

Investigation of ministerial reappointment decision relating to the Money and Pensions Service, a public body of the Department for Work and Pensions

Introduction

1. This report sets out the findings of an investigation by the Commissioner for Public Appointments into a decision to not reappoint a member of the Money and Pensions Service (MaPS), a public body of the Department for Work and Pensions (DWP)
2. This report has been made under section 4(4) of the Public Appointments Order in Council 2019, which permits the Commissioner to 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. The Commissioner investigated this reappointment process and ministerial decision in order to consider whether the provisions in the Governance Code for Public Appointments (the Governance Code) had been followed. The Commissioner's investigation and this subsequent report do not consider any matters relating to the work of the MaPS, the relationship between the MaPS and the DWP, or the way it is run, as these matters lie outside of the Commissioner's remit. The Commissioner's concern is whether the decision-making in regards to this reappointment was compliant with the Governance Code.

Background

3. Chris Stephens MP contacted the Commissioner for Public Appointments by letter on 7 September 2020. He raised concerns with the decision by DWP ministers to not reappoint a member of the MaPS Board. This member had served one term, and ministers had declined to appoint them for a second.
4. Mr Stephens was concerned that it appeared the member had not had a performance appraisal, and that the decision to not make the reappointment 'was based on political grounds, and not on any other consideration.'
5. The Commissioner decided to use his power under paragraph 4(4) to conduct an inquiry into the procedures of the appointing authority - in this case, the DWP - to assure himself they were in accordance with the Governance Code which governs ministerial appointees to public bodies, which includes the MaPS.
6. MaPS was created in 2018 to replace three separate guidance services, the Pensions Advisory Service, Pension Wise and the Money Advice Service (which also provided debt advice support). In 2018, the member in question had been directly co-opted to the membership of the MaPS Board from the previous Pensions Advisory Service and the Money Advice Service, for a period of 2 years from the legal commencement of MaPS.

7. MaPS board members are appointed by the Secretary of State for Work and Pensions on the recommendation of the Minister for Pensions and Financial Inclusion. OCPA understands there are no other stakeholders directly involved with appointments made to the MaPS board.

Methodology

8. The Office of the Commissioner for Public Appointments (OCPA) notified Chris Stephens MP of the Commissioner's decision to investigate on 16 September. OCPA also notified the individual concerned and invited them to share documentation with OCPA to aid the investigation if they wished. They supplied information to OCPA on 18 September.
9. OCPA contacted the DWP on 16 September to confirm that ministers had made a decision not to reappoint the individual as a member of the MaPS board, as described by Chris Stephens MP. DWP confirmed the individual had not been reappointed. On 17 September, OCPA requested documentation relating to the reappointment decision of ministers, including decisions about other MaPS members considered at the same time. This requested documentation included submissions to ministers at every stage of the reappointment decisions and any relevant internal discussions, including transcripts of phone calls and copies of emails. The DWP provided this information within 10 working days as requested.

Findings

10. Provisions on reappointments are contained in sections 3.1 (bullet 1), 3.4, 3.5 and 3.6 of the Governance Code. Ministers are reminded that reappointments should only be made on merit, and there is no automatic presumption of reappointment. Ministers are directed to provide a satisfactory performance appraisal of those they are reappointing if the Commissioner requests it. When making reappointments, ministers should consider factors including, but not restricted to, the diversity of the current board and its balance of skills and experience. It is the Commissioner's view that the Governance Code places an emphasis on refreshing the range of people on a board where possible and desirable, and gives ministers considerable discretion within the boundaries of the overriding principle of merit to make or not make reappointments as they see fit.
11. In May 2020, the chair of the board of MaPS recommended to the Secretary of State that two members of the MaPS board be reappointed. These members were both in their first terms. DWP officials were also engaged in this correspondence. Officials informed the chair and the two members concerned that there is no presumption of reappointment for public appointments, and that a business case and performance appraisal would be required. The Commissioner is satisfied that DWP officials understood and relayed the Governance Code's measures on reappointments accurately to the chair. This advice was in line with the Governance Code's paragraphs 3.4 and 3.5.

12. Following this exchange, the individual in question was appraised in early June; the individual supplied OCPA a copy of this appraisal to aid this investigation. OCPA therefore finds para 3.5 of the Code - 'No reappointment or extension being made without a satisfactory performance appraisal' - had been met. While in this case the reappointment was not made, the individual took part in an appraisal process in order to aid ministers in their decision.
13. Ministers were asked to consider the two reappointments in a submission on 12 June, ahead of the members' respective terms ending in September 2020. Para 3.4 states that when making reappointments, ministers should consider factors including, but not restricted to, the diversity of the current board and its balance of skills and experience. The submission to ministers included the chair's views of an annual review of the skills, knowledge, experience and diversity of MaPS' current board members. The basis of the chair's recommendation - supported by DWP officials - was to reappoint two currently serving members and recruit two new members with digital and education skills the following year.
14. The submission was clear on the merit of the two members up for reappointment, detailing their skills and contribution to the MaPS board. Ministers were correctly advised that reappointments should be considered on merit, on a case by case basis, and not be agreed without consideration of performance and other factors such as the skills and diversity of the remaining Board members.
15. The Governance Code, in para 3.4, says that ministers can consider a range of information to make a reappointment decision; it is not limited to skills, experience or diversity considerations. In this case, the Commissioner finds no evidence of any other information being put to ministers in the submission.
16. The Commissioner has recommended that all shortlisted candidates in competitions, and those considered for reappointment, such as in this case, should be asked again about any perceived conflicts of interest and officials should conduct new due diligence searches. If anything of concern is found or declared, the candidates in question should have these matters discussed with them as per para 9.1 of the Governance Code. Following these checks and conversations, ministers should be advised to make their decision. DWP have confirmed to the Commissioner that, not in keeping with usual DWP practice and the Commissioner's advice, the two members up for reappointment in this instance did not have their conflicts of interest or due diligence looked at again.
17. Ministers made the decision to reappoint one of the two members on 10 July; the individual represented by Chris Stephens MP was not selected to be reappointed. It is the Commissioner's view that the Governance Code places an emphasis on refreshing the range of talent on boards where possible and desirable, and gives ministers the discretion, within the boundaries of the overriding principle of merit, to make or not make reappointments as they see fit. The Commissioner finds ministers were within their rights to decide to make the reappointment to one member, and not the other, and that in accordance with para 3.4, neither of these decisions were presumed or automatic. The Governance Code is clear that even when a candidate's merit is clear, as in this case,

this does not confer automatic rights to a member for a second or subsequent term of service.

18. DWP officials informed the chair of ministers' decision, and he then informed the individual in question. The chair then requested more information from officials after the individual raised concerns. In response, officials made attempts to find out more about the decision to relay to the chair. Ministers declined to provide reasons for their decision not to make the reappointment. Whilst this was undoubtedly frustrating to the chair and the member concerned, it was compliant with the Governance Code. Officials informed the chair and the member, correctly, that the decision taken by ministers was final and that no reasons were required (nor provided). Therefore, the response to the individual sent via the chair stated only that ministers had declined the chair's request to make the reappointment that reappointments require the agreement of ministers, and they are not automatic. The Commissioner notes that Principle A of the Code is clear that ministers are responsible for appointments and reappointments.
19. However, the Commissioner notes that ministers' reluctance to provide an explanation for their decision, while compliant with the Code, left officials in a difficult position of being unable to say much in response to the concerns raised by the chair and the member. The Commissioner notes that the limited response given to the member and chair risked the issue becoming heated and ministers had been informed of this risk. Subsequently, press coverage on the reappointment not being made, and the approach to OCPA from a Member of Parliament, referred to poor treatment of the member concerned. The Commissioner notes that this outcome had been anticipated and could perhaps have been mitigated if not entirely avoided.

Decision

20. The Commissioner's investigation finds no breach of the Governance Code in the process by which ministers decided not to make this particular reappointment. He advises departments, chairs of public bodies and public appointees themselves to read this notice, and his previous investigation notice regarding the Criminal Cases Review Commission (September 2020) better to understand the discretion, as he sees it, provided to ministers by the Governance Code in making reappointments.
21. The Commissioner suggests that public body chairs should carefully consider the message they convey to members of their boards when recommending reappointments or extensions to ministers - in particular, to reflect on how much of these discussions with ministers should be made known to board members. It can be easy inadvertently to indicate or imply that a reappointment or extension may happen when chairs in fact do not have that authority, because the Code gives ministers the final choice with much discretion.
22. The Commissioner believes that while ministers acted within the Governance Code in exercising their discretion in this case, they could have handled the matter better. Members who serve on public bodies, and who have been found to have performed their

roles well, deserve to be treated courteously whatever the decision and should, at minimum, be thanked for their service.

Annex A

Letter from Chris Stephens MP to Commissioner for Public Appointments

HOUSE OF COMMONS
LONDON SW1A QAA

07/09/2020

Dear Mr Riddell

RE - APPOINTMENTS TO MONEY ADVICE AND PENSIONS SERVICE

I write to you regarding the above, which you may know received considerable media interest in Scottish newspapers only a couple of weeks ago. As you may be aware Glasgow South West Constituent, [REDACTED] has been serving a member of the Money Advice and Pensions Service and has been notified that he is not to be reappointed, despite the board requesting his reappointment. The only written confirmation of this has been the following statement;

As previously mentioned, the DWP Public Appointments Team informed me that the Secretary of State and Minister for Pensions and Financial Inclusion declined the MaPS request to reappoint you to the board. Reappointments and extensions require the agreement of Ministers and the Governance Code sets out that there can be no automatic presumption of reappointment."

The Governance Code for Appointments states that Minister's guidance must;

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.

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.

The code of reappointments clearly states:

"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."

My concern is that this Code is not be adhered to in this case. There certainly appears to have been no performance appraisal given, and moreover to provide a paragraph to an individual who is provided public service to this body to end their tenure is a disgusting way to treat any individual. Given ██████ advocacy of the European Union, I am equally concerned that the decision to not reappoint ██████ is based on political grounds, and not any other consideration.

I am therefore, asking the as Commissioner of Public Appointments to hold an investigation into appointments by DWP Ministers onto Public Boards, including this particular case, so we can ensure the process is transparent and adheres to the Code of Public Appointments.

Kind Regards

Chris Stephens MP
Glasgow South West

Annex B

Letter from Commissioner for Public Appointments to Chris Stephens MP

16 September 2020

Mr Chris Stephens MP
House of Commons
London
SW1A 0AA

By email to: chris.stephens.mp@parliament.uk

Dear Mr Stephens,

Thank you for your letter of 7 September – my officials have been working mostly from home so I apologise your letter sent to OCPA's offices did not reach me until today.

I understand your concern over what appears to be a breach of the Governance Code, in that your constituent [REDACTED] was not performance appraised in [REDACTED] role for the Money and Pensions Service. I note, as you do, reappointments are not automatic and must be based on merit. The Code specifically states that ministers must be in receipt of a satisfactory performance appraisal in making a reappointment.

Under the Order in Council 2019 4(4), I am able to 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. I will begin to make enquiries to the DWP - thank you for bringing this to my attention. As I may require information from [REDACTED] to aid my investigation, can I ask your office to ask [REDACTED] if [REDACTED] would consent to have [REDACTED] contact details shared with OCPA.

I will keep you fully informed of my progress and results of the investigation.

With best wishes,

Peter Riddell
Commissioner for Public Appointments