

Commissioner for Public Appointments' decision notice: public body appointments process for Advisory Council on the Misuse of Drugs, administered by Home Office.

1. The Public Appointments Order in Council (OIC) November 2019 states that the Commissioner for Public Appointments 'may conduct an enquiry into the procedures and practices followed by an appointing authority in relation to any public appointment whether in response to a complaint or otherwise'.
2. Under the Governance Code, complaints should be raised with the appointing department in the first instance. Departments are responsible for having effective complaints handling procedures, for making applicants aware of their right to complain and for referring them to the Commissioner's complaints procedures. If, after investigation by the department, the complainant remains dissatisfied, they may bring their complaint to the independent Commissioner for Public Appointments.
3. The complainant made an application to the Home Office in 2017 for a role as a member of the Advisory Council on the Misuse of Drugs (ACMD). The complainant was found appointable by the Advisory Assessment Panel (the Panel) at interview. Whilst the complainant's application for the 2017 competition was still being considered by ministers, another recruitment was launched by Home Office for members of the ACMD in 2018. As this second competition progressed, the complainant was then not appointed from the 2017 competition, and later in the 2018 competition, the complainant was also not appointed by ministers.
4. The Commissioner only considers complaints which meet a number of conditions. They must relate to appointment competitions that have concluded within the last 12 months, and that relate to either 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.
5. In regard to the first condition, the Commissioner has noted the complainant's use of Subject Access Requests (SAR) before undertaking a formal complaint to the Home Office. This has resulted in a final response from the Home Office on 29 May 2020, despite the competitions in focus concluding two years before. In this case, the Commissioner considers the 12 month condition to have been met. The Commissioner would like to remind departments to offer a clear complaints process to any applicant to avoid delays in approach to his office.

Background and methodology

6. In October 2019, various news articles and social media posts regarding the resignation of a member of the ACMD brought the Commissioner's attention to recent competitions for the ACMD. Under the Commissioner's investigation function, the Commissioner requested documentation of the 2018 ACMD competition, and Home Office supplied this in November 2019. The Commissioner took no further action at this time.
7. The complainant first approached OCPA in February 2020. They had concerns with the treatment of their two applications made for competitions finding members of the ACMD.

The complainant, in requesting feedback from these two competitions, had made a SAR to the Home Office following the conclusion of the competitions. OCPA advised the complainant to make a complaint to the Home Office, and if they remained unsatisfied, to approach OCPA (as para 4.4 of the Governance Code's outlines). The complainant did so and received a final response from the Home Office to their complaint on 29 May 2020.

8. The Home Office's response to their complaint maintained that ministers had adhered to the Governance Code in both 2017 and 2018 competitions. Following this, the complainant remained unsatisfied and approached OCPA on 29 May 2020. OCPA acknowledged the complaint the same day and further correspondence between the OCPA and the complainant via email clarified the nature and scope of the complaint and material for consideration. The personal data of the complainant in the SAR included documentation of both competitions, and this material was shared by the complainant with OCPA with their consent.
9. The Commissioner felt on balance that some aspects of the complainant's complaint were in scope because they concerned the experience of being an applicant - in particular, the access the complainant had to feedback about their applications - and adherence to the Governance Code - in the application of due diligence processes. As such, the Commissioner found this complaint was in scope for investigation under Section 4.4 of the OIC 2019.
10. OCPA informed the complainant that the Commissioner would investigate their complaint on 5 June 2020 and requested the papers from the Home Office for these two particular competitions the same day. These letters from OCPA are in Annex A and Annex B. OCPA informed the complainant of the Commissioner's remit to look at competitions according to the Government's Governance Code and the criteria published on his website. The complainant was also informed that the Commissioner has no authority to ask departments to run competitions again nor to remove or place any person into a public appointment.
11. The Home Office requested an extension to the deadline for providing the 2017 competition material to OCPA, which was proving difficult to retrieve due to organisational changes in the Department where the information was held/stored, and a new document retrieval system within the Department. OCPA agreed to this extension and accepted any limitations to what could be provided from the 2017 competitions was an unfortunate but understandable consequence of examining a competition from three years before.
12. The complainant provided OCPA with the material from their SAR, and email correspondence between themselves and the Home Office. The Home Office provided the requested information to OCPA, and a covering note for each bundle of information for the 2017 and 2018 competitions. In forming a decision, the Commissioner reviewed the following documentation:
 - a. Correspondence between the complainant and the Home Office including the final response from the Home Office in relation to the complaint
 - b. Material provided to the complainant from their SAR

and for both 2017 and 2018 ACMD competitions:

- c. Candidate packs
- d. Submissions made to Ministers relating to various stages and subsequent readouts
- e. Panel notes and reports at sifting and interview stages, and notes of pre-sift by officials
- f. Records of applicants' conflict of interest declarations and due diligence conducted
- g. Emails between officials including special advisors throughout the competition stages
- h. Spreadsheets and notes detailing applicants' progress across the competition stages and the diversity of the fields

Outline of complaint

13. The complainant had unsuccessfully applied to both 2017 and 2018 competitions for members of the ACMD and felt that they had been unfairly treated. The complainant cited the treatment of their views expressed on social media and other online publications in due diligence advice considered by ministers. They were concerned other 'bigger picture' considerations of their previous involvement with health and drug policy were not considered alongside the due diligence findings. They also complained about the lack of feedback from the Home Office on their applications. They argued the appointments processes did not adhere to the Governance Code's Principles of Selflessness and Fairness.
14. Matters of feedback and due diligence relate to Sections 7.6 (feedback) and 9.1 (conflicts of interest) of the Governance Code. The Commissioner has investigated the processes of the Home Office for both ACMD competitions in relation to these relevant sections of the Governance Code and its Principles which mandate the roles of departments, panels and ministers when making appointments.
15. Other parts of the complaint noted the potential detrimental consequences for the ACMD because of ministers' decisions in the two competitions concerned. These consequences included the ACMD carrying a vacancy, a lack of specialist knowledge amongst its members and the undermining of its independence and authority. These concerns - while valid - are not in scope for the Commissioner's consideration as they concern the functioning of the body itself. On the first two of these three points, the Governance Code provides no guidance on carrying vacancies. Ministers are within their rights to not fill a vacancy with an appointable candidate if they wish, and remain responsible and accountable to Parliament for any consequences from that decision (Para 3.1).
16. On the complainant's third point on independence and authority, the workings of any public body and its relationship with government is not for the Commissioner's consideration under the powers given in the Order in Council 2019. It is not in the Commissioner's lawful scope to make a judgment on whether the appointing decisions of

ministers make a public body less independent or authoritative. As such, he encourages ministers to work constructively with public body chairs to avoid any doubt as to a body's purpose to Government. This will do much to shore up trust in public bodies which do critical work on behalf of the public.

Consideration

2017 competition

17. Under the Misuse of Drugs Act 1971, appointments to the ACMD are made by the Secretary of State, at the recommendation of junior Home Office ministers. The Secretary of State may also consult other relevant stakeholders as they see fit. The ACMD reports jointly to the Home Office, Department of Health and Social Care and Public Health England. The Home Office's Public Appointments team ran this competition and consulted with officials of these relevant stakeholders throughout the process.
18. In 2017 the Home Office were looking to appoint 11 members to the ACMD, with expertise across enforcement, forensic chemistry, neuropharmacology, clinical psychology or general practice, prison/offender management, public health, third sector, pharmacy and law. The complainant was one of 77 applicants who applied by the deadline of 27 April 2017.
19. Officials conducted a pre-sift of the applicants; their views were fed to the Panel before shortlisting. The Panel consisted of a representative of the ACMD, the Home Office, and an independent member, in line with the Governance Code. They reviewed the pre-sifting by officials and confirmed 22 candidates for interview. The complainant was shortlisted and interviewed on 12 June 2017. Home Office officials gained the necessary clearance to move to interviews during the pre-election period and the immediate post-election period, with appointments decisions left until after the election for incoming ministers.
20. Principle D of the Governance Code on Merit states: 'All public appointments should be governed by the principle of appointment on merit. This means providing ministers with a choice of high quality candidates, drawn from a strong, diverse field, whose skills, experiences and qualities have been judged to meet the needs of the public body or statutory office in question.' The Commissioner is satisfied that the Panel's assessment of candidates at interview was fair and impartial and in line with Principle D. All candidates were asked standard questions and the Panel was able to ascertain merit in relation to the published criteria.
21. The candidate pack made clear to candidates the importance of declaring any political activity or conflicts of interest in their applications, and that 'public appointments require the highest standards of propriety, involving impartiality, integrity and objectivity.' The Panel considered potential conflicts of interest and any political activity declared by shortlisted candidates at the sift. At interview, candidates were asked whether they had done anything that if it came to light would cause embarrassment to either the Home Secretary or HM Government. There were no matters that the Panel wished to bring to the attention of ministers from this questioning at interview or candidate declarations.
22. On 18 July 2017, 12 candidates including the complainant were found appointable and put to ministers for their decision. Ministers were advised of the Panel's view that the

interview process did not highlight any information relevant to undermine any of the appointable candidates' credibility to perform the role, and that due diligence checks were to be completed. There was also no comment from the relevant stakeholders on the candidates at that time. Ministers were also reminded of the discretion in the Governance Code to appoint as many or few candidates to the 11 roles on offer, and their right to disagree with the advice of Panels if they so wish.

23. Due diligence was conducted by officials in August 2017 on the appointable candidates after they were interviewed. Restrictions on officials' internet access meant no social media was checked at this time, but google searches were conducted. This uncovered no issues to bring to the attention of ministers. At this time, due diligence processes were less robust than today, predating the Commissioner's advice to departments following his investigation into an appointment made by the Department for Education (DfE) in 2017. (In that advice, the Commissioner recommends due diligence is undertaken on all shortlisted candidates and probed at interview by the Panel.) Further due diligence checks were undertaken by special advisers which did include social media searches.
24. On 24 October 2017, the Home Secretary recommended the appointment of 10 of the 12 candidates who were found appointable; the complainant was not proposed for appointment. The following day, this decision was shared with Number 10. Number 10 confirmed they supported the 10 appointments proposed by the minister and candidates were informed of the outcome of the competition on 10 November.
25. The announcement of the successful appointees was made on gov.uk on 12 February 2018. (Eight were announced - one of the ten candidates recommended for appointment was unable to take up the post, and another appointment was delayed due to security vetting and announced later.) The Commissioner notes it is regrettable that the time between the deadline for applications and the announcement was nine months, three times longer than the aim outlined in the Governance Code para 7.8. While the timing of the 2017 general election meant some delay was inevitable, the time between the appointment decision and the announcement was itself three months.
26. Further advice from officials in December 2017 recommended a new decision over two appointable candidates whom the Home Secretary had not proposed for appointment, including the complainant. This advice stressed the two candidates' credentials and the need for 11 new members to the ACMD. The Commissioner is satisfied that there was a robust discussion amongst officials on the material found from the due diligence, including its relevance to the role on offer and the Principles of Public Life.¹ However, as discussed at para 23, the complainant was not given an opportunity to discuss these findings with the Panel at interview, as the due diligence was conducted *after* the interviews took place.
27. Following this advice from officials, the Home Secretary re-considered their previous decision and proposed the complainant for appointment on 10 January 2018. The Department consulted Number 10 on the proposed appointment on 19 January, as is a normal and regular part of the appointments process. The complainant was not told that ministers had revised their decision and were now recommending their appointment to

¹ Committee on Standards in Public Life. The Seven Principles of Public Life.
<https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

Number 10. The Commissioner agrees with the decision not to notify the complainant of this step in the process. The appointment decision was still pending and the Department was right not to raise expectations for the complainant.

28. In February 2018, Number 10 advised the Home Office they had not considered the revised decision, believing it not to be officially put to them that the Home Secretary was now recommending the appointment. Documentation which the Commissioner has examined does not make clear how the recommendation from the Home Secretary to Number 10 - which was sent on 19 January 2018 - was rescinded. Nevertheless, the evidence shows this is where consideration of the complainant's 2017 application ended.

2018 competition

29. OCPA understands the complainant was not aware of the decision that had been made on their 2017 application when they applied to the 2018 competition, launched in February 2018.
30. The 2018 competition followed a similar pattern to the 2017 competition. This time the Home Office was looking for eight members with various clinical specialisms. The ACMD consulted various other official bodies on its skills requirements. As previously, appointments to the ACMD were to be made by the Home Secretary, after a recommendation from junior ministers. Again, appointments to the ACMD were of Number 10 interest; that is, Number 10 would be consulted, along with other relevant stakeholders.
31. The Panel report of the sift on 19 March 2018 makes clear that members of the Panel declared their interests, and documented their understanding that the complainant had not been appointed by ministers in the last round. They decided to assess the complainant's 2018 application freshly in line with the criteria regardless of their previous application. The Commissioner supports this approach by the Panel. The complainant was shortlisted along with 13 others and the Commissioner can see the sift was fair and transparent against the published criteria, with ministers noting the shortlisted candidates and agreeing to move the competition forward. Ministers informed officials at this time that they would not require a meeting with appointable candidates before making a final decision on who to appoint (the Governance Code allows for this in para 3.1).
32. The candidate pack for the 2018 competition and subsequent letters to shortlisted candidates were clear that due diligence searches would be carried out and candidates should be prepared to discuss any findings. Candidates were asked upon applying to declare any conflicts of interests, political activity and social media activity. The complainant accepts that these checks were necessary and was prepared to discuss any matters arising. The Commissioner notes the good practice here - that the Home Office was clear with candidates that these checks would be carried out. Due diligence was undertaken by the ACMD secretariat on the 14 shortlisted candidates for the 2018 competition during April and May 2018, before the interviews scheduled for 4 and 6 June 2018.
33. The Commissioner understands departments independently decide the parameters of online due diligence research, and these parameters will change over time to reflect current concerns. In this instance, records of the due diligence process undertaken by

Home Office show all shortlisted candidates were searched online against the same standardised search terms. For google searches, the first 20 hits were checked. Most recent online activity and other public comments from candidates including on social media platforms were recorded. The complainant had no publicly accessible social media presence at this point. The candidates' self-declared conflicts of interest were also noted.

34. The Panel probed the due diligence material, and candidates' declared conflicts of interest, at the interviews. It is also clear that the due diligence material found after the 2017 interviews in respect of the complainant was also put to them for discussion at their 2018 interview.
35. Advice to ministers from officials in the submission following the interview and from the Panel chair's report was clear on the due diligence considerations for ministers resulting from these online searches and the subsequent discussions with candidates about acknowledging and managing these apparent conflicts. The Commissioner is satisfied that at this point, the process of finding relevant due diligence material, discussing it with candidates, its use by the Panel in their assessment, and the provision of the advice to ministers on the back of this, was robust and proportionate.
36. The complainant was one of nine candidates found appointable by the Panel at interview. Again, the Commissioner is satisfied with the approach of the Panel to assessing merit and is assured the process was in line with the Governance Code's Principle of Merit. These candidates were presented to ministers in July 2018. The Home Secretary delegated responsibility for deciding the appointments to the then Minister for Crime, Safeguarding and Vulnerability.
37. The minister made the decision to propose eight of the nine appointable candidates for appointment, including the complainant. Number 10 were consulted in August 2018.
38. A second round of due diligence was conducted on the complainant by Number 10 special advisors. This hitherto new information was presented back to Home Office ministers on 11 September 2018 and later that month, ministers decided not to recommend the complainant for appointment.
39. The other seven candidates found appointable by the Panel were appointed by ministers and notified on 29 October, and on the same day unsuccessful candidates were informed and offered feedback. The complainant had a phone call for feedback in November 2018 and asked for more information about the due diligence material considered in their application. This was provided to the complainant by officials in a face to face meeting in early 2019.

Decision

Due diligence process

40. In the 2017 competition, candidates were not informed that due diligence would be undertaken. It was conducted after interviews on candidates found appointable, and it was not shared with Panels in time for them to consider it in their assessment of candidates at interview. (It is only by virtue of being interviewed again in 2018 that the

Panel was able to bring the due diligence from 2017 to the complainant for discussion in 2018.)

41. The Commissioner recognises that this due diligence process in 2017 was in keeping with common practice across Departments at the time, brought to light in his investigation of DfE's recruitment to the Office for Students board in 2018. That investigation recommended that due diligence be explained to candidates, undertaken before interviews and then probed by Panels in a discussion with candidates in the context of the Principles of Public Life and managing real and perceived conflicts of interest. Candidates should know the issues that have been raised and be prepared to discuss and defend them if necessary, at interview.
42. The Commissioner's subsequent decision notices and advice to Departments has continued to press this advice. Departments have improved their approach to due diligence in line with those recommendations, including the Home Office.
43. Section 9.1 of the Governance Code is clear that conflicts of interest must be considered and discussed with candidates in the public appointments process:

"All potential conflicts of interest and how they might be managed must be discussed with an individual at interview. A potential conflict should not preclude a candidate from being shortlisted/appointed provided that appropriate arrangements are made."
44. Thus the Commissioner's view is that candidates should be given an opportunity to have the findings of due diligence put to them and for any 'appropriate arrangements' to be made over their future conduct. Panels should take that evidence into account when deciding who is appointable for the role. Further, and related to the Principle of Ministerial Responsibility, if ministers are concerned about material uncovered in due diligence, it may be that they are not convinced that an appropriate arrangement can be made to resolve a potential conflict, even if Panels are. The Governance Code allows for ministers to disagree with Panels (para 3.2) and to *not* make an appointment for any reason, including over due diligence concerns.
45. The due diligence matters uncovered in September 2018 by Number 10 - following interviews for the 2018 competition - was different to that found four months earlier by different officials, and was not presented to the complainant to discuss within the appointments process.
46. Number 10 has a legitimate close interest in a wide range of public appointments such as ACMD to ensure that suitable candidates are appointed. The issue is one of timing. While the Commissioner finds no fault in the initial process of due diligence in the 2018 competition, attention must be given as to how para 9.1 can continue to be followed when due diligence on candidates occurs following the interview process, i.e. the latter stages of a competition.
47. The key point in the complainant's argument put to the Commissioner is that explanations about the relevance and meaning of the second due diligence finding should have been raised and discussed at the time during the course of the competition two years ago. If due diligence is going to be routinely undertaken *following* interviews, or any other significant information about a candidate affecting their appointability comes to light, the

Commissioner believes that Departments must create a process to account for this as per para 9.1's stipulation that all conflicts of interest should be discussed with candidates. It should be the responsibility of the official who has chaired the interview panel to ensure that candidates are contacted to discuss with them any substantial new issues raised by due diligence after an interview, so they can respond.

48. This does not suggest any dilution of ministerial responsibility for appointments and their right to disagree with Panels. It would, however, give ministers fuller information as to the suitability of the appointment and allow natural justice for candidates to put their case forward and agree to 'suitable arrangements' if possible.
49. There is no suggestion that ministerial decision making has been less than robust or compromised in this case, nor that the candidate was wrongly not appointed, nor that the outcome would be any different if the complainant's representations were made at the time. The Commissioner's view is that the process could have been more transparent for the complainant, and the Commissioner would remind ministers and special advisers the Governance Code's Principles of Fairness, Selflessness and Openness are of relevance here.
50. A second element of the complaint concerns the complainant's view that the various material found at due diligence was misrepresented to ministers; that the due diligence process was not carried out 'fully or impartially', and the material was 'erroneous information not relevant to my application'; a 'misrepresent[ation]' of their views, and used 'selective and misleading' quotes from the source material online. The complainant has further concerns that due diligence appeared to be 'one person's opinion' and that it was considered to outweigh the complainant's professional credentials.
51. The Commissioner has sympathy for the complainant and can understand their frustration at having been found appointable by a panel, and then not appointed. Candidates should be aware of the very real chance in any public appointment competition that being assessed as appointable by a panel may not be followed by being appointed to the role by a minister. This is the process mandated in the government's Governance Code.
52. The Commissioner has made it clear his view that due diligence must be proportionate and reputational risk needs to be seen in the context of the advertised roles. There are a number of official agreements/protocols that set out the relationship between members of the ACMD, their advice to ministers, and others outlining the relationship between scientific advisors and policy making more generally. These documents were highlighted to applicants in the candidate packs for both competitions and make statements on advisory committee members' opinions and independence and how to manage these whilst providing advice to government. However, as with the appointment itself, the relevance and proportionality of due diligence material is a judgment for ministers. The material from the complainant's SAR shows officials' briefed ministers with the various viewpoints of stakeholders and this prompted internal debate on the due diligence findings for ministers to take an ultimate decision. The reports of the Panels in both 2017 and 2018 competitions show Panel members also took a view on the due diligence material. Opinions differed, and ministers made a final choice, in keeping with the Governance Code's provisions on the role of Panels and ministerial responsibility. It is not for the Commissioner to assess or judge ministerial choices unless they are made outside

of the Panel's recommendations, as described in para 3.2 of the Governance Code. This is not the case here.

53. Therefore, the Commissioner does not find the complainant's descriptions of due diligence are in of themselves breaches of para 9.1 of the Governance Code. Ministers are responsible for appointments and it is for them to determine the balance of factors in an appointment. They assess the relevance and accuracy of the material and can reject or accept the advice officials put to them. They can decide whether 'appropriate arrangements' can be made to manage a conflict, or not. **The Commissioner does not uphold this part of the complaint.**

Feedback

54. The complainant also was concerned over the lack of feedback on their applications to the ACMD. The Governance Code says 'All candidates should be offered constructive feedback if unsuccessful following interview by phone call where this is possible' (para 7.6). Records state, after the conclusion of the 2017 competition in April 2018 that the complainant sought feedback but it was not actioned at that time. Later, documents state the complainant had not chased feedback, so this was not volunteered. The Commissioner understands the Home Office has apologised for not providing feedback in their letter to the complainant on 27 May 2020.
55. The candidate requested feedback following the 2018 competition and did have two telephone conversations with officials in November 2018 and a face to face conversation in December 2018. These conversations explained the process their application had gone through, the role of advice from officials to ministers, the role of Number 10, how due diligence was conducted, and the ultimate responsibility ministers hold for appointments. This was a proactive and sensible conversation to have and the Commissioner encourages feedback to be transparent, timely and helpful for candidates to encourage them to apply for future roles.
56. However, the complainant wanted written feedback and more detail on the nature of the due diligence material, and when this was not forthcoming, submitted their first SAR in January 2019, which they received in July 2019.
57. **As such, the Commissioner upholds this part of the complaint in regard to timely feedback for the 2017 competition, but acknowledges the department has apologised and encourages it to continue to improve its feedback service to candidates, following interview.**

Conclusion and lessons learned

58. The Commissioner has upheld part of the complaint relating to feedback. The Commissioner has not upheld the part of the complaint relating to the due diligence advice considered by ministers, but has noted that there is room for improvement (see para 47). The Commissioner recognises the Department has developed guidance to support those responsible for conducting due diligence, bringing greater consistency to this part of the process. The matters raised by the complainant on the consequences for the ACMD from the appointment not being made, and the relevance and proportionality of due diligence findings, are important but the Commissioner has no remit to rule on them.

59. The Commissioner would like to stress to all Departments and appointing authorities that, while OCPA has no remit to challenge a minister's judgment in rejecting a candidate for appointment, the Commissioner believes candidates should be presented with the findings of any and all due diligence conducted upon them, so that they can reply to it in keeping with natural justice. This is a broader issue than this particular complaint and will be addressed separately. The policy around due diligence has developed rapidly in the last several years, but what has remained central are the Governance Code's principles of Openness, Selflessness and Fairness.

Annex A: OCPA letter to Home Office

Dear [REDACTED]

5 June 2020

We have been contacted by a complainant over matters relating to two competitions for the Advisory Committee on the Misuse of Drugs, one launched in 2017, and the other in 2018.

The complainant confirmed the final response from the Home Office to [REDACTED] complaint was received 29 May 2020 and they remain unsatisfied. They came to OCPA, and the Commissioner has considered whether the complaint is within scope to Investigate. The Commissioner has five days to make this consideration, that final day being today.

The Commissioner has decided some aspects of this complaint are within scope and will therefore investigate under Section 4(4) of the OIC (reflected in para 4.4 of the Governance Code). You will find his letter to the complainant confirming this decision attached for your reference. OCPA has received the material the complainant has received from the Home Office in the form of their SAR requests, and has allowed OCPA to examine this material in the course of the Commissioner's investigation.

The Commissioner's role in considering this complaint is to examine the practices and processes of the Home Office in running these two competitions and ensure that they have both adhered to the Governance Code. His role is not to reassess individual applications, to overturn ministerial decision-making, nor can he ask Departments to run competitions again nor remove appointees from their posts.

So the Commissioner can begin, we require the following documentation, which is outlined in our regulatory framework (in Annex A), for the Advisory Committee on the Misuse of Drugs competition, launched in 2017. The Commissioner acknowledges that the Home Office has already supplied OCPA with the documentation from the 2018 competition to the ACMD under Section 4(4) of the OIC last October, and so we will not be requiring that material again. All these documents for the 2017 competition must be unredacted.

- A list/record of all applicants, including the dates the applications were received
- Longlist note with details of those candidates sifted through to the next stage, with panel comments and/or scoring
- Shortlist note with details of candidates invited to interview, including comments and/or scoring from the Panel
- Submissions to any relevant Ministers at campaign closing, longlisting, shortlisting and candidates found appointable (post-interview) stages, including any due diligence conducted at these stages
- Confirmation from the Minister of those chosen to be appointed to these trustee roles.

Further, the Commissioner requires:

- Any record of Number 10 or Cabinet Office activity or discussion relating to the applicants for this campaign, including any comments from special advisors.

Please supply the above documents within 10 working days of this request – that is, 22 June 2020. Please let us know if retrieving information in this timeframe will be problematic. OCPA will then review and come back if the Commissioner requires anything further. If you could confirm for us the campaign ID for these two campaigns that would be helpful too.

After considering all the documentation, the Commissioner will draft a decision notice, which will be sent to you for review of factual inaccuracies. The final version will be published on OCPA's website.

You can read more about the Commissioner's processes in OCPA's [regulatory framework](#) and on the [complaints section of the OCPA website](#). If you have any questions about the Commissioner's complaint processes, please don't hesitate to drop me a line or give me a call and I will come back to you as soon as possible.

Annex B: Complaint acknowledgement

Dear [REDACTED]

5 June 2020

OCPA acknowledges your complaint to the Commissioner for Public Appointments in regards to the Home Office (HO) recruitment campaign for members of the Advisory Committee on Misuse of Drugs, received via email on 29 May 2020. The Commissioner notes your concerns centre around the treatment of your applications to two recruitment rounds for the body, conducted in 2017 and 2018. He notes that the ACMD is a regulated body under the Order in Council 2019.

The Commissioner only considers complaints where the complainant has first complained to the Department responsible for the public appointments process concerned and, having completed their complaints procedure, received a response to the complaint. Having received from you on 29 May a copy of the letter you have received from the HO about your complaint, dated 28 May 2020, the Commissioner is assured that the HO's own complaints process has ended and you remain unsatisfied.

The Commissioner has also noted that the competitions you are making a complaint about concluded in 2018. The Commissioner only considers complaints relating to processes within the last 12 months unless there are exceptional circumstances relating to the timing of the complaint. Because the HO provided you with a conclusion about your complaint only recently, and the SARs you made brought more information to light about those competitions after they concluded, the Commissioner has considered that your complaint meets these exceptional circumstances.

Under para 4.4 of the OIC, the Commissioner can investigate complaints about public appointments procedures and practices which concern:-

- An individual's experience as an applicant
- The way a department or other responsible organisation has handled an appointments process
- If it appears that the Governance Code may not have been followed.

The Commissioner considers that some aspects of your complaint – specified in Appendix 6 you sent to OCPA on 29 May - meet these criteria and therefore he will investigate the procedures and practices of the two competitions to the ACMD specified above. Please consider this letter a formal acknowledgement that he will investigate your complaint and as such, this letter will be shared with the Home Office, as the department concerned.

We note you had previously used the OCPA complaints form to make a complaint to OCPA back in February; it appears both this and Appendix 6 raise the same points so please let me know if you are satisfied that the Commissioner takes your complaint to be contained with Appendix 6 for practicality. We assume you are content for the Commissioner to also use the personal data material contained within your SAR responses from the Home Office in his

investigation, as you have sent it to OCPA with your complaint. Please inform us if that is not the case.

The Commissioner's role in investigating complaints is to consider whether the Governance Code has been adhered to in the appointment procedures and practices of the competitions concerned. His investigation cannot examine other matters, including the perceived authority and independence of the ACMD. He notes the HO, in their letter to you on 28 May 2020, has been accurate in their description of the role of Ministers, Advisory Assessment Panels and due diligence, in public appointments. The Commissioner's remit to investigate complaints does not allow him to ask departments to run a closed competition again. Nor does he have the remit to ask Ministers to revise their decisions, appoint particular people or remove successful appointees from their posts. You can read more about the Commissioner's regulatory framework and the process he uses to consider complaints on his website, here: <https://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2019/01/OCPA-Regulatory-Framework-1.pdf>

The next steps in the Commissioner's investigation process is for OCPA to inform the Home Office of the Commissioner's decision to investigate and send them a copy of this letter. We will request the material from the two ACMD competitions the Commissioner needs to investigate your complaint. They will have 10 working days to comply with this request. During the course of the Commissioner's investigation, we may also request more information from you. Please let me know if that is ok if we make contact with you for that reason. We will also notify you when OCPA publishes the Commissioner's decision notice on his website.

I hope this letter explains the Commissioner's remit and role in relation to your complaint satisfactorily. Please contact me if you have any questions about OCPA or the Commissioner's investigations process, and I will come back to you as soon as I can.