

Ethical Standards Commissioner

CONSULTATION DOCUMENT

A consultation on potential revisions to the
Code of Practice for Ministerial Appointments
to Public Bodies in Scotland
– questions for consideration

06 August 2020

Contents

Respondent information.....	3
Issues on which Views are Invited	4
Equality and Diversity	4
Thematic Reviews of the Code’s Operation and Diversity Delivers Progress.....	5
Pragmatic, Proportionate and Public Interest Focused	6
Additional Issues that Code Revisions Could Address	7
Responses	11

Laid before the Scottish Parliament on 6 August 2020 in accordance with section 2(4) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003.
Reference CES/2020/03.

This document is available in alternative formats on request by telephoning 0300 011 0550 or by e-mailing i.bruce@ethicalstandards.org.uk.

CONSULTATION ON THE CODE OF PRACTICE FOR MINISTERIAL APPOINTMENTS TO PUBLIC BODIES IN SCOTLAND

Respondent information

This consultation paper invites comments on the existing Code and, in particular, asks those with a role or otherwise having an interest in the public appointments process whether the Code is operating as effectively as possible or whether they consider any improvements should be made to the Code. This paper should be read in conjunction with the main consultation document, available to download from our website:

<https://www.ethicalstandards.org.uk/publication/consultation-document-prospective-code-revisions>

Comments are invited by **Monday 9 November 2020**.

Please complete the details below. This will help ensure we handle your response appropriately. For information about how we process data we collect, including how we process personal data, please see our privacy policy at www.ethicalstandards.org.uk/privacy-policy.

Name: Paul Reilly	
Address: Accounts Commission, 102 West Port, Edinburgh EH3 9DN	
1. Are you responding as (please tick appropriate box):	
1a. An individual (go to 2a/b, 3)?	
1b. On behalf of a group or organisation (go to 2c/d, 3)?	YES
2. Individuals:	
2a. Do you agree to your response being made public (on the Commissioner's website or otherwise published) (please tick one box)?	
Yes (go to 2b below)	
No	
2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one box):	
Yes, make my response and name available	
Yes, make my response available, but not my name	
On behalf of groups or organisations:	
2c. Do you agree to your response being made public (on the Commissioner's website or otherwise published) (please tick one box)?	
Yes (go to 2d below)	YES
No	
2d. Your organisation's name as a respondent will be made available to the public (on the Commissioner's website or otherwise published) unless you request otherwise. Are you content for your response to be made available (please tick one box)?	
Yes, make my response and organisation's name available	YES
Yes, make my response available, but not my organisation's name	
Further contact	
3a. We may wish to contact you again in the future to clarify comments you make. Are you content for us to do so (please tick one box)?	
Yes	YES
No	
3b. We may wish to contact you again in the future for consultation or research purposes. Are you content for us to do so (please tick one box)?	
Yes	YES
No	

Issues on which Views are Invited

Equality and Diversity

Q1 – Should the Code have clear and specific provisions about the measures that the Scottish Ministers should adopt when planning to appoint new members in respect of diversity and should diversity be expanded to include other factors such as household income, sector worked in and skills, knowledge and experience?

Having additional measures and expanding diversity considerations both seem reasonable steps forward.

Q2 – If so, what should those measures be and what other factors should be considered?

In the spirit of accountability, an impact assessment approach would seem a helpful step forward.

In our role, we are keen that councils ensure that their engagement approaches reflect the make-up and diversity of their communities. It seems reasonable, therefore, that if Boards are geographical in nature, then their make-up should reflect their population.

Our reporting has consistently noted the engagement of minority communities in public services as being an area of concern, and so we would share the Commissioner's concern in this regard.

Q3 – Please provide reasons for your responses to Q1 and Q2.

Points answered above.

Thematic Reviews of the Code's Operation and Diversity Delivers Progress

Q4 – Should the Code include more prescriptive requirements to ensure that lessons are learned on an ongoing basis and that decisions taken by panels are always informed by evidence?

Our experience of appointment rounds tells us that reviewing previous rounds and reflecting on panel decisions is vital. It is sensible therefore – in the spirit of using the Code to improve the appointment process and board diversity as a whole – that the Code reflects such practice.

Q5 – If so, what requirements should be included?

In the spirit of accountability, such reviews need a reasonable degree of formality around:

- *Outcome against objective*
- *Learning for future rounds*
- *Learning for other Boards*
- *Lessons from recruitment numbers for the Board's own public profile.*

Q6 – Please give reasons for your responses to Q4 and Q5.

Explained above.

Q7 – Should the Code make reference to other, central activities such as nationwide, regional or characteristic-specific positive action measures that the Scottish Ministers should be engaging in to improve on board diversity?

This would be a matter for Ministers, although we always welcome positive steps from Ministers that help increase our diversity and thus representativeness.

Q8 – If so, what should those be?

n/a

Q9 – Please give reasons for your responses to Q7 and Q8.

As in q.7.

Q10 – Should the Commissioner seek ministerial and parliamentary approval to refresh the Diversity Delivers strategy?

No comment

Q11 – If so, what specifically should be updated/refreshed in the strategy?

n/a

Q12 – Please give reasons for your responses to Q10 and Q11.

Q13 – Which provisions of the Code and associated Guidance are detracting from the delivery of appropriate outcomes in the context of a fair, transparent and merit-based appointments system?

Our experience does not suggest any provisions which detract as such.

The current Covid-19 crisis may require more use of the ‘exceptional circumstances’ part of the Code (section H) and therefore there may be an opportunity to reflect such matters in this section.

Q14 – Please give reasons for your views.

As above.

Additional Issues that Code Revisions Could Address

Q15 – Should the Code be more prescriptive in this area and require panels to base appointment plan decisions on evidence of what works well to attract and appoint the right calibre of applicants?

Yes. It is the experience of the Commission that since we are keen on encouraging interest from people with an interest in or experience of public services, that creativity and flexibility are key in methods used.

Q16 – If so, what should these requirements consist of and what measures should be adopted to achieve board diversity in relation to protected characteristics, sector worked in and socio-economic background?

The requirements could include:

- *Use of more accessible language to advertise and interview (for example, the Commission underlines its role as a ‘public watchdog’ and its interest in the public services used by people and communities).*
- *More creative approaches in applications and details required (for example, the Commission ensures that an applicant can cite indirect experience and skills).*
- *More creative methods of advertising (for example, the Commission makes extensive use of social media in its campaigns, reaching into communities).*
- *Outreach activities (for example, the Commission has had in place for the last three rounds of recruitment our ‘Commission Uncovered’ events which take place around the country, aimed at prospective applicants).*
- *Method of interview/selection process (for example, the Commission includes a practical exercise to assess applicants’ skills in interrogating audit reports, and important aspect of the role of a Commission member. The exercise is shaped in a way not to disadvantage those who are unfamiliar with audit; rather it it’s the ability to interrogate and exercise professional scepticism that is important).*

Q17 – Please give reasons for your answers to Q15 and Q16.

We require in our audit work for local government bodies to be able to demonstrate how they learn from good practice. This therefore seems a reasonable expectation of the public appointments process.

Q18 – What changes, if any, should be made to the Code as a result of the coming into force of the 2018 Act?

It is reasonable that the Code reflects the Act.

Q19 – What legitimate grounds for choice should be specified?

No further comment

Q20 – Please give reasons for your views.

n/a.

Q21 – Should the Code more generally make specific reference to these new duties placed on the Scottish Ministers as well as the ramifications of those for prospective applicants? Appointment plans might, for example, require to include specific positive action measures to be taken for each vacancy to be filled.

No further comment

Q22 – If so, which duties should be included?

n/a

Q23 – What are your reasons for these views?

n/a

Q24 – Should the Code place an obligation on the Scottish Ministers to consult the Scottish Parliament on the prospective appointment plan for roles that require parliamentary approval?

We have no specific view on this, but would underline our view that improving accountability in the process is always helpful..

Q25 – Please give reasons for your views.

As above.

Q26 – Should information provided to applicants be clear about what parliamentary approval will mean for the appointment round in question?

Subject to the above answer, yes, although this should be done in a way that doesn't make the process seem more onerous or inaccessible to prospective applicants.

Q27 – Please give reasons for your view.

As above.

Q28 – Should the description of the attributes sought in new board members be expanded to include more than skills, knowledge and experience?

Yes.

Q29 – If so, what other attributes should be included?

Our experience of previous appointment rounds tells us that only including 'skills, knowledge and experience' can exclude a wide part of the population who have much to offer decision-making simply through being users of public services. There are many people who probably do not appreciate that their 'everyday' experience of public services can be such an asset to improving those public services.

Further, we firmly believe that good decision-making and oversight of public services benefits greatly not only from appropriate values but also from appropriate behaviours of those on public boards.

Q30 – Please give reasons for your answers to Q28 and Q29.

As above.

Q31 – Should the Code be more explicit about the need to match assessment methods to the attributes sought?

This would seem sensible, but not at the expense of the process being too onerous, inaccessible or off-putting to prospective applicants (thus consistent with our view in q27).

Q32 – Please give reasons for your answer to Q31.

As above.

Q33 – Please say whether you consider any of these issues is appropriate to be included in the Code, guidance or inappropriate for either. Please give reasons for the views you expressed below.

It is unclear as to what guidance set out in Appendix 3 are regarded as disproportionate, and so we have no comment to make.

Q34 – What should the Code say about panel members, including panel chairs and independent panel members, with a view to achieving the desired outcome on each appointment round? For example, should other competing personal and professional commitments be taken into account in the designation of a suitable member?

It is unclear from the consultation paper as to what the Commissioner has gleaned from good practice as being a matter of concern, so we have no comment on this.

Q35 – Should panel chairs be required to undertake any training, and if so, what should that entail?

Any members of a recruitment panel should be required to undertake training, including relating to diversity matters. Cognitive unconscious bias training may also be worth considering.

Q36 – Do you have any strong views about the terms of reference that independent panel members should be subject to (e.g. should they have received training, be paid, not be paid, be limited to a certain number of rounds that they are involved with before losing ‘independent’ status)?

They must be trained and be provided with sufficient support and time to participate fully in the appointments process.

Q 37 – Please give reasons for the views expressed in response to Q34-36.

All of these reflect our previous answers around the importance of the representativeness of public boards.

Q38 – Should the Commissioner commence audits for a proportion of appointment rounds that will otherwise have had no direct or partial oversight?

Proportionate review of such appointment rounds seems reasonable on the grounds of accountability and transparency, although clarity around the status of an ‘audit’ would be helpful.

Q39 – Should the results of such reviews and other relevant matters feature in more regular reports to the Scottish Parliament in order to improve on transparency?

Yes.

Q40 – Please provide reasons for your answers to Q38 and Q39.

As above.

Q41 – Do you consider the current regulatory model to be appropriate? If not, what should replace it?

No comment.

Q42 – Please provide reasons for your answer to Q41.

n/a

Q43 – Are there any other issues relating to the Code or associated guidance you wish to raise?

This consultation exercise has been helpful to us in being able to reflect our role in securing the audit – and thus setting expectations of – local government bodies. It has

allowed us to reflect on our own experience of appointment rounds as well as using our learning from our audit of local government.

We would underline our experience – and reflecting our role in overseeing how public services are shaped and provided - of ensuring that the appointments process is designed and conducted in a way that encourages applicants and interest that is as representative of the population as possible. Accessibility is key, and this can be improved with the right checks and balances in place and reflected in the Code. Empowering people and communities is a theme that should run through the process.

Q44 – Are there any other issues relating to appointment practices you wish to raise?

We suggest that public confidence in the public appointments process may be enhanced if the Code could be clearer about responsibilities, accountability and the importance of quality and effectiveness around due diligence on candidates' suitability for the post. For example, section A could set out who is responsible for ensuring due diligence is done, and section E could set out how this is to be done.

Responses

Responses should be submitted by **Monday 9 November 2020**.

They should be sent, ideally by email, to:

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Ethical Standards Commissioner

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