

1. Can you please provide details of what mitigations are in place re conflicts of interest?

The Promise Scotland is governed by company law as set out in the Companies Act 2006. All Directors are bound to perform a set of 7 duties under the Act (below). Directors must act in the company's best interests, use independent judgement and exercise care, skill and diligence. Specific sections of the Act relating to conflicts of interest are highlighted below:

Company's constitution

You must follow the company's constitution and its articles of association. These are written rules about running the company, agreed by the members, directors and the company secretary.

The constitution sets out what powers you have as a director, and the purpose of those powers.

Promote the success of the company

You must act in the company's best interests to promote its success. You must consider the:

- *consequences of decisions, including the long term*
- *interests of its employees*
- *need to support business relationships with suppliers, customers and others*
- *impact of its operations on the community and environment*
- *company's reputation for high standards of business conduct*
- *need to act fairly to all members of the company*

If the company becomes insolvent, your responsibilities as director will apply towards the creditors, instead of the company. A creditor is anyone owed money by the company.

Independent judgement

You must not allow other people to control your powers as a director. You can accept advice, but you must use your own independent judgement to make final decisions.

Exercise reasonable care, skill and diligence

You must perform to the best of your ability. The more qualified or experienced you are, the greater the standard expected of you.

You must use any relevant knowledge, skill or experience you have (for example, if you're a qualified accountant).

Avoid conflicts of interest

You must avoid situations where your loyalties might be divided. You should consider the positions and interests of your family, to avoid possible conflicts.

You should tell other directors and members about any possible conflict of interest, and follow any process set out in the company's articles of association.

This duty continues to apply if you're no longer a director. You must not take advantage of any property, information or opportunity you became aware of as a director.

Third party benefits

You must not accept benefits from a third party that are offered to you because you're a director. This could cause a conflict of interest.

The company may allow you to accept benefits like reasonable corporate hospitality, if it's clear there's no conflict of interest.

Interests in a transaction

You must tell the other directors and members if you might personally benefit from a transaction the company makes. For example, if the company plans to enter a contract with a business owned by a member of your family.

Other duties

Other duties you must perform as a company director include:

- *not misusing the company's property*
- *applying confidentiality about the company's affairs*

[Item 14 in the Company's Articles of Association](#) also provides guidance on disclosing interests in order to mitigate the possibility of conflicts of interest.

There is a standing 'Declarations of Interest' agenda item in all Directors' meetings where Directors must declare anything on the agenda that is likely to cause a conflict for them. If a conflict is declared, the Director is asked to leave the meeting for the relevant agenda item.

2. Meeting Three. Please provide a copy of Board Paper One and Board Paper Two.



Meeting THREE: Directors of the Promise Scotland 21-07-22
Agenda Item 3, Paper 1: non-executive director recruitment

Update

Further to the agreement at Meeting TWO on 11 May, a two pronged approach to recruitment of directors to the Board of The Promise Scotland commenced immediately after Scottish Government's announcement on the shape National Care Service.

The process for appointment is a Board resolution.

i. Advertisement

Between 27 June and 18 July, The Promise Scotland advertised for three non-executive directors, ideally with lived experience of the 'care system', on www.goodmoves.com and www.myjobscotland.gov.uk. The role was also promoted on The Promise Scotland's LinkedIn and Twitter accounts, and featured on its website.

Fifteen applications were received.

Using the essential qualities and required collective experience outlined in the recruitment pack, all fifteen were read, carefully considered then scored by the Chair of The Promise Scotland (Fiona Duncan) and the Head of Governance and Operations (Morag Burnett).

From the scoring, applications were grouped into three categories: strong ↔ middling ↔ weak.

- Five candidates were grouped as strong ↔ middling:

[REDACTED]

- Three of the remaining ten applications grouped as weak, [REDACTED] with a further applicant [REDACTED]. These applications will be review by a Director of The Promise Scotland (Jackie Brock).

At the meeting, the Directors will agree which candidates to invited to a 45 minute conversation on governance to explore their suitability to become a non-executive director.

The conversations are scheduled to take place 26, 27 and 28 July and will be with the Chair and Director.

A meeting of the Directors has been scheduled for Monday 8 August to approve appointments.

ii. Direct approaches

Letters of invitation to Solace, COSLA, NHS Chairs and Chief Executive and Philip Rycroft (who chaired the Independent Care Review's Steering Group on the Human and Economic Cost Modelling that resulted in Follow the Money and The Money reports) were issued on 27 June by the Chair of The Promise Scotland.

Solace and the NHS have accepted, as has Philip Rycroft. Jim Savege will attend on behalf of Solace and the NHS chairs are following a process to nominate a suitable representative.

At the meeting, the Directors will pass a resolution to appoint Philip Rycroft and Jim Savege.



Further to the agreement at Meeting TWO on 11 May, recruitment of the Chief Executive commenced immediately after Scottish Government’s announcement on the National Care Service.

Between 27th June and 18th July, The Promise Scotland advertised for a Chief Executive on www.goodmoves.com, www.myjobscotland.gov.uk and www.s1jobs.com. The role was also promoted on The Promise Scotland’s Facebook, Instagram, LinkedIn and Twitter accounts, directing people to The Promise Scotland’s own website.

Twenty one applications were received. All applications were read, considered and scored against the candidate’s knowledge and understanding of the role; demonstrable skills, experience and competency to achieve the main activities; evidence they met the essential criteria - as detailed in the recruitment pack.

From the scoring, applications were grouped into four categories: strong ⇌ good ⇌ middling ⇌ weak. As the work of The Promise Scotland is wide and complex, there is no identikit CEO role making shortlisting complex.

The Board of Directors will discuss all applications to reach an agreement who to invite for interview. There are up to seven slots over two days.

The interview panel will comprise of the Chair and a Director of The Promise Scotland; they will have the responsibility for making a recommendation to the full board. The panel will be supported by an individual with lived experience of the ‘care system’ and knowledge of the role, plus an independent advisor.

A meeting of the Directors has been scheduled for Monday 8 August to consider any recommendation to appoint.

Day one – 29 July

SLT slot	SLT panel	Candidate	Panel slot
9.30-10.00	Fi, Morag	Candidate 1	10.00-11.00
10.45-11.15	Fi, Morag	Candidate 2	11.15-12.15

Day two – 4 August

SLT slot	SLT panel	Candidate	Panel slot
9.30-10.00	Claire, Brian, Fi	Candidate 3	10.00-11.00
10.45-11.15	Claire, Brian, Fi	Candidate 4	11.15-12.15
		LUNCH	12.15-12.45
12.15-12.45	Claire, Brian	Candidate 5	12.45-13.45
13.30-14.00	Claire, Brian, Fi	Candidate 6	14.00-15.00
14.45-15.15	Claire, Brian, Fi	Candidate 7	15.15-16.15
16.15	Claire, Brian, Fi	Debrief	16.15

3. Meeting Four. Could you please share details/correspondence provided to the Chair from COSLA re how COSLA interact with the Promise Scotland.

The two emails below were followed by the pros and cons paper that is set out under item (4) of this request.

From: Sally Loudon
To: Fiona Duncan
Date: 25 July 2022
Subject: RE: The Promise Scotland Board

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[REDACTED]

COSLA is really keen to be represented on the Board of Directors. As a rule of thumb, our spokespeople (elected members) usually sit on groups alongside Ministers so that, in governance terms, they are representing COSLA at a political level alongside Ministers at a political level. I think there's been a bit of confusion on my part on who sits on the Board.

Sitting as a non exec on a Board of Directors would potentially put a spokesperson in a tricky position, where acting as an individual in the Board would then have to take a different position politically if their Board/ Leaders take a different position. It can get pretty messy and I'm not sure that would help either the Board or COSLA.

A solution would be to have an officer sit on the Board of Directors and given how keen we are to be involved, I would be delighted to do it.

Let me know your thoughts – happy to discuss.

Sally

From: Fiona Duncan
To: Sally Loudon
Date: 26 July 2022
Subject: RE: The Promise Scotland Board

Hello!

[REDACTED]

First off, it's good news that we are still exploring how COSLA can be represented and am sorry there is still confusion about the ask.

You know this... the need for a completely new model to #KeepThePromise was agreed at the end of the Independent Care Review. So the Expert Group was tasked with shaping that.

As The Promise Scotland is wholly owned by Ministers, quite deliberately, no Ministers or official from Scottish Government has been invited to be a non-executive director.

Maybe this new approach to #KeepThePromise can challenge the COSLA rule of thumb?

I would really like to properly explore if it is possible for COSLA to field an elected member in a way that avoids the potential risks of tricky positions and mess...? Hopefully the pack is clear that the COSLA / Solace / NHS nominee will be on the Board in an individual capacity, not representing any specific organisation.

And..., as much as I would like to work more closely with you, COSLA (or the NHS) fielding an officer would not be a solution.

Shall we talk? Or meet?

Thans again!!

F

4. Could you also provide a copy of the COSLA pros/cons/scenarios/risks paper also referenced in item 2?

From: Sally Loudon

To: Fiona Duncan

Date: 23 August 2022

Subject: RE: follow up

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello

[REDACTED]

Apologies, crossed wires at this end.

You asked for an option appraisal – one outlined. Key point is that spokesperson represents the views of the Board and Leaders and doesn't hold executive power. Officers sit on many groups representing the interests of LG as well as being on the group.

If you can let me know what The Promise decides, I am happy to speak to Cllr Buchanan in light of previous view of the advisory group.

<u>Spokesperson</u>	
Pro	Con
<ol style="list-style-type: none"> 1. Political accountability. 2. Political experience and expertise. 3. If he there as COSLA Spokesperson, then he there to represent the views and decisions of COSLA Leaders and the Children and Young People Board. 	<ol style="list-style-type: none"> 4. Spokespeople should have an equivalent role to Ministers. The Board has no representation from the SG. 5. Spokesperson only has a remit to represent the views of the Children and Young People Board. 6. Spokesperson will not be supported by officers at meetings. 7. Potential future conflict of interest between the views of the CYP Board (who spokesperson represents) and Board of Directors.
<u>Officer</u>	
Pro	Con
<ol style="list-style-type: none"> 1. Professional experience and expertise. 2. Cross organisational view of implementation of The Promise. 3. Officers have operational responsibility and direct and continuous links with professional association for access to information and support. 4. Access to 32 LAs for operational and strategic information. 	<ol style="list-style-type: none"> 5. Still potential for conflict of interest between COSLA politically and Board.

Additional points:

1. COSLA's organisational relationship with PHS is as co-sponsor with the SG so the governance arrangements are very different
2. After discussion with you, I agreed that I would be the officer on the Board of Directors which will allow for a strengthened strategic and operational relationship between organisations, fulfilling and elevating our (draft) Partnership Agreement.