

AUGUST 2016

DECISION NOTICE: PUBLIC BODY APPOINTMENT PROCESS, INDEPENDENT MONITORING BOARD, MINISTRY OF JUSTICE (MOJ)

AUTHORITY

1. The Code of Practice for Ministerial Appointments to Public Bodies dated 1 April 2012 states that any individual may complain to the Commissioner for Public Appointments that a competition has not been conducted in compliance with this Code.
2. Complaints should first be raised with the appointing Department, but if, after investigation by the Department, the complainant remains dissatisfied, he/she may bring their complaint to the Commissioner.

METHODOLOGY

3. The Commissioner investigated the complaint through consideration of written evidence supplied by the complainant and MOJ.

OUTLINE OF COMPLAINT

4. The complainant applied for appointment as a member of a MOJ public body. He had served a previous term in the public body. Two of the interview panel members were known to him. The complainant raised concerns including the perceived conflict of interest, the length of time the panel took to carry out the interview and the fact that notes were taken during the process.

CONSIDERATION

5. The Code of Practice sets out the principles of public appointments:
 - *Merit- The overriding principle is selection on merit. This means providing Ministers with a choice of high quality candidates, drawn from a strong diverse field, whose skills, experience and qualities have been judged to best meet the needs of the public body or statutory office in question.*



- *Fairness- Selection processes must be objective, impartial and applied consistently to all candidates. Each candidate must be assessed against the same published criteria.*
 - *Openness- Information about the requirements of the post and the selection process must be publicly available. Public appointments must be advertised publicly in a way that is designed to attract a strong and diverse field of suitable candidates.*
6. At the interview, two of the interview panel members were known to the complainant; he had been part of the recruitment process to bring them into the public body some years before.
 7. The Code of Practice does not make specific reference to panel members having knowledge of candidates or to a method of recording this for transparency purposes. However it does state: *“the panel must be able to assess candidates impartially against the selection criteria”*.
 8. The panel must also have an external perspective. In this case, in addition to the two individuals who were known to the complainant, there was an independent reviewer present. The fact that the complainant had already served a term of office in the public body increased the possibility that he would know the panel members.
 9. MOJ was asked to provide records relating to this campaign. The Commissioner’s office was told that all records were destroyed after 12 months, in line with the public body’s retention policy. The Code states:

*Individual Departments will be audited for evidence of their capability and compliance with this Code. Departments must therefore retain sufficient information on their public appointments.....to provide evidence that they have complied with this Code. **This information must be kept for a minimum of two years.***
 10. There is no evidence that the complainant was treated less fairly because he had formerly served a term of office in the public body or because of his previous working relationships with the two panel members. There are no records, other than the complainant’s interview records, so a comparison of scores or panel comments is not possible. However, the presence of a panel member who was not known to the complainant provides the necessary independence and external perspective required by the Code.
 11. However, the fact that the complainant’s interview records make no mention of the panel members’ previous knowledge of the complainant is not helpful and has heightened his view, not justified in this case, that this campaign was not carried out fairly. It would be good practice to record prior knowledge of candidates by the panel members, and MOJ and the public body should

review their initial assessment/interview documentation relating to declarations of previous knowledge by the panel members.

12. The complainant stated that, his interview lasted in excess of an hour and he felt distracted because panel members were taking notes. The panel's objective is to: "*provide Ministers with a choice of high quality candidates, whose skills and experience and qualities have been judged to best meet the needs of the public body in question*". Six competencies are shown on the complainant's interview record and the complainant would have been asked for evidence against each one. It is not clear whether candidates were asked to provide a presentation to the panel. One hour is longer than the norm, but is not overly excessive. All interview panels take notes and the complainant should have had this explained at the start of the interview. In any event, the complainant should have been aware of this, having been part of the recruitment process for the two panel members.
13. There is no documentation, other than the complainant's own records, because of the early destruction of records, and the Commissioner is not able to comment on the complainant's assessment against the other candidates.
14. The complainant stated that the process for raising a complaint was not shown on the advertisement for this post. As original records are not available for review, the Commissioner is not able to make a finding on this matter. However, MOJ did assure the complainant that, in future campaigns, the appropriate references to the Commissioner and his role would be shown.

DECISION

15. There is **no breach** of the Code of Practice regarding any conflict of interest, the length of the interview or note taking at interview.
16. The destruction of documents, before the required minimum 2 year period **is a breach of the Code of Practice**. MOJ and the public body should have sufficient oversight of public appointment campaigns to ensure that auditable material is retained.

Peter Riddell
Commissioner for Public Appointments

August 2016



**The Commissioner for
Public Appointments**