

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

Introduction

The Scottish Social Services Council (SSSC) is the regulator for the social service workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce. We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action.

The Ethical Standards Commissioner has asked us to consider whether the Code of Practice for Ministerial Appointments to Public Bodies in Scotland is operating as effectively as it could and whether there are any improvements that should be made to the Code.

Equality and diversity

Q1, Q2 and Q3

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, we believe the code should be as clear and specific as possible about the measures to be adopted when planning to appoint new members as it promotes openness and transparency. People going through the process should be clear to what standards they are going to be held when being selected for public appointments.

Any expansion of other factors should be informed and consistent with the factors required by the Equality Act 2010 and the guidance on applying public sector duties set out by the Equality and Human Rights Commission to promote consistency and reduce confusion.

Inclusion of household income seems sensible. As to other factors such as skills, knowledge and experience, care needs to be taken not to interfere with long established requirements for boards to target specific skill sets necessary to demonstrate good governance. In respect of sector worked in - some boards have statutory requirements in their founding legislation regarding the numbers of members with specific skills and experience and in our view this is sufficient and therefore not necessary to include within the meaning of diversity. Care needs to be taken that in expanding the definition of Diversity that it doesn't become so broad that less emphasis is placed on other factors.

Thematic review of the Code's operation and Diversity Delivers Progress

Q4, Q5 and Q6

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, we feel that lessons should be learned from each round of recruitment. From the ESC's thematic review paper it appears that a lesson's learned process is being developed, this would be welcomed by us.

Decisions from panels should always be based on evidence and more prescriptive requirements will make it clearer how Panels are informed of the particular need of each public body and how this is taken into account.

Q7, Q8 and Q9

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, the codes of practice do make mention of diversity and equality but only to the extent that the process must provide equality of opportunity. We would welcome a clearer link between the definitions in the code and the definitions and requirements set out by the Equalities Act 2010 and associated guidance issued by the Equality and Human Rights Commission.

Q10, Q11 and Q12

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

The SSSC does not have a position on this.

Pragmatic, proportionate and public interest focussed

Q13 and Q14

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?

Section B provides that the Scottish Ministers will identify the skills, knowledge and experience needed by the board however in practice this needs to be informed by the organisation itself. A more clearly set out provision that they must take this input into account would be welcomed.

Section C says that it is the selection panel who determine the description of the role and the description of the skills and experience required. Again, clearer provisions around consultation with the bodies in question would be helpful.

Section C should have more about targeting role advertisements with diversity in mind. For example C3 simply requires an optimum number of people, without any reference to characteristics or diversity goals.

Additional issues that code revisions could address

Q15, Q16 and Q17

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? – 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 socioeconomic background?

Yes, the codes should be prescriptive about basing appointment plan decisions on evidence of what attracts the right applicants. This is as the challenges to diversity in panel selection begin before the appointment panel. There therefore, needs to be a better understanding of these challenges and greater consideration of wider cultural issues in the selection process.

Q18, Q19 and Q20

What changes, if any, should be made to the Code as a result of the coming into force of the 2018 Act? What legitimate grounds for choice should be specified?

The Gender Representation on Public Boards Act 2018 requires that all appointments are made on merit and the most able candidate is always appointed. However, in circumstances where there are two or more equally qualified candidates, at least one of whom is a woman, then section 4(2) of the Act requires the appointing person to give preference to a woman if doing so will result in the board achieving (or making progress towards achieving) the gender representation objective. This is, however, subject to section 4(4).

Most boards appear to have gender balance, as recognised in the draft code of practice so it would seem appropriate now to take a similar approach to wider diversity concerns, using the lessons that have been learned through this process and involving key equality partners and bodies.

Q21, Q22 and Q23

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.

We feel that specific reference to the duties on Scottish Ministers within the codes would be helpful.

Q24 and Q25

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?

The SSSC does not have a position on this.

Q26 and Q27

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

Yes.

Q28, Q29 and Q30

Should the description of the attributes sought in new board members be expanded to include more than skills, knowledge and experience? If so, what other attributes should be included?

Yes, it should be clear that there may be statutory requirements regarding the composition of a board with regards to specific skill sets or sector worked in and that because of this, these requirements take priority over other aspects of the code.

Q31 and Q32

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

Yes, for example, if we are looking to appoint a new panel member with experience in the social services sector, the way we assess that would be or should be different to how we assess the other attributes. It might be that the ideal applicant may not be strong on presentation writing, for example, as they would not necessarily have to be to perform well in the social services sector and an assessment which is based on presentation would mean that such a candidate may be overlooked.

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.

Answers 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?

This would be appropriate for inclusion in the Code. The Codes of Practice should highlight some of the benefits for and expectations on board members, such opportunities to develop, to make a difference, to contribute in another way which should be considered by panel members and therefore set out in the code.

For example, should other competing personal and professional commitments be taken into account in the designation of a suitable member?

This is appropriate for inclusion in the Code. There is a need to make potential candidates aware of the practicalities and implications of board positions. There should also be limits placed on the number of panels to which individuals can members. We feel that limiting the number of panels individuals can belong to would help to promote wider representation on panels as there would be more roles which could be filled by a more diverse group of people.

Q35, Q36 and Q37

Should panel chairs be required to undertake any training, and if so, what should that entail? 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 feel this inclusion would be appropriate for inclusion in the Code. In our response to the consultation regarding the codes of practice in 2012, we advised:

It is important that panels understand the Code against which they are recruiting people, but for experienced members, it should not be necessary to attend a full-blown training course. We would suggest a podcast or similar online resource is made available, particularly for refresher training. It is important to have a degree of consistency of approach.

Panels need to be appropriately constituted and evaluated. Only then might it be possible to assess the extent of the need for training. If generic training is put in place, it will be important to recognise any possible negative impact - eg more rigidity and less flexibility.

Refresher training should be available but this need not take the form of workshops. There are many more innovative, flexible and cheap ways of delivering it.

Our position hasn't changed.

Q38, Q39 and Q40

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

oversight? 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?

We feel this is appropriate as this will test how the code is being implemented in practise by Panels and the Scottish Ministers.

Q41 and Q42

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

We feel the current regulatory model is appropriate.

Q43

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

We have nothing further to add.

Q44

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

We have nothing to add that hasn't been considered in this response.

**Scottish Social Services Council
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