

Ethical Standards Commissioner



ANNUAL REPORT ON PUBLIC APPOINTMENTS

2020-21

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EXECUTIVE SUMMARY

The phrase “we are living in unprecedented times” is one that has been uttered on a regular basis since early 2020. The financial year of 2020/21 in regulated public appointments has been affected by the same significant worldwide events as every other area of public and private life. The start of the financial year in April 2020 coincided with the onset of a world-wide pandemic. This saw a sudden and urgent move to home working for those organisations and individuals for whom it was practicable and achievable. A lock down on the movement of individuals was implemented in order to slow down the spread of a deadly new virus. These measures affected all who are involved in the regulated public appointments process including the Commissioner’s staff, the Public Appointments Advisers (PAAs), Scottish Government officials who run the public appointments process on behalf of Ministers, Boards themselves and, of course, prospective applicants.

Initially, there was a temporary “pause” in appointment activity as all involved in the process waited to see what effect the pandemic would have on society. Many of the Scottish Government employees who would normally be involved in the process were transferred temporarily to Covid-19 related duties. This cessation in appointment activity can be seen reflected in the overall numbers of appointment rounds for the year. However, the overall numbers of contacts with the office in the form of enquires and reports did not diminish and in fact increased in some cases on previous years. This is not surprising; quite a number of requests were submitted to the Commissioner by the Scottish Ministers to extend appointment terms beyond the eight-year limit normally anticipated by the Code. These were agreed by the Commissioner to afford boards vital continuity during a period of significant uncertainty. As appointment activity resumed, in order to secure new Chairs and Members with the skills, knowledge and experience required for boards to deal with their hugely changed operational context, we saw a rise in requests for advice on how different parts of the process might best be conducted online. This process was iterative, as new information on good practice in this area was ingathered and distributed to the PAAs.

The Commissioner wrote to both the Permanent Secretary of the Scottish Government and the Cabinet Secretary for Finance, with responsibility for public appointments, in July 2020 to highlight her concerns about a perceived lack of strategic planning for the resumption of activity. The Commissioner’s view was that, following a world-wide system shock, Scotland’s public bodies would require to adapt flexibly to changes in services, resources, public needs and expectations and approaches to delivery. The Scottish Government’s response at that time was not compelling with an apparent focus on the operational aspects of the resumption of appointment activity. It was therefore heartening to see occasional changes in perspective and thought starting to take place in some forward-thinking appointment panels as the year progressed. This was particularly the case for NHS appointments where a considerable amount of time and focus was dedicated to improving on pre-existing appointments practices, in collaboration with our office.

In the 2019/20 annual report, the Commissioner had, for the first time, reported not only on protected characteristics, applications and appointments but also on sector worked (or more recently worked) in and household income. The Commissioner had also placed an emphasis on transparency with a view to reporting aspects of regulated public appointments processes, both good practice and areas for improvement, on a more regular basis. Both of these proved to be of significant interest to the Standards, Procedures and Public Appointments Committee. The Committee also took an interest in other research conducted by the Commissioner during the year on both applicants’ views of the process

and on a survey of current board chairs' and members' views on time commitment, remuneration and expenses and the impact that these have on board diversity.

The Commissioner also launched a consultation on prospective changes to the Code of Practice for Ministerial Appointments to Public Bodies in Scotland. The Code had last been revised in 2013. The responses proved to be illuminating with a submission from the Scottish Government made on behalf of the Scottish Ministers which contained views that were out of step with those of the majority of respondents, including those of a number of high-profile organisations working in the field of equality. This response gave the Commissioner some cause for concern with a proportion of the content suggesting that the Code should be 'principles based' and suggesting that current regulation is inflexible and prescriptive. Subsequent discussions between the Acting Commissioner and Scottish Government officials have suggested that a suitable resolution can be achieved.

The diversity statistics for the 2020/21 year have shown a general improvement overall, although, other than for gender, our boards still do not reflect the public that they serve. Figures for female representation continue to increase. Figures for BME applicants, appointments and reflection on boards have also improved and this may be as a result of positive action taking place due to the relaunch of the Scottish Government's Race Equality Action Plan in October 2020. It is encouraging to see improvement happening, however limited, across a number of areas. We will encourage learning on the part of the Scottish Government to establish what practices, some of which have been necessitated by the pandemic, have had an impact on these figures, if any. We will also continue to encourage learning from those Director General areas which have performed particularly well, such that good practice can be adopted across the Scottish Government.

We will also encourage greater measuring and understanding of intersectionality in public appointments, particularly in relation to socio-economic factors and the pipeline from board members into chair positions.

INTRODUCTION

The Commissioner for Ethical Standards in Public Life in Scotland, known as the Ethical Standards Commissioner, regulates how Scottish Ministers make appointments to the boards of public bodies that are within our remit.

The Commissioner's statutory functions in relation to public appointments are to:

- prepare, publish and, as necessary, revise a Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code)
- issue guidance on the Code and promote compliance with it
- examine the methods and practices employed by the Scottish Ministers when making appointments
- investigate complaints about how an appointment was made
- report to the Scottish Parliament instances of material non-compliance with the Code; the Commissioner may direct the Minister to delay making the appointment until Parliament has considered the report.

The Commissioner is to exercise these functions with a view to ensuring that appointments are made fairly and openly and allow everyone, where reasonably practicable, the opportunity to be considered for an appointment.

SUMMARY OF THE YEAR

The regulation of public appointments in the financial year 2020/21 was affected in an unprecedented and unanticipated way. The entire world was affected by the impact of the Covid-19 pandemic and its aftermath. In March 2020 the Commissioner's team moved to working from home exclusively. A number of general "in principle" variations to the requirements of the Code were requested by the Scottish Government as likely to be needed. These included requests to extend chair and member terms of appointment beyond the eight-year maximum normally allowed for by the Code. This took cognisance of the fact that appointment activity was likely to be delayed and it would therefore take longer to get new appointees in place. The Commissioner also allowed for greater flexibility in relation to changes to panel membership as there was a potential for people to become unwell or otherwise unavailable and unable as a consequence to fulfil their obligations under the Code. Eventually, there was a cessation in the majority of appointment activity pending the outcome of measures put in place to deal with the pandemic. Most of the Scottish Government Public Appointments Team were redeployed between March and September 2020 to help deal with Covid-19 response work at this time.

Updates from the Scottish Government and some term extension requests (which are provided in more detail later in this report) were received in April, May and August 2020. The Commissioner was keen to support the Scottish Ministers where possible during this time by agreeing to extensions and also made an offer that Public Appointment Advisers (PAAs) who were experienced in governance might help with board cover on an emergency interim basis if it was required.

The Commissioner, on granting the "in principle" requests for Code variations, had suggested that a review following three months may be appropriate and asked to be provided with updates on the plans for the resumption in activity. The Commissioner was directed in response toward the Scottish Government's [Framework for Decision Making](#) as a guide for transitions back to business as usual. This framework did not contain any details for the planned resumption of the appointment activity required to sustain the governance of public bodies in what were exceptional and challenging circumstances. In addition, where appointment activity did seem to be recommencing, panels did not appear to be giving much consideration to the changed needs of the board precipitated by their significantly altered operational contexts. This included limited consideration of varied requirements for health boards, despite the clear impact that the Covid-19 pandemic was having on health and social care provision. The Commissioner therefore wrote to both the Cabinet Secretary of Finance, whose portfolio included public appointments, and the Scottish Government's Permanent Secretary, to query the Scottish Ministers' response to the planned resumption of appointment activity, and to seek assurances on their plans for meeting board needs through appointments.

No formal resumption plan for appointment activity was received, but as the Scottish Government increased and developed the online functionality for employees working from home, the subsequent resumption of appointment activity online began to be the norm.

Some instances of good practice were noted, where requirements for board members included consideration of the changing demands that they would be subject to.

In the midst of the early cessation of appointment activity, the Gender Representation on Public Boards (Scotland) Act 2018 came into force. This had been anticipated and new statutory guidance on application of the Code, which took account of the Act's provisions, was published at the end of May 2020.

In the second half of 2020, the Commissioner launched a consultation on prospective revisions to the current Code of Practice for Ministerial Appointments to Public Bodies in Scotland. The 2019/20 annual report had highlighted that there was a need to review the current Code which had last been updated in 2013. The consultation was open from August 2020 until early November 2020. A range of responses was received to this, including one from the Scottish Government on behalf of the Scottish Ministers. This response gave the Commissioner some cause for concern with a proportion of the content suggesting that the Code should be 'principles based' and suggesting that current regulation is inflexible and prescriptive. It was also an outlier in its views in comparison with most other responses received, including those submitted by significant organisations working in the field of equalities. This response gave the Commissioner some cause for concern with a proportion of the content suggesting that the Code should be 'principles based' and suggesting that current regulation is inflexible and prescriptive. Subsequent discussions between the Acting Commissioner and Scottish Government officials have suggested that a suitable resolution can be achieved.

The Commissioner published the 2019/20 annual report and accounts in October 2020. This annual report contained, for the first time, data relating to applications and appointments by sector that the applicant worked (or most recently worked) in and household income of applicants.

Early 2021 saw the publication of reports on two pieces of research that the Commissioner had conducted. One was the annual report of applicant views on the appointments process. In line with the Commissioner's interest in the issue, this had researched applicants' responses to questions about aspects of the appointments process split by household income and by sector worked (or most recently worked) in. The other report was on the results of a survey of current board chairs and members seeking their views on various aspects of their role. This included how closely they felt the time commitment that they committed to when applying matched the reality once in post. We also sought their views on the remuneration that they receive, how they feel about expenses that they are able to claim and what they knew of the Commissioner's role. Both of these reports are available on the website.

The Standards, Procedures and Public Appointments Committee were keenly interested in both of these pieces of research and requested evidence sessions respectively with the Commissioner and the Cabinet Secretary for Finance, with responsibility for Public Appointments, in February 2021. The sessions were mainly based on the subject of the Code consultation, but also asked some thorough and searching questions around these reports and it was encouraging to hear the Cabinet Secretary take some of the Committee's key concerns seriously with a view to informing and implementing positive change. Given that the Scottish Parliament election taking place in May 2021 will result in a new Standards, Procedures and Public Appointments Committee being appointed, it is hoped

that they will continue with the interest in appointments highlighted in the previous Committee's legacy report.

During the course of the year, the Public Appointments Manager was required by the Commissioner to handle all incoming MSP complaints, which had originally been a temporary arrangement for three months from the start of 2020, and to provide advice and support in relation to a range of other of the Commissioner's statutory functions. As a consequence, a proportion of the activity planned for appointments remained incomplete at the year end, as reflected in our business and action plans.

IMPROVING DIVERSITY ON THE BOARDS OF PUBLIC BODIES

We have a statutory duty to use our powers with a view to ensuring that appointments are made fairly and openly and that as far as possible everyone has an opportunity to be considered. As part of our work in this area, the Commissioner agreed targets with the Scottish Ministers in the strategy document "Diversity Delivers", intended to encourage applications from as wide a range of people as possible. The strategy also included a range of recommendations, agreed with the Scottish Government at the time, intended to improve on the diversity of Scotland's boards. Progress against the recommendations is available on our website:

www.ethicalstandards.org.uk/promoting-diversity

The following tables and graphs show the extent to which Scotland's board members at the end of 2020 reflect the population of the country as a whole and how it has changed over time.

Table 1 – The current demographic profile of Scotland's boards

| Target Group | Change in board membership profile | Profile of board members [†] at the end of 2020 | Profile of board members [†] at the end of 2019 | Scottish Population (2011 Census) |
|---|------------------------------------|--|--|-----------------------------------|
| Female | +1.7% | 51.7% | 50.0% | 51.5% |
| Disabled | +0.2% | 7.4% | 7.2% | 19.6% |
| Black and minority ethnic ^{††} | +0.8% | 3.6% | 2.8% | 4.0% |
| Aged 49 and under | -0.2% | 17.7% | 17.9% | 54.3%* |
| Lesbian, gay and bisexual | -0.2% | 4.9% | 5.1% | 6.0%** |

[†]All board members inclusive of the chair unless otherwise stated. Percentages do not include those who did not make a declaration.

^{††}Black and minority ethnic figures reflect people from a non-white minority ethnic background

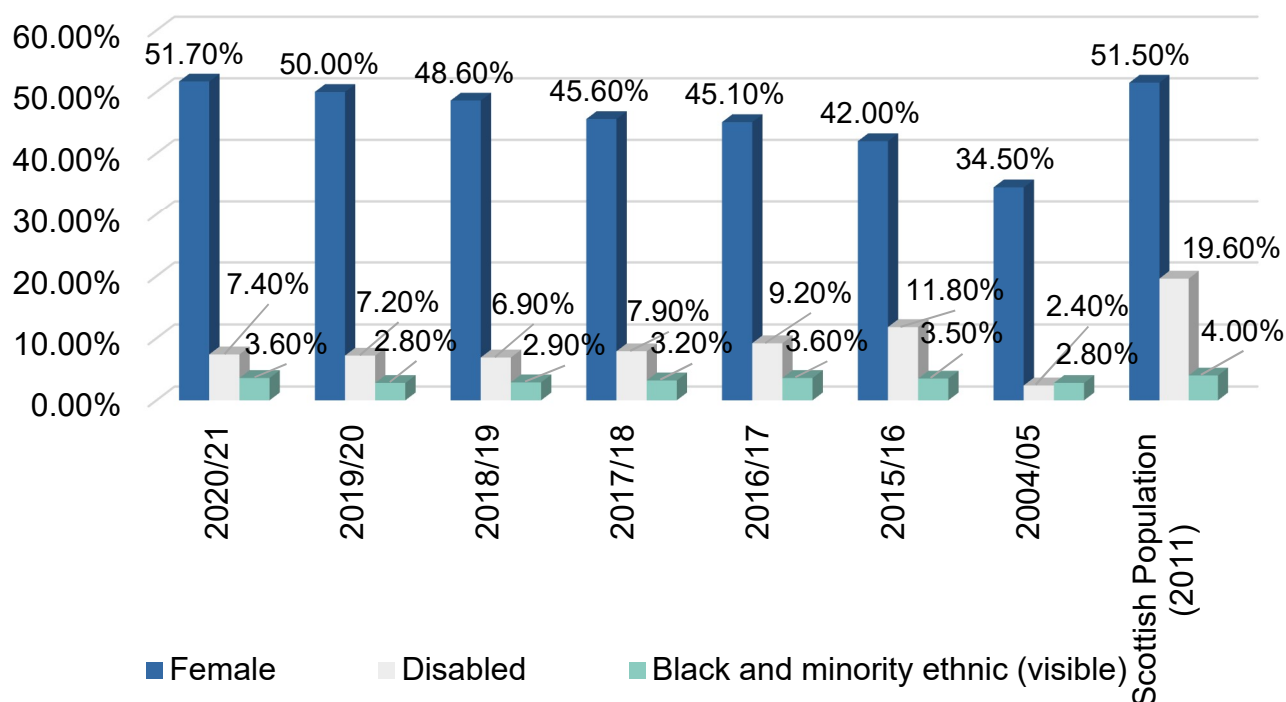
* Scottish Population aged 18 to 49 as a percentage of the whole population aged 18 and over.

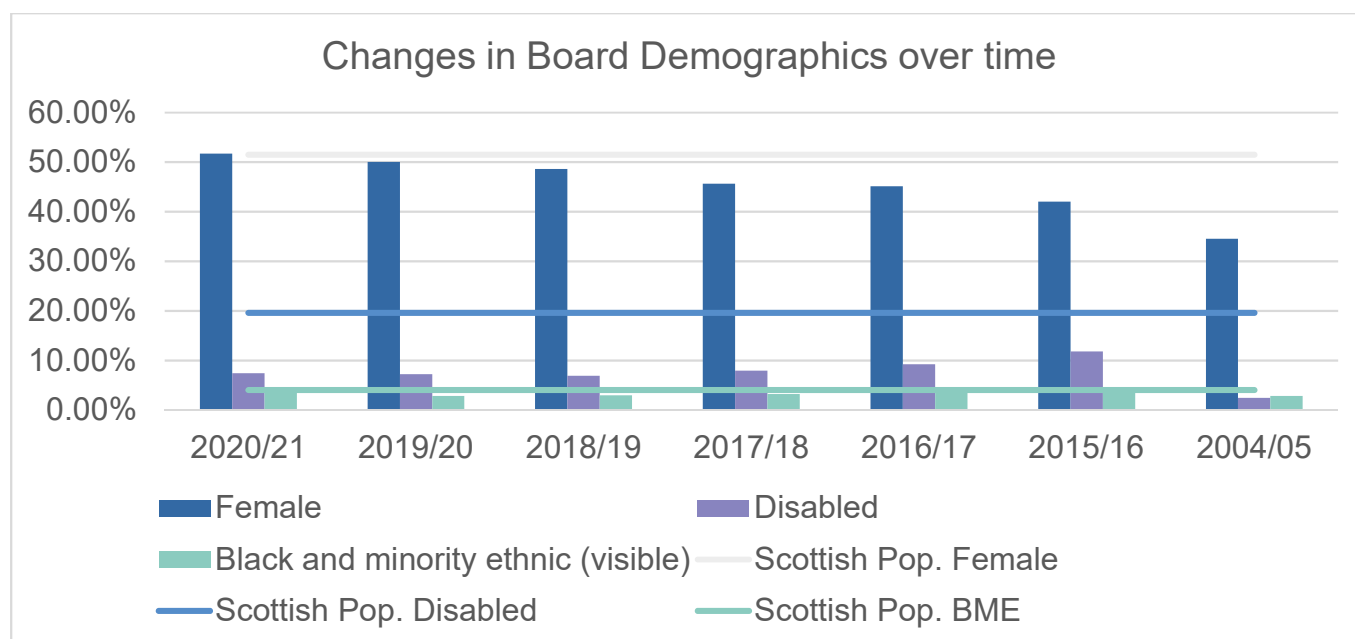
** Estimated based on information from Stonewall Scotland website

Table 2 – How the demographic profile of Scotland’s boards is changing

| Group | All board members (inclusive of chairs) | | | | | | | Scottish Population (2011) |
|-------------------------------------|--|---------|---------|---------|---------|---------|---------|----------------------------------|
| | 2020/21 | 2019/20 | 2018/19 | 2017/18 | 2016/17 | 2015/16 | 2004/05 | |
| Female | 51.7% | 50.0% | 48.6% | 45.6% | 45.1% | 42.0% | 34.5% | 51.5% |
| Disabled | 7.4% | 7.2% | 6.9% | 7.9% | 9.2% | 11.8% | 2.4% | 19.6% |
| Black and minority ethnic (visible) | 3.6% | 2.8% | 2.9% | 3.2% | 3.6% | 3.5% | 2.8% | 4.0% |

Changes in Board Demographics over time





The Commissioner has not set an objective for reflection by protected characteristics on boards. It is however recognised that this baseline must be tracked in order to assess whether the measures put in place to meet Diversity Delivers targets for applications from individuals from currently underrepresented groups and to enable successful applications from such individuals are making a difference to board demographics. This in turn will determine whether the targets continue to be required and set at current levels.

Female board membership has increased year on year since 2015/16 and has now exceeded the 50% target set by the Scottish Ministers in 2015. There is still under-reflection in respect of all other characteristics for which targets have been set in comparison with the demographics of the population. It is, however, encouraging to see a number of small increases across some of these characteristics from 2019 to 2020.

In 2018, the Commissioner requested, for the first time, the breakdown between chairs and members with a view to monitoring and tracking the extent to which public body chairs are reflective of society.

Table 3 – Demographic profile of board chairs and members

| Target Group | Difference in profile of chair cohort | Difference in profile of members cohort | Profile of board chairs at the end of 2020 | Profile of board members at the end of 2020 | Profile of board chairs at the end of 2019 | Profile of board members at the end of 2019 | Profile of board chairs at the end of 2018 | Profile of board members at the end of 2018 | Scottish Population (2011 Census) |
|---|---------------------------------------|---|--|---|--|---|--|---|-----------------------------------|
| Female | 9.88% | 0.57% | 39.29% | 53.40% | 29.41% | 52.83% | 28.24% | 51.53% | 51.5% |
| Disabled | -1.05% | 0.33% | 10.71% | 6.95% | 11.76% | 6.62% | 9.41% | 6.46% | 19.6% |
| Black and minority ethnic ^{††} | ^ | 0.57% | ^ | 3.64% | ^ | 3.07% | ^ | 3.06% | 4.0% |

| Target Group | Difference in profile of chair cohort | Difference in profile of members cohort | Profile of board chairs at the end of 2020 | Profile of board members at the end of 2020 | Profile of board chairs at the end of 2019 | Profile of board members at the end of 2019 | Profile of board chairs at the end of 2018 | Profile of board members at the end of 2018 | Scottish Population (2011 Census) |
|---------------------------|---------------------------------------|---|--|---|--|---|--|---|-----------------------------------|
| Aged 49 and under | 0.07% | -0.28% | 5.95% | 19.27% | 5.88% | 19.55% | 9.41% | 19.56% | 54.3%* |
| Lesbian, gay and bisexual | ^ | -0.27% | ^ | 4.90% | ^ | 5.17% | ^ | 5.44% | 6.0%** |

††Black and minority ethnic figures reflect people from a non-white minority ethnic background

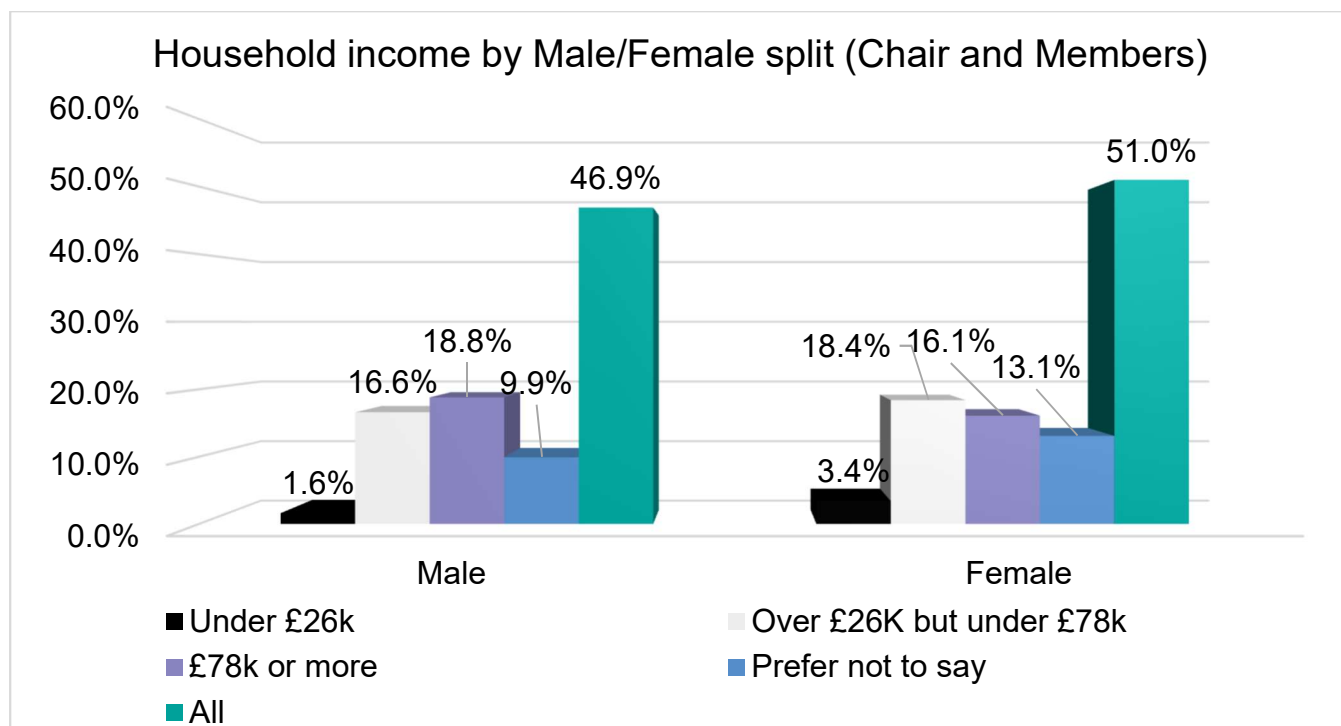
* Scottish Population aged 18 to 49 as a percentage of the whole population aged 18 and over.

** Estimated based on information from Stonewall Scotland website

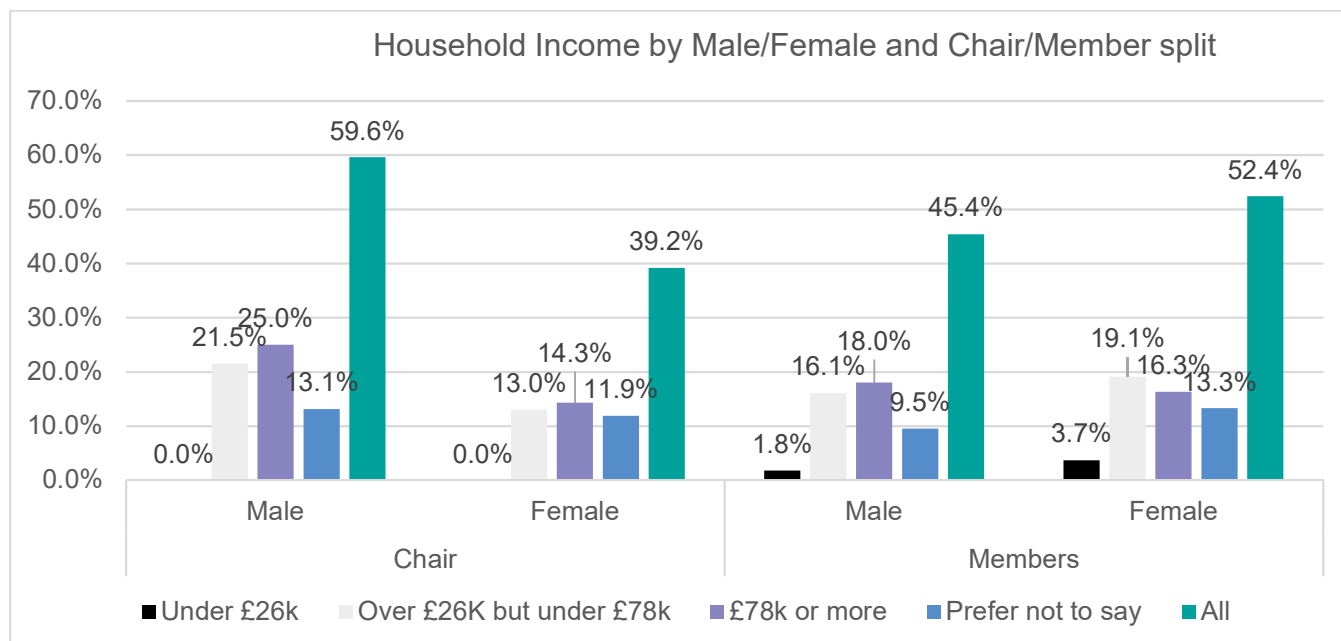
^ Values for fewer than five have been suppressed to decrease the risk of disclosure of information about individuals.

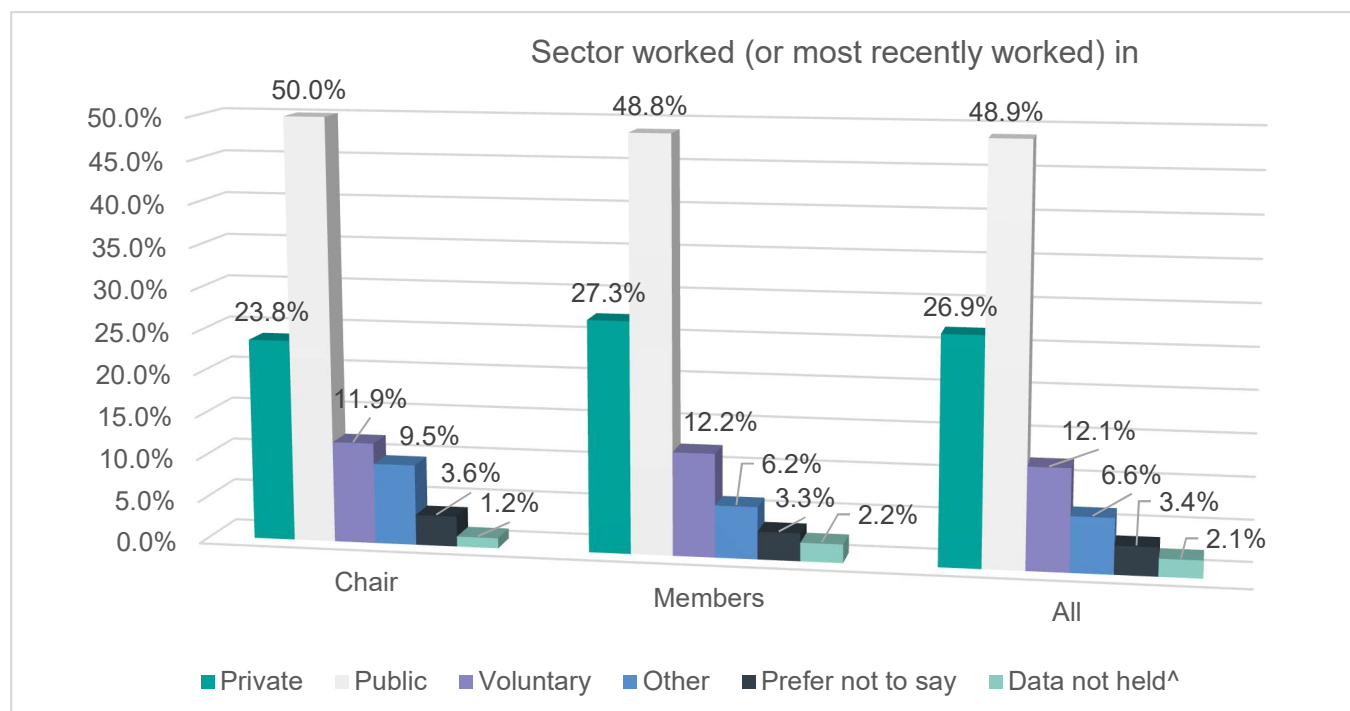
Following significant interest from a number of quarters, including the Standards, Procedures and Public Appointments Committee of the Scottish Parliament, about the data on applications and appointments by household income and sector worked (or most recently worked) in, as well as the Commissioners' research during the year on time commitment and remuneration, which sparked further interest in this area, the Commissioner has decided to also provide the demographic data for current board members and chairs split by these categories. The Commissioner was particularly keen to show the household income data split not only by chair and member but also by male/female split. Although the 50% objective for board membership set by the First Minister has been achieved, the Commissioner is concerned to understand whether the male/female make up of boards is also reflective of the socio-economic profile of the population of Scotland. In the absence of any other socio-economic data being collected from applicants and appointees, household income is the closest measure available to begin to determine this.

Information on household income of board chairs and members as at December 2020



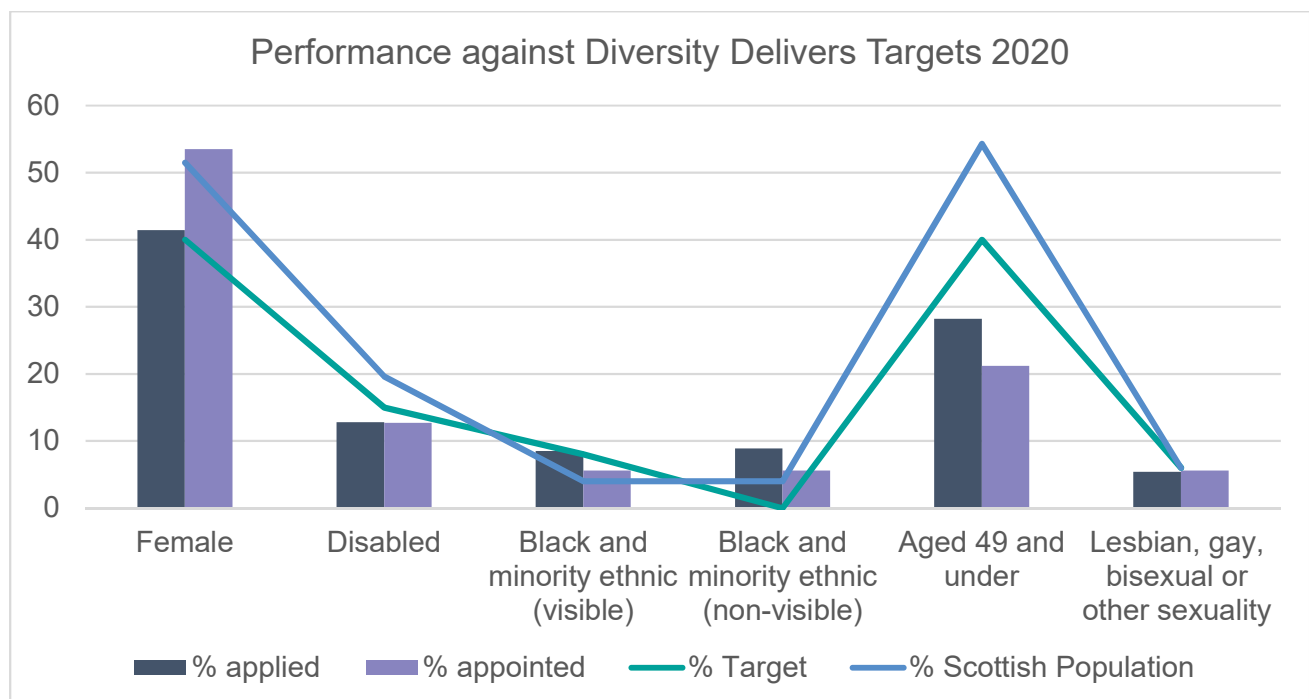
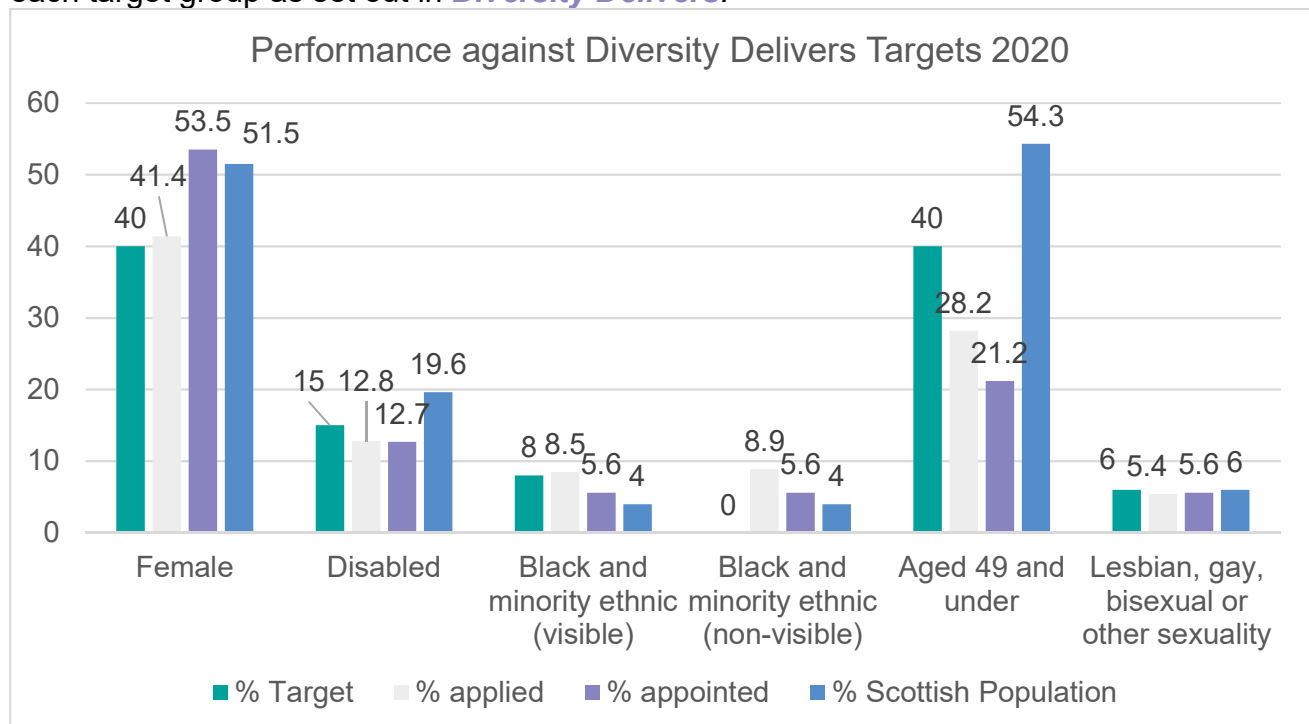
The Scottish Government publication, *Poverty and income inequality in Scotland: 2014-2017* gives the median weekly household income figure as £485 per week, equivalent to £25,220 per annum. The above chart shows that around 70% of our current board chairs and members (as at 31 December 2020) earn above the median income. Although male member and chairs are slightly higher in the £78k + category, this is not significantly higher. As such, the Commissioner's concern that, although boards are now gender balanced socio-demographic balance has not been achieved, seems to be well founded.





This shows that around half of both public body chair and members either work or mostly recently worked in the public sector. According to the Scottish Government publication “Public sector employment in Scotland: statistics for fourth quarter 2020” around 21.8% of the Scottish population work in the public sector.

The following chart shows the percentage of applications and appointments in 2020 by each target group as set out in *Diversity Delivers*.



The table below shows these figures for the preceding four years.

Table 4 – Applications and appointments by target group

| Target Group | Target | 2020 | | 2019 | | 2018 | | 2017 | | Scottish Population* |
|---|--------|--------|--------|--------|--------|--------|--------|--------|--------|----------------------|
| | ● % | ● % | ● % | ● % | ● % | ● % | ● % | ● % | ● % | |
| Female | 40.0 | 41.4 | 53.5 | 42.9 | 48.1 | 42.8 | 52.4 | 39.5 | 52.8 | 51.5 |
| Disabled | 15.0 | 12.8 | 12.7 | 12.9 | 11.9 | 9.4 | 7.1 | 11.0 | 6.5 | 19.6 |
| Black and minority ethnic (visible)** | 8.0 | 8.5 | 5.6 | 8.7 | 5.9 | 6.3 | 3.6 | 7.0 | ^ | 4.0 |
| Black and minority ethnic (non-visible) | N/A | 8.9 | 5.6 | 6.3 | 5.9 | 5.2 | 3.6 | 4.9 | ^ | 4.0 |
| Aged 49 and under | 40.0 | 28.2 | 21.2 | 30.8 | 27.4 | 28.2 | 22.6 | 27.1 | 29.6 | 54.3*** |
| Lesbian, gay, bisexual or other sexuality | 6.0 | 5.4 | 5.6 | 4.9 | 3.7 | 4.3 | 7.1 | 4.6 | 4.6 | 6.0**** |

Key: Applications ● Appointed ●

^ Values for fewer than five have been suppressed to decrease the risk of disclosure of information about individuals.

* Unless otherwise stated, all population figures are extracted from 2011 census data

** The target for the BME population is inclusive of people from non-visible minority groups. Up until 2017 the figures reported on have related to visible minority applicants and appointees. From 2017 onwards, the figures have been provided for both visible and non-visible. For this latter category the monitoring form question responded to is “Other white” and includes those who selected “Irish”, “Polish” or “Other white ethnic group”.

*** Scottish population aged 18 to 49 as a percentage of whole population 18 and over

**** Estimated based on information from Stonewall Scotland website

It is apparent from these figures that women are the only standalone group over the past four years who were more likely to be successful when they applied (although it is acknowledged that, in 2020, BME applications exceeded the target, people declaring LGB status were relatively successful when applying and people declaring a disability have seen some increase in both applications and appointments in the last 2 years).

The Commissioner met with the Cabinet Secretary for Finance, Economy and Fair Work during the course of 2019 as he had overall responsibility for public appointments. The Commissioner noted his commitment to broader diversity, including socio-economic diversity on boards, and his concerns about the need to reach out beyond the “usual suspects”. The Commissioner therefore decided to publish statistical information on household income and sector worked in for the first time in the 2019/20 report. As the interest in these statistics increased during 2020/21, with the Standards, Procedures and Public Appointments Committee having a particular interest, the Commissioner has decided to continue to publish these figures.

Table 5 – Applications and appointments by current or most recent sector worked in

| Current or most recent sector of work | 2020 | | 2019 | | 2018 | | 2017 | | Scottish Population |
|---------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|---------------------|
| | ● % | ● % | ● % | ● % | ● % | ● % | ● % | ● % | |
| Private | 33.1 | 23.9 | 33.9 | 27.4 | 31.2 | 25.0 | 35.9 | 30.6 | 78.2* |
| Public | 41.9 | 49.3 | 41.4 | 45.8 | 36.5 | 52.4 | 42.6 | 49.1 | 21.8* |
| Voluntary | 13.8 | 14.1 | 13.2 | 14.1 | 10.1 | 10.7 | 10.8 | 11.1 | 4.1** |
| Other | 7.2 | 7.0 | 7.8 | 11.1 | 6.3 | 7.1 | 7.5 | 6.5 | |

Key: Applications ● Appointed ●

*Figures obtained from the Scottish Government publication “Public sector employment in Scotland: statistics for fourth quarter 2020”.

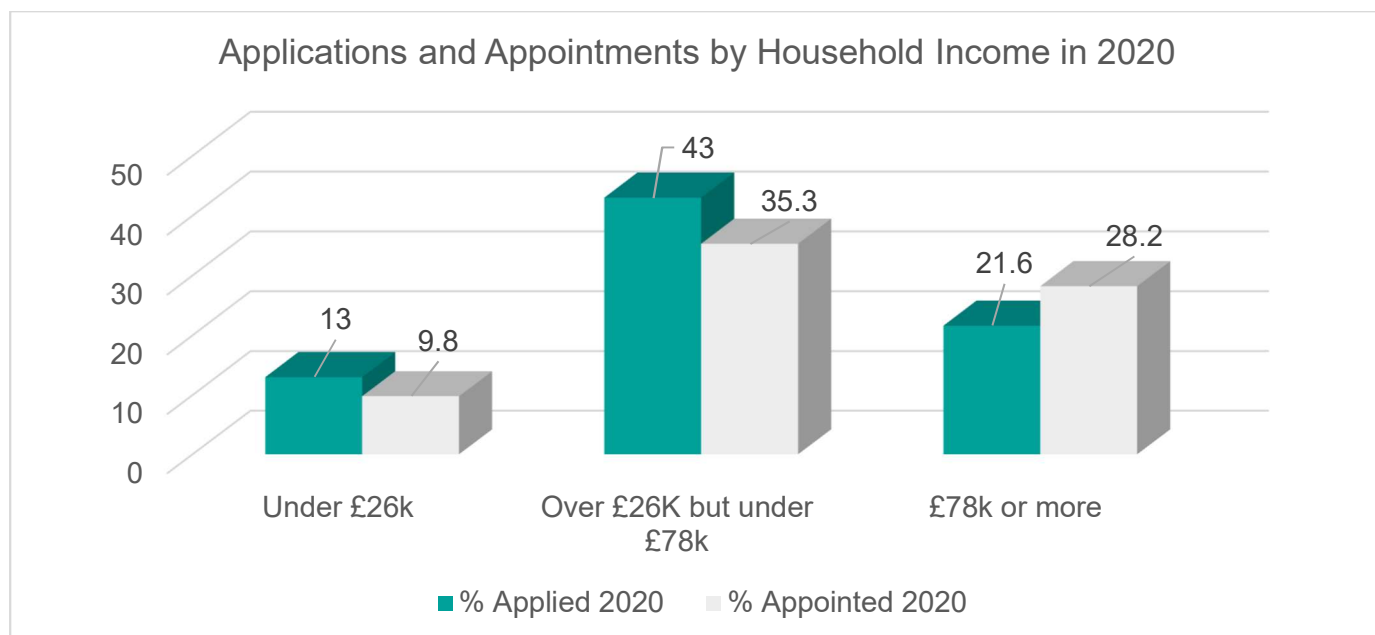
**Figure used is the number of paid staff in the third sector obtained from the SCVO publication “State of the Sector 2020: Scottish Voluntary Sector Statistics” (c 108,000 headcount) as a percentage of the overall population figure used at *.

It is clear from these figures that individuals from a public sector background are more likely than those from a private sector background to apply and that they are more successful when they do so. A disproportionately high number of people working in the voluntary sector, in comparison with the demographic of people working in that sector across the country, appear to apply for board roles and to be successful when they do so.

Table 6 – Applications and appointments by household income

| Household income | 2020 | | 2019 | | 2018 | | 2017 | |
|--------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| | ● % | ● % | ● % | ● % | ● % | ● % | ● % | ● % |
| a. Less than £5,200 per year | 1.2 | 1.4 | 1.2 | 0.0 | 0.6 | 0.0 | 0.7 | 0.0 |
| b. £5,200 to £10,399 per year | 2.1 | 1.4 | 1.8 | 0.7 | 1.3 | 0.6 | 2.1 | 0.9 |
| c. £10,400 to £15,599 per year | 2.4 | 2.8 | 2.1 | 1.5 | 2.3 | 1.2 | 2.7 | 0.0 |
| d. £15,600 to £25,999 per year | 7.3 | 4.2 | 7.6 | 3.7 | 7.0 | 3.0 | 7.4 | 3.7 |
| e. £26,000 to £36,399 per year | 10.7 | 8.5 | 10.2 | 3.7 | 9.3 | 5.4 | 10.2 | 6.5 |
| f. £36,400 to £49,399 per year | 13.5 | 5.6 | 13.4 | 11.9 | 12.9 | 17.9 | 13.7 | 9.3 |
| g. £49,400 to £62,399 per year | 9.3 | 11.3 | 10.2 | 11.1 | 10.2 | 10.1 | 11.4 | 8.3 |
| h. £62,400 to £77,999 year | 9.5 | 9.9 | 8.9 | 13.3 | 6.6 | 7.7 | 7.3 | 3.7 |
| i. £78,000 or more per year | 21.6 | 28.2 | 21.7 | 37.8 | 16.9 | 29.8 | 19.9 | 39.8 |
| j. Prefer not to say | 22.5 | 26.8 | 22.8 | 16.3 | 32.9 | 24.4 | 24.7 | 27.8 |
| All | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

Key: Applications ● Appointed ●



The Scottish Government publication Poverty and income inequality in Scotland: 2014-2017 gives the median weekly household income figure as £485 per week, equivalent to £25,220 per annum. This means that, in 2020, at least 64% of applicants and 63% of appointees had household incomes above the median. It is also apparent that in this and in previous years, those with household incomes in excess of £78,000 per year, the top 5% of earners in the UK according to HMRC estimates, are far more likely to be appointed than others who have applied. The results of the high level of applications from and appointments to individuals in the upper household income bracket are clearly contributing to the demographic profile of chairs and members by household income shown earlier in the report.

The Scottish Government also provides application and appointment data to the Commissioner disaggregated by Director General (DG) area to aid in identifying those that are meeting or exceeding the targets and so that the sharing of their good practice can be encouraged. The Director General areas are:

- Health and Social Care
- Education, Communities and Justice
- Economy

The Commissioner requested, for the first time this year, the data also disaggregated by household income and sector worked (or most recently worked in). Analysis of these data are included in appendix one.

There appears to have been some encouraging progress by some DGs in some areas.

Gender continues to be a key focus for all areas and this will have been further emphasised by the provisions of the Gender Representation on Public Boards (Scotland) Act 2018 coming into force during 2020. All areas continue to appoint above the target of 40% with only DG Economy attracting fewer than the target in applications.

There have been a number of targets achieved within the BME category for each DG area. Education, Communities and Justice have achieved the 8% target for applications for both

visible and non-visible BME applicants with these converting into appointments. Health and Social care also achieved the 8% target for applications for both visible and non-visible BME and came close to 8% for appointments. Economy achieved 8% in applications from non-visible BME applicants.

The Scottish Government Public Appointments Team published its updated dedicated Race Equality Action Plan in October 2020 and it is encouraging to see that this seems to be having a positive impact on appointment activity in certain areas.

The Health and Social Care and Education, Communities and Justice DG areas came close to the 15% target for applications from people declaring a disability. Their conversion rates from application to appointment was also higher than the target.

Health and Social care achieved the target for applications from LGB communities.

Although there are no targets, highlights from the new data provided include:

- Education, Communities and Justice appointed 57% from the private sector
- Health and Social Care appointed 15% from those earning £26,000 or less
- 50% of appointments made under the Economy DG area were under 50.

It is encouraging to see these pockets of improvement in certain areas of the Scottish Government, particularly in a year which has been so affected by a worldwide pandemic. It would be helpful to see this information being analysed to understand both whether the move to online interviews and assessments has made any difference to some of the specific groups, and also to learn from DG areas where improvements have been identified, so that others can learn from their practices.

PERFORMANCE AGAINST OUR BUSINESS PLAN

The Commissioner's public appointments objective is set out in the strategic plan for 2020 to 2024. At 31st March 2020 (it has since been re-written) it was:

“Evolution and maturity as a regulator, responsive to contextual and scope change:

- **Help create public body boards that are effective and reflective of society through our regulatory and outreach work, including our Diversity Strategy**
- **Consider adoption of a traditional regulatory role more fitting to the current environment”.**

The Commissioner's business plan for 2020/21 was not published but included actions intended to contribute to the achievement of this objective. Specific activities were set out under the following headings:

1. Revise the Code and Guidance on Ministerial Appointments to Public Bodies in Scotland
2. Increase transparency in the public appointments process by adoption of a traditional regulatory role
3. Help create public body boards that are effective and reflective of society through regulation and support of ministerial plans to implement the diversity strategy
4. Developing a talented professional team to further drive quality
5. Creating an effective information governance system designed to support our business aims

When the Covid-19 pandemic required the entire workforce to move entirely to homeworking, all activities were streamed to identify those which could be achieved whilst Social Distancing (SD) and which would require Regular Working practices (RW). Progress against the business plan is summarised in the following table.

Table 7 – Performance against Business Plan

| KEY | | Complete: | Partially complete: | Not done: |
|--|--|-----------|---------------------|-----------|
| | | | | |
| Actions Specified in the Strategic Plan | | SD/ RW | Due Date | Status |
| 1 – Revise the Code and Guidance on Ministerial Appointments to Public Bodies in Scotland | | | | |
| a | Consider innovative approaches to making amendments to the Code and guidance such that the revised version is pragmatic, proportionate and public interest focussed, including being in line with the adoption of a traditional regulatory role and providing best value for the public purse. | SD | July 2020 | |

| Actions Specified in the Strategic Plan | | SD/ RW | Due Date | Status |
|---|--|-----------|---------------|---|
| b | Consider innovative approaches to making amendments to the Code and guidance such that the revised version is pragmatic, proportionate and public interest focussed, including being in line with the adoption of a traditional regulatory role and providing best value for the public purse. | SD | July 2020 | |
| i | Draft a consultation document on prospective Code revisions for consideration by the ESC. Refer to the results of thematic reviews of the 2013 Code's operation as well as direct oversight of appointment activity and statutory guidance issued to inform the content. | SD | June 2020 | Done |
| c | Consult with the Scottish Parliament, Scottish Ministers, public bodies and stakeholder and equality groups about proposed revisions to the Code to inform and shape a model that is efficient, effective, appropriate to a traditional regulatory role and delivers successful outcomes. | RW | TBC | |
| i | Draft a GANTT Chart setting out all stages in the consultation. | SD | June 2020 | Done |
| ii | Issue the initial consultation document to the Scottish Ministers, Scottish Parliament, public bodies and relevant stakeholder organisations. Set an October deadline for responses. | SD | July 2020 | Done |
| iii | Set up group meetings with prospective responders such as public body chairs and stakeholder groups to gather their views in person. | RW | TBC. | Not done. Social distancing measures still in place |
| iv | Analyse consultation responses from ii and iii above | SD | December 2020 | Partial analysis done based on results of ii only. |

| Actions Specified in the Strategic Plan | | SD/ RW | Due Date | Status |
|---|--|-----------|----------------|--|
| v | Publish results of analysis | SD | January 2021 | Not done – full consultation not achieved due to social distancing. Rescheduled to 2021. |
| vi | Publish revised Code of Practice and associated statutory guidance. | SD | February 2021 | Not done – full consultation not achieved due to social distancing. Rescheduled to 2021. |
| vii | Provide training to PAAs and Scottish Government officials on what the revised Code and guidance will require in practice. | RW | Feb/March 2021 | Not done – full consultation not achieved due to social distancing. Rescheduled to 2021. |
| viii | Revised Code and guidance come into force. | SD | End March 2021 | Not done – full consultation not achieved due to social distancing. Rescheduled to 2021. |

| Actions Specified in the Strategic Plan | | SD/ RW | Due Date | Status |
|--|---|-----------|---------------|--|
| 2 - Increase transparency in the public appointments process by adoption of a traditional regulatory role | | | | |
| a | Develop a system of audit for rounds where the ESC has little or no oversight. Consider innovative methods to ensure proportionate and public interest focus. | SD | February 2021 | Not done due to other work prioritised by the Commissioner. Rescheduled to 2021. |

| Actions Specified in the Strategic Plan | | SD/ RW | Due Date | Status |
|---|---|-----------|-------------|---|
| b | Develop a method of reporting instances of non-compliance and good or poor practice to parliament on a regular basis such that transparency is increased. Track and report on the addition and removal of public body boards to/from the Commissioner's regulatory remit. Build on intelligence, data and knowledge to identify trends and value for the public purse with the resources available. | SD | June 2020 | Done |
| c | Raise awareness of the regulatory role of the ESC in the public appointments process such that the public has increased trust and assurance that the system is fair and transparent and that a wider and more diverse group of people are encouraged to apply. | | | |
| i | Revise the applicant survey to seek views on the regulatory and assurance role provided by the Commissioner. | SD | April 2020 | Done |
| ii | Use survey of board members on time commitment and remuneration (see below) to publicise ESC regulatory role. | SD | August 2020 | Done |
| iii | Record a range of new videos on the work of the ESC and Public Appointments Advisers and the assurance that they provide. Publish to the ESC website. | RW | TBC | Not done due to other work prioritised by the Commissioner and social distancing measures. Rescheduled to 2021. |

| Actions Specified in the Strategic Plan | | SD/ RW | Due Date | Status |
|---|---|-----------|-------------|--------|
| 3 - Help create public body boards that are effective and reflective of society through regulation and support of ministerial plans to implement the diversity strategy. | | | | |
| a | Build and publish online a suite of good practice guidance. Use innovative methods to ensure proportionate and public interest focus. | SD | August 2020 | Done |

| Actions Specified in the Strategic Plan | | SD/ RW | Due Date | Status |
|---|---|-----------|-------------|---|
| b | Support ministers with outreach opportunities in a way that is proportionate and provides value for the public purse. | | | |
| i | Run training for individuals from a visible BME background to become independent panel members (IPMs). | RW | TBC | Not done – postponed by SG due to pandemic. Date TBC. |
| ii | Support the mentoring and board shadowing scheme for disabled people. | RW /SD | Ongoing | Done |
| iii | Support the mentoring scheme for potential chairs of the future from currently under-reflected groups. | RW /SD | Ongoing | Done |
| iv | Other outreach and positive action measures to be agreed/responded to depending on requests for support from the Scottish Government. | RW /SD | Ongoing | One on line session conducted with Officers Association Scotland. |
| c | Conduct a review to assess whether the time commitment published in applicant information packs is accurate. Also assess whether the remuneration for roles is compatible with the true time commitment. | | | |
| d | Conduct a review to understand what barriers exist for potential applicants and in particular for those with a non-public sector background and those from less well reflected socio-economic backgrounds. Publish the results of the review and make recommendations to address any barriers identified. | | | |
| i | Survey all current board members and chairs on time commitment and remuneration using an online survey. | SD | August 2020 | Done |

| Actions Specified in the Strategic Plan | | SD/ RW | Due Date | Status |
|---|--|-----------|---------------|---|
| ii | Ask representative bodies for groups currently under-reflected on boards to canvas their members for their views on the same issue as well as on the barriers that they perceive they face. Include sectors worked in and socio-economic background. Set up an online survey for this purpose (SD) and run a series of workshops (RW). | RW /SD | November 2020 | Not done due to other work prioritised by the Commissioner. Rescheduled to 2021/22. |
| iii | Analyse survey results from i and ii above. | SD | January 2021 | Partial analysis done based on results of i only. |
| iv | Publish survey results and share with participants, the Scottish Government and Scottish Parliament. | SD | February 2021 | Partially complete. Results from i shared only. |
| | NEW ACTION DUE TO PANDEMIC: Request from the Scottish Government the plans of the Scottish Ministers for the resumption of appointment activity following lockdown including their proposals to take account of the new operations circumstances of boards when succession planning. | SD | July 2020 | Done |

| Actions Specified in the Strategic Plan | | SD/ RW | Due Date | Status |
|---|--|-----------|----------------|--|
| 4 - Developing a talented professional team to further drive quality | | | | |
| a | Conduct a PAA tendering exercise. | SD | December 2020 | Done |
| b | Conduct annual SLA discussion with each PAA to discuss contribution to appointment round, training needs and trends. | SD | March 2021 | Done |
| c | Review PAA training needs by reference to common enquiries and reports and requests submitted during SLA review discussions. | SD | September 2020 | Done |
| d | Run two PAA only Communication Days per annum to address training needs and to share intelligence on good practice. | RW /SD | March 2021 | Done (moved to four half day on line events) |
| e | Maintain reviews of staff training and development needs through performance management system and address any needs identified. | SD | May 2020 | Done |

| Actions Specified in the Strategic Plan | | SD/ RW | Due Date | Status |
|--|---|-----------|-------------|--|
| 4 - Creating an effective information governance system designed to support our business aims | | | | |
| a | Give support to the Corporate services team in developing risk management procedures/audit arrangements. | SD | TBC | |
| b | Conclude the data audit commenced in 2018 to ensure all Public Appointment records have been checked and that all data is held securely and in accordance with relevant records management policies and procedures. | SD | TBC | Not done due to other work prioritised by the Commissioner. Rescheduled to 2021. |
| c | Review our web pages to consider where technological developments can be used to improve information and guidance available. | RW | August 2020 | Not done due to other work prioritised by the Commissioner. Rescheduled to 2021. |

| Performance measures | | Due Date | Status |
|----------------------|--|--|--------|
| 1 | Numbers of regulated bodies and posts | Published in Annual Report and/or on website | Done |
| 2 | Number of appointment rounds initiated and completed | | |
| 3 | Number of applications and appointments | | |
| 4 | Time taken for individual stages of appointment rounds | | |
| 5 | Timing of re-appointments | | |
| 6 | Numbers of people appointed who have not previously held and do not currently hold a regulated appointment | | |
| 7 | Satisfaction levels with appointment process | | |
| 8 | Changes in demographic profile of applicants, appointees and board membership | | |
| 9 | Performance against Diversity Delivers targets | | |

| Annual Actions | | SD/ RW | Due Date | Status |
|----------------|---|-----------|---------------------------------------|---|
| 1 | Provide briefings to SG officials and parliamentary clerks/committees on the regulated public appointments process and in particular on cases in which appointments are subject to parliamentary approval. | SD /RW | As required | N/A |
| 2 | Draft updated manual of procedures for the public appointments allocations database. | SD | August 2020 | Not done due to other work prioritised by the Commissioner. Rescheduled to 2021. |
| 3 | Contribute to new board member induction sessions. | RW | TBC | Done (one on line session in September 2020) |
| 4 | Survey board and panel chairs one year after new appointments are made to assess whether the process has contributed to effective harnessing of diversity in governance. | SD | Ongoing | Not done due to other work prioritised by the Commissioner. Postponed to 2021. |
| 5 | Encourage SG to make appointments materials and online application system more accessible and more welcoming. | RW | Ongoing | No new activity in year |
| 6 | Engage with ministers and/or officials at the highest possible levels where they are able to influence the priority and resources afforded to public appointments improvement. | RW | Various during the course of the year | ESC has written to two ministers and the Permanent Secretary to raise concerns about practices. |
| 7 | Feed into lessons learned process through <ul style="list-style-type: none"> a. Contacting panel members (chair and body chair) for views on rounds and PAA performance b. applicant surveys: <ul style="list-style-type: none"> ○ Per round ○ Annually consolidated | SD | Ongoing | Done |

| Annual Actions | | SD/ RW | Due Date | Status |
|----------------|---|-----------|-------------|---|
| 8 | Reporting the results of the composite applicant survey. | SD | November 20 | Done – published Feb 2021 |
| | Working with officials to enhance strategic planning for appointment activity by allocating PAAs at the long term strategic planning stage before appointment rounds are agreed and in train. | SD | Ongoing | Sporadic provision of long term plans by SG (E.g. Nov 2020 – April 2021 all provided in March 2021) |
| 9 | Allocate PAAs to rounds on which their involvement will increase and enhance both understanding and assurance and will likely lead to more diverse boards. | SD | Ongoing | PAAs allocated when plans provided |
| 10 | Regulation of rounds a. Long term strategic plan provided b. Allocate PAAs c. Assess oversight level d. Update database Provide briefing | SD | As required | Ongoing |
| 11 | Issue statutory and non-statutory guidance as appropriate to foster improvement in practices. | SD | As required | Guidance issued during year related to GRPB introduction, and recruitment consultants (statutory to all). Guidance issued during year related to use of ICT and scoring/the use of priority criteria to PAA's only. |

| Annual Actions | | SD/ RW | Due Date | Status |
|----------------|---|-----------|--|---|
| 12 | Conduct ad hoc reviews of material produced during appointment rounds versus advice and/or reports from PAAs. | SD | One or two per annum – selection based on reports about PAA input. | Not done due to other work prioritised by the Commissioner. Rescheduled to 2021. |
| 13 | Provide training for panel members if/when requested. | RW | On request | None Requested |
| 14 | Post case studies of examples of successful new approaches on website. | SD | When PAAs advise round is appropriate for study. | None published in year |
| 15 | Amend guidance on the Code to take account of changes made to public appointments following enactment of the Gender Representation on Public Boards (Scotland) Act 2018 | SD | May 20 | Issued May 20 |
| 16 | Provide training for Scottish Government Graduate Development Programme/Fast-streamers on CESPLS regulation of public appointments. | RW | Once per annum – date to be confirmed | None requested |
| 17 | Provide training for independent panel members on their role and responsibilities under the Code. | RW | One group session per annum – date TBC | None requested |
| 18 | Review of reappointments | SD | When submitted by PAT | Ongoing |
| 19 | Conduct annual performance review with MS and half-yearly progress review | SD | May 20 and October 20 | Annual review conducted in September. No half-yearly to be conducted by mutual agreement. |
| | Conduct investigations into complaints or reports of potential material non-compliance, write draft reports of findings in accordance with laid down guidelines | SD | As required | One completed January 21 |

| Annual Actions | | SD/ RW | Due Date | Status |
|----------------|--|-----------|-------------|---|
| | Follow up on panel conduct concerns reported to the office by PAT and/or PAAs with a view to improving on practices. | SD | As required | Concerns raised with panels on rounds for SNIB and NHS Tayside |
| | Circulate PAA end of involvement reports | SD | Monthly | Ongoing |
| | Maintain mechanism for tracking legislation that removes or adds bodies from/to the CESPLS remit in respect of appointments. | SD | Monthly | Ongoing |
| | Keep up to date and moderate posts on the LinkedIn non-exec network | SD | Ongoing | Ongoing |
| | Keep up to date and review / consider new content for ESC website. | SD | Ongoing | Ongoing. New content added to support Code consultation and to support survey on time commitment / remuneration |
| | Manage archive and destruction of all ESC records relating to appointments | SD | Ongoing | Not done due to other work prioritised by the Commissioner. Rescheduled to 2021. |
| | Attend MTMs – prepare briefing on PA activity to date for year. | SD | Ongoing | Done for MTMs when held |
| | Write content for annual report | SD | May 20 | Completed May 20 |
| | Provide cover for Public Appointments Manager when out of office = responding to enquiries and requests for advice and guidance from SG and PAAs | SD | As required | Completed |
| | Produce quarterly FOI activity reports to FOI Commissioner | SD | Ongoing | Complete |

| Annual Actions | | SD/ RW | Due Date | Status |
|----------------|----------------------------------|-----------|----------|-------------------|
| | Tripartite Commissioners meeting | RW | March 21 | Completed on line |

MONITORING AND REPORTING

All information under this heading relates to the Commissioner's statutory duties to monitor and report on appointment activity and to provide guidance on application of the Code.

The Commissioner's remit extended to 717 posts on the boards of 99 public bodies at the year end. In the case of a proportion of these bodies, such as regional colleges, only the chair appointments are regulated. Additionally, some bodies are statutorily included in the Commissioner's remit even though they are either abolished or no longer active.

Table 8 - How many bodies and positions do we regulate?

| At 31 March | 2021 | 2020 | 2019 | 2018 |
|--|------------|------------|------------|------------|
| No. of bodies regulated | 99 | 97 | 95 | 95 |
| No. of posts regulated | 717 | 755 | 677 | 660 |
| Avg. no. of regulated positions per board | 7.2 | 7.8 | 7.1 | 6.9 |

Consumer Scotland, the Scottish National Investment Bank and the Scottish Fuel Poverty Advisory Panel were added to the Commissioner's remit over the course of the year and the Parole Board for Scotland was removed. The National Confidential Forum was also removed from the Commissioner's remit on 23rd April 2021 and this will be reflected in the 2021/22 annual report. The drop in the average number of posts regulated per board is largely due to the Parole Board for Scotland no longer being regulated as it consisted of 40 appointments.

A list of the regulated bodies is available at www.ethicalstandards.org.uk/regulated-bodies.

How many appointments did we oversee?

During the previous calendar year, 71 regulated board appointments were made to 30 public bodies. For a more detailed breakdown of appointment activity see Appendix Two. The data in Appendix Two are supplied by the Scottish Government. It covers a calendar rather than financial year. It sets out all appointments made by the Scottish Ministers in 2020, the number of applications for the posts and the oversight level applied by the Commissioner.

Appointments are made through a process called an appointment round. Multiple appointments can be made through a single appointment round and the Scottish Ministers can run more than one round in a single year per public body. In certain circumstances we allocate a Public Appointments Adviser (PAA) to oversee all or part of the round. We report on these allocations rather than the number of appointment rounds as this better reflects our actual workload - not every allocation becomes an appointment round.

Table 9 – Number of allocations made

| Allocations made | 2020/21 | 2019/20 | 2018/19 | 2017/18 |
|------------------------------------|-----------------|------------|------------|------------|
| Brought forward from previous year | 40 ¹ | 58 | 43 | 24 |
| Started in year | 58 | 70 | 96 | 90 |
| Active during year | 98 | 128 | 139 | 114 |
| Completed | 45 | 83 | 81 | 71 |
| Open at end of year | 53 | 45 | 58 | 43 |

The significant drop in number of rounds completed during the year 2020/21 can largely be attributed to a temporary cessation in appointment activity due to the Covid-19 pandemic. The oversight levels for allocations in 2020/21 are set out in the table below. How the Commissioner decides on an appropriate oversight level is explained in the [guidance on application of the Code](#). (see section 8)

Table 10 – Scrutiny of appointment rounds

| Scrutiny of appointment rounds | 2020/21 | HIGH | HIGH (SG request) | MEDIUM | MEDIUM (SG request) | LOW | TBC |
|------------------------------------|-----------|-----------|----------------------|----------|------------------------|----------|-----------|
| Started in year | 58 | 25 | 6 | 6 | 0 | 9 | 12 |
| Carried forward from previous year | 40 | 19 | 1 | 4 | 0 | 5 | 11 |
| Total active in year | 98 | 44 | 7 | 10 | 0 | 14 | 23 |
| Open at year end | 53 | 28 | 5 | 7 | 0 | 8 | 5 |
| Total completed in year | 45 | 16 | 2 | 3 | 0 | 6 | 18 |

TBC reflects the Commissioner's allocation of PAAs to rounds at a much earlier stage in planning and before any decisions have been reached on whether and, if so, how many appointments are to be made. A proportion of early engagement allocations did not result in appointment rounds.

How many people apply for a public appointment?

During 2020, 71 appointments were made to 30 public bodies following 1,307 applications made by 1,117 applicants. This information is provided by the Scottish Government and relates to a calendar year.

Table 11 – Number of applications and appointments

| Number of | 2020 | 2019 | 2018 | 2017 |
|--------------------------------------|-------|-------|-------|-------|
| Applications | 1,307 | 2,088 | 2,832 | 2,048 |
| Appointments | 71 | 135 | 168 | 108 |
| Average applications per appointment | 18.4 | 15.5 | 16.9 | 19.0 |

¹ 5 rounds were reported as live at the end of 2019/20 which were subsequently closed with a closing date at the end of March 2020 and therefore should have been included in the "completed in year" category.

Table 12 – Breakdown of applications

| Number of applications | 2020 | 2019 | 2018 | 2017 |
|-----------------------------|-------|-------|-------|-------|
| Applied | 1,307 | 2,088 | 2,832 | 2,048 |
| Reached shortlist | 1,299 | 2,079 | 2,827 | 2,017 |
| Invited to interview | 242 | 442 | 580 | 368 |
| Recommended for appointment | 87 | 151 | 176 | 132 |
| Appointed | 71 | 135 | 168 | 108 |

How long does an appointment round take?

As with the appointments' statistics, much of the material relating to these measures is provided to the Commissioner by the Scottish Government and relates to a calendar year. Concerns have historically been raised about the time taken for appointment rounds and reappointments and the Commissioner therefore included indicative targets for timescales in guidance on application of the Code. All of the indicative targets were surpassed in the prior three reporting years but not met by a small margin in this year.

The following tables provide information on the time taken for appointment rounds and for appointment and reappointment decisions to be made. The 2020 appointment rounds concerned are listed in Appendix Two.

Table 13 – The average time taken to appoint a member from the date of planning to the Minister's appointment decision

| | 2020 | 2019 | 2018 | 2017 | TARGET |
|----------------------------|-----------------|------|------|------|------------------------------------|
| Number of rounds | 31 ² | 55 | 70 | 49 | |
| Average time taken (weeks) | 20.4 | 17.5 | 18.9 | 18.2 | Up to 16 and no more than 20 weeks |

Table 14 – Time taken for discrete stages of an appointment round

| Stage | | 2020 | 2019 | 2018 | 2017 |
|------------------------------------|---|-------------|--------------|--------------|--------------|
| From | To | No of weeks | No. of weeks | No. of weeks | No. of weeks |
| Closing date for applications | Date when all applicants are informed about the final appointment decision | 13.5 | 10.8 | 8.9 | 11.9 |
| Date of interviews | Date when all applicants are informed about the final appointment decision | 4.4 | 5.3 | 5.2 | 6.6 |
| Selection panel report | Ministerial decision | 9.6 | 1.6 | 6.8 | 1.4 |
| Date on which the round is planned | Date on which the minister makes their appointment decision (overall time for purposes of target) | 20.4 | 17.5 | 18.2 | 19.8 |
| Date on which the round is planned | Date on which applicants are informed of the appointment decision | 21.1 | 18.8 | 18.0 | 20.9 |

² **Appendix Three** shows that the appointment rounds for the 4 NHS whistleblowing champions and for chairs of three NHS boards were run in tandem. Each is counted in this total as a single appointment round.

An appointment to the board of a public body is for a set number of years. At the end of this period, the board member's term of office may cease or they may be re-appointed. The guidance on the Code anticipates that the appointing Minister will give board members reasonable notice of their decision with a minimum of 13 weeks anticipated. In 2020, twenty one people had their terms of appointment extended. This tended to be due to the temporary cessation of appointment activity attributable to the Covid-19 pandemic and allowed for boards to maintain continuity during this time. There is no target for extensions, but the data for 2020 is noted here for interest.

Table 15 – Time taken to advise board members about reappointment decisions

| | 2020 | 2019 | 2018 | 2017 | Target |
|---|-------|-------|-------|-------|---------------------|
| | Weeks | Weeks | Weeks | Weeks | (Min. no. of weeks) |
| Amount of notice given to re-appointees before term of appointment due to end | 20.2 | 17.7 | 21 | 21 | 13 |
| Number of people reappointed | 65 | 50 | 96 | 107 | |
| Amount of notice given to those having their terms extended | 22.5 | | | | |
| Number of people having their terms extended | 21 | | | | |

How many applicants hold or have held a public appointment?

This indicator relates to whether applicants hold or have previously held a public appointment.

Table 16 – Applicants hold or have held an appointment

| | 2020 | | | | 2019 | | | | 2018 | | | |
|--|------------|---|--------------|---|------------|---|--------------|---|------------|----|--------------|----|
| | Applicants | % | Applications | % | Applicants | % | Applications | % | Applicants | % | Applications | % |
| Total | 1,117 | | 1,301 | | 1,786 | | 2,088 | | 2,058 | | 2,832 | |
| Currently holds /previously held a public appointment* | 91 | 8 | 101 | 8 | 83 | 5 | 97 | 5 | 348 | 17 | 612 | 22 |
| Currently holds /previously held a regulated public appointment* | 54 | 5 | 64 | 5 | 52 | 3 | 72 | 4 | 249 | 12 | 467 | 17 |
| Did not say** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 81 | 4 | 92 | 3 |

*Applicants who complete the relevant fields on the application form do not restrict themselves to listing regulated appointments. Two figures are provided as a consequence; the number of those who have declared any appointment and those who declared regulated appointments. The former includes children's panels, housing associations, tribunals, justice of the peace posts and appointments in England among others.

**Applicants are now obliged to provide an answer to this question.

Ministers interviewing applicants

The guidance on application of the Code states that the appointing minister is anticipated as meeting with appointable applicants, particularly in the case of significant chair appointments. During 2020, the Scottish Ministers only met the potential appointees on one round which was seeking new members for the Care Inspectorate.

What do applicants think of the appointments process?

The Commissioner published the 2019 Annual Applicant Research report in January 2021 and a summary of its findings was included in the last annual report. This report included applicant views disaggregated by sector worked (or most recently worked in) and household income. The report reflected on some interesting views from applicants. The only recommendations in the 2019 research report were that the Scottish Government take on board the views of applicants as expressed in the report and provide a response to these. This response was received and is published on the website alongside the report.

Applicant surveys continued to be undertaken for the majority of rounds taking place in the financial year 2020/21.

In summary:

- 1,170 applicants were asked for their views on 27 appointment rounds. This is in comparison to 1,372 applicants covering 48 appointment rounds in 2019, 2,230 applicants covering 53 appointment rounds in 2018, 1,601 applicants covering 40 rounds in 2017 and 805 applicants covering 16 rounds in 2016.
- 293 applicants responded in full or in part (25%). This is a decrease of 7 percentage points on response rates in comparison with the 2019 annual survey.

Due to the low numbers of applicants responding to the surveys in this year, and the changed operational circumstances of the Commissioner's office, it is not intended to produce an annual applicant survey report for 2020 and instead continued discussions will take place with the Scottish Government as to how applicant participation in the survey can be encouraged with a view to producing an annual report in 2022, for the survey's conducted in 2021.

We also ask public body and panel chairs to provide their views on the contribution of our PAA and on the appointments process. We use a simple 1 to 5 scale (5 is very satisfied, 1 is very dissatisfied), the results of which have consistently exceeded 4 in the past two years.

Table 17 – Satisfaction with the appointment process

| Average satisfaction level | 2020/21 | 2019/20 | 2018/19 | 2017/18 |
|----------------------------|---------|---------|---------|---------|
| PAA's contribution | 4.46 | 4.51 | 4.71 | 4.55 |
| Appointments process | 3.85 | 4.05 | 4.21 | 4.18 |

Any comments or constructive suggestions made are acted upon by the PAT and/or the Commissioner as appropriate.

PROVIDING GUIDANCE

Enquiries and reports arising from scrutiny

The following tables summarise substantive contacts with the office during the reporting year.

Table 18 – Summary of contact with the ESC office

| Issues raised | Supplementary Information | 2020/21 | 2019/20 | 2018/19 | 2017/18 |
|--|---------------------------|------------|------------|------------|------------|
| Enquiry - Asked for advice on the Code of Practice | 1* | 177 | 166 | 155 | 167 |
| Enquiry - Asked for advice on good practice | | 14 | 8 | 27 | 23 |
| Enquiry – Asked for exceptions to the Code, or term extensions or to discuss options not covered by the Code | 2* | 46 | 46 | 35 | 28 |
| Diversity research enquiry | | 0 | 5 | 16 | 48 |
| Enquiry - General enquiry on the work of the office | | 42 | 30 | 60 | 76 |
| Enquiries and Reports - Miscellaneous or “Other” enquiries or reports | | 346 | 315 | 283 | 190 |
| Enquiry - Freedom of information requests | | 0 | 0 | 0 | 2 |
| Report a complaint about an appointment round | 3* | 4 | 1 | 2 | 1 |
| Report a concern about an appointment round or a failure in administration | 4* | 100 | 91 | 93 | 84 |
| Report about good practice | 5* | 20 | 10 | 13 | 20 |
| Report about non-compliance with the Code of Practice | 6* | 7 | 8 | 13 | 7 |
| Totals | | 756 | 680 | 697 | 646 |

* Narrative below provides further detail.

1* - Requests for advice on the Code of Practice

Comparative analysis of these requests showed that seeking advice related to planning were the highest in the year concerned. Requests for advice on application and assessment methods were the next most common. There was a significant jump in queries relating to recruitment consultants (12 compared to 1 in the previous year) which will have been as a result of panels seeking advice on new statutory guidance introduced on this subject during the year (see below).

2* - Exception requests and options discussions

The Scottish Ministers can approach the Commissioner and make a case for specific provisions of the Code to be varied. The Commissioner’s agreement to such “exceptions” allows for courses of action to be taken that would otherwise not comply with the Code.

39 such cases were approved during the year in comparison with 28 in 2019/20:

- The largest number of exceptions sought in 2020/21 were in relation to extensions to board member and chairs’ terms. This was due to appointment activity being

temporarily ceased due to the Covid-19 pandemic and Scottish Government staff who would normally be engaged in this work being required to support work related to the pandemic for a short time. Exceptions were therefore needed (with the Commissioner having assured the Scottish Government that these would be agreed) in order to allow boards to continue to operate until such time as appointment activity could recommence. In the course of the year there were 27 contacts with the office about extension requests which resulted in 24 extensions being agreed covering 20 different bodies and 30 posts in total. Extensions tended to be for about 9 months.

Other exception requests were:

- additional appointments were made to three bodies
- changes to panel membership were allowed for twice
- unanticipated vacancies were filled from a reserve list of people considered suitable but not appointed at the conclusion of a recent competition once
- an emergency interim appointment was allowed for twice
- three miscellaneous Code variations were agreed. One was a request for a panel to convene a planning meeting remotely, rather than in person. This became a norm as the year progressed.

3* - Report a complaint about an appointment round

One of the complaints received during the year was as a result of a discussion where an applicant wanted to provide feedback in addition to that which had been provided in an applicant survey. It became clear that some of the applicant's experience was closer to an individual complaint than generic feedback about the process. The complainer was therefore referred to the Scottish Government as they had not yet raised their complaint direct. The Commissioner only investigates complaints once the Scottish Government's complaints handling process has been exhausted. The other two complaints received (one being made twice resulting in two contacts with the office) were out with the Commissioner's remit and the individuals were directed to the appropriate body to raise their concerns.

4* - Reported concerns

Reported concerns this year were roughly on a par with the previous one. Concerns about planning were the highest followed by public confidence and application and assessment methods.

5* - Reported good practice

Twenty good practice reports were received during the course of the year which included the following:

- Two referred to the panel's consideration of changing board needs due to the pandemic.
- Five related to various instances of good practice in succession planning. These included board chairs discussing the impact of the pandemic and societal changes in general on succession planning for their boards, use of succession planning committees and use of skills assessment for succession planning.
- Four related to reports of interviews going well, particularly in relation to the online environment which replaced face to face interviews as the year progressed.
- Five related to innovative approaches to publicising the opportunities through avenues such as good quality packs, video links describing the opportunity or virtual events to promote the opportunity.

- One described a panel's good use of priority criteria
- One described a good use of assessment with a simulated interview with a journalist being used to assess communication skills
- One referred to a great contribution from one of the Scottish Government's PAT managers who provided advice and support on using ICT for assessment and bias mitigation
- One related to support for applicants following their appointment to the role.

6* - Report non-compliance

There were 7 contacts relating to non-compliance – three of these were about the same instance but providing updates therefore there were 5 reports in total. The instances of non-compliance are listed below.

- the panel chair did not take part in shortlisting due to being on leave and delegated someone to attend in their place, with no prior warning to the rest of the panel.
- A role description was notified as being unable to be changed by the panel as a result of a decision by the minister. This was later clarified as a misunderstanding.
- A mismatch in the time commitment listed in the pack to the chair's understanding of the actual time commitment required.
- two cases in which a potentially inappropriate candidate had been identified for the role. One of these was circumvented from becoming material non-compliance through intervention to preclude this during the course of the round. The other resulted in an investigation which found that there was no material non-compliance.

PAT and the Scottish Government's cooperation when non-compliance was identified precluded material breaches of the Code arising.

Guidance on application of the Code

The Commissioner's office provides Code interpretation guidance, primarily to officials and PAAs, on a very frequent, ad hoc basis. Where trends are identified, the Commissioner seeks to provide general guidance with a view to improving on practices and increasing understanding.

Statutory guidance was provided during the course of the year on the following topics:

- the statutory guidance document was updated and published in May 2020 to take account of the Gender Representation on Public Boards (Scotland) Act 2018 which came into force on 29th May 2020.
- The use of recruitment consultants.

The Commissioner also updated the PAAs comprehensive good practice toolkit during the course of the year, particularly in relation to assessment using ICT.

APPENDIX ONE: Applications and Appointments by DG Area

The Scottish Government also provides application and appointment data to the Commissioner disaggregated by Director General (DG) area to aid in identifying those that are meeting or exceeding the targets and so that the sharing of their good practice can be encouraged. In 2020 the DG areas for Economy, Education Communities & Justice and Health & Social Care saw appointments made to boards within their remit. No appointments were made in the DG areas for the Scottish Exchequer, Organisation Development & Operations or Constitution & External Affairs.

Gender parity has been a particular focus for the Scottish Government since the launch of its 5050 by 2020 campaign in June 2015. That target was achieved in June of 2019, albeit for board members and not board chairs, on the boards of Scotland's regulated public bodies. Two of the three DG areas exceeded the target of 40% of applications from women during 2020 although none saw 50% or more applications. However, the Scottish Government's target for appointments continues to be met by virtue of the fact that women are more successful than men when they do apply.

Table 19 – Applications from and appointments made to women by DG area

| | Economy | | Education Communities & Justice | | Health & Social Care | |
|--------------------------|---------|-----------|---------------------------------|-----------|----------------------|-----------|
| | Applied | Appointed | Applied | Appointed | Applied | Appointed |
| Female | 30.8% | 45.8% | 42.2% | 71.4% | 47.9% | 55.0% |
| Male | 64.7% | 50.0% | 54.2% | 28.6% | 50.7% | 45.0% |
| Prefer not to say | 4.5% | 4.2% | 3.6% | 0% | 1.5% | 0% |
| All | 100% | 100% | 100% | 100% | 100% | 100% |

It is apparent from this table that the DG area for Health & Social Care, which has responsibility for more appointments than any of the others, continues to support the success of the achievement of gender parity on boards. Education, Communities and Justice have made a higher percentage of female appointments than Health and Social care in this year and in real number (rather than percentages) Economy only made one more male appointee during the course of the year. It is therefore clear that the Scottish Government's approach to increasing numbers (which will of course be helped by the Gender Representation on Public Boards (Scotland) Act 2018 coming into force in this year) is working. As the numbers of applications from women continue to increase, there is also an opportunity for DG areas to monitor the intersectionality of women applicants so that a true reflection of Scottish society can be achieved, as well as starting to make the same considerations for chair positions.

Reviews of other protected characteristics by DG area showed some differentiations for different groups.

Table 20 – Applications from and appointments made by age

The target for applications for this group is 40%.

| | Economy | | Education Communities & Justice | | Health & Social Care | |
|--------------------------|---------|-----------|---------------------------------|-----------|----------------------|-----------|
| | Applied | Appointed | Applied | Appointed | Applied | Appointed |
| Under 50 | 26.4% | 50.0% | 33.8% | 28.6% | 27.2% | 15.0% |
| Over 50 | 63.8% | 37.5% | 54.6% | 71.5% | 65.4% | 82.5% |
| Prefer not to say | 9.6% | 12.5% | 11.7% | 0.0% | 7.5% | 2.5% |
| All | 100% | 100% | 100% | 100% | 100% | 100% |

Table 21 – Applications from and appointments made by ethnicity

The target for applications from this group is 8% for both visible and non-visible BME individuals. There is no disaggregated target for non-visible BME applicants.

| | Economy | | Education Communities & Justice | | Health & Social Care | |
|--------------------------|---------|-----------|---------------------------------|-----------|----------------------|-----------|
| | Applied | Appointed | Applied | Appointed | Applied | Appointed |
| BME (visible) | 6.0% | 0.0% | 12.1% | 14.3% | 9.7% | 7.5% |
| BME (non visible) | 9.8% | 0.0% | 8.4% | 14.3% | 8.5% | 7.5% |
| Other | 81.0% | 95.8% | 74.7% | 71.4% | 80.2% | 82.5% |
| Prefer not to say | 3.2% | 4.2% | 4.8% | 0.0% | 1.5% | 2.5% |
| Not Stated | 0.0% | 0% | 0.0% | 0.0% | 0.3% | 0.0% |
| All | 100% | 100% | 100% | 100% | 100% | 100% |

Table 22 – Applications from and appointments made by declared disability

The target for applications from this group is 15%.

| | Economy | | Education Communities & Justice | | Health & Social Care | |
|-------------------------------|---------|-----------|---------------------------------|-----------|----------------------|-----------|
| | Applied | Appointed | Applied | Appointed | Applied | Appointed |
| Declared disability | 12.4% | 4.2% | 14.5% | 14.3% | 13.0% | 17.5% |
| No declared disability | 83.5% | 83.3% | 81.9% | 85.7% | 83.1% | 77.5% |
| Prefer not to say | 3.6% | 12.5% | 2.4% | 0.0% | 3.7% | 5.0% |
| Not stated | 0.4% | 0.0% | 1.2% | 0.0% | 0.3% | 0.0% |
| All | 100% | 100% | 100% | 100% | 100% | 100% |

Table 23 – Applications from and appointments made by LGB

The target for applications from this group is 6%.

| | Economy | | Education Communities & Justice | | Health & Social Care | |
|--------------------------|---------|-----------|---------------------------------|-----------|----------------------|-----------|
| | Applied | Appointed | Applied | Appointed | Applied | Appointed |
| Heterosexual | 87.6% | 87.5% | 86.7% | 100.0% | 87.2% | 87.5% |
| Non-Heterosexual | 5.8% | 4.2% | 4.8% | 0.0% | 5.3% | 7.5% |
| Prefer not to say | 6.6% | 8.3% | 8.5% | 0.0% | 7.5% | 5.0% |
| All | 100% | 100% | 100% | 100% | 100% | 100% |

Table 24 – Applications from and appointments made by sector worked (or most recently worked) in

Sector worked (or most recently worked) in – no target

| | Economy | | Education Communities & Justice | | Health & Social Care | |
|--------------------------|---------|-----------|---------------------------------|-----------|----------------------|-----------|
| | Applied | Appointed | Applied | Appointed | Applied | Appointed |
| Private | 30.3% | 12.5% | 39.8% | 57.1% | 34.0% | 25.0% |
| Public | 42.9% | 37.5% | 38.5% | 28.6% | 41.7% | 60.0% |
| Voluntary | 15.4% | 25.0% | 15.7% | 14.3% | 12.6% | 7.5% |
| Other | 7.5% | 12.5% | 2.4% | 0.0% | 7.5% | 5.0% |
| Prefer not to say | 3.8% | 12.5% | 3.6% | 0.0% | 4.2% | 2.5% |
| All | 100% | 100% | 100% | 100% | 100% | 100% |

Table 25 – Applications from and appointments made by household income

Household Income – no target

| | Economy | | Education Communities & Justice | | Health & Social Care | |
|--------------------------|---------|-----------|---------------------------------|-----------|----------------------|-----------|
| | Applied | Appointed | Applied | Appointed | Applied | Appointed |
| Less than £26,000 | 12.0% | 4.2% | 10.8% | 0.0% | 13.7% | 15.0% |
| £26,000 - £78,000 | 44.4% | 41.8% | 42.2% | 57.2% | 42.1% | 27.5% |
| Over £78,000 | 23.1% | 37.5% | 15.7% | 14.3% | 21.3% | 25.0% |
| Prefer not to say | 20.5% | 16.7% | 31.3% | 28.6% | 22.9% | 32.5% |
| All | 100% | 100% | 100% | 100% | 100% | 100% |

APPENDIX TWO: Appointments made in 2020

| Key for table | |
|---|---|
| Applications: ● Appointments: ● | |
| Column: DG | Column: Level |
| DG - Director General with sponsorship responsibility C – DG for General Communities E – DG for General Economy EJ - DG for General Education and Justice HSC – Chief Exec of NHS Scotland SE - DG for Scottish Exchequer Cor – DG for General Corporate | L - low M - Medium MSG – PAA involvement during planning requested H - High HSG - Set at high at the request of the Scottish Government |

| Body | DG | Position | ● | ● | Level |
|--|-----|----------|----|---|-------|
| Bord na Gaidhlig | E | Chair | 2 | 1 | H |
| Bord na Gaidhlig | E | Member | 4 | 1 | H |
| Borders Regional College | EJ | Chair | 6 | 0 | H |
| Care Inspectorate Board (Social Care and Social Work Improvement Scotland) | HSC | Member | 20 | 2 | H |
| Community Justice Scotland | EJ | Member | 36 | 2 | H |
| David MacBrayne Ltd | E | Chair | 22 | 0 | H |
| Dumfries and Galloway College | EJ | Chair | 8 | 0 | H |
| Healthcare Improvement Scotland | HSC | Member | 18 | 1 | H |
| Highlands and Islands Enterprise | E | Chair | 14 | 1 | H |
| National Museums Scotland | E | Chair | 10 | 1 | H |
| Historic Environment Scotland | E | Member | 34 | 4 | L |
| National Galleries of Scotland | E | Member | 41 | 4 | L |
| NHS Ayrshire and Arran | HSC | Member | 45 | 3 | H |
| NHS Ayrshire and Arran ³ | HSC | Chair | 18 | 3 | H |
| NHS Forth Valley | HSC | Chair | | | H |
| NHS Orkney | HSC | Chair | | | H |
| NHS Borders | HSC | Member | 31 | 1 | L |
| NHS Greater Glasgow & Clyde | HSC | Member | 69 | 3 | H |
| NHS Highland | HSC | Member | 54 | 3 | H |
| NHS Lanarkshire | HSC | Member | 34 | 1 | H |
| NHS Lothian | HSC | Member | 86 | 2 | H |
| NHS 24 | HSC | Member | 48 | 1 | L |
| NHS Golden Jubilee Board (National Waiting Times Centre Board) | HSC | Member | 14 | 1 | L |
| NHS National Services Scotland | HSC | Member | 49 | 2 | L |
| NHS Tayside | HSC | Chair | 8 | 2 | H |
| NHS Tayside | HSC | Member | 13 | 2 | H |

³ The figures supplied gave the aggregate number of applications and appointments for all of three of these NHS board chair posts.

| Body | DG | Position | ● | ● | Level |
|--|-----|--------------------------------|--------------|-----------|-------|
| NHS Golden Jubilee Foundation Board (National Waiting Times Centre Board) ⁴ | HSC | Whistleblowing Champion Member | 24 | 3 | H |
| Healthcare Improvement Scotland | HSC | Whistleblowing Champion Member | | | H |
| NHS National Services Scotland | HSC | Whistleblowing Champion Member | | | H |
| NHS Western Isles | HSC | Whistleblowing Champion Member | | | H |
| Public Health Scotland | HSC | Member | 171 | 7 | H |
| Scottish Law Commission | EJ | Member | 13 | 2 | M |
| Scottish National Investment Bank | E | Member | 231 | 8 | H |
| South of Scotland Enterprise | E | Member | 116 | 6 | H |
| The State Hospitals Board for Scotland | HSC | Member | 54 | 3 | H |
| West College Scotland | ECJ | Chair | 14 | 1 | H |
| Totals | | | 1,307 | 71 | |

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⁴ The figures supplied gave the aggregate number of applications and appointments for all of the nonexecutive whistleblowing champions.

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