



Ethical Standards Commissioner

Information Pack for Potential Consultants *to act as* Public Appointments Advisers

Up to three contracts available

September 2020

INVITATION TO APPLY TO CONTRACT WITH THE ETHICAL STANDARDS COMMISSIONER FOR SCOTLAND TO ACT AS A PUBLIC APPOINTMENTS ADVISER

This document is supplied purely for the purpose of assisting potential suppliers to respond to this invitation to apply to work with us as consultants. No part of this document may be reproduced or transmitted in any form, by any means (electronic, photocopying, recording or otherwise) for any other purpose.

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

Introduction

1.1 The post of Commissioner for Ethical Standards in Public Life in Scotland (The Commissioner) was established in 2013 and brings together the functions of the Chief Investigating Officer, the Commissioner for Public Appointments in Scotland and the Scottish Parliamentary Standards Commissioner.

In relation to public appointments, the Commissioner regulates the processes administered on behalf of the Scottish Ministers to appoint individuals to the boards of public bodies in Scotland. This is done by:

- publishing a code of practice to be followed when making non-executive appointments to the boards of public bodies
- examining the practices used during appointment rounds with a view to ensuring they comply with the code of practice
- encouraging increased board diversity by publishing and promoting a strategy to that end
- working to ensure that appointments are made fairly and openly and that everyone who may be interested in an appointment has the opportunity to apply
- investigating complaints about the public appointments process.

The previous Commissioner published a revised Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code) in October 2013. The current Commissioner, Caroline Anderson, was appointed in April 2019. She has a consultation on prospective revisions to the Code underway. In any case it is anticipated that the Commissioner and her team of staff and Public Appointments Advisers will continue to work with the Scottish Government to encourage innovation in appointment practices and specifically to increase the diversity of the people who serve on the boards of Scotland's public bodies. The Commissioner is seeking to increase the pool of talented individuals, by up to three, available to act on her behalf as Advisers.

Advisers provide independent scrutiny of the appointments process and are responsible for monitoring application of the code and, where appropriate, for highlighting any breaches. They also have a very important role to play in providing advice to officials and to selection panels on good practice in open, transparent and accessible recruitment and selection techniques.

To be effective in the role, it is essential that Advisers have well developed influencing and communication skills, are able to apply a Code or system of regulation in practical situations and a significant and successful track record in promoting diversity and ensuring equality through providing advice on and taking an active role in recruitment and selection processes.

More information about the Commissioner, the work of her office and the Code of Practice can be found at www.ethicalstandards.org.uk/public-appointments.

PUBLIC APPOINTMENTS ADVISER ROLE

Scope

The number of appointment rounds run in any one year is determined by Scottish Ministers. In the year 2019/20 there were 128 Adviser allocations to appointment rounds. 68 of these completed in the year were overseen by one of our 11 Advisers. In 58 of those cases, the Adviser acted as a full panel member.

An Adviser may expect to be involved in four or more rounds per year. If no, or a limited number, of appointment rounds are instructed by Scottish Ministers in a year then Adviser input will be less or may not be required. Appointment activity was paused from March this year as a result of the global pandemic. There is therefore a backlog of appointments to be made, a fair proportion of which will require oversight in the last quarter of 2020 and into 2021.

Scale

The complexity of each appointment round differs. Advisers can act in a number of different capacities from advising a panel on good practice at the very earliest stages of planning for a round through to acting as a full panel member – on a range of different appointment rounds to a range of different public bodies. A current list of regulated bodies is available to view on our website: <https://www.ethicalstandards.org.uk/regulated-bodies>.

Each round for each body should be designed to find a choice of suitable candidates for the appointing minister. It is our aspiration that each appointment round will be bespoke to the position to be filled and considerable tailoring involved to deliver that outcome. An appointment round that, for example, seeks suitable candidates to chair a public corporation should look very different to one that seeks candidates for a scientific position on an advisory body. Recruitment exercises should also be designed to redress the under-reflection of people who share protected characteristics. Our Advisers have to be both skilled at and comfortable in providing advice to selection panels in both types of situation with a view to securing the right outcome for the body, the minister and ultimately the people that the body serves. Regulated bodies in Scotland are responsible for annual expenditure in excess of £14 billion.

Activities

The nature of the Adviser's role is to provide proportionate, external scrutiny of the appointments process on behalf of the Commissioner. It is also fundamentally concerned with spreading good practice in recruitment and selection by sharing information on, encouraging the use of and putting into place fair, open and accessible techniques that do not represent barriers for people from currently under-reflected groups. Activities will be varied but may include the following (this is not an exhaustive list):

- supporting selection panels to make appropriate decisions about the way in which appointment rounds should be conducted through ongoing dialogue and advice to panel members and attendance at pre planning and planning meetings
- Assisting panels with interpreting ministerial requirements for a position into a formal personal specification with appropriate assessment methods
- reviewing and auditing paper trails relevant to the appointment process
- attending other meetings as required as part of the appointments process such as shortlisting meetings
- providing concise reports to the Commissioner on findings of both good practice and poor practice
- Making appropriate interventions in cases in which a selection panel or others working in support of the panel either have contravened or appear as though they may contravene the requirements of the Code
- Sharing examples of good practice and alerting the Commissioner to evidence of non-compliance with the Code
- Responding timeously to requests for a view on matters considered urgent by the Scottish Government and/or the Commissioner.

VALUE OF CONTRACT

Advisers will be paid a VAT inclusive daily rate of £300 per day or a proportion for part thereof and all reasonable expenses incurred will be reimbursed. More information on the role of the PAA is included in the Service Level Agreement (SLA) that each works to. This is appended to this document. In 2019/20, PAAs earned an average of approximately £8,000 per annum in fees for the provision of oversight, exclusive of out of pocket expenses.

GENERAL REQUIREMENTS

Travel

Although the Commissioner's staff and most Advisers are currently working remotely, Advisers will, subject to the social distancing measures in place at the time, be required to travel to and attend meetings which will generally be held in the offices of public sector organisations across Scotland (predominantly in Edinburgh and Glasgow). All reasonable travel expenses will be reimbursed in line with the ESC expenses policy.

Information Technology

The Commissioner's office uses MS Office software. Advisers will not be supplied with hardware or software and will be expected to have access to secure systems that will enable communication with the office including completion of MS Word documents, the sending and receipt of emails and participation in meetings using MS Teams. Tenderers invited to interview will be asked to complete a practical test using MS Word.

Applicable Policies

As specified in the Service Level Agreement that successful tenderers are required to sign, Advisers are required to work to the policies of the Commissioner. These include the Code of Conduct and Equal Opportunities Policies. Copies of all relevant policies are available on request and are also published on the Commissioner's website. Advisers are welcome to work to their own policies if these equal or better the content of the Commissioner's policies. Evidence of such policies would be requested at interview for those who wish to work to their own. Prospective tenderers should note that they are specifically excluded from holding a role on the board of a regulated body whilst at the same time acting as an Adviser. A list of regulated bodies is available to view on our website:

<https://www.ethicalstandards.org.uk/regulated-bodies>

We uphold conduct and equal opportunities policies rigorously.

Point of contact

The primary contact at the Commissioner's office will be the Public Appointments Manager. Other members of the Commissioner's team, most frequently the Public Appointments Officer, will instruct work on occasion.

Sub-contracting

Tenderers should note that, due to the nature of the role, the use of sub-contractors will not be possible. As we are contracting with individuals, all tenderers are also asked to complete a monitoring form (see appendix two).

REQUIREMENTS FOR THOSE WISHING TO APPLY

Successful Advisers will have the following attributes:

1. A significant and successful track record in promoting diversity and ensuring equality through providing advice on and taking an active role in recruitment and selection processes.
2. In the case of at least one of the positions to be filled, we consider it highly desirable for the successful tenderer to also be able to demonstrate a successful track record in conducting quality audits and/or retrospective reviews of recruitment practices and making improvement recommendations on the basis of their findings. This is not an essential criterion for all tenderers. Tenderers who can demonstrate their match for this criterion and who are otherwise on a par with others will be given preference in relation to at least one of the agreements being awarded.
3. Able to communicate effectively in writing and in person in a way that maintains good working relationships.

4. Well-developed influencing skills with a track record of persuading people, on occasion at a very senior level (such as board chair or senior civil servant), to adopt approaches that they may initially be wary of or sceptical about.
5. Maintains high standards of ethical conduct, particularly in challenging circumstances.
6. Ability to apply a code or system of regulation in practical situations.

Criteria 1 and 4 are considered the most important to fulfilling the adviser role successfully. Tenderers who are otherwise equally matched but who can demonstrate an enhanced track record and ability in these areas will be given priority. Given the nature of the role we are also interested in the motivation of tenderers. These are high profile positions in public life in Scotland and we wish to attract tenders from people who are motivated to contribute to society.

The required format for tenders is set out below.

STAGES OF THIS TENDER PROCESS

Noting Interest

People interested in the role can note their interest first, by 2 October, although they are not obliged to do so.

Those who note their interest will be provided with a list of questions asked by all who have noted interest, along with our responses, on 4 October.

Applying for a Service Level Agreement

The closing date and time for receipt of tenders is 12 noon on 23 October.

Tender submissions should demonstrate the fulfilment of the requirements in the following way:

PART ONE

Covering Letter or Email.	Include an explanation for why you wish to become an Adviser. Include your contact details, ideally inclusive of an email address and telephone number.
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PART TWO

Tender Document	This should be no longer than 1000 words in total . The panel will discount text that exceeds this limit. Tenderers who wish to demonstrate that they also have attribute 2 may use up to 1250 words in total .
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	It should include evidence relating to the attributes set out on pages 6 and 7 as follows:
Attribute 1	The tender document should provide actual examples of success achieved by way of the application of good practice rather than a generalised description of roles held. The document should detail relevant career history and cite client satisfaction.
Attribute 2 (if applicable)	
Attribute 3	The tender document should provide actual examples of effectiveness rather than a generalised description of roles held. The tender document itself will also be assessed for clarity.
Attribute 4	

PART THREE

Referees	The tender document should have attached to it contact details for at least two referees who can verify ability in relation to attributes 1, 3 and 4 (and 2 if applicable). References will be taken up after interview. Please note that individual referees need not address each attribute but the combination of references must cover each attribute.
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PART FOUR

Monitoring form (Appendix Two to this document)	We are asking all tenderers to complete a monitoring form. This information will not be provided to the selection panel and will not be reviewed or analysed until the entire tendering process is complete. We are asking tenderers to provide this information to review and assess the accessibility of our contracting practices.
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Following shortlisting of the tender documents, a number of tenderers will be invited to a second stage of assessment which will involve the methods set out below.

Interviews and Practical Tests

Practical Test	Will assess the fulfilment of the requirements listed above in the following way:
Attribute 1 (and use of MS Word)	<p>Track record in recruitment and selection:</p> <p>A simulated role description and person specification will be provided.</p> <p>Tenderers will be asked to suggest amendments to the specification, based on their knowledge of applying good practice.</p> <p>Tenderers will also be asked to include recommendations for a publicity strategy to fill the putative role and to identify appropriate application and assessment methods. The report will have to be produced in a specified format in MS Word.</p>

Attribute 3	The summary report on the practical test itself will be assessed for its clarity.
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Interview	Will assess the fulfilment of the requirements listed above in the following way:
Attribute 1	The panel will explore in detail: <ul style="list-style-type: none"> the results of the practical tests the examples provided in the tender document
Attribute 2 (if applicable)	The panel will explore in detail the examples provided in the tender document.
Attribute 3	The panel will explore in detail the examples provided in the tender document and potentially ask for detail of other instances. The panel will also assess verbal communication skills.
Attribute 4	The panel will explore in detail the examples provided in the tender document. The panel will probe your skills in this area by reference to simulated situations and previous situations in which you have used them.
Attribute 5	The panel will probe your propensity to act ethically by reference to simulated situations and previous situations in which you have demonstrated appropriate behaviours. The panel will also conduct a review of your online footprint, inclusive of relevant social media.
Attribute 6	The panel will explore in detail the examples provided in the tender document and potentially ask for detail of other instances.

PROCUREMENT TIMETABLE

KEY STAGE	ACTION REQUIRED	DATE
Note your interest in the opportunity (not obligatory)	email to i.bruce@ethicalstandards.org.uk with subject line: PAA NOTE OF INTEREST	By 2 October 2020
Submit any questions relating to the opportunity (not obligatory)	email to i.bruce@ethicalstandards.org.uk with subject line: PAA NOTE OF INTEREST	By 2 October 2020
Answers to questions circulated		5 October 2020
Closing date for receipt of submissions	email to i.bruce@ethicalstandards.org.uk with subject Line: PAA TENDER SUBMISSION	12 noon 23 October 2020

KEY STAGE	ACTION REQUIRED	DATE
Shortlisting		w/c 23 October 2020
All tenderers contacted to advise of outcome of tender		1 November 2020
Information event for shortlisted tenderers	Shortlisted tenderers will be invited to attend an event to be held on MS Teams on 2 November. The purpose of this event will be to introduce them to the staff members working for the Commissioner in the public appointments section of the office and to provide detailed information about the role of the Adviser, the Code and the public sector environment in which they may be working.	2 November 2020 14.00 – 16.30
Tender Selection process	Panel interviews will be held remotely using MS Teams. Shortlisted tenderers will be invited to attend for interview and practical test on one of three days.	5, 6 and 9 November 2020
Decision made on successful tenders		w/c 9 November 2020
Feedback	Available to all shortlisted tenderers on request	Two weeks commencing 16 November 2020
Stage one induction	The successful tenderers will be invited to attend an induction session on 4 December and also a communications session with their fellow advisers at a date to be confirmed later the same month. The standard fee will be payable. New Advisers will thereafter 'shadow' other experienced Advisers.	December 2020
Anticipated start date	Successful tenderers will, subject to completion of stage 1 induction and shadowing, be added to the list of Advisers available to act on behalf of the Commissioner in December 2020.	December 2020

Ethical Standards Commissioner

Service Level Agreement

between

«Title» «Forename» «Surname»

**(A Public Appointments Adviser for the Commissioner for Ethical
Standards in Public Life in Scotland)**

The Commissioner for Ethical Standards in Public Life in Scotland

Thistle House

91 Haymarket Terrace

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1. Signatories to the Agreement

This document is a Service Level Agreement between the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner) and «Title» «Forename» «Surname», a Public Appointments Adviser (hereinafter referred to as the 'PAA') working for the Commissioner as a consultant. This agreement does not represent an employment contract and is not intended to set up the relationship of employer/employee (or worker) between the Commissioner and the PAA:

Signatories to this agreement

Signed on behalf of the
Commissioner:

Commissioner for Ethical Standards
in Public Life in Scotland

Signed by the PAA:

«Title» «Forename» «Surname»

Please provide your VAT registration
number (if applicable):

2. Introduction

The Commissioner has contracted with a range of suitably qualified consultants who provide oversight of the regulated public appointments process and advice on innovation in appointment practices. The oversight is intended to facilitate compliance with the Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code) and with its associated guidance. Advice on good practice and innovation in appointment practices is considered critical to the advancement of application of the Code in relation to improving diversity on public body boards.

This Agreement sets out the responsibilities of consultants, known as Public Appointments Advisers, when they are providing services to the Commissioner. The schedules form part of the Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.

3. Service Delivery and Service Requirements

The following sets out the service delivery and service requirements for PAAs.

i) The PAA will fulfil their obligations as consultants under this agreement in a manner which is in accordance with the policies of the Commissioner, or be able to demonstrate that they have comparable policies, appropriate to their own business structure, that are acceptable to the Commissioner. The PAA will demonstrate the highest standards of practice and probity when undertaking their work. For reference, the particular policies of the Commissioner that set out these expectations are included in the following documents (copies are available to download from the Commissioner's website and can also be provided on request):

- Equal Opportunities Policy
- Code of Conduct
- Confidentiality Policy
- Data Protection Policy
- Information Security Policy

To comply with the Commissioner's Code of Conduct the PAA must complete and submit to the Commissioner a declaration of interests form. The PAA is responsible for advising the Commissioner of any relevant changes to their interests. PAAs are also expected to comply with the Out of Pocket Expenses Policy and the Charging and Travelling Time Policy for Advisers.

In relation to Data Protection, the PAA will comply with the provisions set out in Annexe three and Schedules One and Two of this agreement.

The PAA, during the period of their appointment with the Commissioner, is not permitted to provide oversight of unregulated appointment rounds in Scotland or to hold a role on the board of a body regulated by the Commissioner. The required additional standards of

anticipated conduct, and behaviours to be displayed by the PAA whilst overseeing public appointment activity, are set out in the Annexes to this agreement.

ii) The PAA is required to keep up to date with developments in the field of public appointments. The Commissioner will facilitate this by running at least two one day training events per year. The Commissioner will give reasonable notice of these events. Attendance at the training events is not obligatory. Payment will be made to the PAA for attendance at the usual daily rate.

iii) The PAA will have, or undertakes to acquire, a detailed knowledge of the Code of Practice and associated guidance and to refer issues requiring interpretation of the Code to the Commissioner.

iv) The Commissioner will be the first point of contact for the Scottish Government when a request for regulatory oversight is received. The Commissioner will offer the PAA opportunities to scrutinise appointment rounds on receipt of such requests from the Scottish Government. The Commissioner is not obliged to offer any assignment to any particular PAA and the PAA is not obliged to take any assignments offered to them.

v) At the point of assignment, the Commissioner will provide the Scottish Government and the PAA with brief details of the assignment and will forward the PAA's contact details to the sponsor directorate. The Commissioner will also provide a written briefing to the PAA setting out information on the body and the assignment. The PAA will make themselves familiar with this material before undertaking their role.

vi) When providing scrutiny of any appointment activity, the PAA's role is to enable compliance with the Code by either:

- providing oversight, advice and proactive support during planning for the appointment round, or
- taking a full and active role in the appointment round as a member of the selection panel.

At the point of assignment the Commissioner will inform the PAA in which capacity they will fulfil their role.

In either case the PAA is required to draw instances of potential non-compliance to the attention of the responsible person. This will usually be the chair of the selection panel and/or a senior civil servant. It is anticipated that the responsible person will take steps to ensure that the Code is complied with. Where the responsible person, for whatever reason, is unable or unwilling to address any instance of potential or actual non-compliance highlighted by the PAA, the PAA will

- set out the relevant facts in writing
- provide this to the responsible person and
- copy the correspondence to the Commissioner.

Whether to take action in response to such a report and the form that any such action might take are matters for the Commissioner.

vii) PAAs must issue an invoice and expenses claim form (with relevant supporting receipts) at the end of their participation in an appointment round or other type of assignment. The PAA must also provide a written report on what they have observed during each stage of the round that they have overseen. These reports will subsequently be circulated to all PAAs for the purpose of securing improvement in and enhancing the public appointments process. The paperwork must be submitted to the Commissioner within one month.

viii) The Commissioner will make payment to the PAA within 21 days of receipt of the above and in accordance with the PAA charging and travelling time policy. The Commissioner reserves the right to withhold payment if, in the opinion of Commissioner, the services have not been delivered to a satisfactory standard. Payments will be made by BACS transfer. The agreed rate of remuneration is £275 per full day (£300 per full day from 1 April 2019), payable to the nearest half day (as defined in the charging policy), (inclusive of VAT where this is chargeable), plus all agreed out of pocket expenses. Expenses claims will only be paid when they comply fully with the Commissioner's out of pocket expenses policy. The PAA is responsible for the payment of his/her own tax and national insurance.

ix) The Commissioner may occasionally contact PAAs and offer them an opportunity to carry out other ad-hoc activities for the Commissioner. Examples of such opportunities may include, but are not limited to, thematic reviews of the public appointments process, scrutiny of reappointments and promotions and complaint investigations. The Commissioner is not obliged to offer such work to all PAAs and no PAA is obliged to take on such work when it is offered. When a PAA does take up such ad-hoc work, the service standards set out at (i) apply and payment will be made on submission of an invoice at the completion of the project concerned (see vi and vii). Ad hoc work will be chargeable at an hourly rate pro rated to the equivalent of the appropriate daily rate.

4. Nominated Officer

For the purposes of this agreement, the nominated officer of the Commissioner is the Public Appointments Manager.

The role of the nominated officer is to:

- promote compliance with the Code and guidance by identifying and arranging for training sessions and exchange of information, including details of changes to the Code of Practice
- cascade relevant information to the sponsor directorates, to the PAAs and to other stakeholders in the field of public appointments
- oversee the gathering of information to monitor adherence to the Agreement.

The contact details for the nominated officer are as follows:

Ian Bruce
Public Appointments Manager
The Commissioner for Ethical Standards in Public Life in Scotland
Thistle House, 91 Haymarket Terrace
Edinburgh, EH12 5HE

Telephone: 0131 347 3897

5. MONITORING AND REVIEWS

The nominated officer will monitor the adherence of PAAs to this agreement and will draw service delivery failures to the attention of PAAs if these arise. In coming to a view on the extent to which this agreement has been adhered to the nominated officer will refer to:

- the views of participants in the appointments process, whose feedback on whether the PAA met the requirements of this agreement will be gathered and
- the results of any other reviews conducted into a given appointment.

Section three and the Annexes set out the Commissioner's specific service requirements. Annex one, or a variation on this document, will be used to gather feedback from participants.

Based on the extent of the PAA's adherence to the Agreement's requirements, the Commissioner will decide whether to:

- revise this agreement or
- maintain the agreement for another year.

6. DURATION AND TERMINATION

Duration

This agreement will last for XX months from XX/XX/20XX and subject to the ongoing business needs of the Commissioner will be renewed yearly thereafter for one year unless terminated in accordance with the Termination section below.

Termination

The Commissioner or the PAA may terminate this agreement on giving twenty working days' written notice. This agreement does not represent an employment contract and there are no mutual obligations to either supply or complete work in pursuance of it.

The Commissioner reserves the right to terminate the agreement immediately by written notice in the event of a serious breach of the agreement's terms. The agreement will be reviewed in keeping with the reviewing and monitoring arrangements set out above.

7. INDEMNITY

The Scottish Parliamentary Corporate Body (SPCB) has undertaken to indemnify PAAs who act honestly and in good faith in connection with this agreement and in the course of their work for the Commissioner against any loss (including legal costs and expenses), or liability, reasonably incurred or suffered arising from any claim, suit, demand, action or proceeding by any person against the PAA PROVIDED ALWAYS THAT this indemnity

shall not apply where such loss or liability was caused by any unlawful or negligent act or omission by the PAA.

Annexe One – Public Appointments Adviser Review Form

Public Appointments Adviser Review Form (2013 code)

To be completed by the chair of the selection panel and additionally, where applicable, the chair or representative of the public body who is serving as a member of the selection panel (each should complete a separate form).

Public Body:	Completed By:
PAA:	Position:
Type of Appointment (e.g. Chair/member):	Contact Tel No/Email:
Date:	Signature:

The Commissioner for Ethical Standards in Public Life in Scotland (CESPLS) has a service level agreement with each PAA. We are happy to provide selection panels with a copy to make clear the standard of service expected. In this context, please rate the contribution the PAA made during the appointment round.

Did the PAA ...	Strongly Agree	Agree	Disagree	Not Applicable	You may wish to consider the following when answering this question. Did the PAA ...
1 Advise effectively on compliance with the Code of Practice.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> offer informed guidance to the directorate and/or panel on interpreting the Code to ensure compliance seek guidance from the CESPLS where necessary
2 Respond timeously to requests for an opinion on matters pertaining to Code compliance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> give timely responses to correspondence and communication

Did the PAA ...	Strongly Agree	Agree	Disagree	Not Applicable	You may wish to consider the following when answering this question. Did the PAA ...
3 Communicate effectively	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • ask questions and pass comments in a constructive manner • behave courteously towards the selection panel members and others involved in the process
4 Act independently and with integrity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • demonstrate he/she was prepared to question others on application of the code • raise appropriate concerns at potential breaches of the Code
5 In the case of high risk rounds only; assess applicants effectively against the requirements of the role	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> • demonstrate an understanding of the role requirements and the evidence presented by applicants and assess effectively • question effectively and operate professionally at interview

We welcome your constructive comments on whether the PAA worked to the agreed service standard. We use your comments to

- capture your perspective on the quality of the service provided
- identify areas for PAA development and training (individual and collective)
- ensure that the quality of the advice and oversight provided by PAAs is consistent and consistently improved on.

Please use the free text box overleaf to provide your constructive comments about the PAA's contribution. We would also be grateful for your views on your satisfaction with the Scottish Government's public appointment process and for you to provide constructive comments or suggestions you may have about the process. Thank you.

Comments and feedback on the PAA's contribution

Please circle or highlight one number between 1 and 5 to indicate your satisfaction with the contribution of the PAA where 1 is very dissatisfied 3 is neutral and 5 is very satisfied.

1

2

3

4

5

Please write any constructive comments you may have in the space below:

Comments on the Scottish Government's public appointments process

Please circle or highlight one number between 1 and 5 to indicate your satisfaction with the public appointments process where 1 is very dissatisfied 3 is neutral and 5 is very satisfied

1

2

3

4

5

Please write any constructive comments you may have in the space below:

Please return the completed form, **within 5 working days** of receipt to:
The Commissioner for Ethical Standards in Public Life in Scotland
Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HE
or email i.bruce@ethicalstandards.org.uk (telephone: 0131 347 3897)

To be completed by the chair of the selection panel and additionally, where applicable, the chair or representative of the public body who is serving as a member of the selection panel.

Annexe Two – Definitions

In this Agreement:

“Agreement” and “Service Level Agreement” mean the contract between the Commissioner and the PAA consisting of the tender, this agreement and other documents such as policies (or parts thereof) specified in the tender and in the agreement;

“The Code” means the Code of Practice for Ministerial Appointments to Public Bodies in Scotland;

“Data Protection Laws” means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data to which a party to this Agreement is subject, including: (a) the Data Protection Act 2018 and EC Directive 95/46/EC (up to and including 24 May 2018); and (b) the GDPR (from and including 25 May 2018); and/or (c) in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of Personal Data;

“Data Controller”, “Data Processor”, “Data Subject” “Data Subject Access Request” “Personal data”, “Processing”, “Sensitive personal data and “Special category data” have the meanings given in the Data Protection Laws;

“Data Security Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data;

“PAA” and “PAAs” means the Public Appointments Adviser with whom the agreement has been entered into;

“Personal Data” in this Agreement refers to personal data, including sensitive or special category data detailed in Schedule One of this Agreement to be shared between the PAA and the Commissioner and provided to the PAA by the Scottish Ministers for the purposes of fulfilling the Agreement;

“Supervisory Authority” has the meaning given in the Data Protection Laws. In Scotland, this is the Information Commissioner’s Office (ICO); and

“Tender” means the document setting out the Commissioner’s requirements for the Service Level Agreement and the tenderer’s response.

Annexe Three – Data Protection

1. COMPLIANCE WITH DATA PROTECTION LAWS

1.1 The PAA and the Commissioner acknowledge that under the Data Protection Laws, the Commissioner is a Data Controller and the PAA is a Data Processor when processing personal data under the terms of the Agreement. Each Party must ensure compliance with the Data Protection Legislation at all times during the Term of the Agreement.

2. USE, DISCLOSURE AND PUBLICATION

2.1 The PAA agrees to process the personal data described in Part 1 of Schedule One of this agreement for the purposes of fulfilling their obligations under this Agreement, or in pursuance of other written instructions of the Commissioner, and strictly for no other purpose unless required to do so by Union or Member State law to which the processor is subject. In such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information being processed on important grounds of public interest.

2.2 The PAA will not disclose or share the data processed under the Agreement with any third party without the written authority of the Commissioner.

2.3 The PAA is prohibited from publishing, copying, transferring or duplicating any personal data they hold in terms of this agreement without the written authority of the Commissioner.

2.4 The PAA must have their own policies and procedures for the handling of records including personal data. The Commissioner has provided an information security policy to all PAAs for reference purposes.

2.5 The PAA agrees to store or record the personal data processed under the Agreement in a structured, commonly used and machine readable or otherwise accessible form.

2.6 The PAA shall not process or otherwise transfer any Personal Data in or to any country outside the European Economic Area without the Commissioner's prior written consent.

2.7 The PAA shall not engage a sub-contractor to carry out Processing in connection with the Agreement.

3 PURPOSE

3.1 In performing their obligations under the Agreement the PAA will process personal data on behalf of the Commissioner.

3.2 The Scottish Ministers will provide personal data to the PAA in order to comply with section 3 (1) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 which places an obligation on them to provide the Commissioner with such information as the Commissioner reasonably requires in the exercise of his functions. The Commissioner will provide personal data to the PAA in pursuance of the Agreement. The data is provided in order that PAAs can:

- promote compliance with the Code;
- examine the methods and practices employed by the Scottish Ministers in the making of appointments, and recommendations for appointment, to the specified authorities
- if the Commissioner considers it appropriate, examine the making by the Scottish Ministers of any appointment, or recommendation for appointment, to any of the specified authorities.

3.3 The Scottish Ministers and the Commissioner will provide the PAA with information relating to the methods and practices employed by the Scottish Ministers in the making of appointments to the specified authorities on both live and previous appointment rounds. Such information, relating as it does to the activities and behaviours of selection panel members and others engaged in the appointment process, as well as to the performance of applicants and candidates during the stages of appointment rounds and once appointed, will of necessity include personal data. Detail of the specific types and volumes of this personal data, and the duration for which the PAA is permitted to process it, is provided in Schedule 1 of this Agreement.

3.4 The Commissioner will process the PAA's personal data for the purposes of fulfilling the terms of the Agreement. Detail of the specific types and volumes of this data is provided in Schedule 1 of this Agreement. The Commissioner will process the PAA's personal data in accordance with the Commissioner's data protection policy.

4 DATA SECURITY

4.1 The PAA must ensure the security of personal data processed by them in terms of this Agreement. In assessing the appropriate level of security the PAA shall take into account any risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.

4.2 The PAA must implement appropriate technical and organisational measures to protect Personal Data processed in terms of this Agreement. Such measures, having regard to the nature of the processing and the risks posed, may include as appropriate:

- the pseudonymisation and encryption of personal data and password protection for access to any device used to store or transfer data;
- ensuring that processing systems and services are able to provide ongoing confidentiality, integrity, availability and resilience in relation to the processing of personal data. In practical terms this includes ensuring that the operating systems and software are appropriately licensed, security fixes for the operating system and software are regularly applied and reliable anti-virus software is installed;
- ensuring that systems have the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- implementation of a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

4.3 The PAA must ensure that the technical and organisational measures employed facilitate immediate detection of relevant infringement events.

4.4 The PAA agrees to notify the Commissioner of any material change to the measures they employ in pursuance of clause 4.2.

5 DATA SUBJECTS' RIGHTS AND REQUESTS FOR INFORMATION

5.1 The Commissioner and the PAA shall ensure that they process the Personal Data fairly and lawfully during the term of the Agreement

5.2 Individuals have rights in relation to their personal data under the Data Protection Laws. Those rights include:

- i. The right to be informed
- ii. The right of access
- iii. The right to rectification
- iv. The right to erasure
- v. The right to restrict processing
- vi. The right to data portability
- vii. The right to object
- viii. Rights in relation to automated decision making and profiling

5.3 The PAA must advise the Commissioner as soon as possible, or in any event within three business days of receiving such, of any request made to them for information or notification under the Data Protection Laws, including:

- any request, complaint or communication from a data subject relating to personal data or the PAA's or Commissioner's obligations under the Data Protection Laws;
- any communication from the ICO or any other regulatory authority in connection with Personal Data processed under this Agreement; and
- any request from a third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order.

6 DATA SECURITY BREACHES AND REPORTING PROCEDURES

6.1 The PAA must notify any data security breach in relation to any personal data processed by them under this Agreement to the Commissioner without undue delay and in any event no later than 24 hours after becoming aware of it, following the procedure in Schedule Two of the Agreement.

6.2 The PAA shall assist the Commissioner in relation to the Commissioner's obligation to notify any data security breach to the ICO and with communication of a personal data breach to a Data Subject.

7 OTHER DATA PROTECTION OBLIGATIONS

7.1 From time to time the PAA will support the Commissioner with preparation of data protection impact assessments and with consultation with the Information Commissioner's Office on data protection measures.

7.2 The PAA will act only under the Commissioner's instructions in relation to any activities undertaken to resolve any complaints or comply with any requests from individuals under clause 5.

8 DUTY OF CONFIDENCE

8.1 The PAA will treat personal data that they process in terms of the Agreement in the strictest confidence. The Commissioner's confidentiality policy provides guidance.

9 FREEDOM OF INFORMATION

9.1 The PAA recognises that the Commissioner is a public authority for the purposes of the Freedom of Information (Scotland) Act 2002 and may be required to disclose information about the Agreement, the services provided by the PAA under the Agreement and the processing carried out under the Agreement. The PAA agrees to provide any reasonable assistance to the Commissioner as is necessary to enable the Commissioner to comply with his obligations under the 2002 Act.

10 RECORD KEEPING, RETENTION, AND INSPECTION

10.1 The PAA must delete or return all personal data processed in terms of the Agreement if requested by the Commissioner to do so at any time.

10.2 The PAA shall, at the conclusion of the provision of services in relation to any particular assignment the PAA is engaged in under the terms of the Agreement, delete or return as required all Personal Data that they have processed in relation to that assignment. The Personal Data will be deleted or returned to either the Commissioner or the Scottish Ministers as appropriate and depending on which party provided the information to the PAA for the purposes of the assignment.

10.3 The PAA must provide such information as is necessary to enable the Commissioner to satisfy himself of the PAA's compliance with the requirements imposed by the Agreement in terms of data protection.

10.4 The PAA will allow the Commissioner, his employees, auditors and/or authorised agents reasonable access to any relevant premises or systems, during normal business hours, to inspect any procedures, measures and records used or employed by the PAA in relation to the processing of personal data in terms of this Agreement and contribute as is reasonable to those audits and inspections.

10.5 The PAA shall inform the Commissioner, if in his or her opinion, an instruction from the Commissioner infringes any obligation under the Data Protection Laws.

10.6 The PAA must maintain written records including in electronic form, of all processing activities carried out in pursuance of the Agreement or otherwise on behalf of the Commissioner. This record must contain the name and contact details of the PAA, the Commissioner and the Commissioner's data protection officer (see the Commissioner's Data Protection Policy for details), the categories of processing carried out by the PAA on behalf of the Commissioner and a general description of the technical and organisational security measures referred to in clause 4 of this Agreement.

10.7 If requested, the PAA must make any records that are requested available to the ICO and co-operate with the ICO in the performance of its tasks.

11 TERMINATION

11.1 The PAA shall, on termination of this Agreement, delete or return as required any personal data which they have processed in terms of the Agreement.

11.2 In the even that EU or Member State law requires the PAA to retain Personal Data contrary to the provisions of clauses 10.1 or 11.1, the PAA shall notify the Commissioner accordingly unless the law prohibits such disclosure.

12 AMENDMENTS AND RESOLUTION OF DISPUTES

12.1 The PAA and the Commissioner agree to negotiate in good faith any amendments to this Agreement or the Schedules that may be required to ensure that both meet all their obligations under Data Protection Laws. However the PAA shall be bound to accept any changes made in this regard by the Commissioner.

12.2 The provisions set out in this annexe are without prejudice to any obligations and duties imposed directly on the PAA under Data Protection Laws and the PAA agrees to comply with those obligations and duties.

12.3 In the event of a dispute or claim brought by a data subject or action on the part of the ICO concerning the processing of personal data against either the PAA or the Commissioner, the parties will inform each other about any such disputes or claims, and will cooperate with a view to resolving them amicably in a timely fashion.

13 GOVERNING LAW

13.1 This Agreement and any dispute or claim (in connection with it or its subject matter or formation) shall be governed by and construed in accordance with the law of Scotland.

SCHEDULE ONE – DESCRIPTION OF PERSONAL DATA AND DURATION OF PROCESSING

Part 1

Personal data to be processed by the PAA in terms of the Agreement

The personal data of data subjects involved in the public appointments process, including but not limited to:

- Names
- Addresses including email addresses
- Application and monitoring forms which may include protected characteristics under the Equality Act 2010 such as gender, sexual orientation, religion or belief and ethnicity
- Political affiliation
- The views of PAAs, Scottish Government officials, independent panel members and public body chairs on applicants, on appointees and on each other's performance, views, beliefs, activities and behaviours.

Duration of the processing

When PAAs are allocated to oversee all or part of an appointment round they are provided with briefing material by the Commissioner and subsequently with applications and panel member assessments of them by the Scottish Ministers. When the PAA's involvement in a round ceases and when they have produced their final report for the Commissioner they should destroy the information provided by the Commissioner and either return or destroy the information provided by the Scottish Ministers.

When PAAs are engaged in thematic reviews or ad hoc projects they are provided with information by both the Commissioner and by the Scottish Ministers. When the PAA's involvement in a review or project ceases they should destroy the information provided by the Commissioner and either return or destroy the information provided by the Scottish Ministers.

If unclear, the Nominated Officer can give direction as to the cessation of a PAA's involvement in appointment rounds, reviews and ad hoc activities to ensure that the duration of processing is limited appropriately.

Part 2

The personal data of the PAA to be processed by the Commissioner

Personal data provided by the PAA relating to their ability to fulfil the role of a PAA and to allow for administration of the Agreement, including but not limited to:

- Contact details, which are forwarded to others for the fulfilment of assignments
- data on the PAA's personal health and wellbeing
- the PAA's banking details to allow for the remuneration of invoices and expenses
- the PAA's availability or otherwise to take on assignments and reasons for doing so or not and information on the PAA's experience, expertise and specialisms.
- review forms containing the views of appointment round participants on the PAA's contribution to appointments processes. These are forwarded to the Scottish Ministers with a view to securing ongoing improvements to the appointments process.

The Commissioner also processes personal data the PAA provides during tendering processes, including diversity monitoring information, in order to comply with his obligations under the Equality Act 2010.

Duration of the processing

For the term of the Agreement or such further term as agreed between the PAA and the Commissioner.

SCHEDULE TWO - DATA SECURITY BREACHES

Data Breaches can arise as a result of both accidental and deliberate causes. The Commissioner has obligations in relation to data breaches which the PAA has an obligation to assist with as detailed elsewhere in this Agreement. Where a personal data breach has occurred, the Commissioner and the PAA have an obligation to establish the likelihood and the severity of the resulting risk to people's rights and freedoms as a result.

The Commissioner, on becoming aware of a breach, must

- make all reasonable attempts to contain it. For example, contact IT Support to contain a virus or retrieve documents from backup.
- identify what the risks to an individual's rights and freedoms might be. It's important to focus on the potential negative consequences for individuals.
- assess the likelihood of the risks occurring. If it's likely that a risk will occur, then the ICO must be notified of the breach; if it's unlikely to occur then the breach does not have to be reported. In any event, the breach and the reasons for reporting or not reporting to the ICO should be documented.
- finally, assess the likelihood and impact of the risk occurring. If this is assessed as 'high' then those concerned directly should be informed without undue delay.

PROCEDURE TO BE FOLLOWED BY PAA IN THE EVENT OF A DATA SECURITY BREACH

In the event of a data security breach the PAA must contact the Nominated Officer and Business Manager of the Commissioner, within 24 hours of discovering it, and provide the following information:

- the nature of the breach, including – where possible – the categories and approximate number of individuals and personal data records concerned
- the name and contact details of the DPO or relevant person (this may simply be the PAA)
- a description of the likely consequences of the breach
- a description of the measures taken or proposed to be taken to respond to the breach.

The Business Manager and/or Nominated Officer will provide guidance on how the results of the breach are to be handled.

Appendix Two – Monitoring form

Ref No (Office use only):

September 2020

TENDER FOR CONTRACT WITH: **Commissioner for Ethical Standards in Public Life in Scotland**

Service Level Agreement(s) for the role of: **Public Appointments Adviser**

We value diversity and are committed to promoting equality in all that we do. We want to know that opportunities to work with us are attractive to the widest range of people and we want to make sure that our tendering processes are fair. One of the ways we can check this is to monitor who applies to work with us. We use the personal data you provide to assess whether there appear to be barriers in our tendering process for people from particular groups. To help us do this, we would be very grateful if you could complete as much of this form as possible.

The information you provide forms no part of the selection process and the selection panel won't review any of the information until after a final decision and offer of a service level agreement has been made. If you require particular adjustments to be made to participate in this tendering process you will have an opportunity to tell us about this in your application.

Please complete this form electronically or, if hand-written, please ensure that it is legible. Your form will be downloaded or scanned and filed electronically. All monitoring forms are deleted/destroyed after six months.

Your information will be stored and accessed in accordance with the requirements of the Data Protection Act 2018.

Please return your monitoring information form along with your completed tender.

For each question on this form, you should only select one box (except for question 4 which requires you to select any that apply to you)

Question 1 – What best describes your gender?

- ☐ Male
- ☐ Female
- ☐ Prefer to self-describe:
- ☐ Prefer not to say

If you are going through gender-reassignment please select the gender you identify as.

Question 2 – Is your gender identity the same as the sex you were assigned at birth?

- ☐ Yes
- ☐ No
- ☐ Prefer not to say

Question 3 – What is your year of birth? (Please enter in the following format e.g. 1968)

Please write in:

☐ Prefer not to say

Question 4 – What is your ethnic group?

Please choose **ONE** section from A to F which best describes your ethnic group or background, then select **ONE** box from within that section.

A White

- ☐ Scottish
- ☐ Other British
- ☐ Irish
- ☐ Gypsy/Traveller
- ☐ Polish
- ☐ Other white ethnic group, please write in:

B Mixed or multiple ethnic groups

- ☐ Any mixed or multiple ethnic groups, please write in

C Asian, Asian Scottish or Asian British

- ☐ Pakistani, Pakistani Scottish or Pakistani British
- ☐ Indian, Indian Scottish or Indian British
- ☐ Bangladeshi, Bangladeshi Scottish or Bangladeshi British
- ☐ Chinese, Chinese Scottish or Chinese British
- ☐ Other, please write in:

D African, Caribbean or Black

- ☐ African, African Scottish or African British
- ☐ Caribbean, Caribbean Scottish or Caribbean British
- ☐ Black, Black Scottish or Black British
- ☐ Other, please write in:

E Other ethnic group

- ☐ Arab, Arab Scottish or Arab British
- ☐ Other, please write in:

F Prefer not to say

- ☐ Prefer not to say

Question 5 - The Equality Act 2010 protects disabled people. The Equality Act defines a person as disabled if they have a physical or mental impairment, which is substantial and

long term (has lasted or is expected to last at least 12 months) and has an adverse effect on the person's ability to carry out normal day-to-day activities.

Do you have any of the following conditions which have lasted, or are expected to last, at least 12 months? ♦ Please select all that apply

- ☐ Deafness or severe hearing impairment
- ☐ Visual impairment
- ☐ A physical disability (a condition that substantially limits one or more basic physical activities such as walking, climbing stairs, lifting or carrying)
- ☐ A learning disability (such as Down's syndrome)
- ☐ A learning difficulty (such as dyslexia or dyspraxia)
- ☐ A mental health condition (such as depression or schizophrenia)
- ☐ A chronic illness (such as cancer, HIV, diabetes, heart disease or epilepsy)
- ☐ Other condition, please write in:

- ☐ No
- ☐ Prefer not to say

If you require a reasonable adjustment to enable you to carry out your duties, we can make the necessary arrangements post interview. However, if you need reasonable adjustments to attend and participate at interview please make this clear in the event that you are invited. We want everyone's interview experience to be a positive one and we will do all that we can to ensure that people are able to give the best account of themselves.

Question 6 – What religion, religious denomination or body to you belong to?

- ☐ None
- ☐ Church of Scotland
- ☐ Roman Catholic
- ☐ Other Christian, please write in:

- ☐ Muslim
- ☐ Buddhist
- ☐ Sikh
- ☐ Jewish
- ☐ Hindu
- ☐ Another religion, please write in:

- ☐ Prefer not to say

Question 7 – How would you describe your sexual orientation

- ☐ Bi-sexual
- ☐ Gay man
- ☐ Gay woman/lesbian
- ☐ Heterosexual/straight
- ☐ Other

- ☐ Prefer not to say

Question 8 - Advertising and Publicity

To allow us to manage our advertising and publicity campaigns effectively in the future, please tell us where you heard about the fact that we are recruiting.

- ☐ Our website (www.ethicalstandards.org.uk)
- ☐ Indeed website
- ☐ Appointed for Scotland website
- ☐ Registered interest in ESC vacancies for this role
- ☐ Word of mouth
- ☐ Can't remember
- ☐ Prefer not to say
- ☐ Other, please specify: