

Ethical Standards Commissioner

CONSULTATION DOCUMENT

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

06 August 2020

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

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

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: George Walker/Roisin Harris	
Address: Scottish Housing Regulator, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF – currently working remotely SHR@shr.gov.scot	
1. Are you responding as (please tick appropriate box):	
1a. An individual (go to 2a/b, 3)?	<input type="checkbox"/>
1b. On behalf of a group or organisation (go to 2c/d, 3)?	<input checked="" type="checkbox"/>
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)	<input type="checkbox"/>
No	<input type="checkbox"/>

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)	✓
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, 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	✓
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	✓
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?

If it would be helpful for the code to include provisions that match the Scottish Government's policy objective and desired outcomes for the effective governance of public bodies.

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

The measures should reflect the Scottish Government's policy objectives for the effective governance of public bodies

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

The Scottish Housing Regulator supports diversity in the broadest sense. It is a public body bound by statute and our primary objective as set out in legislation is to safeguard and promote the interests of current and future tenants of social housing, people who are or may become homeless, and people who use housing services provided by registered social landlords (RSLs) and local authorities.

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, that would be helpful for continued development.

Q5 – If so, what requirements should be included?

It would be helpful to capture both what was successful and what did not work so well and for this to be accessible for those involved in designing and delivering future rounds of recruitment.

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

The process is very resourceful so it is important to streamline and promote things that worked well through shared learning.

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?

The code could make reference to such activities, but it would need to ensure any language is future proofed to ensure that it accounts for how these activities might evolve over the lifetime of the code.

Q8 – If so, what should those be?

The activities referenced should reflect the Scottish Government's policy objectives for the effective governance of public bodies.

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

As set out in the responses.

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

The Commissioner should seek to establish if approval is required and also if it would be useful to have that approval in order to support deliver of the strategy.

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

The strategy should reflect the Scottish Government's policy objectives for the effective governance of public bodies.

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

As set out in the responses.

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?

An effective appointment is supported by an effective process, but the starting point is the attraction strategy. This is essential for bringing forward the pool of candidates that could meet the skills, qualities and represent diverse life experiences being sought. More attention at an earlier stage needs to be focussed on this stage of the appointment system.

Q14 – Please give reasons for your views.

If a campaign fails to attract enough candidates then achieving the desired outcome is harder to deliver not matter how good the rest of the code is.

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?

An open and promoted campaign that reaches as wide an audience as possible, but that may also need to target and encourage applicants from people who have the skills, qualities, experience and characteristics, but who would not normally consider making an application.

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

We have found that we need to put the resource input into this aspect of the appointment process and it is only as successful as the resources inputted.

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 reflect the changes coming into force, so that recruitment panels have clarity on their duties and how they can carry out effective recruitment. The current code is underpinned by the principle of diversity and equality, but it does little to expand on this further. The tone of the code is dated and language such as '*the most able people on merit are identified*' could present unintended barriers that prevent potential candidates from considering making an application.

Q19 – What legitimate grounds for choice should be specified?

The current code refers to assessments being based on skills, knowledge and experience, the experience element may need expanded to reflect any grounds for choice.

Q20 – Please give reasons for your views.

To give the recruitment panels an effective framework by which to make appointments.

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.

It would be helpful to reference the new duties.

Q22 – If so, which duties should be included?

All the new duties should be included.

Q23 – What are your reasons for these views?

To help the panel understand the job they are being tasked with and support an effective outcome.

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?

This is not applicable to the Scottish Housing Regulation, however it seems logical. We and the appointing Ministers have been involved in the recruitment plans for appointments to our Board. However the Commissions impacted may be better placed to offer a view on if this would be effective.

Q25 – Please give reasons for your views.

As set out in responses.

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.

Openness and transparency is important and essential for accountability.

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

If the use of values in the health board appointments since 2018 has been found to be effective and make a difference to recruitment then this should be allowed for in the code. Values or personal qualities are more subjective so could be harder for panels to assess and compare between candidates.

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

none

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

As set out in responses.

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

Yes this will be important for openness and transparency and to support recruitment panels.

Q32 – Please give reasons for your answer to Q31.

As set out in responses.

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.

Appendix three lists many areas of clarity and guidance provided. It is appropriate that these are incorporated into the new code and that there is provision to provide future guidance as time moves on and the code dates. It is most important that panels have access to expertise to ensure that they operated within the guidance.

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?

Recruitment can be resourceful so all panel members need to be fully aware of this and able to commit to the programme which is up to a year of activity. It is also essential that there is knowledge of the public body that the appointment is being made to and the objectives it is charged with delivering.

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

We have experienced some rounds of recruitment when the panel chair is participating for the first time and some training would be helpful to support them in understanding what is involved so that the exercise is effective and adequately resourced.

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)?

A training resource – which could maybe be online would be helpful for all panel members not just the independent member. It would be appropriate to pay a day rate to reflect the resource input. As long as there is no conflict with others on the panel or the organisation being recruited to there should be no need to limit the number of recruitment rounds – but there should be an evaluation of how effective their input has been before participation in future rounds.

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

As set out in responses.

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

The Commissioner has always been involved in appointments to the Scottish Housing Regulator Board so this question is not applicable.

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?

Yes and it is important that any learning is shared with those likely to be involved in future recruitment rounds and the resources that support these.

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

As set out in responses.

Q41 – Do you consider the current regulatory model to be appropriate? If not, what should replace it? It has worked effectively for SHR appointments.

Q42 – Please provide reasons for your answer to Q41.

Not applicable

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?

The length of time a round of recruitment takes is an issue. It can be up to a year and this is a major resource demand for all involved that requires planning and supporting across departments and organisations as well as with advisors and independent members. The time frame is off-putting to candidates – their lives and availability will have moved on so much in the timescale that they may choose not to apply or not to proceed with an application.

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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