

Regulating Public Appointments with the Governance Code 2016

1. In March 2015, the Government reviewed the way in which departments make appointments to the governing boards of public bodies. A consultation took place, and the result was an Order in Council and resulting Governance Code which came into force in January 2017.
2. The independent Commissioner for Public Appointments was given the regulatory duty to ensure public appointments are made within the requirements of the Governance Code 2016. The Order in Council 2016 provides the Commissioner for Public Appointments with the following key duties:
 - ‘ carry out an audit of the procedures and practices followed by the appointing authorities in making public appointments, including the interpretation and application by them of the Governance Code including the principles of public appointments’. (4(2))**
 - ‘ conduct an investigation into any aspect on public appointments with the objective to improving their quality’ (4 (3))**
 - ‘ conduct an inquiry into the procedures and practices followed by an appointing authority in relation to any public appointment whether in response to a complaint or otherwise’ (4 (4))**
3. This note from the Commissioner introduces the way in which the he intends to engage with Departments over ensuring the requirements of the Governance Code are met, through three key activities- auditing appointing authorities to ensure that they are following the Code, complaints and investigations. The most effective way is to engage closely with appointing departments, through pre-planned visits, ad hoc visits and investigations where necessary.
4. In exercising these duties, the Commissioner may request documentation, without redactions, under the provisions of the Order in Council. All information supplied will be kept confidentially and will be destroyed once the visit or investigation has concluded.

Timings of Competitions

5. The Governance Code states that 'the aim should be to conclude the process within three months of a competition closing'. Departments should keep campaign timelines updated on the Centre for Public Appointments website. The Commissioner's secretariat will monitor competitions on a regular basis, and may write to Departments if an appointment has not been announced, three months after the competition has closed. Incomplete campaign timelines will be treated as if the appointment has not been formally announced. Departments will be asked to explain the reasons why it has not been possible to conclude the process within the three month aim.

Visits to ensure appointing authorities act in accordance with the Code

6. Building on the successful meetings with Permanent Secretaries in the autumn of 2017, and with an aim to ensure that appointing authorities are acting in accordance with the Governance Code, the Commissioner will arrange visits with departments to review how public appointments (including extensions of tenure) are being carried out. A schedule of visits will be arranged between the Commissioner's secretariat and departments, with dates agreed in advance. As part of the preparation, departments will be asked for a list of all competitions and appointments made within a given period, so that the secretariat can select a sample of appointment campaigns to focus on. The Commissioner will expect to see the documents listed at Annex A and may request additional information, should the need arise during the review.
7. The Commissioner will produce a report after each visit has taken place, highlighting any best practice and raising any concerns with departments. A draft copy of the report will be shared with the department before it is finalised, to correct factual inaccuracies and provide comment if necessary.
A copy of the final report will be provided to the relevant department and the Cabinet Office public appointments team, and conclusions may be published in the Commissioner's annual report and/or on the Commissioner's website.
8. In instances where it has been found that an appointing authority has not acted in accordance with the Governance Code, the Commissioner may request that a series of follow up visits are made to ensure that recommendations have been acted upon. Both the initial visits, and any follow up visits, are aimed at the continuous improvement of the quality of public appointments. The Commissioner's office will expect to meet with public appointments teams, and where appropriate, sponsorship teams.
9. The Commissioner's remit also includes the promotion of diversity in public appointments. Therefore, the visit will include the department being asked to set out its approach to encouraging diversity, including an overview of its diversity management information in relation to appointments, which should be provided in advance of the meeting. The Commissioner is keen to identify examples of best practice and any case studies that could be used to further promote diversity.

Complaints from applicants or the public

10. The Order in Council 2016 and the Governance Code 2016 also provides the Commissioner with a statutory remit to consider complaints. Examples of complaints include candidates who have felt dissatisfied with the experience of applying for a public appointment, and how, after having complained to the department first, have taken the view that the Governance Code 2016 has not been followed. The Commissioner will take a view on whether the complaint is within his remit to consider and confirm this in writing.
11. In order to consider a complaint, the Commissioner may request files relating to the appointment in question (these documents are at Annex A). Depending on the nature of the complaint, the Commissioner may request additional documentation or information. The Commissioner will expect to receive the information requested within 10 working days of making a request. Further information about the process the Commissioner will normally follow when considering a complaint is set out at Annex B

Investigations

12. The Order in Council also allows the Commissioner to 'conduct an investigation into any aspect of the public appointments process with the object of improving their quality' (4(3)). Examples of these will include concerns raised by Members of Parliament or controversy raised in the press around certain appointments. For appointments that are subject to pre-appointment scrutiny, or where questions have been raised by the Select Committees, the Commissioner may ask to see the panel report and this should be provided promptly. If further investigation is needed, departments will be informed in writing, with further information on what will be reviewed.
13. The Commissioner will investigate to ascertain whether the principles in the Governance Code have been met, identify areas in which there is room for improvements, and highlight best practice. The Commissioner may request information on public appointments, including the documents listed at Annex A. The Commissioner may request additional documentation or information relevant to his investigation. The Commissioner will normally expect to receive the information requested within 10 working days of making a request.
14. The process for investigation that the Commissioner will normally follow is set out at Annex C.

Accounting Officer sign off and panel reports

15. The Governance Code requires each public appointment process to be certified by a relevant accounting officer or senior representative, providing assurance that the process conducted was in line with the Code.
16. In practice, this assurance can be provided by the senior departmental official on the Advisory Assessment Panel, and the assurance can be contained in the final panel report.
17. The panel reports for significant appointments, involving Senior Independent Panel Members, should be sent to the Commissioner, once the competition has concluded.
18. It is the responsibility of all recruiting departments to ensure that the process is compliant with the Governance Code. A basic checklist to assist departments in has been included at Annex B, however this again, is by no means exhaustive.

Failure to act in accordance with the Code

19. In cases where departments have found that they have not acted in accordance with the Governance Code, they are asked to inform the Commissioner's Secretariat in writing.

Annex A

Documentation

The following list of documents can be used as a guide for departments, it is indicative but is by no means exhaustive

- Advert Candidate pack
- Names of applicants and application forms
- Names and of applicants, sometimes with supporting statements, and the source of those names
- Longlist note with details of those candidates sifted through to the next stage, with panel comments
- Shortlist note with details of candidates invited to interview, including comments from panel
- Panel report with details of candidates found appointable or not appointable
- Submissions to Ministers at every stage and any relevant internal discussions, including transcripts of phonecalls and copies of emails
- Declarations of political activity or conflicts of interests
- Due diligence checks
- Press releases
- Appointment letters

Annex B

The process for considering complaints:

- The Commissioner's Secretariat will acknowledge receipt of complaint to the Commissioner within 2 days
- The complainant will receive confirmation in writing as to whether the complaint is within the Commissioner's scope, setting out the terms under which the complaint will be considered, as outlined in the Governance Code 2016 within 5 working days. This will also be shared with departments, keeping the complainant's name anonymised, if requested
- The Commissioner may formally request a full set of papers (see Annex A) , to be supplied within 10 working days of receipt of request
- The Commissioner's secretariat will review papers supplied
- Contact Complainant/ department to request any further information the Commissioner finds necessary
- Arrange any meetings/ conversations with departments, as required
- Commissioner produces a Decision Notice, which will be shared with the department. Departments will have 2 working days in which to return any comments
- Decision Notice will be published on Commissioner's website.
- Once the complaint process is complete, the Commissioner's office will destroy or delete any records or papers that have been supplied by departments. No sensitive data will be retained.
- Information may also be used in the Commissioner's annual report and to inform future compliance visits

Annex C

Process for conducting an investigation

- The Commissioner's Office will confirm in writing that an investigation is to commence
- Files requested from and supplied by the department, in an agreed format, within 10 working days of notification
- The Commissioner will examine files and return with any questions or requests for additional information
- Once the report has been finalised, the Commissioner's office will share with the Department. Departments have 2 working days in which to return any comments
- The report will be published on the Commissioner's website
- Once the investigation is complete, the Commissioner's office will destroy or delete any records or papers that have been supplied by departments. No sensitive data will be retained.
- Information may also be used in the Commissioner's annual report and to inform future compliance visits

Annex D

Checks for appointing authorities acting in accordance with the Code

Were Ministers consulted on:

- Job description
- Tenure
- Remuneration
- Panel Composition, including an official from the department, from the body and an independent member
- The opportunity to engage with the Chair of the board
- The opportunity to meet candidates before or after interviews
- Current board diversity
- Potential candidates suggested by Ministers and stakeholders
- Diversity of field of applicants
- Progress at each stage

Did the process take account of:

- A transparent, fair and open selection process, agreed in advance by the Minister and the Advisory Panel
- (If appointed), was the Recruitment consultant made aware of the requirements of the Governance Code and ministers' views
- (If relevant) agreement from the Commissioner for Public Appointments on a Senior Independent Panel Member
- Transparent documentation for each stage
- Advertising openly to attract a wide and diverse field of applicants
- Due diligence and political activity declarations of both candidates and panel members
- Awareness of the Seven Principles of Public Life
- A satisfactory level of customer care, including feedback when requested
- Publication of real time campaign timeline data on the Public Appointments website
- Identification of a reserve list
- The aim of appointing within three months of the competition closing