

## **Investigation of the ministerial appointment process relating to the chair of the Charity Commission, a public body of the Department for Digital, Culture, Media and Sport.**

1. This report sets out the findings of an investigation by the Commissioner for Public Appointments (the Commissioner) into the 2021 competition to find a chair for the Charity Commission, a public body of the Department for Digital, Culture, Media and Sport (DCMS). The Commissioner's remit and approach is set out in the annex.
2. The conclusions are set out from page 6. In summary:
  - The Commissioner finds that this competition did not breach the government's Governance Code on Public Appointments (the Governance Code). The assessment of candidates was consistent and fair, based on the knowledge of the Panel at the time.
  - The Commissioner, like others, is disappointed in the failure of the appointment and the impact this had had on all parties. The competition was not perfect, with long delays and lessons to be learned, but the Commissioner sees no impropriety in the process.
  - The appointee involved has apologised to the DCMS Select Committee for his failure to declare an allegation against him which, when revealed after his appointment, led to his resignation.
  - Appointing departments have a variety of methods from standard recruitment practices to ascertain the suitability of candidates. These should be proportionate and based on risk, with the understanding that none are infallible.

### **Background**

3. Martin Thomas was announced as the government's preferred candidate for chair of the Charity Commission on 2 December 2021. He appeared in front of the Digital, Culture, Media and Sport Committee ('the Committee') for pre-appointment scrutiny on 9 December. The Committee approved the appointment of Mr Thomas on 10 December and government confirmed his appointment to the role.
4. Following the announcement, there were media reports about the circumstances under which Mr Thomas left his chairmanship of a charity - Women for Women International UK - in May 2021. It was alleged he had been the subject of three misconduct complaints. The charity filed a serious incident report with the Charity Commission over one of the complaints, which was partly upheld.
5. On 17 December, Mr Thomas resigned from the role of chair of the Charity Commission, before formally taking it up. The media reported that DCMS and the Committee were not aware of the misconduct complaints against Mr Thomas. Media also reported that Mr Thomas had released a statement, saying he made an error of judgement on a technical

omission during the recruitment process for the role.<sup>1</sup> A letter from Mr Thomas to the Committee stated he apologised to the Committee for this omission, and resigned from the role by mutual consent with DCMS.<sup>2</sup>

## Findings

6. The role of chair of the Charity Commission was advertised from 9 March to 16 April 2021. As the role was considered a Significant Appointment<sup>3</sup>, the Advisory Assessment Panel ('the Panel') included a Senior Independent Panel Member (SIPM), and the Panel was chaired by DCMS officials. The job description stated the Chair of the Charity Commission would have a responsibility to lead the Board, including:

'...ensuring that the Board and its members observe the highest standards of propriety and operate in accordance with the Commission's Governance Framework and the Nolan principles of standards in public life.'<sup>4</sup>

The advertisement also included a link to the Cabinet Office's Code of Conduct for Board Members of Public Bodies.<sup>5</sup>

7. Candidates were asked to declare any conflicts or perceived conflicts of interest in their application documents,<sup>6</sup> and to consider 'interests they may have that might cause questions to be raised about their approach to the business of the Charity Commission'. Candidates were also informed that failure to declare conflicts would disqualify an applicant for being considered for a public appointment.<sup>7</sup>
8. Mr Thomas declared his positions on a number of charitable boards. He noted that the Prime Minister was a patron of one of these charities; and he would resign from another, charity, to manage the conflict that may arise.

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<sup>1</sup> The Times (17 December 2021). New head of Charity Commission quits after bullying investigation. <https://www.thetimes.co.uk/article/new-head-of-charity-commission-quits-over-inappropriate-behaviour-pc7kzcxfn>

<sup>2</sup> Letter from Mr Martin Thomas to Julian Knight MP (10 January 2022).

<https://committees.parliament.uk/publications/8589/documents/86707/default/>

<sup>3</sup> 'Significant appointments' are those competitions that require a Senior Independent Panel Member to be a member of the Advisory Assessment Panel. A list of these appointments is available here: <https://39h2g54dv7u74bwyae2bp396-wpengine.netdna-ssl.com/wp-content/uploads/2017/07/20170706-HMG-List-of-significant-appointments-1.pdf>

<sup>4</sup> Charity Commissioner advertisement, Cabinet Office Public Appointments Website.

<https://publicappointments.cabinetoffice.gov.uk/appointment/charity-commission-chair-2/>

<sup>5</sup> Cabinet Office (June 2019). Code of Conduct for Board Members of Public Bodies.

<https://publicappointments.cabinetoffice.gov.uk/wp-content/uploads/2021/03/Code-of-Conduct-for-Board-Members-of-Public-Bodies-2.pdf>

<sup>6</sup> DCMS - Public Appointments to Arm's Length Bodies. 'Declaration of conflict of interest form'.

<sup>7</sup> Charity Commissioner advertisement and role specification, Cabinet Office Public Appointments Website and

<https://publicappointments.cabinetoffice.gov.uk/wp-content/uploads/2021/04/CC-Chair-Role-Specification-final.pdf>

9. Applicants were not asked to provide details of any referees in their application, and DCMS have confirmed they did not obtain references for any applicants.<sup>8</sup>
10. Applicants were told that due diligence on publicly available information would be undertaken on those shortlisted for interview, and might be discussed at interview (e.g public statements, social media and blogs).<sup>9</sup> The Commissioner is satisfied that DCMS undertook due diligence checks as explained to candidates.
11. Shortlisted candidates were also checked against public registers to ascertain if they had previously been disqualified as a director, declared bankrupt or removed as a trustee from a charitable organisation. These checks resulted in a nil return for Mr Thomas. DCMS also undertook checks on the publicly available records of charities with which Mr Thomas was associated and DCMS said no 'red flags' or areas to pursue further were identified.
12. 37 people applied for the role and seven candidates were interviewed on 13 and 24 September 2021. Ministers were presented with a choice of appointable candidates and the Secretary of State announced the government's preferred candidate for the role on 2 December.
13. The Panel's report from the interviews details the assessment of the candidates against the essential criteria advertised. The Commissioner is satisfied the Panel used the published criteria to assess all candidates consistently and fairly, in keeping with Principles D and H of the Governance Code - the principles of merit and fairness respectively.<sup>10</sup>
14. In ascertaining a candidate's reputation or public standing, panellists are required to ask candidates direct questions about propriety in interviews. Para 9.1 of the Governance Code states:

'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 and are expected to adhere to the Code of Conduct for board members of public bodies. The Advisory Assessment Panel must satisfy itself that all candidates for appointment can meet these standards.'
15. Panels ask for relevant information directly from candidates in their interviews about their suitability for public life. It is up to the Panel and ministers to define how they wish

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<sup>8</sup> DCMS Permanent Secretary to the DCMS Select Committee on 11 January 2022.

<https://committees.parliament.uk/oralevidence/3264/pdf/>

<sup>9</sup> Text from the Role Specification.

<sup>10</sup> Para 2.1 of the Governance Code, Principle D. Merit: 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. Principle H. Fairness: Selection processes should be fair, impartial and each candidate must be assessed against the same criteria for the role in question.

to probe the candidates.<sup>11</sup> It is open to Panels to include specific questions on propriety, for example, about investigations into their behaviour by any regulators; whether allegations that have been made against them or how they see the relationship with their former employers or colleagues. The Governance Code mandates that the questions must always be put to candidates consistently and fairly.

16. The Commissioner is satisfied the Panel report shows that Mr Thomas ‘...confirmed no conflicts of interest in addition to those already declared, nor stories in the public domain the Panel should be aware of.’ The due diligence on Mr Thomas did not find any issues that the Panel should probe further. The Commissioner understands that all interviewees were properly asked if there were any other matters pertaining to standards in public life that candidates wished to discuss with the Panel. The Commissioner finds no flaws in the Panel’s assessment of candidates based on the information received.
17. The recruitment process for this competition did not undertake any reference checks. Such checks are just one of a number of different kinds of pre-employment checks that employers can consider. Advice from the Chartered Institute of Personnel and Development (CIPD) is that it has become ‘common practice for organisations to request at least one reference from the individual’s current or most recent employer.’<sup>12</sup>
18. Organisations are generally under no legal obligation to obtain an employment reference; nor is there an automatic right to receive a reference from a previous or current employer. However, case law has established that employers have ‘at least a moral obligation’ to provide references. CIPD recommends taking references after a conditional offer is made, allowing organisations to ‘withdraw the employment offer if the references are not deemed satisfactory.’<sup>13</sup>
19. The Commissioner’s research into live public appointments competitions,<sup>14</sup> and answers to recent Parliamentary Written Questions,<sup>15</sup> shows there are differing approaches on the taking of references in public appointments. Seven HM government departments<sup>16</sup>

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<sup>11</sup> Para 5.3 of the Governance Code: ‘The Advisory Assessment Panel should agree with the Minister its assessment strategy for determining merit against the selection criteria that the Minister has agreed. The assessment process should be appropriate to the recruitment and reflect the nature and significance of the role. A variety of techniques, both less formal and more expert, may be used to assess candidates fairly against the published selection criteria for the role.’

<sup>12</sup> CIPD (December 2020). Pre-employment checks: guidance for organisations.

[https://www.cipd.co.uk/Images/pre-employment-checks-guide-dec-2020\\_tcm18-51572.pdf](https://www.cipd.co.uk/Images/pre-employment-checks-guide-dec-2020_tcm18-51572.pdf)

<sup>13</sup> CIPD, December 2020.

<sup>14</sup> As advertised on the Cabinet Office Public Appointments website as on 13 January 2021.

<https://publicappointments.cabinetoffice.gov.uk/>

<sup>15</sup> ‘Questions from Kevin Brennan MP, put to 20 government ministers between 20 and 25 January 2022, asked ‘whether her/his Department seeks references for candidates appointed to public positions which fall under the remit of the Commissioner for Public Appointments.’

<https://questions-statements.parliament.uk/>

<sup>16</sup> The Attorney General’s Office answer to this Parliamentary Question referenced the practice undertaken in their last public appointment competition rather than their policy - OCPA has therefore excluded them from this group of seven and included them amongst the ‘sometimes’ group.

and the Welsh Government<sup>17</sup> are known to take references routinely. Most of these ask for at least two names, and some suggest previous employers specifically. Four departments, including DCMS,<sup>18</sup> do not take references; and six sometimes do, depending on the role.<sup>19</sup>

20. References are limited and can take different forms. It is the Commissioner's view that references can form part of the picture of a candidate but should not be the determining factor in the view a Panel forms on a candidate.
21. Providing references is covered by legal provisions in the Data Protection Act 1998. Referees can only be approached by a future employer with an applicant's consent. There is no guarantee the level of detail a future employer may request will be granted. Providing anything more than start and end dates to provide details of performance, attendance or conduct requires explicit consent from the individual and will be at the organisation's discretion.<sup>20</sup>
22. There is no standard policy for what references will be taken in public appointments competitions, and even if there were, it would not produce a standard result. The Commissioner's view is that obtaining references may provide ministers with a fuller picture of candidates. Therefore it might be sensible for departments to explore carrying out reference checks in line with established recruitment practises. However, the Commissioner acknowledges that this is not guaranteed to uncover detailed information about an applicant, for the reasons outlined above.
23. DCMS' Permanent Secretary has promised to learn from other departments about their experience of taking references in public appointment competitions, and its usefulness.<sup>21</sup> The Commissioner welcomes this immediate step taken by the Department to learn lessons from this incident.
24. Applicants must think carefully about matters of propriety and the expected standards in public life when being questioned in an interview. The Commissioner's view is that the taking of references does not and will not remove the requirement to ask applicants to declare anything of note at the application and interview stage of the process. The Commissioner is satisfied that all applicants for this competition were asked such questions at their interviews. The answers to those questions will naturally be limited by what applicants know of themselves and their reputation, their understanding of the public interest and what they are willing to disclose. Mr Thomas has apologised for his 'error of judgement on a technical omission'.<sup>22</sup>

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<sup>17</sup> As noted in current and recent Welsh Government public appointments competitions as advertised on the Cabinet Office Public Appointments website.

<sup>18</sup> DCMS were not asked a Written Question for their policy but their policy was confirmed by the DCMS Permanent Secretary to the DCMS Select Committee on 11 January 2022.

<sup>19</sup> 'Questions from Kevin Brennan MP, 20 and 25 January 2022.

<sup>20</sup> CIPD, December 2020.

<sup>21</sup> DCMS Permanent Secretary, 11 January 2022.

<sup>22</sup> Letter from Mr Martin Thomas, 10 January 2022.

25. DCMS' Permanent Secretary told the Committee that, with hindsight, the Department recognised it could have checked with the Charity Commission to see whether it had any record of issues flagged with any charities the shortlisted candidates were involved with.<sup>23</sup> The Commissioner agrees this is a sensible and proportionate step in regards to this public body in particular. Departments may wish to consider contact with other regulators where appropriate.
26. There are legal requirements placed on organisations to carry out certain other pre-employment checks. The Commissioner notes advice from CIPD which advocates a case-by-case approach to these checks.<sup>24</sup> Some roles in public bodies require higher pre-employment checks to gain the appropriate security clearance, for example where they are handling sensitive information. Enhanced checks at this stage can delay the announcement of appointees.<sup>25</sup>
27. These 'on boarding' checks are undertaken by the Arms-Length Body (ALB) and the sponsor team in the department, as an HR function. In this case, DCMS confirmed it did not conduct pre-employment checks of this nature on the appointee in question. It is the Commissioner's understanding that the Charity Commission was responsible for final employment checks, after ministers announced the appointment.

## Conclusions and recommendations

### *Compliance with the Code*

28. The Commissioner finds this competition did not breach the Governance Code. Its assessment of candidates was consistent and fair, based on the knowledge of the panel at the time. The Commissioner is satisfied on the basis of this investigation that candidates were probed appropriately by the Panel in the interviews.

### *Pre appointment scrutiny*

29. The Commissioner considers that the discretion for taking references should remain with appointing departments. Other employment checks, like right to work or checks to obtain the requisite security clearance for a role, should remain with ALBs and sponsor teams in departments.
30. The Commissioner recognises the level and timing of pre-employment checks can present a tension in the case of those appointees required to go through pre-appointment scrutiny.<sup>26</sup>

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<sup>23</sup> DCMS Permanent Secretary, 11 January 2022.

<sup>24</sup> CIPD, December 2020.

<sup>25</sup> Commissioner for Public Appointments (July 2018). Thematic Review: Concluding competitions within the three month ambition'.

<https://39h2q54dv7u74bwyae2bp396-wpengine.netdna-ssl.com/wp-content/uploads/2019/07/Final-Thematic-Review-The-Three-month-aspiration.pdf>

<sup>26</sup> Pre-appointment scrutiny by select committees applies to specified appointments - for these posts, the added level of scrutiny of the overall process provides an additional safeguard to verify that the recruitment meets the principles set out in the Governance Code. Cabinet Office (January 2019). 'Pre-appointment scrutiny by House of Commons select committees. See:

31. In this case, the Committee's Chair thought he and his Committee members had been 'made a fool of.'<sup>27</sup> Any public appointment is contingent upon pre-employment checks being completed and satisfactory. The announcement of the government's preferred candidate; the Select Committee confirming his appointment; and the government's announcement of the successful appointee were all made in advance of the full completion of pre-employment checks.
32. This investigation has enabled the Commissioner to take a view on the ways departments approach the assurance of candidates generally. The Commissioner found no evidence that the suite of pre-employment checks would have been certain to reveal the piece of information that eventually led to Mr Thomas' resignation. Moreover, there is always a risk that failure to obtain the right security clearance, or some other unanticipated issue, could rule an appointee out, even after announcement.
33. Following this incident, the Commissioner suggests that appointing departments should reconsider how to best manage the pre-employment checks which can be lengthy. Departments should consider when it is most appropriate to announce their preferred candidates, and should discuss with Select Committees how they are managing these checks in relation to the Committee's pre-appointment scrutiny.

#### *Applicants' duty to declare and the Panel's duty to question*

34. The appointee involved has apologised to the DCMS Select Committee for his failure to declare an allegation against him which, when revealed after his appointment, led to his resignation.
35. The information received from candidates is dependent on their understanding and openness; anything gleaned from this process will be considered by ministers alongside a range of information before making a decision on who to appoint. In this case, the Commissioner's view is there is no certainty that different questions would have produced a different outcome. DCMS has made commitments to learn from other departments and this incident, to improve the information it receives ahead of ministers making an appointment decision. The Commissioner welcomes this sharing of best practice.

#### *Timeliness and delays*

36. The Commissioner notes this competition was subject to media speculation and interest from the start. Delays meant speculation grew. The Governance Code proposes that departments conclude competitions within three months of the advertisement closing. This provision has candidate care at its core. This provision seeks to ensure that both

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/771845/Cabinet-Office-Guidance-pre-appointment-scrutiny-of-public-appointments.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/771845/Cabinet-Office-Guidance-pre-appointment-scrutiny-of-public-appointments.pdf)

<sup>27</sup> The Independent (23 December 2021). 'Culture and media appointments process "shambolic", MP says'.

<https://www.independent.co.uk/news/uk/julian-knight-paul-dacre-government-charity-commission-ofcom-b1981665.html>

candidates and Panel members are treated with respect. Timeliness also provides confidence in a well-run, robust system.

37. Sometimes delays cannot be avoided, and the Commissioner understands extra time may be required where, for example, there is a change of minister part way through a competition as happened in this case. However, in this competition there were delays that are much less understandable. The Commissioner urges DCMS and all departments to plan their competitions well in advance, and ministers to treat decisions in these cases not only with importance, but with urgency.

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### Annex - the Commissioner's remit and methodology

1. This report has been made under section 4(4) of the Public Appointments Order in Council 2019, which permits the Commissioner to conduct an inquiry into the procedures and practices followed by an appointing authority in relation to any public appointment whether in response to a complaint or otherwise.<sup>28</sup> Its purpose is to consider whether the appointment process followed the principles set out in the government's Governance Code for Public Appointments (the Governance Code),<sup>29</sup> and make recommendations where appropriate.
2. This investigation and report focuses on the process and practices of the appointing department - DCMS - with a view to finding out what happened in this case and any lessons that can be learned to avoid similar outcomes in future.
3. The Commissioner's investigation and this report do not consider any matters relating to the conduct of any applicant or appointee outside of the competition process. It does not consider the work or remit of the Charity Commission, or any of the other charities involved. The Commissioner's role is not to second guess the Panel or ministers about whether candidates are appointable, nor to investigate any allegations subsequently made against them.
4. The Commissioner refers to standard practices in general recruitment in this notice. While public office holders are not employees and have unique conditions of employment,<sup>30</sup> the Commissioner believes general principles of recruitment are applicable to public appointments insofar as they can guide what is reasonable to expect of applicants and departments making these appointments.

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<sup>28</sup> Order in Council (6 November 2019).

<https://publicappointments.cabinetoffice.gov.uk/wp-content/uploads/2019/11/Public-Appointments-No.-2-Order-in-Council-2019.pdf>

<sup>29</sup> Governance Code on Public Appointments (December 2016).

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/578498/governance\\_code\\_on\\_public\\_appointments\\_16\\_12\\_2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/578498/governance_code_on_public_appointments_16_12_2016.pdf)

<sup>30</sup> 'The appointment of a person who is to be an employee of a public body or public office is not a public appointment for the purposes of this Order except so far as specified in Schedule 2. In this paragraph, "employee" has the same meaning as in section 230(1) of the Employment Rights Act 1996(b).' Public Appointments Order in Council 2019.



5. DCMS was notified of the Commissioner's decision to investigate this competition on 21 December 2021 and asked to provide relevant documentation. This was provided on 7 January. DCMS supplied further information about the pre-employment checks as requested by the Commissioner on 16 February.
6. The Commissioner was called to appear in front of the DCMS Select Committee to discuss the matter on 11 January. He noted his regret that the process to find a new Chair had been severely delayed, and ultimately failed on this occasion. He noted that competitions fail from time to time, for a variety of reasons, and his investigation would consider what happened in this particular case.
7. This report details the Commissioner's findings from the records of due diligence, the Panel report from the interview, a letter from Mr Thomas to the DCMS Select Committee,<sup>31</sup> the views of the Senior Independent Panel Member (SIPM) for the competition, evidence from the DCMS Permanent Secretary to the Committee, and written parliamentary questions. It also examined the advertisement and information provided to applicants for the role.

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<sup>31</sup> Letter from Mr Martin Thomas, 10 January 2022.