



House of Commons  
Public Administration Select  
Committee

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**Parliament and public  
appointments:  
Pre-appointment  
hearings by select  
committees**

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**Third Report of Session 2007–08**

*Report, together with formal minutes, oral and  
written evidence*

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## The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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# Contents

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<b>Report</b>	<i>Page</i>
<b>Summary</b>	<b>3</b>
<b>Report</b>	<b>5</b>
Introduction	5
How public appointments are made	6
Purpose and conduct of pre-appointment hearings	6
List of appointments	8
Risks	10
Would candidates be put off?	11
Would it lengthen the appointments process?	12
Would hearings be properly conducted, and might they be open to legal challenge?	12
What would happen if a committee objected to an appointment?	13
How would committees' agendas be affected?	15
Conclusion	15
<b>Witnesses</b>	<b>20</b>
<b>List of written evidence</b>	<b>20</b>
<b>List of Reports from the Committee during the current Parliament</b>	<b>21</b>



## Summary

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This Report welcomes and responds to the Government's proposal to involve select committees in public appointments by inviting committees to hold non-binding pre-appointment hearings with nominees for key positions.

The Report clarifies the purpose of these hearings: to expose nominees to parliamentary and public scrutiny before the final ministerial decision on the appointment, to increase the likelihood that those appointed will be effective in their accountability to Parliament and the public. The Report also establishes criteria to determine which posts should be subject to these hearings, and identifies major auditors, ombudsmen, regulators and inspectors, as well as those responsible for the appointments system itself; along with appointments normally made on merit but where Ministers have chosen not to follow the usual processes.

Finally, the Report responds to concerns about involving select committees in public appointments, including several raised by the Commissioner for Public Appointments, and proposes ways of managing the risks identified, largely through a framework of clear protocols to be agreed between the Government and the Liaison Committee, and also by monitoring and reviewing the effect of the hearings on public appointments over time.



# Report

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## Introduction

1. On 3 July 2007, only days after Rt Hon Gordon Brown MP had taken office as Prime Minister, the Government published proposals on “streamlining public appointments” in its green paper ‘The Governance of Britain’. One of these proposals was:

that 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 ... The Government, in consultation with the Liaison Committee, will prepare a list of such appointments for which these hearings will apply.<sup>1</sup>

The Government’s support for this idea was new, even if the idea itself was not.

2. Shortly beforehand, on 19 June, we had taken evidence on confirmation hearings from Janet Gaymer CBE, the Commissioner for Public Appointments. This followed a proposal by the Conservative Party Democracy Taskforce earlier the same month that “Select Committees should be the vehicle through which Parliament plays an increased role in public appointments”.<sup>2</sup> Others have also made recommendations in this area during the past few years, including our predecessor Committee in a wide-ranging report on public appointments.<sup>3</sup>

3. In the light of the Government’s proposals, we took evidence from Janet Gaymer again in December 2007, as well as from Rt Hon John McFall MP, the Chairman of the Treasury Select Committee. While a number of parliamentary committees had taken evidence from newly appointed office-holders and had commented publicly on specific appointments, the Treasury Committee had been unique in regularly taking evidence from and reporting on new appointments to the Monetary Policy Committee of the Bank of England over a period of ten years. The Committee had also held in July 2007 a ‘pilot’ pre-appointment hearing (along the lines envisaged in the Governance of Britain paper) with Sir Michael Scholar, recently nominated as the first Chair of the new Statistics Board. We are grateful to our witnesses for their time and for giving us the benefit of their substantial experience.

4. Arrangements for pre-appointment hearings are unlikely to require primary legislation, but we understand that the Government plans to produce more definite proposals at the same time as the draft Constitutional Renewal Bill, due to be published in February 2008. We are therefore taking this opportunity to make our views known before the Government’s proposals are finalised.

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1 *The Governance of Britain*, Cm 7170, p 29

2 Conservative Democracy Taskforce, *Power to the People: Rebuilding Parliament*, p 4

3 *Government By Appointment: Opening Up The Patronage State*, Fourth Report from the Public Administration Select Committee, Session 2002–03, HC 165-1, paras 103–110 (henceforth *Government by Appointment*). See also *The report of POWER: An independent inquiry into Britain’s democracy*, March 2006, pp 139–142.

## How public appointments are made

5. Ministers and the Crown are responsible for many thousands of public appointments, in areas ranging “from the regulation of key utilities to health service bodies and from the boards of museums and galleries to those who can investigate complaints about the way key public services are provided”.<sup>4</sup> The independent Office of the Commissioner for Public Appointments (OCPA) regulates in the region of 10,000 of these appointments in line with core principles of appointment on merit, probity and transparency.<sup>5</sup> However, as our predecessor Committee discovered, “OCPA’s writ does not run everywhere” and there does not “seem to be any convincing rationale to explain why some bodies are free from direct regulation and some are covered”.<sup>6</sup> Many of the appointments not regulated by OCPA nevertheless follow a process stated to be in line with OCPA’s core principles.<sup>7</sup> The appointments system maintains the principle of ministerial responsibility in relation to public appointments, but puts checks on how the principle is applied in practice.

6. In practice, ministerial involvement in the vast majority of public appointments comes only at the beginning of the process, in setting out the balance of skills required for the post, and at the end, in deciding whether to appoint one of a limited number of candidates proposed by a selection board (which operates under the eye of an independent assessor). While this restricts the scope for political involvement in the appointment process, it does not remove it entirely—irrespective of whether the appointments are regulated by OCPA.

## Purpose and conduct of pre-appointment hearings

7. **We welcome the Government’s decision to involve select committees in key public appointments.** A number of committees have already responded positively to the proposal, and have recommended posts within their remit for pre-appointment hearings.<sup>8</sup> **It is important, however, to establish with clarity what the purpose of pre-appointment hearings would be, before deciding to which posts they might apply.** As the ‘Governance of Britain’ paper was not entirely clear as to this purpose, we asked our witnesses for their views.

8. Both Janet Gaymer and John McFall identified the need to clarify whether the purpose of pre-appointment hearings was to help select a candidate for a post or to begin to hold a nominee to account for how they would carry out a position. Both seemed to view the hearings held so far as the latter, rather than the former.<sup>9</sup>

9. We are not convinced, however, that nominees can reasonably be held to account for their performance in positions they have yet to take up. Neither, it would seem, is Janet Gaymer, who told us...

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4 *The Governance of Britain*, p 28

5 Ev 15, para 5

6 *Government by Appointment*, para 19. See also Q 77.

7 Qq 6 and 63; Ev 20, para 13

8 *Chairman of the Medical Research Council: Introductory Hearing*, Eighth Report from the Science and Technology Committee, Session 2006–07, HC 746, para 15; *The Chairmanship of the BBC*, First Report from the House of Lords Select Committee on Communications, Session 2006–07, HL 171, para 42

9 Q 2 [John McFall]; Q 71 [Janet Gaymer]

What was interesting, I thought, about the Michael Scholar hearing was that, for example, there were questions about the budget of the Statistics Board and Michael Scholar, who had only been told the previous day that he was the nominee for the appointment, said, “I can’t answer that question. It’s too soon. I’ve done the reading round the post, but I can’t answer that question. All I can do is tell you what I’ve learnt preparing for the interview and so on”. It leads me to the view, and it is a personal view, that it must be better, therefore, to see this person post-appointment when they have gone through their induction, they have gone in, they have looked at the place, they have checked whether their first impressions were correct and then a meaningful discussion can take place.<sup>10</sup>

...and who reiterated this point in her written evidence:

there may be a more meaningful debate between a Select Committee and an appointee once the appointee has begun to discharge his or her duties and is in a position to discuss strategy and plans for the future of the public body in question from a more informed basis.<sup>11</sup>

**10. We agree with the Commissioner for Public Appointments that those in public office can only be meaningfully held to account after they have taken up office.** Pre-appointment hearings would inevitably, however, begin a relationship between a committee and an appointee (assuming he or she did take up office), which would subsequently develop into one of accountability: this is probably what the Chairman of the Treasury Committee had in mind when he described hearings as “start of a process of continuing accountability”.<sup>12</sup>

**11. If pre-appointment hearings are not about accountability, then they must be about selection. The question to be answered is whether there is a proper and valuable role for committees in this process.**

12. Confirmation hearings by Senate committees are a well-known aspect of the public appointments process in the United States. These hearings were one of our main subjects of discussion during a visit to Washington DC in November 2007, when much of the comment we heard was negative. Senate hearings, however, operate in a particular political context, by providing a cross-party check to partisan presidential appointments made without a transparent process based on merit. Where a transparent, regulated process exists, this type of binding hearing could all too easily become perceived as politicisation of the process rather than as a necessary democratic limit on executive power.

13. Janet Gaymer has expressed concerns that pre-appointment hearings could lead to “perceived politicisation ... the further you involve a political influence of whatever kind in the process the more you run that risk”.<sup>13</sup> We agree with her entirely that pre-appointment hearings should not interfere with the OCPA-regulated or equivalent part of the selection process. But this is not what is proposed. Pre-appointment hearings would take place after

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10 Q 9

11 Ev 18, para 11

12 Q 2

13 Q 62. See also Ev 16–17, para 10 (ii).

the OCPA-regulated part of the process was complete and after the Minister had already provisionally chosen a candidate. In other words, they would provide political balance to the already political final part of the selection process: the ministerial decision. **The proper role for select committees in the selection of candidates for public appointments is in informing the final ministerial decision, not in influencing the impartial process that precedes that decision. Select committees should only become involved once every part of the interview and selection process has been completed except for this final decision.**

14. If they are to proceed, it is not enough that pre-appointment hearings should be proper; they should also add value. **The value that committees can add over and above that provided by a rigorous selection process is to expose a candidate to parliamentary and public scrutiny.** It follows that **hearings should normally apply only to posts for which accountability to Parliament and the public are an important part of the role. A positive outcome of holding pre-appointment hearings for such posts is the likelihood that appointees will perform this accountability function more effectively.**

15. Janet Gaymer's work has led her to the view that

the asking by politicians of questions about political activity and other matters might be seen by the public as politicising appointments processes overall, even though the questioning was intended to establish independence and lack of political bias.<sup>14</sup>

John McFall, on the other hand, suggested from his experience as a Chairman that hearings could help to allay suspicions that a candidate had been chosen for political reasons:

Sir Michael Scholar is the father of Tom Scholar who is the Chief of Staff at Number 10 Downing Street. As Chairman, I specifically asked the question of Sir Michael Scholar, did his son know that he was in for this job and did he have any contact with him, and Sir Michael was very clear and above board that the first the son had heard about it was after the appointment process, so that put to bed the issue of politicisation.<sup>15</sup>

16. It is interesting that the Prime Minister submitted the new Chair of the Statistics Board not just to a pre-appointment hearing, but also to the approval of both Houses of Parliament, although there was no requirement for him to do so. This may have been to allay concerns of party political bias in the appointment process. This suggests that **hearings might also be appropriate where a ministerial appointment might otherwise appear to be improperly partisan, particularly where there had been no transparent process of appointment on merit. There also needs to be clarity and consistency about which appointments are made with cross-party agreement and are put to Parliament for approval.**

## List of appointments

17. How then to decide which posts should be subject to a pre-appointment hearing? The Government's suggestion is that hearings should apply to "positions in which Parliament

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14 Ev 16, para 10 (ii)

15 Q 1

has a particularly strong interest because the officeholder exercises statutory or other powers in relation to protecting the public's rights and interests".<sup>16</sup> We agree that this is a necessary criterion, but it is not sufficient: it would not be appropriate for the judiciary to be subject to pre-appointment hearings, despite their role in protecting the public's rights and interests. Positions subject to pre-appointment hearings should also, as set out at paragraph 14, carry an expectation of accountability to Parliament and the public. **We would expect pre-appointment hearings to apply to major auditors, ombudsmen, regulators and inspectors, as well as to those responsible for the appointments system itself.**

18. The Government has cited the following positions as examples of those suitable for hearings:

- the First Civil Service Commissioner;
- the Commissioner for Public Appointments;
- the Parliamentary Commissioner for Administration and Health Service Commissioner for England ('the Ombudsman');
- the Local Government Ombudsman for England; and
- independent inspectors such as the Chief Inspector of Prisons and the Chief Inspector of Probation for England and Wales.<sup>17</sup>

19. The Government's list does not claim to be exclusive, and there are other obvious candidates. Organised by the categories identified above, some examples are:

- auditors: the Comptroller and Auditor General (whose appointment is already subject to a vote in the House of Commons) and the Chair of the Audit Commission;
- ombudsmen and complaints investigators: the Pensions Ombudsman and the Chair of the Independent Police Complaints Commission;
- regulators: the Information Commissioner and the Chairman of the Committee on Standards in Public Life;
- inspectors: HM Inspector for Education, Children's Services and Skills, and HM Inspector for Constabulary; and
- appointers: the Chair of the Appointments Commission (formerly the NHS Appointments Commission) and the Chair of the House of Lords Appointments Commission.

There are potentially many others, although Janet Gaymer's point is well taken that pre-appointment hearings "should concentrate on quality rather than quantity in the first instance".<sup>18</sup> **We welcome the Government's commitment to keep under review the list of**

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16 *The Governance of Britain*, p 28

17 *The Governance of Britain*, p 29

18 Ev 19, para 12 (iii)

**appointments subject to pre-appointment hearings, and to maintain a discussion on this list with the Liaison Committee.**

20. Ministers do not make appointments to all posts matching the criteria set out at paragraph 17. For example, the Chair of the Financial Ombudsman Service is appointed by the Financial Services Authority; the Chair of the Healthcare Commission by the Appointments Commission. Despite the parliamentary and public interest in these appointments, it would be difficult to justify involving a committee of politicians in appointments processes where politicians were not also taking the final decisions. **We recommend that a pre-appointment hearing should take place only where the final decision on appointment remains in the hands of a politician.**

21. The Government proposes that for “market-sensitive and certain other appointments, including the Governor and the two Deputy Governors of the Bank of England, the Chairman of the Financial Services Authority, and some utility regulators”, pre-commencement hearings should be held, after the appointments have been approved but before the appointee has taken up post.<sup>19</sup> **We understand why the Government might be cautious about adding a public scrutiny element to the appointments process if this might affect markets or dissuade private-sector candidates from putting themselves forward. However, it is not clear what the value would be of a hearing which was able neither to influence the appointment of a candidate nor to allow an office-holder to account for their performance.** It could also be argued that pre-commencement hearings might put a Minister in a difficult position, if issues of competence or acceptability emerged before an appointee had begun work but too late to step back from appointing them. **We are not attracted to the idea of pre-commencement hearings as an alternative to pre-appointment hearings. For a limited range of genuinely sensitive appointments, an alternative to a public hearing might be for a pre-appointment hearing to be held in private, with the transcript of evidence published once the status of the appointment had been confirmed.**

22. Janet Gaymer argued in evidence to us that appointments regulated by her office should not be subject to hearings.<sup>20</sup> We are not persuaded. Some of those posts which most closely meet the criteria we have identified fall within her remit; others do not. Of those posts outside her remit, many nonetheless follow a well-regulated and meritocratic appointments procedure. **If the basis on which posts are regulated by the Commissioner for Public Appointments is arbitrary, as the Commissioner seems to believe,<sup>21</sup> it would be equally arbitrary to exclude posts from pre-appointment hearings simply because they are regulated by the Commissioner.**

## Risks

23. Janet Gaymer has warned us of a number of risks that could arise from holding pre-appointment hearings:

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<sup>19</sup> *The Governance of Britain*, p 29

<sup>20</sup> Qq 4 and 17. See also Ev 19, para 12 (v).

<sup>21</sup> Qq 76–80

- i. “whether this will put off potential candidates”;
- ii. “the concern that it may lengthen the process”;
- iii. “perceived politicisation of the process” (already considered above); and
- iv. “inappropriate questioning and potential legal consequences”.<sup>22</sup>

24. These deserve close consideration, along with two other concerns:

- i. What would happen if a committee objected to an appointment?
- ii. How would the need to hold pre-appointment hearings impact on committees’ agendas?

### ***Would candidates be put off?***

25. When she came before us in June 2007, Janet Gaymer suggested that “the confirmatory hearing process ... may put off a number of candidates from applying in the first place and, therefore, reduce the pool of candidates from which the ultimate choice is being made”.<sup>23</sup> She repeated these arguments in December and in her written evidence.<sup>24</sup> The posts to which we are recommending that pre-appointment hearings should apply require a substantial degree of parliamentary and public accountability. We therefore think it highly unlikely that suitable candidates would be dissuaded from applying because of fear or concern about a pre-appointment hearing.

26. Janet Gaymer also suggested that holding pre-appointment hearings “might even have some sort of gender-related effect” on applications.<sup>25</sup> This too strikes us as unlikely, but would clearly be of concern if it were the case.

27. Thirdly, there is a concern that some candidates, particularly those with a private sector background, might not wish the fact of their candidacy to emerge before they had been formally appointed or rejected. Janet Gaymer has put it to us in written evidence that “the very fact that an individual had applied for a particular position might, for perfectly proper reasons, need to be kept confidential until the unconditional acceptance of the position had been confirmed”.<sup>26</sup> She suggested to us in June 2007 that hearings might be difficult for “people on boards of FTSE companies whose very act of voicing the thought of departure can affect share prices”.<sup>27</sup> She told us in December that she herself would probably not have applied for her post if a pre-appointment hearing had been required because of the potential for her employer’s reputation to be adversely affected.<sup>28</sup>

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22 Q 1

23 HC (2006–07) 731-i, Q 1

24 Qq 1 and 43–44; Ev 16, para 10 (i)

25 Q 44

26 Ev 16, para 10 (i)

27 HC (2006–07) 731-i, Q 1

28 Qq 20–22

28. It is difficult for us to judge to what extent this would be a widely held concern, but we think in practice that the likelihood of an individual's or an organisation's reputation being significantly affected by a pre-appointment hearing is very slight indeed. In reality, the likelihood of a candidate who has reached the pre-appointment hearing stage not subsequently being appointed will also be very slight.

29. **It is not our intention that pre-appointment hearings should put off suitable candidates from applying, and we do not think that they will be put off. Given the suggestion that this may be a risk, however, we recommend that the Government should attempt to monitor the effect of pre-appointment hearings on the number, balance and quality of applications for the positions to which they apply, and should aim to discuss with the Liaison Committee the results of this monitoring exercise as they become available.** Janet Gaymer is supportive of an attempt “to measure any reduction in the pool or diversity of candidates”, although she points out that “in practice it will be extremely difficult to identify those candidates who did not proceed with an application for a public appointment at all and whose reason was the need to attend a pre-appointment hearing”.<sup>29</sup>

### ***Would it lengthen the appointments process?***

30. Confirmation hearings in the United States can significantly delay appointments. It is important that pre-appointment hearings should not. The Treasury Committee has an excellent reputation in this respect. As its Chairman pointed out by way of example, “when we found out about the appointment of Sir Michael Scholar, I think we went into gear very quickly and within a week or so we had the hearing”.<sup>30</sup>

31. It is, however, equally important that the Government should have in mind the parliamentary timetable when scheduling appointments, and should give committees adequate notice of any forthcoming appointment to which a hearing might apply. **We recommend that the Government should allow committees at least three sitting weeks within which to hold a pre-appointment hearing and to give their advice on an appointment. A committee's failure to do so would not prevent an appointment from being made.**

### ***Would hearings be properly conducted, and might they be open to legal challenge?***

32. It is for the House of Commons and committees themselves to determine how pre-appointment hearings should be organised and if there should be any constraints on questioning. For its hearings with nominated members of the Monetary Policy Committee of the Bank of England (MPC), the Treasury Committee agreed from the outset that “questioning should be restricted to the two criteria of professional competence and personal independence”.<sup>31</sup> Where impartiality and the need to speak out are core to the

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29 Ev 19, para 12 (iii)

30 Q 2

31 *The Monetary Policy Committee of the Bank of England: Confirmation Hearings*, Seventh Report from the Treasury Committee, Session 1999–2000, HC 520, para 3

role, questioning on personal independence should, in our view, properly cover concerns about political allegiance which it would not have been appropriate to raise at interview.<sup>32</sup>

33. Where individuals are being asked about their personal qualities in public, it is also particularly important that questioning, however probing, should be courteous. This has almost always been the case in the Treasury Committee's history. There has been no recent equivalent of the unfortunate incident in which a new MPC member was asked whether it was "fair" to suggest that whereas another member "was premier division of the quality of Arsenal, maybe Manchester United", he was "likely to turn out to be Vauxhall League of the quality of Yeovil, maybe Kidderminster".<sup>33</sup>

**34. We invite the Liaison Committee to agree guidelines for pre-appointment hearings, and suggest that the Chairman of any committee who departs egregiously from these guidelines should be answerable in the first instance to his or her fellow Chairmen. We trust to the good sense of committee Members to ensure that pre-appointment hearings are conducted appropriately. If they are not, the reputations of committees are likely to suffer and the Government is likely to reconsider whether pre-appointment hearings are appropriate.**

35. Select committee hearings, like other parliamentary proceedings, are protected from challenge in the courts. As has been pointed out to us, however, the ministerial decision on an appointment could be open to challenge, and if it were challenged, "then questions arise as to what sort of considerations went into the decision".<sup>34</sup> It would be foolish of us to contradict Janet Gaymer, when she tells us as an expert on employment law that this is "a very arcane area of the law and it would be a very brave person who said that they knew the answer one way or the other".<sup>35</sup> It would, however, be perverse in the extreme if Ministers felt unable for legal reasons even to take into account the results of pre-appointment hearings.

**36. We recommend that the Government should ensure that a Minister, when coming to a decision on an appointment, will not be dissuaded by the risk of legal challenge from taking committee proceedings into account. If committee involvement in an appointment led a Minister to change his or her mind on the suitability of candidate, it would be absurd if the Minister felt required for legal reasons to proceed with the appointment against his or her better judgement.**

### ***What would happen if a committee objected to an appointment?***

37. It has been suggested that it would be "a very brave Secretary of State" that appointed any candidate not reported on favourably by Parliament.<sup>36</sup> However, on the rare occasions in the recent past when committees have produced negative opinions on new appointees, the Government has supported those it has appointed:

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32 Qq 2, 4, 7 and 9

33 HC (1999–2000) 520, Q 32

34 Q 37

35 Q 39

36 *The Chairmanship of the BBC*, HL (2006–07) 171, Q 444

- In May 2000, the Treasury Committee reported in the case of Christopher Allsopp as a nominee to the MPC that they were “disappointed in his answers to our questions, and believe that this casts doubt on whether he possesses the skills required to take part in meetings of the Monetary Policy Committee”. The Committee decided to “call on the Chancellor of the Exchequer to think again about Mr Allsopp's appointment”.<sup>37</sup> This was a week before Mr Allsopp was due to take up the position. In its reply two months later, the Government simply noted that “Mr Christopher Allsopp fully satisfies the criteria for appointments to the Bank of England Monetary Policy Committee”, set out why this was the case and noted that “his appointment has been widely welcomed, including personally by the Governor and Deputy Governor”.<sup>38</sup>
- The Science and Technology Committee, following evidence from Sir John Chisholm as Chairman of the Medical Research Council, reported in July 2007 that they had “serious reservations as to whether Sir John is the right person to guide the MRC Executive through the coming period of change”.<sup>39</sup> The Government responded that it “disagree[d] with the Committee's reservations. The Government, the MRC Council and the MRC senior executive have every confidence in Sir John Chisholm and believe that the skills and experience he can bring as chair will be invaluable through this period of change”.<sup>40</sup> This was by no means a pre-appointment hearing: the Committee heard from Sir John the best part of a year after he had taken up the appointment.

**38. It is not intended that pre-appointment hearings will be binding, and Ministers will therefore retain the right to disagree with a committee's views on an appointee. Pre-appointment hearings will only be of any significance, however, if there is the possibility that Ministers might change their minds, and that a candidate's appointment might not be approved. We expect that it will be only in very exceptional cases that committees will recommend against the appointment of a candidate; but the test of the Government's commitment to pre-appointment hearings will be how Ministers react in such cases.**

39. How should a committee make its reservations about a candidate known? Where a committee has held a public evidence session, media speculation about a candidate's future might develop unless a Report was made to the House and published as swiftly as possible. If a session has been held in private, as we have suggested might be appropriate for particularly sensitive positions,<sup>41</sup> then a committee could enter a confidential “Letter of Reservation”, in line with a proposal from our predecessors.<sup>42</sup> **Clear procedures are needed to avoid protracted media speculation about a candidate's fate following a pre-appointment hearing, particularly where a committee is minded to recommend against an appointment. We invite the Liaison Committee to ensure that these procedures are in place.**

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37 *The Monetary Policy Committee of the Bank of England: Confirmation Hearings*, Seventh Report from the House of Commons Treasury Committee, Session 1999-2000, HC520-I, para 5

38 Seventh Special Report from the Treasury Committee, Session 1999-2000, HC 859

39 HC (2006-07) 746, para 14

40 Sixth Special Report from the Science and Technology Committee, Session 2006-07, HC 1043, Appendix, para 10

41 See paragraph 21.

42 *Government by Appointment*, para 110

40. As Janet Gaymer has rightly pointed out, the Government will also need to set out clearly procedures that will be followed if a Minister decides not to appoint a candidate following a pre-appointment hearing.<sup>43</sup> In those cases in which more than one appointable candidate will have been identified (the majority), we would expect a further pre-appointment hearing to be scheduled as swiftly as possible.

### *How would committees' agendas be affected?*

41. As a general rule, select committees currently control their own agendas and forward programmes. There is a risk that committees will have to abandon other work in order to hold pre-appointment hearings, or may simply choose not to hold the hearings instead. This risk will depend on how many hearings each committee is expected to hold, and to what schedule. **We recommend that a select committee should not necessarily be expected to hold more than three pre-appointment hearings in a year. Where this total is likely to be exceeded, the committee should be warned in advance and may reasonably choose not to carry out all of the hearings proposed.**

### **Conclusion**

42. The Government's commitment to involving the House of Commons more closely in key public appointments is an important step. It recognises that both the House and the public have an interest in some posts, which makes it inappropriate for appointments to be made by Ministers without parliamentary input. **In this Report, we have set out what we believe committees' role in these appointments should be, and which appointments should be affected. This is a new step, somewhat into the unknown, the Commissioner for Public Appointments has expressed a number of concerns, and we would understand if the Government wished to keep how the system was working under review, in close co-operation with the Liaison Committee. Given the limited number of posts affected, data to conduct such a review would probably only be available after three years of operation.**

43. **There is one other circumstance in which pre-appointment hearings should be introduced. Occasionally, Ministers have made public appointments without following the usual processes, where normal practice and the public expectation are that these appointments will be made on merit. The most common examples are appointments to the Diplomatic Service, often of former Members of Parliament. Such appointments may occasionally be appropriate, but they deserve to be tested in public by a cross-party committee.<sup>44</sup> There is a strong argument for requiring a pre-appointment hearing—even a binding hearing—in such cases.**

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43 Ev 18, para 10 (vi)

44 The Foreign Affairs Committee has reported its interest in carrying out scrutiny of this kind on a number of occasions, most recently in its First Report of Session 2007–08, HC 50, paras 199–200.

## Conclusions and recommendations

1. We welcome the Government's decision to involve select committees in key public appointments. (Paragraph 7)
2. It is important, however, to establish with clarity what the purpose of pre-appointment hearings would be, before deciding to which posts they might apply. (Paragraph 7)
3. We agree with the Commissioner for Public Appointments that those in public office can only be meaningfully held to account after they have taken up office (Paragraph 10)
4. If pre-appointment hearings are not about accountability, then they must be about selection. The question to be answered is whether there is a proper and valuable role for committees in this process. (Paragraph 11)
5. The proper role for select committees in the selection of candidates for public appointments is in informing the final ministerial decision, not in influencing the impartial process that precedes that decision. Select committees should only become involved once every part of the interview and selection process has been completed except for this final decision. (Paragraph 13)
6. The value that committees can add over and above that provided by a rigorous selection process is to expose a candidate to parliamentary and public scrutiny. (Paragraph 14)
7. Hearings should normally apply only to posts for which accountability to Parliament and the public are an important part of the role. A positive outcome of holding pre-appointment hearings for such posts is the likelihood that appointees will perform this accountability function more effectively. (Paragraph 14)
8. Hearings might also be appropriate where a ministerial appointment might otherwise appear to be improperly partisan, particularly where there had been no transparent process of appointment on merit. There also needs to be clarity and consistency about which appointments are made with cross-party agreement and are put to Parliament for approval. (Paragraph 16)
9. We would expect pre-appointment hearings to apply to major auditors, ombudsmen, regulators and inspectors, as well as to those responsible for the appointments system itself. (Paragraph 17)
10. We welcome the Government's commitment to keep under review the list of appointments subject to pre-appointment hearings, and to maintain a discussion on this list with the Liaison Committee. (Paragraph 19)
11. We recommend that a pre-appointment hearing should take place only where the final decision on appointment remains in the hands of a politician. (Paragraph 20)
12. We understand why the Government might be cautious about adding a public scrutiny element to the appointments process if this might affect markets or dissuade

private-sector candidates from putting themselves forward. However, it is not clear what the value would be of a hearing which was able neither to influence the appointment of a candidate nor to allow an office-holder to account for their performance. (Paragraph 21)

13. We are not attracted to the idea of pre-commencement hearings as an alternative to pre-appointment hearings. For a limited range of genuinely sensitive appointments, an alternative to a public hearing might be for a pre-appointment hearing to be held in private, with the transcript of evidence published once the status of the appointment had been confirmed. (Paragraph 21)
14. If the basis on which posts are regulated by the Commissioner for Public Appointments is arbitrary, it would be equally arbitrary to exclude posts from pre-appointment hearings simply because they are regulated by the Commissioner. (Paragraph 22)
15. It is not our intention that pre-appointment hearings should put off suitable candidates from applying, and we do not think that they will be put off. Given the suggestion that this may be a risk, however, we recommend that the Government should attempt to monitor the effect of pre-appointment hearings on the number, balance and quality of applications for the positions to which they apply, and should aim to discuss with the Liaison Committee the results of this monitoring exercise as they become available. (Paragraph 29)
16. We recommend that the Government should allow committees at least three sitting weeks within which to hold a pre-appointment hearing and to give their advice on an appointment. A committee's failure to do so would not prevent an appointment from being made. (Paragraph 31)
17. We invite the Liaison Committee to agree guidelines for pre-appointment hearings, and suggest that the Chairman of any committee who departs egregiously from these guidelines should be answerable in the first instance to his or her fellow Chairmen. We trust to the good sense of committee Members to ensure that pre-appointment hearings are conducted appropriately. If they are not, the reputations of committees are likely to suffer and the Government is likely to reconsider whether pre-appointment hearings are appropriate. (Paragraph 34)
18. We recommend that the Government should ensure that a Minister, when coming to a decision on an appointment, will not be dissuaded by the risk of legal challenge from taking committee proceedings into account. If committee involvement in an appointment led a Minister to change his or her mind on the suitability of candidate, it would be absurd if the Minister felt required for legal reasons to proceed with the appointment against his or her better judgement. (Paragraph 36)
19. It is not intended that pre-appointment hearings will be binding, and Ministers will therefore retain the right to disagree with a committee's views on an appointee. Pre-appointment hearings will only be of any significance, however, if there is the possibility that Ministers might change their minds, and that a candidate's appointment might not be approved. We expect that it will be only in very exceptional cases that committees will recommend against the appointment of a

candidate; but the test of the Government's commitment to pre-appointment hearings will be how Ministers react in such cases. (Paragraph 38)

20. Clear procedures are needed to avoid protracted media speculation about a candidate's fate following a pre-appointment hearing, particularly where a committee is minded to recommend against an appointment. We invite the Liaison Committee to ensure that these procedures are in place. (Paragraph 39)
21. We recommend that a select committee should not necessarily be expected to hold more than three pre-appointment hearings in a year. Where this total is likely to be exceeded, the committee should be warned in advance and may reasonably choose not to carry out all of the hearings proposed. (Paragraph 41)
22. In this Report, we have set out what we believe committees' role in these appointments should be, and which appointments should be affected. This is a new step, somewhat into the unknown, the Commissioner for Public Appointments has expressed a number of concerns, and we would understand if the Government wished to keep how the system was working under review, in close co-operation with the Liaison Committee. Given the limited number of posts affected, data to conduct such a review would probably only be available after three years of operation. (Paragraph 42)
23. There is one other circumstance in which pre-appointment hearings should be introduced. Occasionally, Ministers have made public appointments without following the usual processes, where normal practice and the public expectation are that these appointments will be made on merit. The most common examples are appointments to the Diplomatic Service, often of former Members of Parliament. Such appointments may occasionally be appropriate, but they deserve to be tested in public by a cross-party committee. There is a strong argument for requiring a pre-appointment hearing—even a binding hearing—in such cases. (Paragraph 43)

## Formal Minutes

Thursday 10 January 2008

Members present:

Dr Tony Wright, in the Chair

Mr David Burrowes

Paul Flynn

David Heyes

Kelvin Hopkins

Mr Iain Liddell-Grainger

Julie Morgan

Mr Gordon Prentice

Paul Rowen

Mr Charles Walker

Jenny Willott

Draft Report (*Parliament and public appointments: Pre-appointment hearings by select committees*), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 43 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Thursday 17 January at 9.45 am

## Witnesses

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**Thursday 6 December 2007**

*Page*

**Janet Gaymer CBE**, Commissioner for Public Appointments, and **Rt Hon John McFall**, Chairman of the Treasury Select Committee

Ev 1

## List of written evidence

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Commissioner for Public Appointments

Ev 15

# List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2007–08

First Report	Machinery of Government Changes – A follow-up Report	HC 160
Second Report	Propriety and Peerages	HC 153

## Session 2006–07

First Report	The Work of the Committee in 2005–06	HC 258
Second Report	Governing the Future	HC 123 ( <i>Cm 7154</i> )
Third Report	Politics and Administration: Ministers and Civil Servants	HC 122
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121 ( <i>HC 88</i> )
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523 ( <i>HC 922</i> )
Sixth Report	The Business Appointment Rules	HC 651 ( <i>HC 1087</i> )
Seventh Report	Machinery of Government Changes	HC 672 ( <i>HC 90</i> )
Eighth Report	The Pensions Bill and the FAS: An Update, Including the Government Response to the Fifth Report of Session 2006-07	HC 922 ( <i>HC 1048</i> )
Ninth Report	Skills for Government	HC 93 ( <i>HC 89</i> )
First Special Report	The Governance of Britain	HC 901

## Session 2005–06

First Report	A Debt of Honour	HC 735
Second Report	Tax Credits: putting things right	HC 577 ( <i>HC 1076</i> )
Third Report	Legislative and Regulatory Reform Bill	HC 1033 ( <i>HC 1205</i> )
Fourth Report	Propriety and Honours: Interim Findings	HC 1119
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689 ( <i>HC 91, Session 2007–08</i> )
Sixth Report	The Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications	HC 1081 ( <i>Cm 6961</i> )
Seventh Report	The Ministerial Code: the case for Independent Investigation	HC 1457 ( <i>HC 1088, Session 2006–07</i> )
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690

# Oral evidence

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## Taken before the Public Administration Committee on Thursday 6 December 2007

Members present

Dr Tony Wright, in the Chair

Mr David Burrowes  
David Heyes  
Kelvin Hopkins

Mr Ian Liddell-Grainger  
Mr Gordon Prentice  
Paul Rowen

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*Witnesses:* **Rt Hon John McFall MP**, Chairman, Treasury Select Committee and **Ms Janet Gaymer CBE**, Commissioner for Public Appointments, gave evidence.

**Q1 Chairman:** Let me call the Committee to order and welcome our witnesses this morning. It is very kind of you to come along and see us. We wanted to ask you about the proposal that we should have pre-appointment hearings. We asked you, Janet, because obviously you are responsible for the integrity of the public appointments process and, therefore, you will have views about this and involvement in it. John, as Chairman of the Treasury Committee and, I am delighted to say, a former member of this Committee, we are very pleased to have you along because your Committee has had some experience of having hearings of this kind, so we wanted to draw upon the views and experiences of both of you. Would both, or either, of you like to say something by way of introduction?

**Ms Gaymer:** First of all, thank you very much for inviting me back to talk about this. It is an evolving subject, so thank you, I appreciate it. We have moved on obviously since I was in front of you in June because we have had the Green Paper containing various proposals which I understand are still at a formative stage and subject to consultation, so I think this is a very good time obviously to have this hearing. Some of the queries which I raised when I was last before you have to some extent been addressed in the Green Paper and I think it might be quite helpful just to get those out of the way so that we can focus on the issues that are still outstanding. The Green Paper makes it very clear that what we are looking at are positions in which Parliament has a particularly strong interest because of the office-holder's exercise of statutory or other powers in relation to public rights and interests, but it does make the point that those are positions which are not subject to oversight by me or some other form of independent scrutiny, and I think that starting position is quite important in terms of going down this road. The Paper also makes clear that, in the context of language, we are talking now about pre-appointment and post-appointment hearings, not confirmatory hearings, so I have told myself that I must now not talk about confirmatory hearings, I am talking about pre-appointment and post-appointment hearings, and I think that is important because of the experience in the States of those types of confirmatory hearings. The Paper also makes

clear that the pre-appointment hearing is not intended to be binding, so the suggestion is that there is no right of veto on the part of the select committee, which was certainly one of my issues. I was not clear whether there was going to be a specific right of veto, although of course select committees would expect ministers to take into account what they have said, having interviewed the candidate. I think it also makes it clear that the hearings are going to cover the candidates' suitability for the role, their key priorities and the process used in selection—we may well come back to that—that the list to which these hearings will apply is under review, and I suspect we will also talk about that, and that post-appointment hearings are actually going to be used for what are called “market-sensitive” and certain other appointments, including some utility regulators, and I think there are some issues there in terms of identifying that group. For example, in my own case, I do regulate appointment processes for Ofcom, but I do not regulate appointment processes for other regulators and indeed that issue, I know, is under review at the moment by the Cabinet Office which is looking at the list of the appointments I regulate, so there are some shading issues there that I think need to be looked at. Having said all that, unfortunately I still have the concerns I articulated to you last time and they are primarily four-fold: first, the concern about the pool of candidates, whether this will put off potential candidates; secondly, the issue about length of process, the concern that it may lengthen the process, although I appreciate that in the case of Sir Michael Scholar's hearing, that was very rapid in fact; thirdly, this question of perceived politicisation of the process, the very fact that a select committee is involved in some way because I have concerns about the public's perception of public appointments in that context, and I know Mr McFall has already said this, that perception is everything in politics, and it is true of public appointments as well, so that is an issue; and last, but not least, is the concern (we had quite a talk about last time), this issue of inappropriate questioning and potential legal consequences thereof.

**Q2 Chairman:** That is a very crisp introduction to the whole set of issues, so thank you very much for that. John, you have experience of the Monetary

Policy Committee appointments and you have experience of the Statistics Board Chair appointment. Listening to Janet and reflecting upon your own direct experience of this so far, what do you make of it all?

**John McFall:** Well, I see this as a welcome step for select committees in principle, Chairman, in that it is the start of a process of continuing accountability. Let us take the MPC<sup>1</sup> appointments, as you mentioned. Indeed, our Committee has made comment on the time-lag on appointments to the MPC and I would suggest that, as a result of those continuing comments, the then Chancellor in his statement in the summer recognised that and made changes to the appointments process. We also came out with a document at the time, *The MPC Ten Years On* on that, so I think the issue of a pool of candidates is important to have. I think you can have a confidential pool of candidates without people being exposed to public glare because, if you are going for the MPC and your name is made public, there are problems with your present employment and maybe future employment because the MPC appointments are three years only, although we have made a comment on that and also the tenure. The length of process, Janet has made a comment on that, but, when we found out about the appointment of Sir Michael Scholar, I think we went into gear very quickly and within a week or so we had the hearing for Sir Michael Scholar, and I think that ties up with the perceived politicisation because Sir Michael Scholar is the father of Tom Scholar who is the Chief of Staff at Number 10 Downing Street. As Chairman, I specifically asked the question of Sir Michael Scholar, did his son know that he was in for this job and did he have any contact with him, and Sir Michael was very clear and above board that the first the son had heard about it was after the appointment process, so that put to bed the issue of politicisation. Nowhere in any press commentary after that was there any mention of Sir Michael Scholar and his son and that relationship, so I think we dealt with that very well. In terms of inappropriate questions, well, I think it is up to the chairman to ensure that there are not inappropriate questions. When members of the MPC come before us, we are very clear in saying that we are interested in their independence and professional competence and it is those criteria by which we judge and, if you lay down the criteria by which you are questioning individuals, then I think that deters the politicisation.

**Q3 Chairman:** Thank you very much for that. Listening to you both, I think there are perhaps two different things we need to think about: firstly, which sort of posts we are talking about and what is the basis for those sorts of posts; and, secondly, sort of conduct and process issues in relation to that, and perhaps in our minds we could keep that clear. Could I start with the first one because we have to get our heads round this. Are you content, Janet, with

the list of appointments as given in the Government's Green Paper? Does that seem to be a reasonable category of appointments?

**Ms Gaymer:** I am going to give you two answers to this in quick succession. The list given in the Green Paper, none of those is an OCPA-regulated<sup>2</sup> appointment, so, consistent with my principle that, if there is no process, then someone ought to be checking them out, that list looks okay. It does not unfortunately remove some of the concerns I have articulated about the effect on candidates, for example, and I am very conscious that my own post is in that list, so I am afraid it is a terrible lawyer's answer, it is a yes and no answer. The logic is fine, but what will be the effect in practice?

**Q4 Chairman:** We had this discussion with you back in June, but we can have it in a more concrete way now because at least we have got a list, and it was all a bit sort of ethereal earlier on, but is it your proposition that this process should only apply to appointments which are not OCPA-regulated?

**Ms Gaymer:** Effectively, yes. If there has been a properly regulated selection process, then I have to ask the question: what is the point of the pre-appointment hearing? I can see the relevance of the post-appointment hearing because it is sensible when someone has taken up the post, they have opened up the cupboards, they have looked inside, they have checked themselves against their first impressions and then a meaningful debate can take place with a select committee about whether it was what they expected, what they want to do and so on and so forth. My concern is this confusion, I think, that might occur about whether the hearing before the select committee is somehow some part of the selection process. Just to give you some examples, if a post, which was OCPA-regulated, then came in front of a select committee and that hearing was part of the selection process, or seemed to be, I would have to be crystal clear in my code of practice at the start of the exercise that that hearing was going to take place, that I did not regulate any aspect of it, that, if anyone had a complaint about the hearing, that was not a matter for me to deal with and that what happened in that hearing was fair game. Actually, just pausing there, the questions put to Michael Scholar about political activity would not have been permitted in a selection panel under the OCPA code of practice, so you can start to see the sorts of dangers that arise in terms of people's confusion about which is a regulated process and then what the hearing is. Also, one general concern that I put to you last time was that, if there has been a regulated selection process and then there is a further hearing, the concern is that that may then make people ask, "Well, what was wrong with the previous selection process?" and in some way that may be brought into disrepute overall.

**Q5 Chairman:** I do not think your position is the Government's position though.

<sup>1</sup> Monetary Policy Committee

<sup>2</sup> Office of the Commissioner for Public Appointments

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6 December 2007 Rt Hon John McFall MP and Ms Janet Gaymer CBE

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**Ms Gaymer:** That is what I want to clarify today because I think it is important.

**Q6 Chairman:** If I look at what the Government has said, it talks about positions in which Parliament has a particularly strong interest because the office-holder exercises statutory or other powers in relation to protecting the public's rights and interests. Well, that is a wonderfully sort of ill-defined description that these are important public posts, that is what it says, in which Parliament has an interest. Then it says, "Some of these appointments are not subject to oversight by the Commissioner for Public Appointments", indicating that some will be, so the Government are not saying that these appointments are only going to be ones that are not OCPA-regulated, they are saying that they are ones that are of great public interest in which Parliament has a role, so in a sense you are not in step with what the Government's position is, are you?

**Ms Gaymer:** I am seeking to clarify what the Government's position is, quite frankly, which is the purpose of consultation and, I think, this hearing because I want to be crystal clear what the purpose of that hearing is, lest it creates confusion in those who are regulated by my process in the general round of things. It is worth just adding here also, which confuses the picture still further, that there are processes that are run by departments that are not regulated by OCPA, but who seek to act in accordance with the OCPA code, and in fact we have had some very recent examples of this. We were asked, for example, to supply independent assessors for appointments processes for police authorities and there were a huge number of these. Now, we had no resources to do that, they were not within our remit, the Home Office obviously wanted to follow the principles of the code, wanted to have independent scrutiny as part of the process and we said, "Sorry, not our job", so there are a whole range of processes out there and people are trying to do it right. They want to do it in accordance with the code, it is not a formally regulated process and they try to sort of create their own process and sometimes involve independent assessors, so there is a sort of grey area there in the middle.

**Q7 Chairman:** Let me ask both you and John, you have identified some of the problems with this process, and we will come back to that, but what value does it add to the process of being appointed to a public post to have Parliament involved?

**John McFall:** If I can just say from the parliamentary point of view, I think the value of pre-appointment hearings is three-fold: first of all, it is in public and the selection process was in private; it provides information regarding the public accountability of that post-holder because that post-holder is not accountable to a minister, but he or she is independent, so there has to be an element of public accountability for that individual; and it also demonstrates the skills of the nominee. I consider also that it sets the agenda for subsequent select committee scrutiny of post-holders when they take the post. I mentioned the issue of Sir Michael

Scholar and his son, but that did not get any press comment at all and it was a fairly legitimate question to put on the agenda because it could have set hares racing afterwards with people saying, "Well, here's a select committee that had an individual in front of them and they never asked that question. It is the most blindingly obvious question they can ask. This is incompetence", so what are we going to do? On the record, Sir Michael answered and we moved on, the caravan moved on.

**Q8 Chairman:** Janet is saying that this was quite improper.

**Ms Gaymer:** No, I am not saying it is improper, but I questioned its usefulness at that time.

**Q9 Chairman:** You said it would not be permissible under—

**Ms Gaymer:** If it were part of the selection process. That is why I am saying to you that I think it is important to be crystal clear about what the purpose of this hearing is. There is all the difference in the world between a hearing which is tacked on to the end, so to speak, of a selection process and forms part of it, although, admittedly, that is reduced by the position that the decision is non-binding, and a hearing which seeks, as I understand it from what John is saying, to say to the individual, "Well, I want to see if you are really an independent person, I want to hear what your vision for the body is and I want to hear what your thoughts are about running it". What was interesting, I thought, about the Michael Scholar hearing was that, for example, there were questions about the budget of the Statistics Board and Michael Scholar, who had only been told the previous day that he was the nominee for the appointment, said, "I can't answer that question. It's too soon. I've done the reading round the post, but I can't answer that question. All I can do is tell you what I've learnt preparing for the interview and so on". It leads me to the view, and it is a personal view, that it must be better, therefore, to see this person post-appointment when they have gone through their induction, they have gone in, they have looked at the place, they have checked whether their first impressions were correct and then a meaningful discussion can take place with the select committee, if that is the purpose of the select committee hearing, which is why I keep coming back to this question: what is the purpose of the hearing?

**John McFall:** The issue was, I think, very different from the Treasury Select Committee's point of view. We subsequently endorsed Sir Michael unanimously and that is very important. We had the debate on the floor of the House of Commons and anyone had the opportunity to come in and speak their soul. Parliament itself endorsed Sir Michael and I think that is a good process from Parliament. In terms of his independence, and I think it was very important to demonstrate his independence, Sir Michael was an eminent former civil servant, Permanent Secretary in the Welsh Office, amongst other posts, and he had spent many years in the Civil Service. He comes into a job in statistics where statistics is a big, political issue. On the floor of the House any day you

will get debates about the Government spinning the health statistics or the crime statistics or whatever else, so we need an independent individual there. We questioned his independence on that and I think the questioning went along the lines of, "Sir Michael, you've been in the Civil Service for many years. Will you adopt the culture of the Civil Service?" He said that, when he retired, he took a vow of silence and did not speak, unlike some other civil servants, or write books or get money from it. We said, "Sir Michael, your culture needs to change now. You have kept your mouth closed for many years and that is admirable in your position, but, if in statistics there was a need for you to say something, are you going to speak up on this issue?" and he said he would speak up, thereby demonstrating his independence as well and that brings comfort to parliamentarians.

**Q10 Chairman:** Having to—and I am trying to avoid saying, "run the gauntlet of"—appear in front of a parliamentary committee for certain kinds of posts, is that not the kind of test that someone applying for such a post ought to be able to pass because that is very much part of the job?

**Ms Gaymer:** That sounds like part of the selection process and yes, it is.

**Q11 Chairman:** But you do not have it as part of the selection process.

**Ms Gaymer:** Well, in that case it must be absolutely clear about that, that it is not part of the selection process, and what it is.

**Q12 Chairman:** But surely the compromise has been arrived at which is that, as it were, a committee can express a reservation if it is not happy with someone that it sees, but it will not be formally part of the process, so it is the best of both worlds.

**Ms Gaymer:** I think if that is made crystal clear, that is a lot better than being silent about it. Again I come back to this issue about perception. It is very important that, whatever procedure is adopted, everyone is absolutely open and transparent about what the hearing is, what it is doing, what its purpose is and that it fulfils that purpose, and that is my main concern.

**Q13 Chairman:** Perhaps I can just give you one example which is that this Committee has asked in the last few weeks that we might have some involvement with the new appointment to the chairmanship of the Committee on Standards in Public Life, which seemed to us to be a major public appointment and it passes the Government's description of the kind of post that should be involved here. Why would you feel it undesirable for the Committee to be involved in a post of that kind in a way that is described by the Government?

**Ms Gaymer:** Let me take the specific example that you have mentioned. The suggestion that you be involved in that appointment came when the appointment process was in mid-flow. My job effectively is to ensure fair play in the appointments process for public appointments and that is

supported by all the principles in my code, in particular, openness and transparency. What that means in practice is that, when a process starts, the candidates and those involved in it know what the rules of that process are and you do not change the rules half-way through, and, had suddenly a requirement for a pre-appointment hearing been introduced into that process, that would, therefore, have been a breach of my code, as it currently stands, which is why I think it would have been a bad idea with the current appointment, so that is a question of timing. Just assuming for one moment that this proposal is put in place, that there is a proposal that there should be pre-appointment hearings for OCPA-regulated processes or some of them, the first thing I would do would be to amend my code of practice and I would deal with the sort of practical issues I have already mentioned to you, so I would want to be clear with candidates at the very beginning of the process that there may be a pre-appointment hearing at the end and that that hearing is not a process regulated by me, so I cannot hear complaints relating to it, so I butt out, so to speak, at the point of the selection panel before it goes through to the select committee. I would need to explain to candidates in some way, or at least those conducting the process would need to explain to candidates, how independent scrutiny is being dealt with where there is a pre-appointment hearing by a select committee, in other words, where the independent scrutiny is in that process because there would have been an independent assessor involved all the way through to the point of the select committee. Overall, I would need to be crystal clear about what the role of the selection panel itself was at that particular point in the process before it goes through to the pre-appointment hearing. Now, all these things that I have described can be done. I can put those into my code of practice and so on and so forth, so it is doable in that sense. All I am really saying to you is that, if you do go down that road and the Government does go down that road so that some OCPA-regulated processes are subject to pre-appointment hearings, it is very, very important that all these other issues are also addressed at the same time.

**Q14 Chairman:** It is a bolt-on bit for certain public appointments. That is what it is. In the example that I gave to you, my understanding was that the person who was going to be appointed to this post was very happy to engage in a pre-appointment hearing, so the fact that it was not contained in the OCPA rules if it was thought to be a good thing, if the candidate was very happy about it and if it added some value to the process, why on earth would we not do it?

**Ms Gaymer:** Well, unfortunately sometimes these questions are asked at the time of the interview. The selection panel would say to a candidate in the final group, "Would you be happy to go in front of a select committee for a pre-appointment hearing?" At that time in the selection process, candidates are unlikely to say no. They are in a situation where it is extremely difficult if they are being interviewed for a job, whereas it is important that at the beginning of

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**6 December 2007 Rt Hon John McFall MP and Ms Janet Gaymer CBE**

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the process everyone knows what is going to happen and so on and so forth. Otherwise, you may find yourself in a situation where you do not have people who want to do it, but who go all the way through the process and then decide, "I'm not sure I fancy this", and then withdraw at the last stage, and you find that you have not quite got the pool and range of candidates perhaps you hoped you had.

**Q15 Chairman:** I sense, John, that you are not terribly taken with this argument.

**John McFall:** No. Mention was made earlier about the Green Paper and I think the Green Paper is just a start and I think Parliament needs to get more involved, whether we start discussing that at the Liaison Committee or individual select committees discuss it themselves. Frankly, if anyone who is up for an independent post cannot defend himself or herself in public, then I do not think they should be getting the post in the first place, so a pre-appointment hearing should be a cakewalk for anyone in a position like that. Also, I think that coming before a select committee strengthens the individual. I mentioned Sir Michael, the father of Tom Scholar, the Chief of Staff, President of St John's College, Oxford, so he was going to do the job in a three-day week, an ex-civil servant, so there was a bunch of issues which the press could get their teeth into and say the Select Committee has not done, but there has not been a whimper since Sir Michael has been to our Committee and it has strengthened his position.

**Q16 Chairman:** This Committee went to the United States recently to look at a number of things, including this issue, and of course we discovered that there are difficulties with the way in which confirmation hearings happen in the United States and people are very critical about aspects of them, but we had an interesting meeting with a group of people who had been through this process, a number of different roles in life, and what was striking was that one of them said to us, "But it makes a big difference that we are not just a creature of the Administration, that in a sense we are approved by the American people because we have been approved by the Senate", so there is an argument, and I think John is really saying this, that there is this added dimension to the post which comes from having been through that kind of process at the end. Do you not accept that?

**Ms Gaymer:** I said this in June, that I can see the argument for a democratic check and I am not arguing with that. All I am saying is that I think you need to be very clear what you are doing, when you are doing it and what the ground rules are. Just in answer to John's point about these people should not be there if they cannot cope with this, I agree with you, but basically, these will not be shrinking violets, and I said this to you in June. What worries me is not that, but that there will be some people where, because of their particular personal circumstances, having a pre-appointment hearing will cause difficulties, personal difficulties.

**Q17 Chairman:** I am still trying to get to the core of your position because I thought you started off by saying that you were not happy about OCPA-regulated posts falling under this new arrangement.

**Ms Gaymer:** I would prefer they did not, yes.

**Q18 Chairman:** But I thought now you were saying that, as long as there was clarity about it—

**Ms Gaymer:** That is my secondary position!

**Q19 Chairman:** So you have a primary position and a secondary position?

**Ms Gaymer:** Yes. My first position is that, and let me crystal clear about this, I would prefer it if OCPA-regulated processes were not subject to pre-appointment hearings for all the reasons I have articulated to you before and some of them again this morning. If, however, it is government policy, and I am told that they will be subject or some of them will be subject to pre-appointment hearings, I am giving advance notice that I am going to have to make some changes to the OCPA-regulated process and I will continue to reiterate the concerns that I have already reiterated now three times, I think, in front of you about this issue.

**Q20 Mr Liddell-Grainger:** Janet, if you were in a position now where you were going to start again, would you be prepared to come in front of a select committee to be questioned?

**Ms Gaymer:** I have asked myself this question, particularly when I saw my post on the list, and, in the particular circumstances I was in at the time when my post was advertised, I do not think I could have applied for the post, no.

**Q21 Mr Liddell-Grainger:** I think that is very interesting because I think that shows you are a wimp and I think you should—

**Ms Gaymer:** Well, I would like to defend myself and explain why.

**Q22 Mr Liddell-Grainger:** All of us here have scrutiny. If I want to get at John or I disagree with John, I can either stand up in the House and ask him to give way or I can get him in the lobbies and say, "John, I think that was a load of . . .", and the same goes with Tony and everyone in here. I do not see why, regardless of what you say, you should not be open to scrutiny by the democratically elected people of this country.

**Ms Gaymer:** Post-appointment, I agree, but can I just explain to you why I would not have applied because I think it is important to understand because it puts into context some of these discussions. At the time when my post was advertised, I was the Chair of an international law firm. In that job, I was the guardian of probity and, more importantly, the face of the firm, so I was the guardian of the firm's reputation. If I had come in front of a select committee at the time when I was still Chair of my law firm, and in public, I would have had to ask myself the question, "If there had been an adverse reflection on my reputation, would it have affected my firm's reputation?" and I have to say,

on reflection, I think, bearing in mind the responsibilities to my partners and my firm and the job that I was doing, I would not have taken that risk.

**Chairman:** That is a good answer, Ian, is it not?

**Q23 Mr Liddell-Grainger:** I think it is a cop-out. I think it is a complete cop-out. I am sorry, I think that is a terrible answer and I will tell you why.

**Ms Gaymer:** That is the truth.

**Q24 Mr Liddell-Grainger:** We all come from various sectors, business or whatever, and our reputation is on the line, as anyone else's is on the line. We want to know that the person, you or any other person, that is being appointed is of the highest level. Now, if we cannot ask you about your background, and you have had, I think it is, 30 years' experience in the private and public sector which is an enormous time to be involved, why should we not ask you questions? If there is a certain area which you find it difficult to answer, I suspect there is a way, a mechanism where you could say, rather like Commander Yates of the Yard, except he leaked before we got it, "There are areas where we cannot talk about that", and that is fine, but do not just say, "I'm sorry, we can't do it". I think that is wrong, is it not?

**Ms Gaymer:** I can only tell you it from my perspective at the time that I was contemplating this job. The added reason is one of confidentiality, but I think the most important one was this issue of reflection on the firm.

**Q25 Mr Liddell-Grainger:** There are certain things which are confidential, we understand that. The Government is going down this route. Are you going to consider your position?

**Ms Gaymer:** In what way?

**Q26 Mr Liddell-Grainger:** Do you think you are now so out of step with what the Government requires that maybe the time has come to look at what you want to do?

**Ms Gaymer:** I hope that I am contributing to an informed debate about this issue, which I think is a very, very important issue. I do believe in the democratic check and I do believe that those occupying public office should be prepared to answer for themselves and be subject to scrutiny, so I am not quarrelling with any of that. All I am saying is that, taking into account what I have experienced so far of the public appointments process, I am sharing with you what I think might be issues which should be addressed, and I hope that my contribution is received in that way.

**Q27 Mr Liddell-Grainger:** If that is the case, why do you not prepare a paper for this Committee to say what your concerns are and where you would change it in government and we will talk to the Government about it? Is that not open to scrutiny?

**Ms Gaymer:** I would be happy to.<sup>3</sup>

**Mr Liddell-Grainger:** It is just a thought. I do not know. I am just sort of suggesting.

**Q28 Chairman:** Have these problems surfaced, John, when you have been doing the MPC?

**John McFall:** Let me try and help Janet, and hopefully she feels she can apply for any other post that comes up. The twin criteria are independence and professional competence, it is on those issues and only on those issues, and the example is the MPC that you have mentioned, that we ask candidates. We establish the criteria beforehand and when witnesses come before us, as, for example, the major investment banks came before the Treasury Select Committee this week, they sent us a letter, saying that there were certain areas that they would not be able to talk about, so before the meeting I brought that to the attention of my colleagues in private and, if any of them had been foolish enough to overstep the line, as Chairman, I would have said, "Look, we have agreed this", and none of them did. The rules are established beforehand and, therefore, we eliminate the issue of inappropriate questions. If Janet felt that her position with the law firm was threatened in certain areas, I am sure a letter to the Committee, discussion with the clerks and discussion with the members would ensure that that was no longer the case. Is she independent? That is nothing to do with the law firm. Does she have professional competence? That is very important and we can go over that with Janet.

**Q29 Chairman:** Is that not the answer?

**Ms Gaymer:** I do not think it would have addressed the confidentiality issue I also had at the time, I have to say.

**John McFall:** Yes, but the investment banks that came before us this week specifically wrote to us about issues of confidentiality which they did not want to be questioned on and they were not questioned on them.

**Q30 Mr Prentice:** I am still not clear in my own mind what the questions were that were put to Sir Michael Scholar that you thought were too political.

**Ms Gaymer:** Well, the position in relation to an OCPA-regulated process, and this goes right back to Nolan, is that the selection panel does not ask questions about political activity. What happens is that a form is filled in by candidates and they will set out their political activity. That is detached and it is not shared with the selection panel, so they do not have that in front of them. The aim of that is to ensure that, at the moment when the selection is made, it is not tainted by any awareness of political activity or otherwise. It is a basic Nolan requirement, that there should be no perception of political affiliation forming part of the selection decision.

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6 December 2007 Rt Hon John McFall MP and Ms Janet Gaymer CBE

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**Q31 Mr Prentice:** It sounds like the code should be amended if the object of the exercise is to test the independence of the individual concerned.

**Ms Gaymer:** But that question would be asked by reference to the criteria of the post. If a criterion of the post was independence, then clearly relevant questions would be asked. There are some appointments, and in fact the Committee on Standards in Public Life is one of them, where the members of the body itself are drawn from political parties. They are exceptions, but in fact the majority of appointments are not, but they are appointments made against criteria which are set at the beginning and those are the criteria that are used for the purpose of the questioning.

**John McFall:** I think we have to remind ourselves here of where we started this process in 1995 with the Nolan process. It was because it was perceived that there were too many appointments by the Government of the day of supporters of their cause and, therefore, we are going down that road of ensuring that there is an independence, so I think a question about political affiliation is very important. Can I say about Sir Michael, he was unperturbed by the questions and he was quite jolly after we had had the discussion with him, so we have made people feel better when they came before us, Chairman, rather than worse.

**Q32 Chairman:** Is that not a good point, Janet, that, if you roll the clock back, as John has just done, to where we came in with all of this, it was to stop patronage and it was to secure robust independence in these posts, so an activity like a pre-appointment hearing will contribute to that objective, will it not, rather than diminish it?

**Ms Gaymer:** Provided that the actual act of selecting the individual has been free from political bias, yes.

**Q33 Mr Liddell-Grainger:** This is surreal. If there was a problem with political patronage, and in this room there are four members of the Labour Party and two members of the Conservative Party, if we thought for a second, David and I, that this was a stitch-up to try and get somebody in, we would be furious. Tony's neck would be on the line because it had been caught and it would appear in *The Daily Record*—

**John McFall:** *The Daily Mail!*

**Q34 Mr Liddell-Grainger:** Even better! You are going upmarket already, John! It should be us who make that decision. We can spot political interference, you know we can, that is our job. Why have you got this sort of phobic thing of not allowing this to happen?

**Ms Gaymer:** I go back to this point of establishing the purpose of the hearing, whether this is a selection process or not. For the selection panel, in the decision to select, the final individual should be free from any perception of political bias before the start. Now, the hearing may be doing something completely different and in fact I think, from what I

am hearing, that it is, but then I am saying that, if it is doing something completely different, you need to be very clear about that. That is all I am saying.

**Q35 Mr Liddell-Grainger:** John has made the point very clearly that he sees nothing wrong with it and I cannot see anything wrong with it, but John has actually done it, he is the proof of the pudding, are you not, John, and you have said quite categorically that there have been no problems?

**John McFall:** I do not know about the pudding! I refer to a speech I made to the Constitution Unit Conference on Thursday 18 October and I covered the point, I think, that Janet is making. I said that, in such circumstances, it is important that a select committee does not try to ape a selection board. Select committees do not know who the other candidates for the post were, so a select committee is not reaching a decision as to whether the nominee is the best candidate. That would be impossible without knowing more about the other candidates. Rather, a committee is trying to assess whether the nominee is of the requisite standard.

**Q36 Mr Liddell-Grainger:** One of the points you made, Janet, is over the legal consequences. Now, you made the point of whether the level of intrusion through questioning of a person's personal life might impact on the European Convention on Human Rights. Now, to me, that is again a complete cop-out because, if a person puts themselves up, I am sorry, but we get people in front of select committees and we do not expect them to go running off to Strasbourg, saying, "They've infringed my human rights because they've asked me some intrusive questions". That is the job of a select committee. Now, why do you think that somebody is going to be so terribly offended that we are going to have a two-year court battle in Europe?

**Ms Gaymer:** I think the issue here is who makes the final decision and I think this problem needs looking at a little more deeply, the relationship between the select committee and the minister who makes the final decision. There are two possible claims. There is the claim for judicial review of the minister's decision and there is the possibility of a claim in front of an employment tribunal. Now, I think there are different considerations in each type of claim, but at the end of the day both claims will focus on who made the final decision and what was taken into account in reaching that decision, so the linkage between what the select committee says and then what the minister does may be quite important.

**Q37 Mr Liddell-Grainger:** The final decision is for the minister, and in America the final decision is the presidential one, so it is ultimately for the minister, but surely the minister may turn round and say, "Under the chairmanship of John", or Tony, "the Committee has looked at it. I accept", or "I don't accept".

**Ms Gaymer:** I am sorry, I am now looking at it through almost a quasi-legal lens. That is true obviously, the minister does make the final decision, but, if that decision were to be challenged, then

questions arise as to what sort of considerations went into the decision and also indeed what legal system would apply to it, and that is where European law would come in.

**Mr Liddell-Grainger:** As far as I can see, it would be a jolly good thing because the sooner we get to the bottom of some of these things that are going on.

**Q38 Mr Prentice:** On this very point, at the beginning you talked about inappropriate questioning and you said that legal issues may arise. Given that we are covered by absolute privilege here, what kind of legal issues would arise?

**Ms Gaymer:** Let me say straightaway, I am not here in my capacity as a lawyer and I am certainly not giving legal advice. All I can give you is an informed view from a rather unusual vantage point, I suppose.

**Q39 Mr Prentice:** It would be weird, would it not, if legal proceedings were initiated based on what was said here where we are all covered by absolute privilege and it cannot be challenged in the courts?

**Ms Gaymer:** I may be wrong about this, I am not an expert on parliamentary privilege, so there is no point in my trying to give you a detailed answer, but the only thing I do know is that it is a very arcane area of the law and it would be a very brave person who said that they knew the answer one way or the other, so I am just copping out on that one.

**Q40 Mr Prentice:** David has just told me that we are covered, but you are not.

**Ms Gaymer:** Well, there you are. That gives you an example.

**Chairman:** But whether David can be relied upon, we do not actually know!

**Q41 Mr Prentice:** He is just another lawyer! This place is infested with lawyers! You said that you would not apply for the job that you currently hold if a pre-appointment hearing was part of the process?

**Ms Gaymer:** In the particular circumstances that I was in.

**Q42 Mr Prentice:** Yes, but you are an unusual person in that you were the guardian of probity in your law firm. There are not many other people out there in a kind of comparable position, are there? Would a pre-appointment hearing put off, and I am just asking for your hunch, the first Civil Service Commissioner or put off the Parliamentary Ombudsman? It would not, so you are kind of unique here.

**Ms Gaymer:** Well, yes, and you are making a very good point. I have been asked about my own individual case and I would not wish there to be a generalisation that everyone is going to have the issues that I had.

**Q43 Mr Prentice:** I understand that, but the very first thing you said to us this morning was that this new system may put off people, and I am just trying to get it clear in my own mind. If we moved to the pre-appointment hearings before select committees,

what is your hunch about the number of people who would, for whatever reason, be put off and say, "I don't want to go there"?

**Ms Gaymer:** Probably the person you need to ask that question of who would have a better answer is an executive search consultant or a group of executive search consultants because I am really articulating to you what I am hearing from them. One other interesting aspect of this which has come up very recently, and, I must admit, I had not made the connection, is that there is a view, and indeed I think I am right in saying that it is supported by some recent research, that women tend not to apply for jobs unless they can fulfil the requirements for them 100%, whereas men will apply if they can fulfil about 60% of the requirements.

**Chairman:** That sounds plausible!

**Q44 Mr Prentice:** So you want to make us feel guilty! I know, it is an old tactic!

**Ms Gaymer:** It is just an interesting observation, and women, therefore, tend to be very risk-averse when applying for positions. It had only occurred to me actually last night that, if that research is correct and there is a pre-appointment hearing in the mix, query whether that actually might even have some sort of gender-related effect. Now, that is just me fantasising, but I have to say to you that my concern about reducing the pool primarily, because I am conscious that Mr McFall is about to say something, really does come from what I am hearing from recruitment consultants and I am hearing what they are telling me.

**John McFall:** I think Janet has eloquently made the case for further parliamentary scrutiny because then we can catch out the dodgy men!

**Q45 Chairman:** Is that not true, the men who are over-claiming?

**Ms Gaymer:** Prepared to take the risk, I think, is the finding of the research in a job application. I do not know if it is true.

**Q46 Chairman:** Gordon's point is that, if you look at the person who is the Parliamentary Ombudsman now, look at the person who is the first Civil Service Commissioner, women both, these are not women who are going to be deterred by the fact that they have got to come in front of a committee.

**Ms Gaymer:** That is the danger of generalisations.

**John McFall:** In terms of the MPC, we have got Rachel Lomax coming before the Committee and I think you would have to be on your guard to start arguing with her!

**Q47 Kelvin Hopkins:** If I could be devil's advocate and take a different tack, I do remember, when we recently visited Washington, that the rigour of the scrutiny of the hearing process was such that all of us gasped. In fact, my colleague here was one of those amongst us who said, "We just won't go there", and I do understand. Nine months sometimes it takes the FBI to pull the personal background and whatever indiscretions one might have had in one's youth at university or whatever, everything comes out. We

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6 December 2007 Rt Hon John McFall MP and Ms Janet Gaymer CBE

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thought that that was just beyond the pale and impossible in our circumstances. John said at the beginning, and I will ask John this question, that it is the Chair's discretion, but even asking a difficult question, if you take a mischief-maker like myself, I might say to somebody, "Are you, or have you ever been, a member of the Conservative Party?" for a politically neutral position. Then the Chair might say, "Well, you can't ask that question", but I have dropped a hint and already we are starting to dig. I would certainly have preferences if I knew about these people, and I could start to undermine a candidate. What I am really saying, John, and you were suggesting the Chair's discretion, but should there not be some parliamentary ground rules about all of this?

**John McFall:** I think I mentioned earlier on that you need criteria and that is really important.

**Q48 Kelvin Hopkins:** It can be quite prescribed, what you can ask, about professional competence and not about the personal life, for example.

**John McFall:** I have never had any bother on the Committee on that. We have just defined it generally and there has never been any bother. The only thing, as Chairman, that I would stop is if a member is being rude to a witness and it is obvious that they are going overboard, then you can stop it. I think there was one case in the annals of history of the Treasury Select Committee where members were rude in pre-appointment hearings, and I think it is infamous and people have learnt from that, so the criteria are important and I have never had any problem with that. In the Sir Michael Scholar case—mention was made of America—from start to finish, from when the announcement was made by the Government to the appointment confirmation on the floor of the House, I think it took 10 days.

**Q49 Kelvin Hopkins:** You have mentioned Sir Michael Scholar quite a lot, but you would concede that there might be other people who, knowing the process and how rigorous it might be, might choose not to put themselves forward?

**John McFall:** I do not see why they would not. The only reason I mentioned Sir Michael Scholar is because he is the only case since this has come before Parliament, but, given that his is an important position, that he has to be in the press, he has to ensure that the concept of statistics is respected in the country and that he has a huge building job to do, then I think it is a more daunting task for Sir Michael, to take his example, to convince society that the statistics are independent than it is to come before a number of MPs, and I think people should welcome that. I do not think there is anything we should fear at all.

**Q50 Kelvin Hopkins:** Just going on to the MPC, which I have a great interest in, we all know that it is a balance between doves and hawks on the MPC and the Treasury keeps a very close watch on that balance, as indeed no doubt the Treasury Select Committee keeps a close watch on that balance as well. If I were, though I am unlikely to be, but if I

were to be a member of the Treasury Select Committee, I would look into their record on economic forecasting. Economic forecasting, as we were told on television last night, was invented to make weather forecasting look good! To go back to Mrs Thatcher, the sort of people that would have probably put themselves forward for the MPC, they might have come from the London Business School, which is the sort of institution that is favoured by successive governments, yet a few years ago the London Business School was given nought out of 10 for its forecasting skills. By contrast, at the same time, the Cambridge Economic Policy Group was given six out of 10, which was the highest score of all the forecasters, but it was a left-wing Keynesian organisation which was detested by Mrs Thatcher and she took away their grant. Now, even with economists that come before you, you can start to undermine them like that, especially if they are post-appointment, and you can damage their reputation by drawing attention to their failures in their previous life as a forecaster, a perfectly legitimate question, and I am happy to do all of that, but can you not see that it could be quite controversial?

**John McFall:** I think the reputation matters and I think it should matter from day one and I think the views of the individual matter, so at the pre-appointment hearing they should see it and Parliament should see that as the start of the process of accountability. When members of the MPC come before us, yes, indeed we ask them about their economic forecast record. They were before us last week and the general question to everyone was, "Why did you vote the way you did last time?" To take one example, Danny Blanchflower, he is quite a personality on the MPC and he demonstrated his independence of thought when he came before our Committee for his pre-appointment hearing and last week he was, I think, the only one that was out of step, saying that all the risks were downward and he had voted for a cut last time. Now, he was so clear in that that I would assume that in today's decision by the MPC, coming out at twelve noon, Mr Danny Blanchflower will vote for a cut; how the other members go is a different matter, but they have given their views to the Committee both at the pre-appointment hearing time and subsequently that informs the debate for Parliament and, dare I say, the debate for the country because one of the issues for the MPC coming before us is that everyone in the City is looking at the Select Committee hearing to get a feel for how the members of the MPC are going to vote and, therefore, how the markets will adjust to that. That is crucial, so they do have a very important position, but Parliament is right there at the forefront, offering the MPC the opportunity to put their views forward to educate the public and to be right there. Every time in my chairmanship, I think, that the MPC have come before us, that was followed by a spate of news stories, so Parliament is performing a very, very useful function there. This week we saw that after the MPC came before us when the Governor, Mervyn King, made probably the gloomiest opening statement that he has made since he has been coming before the Committee, and that was reflected in the press.

**Q51 Kelvin Hopkins:** At this very moment the MPC is making a decision, we think, which could be very significant and we saw on *Newsnight* last night people taking diametrically opposed views. Some want no change, the hawks, if you like, they are opposed to a cut, and there are the doves. Now, I would look forward very much to a situation where Parliament had a real say in who is appointed to the MPC, but one suspects that the Chancellor and the Treasury would be less keen on that. Are there not potentially quite serious political consequences and constitutional changes arising from it? I would like it, but—

**John McFall:** I would not like it because it drags us right into the political process in that. As I mentioned, we are there to demonstrate the competence of the person. If you think about the Treasury Select Committee responsible for appointing people to the Monetary Policy Committee, it depends who is at the Committee meeting that day. Mr Chairman, I presume that not every member of the Committee is here, so, if you have it on a day when not everyone is here, they say, “The Conservatives overwhelmed Labour on that day and they got their inflation hawk on it and their monetarist on it as a result”, or “Labour have dominated all the time and they have got their people on it”. Do I want Parliament involved in that? Absolutely not. Do I want Parliament to hold people accountable for their stance? Absolutely, yes.

**Chairman:** So there is no pressure on your part to take this process further.

**Q52 Mr Burrowes:** Your involvement in looking at those who are appointed to the MPC, it may raise press interest, but does it serve much point in terms of improving public confidence?

**John McFall:** I think that is for others to judge, but I think the question which I, as Chairman, would address is: do the MPC take us seriously? They take us really seriously, there is no doubt about that.

**Q53 Mr Burrowes:** They also ignore you.

**John McFall:** In what way?

**Q54 Mr Burrowes:** They have ignored you when you have had concerns over appointments in the past, although it was not formally an appointment scrutiny, but you have expressed concerns about appointments and they did not do anything about it.

**John McFall:** What ones are you referring to? Are you referring to Sir Andrew Large?

**Q55 Chairman:** Is Allsopp the case?

**John McFall:** I think, rather than the MPC, you are talking about the Treasury, are you not?

**Q56 Mr Burrowes:** Yes.

**John McFall:** We have never, as a select committee, said that no one should have been appointed.

**Q57 Mr Burrowes:** But, as a nominee to the MPC, he was, was he not, the Christopher Allsopp case?

**John McFall:** Actually I did not refer to it in person, that was before my time, but I think you would find that following Chris Allsopp’s appointment to the MPC, he had a distinguished tenure on the MPC.

**Q58 Mr Burrowes:** I would not go against that, but nevertheless, the issue still is that the Committee expressed concerns there, it raised the whole issue of confidence in that particular nominee and it was ignored and there were few teeth to that process. If one then looks back, okay, he is now doing a fine job, but maybe at the time it has not necessarily improved people’s confidence because questions were raised, but there were not any answers in terms of any teeth to your process.

**John McFall:** To remember the context, that was in the year 2000, so seven years later we have moved on, Parliament has moved on, and we have now got this Green Paper, so things have developed. I would suggest to you that, if the Committee had had serious reservations about Sir Michael Scholar, I would certainly have conveyed that to the floor of the House of Commons, other Members would have been in and I think the Government would have had to have taken that very, very seriously, so we are talking about two different time-sets here.

**Q59 Mr Burrowes:** Let us move it on then to July 2007 and the Science and Technology Committee and there, they expressed concerns again. It was not a formal appointment hearing or scrutiny, but nevertheless, they expressed serious reservations concerning John Chisholm as Chairman of the MRC<sup>4</sup> as to whether he was the right person to guide them through a period of changes. The Government responded that they disagreed and then he carried on. Obviously the Government is right to disagree, but nevertheless, if there are no teeth in any of this process of pre-appointment and it is not binding, it may well in certain circumstances, where there are these questions about the credibility and competence of a particular nominee, be left hanging there and that left hanging could be damaging, so is it not important that we look carefully at what point we are getting to? We may all get very concerned and steamed up about particular issues, we may raise concerns, but, if there are not going to be those teeth at the end of the day, we may just end up, in hindsight, diminishing public confidence and trust.

**John McFall:** My experience of Parliament in 20 years is that it moves very gingerly indeed, so you do not get any radical movement in Parliament, and I think the Chairman and myself, as members of the Liaison Committee, would agree on that point. In terms of select committees, I think what we are doing is we are chipping away at the process to ensure a greater role for select committees in terms of public accountability, so I think there is a process there and we have quite a long way to go. I would say to you that, if the Government disagrees with select committees and keeps disagreeing, then it is the reputation of the Government that is going to suffer. I would suggest to you that with the MPC, when

<sup>4</sup> Medical Research Council

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6 December 2007 Rt Hon John McFall MP and Ms Janet Gaymer CBE

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Gordon Brown came before us at the time to announce the different proposals for appointments, it was as a result of our Select Committee which kept hammering away at that, so whilst it maybe will not get changed instantly, at the end of the day we do get change. As the Chairman of a committee, if you asked me the question, "Does the Government listen to select committees?", yes, they have to listen, at their peril.

**Q60 Mr Burrowes:** Perhaps to use the words of our esteemed Chairman here, is there not a fundamental concern that, in terms of any major appointments, the partisan character in select committees will always try to further its collegiate character? Have you found that?

**John McFall:** No, I have not found that. Almost every report that the Treasury Committee has put out since 2001 since I started chairing it has been unanimous, so we look at it not in any partisan way, but we spend a lot of time, when we come to our reports, negotiating them and refining them, as you know yourselves as a committee, but putting all the issues that really matter. There is one report before us at the moment which is extremely crucial and that is the issue of financial stability following the Northern Rock situation. Now, as Chairman, I want to ensure that we get proposals there which are unanimous, otherwise, they are of little value, so I think it is the responsibility of a chairman to work with his or her committee members to ensure that. I do not see that partisan issue, if that is what you mean.

**Q61 Mr Burrowes:** We are wonderfully collegiate on this Committee, but when there is the character in terms of an appointment process, particularly a high-profile appointment, it does generate partisanship in terms of the questioning which is going to be hard to control from the Chair and could well lead, particularly if there is a lack of teeth at the end of the process in terms of any binding recommendations on the Government, to more questions than answers.

**John McFall:** Well, people on the Committee come from different angles, of course they will. When we have a hearing on a particular subject, I am familiar with the personalities of my members and I know where somebody will come from in a different area, and I allow them that opportunity. Let me give you an example. When the Chancellor came before us, we had one member of our Committee, David Ruffley from Bury St Edmunds, and he loved, above anything, being a terrier to the Chancellor and every time interrupting him and making his life as miserable as possible. As Chairman, did I allow David Ruffley to get on with it? Of course, because that is a democratic issue. Did Gordon Brown, when he was sitting here, have as good a time as I am having this morning? No, he did not have, but that is part of the democratic process.

**Q62 Mr Burrowes:** But it is wholly different if we have Janet Gaymer before us as part of the pre-appointment process and, if there are any partisan

points that may come in, that may well lead to questions being raised about the confidence in the particular appointment which cannot be easily answered. I will just bring in Janet here because the Committee on Standards in Public Life have raised this issue in terms of concerns and caution about having a direct involvement in the process and I am not sure whether you share their concerns.

**Ms Gaymer:** Well, this is this issue about perceived politicisation. One of my major concerns about public appointments is that the public do not have a clear understanding about public appointments, public appointment processes, who does what and so on and so forth. Indeed, we did some research in my office in 2003 through MORI and one of the issues that came up in the course of that research was a perception on the part of the public that, as soon as politicians were involved in an appointments process, it is almost a direct step to a perception of politicisation even to the point where the appointment itself is made by the minister, so that is a very, very difficult area indeed, it seems to me, and clearly the further you involve a political influence of whatever kind in the process the more you run that risk. I was just going to say, listening particularly to the last few exchanges, what struck me is that what we are talking about is actually the distinction between selection and accountability and where selection stops and accountability starts. What I am hearing from John McFall is that he sees the role of a select committee as the beginning of the accountability process, the selection process having concluded. Am I right?

**John McFall:** Yes, I made that point.

**Ms Gaymer:** I thought I would vocalise that because I think it is quite helpful in terms of trying to work out what the purpose is.

**John McFall:** If you have any concerns yourselves, one suggestion I have is that you, if time permits and it is possible, invite Sir Michael to the Committee to ask for his views and look at the pre-appointment hearing.

**Chairman:** That is a useful suggestion. David's quotation of my talking to the Committee on Standards in Public Life in the mid-1990s, and one has to be careful what one says, was referring to the prospect of if we went to real confirmation hearings and then it was a warning about that, so it is a million miles away from what we are discussing here, I think.

**Mr Burrowes:** The Committee on Standards in Public Life are keen to use it.

**Chairman:** Yes, I noticed that they have quoted it.

**Q63 Mr Burrowes:** Just to clarify one point, Janet, you said that you may be more open to select committee involvement in appointments which have not been subject to a clear system of merit-based appraisal, where those appointments do not have a transparent process, so as far as those people who are appointed without a transparent process are concerned, it seems to me there has to be an argument for some sort of confirmation. Can you

give details of those particular appointments that do not have merit-based appraisals and do not have that transparency that could merit the appointment?

**Ms Gaymer:** Well, this was the point I was making earlier. It is actually a distinction between OCPA-regulated processes and processes which are not OCPA-regulated because a lot of the appointments that are on the list in the Green Paper did follow a process and in fact the process in many cases tried to follow an OCPA process, but they were not OCPA-regulated processes, and that is the distinction.

**Q64 Chairman:** I am conscious, John, that you have to get away. Unless you have anything else to say to us, and you have been very, very helpful, I would be very happy for you to leave, but we will keep Janet for a few more minutes, if we may. Is there anything else that you think we ought to know before you go?

**John McFall:** I think the advice I have got for Janet is to relax and discuss this with the politicians and you can get a good answer!

**Ms Gaymer:** I do not think regulators do relaxation!

**Q65 David Heyes:** I think a lot of the ground I wanted to cover we went through in some detail when you were here in June and there is little point in repeating that. Just going back a few moments, this issue of recognising that there is a movement from the recruitment process into a testing of accountability process, I thought that came as an insight to you. Am I making too much of this?

**Ms Gaymer:** Not an insight as such but, listening to the exchange this morning, I have been banging on about if you are going to have these pre-appointment hearings you need to be crystal clear what their purpose is. I think what has happened this morning is the definition of what that purpose is has started to evolve, I will put it no higher than that.

**Q66 David Heyes:** Can I press you a bit on some of the things you were saying earlier. You mentioned conversations you had with recruitment consultants and they, to some extent, informed your view about the fear of people being put off because of personal scrutiny. Was that formalised in any way? Have you got documentation on that?

**Ms Gaymer:** No, purely anecdotal. I have regular meetings with recruitment consultants, it is something that I instituted when I became Commissioner and I see them on a fairly regular basis. When I knew that this proposal was being made, I asked them, "What is your view about this, do you think it will have an effect on candidates applying?" and they said they thought it would.

**Q67 David Heyes:** What was the question you put to them? What was the context that you described that you were seeking a view on?

**Ms Gaymer:** The proposal, the discussion about pre-appointment hearings that had happened in the summer.

**Q68 David Heyes:** Was it clear to them from you that here we were talking about a very small number of very high level posts, that you would have an expectation of people who were skilled in operating in a political environment, for instance?

**Ms Gaymer:** Some people were not. I think one of their concerns was where you are trying to attract someone from the private sector into the public sector, indeed I have done it myself so I know the thought process that goes on, you are moving into a completely different environment and obviously you will do research and so on and so forth but it is going to inform your view. If you are looking at a range of opportunities, if you are looking at a range of choices and you are going to make a career move and you are saying to yourself, "Okay, private sector, private sector, public sector, public sector, or whatever" it is going to inform your view, I can see that.

**Q69 David Heyes:** I think despite your continuing misgivings about the direction we are going in, you said you would be pragmatic. You recognise you have to go with it.

**Ms Gaymer:** I am a pragmatist, yes.

**Q70 David Heyes:** You have to go with it. I think I heard you say, just as I came into the meeting, in recognition of that you would need to make some changes to your regulatory code.

**Ms Gaymer:** Yes.

**Q71 David Heyes:** Can you give us an idea of what that might involve? Perhaps, firstly, why is that necessary and then what might it be?

**Ms Gaymer:** One of my principles is openness and transparency. I do not want anyone to go into an OCPA regulated process and be taken by surprise and be exposed to something that was not obvious at the beginning. One of the first things I would have to do, if the appointment was an appointment which might be subject or would be subject to a pre-appointment hearing, would be to make that clear at the very beginning of the process. In my own case, had I known that the appointment would be subject to a pre-appointment process I would have decided at the very beginning of the process whether it was appropriate for me to continue with the application. That is very, very important, to make that clear at the beginning and indeed, therefore, to explain what the purpose of the hearing is. Again, that would be relevant. I would need to make it clear that I would have no jurisdiction to investigate any complaint from a candidate arising from a pre-appointment hearing because my jurisdiction does not run to this kind of environment, so that is clear. I would need to explain to candidates, or make sure that it is explained to them, the extent of independent scrutiny in the process, namely that that independent scrutiny, which is also one of my principles, would effectively end at the selection panel stage of the process because then there would be a pre-appointment hearing afterwards. I would also have to be crystal clear, which is why these kinds of sessions are so helpful, about where the selection

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6 December 2007 Rt Hon John McFall MP and Ms Janet Gaymer CBE

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process starts, and this process of accountability starts because I think candidates deserve to know that. Then it is up to them to make up their own minds how they deal with that. Those kinds of issues, I have started to churn them around, having had the Green Paper, but it is those kinds of issues.

**Q72 David Heyes:** Before I give it back to the Chairman, what you have described I think might serve to put people off, would that not be a concern for you?

**Ms Gaymer:** I am in the business of openness and transparency, I am not prepared to hide anything. If there is a process people need to know what it is, what they are expected to achieve, what the criteria are, what they need to achieve to get appointment on merit and that is what I am there for.

**Q73 Mr Prentice:** I am interested in what you said a few moments ago about people not trusting politicians to make appointments. The Green Paper that we have been talking about, *The Governance of Britain*, talks about regional ministers advising the Secretary of State for Business Enterprise and Regulatory Reform on the appointment of regional development chairs and boards. One of the big concerns that we have had for years and years is that there is a regional tier of quangos which are not democratically accountable. So there would not be any problem about involving the regional ministers that have now been appointed in the appointment of the Regional Development Agency chairs, would there?

**Ms Gaymer:** I am very pleased that you have raised that because we have already encountered problems in terms of clarifying the role of regional ministers in these processes. You will know that I have sent out a consultation paper—

**Mr Prentice:** I have it here.

**Ms Gaymer:** —on the issue of ministerial involvement to try and get to the bottom of some of these issues and to be clear at the beginning about how they should be handled ahead of time. For example, we have had a case where a regional minister in the middle of the process wanted to add an extra criterion to the selection of candidates and we had to say, “Sorry, don’t do that, you have to set out the criteria at the beginning, it is not appropriate suddenly to change the rules of the game . . .”, if I can put it that way, use that allusion again, “. . . half way through the process”.

**Q74 Mr Prentice:** What if that had been done at the beginning though?

**Ms Gaymer:** Fine, at the beginning. The aim of the consultation is to sit down and say, “Okay, we have got a Green Paper which says regional ministers should have an advisory role, completely understandable given their role, greater connection to the regions but how should that role be exercised in an open way so that we can show it is not ‘interference’, it is being involved in the process in an advisory capacity but the minister at the end of the day makes the decision”.

**Q75 Mr Prentice:** Yes, so they are all just process issues then.

**Ms Gaymer:** They are process issues, yes.

**Q76 Mr Prentice:** On something completely different, why is it that you are responsible for Ofcom but not the other utilities? It seems very complicated to me.

**Ms Gaymer:** This is something that I have mentioned, and I know my predecessor has mentioned before you in the past. My remit depends primarily upon the classification of the body itself. That classification is done in the Cabinet Office and we are informed whether the body falls within the classification or does not. I do not know, quite frankly, why I am responsible for Ofcom and not for other similar utility regulators. I do know that at the moment the Cabinet Office is reviewing the list and is indeed looking at that particular area, for example, energy and water, should I be responsible for energy and water or should I not?

**Q77 Mr Prentice:** Do you know the criteria that they are using?

**Ms Gaymer:** Only very broadly in terms of classification of whether it is an NDPB,<sup>5</sup> advisory, executive and so on and so forth. We do not get involved in the classification ourselves. Quite frankly, what struck me when I first became Commissioner, and I must admit it has become stronger over the months, was that if you accept that appointment on merit after an open and transparent process is a good thing for public appointments then why does that principle not apply to all public appointments and you only exempt from that list appointments that have specific issues about them which you may wish to say, “Sorry, that is not right for that group”. At the moment what we have is an opt-in system as opposed to an opt-out system and I think it is one of the reasons why the whole area of public appointments is such a mystery to a large part of the public community out there.

**Q78 Mr Prentice:** Yes, because one of the groups and a growing group that has opted out or been opted out are the NHS foundation trusts.

**Ms Gaymer:** Yes, absolutely.

**Q79 Mr Prentice:** The Government’s intention is to have every hospital trust a foundation trust by the end of next year, I think.

**Ms Gaymer:** Yes.

**Q80 Mr Prentice:** They fall completely outside your responsibility.

**Ms Gaymer:** That is right. There may be very good reasons for this. There may be very good reasons why things should have their own particular grouping and work in a particular way but it seems to me if you are in a democracy and you want to be open and transparent about it, you should be very clear about why you are opting out. It is also compliant with modern governance, this notion of

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<sup>5</sup> Non-departmental Public Body

comply or explain, it is absolutely at one with that approach. I have always found it strange, it is probably a function of history, because of Nolan and the way the bodies were initially chosen because I think Lord Nolan took the view that he could not possibly do everything in six months because he was not given much time to produce this report so he said to himself, "Okay, I am going to concentrate on this particular group of bodies, this particular group of ministerial appointments". I think we have moved on since then, we have been doing this now for 12 years and I think the time is now right for us to pause and say, "Okay, we have learnt from this now, it seems to be working, what can we do now to bring it into a much better framework".

**Q81 Mr Prentice:** Okay. Maybe I should know this but when is the Cabinet Office going to conclude its review?

**Ms Gaymer:** You will have to ask the Cabinet Office, I cannot answer that.

**Q82 Chairman:** On this consultation you are doing, which is to be welcomed and it brings in a number of things, including things we have set, what do you hope to get out of it?

**Ms Gaymer:** In a way it is part of this taking stock that I have mentioned in relation to the list. I was very conscious that a number of people, including yourselves, have expressed views about ministerial involvement. The Committee on Standards in Public Life in its 10th Report was very clear that I should consult about the whole issue and try and see whether the current process was working or not, particularly in the context of certain departments showing shortlists to ministers. As you will have seen from that document, my predecessor set up a working group that produced proposals but they coincided with the Graham Committee's 10th Report. There have since been further pronouncements about ministerial involvement in various quarters that I refer to in the paper and when I sat down and looked at all this I thought, right, before we do anything, let us get this all down in one place, let me go to the people who are at the coalface, the users, ie, ministers, permanent secretaries primarily at that point, and ask the question, "Well, okay, everyone has expressed these views, what do you think?" I have carefully not expressed a view myself in this paper because I want to hear from them first. I then want to put that into the context of what everyone else has said and ask myself is the current process that we are using in the code still fit for purpose, should we amend it and I may go out to still further consultation after that. I want to hear what people say first. I am a great believer in speaking to the users.

**Q83 Chairman:** Who are the users that you are asking?

**Ms Gaymer:** Primarily I am asking ministers, well permanent secretaries and in effect ministers. I want to hear ministers' views about how they see ministerial involvement now in the light of all these pronouncements, that is what it comes down to.

**Q84 Chairman:** You roll together permanent secretaries and ministers.

**Ms Gaymer:** I am working on the assumption that the permanent secretary is going to speak to the minister and I am going to have the ministers' views. I am hoping I am going to speak to some ministers as well.

**Q85 Chairman:** That is quite important, is it not?

**Ms Gaymer:** Yes, very.

**Q86 Chairman:** Ministers and former ministers.

**Ms Gaymer:** I have not extended it that far. We are a small team in OCPA. We use our resources tightly so I decided I would start first with current departments and permanent secretaries and those to whom they report.

**Q87 Chairman:** Okay. Obviously we shall talk to you more about that.

**Ms Gaymer:** It will conclude in the middle of January. Then we will be collating results and we will decide whether we ought to go out perhaps to the next group which will be the people who implement the process because if there are new ideas coming out of that consultation we will need to ask them whether they will work in practice.

**Q88 Chairman:** Just to go back right at the end to where we started, we have got this little list at the moment of government suggestions of posts which might involve pre-appointment hearings. The chances are that various committees inside the House will want to get in on this act in some way. We have already seen examples of this and there will be pressures to extend this list in a number of ways. Would that in itself pose difficulties, do you think?

**Ms Gaymer:** I think I would just make a general comment and it is a comment about trying to preserve the quality of what we have achieved so far. I think quality is much more important than quantity and this is a new process in a way. Obviously it has been operated in some cases in the past but we are moving into new territory. I would have thought it was sensible to concentrate on a comparatively small group of appointments to start off with to see how it works, to learn from it and then to extend it if one wants to extend it to a further group. I can understand there may be an appetite for going for a big bang effect and going for lots of appointments straight away. I would urge a bit of caution about that and the reason is a commonsensical one. These processes are going to require resourcing, it is going to require time. There is the danger, I think, and it is something which has happened in the United States actually, that if you have lots of different committees conducting this process you sometimes run the risk of inconsistency in approach and practice because they will have the ground rules but they may slightly refine it and do it slightly differently. Speaking entirely personally, I would urge a step-by-step approach and I would go for quality over quantity. I would watch resourcing and consistency.

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6 December 2007 Rt Hon John McFall MP and Ms Janet Gaymer CBE

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**Q89 Chairman:** I think the argument is that the posts that we are talking about have a kind of specialness in terms of their public position, their place in the political firmament and so on. That is a justification for doing it and I think there is a strong case of that kind. You are absolutely right to be robust in insisting upon clarity. Contrary to what Ian was saying to you, I think you are extremely robust in forcing us to be clear about what it is that we are engaged upon here to make sure that we can answer some of these tough questions and then to be sure that we get the processes done in an acceptable way as well. The fact that you are a kind of reluctant not an ally in this process but a reluctant observer in this process is helpful because it is easy to be carried

away with the enthusiasm of a new idea. You asking the tough questions forces us to ask the tough questions so we finish up with a system that we feel comfortable with. We would like you to get slightly more enthusiastic about it but not to stop asking the tough questions. Thank you for sharing some of your fantasies with us too this morning.

**Ms Gaymer:** Thank you. I just want to get things right, it is very simple, and I am sure you do too.

**Q90 Chairman:** Thank you very much and I am sure we shall see you again about this and other things.

**Ms Gaymer:** I am happy to come along because I think it is a very important subject.

**Chairman:** Thank you very much indeed.

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## Written evidence

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### Memorandum from the Commissioner for Public Appointments

#### INTRODUCTION

1. This Paper has been prepared in response to a request by the Public Administration Select Committee at its hearing on 6 December 2007 at which the Commissioner for Public Appointments gave evidence. The Commissioner was asked by the Committee to state her concerns about the proposals for Parliamentary scrutiny of certain public appointments set out in the Green Paper, "The Governance of Britain" and any suggestions for changes in these proposals.

#### BACKGROUND

2. In July 2007 the Government published a Green Paper entitled "The Governance of Britain" with the stated aim of achieving a new constitutional settlement which "entrusts Parliament and the people with more power". In particular, the Green Paper proposes that the time is now right to seek to involve Parliament in the appointment of key public officials. The Green Paper notes that there are a number of positions in which Parliament has a particularly strong interest because the officeholder exercises statutory or other powers in relation to protecting the public's rights and interests. Some of these appointments are not subject to oversight by the Commissioner for Public Appointments or other form of independent scrutiny. In respect of such appointments it is suggested that there should be a non-binding pre-appointment hearing by the relevant Select Committee which would deal with the particular candidate's suitability for the relevant role, his or her key priorities and the process used in selection. In the light of the Report from the relevant Committee, Ministers would decide whether to proceed with the appointment.

3. In relation to market sensitive and certain other appointments, including the Governor and the two Deputy Governors of the Bank of England, the Chairman of the Financial Services Authority, and some utility regulators, once the relevant appointment has been approved, the relevant Select Committee will be invited to convene a hearing with the nominee before he or she takes up post. The aim overall of both these pre-appointment and post-appointment hearings is to ensure greater accountability than currently exists.

#### PARLIAMENTARY SCRUTINY AND PUBLIC APPOINTMENTS

4. In 1995, the first Committee on Standards in Public Life (under the chairmanship of Lord Nolan) rejected Parliamentary scrutiny of appointments in favour of setting up the office of the independent Commissioner for Public Appointments to regulate, monitor and report on appointment processes. In relation to the question of perceived political bias, the Committee concluded that except in very limited circumstances it was neither necessary nor desirable to make political affiliation a criterion for appointment. However it would be useful if a candidate were asked to declare any significant political activity that might be considered to be a matter of public record. This information would not be made public unless the candidate was appointed. This would in turn help to restore public confidence.

5. Currently there is no formal Parliamentary scrutiny of the public appointments within the Commissioner's remit. These are in the region of 10,000 appointments made by Ministers to just over 1,000 public bodies in England and Wales. Instead the Commissioner monitors compliance with her Code of

Practice in relation to these appointments by means of the use of Independent Assessors who are engaged in all stages of the selection process to ensure that there is independent scrutiny throughout; by means of regular audits, publication of her Annual Report and being herself subject to the scrutiny of the Public Administration Select Committee.

6. In relation to political activity, all candidates for appointment to positions within the Commissioner's remit are asked to declare any significant political activity which may be considered to be a matter for public record (candidates are not required to divulge personal or private information such as membership of political parties or voting preferences). This information is not disclosed to the selection panel and is not made public unless the candidate is appointed.

7. These measures are designed to ensure that all public appointments within the remit of the Commissioner are made on merit and that political activity plays no part in the selection process.

#### PRE-APPOINTMENT HEARINGS

8. Accountability to Parliament is an important constitutional principle which the Commissioner fully supports. She understands that there may be concern about lack of oversight in relation to certain positions which involve the officeholder exercising statutory or other powers, which may affect the public's rights and interests, and suggests that those which have not been subject to any form of scrutiny, whether by her or some other independent body, are deserving particularly of further scrutiny.

9. However, the Commissioner does have concerns about the introduction of non-binding pre-appointment hearings by relevant Select Committees, some of which she has already articulated when giving evidence to the Public Administration Select Committee on 19 June and 6 December 2007. She also foresees practical and other difficulties which ought to be taken into account in relation to the further use of such hearings.

10. The Commissioner's main concerns in relation to such hearings are set out below:

(i) *Reduction of the pool of candidates*

According to information given to the Commissioner by recruitment consultants and others, and according to her own experience, the Commissioner is concerned that candidates for appointment may be dissuaded from applying for public appointments if the appointment is subject to a public hearing by a Select Committee. Some of the issues which might affect candidates' views on whether to apply for appointment might include the perception of potential reputational risk to the candidate or the candidate's current employer, the effect on the candidate's current position if, for perfectly acceptable reasons, the candidate is disinclined to inform the current employer of the application for a public appointment or if the act of so doing becomes public knowledge and may have regulatory or share dealing consequences (for example if the employer is listed on the Stock Exchange). Any reduction in the pool of available candidates for public appointments may run the risk of hampering efforts to widen the pool of candidates for public appointments generally and in particular with a view to increasing the diversity of candidates.

These concerns do not relate to the robustness of candidates and their ability to stand up to public scrutiny. The types of individuals who would be likely candidates for public appointments, particularly those regulated by the Commissioner, would be well used to appearing in public and dealing with the type of examination proposed by the Select Committee. Nor would the above concern necessarily be addressed by the Chairman of the Select Committee specifying those confidential issues about which questions should not be asked. For example, the very fact that an individual had applied for a particular position might, for perfectly proper reasons, need to be kept confidential until the unconditional acceptance of the position had been confirmed.

(ii) *Perceived politicisation of appointments processes*

An appointments process which includes a hearing by a Select Committee may be seen to be politicised even though questioning of any nominee for appointment is kept within predetermined guidelines such as those relating to competence or qualifications. In the case of processes regulated by the Commissioner, the aim is to appoint on merit after an open and transparent process without any suggestion of political bias (unless political representation is part of the constitution of the body concerned). The asking of questions about political activity, as occurred in the recent hearing of the appointment of Sir Michael Scholar as the Chair of the new independent Statistics Board, would not be permitted as part of an appointments process regulated by the Commissioner. Even if the purpose of the Select Committee hearing were to be made clearer (as recommended below), the risk would remain that the asking by politicians of questions about political activity and other matters might be seen by the public as politicising appointments processes overall, even though the questioning was intended to establish independence and lack of political bias. This would be

an unfortunate consequence, given the efforts made during the last 12 years, since the Report of the Nolan Committee, in order to eliminate the perception of politicisation of public appointments processes.

These concerns are supported by research conducted by the Commissioner's office by MORI in February 2005, which did not support the involvement of politicians in public appointments processes.

In his evidence to the Public Administration Select Committee on 6 December, the Right Honourable John McFall MP noted that in the recent questioning of Sir Michael Scholar by the Treasury Select Committee, Sir Michael Scholar had been asked about his son who is the Chief of Staff at No.10 Downing Street. He noted that nowhere in any press commentary after that was there any mention of Sir Michael Scholar and his son and that relationship, and that the questioning "put to bed" the issue of politicisation. The fact that Sir Michael Scholar was the father of Tom Scholar, the Prime Minister's Chief of Staff was reported in the *Financial Times* on 24 July, the Committee having found Sir Michael to be a suitable candidate, who demonstrated his commitment to the independence, integrity and importance of statistics.

(iii) *The asking of inappropriate questions*

There may be a risk that inappropriate questions (such as those relating to a candidate's private life) which would not be permitted in a selection interview might be asked. This may be so even if the Select Committee has a strong chairman. Mr McFall noted in his evidence to the Public Administration Select Committee that these concerns may be dealt with by establishing clear criteria for questioning before the hearing. He further noted that when members of the Monetary Policy Committee came before the Treasury Select Committee, the Committee was clear in saying that it was interested in their independence and professional competence. Later in his evidence, Mr McFall suggested that one of the justifications for pre-appointment hearings was the demonstration of the skills of the nominee and later in his evidence added that a Select Committee would be trying to assess "whether the nominee is of the requisite standard", making it clear that it was important that "a Select Committee does not try to ape a selection board". The Green Paper proposes that Select Committee pre-appointment hearings would cover "issues such as the candidate's suitability for the role, his or her key priorities, and the process used in selection". A number of these issues such as competence, skills and suitability for the role are typically dealt with during selection processes. If independence is a criterion for a position, this is also dealt with in the selection process. The risk is, therefore, that the purpose of a hearing by a Select Committee may become unclear. It is, therefore, essential that the purpose of any such hearing should be clarified and made clear to all concerned at the outset.

The Chairman of the Public Administration Select Committee has suggested that pre-appointment hearings constitute a compromise so that a Committee can express a reservation if it is not happy with someone that it sees but it will not be formally part of the process—thus giving the best of both worlds. The Commissioner has concerns that this will lead to confusion of purpose and ultimately may bring the selection process into disrepute. This may be the position even if, as proposed by Mr McFall in his evidence, a pre-appointment hearing should be seen as the beginning of the accountability process, the selection process having concluded. This is a fine distinction and the Commissioner has concerns that this distinction may be or become eroded in time, for example, by inappropriate or inconsistent questioning by Select Committees and will have the unintended consequence of eroding public confidence in appointment processes whether or not they are regulated by the Commissioner.

(iv) *The effect on timing of the appointments process*

The time taken to complete a public appointments process may be extended if, for example, the appointment process falls during periods when the House is not sitting or difficulties are encountered in ensuring that all participants in the hearing may attend on a given day at a given time. Mr McFall has also publicly noted that appointments processes might need to be extended in order to allow time for Ministers to reflect on the conclusions reached by the relevant Select Committee. The hearing conducted in relation to Sir Michael Scholar's appointment was conducted in a timely fashion, although Sir Michael was unable to respond to certain questions about the position to which he had been nominated since these were premature. In this respect the Commissioner notes that a post-appointment hearing held, say, within six months of appointment, would offer a candidate and the relevant Select Committee a better opportunity to have a meaningful discussion about the particular appointment and the candidate's views on it or the organisation to which the appointment relates. Timetabling issues may also be addressed as suggested below, by clear rules in this regard.

(v) *The role of Ministerial accountability*

The Committee on Standards in Public Life under Lord Nolan stated that ultimate responsibility for appointments should remain with Ministers. The principle of Ministerial responsibility is a principle of the Commissioner's Code of Practice. Where the public appointment is regulated by the Commissioner, the Minister is usually offered a choice of two appointable candidates. Since the views expressed by a Select Committee as a result of a pre-appointment hearing would not be

binding on the Minister, the Minister would retain choice. However, if the Minister were to disagree with the view of the relevant Select Committee, which has already occurred in the past, there is a longer term risk that, if such instances become a regular feature, the system overall will be brought into disrepute and public trust in the appointments process eroded. While there is an argument that confirmation of appointment following a pre-appointment hearing may lend legitimacy to a candidate's appointment and assist the candidate in the subsequent discharge of his duties, it would be important for the Select Committee concerned not to feel constrained in any way subsequently to criticise the candidate's performance, having originally endorsed the candidate's appointment. If a candidate were not to be confirmed by the Select Committee but subsequently appointed by the Minister, then the subsequent questioning of the appointee by the Select Committee would no doubt be particularly rigorous. If a candidate were not to be confirmed both by the relevant Select Committee and the Minister, then the manner in which the appointments process would be rerun would need to be clarified. In any event the appointments process would be likely to be lengthened.

(vi) *Effect on OCPA regulated processes*

If pre-appointment hearings were to be required in relation to appointments processes already regulated by the Commissioner, the Commissioner is concerned that the current confusion on the part of the public about the role of the Commissioner, the extent of her remit and the coverage of her processes may be worsened at a time when the Commissioner is seeking to be more open and explicit about her role in dealings with both the public and users of the process. She is also anxious to reduce perceived bureaucracy and emphasis on "process" in the appointments process within her remit. (She notes in this respect that Regional Ministers are to be involved in certain regional appointments in an advisory role which will complicate these processes further).

Importantly, the Commissioner would need to amend her Code of Practice in order to take into account any pre-hearing appointment process which does not fall within her remit. In particular, she would need to make it clear in her Code of Practice that such a pre-appointment hearing did not form part of a process regulated by her; that such a hearing would not be subject to any form of independent scrutiny (which is one of the Seven Principles which underpins her Code of Practice); that she would have no jurisdiction to hear any complaint from any member of the public concerning the conduct of any such hearing; that, contrary to the provisions in her Code, such a hearing may include questions about political activity and that she would not investigate any complaints of political bias in relation to the public appointments process as a whole if instigated by reference to such questioning. Finally, she would need to clarify what her role would be in the event of a process regulated by her not resulting in an appointment by reason of views expressed by a Select Committee prior to a Minister's decision not to appoint a candidate otherwise deemed appointable by the selection panel. She would also need to explain what procedures would apply if more than one appointable candidate had been identified (as is usually the case) before the Minister was asked to make a final decision.

## 11. POST-APPOINTMENT HEARINGS

As already indicated, the Commissioner supports the principle of Parliamentary scrutiny and considers that all public servants who have stewardship of public funds should be accountable to Parliament for the manner in which they discharge their duties in order to provide a democratic check on the discharge of public functions. As noted above, the Commissioner suggests that there may be a more meaningful debate between a Select Committee and an appointee once the appointee has begun to discharge his or her duties and is in a position to discuss strategy and plans for the future of the public body in question from a more informed basis. This form of post-appointment hearing would have the advantage of avoiding the difficulties identified above in relation to hearings held before the appointment has been confirmed. This type of scrutiny already occurs in relation to certain appointments and Select Committees already have the right to call for witnesses at any time. However, the Commissioner suggests that there is scope for making this process of post-appointment scrutiny more formal, open and transparent—for example, by requiring that, if requested, appointees should appear in front of the relevant Select Committee within a certain period following appointment.

## 12. GENERAL OBSERVATIONS

As well as articulating her concerns about the proposals contained in the Green Paper, the Commissioner has been asked by the Public Administration Select Committee to suggest any changes which she might propose in relation to the proposals. Accordingly, a number of general observations follow.

(i) *Practical considerations*

If the proposals in the Green Paper for pre-appointment hearings proceed, there are a number of practical considerations which, in the Commissioner's view, should be taken into account, namely:

- ensuring that Select Committees are fully and accurately informed about the bodies within their remit;

- ensuring that Select Committees have received accurate and up-to-date information about the particular appointment which is to be the subject of the pre-appointment hearing and that any issues relating to confidentiality of information and data protection have been addressed;
- ensuring that Select Committees have adequate time and administrative support in order to question candidates for appointment in a proper fashion;
- ensuring that Select Committees behave consistently generally. In this respect, Select Committees may wish to consider preparing a separate Code of Practice which might give guidance on the purpose of the pre-appointment hearing and considerations to be borne in mind in relation to the formulation of questions including the role of Parliamentary privilege;
- ensuring that the overriding principle of appointment on merit is safeguarded unless the appointment is expressly identified as being an exception to this principle; and
- ensuring that the legal consequences of introducing non-binding pre-appointment hearings into the appointments processes for posts which may already be subject to a statutory framework are considered and any legal implications addressed.

(ii) *Timetabling*

In order to ensure that public appointments processes are not unduly extended, the Commissioner proposes that there should be a period during which any pre-appointment hearing should take place, failing which the approval of the appointment by the Minister or otherwise may proceed. This would be particularly important if the process were urgent or it was anticipated that the process would be occurring during a period when Parliament was not sitting. Any timetable may also need to take into account any period of reflection by the Minister on the appointment required, following the Select Committee's recommendations.

(iii) *Monitoring and review of process*

Although Select Committees have had the power to scrutinise certain appointments since 2002, the formalisation of pre-appointment hearings may be viewed as experimental in nature. As suggested when she gave evidence to the Public Administration Select Committee on 6 December, the Commissioner believes that the manner of their implementation should concentrate on quality rather than quantity in the first instance. This may, in any event, be the case in practice, given the sequential expiry dates of the fixed terms of key public appointments. In any event it would be appropriate to set a period or periods of time within which to review the effect of pre-appointment hearings. For example, an attempt may be made to measure any reduction in the pool or diversity of candidates, although in practice it will be extremely difficult to identify those candidates who did not proceed with an application for a public appointment at all and whose reason was the need to attend a pre-appointment hearing. The outcome of the process may offer a greater insight, for example, if there are increasing numbers of candidates with public sector backgrounds who are used to Parliamentary scrutiny.

(iv) *Clarification of roles and purpose*

As the Commissioner indicated in her evidence to the Public Administration Select Committee, in her view it is essential that the purpose of a pre-appointment hearing is made clear at the outset of any appointments process. It would also be helpful to indicate the likely areas of questioning, so that candidates can make an informed decision before embarking on a public appointment process whether or not regulated by the Commissioner. Similarly, efforts should be made to ensure that the Chairs of Select Committees understand the purpose of pre-appointment hearings and control questioning accordingly.

(v) *Processes regulated by the Commissioner*

For the reasons articulated in this Paper, the Commissioner would prefer that processes regulated by her should not be subject to pre-appointment hearings. However, if a decision is made by the Government that this will be the case, she will need to amend her Code of Practice in the manner indicated above, after appropriate consultation. Accordingly, the timetable for introduction of pre-appointment hearings in relation to processes within the Commissioner's remit should allow for this process. It would be a breach of the Commissioner's Code if an appointment process were to be commenced on the basis that there was to be no pre-appointment hearing and then a pre-appointment hearing were to be introduced later in the process. Accordingly, this set of circumstances is to be avoided, if at all possible.

### 13. APPOINTMENT ON MERIT

The Green Paper notes that public bodies at arms' length from Ministers play an important role in public life. The Commissioner welcomes this statement as well as the Green Paper's stated intention to build on previous improvements in public appointments processes. The principle of appointment on merit after an open and transparent process should, in the Commissioner's view, apply to all public appointments

processes unless there are exceptional reasons justifying an alternative process to be adopted. Many Government Departments seek to apply the principles and procedures set out in the Commissioner's Code to appointments to bodies which currently do not fall within her remit. If pre-appointment or post-appointment hearings by Select Committees lead to an improvement in public appointments processes, then this would be a worthy outcome. If, however, these changes lead to a reduction in the pool and diversity of candidates, increasing the complexity of the process and the perception of politicisation of appointments processes, these would be unwelcome unintended consequences which would run the risk of reversing much of the progress made during the last 12 years. The Commissioner hopes that this will not be the case but that the principle of appointment on merit after an open and transparent process will in due course be made obligatory for all public appointments processes, including those not within her current remit, subject to there being an appropriate proportionate regulatory regime and provision for exceptional arrangements where an alternative process should be adopted. In any event, she welcomes any measures which are designed to bolster public confidence in public appointments processes.

*December 2007*

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