereby "the Council shall, in accordance with such procedure as the Department may direct, nominate such number of persons who are members of the Council as the Department may determine for consideration as member of the Executive" and "the Minister in charge of the Department shall as far as practicable secure that the members of the Executive as a group, are representative of the community in Northern Ireland".
- 2.2 The format through which this process would take place was the subject of considerable discussion and correspondence. The Director of Housing first wrote to OCPANI in April 2006, indicating that 'all nominees put forward will be required to complete a Nomination Form which will be considered by the Department in making

recommendations for appointment'. It was subsequently agreed between the Office of the Commissioner for Public Appointments (OCPANI) and DSD that as a regulated appointment, an Independent Assessor (IA) would have to be involved in the process as a whole, including sitting in on a series of 'Conversations with a Purpose' to allow the necessary validation to be carried out.

2.3 The format of this audit report is based on an examination of the main stages of the appointments process, from which a number of audit issues were identified. These are set out in detail within the report and summarised in an Audit Issues Grid within **Appendix 2**, which includes associated audit recommendations and the Department's responses. The main issues identified are:

- ❖ The Code requires departments to ensure that a full and complete audit trail of records is easily available – relevant papers were made available gradually (on request) during the course of the audit which included a combination of hard copies of electronic documentation and unregistered original papers. In addition, one other key document was made available at the completion stage of the audit
- ❖ A detailed Information Pack was not made available, which reflected the developmental approach to the appointments process being undertaken
- ❖ Nomination forms issued to candidates did include a section relating to Political Activity, however the form of words used was outdated and not as set down in the Code
- ❖ One of the nominees was abroad and unavailable for the Conversation with a Purpose, although, given the tight timescale involved for this public appointments process was included in the Ministerial Submission on the assumption that they would have "passed" (and if subsequently selected, would then go through this element of the process)
- ❖ One of the nominees did not declare what could be regarded as a potential conflict of interest, either in the nomination form or when asked the standard question in this area during the Conversation with a Purpose. The circumstances had become apparent early in the appointments process and further background information was obtained. However, the Panel's discussions and agreed approach in support of a key decision-making process were not formally minuted and unavailable for scrutiny. It was also noted that the wording used in nomination forms and letters of appointment does not currently draw attention to the requirement on individuals to declare conflicts of interest arising at any stage of a public appointment

- ❖ Full Equal Opportunities monitoring information was not provided by a nominee at the outset of the process and this was not followed up by the Department in order to provide the nominee with a second opportunity to do so, recording this request and any refusal to do so in writing
- ❖ At the point where the Department was required to obtain written verification that the IA was satisfied with the appointments process (in the form of a Validation Certificate), verbal confirmation had to be relied on to allow the Ministerial Submission to be completed
- ❖ The Panel Chair failed to complete and return a standard feedback form on the IA's performance during the competition process to OCPANI.

Overall Conclusion

- 3.1 Overall, the quality of the appointments process associated with this competition in terms of compliance with the Code (on a scale of High-Medium-Low) has been assessed as *Low*, as a result of the nature of the audit issues identified.

Main Stages of the Appointments Process

(1) Planning and Preparation

- 4.1 In May 2006, a 'Direction' was issued by DSD regarding membership of the NI Housing Council to the Chairperson of the Council "setting out the requirements for the NI Housing Council to follow when making its nominations for appointment to the Housing Executive Board" – however, this documentation referred more to the legislative means by which the nomination process would operate, rather than addressing the practicalities associated with the appointments process.
- 4.2 The panel members involved in the competition and who participated in the Conversation with a Purpose element were the Director of Housing; a Grade 7 staff member in Housing Division and the IA.
- 4.3 It was noted from the competition papers that the panel debated the options for carrying out the sift stage of the process, in terms of ranking while taking account of party affiliations, and agreed to consider all nominations together and rank across party lines – OCPANI drew attention to Code guidelines at Sections 3.37 and 3.38.
- 4.4 DSD (and the Housing Council) were initially reluctant to engage in the Conversation with a Purpose element of the process and the IA

expressed concerns as to a means of verifying that responses were being accurately recorded, leading to difficulties in integrating this competition into the normal appointments process – the Conversations with a Purpose subsequently took place, by speaker phone, in line with Section 3.35 of the Code.

- 4.5 Discussions did not occur between DSD and the Independent Assessor until a week before these Conversations with a Purpose took place, on issues such as suitable format, while the need to produce questions including wording for a probity question was first raised by OCPANI in conversation with DSD also at this time. The IA provided valuable input with regard to the provision of a suitable form of words to explore the issue of conflict of interest with the nominees as well as developing a probity-related question.
- 4.6 The IA made the point in the feedback form on the appointments process that “it would be helpful if all Departments which made appointments where other organisations have a right/requirement to make nominations were alerted to the need to reconcile the nomination process to the requirement in the Code to appoint on more than just a paper exercise....”.

Issues Arising

- 4.7 Relevant papers were made available gradually (on request) during the course of the audit. This included hard copies of documentation held electronically and original unregistered papers. In addition, one other key document was made available at the completion stage of the audit – **ISSUE**
- 4.8 A detailed Information Pack was not made available to nominees and appeared to reflect the developmental approach to the process which was being administered by DSD. The Department issued nomination forms along with the OCPANI ‘Probity and Conflicts of Interest’ booklet to the Housing Council, to be passed to the nominees selected – there were no Role and Person Specifications drawn up and issued; a Complaints Leaflet was not provided; there was no indication to the nominees that the process would consist of anything further than a written application (until close to the time when the Conversation with a Purpose element of the process was to take place); and no guidance to indicate that nomination forms had to be fully completed in order to be considered (one was rejected with no written response to three of the 5 question areas set). Consideration could have been given to drawing nominees’ attention to the document “Public Appointments in Northern Ireland: A Guide for Nominating Bodies” which sets out the whole process or issuing a copy of “Making your Mark – A Guide to Public Appointments in Northern Ireland” (particularly when this was

represented a change from previous methods of appointment, but where nominating rights continued to exist) – **ISSUE**.

- 4.9 The nomination form issued to candidates did include a section requesting a response to a standard question on Political Activity, however the form of words used was not exactly as prescribed in Annex F to the Code of Practice – **ISSUE**.

(2) Selection

- 4.10 The selection process used involved the consideration and shortlisting of the submitted nomination forms followed by a Conversation with a Purpose with each nominee to confirm the conclusions reached following the shortlisting process.
- 4.11 There was no indication from the file papers that follow-up had been carried out in terms of references or performance assessments (although the nomination forms used had requested details of other public appointments held) after the Conversations with a Purpose had been completed. A panel member indicated that they were not aware of any requirement to do so, neither had they been advised accordingly by the IA. The Department confirmed that no policy has been established in relation to following up on this aspect of the process. When asked how the details of other public appointments held (and published in the subsequent Press Release) had been confirmed, the Department indicated that the Panel Chair attended monthly Housing Council meetings and, as a result, knew the individual members involved in this process. A formal audit issue is not being raised, as the Code currently places no requirement on Departments to carry out and document follow-up on the Performance Assessments with regard to new appointments.

Issues Arising

- 4.12 One of the nominees was in the USA and unavailable for the Conversation with a Purpose – the Department indicated that although efforts had been made to contact the candidate abroad by mobile phone, this had proven impossible. Given the tight timescale within which this public appointments process was being progressed, a decision was taken by the Panel to include this candidate in the Ministerial Submission on the assumption that they would have “passed” and if subsequently selected by the Minister, would then go through this element of the process. The candidate agreed to do so if necessary, but preferred “not to bother with the Conversation with a Purpose” [effectively unless it was essential]. Documentation on file indicates that the IA was aware of the situation and while (rightly) preferring to complete the process regardless of the final selection

decisions to be made, accepted the candidate's preference in view of the timescale involved and signed off the required compliance documentation – the candidate was not subsequently recommended for appointment in the Ministerial Submission and was not selected by the Minister – **ISSUE**.

- 4.13 One of the nominees did not declare what could be regarded as a potential conflict of interest on the nomination form or when asked the standard question in this area during the Conversation with a Purpose – the circumstances had become apparent during the early stages of the appointments process, when further background information was obtained (linked to a pending High Court hearing). However, the basis for the approach which the panel discussed and agreed to follow in this situation was not formally minuted in support of a key decision-making process and unavailable for scrutiny. Linked to this, it was noted that the wording used in nomination forms and letters of appointment does not currently draw attention to the requirement on individuals to declare conflicts of interest which may arise at any stage of a public appointment – **ISSUE**.
- 4.14 Prior to the Ministerial Submission being made, a Department is required to ensure that, if necessary, “all the monitoring information, including that on Political Activity has been provided”, using the requisite forms. The Department indicated that these forms were examined by staff (non-panel members) when received along with the nomination forms, and then separated and filed away securely. In the case of one nominee, the Equal Opportunities monitoring form had not been fully completed, however this was not followed up with the individual by the Department, in order to fulfil the requirement under Section 3.28 of the Code, by providing the nominee with a second opportunity to do so, recording this request and any refusal in writing - **ISSUE**.

(3) Post-Selection

- 4.15 This stage of the process related to the preparation of the Ministerial Submission for consideration and the IA's role in this, followed by an approval process and dissemination of the appointments made. There would also be provision of feedback to candidates, where requested, including feedback to the IA on their role in the process as a whole.

Issues Arising

- 4.16 The IA is required “to certify their satisfaction or otherwise that the process up to the stage of Ministerial Submission has conformed to the requirements of the Code of Practice” by signing off a Validation Certificate and providing this to the Department. Although a copy of

this was provided to the IA in the initial pack of papers, this had not been submitted when the Ministerial Submission was being prepared and verbal confirmation had to be obtained as an interim measure. The Validation Certificate was not returned to the Department until January 2007 – **ISSUE**.

- 4.17 There was no indication on Departmental files that a feedback form on the IA's role in the appointments process (due for completion within 2 weeks of the competition by Panel Chair) had been completed, and the Department was unable to provide evidence that this had been carried out. It was not received or followed up by OCPANI, while feedback was not formally requested by the IA on this occasion – **ISSUE**.

APPENDIX 1

Previous audit recommendations considered as part of 2006-07 competition audit

- ❖ Is the Departmental guide to Public Appointments updated annually thereby reflecting Code changes? NO LONGER AN ISSUE - agreement was reached in January 2007 to discontinue this approach (with associated duplication and potential for reliance on outdated practice) and instead rely solely on the requirements set out in the OCPANI Code of Practice and the principles contained within Central Appointment Unit's Best Practice Guide
- ❖ Was there early IA involvement in the process? YES (IA requested in early Oct 2006, Conversations with a Purpose took place on 26 Oct 2006)
- ❖ Was there any alteration of agreed assessment criteria once the process was underway? NO, but a developmental process was in place during this competition
- ❖ Proforma for Sifting/Conversation with a Purpose? YES
- ❖ Was there testing of probity issues as required at the Conversations with a Purpose? YES
- ❖ Were all relevant details included in the Press Release? YES
- ❖ Was the IA notified of the appointment outcome? YES
- ❖ Was the Press Release received by OCPANI? YES
- ❖ Was the retention period for documents observed? YES, although some original documents were not available centrally on a registered file until after the request for papers for audit purposes was received by DSD – these were received gradually during the audit. Papers held electronically were provided in hard copy - **ISSUE**

Other general departmental audit recommendations arising which are pertinent to this competition

- ❖ Was a detailed Information Pack made available? – NO, this was not made available and appeared to reflect the developmental approach to the process being undertaken. The only documentation issued by the Department to the NI Housing Council was nomination forms along with the OCPANI 'Probity and Conflicts of Interest' booklet, to be passed to

the nominees selected – there were no Role and Person Specifications drawn up and issued; a Complaints Leaflet was not issued; there was no indication to the nominees that the process would consist of anything further than a written application (until close to the time when the Conversation with a Purpose element of the process was being organised and taking place); and no guidance to indicate that nomination forms had to be fully completed in order to be considered (one was rejected with no written response to three of the 5 question areas set) – **ISSUE**.

AUDIT ISSUES

APPENDIX 2

	Audit Issue	Impact	Recommendation	Priority Level	Departmental Response
1	OCPANI Code of Practice requires (Section 4.2) requires departments to ensure that a full and complete audit trail of records is easily available. With the introduction of electronic document management, the Department does not now, as a matter of course, retain original documents on registered files – this was provided after a request for papers for audit purposes was received by DSD (3/7/07). Relevant papers were made available gradually (on request) during the course of the audit. This included original unregistered papers and hard copies of documentation held electronically. In addition, one other key document was made available at the completion stage of the audit	This is a Code compliant issue	That the Department considers how its systems for electronic document storage can meet the requirements for audit in terms of completeness of the audit trail	1	Housing Division within DSD who administered this public appointment process, while complying with the Department’s requirements on electronic document retention also continues to hold small number of related original papers in unregistered files until disposal issues are clarified

AUDIT ISSUES

	Audit Issue	Impact	Recommendation	Priority Level	Departmental Response
2	<p>A detailed Information Pack was not made available, which reflected the developmental approach to the appointments process which was being undertaken. The following standard documents were not contained within the Information Pack:</p> <ul style="list-style-type: none"> • a Role Specification • a Person Specification • a Complaints Leaflet • some form of guidance note, indicating to the nominees the format which the process would take, particularly when this represented a change from the previous method of appointment, albeit that nominating rights continued to exist – this could have included a reference to relevant publications such as “Making your Mark – A Guide to Public Appointments in Northern Ireland”; emphasis on the requirement to complete all nomination documents in full; and an explanation regarding the Conversation with a Purpose element 	<p>This is a Code compliant issue</p> <p>The absence of these documents made the process, in its final form, a more difficult one for the nominees (in knowing what the requirements of the posts were and being fully prepared to participate in the whole process which included a Conversation with a Purpose) and for those involved in its administration (in terms of delivering accountability and transparency)</p>	<p>That the Department develops and includes the required specifications and guidance note at the outset of the process for similar public appointment competitions in the future, particularly where nominating rights are involved</p>	1	<p>The Department's Housing Division has embarked on a new NIHE Board Member competition and will, where possible, take cognisance of these issues as part of that process (again in conjunction with the Housing Council)</p>

AUDIT ISSUES

	Audit Issue	Impact	Recommendation	Priority Level	Departmental Response
3	Nomination forms issued to candidates <u>did</u> include a section requesting a response to a standard question on Political Activity, however the form of words used was out of date and <u>not exactly as prescribed</u> in the Code (Annex F)	This is a Code compliant issue	That the Department develops its nomination form in line with the Code (and with reference to the application form template contained within Central Appointment Unit's Best Practice Guide)	1	The Department has noted the issue raised

AUDIT ISSUES

	Audit Issue	Impact	Recommendation	Priority Level	Departmental Response
4	<p>One of the nominees was unavailable for the Conversation with a Purpose. While the Department made efforts to contact the candidate abroad by mobile phone, this proved impossible. A decision was taken by the Panel to include this candidate in the Ministerial Submission on the assumption that they would have “passed” (and if subsequently selected by the Minister, would then go through this element of the process). While the IA (rightly) preferred to complete the process regardless of the final selection decisions to be made, given the circumstances, which included a tight timescale in which to progress this public appointments process, the required compliance documentation was signed off – <u>the candidate was not subsequently recommended for appointment or selected by the Minister</u>. The Code at Section 3.33 states that “no appointment can be recommended to Ministers unless the candidate has been scrutinised by the panel, even if this means reconvening the panel...”</p>	<p>This is a Code compliant issue</p>	<p>The Department, in administering the public appointments process, should ensure that, both nominees are aware of the requirements set out in the Code relating to candidate participation (for example, through the issue of guidance at the outset of the appointments process) and that those involved in public appointments take cognisance of the Code’s provisions in this regard</p>	<p>1</p>	<p>The Department considers that, taking into account all the circumstances relating to this appointments process and particularly with regard to the need to work to a very tight timescale, that the course of action taken was acceptable and was supported by the IA on this basis</p>

AUDIT ISSUES

	Audit Issue	Impact	Recommendation	Priority Level	Departmental Response
5	<p>One nominee did not declare what could be regarded as a <u>potential conflict of interest</u> on their nomination form. The circumstances, known to the Panel Chair, were brought to the panel’s attention at shortlisting stage. Departmental research indicated that there was a High Court Appeal awaiting hearing, and it is understood that the Panel discussed the situation, concluding that the nominee’s response was acceptable for the purposes of the selection process. However, the content of these discussions was not formally minuted to support a key decision-making process and unavailable for scrutiny. While the Code at Annex C refers to situations where “it is possible that a candidate may not discern that a potential conflict exists.....the panel, however,.....could identify a potential conflict.....in such cases, they must explore this with the candidate”, it is understood that, again, the Panel verbally agreed to only ask the standard question in this area during the Conversation with a Purpose - <u>the candidate’s recommendation for appointment was subsequently approved by the Minister</u></p>	<p>The Ministerial Submission stated that “if [the nominee is] appointed to the Board, the outcome of the Appeal will be monitored and a further submission sent to you”</p> <p>It is noted, however, that neither the wording of the nomination form, nor the letter of appointment issued highlighted the requirement on individuals to declare any conflicts of interest arising at any stage in relation to this public appointment</p> <p>It was also difficult to assess the form and content of Panel discussions on a key area against the Code’s requirements, as these had not been formally minuted</p>	<p>That the Department monitors the progress of the High Court Appeal in relation to the appointee (the Local Government Auditor’s June 2007 Report refers to a likely October 2007 hearing)</p> <p>The Department should consider the inclusion of additional wording within the Declaration section in nomination forms (see the CAU’s template) and in letters of appointment, to draw attention to the requirement to declare conflicts of interest arising at any stage</p> <p>The Department should document discussions in support of all key decision-making processes</p>	1	<p>The Department indicated that there was verbal agreement only (due to time constraints) on the Panel’s approach, based on the view that the candidate would not have considered that a legitimate conflict of interest issue existed – the outcome of the High Court Appeal is being monitored</p> <p>The Department notes the recommendation regarding the inclusion of additional wording</p>

AUDIT ISSUES

	Audit Issue	Impact	Recommendation	Priority Level	Departmental Response
6	<p>Prior to the Ministerial Submission being made, a Department is required to ensure that “all the monitoring information, including that on Political Activity has been provided”. The Department examined the monitoring forms on receipt, separated the details from the nomination forms and they were filed away securely (unseen by the panel members, as required). In the case of one nominee, the Equal Opportunities monitoring form had not been fully completed, however this was not followed up with the individual by the Department, in order to fulfil the requirement under Section 3.28 of the Code, whereby: “candidates who do not complete the monitoring section initially should be given a second opportunity to do so. If this is not completed, however, Departments should not reject the application but should ensure that the request and refusal is recorded”</p>	<p>This is a Code compliant issue</p>	<p>As the panel members (including the IA) do not have access to Equal Opportunities data on nominees, a formal step in the appointments administration process should be included to ensure that incomplete monitoring information is followed up, with any subsequent refusal by a nominee to provide the outstanding information being clearly evidenced, as required by the Code</p>	<p>1</p>	<p>The Department confirmed that it did not carry out any follow-up with the nominee concerned regarding the completeness of the Equal Opportunities monitoring information provided at the outset of the process.</p> <p>The Department also questions the interpretation of Section 3.28 of the Code, in terms of the requirement that an Equal Opportunities form should be completed in full being definitively stated</p>

AUDIT ISSUES

	Audit Issue	Impact	Recommendation	Priority Level	Departmental Response
7	Section 3.36 of the Code requires the IA to “certify their satisfaction or otherwise that the process up to the stage of Ministerial Submission has conformed to the requirements of the Code of Practice (see Annex E – Validation Certificate)”. While the Department provided this document to the IA at the outset of the process, verbal confirmation had to be relied on in order to allow the Submission to go the Minister as the Validation Certificate had not been returned by the IA to the Department. Contact was then made by letter when the Press Release was about to issue (20/11/06) with a reminder of the need to complete this document, which was subsequently received in mid-January 2007	<p>The Department did not ensure that the IA completed their responsibilities to the appointments process as laid down in the Code by accepting a verbal assurance instead of written certification of their satisfaction with the process undertaken, in order to finalise the Ministerial Submission</p> <p>This is a Code compliant issue</p>	That the Department takes the steps necessary to ensure that the required timings for the receipt of the Validation Certificate are adhered to as the process draws to a close	1	The Department considered that it took reasonable steps in the circumstances to ensure that the Validation Certificate was available for completion, and that the IA was satisfied with the appointments process which had been undertaken
8	The Panel Chair failed to complete and return a standard feedback form on the IA’s performance during the competition process to OCPANI	This is a Code compliant issue	That the Department ensures that this takes place, eg through the use of a checklist as an aide-memoire at the close of the process	1	The Department, while aware of this requirement, are unable to provide the necessary feedback form (the Panel Chair has since retired)