

Ethical Standards Commissioner submission of 31 January 2024

PE1862/H: Introduce community representation on boards of public organisations delivering lifeline services to island communities

I am writing in response to your letter of 26 January, in which you sought clarification of my views on the action called for in the petition, specifically the suggestion that island knowledge should be added as an essential criterion for the skills matrix for boards delivering lifeline services to island communities, and the processes for encouraging island residents to apply for these roles.

It may first be helpful to clarify the statutory functions conferred on me by the [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#). These require me to prepare and publish a Code of Practice (and accompanying guidance) to guide the Scottish Ministers in making fair and open appointments based on the merit of people who apply to take up a position on the boards of any regulated public body in Scotland. I published the most recent version of the [Code of Practice](#) and [accompanying guidance](#) in March 2022 and it took effect for all appointment rounds commencing on or after 3rd October 2022.

In introducing the 2022 Code of practice, I was keen to ensure that it met both ministerial and parliamentary ambitions to diversify Scotland's public body boards. The intention was to diversify boards in the widest possible sense including broadening diversity of thought, contribution and other relevant attributes such as values. The Committee may be interested to read the following extract from my introductory text in the 2022 Code:

“Organisations that understand and reflect the people and communities that they serve are more likely to have credibility with them and deliver better services; this in turn promotes wider engagement and public trust in board decision-making.

I am strongly supportive of diversity of thought and contribution resulting in better corporate governance and decision-making, and, in turn, supporting the continuous improvement of our public services in Scotland. For this reason, the revised Code is unashamedly focused on

enabling more creative and ambitious approaches to attracting and appointing the best new board members from the widest possible pool of applicants.”

I am, however, not responsible for defining what attributes might be required for those undertaking a board position. The attributes required to undertake these positions are defined as ‘Merit’ in the Code and the definition of Merit is very clearly the responsibility of the appointing minister. There is no requirement for the Scottish Ministers to use a skills matrix, although it can be one of a number of useful tools when planning for succession on a board.

If an appointing minister wished to consider including “Island Knowledge” as a requirement for board membership, there is nothing in the Code or guidance which would preclude this. When offering advice on setting criteria for selection, I would want to be sure that the appointing minister had considered what was sought and why, including ensuring that the criteria are not unnecessarily restrictive so as to limit the field of applicants who might apply. For example, a criterion of “Island Knowledge” without further context might attract applicants who have knowledge without residency, or have knowledge through their residency on the Isle of Man (or other non-Scottish Island) for example. If knowledge of Island life (more generally) is what is sought, this will be helpful in keeping the field of applicants wide. However, if there is a requirement for knowledge of Scottish Island life, the minister will need to give consideration as to whether “Island knowledge” might be more accurately described as Island residency, Island residency or main place of work, or lived experience of Scottish Island life (which may be in the past) for example. The Scottish Ministers are encouraged to use indicators for each criterion for selection in order to properly articulate and specify precisely what is sought.

The 2022 Code of Practice now includes reference to skills, knowledge, experience **and other related attributes** within the definition of merit, and so there would be nothing in the Code of Practice to preclude any appropriate criteria for selection, provided that they are clearly defined such that applicants and selection panels readily understand what is required to meet them. Indeed, the accompanying Statutory Guidance now also includes a “Glossary of Terms” which defines Attributes as:

*“Criteria for selection that aren’t readily identifiable as skills, knowledge or experience. Examples include an individual’s values, socio-economic background or **geographical location**. For the purposes of the Code,*

they don't include protected characteristics as defined by the Equality Act 2010. [Emphasis added in **bold** for the purposes of this response to the Committee].

In addition, it may be of interest to the Committee that Scottish Government officials, with the support of our office, developed a "[Core Skills Framework](#)" a number of years ago (and most recently updated in 2020) to assist with defining requirements for a public appointment. This is still utilised and considered as good practice. On page 3 of the document, options for what might be considered as priority criteria are listed, with one option being "*Geographic – applicants must live or work in a specific area, there may be a need for the interests of specific communities to be represented on a board*".

In summary, there is nothing in the Code of Practice or guidance which would preclude consideration of Island knowledge, or residency or lived experience of some sort being included in the requirements for a board position, should the Scottish Ministers choose to make this essential or even a priority.

As to attraction, the Code of Practice requires the selection panel to design an appointment plan which is to include, among other elements, the publicity, application and assessment methods to be used. The objective is to "encourage the optimum number of people to apply for positions and for people to find it a comparatively easy exercise to submit applications".

Our office and the Public Appointments Advisers that we allocate to provide oversight of public appointment activity provide contemporaneous guidance to panels and Scottish Government officials on both compliance with the Code and good practice in all of these areas.

I trust that this addresses the Committee's question fully but please don't hesitate contact my office if you require further clarification on this or any other matters that I may be able to assist with.