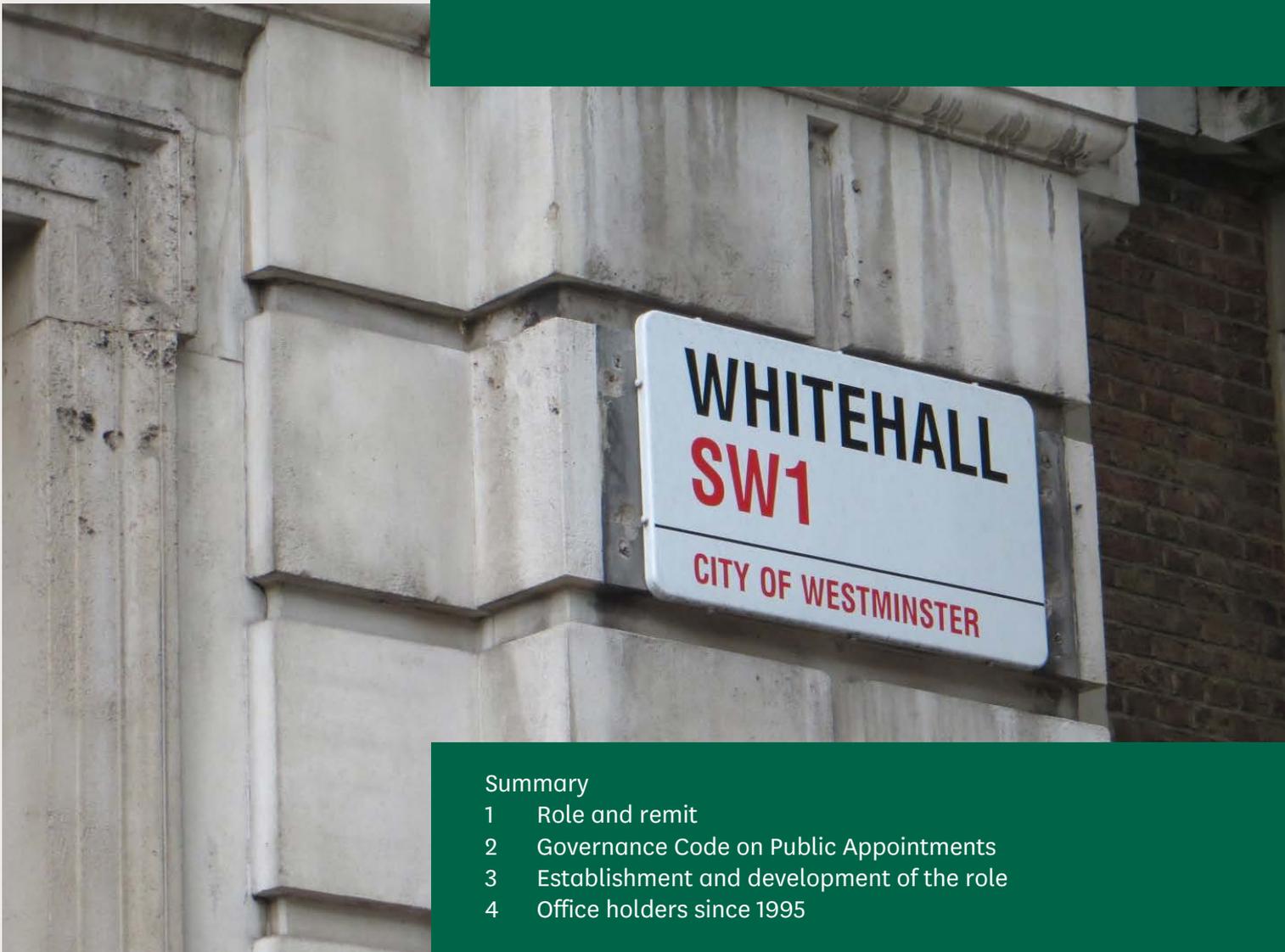


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1 February 2022

# The Commissioner for Public Appointments



## Summary

- 1 Role and remit
- 2 Governance Code on Public Appointments
- 3 Establishment and development of the role
- 4 Office holders since 1995

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# Contents

<b>Summary</b>	<b>4</b>
<b>1 Role and remit</b>	<b>5</b>
<b>2 Governance Code on Public Appointments</b>	<b>7</b>
2.1 Principles of Public Appointments	7
2.2 Requirements of the appointments process	8
2.3 The role of ministers	9
2.4 The role of Senior Independent Panel Members	10
2.5 The role of the departments	11
<b>3 Establishment and development of the role</b>	<b>14</b>
3.1 Establishing the role: First report of the Committee on Standards in Public Life	14
3.2 Development of the Commissioner's role and remit	15
3.3 Better Public Appointments -The Grimstone Review 2016	16
3.4 Government Response to the Grimstone Review 2016	17
3.5 Other responses to the Grimstone Review	18
3.6 Agreeing the Governance Code 2016-2017	19
3.7 Comments on the Code 2018-2021.	20
3.8 Standards matter 2: recommendations for reform	22
<b>4 Office holders since 1995</b>	<b>24</b>

# Summary

## Role of the Commissioner

The Commissioner for Public Appointments regulates appointments made by ministers to senior positions in public bodies. Those who make public appointments subject to regulation by the Commissioner are required to follow the Governance Code on Public Appointments and the Principles of Public Appointments published by the Cabinet Office. The Commissioner can investigate complaints about appointments processes within their remit.

## Establishment and development of the role

The Commissioner and the Office of the Commissioner for Public Appointments were both established in 1995, on the recommendation of the Committee on Standards in Public Life. There has been a continuing debate about the appropriate role of ministers in the public appointments process.

From 1995-2004, a single Commissioner regulated appointments in England, Wales, Scotland and Northern Ireland. In June 2004 the first Commissioner for Public Appointments in Scotland was appointed (from 2013 the Ethical Standards Commissioner). In July 2005 the first Commissioner for Public Appointments in Northern Ireland was appointed. This briefing relates to the post of the Commissioner who, from 2005 onwards, has covered bodies which are appointed by UK Government and Welsh Government ministers.

## “Better public appointments”: the 2016 Grimstone Review

A review of the Office of the Commissioner for Public Appointments was published in March 2016, carried out by Sir Gerry Grimstone. The Review proposed new appointments principles and processes which emphasised the importance of ministerial responsibility. The Government responded favourably to the findings. The then outgoing Commissioner, Sir David Normington, was highly critical about the cumulative effect of Grimstone’s proposals and the Committee on Standards in Public Life also raised concerns. The Government consulted with the newly appointed Commissioner Peter Riddell, in 2016, as the Governance Code was being drafted, taking on board some of his suggestions. Developments in the use of the Code since 2017 are considered in this paper.

## Post-holders

William Shawcross was appointed to the post of Commissioner in September 2021. The Rt Hon Peter Riddell CBE held the post from March 2016 to September 2021. His original five- year term was extended from March-September 2021. The Public Administration and Constitutional Affairs Committee held a pre-appointment hearing with William Shawcross on 16 September 2021 and endorsed his appointment.

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# 1 Role and remit

The Commissioner for Public Appointments regulates the processes by which ministers (including Welsh ministers) make appointments to the boards of national and regional public bodies. The post also currently regulates senior appointments processes in relation to some five bodies in Northern Ireland and one in Scotland. The bodies in Northern Ireland and Scotland are those where appointments are made by UK Government ministers.

The Commissioner is appointed by the Queen and is independent of the Government and the Civil Service. The Commissioner's statutory functions are set out in a Public Appointments Order in Council. A major revision of this took place in 2016. The Order is updated regularly, mainly to revise the list of bodies. The most recent Order was issued in 2019.<sup>1</sup>

The responsibilities of the Commissioner include the following:

- Monitoring compliance with the [Governance Code](#) and the Principles of Public Appointments by regularly auditing the appointments processes within his remit.
- Conducting spot checks or responding to any concerns raised about a public appointments process.
- Conducting thematic reviews focusing on different elements of process to inform best practice. Advising departments and the Centre for Public Appointments on best practice aimed at continuous improvement.
- Investigating complaints about the appointment processes for posts within his remit.
- Issuing an annual report which provides detailed information about compliance with the appointments processes, complaints made and issues that have arisen over the last 12 months.
- Actively promoting diversity and working with departments and the Centre for Public Appointments to encourage candidates from a diverse range of backgrounds. Diversity is considered in the broadest sense and goes beyond gender, disability or race to include wider characteristics such as sexual orientation, gender identity and social background.

The Commissioner regulates appointments to those bodies listed in the [Public Appointments \(no 2\) Order in Council 2019 \(pdf\)](#). The types of appointments covered are:

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<sup>1</sup> [Public Appointments \(no 2\) Order in Council 2019](#).

- Executive non-departmental public bodies;
- Advisory non-departmental public bodies;
- Certain health bodies (not Foundation Trusts);
- Public Corporations;
- Public Broadcasting Authorities;
- Certain Utility Regulators;
- Non-Ministerial Departments;
- National Park Authorities in England and Wales; and
- Conservation Boards for Areas of Outstanding Natural Beauty.

Departments are responsible for ensuring that their public appointments processes meet the Code's principles and requirements, and that they comply with all relevant legislation.

## 2 Governance Code on Public Appointments

### 2.1 Principles of Public Appointments

The [Governance Code](#) on Public Appointments (the Code) (pdf) came into effect on 1 January 2017 and replaced the previous Code of Practice.<sup>2</sup> It covers appointments in England and Wales. Unlike the previous Code of Practice, it is not drawn up or published by the Office of the Commissioner for Public Appointments.

The Code was drafted and published by the Minister for the Cabinet Office in line with the Public Appointments Order in Council 2016. It sets out the regulatory framework for public appointments processes within the Commissioner's remit. The Code sets out the principles that should underpin all public appointments. The text of the Code issued in 2017 has not been updated.

#### Box 1: Public appointment principles

##### Ministerial responsibility

Responsibility for appointments lies with ministers who are accountable to Parliament for their decisions and actions. Welsh ministers are accountable to the Welsh Assembly (now Senedd).

##### Selflessness

Ministers should only act in terms of the public interest.

##### Integrity

Ministers should avoid obligations to people or organisations that might try to inappropriately influence them in their appointments. They should avoid acting to make financial or personal gains for themselves or their families.

##### Merit

Selection should be on merit. Ministers should be provided with a choice of high quality candidates, drawn from a strong and diverse field, whose skills,

<sup>2</sup> Cabinet Office, [Governance Code on Public Appointments](#), December 2016.

experience and qualities have been judged to meet the needs of the public body or statutory office in question.

### **Openness**

The processes for making appointments should be open and transparent.

### **Diversity**

Public appointments should reflect the diverse nature of society. Appointments should take account of the need to appoint boards which include a balance of skills and backgrounds.

### **Assurance**

There should be established assurance processes with checks and balances. The Commissioner provides independent assurance that public appointments are made in accordance with Governance Code and the Principles of Public Appointments.

### **Fairness**

Selection processes must be fair and impartial. Each candidate must be assessed against the same criteria.

## 2.2

## Requirements of the appointments process

Certain requirements are necessary in order to meet these principles.

### **Advisory Assessment Panels**

The Code states that ministers should be assisted in their decision making by Advisory Assessment Panels. Ministers should agree the composition of the Panel and the Panel chair, which should include an independent member and a departmental official. The departmental official is responsible for representing and making other members aware of the Minister's views throughout the process. When appointing non-executive, non-board members, the panel should also include a representative from the body concerned.

The Panel must agree with the Minister the assessment strategy for determining merit against the selection criteria that the Minister has decided.

The assessment process should be appropriate to the recruitment and reflect the nature and significance of the role.

### **Transparency**

The Code promotes transparency requiring information on public appointment processes to be made publicly available. All public

appointments should be advertised openly. For all competitions, there should also be full transparency of the appointee's details, the Advisory Assessment Panel and the selection process. Departments are also required to publish 'real time' data on the progress of individual processes.

In 2021, the Commissioner commented that "good expectations have exceeded implementation" on transparency. The Commissioner stated that "the website advertising appointments has not worked as well as hoped".<sup>3</sup>

Where an appointment is subject to a pre-appointment hearing by a Parliamentary Select Committee, this must be stated clearly in all the publicity and information relating to the post.

## 2.3 The role of ministers

The Code states that ministers should be engaged early on in the planning process and at every stage of the competition. This includes agreeing the job description, the duration of the appointment, the process for appointment and the selection criteria. At the end of the process, ministers should be consulted about the quality and diversity in the field of candidates and whether the competition should be extended. They should be given a choice of candidates if more than one candidate is deemed appointable. Finally, the Minister should be able to meet the appointable candidates before making a decision.

Although ministers should consider the advice of the Advisory Assessment Panel, they are not bound by its views and may reject it.

Ministers are responsible and accountable to Parliament for public appointments. Welsh Ministers are accountable to the Senedd.

The Code allows ministers to delegate responsibility for certain appointments to an appropriate body to run, if it is agreed with the Cabinet Office and the Commissioner.

In exceptional circumstances an appointment is not required to be run in accordance with the Code, if it is considered to be in the public interest. This might occur when a body is winding up or the post is highly technical. In this case, the Minister must consult with the Commissioner in advance of making the decision public alongside the rationale for doing so.

Reappointments and extensions of appointees require the agreement of ministers. There is no automatic presumption of reappointment. Each case should be considered on its own merits, taking into account various factors such as the diversity of the board and its balance of skills and experience. In addition, there must be a satisfactory performance appraisal of the

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<sup>3</sup> Office for the Commissioner for Public Appointments, [Five years on from Grimstone](#), Blog post, 20 April 2021.

appointee, evidence of which must be available to the Commissioner on request.

Ministers should consider the advice of Advisory Assessment Panels, but they may reject their advice and appoint a candidate not deemed “appointable”. They must consult the Commissioner and justify their decision publicly.

In 2020, the Commissioner Peter Riddell commented on the practice of appointing a candidate not deemed appointable by a panel:

I would quite like to see that ended. If a Minister does not think someone on a shortlist should be appointed, to my mind the answer is to have a fresh competition. It is a power that, once used, can be quite dangerous.<sup>4</sup>

The proper role of ministers in making public appointments has been subject to some debate. The balance between independence, appointment on merit, and ministerial choice has been the subject of reports from both the Committee on Standards in Public Life and the Public Administration Select Committee (the predecessor Committee to the Public Administration and Constitutional Affairs Committee). [See Section 3, para 3.8 below]

## 2.4

## The role of Senior Independent Panel Members

‘Significant appointments’ require a Senior Independent Panel Member (SIPM) to sit on the Advisory Assessment Panels.

The Code requires a list of ‘significant appointments’ to be agreed by ministers and the Commissioner. In 2017, the Commissioner and the UK Minister for the Constitution, Chris Skidmore MP, decided that this should include all appointments subject to Select Committee pre-appointment scrutiny and other appointments that are important because of the nature of the work. Agreed lists for both England and Wales were published [on the Commissioner’s website](#) in 2017. Although the website states that both lists “will be kept under review and updated when required”, it does not seem that any changes have been made.<sup>5</sup>

These appointments require a Senior Independent Panel Member (SIPM) to sit on the Advisory Assessment Panels. SIPMs should be independent of the department, and of the body concerned, and should not be currently politically active. This, along with the requirement that the SIPM has senior recruitment experience, is intended to provide additional reassurance that the appointment is being made solely on merit.

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<sup>4</sup> Public Administration and Constitutional Affairs Committee, The work of the Commissioner for Public Appointments, [Oral evidence transcript](#), 4 March 2020, HC 119, 2019-20.

<sup>5</sup> [Significant Appointments](#), 2017, Commissioner for Public Appointments’s website

The Commissioner should be consulted about the selection of SIPMs by the Minister in good time, but they have no veto on the choice.

In 2020 the Commissioner's office posted a video, made by a Senior Independent Panel Member, to explain the role and highlight opportunities for others to become involved.<sup>6</sup> In the accompanying blog, the Commissioner commented that over-use by some Departments of effective SIPMs could potentially compromise the principle of independence.

## 2.5 The role of the departments

Government departments are responsible for ensuring that their public appointments processes meet the Code's principles and requirements, and that they comply with all relevant legislation. Each department is required to have an official overseeing their public appointments process. With each public appointment, the official must certify that the appointment has been made in accordance with the Code which should be agreed with the members of the Advisory Assessment Panel.

Departments are required to implement appointment processes with diversity in mind. This should include:

- Ensuring that the job specifications focus on key necessary skills and avoid jargon
- Emphasising ability over previous experience in job specifications
- Providing the Minister with information about the diversity, skills and experience of the existing board
- Considering ways of raising awareness amongst different groups and networks.

Vacancies are advertised on the [Public Appointments website](#), maintained by the Cabinet Office, with input from recruiting Departments and agencies. Members of the public can register to be sent alerts on new vacancies or changes to timetables and can search by sector; Department or region to identify opportunities. The Public Appointments team, in the Cabinet Office, also use social media Twitter and LinkedIn to advertise roles.

Departments are responsible for customer care of applicants. The Code includes an aim that the appointment process should conclude within three months of the closing date.<sup>7</sup> Research by the OPCA in 2019 found that less than 50% of competitions met this target. This fell to 43% for chair of body appointments. The average time from closing date to announcement was around five months. Taking account of this research, and feedback from Departments the Commissioner, recommended that the target should be

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<sup>6</sup> [Cindy Butts advises on what it means to be a Senior Independent Panel Member \(SIPM\)](#), 13 May 2020.

<sup>7</sup> Cabinet Office, [Governance Code 2016](#), para 7.8.

three months from closing to candidates being informed of a decision. And for ‘significant appointments, the target should be three months from closing to when the government’s preferred candidate is decided.’<sup>8</sup>

He also recommended that Departments should inform all interviewed candidates on the progress of an appointments process three months after the closing date if a decision has not been made, as well as notifying OCPA.

In its response to these recommendations, the Government stated that “...the three month timescale should remain an aim, rather than a hard requirement...”<sup>9</sup>

## Diversity

On the issue of diversity, the Commissioner, Peter Riddell, stated in 2020 that:

For the first time, women account for more than half, 51 per cent, of all new public appointments and reappointments, and ethnic minorities over 15 per cent, in both cases ahead of the Government’s targets on overall appointees in post. These figures are also well above what has been achieved in the rest of the public sector, let alone the private or voluntary sectors.<sup>10</sup>

On disability, in 2020 UK Departments changed to using a two-stage question, as recommended by ONS which asked about the impact of a health condition. This makes it more difficult to compare over time. Using the two-stage question, the figures reported in 2021 showed that five per cent of appointees declared a disability.<sup>11</sup>

## Remuneration

In 2021 the OCPA published a thematic review of the remuneration of public appointments, including research on the time commitment asked of applicants, based on a sample of 291 competitions. This was the first time any systematic, cross Department research into this aspect of public appointments had been undertaken. Part of the reason for the research was to try to assess whether remuneration was a significant factor in the diversity of applicants. The findings of the review included:

- Just under 51% of roles were unpaid, falling to 9% for chairs
- Some Departments, such as the Ministry of Justice, recruit to a large number of roles, almost all unpaid

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<sup>8</sup> OCPA, Thematic review: [Concluding competitions within three months of the closing date \[PDF\]](#), July 2019.

<sup>9</sup> Cabinet Office, [Letter from Minister for Implementation to Commissioner](#), 5 November 2019.

<sup>10</sup> OCPA website, [Public bodies are leading the way](#), Blog post, 26 November 2020.

<sup>11</sup> OPCA, [Annual Report 2020-2021](#), September 2021, table 16.

- For £8,000 per year, an appointee might be asked to work between 5 and 48 days per year
- On average there were five times as many applicants for a role paying £200 per day than for an unpaid role
- The impact of remuneration and time commitment on application rates is not even across all protected groups.<sup>12</sup>

The Commissioner commented that the review revealed inconsistencies in pay for public appointments and that this did not reflect any coherent previous or current strategy. He asked for further work by Departments to establish:

- What should the principles be for determining levels of pay and time worked?
- Should the emphasis be on expenses, rather than pay, to assist service?
- Should there be specific financial incentives aimed at encouraging more people from under-represented groups to apply?
- Should remuneration for public service be disregarded from calculation of benefits? <sup>13</sup>

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<sup>12</sup> OPCA, [Thematic review: Remuneration and public appointments](#), March 2021.

<sup>13</sup> Op cit, p2-3.

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## 3 Establishment and development of the role

### 3.1 Establishing the role: First report of the Committee on Standards in Public Life

The role of Commissioner for Public Appointments was created by the Public Appointments Order in Council 1995.<sup>14</sup> This followed the recommendation of the Committee on Standards in Public Life's first report (the Nolan Report). The Nolan Report recommended the post's creation as a means of enhancing public confidence in the public appointments process and the quality of appointments made under it.

The Committee on Standards in Public Life had been set up in 1994 in response to a number of concerns about the standard of conduct of public office holders. In its first report the Committee considered public appointments and stated that:

Appointments to the boards of executive NDPBs [Non-Departmental Public Bodies] should be made on the basis of merit, to form boards with a balance of relevant skills and backgrounds.

Responsibility for appointments should remain with Ministers, advised by committee which include independent members.

A Public Appointments Commissioner should be appointed to regulate, monitor and report on the public appointments process.

The process should be open and departments should have to justify any departures from best practice. Job specifications should be published, and a wide range of candidates should be sought. The suitability of each candidate should be assessed by an advisory committee.<sup>15</sup>

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<sup>14</sup> The public appointments Order in Council 1995 is not available online. A copy can be obtained from the Privy Council Office. ([enquiries@pco.gov.uk](mailto:enquiries@pco.gov.uk))

<sup>15</sup> Committee on Standards in Public Life, [Standards in Public Life](#), May 1995, Cm 2850

## 3.2

# Development of the Commissioner's role and remit

The original remit of the Commissioner was to regulate appointments to executive NDPBs and NHS bodies, but this was extended in 1998 to include ministerial appointments to advisory NDPBs, public corporations, nationalised industries and appointments to utility regulators.<sup>16</sup> In 2002, the Commissioner's remit was extended to include the regulation of reappointments to NDPBs.

The scope of the Commissioner's remit has also altered with the establishment of arrangements for appointments that are devolved to [Northern Ireland](#), [Scotland](#), and [Wales](#). Each jurisdiction has its own regulator, although the UK Commissioner is also the regulator for Welsh Government appointments.

Public appointments to chairs and non-executive directors of NHS trusts and NHS Charities have been carried out by the NHS Trust Development Authority since 1 October 2012. Previously, they were made by the NHS Appointments Commission, which was abolished on 31 October 2012. An independent appointments commission was established for NHS appointments in 2001.

There have been some concerns over a perceived lack of clarity in the remit of the Commissioner for Public Appointments. In its 2003 report, *Government by Appointment: Opening Up the Quango State*, the Public Administration Select Committee (PASC) commented that "there was no clarity or consistency about the application of the Nolan rules". The Committee recommended that the Cabinet Office should undertake to 'map' public bodies and that this should be placed on the public record along with information on their roles, accountability and appointment arrangements. Whether or not each public body should fall within the Commissioner's remit should be considered on a case-by-case basis. They also recommended that Crown appointments should not be excluded from the Commissioner's remit without justification. The list of bodies falling within the remit should then be subject to the scrutiny and approval of a select committee.<sup>17</sup>

In its 2007 report, *Politics and Administration: Ministers and Civil Servants*, the Public Administration Select Committee returned to the issue. They argued that different accountability processes were needed for different bodies and that difficulties arose from the lack of transparency over what posts are or are not covered by the appointment rules. The report reiterated the earlier recommendation that there should be a review to determine which

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<sup>16</sup> The original remit of the Commissioner for Public Appointments is outlined in the [Memorandum](#) by Mr Douglas Alexander MP, Minister for State, Cabinet Office, 26 June 2003

<sup>17</sup> Public Administration Select Committee, [Government by Appointment: Opening up the Patronage State](#), [PDF], 26 June 2003, HC 165 2002-03

NDPBs and appointments the Commission needed to regulate.<sup>18</sup> The Government response to the report stated that the Government was committed to updating the schedule of the Order in Council on an annual basis and would work with the Commissioner to ensure that an updated list of bodies was widely circulated.<sup>19</sup>

In 2008 the Commissioner was given a new power to promote diversity in the procedures for public appointments within their remit. Previously powers only extended to promoting equality of opportunity in these procedures. The Commissioner currently provides annual statistics on diversity in public appointments and reappointments, within the OCPA annual reports.<sup>20</sup>

### 3.3 Better Public Appointments -The Grimstone Review 2016

On 23 March 2015 Francis Maude, Minister for the Cabinet, announced a review of the Office of the Commissioner for Public Appointments. Its objective was to “establish the continuing need for the Office, and to examine its scope of responsibilities”. The review was carried out by Sir Gerry Grimstone. The report of the review, “Better Public Appointments”, was published on 11 March 2016.<sup>21</sup>

#### New Public Appointment Principles

One of the most significant proposals made in the report of the Grimstone Review related to the publication of the Governance Code. It recommended that the Code should no longer be drawn up and published by the Commissioner, but for the first time since the post was created, by the Government itself. It also outlined a new set of public appointment principles which should be set out in an Order in Council and backed up by a Governance Code.

The principles set out in the Grimstone Report emphasised ministerial responsibility. The report explained that, ultimately, ministers are responsible for public appointments and its recommendations would give ministers more power over the appointments process as a whole. This represented a shift away from the Commissioner, whose role would be significantly reduced towards ministers, whose discretion would be significantly increased.

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<sup>18</sup> Public Administration Select Committee, [Politics and Administration: Ministers and Civil Servants](#), 15 March 2007, HC 122 2006-07, para 102

<sup>19</sup> Public Administration Select Committee, [Politics and Administration: Ministers and Civil Servants: Government response](#), [pdf], 14 October 2008, HC 1057 2007-08, para 18.

<sup>20</sup> Commissioner for Public Appointments, [Annual Reports](#).

<sup>21</sup> Sir Gerry Grimstone, [Better Public Appointments: A Review of the Public Appointments Process: Sir Gerry Grimstone](#), March 2016

Sir Gerry Grimstone gave evidence to the Public Administration and Constitutional Affairs Select Committee on 12 April 2016. He explained that he had spoken to a large number of people involved in the appointments process and had concluded that the existing system was “very well-intentioned” but had “substituted process for substance.”<sup>22</sup>

## 3.4

### Government Response to the Grimstone Review 2016

The Cabinet Office Minister Matthew Hancock responded to the report on 11 March 2016.<sup>23</sup> He welcomed the report and agreed with the emphasis given to ministerial involvement, stating that “ministers should be at the heart of the public appointments system and that ultimately, choice, responsibility and accountability for making appointments must rest with ministers”. The main points of the Government’s response are set out in Box 2 below.

#### 2 Government response to the Grimstone Report: a Summary

The Government stated that they would implement these recommendations.

1. Ministers should continue to make public appointments on merit. A new governance code will set out the new Public Appointment Principles and the process by which appointments should be made.
2. All public appointments, with a limited number of exceptions, will be in scope of this new remit.
3. Ministers should be assisted by advisory assessment panels containing a strong element independent of the body being appointed to.
4. Political activity should not affect judgment of merit nor be any bar to appointment or being a member of a panel. There should be transparency over significant political activity
5. Ministers will agree the job description for the role, the tenure and remuneration. Ministers must also agree the composition of the advisory assessment panel. The same applies to reappointments.
6. The panel must be made familiar with the minister’s requirements and views. Ministers should feel free to put names forward for interview. The presumption should be for these candidates to be interviewed.

<sup>22</sup> Public Administration and Constitutional Affairs Committee Oral evidence, *Better public appointments: review of the public appointments process (The Grimstone Review)*, HC 964 Tuesday 12 April 2016, Q63

<sup>23</sup> [Better Public Appointments Review: Government response](#), 11 March 2016

## 3.5

# Other responses to the Grimstone Review

The Grimstone review and subsequent debate attracted much media and parliamentary debate during 2016-2017 with concerns expressed by the outgoing Commissioner, Sir David Normington, the Public Administration and Constitutional Affairs Committee and the Committee on Standards in Public Life.

## The outgoing Commissioner: Sir David Normington

The outgoing Commissioner, Sir David Normington, wrote a highly critical article in The Independent newspaper about the Grimstone Report in which he concluded:

The Commissioner is taken right out of the equation. Taken together, Grimstone's proposals would enable Ministers to set their own rules; override those rules whenever they want; appoint their own selection panels; get preferential treatment for favoured candidates; ignore the panel's advice if they don't like it; and appoint someone considered by the panel as not up to the job.<sup>24</sup>

## The Committee on Standards in Public Life

The Committee on Standards in Public Life responded stating that they were "uneasy" about "the cumulative effect of the other changes" in the review:

The Committee fears that the changes will remove some of the independent checks and balances of the public appointments process and may have the unintended effect of offering limited protection for Ministers who wish to demonstrate they have appointed on merit alone.<sup>25</sup>

In March 2017 it expressed its intention to 'maintain a close interest' in the new system of appointments.<sup>26</sup>

## The Public Administration and Constitutional Affairs Select Committee (PACAC)

The Public Administration and Constitutional Affairs Select Committee published a report on the appointment of Peter Riddell as Commissioner and also made some initial comments on the Grimstone Review. The Committee raised a concern that alongside other changes, such as the introduction of

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<sup>24</sup> Sir David Normington, '[Public Appointments are Finally Made on Talent, not Connections](#)', The Independent, 18 March 2016

<sup>25</sup> Committee on Standards in Public Life, [Grimstone Report on Public Appointments: The Committee's response](#), 11 March 2016

<sup>26</sup> '[Public appointments: CSPL view on PACAC follow-up report](#)', GOV.UK 10 March 2017

extended ministerial offices, the Government’s interpretation of the Grimstone Report “may be leading to an increasing politicisation of senior public appointments”.<sup>27</sup>

In its July 2016 inquiry into the Grimstone review, it shared Sir David Normington’s concern, noting that the review threatened to “undermine the entire basis of independent appointments”. The Committee concluded that the review “effectively demolishes the safeguard built up by Lord Nolan” and that the Government’s adoption of the proposals was “very worrying”. The Committee recommended that the Government must make “significant changes to the proposals in order to robustly deliver a public appointments process” in which they could have confidence.<sup>28</sup>

The Committee’s concerns did not dissipate, and it continued to register its dissatisfaction with the Government’s response to the Committee’s July 2016 inquiry and its continued control of the Governance Code.<sup>29</sup>

## 3.6 Agreeing the Governance Code 2016-2017

In 2016 the newly appointed Commissioner, Peter Riddell, was consulted by the Cabinet Office about the new Public Appointment Principles and the Governance Code as they were being drafted. He made a number of suggestions which were accepted:

- Senior Independent Panel Members should not be politically active. He also pressed for Independent Panel Members not to be politically active but this was not agreed.
- The Nolan principle of fairness, on which the Commissioner can rely when assessing competitions and exemptions from competitions, was retained.
- If ministers want to dispense with a competition or appoint someone who has been judged unappointable by an interview panel, they must consult the Commissioner in advance, rather than notifying him as suggested by the Grimstone Review.
- A live-time Campaign Timeline to enable anyone to see the progress of a competition, the membership of the Advisory Assessment Panel and for any political activity or other relevant information to be declared. The Cabinet Office [website](#) provides a publicly available tracker of

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<sup>27</sup> Public Administration and Constitutional Affairs Committee, [Appointment of the Commissioner for Public Appointments](#), 14 April 2016, HC869 2015-16, para 3

<sup>28</sup> Public Administration and Constitutional Affairs Committee [Better Public Appointments?: The Grimstone Review on Public Appointments](#) HC 495, 7 July 2016, para 85

<sup>29</sup> Public Administration and Constitutional Affairs Committee [Better Public Appointments? Follow-up and the Government Response to the Committee’s Third Report . Better Public Appointments?: The Grimstone Review on Public Appointments](#) HC 1062 10 March 2017

public appointments. It went live in December 2016 and became fully populated in early 2017. The Commissioner has noted that “the progress of competitions has in too many cases not been kept up to date by the departments” although this issue is currently being addressed by the Cabinet Office.<sup>30</sup>

After six months of discussions, the new Governance Code and accompanying Order in Council were finally published in December 2016. The Governance Code came into effect from 1 January 2017, although some competitions continued to be completed under the previous Code of Practice for a number of months.

## 3.7 Comments on the Code 2018-2021.

In his Annual Reports the Commissioner, Peter Riddell commented on the working of the Code. His verdicts were generally positive. By 2020 he was able to state that fears about the impact of the 2016 Code, on appointment on merit, by open competition, had not been borne out. As yet, under the new Code, no minister has appointed a person who was found unappointable by a panel, despite a provision allowing this.<sup>31</sup>

The Commissioner also drew attention more than once to his concerns about the failure to complete the appointments process within three months, as set out in the Code.

In the latest Annual Report, published in November 2021, the issues to which the Commissioner drew attention were:

What is against the spirit of the Code is to seek to influence the work of an assessment panel by leaking the names of preferred candidates beforehand [...]. Similarly, attempts to appoint politically unbalanced panels undermines the credibility of the appointments process. [...]

This argues for reaffirming, and in some cases, strengthening the independent element in the appointments process, particularly for those bodies which scrutinise the actions and conduct of ministers and the executive.

This is matched by the need for greater transparency about appointments made by ministers, both those currently regulated and listed under the Order in Council, and the many unregulated. The lack of clarity about the latter does not assist public confidence in the appointments process generally.<sup>32</sup>

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<sup>30</sup> [Letter from the Commissioner to the Committee on Standards in Public Life](#) [PDF], 13 November 2017

<sup>31</sup> [Office for the Commissioner for Public Appointments: Annual reports.](#)

<sup>32</sup> Office of the Commissioner for Public Appointments, [Annual report 2020-2021](#), (pdf)

## Pre-valedictory speech

In April 2021, Peter Riddell, the Commissioner delivered a speech reflecting on his period in office.<sup>33</sup>

This was also published as a blog post, which highlighted some changes he felt should be made in the workings of the Code and appointment process. The main points were:

1. Senior Independent Panel Members should have a specific duty of reporting to the Commissioner.
2. The Commissioner should be consulted on the composition of all members of interview panels.
3. A limited number of regulators concerned with ethics, standards and appointments in public life should be appointed in a more independent manner.
4. Candidates must be given the chance to explain their public comments [on social media]. Once appointed, it is reasonable that members of boards should constrain their public comments.
5. The provision in the Code for ministers to be able to appoint candidates judged unappointable by an interview panel should be removed.
6. It should become routine practice for Select Committees to consult the Commissioner over preferred candidates for designated pre-appointment hearings.
7. Departments should publish a list of all their non-regulated appointments, as well as how they are appointed.<sup>34</sup>

## Oral evidence session to PACAC

The Commissioner gave evidence to the Select Committee, in October 2020. The discussion was wide-ranging, and included this comment from the Commissioner on his overall tenure:

More substantively, the thing that has struck me particularly has been the impact of the departmental structure. It is very decentralised. Both the good points and the bad points in public appointments are very related to how individual Departments

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<sup>33</sup> [Regulating public appointments](#), Video, The Constitution Unit, 29 April 2021.

<sup>34</sup> Office of the Commissioner for Public Appointments website, [Blog post 29 April 2021](#) (accessed 18 January 2022)

perform, particularly if there is not necessarily a strong lead from the centre because of the churn.<sup>35</sup>

## 3.8 Standards matter 2: recommendations for reform

The Committee on Standards in Public Life (CSPL) carried out a wide-ranging review of the current landscape of regulatory bodies and the operation of their powers in public life, under the working title Standards Matter 2. The Committee review was carried out from September 2020-June 2021 and included online evidence sessions; public consultations and polling research.<sup>36</sup> The review included online evidence from Sir David Normington, former Commissioner and Peter Riddell, Commissioner on 24 March 2021.<sup>37</sup>

The final report of the review was published in November 2021. It included six main recommendations on public appointments:

19 The Governance Code for Public Appointments should be amended to make clear that ministers should not appoint a candidate who is deemed unappointable by an assessment panel, but if they do so, the minister must appear in front of the relevant select committee to justify their decision.

20 The Governance Code should be amended so that ministers must consult with the Commissioner for Public Appointments on the composition of all panel members for competitions for significant appointments.

21 Senior Independent Panel Members should have a specific duty to report to the Commissioner on the conduct of significant competitions.

22 The chairs of ACOBA and HOLAC, the Registrar of Consultant Lobbyists, the Commissioner for Public Appointments and the Independent Adviser on Ministers' Interests should all be appointed through the process for significant public appointments, and the assessment panel for each should have a majority of independent members.

23 Chairs of standards committees should chair assessment panels for the appointment of their independent members.

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<sup>35</sup> Public Administration and Constitutional Affairs Committee, [The work of the Commissioner for Public Appointments](#), 8 October 2020, HC 119 2019-20, Ev 2

<sup>36</sup> CSPL, [Standards Matter 2: Documents collection](#), Gov.uk, 22 September 2020 onwards.

<sup>37</sup> CSPL, [Video recordings, 24 March 2021](#), YouTube [accessed 29 December 2021]

24 Government departments should publish a list of all unregulated and regulated public appointments.

25 The appointments process for Non-Executive Directors of government departments should be regulated under the Governance Code for Public Appointments.<sup>38</sup>

The review Report also commented that although the public appointments system had generally worked well in recent years, it was highly dependent on informal mechanisms, including the willingness of ministers to act with restraint.

Concern was reported on the number of direct ministerial appointments which are unregulated entirely. It was accepted that this may be appropriate in some circumstances, for example for the heads of short-term policy reviews or some tsars or envoys, but there is a lack of transparency on the number and nature of unregulated appointees.

A particular recommendation was:

A stronger statutory basis for the Commissioner is of particular importance given that much of the Commissioner's role now depends on formal or informal advice, rather than enforceable regulatory power.<sup>39</sup>

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<sup>38</sup> Committee on Standards in Public Life, [Upholding standards in public life](#): Final report of the Standards matter 2 review, November 2021.

<sup>39</sup> Op cit, pp 10-11

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## Office holders since 1995

**William Shawcross 2021-**

On 15 July 2021 it was announced that William Shawcross CVO was the Prime Minister's preferred candidate as Commissioner for Public Appointments.

On 16 September 2021 the Public Administration and Constitutional Affairs (PACAC) held a pre-appointment hearing with William Shawcross. The Committee endorsed the appointment. Commenting on the timing of the appointment process the Committee said:

Given interviews were held in January, it is disappointing that we were only notified of Mr Shawcross' nomination as Commissioner in July. [...]The pre-appointment hearing with Mr Shawcross took place only a few weeks before the end of Mr Riddell's extended term, leaving no time for alternative arrangements to be put in place should the Committee fail to endorse Mr Shawcross' appointment. We assume therefore that the Government intended to proceed with Mr Shawcross' appointment regardless of the outcome of the pre-appointment hearing. [...]<sup>40</sup>

The Committee also pointed out that a recent review by the incumbent Commissioner had found that fewer than half of public appointments are made within the three-month target set out in the Governance Code. They intend to monitor the processes for the improvements promised by Government, in response to the OPCA report. (see also Section 2, para 2.5)

In oral evidence, William Shawcross described making progress in the diversity of appointments as “the most important area of all in my job” and that if he found that any Departments were not doing their best to in this area he would “read the riot act to them [...] and if necessary I would come to you.”<sup>41</sup>

The Institute for Government published an Insight report with some suggested question they felt that the Committee should ask in the hearing, reflecting their view that the public appointments system was under strain.<sup>42</sup>

<sup>40</sup> Public Administration and Constitutional Affairs Committee, [Appointment of William Shawcross as Commissioner for Public Appointments](#), HC 662 2020/21, 20 September 2021.

<sup>41</sup> Public Administration and Constitutional Affairs Committee, [Appointment of William Shawcross, Oral evidence](#), 16 September 2021, Q5.

<sup>42</sup> Gill, Matthew & Dalton, Grant, Ten questions the proposed commissioner for public appointments must answer, IfG Insight, September 2021.

### Peter Riddell 2016-2021

On 19 April 2021, the Prime Minister extended the term of the Peter Riddell as Commissioner for Public Appointments, until 30 September 2021.

In March 2016, the Government announced that the Rt Hon Peter Riddell was their preferred candidate for the post of Commissioner for Public Appointments. He was appointed in April 2016, for five years. He was the former Director of the Institute for Government, former Chair of the Hansard Society and previously a journalist.

PACAC held a “preliminary” pre-appointment hearing on 21 March 2016 after which the Committee become concerned that it had not had the time required to consider the appointment in the context of the Grimstone Review. The Committee therefore decided to hold a second pre-appointment hearing on 12 April 2016. The Committee’s report, published on 14 April 2016, raised a concern that “Mr Riddell lacks experience of managing a large organisation or of making appointments”. The Committee gave a qualified endorsement of his appointment.<sup>43</sup>

The Committee recommended that “in future, the appointment of the Commissioner should be subject to a resolution of both Houses of Parliament, as is the case for the Chair of the UK Statistics Authority and the Comptroller and Auditor General”. The Committee concluded that such a resolution would act as public reassurance of the independence and status of the Commissioner.<sup>44</sup>

### Sir David Normington 2011-2016

In July 2010 the Minister for the Cabinet Office, Francis Maude, notified the Public Administration Select Committee that he planned to recruit a single individual for the separate posts of First Civil Service Commissioner and Commissioner for Public Appointments. Both are among a number of posts that are subject to a pre-appointment hearing by the relevant House of Commons Select Committee.

The Public Administration Select Committee held a hearing with the Government’s preferred candidate for the two posts, Sir David Normington, on 16 November 2010. The Committee endorsed his appointment, but expressed “serious concerns” about the appointment of a senior civil servant to this post. They also stated that they were “concerned about the lack of consultation surrounding the proposal to combine these two roles into one”.<sup>45</sup> One Committee member proposed that the Committee should not endorse the appointment, but this was defeated on a division.<sup>46</sup>

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<sup>44</sup> See also Select Committee Statement, 18 April 2016, HC Deb 18 April 2016 cc661-666

<sup>45</sup> Public Administration Select Committee, [Pre-appointment hearing for the dual post of First Civil Service Commissioner and Commissioner for Public Appointments](#), 18 November 2010, HC 601 2010-11, paras 2-4

<sup>46</sup> *Ibid*, Formal Minutes, p14

On the merger of the two roles, the Committee pointed out that its predecessor committee, in the previous Parliament, had recognised the value of close ties, but had favoured a more collegiate relationship between the two posts.<sup>47</sup> In addition, it stated:

While combining the posts may have merit, we condemn the lack of consultation surrounding the proposal to do so. This might be the correct decision but the Government has not made its case. We reserve our position about the wisdom of this reform, subject to our own examination of the impact it will have on the two offices.<sup>48</sup>

The dual post was equivalent in status to a Permanent Secretary in a Government Department and was paid pro-rata on the same salary range. The appointment took effect from 1 January 2011.

The Grimstone Review in 2016 recommended that the two roles should once again be split. It argued that “The Commissioner should not hold any other public appointments within the public sector that would compromise his or her independence as a regulator”.<sup>49</sup> This recommendation was accepted by the Government.

### **Dame Janet Gaymer 2006-2010**

The third appointment was of Dame Janet Gaymer DBE QC. She was appointed in January 2006 for a non-renewable fixed term of four years. Dame Janet was appointed Commissioner for appointments in England and Wales only: Scotland and Northern Ireland had appointed separate Commissioners, in 2004 and 2005 respectively.

### **Dame Rennie Fritchie 1999-2006**

In March 1999 Dame Rennie Fritchie (now Baroness Fritchie) was appointed the second Commissioner for Public Appointments.

### **Sir Len Peach 1995-1999**

On 23 November 1995 Sir Len Peach was appointed as the first Commissioner for Public Appointments in England, Scotland and Wales and, by a separate Order in Council, Commissioner for Public Appointments for Northern Ireland.<sup>50</sup>

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<sup>47</sup> See Public Administration Select Committee, *Ethics and Standards: The Regulation of Conduct in Public Life*, 29 April 2007, HC 121

<sup>48</sup> Public Administration Select Committee, *Pre-appointment hearing for the dual post of First Civil Service Commissioner and Commissioner for Public Appointments*, 18 November 2010, HC 601 2010-11, para 17

<sup>49</sup> Sir Gerry Grimstone, Sir Gerry Grimstone, *Better Public Appointments: A Review of the Public Appointments Process: Sir Gerry Grimstone*, March 2016, para 4.3

<sup>50</sup> Northern Ireland Office, *Commissioner for Public Appointments (Northern Ireland) Order* 1995 (pdf).



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