

# 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.....	6
Pragmatic, Proportionate and Public Interest Focused .....	8
Additional Issues that Code Revisions Could Address .....	9
Responses .....	14

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: Bill Scott on behalf of the Poverty &amp; Inequality Commission for Scotland</b>	
<b>Address: 10/1 Derby Street, Edinburgh, EH6 4SH</b>	
<b>1. Are you responding as (please tick appropriate box):</b>	
1a. An individual (go to 2a/b, 3)? Yes	
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	
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)	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	
<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?**

Specific provisions and measures on diversity: Yes

Diversity to be expanded: Yes. Should include household income.

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

Specific measures should be taken to increase the representation of disabled people, members from BAME communities and those from lower income households. This could include training for (a) potential applicants from under-represented groups in completing successful application forms and what interviewers are looking for in successful applicants and (b) training for interview panel members disability & race equality, unconscious bias and the value of lived experience.

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

Disabled people, BAME people and those from lower income households are all under-represented on Public Bodies at present. Current recruitment and selection methods are obviously failing to address this under-representation so changes must be made.

**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?**

Whenever possible to follow best practice examples (for example in terms of promoting opportunities and recruitment through representative organisations). To be clear why such practice was not appropriate where it was not followed etc.

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

Examples of best practice which have succeeded in increasing the numbers and proportion of applicants from disabled people, BAME people and those living on low incomes are not being utilised by other public bodies even where they have under-representation from these groups. If encouragement has failed to change some public bodies recruitment and selection methods then stronger measures are obviously needed.

**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?**

Character specific positive action measures seem to be needed including the adoption of bespoke SMART plans to increase applications and appointments from under-represented groups.

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

Urgent and consistent action to address under-representation of specific groups and the lack of diversity on many public bodies requires that more needs to be done by Scottish Ministers.

**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?**

Would agree that the adoption of bespoke SMART Plans for increasing applications and appointments from under-represented groups such as disabled people, BAME people and those living on low incomes should be part of the updated strategy. The Commissioner should also report on progress, or the lack of it, in meeting the updates strategy's objectives.

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

Current under-representation of disabled people, BAME people and those living on low incomes means that Boards do not reflect the community and society they have been established to serve. This lack of representation means that Public Bodies may remain unaware of the needs of those they are meant to serve also resulting in services that do not meet need.

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?**

Unsure.

**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?**

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?**

See answers above.

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

See earlier answers on under-representation.

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

The Code should acknowledge the 2018 Act's existence and requirements.

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

When appointable candidates are identified by interview panels all of those meeting the criteria should be recommended to the Minister who can then exercise choice based on the legitimate grounds of increasing diversity and increasing the representation of under-represented groups such as disabled people, BAME people and those living on low incomes.

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

This would assist in increasing the diversity of boards.

**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.

**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?**

Yes.

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

It would be more efficient and less likely to result in conflict if such consultation had occurred prior to an appointment plan being adopted.

**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.**

Prospective candidates should be fully informed at the beginning of the process so that this does not become an issue later.

**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?**

It should include lived experience which is relevant to the public body on which they might serve.

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

This would be in line with the Christie Commission's recommendations in recognising that public service reform and delivery should be informed by the views and needs of those in receipt of those services.

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

Probably.

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

Recognise that this may be helpful but no strongly held opinion on whether this will aid in increasing diversity.

**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?**

I think that this might dissuade those from low income households and indeed many other potential applicants from coming forward. Few of those who work for a living would have no other competing professional commitments. Secondly would this not preclude those with caring responsibilities from being appointed as they would most definitely have competing “personal commitments”?

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

It would probably be helpful but it should be borne in mind this could potentially slow up the appointment process( for new bodies in particular).

**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)?**

No

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

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

No view.

**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 view.

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

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

Yes.

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

Found the Commissioner's Office and her representatives on appointment panels helpful and aware of diversity issues. Not in favour of change for change's sake. If it's not broke don't fix it!

**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

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Ethical Standards Commissioner

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EH12 5HE

E mail: [i.bruce@ethicalstandards.org.uk](mailto:i.bruce@ethicalstandards.org.uk)

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