

2022 CODE OF PRACTICE FOR MINISTERIAL APPOINTMENTS TO PUBLIC BODIES IN SCOTLAND AIDE MEMOIRE & OVERVIEW

1 - INTRODUCTION

This aide memoire will be useful to all panel members involved in the Public Appointments in Scotland. It is not meant to supersede the Training provided by the Public Appointments Team, but is an interactive overview of the process to guide panel members through the different stages of the Code, along with links to the Code and other relevant sources of information.

2 - THE PRINCIPLES OF THE CODE

Merit: All public appointments must be made on merit. Only persons judged most able to meet the requirements of the post will be appointed.

Accountability: The Scottish Ministers are ultimately responsible for making appointments in accordance with this Code and all other applicable legislation. The Commissioner is responsible for encouraging compliance with the Code and overseeing and reporting publicly on the process.

Openness, Transparency and Integrity: The appointments process must be open, fair and impartial. The integrity of the process must be transparent and earn the trust of the public.

Equality, Diversity and Inclusion: The boards of Scotland's public bodies should be reflective of the communities they serve and Scottish Ministers will take substantive steps to achieve that aim. Public appointments must be advertised publicly in a way that will attract a strong and diverse field of suitable candidates. The process must provide equality of opportunity and the practices must be inclusive for people from all walks of life and backgrounds.

Respect: Applicants will be accorded the respect for their efforts in wishing to contribute for to public appointments.

FOCUS ON OUTCOMES

The appointments process must be focused on successful outcomes. This means a good appointment that meets the needs of a board and increases diversity. The Commissioner is willing to vary the Code's provisions – in response to any reasonable requests from the Scottish Ministers and as long as the principles set out above are not compromised – in order to secure a successful outcome.

3 - STAGES OF THE APPOINTMENT PROCESS

The Code is not prescriptive about the number of stages of an appointment round. However, there must be a planning phase and an assessment process. A typical round will have the following stages:

Early Engagement:

There should be a clear picture of the public body's purpose, strategic objectives and operational context. The panel should also review existing skills on the board, and upcoming challenges and opportunities for the body. The resultant skills gap should inform the criteria for selection.

Planning: The panel will agree:

➤ Skills, knowledge and experience needed by the board	➤ Appropriate publicity to attract a wide pool of diverse candidates
➤ Structured plan and timetable to guide appointment activity	➤ Assessment methods needed to identify, recommend and decide, on the basis of merit, the most able for appointment

Advertising: Targeted advertising which has been planned for maximum pool of candidates.

Shortlisting: The panel will review all applications and invite to interview those who most closely meet the criteria sought at the application stage. Where there is a large number of applications a sift may take place, with the panel reviewing only those sifted in.

Assessment: At the final stage of assessment, shortlisted applicants will be assessed on the advertised skills, knowledge and experience. This is likely to involve an interview and may also include undertaking an exercise to test one or more of the criteria (eg analytical skills). No new criteria may be added at this stage. The panel will also review any potential **Conflicts of Interest** and the **Fit & Proper Person Test**.

The candidate(s) who most closely meet the criteria will be deemed ‘**most able**’ for recommendation by the panel to the appointing Minister. The appointing minister will take steps to confirm that the applicant is a **Fit and Proper Person**¹ for the position to which they are to be appointed (See [section E6](#) of the Code).

4 - THE RESPONSIBILITIES OF THE PEOPLE WHO UPHOLD THE PRINCIPLES

SCOTTISH MINISTERS will be responsible for fair, open and merit-based appointments and will:

➤ Ensure the requirements of relevant legislation and this Code are reflected in all appointment activity	➤ Have effective system for handling, and recording details of, all complaints about the appointment process
➤ Be satisfied that the practices applied at each stage of an appointment round are appropriate for the role to be filled	➤ Provide the Commissioner timeously with evidence relating to board diversity in accordance with applicable legislation and any self-imposed commitments to diversity
➤ Ensure appropriate record is made of key decisions and actions taken during every appointment round	➤ Provide the Commissioner timeously with whatever information the Commissioner reasonably requires to perform the statutory functions set out in the Act.

THE SELECTION PANEL CHAIR will provide the Scottish Ministers with assurance that the requirements of the Code have been met and:

➤ Be responsible for the outcome of an appointment	➤ Comply with the requirements of the Code
➤ Make key decisions on behalf of the Scottish Ministers	➤ Take action when it appears the requirements may not be met

THE SELECTION PANEL MEMBERS will:

- Be competent to fulfil their role on the panel
- Understand & comply with the requirements of the Code
- Understand the purpose & participate fully in the process
- Assist in the design of the appointments
- Assist in the assessment of the suitability of candidates for appointment
- Inform their fellow panel members of any **Conflicts of Interest** in relation to their participation as a panel member:
 - Where the conflict is considered significant enough to have an impact on either the outcome of the round or public perception of the outcome of the round, the matter will be referred to the Commissioner for consideration before the round can proceed.
 - Inform their fellow panel members if they know, or knows of, one or more of the applicants, and explain the nature of the relationship or knowledge:

- If the nature of any relationship between a selection panel member and an applicant means it may be inappropriate for the panel member to assess the applicant, the panel chair will consult the Commissioner and agree appropriate action.
- Share with the selection panel any information about an applicant, relating to whether they may not be a **Fit and Proper Person**.

THE COMMISSIONER will

- Allocate a representative to oversee all or part of any appointments process.
 - This will include any early engagement meeting, and/or the planning phase only.
 - If the representative is overseeing an appointment process from end-to-end, they will be designated as a panel member.
- Issue statutory and non-statutory guidance from time to time on how the requirements of the Code may be translated into practice.
- If considered appropriate, refer complaints about the appointment process to the Scottish Government for resolution.
 - The Commissioner will investigate all relevant and competent complaints that complainers believe have not been resolved within a reasonable time following initial investigation by the Scottish Government.
- Take such action as deemed appropriate when potential or actual material non-compliance with the Code is identified.

THE COMMISSIONER'S REPRESENTATIVES - Public Appointments Advisors will

- Provide independent scrutiny of the methods and practices employed by the Scottish Ministers for making appointments.
- Promote compliance with the Code by providing advice and guidance on applying the Code's provisions and on good practice in recruitment and selection.
- Contribute to panel deliberations
- Produce a report at the conclusion of their involvement in an appointments process, setting out the methods and practices that they have observed and the extent to which their guidance on code compliance and good practice has been followed. The Commissioner will periodically publish such reports in full or in summary.
- Approach the Commissioner for definitive guidance where clarity on the interpretation of the Code is required at any point by an appointing minister (or panel chair representing the minister), a panel member

5 - THE APPOINTING MINISTER'S PRIORITIES FOR THE BOARD:

When considering any appointment activity, the Scottish Ministers will:

- Take into account the effectiveness of the board and how well it is functioning
- Determine what skills, knowledge, experience and other attributes are needed by the board for it to perform its statutory functions and to do so economically, efficiently and effectively.
- Consider the current composition of the board in terms of the attributes and the diversity of its membership.
 - (Attributes may include skills, knowledge, experience – including lived experience – values, perspectives, and backgrounds – including socio-economic background and sector worked in – and geographical location).
- Communicate to the selection panel their desired outcome for any new appointment exercise. The skills, knowledge, experience and related attributes represent "Merit" for the purposes of the appointment being made.
 - The definition of "Merit" cannot include protected characteristics. Where the Scottish Ministers wish to see the under-reflection of protected characteristics on a board addressed, this will also be communicated to the panel.

6 - 'DIVERSITY BY DESIGN' - THE APPOINTMENT PLAN: The panel chair is responsible for finalising the appointment plan and will take the views of the panel members, and will include:

- ◆ Clear and accurate description of the role to be performed (the role description). This will include accurate time commitment, remuneration and expenses, where applicable
- ◆ Publicity, application and assessment methods to be used
- ◆ Any positive action measures intended to redress the under-reflection of protected characteristics on the board concerned
- ◆ Person specification comprising a clear and accurate description of the attributes that the minister requires. They will not be unnecessarily restrictive. They will not include protected characteristics. The person specification will be clear about the extent to which criteria have to be met and whether some attributes take priority over others. The attributes set out in the person specification constitute “the criteria for selection”
- ◆ Timetable specifying key prospective dates within the round.
- ◆ The application and assessment methods and any positive action measures selected - based on evidence of what works well to attract and lead to the appointment of a diverse range of able applicants.
- ◆ All materials to be made available to prospective applicants should be clearly and plainly drafted using simple, easy to understand, language. The objective should be to encourage the optimum number of people to apply for positions and for people to find it a comparatively easy exercise to submit applications.
- ◆ Whether or not to approve the appointment plan is up to the appointing minister. Once the plan has been finalised the appointing minister may be kept informed about the progress of the appointment round. They will not be actively involved in the deliberations of the selection panel but may be approached for a view if any issues arise during the course of the round.
- ◆ Publicity will explain that the appointment is regulated by the Commissioner. Matters relating to publicity and information which must be considered by the selection panel are listed in Annex Two.

At the conclusion of the appointment exercise, the panel chair must set out in a report the extent to which it delivered or failed to deliver the desired outcome set by the appointing minister. Reasons for success or failure must be included in that report. A copy of the report will be provided to the appointing minister and to the Commissioner (See [section C7](#) of the Code).

7 - ASSESSMENT OF APPLICANTS: The methods used to assess applicants will:

- ◆ Be capable of assessing whether applicants have the skills, knowledge, experience and other relevant attributes specified by the appointing minister (the criteria for selection).
- ◆ Be open and transparent.
- ◆ Accommodate the needs of and not present a barrier for people from different groups; reasonable adjustments will be proactively offered in the applicant information pack so that applicants do not feel compelled to or awkward about requesting them.
- ◆ Provide applicants with fair and equal opportunities to demonstrate their merit.
- ◆ Remove as far as reasonably possible the impact of personal bias on selection decisions.
- ◆ Enable panels to explore whether each applicant is a fit and proper person for the position for which they have applied and accepts the Principles of Public Life in Scotland and the public body's Members' Code of Conduct.
- ◆ Application and assessment methods will not present a barrier to people currently under-reflected on boards and will have appropriate predictive, content and face validity. They will enable and encourage people to describe how they meet the requirements of the role.

Selection panel members will assess the merits of applicants against the attributes specified by the appointing minister, and published in the applicant information pack, using the methods they have agreed. New requirements will not be introduced during any stage of the appointments process.

The selection panel may delegate any or all of the stages of assessment, other than the final stage, to appropriately qualified individuals or organisations. This includes sifting, shortlisting, the running of assessment centres and the application of practical tests at any stage of the appointment process.

Assessment will be undertaken by individuals who will be:

- competent to assess using the methods chosen
- consistent in their assessment of applicants
- knowledgeable about equality and diversity issues and the impact the chosen methods may have on different groups of applicants.

No individual or organisation with a conflict of interest that might render the outcome unfair, or create the public perception of unfairness, may conduct assessments.

Assessment activity will identify the applicants who have met the criteria for selection specified by the appointing minister and those who have not.

The individuals who have most closely met the criteria for selection will be the ‘most able’ candidates recommended to the appointing Minister.

The selection panel will draft an applicant summary, based on the information provided by each applicant during the round. The summary will set out the panel’s view on how each applicant did or did not meet the criteria for selection. The applicant summary will contain the selection panel and panel chair’s recommendations for appointment. The panel and panel chair will recommend only the applicants they have identified as the ‘most able’.

8 - THE MOST ABLE PEOPLE ARE APPOINTED

- The applicant summary will be the basis of the appointing minister’s appointment decision. The minister’s decision will be based on the selection panel assessment of the applicants’ merit and information from the fit and proper person test, where that has been delegated.
- The appointing minister will select the most able applicant(s) who has (have) most closely met the criteria for selection set out in the published applicant information pack. The appointing minister may choose not to appoint.
- The appointing minister may meet the recommended applicants before making their final decision.
- When the minister has made the decision whom to appoint and whom not to appoint, the reasons for these decisions will be recorded. This information will form the basis of additional feedback provided on request to applicants who are recommended to Ministers.

9 – RESPECT - Applicants will be:

➤ Made aware of the key dates throughout the processes	➤ Constructive, tailored and meaningful feedback will be provided to all unsuccessful applicants who make a reasonable request for it.
➤ Advised of what will happen to the information that they provide, including their initial application and monitoring data	➤ Will be provided with information on the development and support that they will receive if they are successfully appointed.
➤ Applicants who apply for roles that are subject to parliamentary approval will be provided with full information on what will be shared with the parliament, what will be put into the public domain and what parliamentary involvement in their assessment and appointment will mean for them.	➤ Those who are appointed will be asked to provide feedback on their induction and training. From time to time the Commissioner may provide recommendations to Ministers based on feedback from applicants.

10 – Sources of further information:

1. [Commissioner’s Code](#)
2. [Code Guidance](#)
3. [Good Practice Case Studies](#)
4. [Promoting Diversity](#)