

REVIEW OF THE APPOINTMENT OF MR JONATHAN MOSS TO A POSITION IN THE REAL ESTATE AGENTS AUTHORITY

1. This independent review has been commissioned by the Chair of the Real Estate Agents Authority, on behalf of the Board in order to seek clarification as to the appointment process, as a result of questions being raised about the process of appointment of Mr Jonathan Moss to a senior position within the Authority.

Terms of Reference

2. The terms of reference are simply to *“undertake a review of the employment process of the Senior Manager, Enforcement, and provide a report detailing your findings”*.

Methodology

3. For the purposes of this review, I have:
 - Reviewed all relevant documentation including email correspondence referring to the appointment process;
 - Met with and interviewed key parties, including former Chief Executive, Janet Mazenier, Dean Winter, Steve Haszard and Johnny Gowland of PowerHouse People
 - Spoken by telephone to Mr Moss for clarification of some issues.
 - Reviewed relevant REAA policies and available material on best practice in recruitment.
4. Two key personnel, Mr Jon Duffy and Mr Dave Stewart, have not been interviewed as part of this process. Mr Duffy was employed by the Authority at the relevant times, and was directly involved in the initial assessment of Mr Moss' application to be employed as an investigator, but has subsequently left the organisation. Mr Stewart is out of the country until the end of July. Email records are available which illustrate the involvement of the former, and Mr Stewart has provided the Authority with a written record of his involvement.

Findings

- The appointment process was an commonplace operational matter, managed by the Chief Executive and her senior staff.
- The recruitment occurred at a very busy time, during the establishment phase of the Authority. Many priorities vied for the attention of senior management, including establishing processes and procedures for investigations, training staff and dealing with an “avalanche of complaints” which created an unanticipated workload.
- The recruitment of Mr Moss to a senior management position occurred in two stages. He was initially hired on a fixed term contract into the position of investigator, and later applied for and was appointed to the position of Senior Manager-Enforcement.
- At each stage Mr Moss made full disclosure of the circumstances of his departure from Police, and the fact that a criminal inquiry was under way into an allegation that he had asked a person with whom he was in a relationship to lie about an alleged assault. Mr Moss was at all times anxious to avoid any embarrassment to the Authority.
- The two stage process, and the fact that Mr Moss approached the Authority directly, rather than through a recruitment firm, created some confusion as to whether reference checking had been undertaken and whose role it was to do it.
- There were some departures from best practice however any such irregularities were not material in this case, and did not affect the outcome or result in any unfairness to any other candidate. In other words, had the process been a text book example, it is likely that Mr Moss would have been appointed to both positions.
- Mr Moss appeared on paper, and at interview to be the most highly qualified candidate for the position. The review has found no impropriety in the recruitment process.
- This review has found no reason to impugn the decision to employ Mr Moss, either initially as an investigator, or subsequently as Senior Manager -Enforcement.

Background

5. Early in 2010 the REAA management identified a need to recruit more investigators to cope with a greater than expected workload.
6. Recruitment of investigators was the role of John Duffy and Dean Winter. On 29 January they instructed PowerHousePeople (“PHP”), a human resources firm, to assist in recruiting two investigators. Johnny Gowland from PHP advertised the positions, received and reviewed CVs, and undertook preliminary interviews of 12 candidates. Of those 12 he selected 4 as suitable for participating in a panel interview.
7. Steven Haszard, a solicitor from Meredith Connell in Auckland had been advising the REAA from November 2009 to January 2010. Meredith Connell, which holds the Crown Solicitor warrant for Auckland, had acted for the predecessor to the REAA, the Real Estate Agent’s Licensing Board, and was ideally placed to assist the REAA in its establishment and implementation

phases. In February, the Chief Executive, Janet Mazenier asked Mr Haszard to oversee the Authority's investigations function, for three to four days per week.

8. A colleague of Mr Haszard's from Meredith Connell was a former professional associate of Mr Moss. She had spoken to Mr Moss of Mr Haszard's work, and of the fact that they were recruiting investigators.
9. On 2 March Mr Moss sent Mr Haszard an email which said:

Hi Steve – I was talking to Sarn Herdson tonight and she mentioned that you are doing some work for the Real Estates Agents Authority in Wellington.

I believe you are aware of the circumstances of my retirement from Police in that Sarn briefed you so that you were across any risk to Meredith Connell.

I am now starting to look for employment and I did notice Investigators jobs with the Authority in the last week or two. I think the jobs have been taken down now though.

This is just a query – as an experienced senior investigator, as to whether the Authority are interested in considering me either in a role or perhaps as a (cheap) contractor, perhaps.

I am also familiar with the complaints/investigations process for Police and IPCA and so understand the requirements for the various levels of complaint / issues.

If you would rather not be involved in this that is fine, I can go direct to the Authority.

I can send a CV.

10. Mr Haszard replied the same day, saying *"Hi Jon. Your email is timely. If you send me your CV I will happily pass it on to those who matter."*
11. Mr Moss responded with an email to which his CV was attached. In the covering email he said:

Without overstating the situation, I would ask that you brief Kristy McDonald or the CEO on my application and situation. I do not want to embarrass her the Authority (sic) especially in its infancy.
12. Mr Moss included as referees, Assistant Commissioner Viv Rickard, and Mr Wayne Annan, General Manager Human Resources NZ Police. Mr Haszard forwarded the email and CV to the Chief Executive on the afternoon of 3 March. His email said *"Now this is a CV"*. By that he meant that Mr Moss' CV had stood out in terms of quality and experience, from others he had seen submitted for the investigator roles.
13. By this time the interview panel (John Duffy, Dean Winter and Johnny Gowland) were on the last day of interviews.
14. Mr Haszard briefed the Chief Executive on Mr Moss' circumstances, namely, that he had left the Police during an employment investigation into a relationship with a colleague (which had been reported in the media at the

time), and that a complaint had been made to and was being investigated by Police that he had been a party to an assault in a Police van, and that he had asked an officer to lie about his involvement.

15. The Chief Executive passed on the CV to John Duffy and Dean Winter with instructions to add him to the pool. She did not advise them of the circumstances of his departure from the Police, or of the extant inquiry into his conduct. Her explanation for this is entirely reasonable. She thought that Mr Moss had disclosed personal information and that that information was not relevant to the interview panel. Had the panel found Mr Moss not suitable for the position, based on his qualifications, experience, of perception of “fit” with the organisation, the disclosure would have been for nought. The Chief Executive also had a brief exchange of text messages with the Chair, knowing that the Chair had had a number of professional dealings with senior Police. The Chair, who did not know Mr Moss in a personal capacity, but was aware of his professional reputation through her work with Police, responded positively. Ms Mazenier recorded in a file note for the purposes of dealing with a request under the Official Information Act, the following exchange:

CE to Chair 3 March 2.23

K, do you know a chap John Moss – potential investigator?

Chair to CE

From Police?formr professional stds? If it is – grab him. He’s a wonderful and lovely guy. U wld get on well with him.

CE to Chair

Yep – same guy – Steve found him

Chair to CE

He’s great

CE to Chair

Steve or John?! (both..)

Chair to CE

Actually meant John but both

16. There was no discussion at this stage between the Chair and the Chief Executive of the disclosures made by Mr Moss to the Authority about his past. Because his application was late, and came directly to the Authority, and not through PHP, Dean Winter was asked by the Chief Executive not to put the application through the PHP process, thereby avoiding the fee that would be otherwise due to PHP. PHP advise that these things happen from time to time, and while they are disappointing from a commercial perspective, recruitment agencies usually let them pass on the basis that the ongoing relationship, and future work is more important than making an issue out of a particular case. In this case PHP accepted that decision, while noting that there are risks in not having all candidates go through the same process.

17. On receipt of the CV, it appeared to Mr Winter that Mr Moss was almost too good to be true. He had been a senior investigator with the Police, and appeared over-qualified for the position of investigator. He decided to make some checks of his own with contacts in the Police, and discovered that he had left the Police during the course of an investigation into a relationship with a constable.
18. He gave this information to the Chief Executive, and was annoyed to discover that she already had that information but had not advised him.
19. Dean Winter and John Duffy arranged for Mr Moss to travel to Wellington for an interview on Saturday 6 March.
20. At interview, Mr Moss appeared to be a superior candidate. He made it clear that he would be happy for the Authority to undertake any inquiries into his background.
21. Contemporaneously with this process, and following the interview there were a number of discussions, and email exchanges as to the relative benefits to be gained by the organisation from his impressive qualifications and experience versus the possible reputational risk of engaging someone who had left the Police in the circumstances Mr Moss had. For example:

Janet Mazenier to Steve Haszard
Wednesday 3 March 6:49 pm

Steve, fyi Dean and Jon are interviewing Jon Moss on Saturday in Wellington. Dean's reaction at our meeting this afternoon appears to have been driven off the fact that Jon M's CV is so rich so he did a bit of research which resulted in him finding out about the situation regarding the complaint. Dean does reflect the fact that the universal view is that Jon M fell on his sword, was cleared and was targeted [...] and deserves a break, so there is no judgment remaining there by Dean.

But, Dean is (probably rightfully) a bit miffed we didn't mention it at the meeting, and later when he asked you one-on-one about him....consider this a warning to us both!

Steve Haszard to Jane Mazenier
Wednesday 3 March 22:08

Possibly rightfully so. First step in the process was interview and then consideration of other issues. Must say I am still not completely convinced the authority would want to take on the reputational risk (spoke with Jon on the phone and he has not been cleared by the IPCA yet). Anyway, that is food for thought for next week ... amongst other things....

Janet Mazenier to Steve Haszard
Thursday 4 March 5:25 am

OK, we'll tread with some caution – I do wonder whether Kristy is aware of the issue too – will check with her.

Janet Mazenier to Jon Duffy
Sunday 7 March 7:19 am

Hi Jon Dean and I had [a] good chat – is definitely a tricky situation. I will ring Jon tomorrow as I need to get the situation clear then I'll speak to Kristy – ordinarily I

wouldn't do this given it is an operation matter [but] there are potentially reputational issues.

Janet Mazenier to Steve Haszard
Sunday 7 March 7:21 am

Steve, FYI Jon and Dean are keen to engage Jon Moss however in the circumstances I need to ensure I am very clear about the matters that are still underway.

Steve Haszard to Janet Mazenier
Monday 8 March

Couldn't agree more Janet

22. As indicated above, in accordance with good practice (the "no surprises principle"), the Chief Executive also kept the Chair informed. On 8 March the Chief Executive sent a text to the Chair saying "*K, I need to talk to you about Jon Moss & the response to the READT folk. Dan & I r in Greymouth 2day - will be free up till 1:45pm - when suits you?.*" The Chair responded that she would be in a meeting, but if the Chief Executive called at 12:30, she would exit the meeting to take the call. During this call the CE for the first time apprised the chair of the nature of Mr Moss' disclosures as described above. No contemporaneous notes were kept of the call, but it is clear that the Chief Executive advised the Chair that she was considering employing Mr Moss despite the matters he had disclosed about the complaint, and the circumstances of his departure from the Police.
23. Dean Winter went on leave prior to the decision to engage Mr Moss being made. Because of the outstanding complaint, he suggested to the Chief Executive that Mr Moss could be taken on as a contractor. This would enable the Authority to make use of his skills, without being committed to keeping him on should the Police investigation disclosed by Mr Moss conclude that Mr Moss was guilty of a criminal offence.
24. The decision to employ Mr Moss was made between Mr Duffy and the Chief Executive, as illustrated in the following email exchange.

Jon Duffy to Janet Mazenier
Sunday 7 March 09:11
Hi Janet

One of the possibilities that Dean and I discussed was bringing him on in an advisory role for 3 months until the result of the investigation into him is known. He would be invaluable in assisting with the operations manual and the review as he has basically just done the same thing at the Independent Police Complaints Authority. We could then look at an Investigator role after that if the investigation finds no case to answer.

Obviously there are budgetary considerations as we would still need tow new Investigators in the mean time, but it could be a way to mitigate the risk and not lose his expertise.

Janet Mazenier to Jon Duffy
Sunday 7 March 11:25

Thanks yes Dean mentioned that idea, but I am keen for you and I to explore that first with Steve as he is leading the overall QA piece of work (of which he complaints procedures manual is only one of the outputs). I'll call Jon for a chat tomorrow.

25. Mr Moss was engaged on a 12 month contract dated 9 March. Despite the date on the cover page of the contract showing that the engagement was to commence on 9 March, Mr Moss' signature at the end of that contract is witnessed with a date stamp of 10 May. A likely explanation, confirmed by Mr Moss was that the formal execution of the contract was overlooked until the permanent contract was ready to be executed. Both were then executed, together with a memo signed by Mr Moss rescinding the earlier contract.
26. At the same time as the recruitment of the two investigators was occurring, there was a great deal of activity going on in the authority to cope with the "avalanche of complaints". One of these things was a review of the structure and roles to improve workflow. The Chief Executive made a recommendation to the Board that a new senior management position should be created, Senior Manager – Enforcement. The restructure would double or triple the enforcement capacity of the Authority. An employment consultant, David Stewart, of Human Value completed a draft position description on 15 March.
27. Pending the recruitment of a suitable person to fill that role, Steve Haszard was acting in the role of Enforcement Manager, with responsibility for quality control and structural reform.
28. In order to ensure an "arms length" approach to recruitment, and that the process would not discriminate between internal and external applicants, the Chief Executive engaged PHP, as well as David Stewart, (from Human Value) to recruit the Senior Manager – Enforcement. PHP was to advertise the position internally and externally, to identify suitable applicants through their own networks, to shortlist and release any unsuitable candidates, and report to Mr Stewart as the Chief Executive's agent. The position was advertised on 18 March. Due to the need to fill the position as quickly as possible applications were sought by 25 March. Mr Moss, who was the only internal candidate, was interviewed by PHP on 29 March.
29. PHP gave Mr Stewart a list of 7 potential candidates on 30 March. Also on 30 March, Mr Moss, aware that some uncertainty remained as to the disposition of the Police investigation into an allegation against him, emailed Mr Haszard saying:

Steve – I spoke with Viv Rickard last night and asked for an update. Below is his response. I would expect to receive a formal letter in due course.

The file will be sent to the IPCA for review. A letter would normally be sent to the Commissioner advising of the Authority's review of the matter. I have no idea how long that process might take.

That would be the end of it.

I will leave this for you to advise Janet.

Attached – email from Viv Rickard to Jon Moss (cc Steve Hinds NZ Police)

Kia ora Jon

We will catch at some stage in Wgtn.

You queried the final outcome of the enquiry.

I apologise that I have not responded formally to you in this regard. As you know the enquiry was all but completed, but for completeness, we carried out a further enquiry (out of Auckland with an ex-member) last week. The ex-member has not provided any further/different information.

Therefore I can advise that the NZ Police have no cogent evidence that an assault took place in the back of a prison van when [complainant] was present and there is no cogent evidence indicating that you asked her to lie to investigators. Accordingly, I have taken the decision that no further Police action will be taken.

Feel free to discuss further. I will try and make contact with you personally.

Kind regards

viv

30. Mr Stewart met with 4 candidates recommended by PHP. Of these, one (“A”) had been approached by PHP, and for his own reasons did not want his identity disclosed to the Authority until he was sufficiently advanced in the process, and confident that he would want the job if offered. He was considered by PHP to be a very strong candidate. Another very able candidate was overseas, and was advised that due to the need to have someone in the position as soon as possible, his candidacy would not proceed to final interview stage.
31. The process was that long listed candidates would be interviewed by PHP, Mr Stewart would interview a shortlist, and then a final interview would be undertaken by the Chief Executive and Mr Haszard (on the basis that he was acting in the role to be filled). Mr Stewart advised PHO that for various reasons 3 of the 4 shortlisted candidates would not proceed to interview. He recommended just one candidate as the preferred candidate. That person was Mr Moss, who was then interviewed by the Chief Executive and Mr Haszard.
32. By the time Mr Stewart had met with the Chief Executive to determine who was to be interviewed, candidate “A” had still asked that his identity be withheld from the Authority. Mr Stewart emailed PHP on 15 April and said:

As I suspected [the Chief Executive] feels that [A’s] experience (without divulging specifics and his name) are not substantially greater than Jon Moss so they are going to run with Jon’s interview today and then make a decision if he is the right candidate or if they need to re-visit others.

33. As it happened, after that email had been sent, candidate A had called Mr Stewart to say he would be interested in pursuing the role. In a further email to PHP David Stewart said:

I advised him that the internal candidate was being strongly considered and then they would make a decision if they need to go external again. Unfortunate that in the 11th hour his application came though and without giving full details of his background (and disclosing his identity) I could not demonstrate a greater strength than the internal

34. Mr Gowland from PHP responded the same day saying:

Whilst disappointing that we could not get A to final interview stage we will talk with him today and manage this. Pending this afternoon's meeting please advise when you would like us to conduct full reference checks on the internal - Jon Moss.

35. The interview of Mr Moss with Mr Haszard and the Chief Executive proceeded that day. At interview, Mr Moss was again at pains to explain that he did not want the circumstances of his departure from the Police to embarrass the Authority. The offer from PHP to Mr Stewart to undertake reference checking was not taken up. Mr Stewart advised that his understanding was *“that Powerhouse had already provided robust reference checks to REAA at the initial time of recruiting Jon Moss to the Investigator role”*.

36. Because of his role in introducing Mr Moss into the organisation, Mr Haszard made “informal” inquiries of his contacts, including former and serving senior officers, to ask about Mr Moss’ performance, as he would not have been wanting to be responsible for a “dud” getting the job. It should be emphasised that these enquiries were not about the conduct or complaint issues, they were merely around his work performance. Mr Haszard was satisfied that Mr Moss had made a full disclosure of the former issues to the Chief Executive and that she would be able to deal with those as she saw fit.

37. On 15 April at 5:24 pm, the Chief Executive emailed Jon Moss, offering him the position of Senior Manager – Enforcement.

38. There is one further aspect of this second recruitment process that needs to be mentioned as part of this review. On 30 March, the REAA received an anonymous letter which made a number of allegations about Mr Moss, and his fitness for employment with the Authority. The letter referred to the allegations surrounding Mr Moss’ departure from the Police, and made a number of assertions as to his fitness for employment as a result of those allegations, and of the relationship he had while employed with the Police. This letter came after some odd anonymous telephone calls apparently intended to obtain information as to the nature of Mr Moss’ employment with the Authority. PHP too, received a number of calls from a person ostensibly enquiring about the Senior Manager – Enforcement position, but which in fact were intended to elicit information about Mr Moss. The caller identified herself as being a current public servant, and then sent in her CV, but did not

then proceed with her application. The way in which that person presented herself caused some concerns with the recruiter.

39. On receipt of the anonymous letter, the Chief Executive discussed its contents with Mr Moss, and concluded that there was nothing alleged in it (apart from the writers interpretations of the events and their significance) which added to what Mr Moss had already disclosed. In addition, as it was anonymous, it was discounted, and no further notice was taken of it.

Legal and Policy issues

40. There is very little in the way of regulation around recruitment practices apart from the general provisions of the Human Rights Act, Privacy Act, the Fair Trading Act and the like.

41. As a Crown Entity, REAA is subject to the Crown Entities Act 2004. Section 118 of that Act recites Crown Entities' obligations as a "good employer". The term "good employer" is defined as "*an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring*";

(c) the impartial selection of suitably qualified persons for appointment; and

42. This obligation appears to have been complied with in the recruitment of Jon Moss for the position of investigator, and for recruitment as Senior Manager – Enforcement. I have found no evidence to suggest that partiality was an element of the decision to employ Mr Moss at that time (except to the extent that an employer is entitled, even obliged to be "partial" to the most suitable candidate).

43. Nor is there very much available by way of "best practice" guidelines for crown entity or even state sector employers. I note that in its 2005/2006 Annual Report the State Services Commission said:

Projects have been established and project managers appointed for a number of new initiatives, including State sector employment brand research, syndicated procurement of an Employee Engagement Survey and the development of a guide to best practice recruitment tools.

44. Enquiries of the SSC indicate that this latter piece of work has not been done. Nonetheless, SSC could be expected to show a leadership role in recruitment practice. Its own internal recruitment policy says (inter alia):

- **Structured process**

- Selection and assessment processes should be structured, consistent and transparent to give all applicants an equal opportunity to demonstrate their suitability for a position.
- All shortlisted candidates must complete:
 - an application form

- a New Zealand Security Intelligence Service (NZSIS) request and consent for a basic check form
 - a criminal conviction form
 - a Ministry of Justice request for a copy of personal information form
 - a health declaration
 - a competency self-assessment form.
- **Pre-appointment checks**
 - Reference checks, criminal history checks and a NZSIS basic check must be carried out for the preferred applicant prior to recommending an appointment.

45. There is no suggestion that SIS checks would be a prerequisite for employment to the REAA, however, the policy emphasises the need for reference checks. Its more extensive internal guidance material includes the following:

Reference checks

Reference checks must be carried out for the preferred applicant prior to recommending an appointment. The convenor or an appropriate delegate should carry out the check.

Reference checking is used to:

- verify information supplied by the preferred applicant during the interview/assessment and
- follow up on any relevant areas of concern the panel has.

Applicants should provide the names of at least two referees who have been forewarned they may be called. The referees should be able to be contacted by telephone to provide the opportunity to ask follow-up questions to their responses.

Reference checks can only be made with the referees that have been nominated or agreed to by the individual. However, the panel can request the names of other referees from the applicant to assess suitability against specific competencies.

Before contacting referees, select the competencies where verification is needed or any areas of concern.

It is important to confirm and clarify the past and any current relationship between the referee and the applicant as any personal relationship and the type of work relationship may impact on the usefulness and relevance of the information.

Where the referees have not provided sufficient (or specific) information, ask the applicant for the name of more referees, indicating the type of information/referee needed.

If the reference checks raise or confirm any doubts about the preferred applicant's ability to perform the job:

- seek further information from the applicant or
- reference check the next most preferred applicant.

Note: The Privacy Act allows for 'evaluative material' that has been obtained from a referee in the course of a selection process to be withheld from the applicant if a referee has been promised that the information supplied will be held in confidence. All information obtained from referees should be placed in a sealed envelope and held on the vacancy file.

Refer to the [verbal reference check form](#) - the questions may need to be adapted to suit the particular position/applicant.

46. These would appear to be prudent steps. While they were clearly not undertaken in this way in the case of Mr Moss' employment, there is no suggestion that in that case, the failure to follow a practice of that nature would have led to any different decision being made about his suitability for the job, or the assessment that he was the best qualified candidate.
47. The Office of the Auditor-General rarely reviews recruitment practices, and has likewise issued no guidance or best practice material for employers. However in Part 2 of its inquiry into the appointment of the Head of Immigration, MaryAnn Thompson the Auditor-General said:

After withdrawing from the recruitment process for the role of chief executive of DPMC, Ms Thompson applied for the role of Deputy Secretary (Workforce) at the Department of Labour. The process appears to have been reasonably standard, but there were some aspects of the process that departed from good practice. I do not consider that these departures had a significant effect on the outcome of the process.

The Department of Labour used a consultant, a contestable process, an interview panel, and reference checks. Although Ms Thompson was interviewed by the panel, her late application bypassed the consultant's usual process without any documented rationale for this, and records were not retained by the Department of Labour. The offer of employment to Ms Thompson was made before reference checks were carried out, and the offer was not conditional on the outcome of the reference checks. Even though Ms Thompson had previous public sector experience, this deviated from my expectations of good practice. However, my findings are limited to this one recruitment process.

The then chief executive of the Department of Labour and Ms Thompson's employer, Dr James Buwalda, became aware from Mr Wintringham in 2007 that a question had previously arisen about Ms Thompson's PhD. This was in the context of an external review Dr Buwalda was commissioning into some immigration decisions for family members of Ms Thompson (discussed in Volume 1). At this time, Mr Wintringham was a member of the Department of Labour's Audit Committee. Dr Buwalda did not believe that there was an outstanding issue to be resolved, and so did not do anything with this information. With hindsight, it would have been helpful for this information to have been passed on to Dr Buwalda's successor.

Ministers' knowledge of the PhD uncertainty

Ministers were not aware of the PhD uncertainty until just before it became public in May 2008. That is consistent with the norms governing when it is appropriate for Ministers to be informed about employment matters in the public service.

Timely reminder for all employers within public entities

This case illustrates that it is important for all public sector employers to consider the general and specific approach they take to verifying the information presented in a curriculum vitae (CV). They also need to be aware of the link between these procedural steps in recruitment processes and the broad collective role they play in safeguarding the integrity of the public sector.

The extent of checks required is likely to vary depending on the seniority of the role and the nature of the experience and qualifications needed. The applicant's previous work history may also be relevant. However, each entity within the public sector is a distinct organisation, and each chief executive is responsible for their employment practices. An

individual having previously worked in the public sector cannot be a reason for not carrying out a proper recruitment process with the appropriate checks.

It is reasonable to expect a more robust approach to be taken for chief executive and senior positions than for other positions, given the leadership and management role they have in an organisation. Although the checking processes may at times appear mundane, those making senior appointments need to be aware of the risk that incorrect information in a CV potentially raises a question about an applicant's integrity. For senior public sector roles, that is a risk that needs to be scrupulously managed. In fairness to the individuals, it is important to dispel a question if it is unfounded. For the organisation, and for the sector as a whole, it is important to ensure that any integrity risk raised by a credible source is addressed.

48. Applying those observations to the recruitment of Mr Moss, it is clear that many elements of good practice were present; the use of independent consultants, a structured and fair interview process and others. Absent however, was a full and formal process or referee checking and qualification verification.
49. Having said that, it is unlikely that had those processes been followed, and formal checking undertaken, there would have been any different outcome. Mr Moss was identified as the best person for the job. Informal checks confirmed that there was no reason to doubt his previous performance in similar roles, or that he had withheld any information which might have affected the decision to offer him employment.
50. It is an open secret that employers often use informal checking processes, whereby staff use personal contacts and connections to ascertain the "fit" of a candidate for a position. It is not best practice to rely on such measures, which are usually confidential and often "off the record" in a contestable process. Doing so exposes an organisation to risk (of breach of the Privacy Act for one) and raise the serious question of how a prospective employer is to treat any adverse information that comes through such channels.
51. These concerns were not an issue in the present case, as Mr Moss had given a broad authority to the Authority to enquire as it saw fit (even though, in one case the "informal contacts" were used prior to that consent being given), and those sources of information gave no cause for concern about employing him.
52. In addition to the concern about the use of "informal contacts", the absence of adherence to a standard policy can lead to (and in this case did lead to) confusion about who was doing what. Mr Moss' initial application was received outside the PHP recruitment policy, and thereby missed the checks that would have been a standard part of the services offered by that firm. When he applied for the Senior Manager-Enforcement position as an internal candidate, assumptions were made that reference checks would already have been a part of the initial process.

Recommendation

53. The REAA should adapt, and adopt as its own recruitment policy, the guidance and policy of the State Services Commission

John Edwards