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IMPROVING PARLIAMENTARY SCRUTINY OF PUBLIC APPOINTMENTS

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Preface and credits

Like most Constitution Unit projects, this has been a team effort. It was led by Robert Hazell, working with Peter Waller, a member of the original team who conducted our first review of pre-appointment scrutiny in 2008-09; and ably supported by three exceptional young researchers, Turan Hursit, Harmish Mehta and Qalid Mohamed. Qalid analysed the transcripts of the scrutiny hearings; Turan continued that analysis, plus analysis of media coverage of those hearings; and both Turan and Harmish helped to conduct the interviews. We have all contributed to writing this report.

We owe special thanks to all those who kindly helped with the project: in particular the Commissioner for Public Appointments Sir David Normington and his successor Peter Riddell, and Sue Gray and the Public Appointments team in the Cabinet Office. Particular thanks go to the 25 people who kindly gave up their time to be interviewed. They included select committee chairs, members and staff, the candidates who appeared before them, and the headhunters who helped to recruit them. Their quotations, suitably anonymised, have helped to bring the report alive. We should also thank Andrew Kennon and Adam Evans, who kindly invited us to a private seminar they organised with 14 committee clerks to discuss pre-appointment scrutiny in July 2016.

Robert Hazell

Constitution Unit, UCL

July 2017

Executive summary

1. Within a few days of Gordon Brown becoming Prime Minister in 2007, the government published a Green Paper, *The Governance of Britain*.¹ It included a commitment to systematise select committee scrutiny of senior public appointments, by the introduction of ‘pre-appointment scrutiny hearings’.
2. In February 2010 the Constitution Unit published a report on the first 20 pre-appointment hearings.² This report re-visits the topic, by studying the 71 hearings that took place between February 2010 (the publication date of the Unit’s earlier report) and September 2016. We read all the transcripts of committee hearings and their reports, and interviewed committee chairs, clerks, candidates and headhunters.
3. Around 50 top public appointments are now subject to pre-appointment scrutiny. Select committees can question the government’s preferred candidate, but have no power of veto. In 2011 the Commons Liaison Committee suggested that these appointments be divided into three categories, with varying degrees of scrutiny. The government rejected this three-tier approach, but agreed to provide committees with more information about the recruitment process. This closer co-operation was reflected in revised guidelines issued in 2013 by the Cabinet Office and House of Commons Liaison Committee.
4. Concerns had originally been expressed that pre-appointment scrutiny might deter good candidates, that committees might ask inappropriate questions, and politicise the appointments process. We wanted to test if these concerns have been realised. We set out first to establish the purpose of pre-appointment hearings: is it to scrutinise the recruitment process; the suitability of the preferred candidate; or their initial priorities once appointed? We then asked how effective pre-appointment hearings are in fulfilling these different purposes; what is the impact of a negative report; and how closely the committees observe the Liaison Committee guidelines.
5. We found that committees do observe the guidelines, and rarely ask inappropriate questions. In our analysis almost 90 per cent of questions were judged to be appropriate, and less than 5 per cent to be irrelevant, aggressive or politicised. Committees rarely divided on straight party political lines. The main purpose of pre-appointment hearings was to test the suitability of the preferred candidate, and secondly to discuss their initial priorities; only in nine out of the 71 hearings did the committee question aspects of the recruitment process. The preferred candidate was not best placed to defend that; a better witness would have been the appointing minister.

¹ *The Governance of Britain*, Cm 7170, July 2007, para 76.

² UCL Constitution Unit, ‘An Evaluation of Pre-Appointment Hearings’, 9 February 2010, www.ucl.ac.uk/constitution-unit/research/consultancy/consultancy-projects/PASreport/

6. Negative reports do have an impact. Since 2010 there have been seven pre-appointment hearings which have called appointments into question. In four cases, the candidate received a negative report from the committee; of these four, one was not appointed, two were appointed nonetheless and one withdrew. In a fifth case, a candidate withdrew following the pre-appointment hearing, in anticipation of a negative report. In a sixth case, the committee persuaded the government to run a competition, which led the government's nominee to withdraw. In a seventh case, comments made by the candidate during his pre-appointment hearing were significant factors in a subsequent decision to resign.
7. Our study gained added topicality with Sir Gerry Grimstone's 2016 review of public appointments. From January 2017, ministers have chosen all members of the interview panel, including the ISPM, though only after consultation with the Commissioner for Public Appointments. Ministers will also have the power to appoint someone who had been judged unappointable, or decide to dispense with a competition and just appoint their favoured candidate. In such cases the Commissioner must be consulted; the Commissioner may in turn decide to inform the relevant select committee.

Our conclusions

8. Pre-appointment hearings continue to be of value. Select committees have a significant influence over appointments, but do not ultimately have a power of veto. That accords with the established balance of power between select committees and the departments they scrutinise.
9. Select committees' influence is real. Candidates have not been appointed as a result of their hearings, and others have been forced to resign, so they are far from toothless. And pre-appointment scrutiny does help to deter ministers from making unsuitable appointments or exercising naked political patronage. We found no evidence that pre-appointment hearings deter good candidates from applying.
10. The changes flowing from the Grimstone review may require the role of select committees to change. The new rules give ministers more scope to make appointments outside the rigorous requirements for open and fair competition, and reduce the veto powers of the Commissioner for Public Appointments. It does not follow that ministers will abuse the new rules by making appointments on political grounds. But select committees will need to keep a close eye on all public appointments in their area and be ready to hold inquiries whenever the Commissioner raises concerns.
11. Committees should no longer be restricted to scrutiny of the top 50 appointments on the Cabinet Office list. That leads to needless scrutiny of some appointments in the top 50, while other appointments might be of greater concern. If the Commissioner sounds the alarm, committees should be able to respond by summoning the minister or permanent secretary to explain why they have bent the rules. This may happen with one of the top 50

appointments, or one falling outside. But even where the Commissioner is not concerned, it should be for the committees to decide which appointments merit scrutiny.

12. This would also give committees greater control over their workloads. At the start of a parliament - or at the start of each session - each committee should discuss its scrutiny role in relation to public appointments, how much time it wants to devote to it, which posts are of particular interest, and how much it is willing to delegate to the chair and the clerk. Committees need not be prisoners of the Cabinet Office list: Liaison Committee guidelines recognise that committees may go wider, but only the Treasury Committee has regularly done so. Other committees could be bolder in following its example.
13. There are also a few appointments which deserve enhanced scrutiny. This can take a variety of forms, from the chair of the select committee sitting on the appointment panel, to the committee being given an effective or formal veto, to the appointment being approved by a resolution of the House of Commons. Over time more of the major constitutional watchdogs will become subject to enhanced scrutiny of this kind.

1. A history of pre-appointment scrutiny

The Governance of Britain

- 1.1 When Gordon Brown became Prime Minister in the summer of 2007 he issued within days a Green Paper on *The Governance of Britain* (Cm 7170) setting out his vision for a wide-ranging programme of constitutional reforms. In the event few were implemented; but one of the more significant was one of the least noticed at the time, a plan to give select committees a stronger role in scrutinising senior public appointments:

...the Government nominee for 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.³

- 1.2 Although a few such hearings had started to happen before 2007, the Green Paper triggered a move towards systematisation. There followed a year of negotiation between government and parliament, in which the Cabinet Office opened with a low bid of 30 positions which would be subject to pre-appointment scrutiny. The House of Commons Liaison Committee⁴, comprising the chairs of all Commons select committees, responded with a list of some 80 positions, and eventually they agreed on a list of just over 50 positions which would be subject to the new procedure. The first pre-appointment hearings started in June 2008, and by the end of the Brown government in May 2010 select committees had held some 20 scrutiny hearings. By the end of the coalition government in May 2015 there had been 76 hearings, before 17 different select committees: almost all were involved, although some much more frequently than others, and pre-appointment hearings were taking place on average at the rate of one a month.

Figure 1: Number of Hearings held by each House of Commons select committee, February 2010 to September 2016

Select committee	Number of hearings conducted
Public Administration ⁵	12

³ *The Governance of Britain*, Cm 7170, July 2007, para 76.

⁴ With the exception of the Joint Committee on Human Rights, all Committees referred to in this report are House of Commons select committees, unless otherwise specified.

⁵ This includes the Public Administration Select Committee (PASC, 2005 to 2015) and its successor, the Public Administration and Constitutional Affairs Committee (PACAC, 2015 to date), and the Political and Constitutional Reform Committee (PCRC), which existed for just one Parliament, from 2010 to 2015. All three committees primarily scrutinised the responsibilities of the Cabinet Office.

Select committee	Number of hearings conducted
Justice	10
Health	7
Education	6
Science and Technology	6
Culture, Media and Sport	5
Environment, Food and Rural Affairs	5
Communities and Local Government	4
Treasury	3
Work and Pensions	3
Business, Innovation and Skills	2
Energy and Climate Change	2
International Development	2
Joint Committee on Human Rights ⁶	2
Home Affairs	1
Defence	1
Total	71⁷

Constitution Unit evaluation in 2009

1.3 Right at the start in 2008 the Commissioner for Public Appointments, Janet Gaymer, expressed a series of important reservations: that pre-appointment hearings might deter good candidates; politicise the appointments process; lengthen the process; that

⁶ This committee's membership spans both the House of Commons and the House of Lords.

⁷ This is the total number of hearings held between 2010 and 2016 inclusive. In 2008 and 2009 there were 19 previous hearings, so that the grand total to end 2016 is 90 hearings.

committees would ask inappropriate questions; and ministerial accountability for appointments would be changed.⁸

1.4 In the light of these concerns, and because the new procedure involved a significant new departure for the House of Commons, the Constitution Unit undertook an evaluation of the first 20 pre-appointment hearings held from June 2008 to December 2009, in a study which was jointly funded by the Liaison Committee and the Cabinet Office. We interviewed over 60 people: the candidates, select committee chairs, members and clerks, civil servants and recruitment consultants who specialised in public appointments. The Unit's report was published by the Liaison Committee in February 2010.⁹ Our main findings were that:

- parliamentarians found the new approach frustrating and had no confidence that the government would take a negative recommendation seriously, and many wanted to be able to consider a wider range of candidates, or have a power of veto;
- the majority of candidates supported the hearings and felt they were beneficial, as well as justified on democratic grounds, and told us that in the event of a negative report, they would have probably decided not take up the appointment;
- departmental officials were broadly neutral, being more focussed on the additional processes involved and the lengthening of the timetable;
- search consultants were mildly negative. Their initial concerns that the new system would deter candidates had not been realised, but there were residual concerns of a longer term deterrent effect.

1.5 Our conclusions in that initial study were that:

- there had been a positive benefit from the new approach in terms of democracy and transparency;
- there had been no significant deterrent effect to good quality candidates;
- the new system tended to favour candidates with previous experience of the public sector; but there were strong pressures favouring such candidates already;
- it was wrong to assume that negative reports would never have any impact, based solely on the fact that in the one case so far, the candidate had nevertheless been appointed; and

⁸ Public Administration Select Committee, *Parliament and public appointments: Pre-Appointment Hearings by select committees* HC 152, 16 January 2008, Ev 16-18.

⁹ UCL Constitution Unit, 'An Evaluation of Pre-Appointment Hearings', 9 February 2010, www.ucl.ac.uk/constitution-unit/research/consultancy/consultancy-projects/PASreport.

- there was an inherent tension between the formality of the public appointment recruitment processes, with their high priority on consistent procedures, and the informality of committee hearings which were not constrained in the same way.
- 1.6 In the final chapter of our report we offered a range of options for the Committee to consider:
- greater involvement of committees in public appointments, as many parliamentarians wished;
 - continuing the current approach, with modest changes and improvements;
 - stepping back, making hearings post- rather than pre-appointment, thus removing some of the tensions; and
 - parliament having greater involvement in a subset of the most significant appointments.

Review by the Commons Liaison Committee in 2011

- 1.7 In March 2011 the Institute for Government published *Balancing Act: The Right Role for Select Committees in Public Appointments*.¹⁰ The report recommended that the list of public appointments subject to parliamentary scrutiny should be reviewed against a set of clearer criteria, with variable geometry so that those posts which scored more highly should be subject to more stringent parliamentary scrutiny. For an ‘A list’ of the top 25 or so public appointments, there should be an effective veto power granted to parliament over appointment, and also against dismissal from such posts. The minister should be required to appear before the relevant select committee in the event that the committee had concerns, with the matter being referred to the House for resolution if agreement was not forthcoming. The A list included economic regulators, constitutional watchdogs, public service and utility regulators and independent inspectorates. For a second tier of public appointments they recommended a continuation of the current pre-appointment hearing system, but again with an expectation that the minister would appear before the committee to explain his or her decision, in the event of disagreement.
- 1.8 This suggestion for variable geometry was reflected six months later in a report of the Liaison Committee in September 2011, which sought to divide the list of appointments into three different categories: first tier posts should require a joint appointment by government and parliament; second tier posts should be subject to an effective veto; and for posts in the third tier, a pre-appointment hearing should be at the discretion of the committee.¹¹ The first tier posts were all constitutional and ethical watchdogs: the Parliamentary Ombudsman, Chair of the Statistics Authority, Information Commissioner,

¹⁰ Institute for Government, *Balancing Act: The Right Role for Parliament in Public Appointments*, March 2011.

¹¹ Liaison Committee, *Select Committees and Public Appointments* HC 1230, 4 September 2011.

Chairs of the House of Lords Appointments Commission and Judicial Appointments Commission, First Civil Service Commissioner, Commissioner for Public Appointments, Chair of the Committee on Standards in Public Life, and of the Equality and Human Rights Commission. The Committee also recommended greater consultation with select committees at the start of the recruitment process on the definition of the post and the criteria for selection; and asked for more information to be provided to committees in advance of hearings about the field of candidates from which the preferred candidate had been selected. It also suggested that it might be appropriate in some cases for the chair of a committee to discuss privately with the minister any reservations the committee might have about a candidate before issuing its report and before the minister proceeded to a decision. The committee also recommended that a single consolidated guidance document should be produced jointly by the Cabinet Office and parliament.

Cabinet Office and Liaison Committee issue revised guidelines

- 1.9 The government rejected the Liaison Committee's three-tier approach, but on other procedural matters has been more accommodating. Although it did not go along with the Liaison Committee's wish to publish joint guidelines, it did agree to consult committee chairs at the start of each recruitment exercise about the job description and person specification, and to provide select committees with details of the competition, in terms of the number of applications, and the number shortlisted and interviewed; but without identifying anyone other than the government's preferred candidate. In a carefully choreographed exercise in November 2013, the Cabinet Office and the Liaison Committee issued revised guidelines, which contained a lot of agreed and overlapping material.¹²
- 1.10 The Cabinet Office guidance includes a revised list of appointments that should be subject to a pre-appointment hearing. The guidance states that additions and 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 hearings are discretionary. Equally, nothing in the guidance prevents a committee inviting or summoning any individual to give evidence, so that committees can range beyond the 'top 50' appointments if they wish to do so. The Treasury Committee has done so routinely.¹³ Other committees have only occasionally done so: the Foreign Affairs Committee held a pre-appointment hearing with the government's nominee to be High Commissioner to Malawi in 2008, and the Culture, Media and Sport Committee did so with the preferred candidate for Chair of the BBC Trust in March 2011 and the Chair of S4C in May 2011.

¹² Cabinet Office, *Cabinet Office Guidance: Pre-Appointment Scrutiny by House of Commons select committees*, 14 November 2013; Liaison Committee, *Guidelines for select committees holding Pre-Appointment Hearings*, 27 November 2013.

¹³ See para 9.15.

1.11 After this flurry of activity, with reports from the Liaison Committee in 2010, 2011, 2012 and 2013, it has issued no further reports on pre-appointment scrutiny, and the 2013 guidelines remain in place. It might therefore be thought that the system had settled down. But around the fringes parliament had been chipping away in seeking greater control over public appointments, and in some cases a veto. In 2010 the Chancellor of the Exchequer had announced that the appointment and dismissal of the top staff in the new Office for Budgetary Responsibility would require the approval of government and parliament, and this was enshrined in the Budget Responsibility and National Audit Act 2011. In 2011 the Justice Secretary agreed to accept the Justice Committee's recommendation on the government's preferred candidate for the post of Information Commissioner, thus giving the Committee an effective veto. After the withdrawal of the preferred candidate for the Chair of the UK Statistics Authority in June 2011, the appointment panel was reconstituted to include the Chair of the Public Administration and Constitutional Affairs Committee (PACAC). In early 2011, it was agreed that the selection process of the Parliamentary Ombudsman would be led by the House of Commons Service rather than the Cabinet Office, 'given the parliamentary nature of the post', albeit 'in close co-operation' with government and with permanent secretaries on the interview panel.¹⁴ Dame Julie Mellor was the first Parliamentary Ombudsman appointed under the new procedure.

Matthews and Flinders' 2015 critique

1.12 These developments led two academic commentators, Felicity Matthews and Matt Flinders, to express concern that parliament was pressing for a move from *voice* to *choice* over public appointments: from its traditional role of scrutiny, to becoming a joint decision maker. They summarised their argument as follows:

select committees have become increasingly willing to publicly challenge the appointment of the Government's preferred candidate (activism). This has resulted in further unintended consequences, as select committees have failed to focus solely on independence and professional competence and have instead engaged in political point-scoring (aggression). In turn, the highly public and increasingly partisan nature of pre-appointment scrutiny (re-politicisation) has served to discourage involvement in public life and risks negatively impacting on attempts to improve the diversity of public appointments (deterrence). This has therefore promoted critical questions regarding the desirability of an extra layer of inherently political scrutiny within an otherwise independently regulated process (added-value).¹⁵

1.13 These were serious charges, expanded on in the remainder of the article, which criticised the 'increasingly partisan and adversarial nature of pre-appointment hearings', and reported a 'qualitative shift in the tone and nature of hearings, which are replete with

¹⁴ Public Administration Select Committee, *Pre-Appointment Hearing for the post of Parliamentary and Health Service Ombudsman* HC 1220-I, 8 July 2011, Appendix 2.

¹⁵ Felicity Matthews and Matthew Flinders, 'The watchdogs of "Washminster" – parliamentary scrutiny of executive patronage in the UK', *Commonwealth & Comparative Politics* 53:2 (2015), {INSERT FLINDERS PAGE NOS}.

examples of committees engaging in inappropriate, even aggressive, cross-examination'.¹⁶ Matthews and Flinders concluded that select committees had become *de facto* veto players; that a deterrent effect was beginning to emerge from highly politicised hearings; and that the relation between the systems of regulation and scrutiny - one independent, one legislative - had been allowed to drift, without explicit consideration of the inter-relations or interface between these two systems.

Revival of interest in public appointments in 2016

1.14 The Constitution Unit had been planning to re-visit the topic of pre-appointment hearings, because with over 70 more hearings by the end of 2016 (listed in Appendix 1) there was much more data available than in our original study; and because more of those hearings had resulted in negative reports, leading to some candidates nevertheless being appointed, but others withdrawing or not being appointed. The time seemed right for a further evaluation, now that the process had been running for eight years, to test whether pre-appointment scrutiny was working better in the eyes of select committee chairs and members, or whether they still experienced the frustrations reported in our initial study. We also wanted to test the Matthews and Flinders thesis that hearings had become increasingly partisan, adversarial and politicised. And we wanted to re-visit some of the ideas proposed by the Liaison Committee, of dividing senior public appointments into an A, B and C list, with different degrees of parliamentary involvement in appointments to each category; and to re-visit the whole 'top 50' list, since several posts had disappeared, new ones had been created, and select committees might have developed different ideas about their priorities. For example, the Justice Committee had repeatedly recommended, most recently in 2015, that appointment to the posts of HM Chief Inspector of Prisons and HM Chief Inspector of Probation be made by parliament, in line with the Liaison Committee's proposed structure, but without success.¹⁷

1.15 The subject gained added topicality in 2016 because of the controversy generated by the Grimstone review of public appointments, which appeared to remove some safeguards and extend the possibilities for ministerial patronage.¹⁸ Sir Gerry Grimstone had been appointed by the Cabinet Office in July 2015 to review the whole process of public appointments. In his report, published in March 2016, the central recommendation was that ideally public appointments should be concluded within three months. His main concern was to streamline the process, which in his view had become unduly cumbersome and bureaucratic. Sir David Normington, the outgoing Commissioner for Public Appointments had himself introduced streamlining measures which focused the Commissioner's direct regulation on the major positions.¹⁹ Central also to Grimstone's

¹⁶ {FLINDERS PAGE NOS}

¹⁷ Justice Committee, *Appointment of HM Chief Inspector of Prisons and HM Chief Inspector of Probation* HC 624, 27 November 2015, para 8; Justice Committee, *Appointment of HM Chief Inspector of Prisons: Matters of Concern* HC 1136, 20 March 2015, para 14.

¹⁸ Cabinet Office, *Better Public Appointments: A Review of the Public Appointments Process*, March 2016.

¹⁹ Public Administration and Constitutional Affairs Committee, *Better Public Appointments?: The Grimstone Review on Public Appointments* HC 495, 7 July 2016, paras 9-13.

review was his recommendation that in each department the permanent secretary should get a grip on public appointments, with a requirement to certify each year that all appointments had been made in accordance with a new set of Public Appointment Principles.

1.16 But alongside this streamlining and tightening of Whitehall practice went a loosening of the constraints on ministers. The Commissioner for Public Appointments and his independent assessors would no longer be directly involved in appointments, safeguarding the integrity of the process. The Commissioner would instead become an arm's length regulator and whistle blower. In exceptional cases ministers could appoint someone they favoured without running any competition, or appoint a candidate who had been judged unappointable by the selection panel. Such exceptional cases should be notified to the Commissioner; and in every appointment in which ministers had 'a material involvement', the permanent secretary or a senior official should certify that the appointment had been made in accordance with the Public Appointment Principles.

1.17 The government was quick to announce that it accepted all the main recommendations in the Grimstone review, in a detailed statement by the Cabinet Office Minister Matt Hancock MP.²⁰ But behind the scenes the outgoing Public Appointments Commissioner, Sir David Normington, had been fighting a rearguard battle to defend the integrity of the system and the Commissioner's role as its main champion and guardian. In his last weeks in office in March 2016 he sounded a public warning in an article 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.²¹

1.18 PACAC, in its July 2016 inquiry into the Grimstone review, shared Sir David's concern:

We do not question the merits of holding a review of the public appointments process, but this review should have aimed to reinforce the changes made by Sir David Normington. Instead, the Grimstone review threatens to undermine the entire basis of independent appointments. Rather than build on Sir David's work, it effectively demolishes the safeguards built up by Lord Nolan. The Government's adoption of the Grimstone proposals is very worrying. The Government must make significant changes to the proposals in order to robustly deliver a public appointments process in which the public can have confidence.²²

²⁰ 'Government response to Grimstone review', GOV.UK, 11 March 2016, www.gov.uk/government/news/better-public-appointments-review-government-response, last accessed 16 July 2017.

²¹ Sir David Normington, 'Public Appointments are Finally Made on Talent, not Connections', The Independent, 18 March 2016.

²² Public Administration and Constitutional Affairs Committee, *Better Public Appointments?: The Grimstone Review on Public Appointments* HC 495, 7 July 2016, para 85.

- 1.19 It was left to the new Commissioner, Peter Riddell, to negotiate with the Cabinet Office the new set of Public Appointment Principles and Governance Code which will underpin the new system. The new Governance Code for Public Appointments and accompanying Order in Council were eventually published in December 2016. The Commissioner's remit now extends to 322 public bodies and offices, up from 277 in 2015.²³ The new Code is produced by the Cabinet Office, not the Commissioner: it represents a significant shift away from the Commissioner, whose role is reduced, towards ministers, whose discretion is greatly increased. Ministers have always made the ultimate decision, and had the right to be consulted about the job and person specifications, to suggest possible candidates, and to be kept informed about every stage in the process. But the competition was run independently of ministers, in a process overseen by the Commissioner, with the panel being chaired by a Public Appointments Assessor chosen by the Commissioner; in future that role will be performed by an ISPM chosen by the minister.
- 1.20 The Commissioner will be consulted about the selection of ISPMs, but has no veto. Similarly, the Commissioner has no power to prevent ministers from occasionally doing away with a competition altogether, or appointing someone judged to be 'below the line' by the panel. However, in protracted negotiations about the draft Code, Peter Riddell was able to secure several important concessions. Most importantly, the Public Appointment Principles will retain the principle of fairness, on which the Commissioner can rely when assessing competitions and exemptions from competitions. Instead of the Commissioner merely being notified *post hoc* of cases when ministers want an exemption from the normal process of competition, or when they want to appoint someone deemed to be below the line, they will have to consult the Commissioner in good time before an announcement is made to allow him to express his views. The outcomes of such consultations will appear on the Commissioner's website. In reserving the right to express his views the new Commissioner explicitly envisaged that, if consultation procured no agreement, he would be sounding a warning to the relevant select committee:

We will have, in particular, to see how consultation by ministers works, as opposed to the present requirement for the Commissioner to give his consent. The changes I have negotiated will permit a two stage process of, first, private consultation and discussion with departments; and, then second, if no agreement can be reached, I reserve the right to express my doubts publicly and to inform the relevant Commons Select Committees.²⁴

²³ Public Appointments Order in Council 2015, 15 July 2015; Public Appointments Order in Council 2016, 13 July 2016. At the time of writing, a further order is expected in 2017 which will respond to the changes in government machinery introduced by the incoming Prime Minister in 2016, and may alter the Commissioner's remit.

²⁴ Peter Riddell, 'Commissioner's Blog', 16 December 2016, publicappointmentscommissioner.independent.gov.uk/news/commissioners-blog-16-december-2016/, last accessed 16 July 2017.

- 1.21 In keeping with the shift from hard to soft controls on the public appointment system, the Cabinet Office website now houses a publicly-available tracker of public appointment competitions.²⁵ It went live in December 2016 and became fully populated in early 2017.
- 1.22 As of March 2017, the tension surrounding public appointments has not dissipated. PACAC registered its dissatisfaction with the government response to the Committee's July 2016 inquiry and continued concerns about the government's control of the Governance Code and refusal to review the Cabinet Office list.²⁶ The Committee on Standards in Public Life, which had also responded critically to the Grimstone review²⁷, intends to 'maintain a close interest'.²⁸ The new regime will be watched anxiously.
- 1.23 Nonetheless, other circumstances loom large. The 2017 general election led to a six-month pause in pre-appointment hearings until select committees were up and running again in the new parliament. It also led to some loss of institutional memory. The most significant loss is Andrew Tyrie, who has stepped down after seven years of chairing both the Liaison Committee and a vanguard Treasury Committee. In a parliament dominated by Brexit, with intense scrutiny of the negotiations and the UK's future plans, pre-appointment scrutiny may find itself squeezed by more important scrutiny tasks.
- 1.24 Our study looks only at the role and effectiveness of select committees in scrutinising public appointments, and not at the wider system. But to the extent that the role of the Commissioner is weakened, it will fall to select committees to strengthen their role, and themselves become stronger scrutineers of the integrity of the appointment process, as well as inquiring into the suitability of individual candidates. One purpose of pre-appointment hearings had always been to scrutinise the recruitment process, but the main focus of select committees was understandably on the suitability of the candidate before them. Post-Grimstone, the balance might need to change. So in framing our own objectives for our new study, one of our main questions to interviewees was to ask them how they would rank the different objectives of pre-appointment scrutiny; and we added a further question, whether the Grimstone review might in future require select committees to change their game.

²⁵ publicappointments.cabinetoffice.gov.uk.

²⁶ 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.

²⁷ 'Submission of evidence by the Committee on Standards in Public Life to Public Administration and Constitutional Affairs Committee Inquiry into the Grimstone Review', GOV.UK, 7 April 2016, www.gov.uk/government/uploads/system/uploads/attachment_data/file/516352/PACAC_sub_Grimstone_Review.pdf, last accessed 16 July 2017.

²⁸ 'Public appointments: CSPL view on PACAC follow-up report', GOV.UK, 10 March 2017, www.gov.uk/government/news/public-appointments-cspl-view-on-pacac-follow-up-report, last accessed 16 July 2017.

2. Research questions

2.1 This chapter sets out our research questions and how they were formulated. Our research questions are as follows:

RQ1. Is the primary purpose of pre-appointment hearings to scrutinise the recruitment process; or the suitability of the preferred candidate; or to discuss their initial priorities once appointed?²⁹

RQ2. Or is the role to scrutinise the quality of ministerial decision making; provide public reassurance that those appointed have been selected on merit; enhance the appointee's legitimacy; and provide public evidence of their independence of mind?³⁰

RQ3. How effective are pre-appointment hearings in fulfilling these different purposes?

RQ4. How much media coverage do pre-appointment hearings attract?

RQ5. How often do committees issue a negative report, or express lesser concerns at the hearing? What is the impact of committee criticism on the government's decision?

RQ5A. How often do select committees express concerns in private correspondence?

RQ6. How closely do select committees follow the Liaison Committee guidelines, in asking questions which are appropriate, relevant, not too hostile?

RQ7. How well do government departments observe the Cabinet Office guidelines, in consulting select committees at the start of a recruitment exercise, and later in giving full details of the interview panel, the numbers of candidates applying, shortlisted and deemed appointable?

RQ8. How much importance do select committees attach to pre-appointment scrutiny? How useful or effective do select committees think they are?

RQ9. How could the system of pre-appointment scrutiny be improved?

2.2 In carrying out this project, we adopted essentially the same approach as in our initial study in 2009. We set out to evaluate the effectiveness of pre-appointment hearings. To assess their effectiveness, we needed first to identify what purposes they were intended to

²⁹ These three objectives are taken from *The Governance of Britain*, Cm 7170, July 2007, para 76.

³⁰ These four objectives are taken from, 'Purpose and objective of pre-appointment hearings', in Liaison Committee, *Guidelines for select committees holding Pre-Appointment Hearings*, 27 November 2013, para 3.

achieve. **RQ1-RQ2**, aimed at identifying the purposes of pre-appointment hearings, are inevitably overlapping. They were deliberately framed to reflect both the government's and parliament's objectives. These objectives are outlined in the 2007 *Governance of Britain* Green Paper, and the Liaison Committee's 2011 guidance respectively. While the government's interpretation takes the form of three broad objectives, parliament gives four, rather more detailed ones.

- 2.3 **RQ3-RQ4** aimed to evaluate the effectiveness of pre-appointment hearings, as was a focus of our initial study in 2009.
- 2.4 **RQ5-RQ5A** specifically sought to study the impact of pre-appointment scrutiny when a select committee issues a negative report, or expresses reservations.
- 2.5 **RQ6-RQ7** explore the effectiveness of the guidelines in controlling errant behaviour by select committees (one of Janet Gaymer's early concerns, shared by Matthews and Flinders); and in ensuring efficient co-operation by government departments in providing full and timely information.
- 2.6 **RQ8** sought to understand select committees' attitudes towards pre-appointment scrutiny.
- 2.7 **RQ9** sought, in light of all of our findings, to identify ways in which pre-appointment scrutiny might be improved.

3. Methodology

Examination of literature

- 3.1 We adopted a similar set of research methods to our earlier study. We began by reading all the official literature on pre-appointment scrutiny, which is listed in the Bibliography. This includes on the parliamentary side, successive reports of the Commons Liaison Committee, including the Liaison Committee's guidance; and specific reports on public appointments from the Public Administration Select Committee (PASC), and later PACAC. On the government side, this included statements by Cabinet Office Ministers, responses to Liaison Committee reports, Cabinet Office guidance to government departments, reports by the Commissioner for Public Appointments, the Grimstone review of public appointments, and the government's response.

Analysis of transcripts and reports

- 3.2 Next, we conducted a systematic analysis of the transcripts, and subsequent committee reports, of the 71 pre-appointment hearings that took place between February 2010 (the publication date of the Unit's first report on pre-appointment hearings³¹) and September 2016. In analysing each hearing, we asked a series of questions derived from our research questions above. What is the balance between scrutinising the recruitment process, assessing the suitability of the preferred candidate, and discussing their initial priorities? Is the committee's questioning appropriate, relevant, not too intimidating? How often do committees split in deciding whether to endorse a candidate, and what happens when they do? How much publicity do the committee hearings and their reports attract, in the mainstream media or specialist press? Our full analysis of the pre-appointment scrutiny was collected in a large table published on the project web page, and our findings are summarised in Chapter 4.³²
- 3.3 For each hearing we recorded the committee members present, and the number of questions asked, and then analysed separately how many were appropriate, irrelevant, aggressive or politicised questions. Categorising questions into different types enabled us to evaluate the overall tone of hearings, and allowed us to analyse the extent to which committees follow the Liaison Committee guidelines in asking questions which are relevant, appropriate and not too hostile.
- 3.4 We considered to be appropriate any question relating to the candidate's competence, motivations, or substantive knowledge of the relevant area. 'Irrelevant' questions were those that did not rationally fit into the direction of the conversation, and the response to

³¹ UCL Constitution Unit, 'An Evaluation of Pre-Appointment Hearings', 9 February 2010, www.ucl.ac.uk/constitution-unit/research/consultancy/consultancy-projects/PASreport.

³² {Website address to be inserted}

which could not have assisted the committee in judging the abilities of the candidate. We defined as ‘aggressive’ any questions that were strongly worded, persistent, or clearly intended to make the candidate uneasy.

- 3.5 Finally, we classified as ‘politicised’ any questions asking the candidate directly about their political views on an issue, whether the candidate’s views align with those of the governing political party, and questions about past and/or present political affiliations. We did not consider to be ‘politicised’ any questions assessing the candidate’s views on controversial policy issues, as most roles subject to the pre-appointment scrutiny process require the adoption of views that may in some circumstances be politically controversial.
- 3.6 We also analysed any divisions between committee members on a candidate and the reasons for such disagreement. Of course, no coding system is infallible. We had to exercise judgement in categorising the hearing questions, some of which fell into more than one category. In cases of doubt, we cross-checked with other members of the team.

Interviews

- 3.7 As in our initial study, we conducted 25 interviews with those involved in pre-appointment scrutiny. This included interviews with select committee chairs, members and clerks; with candidates; recruitment consultants; the Commissioner for Public Appointments; and the Cabinet Office Public Appointments Team. In July 2016 the House of Commons kindly organised a half-day seminar for us with 14 committee clerks, to discuss their varied experience of pre-appointment scrutiny.

Analysis of media coverage

- 3.8 We also analysed the amount of media coverage attracted by each pre-appointment hearing. We searched for coverage online. Using the search formula: ‘[candidate’s name], [role], [organisation], pre-appointment hearing’ (for example, ‘David Prior, Chair, Care Quality Commission, pre-appointment hearing’), we searched for the number of local and national media entries on Google relating to the appointment or pre-appointment scrutiny process. We did not limit the number of Google search pages surveyed, counting every entry until the final search page. We divided each candidate/hearing process into three categories of media coverage: minimal, moderate, or significant. Candidates with ‘minimal’ coverage had fewer than 3 non-mainstream media entries. ‘Moderate’ coverage was used to describe either 3 - 5 media entries or at least 1 mainstream media entry. Anything with 6 or more media entries, or with at least 2 mainstream media entries, was categorised as ‘significant’. ‘Mainstream’ media was defined as national media with a high readership (for example, the BBC, The Guardian, The Times).

4. Analysis of committee hearings and reports

- 4.1 This chapter reports on our analysis of the transcripts, and subsequent committee reports, of the 71 pre-appointment hearings that took place between February 2010 (the publication date of the Unit's first report on pre-appointment hearings³³) and September 2016.³⁴
- 4.2 Our purpose in analysing hearing transcripts and reports was to find answers to five of our main research questions. First, is the primary purpose of pre-appointment hearings to scrutinise the recruitment process; or the suitability of the preferred candidate; or to discuss their initial priorities once appointed (RQ1-RQ2)? Second, how effective are pre-appointment hearings in fulfilling these different purposes, and what is the impact of committee criticism or negative reports (RQ5-RQ5A)? And third, how closely do select committees follow the Liaison Committee guidelines in asking questions which are appropriate, relevant and not too hostile (RQ6)?

General observations

- 4.3 In general, committee reports on pre-appointment hearings have been brief, averaging 10 - 20 pages. Reports have normally been consistent in providing an introduction to the organisation and/or role; an outline of the appointment process, including the job description; details of the preferred candidate; the main areas explored in questioning at the hearing; and the committee's view on the suitability of the candidate.
- 4.4 In cases where committees have endorsed candidates, they have usually stated that they are content to endorse the candidate in two to three lines, without elaborating reasons for their decision. A common phrase across reports has been that the committee is 'satisfied that the candidate has the professional competence and personal independence' required for the role.³⁵
- 4.5 In three of the four cases where committees issued a negative report, they were more outspoken about their reasons, though these typically still spanned only one or two paragraphs. The Justice Committee report on Diana Fullbrook suggested that most successful inspectors in the criminal justice system had come from outside the system, and

³³ UCL Constitution Unit, 'An Evaluation of Pre-Appointment Hearings', 9 February 2010, www.ucl.ac.uk/constitution-unit/research/consultancy/consultancy-projects/PASreport.

³⁴ See Appendix 1 for a full list of hearings.

³⁵ See, for example, Environment, Food and Rural Affairs Committee, *Pre-Appointment Hearing: Chair of The Water Services Regulation Authority (Ofwat)* HC 471-I, 6 July 2012; Culture, Media and Sport and Welsh Affairs Committees, *Pre-Appointment Hearing with the Government's Preferred Candidate for Chairman of the SAC Authority* HC 1061-I, 26 May 2011.

expressed disappointment that there was ‘no indication that external candidates had been sought or placed on the shortlist’.³⁶ The Business, Innovation and Skills Committee, in its report on its pre-appointment hearing with Leslie Ebdon, made a more obvious effort to match its reasons for non-endorsement with the prescribed selection criteria, though reasons were once again kept short.³⁷ The Education Committee provided the most extensive reasoning of any negative report following its hearing with Amanda Spielman, listing five detailed reasons, some backed with examples of answers given by the candidate.³⁸ This contrasted starkly with the report of the Health Committee on Dominic Dodd’s suitability to be Chair of Monitor, which simply stated that the Committee ‘[did] not think Mr Dodd [was] the right person to undertake [a] difficult transition’.³⁹

- 4.6 More active and experienced committees (in particular, the Justice and Education Committees) have generally been more extensive in their reasoning for endorsing or not endorsing a candidate. Most committees have been outspoken in two sets of circumstances. The first is where a committee has identified what it perceives as procedural failures in the governmental selection process. The second, more common circumstance is where there has been disagreement with governmental changes to a role (discussed below: see paragraph 4.28).

Areas of questioning

- 4.7 Questioning in pre-appointment hearings has covered seven issues to varying degrees. The first of these is the candidate’s **reasons for applying**. This is a common question to open the hearing, often coupled with asking how the candidate learned of the vacancy, to probe if the candidate was headhunted, and if so by whom.
- 4.8 The second area of focus is the candidate’s **suitability for the role**. Questions address candidates’ skills, past experience (and the transferability of this experience to the new role), management and/or leadership experience, and ability to deal with the media. This has been a central feature of all hearings, with competence-based questioning in 70 out of 71 hearings.⁴⁰ At the low end of this spectrum is the Justice Committee hearing with Stephen Green for the position of Chair of the Office for Legal Complaints, in which the candidate was asked only four skills-based questions.⁴¹ At the other end are hearings conducted by the Science and Technology Committee, with dozens of questions focused

³⁶ Justice Committee, *Appointment of HM Chief Inspector of Probation* HC 1021, 21 June 2011, para 8.

³⁷ Business, Innovation and Skills Committee, *Pre-Appointment Hearing: Appointment of the Director of the Office for Fair Access* HC 1811, 8 February 2012.

³⁸ Education Committee, *Appointment of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills* HC 170, 7 July 2016, pages 7-8.

³⁹ Health Committee, *Appointment of the Chair of Monitor* HC 744, 24 October 2013, para 4.

⁴⁰ The one exception was the Education Committee hearing in November 2014 with Anne Longfield for the position of Children’s Commissioner for England, during which the candidate was questioned at length about options for reform in children’s matters: Education Committee, *Pre-Appointment Hearing: Children’s Commissioner for England* (oral evidence) HC 815, 11 November 2014.

⁴¹ Justice Committee, *Pre-Appointment Scrutiny hearing: Chair of the Office for Legal Complaints* (oral evidence) HC 916, 10 December 2013.

on the skillset of the candidate. The more politically divisive a position has been, the more a committee has tended to focus on policy-based questioning rather than on the candidate's suitability for the role.

- 4.9 The third area of questioning is about the **nature of the role** - specifically, whether the role should be reformed or its ambit widened or narrowed. This was particularly evident in the case of a new role. So PASC questioned Sir David Normington on whether it was appropriate to merge the roles of First Civil Service Commissioner and Commissioner for Public Appointments.⁴² And its successor, PACAC, asked Keith Conradi on the best way to run the newly-created Healthcare Safety Investigation Branch.⁴³ A second line of questioning about the role focuses on the relationship with the government. A good example of this was Nicholas Hardwick being asked whether he felt that the Prison Inspectorate needed to be fully independent.⁴⁴
- 4.10 The fourth common area of questioning is about the **policy environment**. It spans the candidate's perception of existing challenges facing a particular organisation and their vision for the role, priorities once in office, and intended relationship with the government and/or partner bodies. Some committees engage candidates in generic discussion about the large-scale problems facing an organisation. Others have preferred more detailed discussion about candidates' initial priorities, including suggestions of what the candidate's priorities should be.
- 4.11 Fifth, committees have questioned candidates about their **independence**: primarily from the government; but second, from other conflicts of interest. Candidates have been asked about party affiliations (including any funding of political parties); and their specific policy views where these are perceived as being too closely aligned with those of the government (in particular, where the role is with an independent regulatory body). One example is the 2010 Health Committee hearing for the position of Chair of the Care Quality Commission, in which David Prior was asked five questions on whether his political background (as former Conservative deputy Chair) would hinder his work.⁴⁵ Andrew Sells was similarly questioned by the Environment, Food and Rural Affairs Committee about his affiliations with the Conservative Party, though questioning was light-touch considering the candidate's past funding of the party and the significant media attention given in specialist environment journals to his political ties.⁴⁶ Glenys Stacey was questioned at length about whether she could maintain her independence from the government after being

⁴² Public Administration Select Committee, *Pre-Appointment Hearing For The Dual Post Of First Civil Service Commissioner And Commissioner For Public Appointments* (oral evidence) HC 601-I, 16 November 2010.

⁴³ Public Administration and Constitutional Affairs Committee, *Pre-Appointment Hearing: Chief Investigator, Healthcare Safety Investigation Branch* (oral evidence) HC 96, 7 June 2016.

⁴⁴ Justice Committee, *Appointment of HM Chief Inspector of Prisons* (oral evidence) HC 354, 16 March 2010.

⁴⁵ Health Committee, *Pre-Appointment Hearing for Chair of the Care Quality Commission* (oral evidence) HC 807-I, 5 December 2012.

⁴⁶ Environment, Food and Rural Affairs Committee, *Appointment of Chairman of Natural England* (oral evidence) HC 890, 11 December 2013.

telephoned by Michael Gove in advance of the advertisement of her position.⁴⁷ Committees have been quick to pick up on other potential conflicts of interest. For example, during his Hearing for the position of Chair of the Equality and Human Rights Commission, David Isaac came under close scrutiny for his position as a senior equity partner of a law firm conducting significant amounts of business with the government.⁴⁸ One civil servant and another ex-civil servant were also asked to demonstrate how they would maintain their independence in light of their previous government service.⁴⁹

- 4.12 The sixth area of questioning is the **recruitment process**. Candidates were asked about the process in nine hearings. In five of these, the committee enquired how the candidate came across the vacancy - usually, whether or not they were headhunted, and if so, by whom.⁵⁰ Questioning on this area tended to be brief, except where the committee perceived potentially improper governmental influence on the candidate's decision to apply for the position.⁵¹
- 4.13 The seventh area of questioning involves **practical issues**. Five candidates were asked how they intended to balance their roles with other responsibilities.⁵² Two were questioned on whether the number of days specified in the job description were sufficient.⁵³ Two were

⁴⁷ Justice Committee, *Pre-Appointment Scrutiny of HM Chief Inspector of Prisons and HM Chief Inspector of Probation* (oral evidence) HC 264, 24 November 2015.

⁴⁸ Joint Committee on Human Rights, *Pre-Appointment Hearing: Chair of the Equality and Human Rights Commission* (oral evidence) HC 648, 23 March 2016.

⁴⁹ Public Administration and Constitutional Affairs Committee, *Pre-Appointment Hearing For The Dual Post Of First Civil Service Commissioner And Commissioner For Public Appointments* (oral evidence) HC 601-I, 16 November 2010; Communities and Local Government Committee, *Appointment of the Housing Ombudsman* (oral evidence) HC 877, 16 December 2014.

⁵⁰ Culture, Media and Sport and Welsh Affairs Committees, *Pre-Appointment Hearing with the Government's Preferred Candidate for Chairman of the S4C Authority* (oral evidence) HC 1061-II, 24 May 2011; Communities and Local Government Committee, *Jeremy Newman, the Government's Preferred Candidate for the Chair of the Audit Commission* (oral evidence) HC 533-I, 3 September 2012; Joint Committee on Human Rights, *Equality and Human Rights Commission Pre-Appointment Hearing* (oral evidence) HC 634, 16 October 2012; Science and Technology Committee, *Pre-Appointment Hearing with the Government's Preferred Candidate for Chair of the Medical Research Council* (oral evidence) HC 510-II, 11 July 2012; Justice Committee, *Pre-Appointment Scrutiny of the Chair of the Judicial Appointments Commission* (oral evidence) HC 416, 12 July 2016 (the candidate revealed that he had been approached for the position and was subsequently questioned on who had approached him).

⁵¹ Justice Committee, *Pre-Appointment Scrutiny of HM Chief Inspector of Prisons and HM Chief Inspector of Probation* (oral evidence) HC 264, 24 November 2015; Education Committee, *Appointment of HM Chief Inspector, Ofsted* (oral evidence) HC 1607-II, 1 November 2011; Communities and Local Government Committee, *Pre-Appointment Hearing with the Chair-designate of the Homes and Communities Agency Board* (oral evidence) HC 41, 14 June 2016.

⁵² Justice Committee, *Appointment of the Chair of the Judicial Appointments Commission* HC 770, 7 February 2011; Environment, Food, and Rural Affairs Committee, *Pre-Appointment Hearing: Chair of The Water Services Regulation Authority (Ofwat)* (oral evidence) HC 471-II 2012-13; Environment, Food and Rural Affairs Committee, *Pre-Appointment Hearing for Chair of the Environment Agency* (oral evidence) HC 649, 13 September 2016; Public Administration and Constitutional Affairs Committee, *Pre-Appointment Hearing: First Civil Service Commissioner* (oral evidence) HC 655, 6 September 2016; Justice Committee, *Pre-Appointment Scrutiny of the Chair of the Judicial Appointments Commission* (oral evidence) HC 416, 12 July 2016.

⁵³ International Development Committee, *Appointment of the Chief Commissioner of the Independent Commission for Aid Impact* (oral evidence) HC 551-II, 24 November 2010; Business, Innovation and Skills Committee, *Pre-Appointment Hearing for the Groceries Code Adjudicator* (oral evidence) HC 1011-I, 27 February 2013.

asked whether they would need more staff.⁵⁴ Finally, one candidate was asked whether the pay for her role was excessive.⁵⁵

Hearings criticising appointments

4.14 Since 2010 there have been seven pre-appointment hearings which have called appointments into question. Four of these hearings were followed by a negative report from the committee; in the other three, the pre-appointment hearing had a critical influence on the appointment for other reasons. Each of these cases turned on its own facts, in terms of the individual candidate, the political dynamic of the committee, and the wider political context. Importantly, they indicate that committees are far from toothless, and do not need a power of veto to make their influence felt. The seven cases are set out in Figure 2, and explored below in chronological order.

Figure 2: Pre-appointment hearings which have derailed appointments, 2010 onwards

Candidate	Hearing date	Position	Negative committee report?	Result
Diana Fulbrook	11/05/11	HM Chief Inspector of Probation	Yes	Not appointed
Professor Dame Janet Finch	28/06/11	Chair of the UK Statistics Authority	No	Withdrew anticipating negative report
Professor Leslie Ebdon	02/02/12	Director of the Office for Fair Access	Yes	Appointed
Dominic Dodd	15/10/13	Chair of Monitor	Yes	Withdrew
Philip Dilley	15/07/14	Chair of the Environment Agency	No	Candidate's comments during hearing were significant factor in later resignation

⁵⁴ International Development Committee, *Appointment of the Chief Commissioner of the Independent Commission for Aid Impact* (oral evidence) HC 551-II, 24 November 2010; Business, Innovation and Skills Committee, *Pre-Appointment Hearing for the Groceries Code Adjudicator* (oral evidence) HC 1011-I, 27 February 2013.

⁵⁵ Education Committee, *Pre-Appointment Hearing: Children's Commissioner for England* (oral evidence) HC 815, 11 November 2014.

Candidate	Hearing date	Position	Negative committee report?	Result
Amanda Spielman	29/06/16	HM Chief Inspector, Office for Standards in Education (Ofsted)	Yes	Appointed
Rona Fairhead ⁵⁶	06/07/16	Chair of the BBC Board	No	Did not apply after government persuaded that position would be subject to competition

- 4.15 Diana Fulbrook was the subject of a unanimously negative report supported by all the Conservative members on the Justice Committee: the Lord Chancellor, Kenneth Clarke, felt he had little option but to withdraw her as a candidate, and start a new competition.
- 4.16 Professor Dame Janet Finch withdrew after a gruelling appearance before PASC, before the Committee could issue a negative report. In her words, ‘it became clear that the committee and I have different views about how the job should be undertaken’.⁵⁷
- 4.17 Professor Leslie Ebdon was appointed despite a negative report from the Business, Innovation and Skills Committee.⁵⁸ The committee felt unable to endorse his appointment as it ‘struggled to get a clear picture of [his] strategy for the future of [the Office for Fair Access]’, as it was ‘not convinced by [his] descriptions of the root causes of the obstacles to accessing universities’.⁵⁹ The committee referenced this finding against two of the selection criteria to justify its decision: ‘promote the strengths of the arguments in face of opposition’ and ‘communicate persuasively and publicly, with excellent presentational skills’.⁶⁰
- 4.18 Dominic Dodd was a strong candidate, but fell victim to unfortunate timing when one of the Conservative members on the Health Committee arrived too late to vote. The Department of Health wanted to proceed with his appointment, but he felt that he lacked legitimacy without the support of the select committee, and so withdrew.
- 4.19 Philip Dilley was asked at his pre-appointment hearing how he would respond in times of crisis, such as severe flooding. He responded that it would be important to ‘turn up in your

⁵⁶ This was not formally a pre-appointment hearing, and so not one of the 71 hearings analysed in our study.

⁵⁷ Letter from Dame Janet Finch to Sir Gus O’Donnell, 5 July 2011, published by the Cabinet Office.

⁵⁸ HC Deb 20 February 2012, c609.

⁵⁹ Business, Innovation and Skills Committee, *Pre-Appointment Hearing: Appointment of Director of the Office for Fair Access* HC 1811, 8 February 2012, paras 10-11.

⁶⁰ Business, Innovation and Skills Committee, *Pre-Appointment Hearing: Appointment of Director of the Office for Fair Access* HC 1811, 8 February 2012, para 11.

wellingtons and so on very early on'.⁶¹ In 2016, this fateful commitment became a significant factor in his decision to resign, citing the expectation 'to be available at short notice throughout the year'.⁶²

- 4.20 Amanda Spielman was appointed, despite a report from the Education Committee with the most extensive reasoning of any negative report. The appointing minister's response was similarly extensive, expressing surprise and disappointment at the committee's report.⁶³
- 4.21 Rona Fairhead's hearing in 2016 is noteworthy, though not an ordinary pre-appointment hearing, and therefore not one of the 71 hearings we analysed. Fairhead had already been appointed Chair of the BBC Trust, after a pre-appointment hearing in 2014 (which is one of the 71 hearings analysed). As part of its proposed reform of the BBC, the government announced that Fairhead would transfer sideways into the role of Chair of the new BBC Board.⁶⁴ The Culture, Media and Sport Committee, concerned by the flouting of the normal appointment process, invited Fairhead for what it described as 'in part...a pre-appointment hearing'.⁶⁵ In its ensuing report, the Committee criticised the omission of a competitive process, though it did not comment negatively on Fairhead's suitability for the new role.⁶⁶ When the government accepted the Committee's recommendation to hold a fresh appointment process, Fairhead announced that she would not be a candidate.⁶⁷

Qualified reports

- 4.22 On 13 occasions, the committee also expressed reservations and/or made recommendations to the candidate. One approach is to make the appointment 'subject' to the candidate taking certain actions, for example to avoid conflicts of interest.⁶⁸ The second approach was simply to put forward recommendations without placing limits on the appointment itself. This was far more common, taking place in ten cases. Examples include the Health Committee advising Peter Wyman to spend time in health and care settings at the beginning of his tenure to address his lack of experience in clinical settings;⁶⁹ the Home

⁶¹ Environment, Food and Rural Affairs Committee, *Appointment of the Chair of the Environment Agency* (oral evidence) HC 545, 15 July 2014, Q20.

⁶² Department for Environment, Food and Rural Affairs, 'Environment Agency Chair resigns', GOV.UK, 11 January 2016, www.gov.uk/government/news/environment-agency-chairman-resigns, last accessed 16 July 2017.

⁶³ Letter from Nicky Morgan to Neil Carmichael MP, 7 July 2016, www.gov.uk/government/uploads/system/uploads/attachment_data/file/535873/160707_Letter_Nicky_Morgan_to_Neil_Carmichael_HMCI_appointment.pdf, last accessed 16 July 2017.

⁶⁴ Department for Culture, Media and Sport, *A BBC for the future: a broadcaster of distinction* (White Paper, Cm 9242, 2016) p56.

⁶⁵ Culture, Media and Sport Committee, *BBC White Paper and related issues* (oral evidence) HC 150, 6 July 2016, Q280.

⁶⁶ Culture, Media and Sport Committee, *BBC White Paper and related issues* HC 150, 2 August 2016.

⁶⁷ HC Deb 15 September 2016, col 1056.

⁶⁸ Communities and Local Government Committee, *Pre-Appointment Hearing with the Government's Preferred Candidate for the post of Housing Ombudsman* HC 877, 18 December 2014, para 17; Communities and Local Government Committee, *Pre-Appointment Hearing for the Government's preferred nominee for the Chair of the Homes and Communities Agency Regulation Committee* HC 1612, 2 November 2011, para 19; Women and Equalities Committee, *Appointment of the Chair of the Equality and Human Rights Commission* HC 599, 9 May 2016, paras 28-33.

⁶⁹ Health Committee, *Appointment of the Chair of the Care Quality Commission* HC 641, 4 December 2015, para 4.

Affairs Committee encouraging Tom Winsor to reach out to police forces;⁷⁰ the Work and Pensions Committee welcoming Deep Sagar's relinquishment of other public appointments;⁷¹ and the Justice Committee requiring both Peter Clarke and Glenys Stacey to bring forward detailed strategies for their respective roles within three months of appointment.⁷²

Independence of the candidate

- 4.23 Where committees have identified possible conflicts of interest, they have sometimes prescribed courses of conduct for the candidate to remedy the perceived conflict. For example, the Communities and Local Government Committee, following its hearing with Denise Fowler, recommended that the candidate resign from the Civil Service before taking up her post as Housing Ombudsman in order to maintain independence. The report made the endorsement 'subject' to the resignation.⁷³ In the case of Glenys Stacey and Peter Clarke, the Justice Committee expressed serious concern about the fact that the candidates had been contacted by Michael Gove in advance of official advertisement of the positions.⁷⁴ Michael Gove was advised, in strong terms, not to contact prospective candidates given the particular need for independence in the roles of Chief Inspector of Probation and Chief Inspector of Prisons.⁷⁵
- 4.24 Committees have also pressed candidates to explain how they will remedy an identified conflict of interest. A good example is the hearing of the Joint Committee on Human Rights with David Isaac for the position of Chair of the Equality and Human Rights Commission.⁷⁶ Mr Isaac was questioned at length about specific measures he would undertake within his law firm to ensure that he was isolated from cases potentially impacted by EHRC decisions.

Candidate's knowledge of subject area

- 4.25 Where committees have perceived gaps in a candidate's knowledge of a subject area (particularly in the case of regulator roles), they have on occasion prompted the candidate

⁷⁰ Home Affairs Committee, *Appointment of Her Majesty's Chief Inspector of Constabulary* HC 183-I, 27 June 2012, para 23.

⁷¹ Work and Pensions Committee, *Appointment of the Chair of the Social Security Advisory Committee* HC 904-I, 1 April 2011, para 17.

⁷² Justice Committee, *Appointment of HM Chief Inspector of Prisons and HM Chief Inspector of Probation* HC 624, 27 November 2015, paras 22 and 32.

⁷³ Communities and Local Government Committee, *Pre-Appointment Hearing with the Government's Preferred Candidate for the post of Housing Ombudsman* HC 877, 18 December 2014, paras 3 and 17.

⁷⁴ Justice Committee, *Appointment of HM Chief Inspector of Prisons and HM Chief Inspector of Probation* HC 624, 27 November 2015. At the hearing, there were 34 questions on the issue to Glenys Stacey alone, for which see: Justice Committee, *Pre-Appointment Scrutiny of HM Chief Inspector of Prisons and HM Chief Inspector of Probation* (oral evidence) HC 624, 24 November 2015.

⁷⁵ Justice Committee, *Appointment of HM Chief Inspector of Prisons and HM Chief Inspector of Probation* HC 624, 27 November 2015, para 8.

⁷⁶ Joint Committee on Human Rights and Women and Equalities Committees, *Pre-Appointment Hearing: Chair of the Equality and Human Rights Commission* (oral evidence) HC 648, 23 March 2016.

to take measures to fill these gaps. The best example of this is the Education Committee hearing with Sally Collier for the position of Chief Inspector of Ofqual. The Committee, clearly concerned with the candidate's lack of expertise in education (and specifically, school examinations), recommended that Ms Collier '[take] steps to rapidly acquire the specific professional competence in terms of qualifications and assessment' and hinted at 'further hearings' to follow this up.⁷⁷

Candidate's policy priorities

- 4.26 Committees have sometimes made recommendations to candidates to address certain policy priorities once in office. For example, the Justice Committee, in its hearing with Lord Ajay Kakkar, the preferred candidate for Chair of the Judicial Appointments Commission, highlighted its concerns about the lack of diversity within the judiciary.⁷⁸ The Health Committee, during its hearing with Dame Jo Williams, and in its report, highlighted five specific areas of concern that it felt needed to be addressed by the Care Quality Commission.⁷⁹
- 4.27 Where committee members have clearly disagreed with the direction taken by the government, they have been more forceful in their comments, demanding that the candidate adopts a prescribed response.⁸⁰

Remit and governmental reform of the role

- 4.28 Committees have been most outspoken where they have disagreed with the remit or functions of a role. This criticism has taken four forms, of varying degrees of intensity.
- 4.29 First, there have been cases where committees have made informal suggestions for future reform of a role, building on comments made by the candidate. For example, in its hearing with Nicholas Hardwick for the position of HM Chief Inspector of Prisons, the Justice Committee asked the candidate whether the Inspectorate should be made fully independent and subsequently expressed that it was 'desperately important for the Prisons Inspectorate to be separate and distinct from any other inspectorate.'⁸¹

⁷⁷ Education Committee, *Appointment of the Chief Regulator of Ofqual* HC 822, 20 March 2016, para 14.

⁷⁸ Justice Committee, *Pre-Appointment Scrutiny of the Chair of the Judicial Appointments Commission* (oral evidence) HC 416, 12 July 2016.

⁷⁹ Health Committee, *Appointment of the Chair of the Care Quality Commission* (oral evidence) HC 461-II, 28 March 2012; Health Committee, *Appointment of the Chair of the Care Quality Commission* HC 461-I, 15 September 2010.

⁸⁰ For example, during its hearing with Dame Janet Finch for the position of Chair of the UK Statistics Authority, the Public Administration Select Committee asked fifteen fiercely critical questions on the government's proposed wellbeing index: Public Administration Select Committee, *Pre-Appointment Hearing for the post of Chair of the UK Statistics Authority* (oral evidence) HC 1261-I, 28 June 2011. The chair of the Education Committee was also open about his disagreement with the government over two major policy issues during the Committee's hearing with Anne Longfield: Education Committee, *Pre-Appointment Hearing: Children's Commissioner for England* (oral evidence) HC 815, 11 November 2014, Q40-42.

⁸¹ Justice Committee, *Appointment of HM Chief Inspector of Prisons* HC 351, 18 March 2010.

- 4.30 Second, there are cases where committees have expressed concerns with governmental changes to the body in question. Sir David Normington was asked how he would successfully carry out the combined roles of First Civil Service Commissioner and Commissioner for Public Appointments,⁸² amidst concerns that merging the two would compromise his independence from the Cabinet Office. At Huw Jones’ hearing to be Chair of S4C,⁸³ the Culture, Media and Sport Committee discussed how to reconcile BBC funding with S4C’s editorial independence.
- 4.31 In a number of cases committees have gone further, to prescribe precise courses of future conduct for the candidate, the government, or both. In its report on the hearing with Dr Alison Evans for the role of Chief Commissioner of the Independent Commission for Aid Impact, the International Development Committee made three very specific proposals on the number of remunerated days for the role, the government’s choice of candidates for other Commissioner positions, and who should have ultimate responsibility for choosing the Chief Commissioner.⁸⁴ The Justice Committee made a similarly strong recommendation in its report on the hearing with Nigel Newcomen for the position of Probation Ombudsman for England and Wales, expressing its ‘hopes’ that the government ‘will proceed to put the Ombudsman on a statutory basis at an early opportunity’.⁸⁵
- 4.32 Two further examples demonstrate committee activism in situations where the political landscape was ripe for reform, and where committees may therefore have perceived that they would wield the most influence. The Treasury Committee used its hearing and report with Mark Carney as Governor of the Bank of England to provide very detailed opinions on individual reform proposals for the banking sector. Likewise, PACAC used its report on the hearing with Keith Conradi for his role as Chief Investigator of the Healthcare Safety Investigation Branch to comment on the lack of safeguards to guarantee the independence of the new Branch, set up by Jeremy Hunt to support NHS providers in the conduct of investigations and to conduct investigations of its own.⁸⁶ This followed a report by the committee that strongly condemned the government’s refusal to grant the body full legislative independence. The hearing report reflects and re-emphasises these concerns.⁸⁷
- 4.33 In some cases the committee has indicated that its endorsement may depend on the candidate sharing their views about the nature of the role. During the PASC hearing with Baroness Angela Browning, there was a clear concern that the Advisory Committee on

⁸² Public Administration Select Committee, *Pre-Appointment Hearing For the Dual Post of First Civil Service Commissioner and Commissioner for Public Appointments* (oral evidence) HC 601-I, 16 November 2010.

⁸³ Culture, Media, and Sport Committee and Welsh Affairs Committees, *Joint Pre-Appointment Hearing for the post of S4C Chairman* (oral evidence) HC 1061, 24 May 2011.

⁸⁴ International Development Committee, *Appointment of the Chief Commissioner of the Independent Commission for Aid Impact* HC 741, 11 December 2014, pages 6-7.

⁸⁵ Justice Committee, *Appointment of the Prisons and Probation Ombudsman for England and Wales* HC 1022, 24 May 2011.

⁸⁶ Public Administration and Constitutional Affairs Committee, *Appointment of the Chief Investigator of the Healthcare Safety Investigation Branch* HC 96, 9 June 2016.

⁸⁷ See, in particular, paragraph 19, where the Committee highlighted that it felt that it was of “paramount importance” to the HSIB’s success for it to be independent and represent a credible “safe space”, and page 9, paragraphs 1 and 2, in which the Committee expressed “deep concern” that HSIB “has been established without the necessary primary legislation”.

Business Appointments was a toothless body. Greg Mulholland MP made clear that his decision to endorse or otherwise depended on the candidate's willingness to drive changes in the rules; he missed the subsequent division, but Paul Flynn MP voted against.⁸⁸ Another example is the Education Committee's hearing with Amanda Spielman for the position of HM Chief Inspector of Ofsted. There was clear disagreement between the Committee and the candidate on the remit of the role (for example, on whether Ofsted should have responsibility for children's social care issues). It was clear from the Committee report that this had at least some bearing on Committee opinion on candidate suitability (though a number of other reasons were also given for the refusal to endorse).⁸⁹

Emphasising need for continuing dialogue

- 4.34 It is common for committees to emphasise the need for continuing dialogue. The Justice Committee, at its hearing with Nicholas Hardwick, said that it was looking forward to 'a continuing dialogue - at least once a year - on progress in HM Inspectorate of Prison's monitoring, assessment, and driving of the take up of best practice...'⁹⁰ Systematic follow-up was also sought by the Treasury Committee during its hearing with Andrew Bailey for his position as Chief Executive Officer of the Financial Conduct Authority.⁹¹ The Committee asked the candidate to set out, in writing, how he hoped to address certain issues.
- 4.35 Candidates can hardly refuse such invitations. Paul Gray, the preferred candidate for Chair of the Social Security Advisory Committee, said that it would be useful to him to have a 'regular dialogue, both formal and informal' with the Work and Pensions Committee.⁹² Lord Ajay Kakkar, the preferred candidate for Chair of the Judicial Appointments Commission, likewise made clear his intention to return on a regular basis to discuss the work of the Commission and 'seek guidance' from the Committee.⁹³
- 4.36 The most explicit examples are those where committees have asked candidates to re-appear before them, either to review progress or to re-consider proposals once the candidate has had the opportunity to draw up a more concrete strategy. PACAC requested Sir David Normington to re-appear in a year's time to review his dual roles.⁹⁴ Following its hearing with Glenys Stacey as HM Chief Inspector of Probation, the Justice Committee

⁸⁸ Public Administration Select Committee, *Pre-appointment Hearing, Chair of the Advisory Committee on Business Appointments* (oral evidence) HC 759, 9 December 2014.

⁸⁹ Education Committee, *Appointment of Her Majesty's Chief Inspector of Education, Children's Services and Skills* HC 170, 7 July 2016, pages 7-8.

⁹⁰ Justice Committee, *Appointment of HM Chief Inspector of Prisons* HC 354, 18 March 2010.

⁹¹ Treasury Committee, *Appointment of Andrew Bailey as Chief Executive Officer of the Financial Conduct Authority* (oral evidence) HC 568, 20 July 2016.

⁹² Work and Pensions Committee, *Appointment of the Chair of the Social Security Advisory Committee* (oral evidence), GC297-II, 20 June 2012, response to Q31.

⁹³ Justice Committee, *Pre-Appointment Scrutiny of the Chair of the Judicial Appointments Commission* (oral evidence) HC 416, 12 July 2016, response to Q51.

⁹⁴ Public Administration and Constitutional Affairs Committee, *Pre-Appointment Hearing For The Dual Post Of First Civil Service Commissioner And Commissioner For Public Appointments* (oral evidence) HC 601-I, 16 November 2010.

recommended in its report that ‘within three months of taking up post Ms Stacey bring forward a strategy for the Inspectorate’ and expressed a desire to ‘hold an evidence session with her following production of that strategy to discuss its implementation’.⁹⁵ This was clearly intended to address concerns about the candidate’s lack of experience in probation. Finally, the Health Committee invited Dame Jo Williams to reappear before it one year after her hearing for the role of Chair of the Care Quality Commission after stating that the CQC’s operations ‘should be subject to regular scrutiny by the Committee’.⁹⁶

Committees’ varying focus on policy and on suitability of the candidate

- 4.37 We found a strong correlation between the number of pre-appointment hearings conducted by a committee and the way in which a committee conducted its hearings. Hearings became particularly rigorous where a committee was responsible for high-profile and politically divisive appointments. The four committees that conducted the highest number of hearings (Justice, Public Administration, Health, and Education) also tended to be responsible for appointing candidates in some of the most politically controversial policy areas. For example, the Justice Committee conducted hearings for the appointment of the HM Chief Inspector of Prisons and the Chief Inspector of the Crown Prosecution Service, in periods during which public prosecutions and prisons featured prominently in media headlines. Likewise, the Education Committee was responsible for hearings with the Chief Inspector at Ofsted and Chair of Ofqual during fierce public debate on the examinations system and a number of high-profile marking scandals.
- 4.38 As a result these committees tended to spend more hearing time addressing the candidate’s policy plans rather than his/her competence for the position. Five of the seven hearings conducted by PASC were heavily weighted in favour of policy-based questioning; as were five of the Justice Committee hearings, and half of the hearings conducted by the Health and Education Committees. These four committees expected a high degree of knowledge and a strong understanding of policy priorities. This contrasts starkly with the position of committees responsible for appointments in less politically controversial areas. The Environment, Food, and Rural Affairs Committee reminded readers in its report on its hearing with Philip Dilley (Chair of the Environment Agency, July 2014) that ‘[p]re-appointment hearings, by necessity, are focused more on the personal qualities of the candidate and his or her suitability for the role proposed than on the policies, administration or spending of the organisation concerned. It would be unfair to expect a detailed knowledge of the Environment Agency’s current programmes and policies at this stage’.⁹⁷ Hearings conducted by committees further down in Figure 1 focused on the

⁹⁵ Justice Committee, *Appointment of HM Chief Inspector of Prisons and HM Chief Inspector of Probation* HC 624, 27 November 2015, para 32.

⁹⁶ Health Committee, *Appointment of the Chair of the Care Quality Commission* HC 461-I, 15 September 2010, para 8.

⁹⁷ Environment, Food and Rural Affairs Committee, *Appointment of the Chair of the Environment Agency* HC 545, 17 July 2014.

candidate's past experiences, the transferability of the candidate's skills, practicalities such as time constraints, and the candidate's political independence. This was, for example, the case for all three of the hearings undertaken by the Work and Pensions Committee.

Split hearings

- 4.39 Committee members formally divided over whether to endorse candidates on 12 occasions. Committees endorsed candidates in ten of these cases.⁹⁸ There were two cases where the division resulted in a refusal to endorse.⁹⁹
- 4.40 Only four of the 12 splits were political in nature (i.e. there was a straight party-political division in voting).¹⁰⁰ On some occasions, the division was not necessarily against the candidate, but a protest against the weakness of government policy; for example that the new Registrar of Consultant Lobbyists, and the Advisory Council on Business Appointments were both viewed as watchdogs without teeth.¹⁰¹ Even where MPs did divide on party lines, such divisions were not always predictable: the hearing with Professor Les Ebdon was followed by the unusual spectacle of Conservative members voting against their government's preferred candidate, and opposition Labour members trying vainly to support him.¹⁰²

⁹⁸ Professor Malcolm Grant (Health Committee), Peter Wyman (Health Committee), Sir David Normington (Public Administration Select Committee), William Shawcross (Public Administration Select Committee), Baroness Angela Browning (Public Administration Select Committee), Lord Patten (Culture, Media and Sport Committee), Dame Patricia Hodgson (Culture, Media and Sport Committee), Tom Winsor (Home Affairs Committee), David Gray (Energy and Climate Change Committee) and Alison White (Political and Constitutional Reform Committee).

⁹⁹ Dominic Dodd (Health Committee) and Leslie Ebdon (Business, Innovation and Skills Committee).

¹⁰⁰ Professor Malcolm Grant (Health Committee), Dominic Dodd (Health Committee), Sir David Normington (Public Administration Select Committee) and Professor Leslie Ebdon (Business, Innovation and Skills Committee).

¹⁰¹ Alison White (Political and Constitutional Reform Committee) and Baroness Angela Browning (Public Administration Select Committee).

¹⁰² Business, Innovation and Skills Committee, *Appointment of Director of the Office for Fair Access* HC 1811, 8 February 2012.

5. Analysis of media coverage

- 5.1 This chapter reports our analysis of media coverage of pre-appointment hearings. The reason why this was included in our research questions (RQ4) is because the committees' main power is one of voice, not veto. As with all select committee reports, the more publicity they gain, the greater is likely to be their leverage.
- 5.2 The methodology we developed to analyse the amount of media coverage is described in paragraph 3.8. The most highly publicised hearings gained over 100 media mentions. A lot of media mentions were in specialist press and trade journals, which for some positions (such as the Pensions Ombudsman, or HM Inspector of Probation) is all that might be expected.

Figure 3: Number of hearings, categorised by level of media coverage

Category	Number of hearings, and percentage
Minimal coverage (less than 3 media mentions)	19 (27%)
Moderate coverage (3 - 5 mentions, or 1 mainstream media mention)	19 (27%)
Significant coverage (6+ mentions or 2+ mainstream media coverage)	33 (46%)

- 5.3 Around 46 per cent of the hearings and subsequent reports gained significant coverage in the media. The most high-profile positions, such as Chair of the BBC and Governor of the Bank of England, gained very significant coverage, as might be expected. Other examples of positions gaining significant coverage were HM Chief Inspector of Ofsted and the Chairs of NHS England, the Charity Commission, the Equalities and Human Rights Commission, and the Office for Budgetary Responsibility. But the nature of the position was not always an accurate predictor: Nick Hardwick's 2010 hearing as HM Inspector of Prisons attracted no attention, while that of his successor Peter Clarke in 2015 gained significant media coverage, even though both of them were outsiders to the prison service.
- 5.4 Hearings will also attract significant media coverage if there is conflict, criticism or controversy. So in almost all cases where the committee recommended against appointment and those where the candidate withdrew, there was a lot of media coverage: the one exception which attracted little attention was when the Justice Committee recommended against Diana Fulbrook being appointed as HM Chief Inspector of Probation. There was also significant media coverage in most cases where the candidate was known to be a donor or senior member of a political party: for example, Peter

Wyman's 2015 hearing as Chair of the Care Quality Commission, where the hearing disclosed that his family business had donated to the Conservative Party; and his predecessor's 2012 hearing, where David Prior had been a deputy party Chair.

- 5.5 At the other end of the scale hearings which attracted a minimal number of media mentions were mainly for low-profile public bodies such as Ofqual, the Social Security Advisory Committee, and the Office for Legal Complaints. But there were also some surprises: Dame Julie Mellor's hearing for the Parliamentary Ombudsman in 2011 and Professor David Haslam's for the Chair of the National Institute for Health and Care Excellence in 2012 attracted no media interest. There were also surprises in relation to some high-profile individuals: while Chris Patten's hearing as Chair of the BBC Trust attracted lots of media interest, Alan Milburn's hearing as Chair of the Mobility and Child Poverty Commission attracted none.
- 5.6 This should not detract from the overall position, where around 73 per cent of the hearings we analysed attracted significant (six or more) or moderate (three to five) media mentions, or were covered in at least one source of mainstream media. And for specialist positions, coverage in specialist journals, whether in the field of health care, pensions or the environment, may be sufficient to inform the professional community in that field that the pre-appointment hearing has taken place, and the candidate was deemed to have passed or failed the test of parliamentary scrutiny.

6. Interviewees' comments on pre-appointment scrutiny

- 6.1 The chapter reports the impressions we gathered about pre-appointment scrutiny from our interviews with select committee chairs and clerks, and with candidates. Our purpose in conducting interviews was to find answers to RQ1-RQ2 (purposes of pre-appointment scrutiny), RQ3 (effectiveness of pre-appointment scrutiny), RQ5-RQ5A (impact and modes of committee criticism), RQ7 (how well government departments observe Cabinet Office guidelines) and RQ8 (committees' attitudes towards pre-appointment scrutiny).
- 6.2 Contrary to expectation, the candidates were mainly very positive. One said to us, 'As the democratic model develops and people get less and less trust in the appointments process ... these extra checks and balances are very welcome'. Another welcomed the chance to demonstrate his independence in a public forum: 'if it's the right person for the post, I don't think they should have any real concern. It is a protection because they can demonstrate that they are independent of a particular minister or whatever, they have been chosen on merit, they are the right person for the job'. Others felt that the hearing could help to buttress their independence if subsequently they came under pressure, with a third candidate adding, 'Were the government to injure my independence, the select committee could be a useful ally'. Even a candidate who was the subject of a negative report felt that the hearing had unexpectedly helped legitimise the government's decision to appoint, because the leaders of the professional bodies and other stakeholders had come out strongly in support. But the same candidate was critical of the casual attitude of some committee members: 'Several people were absent ... Several people left early. Some were on their phones the whole way through'.
- 6.3 Candidates were also positive about the preparation which they received in advance of the hearing, mainly from committee clerks. Some were invited for a coffee by the clerk, others were briefed on what to expect by Cabinet Office or the sponsoring Whitehall department, others were rehearsed by both sides. Only one of our interviewees received no coaching, but prepared by watching videos of previous hearings. Many candidates prepared in this way, and one even said that they researched the interests of all the committee members, the better to be prepared for their individual questions.
- 6.4 Committee clerks and chairs also told us of their work behind the scenes after a hearing, especially when the committee had doubts, or was planning to issue a negative report. This is envisaged in the Cabinet Office guidance, which says that committees may raise concerns in private correspondence or discussion with the minister. We were told of several examples of this happening, to resolve a doubt or seek an assurance, or in negative cases to give the candidate an opportunity to withdraw. Some candidates took the opportunity; others decided to stand their ground.

6.5 Finally, in reporting on traffic between committees and Whitehall departments, we should record how well departments comply with the Cabinet Office and Liaison Committee guidance. Here the committee clerks said that departments were good at notifying them of forthcoming appointments, and consulting them well in advance about the job description and person specification. And departments are responsive: we learnt that there have been cases where the department has altered the search criteria in response to feedback from the committee. What was not so good was feedback on arranging the timing of the hearing: dates had to be postponed because of ministerial delays, sometimes more than once, and committees often received details of the preferred candidate at short notice. This is probably inevitable, given the consultation required in Whitehall for senior public appointments, especially when No 10 is involved; but for the committees it is disruptive, and may add to their feelings of resentment that pre-appointment scrutiny is a bit of a chore.

7. Problems with the current system

A lack of consensus as to purpose

- 7.1 There was broad consensus at a high level - namely that the primary objective was scrutinising the suitability of the government's preferred candidate - but there was little consensus below that. Comparing the different views about the other stated objectives (see RQ1 and RQ2), we observed that our interviewees ranked next public reassurance that the appointment was on merit, and evidence of independence of mind; with discussion of the candidate's initial priorities coming next, scrutiny of the recruitment process ranking fifth, and enhancing the legitimacy of the candidate coming last.
- 7.2 Further discussion elicited why our interviewees had doubts about several of these objectives. One of the clerks explained 'it can be a bit difficult to convey to the members exactly what the purpose of this is, and what their role is, because in some ways it can feel like a selection panel ... as though you're interviewing someone for the job. And they have to be clear that's not what their role is'. Another said that it was difficult for committees to test whether the Secretary of State had chosen the best candidate, when they had no knowledge of the other candidates. In only nine cases out of the 71 transcripts we analysed did committees seek to scrutinise the recruitment process; but to do that effectively would require the committee to take evidence from the department rather than the candidate. As for the hearing providing an opportunity for the committee to influence the candidate's priorities at an early stage, interviewees questioned whether it was a good use of time for committees to interrogate a candidate before they had taken up their post. The difficulties in fulfilling these various potential objectives meant that some committee members we interviewed found the whole process rather frustrating. As one committee clerk explained, 'Sadly, I fear that my committee does see it as a chore. I haven't been successful in convincing them of the value of these things, both in the wider constitutional sense, or in an engagement sense. The feeling coming back was griping about the process: why can't we see details of all the other candidates, we're just being asked to rubber stamp this thing, we're not being given any genuine choice here'.
- 7.3 An issue flowing from this is whether this lack of consensus about pre-appointment scrutiny invalidates the whole exercise. Our view was that it did not - indeed there was something to be said positively for the lack of consensus or standard format. Pre-appointment hearings are not designed to be part of the formal process, but partly to be a 'wild card', over and above that process. As such, it is impossible to predict in advance what specific issues might be raised. In some cases, where the candidate has been well chosen, the select committee process may not add a great deal and can become an anodyne affair. But if a candidate is put forward by the government who is not particularly well

suited to the role, there is a good chance that the committee will pick up on that, and express reservations or recommend against the appointment being confirmed. Another advantage is that hearings test the preferred candidates' ability to handle challenging questioning on a public platform - something which is not easily tested at an earlier stage in the process. And finally there is a deterrent effect on government - the knowledge that a candidate will be tested in public by a parliamentary committee should help to dissuade ministers from putting forward weak candidates or government stooges.

- 7.4 A few committee members said to us that they would like a formal veto. But governments must ultimately take responsibility for the quality of the people they appoint - and the select committees' role is to hold government to account for its decisions but not to become joint decision makers. We would always expect the government to consider seriously any adverse recommendation from a committee but then to make its own judgement as to how to proceed. (A separate issue is that the underlying legislation for many appointments requires the relevant Secretary of State to make the final decision - and it would be impossible without legislative change to put select committees into a formal decision making role.)

Inflexibility of the list of 'top 50' appointments

- 7.5 The Cabinet Office list of appointments subject to pre-appointment scrutiny is both over- and under-inclusive. It is certainly not the product of the consistent application of criteria to all public posts. For example, five Chief Inspectors are on the list, yet the Independent Chief Inspector of Borders and Immigration is not. Equally, there are appointments on the list which need not be. We asked our interviewees for their suggestions of which posts could be dropped, and which should be added. They suggested dropping the Chair of the Judicial Appointments Commission and of the Office for Legal Complaints; others would drop the chairs of the research councils. Suggestions for posts which could be added were the Chair of the House of Lords Appointments Commission, and the Legal Services Board; the Chairs of Ofsted and Ofqual (in addition to the Chief Inspectors, already included), and the National Schools Commissioner; the Chairs of NHS Improvement, and of Health Watch; the Independent Reviewer of Terrorism Legislation; and the Prime Minister's Adviser on Ministerial Interests. Other posts missing from the Cabinet Office list are the Governor of the Bank of England, the Chair of the Financial Conduct Authority, and of the NAO Board; the Director of Public Prosecutions; the Chairs of the Arts Council, and of the Big Lottery Fund. Further additions could be selected from the list of 94 'significant appointments' agreed by Cabinet Office Ministers and the Commissioner for Public Appointments in 2016.¹⁰³ That was the product of a more recent and more systematic trawl through a longer list of all senior public appointments to decide which required an ISPM, as required by paragraph 6.1 of the new Governance Code. It could provide a very useful starting point if the Liaison Committee and the Cabinet Office

¹⁰³ Available at: publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2017/04/20170403-HMG-List-of-significant-appointments-1.pdf, last accessed 16 July 2017.

were minded to conduct a similarly systematic review of those appointments which merited pre-appointment scrutiny.

- 7.6 The range of these posts illustrates the different nature of many of the bodies being scrutinised. Some have a structure under which a single individual is appointed, to be an Inspector or regulator. In other cases, the appointment is to be chair of a board, with a more limited executive function. In such cases, the chair can be a less significant appointment than the chief executive. An example is NHS England, where the NHS Chief Executive has a more powerful role than the Chair, but the latter is subject to pre-appointment scrutiny while the former is not. The list was originally drawn up in a process of horse trading between government and parliament about which were the most important posts. It has occasionally been amended as new posts have been created but it continues to reflect a lack of underlying coherence. As one of our interviewees said, ‘The list is without any particular logic. When you look through the list, you do wonder why some positions are there: there is no consistent pattern’. A further issue is that a rigid distinction between appointments which are subject to pre-appointment hearings and those which are not ignores the reality of changing political considerations. A committee might, for example, decide that an appointment to a body not on the list has become more important over time and a pre-appointment hearing might be justified. Equally the current system works on the basis that a pre-appointment hearing will be held whether or not the committee has any real wish to scrutinise the candidate. (In principle the committee could decline to hold a hearing, but we did not uncover any such cases in our research.)

Difficulties of timing

- 7.7 Our interviews were full of examples of timing difficulties, of delays, of short notice, of committee schedules being messed around. Committees were asked to hold certain dates for a pre-appointment hearing which then had to be vacated because of ministerial delays; they are asked to hold hearings at short notice; and they receive details of the candidate only days beforehand. To give one example, the pre-appointment hearing for Deep Sagar as Chair of the Social Security Advisory Committee had to be rescheduled twice at short notice.¹⁰⁴ Departments may struggle to handle appointments in a timely fashion because they necessarily come around infrequently. This all takes place in the context of scarce parliamentary time, with the House of Commons sitting for less than half the year. This has given rise to difficulties at the start of a parliament, when select committees are still being established; and there are also difficulties when appointments run into the recess, especially the long summer recess of 2-3 months.
- 7.8 A final difficulty of timing is that committees are expected to report almost immediately: the Cabinet Office guidelines state that committees will ‘usually’ report within 48 hours. A swift turnaround is expected so that the candidate is not left in limbo, and to minimise the

¹⁰⁴ Work and Pensions Committee, *Appointment of the Chair of the Social Security Advisory Committee* HC 904-I, 1 April 2011, para 5.

risk of leaks. Yet this makes no allowance for situations when committees need more time, for example, to discuss their reservations with the minister, or seek further evidence. For example, the Women and Equalities Committee and Joint Committee on Human Rights sought further evidence after the pre-appointment hearing with David Isaac to be Chair of the Equalities and Human Rights Commission, due to their concerns about conflict of interest; they eventually reported over a month after the hearing.¹⁰⁵ The committees noted the ‘confusion and uncertainty’ during this period:¹⁰⁶ it became difficult to exclude absentee committee members during long periods of deliberation, although the Liaison Committee guidelines require that ‘only those members of the committee who participated in the pre-appointment hearing should deliberate and vote on the eventual report’.¹⁰⁷

The appropriateness and quality of questions

- 7.9 Given the criticism by Matthews and Flinders, we wanted to test their thesis that questioning had become unreasonable and unfair to candidates. In our detailed analysis of 71 transcripts, we found very little evidence to support Matthews and Flinders’ thesis (see paragraphs 3.4-3.5 for an explanation of our coding). Almost 90 per cent of the questions were judged to be appropriate; and less than 5 per cent were deemed to be irrelevant, aggressive or politicised. We also found very little evidence to support their thesis amongst the candidates we interviewed. Only one complained of hostile questioning. More typical were candidates who said it was like water off a duck’s back, or who said they had faced more hostile questioning from other select committees. One candidate said they were glad to be asked of examples when they had given unwelcome advice to ministers, because that had not been tested in the departmental interviews. Another interviewee said that the select committee was the first to ask the candidate about being a Conservative Party donor: in our analysis most such ‘politicised’ questions were also deemed appropriate, and justified. As one committee chair (from the governing party) put it, ‘If governments give the impression that they are appointing cronies, they shouldn’t be surprised if committees give them a lot of grief’.
- 7.10 We would make rather different criticisms of pre-appointment hearings. One is the reverse of Matthews and Flinders: that committees sometimes give candidates too easy a ride. The most obvious case is that of Deep Sagar, endorsed by the Work and Pensions Committee to be Chair of the Social Security Advisory Committee, only to see him resign six months later, when the Committee had noted that he lacked any experience in social security policy.¹⁰⁸ Another candidate let off lightly was Lord Kakkar, who listed a string of other commitments which would make it difficult to give sufficient time to the Judicial

¹⁰⁵ Women and Equalities Committee, *Appointment of the Chair of the Equality and Human Rights Commission* HC 599, 9 May 2016, paras 20-22.

¹⁰⁶ Women and Equalities Committee, *Appointment of the Chair of the Equality and Human Rights Commission* HC 599, 9 May 2016, para 21.

¹⁰⁷ Liaison Committee, *Guidelines for select committees holding Pre-Appointment Hearings*, 27 November 2013, para 20.

¹⁰⁸ Work and Pensions Committee, *Appointment of the Chair of the Social Security Advisory Committee* HC 297-I, 22 June 2012, para 4.

Appointments Commission; but the Justice Committee did not make their approval conditional on his giving up any of those appointments.¹⁰⁹

- 7.11 Committee questioning can nonetheless sometimes be inappropriate. First, questioning sometimes challenges a candidate's viewpoint on a policy, with the committee trying to get the candidate to endorse criticism of government policy. Second, committees have split on party political lines, sometimes on the basis of other disputes with the relevant minister. This can politicise appointments. But, as indicated above, when we analysed the 12 occasions when the committee was split and had a formal division on its report, in only four cases did voting cut straight across party lines. Third, committees sometimes legitimately challenge candidates, but do so in an aggressive way. One committee chair explained that their committee occasionally presented a vociferous front to maintain an image of independence. But an experienced headhunter observed that on the whole committees have conducted pre-appointment hearings responsibly, with very little grandstanding.
- 7.12 We also differ from Matthews and Flinders in their conclusion that hostile and even random questioning by committees undermines the legitimacy of pre-appointment scrutiny. If committees were to have a decision-making role in appointments, Matthews and Flinders would be making a justifiable point, namely that the selection process for any government position must be fair, and be seen to be fair. But committees do not usually have a veto: pre-appointment hearings are a 'wild card', outside the formal process, and the occasional unreasonable question seems an acceptable price to pay for allowing parliamentary scrutiny on a public platform.
- 7.13 Two further issues go to the quality rather than the appropriateness of questioning. First, committees vary in their experience and expertise. Some committees, such as Justice, and Culture, Media and Sport, do many pre-appointment hearings, while others do very few. Less experienced committees tend to be less rigorous in their questioning. One way to raise their game would be to use written questionnaires before the hearing, discussed in paragraphs 9.4-9.5 below. Second, attendance of committee members is not great: on average, two thirds of a committee's members attend all or part of a pre-appointment hearing.¹¹⁰ Members who have not participated in the pre-appointment hearing are not allowed to deliberate or vote on the report.¹¹¹ One candidate said to us that if not all the committee members are present, the benefits of facing a hearing, namely the endorsement obtained and relationships built, are correspondingly diminished.

¹⁰⁹ Justice Committee, *Pre-Appointment Scrutiny of the Chair of the Judicial Appointments Commission* (oral evidence) HC 416, 12 July 2016, Q9-11.

¹¹⁰ The average is 64%, calculated from Liaison Committee, 'Pre-appointment hearings held by select committees of the House of Commons July 2007-March 2017', available at: www.parliament.uk/documents/commons-committees/liaison/Pre-appointment-table-by-department-to-March-2017.pdf, last accessed 16 July 2017. Figures are based on members recorded as attending all or part of the relevant meeting. Attendance data was not available for three hearings.

¹¹¹ Liaison Committee, *Guidelines for select committees holding Pre-Appointment Hearings*, 27 November 2013, para 20.

Committee concerns about process issues

- 7.14 Pre-appointment hearings are in principle designed to scrutinise not only the candidate but also the recruitment process. Yet in doing so, they are directed at the wrong individual and take place at the wrong time. The most appropriate individual to question regarding faults in the recruitment process is the responsible minister, not the candidate. An example comes from the Justice Committee's joint hearing for the roles of HM Inspector of Prisons and of Probation. It transpired during the hearing that both candidates had received a telephone call from the Secretary of State Michael Gove, encouraging them to apply. Alberto Costa MP repeatedly asked about this; but the person to ask was Michael Gove, not the candidates.¹¹² Second, the current system allows the committee very little consideration of the recruitment process until after the process is completed. By this time, it is often too late to rectify any problems.
- 7.15 Committees struggle to assess a candidate's appointability when they have no details of the other candidates. Yet it is difficult to justify putting other candidates' details into the public domain when they are not the preferred candidate. This difficulty stands even when committee members accept that their role is to determine a candidate's appointability rather than to assess which candidate is the best for the role. Determining appointability requires the establishment of a threshold of appointability, which is difficult without any other candidates to use as a benchmark.
- 7.16 Finally, there is still some concern that pre-appointment hearings will deter good candidates. Sir David Normington told us that he had believed this when first appointed as Commissioner for Public Appointments; but in office he found no evidence of a deterrent effect. Our research similarly failed to uncover evidence for any such effect derived from pre-appointment scrutiny. Good candidates may be deterred by the length and complexity of the whole public appointment process, and a general reluctance to put themselves into the firing line. Candidates who are deterred by the possibility of a committee hearing should think twice about pursuing posts which are in the public arena. Furthermore, there is evidence that candidates see the pre-appointment hearing as beneficial, not least in giving them public legitimacy.¹¹³

¹¹² Justice Committee, *Pre-Appointment Scrutiny of HM Chief Inspector of Prisons and HM Chief Inspector of Probation* (oral evidence) HC 624, 24 November 2015, Q89, Q92-3, Q100, Q111-2, Q114.

¹¹³ UCL Constitution Unit, 'An Evaluation of Pre-Appointment Hearings', 9 February 2010, www.ucl.ac.uk/constitution-unit/research/consultancy/consultancy-projects/PASreport, para 3.12.1.

8. Problems in the future post-Grimstone

- 8.1 In Chapter 1 of this report we described the new system of public appointments following the Grimstone review, under which ministers choose the interview panel, including its independent members, and ministers can appoint someone judged to fall below the line, or decide to dispense with a competition and just appoint their favoured candidate. In such cases the new Governance Code requires the Commissioner for Public Appointments to be consulted in good time, before the appointment is publicly announced.¹¹⁴ Peter Riddell has indicated that he would wish first to engage in private discussion with the department; and second, if still dissatisfied, he would express his doubts publicly and inform the relevant Commons select committee.¹¹⁵
- 8.2 It is too early to say whether the post-Grimstone changes will lead to many - indeed any - examples of the government seeking to appoint people following processes which were previously unavailable to them. But if there are such cases - and particularly if the new Commissioner has concerns which he makes public - then committees will be faced with a new challenge, which may require a different approach from a traditional pre-appointment hearing with the preferred candidate. If the main concern is with a flaw in the appointment process, the committee should find it more appropriate to summon the Commissioner to enlarge upon his concerns; or to summon the permanent secretary or senior official who led on the appointment within the department. Ultimately, if ministers decided to appoint someone taking advantage of the new flexibilities, committees should be able to question the relevant minister directly on why they had chosen to depart from the usual principles of fair and open competition. These would all be more appropriate witnesses than the preferred candidate: indeed it has always seemed odd to expect the candidate to explain or justify the rules of a selection process which was not of their devising.
- 8.3 This would require committees to take a greater interest in the recruitment process than they have traditionally done; but, alerted by the Commissioner, and with evidence supplied by him, a committee could hold a quick hearing into the integrity of the process. It may then, if it wishes, proceed in a second stage to a hearing with the candidate, to assess his or her merits; or they might choose to publish a quick report first simply about the recruitment process, if it wants to amplify the Commissioner's concerns. Because time is tight with senior public appointments, a committee might prefer to hear in one session evidence from the Commissioner, the permanent secretary or the minister, and then the

¹¹⁴ Cabinet Office, *Governance Code on Public Appointments*, December 2016, paras 3.2 and 3.3.

¹¹⁵ Peter Riddell, 'Commissioner's Blog', 16 December 2016, publicappointmentscommissioner.independent.gov.uk/news/commissioners-blog-16-december-2016/, last accessed 16 July 2017.

candidate, and then to publish a report both about the appointment process and the suitability of the candidate. Or as one committee clerk suggested to us, committees should hold the minister to account for the conduct of the recruitment process, and then, if they wish, have a hearing with the appointee post-appointment, early into their tenure.

9. Possible improvements to the system

- 9.1 Most of this report has been about the dynamics of individual pre-appointment hearings. Along the way we have made suggestions for their improvement. This chapter pulls together those recommendations on how to make each hearing, and the system as a whole, more effective.
- 9.2 But we begin with a wider observation. Pre-appointment scrutiny was introduced in 2008, initially as something of an experiment. Since then there has been no serious attempt by government to review its operation. Parliament, through the Liaison Committee, has made several attempts to propose improvements but its reports have largely been rebuffed. It is hard to escape the suspicion that the Cabinet Office is not convinced that pre-appointment scrutiny was a good idea, and does not wish to see it extended. To have reviewed the process of making public appointments through the Grimstone review, but not to have considered the role of parliament in such appointments, was a missed opportunity. With the Cabinet Office sitting on its hands, the initiative must lie with parliament to set about making individual pre-appointment hearings more effective, and improving the system as a whole.

Enhanced planning

- 9.3 It is fanciful to suppose that pre-appointment hearings can be reduced to a single purpose. As this report has shown, they generally serve multiple purposes, with the main ones being to probe the openness and fairness of the recruitment process; to scrutinise the suitability of the candidate; and to discuss their initial priorities. There is nothing wrong in pursuing multiple purposes in the same hearing. But it can appear chaotic and unpredictable, to candidates and committee members alike, to arrive at the hearing without knowing which purposes will be pursued, or in what order. So our first recommendation is that at the start of each hearing the chair will announce what is the main purpose of the hearing, and what issues the committee wishes to pursue. That will make clear the structure to be followed, and whether the main focus is to be on the recruitment process, the suitability of the candidate, or their initial priorities. For example, if the committee is satisfied by the recruitment process and the suitability of the candidate, it may use most of the hearing to discuss the candidate's initial priorities and agenda.
- 9.4 To assist the committee in identifying the main issues to be pursued, our second recommendation is that each candidate should be invited to complete a written questionnaire before appearing before the committee. That would save time at the hearing by enabling the committee to focus on those issues which still cause concern; or if there are no concerns, it might enable the committee to dispense with a hearing altogether. The

use of questionnaires is a practice which has been followed for some 20 years by the Treasury Committee, but has yet to be adopted by other committees.¹¹⁶ To illustrate the kind of questions which might be included, we have drafted a model questionnaire in Appendix 2, focusing first on the personal independence and professional competence of the candidate, and second on the strengths and weaknesses of the organisation.

9.5 It would only involve minor redrafting of the Liaison Committee guidelines to encourage committees to use questionnaires, and to encourage chairs to announce at the start of a hearing the main issues which they wish to pursue. One further change suggested to us would be to widen the two alternatives proposed in the Cabinet Office guidance, that after a hearing a committee may issue a report or express reservations privately to the minister, to include a third option of seeking more evidence, written or oral. Committees will always try to issue quick reports; but they should not be bounced into hasty decisions when there remain genuine uncertainties to be resolved.

Varying degrees of parliamentary control

9.6 The second part of this chapter considers the options for enhanced scrutiny of the most important public appointments. Previous such exercises have begun by dividing the current list of 50 or so top public appointments into an A, B and C list. We begin instead by considering first the procedural options for enhanced scrutiny. There are already several different options available, from recent developments for certain post holders deemed to need a very high degree of independence. These range from the chair of the select committee sitting on the appointment panel, to the committee being given an effective or a formal veto, to the appointment needing to be approved by a resolution of the House, with finally a couple of appointments being made by parliament alone, and so completely outside executive control. Figure 4 gives more detail of these appointments, starting with those made by parliament alone, and then showing descending degrees of parliamentary control.

Figure 4: Appointments already requiring greater involvement by parliament

Post	Governing legislation	Appointment process	Degree of parliamentary control	Comments
Chair of Electoral Commission	Political Parties, Elections and	Speaker's Committee appoints	Complete control	For the latest appointment, see Fourth Report of

¹¹⁶ For an account of the Treasury Committee's practice, see their report: *The Treasury Committee's Scrutiny of Appointments* HC 811, 26 February 2016. The questionnaires elicit very full answers: in the case of Mark Carney, Governor of the Bank of England, his answer ran to 45 pages: *Appointment of Dr Mark Carney as Governor of the Bank of England* HC 944, 19 April 2013, Ev 29.

Post	Governing legislation	Appointment process	Degree of parliamentary control	Comments
	Referendums Act 2000 section 3			Speaker's Committee 2016 ¹¹⁷
Chair of Independent Parliamentary Standards Authority	Parliamentary Standards Act 2009 schedule 1 para 2	Speaker's Committee appoints	Complete control	For the latest appointment, see the report of the Speaker's Committee 2016 ¹¹⁸
Comptroller and Auditor General	Budgetary Responsibility and National Audit Act 2011 section 11	Motion for Address made by Prime Minister, which gives Prime Minister a veto	Requires consent of Chair of Public Accounts Committee: gives the Chair a veto	Chair of Public Accounts Committee objected to holding pre-appointment hearings in 2008 ¹¹⁹
Parliamentary and Health Service Ombudsman	Parliamentary Commissioner Act 1967	House of Commons Service appoints panel, including permanent secretaries	Led by parliament 'in close co-operation' with government ¹²⁰ . Chair of PACAC on the panel	Previously led by Cabinet Office; new procedure first used in 2011
Office for Budgetary Responsibility (OBR)	Budgetary Responsibility and National Audit Act 2011 schedule 1	Treasury appointment, but with consent of Treasury Committee	Treasury Committee has power of veto	Treasury Committee must consent to appointment of the Chair and two members of OBR

¹¹⁷ www.publications.parliament.uk/pa/cm201617/cmselect/cmspeak/499/499.pdf, last accessed 16 July 2017.

¹¹⁸ www.publications.parliament.uk/pa/cm201516/cmselect/cmspeak/906/906.pdf, last accessed 16 July 2017.

¹¹⁹ House of Commons Library, *Comptroller and Auditor General*, SN/PC/4595, 12 May 2008, page 13.

¹²⁰ Public Administration Select Committee, *Pre-Appointment Hearing for the post of Parliamentary and Health Service Ombudsman* HC 1220-I, 8 July 2011, Appendix 2.

Post	Governing legislation	Appointment process	Degree of parliamentary control	Comments
Chair of the UK Statistics Authority	Statistics and Registration Service Act 2007	Cabinet Office appoints, but Chair of PACAC on the panel	Nomination subject to resolution of the House of Commons	Pre-appointment hearing with PACAC
Information Commissioner	Freedom of Information Act 2000	Pre-appointment scrutiny by Justice Committee	Justice Committee given effective veto	Justice Minister said in 2011 that government would accept Justice Committee's recommendation ¹²¹

9.7 In devising different forms of enhanced scrutiny, we can build on this current practice to construct a ladder with varying degrees of parliamentary control, ranging from total parliamentary control to no parliamentary involvement:

- Parliament makes the appointment with no involvement of the executive (as with the Chair of the Electoral Commission, and the Independent Parliamentary Standards Authority).
- Government and parliament make the appointment jointly, giving each a veto (as with the Comptroller and Auditor General, and since 2011 the Ombudsman).
- Government can only make the appointment with the consent of a select committee, or its chair: giving the committee a formal veto (as with the Office for Budgetary Responsibility).
- Government makes the appointment but agrees to abide by a Resolution of the House: giving parliament an effective veto (as with the Chair of the UK Statistics Authority).
- Government makes the appointment but agrees to abide by the select committee's recommendation: giving the committee an effective veto (as with the Information Commissioner).

¹²¹ HC Deb 16 February 2011, cols 87-88WS. Since 2015 the appointment has been scrutinised by the Culture, Media and Sport Committee, but the effective veto remains: see Culture, Media and Sport Committee, *Appointment of the Information Commissioner* HC 990, 28 April 2016, para 2.

- Government makes the appointment but with a select committee chair on the panel.
- Government makes the appointment subject to pre-appointment scrutiny.
- Government makes the appointment with no reference to parliament.

9.8 The top four or five rungs of this ladder (highest in parliamentary control) are unlikely to be extended to a much larger number of public appointments: as the Liaison Committee recognised in their 2011 report, the case for some form of parliamentary veto is strongest in relation to the main constitutional and ethical watchdogs, nine of whom were listed in the Committee's report.¹²² They are unlikely to be shifted up the ladder *en bloc*; what is more likely is that some will gradually be upgraded as their governing statutes are renewed - with the next in line likely to be the new unified Public Services Ombudsman.¹²³

9.9 Select committee chairs and members continue to be unduly focused on acquiring a power of veto, as our interviews have shown. Since the Treasury Committee was promised that power in relation to the new Office for Budgetary Responsibility in 2010, and since its Chair, Andrew Tyrie MP, became Chair of the Commons Liaison Committee in 2015, the veto has come to be regarded as the gold standard. But it may prove to be a distraction, especially considering the changes introduced by the Grimstone review.

More flexible scrutiny

9.10 The Grimstone review has changed the rules of the game, and may require committees to focus on a much wider range of public appointments than just the 'top 50': the challenge in future may be one of quantity, not quality. This is how it was put by the outgoing Commissioner for Public Appointments, Sir David Normington:

*If the Grimstone review is implemented, then the case for extending Select Committee scrutiny of individual appointments becomes unanswerable. At present such pre-appointment scrutiny, as it is known, is limited to a list of appointments agreed with the Government, which contains mainly regulators, inspectors and others where independence from the executive is a requirement of the job. If the Commissioner's scrutiny is to be weakened, pre-appointment scrutiny may need to be extended to all significant appointments.*¹²⁴

¹²² The committee suggested joint appointments for the Parliamentary Ombudsman, chair of the Statistics Authority, Information Commissioner, chairs of the House of Lords Appointments Commission and Judicial Appointments Commission, First Civil Service Commissioner, Commissioner for Public Appointments, chair of the Committee on Standards in Public Life and chair of the Equality and Human Rights Commission: Liaison Committee, *Select Committees and Public Appointments* HC 1230, 4 September 2011.

¹²³ See the draft Public Service Ombudsman Bill published on 5 December 2016, www.gov.uk/government/publications/draft-public-service-ombudsman-bill, last accessed on 16 July 2017. Appointment would require the consent of the Public Accounts Commission: sch 1 para 1 of the draft bill.

¹²⁴ Lecture to Constitution Unit seminar on 8 December 2016: for the text, see www.constitution-unit.com/2016/12/20/the-grimstone-proposals-to-reform-the-public-appointments-process-are-a-step-in-the-wrong-direction.

- 9.11 When asked how many appointments that might comprise, Sir David suggested perhaps 120.¹²⁵ That would require a big change in the frequency of pre-appointment hearings, which would be resisted by the Cabinet Office, and would not be welcomed by the select committees themselves. But it does suggest a new way of working, in which committees seek to monitor a wider range of public appointments, but are more selective in those subjected to pre-appointment scrutiny. Their guide to selection can be the new Commissioner, whose powers are much reduced, but who still has power to speak out and alert the relevant select committee.¹²⁶
- 9.12 It will be important whenever the Commissioner does sound a warning for the select committee to respond, in the same way that the PASC has always responded to urgent reports from the Parliamentary Ombudsman. And it will be important for select committees to do so quickly, because the main change the Commissioner managed to negotiate in the new Governance Code is the right to be consulted before an exceptional appointment is made, rather than simply being notified *post hoc*. So when the Commissioner does sound the alarm, whether the appointment is one of the top 50 or one which falls outside, it is vital that committees respond by summoning the minister or the permanent secretary to explain why they have appointed a favoured candidate without a competition, or decided to appoint someone judged by the panel to fall below the line and so be non-appointable.
- 9.13 In the post-Grimstone world, committees may need to move away from a system of routine police patrolling, where they are expected to scrutinise every appointment in the top 50, to a system of fire fighting in which they are more selective about which appointments they choose to investigate. That may be welcome to those select committees who find routine pre-appointment hearings a tedious chore; it may be disconcerting to the more conscientious committee chairs who regard it as part of their public duty. But if they delegate scrutiny of the more routine appointments to a paper check conducted by committee staff, working to the chair, that would release more committee time for investigating those appointments requiring further scrutiny. These may be posts where committee members have a particular interest and want to meet the candidate, or the Commissioner has sounded a warning which the committee wants to follow up; or they may be cases where the candidate's response to a written questionnaire throws up particular concerns which the committee wants to probe further.
- 9.14 Once in each parliament the Liaison Committee might usefully review any new public bodies which have been created, to see whether they merit pre-appointment scrutiny. Post-Brexit there is going to be a plethora of such bodies, especially in the regulatory field. At the start of a parliament each committee could also benefit from a discussion, led by the chair, about its scrutiny role in relation to public appointments, how it will work alongside the Commissioner, how much time it is willing to devote to public appointments, and how much it is willing to delegate. It would also be assisted if the committee staff drew up a list

¹²⁵ In discussion at the Constitution Unit seminar on 8 December 2016.

¹²⁶ See para 1.20.

of all the senior public appointments within the committee's remit due for renewal over the next five years, so the committee could identify in advance those posts of particular interest. Committees have become prisoners of the agreed Cabinet Office list, rarely straying outside it; the Liaison Committee guidelines recognise that committees may wish to scrutinise other appointments, but they rarely do so.¹²⁷ The Treasury Committee has blazed the trail, routinely scrutinising six public appointments in addition to those on the Cabinet Office list; where the Treasury Committee has led the way, other committees can follow.¹²⁸

- 9.15 It is beyond the scope of this report to draw up a comprehensive list of hearings outside the top 50. But to give a couple of examples, the Treasury Committee currently goes beyond the list in scrutinising the appointment of the Governor of the Bank of England, the Deputy Governors and the Chair of the Financial Conduct Authority. Following that example, the Culture, Media and Sport Committee might want to scrutinise the appointment of the Chair of the Arts Council, the Big Lottery Fund and the Director General of the BBC. Pre-appointment hearings currently apply to only a tiny proportion of the 2,000 or so public appointments made each year.
- 9.16 The Treasury Committee calls such hearings 'pre-commencement' rather than pre-appointment hearings, because strictly the candidate has been appointed, and ministers are not formally required by the Cabinet Office to consider committee recommendations in the same way that they do for appointments on the Cabinet Office list. But the Treasury Committee applies exactly the same criteria, of personal independence (including lack of conflicts) and professional competence, that they apply to pre-appointment hearings, and they use the same tools, including written questionnaires, to probe candidates' suitability. Despite the lack of formal recognition on the Cabinet Office list, these pre-commencement hearings can produce equally dramatic results, as illustrated by the recent case of Charlotte Hogg. When she completed the Treasury Committee's questionnaire in preparation for her hearing as a newly appointed Deputy Governor of the Bank of England, she realised that 'I had not formally declared my brother's 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'.¹²⁹ This led to the Bank instituting disciplinary proceedings for failing to declare a conflict of interest, and to Hogg's resignation as Deputy Governor following a strongly critical report from the Treasury Committee.¹³⁰
- 9.17 This episode brings out one of the main themes running throughout this report. It repeats a finding from our earlier study: that select committees and their chairs do not appreciate

¹²⁷ Liaison Committee, *Guidelines for select committees holding Pre-Appointment Hearings*, 27 November 2013, paras 8 and 11.

¹²⁸ See Treasury Committee, *The Treasury Committee's Scrutiny of Appointments* HC 811, 26 February 2016, where the six public appointments are listed in para 1.

¹²⁹ Letter from Charlotte Hogg to Andrew Tyrie, Chair of Treasury Committee, 2 March 2017.

¹³⁰ Treasury Committee, *Appointment of Charlotte Hogg as Deputy Governor of the Bank of England: Second Report* HC 1092, 14 March 2017.

how powerful they really are. The Treasury Committee has repeatedly called for a formal power of veto, contrasting its statutory powers in relation to the Office for Budgetary Responsibility with the weaker powers it has in relation to other appointments. But the resignation of Charlotte Hogg shows how powerful a select committee's voice can be when it decides to make a fuss, even with respect to an appointment that it has no requirement to oversee. The same is true of the other committees which have issued negative reports, or given candidates a hard time at the hearing: the fact that four candidates have withdrawn following pre-appointment scrutiny shows the effectiveness of the process, even though committees have no power of veto.

- 9.18 The second lesson worth emphasising is how much select committees can achieve through sheer dogged persistence. The Treasury Committee has never received any encouragement from successive Chancellors for its keen interest in public appointments. But for 20 years it has persevered, and improved its procedures, in particular through pioneering the use of questionnaires. It has also extended the range of appointments being scrutinised way beyond the Cabinet Office list. Its experience shows that parliament has all the powers that it needs for pre-appointment scrutiny, and that committees which wish to become more effective could benefit from adopting a more systematic approach. Being more systematic does not necessarily involve a heavier workload; they could also be more selective, by deciding at the start of a parliament (or the start of a session) which appointments they want to single out for particular scrutiny. Select committees need not feel constrained by the Cabinet Office guidance or the top 50 list: they need simply to be a bit bolder in setting their own agenda for scrutinising public appointments, rather than having it set for them.

Appendix 1 - List of pre- appointment hearings analysed

Candidate	Date	Position	Committee
Professor Leslie Ebdon	02/02/12	Director of the Office for Fair Access	Business, Innovation and Skills
Christine Tacon	27/02/13	Groceries Code Adjudicator	Business, Innovation and Skills
Julian Ashby	31/10/11	Chair of the Homes and Communities Agency Regulation Committee	Communities and Local Government
Jeremy Newman	03/11/12	Chair of the Audit Commission	Communities and Local Government
Denise Fowler	16/12/14	Housing Ombudsman	Communities and Local Government
Sir Edward Lister	14/06/16	Chair of the Homes and Communities Agency	Communities and Local Government
Lord Chris Patten	10/03/11	Chair of the BBC Trust	Culture, Media and Sport
Dame Patricia Hodgson	17/12/13	Chair of Ofcom	Culture, Media and Sport
Rona Fairhead	09/09/14	Chair of the BBC Trust	Culture, Media and Sport
Elizabeth Denham	27/04/16	Information Commissioner	Culture, Media and Sport
Huw Jones	24/05/11	Chair of the S4C Authority	Culture, Media and Sport (with Welsh Affairs)

Nicola Williams	26/11/14	Service Complaints Commissioner	Defence
Sir Michael Wilshaw	01/11/11	HM Chief Inspector, Office for Standards in Education (Ofsted)	Education
Glenys Stacey	01/02/12	Chief Regulator of Qualifications and Examinations	Education
Alan Milburn	10/07/12	Chair of the Mobility and Child Poverty Commission	Education
Anne Longfield	11/11/14	Children's Commissioner for England	Education
Sally Collier	16/03/16	Chief Inspector of Qualifications and Examinations	Education
Amanda Spielman	29/06/16	HM Chief Inspector, Office for Standards in Education (Ofsted)	Education
Lord Deben	04/09/12	Chair of the Committee on Climate Change	Energy and Climate Change
David Gray	10/09/13	Chair of the Office of Gas and Electricity Markets (Ofgem)	Energy and Climate Change
Margaret McKinlay	05/07/11	Chair of the Gangmasters Licensing Authority	Environment, Food and Rural Affairs
Jonson Cox	04/07/12	Chair of the Water Services Regulation Authority (Ofwat)	Environment, Food and Rural Affairs
Andrew Sells	11/12/13	Chair of Natural England	Environment, Food and Rural Affairs
Philip Dilley	15/07/14	Chair of the Environment Agency	Environment, Food and Rural Affairs
Emma Howard Boyd	13/09/16	Chair of the Environment Agency	Environment, Food and Rural Affairs
Dame Jo Williams	09/11/10	Chair of the Care Quality Commission	Health

Professor Malcolm Grant	18/10/11	Chair of the NHS Commissioning Board	Health
David Prior	05/12/12	Chair of the Care Quality Commission	Health
David Haslam	11/12/12	Chair of the National Institute for Health and Care Excellence	Health
Dominic Dodd	15/10/13	Chair of Monitor	Health
Peter Wyman	01/12/15	Chair of the Care Quality Commission	Health
Heather Hancock	05/01/16	Chair of the Food Standards Agency	Health (with Environment, Food and Rural Affairs)
Tom Winsor	26/06/12	HM Chief Inspector of Constabulary	Home Affairs
Graham Ward	26/10/10	Chief Commissioner of the Independent Commission for Aid Impact	International Development
Dr Alison Evans	09/12/14	Chief Commissioner of the Independent Commission for Aid Impact	International Development
Baroness Onora O'Neill	16/10/12	Chair of the Equality and Human Rights Commission	Joint Committee on Human Rights
David Isaac	23/03/16	Chair of the Equality and Human Rights Commission	Joint Committee on Human Rights (with Women and Equalities)
Nicholas Hardwick	10/03/10	HM Chief Inspector of Prisons	Justice
Christopher Stephens	31/01/11	Chair of the Judicial Appointments Commission	Justice

Diana Fulbrook	11/05/11	HM Chief Inspector of Probation	Justice
Nigel Newcomen	17/05/11	Prisons and Probation Ombudsman for England and Wales	Justice
Paul McDowell	08/10/13	HM Chief Inspector of Probation	Justice
Stephen Green	10/12/13	Chair of the Office for Legal Complaints	Justice
Kevin McGinty	11/03/15	Chief Inspector of the Crown Prosecution Service	Justice
Peter Clarke	24/11/15	HM Chief Inspector of Prisons	Justice
Glenys Stacey	24/11/15	HM Chief Inspector of Probation	Justice
Lord Ajay Kakkar	12/07/16	Chair of the Judicial Appointments Commission	Justice
Lord Ajay Kakkar	18/07/13	Chair of the House of Lords Appointments Commission	Political and Constitutional Reform
Alison White	11/09/14	Registrar of Consultant Lobbyists	Political and Constitutional Reform
Sir David Normington	16/11/10	First Civil Service Commissioner and Commissioner for Public Appointments	Public Administration
Professor Dame Janet Finch	28/06/11	Chair of the UK Statistics Authority	Public Administration
Dame Julie Mellor	06/07/11	Parliamentary and Health Service Ombudsman	Public Administration
Andrew Dilnot	06/12/11	Chair of the UK Statistics Authority	Public Administration

William Shawcross	05/09/12	Chair of the Charity Commission	Public Administration
Lord Paul Bew	11/07/13	Chair of the Committee on Standards in Public Life	Public Administration
Baroness Angela Browning	09/12/14	Chair of the Advisory Council on Business Appointments	Public Administration
Peter Riddell	21/03/16	Commissioner for Public Appointments	Public Administration and Constitutional Affairs
Keith Conradi	07/06/16	Chief Investigator of the Healthcare Safety Investigation Branch	Public Administration and Constitutional Affairs
Ian Watmore	06/09/16	First Civil Service Commissioner	Public Administration and Constitutional Affairs
Phil Smith	24/10/11	Chair of the Technology Strategy Board	Science and Technology
Dr Paul Golby	07/03/12	Chair of the Engineering and Physical Sciences Research Council	Science and Technology
Donald Brydon	11/07/12	Chair of the Medical Research Council	Science and Technology
Sir Anthony Cleaver	21/10/13	Chair of the Natural Environment Research Council	Science and Technology
Sir Drummond Bone	27/01/14	Chair of the Arts and Humanities Research Council	Science and Technology
Professor Sir Gordon Duff	02/03/15	Chair of the Biotechnology and Biological Sciences Research Council	Science and Technology
Robert Chote	16/09/10	Chair of the Office for Budget Responsibility	Treasury

Mark Carney	07/02/13	Governor of the Bank of England	Treasury
Andrew Bailey	20/07/16	Chief Executive Officer of the Financial Conduct Authority	Treasury
Deep Sagar	30/03/11	Chair of the Social Security Advisory Committee	Work and Pensions
Paul Gray	20/06/12	Chair of the Social Security Advisory Committee	Work and Pensions
Anthony Arter	11/02/15	Pensions Ombudsman and Pension Protection Fund Ombudsman	Work and Pensions

Appendix 2 - Model questionnaire

Personal

Do you have any business or financial connections, or other commitments, which might give rise to a conflict of interest in carrying out your new duties?

What other professional activities do you expect to continue/undertake, and how do you intend reconciling these activities with your new position?

Have you ever held any post or undertaken any activity that might cast doubt on your political impartiality?

How were you recruited: were you encouraged to apply, and if so, by whom?

Please explain how your experience to date has equipped you to fulfil your new responsibilities.

In which areas do you feel well-qualified to make a contribution; and in which will you have to acquire new skills, or knowledge?

Do you intend to serve your full term of office, and do you intend to apply for another once it has ended?

How would you describe your leadership style? How will the organisation look and feel different under your leadership?

The organisation

What will be your main priorities?

What criteria should be used to judge your performance over your term of office?

What criteria should be used to judge the performance of the organisation as a whole?

What do you see as the key risks to the organisation's objectives?

What do you consider to have been the main successes and failures of the organisation? What will you do to address the failures?

How do you assess the public profile and reputation of the organisation?

How will you protect and enhance your personal independence and the institutional independence of the organisation? What role can parliamentary scrutiny play in this?

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In 2007 the new Prime Minister Gordon Brown announced that in future the most important senior public appointments would be opened to scrutiny by departmental select committees. The Constitution Unit evaluated the impact of the first 20 pre-appointment scrutiny hearings in a report published by the House of Commons Liaison Committee in 2010.

This report is based on a study of a further 70 pre-appointment hearings conducted between 2010 and 2016. It concludes that pre-appointment scrutiny has real value: candidates have not been appointed as a result, and others have been forced to resign, so select committees are far from toothless. Following the Grimstone review, which gives ministers more scope for political patronage, pre-appointment scrutiny is all the more important. The report recommends that committees should not be restricted by the Cabinet Office list of the 'top 50' public appointments, but set their own priorities, and be more selective but also more systematic in their approach to pre-appointment scrutiny.

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