



BRIEFING PAPER

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Pre-appointment hearings

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Summary

Since June 2008 House of Commons select committees have routinely held pre-appointment hearings for a number of public appointments. The current system of pre-appointment hearings was introduced in 2008 as part of the *Government of Britain* reforms led by the then Prime Minister, Gordon Brown.

This Commons Library briefing paper outlines the role that select committees play in assessing the suitability of the Government's favoured candidates for a number of public appointments. It sets out the guidance for their operation before summarising key hearings of interest, where a committee has raised doubts about the suitability of a candidate. It also includes information about the introduction of the present system of pre-appointment hearings and highlights research about their effectiveness.

There were a total of 96 pre-appointment hearings between July 2007 and December 2017. Of these, there were five occasions where a committee made a negative assessment of the Government's preferred candidate. For three of these, the appointment went ahead in any case (the Children's Commissioner, the Director of the Office for Fair Access and HM Chief Inspector, Office for Standards in Education). In one case, the appointment did not go ahead (Her Majesty's Inspector of Probation). In another, the candidate withdrew from the appointment process after a negative report was issued by the select committee (Chair of Monitor). There have also been situations where committees have had an impact on an appointment without producing a negative assessment of a candidate.

There have been some calls for changes to the pre-appointment hearings process, including suggestions that there should be greater parliamentary involvement in a small number of appointments.

For background information, international comparisons and a detailed discussion of the issues raised by the introduction of pre-appointment hearings, see Library Research Paper 08/39 [*Parliamentary Involvement in Public Appointments*](#).

1. Introduction

1.1 What are pre-appointment hearings?

For certain key public appointments House of Commons select committees may hold evidence sessions with the Minister's preferred candidate before the appointment is made. This enables the Committee to endorse or to raise concerns about the appointment.

In 2011 the Liaison Committee (whose membership consists of the chairs of the House's select committees) stated that the purpose and objectives of pre-appointment hearings could be characterised as:

1. Scrutiny of the quality of ministerial decision making, which is a proper part of ministerial accountability;
2. Providing public reassurance, in addition to the processes of the Office for the Commissioner of Public Appointments, that those appointed to key public offices have been selected on merit;
3. Enhancing the appointee's legitimacy in undertaking their function; and
4. Providing public evidence of the independence of mind of the candidate.¹

The Liaison Committee explained that the hearings also provide an opportunity for exploring the priorities of the candidate on taking up the post and for allowing the candidate to understand Parliament's expectation of the post-holder.

Following the evidence session, the select committee will usually prepare a report containing its view on the suitability of the candidate for appointment. However, it is for the minister to decide whether or not to accept committee's recommendation. If the recommendation is rejected, the minister should respond to the committee explaining the reason(s) for doing so. Select committees are unable to veto an appointment.

It may also be appropriate for the committee's report to refer to any resources, support, or training needs that the candidate may require for the appointment which the hearing has brought to light.

Committee members who have not participated in the pre-appointment hearing are not allowed to deliberate or vote on the report.

¹ Liaison Committee, [*Select Committees and Public Appointments*](#), 4 September 2011, HC 1230 2010-12

Box 1: Posts subject to pre-appointment hearings

Attorney General's Office

HM Chief Inspector of the Crown Prosecution Service

Business Innovation and Skills

Chair of the Higher Education Funding Council for England

Chairs of the Research Councils

Director of the Office for Fair Access

Chair of Competition and Markets Authority

Chair of the Technology Strategy Board

Groceries Code Adjudicator

Cabinet Office

Chair of the Advisory Committee on Business Appointments

Chair of the Charity Commission for England and Wales

Chair of the Committee on Standards in Public Life

Chair of the House of Lords Appointments Commission

Chair of the UK Statistics Authority

First Civil Service Commissioner and Commissioner for Public Appointments

Parliamentary Commissioner for Administration (office also held by Health Service Commissioner)

Communities and Local Government

Local Commissioners for Administration in England

Chair of the Homes and Communities Agency

Chair of the Homes and Communities Agency's Regulation Committee

Department of Culture, Media and Sport

Chair of OFCOM

Chair of the BBC Trust

Chair of S4C

Chair of the Equality and Human Rights Commission

Department of Energy and Climate Change

Chair of the Committee on Climate Change

Chair of the Gas and Electricity Markets Authority (GEMA)

Department of Environment, Food and Rural Affairs

Chair of Natural England

Chair of the Environment Agency

Chair of the Gangmaster Licensing Authority

Chair of the Water Services Regulatory Authority (OFWAT)

Department of Education

HM Chief Inspector of Education, Children's Services and Skills

Children's Commissioner for England

Chief Regulator for Ofqual

Chair of the Social Mobility and Child Poverty Commission

Department for International Development

Chair of the Independent Commission for Aid Impact

Department of Health

Chair of the Care Quality Commission

Health Service Commissioner for England (office also held by Parliamentary Commissioner for Administration)

Chair of the Food Standards Agency

Chair of Monitor

Chair of NHS England

Chair of the National Institute for Health and Care Excellence

Ministry of Justice

Chair of the Judicial Appointments Commission

Chair of the Office for Legal Complaints

HM Chief Inspector of Prisons

HM Chief Inspector of Probation

Information Commissioner

Prison and Probation Ombudsman

Home Office

HM Chief Inspector of Constabulary

Department for Transport

Chair of the Office of Rail Regulation

Her Majesty's Treasury

Comptroller and Auditor General

Chair and Members of the Budget Responsibility Committee

Department of Work and Pensions

Chair of the Social Security Advisory Committee

Pensions Ombudsman

Pension Protection Fund Ombudsman

Ministry of Defence

Service Complaints Commissioner

1.2 Which posts are subject to pre-appointment hearings?

The list of appointments subject to pre-appointment hearings (see box 1) was published by the Government following some to-ing and fro-ing between the Government, the Liaison Committee, and the Public Administration Select Committee.² The list is set out in the appendix to the Cabinet Office [guidance](#) on pre-appointment hearings.³

1.3 Guidance on pre-appointment hearings

In 2011 the Liaison Committee recommended that a single consolidated guidance document should be produced jointly by the Cabinet Office and Liaison Committee. The Government rejected this proposal but in November 2013, both the Cabinet Office⁴ and the Liaison Committee⁵ issued separate revised guidelines that contained much overlapping material.

Government guidance

The guidance includes a list of appointments that ministers have agreed should be subject to a pre-appointment hearing. Any additions or withdrawals from the list must be agreed by both the Secretary of State and the relevant committee. It remains up to the relevant committee whether or not to hold the pre-appointment hearing, so ultimately hearings are discretionary. The guidance does not prevent committees from inviting or summoning any individual to give evidence, so that committees may extend beyond the list of appointments if they wish.

The Cabinet Office guidance requires the sponsor department to consult the Chair of the relevant committee on the proposed selection process before any recruitment exercise begins. Committees may expect to receive drafts of the job description and person specification for comment.

Liaison Committee guidance

The Liaison Committee guidance similarly notes that the decision on whether or not to hold a pre-appointment hearing rests with the select committee. The guidance notes that the “Chair of the Committee should ensure that committee members are aware that their questions must remain relevant to the professional competence and personal independence of the candidate”. It also explains that candidates will need to be able to withstand parliamentary and public scrutiny should he or she take up the post, and part of the purpose of the pre-appointment hearing is to test this. It continues “Questioning may therefore be robust, and it may cover some areas that might not have

² For full details see the Commons Library Research Paper [Parliamentary Involvement in Public Appointments](#) (RP 08/39).

³ In September 2015 the appointment of the Information Commissioner transferred to the remit of the Committee for Culture Media and Sport

⁴ Cabinet Office, [Pre-appointment scrutiny by House of Commons committees](#), November 2013

⁵ Liaison Committee, [Liaison Committee guidelines for select committees holding pre-appointment hearings](#), agreed by the Committee at their meeting of 27 November 2013

been appropriate at the candidate's interview, such as party political activity".

1.4 Background to the introduction of pre-appointment hearings

Although select committees previously had no formal role in the process of making public appointments, they often scrutinised major appointments made by the relevant department. This had been a 'core task' of select committees, as agreed by the Liaison Committee, since 2002.

Gordon Brown's first statement to the House of Commons as Prime Minister, on 3 July 2007, announced the publication of *The Governance of Britain* Green Paper.⁶ It set out his vision for a wide range of constitutional reforms, including that "the House of Commons should also have a bigger role in the selection of key public officials".⁷ The Green Paper stated that the Government's nominee for certain "key positions" should be subject to a "pre-appointment" hearing with the relevant select committee:

The hearing would be non-binding, but in the light of the report from the committee, Ministers would decide whether to proceed. The hearings would cover issues such as the candidate's suitability for the role, his or her key priorities, and the process used in selection.⁸

Proposals for greater parliamentary involvement in public appointments had been made by a variety of sources including the Public Administration Select Committee (PASC) and the independent 'Power Inquiry'.⁹ However, previous administrations had argued that ministerial responsibility prevented Parliament becoming involved in the appointments process. For example, in response to the Liaison Committee's 2000 report *Shifting the Balance*, the Labour Government stated:

Any indication that a Ministerial appointment relied upon the approval of a Select Committee or was open to a Select Committee veto would break the clear lines of accountability by which Ministers are answerable to Committees for the actions of the executive...¹⁰

In addition, it was argued that there was the risk of 'lame duck' appointments – those who had been appointed by the minister but without select committee approval. There was also a concern that the

⁶ Ministry of Justice, [The Governance of Britain](#), July 2007, Cm 7170. For more information about the *Governance of Britain* see the House of Commons Library Research Paper RP 7172, [The Governance of Britain](#)

⁷ HC Deb 3 July 2007 c816

⁸ Ministry of Justice, [The Governance of Britain](#), Cm 7170, July 2007, paras 76-79

⁹ Public Administration Select Committee, [Government by Appointment: Opening up the Patronage State, 10 July 2003](#), HC 165-I 2002-03; The Power Commission, [Power to the People: The Report of Power, an independent inquiry into Britain's democracy](#), February 2006, pp139-142

¹⁰ Liaison Committee, *Independence or Control: The Government's response to the First Report from the Liaison Committee: Shifting the Balance*, 25 July 2000, HC 748 1999-2000, para 17

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status of select committees as scrutiny bodies rather than decision-making bodies would be changed.¹¹

After the publication of *The Governance of Britain*, the then Commissioner for Public Appointments, Janet Gaymer, raised potential difficulties in evidence given to PASC in January 2008, setting out her concerns as follows:

- there might be a reduction in the pool of candidates;
- there might be a perceived politicisation of the appointments process;
- there is a risk that committees would ask inappropriate questions;
- hearings might have an effect on the timing of the appointments process;
- the role of ministerial accountability for appointments might be changed;
- changes might have an effect on the Office of the Commissioner for Public Appointments regulated processes.¹²

¹¹ See for example, Liaison Committee, *Independence or Control? the Government's Response to the First Report from the Liaison Committee: Shifting the Balance*, 25 July HC 748 1999-2000 and Cabinet Office, *Government Response to the Public Administration Select Committee's Fourth Report of Session 2002-03 "Government by Appointment: Opening Up the Patronage State"*, December 2003, Cm 6056

¹² Public Administration Select Committee, [Parliament and public appointments: Pre-appointment hearings by select committees](#), 16 January 2008, HC 152 2007-08, Ev 16-18

2. Outcome and impact of pre-appointment hearings

2.1 In brief

There were a total of 96 pre-appointment hearings between July 2007 and December 2017.¹³

On five occasions during this period a committee issued a negative recommendation about the preferred candidate. For three of these, the appointment went ahead (the Children’s Commissioner 2009, the Director of the Office for Fair Access 2012 and HM Chief Inspector of OFSTED 2016). In one case, the appointment did not go ahead (HM Chief Inspector of Probation 2011). In the other case, the candidate withdrew from the process after a negative report was issued by the committee (Chair of Monitor 2013).

There have also been two notable cases where committees have exerted an influence without producing a negative assessment of a candidate:

- The candidate for the Chair of the UK Statistics Authority (2011) withdrew before the Public Administration Select Committee published its report as it was likely to have been negative
- the Joint Committee on Human Rights and the Women and Equalities Committee raised concerns about a potential conflict of interest regarding the appointment of the chair of the Equality and Human Rights Commission (2016). Although certain assurances were made by the candidate to allay their fears, the committees remained concerned although they did not produce a negative report.

Where committees perceive a gap in a candidate’s knowledge of a subject, they may prompt the candidate to take specific measures to fill the gap. For example, for the appointment of the Chief Inspector of Ofqual (2016), the Education Committee was concerned with the candidate, Sally Collier’s, lack of experience in education. It recommended that Ms. Collier take “steps to rapidly acquire the specific competence in terms of qualification and assessment “. ¹⁴

Committees have also on occasion recommended certain policy priorities for the candidate to address once in office. For example, for the appointment of the Chair of the Care Quality Commission (2010), the Health Committee highlighted five specific areas of concern that it felt needed to be addressed by the Care Quality Commission.¹⁵

The Liaison Committee stated in its 2015 “Legacy” report that in its opinion, the pre-appointment hearing process was working well, although it reported an issue regarding the appointment of the Chief

¹³ Liaison Committee [Pre-appointment hearings held by select committees of the House of Commons](#) July 2007—March 2017

¹⁴ Education Committee [Appointment of the Chief Regulator of Ofqual](#), HC 822, 20 March 2016, para 14.

¹⁵ Health Committee [Appointment of the Chair of the Care Quality Commission](#) Report, HC 461-I, 15 September 2010

Inspector of Probation (2011) by the Justice Committee. As information relevant to the appointment had not been made available to the committee before the hearing, the Liaison Committee concluded that:

We attach great importance to the right of select committees to take evidence from people nominated by ministers for public appointments. There is no desire to make this an arduous process which may deter good candidates from applying, and committees stick carefully to the procedural safeguards within the process. In many cases, where the appointment is to a post with some regulatory or supervisory role over parts of government, the pre-appointment hearing should be the start of a constructive relationship between the appointee and the committee, both of which have a positive interest in the accountability of that part of public money and administration. It can also help set the agenda for the post-holder.¹⁶

2.2 Hearings of Interest

Negative Reports

Children's Commissioner for England, 2009

The first occasion when a committee recommended that a candidate should not be appointed was in October 2009. The Children's Schools and Families Committee took evidence from Maggie Atkinson as the Government's preferred candidate for the post of Children's Commissioner. The Committee was unable to endorse her appointment "as we would have like to have seen more sign of determination to assert the independence of the role, to challenge the status quo on children's behalf, and to stretch the remit of the post, in particular, by championing children's rights".¹⁷

The then Secretary of State for Children, Schools and Families, Ed Balls, wrote to the then Chair of the Children, Schools and Families Committee, to inform him that he would be appointing Maggie Atkinson, despite the negative report from the Committee. In his letter, he stated that the Committee's report did not put forward any "relevant new facts" regarding the candidate. He noted that her appointment had been the recommendation of the independent panel established as part of the standard Nolan recruitment process.¹⁸ On 19 October 2009, Ed Balls responded to an Urgent Question in the House by the Shadow Secretary of State on the appointment.¹⁹ The disagreement was also discussed at a select committee meeting on 21 October 2009 when the Committee took evidence from the Secretary of State.²⁰

¹⁶ Liaison Committee, *Legacy Report*, First Report of Session 2014–15, 24 March 2015 HC954 2014-15, para 56

¹⁷ Children Schools and Families Select Committee, *Appointment of the Children's Commissioner for England*, 14 October 2009, HC 998-I, para 6

¹⁸ Department for Children Schools and Families, *Letter from Ed Balls regarding appointment of Children's Commissioner*, 19 October 2009

¹⁹ HC Deb 19 October 2009 c639

²⁰ Oral Evidence given before the Children Schools and Families Select Committee by Rt Hon Ed Balls. Secretary of State for Children Schools. and Families and David Bell, Permanent Secretary, Department of Children Schools and Families, 21 October 2009, HC 174 2008-09

HM Chief Inspector of Probation, June 2011

In June 2011 the Justice Committee declined to endorse the appointment of Diana Fulbrook as HM Chief Inspector of Probation. The Committee reported that although they were “favourably impressed” by the candidate’s experience and track-record, it had reservations about her candidature “in relation to the importance of reducing re-offending and the need for the Chief Inspector to be a driver for change within the probation system.” The Committee continued:

We also had regard to the fact that a number of the most successful inspectors in the criminal justice system have come from outside that system. We were given no indication that external candidates had been sought or placed on the shortlist on this occasion. We concluded that we were not in a position to give our approval to the appointment...

Having given the Secretary of State an opportunity to consider the issues raised by this case, we now report formally our conclusion that, given the reservations referred to above and set out in our Chair’s letter of 11 May, we are not able to give our approval to the appointment of the preferred candidate in this instance and we recommend that the recruitment process be re-opened.²¹

The appointment did not go ahead. Instead Liz Calderbank was appointed to the role on a temporary basis in September 2011.

Director of Office for Fair Access, February 2012

In February 2012 the Business, Innovation and Skills Committee considered the appointment of Les Ebdon, the preferred candidate, as Director of the Office for Fair Access (OFFA). The Committee declined to endorse his appointment, noting that it was “not convinced by Professor Ebdon’s descriptions of the root causes of the obstacles to accessing universities”:

... Therefore, we have to question his evidence in respect of two of the criteria for selection, namely “promote the strengths of the arguments in face of opposition” and “communicate persuasively and publicly, with excellent presentational skills”. We are unable to endorse the appointment of Professor Ebdon as the Director of OFFA and we recommend that the Department conduct a new recruitment exercise.²²

However, the Secretary of State for Business, Innovation and Skills, Vincent Cable, decided to proceed with the appointment. He explained his decision in answer to an Urgent Question, stating that Committee’s report did not present any new relevant facts about the candidate’s suitability. The minister had decided the appointment should go ahead but that the appointee should appear before the Committee on a regular basis.²³

²¹ Justice Committee, *Appointment of HM Chief Inspector of Probation*, 5th report 2010-12, HC 1021, 21 June 2011

²² Business, Innovation and Skills Committee, [Pre-appointment hearing: appointment of Director of the Office for Fair Access](#), 13th report 2010-12, HC 1811, 8 February 2012

²³ HC Deb 20 February 2012, c609

Chair of Monitor, October 2013

The Health Select Committee held its pre-appointment hearing with Dominic Dodd, the Government's preferred candidate for the post of Chair of Monitor, on 15 October 2013. In its report published on 24 October the Committee did not express support for the appointment.²⁴ The report as initially drafted had expressed some concerns about the appointment. However, the report was subsequently amended on division of the Committee to replace these concerns with the decision not to support the appointment. Dominic Dodd then withdrew his name from the appointment process as he felt he lacked legitimacy without the support of the committee.

HM Chief Inspector, Office for Standards in Education (Ofsted) 2016

Most recently on 5 July 2016 the Education Committee reported that it would not endorse the appointment of Amanda Spielman, the Government's preferred candidate, as Her Majesty's Chief Inspector of Ofsted.

The Committee stated that "Ms Spielman did not demonstrate the passion for the role that we would have hoped for".²⁵ The Committee wrote to the Secretary of State for Education on 29 June 2016 inviting her to reconsider the appointment:

Notwithstanding her [Ms Spielman's] broad experience and the contribution she has made to the field of education, we do not consider that Ms Spielman exhibited sufficient understanding of the scope and complexity of the role. She did not demonstrate sufficient vision or show the leadership abilities we feel will be needed. We were concerned by the lack of passion she demonstrated for the job and the important contribution it makes to the lives of children.²⁶

A copy of the letter was forwarded to Ms Spielman, who responded on 3 July 2016, to assuage the doubts raised by the committee.²⁷ Following this the Committee reconvened for a second private discussion about the appointment, however its decision remained unchanged.

Then Secretary of State for Education, Rt Hon Nicky Morgan MP, wrote to the Chair Neil Carmichael to inform him that she would be appointing Amanda Spielman to the post, despite the negative recommendation:

This has been an open and transparent process, where the best candidate has been selected on merit. A senior, independently-chaired panel assessed Amanda as eminently appointable against all the requirements of the role, and my judgement is that she

²⁴ Health Select Committee, [Appointment of the Chair of Monitor](#), 24 October 2013, HC 744 2012-13

²⁵ Education Committee, [Appointment of Her Majesty's Chief Inspector of Education, Children's Services and Skills](#), 7 July 2016, HC 170, PARA 8

²⁶ Education Committee, Letter from the Chair to Rt Hon Nicky Morgan MP, Secretary of State for Education, 29 June 2016

²⁷ Letter from Amanda Spielman, Government's preferred candidate for HMCI, to the Chair of Select Committee, Neil Carmichael, 3 July 2016

was the best candidate from a strong field. I have therefore decided to proceed in recommending Amanda's appointment...²⁸

Qualified Reports

Chair, Equality and Human Rights Commission

The Joint Committee on Human Rights and the Women and Equalities Select Committee held a pre-appointment hearing with the Government's preferred candidate for the Chair of the Equality and Human Rights Commission, David Isaac, on 23 March 2016.

The committees wrote to the Minister for Equalities expressing concerns about what they perceived as the potential for a conflict of interest given the candidate's continued employment at the law firm Pinsent Masons which had acted for the Government. He was questioned at length about specific measures he would undertake at the firm to ensure that he was isolated from cases potentially impacted by decisions from the European Court of Human Rights (ECHR). He agreed to ensure that his remuneration would not in any way depend on his firm's involvement with the Government.

The Joint Committee on Human Rights noted that this action did not address the issue of "potential or perceived conflicts of interest arising from work by Pinsent Masons for private sector clients which may be subject to investigation or enforcement actions by the EHRC, a potential problem treated in some detail in the legal advice we have received and published from Speaker's Counsel".

The Committee concluded that:

We note that the Government has confirmed its intention of appointing Mr Isaac. We are glad that our pre-appointment hearing has focussed attention on the importance of avoiding potential or perceived conflicts of interest and prompted the undertakings we have now received from Mr Isaac. We will continue to monitor the situation as part of our wider responsibility to scrutinise the human rights work of the EHRC.

We hope the Government will learn lessons from this appointment, particularly in relation to the processes followed by the selection panel, which Sir David Normington told us did not specifically address the issue of Mr Isaac's role as a senior partner in Pinsent Masons. The Liaison Committee and Cabinet Office guidelines on pre-appointment hearings do not cover the release of panel documents, which limited our ability to scrutinise the quality of the panel's decision and we recommend that this guidance be reviewed.²⁹

The Women and Equalities Committee also published similar conclusions and recommendations in its report on the appointment.³⁰

²⁸ Letter from Secretary of State for Education, to the Chair, Appointment of Her Majesty's Chief Inspector of Education, Children's Services and Skills, 4 July 2016

²⁹ Joint Committee on Human Rights, [Appointment of the Chair of the Equality and Human Rights Commission](#), Third Report of Session 2015-16, HC 648 HL Paper 145 2015-16 paras 29-30

³⁰ Women and Equalities Committee, [Appointment of the Chair of the Equality and Human Rights Commission](#), Third Report of Session 2015-16, HC 599 2015-16

Chair of the UK Statistics Authority, July 2011

In June 2011 the Public Administration Select Committee (PASC) held a pre-appointment hearing with Dame Janet Finch, the preferred candidate for the post of Chair of the UK Statistics Authority.³¹

Following the hearing, Dame Janet wrote to Sir Gus O'Donnell, the Cabinet Secretary, informing him that she had "reluctantly taken the decision that my name should go no further in this process". In her letter she noted that in her discussions with the Committee it had become clear that she and the Committee had differing views about the way in which the role should be undertaken and independence exercised. She had therefore concluded "it would be difficult for me to do the job in the manner which I had attended" and therefore her name should go no further in the process. Her letter was sent before PASC issued any report on the hearing and her decision was accepted. The exchange of letters between Dame Janet and Sir Gus is available on the Cabinet Office website.³²

Commissioner for Public Appointments, 2016

In March 2016 the Public Administration and Constitutional Affairs Select Committee (PACAC) considered the Government's preferred candidate, Rt Hon Peter Riddell CBE, for the post of Commissioner for Public Appointments. The post had previously been held alongside that of Civil Service Commissioner. However, the Grimstone Review of Public Appointments recommended that the two posts should no longer be held by the same person.³³

At a preliminary hearing on 21 March 2016 the Committee asked Mr Riddell about his vision for the role and his views on the Grimstone review. Following this hearing the Committee raised concerns that it did not have the time required to undertake scrutiny of the Grimstone review. It concluded that it would have been inappropriate for it 'to make a report on the Government's preferred candidate which could have been interpreted as implying a judgement on the Grimstone report'.³⁴ In light of these concerns, it decided to hold a second pre-appointment hearing with Mr Riddell on 12 April 2016.

The Committee's report stated that it was 'concerned that Mr Riddell lacks experience of managing a large organisation or of making appointments'.³⁵ Therefore, while PACAC endorsed his appointment, the endorsement was not unqualified.

The Committee then went on to consider how the appointment of the Commissioner should be made in future. It 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

³¹ Public Administration Select Committee, [Pre-appointment hearing of the post of Chair of the UK Statistics Authority, 28 June 2011](#), 15 July 2011, HC 1261-i 2010-12

³² Cabinet Office, [Dame Janet Finch statement](#), 6 July 2011

³³ Sir Gerry Grimstone, [Better public appointments: review of the public appointments process](#), 11 March 2016

³⁴ Public Administration and Constitutional Affairs Committee, [Pre-appointment hearing – Commissioner for Public Appointments](#), 14 April 2016 HC 869 2015-16

³⁵ Ibid, para 12

Statistics Authority and the Comptroller and Auditor General'.³⁶ The Committee concluded that such a resolution would act as public reassurance of the independence and the status of the Commissioner.

³⁶ Ibid, para 13

3. Calls for changes to pre-appointment hearings

3.1 Evaluation of pre-appointment hearings published by the Liaison Committee, March 2010

In March 2010 the Liaison Committee published an evaluation of pre-appointments which had been prepared for it and the Cabinet Office by the Constitution Unit, University College London. The research found that there had been a positive benefit in terms of democracy and transparency, but that this was a “modest step not a giant stride”.³⁷

It concluded that:

- there had been no significant deterrent to attracting good quality candidates although the system did favour candidates with previous experience of committees and public sector boards;
- the majority of candidates interviewed would have chosen not to take up their post following a negative select committee report;
- there was scope for further consideration about the posts that should be covered by the hearings.³⁸

The Liaison Committee in principle supported the continuance of the pre-appointment hearings on a permanent basis. It recommended that:

- existing guidance relating to the hearings should be consolidated, if agreed between the Cabinet Office and the Liaison Committee, in a single document;
- a list of criteria governing the posts subject to pre-appointment hearings be established and a revised list agreed between the Government and Liaison Committee;
- departments consult the relevant select committee on the job specification of any post that is subject to a pre-appointment hearing at the start of the recruitment process about the precise remit of the job surfacing at the pre-appointment hearing stage;
- revised guidelines should allow for a private meeting between a Minister and committee at the committee’s discretion, in cases where a committee is inclined to make a negative report on the preferred candidate. This would provide the Minister with an opportunity “to explain the rationale behind the decision, possibly with reference to the nature of the available alternatives, and for the committee to convey candidly the nature and depth of its concerns. The committee could then make its report with full

³⁷ Peter Waller and Mark Chambers, *An Evaluation of Pre-Appointment Scrutiny Hearings. Prepared for the House of Commons Liaison Committee and the Cabinet Office*, The Constitution Unit, 9 February 2010, p4

³⁸ Peter Waller and Mark Chambers, *An Evaluation of Pre-Appointment Scrutiny Hearings. Prepared for the House of Commons Liaison Committee and the Cabinet Office*, The Constitution Unit, 9 February 2010

knowledge of the background to the appointment and the consequences of a negative view".³⁹

The Government's response to the report, published in August 2010 (after the General Election), stated that it "noted these recommendations". It agreed that "there may be scope to improve the arrangements for pre-appointment hearings" and that the Minister for the Cabinet Office would write to the Committee to consider how this could be taken forward.⁴⁰ The Coalition Agreement, published in May 2010, had stated that the Government would "strengthen the powers of Select Committees to scrutinise major public appointments".⁴¹

3.2 A greater role for Parliament in a small number of appointments? March 2011

In March 2011 the Institute for Government published [*Balancing Act: The right role for select committees in public appointments*](#). The report recommended that the list of public appointments subject to parliamentary scrutiny needed to be reviewed. The Institute for Government stated that some posts needed more "stringent" forms of parliamentary scrutiny. For some appointments, there should be an effective veto power granted to Parliament. Its 'A List' of public appointments included economic regulators, constitutional watchdogs, public service and utility regulators and independent inspectorates.

The Liaison Committee's report – *Select Committees and Public Appointments* – was published on 4 September 2011.⁴² It made several recommendations to strengthen the accountability of ministerial appointments. In particular, it recommended changes to the list of posts through the introduction of a three category approach to which the procedure applied.

The first category consisted of posts of sufficient constitutional significance so as to require a process which was "effectively a joint appointment by Government and the House of Commons".

The second category proposed posts that should be subject to an "effective veto" by the House of Commons or its committees.

For the third category of posts, the decision of whether or not to hold the pre-appointment hearings should be at the discretion of the committee.⁴³

It also recommended that:

³⁹ Liaison Committee, [*The Work of Committees 2008-09*](#), 16 March 2010, HC 426 2009-10

⁴⁰ Liaison Committee, [*The Work of Committees in Session 2008-09: Government Response to the Committee's Second Report of Session 2009-10*](#), 2 August 2010, HC 415 2010-11

⁴¹ HM Government, [*The Coalition Agreement: Our Programme for Government*](#), May 2010 p21

⁴² Liaison Committee, [*Select Committees and Public Appointments*](#), 4 September 2011, HC 1230 2010-12

⁴³ Liaison Committee, [*Select Committees and Public Appointments*](#), 4 September 2011, HC 1230 2010-12, Summary

18 Pre-appointment hearings

- there should be greater consultation between ministers and committees at the start of the recruitment process about the definition of the post and the criteria for selection.
- more information should be provided to the committee in advance of the hearings about the field of candidates from which the preferred candidate had been selected.
- The opportunity for the Chair of a committee to discuss privately with a minister any reservations the committee may have about a candidate before issuing its report and the minister proceeded to a decision.
- The Liaison Committee published a subsequent report together with the Government's response in September 2012. It stated that "the response fails to engage with our recommendations, and is somewhat dismissive in tone, even where the Government declares itself in agreement with us".⁴⁴

The Government rejected the three category approach. The Committee stated:

It rejects our proposal for a top tier of constitutional posts over which the House should have formal control of appointment and dismissal, except for the three where this is already firmly established: the Comptroller and Auditor General, the Parliamentary and Health Services Ombudsman (both posts which are Officers of the House) and the Chair of the Office for Budget Responsibility (for which the veto is established in statute). The Government does not, for instance, include the post of Chair of the UK Statistics Authority, which is surprising given that the Government has agreed that that appointment should be subject to a vote in the House. The Government merely asserts of all other posts that we listed as category A "As these are Ministerial appointments it would not be appropriate for Parliament to be an equal partner in appointment decisions".⁴⁵

The Committee Chair Sir Alan Beith said:

This is a surprisingly poor response by the Government to some straightforward proposals to improve the existing process. The Government says it's committed to increasing accountability in the public appointments process, but this dismissive and disengaged response makes this hard to believe.

Select Committees of the House of Commons will continue to develop pre-appointment hearings. They're now a well established part of parliamentary scrutiny: the Government is missing an opportunity to agree the ground rules, and to extend the process to other appointments for which it is needed.⁴⁶

The Liaison Committee also recommended that the existing guidance on pre-appointment hearings needed revising and recommended that "a single consolidated guidance document" should be produced.⁴⁷ In an annex the Committee set out a draft version of "Joint Guidance for

⁴⁴ Liaison Committee, [Select Committees and Public Appointments: the Government's response](#), 6 September 2012, HC 394 2012-13

⁴⁵ *Ibid*, p17

⁴⁶ Liaison Committee [News](#) 6th September 2012

⁴⁷ Liaison Committee, [Select Committees and Public Appointments: the Government's response](#), 6 September 2012, HC 394 2012-13, paras 64-68

Departments and Select Committees" that it wished to agree with the Cabinet Office.⁴⁸

However, the Committee noted that the Government had circulated new guidance to departments, but its connection with the draft guidance produced by the Committee appeared to be "slight". The Committee noted that "The response states that the guidance is still to be 'agreed between Government and Parliament' but the Government does not appear to be seeking our agreement to it".

3.3 Revival of Interest

Pre-appointment hearings gained added topicality in light of the [Grimstone](#) review of public appointments, which represented a shift away from the Commissioner for Public Appointments, whose role was significantly reduced towards ministers whose discretion was significantly increased.

In exceptional circumstances, ministers may appoint a favoured candidate without running an appointment competition, or appoint a candidate who has been judged not suitable by the selection panel.

Public Administration and Constitutional Affairs Committee work on public appointments

In March 2016 PACAC held a short inquiry into the Grimstone Review and published its report in July 2016.⁴⁹ In March 2017 PACAC published both the Government's response to its report and a letter from Peter Riddell, Commissioner for Public Appointments, outlining some changes which had been made to the appointments process in the interim.

The Committee was particularly concerned that the Government had again rejected a recommendation on pre-appointment hearings made by itself and the Liaison Committee. It urged the Government to reconsider its position:

The Liaison Committee in 2012 recommended that the Government should reconsider which appointments are offered to select committee for pre-appointment hearings. It suggested that there should be a central list of posts, such as the Comptroller and Auditor General, the Chair of UKSA or the Chair of the Office for Budget Responsibility which are confirmed by a vote in the House of Commons, widening the existing category of posts subject to Parliamentary approval. We endorsed this recommendation in our report, but the Government has rejected it, stating it believes such cases of Parliamentary veto should be "exceptional" and "decided on a case by case basis." **It is concerning that the Government has again rejected a recommendation on pre-appointment hearings which has now been made by two select committees. We urge the Government to reconsider its position.**⁵⁰

⁴⁸ Ibid, Annex 4

⁴⁹ Public Administration and Constitutional Affairs Committee [Third Report from the Public Administration and Constitutional Affairs Committee of Session 2016–17, Better Public Appointments?: The Grimstone Review on Public Appointments](#), HC 495 7 July 2016

⁵⁰ Ibid, para 7

Constitution Unit report July 2017

[*Improving Parliamentary Scrutiny of Public Appointment*](#) by the Constitution Unit sought to evaluate whether any concerns raised about pre-appointments had been realised since its previous report in 2010. It analysed pre-appointment scrutiny, elements of inappropriateness in questioning as well as changes following the Grimstone Review.

The Unit concluded that:

- the main purpose of pre-appointment hearings was to gauge the suitability of the candidate, with committees across the board observing to strict guidelines, 90 percent of all questions asked were appropriate and less than 5 percent were deemed irrelevant, aggressive or politicised;
- pre-appointment scrutiny plays a significant impact in maintaining the integrity of public office and ensuring it remains merit based. Additionally, it dissuades ministers misusing powers of patronage and deters them from recommending candidates that would not pass this additional layer of scrutiny; and
- although not a formal power of veto, a negative report exerts substantial influence, having caused candidates to withdraw due to lack of legitimacy, to appointments not being made as a result.

The report singled out the Treasury Committee for good practice for routinely including public appointments in addition to those mentioned in the Cabinet Office list. It acknowledged that the rigorous questionnaire set by the Treasury Committee to check suitability for appointments helps to save time at the oral hearing and helps to focus on the main points.

The Report recommended that:

- 'Committees need not be prisoners of the Cabinet Office list'⁵¹ and encouraged committees to go beyond scrutinising the top 50 appointments, as there may be other positions outside the list that require enhanced scrutiny; and
- Committees be given greater control over their workload, it should be for the committees to decide which appointments merit scrutiny.

The report also raised some concerns regarding the impact of the Grimstone report. It suggested that the prospect of ministers being able to make appointments in the absence of the rigorous requirement for fair competition could be at a risk of misuse. It did not presuppose that ministers would abuse the new rules but advised that select committees will need to keep a watchful eye on all public appointments in their subject area.⁵²

⁵¹ The Constitution Unit University College London [*Improving Parliamentary Scrutiny of Public Appointments*](#) July 2017, p9

⁵² *Ibid*, p 8

4. Parliamentary involvement in public appointments: other posts

4.1 Office for Budget Responsibility

The Budget Responsibility and National Audit Act 2011⁵³ broke new ground when it provided a statutory 'double lock' on the appointment and dismissal of members of the Budget Responsibility Committee, for which the Treasury Committee's consent is required.

In its September 2010 report the Treasury Committee recorded that the Chancellor of the Exchequer had told the Chair of the Treasury Committee that the Government would legislate to give the Committee a veto over the appointment of future Chairs of the Office for Budget Responsibility (OBR).⁵⁴ In the same report, the Committee recommended that "We should also have the right to veto other BRC [Budget Responsibility Committee] executive members proposed by the Chancellor".⁵⁵

In its subsequent report on appointments to the OBR, the Treasury Committee reported that the Chancellor had written to the Committee to confirm that he intended to extend the power of veto over the appointment to members of the BRC. The Chancellor explained that he wanted there to be "absolutely no doubt that all the members of the BRC leading the OBR are independent and have the support and approval of the TSC (Treasury Select Committee)".⁵⁶

4.2 The Comptroller and Auditor General

The Comptroller and Auditor General is an officer of the House whose appointment is governed by the *National Audit Act 1983*. The appointment process is led by the House of Commons. The appointment is made pursuant to a Motion for an Address made by the Prime Minister to which the consent of the Chair of the Public Accounts Committee must be signified.

4.3 The Parliamentary and Health Service Ombudsman

The Parliamentary and Health Service Ombudsman is an officer of the House. The appointment process is led by the House of Commons and is made following a Motion for an Address.

⁵³ [Budget Responsibility and National Audit Act 2011](#), Schedule 1, para 1

⁵⁴ Treasury Committee, [Office for Budget Responsibility, 21 September 2010, HC 385 2010-11](#), paras 98-108

⁵⁵ *Ibid*, para 107

⁵⁶ [Treasury Committee, Appointments to the Budget Responsibility Committee, 1 November 2010, HC 545-I 2010-11](#)

4.4 Chair of the UK Statistics Authority

The Chair of UK Statistics Authority is appointed following a pre-appointment hearing held by the Public Administration Select Committee and a resolution of the House endorsing the appointment.

4.5 Office of the Information Commissioner

In 2011 the then Justice Minister, announced that an “effective veto” would be given to the Justice Committee for the appointment of the Information Commissioner. As part of wider measures to strengthen the independence of the office of the Information Commissioner, the Government would accept the Justice Committee's conclusion from its pre-appointment hearing on whether or not the preferred candidate should be appointed. In September 2015 the post transferred to the remit of the Committee for Culture, Media and Sport which also acquired the power to exercise a veto for the post.⁵⁷

4.6 Treasury Committee involvement in market sensitive posts

The Treasury Committee routinely scrutinises several public appointments in addition to those on the Cabinet List. These include the Governor of the Bank of England, the Deputy Governors, members of the Monetary Policy Committee, and the chair of the Financial Conduct Authority. In these cases, it undertakes pre-commencement rather than pre-appointment hearings.

As the candidate has already been appointed, the Minister is not formally required to consider the Committee's recommendations in the same manner as those on the Cabinet list. However, the Committee applies the same criteria of personal independence and professional competence that it applies to pre-appointment hearings and uses the same tools such as written questionnaires to probe the candidate's suitability.

Despite not being formally recognised on the Cabinet Office list, these pre-commencement hearings can play a pivotal role in the appointment process. For example, Charlotte Hogg was recently appointed as the Deputy Governor of the Bank of England. When she completed the questionnaire for the committee she realised that

I had not formally declared my brothers' role at Barclays Bank plc to the Bank. The first time that I formally outlined my brother's role was when I noted it in the questionnaire which I submitted to the committee in advance of my recent hearing.⁵⁸

As a result of this admission, the Bank initiated disciplinary proceedings against her for failure to declare a conflict of interest. She subsequently

⁵⁷ Culture, Media and Sport Committee [Appointment of the Information Commissioner](#) 28 April 2016, HC 990

⁵⁸ Treasury Committee, [Appointment of Charlotte Hogg as Deputy Governor of the Bank of England: Second Report](#), HC 1092 14 March 2017

resigned from the role following a highly critical report from the Treasury Committee.⁵⁹

⁵⁹ Treasury Committee, [*Appointment of Charlotte Hogg as Deputy Director of the Bank of Scotland: Second Report*](#), HC 1092, 14 March 2017

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