



The Office of the Commissioner for
Public Appointments in Scotland

Notes for Guidance

Guidance for OCPAS Assessors
on the Code of Practice for Ministerial
Appointments to Public Bodies
in Scotland



Foreword

The following notes are intended for use by OCPAS Assessors when interpreting and applying the Code of Practice, although they may also prove useful for others involved in the public appointments process. The notes are not exhaustive, nor can they offer a definitive interpretation of every requirement of the Code. The Code itself does not attempt to legislate for every conceivable event. It provides the framework of practices and procedures which must be applied in the light of seven overarching principles and as appropriate to the individual circumstances concerned.

These notes follow the numerical structure of the Code of Practice and references are made to the relevant paragraphs of the Code, where appropriate. Not every part of the Code has warranted an explanatory note, so the paragraph numbers referred to in this document are not continuous. The guidance is presented in a simple, bullet-point format, which is intended to provide an easy-reference guide. The text of the Code is not fully repeated in this document, and the guidance should not be used as a substitute for the Code. Ultimately, the correct approach in any given situation will rest on the wording of the relevant parts of the Code itself, interpreted in a way which gives effect to the seven overarching principles.

The Code prescribes *what* must be done, or not done, throughout the public appointments process. *How* these requirements are achieved, provided the methods are compliant with the Code, is a matter for the Scottish Executive.

These are draft guidance notes. They will be tested during the first two appointment rounds under the new Code of Practice to ensure that all relevant guidance has been included.

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SECTION 3 - APPLICATION OF THE CODE

1 Applying the Principle of Proportionality

- Applying the principle of proportionality does not mean that some requirements of the Code do not apply for certain appointment rounds. Rather, it means that the methods and practices needed to meet certain requirements will vary between appointment rounds, depending on several relevant factors.
- In essence, proportionality means that the approach required is directly related to the risk associated with making an inappropriate appointment. If the post in question is the chair of Scottish Enterprise who oversees a budget of more than £400 million each year, the risks involved are quite substantial. A very inclusive approach at each stage of the process would therefore be appropriate, to make every possible effort to ensure that the most suitable person for the role becomes aware of the opportunity, applies and is selected.

At which stage of the process should proportionality be considered?

- Proportionality must be considered with regard to every aspect of the appointment plan (see paragraph 7.2):
 - publicity
 - the appointment timetable
 - the process for sifting and/or shortlisting
 - the composition of the selection panel and the arrangements for interviews
 - how applicants will be kept informed.
- In practice, however, the aspects likely to vary most significantly for reasons of proportionality are:
 - a) the methods of publicity, and
 - b) the composition of the selection panel and
 - c) *possibly* the arrangements for interviews.

a) Methods of publicity

Scottish Water is a very high profile body with a substantial budget, whose work has a very significant impact on the people of Scotland and whose board members are paid £19,000 a year. Unless the posts required very specialist skills, these appointments are likely to warrant a high profile, nationwide campaign. This might include advertisements in the national press, such as the Scotsman/Herald, but might also include regional papers such as the Press & Journal, and business journals such as Insider magazine. It might also be helpful to consider other methods of reaching a

wide audience, such as a poster campaign in public buildings (hospitals, libraries, train stations, and so on) and links on appropriate websites. Publicity could also include articles, interviews or advertorials in relevant publications or on radio/television. The Code does not stipulate how the publicity is achieved, as long as it reaches as wide and diverse an audience as is appropriate.

In contrast, the Fisheries (Electricity) Committee is an advisory body operating in a field which does not have widespread impact, it is not responsible for spending public funds and its members are paid £135 per meeting. It is likely to be proportionate to require a less inclusive approach to publicity for these posts. It might be possible to target the appropriate audience through professional journals, relevant websites, through organisations whose members are likely to have the appropriate skills and knowledge, and so on.

b) Composition of the selection panel

Scottish Natural Heritage is a high-profile body whose members are paid up to £19,000 a year and whose work has a significant impact on both the population of Scotland and on informing government policy. It is therefore likely to be proportionate for the selection panel to include the chair of the body, a senior member of the sponsor department, the OCPAS Assessor and possibly an expert in the aspect of natural heritage relevant to the post (if this could not be tested in sufficient depth by the other panel members).

In contrast, the work of the Scottish Records Advisory Council has less of an impact on the population, it meets twice a year and is an advisory body, so has no budget to spend, and its members are not remunerated. It might be proportionate for the selection panel to consist only of the senior official from the sponsor department (who will have consulted with the chair of the body) and the OCPAS Assessor.

c) Arrangements for interview

Interviews will almost always take place in person, although there may occasionally be circumstances where it is proportionate to conduct an interview by telephone conference between the panel members and the candidate. All panel members must be party to the conference and a record must be kept of what was said. The OA must ensure equality of treatment between the candidates, even if some candidates are interviewed in person and some by telephone. An example of where this approach might be proportionate is for an unpaid post on a specialist advisory body which meets only once or twice as year and which conducts a good deal of its business by telephone. It might not be appropriate to fly a candidate from Shetland at considerable expense if the panel feels able to conduct the interview adequately by telephone. Such occasions will, however, be very rare and will depend entirely in the circumstances. The preferred course of action will always be to conduct interviews in person.

The only other occasion where telephone interviews might be appropriate is when an emergency appointment needs to be made. Due to the nature of such appointments, the pool of candidates is usually small and interviews need to be organised at short notice. If a candidate is out of the country, for example, it might be appropriate to conduct a telephone interview rather than attempt to fly the candidate back or delay the interviews until after his/her return.

Which factors should be considered when deciding a proportionate approach?

- It is important that none of the issues relevant to proportionality are considered in isolation. It is the combination of the factors listed in paragraph 1.3 (a) to (g) that will determine the correct approach.
For example, neither the members of the Scottish Arts Council nor the members of the Scottish Industrial Development Advisory Board are remunerated. The Scottish Arts Council, however, is an executive body responsible for spending £65 million of public money each year. It has a high profile and a fairly widespread influence on the lives of the people of Scotland. The Scottish Industrial Development Advisory Board is an advisory body with no annual budget, it has a much lower profile and less of an impact on people's lives. The combination of the relevant factors might therefore suggest a more inclusive approach is required for appointments to the Scottish Arts Council, even though the posts are not remunerated.
- Paragraph 1.3 states that in compiling the appointment plan the sponsor department will consider:

a) the role the public body plays in informing the Scottish Executive's policies

For example, SEPA plays a significant role in informing Executive policy on key issues such as environmental pollution and the disposal of radioactive waste, whereas the board of the Royal Botanic Garden is likely to be less involved in influencing key policy areas. Appointments to the board of SEPA will probably, therefore, warrant a more inclusive approach to applying the Code than would be appropriate for appointments for the Royal Botanic Garden.

b) the impact the public body has on Scottish public life and on individuals in Scotland

For example, Scottish Water affects the lives of every individual in Scotland, in contrast to the more limited impact of the work of the Fisheries (Electricity) Committee so the publicity, composition of the panel and arrangements for interview might be less inclusive for the latter body.

c) the nature of the post to be filled

For example:

i) Is the appointment for a chair or a member? A more inclusive approach might be appropriate for a chair - the selection panel might include an expert in the relevant field of knowledge, and the interviews may be longer than for members, to allow candidates' skills, knowledge and personal qualities to be explored in greater depth..

ii) Who are the potential candidates? Is there a limited group of people who could fill this position – say, chartered surveyors or experts in geology? Could the pool of potential applicants be reached by targeting the publicity towards this group, perhaps through trade journals or professional bodies?

iii) How often will the board meet? Is it an advisory or executive body? The Scottish Records Advisory Council is an advisory body whose members are not remunerated and which meets only twice a year. With this in mind, it might be proportionate for the appointment interview to take the form of a conference telephone call between the sponsor department official, the OCPAS Assessor and the candidate (recorded or minuted by the sponsor department).

d) the annual budget of the body concerned

Appointments to public bodies responsible for spending large sums of public money, such as Scottish Enterprise with an annual expenditure of £493 million, will usually warrant the most inclusive interpretation of the Code's procedures. It might, however, be proportionate to take a different approach to the publicity and interview for a body with a relatively small annual budget, such as the Local Government Boundary Commission with an expenditure of £574,000.

e) the remuneration paid to the chair and members

As remunerated positions are paid using public funds, they may require a more inclusive approach to the application of the Code.

f) the cost-effective use of resources required for each stage in the appointment round

For example:

i) It would not be proportionate to require an expensive publicity campaign in the national press for an appointment which could only be filled by advocates currently practising in Scotland. Instead, it might be more cost-effective to send a letter to all the members of the Faculty of Advocates, informing them of the appointment opportunity.

ii) It might not be proportionate or cost-effective to advertise nationally for a position which requires applicants to live or work in a specific area, for example, advertising in The Scotsman or The Herald for appointments to the Western Isles Health Board. Publicity in the West Highland Free Press and/or public buildings in the area (hospitals, doctors' surgeries, libraries, council offices, and so on) might be more appropriate.

g) any unusual circumstances affecting the role or the public body concerned at the time of the appointment.

For example:

i) The need to appoint quickly to ensure the body is not inquorate may make it proportionate to have a shorter period of publicity than would otherwise be the case.

ii) If health boards had been the subject of recent public criticism about the lack of publicity for their appointments it might be appropriate to ensure that publicity is wider and more visible than before.

2 Specialist Posts

- a) This provision is designed for exceptional circumstances, so the threshold for designation as a specialist post is fairly high. Many public appointments could be viewed as requiring “specialist skills” in the broadest sense - all public bodies are required to work at a high level, and many work in specialist areas and deal with complex issues. Many members (and prospective members) of boards are busy professional people, but this is not reason enough to excuse them from participating fully in an open and fair appointments process.
- b) The sponsor team must approach the Commissioner to request that a post be given specialist designation prior to commencing the appointment round (2.2), so this will usually occur before an OA is allocated.

4 Anonymity

- c) All application forms will be designed to enable the separation of personal information from the body of the application. Part one of the form will contain personal information, such as name, age, gender, information about other public appointments, names of referees, and so on.
- d) Part two of the form will ask the applicant to describe how they meet the requirements set out in the person specification. It will also contain a question, requiring nothing more than a yes/no answer, about potential conflicts of interest. The form should not require applicants to give *details* of any potential conflicts, but should contain a statement saying that potential conflicts will be explored in full if the applicant is invited for interview.
- e) The selection panel will not, therefore, have details about potential conflicts at the shortlist stage, so will need to question each candidate about them at interview. (*“I see from your application form that you may have a conflict of interest, could you tell us more about that?”*)

- f) Guidance on what constitutes a conflict of interest is to be included in the revised OCPAS leaflet which is included in the application pack for all regulated appointments.
- g) Even if a candidate has not indicated a potential conflict on their application form, they should still be questioned at interview (see guidance on paragraph 22.7)
- h) Part two of the application form might also include questions about relevant previous convictions, location requirements and professional qualifications, **but only if they are requirements of the post and have been included in the person specification.** Any questions about previous convictions or location requirements should require only a yes/no answer, so that no unnecessary personal information appears on the form.

*For example, if there were a requirement to live/work in the Tayside area in order to be on the board of Tayside Health, the question on part two of the form might simply be: "Do you live or work in the Tayside area?" (YES/NO)
Or even:*

"Please note that it is a requirement of being appointed that you live or work in the geographical area served by Tayside Health Board.

Do you live or work in the Tayside area? (YES/NO)

Do you intend to be living or working in the area by the planned date of appointment?" (YES/NO)"

These questions ensure that the applicant can satisfy the requirement, but do not invite any unnecessary detail about their address, or even the particular area in which they live, so there can be no question of unconscious bias.

- Information about previous convictions is classed as sensitive personal data under the Data Protection Act 1998 and must be treated with great discretion. Even when it is appropriate to ask for relevant previous convictions to be declared, it would not be acceptable to ask for *details* to be given on the application form, even in the part which is kept separate from the panel. Either a yes/no answer should be asked, and details explored at interview, and/or the form should request the applicant's permission for the appropriate level of Disclosure check.
- The panel will be given the names of the candidates shortlisted for interview, but will not be given any other information from part one of the form (paragraph 4.3).

SECTION 4 – THE APPOINTMENTS PROCESS

STAGE 1 - PLANNING

6 Ministerial Involvement in Planning the Appointment

- The Code deals with the Minister’s involvement in the planning stage first, to reflect the Minister’s overall responsibility for the appointment and the selection process. In practice, however, the Minister will usually discuss the requirements of the board with the sponsor team, and ask them to produce the role description, person specification, and so on, before passing them to the Minister for comment.
- The flowchart at Appendix B to the Code reflects this flexibility in the Minister’s involvement. Naturally, whatever the order of involvement, the final versions of the documents must always be approved by the OA before any publicity is issued (8.2).

8 OCPAS Assessor Involvement in Planning the Appointment

8.1(a) The Role Description

- The OCPAS Assessor is not in a position to comment on whether the role description reflects the current requirements of the board, but should ensure that it does not discriminate unlawfully against any group(s).
- The OA should check that it states:
 - length of appointment term
 - any remuneration
 - allowable expenses
 - realistic indication of time commitment
 - requirements specific to the appointment (For example, the location of the applicant’s home or work)

8.1(a) The Person Specification

- Does the person specification accurately outline the skills, knowledge and personal qualities required to discharge the responsibilities in the role description? Is there anything missing, or any criteria included which are unnecessary or which overlap? *One way of determining the skills, knowledge and personal qualities needed for the post is to create a matrix of the skills, knowledge and personal qualities required on the board as a whole, then mark off all those which have already been met by the existing board members. This may help to identify where the “gaps” are and therefore what will be the requirements of the new board member.*

- Will the person specification attract applicants of the nature and quality of that is intended?
- Are the skills, knowledge and personal qualities definable and not too vague? *For example, “good communication skills” is quite vague, which may be appropriate in some cases, whereas “the ability to influence and negotiate” or “the ability to listen carefully and react in a non-judgmental manner” are far more precise descriptions.*
- Are any of the criteria unnecessarily restrictive?
For example:
 - a) *would a requirement to have been the Head of a PE Department be unnecessarily restrictive?*
 - b) *a requirement to be the serving chair of a geographical health board might be unnecessarily restrictive if it is not an ex officio post. Could a vice-chair, a recently retired chair, or a senior health service executive also satisfy the requirements? Should it actually be the knowledge and skills which it is thought that a chair would bring that should be included in the person specification, rather than a job title which might unfairly rule out potential applicants?*
 - c) *if there are six posts available on the Parole Board for Scotland do they all need to have prior knowledge of the criminal justice system?*
- Are the criteria described in a way that will be interpreted similarly by everyone who reads them?
For example, what does “knowledge” of the charity sector mean? Does it need to be qualified – “extensive knowledge” or “first-hand knowledge”, or clarified - “familiarity with the issues affecting the governance of charities”?
- Can the criteria be adequately tested in the application form or at interview? Are they presented in a way which enables the applicant to describe how they meet the criteria?
For example, a requirement to have faith in the National Health System would be difficult to assess – how do you show evidence of this, and how does the panel test it?
- Are the criteria in the appropriate categories - essential or desirable?
For example, if effective communication skills are obviously essential it would not be appropriate to list them as desirable.
- Is the person specification drafted too narrowly/too broadly as a whole? Are there too many or too few essential criteria – too many might make the field unnecessarily narrow, too few might encourage applications which are far removed from what is actually being sought.
- In particular, are there enough desirable criteria to distinguish sufficiently between candidates? *For example, if there is only one desirable criterion*

then once everyone who does not meet the essential criteria has been sifted out there may be little to distinguish between the rest of the field.

- Have any requirements which apply to all public appointments been included? *For example, a requirement to have a high level of personal integrity. These should be included even if they cannot be tested on the application form – they can be explored at interview, and are still necessary requirements for the role.*
- Has thought been given to the balance of the board as a whole (in terms of skills, knowledge and personal qualities)?
- In particular, if there is more than one appointment, is the person specification drafted in a way that does not require two (or more) people with identical skills, knowledge and personal qualities, but will enable the combination of requirements to be satisfied?

For example, imagine two board members are being appointed to Visit Scotland. One of the two outgoing members had financial expertise and knowledge of business tourism, the other had knowledge of governance and hotel experience. If the board needed all these requirements to be replaced it would not be necessary for them to be distributed in the same way between the two new members – one of them could be a hotelier specialising in business tourism, and the other a financial consultant with corporate governance experience.

- Do any of the criteria discriminate unlawfully against any group(s)?
For example, in our person specification - the requirement to have experience gained on a full-time basis over a number of years would probably be indirect discrimination against a woman on grounds of her sex.
- Have any special requirements of the post been included (such as location requirements, Disclosure requirements, professional qualifications needed)? Even if these have been mentioned in the role description, or elsewhere in the application pack, they must still be included in the person specification as this is the definitive statement of the requirements which need to be met.
- If the department intends to give different weightings to the criteria (*For example, for demonstrating strong evidence of criterion A applicants will receive twice as many points as demonstrating strong evidence of criterion B, and so on.*) then in the interests of openness and transparency, and equality of opportunity, these weightings must be clearly indicated on the person specification and preferably on the application form as well.

What are Personal Qualities?

- *The principle of Merit: “Individuals selected will be those who have demonstrated that they best match the skills, knowledge and **personal qualities** required for the appointment in question”.*

*Paragraph 6.1 (a): “Appointment decisions will be based on the merit of individual applicants in light of the skills, knowledge and **personal qualities** reasonably required to balance the board at the time of the appointment.”*

- The term “personal qualities” has been included in the Code because it is not always possible to fully describe a person specification in terms of skills and knowledge alone. Without having regard to personal qualities, boards might attract members who are very competent in terms of their collective skills and knowledge, but who are not compatible as a team. *For example, without its members being assertive enough to raise objections or questions a board might not function effectively.*
- Describing the important personal qualities required for the role (in addition to the required skills and knowledge) will lead to a more complete and accurate person specification, and consequently a more accurate match between the applicants and the needs of the board.
- Personal qualities are the behaviours displayed in *demonstrating* a particular skill. *For example, “leadership ability” is a skill which may embody personal qualities such as self-assurance, vision, charisma and so on.*
- The person specification will often, therefore, include personal qualities which reinforce what is meant by the skills required. It may, however, also include qualities which do not directly relate to any other criteria. *For example, if the post involves dealing directly with users of a care service the person specification may list “empathy” or “approachability” as personal qualities needed in addition to the skills required for governance.*
- Certain attributes could potentially be described in terms of either a skill or a personal quality. *For example, is it better to list “an ability to challenge diplomatically” as a skill, or “diplomacy” as a personal quality? Is “the ability to work effectively as part of a team” better described as a skill or a combination of personal qualities, such as empathy, co-operation, flexibility, and so on?* There is no definitive answer to these questions - it will depend on what is the best way in the circumstances to attract someone with the required skills and qualities, on what appears to be the clearest way to describe them and on whether and how they can be tested in the application process.

- The Code does not suggest that personal qualities can necessarily be tested on the application form:

Paragraph 5.5: *“The required skills, knowledge and personal qualities determined at this stage will be used in publicity relating to the appointment. The **skills and knowledge required will be used to identify people for interview** and, in conjunction with the personal qualities required, will be used to form the basis of questions asked at interview and to identify candidates suitable for appointment.”*

This may be one way to distinguish between skills and qualities – if the requirement cannot be tested in a written application then it is probably better described in terms of a personal quality, or qualities, than as a skill..

- Many personal qualities may be difficult to assess in the selection process at all, although some can be tested at the interview stage. *For example, the need to be articulate.*

8.1(b) The Appointment Plan

General

In reviewing all aspects of the appointment plan the OA must have regard to the considerations in paragraph 1.3 to ensure that a proportionate approach is taken (further examples are given under each heading). An additional requirement has been added to 1.3 since the Code was distributed to the OAs – the department must also consider “any unusual circumstances affecting the role or the public body concerned at the time of the appointment”.

For example:

- a) the need to appoint quickly to ensure the body is not iniquorate*
- b) if health boards have been the subject of recent public criticism about the lack of publicity about appointments it may be appropriate to ensure that publicity is wider and more visible than before.*

The appointment plan will include:

1. The content and methods of publicising the appointment

- Who are the potential applicants?

If lay members are required then publicity should be aimed at the general public, if more specialised skills are needed then publicity should be appropriately directed.

For example:

a) if there is a requirement to be an advocate it might be appropriate to send letters to all advocates through the faculty of advocates (say, for a Law Commission post)

b) if there is a requirement to live or work in the Lothian area it might be appropriate to advertise only in the Lothian area (say for members of Lothian Health)

- Can potential applicants make an informed decision from the publicity about whether they meet the requirements of the post?
- Does it accurately reflect the requirements of the role, the person specification?
- Does it give a realistic indication of the time commitment required and any remuneration?
- Is the publicity proportionate? (see paragraph 1.3) Is it designed to reach as wide and diverse an audience as is appropriate?
For example, for the chair of Scottish Enterprise high profile national publicity would be appropriate (national press, and so on). For an unpaid member of the Building Standards Advisory Committee who needed to be a qualified architect, publicity through professional journals and bodies may be more appropriate.
- Is the OCPAS regulated logo displayed in the publicity?
- Does it include a statement of the Executive's policy on equality of opportunity in public appointments? (see paragraph 16.2(j))
- Does the publicity make it clear that all applicants must complete and return the relevant application form in order to be considered for the post?
Following a recent query where the vice-chair of a board applied for the position of chair without having requested an application form the Executive have revised the standard wording of their publicity to the above effect. This will not affect the right of disabled candidates to complete an alternative format of the form. The wording that will now appear will be along the lines of "All applicants must complete and submit the application form contained in the information pack in order to be considered for appointment."
- Is the publicity likely to attract a good field of candidates? If not, is there anything that can be done to remedy this? *For example, could it be made more visually appealing? Does it try to give too much information? Does it give a good impression of the body and the post?*

2. The appointment timetable

This should include:

- a) the closing date for applications
- b) date(s) of sift, if appropriate
- c) date for shortlisting meeting
The OA should encourage sponsor departments to leave at least 2 weeks between the closing date and the shortlisting meeting to allow the personal information parts of forms to be separated, applications to be copied and sent to panel members and the panel to read them. This should be increased to 3-4 weeks if a sift is needed.
- d) interview date(s)
This must be a precise date, not just an indication of a week or month.
- e) planned date of appointment
This will usually be an exact date if the post is currently held by someone (whose term will end on a specific date). If the post is a new one, especially if the body's founding legislation has not yet come into force, the date might be less specific.
- f) deadline for feedback requests
Feedback must be provided to all candidates interviewed and may be requested by any other applicant within a specified time detailed in the application pack. The deadline set must allow applicants a reasonable time to be informed of the outcome of their applications and contact the department for feedback.

- The minimum details to be included in the application pack are a), d), e) and f) above.
- Once the timetable has been publicised any changes must be agreed with the OA (paragraph 10.2). This should encourage departments to set realistic timetables and stick to them.

3. The process to be used for sifting and/or shortlisting

- In the new Code *sift* is the process conducted by the sponsor department to remove applications which do not meet the essential requirements of the post. *Shortlisting* is the process of selecting candidates for interview.

These terms should not be used for anything other than this to avoid any confusion arising.

- Neither the OA nor any other member of the selection panel should be involved in the sift, it should be conducted by the sponsor department.
- The OA may see all applications which were rejected in the initial sift, but will usually request a sample of randomly numbered applications, along with their sift evaluation forms, to check that the sift has been properly and consistently carried out, by comparing the applications to the essential criteria in the person specification (So for example, the OA might ask to see application numbers 3,10, 25, 43, 51, 72 and 79).
- If they wish, the other selection panel members may also request to see the rejected applications to confirm the consistency of the sift (paragraph 19.2).

4. The composition of the selection panel

- Are there any subject areas which cannot be adequately covered at interview by the OA and the sponsor department official (and the chair or nominated representative of the body if it is proportionate for them to be included on the panel)?
- Are there any areas of specialist knowledge which might require an additional expert on the panel in order to test them?
- If the public body is to be represented by someone other than the chair, has the chair been consulted on who the representative should be?
- Are there potential conflicts of interest for any of the panel members?
For example, for the appointment of the chair of Scottish Natural Heritage the department suggests that the panel includes the chair of one of the national park authorities. Since SNH provides grants to the national park authority it would be inappropriate for the authority's chair to be involved in selecting the new chair of its funding body.
- A proportionate approach should be taken – the considerations outlined in 1.3 should be taken into account. *For example:*
 - a) *for the appointment of an unpaid member to the Scottish Advisory Committee on Distinction Awards it may be appropriate for the panel to consist of the sponsor department official and the OA only.*
 - b) *for the appointment of the chair of Scottish Water it might be appropriate to have the sponsor department official, the OA, the chair of another major*

public body, and possibly someone with relevant environmental or technical expertise.

- The OA must be consulted about the composition of the panel for a new body. *For example, for the appointment of the chair of the (fictional) new Sport in Scottish Schools Commission - there is, as yet, no chair of the body so an alternative panel member should be sought. The sponsor department has expertise in education, so it might be appropriate for the other panel member to have knowledge of the relevant health issues and/or of chairing a similar public body.*

5. The arrangements for interview

- Is the interview venue accessible by good transport links?
- Is the venue is accessible for candidates with a physical disability?
- Have reasonable adjustments been made for disabled candidates who have requested them?
- Does the venue provide an appropriate interview environment?
For example: private, quiet, somewhere for candidates to wait, refreshments and adequate toilet facilities available, and so on
- Will candidates be informed in advance if they need to make a presentation, and on what subject?
- Will adequate arrangements be made for equipment for presentations?
(either notify candidates what will be available, or ask them to request any equipment they require by a certain date)
- Is a member of the sponsor team present to record the content of the interviews and panel discussions?
- Is the time allowed for each interview equal, and sufficient?
- Will any candidate be advantaged or disadvantaged by the arrangements for interview?
For example, requiring a presentation to be made in PowerPoint might disadvantage candidates who do not own their own computer and software, or are not familiar with PowerPoint

6. How applicants will be informed of the progress and outcome of their application

- Will a timetable for feedback be provided?

- What information will applicants be given about the progress of their application?
- Who should be told of the outcome?
- What mechanism is available for feedback? Can it be written or verbal? Is there an e-mail address available?
- Who will provide the feedback? Are they aware that they must use the comments on the evaluation forms to provide feedback?
- Have arrangements for feedback been adequately planned so that the process is not simply reactive to any request received?
For example, has a member of the sponsor team been allocated the task of dealing with feedback requests and if so, have they been told in good time when they must be available (so they will not be on annual leave during this time, so they can prepare any necessary administration, and so on).

8.1 (c) The Application Pack

- Has a political activity form been included in the pack?
There should be no political activity form, only information about the successful applicant's requirement to declare political activity. It should be made clear what type of information must be declared if successful.
- Have details of the Guaranteed Interview Scheme been included?
*The reference to the scheme from the consultation draft has been removed at the request of the Public Appointments Team. They are encouraging departments to reconsider their operation of the scheme (although if the sponsor team does wish to operate the scheme, the OA has no power to stop this. If the scheme **is** to be operated then details of it must be included in the application pack).*
- Does the pack contain a statement of the Executive's policy on equality of opportunity in public appointments?
- Will the successful applicant(s) be required to provide a Disclosure certificate?
If so, this must be clearly stated in the application pack, preferably in the same document as the person specification so that it cannot easily be missed. Please see separate notes on previous convictions.
- Have details been provided of the expenses to be reimbursed for candidates attending interviews?
The Code requires "details" to be given. The Scottish Executive are adopting a policy of reimbursing travel and subsistence expenses at the

current Scottish Executive rates - a list of these rates and a claim form should be enclosed in the application pack. Other expenses which might be paid, and should be agreed by the sponsor team during planning, are reasonable receipted childcare and other carer expenses, and additional expenses incurred by disabled applicants.

Please note - The OA should ensure that any claim form enclosed does not require knowledge of the Executive's procedures, nor access to their manuals, in order to complete it (as was the case in a complaint brought to OCPAS this year).

- Does the application pack give the name of the sponsor department and a named person who can be contacted with any queries?
- Is anything about the pack (style, presentation, jargon, and so on) likely to have an adverse impact on equality of opportunity?
For example, if the pack contains a lot of technical or business jargon, or is written in a way that could only be easily understood by those with a background in corporate finance (and this is not a requirement of the post), this may be contrary to the principle of equality of opportunity.
- Does the pack contain all the necessary information? *For example, if it is a new body, does the pack make this clear?*
- Does the pack contain superfluous information, or anything which might discourage applicants from applying? *For example,*
 - i) *listing the ways in which you can be removed from your post before you have even been appointed is unlikely to encourage applications. Is it really necessary to include that information?*
 - ii) *Is it necessary to include a statement about statutory nominations in the pack for an ordinary appointment round?*
- Does the application pack help people make an informed choice about whether to apply? Does it encourage people to apply?
- Does the pack make reference to anything which requires further explanation? *For example, if the pack refers to the Member's Model Code of Conduct it would be helpful to give details of where to obtain a copy.*
- Is the information given throughout the pack consistent? *For example, does the description of the meetings required to be attended tally with the stated time commitment for the post?*
- Is the pack sufficiently clear? Would it benefit from using sub-headings to separate topics. *For example, instead of the letter being several pages of text containing large quantities of information, could this be divided into "Closing Date", "Further Information", "Equal Opportunities", "Data Protection", and so on.*

- If a standard letter or background note has been used, have the necessary amendments been made to make it appropriate and up-to-date for the current post?
- Even if the poor quality of style/presentation of a pack does not go as far as non-compliance with the Code, the OA should still point out the issues to the department in the interests of achieving good practice in all aspects of the appointment process.
- Does the application form allow all personal information to be separated from the body of the application?
- Is the application form designed so that it does not require applicants to identify their current or previous employer in the part of the form where they describe how they meet the person specification?
This does not mean that applicants are not permitted to mention their employer(s) - it just ensures that the form does not discourage people who do not have a conventional employment history from applying.
- Is the form misleading in any way?
For example, have the criteria been presented in a way which makes it clear which are essential and which are desirable? (It is usual for the essential criteria to be grouped together, followed by the desirable – this will also make the process of assessing the applications easier. Alternatively, the criteria could be grouped in terms of skills or knowledge, provided it is clear which are essential and which desirable.)
- Have all the requirements of the person specification that can be tested in writing been transferred to the application form?
- Are there any additional requirements on the form that do not appear in the person specification (excluding conflicts of interest)?
- Is the wording of each criterion on the application form exactly as it appears in the person specification?
- Does the application form ask for the applicant's permission to be contacted by the Commissioner for research and monitoring purposes?
This may be removed at some point in the future, but for the time being should be included on every form to enable the Commissioner to conduct enquiries for her Equal Opportunities Strategy.
- If references are not being requested, has the section of the form asking for referees been removed?

9 The Selection Panel

See above notes under 8.1(b) on page 16.

11 References

- The members of the selection panel do not see references and they are only used to confirm the factual accuracy of statements made in the application. *For example, they can be used to confirm whether Ms X was Chief Executive of company Y between the dates given on her form, but they cannot be used to assess Ms X's performance in that role, or whether she has any of the skills being sought for the current post.*
- It is for the sponsor team to decide how they wish to ask for references, but no additional information or comment other than the confirmation of the relevant facts, should ever be indicated to the selection panel. Sponsor teams may wish to frame the reference request in a way that does not invite any additional information.
- In practice, unless taking up a reference leads to any fact contained in the application either being denied, or not being confirmed, by a referee the selection panel will not usually hear anything about the reference. If a fact (or facts) is denied or cannot be confirmed the panel should then be informed by the sponsor department, so that the applicant can be questioned about this at interview.
- Where the factual accuracy of information is called into question when references are taken up the OA should consult OCPAS for advice on how to proceed.

13 Publicising the Appointment Opportunity

See notes under 8.1(b) on page 13.

14 Statutory Nominations

- As a general proposition, for each statutory nomination the public body's founding legislation or constitution confers on the body the right to nominate candidates for certain posts, but the Code of Practice governs the process which must be followed for the appointment to be made. The usual approach adopted by an OA should therefore be to require statutory nominees to follow the same appointment process as any other applicant, including the completion of an application form in order to demonstrate how well they match the skills and knowledge required for the post.
- On occasion, the circumstances of the statutory nomination might be so narrow that only a few people in the country could satisfy the requirements for appointment, and due to the nature of their work they may be unable or

unwilling to complete an application form. Rather than be left with no-one to fill the position, or with a smaller field of applicants than is necessary, it may be more appropriate to assess the applicants in another way.

For example, if the post could only be filled by a Senator of the College of Justice who is also a member of the Privy Council, a requirement which could only be satisfied by a handful of Scotland's highest ranking judges, it may not be appropriate to require potential applicants to fill in an application form. The Commissioner should be approached for advice on how to proceed.

- It is important, however, that this paragraph is not used as blanket permission for statutory nominees to avoid following the process required by the Code. Even if a body cannot be encouraged to nominate more than one candidate it will usually still be appropriate for that candidate to complete an application form in order to be assessed against the criteria in the person specification, and to provide an auditable record of their ability to meet the requirements. Moreover, submitting an application form based on the relevant criteria will often be the easiest and most convenient way for a nominee to show how they meet the requirements of the post. If an application form were not used, some other auditable way of assessing their skills and knowledge would have to be found.
- As the Scottish Executive does not hold a list of all statutory nominations and connected legislation, it is impossible to state beyond doubt whether any of the relevant statutes refer to the specific process to be followed for a particular statutory nomination. If the founding legislation or constitution were to raise any question in this regard, the matter should be referred to the Commissioner for guidance on how to interpret the Code in these circumstances.

16 Application Packs

See above notes under 8.1(c) on page 18.

STAGE 3 - PROCESSING APPLICATIONS

18 Informing Applicants

- Applicants must be informed of the progress and outcome of their application, but the Code does not stipulate *how* this must be done. *For example, applicants who are not shortlisted for interview might be informed that they have been unsuccessful either after the shortlisting stage, or at the end of the entire process.*

19 Selecting candidates for interview

Initial Sift

- In the new Code *sift* is the process conducted by the sponsor department to remove applications which do not meet the essential requirements of the post. *Shortlisting* is the process of selecting candidates for interview.

These terms should not be used for anything other than this to avoid any confusion arising.

See additional notes under 8.1(b) on page 15.

Shortlisting

- If an applicant has indicated a possible conflict of interest, or a relevant (but not disqualifying) previous conviction, this information should not be allowed to influence the assessment of the application. The shortlisting is done solely by assessing how well the application meets the requirements of the person specification.
- Nothing new can be introduced at this stage – no new criteria and no new weightings to the existing criteria, only what was clearly stated in the application pack.

21 Additional Information about Candidates

- Please note – if it becomes necessary to inform a candidate of any additional information being considered the panel must take care that in doing so they do not breach any third party's rights, for example, under the Data Protection Act. If these circumstances should arise, the OA should consult OCPAS for advice.
- If the accuracy of the additional information cannot be confirmed by the sponsor team the panel must proceed as if they had never known about it.

STAGE 4 – INTERVIEW

22 The Interview

- See also notes on the arrangements for interview, at 8.1(b) above on page 17.
- Have you arranged in advance who is to question on each different area?
- Would it be helpful to establish which *exact* questions are going to be asked?

This can help to avoid any questions being asked which are inadvertently discriminatory or inappropriate. This might be particularly helpful if a panel member is relatively inexperienced, or inexperienced with the new Code of Practice.

Inappropriate questioning or behaviour

- *As well as the interview needing to comply with the overarching principles on which the Code is founded (such as Equality and Probity and Respect), paragraph 22.8 is specific about the type of situation considered inappropriate. "Selection panel members will not ask questions or pass comment during an interview which may be considered to be prejudicial to a fair and reasonable assessment of the candidate's potential for appointment."*
- *What happens if a panel member asks an inappropriate question, or behaves in an improper manner?
It will rarely be appropriate to challenge the panel member during the interview itself, however, the OA may feel it wise to qualify the question in some way so that its improper effect is diluted or diverted. If the OA feels that the matter can be dealt with at the time without damaging the credibility of the process or the panel then they may do so, but this course of action should be approached with caution. Often, it will be more appropriate to wait until the candidate has left the room to raise this sort of issue.*
- *What if only one question was inappropriate?
Presumably this question will have been picked up by the OA during the first interview, so only the first candidate will have been asked this question so far. Two ways in which this might be addressed are:
1) by ensuring that the question is not asked of the other candidates and the first candidate's answer is disregarded. (The question and answer should not be removed from the record entirely, however, as they form part of the audit trail and may need to be examined if a complaint is made. The OA would be well-advised to have an official note made of the decision to exclude this part of the interview from the assessment of the candidate's performance.) This course of action might, however, put the first candidate at a disadvantage.
2) by raising the inappropriateness of the question, but ensuring that the same question is asked in every interview to ensure equal treatment to all candidates. Obviously, this is not an advisable course of action if the question might be construed as unlawful discrimination of any kind as the chances of legal action might be increased by repeating the question to a number of people.*

The correct approach will depend entirely on the individual circumstances.

- Other than the questions themselves, what sort of behaviour might be considered inappropriate?
Inappropriate behaviour could be anything from a panel member refusing to pay attention to what the candidate is saying, to displaying hostile body language, to unfairly pressing one candidate for a greater depth of knowledge than the other candidates.
- Should the disadvantaged candidate be re-interviewed on another day?
It is likely that this would only be appropriate in the improper behaviour had been quite severe or prolonged. It would probably be a disproportionate remedy for one isolated mis-judged question. This might be considered the best course of action if, for example, the candidate was very strong, but had obviously been adversely affected by the inappropriate behaviour. In this case, giving the candidate a fair opportunity to demonstrate their skills might have a real impact on the appointment decision, so repeating the interview might well be warranted.

Interview Evaluation Forms

- Have all the panel members recorded their comments on the interview evaluation form? *The sponsor team will provide the form for the panel to fill in. The completed forms will then be used by the sponsor department to produce the candidate summary.*
- *Although the Code does not stipulate that the form must be completed directly after each interview has ended, it is unlikely that the candidates will receive equal treatment unless this is the case. Panel members are unlikely to be able to accurately recall a particular candidate's performance if they have seen several other candidates since then.*

22.7 Probity, Conflicts of Interest and Time Commitment

The following are few suggestions of how these issues might be tested at interview:

Probity

- What does probity/integrity mean to you?
- Can you tell us about a time when your integrity was tested?
- Why is probity important?
- Imagine you discovered that one of your fellow board members was being paid to promote the interests of a local company to the board. What would you do?

Conflicts of Interest

Since the panel will not have any details of any potential conflicts, each candidate who has indicated a conflict on their form should be asked to give details at the interview.

If no potential conflict has been indicated the panel should still satisfy itself that no conflicts exist, by questioning the candidate along the following lines:

- Is there anything about this post that might appear to divide your loyalties in some way?
- Is there anything about your home or work life that might be seen as incompatible with this appointment, or which might raise questions if you were appointed?
- If you were appointed, could this be seen as giving you some advantage or benefit – for example, do you or your family or friends have any business interests which might benefit from the knowledge you could gain in this appointment?
- Have you had any prior connection with this public body, or an associated body, or with the Scottish Executive department?
- Is there any part of the work of this public body where you would find it difficult to be impartial? Why?
- Do you have any other obligations or commitments that might influence you, or appear to influence you, if you were appointed?
- Are you a member of any organisation or society that might seem incompatible with this post, or which might be seen to benefit from your appointment?

Time Commitment

- The time commitment for the post is 2 days each month. How do you see that fitting in with your other commitments?
- Board meetings are held on the last Thursday of every month. How do you plan to make time available for the meetings and for reading the necessary papers in advance?

STAGE 5 – SELECTION

24 Informing the Minister of the Candidates Suitable for Appointment

- Confusion can arise around the use of the terms “candidate summary” and “ministerial submission” (sometimes called “candidate submission”). The candidate summary is the summary of the panel’s decisions about each of the candidates interviewed, which includes information about which candidates were considered appointable. This will form part of the total

submission to the Minister which is compiled by the sponsor team (the “ministerial submission”).

- The full submission will contain information about the body, its board, relevant policy issues, plans for future development of the body or policy area, and so on. Some of this information may be sensitive or restricted information.
- The selection panel must see and agree the candidate summary before it goes to the Minister. The OCPAS Assessor cannot sign the validation statement unless they have done this. The OA is not, however, entitled to see the full ministerial submission.
- The candidate summary must not rank candidates, either numerically or in any other way, but it must accurately reflect the panel’s view of how well each candidate meets each requirement of the person specification. This will obviously require some form of description about the candidates’ relative strengths, but the panel should avoid actually comparing one candidate to another overall, as this would effectively be ranking them. *For example, it would be acceptable to comment that Mr X showed very strong evidence of financial management skills at the level required for this board and that Mr Y had financial management skills that achieved the required level, but did not go beyond it. It would not be appropriate to say that Mr X is ranked above Mr Y because his financial management skills are better.*
- Where more than one appointment is being made, the panel may wish to offer comments about which combinations of candidates might be particularly compatible in terms of their relative skills, knowledge and personal qualities. The panel must not, however, appear to suggest which is the best combination.
- The reason that ranking is not permitted is that it effectively removes the decision about who to appoint from the Minister and puts it in the hands of the panel. If the Minister chooses someone other than the candidate ranked first, even if it is on perfectly legitimate grounds, it may look as though his decision is unjust, or even discriminatory. It is the Minister’s choice as to which candidate has the most meritorious combination of the required skills, knowledge and personal qualities.

26 OCPAS Assessor Validation

- The OA cannot sign the validation statement unless they have seen all the relevant documentation and participated in all stages of the process. The final document they will see is the candidate summary, which must accurately and fairly reflect the views of the selection panel about how well each candidate meets the requirements of the post. It must include an

assessment of all the candidates interviewed, even those not considered appointable.

- If an OA has been brought in part-way through an appointment round (for example to take over from another OA due to illness) each OA involved can only sign off the part(s) of the process which they have personally overseen.

29 Retention of Records

- The OA (and other panel members) may keep all documentation and notes from the interviews until they have seen and agreed the candidate summary. This includes both the application forms and the interview evaluation forms completed by any member of the panel. You may ask for copies to be taken if necessary.
- After the candidate summary has been agreed and the validation statement completed the OA must then hand to the sponsor department:
 - any notes made during the appointment round
 - all evaluation forms
 - the candidate summary
 - the validation statement
- Any rough versions of notes made during the appointment round should be disposed of securely. If the OA feels that there are notes which should be kept on file in case of any complaint or investigation they should pass these notes to OCPAS for secure storage and should destroy any copies.

SECTION 6 – EXCEPTIONAL CIRCUMSTANCES

33 General

- The new Code does not refer to “exemptions” to the Code, as this is not a true reflection of the situation. It is not that certain situations are exempt from the application of the Code, rather that the requirements of the Code sometimes need to be tailored to suit exceptional situations.
- Instead of trying to legislate for every one of these situations, the Code (at paragraph 33.1) includes a “catch-all” provision which covers any exceptional circumstances which may occur.

34 Emergency Appointments

- OAs may be involved in emergency appointments, but only after the Commissioner has agreed with the department what action is appropriate

in the circumstances. The OA will be briefed by OCPAS on how to proceed.

