

OIA 20220364

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From: Caralee McLiesh [TSY]
Sent: Wednesday, 22 June 2022 10:57 am
To: Leilani Frew [TSY]; Andrew Rutledge [TSY]; Gael Webster [TSY]
Cc: Bryan Chapple [TSY]; Lisa Barrett [TSY]
Subject: Incident report

[IN-CONFIDENCE]

Kia ora tātou

Very many thanks for the speedy turnaround of the letter for MoF overnight, and finalisation this morning, I appreciate the rapid response.

I am keen that we also have a quick incident report and capture lessons learnt and any changes that need to be made to processes ahead. As always, it's important this is not at all punitive and staff are supported – just an open and curious approach to understand the events and examine how to improve so it doesn't happen again.

Lani could you please lead this, coordinating with Bryan as needed for any steps in his group? I am copying Lisa as well as she will have examples of previous incident reports and we are centring the coordination/records of the incidents process in Jane's team going forward.

I have my one on one with MOF tomorrow and expect he will ask about this, so if there are any initial thoughts that would be great—although at this point I plan to simply emphasise the messages in the letter.

Ngā mihi nui
Caralee

Caralee McLiesh ([she/her](#))

Te Tumu Whakarae mō Te Tai Ōhanga | Secretary and Chief Executive - The Treasury

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Incident report: Failure to disclose risks to the Minister of Finance regarding conflicts of interest – October 2021 and June 2022

1. This report provides background on the process for appointing Rodger Finlay to the board of the Reserve Bank (RB) in October 2021 while he was chair of NZ Post Ltd, and the subsequent reappointment of Mr Finlay as chair of NZ Post in June 2022.
2. It sets out future steps that will be taken to avoid a reoccurrence of this event.

RB Appointments October 2021

3. The Treasury's Governance and Appointments Team (G & A) was responsible for administering the appointments to the RB Transition committee and new RB board, and worked with Bryan Chapple on the first round that led to Rodger Finlay's appointment.
4. Conflicts of interest were closely considered throughout this process. G & A Manager Gael Webster sought statement of conflict protocols from the Chair of the RB board, set up the process for the appointment of Transition board members and the new board, and contracted Kerridge & Partners to run the recruitment process, initially for the Transition board.
5. Kerridge met with the Treasury and RB Governor where conflicts were discussed, and Kerridge was provided with the Bank's conflict protocols.
6. G & A Senior Advisor Murray Costello then picked up this workstream as Gael had a conflict when candidates were identified.
7. Kerridge discussed conflicts with the proposed candidates for shortlisting. Mr Finlay confirmed he had no conflicts and he was included in a shortlist approved by the Minister for interviews.
8. The due diligence interview with Mr Finlay proceeded with a panel comprising Sir Brian Roche as chair, Neil Quigley and Tania Simpson from the current RB board, Caralee McLeish, Wayne Byres (chair of the Australian Prudential Regulation Authority), and Murray Costello. The panel knew that Mr Finlay was chair of NZ Post which owned a majority share in Kiwi Group Holdings Ltd, which in turn owned Kiwibank, which is subject to regulation by the RB.
9. Sir Brian recalls conflicts being discussed but it was considered Mr Finlay was not conflicted. The RB's Conflict of Interest policy stated that Mr Finlay would have a conflict that should be declared if he was a director of Kiwi Group Holdings Ltd, or a director of its subsidiary banking company Kiwibank Ltd. Neither of those situations existed and Mr Finlay is completely removed from the governance and operations of Kiwibank.
10. Mr Finlay was recommended by the panel for appointment to the Transition board and to the new RB board from 1 July 2022 [T2021/1876 signed out by Bryan Chapple, 2 August 2021] and this report did not refer to any perceived or potential conflicts of interest. Neither did the letter the Treasury drafted for the Minister to consult with the other parties in Parliament, as required for this appointment process. The final APH documentation [T2021/2120 signed out by Gael Webster, 9 September 2021] stated "No conflicts of interest have been identified."
11. This document trail shows the Senior Advisor made an error. The 2 August 2021 report to the Minister should have included information that the potential conflict had been identified and considered, and that the conclusion was that Mr Finlay was not conflicted under the RB's conflict policies. The Minister could then have considered whether he was satisfied with that assessment before taking Mr Finlay's appointment any further.

NZ Post Chair reappointment June 2022

12. Murray Costello also provides advice on appointment to the NZ Post board. MoF agreed to reappoint Mr Finlay as chair as recommended by the Treasury [T2022/7 signed out by Gael Webster, 24 February 2022] and APH documentation was sent to the MoF and shareholding Minister on 27 April 2022 (delegated first to Hon Megan Woods and then to Hon Kris Faafoi). This noted that Mr Finlay was on the new RB board from 1 July 2022, but did not refer to possible perceptions of conflict with the regard to NZ Post's interests in Kiwibank. The APH document stated:

Conflicts of Interest

Appropriate enquiries concerning conflicts of interest have been undertaken for the candidates in accordance with the Treasury appointment guidelines, and none have been identified. The NZ Post Board maintains ongoing conflict of interest disclosure regimes, in accordance with the Companies Act 1993.

13. The same error was repeated in this process. The shareholding Ministers should have been advised that there could be perceptions of a conflict of interest if Mr Finlay was reappointed as the chair of NZ Post. The shareholding Ministers could then have considered whether they wished to reappoint Mr Finlay to NZ Post.
14. The Treasury then failed to disclose to the Minister's Office that on 12 May Rodger Finlay had emailed NZ Post's General Counsel (cc to Murray Costello) noting "I'm very conscious ... a personal and perceived conflict for me may exist [from holding both roles after 1 July]." Mr Finlay wanted to know what arrangements had been put in place to manage such a conflict. NZ Post's General Counsel replied on 15 May, providing a copy of protocols put in place in November 2021 after it was public knowledge that Mr Finlay was being appointed to the RB board from 1 July 2022, and noting further discussion with the RB Legal team since then. Mr Finlay then appeared to be satisfied with the protocols and these discussions lapsed.

Subsequent events

15. Gael and Murray were informed of Project K on 30 March 2022 and 19 April respectively. It was understood that this would remove any possible perception of conflict for Mr Finlay. The APH documentation to reappoint Mr Finlay as the chair of NZ Post was sent on 27 April 2022, was lodged for APH on 2 June, and was considered on 8 June 2022. Shortly before 8 June Mr Finlay had suggested to the Treasury (Shelley Hollingsworth and Murray Costello) that he could take leave from the chair role and an Acting Chair could cover that role while Project K was concluded, as it was becoming clear that Project K would not be concluded by 30 June 2022 as planned. The Treasury was still working to that timeframe but problems with achieving the 30 June target were raised on 8 June (email from Stacey Lulham, Principal Solicitor, Treasury).
16. Michael Reddell published a blog article on 10 June 2022 [A highly inappropriate appointment | croaking cassandra](#). The Treasury sent this article to Amanda Wilson and Katie Keir in the Minister's Office on 10 June, along with the suggestion from Mr Finlay that he could take leave from the NZ Post chair role, and resume once Project K was completed.
17. On 13 June Amanda sent an email advising "Given the potential conflict was considered at the time of appointment, and Treasury has advised that this hasn't changed, MoF sees no reason for Rodger to stand down at this time." The Treasury understands that Mr Finlay called Hon Grant Robertson to discuss this, and on 14 June he wrote to the shareholding Ministers to advise he was declining the offer of reappointment to NZ Post "due to a mixture of personal and professional obligations at this time".

18. The blog by Michael Reddell surfaced in mainstream media on 21 June: [Criticism after Reserve Bank board appointee allowed to keep Kiwibank related role | Stuff.co.nz](#)
[Finlay role at RBNZ flagged amid fear of 'conflict of interest' - Fuseworks \(fuseworksmedia.com\)](#)
19. Later on 21 June the Treasury drafted a letter for the Secretary of the Treasury to apologise to the Minister of Finance acknowledging the error in not highlighting the perceived or real conflict in both the reports and APH documentation if Mr Finlay was in both roles after 1 July 2022.
20. The Minister's Office amended the APH paper appointing other NZ Post directors on 22 June, to advise that Mr Finlay had declined reappointment as the chair, and that "Cabinet was not informed of the potential conflict, nor the assessment by officials that it was manageable at the time."

Outcome

21. The unfortunate results of the Treasury's errors are that the Minister, Reserve Bank, and NZ Post have been criticised in the media and the Treasury's reputation has been damaged. This could have been avoided if potential perceived conflicts had been effectively communicated at an earlier stage, because there were other candidates the Minister could have considered for the Reserve Bank and Mr Finlay could have remained chair of NZ Post.

Next steps and learnings

22. The G&A team has considered its processes. The declaration of conflicts of interest is sent to all candidates prior to interview. In Mr Finlay's case this was completed by Kerridge as they were responsible for asking this question. They confirmed no conflicts of interest in their recommendation of Mr Finlay.
23. The standard template for interviews has the conflict of interest question, and so does the reference checks form. The standard Due Diligence report provides a section on conflicts of interest. The due diligence report should have noted the risk of a perception of conflict to be managed.
24. The APH documentation template has a section on conflicts of interest. This was completed but should have noted the potential for a perceived conflict, and what work had been done on conflict management.
25. More rigorous steps will be put in place to:
 - test that appropriate questions have been asked at each stage of a recruitment process
 - ensure that all possible perceived and real conflicts have been considered and reported to Ministers, along with proposed mitigation strategies
 - determine if delayed APH documentation needs to be reviewed prior to lodgement, and particularly if there have been assumptions about project completion dates which may have relevance.

Leilani Frew
Deputy Secretary

____ / ____ / 2022



Date: 10 October 2022
Title: **Action plan – Improvements around identifying and managing conflicts of interest in Treasury’s board appointments process**
Prepared by: Leilani Frew, Deputy Secretary Financial and Commercial

1. This plan outlines actions that will be taken by the Financial and Commercial Group (FCG) to improve how Treasury identifies and manages potential and actual conflicts of interest in the board appointments process.
2. We propose 12 specific actions within four main activities.

	Details	Responsibility	By When
1.	Update Treasury appointment process documentation, including for Actions A3-A9, A11-12.	Manager, Governance and Appointments Team	End of December 2022
2.	Undertake awareness training on the updated Treasury appointment process documentation with the current G&A team	Manager, Governance and Appointments Team	End of January 2023
3.	Complete identified actions from the operating model review	Manager, Governance and Appointments Team	End of April 2023
4.	Develop advice regarding resourcing of the Governance and Appointments team	Director, CIUG	End of Oct 2022

3. The proposed completion dates consider the current resourcing situation of the Governance and Appointments Team. Success in the recruitment activities underway may result in the ability of the above timing to be accelerated.

Issue identified	FCG Response	Action Items	Timing
<p>Updating standard process documentation to ensure full alignment between the Treasury's appointment processes and guidance from the Public Service Commission and the Office of Auditor General.</p>	<p>Agree and Action Item proposed.</p> <p>An initial assessment has identified that most of the Treasury's appointment process documentation aligns with guidance from the Public Service Commission and the Office of Auditor General. We have identified areas where our documentation, including frameworks and key principles, could be improved and updated to address the issues raised more clearly.</p>	<p>A1. Update Treasury appointment process documentation (including the boardappointments.co.nz website, candidate declaration forms and interview templates/guidance for panel members) and including for Actions A3-A10, and A12 below.</p>	<p>End of Dec 2022</p>
		<p>A2. Undertake awareness training on the updated Treasury appointment process documentation and materials with the current and new members of the G&A team.</p>	<p>End of Jan 2023</p>
<p>Updating standard process documentation to ensure full alignment between Treasury's appointment processes and guidance from the Public Service Commission and the Office of Auditor General, particularly with respect to <i>allowing sufficient time</i>.</p>	<p>Agree and Action Item proposed.</p> <p>Treasury follows the Cabinet Approved Appointment Process which may take up to six months to fill a director vacancy or nine to twelve months for the appointment of a chair. When delays are experienced, finalisation of appointments and the communication of decisions are significantly impacted.</p> <p>Following a recent review of the Governance and Appointments Operating Model, improvements have been identified to reduce the occurrence of delays within our control.</p>	<p>A3. Complete identified actions from operating model review including updating all communication materials, enhanced reporting, and more robust tracking systems and timeline management across the volume of simultaneous appointment processes.</p>	<p>End of April 2023</p>
<p>Updating standard process documentation to ensure full alignment between Treasury's appointment processes and guidance from the Public Service Commission and the Office of Auditor General, particularly with respect to:</p>	<p>Agree and Action Items proposed</p> <p>The current appointment processes require the provision of written information to candidates prior to interviews on the proposed role and asks candidates to declare actual and potential conflicts of interest, and to sign and return their declarations to Treasury. Candidates are also asked during the interview itself to confirm any conflicts of interests.</p>	<p>A4. Update appointment process documentation to provide more detailed guidance around requirements for background checking undertaken prior to any interviews.</p>	<p>Refer A1 above</p>
		<p>A5. Update appointment process documentation to explicitly require detailed internet searches to be</p>	

Issue identified	FCG Response	Action Items	Timing
<ul style="list-style-type: none"> the extent of background checking undertaken prior to interview, undertaking detailed internet searches as a part of background checks. the types of conversations held with, and written information provided to, potential candidates to assist them to identify actual, potential and perceived conflicts of interest (including declaration forms) when a higher standard of due diligence is required. 	<p>Treasury undertakes a number of background checks on shortlisted candidates prior to interview. The extent to which these are undertaken vary and are dependent on timing, resourcing and costs. Treasury agree that there is room to improve the consistency and thoroughness of these checks</p>	<p>conducted as part background check processes and include guidance to define what that means</p> <p>A6. Enhance current documentation provided to candidates to include additional information and definitions on declaring interests in particular wording around perceived, not only actual and potential, conflicts.</p> <p>A7. Update appointment process documentation to explicitly require conversations held with potential candidates to assist them to identify conflicts of interest to be documented and filed in iManage.</p> <p>A8. Update appointment process documentation to provide guidance around when a higher standard of due diligence may be required.</p>	
<p>Updating standard processes to allow for seeking the views of people with the relevant expertise not involved in the appointment process on appropriate issues.</p>	<p>Agree and Action Item proposed</p> <p>Treasury's key stakeholders in any board appointment process are the Minister and the board's Chair. Our current practice is to liaise directly with them regarding relevant board skills required, panel membership, conflicts of interest and public announcements.</p> <p>As is appropriate and consistent with PSC guidance, Treasury does not directly liaise with management in respect of the board appointment requirements, process, or progress.</p> <p>If assistance beyond the Chair was considered beneficial, the Treasury would always work directly with the Chair to agree to and facilitate this.</p>	<p>A9. Update appointment process documentation to provide guidance to support, where appropriate, the seeking of views from people, outside of key stakeholders, who may assist in identifying any conflict of interests of potential candidates. The guidance should consider whether consultation on preferred candidates with the Treasury's commercial transaction teams is required.</p>	<p>Refer A1 above</p>

Issue identified	FCG Response	Action Items	Timing
<p>The need for a meeting between staff at the monitored agency, the Chair of the board and the Governance and Appointments team at the beginning of the process to discuss potential conflicts of interest that might arise and the range of management options available should they be required.</p>	<p>Agree and no Additional Action proposed</p> <p>Refer to response 2a above, which will address this issue.</p>	<p>Refer A9 above.</p>	<p>Refer A1 above</p>
<p>Ensuring actual, perceived and potential conflicts of interests are specified in advice to Ministers and APH, even if the conflict can be managed.</p>	<p>Agree and Action Item proposed</p>	<p>A10. Update all relevant appointment documents and templates to refer to actual, perceived, and potential conflicts of interest.</p>	<p>Refer A1 above</p>
<p>Reviewing the resourcing of the Governance and Appointments team to determine if there are sufficient staff with the appropriate skillset to fully meet the Public Service Commission Guidance.</p>	<p>Agree and Action Item proposed</p>	<p>A11. Develop advice regarding resourcing of the Governance and Appointments team</p>	<p>End of Oct 2022</p>
<p>Giving clarity to the recruitment company on the extent to which diversity of candidates is required and the degree to which potential conflicts can be managed.</p>	<p>Agree and Action Item proposed</p> <p>The Treasury recently revised its Capability Framework to provide greater clarity on diversity requirements for our board candidates. The revised Capability Framework was not completed at the time the recruitment companies for the RBNZ appointments were brought on board.</p> <p>Our current practice includes identifying, alongside any recruitment company, any conflicts of interests in line with the self-declaration requirement on potential candidates and Treasury's discussions with the Chair about whether identified issues are likely to be manageable (or not). Chairs may seek board, legal counsel and/or management input but</p>	<p>A12. Ensure future process for engaging recruitment companies incorporates the revised Capability Framework and details around operating protocols, with particular focus and clarity of requirements around background checks and declarations of conflicts of interest.</p>	<p>Refer A1 above</p>

Issue identified	FCG Response	Action Items	Timing
	<p>consistent with PSC guidance to facilitate through the Chair, and the Treasury may not typically participate in these discussions. However, the outcomes of the discussions may be communicated to us (and the recruitment company). We note that at this stage of the process, Treasury operates on the basis of whether conflicts are deemed to be manageable (or not) and indicates so in the appointment documents. Details of how the conflicts could or should be managed are not included in the appointment documents as they would not typically be available for inclusion.</p>		
<p>Advising management of the identity of preferred candidates should be avoided until after the appointments have been confirmed by APH. In the rare situation where revealing the identity of the preferred candidate is deemed necessary, this should only be done with the explicit written permission of the Minister.</p>	<p>Agree and no Additional Action proposed</p> <p>This reflects our current practice. The identity of the candidate is limited to the Chair and members of the interview panel at the time the recommendation goes to the Minister for agreement.</p> <p>It is generally the call of the Chair as to whether he/she discusses the identity of the candidate with management prior to agreement through APH</p>	<p>Continue following current practices.</p>	<p>N/A</p>
<p>Allowing sufficient time between the planned APH meeting for staff and management to prepare (including developing and implementing interest management plans) before the appointments are announced publicly and the appointee starts in role.</p>	<p>Agree and no Additional Action proposed</p> <p>Refer to Action 3 above, which will address this issue.</p>	<p>Refer to Action A3 above around completing identified actions from our recent operating model review.</p>	<p>Refer A1 above</p>