



The Scottish Parliament
Pàrlamaid na h-Alba

Standards, Procedures and Public Appointments Committee

Room CG.07
EDINBURGH
EH99 1SP

Tel (Clerk): 0131 348 5239
e-mail: sppaccommittee@parliament.scot

29 October 2020

Dear Caroline

Thank you for the invitation to respond to your consultation on prospective revisions to the Code of Practice for Ministerial Appointments to Public Bodies in Scotland. The Committee also appreciated the opportunity to discuss the consultation with Ian Bruce on 8 October, as well as your update on progress made in securing greater diversity on the boards of public bodies. The Committee found the discussion interesting and helpful.

Below is our contribution to your Consultation on your Code of Practice for Ministerial Appointments to Public Bodies in Scotland. The Committee has chosen to focus on what it considers to be the key areas in setting out its response.

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?

The Committee would welcome the inclusion of clear and specific provisions on diversity measures and outcomes in the Code of Practice. We are of the view that this would help to ensure tangible progress in delivering greater diversity on the boards of Public Bodies.

The Committee would support any changes to the Code of Practice which draw on best practice from appointment processes which have successfully appointed those with protected characteristics and, where appropriate,

translate them into prescribed measures which Ministers would be required to consider as part of their appointments planning.

The Committee had a number of points that it would like to make in relation to diversity, particularly in respect of those with protected characteristics. The Committee also considers that diversity could be expanded to include other factors given the prevalence of applicants from higher household income bands and the public sector, and to encourage people from more remote and rural areas to seek appointment to the boards of Public Bodies.

In relation to protected characteristics, the Committee was particularly concerned that the boards of Public Bodies are not sufficiently representative of people with disabilities and those from BAME backgrounds. The Committee understands that a number of good practice measures have been used in previous rounds, but that the Code of Practice is not prescriptive in this area and that variations in practice can go unchallenged. Prescriptive measures would promote greater consistency in good practice and help to ensure that those with protected characteristics, including disabled people and people from BAME minority backgrounds, are supported in applying for board membership and can be successful in those applications.

The Committee also has a specific concern about the fact that most applicants are from the higher household income bands and that successful appointees are even more likely to fall into the upper bands. Again, we understand that the way in which merit is defined by appointing ministers can play a crucial role here. We would also like to see more creative approaches - such as the use of open days in deprived areas - as a means of diversifying applications.

We noted the high number of public sector applicants, not reflective of the population as a whole, set out in the Commissioner's letter to us. We understand that this could be addressed through the competency-based approach to person specifications, the composition of interview panels and the way in which Ministers define merit - whether skills such as innovation and collaboration are included here. We note that consultation with representative bodies such as Chambers of Commerce should provide some helpful information on which to base any new provisions.

In addition, we believe that consideration should be given as to how measures can be included to encourage the participation of those in remote and rural areas and how the new ways of working which have emerged as a result of the Covid pandemic will support this. We note that the taxation of the reimbursement of travel expenses will have a greater impact on people who have further to travel and intend to raise this with the Cabinet Secretary with a view to establishing whether this matter could be raised with HMRC.

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?

The Committee heard about the many areas of good practice found in Public Appointments recruitment but regrets that much of this good practice is not developed into required measures for recruitment exercises. While the Commissioner highlights good practice through her audits, thematic reviews and good practice case studies, the Committee would welcome the introduction of more prescriptive requirements in order to ensure that good practice is replicated.

We note that the Government has declined to adopt bespoke plans to address the under-reflection of some groups (disabled people and people under 50). We believe that new, prescriptive requirements would allow the Commissioner to formally report to Parliament on her findings with respect to measures to address under-representation. Given the very significant levels of expenditure overseen by Public Boards, the Committee would particularly welcome this. We believe that public confidence in appointment processes is essential when these sums are considered. Furthermore, a wider and more diverse pool of applicants will be encouraged to apply if they are assured that appointments are made on merit, and the appointment process is conducted fairly.

The Committee considers that a move away from principles-only regulation towards prescribed practices will allow the Commissioner to report material non-compliance.

The Committee shares the Commissioner's concerns regarding delayed appointment rounds (the Scottish Police Authority for example) and low numbers of quality applicants for chair roles, especially for NHS boards. We regret that the Commissioner was prevented from intervening in relation to these delayed appointments, since no Code provisions had been breached.

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?

The Committee is supportive of any measures to highlight, roll out and encode proven good practice. All appointment processes begin with the Minister, which is why we are supportive (as set out above) of clear and specific provisions on diversity measures by which Ministers are bound when preparing person specifications and instructing panels.

In following instructions from Ministers, we support requirements on panels to demonstrate that their appointment plans are evidence-based.

We note the Commissioner's work to survey panel and board chairs and applicants at the conclusion of appointment rounds and agree that this work should inform the improvement of appointments' practices. We are also aware of the work of the Public Audit and Post Legislative Scrutiny Committee's work on board governance and support any Code changes which would allow the Commissioner to require Ministers to address the difficulties that boards are experiencing in recruiting members with the necessary skills, experience and diversity and to ensure consistency across the public sector about the appropriate calibre of board member.

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.

The Committee supports a revision of the Code to take account of the fact that some new public body boards also now require parliamentary approval and that all NHS appointments now require the individuals appointed to demonstrate that they share the values of the NHS in Scotland.

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?

The Committee would welcome this obligation.

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)?

The Committee would support the introduction of a minimum commitment requirements which would ensure that all panel members are engaging in every step of the recruitment exercise and are not able to dip in and out of different stages. We support a requirement on panel chairs to undertake training.

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?

The Committee would welcome the audit of a proportion of appointment rounds which are not directly overseen and would wish to see more regular reports to Parliament in the interests of transparency.

The Committee looks forward to engaging with you further on matters relating to public appointments.

Yours sincerely

A handwritten signature in black ink that reads "Bill Kidd MSP". The signature is written in a cursive style with a horizontal line underneath the name.

Bill Kidd MSP
Convener
Standards, Procedures and Public Appointments Committee