

Public Bodies Information Update – No 109

Focus: Public Sector Pay Policy – the acceptance and remuneration of public appointments / Non-Executive Directorships by senior staff of public bodies

To provide guidance to sponsor teams: when making public appointments; and, when a full-time senior employee of a public body is considering accepting a public appointment or Non-Executive Directorship (in the public, private or third sector) – particularly where remuneration is offered.

To advise sponsor teams: The SG wishes to promote and encourage senior officers and appointees making appropriate contributions to the work of other bodies – thereby broadening their experience; allowing them to give other bodies the benefit of their expertise; and enhancing the contribution they can make to their own employer. However, it is important to ensure that there is:

- no conflict of interest;
- the time commitment is appropriate; and
- arrangements for remuneration are seen to be appropriate.

This Information Update deals with how to ensure these conditions are met.

Sponsor teams dealing with **regulated bodies**¹ in the consideration of public appointments are reminded of the availability of the SG Public Appointments Centre of Expertise (PACE) template application forms and letters of appointment; of the need to consider any other public appointments and Non-Executive Directorships held by prospective appointees; and the remuneration of the post.

The PACE template application forms and letters of appointment for regulated bodies have been extended to require prospective appointees to specify other *non-public sector* Non-Executive Directorships (the application forms and letters of appointment already require prospective appointees to specify other *public sector* public appointments).

Sponsor teams dealing with **non-regulated bodies** are also reminded of the availability of the PACE template application forms and letters of appointment; the potential for these to be used as a basis for their own application forms and letters of appointment; the need to consider other public appointments and Non-Executive Directorships held by prospective appointees; and the remuneration of the post.

The SG Public Bodies Unit (PBU) guidance advises the sponsor team of the public body to which the public appointment is being made to consult, early in the appointments process, the sponsor team (where appropriate) of the public body which employs the individual or to which the individual is currently appointed.

¹ Regulated by the by the Public Appointments Commissioner for Scotland. A full list of regulated bodies is available at: www.publicappointments.org/regulating-appointments/regulated-bodies/

Action for Sponsor Teams: *Sponsor teams are reminded of the need to consider the following matters when –*

- ***making a public appointment where a prospective candidate is already a full-time senior employee² of another public body, or***
- ***when a full-time senior employee of a public body they sponsor is considering accepting a public appointment or Non-Executive Directorship (elsewhere in the public, private or third sector):***

Where such a person is being considered for or is considering an appointment and –

- ***remuneration (daily fee or other payment) is offered; and/or***
- ***the number of days expected commitment is more than 1.5 days per month (18 days per annum),***

then a business case must be submitted and approval sought from the SG Remuneration Group.

Issues to be considered by sponsor teams:

Conflict of interest

Conflict of interest is an issue to be resolved between the individual and the two organisations concerned, but this should be something the relevant sponsor team should take into account when an appointment is being made. Where appropriate, the sponsor team of the appointing body should consult the sponsor team(s) of the body which employs the individual or to which the individual is currently appointed.

PACE ensures there is clear reference to other appointments, other commitments and conflict of interest in the template application forms and letter of appointment in relation to those bodies which are regulated. Non-regulated bodies are not covered formally by this process, but sponsor teams are encouraged to refer to PACE, making use of the templates available.

Public bodies should also have in place procedures for registering conflicts of interest and other appointments, including a Code of Conduct for their staff covering disclosure and conflict of interest matters.

Time commitment

The question of time commitment is also an issue for the individual and the two organisations concerned and it would be for them, in consultation with the relevant sponsor team(s), to establish arrangements to ensure that any additional work did not detract from a public sector employee's (or public appointee's) ability to carry out their main duties for their employer (or the body to which they are appointed). In the case of regulated public appointments, where any doubt about time commitment arises, it is an issue for the selection panel to clarify with the applicant. The requirement to examine these issues is set out in the PACE templates that public bodies use for application forms and letters of appointment.

² A senior employee is considered to be at Director or Chief Executive level in a Scottish public body. A part-time employee would be free to accept a public appointment or non-executive directorship outwith their contracted hours of their main employer.

Remuneration

It is important to remember that the principal objective of offering a daily fee to a public appointment is to increase diversity.

In addition to the consideration of conflict of interest and time commitment, sponsor teams and public bodies should also consider the presentational aspects of:

- the potential for (or perception of) double payment from the public purse;
 - the potential for (or perception of) the total reward to appear inappropriately high;
 - the potential for (or perception of) a private sector body to get public sector expertise at no cost.
1. If the appointment is in the **public sector** or **third sector** and is **unpaid**: then the issues to consider are simply those of conflict of interest and time commitment.
 2. If the Non-Executive Directorship is in the **private sector** and **unpaid**; and there are no concerns over conflict of interest and time commitment: the remuneration issue will be simply one of presentation – that a private sector body is gaining public sector expertise at no cost.
 3. If the appointment is in the **public sector** (and possibly **third sector**, depending on the extent of Government funding to the body concerned) and it is proposed that it be **paid**; and there are no concerns over conflict of interest and time commitment: then the remuneration issue will be the potential (or perception of) double payment from the public purse and the potential for (or perception of) the total reward for the individual concerned to appear inappropriately high.
 4. If the Non-Executive Directorship is in the **private sector** (and possibly **third sector**, depending on the extent of Government funding to the body concerned) and it is proposed that it be **paid**; and there are no concerns over conflict of interest and time commitment: the remuneration issue will be the potential for (or perception of) the total reward for the individual concerned to appear inappropriately high.

Such concerns will need to be taken into account by (where relevant):

- the sponsor team making the public appointment; and
- the sponsor team of the public body which employs the individual being considered for the public appointment or Non-Executive Directorship.

The need for approval by the SG Remuneration Group where remuneration is being offered and/or expected commitment is more than 1.5 days per month

Where the individual concerned is a full-time senior employee of a public body and remuneration (daily fee or other payment) is offered and/or the number of days expected commitment is more than 1.5 days per month (18 days per annum), then a business case must be submitted and approval sought from the SG Remuneration Group (please copy to PACE, PBU and FPP).

- Where this is the case and the individual is:
 - being considered for a public appointment - the sponsor team of the public body to which the appointment is being made will be the lead in developing the business case. The views of the sponsor team of and the public body employing the individual should also be included in the business case.

- considering accepting an appointment (Non-Executive Directorship to another public body (*not* sponsored by the SG) or in the private sector) - the sponsor team of the public body which employs the individual should be the lead in developing the business case.

Sponsor teams may consider an alternative to the matter of remuneration by suggesting that this be paid direct to the public body employing the individual considering the appointment.

The payment of any daily fee must be made in accordance with the Scottish Public Finance Manual (SPFM) section on Tax Planning and Tax Avoidance (www.scotland.gov.uk/Topics/Government/Finance/spfm/taxavoidance).

Retrospective application of guidance

This guidance does not apply retrospectively and applies to new appointments only. However, such matters should be considered by sponsor teams when the appointment (public, private or third sector) comes up for renewal.

Application to members of the Senior Civil Service (SCS) and appointments to Health bodies

The expectation for members of the SCS taking on public appointments or other Non-Executive Directorships is that such positions should be on a non-remunerated basis, but each case should however be considered on its merits. The SG Senior Staff Team should be contacted on this as required. Any member of the SCS considering a public appointment/ Non-Executive Directorship should discuss the time commitment and the potential for any conflict of interest with their line manager in advance of applying for the opportunity. Guidance on the acceptance of posts in outside occupations is set out on the Scottish Government intranet.

No further action is considered required in relation to members of the SCS and Health bodies.

Where can I access more information:

For further advice please contact:

Finance Pay Policy (FPP)

Telephone: 0131 244 7346

Email: financepaypolicy@scotland.gsi.gov.uk

Website: www.scotland.gov.uk/publicsectorpay

Public Appointments Centre of Expertise (PACE)

Telephone: 0800 0158449 / 0131 244 3033

Email: public.appointments@scotland.gsi.gov.uk

Public Bodies Unit (PBU)

Telephone: 0131 244 4375

Email: publicbodiesunit@scotland.gsi.gov.uk