

PROBITY & PUBLIC APPOINTMENTS

The Departmental Board is invited to note the position regarding the development of procedures to deal with conflict of interest, or perceived conflict of interest, concerning any DETI NDPB (and NIAER) board member.

If content, PAU will issue the following note to Sponsor Branch contacts and the public bodies concerned.

Background

1. Public Appointments require the highest standards of propriety, involving impartiality, integrity and objectivity, in relation to the stewardship of public funds and the oversight and management of all related activities.

Prior to Appointment

2. To date, within DETI, Public Appointments Unit have been in the lead on the issue of Probity/Conflict of Interest (COI) prior to appointment. The issue has been addressed as follows:-
 - The Information Pack which accompanies every application form has a section on Probity/COI
 - The Pack includes a copy of OCPANI's "Probity and COI Guide for Candidates"
 - The application form asks candidates to provide details of any known or potential COI's.
 - The Interview Panel receives a copy OCPANI's "Probity and COI Guide for Departments"
 - Probity/COI is raised with all candidates at interview by the Chair of the Panel
 - COI issues are included in the final Ministerial submissions

Post Appointment

3. The issue of Probity/Conflict of Interest (COI) post appointment has been addressed as follows:-
 - NDPB's organise in-house "Induction Events" within one month of the date of appointment, which includes briefing on Probity/COI issues

- NDPB's arrange for new Members to receive CIPFA's "On Board" training within the first 3 months which includes a copy of the "On Board" Guide with a section on Probity/COI
- Confirmation that there have/have not been any instances of failure to adhere to the Principles of Public Life and Codes of Conduct & Accountability forms part of each Board Members annual performance assessment
- When a COI issue becomes known, and if warranted, Senior Management meet to consider the detail and decide upon necessary action

PSG Paper (January 2005)

4. Last year, Nigel Hamilton, Will Haire and the Commissioner for Public Appointments for Northern Ireland, met to discuss the issue of probity in public appointments. The meeting agreed a number of measures aimed at reducing the likelihood of probity issues arising post appointment, which PSG subsequently endorsed.
5. Public Appointments Unit sent a copy of the final version of the paper to NDPB Sponsor Branch contacts in April 2005, see **Annex A**.
6. Above and beyond the actions and processes listed above in paragraphs 2 and 3, the paper makes a number of other recommendations listed below. Progress is shown in italics.
 - Sharing Information (Performance Appraisals) & Seeking References
PAU has incorporated into the public appointment process
 - Application Form to include a more comprehensive declaration
PAU has introduced
 - Terms and Conditions of Appointment Letter to include a section on COI; Candidate to be asked to sign and return a declaration
PAU has introduced
 - Departments may wish to consider using the Independent Assessor to test Probity/ COI at interview
DETI's policy has been for the Chair of the panel, normally the Departmental Representative, to test all candidates at interview
 - "On Board" Induction training to cover Probity/COI issues
Probity/COI normally part of Induction Events organised by the NDPB's within the first month of appointment. Probity/COI included in the "On Board" Guide which members receive on the "On Board" training days which take place within 3 months of appointment

Action Required

7. Taking all of the above into account, and following discussion with Accountability and Casework Branch, it is recommended that the following additional actions should be taken.

Action	By Whom	Deadline
Chairs to raise COI issue with Board Members on a regular basis	Sponsor Branch to instruct Chairs/Chief Executives	Immediate
Have COI as a standing item on NDPB/NIAER Board meeting agendas	Sponsor Branch to instruct Chairs/Chief Executives	Immediate
Have COI as a standing item on Departmental Board meetings agendas	Corporate Planning Unit	Immediate
Add a declaration for the Members' signature to the annual performance assessment form	PAU	Next Annual Reporting cycle, commencing January 2006
Provide Board Members with guidance on COI Countermeasures	Accountability and Casework Branch	Immediate

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PERMANENT SECRETARIES GROUP - PROBITY & PUBLIC APPOINTMENTS

Introduction

1. Standards of conduct and behaviour of those appointed to serve on the Boards of public bodies or to hold other public office should be above reproach. Ministers will expect no less, and public confidence is dependent on demonstrably high standards being maintained.
2. The first report of the Committee on Standards in Public Life identified seven key principles of conduct underpinning public life, one of which is honesty – “holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest”.
3. Following a recommendation from the Committee on Standards in Public Life, the Government created the post of Commissioner for Public Appointments for Northern Ireland. The Commissioner subsequently produced a Code of Practice setting out the regulatory framework for the public appointments process. The Code of Practice is itself underpinned by the Commissioner’s seven principles, one of which is probity – “Board members of ENDPBs and HPSS bodies must be committed to the principles and values of public service and perform their duties with integrity”.
4. Although the Commissioner’s remit is restricted to executive non-departmental public bodies and health and personal social services bodies, departments have agreed, as far as is practicable and with due regard to proportionality, to apply the Code of Practice to all appointments.
5. To ensure Ministers can fulfil their role properly, the Commissioner’s Code of Practice requires departments to “ensure that all candidates put to the Minister for approval meet the criteria and the standards required by the principle of probity”.

6. In order to comply with this requirement, departments need to have at their disposal procedures for:
 - sharing appropriate information on appointee performance;
 - testing probity and conflicts of interest prior to appointment; and
 - handling issues of probity that may arise during an appointee's term of appointment.
7. However, any procedures departments put in place must comply with equality and data protection legislation, be compatible with the principle of freedom of information and meet the Commissioner's test of proportionality, whilst still delivering a quality outcome in relation to Ministerial appointments.

Sharing Information

8. In the employment field, pre-employment checks are a normal part of the selection process and may include references, the confirmation of qualifications, a medical examination and/or criminal records check.
9. A public appointment is not employment and it would not be appropriate, on the grounds of proportionality, to argue for the deployment of the full range of pre-employment checks described above.
10. Whilst there may be some occasions when qualifications may need to be confirmed, or a check made for a criminal record, it is more likely that the main issue for departments when making appointments is the question of whether or not to seek references.
11. The Chartered Institute of Personnel and Development recommend that organisations should always take up references in order to check facts, but that only factual or verifiable data should be relied upon. References can be used to provide a factual check on the information required for appointment, including attendance or performance but it is important to consider what information is needed and who best to approach to get it.

12. It is not uncommon for applicants for public appointments to hold other appointments, or to have done so in the past. The Best Practice Guide on Making Public Appointments contains a specimen application form, which includes a standard question asking candidates to list all previous and current public appointments.
13. Whilst the full range of pre-employment checks are not justified on the grounds that they are not proportionate for the vast majority of public appointments, in the interests of probity and past performance, Departments should, as far as practicable, take steps to check the attendance and performance of those candidates who have a current or previous public appointment. The Central Appointments Unit maintains a database of all public appointees, this provides a useful research tool for all departments wishing to confirm if an individual holds or has held other public appointments.
14. For those candidates who are not holding, or have not previously held a public appointment, the Commissioner's Code of Practice indicates that it is a matter for departments to decide if they require references and how, and when, they take them up. If a department does decide to ask for references, they should first decide whether they are seeking information on the candidates' probity and/or whether they are testing for professional capability. In the case of the latter, copies of the role and person specification, or extracts from them, might be sent to referees. The reference request should ask specific questions relevant to the details being sought.

Performance Appraisal

15. The Commissioner's Code of Practice stipulates that to ensure that existing Board members or holders of other public offices standing for re-appointment meet the current criteria and can compete, when appropriate, in an open competition, departments must have in place a meaningful performance appraisal system. No one should be re-appointed unless their attendance and performance have both been satisfactory during their current term and this has been confirmed by a completed performance appraisal report. It

follows that there should be a question mark over the appointment of an individual if they are known to have received an unsatisfactory performance appraisal report during the time they held a previous appointment to a public body.

16. With this in mind, the performance appraisal system provides a basis for departments to share information on candidates who currently hold, or have held, a public appointment. As indicated in paragraph 13, the Central Appointments Unit database is available to departments to check if candidates hold, or have held, a public appointment. Upon receiving confirmation of a candidate's current or previous role, the appointing department should liaise with the department(s) involved for a more complete picture of a candidate's performance. It would be for each department to decide the appropriate stage in the process prior to appointment to do this.
17. For this to be successful the accurate and timely completion of performance appraisal documentation for all appointees will be essential. This would be a matter for departments, but generally the Chair of the body will assess the members and a senior official from the department will assess the Chair. The Best Practice Guide, 'Making Public Appointments' contains a specimen performance appraisal form that departments can adapt and use to meet their own particular requirements.
18. The role of the Chair of the Board is vital in relation to performance appraisal. Their role in the process is such that a case could be made for including the Chair's obligation to appraise Board members in any role description for the post of Chairperson.
19. Chairs of public bodies may need support with the identification and handling of probity and conflict of interest issues amongst Board members. This issue could perhaps be included in the induction training currently available through the "On Board" programme offered by the Chief Executives' Forum / CIPFA. Departments could also encourage Chairs to raise the issue of probity and

conflicts of interest with Board members on a regular basis, to ensure that any possible conflicts are raised as early as possible.

Testing Probity and Conflicts of Interest prior to Appointment

20. The interview stage of the public appointments process provides a valuable opportunity to test candidates on the issue of probity and conflicts of interest.
21. As indicated in paragraph 3, probity is one of the Commissioner's seven principles and is an important aspect of the appointments process. The Commissioner expects all candidates putting themselves forward for appointment to be committed to the principles and values of public service. Candidates are required to demonstrate their understanding of, and commitment to, these principles and departments are required to explore any issues concerning probity or potential conflicts of interest with the candidate, prior to appointment.
22. Public appointments require the highest standards of probity. This means that private, voluntary, charitable or political interests of an individual or members of their family or household or close associates, which might be material and relevant to the work of the body concerned and might therefore create a real or perceived conflict, should be declared.
23. Even if a candidate does not declare a conflict of interest, the interview panel still needs to be reassured that none exists. The candidate may not have appreciated the potential for conflict; or circumstances may have changed since their application was first submitted.
24. The Commissioner for Public Appointments has published two pieces of advice on handling probity and conflicts of interest. The first, "A Guide for Departments", is included in the Commissioner's Code of Practice. The second is a booklet entitled "Probity and Conflicts of Interest - A Guide for Candidates" and the Best Practice Guide recommends that a copy be included in every applicant's information pack.

25. Candidates applying for a public appointment are asked to declare conflicts of interest when completing their application form. The following question might, for example, be used –

“have you, or your immediate family, any other interests which might be construed as being in conflict with the appointment for which you have applied, or any other probity issues, which might, in future, be raised in public? If yes give details below”.

26. To reinforce the importance that is placed on probity and conflicts of interest, the following declaration could be added to the specimen application form: –

‘Before you complete this section, please read the enclosed booklet entitled “Probity and Conflicts of Interest: A Guide for Candidates”.

In addition to providing space for candidates to detail any conflicts of interest, the following could also be added: –

“I have read the booklet entitled ‘Probity and Conflicts of Interest: A Guide for Candidates’ and have completed this section accordingly. I understand that, if appointed, I must raise with the Chair of the Board or Chief Executive of the public body or the department any probity or conflict of interest issues that might arise during my term of appointment”.

27. Identifying a conflict of interest does not automatically exclude an individual from a public appointment. Early identification allows the conflict to be assessed and effectively managed by both the Chair of the body and the individual member in a way that ensures public confidence in the work of the body is maintained.
28. The Best Practice Guide also recommends that departments make candidates aware of the seven principles of public life and suggests that departments may wish to consider asking candidates for a signed declaration of commitment to the principles before appointment.

Handling Issues of Probity post Appointment

29. The overall aim is to ensure that as far as is possible any probity or conflict of interest issues are resolved, prior to an appointment being made. However, it is conceivable that a probity issue could arise after an appointment has been made and departments must be able to respond effectively.
30. The key to addressing issues that arise post appointment lies in the drafting of the legislation establishing a public body, or in the management statement setting out its operating arrangements. Cabinet Office guidelines suggest that the statute or instrument creating a Non Departmental Public Body or conferring the relevant functions on it, should normally provide suitable powers of appointment and dismissal over the Chairman and Board members.
31. The legislation could therefore possibly include the following:
 - that Board members or holders of other public offices will be appointed by the Minister;
 - that Board members or holders of other public offices will hold and vacate office in accordance with their terms of appointment (the terms of appointment should state that the office holder shall be subject to an appraisal system and failure to maintain a satisfactory standard of performance may result in termination of appointment on the grounds of unfitness for office);
 - that the Minister may remove from office any Board member or holder of other public office: -
 - a) who has been absent from 3 or more consecutive Board meetings without prior approval;
 - b) who has been convicted of a criminal offence;
 - c) who has become bankrupt (if appropriate); and
 - d) is otherwise unable or unfit to carry out his functions as a Board member.

32. It is important that Board members or holders of other public offices declare any financial or other interests or any personal connections that arise during their term of appointment and which could be seen as providing a conflict of interest – real or perceived – between their public duties and private interests. All Non Departmental Public Bodies are required to have a Code Of Practice to which Board members must adhere. The Code should spell out the roles and responsibilities of Board members and the standards expected of them, including provisions for resolving and declaring conflicts of interest. The Cabinet Office has developed Guidance on Codes of Practice for Board Members, which can be downloaded from www.publicappointments.gov.uk . On this point Departments may wish to include in terms of appointment a condition that any appointee who fails to draw attention to any probity issues or conflicts of interest that arise during his or her term of appointment may be dismissed on the grounds of unfitness for office.
33. Terminating or withdrawing the appointment of an existing Board member or holder of other public office depends therefore on the provisions of the legislation under which the body was set up or on the terms and conditions of appointment. For new appointees, the Central Appointments Unit will develop specimen terms and conditions of appointment and incorporate these into the Best Practice Guide.
34. Where circumstances warrant it, departments may wish to consider setting up a small appointments review panel to investigate specific probity or conflict of interest issues. The decision to pursue this course of action rests with the Permanent Secretary to whom the group is accountable and on whose behalf the panel acts. The Permanent Secretary should determine membership of the panel, which may include people with selection and appointment experience or who are independent of the department, for example Civil Service Commissioners or OCPA Independent Assessors.

Summary

35. It is essential that Boards, Board members and holders of other public offices enjoy the confidence of Ministers and the public they serve. The proposals

set out in this paper are intended to help ensure that probity and conflict of interest issues are identified, explored and resolved at the right time and in the right way.

36. The main proposals contained in this paper are summarised below:
- a) Departments can seek confirmation of a candidate's current or previous public appointments role from the Central Appointment Unit database and consider how they wish to deal with the issue of references for candidates who have not previously held a public appointment;
 - b) Departments must ensure that performance appraisal procedures are in place for all Board members or holders of other public appointments;
 - c) The Central Appointments Unit will, on request, check to see if those named have previously held, or are currently holding a public appointment;
 - d) Departments should consider including in role descriptions for Board Chair appointments the requirement to carry out performance appraisals on Board members;
 - e) Departments should also consider encouraging Board Chairs to remind Board members on a regular basis about the importance of declaring any probity and conflicts of interest;
 - f) The Central Appointments Unit will consider amending the probity and conflicts of interest section of the specimen application form, to include a more comprehensive declaration;
 - g) Departments should consider asking candidates to sign a declaration indicating their commitment to the seven principles of public life;
 - h) Departments may wish to use the Independent Assessor to test probity and conflicts of interest issues at interview;
 - i) Departments should consider including appropriate powers in legislation, allowing Ministers to appoint and remove Board members or holders of other public offices;
 - j) The Central Appointments Unit will develop specimen terms and conditions of appointment and incorporate these into the Best Practice Guide;

- k) Where it is appropriate, Departments should consider using small appointment review panels to investigate specific probity or conflict of interest issues that may arise during an appointee's term of office; and
- l) The induction training for Board members provided by the Chief Executives' Forum / CIPFA should include probity and conflicts of interest.

Central Appointments Unit
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