

Ethical Standards Commissioner

CONSULTATION DOCUMENT

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

06 August 2020

Contents

Respondent information.....	3
Issues on which Views are Invited	5
Equality and Diversity	5
Thematic Reviews of the Code’s Operation and Diversity Delivers Progress.....	7
Pragmatic, Proportionate and Public Interest Focused	10
Additional Issues that Code Revisions Could Address	11
Responses	18

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

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

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

Respondent information

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

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

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

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

Name: Hilary Stubbs, Vice Convener, Mobility and Access Committee for Scotland (MACS), and responding on behalf of MACS.	
Address: Victoria Quay, Edinburgh.	
1. Are you responding as (please tick appropriate box):	
1a. An individual (go to 2a/b, 3)?	
1b. On behalf of a group or organisation (go to 2c/d, 3)?	YES
2. Individuals:	
2a. Do you agree to your response being made public (on the Commissioner's website or otherwise published) (please tick one box)?	
Yes (go to 2b below)	

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

Issues on which Views are Invited

Equality and Diversity

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

Yes.

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

The range of measures should depend on the role and function of the appointment e.g, on MACS we have a requirement for at least 50 % of our members and our Convener to be disabled. However, this isn't the only 'lived experience' that is appropriate to us as an advisory Board. In looking at our membership we need to have representation from both urban, rural and island communities so we support adding in additional factors. We also support the drive to see more representation from different socio-economic groups on public board.

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

Lived experience is vital for us to give a balanced range of support and advice to Ministers and Transport Scotland. It also gives us, as a Board credibility with our partners and stakeholders.

Having personally lived on a Scottish island my voice on island matters is vital in framing services to an island community. We have more recently had Board members who bring their perspective from a hidden disability (learning difficulty, hidden underlying chronic medical

condition) and this has helped others within the Board team to learn more and include their needs in our work.

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?

Requirements should reflect the current and foreseeable work of a Board e.g. following the Covid pandemic, Health and Transport Board members would benefit from having experience of change and crisis management. If the requirements for Health Board members remained unchanged the skill level of Board members may not reflect the work of their Board.

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

We have seen over the last 6 months how the work of Scottish Government and its Public Bodies has changed significantly, hence on-going lessons should be used to contribute to future recruitments.

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

Q8 – If so, what should those be?

There is a valuable range of work on the diversity of a Board including the work of Lord Holmes which should be reflected in positive actions. In addition Ministers may have a specific direction of travel that they wish to pursue and require the assistance of their Board/Public Bodies. For example the need to embed climate change into all aspects of work may require specific skills, experience or knowledge in a Board member

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

The world is changing rapidly and sometimes a Board or Public Body urgently needs to add a specific type of person to their Board to enhance their work.

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?

It is important to reflect the changes in society in both terminology and legislation

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

As a nation we are developing our changing attitude to the protective characteristics and it is important to reflect this in our recruitment to ensure fair representation from individuals who own those characteristics.

We are also focussing on a wellbeing and socially just economy and with aspirations to eradicate poverty. Experts by experience (people with lived experience of the impact of

policies) need to be at the table to in put, learn from and help drive the changes. We learned the benefits from taking this approach by involving disabled people (nothing about us without us) when engaging on the National Transport Strategy 2.

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?

The Code and Guidance are written in high level linguistics, and this is above the level of understanding for sections of the population which are under-represented on the Board's of Scottish Government.

We also need a focus on what people need to engage and this could be similar to the support offered under Access to Work. Introducing similar support would allow disabled people to be supported into a public appointment role.

Another area that needs explored in the payment of fees and how it effects people's social security payments (ESA, JSA, UC). Some people cannot undertake a public appointment as the fee payments would interfere with their social security entitlements.

Q14 – Please give reasons for your views.

Educational attainment is intrinsically linked to linguistic ability but these factors are not necessarily linked to many of the under-represented groups on Boards i.e. those on a low household income or in private sector employment may not feel capable of applying for a position on a Public Body, but their lived experience is invaluable.

Additional Issues that Code Revisions Could Address

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

YES

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?

A first step would be to look at how a vacancy is advertised, its documentation and where it is advertised e.g an Easy Read version of all material should be published and vacancies advertised in the Metro newspaper if applicants are sought from all socio-economic backgrounds.

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

Lived experience is vital for a rounded Board.

On MACS one of our disabled members has learning difficulties and we endeavour to publish all our work as Easy Read. Her contribution to our work is invaluable.

We have a member who is in receipt of employment support allowance and we work with them to stagger their fee claims (outwith the normal submission timeframes) to avoid deductions or sanctions on their employment support payments. This member has also consulted with the DWP to gain an agreement to calculate income over 12 week periods rather than 4 week periods to avoid breaches, but this was outwith the norm and only after the member utilised another organisation to help shift the DWPs thinking to find a resolution.

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

None. There should not be one protective characteristic highlighted in preference to all of the equality and diversity requirements, and appointment on merit should be applied.

Q19 – What legitimate grounds for choice should be specified?

If the constitution of the Board specifies a restriction / choice this should be applied, but no other ground for choice should over-ride a fair and equitable recruitment

Q20 – Please give reasons for your views.

There needs to be a well reasoned argument for any deflection from a fair and equitable recruitment. The advertisement could express a positive discrimination e.g. applications are specifically invited who are x, y, z. But once these applicants have applied we believe they should be appointed on merit, not on satisfying a different ground or target i.e. 50/50 gender split.

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.

Yes, the Code could emphasis the requirements placed on Ministers but the selection process should not select to meet these requirements at the exclusion of a more suitably qualified or experienced candidate.

Q22 – If so, which duties should be included?

This would depend on the vacancy or the balance which needs to be addressed

Q23 – What are your reasons for these views?

Board recruitment should be divided: invite suitable candidates including those who meet the 'requirements', select the candidate based on a fair and equitable recruitment with the most suitable candidate being appointed.

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?

No, as long as Ministers are informed of an appointment plan.

Q25 – Please give reasons for your views.

Ministers can if they wish pass on their views about recruitment requirements but notifying them of plans should be adequate to ensure the right candidates are recruited

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

Yes.

Q27 – Please give reasons for your view.

There is a section of the community who aspire to a Non Executive Directorship / Board membership as a status symbol or social connections or to career prospects. This has perpetuated the imbalance between appointments and representation of all incomes and occupations. Applicants need to be advised at the onset of recruitment that these positions have an important part to play in the democracy of the country, and entail hard work and difficult decisions.

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

Yes

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

Personal skills such as a willingness to respond quickly, to take ownership of a decision, to continually learn and develop, to keep up to date with developments in their field, to promote the cause they represent, to champion their Board.

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

Board work is not easy, it demands a significant amount of commitment and frequently the remuneration doesn't reflect the time or skill spent on the work.

Public Appointments need to be more accurate and set realistic expectations regarding the actual time commitment for the role. There should also be a move away from the reliance and expectation that public appointees will volunteer time on top of their paid duties. It is standard practice and an expectation that public appointees will work more days than contracted for no fee.

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

Yes

Q32 – Please give reasons for your answer to Q31.

Applicant deserve to know how they will be selected for appointment or not selected.

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.

The Guidance is the best place as this is flexible whereas the Code is like the foundation stone of an appointment

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?

Any appointment round needs to find and appoint the most suitable person for a role, so the person needs to be looked at as a whole, and not individual attributes. It is crucial that people have realistic expectations of the time commitment for the role and that this can be managed. This needs to be clear pre appointment to avoid unnecessary burdens on other within the public appointment team at a later stage.

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

Panel chairs who have not been involved in senior level recruitment would benefit from training, but I would expect a chair to have the skill and common sense to indicate if they need some training or refresher training.

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)?

I believe they should be paid and have a fixed term appointment of perhaps 2 years

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

If we are to select the best candidates for a role, the success of a recruitment round relies on the skills of the recruiters.

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

No.

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?

No

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

If the documentation provided to Ministers when they confirm an appointment is clear, objective, factual and structured this can form the transparency and fairness tool.

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

I feel it is appropriate as the PAAs are skilled recruitment staff, who support the panel in a comprehensive manner.

Q42 – Please provide reasons for your answer to Q41.

If the recruitment process is a controlled process there is no need to change the model

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

No.

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

No

Responses

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

They should be sent, ideally by email, to:

Ian Bruce

Public Appointments Manager

Ethical Standards Commissioner

Thistle House

91 Haymarket Terrace

Edinburgh

EH12 5HE

E mail: i.bruce@ethicalstandards.org.uk

www.ethicalstandards.org.uk