

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: Healthcare Improvement Scotland	
Address: Gyle Square, 1 Gyle Crescent, Edinburgh, EH12 9EB	
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?

- Yes. Clear provisions in respect of diversity, including household income, should be included at the highest level. This would demonstrate leadership from the Commission in relation to diversity.
- We note the very positive improvement in relation to gender equality, but that this is not paralleled for other groups. Strengthening the code to require Scottish Ministers to take positive action to encourage applications and appointments across the range of protected characteristics is necessary, including as a means of addressing disadvantage occurring at the intersection of different characteristics.

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

- We note the Commission's observations about the lack of provision for equality impact assessment around application and assessment methods, or for positive action measures.
- Taken with the lack of progress in appointing younger people and people from BAME backgrounds, as well as a decline in applications and appointments from disabled people, impact assessments and positive action are clear ways to identify a group's particular needs and the disadvantage they might experience, and to consider practical and appropriate ways to increase their participation.
- There may also be lessons to learn through success in promoting gender equality within Ministerial appointments. What approaches were used? What worked well? Could any of this be practically applied to other groups?
- It is important that boards attract the right mix of skills and experience for their organisations. Diversity of characteristics and experiential lens could be considered within this, supporting a diverse cohort of appointees with the required skills.
- Particular consideration could be given to the role of lived expertise - the combination of personal experience and an understanding of the broader issues for a particular group during the application process, and also during the fulfilment of posts. For example,

organisations may be carrying out pieces of work that are focused around particular inequalities and board expertise in this area would be desirable. This could be extended to low income by considering whether candidates have experience of poverty (currently or in their past) which could support an organisation to ensure it does not cause disadvantage to, or can assist, those currently experiencing poverty.

- Making clear how a position will be supported in terms of finance and time. This will be especially helpful to people from low-income households who may self-exclude if they are unaware of how they can be supported to fulfil an appointment. Considerations around support may include transport, childcare and other caring responsibilities, reliable internet access and IT equipment for example.
- Reliable equality monitoring of recruitment and appointments.
- Using demographic information for relevant geographic areas (this might be national) to support positive action e.g. targeting advertising of vacancies through appropriate channels, running information or support sessions to encourage applications, mentoring programmes.
- The guidance should highlight that there may be unintended impacts on equality and diversity and that the appointment team should be alert to this possibility. By way of an example – a Non-Executive Director position was advertised and clearly outlined that they were particularly looking to encourage women under the age of 50 years to apply. The dates set for the interview, however, were right at the start of the school summer holidays in the region which is likely to impact disproportionately on exactly the demographic they were seeking to attract.

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

- If unidentified through exercises such as equality impact assessments, and subsequent positive action, barriers to application and appointment could persist for the under-represented groups. For example, under the Equality Act a disabled person is someone with ‘a physical or a mental condition which has a substantial and long-term impact on your ability to do normal day to day activities’. This includes progressive conditions like HIV, cancer or multiple sclerosis. It also includes ‘hidden’ conditions such as Myalgic Encephalomyelitis. There could easily be a variety of barriers, actual and perceived, to the appointment of more disabled people. Does information about appointment opportunities make clear the scope for reasonable adjustments which would ensure a disabled person can apply and fulfil an appointment?
- Consideration should be given as to whether there is a lack of people from under-represented groups with the right skills and experience for appointment generally speaking, or whether they are simply not coming forward and / or being appointed. Positive action could support people with the rights skills and from under-represented groups to take up positions. This is important because addressing a lack of visibility at board level is essential to encouraging more people from currently under-represented groups to apply in future.

- Lived expertise will lend a particular perspective to board activities that may not otherwise be available. It is also a way of combining a diversity of skills and expertise with a diversity of characteristics.
- Data from the Scottish Household Survey 2018 shows that formal volunteers are most usually women, from higher income groups, from rural areas, and from less deprived areas. The experience of the Commission around household income and successful appointments is consistent. Steps need to be taken to ensure the application process and role requirements are supportive of people living on lower incomes and who may therefore have less of the resources needed to take on an appointment, but nonetheless the correct skills. A significant consideration here is that people from currently under-represented groups are also more likely to experience poverty; and have additionally been disproportionately impacted by the COVID-19 pandemic.
- We know digital exclusion impacts lower income households to a greater extent, and that people with protected characteristics are more likely to experience socio-economic deprivation. For example, see our [recent equality impact assessment](#) relating to community engagement in the COVID-19 context.
- The intersection of these experiences is important. Note support for the Commissioner's has consideration of the work of First Minister's Advisory Council on Women and Girls in respect of the importance of intersectionality and plans future reporting on key intersectional data.

Thematic Reviews of the Code's Operation and Diversity Delivers Progress

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?

Q5 – If so, what requirements should be included?

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

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

- Yes. It would be helpful if the Code were to explicitly set out the need for appropriate positive action measures.

Q8 – If so, what should those be?

- As above, equality impact assessments and positive action are clear ways to identify a group's particular needs and the disadvantage they might experience, and to consider practical and appropriate ways to increase their participation.
- Advice should be sought from organisations and individuals who can share information about appropriate and effective actions for the groups they represent.
- Ensuring the delivery of diversity and unconscious bias training (and refreshers) for interview panels would be helpful.
- Interview panels should themselves reflect a diversity of board members. Panel members could be drawn from other organisations to support this.

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

- As above, if unidentified through exercises such as equality impact assessments, and subsequent positive action, barriers to application and appointment could persist for the under-represented groups.
- The use of targeted promotion with consideration of the spaces under-represented groups will receive these messages should be emphasized. If a diversity of spaces are not used, a diversity of candidates are less likely to be attracted. In seeking to improve the diversity of Healthcare Improvement's Scotland's volunteers, we have sought guidance from representative organisations and held events, supported by a relevant representative organisations, to raise awareness with and seek feedback from potentially interested individuals. The actions we have taken have included using a diversity of channels to promote vacancies and targeting advertising within the media outlets used by BAME communities, including social media and radio.

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

- Yes. A refresh of the Diversity Delivers strategy would ensure it is properly reflective of the current landscape in Scotland.

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

While we are supportive of the actions outlined in the strategy, a refresh could give specific consideration to:

- Digital exclusion, which is more likely to impact protected groups and those living in relative poverty, and how this may impact awareness and attraction activities as well as the maintenance of a successful appointment.
- The provision of awareness information and application details in British Sign Language (BSL)
- Alongside diversity training for board members as part of building confidence and capacity, a commitment to work with diverse recruitment panels. This means not only that candidates will be encouraged by better representation, but could also play an important additional role in balancing the different biases of recruitment panel members.
- In relation to education and experience, consider a broader approach to mentoring based on time served, skills and background. This would mean new board members or those seeking specific development opportunities are supported as well as trainees.

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

Pragmatic, Proportionate and Public Interest Focused

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

Q14 – Please give reasons for your views.

Additional Issues that Code Revisions Could Address

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

- Yes. There is evidence referred to that selection panel practices are inconsistent and may not be following best practice examples of what has been demonstrated to work. In addition the process is not attracting applications from groups currently underrepresented such as those from the private sector or from lower income households. Improvements could be made if processes were adapted from evidence based practice.

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?

- As above the use of equality impact assessments and positive action. This should include working with equality groups and local communities to identify the right actions to take
- Guidance could make clear the value of engagement with private sector employers to highlight the value which an appointed Non-executive Director would bring to their employment position. This could help to shift perceptions to this as an investment in their development rather than a cost through absence or a commitment which must be delivered using annual leave days.

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

- There cannot be a once size fits all approach for Scotland and its communities of interest and geography, so whilst evidence based practice should be used there should be scope for adapting to fit the demographic - for example remote, rural and island - areas.

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

Q19 – What legitimate grounds for choice should be specified?

Q20 – Please give reasons for your views.

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

Q22 – If so, which duties should be included?

Q23 – What are your reasons for these views?

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

Q25 – Please give reasons for your views.

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

Q27 – Please give reasons for your view.

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

Yes, there are examples where Non-executive Director have been successfully appointed based on how they demonstrate the organisation's values.

Important however that any additional requirement for information does not result in an overwhelming form which would most certainly deter applicants.

A requirement at some stage in the application process to demonstrate the reasons as to why an applicant is interested in a particular position would make sense.

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

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

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

Yes, as this would ensure a more open and transparent approach.

Q32 – Please give reasons for your answer to Q31.

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

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

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

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

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

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

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

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

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

Q42 – Please provide reasons for your answer to Q41.

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

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

- There is anecdotal evidence to suggest that a more practiced applicant has a better chance of being successful. The current application approach which relies on a very formulaic form completion does not encourage applicants who have not applied previously and so favours those who are experienced Board members and/or applicants rather than those who are applying for the first time. This results in the same people serving on different Boards either at the same time or sequentially rather than attracting new blood. This applies to the interview process as well as completion of the form.
- The length of time from advertisement to appointment is likely to be very disheartening for many applicants and indeed circumstances may well change in the intervening period. Every effort from both the Scottish Government and the recruitment panel should be made to keep the process as speedy as possible if we are to appoint the best people for the positions.
- Clear direction for applicants to organisations which provide support, mentoring and training for prospective Non-Executive Directors, particularly those who come from under-represented groups, for example *Changing the Chemistry*.

Responses

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

They should be sent, ideally by email, to:

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Ethical Standards Commissioner

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