

# Ethical Standards Commissioner

## CONSULTATION DOCUMENT

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

06 August 2020

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

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

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

### Respondent information

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

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

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

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

<b>Name: Ethan Young</b>	
<b>Address:</b> 22-24 Earl Grey St, Edinburgh EH3 9BN	
<b>1. Are you responding as (please tick appropriate box):</b>	
1a. An individual (go to 2a/b, 3)?	
1b. On behalf of a group or organisation (go to 2c/d, 3)?	X
<b>2. Individuals:</b>	
2a. Do you agree to your response being made public (on the Commissioner's website or otherwise published) (please tick one box)?	
Yes (go to 2b below)	
No	

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one box):	
Yes, make my response and name available	
Yes, make my response available, but not my name	
<b>On behalf of groups or organisations:</b>	
2c. Do you agree to your response being made public (on the Commissioner's website or otherwise published) (please tick one box)?	
Yes (go to 2d below)	X
No	
2d. Your organisation's name as a respondent will be made available to the public (on the Commissioner's website or otherwise published) unless you request otherwise. Are you content for your response to be made available (please tick one box)?	
Yes, make my response and organisation's name available	X
Yes, make my response available, but not my organisation's name	
<b>Further contact</b>	
3a. We may wish to contact you again in the future to clarify comments you make.	
Are you content for us to do so (please tick one box)?	
Yes	X
No	
3b. We may wish to contact you again in the future for consultation or research purposes. Are you content for us to do so (please tick one box)?	
Yes	X
No	

## Issues on which Views are Invited

### Equality and Diversity

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

**Yes we need to be proactive in assuring that boards have more diverse representation especially disabled people. Ministers and boards need to firstly understand that disabled people bring expertise through their lived experience. One in five people in Scotland are disabled. This must reflect board membership so that the board has the lived experience expertise at this level so that strategy and direction filters down to provide more inclusive and accessible services. The barriers on the ground for disabled people accessing services or benefiting from operational outputs will never be fully removed without inside knowledge and expertise at all levels. House hold income should be taken into account too. 50% of those living in poverty either are or have a disabled family member. This compounds the barriers that disabled people face to gaining a seat at the decision making table. To long have disabled people been the subject of enquiry rather than acknowledged as the essential link in working to remove the societal barriers that block their path to realising their human rights.**

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

**Where boards acknowledge a lack of representation and therefore lack of lived experience expertise, they should be allowed to advertise under the essential criteria, for 1 or 2 postions on the board, lived experience of Disability. It is then that we will be fully demonstrating that this expertise is valued and seen as an asset. Non disabled people simply can't bring that level of experience to the table.**

**Making the application process more accessible is also a way forward. There are many barriers for disabled people who might not be good at applications or interview but can still bring what a board needs. Because of the myriad of barriers face throughout their life there is a chance that they will always be overshadowed by those who have had board level experience before or have been round the block in the corporate world and know the right things to say. Being good at interviews doesn't necessarily make you the right person for the job. This isn't easy to get around of course.**

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

**I think I have covered the reasons in the questions above. Happy to talk further on these points.**

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

**Yes**

**Q5 – If so, what requirements should be included?**

**Learning the lessons on the competency gaps of disabled people who make interview but aren't appointed is vital to understand why underrepresentation is happening. When we understand this we can work to address the gaps.**

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

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

**Yes see questions 1 and 2**

**Q8 – If so, what should those be?**

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

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

**Yes**

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

**Lived experience expertise of disability being allowed as part of the essential criteria for some board positions where there is lack of representation on that board and where their board and body's work clearly have an impact on the lives of disabled people.**

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



Pragmatic, Proportionate and Public Interest Focused

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

**Q14 – Please give reasons for your views.**

## Additional Issues that Code Revisions Could Address

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

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

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

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

**Q19 – What legitimate grounds for choice should be specified?**

**Q20 – Please give reasons for your views.**

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

**Q22 – If so, which duties should be included?**

**Q23 – What are your reasons for these views?**

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

**Q25 – Please give reasons for your views.**

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

**Q27 – Please give reasons for your view.**

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

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

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

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

**Q32 – Please give reasons for your answer to Q31.**

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

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

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

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

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

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

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

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

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

**Q42 – Please provide reasons for your answer to Q41.**

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

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

## Responses

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

They should be sent, ideally by email, to:

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