

Ethical Standards Commissioner

Code of Practice for Ministerial Appointments to Public Bodies in Scotland,
published October 2013, and Guidance on the Code, updated version
published March 2019

SUMMARY AND AIDE MEMOIRE

A - THE PRINCIPLES OF THE CODE

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

Integrity - The appointments process must be open, fair and impartial. The integrity of the process must earn the trust and have the confidence of the public.

Diversity and Equality - Public appointments must be advertised publicly in a way that will attract a strong and diverse field of suitable candidates. The process itself must provide equality of opportunity.

The public appointments process will be outcome focused and applicant focused

B - STAGES OF THE APPOINTMENT PROCESS

Stage 1 - The ministerial public appointments process begins with a clear picture of the public body's

- . purpose
- . strategic objectives and
- . operational context

Stage 2 - The skills, knowledge and experience needed by the board are clear

Stage 3 - An appropriate plan guides appointment activity

Stage 4 - A range of able people is attracted to apply

Stage 5 - Appropriate methods are used to identify, recommend and decide, on the basis of merit, on the most able for appointment

C – RESPONSIBILITIES

Scottish Ministers:

- Fair, open and merit based appointments
- Succession planning (including appointment/re-appointment/ extension)
- Decision on whether a choice of appointable applicants required
- Membership of selection panel (Ministers are encouraged to appoint an independent panel member)
- Encouraged to consult the Chair of the body concerned re developing needs of the Board
- Identify the Skills, Knowledge, Experience and Personal Qualities (such as values) required (taking into account that of current members)

Merit is defined by the appointing Minister at the point at which he or she advises the panel on “the skills, knowledge and experience required to meet the needs of the board”. Given that NHS appointments also now require successful appointees to demonstrate the values of NHS Scotland, these are included in the definition of merit for all such appointments. Should Ministers decide at the outset that applicants only have to meet a given criterion to a given extent then this must be made clear to potential applicants. Ministers may also wish to weight certain criteria for selection

Ethical Standards Commissioner

over others. Ministers in this way can provide absolute clarity on the attributes of the people whom they wish to appoint.

Selection Panel Chair

- Implementation and outcome of appointment round
- Comply with requirements of Code

Selection Panel Members

- Identify and recommend to Scottish Ministers applicants who, on the basis of merit, best meet the requirements of the post in question
- Comply with requirements of the Code
- Guard against any impropriety or appearance of impropriety by declaring any conflicts of interest such as relationship (personal or business) with any applicant and knowledge of any applicants
- Alert the panel chair and their fellow panel members in cases in which their prior knowledge of an applicant may render that person unsuitable by reference to the fit and proper person test.
- Avoid using their prior knowledge of applicants' skills, knowledge or personal qualities during assessment such that they are advantaged or disadvantaged in comparison with applicants who are not known to the panel.
- Be competent to fill their role, ie:
 - Knowledgeable about the public body and the appointment
 - Understand the skills, knowledge and experience required
 - Have demonstrated sound judgment and decision-making
- Membership of panel remains the same throughout unless exceptional circumstances apply

The Commissioner

- Provide proportionate independent scrutiny
- Refer any complaints about the process to SG for resolution
- Investigate any complaints which complainants do not believe have been resolved within a reasonable time by SG
- Issue Guidance on the Code's requirements
- Appoint a Public Appointments Adviser to 'higher' and 'medium' level rounds, to rounds where SG has requested a PAA to act as panel member or adviser during planning only, or where he/she considers it to be appropriate
- Can consider requests to vary the provisions of the Code in any case in which those provisions aren't appropriate for a given situation.

D – THE APPOINTMENT PLAN:

Selection Panel Members will use all available and relevant information (such as Management Information and examples of good practice) and will agree:

- A clear and accurate role description
- A clear and accurate description of the skills, knowledge, experience and any personal qualities required, ie the Person Specification. The Person

Ethical Standards Commissioner

Specification will be readily understandable, capable of assessment, and not be unnecessarily restrictive

- The publicity, application and assessment methods to be used, which the Panel considers will attract a diverse range of applicants
- A timetable specifying key dates

E – ATTRACTING A RANGE OF PEOPLE

- The objective should be to encourage the optimum number of people to apply, and for people to find it comparatively easy to apply
- Publicity about the post(s), assessment criteria and application method(s) should therefore be clear, using easy to understand language
- Publicity methods should be resource-efficient
- Application methods should allow and encourage people to explain their skills, knowledge, experience and personal qualities by appropriate methods such as CV, covering letter or application form

F - IDENTIFYING AND RECOMMENDING THE MOST ABLE PEOPLE ON MERIT

Assessment will be undertaken by individuals who are:

- Competent to assess, using the methods chosen
- Consistent in their assessment of applicants
- Knowledgeable about equality and diversity issues and the impact the chosen methods may have on different groups of applicants

Assessment methods will:

- Be capable of assessing whether candidates have the skills, knowledge and experience for the role
- Be open and transparent
- Accommodate the needs of different groups
- Provide applicants with fair and equal opportunities to demonstrate their merit
- Remove, as far as reasonably possible, the impact of personal bias on decisions
- Enable panels to explore whether each applicant is a 'fit and proper person'

It is perfectly legitimate for the selection panel to delegate some of the assessment to appropriately qualified individuals. A panel might, for example, delegate a sift of applications (i.e. removing all applications which clearly do not meet the criteria for selection) or more specialist assessment such as psychometrics or role plays. It isn't, however, appropriate to delegate shortlisting or interviews as these are panel responsibilities. Selection Panel Members will assess the merits of applicants against the skills, knowledge and experience needed using the methods they have agreed. New requirements will not be introduced during the round. It should be noted that new requirements are not limited to an additional requirement, but can include a change to the level required for a skill, knowledge or experience.

Assessment activity will identify the 'most able' of the applicants who have demonstrated the skills, knowledge and experience required. If the fit and proper person test has been delegated to the panel by the minister, the panel must also assess whether applicants meet the test. A fit and proper person is an individual who is suitable for appointment because they meet the requirements of the role and

Ethical Standards Commissioner

because their past or present activities and/or behaviours do not render them unsuitable for a given appointment.

An Applicant Summary will contain the panel's recommendations for appointment. The panel will recommend only the applicants they have identified as 'most able'.

The Applicant Summary will be the basis of the Scottish Ministers' decision. Ministers will select the applicant whom they consider has the skills, knowledge, experience and personal qualities that most closely match those required and who best meets the needs of the Board.

In cases where more than one position is to be filled and one candidate clearly meets the criteria for selection more closely than others, the selection panel should make it clear to the appointing Minister that this candidate is the most able and should be appointed.

In cases where one candidate clearly meets the criteria for selection more closely than others, and only a single position is being filled, the application of the principles means that the selection panel is obliged to present only this candidate to the Minister as suitable for appointment

Copies of the Code and Guidance documents can be found at

<https://www.ethicalstandards.org.uk/publication/code-practice>

<https://www.ethicalstandards.org.uk/publication/revised-statutory-guidance-application-code-2019-version>