

## Code of Practice for Ministerial Appointments to Public Bodies in Scotland

### Response from the Scottish Charity Regulator

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<b>On behalf of</b>	Office of the Scottish Charity Regulator (OSCR)
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	We agree to our response and the name of the organisation being made public
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	We agree to being contacted in future for consultation or research purposes

### Background

1. The Scottish Charity Regulator (OSCR) is the independent registrar and regulator of Scotland's 25,000+ charities. It is established as a body corporate by section 1 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). It is a Non-Ministerial Office of the Scottish Administration and reports to the Scottish Parliament.
2. Under Schedule 1 of the 2005 Act, OSCR consists of members appointed by Scottish Ministers through the public appointment process. Scottish Ministers must appoint one from among its members as Chair and another as Deputy Chair.
3. Our strategic vision, set out in our Corporate Plan 2020-23, is for a trusted and respected Scottish charity sector that positively contributes to society.

### Response to consultation

4. OSCR welcomes the opportunity to respond to the Ethical Standards Commissioner's consultation. We note that possible revision of the Code of Practice is driven principally by the aim to ensure greater diversity on the boards of public bodies. We fully support the principle that, in their composition, boards should reflect the diversity of the communities they serve. If public bodies are to inspire confidence, our boards must be, and be seen to be, relevant and in touch with the issues and concerns of the public.
5. We recognise that an effective Code is an important tool underpinning the principles of diversity and equality. For Scottish Ministers to be held to account for ensuring that there is appropriate representation of particular groups or sectors there must be targets and timescales against which their progress can be measured and reported. We suggest that the targets may themselves be the subject of consultation before being agreed and published.
6. The consultation points to failures to make significant progress in attracting applications from certain under-represented groups since 2013 and seeks

views on whether the Code should be more prescriptive. While we understand that response, we have concerns that achieving diverse representation may call for creative approaches to recruitment and selection that will not be the same for all public bodies. In our view it would not be helpful for the Code to be prescriptive to the point that it fettered Ministerial discretion to try novel approaches, albeit consistent with the general principles of merit and integrity.

7. On the question of monitoring targets, one concern we have is that in some areas a significant proportion of applicants decline to provide the information necessary to draw firm conclusions. For example, the Commissioner's analysis of applications and appointments by household income indicates that in 2019 nearly a quarter of those surveyed preferred not to say. While providing the information will always be voluntary, more explanation and encouragement may be needed to elicit usable data.
8. We welcome the fact that the Commissioner views diversity in a wider sense than simply representation by people who share protected characteristics defined by the Equality Act 2010. Vital though it is to ensure representation from these groups, her thematic studies of sector worked in and household income demonstrate other aspects of under-representation. In our view, diversity of thought, background and lived experience are equally important, although admittedly not always easy to measure.
9. Approaches to attracting applicants should assist them to identify the life/work skills and experience they have that may be transferrable, especially among sections of the community who may not be familiar with articulating them in the language of public sector governance. Many people from outside the public and third sectors have little contact with the world of governance or public service ethos and will be less likely to relate to the language which often appears in advertisements.
10. Consideration should be given to other methods of encouraging potential applicants such open information meetings, use of social media and opportunities for informal discussion with experienced board members prior to applying. We consider there may be value in running training courses for people interested in becoming members of public bodies, but we recognise this will not be a matter for the Code.
11. Appointment panels must take full account of applicants' transferrable skills and experiences. Panels are tasked with appointing on merit, which can make it more difficult to take greater risks with applicants unused to interviews and assessments. Greater diversity among external panel members increases the likelihood of greater diversity among successful interviewees. We are aware of work previously undertaken by the Association of Chief Officers of Scottish Voluntary Organisations (ACOSVO) with the public appointments team and the Commission to train third sector leaders as panel members. More could be done to build on this work and similar approaches may be of value in under-represented areas such as the private sector, working with appropriate organisations.

12. As the Code identifies, recruitment on merit requires that only persons judged best able to meet the requirements of the post will be appointed. In our view it is important that the requirements of the post are not expressed too narrowly or solely in terms of skills. Other personal characteristics and behaviours affect Board dynamics (problem-solvers, negotiators, challengers, innovators etc) and an effective Board will have a mix of complementary personality types. Assessments should be designed to draw out and evaluate these factors.
13. Finally – and again we recognise this is not really a matter for the Code but is relevant to the wider question of the inclusivity of public body boards – diversity should not be measured just in terms of numerical representation. Ultimately, it is the contribution that board members make that matters not simply their presence. We consider that there is a need for more and improved training for new board members and the availability of the training must be made known to prospective applicants well in advance of them applying.
14. Broadening the range of individuals willing and able to become valuable members of public bodies must also recognise that some people will take longer to become fully effective because the language, context and ways of operating in public bodies is very different from their experiences and backgrounds. Having support and time to do this, both for the individuals and the public bodies concerned, will pay dividends in terms of diversity.
15. The Commissioner may wish to extend her surveys beyond recruitment and selection from under-represented groups to consider measures of retention, attendance and contribution among new or inexperienced board members. The sector we regulate – charities – have often been pioneers of inclusivity and we consider there are lessons that may be learned from their innovations in maximising the contribution of all board members. For example, we are aware of charities that use board apprenticeships and ‘buddying’ (pairing new board members with experienced ones) as methods of induction and for developing knowledge, skills and confidence.

## Contact

OSCR has welcomed the opportunity to respond to this consultation and looks forward to seeing the outcome and possible revision of the Code of Practice. Should you wish to discuss any aspect of our response please contact:

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