



DEALING WITH A LACK OF CHOICE FOR MINISTERS DURING APPOINTMENT ROUNDS

Introduction

The Office of the Commissioner for Public Appointments in Scotland (OCPAS) has dealt with a number of enquiries from sponsor teams unsure about what to do when it appears that there will be insufficient candidates to give the Minister a choice. This paper has been produced to assist sponsor teams to comply with the [Code of Practice for Ministerial Appointments to Public Bodies in Scotland](#) (the Code) when such circumstances arise.

What the Code says about a lack of choice

The relevant part of the Code in such cases is the principle of Ministerial Responsibility (page 4 of the Code):

“Ministerial Responsibility

The ultimate responsibility for appointment and recommendation for appointment rests with Scottish Ministers, who will be provided with a choice of candidates from which to make the appointment.”

How this is to be understood

At any stage in an appointment round it can become apparent that there will be a lack of candidates for a given vacancy at the end of the appointment round such that the appointing Minister cannot be provided with a choice. As the Code requires a choice of candidate for the appointing Minister, sponsor teams may not proceed with the appointment round unless the Minister has been consulted and has agreed that they are content for the round to continue.

In such circumstances the Minister is not required to make an appointment decision. Instead, the Minister must decide on how the appointment process should proceed. That decision must not be based in any way on information about applicants or candidates. The sponsor team cannot provide a submission with any applicant or candidate information to the Minister to inform the Minister’s decision on how to proceed in these circumstances. The Minister’s decision must be an ‘in principle’ decision on how the appointment round should proceed. The Minister may decide, for example, to halt the appointment round and to instigate a new open competition.

When is an exception to the Code required?

If an appointing Minister wishes to accept a final submission that they know will not offer a choice of appointable candidates, sponsor teams must approach OCPAS for an exception to the Code before that submission is made. The exception request must be in writing (by e mail is fine) and include an assurance that the Minister is content to proceed without a choice. Only once the exception has been granted can the final submission be presented to the Minister. Please note that it is open to the Minister not to appoint at the conclusion of any appointment round.

No exception to the Code is required if the Minister decides at any time to instigate a new open competition.

Easy guide

Flowcharts are attached to this guidance for ease of reference. The flowcharts show how a lack of choice for the appointing Minister should be handled at each stage of an appointment round. If a sponsor team wishes to take any approach other than that set out above and in the following flowcharts it should contact the Resourcing Centre of Expertise within Scottish Government for advice.

Definitions

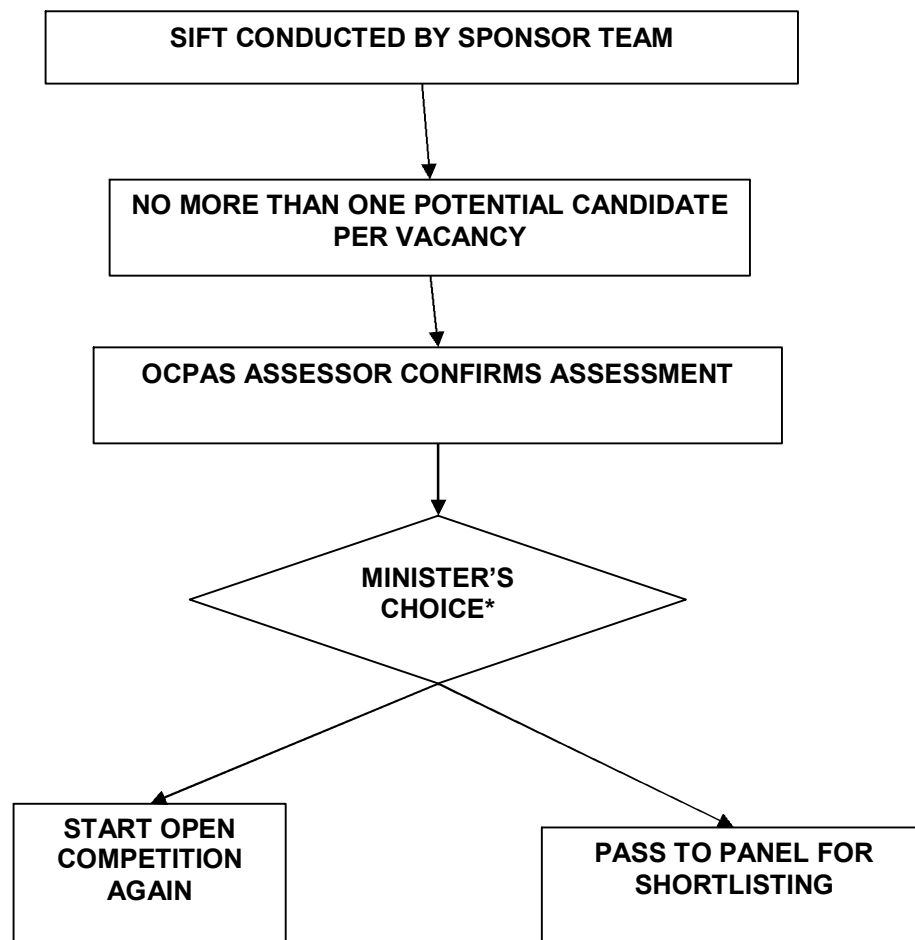
Sponsor teams should be aware that the Code draws a distinction between applicants and candidates (see the Code's glossary on pages 30 and 31):

- an applicant is an individual who has completed and submitted an application form.
- a candidate is an applicant who has progressed to interview.

Status of this guidance

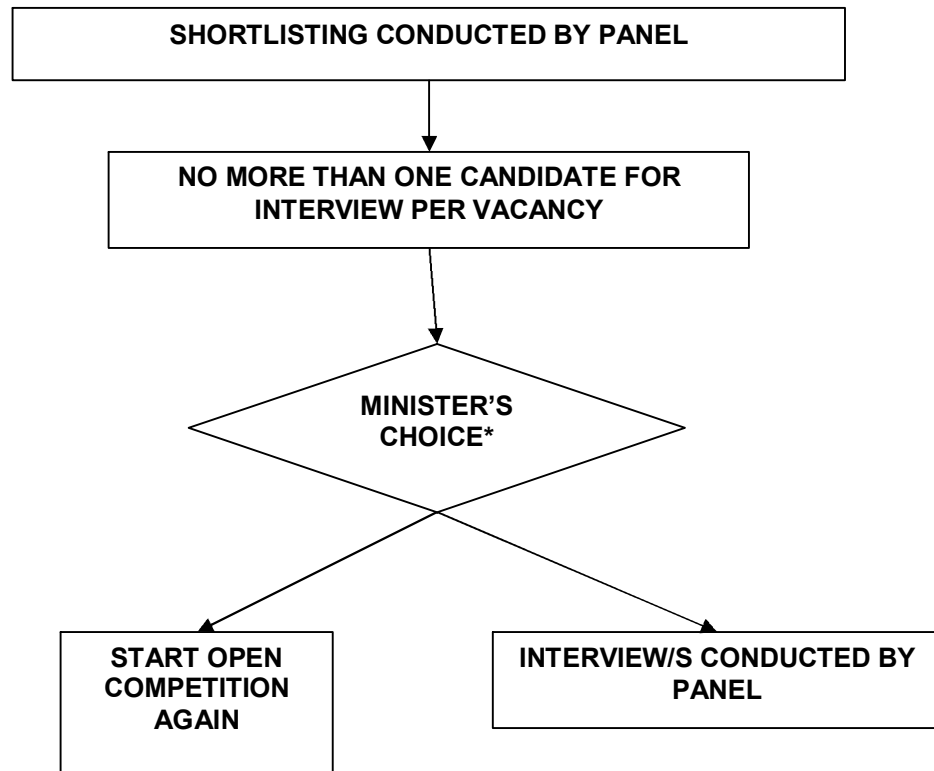
The Commissioner has the power, under the Public Appointments and Public Bodies etc. (Scotland) Act 2003, to issue guidance to the Scottish Ministers as to compliance with the [Code of Practice for Ministerial Appointments to Public Bodies in Scotland](#) (the Code). Sponsor teams should note that failure to comply with such guidance will represent non-compliance with the Code. If sponsor teams are in any doubt as to whether this guidance applies to a round that they are administering, they should contact the Resourcing Centre of Expertise within Scottish Government for advice.

HOW TO HANDLE A LACK OF APPLICANTS AT THE SIFT STAGE



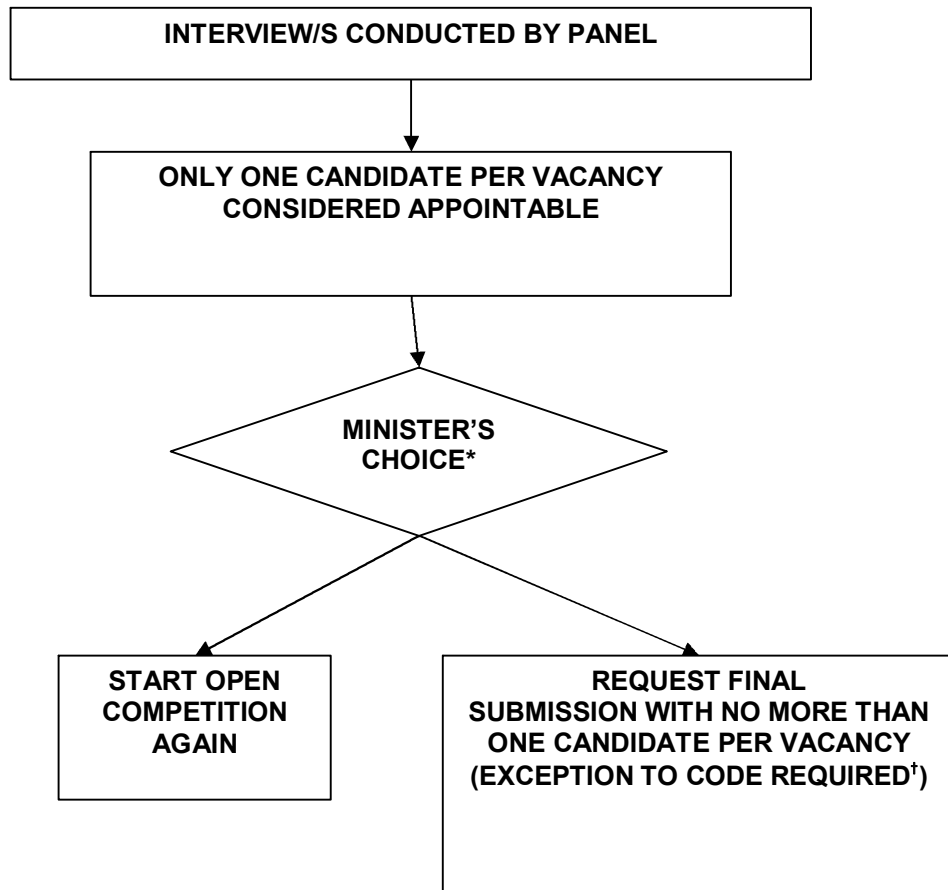
* The Minister is asked to make an in principle decision on whether to start the open competition again or to have the selection panel review the application form/s submitted. No information whatsoever on the applicant/s is to be provided to the Minister in order for them to make this decision.

HOW TO HANDLE A LACK OF APPLICANTS AT THE SHORTLISTING STAGE



* The Minister is asked to make an in principle decision on whether to start the open competition again or to have the selection panel conduct one or more interviews. No information whatsoever on the candidate/s is to be provided to the Minister in order for them to make this decision.

HOW TO HANDLE A LACK OF CANDIDATES AT THE INTERVIEW STAGE



*The Minister is asked to make an in principle decision on whether to start the open competition again or to request a final submission which doesn't offer a choice of appointable candidates. No information whatsoever on the candidate/s is to be provided to the Minister in order for them to make this decision.

†Please note that that an exception to the Code is required if the Minister does request a final submission with no more than one candidate per vacancy. Sponsor teams must first contact OCPAS in writing confirming that the Minister is content to proceed without a choice of candidates. Only once the exception has been granted can the final submission be provided to the Minister.

