

DECISION NOTICE: PUBS CODE ADJUDICATOR, DEPARTMENT FOR BUSINESS, INNOVATION & SKILLS

AUTHORITY

1. The Code of Practice for Ministerial Appointments to Public Bodies dated 1 April 2012 states that any individual may complain to the Commissioner for Public Appointments that a competition has not been conducted in compliance with this Code.
2. Complaints should first be raised with the appointing Department, but if, after investigation by the Department, the complainant remains dissatisfied, he/she may bring their complaint to the Commissioner.

OUTLINE OF COMPLAINT

3. The complaint related to the appointment of Paul Newby as the Pubs Code Adjudicator and whether perceived conflicts of interest were considered during the appointment process. These conflicts related to the fact that Mr Newby had worked for a company whose valuation and surveying business included pub landlords and also to the fact that he had a continued financial interest in the company after appointment.

SUMMARY OF THE EVIDENCE

The principles of public appointments:

Merit- The overriding principle is selection on merit. This means providing Ministers with a choice of high quality candidates, drawn from a strong diverse field, whose skills, experience and qualities have been judged to best meet the needs of the public body or statutory office in question.

Fairness- Selection processes must be objective, impartial and applied consistently to all candidates. Each candidate must be assessed against the same published criteria.

Openness- Information about the requirements of the post and the selection process must be publicly available. Public appointments must be advertised publicly in a way that is designed to attract a strong and diverse field of suitable candidates.

4. The responsibility for making appointments and running the public appointment campaign lies with the appointing Department. This includes carrying out due diligence to assess whether prospective appointees' wider interests could conflict with their duties as a member of a public board.
5. In addition, under the Code of Practice: *It is important that all public appointees uphold the standards of conduct set out in the Committee on Standards in Public Life's Seven Principles of Public Life.*¹ *The panel must satisfy itself that all candidates for appointment can meet these standards and have no conflicts of interest that would call into question their ability to perform the role.*
6. In this case, because the appointment was for the chair of a public body, a Public Appointment Assessor was in the chair. The Commissioner discussed with her what happened at the panel discussions and at interview, to reach a conclusion about conflicts of interest.
7. At the shortlisting stage, the search consultants overseeing this recruitment were invited to discuss their findings on any possible conflict of interest with the panel. In relation to Mr Newby, the panel considered his application and his CV which stated that he was a Partner/Director and Shareholder in the relevant company.
8. At interview, the PAA asked Mr Newby about his ability to hear complaints from both pub companies and tenants. He provided evidence to support his ability to be impartial and objective, due to previous roles where he had adjudicated on behalf of both parties.
9. The panel did consider whether there were conflicts of interest in this case. They were entitled to conclude, as they did, that there were none that could call into question his ability to do the job. However, it would have been better if the panel had specifically addressed the issue of Mr Newby's role as a partner in the relevant company (including the background of his previous clients) and recorded the fact that they had done so in the panel report that recorded the outcome of the competition.
10. Any other issues on due diligence about potential conflicts of interest are a matter for the appointing Department, in this case the Department for Business, Innovation & Skills.

¹ Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty & Leadership

DECISION

11. There is no breach of the OCPA Code relating to standards in public life and conflicts of interest.
12. Although this was unrelated to the complaint made, there is a breach of the Code regarding the retention of records relating to Ministerial meetings. When the Minister meets appointable candidates, the Code requires a short record of the discussions to be kept. There is a note relating to the meeting with Mr Newby, but it is unclear whether a short note ever existed or has been lost in relation to the meetings with the other appointable candidates.

Peter Riddell

Commissioner for Public Appointments

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