

# The Office of the Commissioner for Public Appointments in Scotland Audit Report 2006-2007

NHS Greater Glasgow and Clyde – Member

*Report No. 5*

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**Ranking of areas of non compliance in terms of priority**

Priority	Definition
<b>One</b>	Non compliance arising from failure to document or evidence the basis of a decision on a candidate’s or applicant’s suitability OR where there has been a significant breach of the requirements of the Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code).
<b>Two</b>	Non compliance arising where evidence does not fully document or evidence the basis of a decision on a candidate’s or applicant’s suitability.
<b>Three</b>	Non compliance arising from failure to fully record or evidence a step in the appointment process required by the Code or PAT guidance but which is not related to a decision as to a candidate’s or applicant’s suitability.

**Statement of Responsibility**

Our report has been prepared solely for the Office of the Commissioner for Public Appointments Scotland (OCPAS) in accordance with the terms and conditions set out in our engagement contract. We do not accept or assume any liability or duty of care for any other purpose or to any other party. This report should not be disclosed to any third party, quoted or referred to without our prior written consent. Our work is subject to the inherent limitations set out at Appendix 1.

# Introduction and summary of findings

## Introduction

- 1.01 Our review of the processes implemented for the selected appointment round for a member to the board of NHS Greater Glasgow and Clyde was performed as part of the OCPAS audit plan agreed with the Commissioner.
- 1.02 This report has been prepared solely for the Office of the Commissioner of Public Appointments Scotland (OCPAS) in accordance with the terms and conditions set out in our engagement contract. We do not accept or assume any liability or duty of care for any other purpose or to any other party. This report should not be disclosed to any third party, quoted or referred to without our prior written consent.
- 1.03 Our audit work has been designed to assess compliance with the Code and with any supplementary guidance issued by OCPAS and / or the Scottish Executive Public Appointments Team as to compliance with that Code. It therefore addresses the processes implemented to ensure that the appointment round meets these requirements. Our observations and findings are designed to inform a programme of continuous improvement and do not challenge any decisions regarding the selection of appointable candidates.

## Background

- 1.04 OCPAS is responsible for regulating the processes used and procedures followed by Scottish Ministers in the making of public appointments, to ensure that these appointments are made fairly and openly, and are based on merit. In light of this requirement, the Commissioner has developed a Code to regulate the process to be followed, which was published in April 2006. Independent OCPAS Assessors support the Commissioner and are assigned to appointment rounds to ensure compliance with the Code. Compliance with the Code should ensure equality of opportunity and treatment and ensure that all appointments made are merit-based, with evidence generated and retained to support each part of the decision making process.
- 1.05 The management of the public appointments process is the responsibility of the relevant Scottish Executive department's sponsor team. The team is responsible for initiating the process and managing it through to its conclusion. It is also responsible for generating appropriate documentation at each stage of the appointment round which records decisions taken regarding the selection, or otherwise, of individuals to go through to the next stage of the process.

- 1.06 Within the Scottish Executive, there is a centralised team, entitled the Public Appointments Team (PAT), which is responsible for the Scottish Executive's overall policy in relation to public appointments. PAT acts as the main point of contact within the Scottish Executive for OCPAS. PAT also provides advice and support to sponsor teams with any queries or problems being encountered throughout each appointment process. The PAT guidance states that key documents such as the role description, person specification and publicity for the role must be provided by the sponsor team to PAT for review.
- 1.07 To assist the sponsor teams in conducting the appointments process, the PAT has produced a detailed guidance document (entitled Making Public Appointments in the Scottish Executive) that sets out the steps to be followed at each stage of the appointment round, and includes standard documents for use by sponsor teams. The PAT guidance used for the 2006/07 appointment rounds was not fully compliant with the new Code although there is no evidence that this affected the appointment rounds subject to audit. Following a review of the guidance by the Commissioner, in relation to the requirements of the Code, actions were agreed with Public Appointments Team to amend certain information and advice contained in the guidance. The guidance has now been updated and was re-issued in May 2007.
- 1.08 The OCPAS Assessors play a key role through providing assurance that the processes used to make appointments to the boards of public bodies conform to the principles and practices contained in the Code. At the end of each appointment round, the OCPAS Assessor must complete a validation statement confirming that each element of the round that they participated in complied with the Code.
- 1.09 In terms of adherence to the Code we would also highlight the importance of the role of the senior official within the sponsor division who is responsible for ensuring:
- The process fully complies with the Code;
  - The criteria submitted to the Minister for approval meets the needs of the body and its board and are testable; and
  - The Minister is provided with all the information that he/she needs in order to make a decision on appointment that is based solely on the criteria.

At the end of the process, it is the senior official who must provide a formal statement of assurance to the Minister that the process is both Code compliant and meets the relevant requirements of the PAT guidance.

### **Approach**

- 1.10 The overall objective of our review was to consider whether the Code was complied with during the appointment round for a member to the board of NHS Greater Glasgow and Clyde. We have considered each of the stages of the appointment process (as described in more detail at appendix 1):
- Stage 1: Planning
  - Stage 2: Encouraging Applications
  - Stage 3: Processing Applications
  - Stage 4: Interview

- Stage 5: Selection
- Stage 6: Post Appointment

1.11 Our approach consisted of a review of paper files and files stored within the electronic system (eRDM); as well as interviews with key staff involved in the process.

### Summary of Findings

1.12 The matters arising from this review are noted below. An appendix listing areas for development, to address instances of non compliance, will be included within the annual summary report for the year ended 31 March 2007. For each of the instances of non compliance we have allocated a risk rating based on our evaluation of the impact of the finding in terms of meeting the requirements of the Code and PAT guidance.

#### *Instances of non compliance with the Code*

- The unintended use of an unnecessarily restrictive criterion in the application form (see paragraph 3.01 of this report) - **(Code paragraph 6.1c) – Priority Two**
- Allowing a late application to be considered by the panel, after the advertised closing date for the appointment opportunity had passed, without securing the required exception to the Code from the Commissioner (see paragraph 3.01 of this report) **(Code paragraphs 17.1 and 32.2) – Priority Three**
- There is no record of the reason for the Minister’s decision in relation to the appointment of the Chair from the three appointable candidates. In this respect, we would highlight the swift action taken by the Cabinet Secretary for Finance and Sustainable Growth to address this failure. A guidance note to all Cabinet Secretaries and Ministers was issued by the Cabinet Secretary for Finance and Sustainable Growth on 18 July 2007 introducing them to their role and responsibilities in relation to the public appointments process. Among other things, this note made it clear that they are expected to record the reason for their decisions in relation to appointments. **(Code paragraph 24.5) - Priority One.**

#### *Instances of variance from PAT guidance<sup>1</sup>*

- The lack of a request for an exception to the Code for extending the closing date for applications to be received (see paragraph 3.01 of this report) - **(Scottish Executive Guidance paragraph 4.14.1) – Priority Two**
- The content of feedback provided to one unsuccessful candidate was not recorded in the file of evidence. **(Scottish Executive Guidance paragraph 4.16.18) – Priority Three.**

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<sup>1</sup> Whilst the April 2006 guidance was used as the reference document for the 2006/07 audit process, we have referenced the above areas of variance to the latest PAT guidance, of May 2007, to support future compliance. The primary purpose of PAT guidance is to ensure that the processes adopted during each appointment round are compliant with the Code. Although following all parts of the guidance is not mandatory for sponsor teams (it is only mandatory to follow those parts of the guidance that fully reflect the requirements of the Code) it does provide a framework which promotes consistent application of the Code through the provision of information on the minimum requirements for each round, together with advice on what is considered to be good practice.

#### *Other observations noted*

- While the advert and application pack made reference to the possibility for re-appointment based on effective performance review, no mention was made of the need to fulfil the person specification at the time of re-appointment.
- The advert did not contain any information as to the number of posts being advertised for each of the board areas. Information regarding the number of appointments to be made may well influence the decision of potential applicants to express an interest.
- It is important that all documents are closely reviewed once any amendments have been made to ensure that any changes to draft versions have been made throughout the full application pack.
- The OA was provided with a relatively short period of time for review of the application documents before they were to be submitted to the Minister. Whilst the Code does not specify a time interval, the SEPAT guidance suggests that it is good practice to give at least five days time to review all application documentation.

#### *Good Practice Noted*

- Cost savings were obtained through the running of five concurrent appointment rounds and the placement of a joint advert. This allowed for a single placement of the advert in the national press, ensuring a saving in advertisement costs. Our review however highlighted the challenges where a single sponsor department is required to run multiple concurrent appointment rounds – see overleaf.

#### **Acknowledgements**

- 1.13 We would like to thank all staff involved in this review for their co-operation and assistance.

# Detailed findings and observations

## Stage 1: Planning

- 2.1 The appointment round for a member to the board commenced in July 2006, with the appointment intended to start as soon as possible, since the position was currently vacant following the inception of the integrated board. An OA was assigned to the appointment round on 20 July. As there are many appointments to NHS boards each year, a generic person specification and role description have been developed for member posts, which can be tailored for each specific appointment. The person specification and role description for this appointment round were reviewed and approved by the Chair of the board in conjunction with the sponsor department, and approved by the OA during July. The first Ministerial submission was provided to the Minister on 1 August and was subsequently approved.
- 2.2 It was noted that the person specification included an essential criteria to “live or work for most of the time in the area served by the NHS board”. We understand that the inclusion of this requirement is derived from a policy decision made at a senior level some years ago, designed to ensure that all board members share an understanding of the healthcare requirements of the area in which they live or work. This policy decision remains applicable given the ongoing changes to the reorganisation of healthcare delivery at a local level.

### *Other observations noted*

- It was noted in the file of evidence that the OA was given only two days to review and comment on the drafted appointment documents. Whilst the Code does not specify a time interval, the PAT guidance suggests that it is good practice to give at least five days time to review all application documentation.

## Stage 2: Encouraging Applications

- 2.3 At the time of this appointment round, there were vacancies in a number of different board areas, and it was decided to run five separate appointment rounds concurrently. The advertisement placed in the press was a joint advert for all of these appointments, detailing the board areas with positions to be filled. The advert was placed in both national and regional press throughout the areas served by the different boards on 11 August, with an initial closing date of 22 September. This ensured a wide circulation of the appointment although, as noted earlier, the requirement to live or work in the board area would have minimised the impact of the advert being placed in the various local papers. Subsequent to the advert being placed and application packs being issued, errors were noted in the application packs, one of which led to an extension to the closing date for applications. These issues are considered in greater detail in Section 3 of the report.

#### *Good Practice Noted*

- The publication of a joint advert for the five separate appointment rounds helped to generate cost savings in relation to advertising in the national press as opposed to having to pay for an advert to be placed on five separate occasions.

#### *Other observations noted*

- While the advert and application pack made reference to the possibility for re-appointment based on effective performance review, no mention was made of the need to fulfil the person specification at the time of re-appointment.
- There was no information contained within the advert as to the number of positions the advert was publicising. This information should be provided to give potential applicants additional information to assist them in making their decision as to whether to apply for the post.
- It is important that all documents are closely reviewed once any amendments have been made to ensure that any changes to draft versions have been made throughout the full application pack.

### **Stage 3: Processing Applications**

- 2.4 Seventeen applications were received for this post. Due to the small number of applications, no initial sift was conducted. All applications were submitted to the selection panel for shortlisting which took place on 11 October. Each member of the selection panel completed a shortlist evaluation form for each applicant with brief notes given against the essential criteria. During the shortlisting meeting each applicant was discussed and consensus reached on which candidates to select for interview. A summary of the panel's collective decision in relation to each applicant was documented within a secretariat note containing the comments given from each panel member regarding the suitability of the candidate.

### **Stage 4: Interview**

- 2.5 The interviews for this appointment round took place on 31 October, the date noted within the covering letter to the application pack. Each panel member completed a candidate interview evaluation form for each candidate to record the evidence presented against each of the criteria. A selection panel summary evaluation form for each candidate was then compiled by the sponsor team for each candidate and subsequently agreed by the panel.



## Stage 5: Selection

- 2.6 Three candidates from the four interviewed were assessed by the panel as being suitable for appointment. The summary evaluation forms for each of these candidates were included in the second submission to the Minister. In addition a separate paragraph was given in an annex to the submission detailing the reasons the panel concluded the unsuccessful candidate was not suitable. The Minister was also offered the summary evaluation form for the unsuccessful candidate should this be necessary. The signed Statement of Validation was also included as an annex to the submission. These documents were submitted on 16 November, with the Minister's decision received on 20 November. The note from the Minister stated the person to appoint, but did not record any reasons behind the decision made.

### *Instance of non compliance with the Code*

- The reasons for the Minister's decision on the candidate appointed should be recorded and retained as part of the audit trail of evidence. **(Code paragraph 24.5).**

## Stage 6: Post Appointment

- 2.7 The successful candidate was contacted to request completion of a short biography for inclusion in the press release. The press release was subsequently approved by PAT before being sent for release. The unsuccessful candidates were notified of the decision five days in advance of the press release.
- 2.8 The covering letter provided with the application pack stated that feedback would be available for three weeks after receipt of unsuccessful letters, rather than stating a specific date. Feedback on request was offered to all candidates invited to interview, with one request noted as being received. The letter requesting feedback made a comment on the length of time taken to inform applicants of the decision to appoint. This letter was retained on the file along with a note stating that verbal feedback had been provided. No record of the content of the feedback provided was kept on file.

### *Area of variance for PAT guidance*

- The content of any feedback provided to applicants or candidates should be recorded so that it can be referred to at a later date, if required. **(Scottish Executive Guidance paragraph 4.16.18).**

### *Other observations noted*

- The lack of a specific date for feedback being received appears to have caused confusion, with one candidate unhappy they had not been contacted with a decision three weeks after the interview. While this is not specifically what is stated in the covering letter, a date should be included to clarify the timescales with the candidates. Holding letters should also be issued if the process is taking longer than that stated in the covering letter.

# Other Comments

## Administration

- 3.01 The Code lays down certain administrative requirements that sponsor departments must comply with at each stage of the process. A number of issues were highlighted during the advertising stages of this appointment round. A brief summary of these issues is detailed below.
- The initial draft of the person specification included a criterion that was considered by the OA to be unnecessarily restrictive. The department subsequently agreed to change to a less restrictive criterion (**Code paragraph 6.1c**). However, while the person specification was updated, the initial criterion was not amended in the application forms which were sent to potential applicants. This error was identified relatively quickly and a revised application pack was sent out to all who had expressed an interest with a covering letter explaining the reason for the revised pack.
  - The initial covering letter also had an error, in that it gave the closing date for applications as 22 November 2006 rather than the correct date of 22 September 2006. The correct date was recorded on all other application documents, such as the application pack. The covering letter for the amended application pack did not make any reference to the corrected date.
  - A complaint was received from an individual who believed the closing date to be 22 November and still wished to apply, although he had missed the closing date of 22 September. It was decided by the department to extend the closing date to allow this individual to complete an application form. A letter was sent to all those who expressed an interest in the post giving the updated closing date as required by the Code. This letter was not sent until five days before the revised closing date for applications. In addition, approval was not sought from the Commissioner to change the closing date. (**Code paragraphs 17.1 and 32.2 and Scottish Executive Guidance paragraph 4.14.1**).
- 3.02 The Commissioner reviewed the breaches of the Code identified during these stages of the appointment round and acknowledged that they appeared to be attributable to administrative errors. It was decided that the appointment round could continue and retrospective approval for the exception to the Code was provided by OCPAS.
- 3.03 The Chief Executive of NHSScotland acknowledged the Code breaches stating that these should have been identified as part of the quality assurance checks made by the Department. It was also acknowledged that a lesson had been learned for future reference in that running appointment rounds concurrently had increased the risk of administrative errors arising.

# Appendix 1: Background information for each stage

## **Stage 1: Planning**

It is important that the planning starts in good time, with appointments taking on average 6 months to complete. An appointment timetable must be produced, which will assist in the planning of the appointment round, setting deadlines for various stages of the process.

A key part of the planning process is to identify the skills, knowledge and personal qualities that are required to complement existing members of the board in question. The skills, knowledge and personal qualities identified will be used in both advertising the position, and also to assess the quality of applicants at both the application stage, and candidates at the interview stage. It is therefore important that an appropriate amount of effort is put in to identifying these requirements. The relevant Scottish Minister is ultimately responsible for public appointments, and it is therefore important that they are involved in this stage. The Minister is required to agree the specific requirements of the board and organisation in question, the role description, the person specification and the appointment timetable.

An OCPAS Assessor (OA) is assigned to each appointment round to ensure that it complies with the Code throughout the process. Early involvement of the OA is advised to allow time to take into account any comments raised.

## **Stage 2: Encouraging Applications**

The information contained within advertisements should enable readers to make an informed decision as to their suitability for the appointment. Consideration also has to be given to the approach to publicity to encourage the largest number of suitable candidates from a wide and diverse audience to apply. As with the development of the person specification, it should be ensured that the advertisement is not discriminatory in any way, either through language or methods of publicity used.

The Minister may be asked to provide the name of any potential applicants or avenues to identify applicants. All suggestions of potential applicants are welcomed as a means of improving diversity and obtaining a satisfactory number of applicants. However any such individuals can not be favoured, and will be treated in the same way as all other applicants.

### **Stage 3: Processing Application**

This stage involves a review of the applications received to select the candidates found to demonstrate the skills and knowledge stated in the person specification. A requirement of the Code, which differs in this respect from the Code that preceded it, states that the consideration of application forms must be anonymous, with all personal information separated from the main body of the application form. The process of selecting candidates suitable for interview can be a two stage process, starting with an initial sift undertaken by the sponsor department if a significant number of applications are received. The remaining applicants, or all applicants if an initial sift is not conducted, will then be considered by the selection panel to produce the shortlist of candidates to interview.

There must be documentation as to why decisions were taken at this time, so that feedback could be provided if requested, or so there is appropriate evidence should a complaint be received. Applicants should be kept informed and receive timely notification of the outcome of their application.

### **Stage 4: Interview**

The interview stage of the process gives the selection panel the opportunity to further evaluate the suitability of candidates against the person specification. It is important that questioning is consistent across the candidates to ensure that the selection panel are able to provide assessment of each candidate on an equitable basis. The questioning should therefore be agreed in advance of the interviews taking place. As with the processing applications stage, it is essential that there is appropriate documentation retained as evidence to support any decision as to the suitability of the candidate. Feedback must be offered to any unsuccessful candidates, based on the evidence retained from the interview.

### **Stage 5: Selection**

The ultimate decision to appoint is the responsibility of the Minister. The Minister should make this decision based on a candidate summary received from the selection panel, which should provide an objective analysis of each candidate's suitability for the appointment based on information obtained throughout the process. So as not to influence the Minister, the information on candidates in the summary must not be provided in any form of ranked order, allowing the Minister to make an objective decision as to who to appoint. The decision made by the Minister of who to appoint must be recorded along with the reasons for the decision.

### **Stage 6: Post Appointment**

The evidence retained throughout the process should be used but to provide any feedback requested by any unsuccessful applicants or candidates. Any individuals that were found suitable to appoint but who were not appointed should receive additional feedback provided by the Minister as to their decision.

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