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Dear Mr Bruce

Ethical Standards Commissioner for Scotland – consultation on potential revisions to the Code of Practice for Ministerial Appointments to public bodies

Thank you very much for providing me with the opportunity to respond to your consultation on this important topic.

The Auditor General for Scotland is an independent post created under the Scotland Act 1998 to help ensure that public money is spent properly, efficiently and effectively. I am responsible for the audit of all public bodies except local government. This includes the Scottish Government, government agencies, NHS bodies, police and fire, further education colleges and most non-departmental public bodies. I report to the Scottish Parliament on the governance and performance of those bodies. In delivering public audit, I work closely with the Accounts Commission which secures and reports on the audit of local government in Scotland.

Board members have a strong bearing on the effectiveness of governance and organisational performance, in essence oversight of how public money is used and what is achieved. For that reason, the public appointments process is something in which I have a direct interest. In responding to your consultation, I draw on the findings from my audits across the public sector.

We have a long-standing interest in governance which is reflected in our performance audit reports such as our [Role of boards report](#) and in audit reports on individual organisations. Overall, the audit work indicates that, in general, the governance of public bodies in Scotland is effective. But when difficulties occur, they can have major implications for the bodies concerned and their stakeholders. Common themes include:

- weaknesses in scrutiny and oversight by board members, reflected in limited challenge of key decisions
- a lack of transparency and openness in decision-making, inconsistent with the ethical standards to which board members should operate; and
- board members at times lacking the confidence to request the necessary information to help them make informed decisions on complex and/or sensitive matters.

Governance failures of this kind can cause long-term reputational damage to the organisations and individuals involved, making it all the more important that individuals appointed to public bodies understand their responsibilities and are well supported. That support is required not just through the selection and induction phases of their appointment but as an ongoing process. The Scottish Government, including through its non-departmental public body sponsorship arrangements, has an important role to play here through its support for new board members and its wider advice and guidance for public bodies on governance and compliance with ethical standards.

The Scottish Parliament's Public Audit and Post-legislative Scrutiny Committee published a [Key audit themes](#) report which reflects its interests in governance and accountability. That section of its report includes specific reference to the recruitment of board members.

The board member role was important before the Covid-19 pandemic because of the service demand and financial pressures already facing many public bodies. But it has become even more important still, particularly the oversight and scrutiny aspects of the role, at a time when many public bodies have had to adjust and make rapid decisions in response to the challenges created by Covid-19.

Turning to the Commissioner's consultation, I agree that the need for board diversity has never been keener. The issue of unequal access to key public services pre-dates the pandemic but the unequal impacts of Covid-19 on groups such as young people, people from a BAME background and those from less advantaged economic backgrounds make the issue of equality and diversity on boards of even greater importance now than ever.

The progress in gender balance on boards is encouraging, but the continued under-representation of younger people, people with disabilities and people from a BAME background is something which any changes to the Code should seek to address. I also support the emphasis in the consultation on promoting wider representation on boards from people from less advantaged economic backgrounds. This too should be reflected in any changes made to the Code. Wider representation of the kind proposed should only help support progress towards a fairer and more equal society.

Further, I support the proposal in the consultation paper that the Code should be amended, and the Commissioner should publicly report on the Scottish Government's progress in achieving greater diversity in representation on the boards of Scottish public bodies. This reporting should not only cover protected characteristics under the Equality Act but should also reflect the diverse nature of Scotland's communities, both in terms of geography, gender, age and other characteristics (e.g. socio-economic).

There must, of course, be robust processes in place for appointing individuals to serve on public bodies based on merit and which operate to high standards of openness and transparency, and this must be done in such a way that aims to attract the widest group of potential candidates to apply to take on these roles. When considering the skills, knowledge and experience required to serve on boards more could be done to attract a wider part of the population who have much to offer decision-making and oversight as users of public services. That could be achieved, for example, by emphasising both the value placed on diversity and the support for aspects of the role which may be perceived by potential applicants as a barrier to their appointment.

Finally, I support the general principle in your consultation paper of active and ongoing review of how well the appointment process to public bodies is operating and welcome the emphasis you have placed on effective parliamentary accountability.

I hope you find my comments helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Boyle', with a long horizontal flourish extending to the right.

Stephen Boyle
Auditor General for Scotland