

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: Najimee Parveen, Director PATH (Scotland) | |
| Address: Suite 2, 74-76 Firhill Road, Glasgow G20 7BA | |
| 1. Are you responding as (please tick appropriate box): | |
| 1a. An individual (go to 2a/b, 3)? | |
| 1b. On behalf of a group or organisation (go to 2c/d, 3)? | YES |
| 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) | |
| 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 | |
| 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) | 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 | |
| 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 | 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 | 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.

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

We believe that improving diversity of backgrounds when appointing new members is essential and positive action targets must be set. Identifying board members who have lived experience and diversity of thought can introduce new views and creative approaches to complex discussions.

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

We have 22 years' experience of running positive action training programmes in the housing sector under the positive action provisions of the Race Relations Act (1976) and the Equality Act (2010). We place unemployed and under-employed trainees from a BAME background into traineeships in the housing sector. 90% of our trainees gain employment post placement. Our work has also had a major impact on the communities that housing organisations serve who see themselves reflected in the workplace and on boards. We have increased the diversity of people who work in mainstream housing, many of whom speak a number of languages who can communicate directly to people who need not only housing advice and support but access to local housing too. We see the benefits of lived experience and diversity of thought first-hand.

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?

Requirements should reflect the current political, and social climate. For example, the impact of Covid 19, the uncertainties around Brexit, the increasingly harsh climate for refugees and asylum seekers, food poverty and other matters.

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

Requirements that remain unchanged do not reflect current society. Ongoing lessons are important in responding to changing needs.

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?

There is a wide range of work around positive action e.g. the Equality and Human Rights Commission has published guidance on positive action measures which include the following;

Conducting board evaluations and setting diversity targets for appointments supported by policies and action plans

Ceasing reliance on personal networks and instead publicising appointments through a wide range of channels and using positive action to improve the diversity of the candidate pool.

Using networks, mentoring and sponsorship programmes to encourage and support protected groups who put themselves forward

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

Taking positive action measures produces results! As mentioned previously PATH (Scotland) has a 22-year history of running positive action schemes under the positive action provisions of the Race Relations Act (1976) and the Equality Act (2010)

We believe it is essential for employers/companies and boards to adopt positive action measures to encourage people from protected characteristics to apply. Positive Action is sadly under-utilised in Scotland. We are one of the very few organisations using positive action to support BAME communities into employment and leadership positions. This has been recognised in a Scottish Parliament report, " Removing Barriers, Race, Ethnicity and Employment" (2016) which highlights PATH (Scotland) in 2 of its recommendations and describes us as an example of good practice.

During a field visit to PATH Scotland MSPs spoke to former participants and concluded that PATH Scotland programmes were "excellent examples of good practice in promoting racial equality in the workplace. In addition to helping participants to obtain the confidence and knowledge to seek promoted posts," They concluded by saying," it is apparent that the programmes produce results".

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?

To ensure that legislative/political/social/language and environmental changes are reflected in any strategy.

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

Society is constantly evolving. For example terminology such as BME/BAME encompass a wide range of backgrounds, class, culture and traditions as well as many different obstacles to progression. We advise boards/employers and others to review their people processes to retain diversity, identify barriers to progression, time points where board members/employees leave and address this. We also ask them to consider intersectionality, such as the combined effect of race and gender, and examine progress from different angles.

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?

We would recommend that plain English is used for any Code and Associated guidance. In addition we would recommend that the Code is appropriately marketed for those with protected characteristics and that support is given throughout the process of application.

Q14 – Please give reasons for your views.

See above

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?

As referred to in an earlier question, some of the following could be looked at;

Conducting board evaluations and setting diversity targets for appointments supported by policies and action plans

Ceasing reliance on personal networks and instead publicising appointments through a wide range of channels and using positive action to improve the diversity of the candidate pool.

Using networks, mentoring and sponsorship programmes to encourage and support protected groups who put themselves forward

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

Our experience of working in sectors such as Housing has demonstrated the impact of taking such measures for example, a Chartered Institute of Housing report on the experience of BAME staff in Housing has said that “The most important route into housing had been by way of a PATH traineeship, demonstrating the continuing importance of the PATH Scotland scheme” (see Sim, D, 2014, page 22).

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

We note that the Scottish Ministerial Code (2018) edition makes clear that appointments are made by Ministers based who they consider best qualified for the position, based on specific criteria and that in doing so Ministers should have regard to a number of factors including public accountability. We also note that appointment is made on merit and applies to all Scottish public appointment procedures.

We would seek transparency on terminology used such as 'specific criteria' and 'merit'
We are aware that guidance to the Code explains this in more detail however would emphasise that positive action measures should also be used to address the under-representation of particular groups on public bodies.

Q19 – What legitimate grounds for choice should be specified?

We believe that addressing under-representation is a legitimate choice

Q20 – Please give reasons for your views.

Positive Action is an excellent way of achieving a wider pool of talented, skilled and experienced people from which to recruit. It is also possible to favour candidate from an under-represented group, where two candidates are 'as qualified as' each other

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?

Positive Action measures for attracting applications, getting more positive outcomes at interviews and mechanisms established to support and retain new applicants. In addition specific measures when reappointments are being considered where boards are all white.

Q23 – What are your reasons for these views?

This would assist in addressing diversity imbalance.

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.

Full transparency is required at every stage of the process

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.

As per the last question It is important that clarity is given about each stage of the process

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?

The description should include information relating to the targeting of under-represented groups

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

This will ensure that there is as broad and diverse range of talent as is possible. Measures could include favouring the person from an under-represented group, where two candidates are 'as qualified as' each other

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

Yes

Q32 – Please give reasons for your answer to Q31.

The process needs to be clear, fair and as transparent as possible.

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.

We would advise that these issues be included in the Code or related 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?

We would expect that Board Members would be expected to have a high standard of ethical conduct in carrying out their responsibilities and should not be, or appear to be, subject to external pressure while at the same time ensuring that their views and values are not comprised.

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

We believe that training needs should be identified and addressed. Specifically, training should equip panel chairs with a clear understanding of the different ways in which discrimination can operate and an appreciation of barriers to equality for people with protected characteristics. All training should be monitored and reviewed.

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)?

We believe that independent panel members should be paid for time spent and that they should be limited to a certain number of rounds before losing their ‘independent status.’

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

Good practice in governance deems that duration of appointments should be time limited.

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

Yes

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

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

We feel that transparency and accountability are key to any process and that regular reports will ensure that the process is a robust one.

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

No

Q42 – Please provide reasons for your answer to Q41.

The Ethical Standards Commissioner Annual Report 2018-19 demonstrates that Public Appointment Advisers are engaging early with panels on appointment rounds and that the Commissioner has provided PAA resources to activities such as diversity in governance and other areas. We are also aware that some training has taken place for them. We would encourage further training and development around diversity and equality and would recommend that an external advisory panel with expertise in this area be set up to offer specialist knowledge and advice

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?

We note that the Westminster Public Administration and Constitutional Affairs Committee have said in the past that they were concerned that ministers, not the watchdog, set the appointments code. After a review the Public Appointments Commissioner for Westminster, Peter Riddell said that the

new arrangements were underpinned by a "more transparent system" where everyone could follow the progress of a competition via a web-tracker on the Cabinet Office website. This seems to us to be good practice as it can follow progress in 'real time'

Responses

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

They should be sent, ideally by email, to:

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