

Written evidence from Commissioner for Public Appointments (CPA 01)

Public Administration and Constitutional Affairs Committee The work of the Commissioner for Public Appointments inquiry

This note

This note provides information about the role of the Commissioner and his office, findings from compliance visits, case work and findings from investigations into parts of the appointments process, and a discussion of live issues.

About the Commissioner and OCPA

In March 2015, the Government commissioned a review of the way appointments are made to public bodies (the Grimstone Review) and published a response to the review's recommendations in April 2016. Following consultation with OCPA, and a number of important amendments at our request, the Cabinet Office published the Government's Governance Code in December 2016. This came into effect in January 2017.

The Commissioner (the Rt Hon Peter Riddell CBE) has a number of functions set out in the Public Appointments Order in Council (the most recent being November 2019), which include ensuring that ministerial appointments are made in accordance with the Governance Code and its principles of public appointments. His remit also covers those appointments made by ministers in Welsh Government, so this note includes Whitehall departments and Welsh Government public appointments together, as they are subject to the same OCPA regulatory processes. (This note will use the word 'department' to include Welsh Government).

The Public Appointments Order in Council requires the Commissioner to undertake audits of public appointments procedures, hold investigations and consider complaints where necessary. The Governance Code expands on this to include the duties of the Commissioner to compile an annual report with diversity statistics, be an advocate for diversity, and also be notified or consulted on certain stages of the appointments process.

The Commissioner oversees the appointments made to over 300 public bodies by ministers in Whitehall and another 56 by the Welsh government. Last year (2018-19) there were 972 appointments made, and a further 872 reappointments. OCPA has three members of staff (including the part-time Commissioner) based within the Civil Service Commission Secretariat.

OCA's compliance process

The Order in Council states that the Commissioner has the authority to 'carry out an audit of the procedures and practices followed by appointing authorities in making public appointments.' OCA's regulatory framework outlines how the Commissioner fulfills this function.¹

The autumn of 2018 saw the first round of in-house compliance visits made to each department responsible for managing and making public appointments, which replaced the previous unannounced spot-check and RAG rating system under the old Code. OCA has just completed its second round of visits, looking at appointments competitions in 2018-19. Visits are pre-arranged with departments, with a selection of campaigns chosen for examination within a given period, with the aim to consider a range of appointments and reappointments - from specialist to generalist, chairs and NEDs - and in the case of those departments with regional bodies, geographically diverse and run by central and sponsor teams. On average, the sample is a third of all the completed campaigns for the period, but for departments making three or fewer appointments a year, OCA looks at them all.

In addition, Departments are asked to make a self-assessment of their strengths and challenges faced, in terms of individual appointments and more generally in their approach to making appointments in accordance with the Code. This qualitative analysis is used by OCA staff to form the basis of discussions with public appointment teams. This enables OCA better to understand the bodies to which the departments are appointing; the priorities for the department and appointing ministers; and the successes and failures in attracting a wide and diverse field of candidates. The visits have also helped to forge good working relationships with officials working on public appointments. OCA is appreciative of all those departmental officials who continue to work with us in a constructive and open way.

OCA officials have now produced a report for each department following the respective visits, outlining the findings from looking at the sample of campaigns, and the appointment teams' own self-assessment. These were shared with those teams to check for factual errors prior to being sent to the Permanent Secretary and the Public Appointments Policy Team in the Cabinet Office. After the first round of visits, the Commissioner was pleased by a number of positive responses from Permanent Secretaries, promising to focus on the areas that had been identified as requiring change. In the most recent visits, OCA has found that departments

¹ OCA Regulatory Framework.

<https://publicappointmentscommissioner.independent.gov.uk/regulating-appointments/regulatory-framework/>

have made changes in response to their last compliance visit, and performance generally in following the Code has improved.

The intention of the compliance visits is not to find fault, though OCPA has uncovered several breaches of the Code. Instead, the emphasis is on identifying where good practice is happening and where further improvements can be made.

Following the first round of visits, OCPA held a wash-up learning session for Public Appointments teams across Whitehall and Wales in March 2019, with teams themselves sharing best practice and learning from each other. Following positive feedback, OCPA is holding a similar session in March 2020.

Key findings from the 2018-19 compliance visits

These are detailed in our Annual Report for 2018-19:

- The majority of departments identified diversity as a priority and reported an aim to improve their approach to attracting a wide and diverse field. They had given considerable thought into the wording in candidate packs, avoiding gender specific terms and civil service ‘jargon’ to ensure that vacancies reached out and appealed to as wide an audience as possible, using networks, social media and the third sector. But too often, there is still a gap between intentions/practice and performance/results.
- The attention given to public appointments by departments differs, often depending on the size and influence of some of the bodies involved. Implementing good practice in public appointments has historically not always received the attention and priority it deserves, particularly when some of these bodies are both central to delivering public service and the Government’s policy objectives.
- Many public appointments teams felt distanced from the policy direction and gave the impression that they worked in silos.
- The compliance visits identified issues around documentation with many departments, some lacked a standardised procedure for retaining documentation, electronically and centrally, making it impossible to establish whether a fair and open process had been undertaken.
- The impact of not retaining sufficient evidence meant that ministers were often given the details of a candidate’s past roles, and not of the Advisory Assessment Panel’s view of suitability for the role against the selection criteria. This was evident at the shortlist stage for a number of departments.

- The visits found that compliance with the Code was stronger at the final interview stage. Most departments produced comprehensive panel reports which captured the candidate's responses to questions, and those questions were based on the selection criteria.

Early findings from 2019-20 visits

Overall, departments have improved their record-keeping, standardised their processes and many have begun to develop their own networks, events, application software and training further to improve their systems. Changes to ministers and the hiatus linked to the general election period have added disruption, exacerbated by central public appointments teams still experiencing high turnover. While progress to increase diversity in appointments is on the whole, slow but steady, some departments have made little gains or even gone backwards in recent years. There are still some outliers for whom the basic provisions in the Code still cause trouble. Consequently, the argument for well-resourced central teams, with experienced staff (and similarly, a well-resourced Cabinet Office public appointments policy team to provide oversight), is strong and persuasive.

Notifications made to the Commissioner

The Commissioner must be notified and in some cases, must be consulted, on certain actions of ministers in relation to public appointments.² The Commissioner has maintained that ministers must be allowed to make pragmatic decisions to keep boards functioning and maintain their important role on behalf of the public. At the same time, efforts must be made to open up appointments to fresh talent, and so reappointments, extension of tenure or appointments without competition should not be used simply to maintain the status quo without good reason.

There were 23 of these kinds of cases in 2017-18 but this increased to over 100 in 2018-19. The Commissioners' view is that Departments have become more settled in these kinds of routine practices, and that, at times, poor succession planning has been revealed through notification to the Commissioner. There are, however, day-to-day realities of keeping a board functioning, and the Commissioner welcomes honest and open discussion with departments on such needs. One may have assumed that the recent election period, disrupting ministerial activity, would have led to more extensions of tenure this year than the last, a consequence when the Code

² The list of these notifications made to the Commissioner are on the OCPA website <https://publicappointmentscommissioner.independent.gov.uk/regulating-appointments/exceptional-appointments-made-without-competition/>

places the onus on ministers at every stage. However, data from 2019-20 so far suggests that a similar number of notifications of extension of tenure will be received.

Appointments without competition

Section 3.3 of the Governance Code states that ‘In exceptional cases, Ministers may decide to appoint a candidate without a competition. They must make this decision public alongside their reasons for doing so. They must consult the Commissioner for Public Appointments in good time before the appointment is publicly announced.’ Ministers are also able to make provisional appointments without competition to bodies before they are made official in law under 2(3) of the Order in Council.

In 2018-19, of the 42 consultations of this kind that were received, 41 were agreed. This includes extensions to previously agreed appointments without competition. As in 2017-18, there was one request that the Commissioner did not agree to. In this case, the Commissioner felt that no sufficient justification was provided as to why the post couldn’t be filled through a fair and open competition. So far in 2019-20, 36 requests for appointments without competition have been received, suggesting that the volume of requests will remain similar to last year. The Commissioner has noted two occasions where he accepted the exceptional appointment but his recommendation to change the length of the term proposed was not accepted by the government.

Tenure

Section 3.6 of the Governance Code states that ‘there is a strong presumption that no individual should serve more than two terms or serve in any one post for more than ten years. In exceptional cases, Ministers may decide an individual’s skills and expertise is needed beyond such a tenure. The Commissioner should be notified ahead of announcement.’

In 2018-19 the Commissioner was notified of 57 third term appointments, or extensions of tenure to those already in their second term, or where an appointees’ tenure was being taken to beyond ten years. The Commissioner suggested a reduction in the proposed term length on 10 occasions. So far in 2019-20, the Commissioner has been notified of 60 appointees who have had their tenure extended in these situations. Only in four of these cases has he expressed dissatisfaction; three due to the length of the proposed extension and the fourth he was not convinced of the case to extend.

The most common reasons behind appointments without competition and extension of tenure are:

- To allow time for a competition, for example, extending tenure for a short time to cover the time when a replacement is being recruited
- To provide stability to the board, for example, during a period of significant change to its powers or strategic direction, or when it is subject to an independent review
- Following a resignation from the board, or when a member/chair is suddenly taken ill, or when a competition for a new member/chair has failed, to keep the board quorate or for it to maintain representation ('must have a Welsh member')
- To allow for boards to be merged, established, or closed down where a fresh competition would be redundant.

Unappointable candidates

Section 3.2 of the Governance Code allows for ministers to appoint someone who is not deemed "appointable" by the Advisory Assessment Panel. In this case, they must consult the Commissioner for Public Appointments in good time before a public announcement and will be required to justify their decision publicly.

There were no incidences of the use of Section 3.2 in 2018-19 nor so far this year.

There was one consultation in 2017-18. The panel, which was chaired by a civil servant and approved by the minister, had initially rejected the candidate at the sift stage as they had not met the published criteria for the post. The minister asked the panel to consider adding the candidate to the shortlist, which it did, and then after an interview, judged the person as not appointable. The minister rejected the candidates regarded as appointable and proposed appointing the candidate that the panel had found not appointable on the basis of a change in the criteria from those originally published. The Commissioner raised an objection on the basis that changing the criteria was in conflict with the principle of fairness in the Governance Code. The Commissioner also recommended holding a new competition which was accepted by the department and resulted in the appointment of a different candidate.

Senior Independent Panel Members

All Significant Appointments³ require a Senior Independent Panel Member (SIPM) to sit on the Advisory Assessment Panel. The SIPM is required to be independent of the Department and of the body that is being recruited to and should not be politically active. Departments are required to consult the Commissioner on who the SIPM should be for each competition before recruitment commences. OCPA conducts light touch due diligence on the proposed SIPM. SIPMs can be used for more than one competition but the Commissioner must be consulted each time. Departments need to be cognisant of refreshing their pool of SIPMs to avoid them being used repeatedly, thereby losing their independence.

In 2018-19 the Commissioner received consultation from a number of Departments and agreed to 17 SIPMs. So far in 2019-20, 19 SIPMS have been confirmed.

Breaches identified of the Governance Code

The Commissioner reports on breaches of the Code in OCPA's annual report. These are found as a result of complaints or issues brought to his attention and investigated, or during the course of the annual compliance visits. The following table has summary information on the breaches identified in 2017-18 and 2018-19. Considering that hundreds of recruitment competitions for public appointees are made across government each year, the number of breaches identified is small. Poor record keeping is the basis of a significant number of these identified breaches, as well as not making notifications to the Commissioner as outlined in the Code.

³ A list of these appointments is agreed between the Commissioner for Public Appointments and HM Government Ministers, and Welsh Government Ministers.

Year	Dept	Outcome	Principle/section
2017-18	Department for Education - Deputy Further Education Commissioners and Further Education Advisers	Breach identified after complaint. Part of an application was lost. The process was not sufficiently open and adequate customer care was not administered.	Openness and Section 7 Customer Care
2017-18	NHS Wales Health Board	Breach identified after complaint. The published criteria did not ask for high level NED experience, however candidates were sifted out of they did not demonstrate this.	Fairness and Section 7 Customer Care
2018-19	MOD - Defence Nuclear Safety Committee	Breach identified after complaint (though not related to complaint basis). Absence of key documents.	Openness and Assurance
2018-19	BEIS - Low Pay Commission, Employee Commissioner	Breach identified after complaint. Department unable to provide any record of the assessment made of the complainant's application.	Merit and Section 7 Customer Care
2018-19	Cabinet Office - UK Statistics Authority	Identified during compliance visit, third term reappointment made without notification.	Section 3.6
2018-19	Home Office -	Identified while	Section 3.6

	Biometrics and Forensics Ethics Groups	considering separate exception request, third term reappointment made without notification	
2018-19	MHCLG - Social Housing Regulator	Identified in consultation, consulted on Senior Independent Panel Member after competition had already launched.	Section 6.2

Breaches for 2019-20 will be outlined in the Commissioner's forthcoming 2019-20 annual report, to be published later this year.

Complaints investigated by the Commissioner

The Governance Code gives the Commissioner the power to investigate complaints brought to him about any public appointments process in his remit. The Commissioner takes complaints in relation to the Code when a number of conditions have been fulfilled. First, only after a complainant has first raised the issue with the Department concerned and the Department has concluded its own complaint process. He will only investigate any complaint if the process took place within the preceding 12 months (unless there are exceptional circumstances). Subject to this time limit, he will investigate complaints which concern 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. He will not investigate matters in regards to the way a public body is being run, appointments to bodies he does not regulate, and complaints about a member of a public body after they have been appointed. He will only look into complaints by those unsuccessful in being appointed if it appears that the appointments process might have breached the Governance Code.

Year	Number of complaints investigated	Upheld
2017-18	6	2 (DfE and NHS Wales - detailed above)
2018-19	4	1 (BEIS - detailed in the table above)

One complaint received in the 18-19 year (not in the table above) was concluded in 2019-20 and was not upheld. Three further complaints have been investigated by the Commissioner so far in the 2019-20 year, two have been concluded (one upheld, one not upheld), and one decision notice is pending. The complaints have touched on the issues of the assessment of merit, candidate care and record keeping, and due diligence. The Commissioner's decision notices are published on his website.

Investigations and research

The Commissioner can take a look into any aspect of the appointments process by requesting documentation from departments, as well as undertaking thematic reviews. Under the Governance Code, the Commissioner has concluded two investigations and one thematic review. These are detailed in his annual reports and also in reports on the OCPA website.

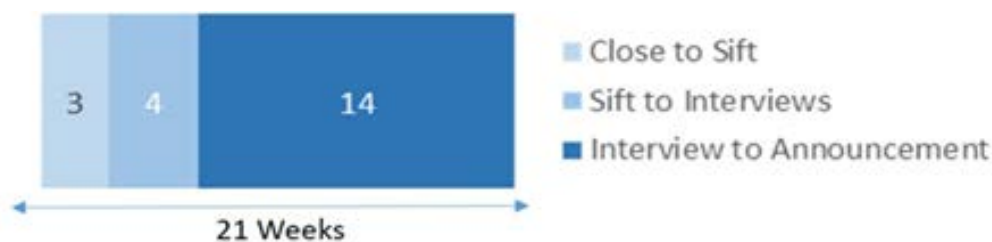
The investigation into the appointments to the board of the Office for Students in early 2018 concluded that while the process was Code compliant, improvements needed to be made to due diligence. The Commissioner outlined his views that due diligence should be undertaken on shortlisted candidates and discussed with them at interview. It should be proportionate and relevant to the post. Joint guidance from the Cabinet Office and OCPA was issued to departments. Subsequently almost all departments have developed their own guidance and templates to conduct proportionate and practical due diligence on candidates for their public bodies, though there are still concerns with implementation (see below).

The investigation into the appointment of Baroness Stowell to the Charity Commission followed a hearing by the then DCMS Select Committee where Baroness Stowell was not recommended for appointment. The inquiry concluded that the appointments process was Code compliant and further clarified the different roles that the Code and pre-appointment scrutiny each play on ensuring that appointments are made in an open, fair and merit-based way.

Thematic review on concluding appointments within three months

The Governance Code states that the aim should be to conclude the appointments process within three months of the deadline for applications being made. In early 2019 OCPA began research into departments' performance on this three month aspiration. This included data collection on the time taken for each stage of a public appointment, and a survey of departments to assess their own capabilities to achieve the aspiration, and what makes it hard to achieve. The research was published as the first thematic review in July 2019. OCPA found less than half

of the appointments achieved the three-month aspiration. A number of different factors contribute to the delays happening at each stage of the process, including the availability of members of the assessment panel, obtaining security clearance, approval from devolved nations and, most crucially, delayed responses from private office/Ministers in relation to submissions.



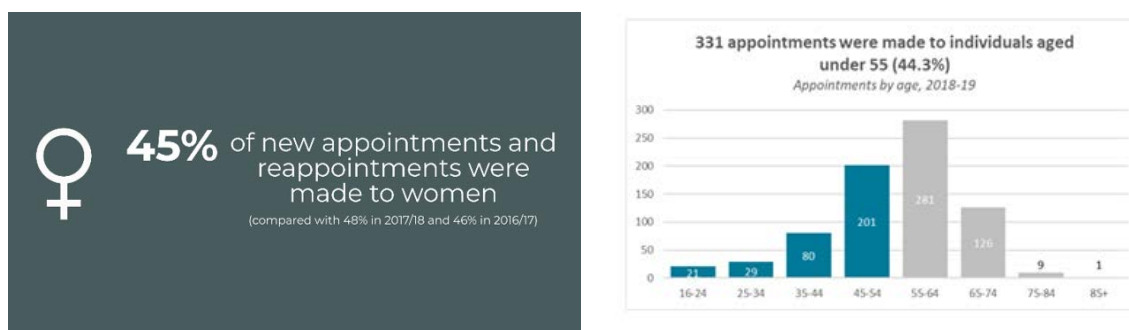
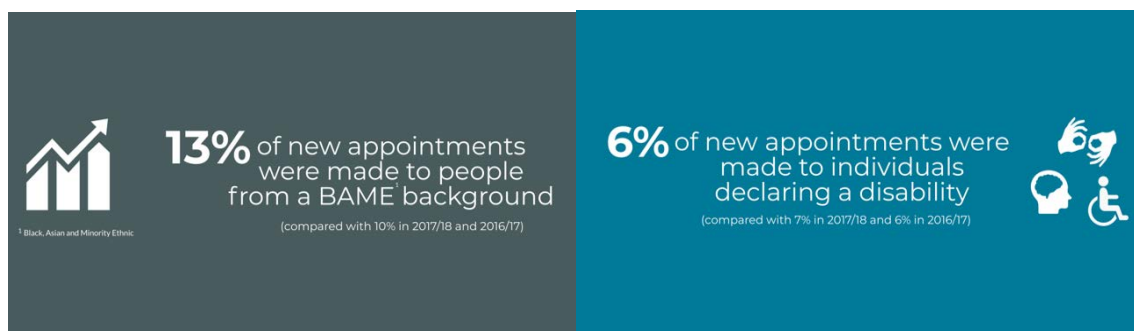
The average time between closing date and sift was 3 weeks. It took an average of 4 weeks from sift to interviews, whilst the interview to announcement stage took 14 weeks, suggesting it is these processes around the minister making a decision that takes the most time. The average time taken between the application deadline to announcement was 21 weeks, which equates to roughly 5 months, far exceeding the three month aspiration.

The Commissioner recommended, on the back of this research, that the three month period remain as an aspiration rather than a target, and to make the ‘end’ measuring point of the process to when the candidates are informed, rather than when the announcement is made. The report also outlined practical steps that the Commissioner recommended to departments to meet the aspiration, such as the timing of due diligence, informing candidates of the progress of campaigns, transparency for the public and better planning of panel members’ involvement. The Government accepted these practical steps but rejected the Commissioner’s recommendation to change the way the three month aspiration is measured. The Government committed to improve campaign planning and communication with candidates and as such, the Commissioner will continue to keep a close eye on any slippage in this area. The Government must accept the implications for talent attraction and retention when so many public appointments processes treat candidates poorly.

2018-19 diversity statistics

The Commissioner has a role to publish annual statistics on the diversity of public appointees and reappointees of that year. This data is obtained from departments who update the information about candidates and their progress through an appointments competition in real time on a central database. OCPA and the Cabinet Office share this data. Cabinet Office targets for diversity of public appointees outlined in the Diversity Action Plan (June 2019) relate to the ‘stock’ of all appointees at any one given time, while OCPA’s published statistics relate to the inflow of appointees in any given year. Welsh government is considering their own targets in their own recently launched Diversity and Inclusion Strategy.

Progress is being made in appointments being made to BAME candidates, but the earlier progress on women has stalled. While the performance on making appointments to those with a disability is unsatisfactory. Chair positions in particular remain undiverse; the Commissioner continues to advocate for development and mentoring programmes to develop a pipeline of talent. Work on the data of the diversity of new appointees and reappointees in 2019-20 will begin at year end in April.



Departments are making efforts are being made within the system to open up opportunities to people from all walks of life: panels undertaking unconscious bias training, reasonable adjustments and the GIS, networking with stakeholders and using headhunters to to reach new talent. Progress is still slow, and these broad data across government hide some large disparity between departments on the diversity of their appointments and reappointments in 2018-19.

Departments with more than 20 new appointees and/or reappointees in 2018-19

	Highest proportion of new appointees/reappointees:	Lowest proportion of new appointees/reappointees:
Women	63.5%	16.7%
BAME	21.9%	0%
Disability	8.9%	0%

Departments with fewer than 20 new appointees and/or reappointees per year

	Highest proportion of new appointees/reappointees:	Lowest proportion of new appointees/reappointees:
Women	100%	0%
BAME	10.5%	0%
Disability	0%	0%

OCAPA initiatives

The Commissioner's role as an advocate for diversity has led to a number of recent initiatives, where OCAPA supports and champions efforts to open up public appointments to more diverse talent. OCOA worked with the Cabinet Office Public Appointments team to develop and launch a new diversity monitoring form, fully accessible for the first time for those use assistive technologies, with updates questions to better track disabled applicants against ONS data. In early 2019 the Commissioner highlighted mentoring schemes in England and Northern Ireland, and will soon begin a mentoring scheme in England in partnership with the Public Chairs Forum and the Cabinet Office PAPT team. OCAPA continues to highlight diverse appointees and break down myths using films on its website, and the Commissioner has spoken at a number of department and public events to advocate practical and achievable steps to open up public appointments to diverse talent.

Live issues

Financial support

Most recently, the Commissioner has taken soundings from appointees and public appointments officials across departments and in Welsh government on the subject of financial support, as compliance visits have revealed the struggles some departments have had when recruiting to roles for which there is no pay offered, or in some cases, even expenses. Whist pay for appointees at the top end is subject to Cabinet Office and Treasury oversight, what is happening at the bottom end has received relatively little attention, before being rightly highlighted by Lord Holmes in his Review into opening up appointments to people with disabilities. The interaction of disability benefits with paid work also creates extra complications, the end result being another barrier to those with talent to give.

The Commissioner's view is that being able to take on public service for several days a month or week for free will be more difficult for those with competing paid and unpaid work, education or caring responsibilities, and those without another source of income. In short, those who will bring diversity of thought, experience and skills. The question must be asked as to what role financial support can play in opening up appointments to more diverse talent.

Ministry of Justice and DCMS have raised the issue of financial support for appointees. OCPA's compliance visit to MOJ found that recruitment to Independent Monitoring Boards was difficult when, as in the case of Cardiff IMB, no financial support was provided to volunteers being asked for 4-5 days a month to visit Cardiff men's prison. When recruiting for MAPPA lay advisors in Cambridgeshire last year, asking for a day a month unpaid, only one application was received. DCMS received no applications when first advertising for members for the Treasure Valuation Committee, again, unpaid. OCPA accepts that some roles will always be more attractive than others, but these critical public roles need to be filled and the government should consider what would help.

There appears to be little standardisation of pay for Chairs or members across government, or even within a department's own public bodies. OCPA's own preliminary desk-research into a snapshot of appointments advertised between April and September 2019 (capturing 83 appointments) finds:

- A role as a member of a body requiring 25 days of work a year could pay anywhere between £3,000 and £22,000 a year.
- A role as a Chair of a body requiring 150 days of work a year could pay anywhere between £23,500 and £150,000
- The average number of days of work per year required for a non-paid member role was 19. One advertised role in this sample asked for 35 days of work for no remuneration.
- There are some departments where Chair roles are paid a lower day rate than member roles, although these are not the same public body.
- Annualised salaries for paid Chair roles range from £4,800 - £150,000; Day rates range from £151 - £1042
- Annualised salaries for paid Member roles range from £3,000 - £22,800; Day rates range from £125 - £950
- For all paid Chair roles, there is a strong correlation between the number of days work required and the annualised salary offered. With paid member roles, there is a very weak correlation between days worked and annualised salary.

Several departments, led by DWP, have done their own internal research about their remuneration and time commitment policies to make comparisons and help with their understanding of attracting candidates, but this has been concentrated on the roles attracting high salaries, most often high profile chairs in highly paid sectors such as transport or infrastructure. But OCPA is most concerned with potential members, not high profile chairs.

NHSI has undertaken detailed analysis of the remuneration of NEDs and chairs across NHS foundation trusts (FT) and NHS trusts. This has formed the basis for a new system of remuneration across both kinds of trusts from October 2019 and will, by 2022, remove the significant difference between NHS trust and FT role remuneration. There is no distinction between the services provided by NHS Trusts and FTs, nor their respective responsibilities to patient care. However, whilst NHS trust chair and members' pay was restricted by HMG approval, those of FT's was not. Research from NHSI found that the greatest differential between NED remuneration in NHS trusts and FTs, based on like for like annual turnover, was more than £14,000.⁴

The Commissioner understands that amongst trusts there was a feeling that FTs - having more freedom to decide remuneration - were attracting more talent. In addition, anecdotally FTs were getting candidates with more experience; considering the scale the responsibilities (billions of pounds of healthcare) the choice of 'safer' pairs of hands is understandable. Some NHS trust chairs felt particularly aggrieved that having taken a risk on a less-experienced candidate, only to be a 'training ground' for future FT NEDs when they offered more money once the candidate had proved themselves. The NHS Confederation contends that FT's 'freedom' to make appointments and decide remuneration levels, since the abolition of the NHS Appointments Commission in 2012, is contributing to a lack of diversity into NHS leadership.⁵

Arguments for the common skills required for all NHS trusts, notwithstanding their scale and particular local health economy contexts, has also lent itself to standardisation as an attempt at fairness. NHSI contends that the remuneration gap has for years had a detrimental impact on the ability of NHS Trusts to attract, appoint and retain high calibre applications, and the diversity of those applicants, 'where people who rely on regular and reasonable income cannot afford to take up chair and NED roles in NHS trusts'.⁶

⁴ NHS England and NHS Improvement (2019). Structure to align remuneration for chairs and non-executive directors of NHS trusts and NHS foundation trusts.

https://improvement.nhs.uk/documents/6110/Chair_and_NED_Remuneration_Structure_1nov.pdf

⁵ NHS Confederation (2019). Chairs and non-executive directors in the NHS: The need for diverse leadership. <https://www.nhsconfed.org/-/media/Confederation/Files/Publications/Chairs-and-non-executives-in-the-NHS.pdf>

⁶ NHS England and NHS Improvement (2019).

Very early assessment of competitions launched since the new remuneration structure came into force and aligned NHS trusts closer to those offered by FTs - provided to OCPA by NHSI - has found that the average number of applications for NED roles in NHS trusts have increased considerably. The average number of NED applications received per campaign for the 12 months prior to the increase was 11.6. In the five months since, this average has increased to 22.2, an increase of 91%. It is too soon to see the diversity implications of the change yet, or the knock-on effect on applications to FT roles (not directly overseen by NHSI). NHSI officials' hypothesis that it is the talent that was attracted to FTs is now being seen in applications to NHS trusts and that this will help retain that talent in the future. This is only a small sample, and further analysis as the system fully develops - the salary adjustments are being phased in over the next two years - will see whether standardising financial support in this way helps increase the diversity of the applicant field as hoped.

Due diligence and political views

The Commissioner's initial views on due diligence were outlined in the Office for Students investigation (detailed above). The rise of social and online media has widened the consideration of reputation beyond conflicts of interest. This topic, emerging in 2018, continues to be a live issue today. A related issue is the misunderstanding of what the Governance Code says about political activity and still more confusion as to the political affiliation of current appointees.

The Code is clear that political activity should not affect any judgement of merit (para 9.2) and that applicants to public appointment roles are asked to declare significant political activity when they apply. Significant political activity includes holding office, public speaking, making a recordable donation and candidature for election within the 5 years prior to application.

Of those who were appointed or reappointed to roles in 2018-19, fewer than 9% declared significant political activity for a party; that is 114 people from over 1,200 who made a declaration. Of these, 54 (47%) declared activity for Labour, 36 (32%) for Conservatives, 12 (11%) for the Liberal Democrats and 12 (11%) for other parties. When appointees have declared significant political activity, this is published within the announcement of the appointment.

The Code's provisions on conflicts of interest are useful for departments and ministers to guide their understanding of due diligence. The Code's clarity on the role of ministers to choose who is appointed, the rights of candidates to have their perceived or real conflicts discussed with them at interview, and the role of officials and panel members bringing issues to Ministers' attention all apply, in the Commissioner's view, to practices on due diligence as well. The

Commissioner's views from 2018, after investigation into the appointments made to the Office for Students, noted above, are worth restating today:

‘It is hard to draw up precise guidance on what is proportionate in due diligence and checking of candidates. This is bound to vary depending on the public body involved, the post being filled and on the candidate applying. There needs to be, however, consistency in each competition... None of this is intended to narrow the field of candidates - far from it - but to ensure that recommendation by interview panels and decisions by ministers are based on fuller information.’

The Commissioner has again, most recently in a complaint decision notice on DCMS, outlined his view that due diligence is a sensible precautionary measure to protect applicants and the government alike, and is compatible with the merit-based Code. The Seven Principles of Public Life apply to all public appointees, and this is the general framework that should guide what is being checked about candidates.

As stated above, departments struggle to complete competitions within the three month ambition. Discussion with departments and the recent compliance visits have brought the issue of the timeliness of due diligence to the Commissioner’s attention. It appears that decisions on the reputational risk of candidates are taking longer to complete. In some cases, it is being repeated on candidates delaying the process even further.

The Commissioner’s view is that it is for ministers to make and defend their appointments and it is their determination of reputational risk that is paramount. Due diligence should be framed around the Seven Principles of Public Life. It must be proportional and relevant to the role the candidate is going for. Candidates must be told it is a part of the appointments process.

Online research on candidates should only be done on those who are shortlisted for interview and any matters arising should be discussed with candidates at interview, just as perceived conflicts of interests are, as stipulated in the Code. Candidates need to have the opportunity to articulate how they will sensibly manage their online presence or other aspects of their public life if they get the appointment. Ultimately, ministers will decide from a number of appointable candidates who to appoint. The Code does not compel them to publish the reasoning behind those decisions.

Recent attention has highlighted an perceived disconnect between what some candidates see as public bodies’ independence and information on reputational risk presented to ministers when making appointments. It is important that all appointments are made with regard to the purpose of the body. Some public bodies will play an important role in directly delivering the government’s agenda. Others will be advising government on the direction of policy. Chairs of public bodies have an important role here, to set out their views on the specification of the role

necessary to enable the to board to carry out its purpose, and to clearly convey what the Seven Principles mean for their board members in 2020.

The Commissioner's view is that there is a delicate balance to be made for each appointment; as stated in 2018, finding that balance of proportionality will be unique for each recruitment round. Public bodies are crucial to the government delivering its agenda, but due diligence should not be used to appoint board members that all think alike. Diversity of background, thought, political persuasion as well as the protected characteristics all make for better decision making and more robust challenge. There is reputational risk in boards not being diverse in outlook just as there is a risk from candidates who do not meet the standards of public life. Ministers must be aware of both.

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