

Investigation of the ministerial appointment process relating to the chair of the National Lottery Community Fund, a public body of the Department for Digital, Culture, Media and Sport.

1. This report sets out the findings of an investigation by the Commissioner for Public Appointments (the Commissioner) into the 2020 competition to find a chair for the National Lottery Community Fund (NLCF), a public body of the Department for Digital, Culture, Media and Sport (DCMS). The Commissioner's remit and approach is set out in the annex.
2. The conclusions are set out from page 3. In summary:
 - The Commissioner is assured that the process of assessment by the Advisory Assessment Panel (the Panel) both at sift and interview stage was made according to the published criteria for the role. This meets the requirements of the Code's principles of Fairness and Merit.
 - As is their right under the Code, Ministers provided input into which candidates were shortlisted for interview. The Commissioner is satisfied the Panel had no objection to this and the process which determined which candidates were shortlisted for interview and appointment was in line with the Code.
 - The Commissioner reminds all appointing departments they must keep accurate written records of all the final decisions on candidates' progress through a competition, especially when the initial assessments by the Panel are reviewed and revised - whether that be at the request of ministers, or for any other reason.
 - The competition did not meet the Code's ambition on timeliness.

Background

3. The National Lottery Community Fund (NLCF) is a public body of DCMS. The competition for a new Chair was launched in August 2020, with shortlisting and interviews conducted from October to December. Blondel Cluff CBE was announced as the successful candidate in February 2021.
4. The Rt Hon Angela Rayner MP, Shadow Chancellor of the Duchy of Lancaster and Anneliese Dodds MP, Shadow Secretary of State for Women and Equalities, wrote jointly to the Commissioner in February 2022. This was shortly after articles appeared in the press alleging interference by Conservative Party officials in the wider process of public appointments. The articles centred on the NLCF competition and one particular donor.¹ The Commissioner replied to this correspondence, noting that his remit under the Public Appointments Order in Council 2019 is to consider the actions of appointing departments. The Commissioner's remit does not extend to political parties. His correspondence also explained that political activity is not a bar to appointment, but it cannot be a reason for an appointment; and that every public appointments process

¹ The Observer (5 February 2022). 'Give me back my £200,000, major donor tells Tories'. <https://www.theguardian.com/politics/2022/feb/05/give-me-back-my-200000-major-donor-tells-tories> and The Sunday Times (13 February 2022). Tories nudge donors into plum state jobs. <https://www.thetimes.co.uk/article/0e512e82-8c4d-11ec-b5fe-7fe087ff87b5?shareToken=f22d531bafc1ac3b85679745d01eb22d>

must be transparent and based on merit. This investigation was launched to ascertain whether the competition to find the Chair of the NLCF had been in accordance with the principles of the government's Governance Code.

Findings

5. The Governance Code states, '*Before a competition opens, Ministers and other stakeholders should be asked [by Departments] for names of individuals who should be approached.*' DCMS recorded ministers' views on this; three people were suggested. The individual subject to the press speculation which prompted this investigation was not suggested by ministers before the competition launched.
6. When the competition opened on 6 August 2020, applicants were asked to submit a CV and a supporting statement with examples of how they met the criteria advertised. They were also asked to declare any real or perceived conflicts of interest (and referred to DCMS' guidance on this matter). The competition closed on 21 September and 52 people applied.
7. Candidates came via several routes. As part of the application process, individuals were asked where they heard about the role. Most candidates did not answer the question; those that did said: from the government's Public Appointments Website, the Number 10 Appointments unit, word of mouth, or 'other'.
8. The Panel met to consider applications on 16 October and seven candidates were shortlisted for interview. The Commissioner is satisfied, from the documentation of the Panel's assessment of candidates, that each was assessed fairly against the criteria, in accordance with para 5.3 of the Code² and its Principle of Fairness.
9. Ministers were consulted on the shortlist on 3 November. They asked for information about the applications of four individuals who had not been shortlisted - two had not made an application and the other two had applied but had not been shortlisted. A week later, ministers asked for three candidates (who had applied) to be added to the shortlist for interview.
10. Para 3.1 of the Code outlines the role ministers can play in all stages of a competition: deciding on panellists, the advertising strategy and the job criteria. Bullet 5 of para 3.1 notes that '*Ministers should also be invited to provide their views to the Advisory Assessment Panel on candidates at all stages of a competition*'. Further, para 5.4 of the Code outlines that ministers can make suggestions on which candidates should be interviewed:

'Ministers should feel free to put names forward to the Advisory Assessment Panel for interview. If a panel does not think it appropriate to interview such a candidate, the

² Para 5.3 of the Governance Code: "The Advisory Assessment Panel should agree with the Minister its assessment strategy for determining merit against the selection criteria that the Minister has agreed. The assessment process should be appropriate to the recruitment and reflect the nature and significance of the role. A variety of techniques, both less formal and more expert, may be used to assess candidates fairly against the published selection criteria for the role." Principle H: Fairness: "Selection processes should be fair, impartial and each candidate must be assessed against the same criteria for the role in question."

panel chair must inform the Minister of the reasons for this before informing the candidate of the rejection.'

11. The Commissioner considers that the view of the Panel is vital in the correct use of para 5.4. Panels are advisory, with their expertise central to safeguarding the Code's principle that the progress of candidates is based on merit.
12. The Commissioner asked for documentation setting out the Panel's views on the addition of the candidates suggested by ministers. DCMS confirmed no written record exists. DCMS said its reading of para 5.4 defines what Panels must do if they do not agree to adding candidates to a shortlist. In this case, the Panel agreed but DCMS kept no record. DCMS officials informed the Commissioner that the Panel was updated verbally and raised no objections.
13. Because there were no written records of the Panel's view on the addition of these three candidates to the shortlist, the Commissioner approached the Panel Chair and the Senior Independent Panel Member (SIPM) for their recollection to ascertain how para 5.4 worked in this competition.
14. The Chair and SIPM corroborated DCMS's view that the Panel raised no objections to the addition of three candidates. The shortlist was therefore expanded to 10 candidates with the Panel's agreement.
15. On 24 November, shortly before the interviews began, the Panel reviewed the use of the Disability Confident Scheme (DCS) in the competition, noting a particular candidate who applied under the Scheme and needed to be reconsidered for interview, having, in their opinion, met the minimum requirements for the role. This candidate was then added to the shortlist with ministers' agreement. The shortlist then contained 11 candidates. The Commissioner considered the DCS review process was well-documented and commends DCMS for identifying and rectifying an initial error in administering the Scheme.
16. One candidate withdrew their application, leaving 10 candidates interviewed in late November and early December 2020. The Panel report of the interviews details the Panel's assessment of the candidates' skills and abilities in reference to the essential and desirable criteria for the role. The Panel also noted the candidates' declarations on other roles and conflicts/perception of conflicts of interest. The Commissioner is assured that the process of assessment at the interviews was fair and based on merit. Five candidates were found appointable by the Panel and ministers appointed one from this group. The successful appointee was one of those seven applicants sifted through to the interview stage by the Panel on 16 October.

Conclusion

17. The appointments system as laid out in the government's 2016 Governance Code is neither pure political patronage, nor completely free of political considerations. The Commissioner notes that the different roles played by Panels - advising on merit - versus that of ministers is often misunderstood.

18. The process is hybrid, exemplified in para 5.4 of the Code, quoted above, which stipulates that ministers can suggest additions to a shortlist and the Panel must make a judgement on whether any addition is appropriate. Where this is found to be inappropriate, 'the panel chair must inform the Minister of the reasons for this before informing the candidate of the rejection.' The Code allows for ministers' views on candidates to be considered, and for Panels to retain their duty to assess candidates on merit. Ultimately, ministers play a key role throughout the process, agreeing a shortlist and making the final decision on who to appoint.
19. The decision taken to add a candidate to the shortlist as a result of the Disability Confident Scheme was documented in detail. However, DCMS could not provide any documentation of the discussion with the panel via phone call on the addition of candidates to the shortlist. The Commissioner is worried that there was no specific record of this conversation. He considers accurate, contemporaneous record keeping throughout the process, and particularly at decision points, is essential for establishing transparency. The Commissioner notes that DCMS has recognised the risk here and will change their methods accordingly. He reminds all departments to keep accurate records of decision making, recording what ministers, panels and officials are doing in relation to applicants will also enable the Commissioner to be assured that this provision in the Code is working as it should.
20. The Commissioner notes that members of Parliament who raised this issue with him were concerned that undue influence was put upon the Panel in their assessment of one particular candidate. The Commissioner found no evidence this was the case. The Commissioner has received assurances from the SIPM and the Panel chair that no undue influence was placed on them. Further, they were comfortable with the addition of the three candidates as suggested by ministers, and had no concerns about how the shortlist was constructed. The Commissioner is content that the Panel understood its responsibilities as per para 5.4 and there was not undue political interference here.
21. However, in the absence of accurate records, it is more difficult for DCMS or any other department to defend the integrity of a process and a Panels' independently-made decisions. The Commissioner reminds all departments that it is essential to record the Panel's final view on the candidates taken forward on the suggestion of ministers, just as it is essential to record the Panel's view on the merit of all other candidates it has shortlisted.
22. Notwithstanding that this competition did not meet the Code's ambition to complete within three months of the close of applications, the Commissioner finds it was run in accordance with the government's Governance Code in all other aspects.
23. The Commissioner is concerned that the timeliness of this competition illustrates a pattern he has seen since his appointment as Commissioner. Competitions which meet the Government's three-month ambition are an exception, rather than the rule. He is concerned that there is a lack of focus in government to meet this ambition. Competitions that do not complete in a timely fashion give the impression of being badly-run, which contributes to misunderstanding and suspicion around the appointments process. This is detrimental to candidates, panellists and public bodies.

The Commissioner views the timeliness of competitions as key to well-run competitions and good outcomes for the boards of public bodies.

Annex:

24. 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.³ Its purpose is to consider whether the appointment process followed the principles set out in the government's Governance Code for Public Appointments (the Governance Code)⁴, and make recommendations where appropriate.
25. In February 2022, articles in the press detailed the concerns of a donor to the Conservative Party, who alleged he had not received goods and services he expected to receive on receipt of his donations.⁵ The articles detailed emails between officials in the Conservative Party and officials in Parliament discussing the NLCF Chair public appointment competition in December 2020 and the donor's interest in the role. It was reported that at the time of these emails, the donor had been shortlisted for the role and that interviews had taken place.
26. Upon receiving correspondence from Rt Hon Angela Rayner MP and Anneliese Dodds MP on 18 February 2022, the Commissioner launched an investigation into the NLCF competition. On the same day, he informed the Members; he later clarified the scope of his investigation on 28 February. This correspondence is published on the Commissioner's website.⁶ DCMS supplied the requested paperwork on 4 March 2022.
27. The Commissioner's investigation did not consider any matters relating to the conduct of staff of political parties or parliamentary officials. It did not consider the work or remit of the NLCF. The government's Governance Code stresses that ministers must agree the criteria for the role which ultimately determines merit. Ministers are assisted in this by Advisory Assessment Panels, who must assess each candidate fairly against the published criteria for the role. The Commissioner has no remit to question the Panel or ministers about whether candidates are appointable for the role, nor the choice of essential and desirable criteria required for the role. The Commissioner's role is to ensure the competition is open and that candidates are fairly assessed against the criteria.

³ Order in Council (6 November 2019).

<https://publicappointments.cabinetoffice.gov.uk/wp-content/uploads/2019/11/Public-Appointments-No.-2-Order-in-Council-2019.pdf>

⁴ Governance Code on Public Appointments (December 2016).

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/578498/governance_code_on_public_appointments_16_12_2016.pdf

⁵ The Observer (5 February 2022). 'Give me back my £200,000, major donor tells Tories'.

<https://www.theguardian.com/politics/2022/feb/05/give-me-back-my-200000-major-donor-tells-tories>

⁶ Letters to the Shadow Chancellor of the Duchy of Lancaster (18 February and 28 February 2022).

<https://publicappointmentscommissioner.independent.gov.uk/letters-to-shadow-chancellor-of-the-duchy-of-lancaster/>



28. This investigation considered the submissions to ministers at all stages of the competition, the records of the Panel's decision-making, copies of the due diligence and the declared conflicts of candidates. The Commissioner also spoke with the Advisory Assessment Panel Chair and the Senior Independent Panel Member. The Commissioner thanks these Panel members for their cooperation with his investigation.
29. The Commissioner has provided a copy of this decision notice to the Rt Hon Angela Rayner MP and Anneliese Dodds MP.