

Commissioner for Public Appointments decision notice: public body appointments process for National Museums of Liverpool (NML) and National Heritage Memorial Fund/Heritage Lottery Fund (NHMF/HLF), administered by Department of Culture, Media and Sport

1. The Public Appointments Order in Council, November 2019, states that the Commissioner for Public Appointments 'may conduct an enquiry into the procedures and practices followed by an appointing authority in relation to any public appointment whether in response to a complaint or otherwise'.
2. Under the Governance Code, complaints should be raised with the appointing department in the first instance. Departments are 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 independent Commissioner for Public Appointments.
3. In this instance, the complainant made an application to the Department of Culture, Media and Sport (DCMS) in the Summer of 2018, to become a trustee of the National Museums of Liverpool. The complainant had been found appointable by the Advisory Assessment Panel at interview, but was not appointed.
4. The complainant was also concerned about an earlier application to become a trustee of the National Heritage Memorial Fund (NHMF) (also known as the Heritage Lottery Fund, HLF), run by DCMS in 2017-2018. The complainant in this case was found not appointable by the panel at interview.
5. The complainant, in requesting feedback from these two competitions, made a subject access request (SAR) to DCMS. The material provided to the complainant included documentation of both competitions. The complainant felt that they had been unfairly maligned and overlooked for both competitions and made a complaint to DCMS. DCMS replied substantively in May and August 2019 in response to the complaint. Following the conclusion of that internal process, the complainant remained dissatisfied and contacted the Commissioner.
6. The Commissioner considers complaints that relate to appointment competitions that have concluded within the last 12 months, and that relate to either an individual's experience as an applicant, the way a department or other responsible organisation

has handled an appointments process or if it appears that the Governance Code may not have been followed.

7. The Commissioner felt on balance the complaint met these criteria and began an investigation into the processes of the competition for the trustees for the National Heritage Memorial Fund/Heritage Lottery Fund and the National Museums Liverpool.

Methodology

8. The complainant contacted OCPA with a formal request to investigate on 31 October 2019 which OCPA acknowledged the same day. Further correspondence between the OCPA and the complainant via email clarified the nature and scope of the complaint. OCPA informed the complainant that the Commissioner would investigate their complaint on 6 November and requested the papers from DCMS for these two particular competitions the same day. These letters from OCPA are in Annex A and Annex B.
9. OCPA informed the complainant of the Commissioner's remit to look at competitions according to the Government's Governance Code and the criteria published on his website. The complainant was also informed that the Commissioner has no authority to ask departments to run competitions again nor to remove or place any person into a public appointment.
10. DCMS provided the requested information to OCPA, and a covering note, and the complainant also provided OCPA with the material they had been provided as a result of the SAR. In forming a decision, the Commissioner reviewed the following documentation:
 - a. Correspondence between the complainant and DCMS including the response from DCMS in relation to the complaint and the material provided in the SAR
 - b. Candidate packs for both competitions
 - c. Submissions made to Ministers relating to various stages of both competitions and subsequent readouts
 - d. Panel reports from both competitions, at sifting and interview stages
 - e. Records of due diligence conducted for both competitions
 - f. Emails between officials including special advisors throughout stages of both competitions
 - g. Spreadsheets detailing applicants and their progress across the competition stages for both competitions

Outline of complaint

11. The candidate made complaints on a number of points in regards to both competitions run by DCMS.

12. Firstly, the complainant maintained that the Department had missed an opportunity to improve its record in diversity of public appointments by not appointing them. Secondly, they maintained that views about them, not informed by an assessment of merit, had informed the decisions that led to them not being appointed in either competition, and they wanted an opportunity to refute those views. Lastly, the complainant maintained that their application and assessment in the NHMF/HLF competition had a bearing on the later National Museums of Liverpool competition.
13. These complaints can broadly be seen in relation to Principles D, E and F (Merit, Openness and Diversity) of the Governance Code for Public Appointments and as such, the Commissioner has investigated the processes of DCMS for both competitions in relation to these three Principles, as well as key sections of the Governance code which mandate the roles of departments, panels and ministers.

Consideration

14. NHMF/HLF appointments are made by the Prime Minister at the recommendation of the Secretary of State for Culture, Media and Sport. DCMS were looking to recruit for four roles; one generalist, one each to chair the financial management and audit and risk committees, and another with a specialism in digital technology.
15. The competition closed to applicants on 3 November 2017. A submission to ministers on the final field of applicants included the diversity of the field and that of the current NHMF/HLF board. 16 candidates were shortlisted on 28 November 2017, two declared political activity. 6 were women, 2 BAME and 2 declared a disability. The Commissioner, reviewing the record of the panel's selection at shortlisting, is satisfied that the panel assessed candidates fairly against the selection criteria - as agreed by ministers and set out in the candidate pack - to determine the shortlist for interviews. The complainant was shortlisted and was interviewed by the panel in January 2018.
16. DCMS have confirmed that the DCMS public appointments team carry out due diligence on all candidates shortlisted for an interview for DCMS public appointments competitions. The Commissioner has previously advocated for a proportionate due diligence process to give ministers more information about reputational risk and to ensure that any conflicts of interest and adherence to the Principles of Public Life are manageable for public appointees. DCMS have stated their due diligence processes include a basic internet search, including all social media sites covering at least the last three years. Due diligence is now standard practice for departments making public appointments. Ministers were told that Number 10 wanted DCMS to complete robust due diligence ahead of the interviews. However, the Commissioner has found the candidate pack for the NHMF/HLF competition did not mention that due diligence would be conducted.
17. The report from the interviews detailed the panel's assessment of the candidates against the criteria for the generalist and more specialist roles. Principle D of the Code on Merit states: '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.' The complainant was not found appointable by the panel at interview and the Commissioner is satisfied, again from the the record kept by the panel of their decision-making, that they were assessed fairly against other candidates and against the agreed selection criteria as stipulated in Principle D of the Code.

18. Further, the Commissioner is satisfied that due diligence, and/or declared political activity/affiliation, was not used by the panel to rule out candidates arbitrarily, in accordance with para 9.2 ('Political activity should not affect any judgement of merit').
19. Seven candidates were found to be appointable by the panel after interview and ministers were asked to choose five of these to recommend for appointment to the Prime Minister (rather than the original four as the chair of the body wanted to temporarily increase the number of Board members). The Governance Code is clear that ministers are to be provided with the names of appointable candidates to choose from (para 5.5) and that they make a decision on merit as to who to appoint. In this case, therefore, at least two of the appointable candidates would not be getting a role from this competition.
20. The Commissioner is satisfied that the information provided to ministers to make the decision to recommend members for appointment by the PM was robust. Excerpts from the panel report clearly show the candidates' assessment against the different criteria for the roles on offer and how this placed some of them above the line and the remaining candidates, including the complainant, below. The Secretary of State recommended five of the seven appointable candidates to the Prime Minister for appointment on 5 February 2018, and the announcement of these successful five was made on 20 March 2018.
21. The Commissioner finds no breaches of the Governance Code or its Principles in this competition. All candidates were assessed fairly and on merit against agreed criteria, including those who declared political activity. The Code does not compel ministers publicly to explain the reasons for appointing particular candidates; this is only necessary when they appoint someone who was deemed not appointable by the panel. The choices made by ministers in this competition were in line with the panel assessment and so no further explanation is required.
22. The Commissioner also finds the department gave the complainant, in response to their request for feedback and in making a complaint, an accurate record of the panel report remarks about them at sifting and interview, and was given an accurate description of the competition's processes and the Governance Code.
23. To turn to the second competition, DCMS were recruiting for 8-10 trustees for the National Museums of Liverpool in the summer of 2018. These appointments are made by the Secretary of State for Culture, Media and Sport, on the advice of the Minister for Arts, Heritage and Tourism.
24. The Board required trustees with different specialisms and skills as well as more generalist members. Applicants were encouraged to choose which specialism they

wanted to apply for: finance, commerce, estate management, marketing/digital/creative and HR/transformational management, or a generalist role. The essential criteria for all candidates included a passion for museums and Liverpool, an understanding of working at board level, partnership working and how culture can contribute to economic growth. The specialist roles had one criteria mapped to each of them. For the finance, commercial and estate management roles these criteria were also described as essential; for marketing, digital, HR and creative trustee roles these were desirable.

25. Six applicants were shortlisted by the panel on 5 October 2018, including the complainant. Therefore it was clear from this point on that this competition would not be recruiting 8-10 members as originally planned. The panel shortlisting report shows how each candidate was assessed against the essential and desirable criteria, and that several shortlisted candidates were known to panel members who declared this. OCPA finds each candidate was assessed fairly. Not all candidates who were known to the panel were shortlisted, and some candidates who were shortlisted were not known to the panel.
26. As in the previous campaign, due diligence was conducted on shortlisted candidates before interviews were held on 20 November 2018. Candidates were informed in the Privacy Notice attached to the candidate pack that 'Due diligence will also be undertaken for applicants shortlisted for interview. Applicants should expect this to include searches for public statements and social media, blogs or any other publically [sic] available information.'
27. The material in the due diligence report, dated '2018', about the complainant for this Liverpool competition includes the same information to that of the due diligence report for the earlier NHMF/HLF competition, also dated '2018'. As DCMS's due diligence searches cover a number of years of each applicant's online history, it is reasonable that similar information came to light for both processes. But the Liverpool competition report also contains instances of verbatim information as the earlier NHMF/HLF competition. That leads the Commissioner to conclude that the department may have relied on the findings from the due diligence carried out for the earlier NHMF/HLF competition to complete the due diligence for the Liverpool competition.
28. The six shortlisted candidates were interviewed on 20 December 2018, and four including the complainant were found appointable by the panel. The panel report details how the candidates showed strength in the essential criteria including where they showed ability for the specialist roles.
29. The panel report mentions candidates having strategic thinking or strategic decision-making skills. However, the essential or desirable criteria for the roles on offer did not include these skills.
30. Ministers were sent the panel report and were recommended to appoint the four people found appointable by the panel for the general, finance, digital and commercial trustee roles. The complainant was one of these four appointable

candidates and was recommended in the panel report for the general trustee role. Other appointable candidates also were recommended for the general role. The submission gave no Cabinet Office or Number 10 steers on which candidates to appoint. Ministers chose to appoint three candidates; the complainant was not appointed.

31. DCMS have explained to the candidate how they came not to be appointed to the Liverpool Museums role despite being found appointable: 'All public appointments must 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; it is then the responsibility of the Minister to make a decision based on suitability for the role and strength of the candidate's performance at interview. It was the (previous) Secretary of State's decision, in this instance, to select candidates that demonstrated a better understanding of the role and who performed better at interview, based on the information in the panel interview report.' The Commissioner agrees with this reading of the Governance Code.
32. Ministerial discretion forms Principle A of the Governance Code. The Code is also clear that appointments should be made on merit, with the process transparent and fair for each candidate, with consideration given to a balance of skills and backgrounds. It is not for the Commissioner to assess or judge ministerial choices unless they are made outside of the panel's recommendations, as described in para 3.2 of the Code. This is not the case here.
33. The panel was correct to present a field of appointable candidates to the Minister to choose from, even if this leaves appointable candidates disappointed. Candidates should be aware of the very real chance in any public appointment competition that being assessed as appointable by a panel may not be followed by being appointed to the role by a minister. This is the process mandated in the government's Governance Code.
34. The Commissioner notes the panel's interview report for the Liverpool competition does not rank the candidates. The Panel gave detailed descriptions of each candidate at interview, using different adjectives to differentiate between their performance and the demonstration of their skills. The panel described characteristics of the candidates which would also aid ministers in their choice (e.g. 'passionate', 'intellectual', 'dynamic'). Ministers were also provided with biographies and CVs of appointable candidates to aid their decision.
35. The panel report from the interviews lists the areas to be probed with candidates which follows the agreed criteria and does not show exactly how candidates' strategic thinking/decision-making skills were ascertained by questioning. However the panel's description of candidates' performance in the interview makes clear all the candidates were similarly assessed for the skill.

36. DCMS were correct to inform the complainant that the final decision rests with ministers and the Commissioner is satisfied that the complainant and other candidates were assessed on merit, albeit against one not previously announced criterion. The panel report from the interviews gave ministers the ability to see candidates' relative skills and abilities to make an informed choice on merit. The Code does not compel ministers to reveal the reasoning for their appointment decisions, unless they decide to appoint someone who the panel has deemed is not appointable (para 3.2). The panel's decision to assess for strategic thinking/ decision-making skills complicates the picture, but again, as ministers have chosen not to appoint the complainant who was found appointable, this requires no public reasoning. The Commissioner does not uphold this part of the complaint relating to the Principle of Merit but with the caveat that there was room for improvement in the process.

37. On the complainant's view of the way diversity has been approached by the department, Principle F of the Code states,

'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.'

38. The Commissioner takes an active interest in the diversity of public appointments and is an advocate for diversity. He has no remit to examine ministers decisions that are in line with panel assessments and cannot take a judgment on the balance ministers have opted to take. However, the Commissioner can look at efforts of departments to give ministers information to appoint, finding a balance between skills and backgrounds.

39. The Commissioner can see DCMS' efforts to encourage applications from people from a diverse range of backgrounds in both these competitions. DCMS explained to the complainant that all DCMS staff undertake unconscious bias training and the Panel chair was a DCMS staff member.

40. The Commissioner has seen submissions to ministers from DCMS which include the diversity of the field, the body in question and the recent record of appointing people with different characteristics onto DCMS public bodies (i.e. male, female, Black, Asian and Minority Ethnic and people with disabilities). The government has mandated targets for the diversity of public appointees to reflect the communities they serve, and the Commissioner is satisfied ministers were given robust information about how DCMS was performing. He can confirm ministers were not informed of the diversity characteristics of any individuals presented to them in any submission for either the NHMF/HLF and National Museums Liverpool competitions which is the correct practice. There was no equal merit provision in the Liverpool competition, so diversity characteristics were not used as a 'tiebreak' to differentiate between appointable candidates. The Commissioner finds no breach of Principle F.

41. Lastly, on the Principle of Openness, the Commissioner finds the appointments process for both competitions was Open, insofar as they were advertised widely,

attracted a diverse field, and the panel assessed candidates fairly on merit. Ministers in both competitions made appointments in line with the respective panel's merit assessments, that do not require further public justification in line with the government's Governance Code.

42. Due diligence was conducted on the complainant and all other shortlisted candidates for each competition. The Panels in both competitions determined that nothing needed to be brought to the attention of ministers, and both panel reports are clear conflicts of interests were discussed with each interviewed candidates. It is not clear to the Commissioner however, that due diligence came into these conflict of interest discussions. He also notes that there is a question as to whether the due diligence for the Liverpool competition was done anew because of the similarity of language to the previous NHMF/HLF competition due diligence report. Whilst the privacy notice for the Liverpool competition notified applicants that they will be subject to due diligence scrutiny, this was one of six forms along with the applicant pack attached to the role advertisement. The NHMF/HLF application material did not mention due diligence to candidates.
43. The Commissioner reminds departments that due diligence should be undertaken for each candidate freshly at each competition and that candidates should be asked at interviews about what has been found and when, and be given the opportunity to discuss any consequent issues with panels in the interview, much like conflicts of interest are raised and managed.
44. The Commissioner believes the panel did not stick to its published brief in assessing strategic decision-making or strategic thinking skills when this was not the agreed criteria for the general or specialist roles for the Liverpool competition. From the panel report, in the Commissioner's view, it is unlikely that the result would have changed who was found appointable and who was not found appointable by the panel if strategic thinking had not been included. Nonetheless, by the panel doing this, it provided information to ministers that was out of scope for the roles in question, albeit it was merit-based and applied fairly. Ministers are ultimately responsible for appointment decisions but they should be able to rely on the information given to them. This does not change the view of the Commissioner that the Openness Principle was adhered to by the department in both competitions, but there is definite room for improvement in openness towards candidates.

DECISION

45. In response to the components of the complaint, the Commissioner can confirm the complainants' applications to both competitions were assessed by each panel on merit entirely separately. The Commissioner cannot take a view on the mechanics of ministerial decision making and the persons appointed; that is out of his scope and it is for ministers to make appointments and defend them against the department's and government's stated goals for diversity in public appointments. Both appointments processes were merit-based and, while not perfect, the complaint as a whole is not upheld.

46. The Commissioner suggests all departments should take lessons from this complaint and the resulting decision notice:

- a. The Commissioner has advocated greater attention to due diligence as a result of previous investigations into complaints and matters arising, as a sensible part of the appointments process to establish any reputational risks of candidates taking up public roles. Due diligence should be conducted afresh for each competition and each shortlisted candidate. It should be dated - social media changes rapidly and candidates deserve to have any perceived reputational risks assessed in real time.
- b. Questioning of identified potential reputational risks by panels at the interview stage, along with conflicts of interest, enables candidates to explain how they will manage them and gives ministers fuller information to make a decision, bearing in mind the Seven Principles of Public Life that appointees should abide by. Candidate packs should include a message about due diligence if departments are going to conduct it. This should include the reasoning behind it and reference to the Seven Principles of Public Life. Candidate packs should make it clear that ministers make appointments and candidates should be helped to realise what that entails, including that not all candidates found appointable will be appointed.
- c. Due diligence must be proportionate and reputational risk needs to be seen in the context of the advertised roles. Para 9.1 of the Code states that a potential conflict should not preclude a candidate from being shortlisted/appointed provided that appropriate arrangements are made. Diversity of thought is important for a board to effectively hold others to account. Due diligence can be a time-consuming process, but the Code's aspiration to conclude a campaign within three months still stands.
- d. Panels should refrain from making assessments of candidates for skills/abilities/experience which are not in the agreed and published selection criteria, even if the assessment appears sensible for the role and is applied fairly.

Peter Riddell

Commissioner for Public Appointments

Annex A

Letter from the Office of the Commissioner to DCMS to request information

Dear [REDACTED]

6 November 2019

We have been contacted by a complainant over matters relating to the competitions for the National Museums of Liverpool, launched on 12 July 2018 and concluded on 21 February 2019, and the National Heritage Memorial Fund, launched on 6 October 2017 and concluded on 20 March 2018.

The Commissioner has decided this complaint is within scope and will investigate. You will find his letter to the complainant confirming this decision attached for your reference.

The Commissioner's role in considering this complaint is to examine the process of these two competitions and ensure that they have both adhered to the Governance Code. His role is not to reassess individual applications, nor can he ask Departments to run competitions again or remove appointees from their posts.

So the Commissioner can begin, we require the following documentation, which is outlined in our [regulatory framework](#) (in Annex A), for the National Museums of Liverpool competition and the National Heritage Memorial Fund competition. All these documents must be unredacted.

- A list/record of all applicants, including the dates the applications were received
- Longlist note with details of those candidates sifted through to the next stage, with panel comments and/or scoring
- Shortlist note with details of candidates invited to interview, including comments and/or scoring from the panel
- Submissions to any relevant Ministers at campaign closing, longlisting, shortlisting and candidates found appointable (post-interview) stages, including any due diligence conducted at these stages
- Confirmation from the Minister of those chosen to be appointed to these trustee roles.

Further, the Commissioner requires:

- Any record of Number 10 or Cabinet Office activity or discussion relating to the applicants for this campaign, including any comments from special advisors.

Please supply the above documents within 10 working days of this request – that is, 20 November 2019. OCPA will then review and come back if the Commissioner requires anything further. We are also requesting documentation from the complainant relating to his applications and his original complaint to DCMS. If you could confirm for us the campaign ID for these two campaigns that would be helpful too.

After considering all the documentation, the Commissioner will draft a decision notice, which will be sent to you for review of factual inaccuracies. The final version will be published on OCPA's website.

You can read more about the Commissioner's processes in OCPA's [regulatory framework](#) and on the [complaints section of the OCPA website](#). If you have any questions about the Commissioner's complaint processes, please don't hesitate to drop me a line and I will come back to you as soon as possible.

Annex B

Letter from the Office of the Commissioner to complainant on investigating the complaint

Dear [REDACTED]

6 November 2019

We acknowledge your complaint to the Commissioner for Public Appointments in regards to the Department for Culture, Media and Sport (DCMS) recruitment campaign for trustees of the National Museums Liverpool, via email on 31 October 2019.

Thank you for confirming the correct competition that your complaint relates to¹. From your correspondence with us, we have determined there are two matters you are concerned about: the process of your application to be a trustee of the National Museums Liverpool, and a comment made in relation to your application to the board of the National Heritage Memorial Fund, which you became aware of after making a Subject Access Request (SAR) to the DCMS. The Commissioner will consider these two competitions as separate matters within one complaint.

The Commissioner only considers complaints where the complainant has first complained to the Department responsible for the public appointments process concerned and, having completed their complaints procedure, received a response to the complaint. Having received from you on 1 November a copy of the letter you have received from the DCMS about your complaint, dated 13 August, the Commissioner is satisfied that the DCMS's own complaints process has ended and you remain unsatisfied. The Commissioner has also noted that the National Heritage Memorial Fund competition you are making a complaint about concluded in March 2018. The Commissioner only considers complaints relating to

¹ You have confirmed the particular National Museums Liverpool competition your complaint relates to is here:

<https://publicappointments.cabinetoffice.gov.uk/appointment/national-museums-liverpool-trustees> The competition for the National Heritage Memorial Fund is here:

<https://publicappointments.cabinetoffice.gov.uk/appointment/national-heritage-memorial-fund-nhmfm/itige-lottery-fund-hlf-4-trustee-roles/>

processes within the last 12 months unless there are exceptional circumstances. Because the DCMS provided you with a conclusion about your complaint more recently, and the SAR you made brought more information to light about that process after it concluded, the Commissioner has considered that both competitions are in scope.

The Commissioner will investigate complaints about public appointments which concern:-

- an individual's experience as an applicant
- the way a department or other responsible organisation has handled an appointments process
- if it appears that the Governance Code may not have been followed.

The Commissioner considers that your complaint meets these criteria and will therefore take up your complaint regarding the two competitions specified.

Please note the Commissioner's role in investigating complaints is to consider whether the Governance Code has been adhered to in the appointment competitions concerned. His investigation cannot stray into other matters, and cannot be targeted at answering the two questions you pose. He notes the DCMS, in their letter to you on 13 August, have been clear and accurate in their description of the role of Ministers and Panels in public appointments as outlined in the Governance Code. The Commissioner's remit does not allow him to ask departments to run a closed competition again. Nor does he have the remit to ask Ministers to appoint particular people nor remove successful appointees from their posts.

You can read the Governance Code here

<https://www.gov.uk/government/publications/governance-code-for-public-appointments> and more about the Commissioner's regulatory framework and the process he uses to consider complaints on his website, here:

<https://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2019/01/OCPA-Regulatory-Framework-1.pdf>

The next steps for the Commissioner will be to request documentation from DCMS in regards to the process followed to recruit trustees for the National Museums Liverpool and National Heritage Memorial Fund. If the Commissioner requires more information from you about your complaint, we will contact you. We will also notify you when we publish our decision notice on our website.

I hope this letter explains the Commissioner's remit and role in relation to your complaint satisfactorily. Please contact me if you have questions about your complaint and the OCPA process and I will come back to you as soon as I can.