



House of Commons
Public Administration
and Constitutional Affairs
Committee

Pre-Appointment Hearings: Promoting Best Practice

Tenth Report of Session 2017–19



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*Report, together with formal minutes relating
to the report*

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Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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Committee reports are published on the Committee's website at www.parliament.uk/pacac and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

Committee staff

The current staff of the Committee are Libby Kurien (Clerk), Sarah Thatcher (Clerk), Ian Bradshaw (Second Clerk), Dr Patrick Thomas (Committee Specialist), Dr Philip Larkin (Committee Specialist), Makka Habre (Committee Specialist), Gabrielle Hill (Senior Committee Assistant), Iwona Hankin (Committee Assistant), and Mr Alex Paterson (Media Officer).

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Summary

Since 2008 House of Commons select committees have scrutinised the Government's preferred candidate for approximately 50 of the most important public appointments through pre-appointment hearings. Their purpose is to scrutinise Minister's decision making and whether their preferred candidate is appointable, and therefore to improve public confidence in the process. These hearings have increased Ministers' accountability to Parliament for their use of their powers to make appointments. Committees do not have a veto over appointments but can recommend that an appointment is not made, although this has rarely happened.

Most of the public discussion about pre-appointment hearings has concentrated on their potentially adversarial nature. In practice, however, the majority of hearings are positive, and provide the committee with an opportunity to begin building a working relationship with the candidate that will continue once they are in post. They are also an opportunity for candidates to demonstrate their fitness for the role publicly, and explain their priorities. However, we emphasise, that it is not for a committee to seek to re-open the selection process if it concludes that the Government's preferred candidate is appointable.

This report therefore sets out a series of recommendations intended to reinforce the constructive nature of the pre-appointment hearing process. Committees should ask candidates to fill out questionnaires in advance to help focus hearings. They should also take a more flexible and strategic approach to choosing which posts to hold hearings for, and not be bound by the Cabinet Office list of appointments the Government considers are suitable for hearings. In revising that list the Cabinet Office should agree clear and transparent principles with the Liaison Committee.

Committees should also be more active in scrutinising Ministers' and officials' handling of the process for selecting candidates, including the Government's practical fulfilment of its rhetorical commitments to increasing the diversity of senior appointments. Committees should not just consider diversity only in terms of protected characteristics, but also ensure that public appointments are filled by a people with a range of experience. Ministers also need to ensure that the appointments process is properly resourced and prioritised, including to ensure Committees and candidates are provided with sufficient notice and information to maximise pre-appointment hearings' value.

When there is a disagreement between a committee and a Minister on a candidate recent experience shows there is a need to ensure that Ministers seriously consider the committee's concerns. Therefore, as part of Ministers accountability to Parliament for appointments, if a Minister decides to proceed with an appointment despite a negative report from a committee there should be an opportunity for the House to debate and vote on whether to support the committee's recommendation. This is intended to encourage a pause for reflection and meaningful engagement between Ministers and committees, rather than confrontation.

Introduction

1. Since 2008 House of Commons select committees have held oral evidence sessions with Ministers' preferred candidates for a small number of senior public positions prior to their being formally appointed. These are called pre-appointment hearings.

2. Although rare, committees can and do recommend against a candidate being appointed. However, a Minister is under no obligation to follow the committee's recommendation.¹ The UK Parliament's powers over executive appointments are therefore less clear cut than, say, the United States' Congress, where the Senate has a constitutional veto over most senior US Government appointments.² This has led to an ongoing debate as to what the purposes of pre-appointment hearings in the UK should be.

3. This debate was brought back into focus by the Digital, Culture, Media and Sport (DCMS) Committee's hearing and subsequent report, and the Government's response rejecting the Committee's concerns, on the appointment of the new Chair of the Charity Commission in February and March 2018.³ That report concluded that:

We think the time may have arrived at which it would be of benefit to both the Government and the House if arrangements for responding to pre-appointment hearings were put on a surer and clearer footing.⁴

4. The Liaison Committee subsequently asked this Committee to carry out an inquiry into pre-appointment hearings, and we launched a call for evidence on 23 March 2018. This asked for views on whether the existing "purposes" for pre-appointment hearings and the current process and guidance needed to be updated; and specifically:

- The implications of the weakening of the formal powers of the Commissioner for Public Appointments following the Grimstone Review for the purposes and practice of pre-appointment hearings;
- Whether Parliamentary procedure should be strengthened to ensure that prior to confirming an appointment despite a negative Committee report that Ministers properly consider the Committee's recommendation and account to Parliament for their decision to set it aside;
- Whether the list of appointments subject to pre-appointment hearings should be updated or expanded; and
- How the pre-appointment hearing process can contribute to increasing the diversity of public appointments.

1 The only exception are some appointments to the Office for Budget Responsibility that can only occur with the consent of the Treasury Select Committee. Budget Responsibility and National Audit Act 2011 [Schedule 1 para 3](#)

2 Article II. Section 2 of the Constitution vests the power of nomination with the President but provides that appointment may be only with "the advice and consent" of the Senate. For a comparison of the powers of the two legislatures regarding appointments see William McKay & Charles W Johnson *Parliament & Congress: Representation & Scrutiny in the Twenty First Century*, Oxford University Press, 2010, pp 72-77

3 Digital, Culture, Media and Sport Select Committee, Third Report of Session 2017-19 "[Appointment of the Chair of the Charity Commission](#)" HC 509, 28 February 2018, and First Special Report of Session 2017-19 "[Appointment of the Chair of the Charity Commission: Government Response to the Committee's Third Report of Session 2017-19](#)" HC 908, 14 March 2018.

4 DCMS Committee "Appointment of the Chair of the Charity Commission" para 53

The Committee took oral evidence from Professor Robert Hazell; Dr Felicity Matthews; the Rt Hon Peter Riddell, the Commissioner for Public Appointments; the Rt Hon Nicky Morgan MP, Chair of the Treasury Committee; Damian Collins MP, Chair of the Digital, Culture, Media and Sport Committee; and Oliver Dowden MP, the Minister for Implementation at the Cabinet Office. We also received written evidence from eleven select committees, the Cabinet Office and other interested organisations. We thank all of them for their evidence.

1 Development of pre-appointment hearings

Origins of pre-appointment hearings

5. In July 2007, upon becoming Prime Minister, the Rt Hon Gordon Brown MP announced that, as part of a wider suite of constitutional reforms, he favoured giving the House of Commons greater influence over key ministerial appointments.⁵ The subsequent Governance of Britain Green Paper proposed:

... 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.⁶

6. This was a significant concession by the Government. Prior to 2007 the Government had rejected a formal role for select committees in scrutinising individual appointments. It had argued that it would weaken Ministerial accountability for appointments, would involve select committees inappropriately in decision making, risk undermining appointees who committees criticised, and compromise selection of candidates on merit by introducing political considerations.⁷

7. Select committees had been arguing that they should have a role in scrutinising individual ministerial appointments, for over a decade. The Treasury Select Committee (TSC) had established, with the agreement of the then Chancellor of the Exchequer Gordon Brown, a practice of holding hearings with newly appointed members of the Bank of England's Monetary Policy Committee (MPC) following the transfer of decision making on interest rates to the MPC in 1997.⁸ These "pre-confirmation" hearings continue for senior appointments to the Bank of England and other major financial regulators.⁹

8. The Liaison Committee argued for this practice to be placed on a statutory footing and spread to other appointments in 2000;¹⁰ and in 2002 included scrutiny of key ministerial appointments in its list of core tasks for select committees.¹¹ In 2003 the Public Administration Select Committee (PASC) recommended the adoption of a system superficially similar to the pre-appointment hearings that emerged in 2008, except that it had proposed that committees should have the power to veto a proposed appointment.¹²

5 HC Deb 3 July 2007 c816

6 Ministry of Justice, "The Governance of Britain", Cm 7170, July 2007. Para 77

7 Lucinda Maer, "[Parliamentary Involvement in Public Appointments](#)" Commons Library Research Paper (RP 08/39) & Robert Hazell, Turan Hursit, Harmish Mehta and Peter Waller "[Improving Parliamentary Scrutiny of Public Appointments](#)" Constitution Unit, July 2017

8 *ibid* p26.

9 As they occur after an appointment has been made the Committee has no ability to recommend that the person is not appointed. However, in 2017 issues raised at her pre-confirmation hearing led to resignation of the newly appointed Deputy Governor of the Bank of England Charlotte Hogg. Professor Robert Hazell CBE ([PAP0002](#))

10 Liaison Committee, First Report of Session 1999–2000 "[Shifting the Balance: Select Committees and the Executive](#)", HC 300, 1 March 2000, para 24.

11 Maer, "Parliamentary Involvement in Public Appointments"

12 *ibid*

Pre-appointment hearings since 2008

9. Nonetheless, the Liaison Committee and the Government reached a degree of consensus on how to take forward the Prime Minister's proposal,¹³ and the first pre-appointment hearings under the present system took place in 2008. By May 2018, there had been 102 pre-appointment hearings.¹⁴ In comparison in 2016/17 Ministers made 2,231 appointments and re-appointments, to the approximately 300 public bodies sponsored by the UK Government, alone.¹⁵

10. The essence of the current system is that, where an appointment is on the list agreed between the Liaison Committee and the Government, after the selection process has run its course but before an appointment is confirmed by a Minister, the Minister will put forward the preferred candidate for a pre-appointment hearing by the relevant select committee. The committee is not obliged to hold a public hearing, but in nearly every case has done so. Having heard from the preferred candidate, the committee is expected to make a rapid report on whether it agrees that the appointment should proceed. Having considered the committee's views, the relevant Minister then decides whether or not to proceed with the appointment of the preferred candidate.¹⁶

11. Of the more than one hundred pre-appointment hearings held since 2008, six resulted in the committee recommending that the preferred candidate should not be appointed. Ministers have rejected this recommendation in four of those six cases. There has been one other case of a candidate withdrawing in anticipation of a negative report, after the Committee informed the Minister of their likely conclusion. In a further case commitments given during a hearing led to a later resignation.¹⁷

12. In 2011, the Liaison Committee reviewed the experience of the first three years of pre-appointment hearings and the role of select committees in the making of public appointments.¹⁸ Its main conclusions and recommendations were:

- That the list of appointments then subject to pre-appointment hearings should be split into three; a small number that should be joint appointments between Parliament and the Executive; a larger number where the relevant Select Committee should have an effective veto unless Ministers were able to secure a resolution of the House supporting their choice, and the majority of posts that would be subject to the existing arrangements;
- Committees should be consulted on, but not required to endorse, job descriptions for posts before they are advertised;
- Committees should inform a Minister in private of any concerns about a candidate and before issuing a report; and
- Department should provide briefing to committees on the nature of the selection process and shortlisted applicants prior to the pre-appointment hearing.

13 Liaison Committee First Report of Session 2007–08, Pre-appointment hearings by select committees, HC 384 and the Government's response, First Special Report, HC 594.

14 Liaison Committee, "[Pre-appointment hearings held by select committees of the House of Commons](#)" accessed 02/07/2018

15 The Commissioner for Public Appointments, "[Annual Report 2016/17](#)"

16 The process, and a list of hearings held to date of publication, is summarised in "[Pre-Appointment Hearings](#)" House of Commons Library Briefing 04387, 20 December 2017

17 All of these cases are summarised in Professor Robert Hazell CBE ([PAP0002](#))

18 Liaison Committee, First Report of Session 2010–12, "[Select Committees and Public Appointments](#)", HC 1230, 4 September 2011

The Government rejected the most substantial recommendation on increasing Parliamentary control over appointments.¹⁹

13. Both the Liaison Committee and the Cabinet Office have issued guidance to committees and departments respectively as to the purposes and process for pre-appointment hearings.²⁰ This report makes a series of recommendations for amendments to them. A suggested revision of the Liaison Committee guidance is at annex A.

Scrutiny of Public Appointments and the Grimstone Reforms

14. Appointments to the Civil Service had, since the Northcote Trevelyan report of the 1854, been required to be made on merit, after open competition, to reduce political patronage.²¹ They were, and continue to be, overseen by the independent Civil Service Commissioners.²²

15. However, over the Twentieth Century the range of public bodies, such as the constituent parts of the NHS and nationalised industries, outside of the Civil Service grew.²³ Ministers were generally responsible for appointments to these bodies, with very limited accountability.

16. In 1995, in its first report, the Committee on Standards in Public Life recommended that these public appointments by Ministers should be regulated by a newly created Commissioner for Public Appointments (CPA) to ensure that appointments were made on merit and public boards had a balance of relevant skills and backgrounds.²⁴

17. Under the Public Appointments Code, which was written and overseen by the Commissioner, that was subsequently introduced, the interview panel was chaired by a senior Civil Servant or the Chair of the relevant public body and included an independent member. For very senior appointments the panel was chaired by a Public Appointments Assessor appointed, and reporting to, the Commissioner.²⁵

18. The appointing Minister was required to agree the job description and criteria against which candidates would be assessed, was able to comment on candidates, but could not add or remove names from any long or shortlist.²⁶ The panel was expected to develop a list of appointable candidates at the end of the process, from which the Minister could choose. If Ministers did not want to appoint any of the candidates deemed appointable by the panel the competition had normally to be re-run. In exceptional circumstances the

19 Liaison Committee First Report of Session 2012–13 “Select Committees and Public Appointments: the Government’s response” HC 394, 12 July 2012.

20 Liaison Committee, “[Liaison Committee guidelines for select committees holding pre-appointment hearings](#)” 27 November 2013; Cabinet Office “[Pre-appointment scrutiny by House of Commons Select Committees](#)”, 2013

21 The development of the “Northcote Trevelyan Reforms” and the Civil Service Commission until the period of the creation of the Committee on Standards in Public Life is summarised in “[Whither the Civil Service](#)”, Research Paper 03/49, House of Commons Library, May 2003 pp7–12

22 The role of the Civil Service Commissioners, and the political independence of the Civil Service, was put on a statutory footing by [Part 1 of the Constitutional Reform and Governance Act 2010](#)

23 For a summary of the history of the development of “public bodies” and the various forms they take see Hazel Armstrong, Lucinda Maer; & Ray McCaffrey; “[Public Bodies](#)” House of Commons Library Briefing Note 8376, 8 August 2018.

24 Committee on Standards in Public Life, “[Standards in Public Life](#)”, Cm 2850, May 1995

25 Sir Gerry Grimstone, “[Better Public Appointments: A review of the public appointments process](#)” Cabinet Office, 11 March 2016 appendix 2

26 The process is summarised in Grimstone “Better Public Appointments” appendix 2

Commissioner could allow an exception to the Code, for instance where there was an urgent business need for a position to be filled. The Commissioner's role also involved auditing the performance of departments in applying the Code, and requiring improvement plans where there were failings, and heard appeals from candidates where they felt the code had been breached.

The Grimstone Review

19. Sir Gerry Grimstone was commissioned by the then Minister for the Cabinet Office in July 2015 to carry out a review of the public appointments process, with a remit to “ensure that the procedures are both effective and proportionate”.²⁷ His report sets out his main conclusion that Ministers are responsible and accountable for public appointments and should therefore be “at the heart of the public appointments system”.²⁸ He also concluded that the current system was too bureaucratic and took too long, dissuading people from private sector backgrounds from applying. Sir Gerry's recommendations included that:

- Ministers, rather than the Commissioner, should become responsible for a renamed Governance Code to regulate the appointments process. The Commissioner would no longer audit compliance with the code or hear appeals from candidates where it had been breached.
- Ministers would be advised by an Advisory Assessment Panel (the Panel) appointed by them, but including an independent person. For senior appointments the Commissioner would be consulted on the choice of the independent member but no longer appoint them. A departmental official would sit on the Panel as the Minister's representative.
- Panels would present Ministers with a list of appointable candidates. Ministers would be able to depart from this list and appoint a candidate not deemed appointable by the panel. This would need to be notified to the Commissioner.²⁹

20. The Government accepted Sir Gerry's recommendations on the day his review was published. The new Order in Council putting in place the new system and Governance Code (the “Grimstone Reforms”) came into force on 1 January 2017.

21. From 2017 the role of the Commissioner was therefore changed from regulator to watchdog.³⁰ The only effective concessions to maintaining the Commissioner's powers were that if Ministers, in “exceptional circumstances” choose to make appointments without a competition or appoint someone deemed un-appointable by the advisory panel, which would previously have required the Commissioner's consent, they must consult the Commissioner first, not just notify him, and he can publish his observations.³¹ The

27 [HCWS 82](#), 02 July 2015

28 Grimstone “Better Public Appointments” para 3.2

29 *ibid*

30 PACAC, Third Report of Session 2016–17 “[Better Public Appointments?: the Grimstone Review on Public Appointments](#)” HC 495,

31 A list of appointments made without competition, the Government's reasoning and the Commissioners observations are available at Commissioner for Public Appointments “[Exceptional Appointments made without a competition](#)” accessed 07/05/2018. PACAC Eleventh Report of Session 2016–17 “[Better Public Appointments? Follow-up and the Government Response to the Committee's Third Report, Better Public Appointments?: The Grimstone Review on Public Appointments](#)” HC 1062, 10 March 2017

Commissioner has also committed, as requested by our predecessor Committee, to informing the relevant select committee if he has concerns about an appointment being made contrary to the Code without good reason.³²

22. Our predecessor Committee carried out an inquiry into the Grimstone Reforms in 2016.³³ The Committee was concerned that the increased powers for Ministers to influence the appointments process, and to ignore it in order to appoint their favoured candidate, would undermine the principles of open competition and appointment on merit, namely that the most suitable person for the role is appointed. It also opposed the downgrading of the role of the Commissioner for Public Appointments to the role of a watchdog with no enforcement powers. It concluded:

... the Grimstone review threatens to undermine the entire basis of independent appointments... it effectively demolishes the safeguards built up by Lord Nolan. The Government's adoption of the Grimstone proposals is very worrying.³⁴

32 [Qq51–52](#), PACAC, Third Report of Session 2016–17 [“Better Public Appointments?: the Grimstone Review on Public Appointments”](#) HC 495, para 76

33 [ibid](#)

34 [Ibid](#) para 85

2 The purpose of pre-appointment hearings

23. The Liaison Committee defined the “purposes and objectives” of pre-appointment hearings in 2013 as:

- scrutiny of the quality of Ministerial decision-making, which is a proper part of Ministerial accountability to Parliament;
- providing public reassurance, in addition to the processes of the Office for the Commissioner of Public Appointments, that those appointed to key public offices have been selected on merit;
- providing public evidence of the independence of mind of the candidate; and
- enhancing the appointee’s legitimacy in undertaking his or her function.³⁵

24. None of the evidence we received challenged these fundamental purposes. However, it was suggested that hearings could play additional roles in setting the tone for the relationship between a Committee and the preferred candidate where their appointment is confirmed.³⁶ They also provide candidates with an opportunity to explain their approach to a role to both the Committee and the wider public before they take up their post.³⁷

25. Oliver Dowden MP, the Minister for Implementation, told us that in his view, pre-appointment hearings provided assurance for Ministers that appointments were in-line with the principles of public appointments, and were “just another check” on Ministers as they made appointments.³⁸

26. Pre-appointment hearings are not “just another check” for Ministers. They are an important part of parliamentary scrutiny of Ministers’ decisions, and of the public appointments process. They provide assurance to the public that Ministers are appointing suitable people to important public offices.

27. The evidence suggests that most pre-appointment hearings are already constructive and non-contentious. They provide enhanced transparency and credibility to the appointment process. They provide an opportunity for candidates to introduce themselves to the committee, and often the public, and begin building a working relationship that can support effective scrutiny later. Pre-appointment hearings are an opportunity to build trust and understanding between committees and public bodies, as well as an opportunity to scrutinise individual ministerial decisions.

28. The Liaison Committee’s purposes and objectives therefore remain relevant. Select committees should also consider how they can use pre-appointment hearings as a way of beginning to build a positive professional relationship with an appointee if they are subsequently confirmed. Committees should also be mindful that the hearing may be the first public opportunity for a preferred candidate to set out their approach and priorities for stakeholders and to the wider public.

35 Liaison Committee, [“Liaison Committee guidelines for select committees holding pre-appointment hearings”](#) 27 November 2013

36 [Qq83–85](#)

37 [Qq81–82](#) [Nicky Morgan]

38 [Qq137–139](#)

29. In the opinion of Dr Matthews, pre-appointment hearings have been more successful at “giving the candidate a good workout” rather than scrutinising the process for selecting them. Professor Hazell, Dr Matthews and Peter Riddell all suggested that committees should be more willing to summon Ministers or senior officials, if the committee had concerns about the selection process, rather than directing questions at the preferred candidate who was not in a good position to answer them.³⁹ Peter Riddell cited the precedent of our predecessor Committee summoning the then Cabinet Office Minister, to answer concerns about the Grimstone Review.⁴⁰

30. Damian Collins MP, Chair of the Digital, Culture, Media and Sport Committee, suggested that the lack of information committees are given about other shortlisted candidates and on the views of the interview panel restricts their ability to scrutinise the process. Without that contextual information, he argued, it was difficult to judge the suitability of the candidate before the Committee, and therefore the rigorousness of the selection process.⁴¹ However, Professor Hazell cautioned against committees seeking further information on unsuccessful candidates, as that risked a committee acting as a “second interview panel”, confusing the responsibility of the Minister to select the candidate, and the select committee’s to scrutinise the decision the Minister proposes to make.⁴² The Government has repeatedly stressed that Ministers are accountable for making appointments, in part because Parliament has legislated to give them that responsibility.⁴³

31. The ability to appoint individuals they have confidence in to key public appointments is, arguably, central to Minister’s ability to deliver an effective service to the nation, including on occasions major policy changes.⁴⁴ Damian Collins MP argued that:

Hypothetically, let us say the Secretary of State wanted to privatise Channel 4 and they wanted to bring in a new chair of Channel 4 that supported privatisation and would help prepare the organisation for privatisation, but the Select Committee were completely against the idea. Should the Minister have the right to appoint the person they feel shares their vision for that organisation? Absolutely, the Minister should have the right to do that and to pursue controversial appointments if it is important to them. As part of the process, part of their responsibility then is to come forward and speak about that.⁴⁵

32. Dr Matthews said that the “overriding principle” for committees should be examining whether an appointment was made on “merit” after a fair competition, even if a Minister decided to select someone who was sympathetic to their agenda.⁴⁶ She saw a “line in the sand” between this sort of patronage, and cronyism where political connections are the overriding factor in an appointment.⁴⁷

39 [Q3 & Qq48–49](#)

40 Commissioner for Public Appointments ([PAP0003](#))

41 [Qq86–87 & Q130](#)

42 [Q8 & Q135](#) [Nicky Morgan]

43 Cabinet Office ([PAP0007](#))

44 [Q33](#), Felicity Matthews & Matthew Flinders “The watchdogs of ‘Washminster’ – parliamentary scrutiny of executive patronage in the UK”, *Commonwealth & Comparative Politics*, 53:2, pp 153–176.

45 [Q135](#)

46 [Qq33–35](#)

47 [Qq33–35](#)

33. **The Government correctly asserts the importance of ministerial accountability for public appointments. In doing so, however, it should remember that Ministers have these powers because Parliament has legislated to give them to them, and they are accountable to Parliament for how they are used. Committees should not seek to substitute their judgement on an appointment for the Minister's, especially on matters of policy. But, the select committee does have a duty to assure itself, and the public, that the Minister's candidate has been appointed on merit and can carry out the role, and is able to exercise independent judgement and demonstrate the highest ethical standards. Ministers should expect to have to robustly defend their reasons for making a controversial decision.**

34. *Where a committee has concerns about the appointment process, or the policy implications reflected by a Minister's choice of candidate, it should take evidence from the relevant Minister or officials. It may wish to do this prior to issuing a report on the pre-appointment hearing. We recommend the Liaison Committee guidance is amended to reflect this.*

The implications of the Grimstone reforms for pre-appointment hearings

35. The Grimstone reforms, implemented in January 2017, substantially increased Ministers' ability to influence public appointments, up to and including choosing to ignore an advisory panel's advice that a candidate was not "appointable".

36. Some critics of the pre-Grimstone system had argued that its narrow focus on 'merit', and a code of practice of 210 pages, had harmfully restricted Ministers' ability to shape key public agencies for which they were accountable through appointments.⁴⁸ However, according to Dr Matthews:

Now, in the post-Grimstone world, that pendulum has swung back towards Ministers and there are questions to be raised about whether it has gone too far the other way.⁴⁹

37. Peter Riddell reported that, in the limited time the new rules had been in place, he had not seen evidence of some of the abuses that had been feared.⁵⁰ In most cases it had been departmental officials, rather than Ministers, trying to "push the limits", and generally for bureaucratic convenience.⁵¹ However he cautioned the need for vigilance on the part of committees because of the potential of the powers Ministers now had to ensure their favoured candidate is appointed even if deemed "unappointable" by the interview panel.⁵²

38. **We remain very concerned about the long-term implications of the Grimstone reforms for the quality of public appointments and especially for public confidence in them. Even if Ministers have, so far, been restrained in using the new powers available to them there is no guarantee that this will continue. Before the changes brought about by the Grimstone review, the Liaison Committee and others had been pressing for a clearer requirement upon Ministers to respond properly to select committee reports**

48 [Q33](#)

49 [Q33](#)

50 [Q51](#)

51 For example extending the terms of existing appointees to avoid having to run a competition [Q51](#)

52 [Q51](#) & [Q58](#)

following pre-appointment hearings.⁵³ Given the weakening of the assurance provided by the Commissioner for Public Appointments, the role of pre-appointment hearings in reassuring the public and improving diversity is now even more important. The Government must accept that to maintain the equilibrium between pragmatism and propriety in the public appointments system the swing of the pendulum towards direct ministerial influence over appointments requires a counter-balancing increase in parliamentary scrutiny to reflect the increased vulnerability of the system to political patronage.

Negative Reports

39. Professor Hazell’s research suggested there was frustration amongst committees because Ministers could, and had, proceed with appointing their preferred candidate even after a committee had issued a report recommending against it (a “negative report”).⁵⁴ Damian Collins MP explained that, in relation to the appointment of the Chair of the Charity Commission, his Committee had asked itself whether there was any value in pre-appointment hearings if: “Someone was put forward; it was the unanimous view of the Committee on a cross-party basis that the candidate was not suitable, and yet the Minister confirmed at the end of that same day that the appointment was going to go ahead anyway.”⁵⁵

40. Instead of concentrating on the lack of direct “hits” in blocking specific candidates, Professor Hazell argued that committees should consider their wider influence and the deterrent effect of pre-appointment hearings.⁵⁶ It was, he argued, impossible to know how many unsuitable candidates had not been proposed because Ministers knew they would be exposed in front of a committee.⁵⁷ In contrast, Damian Collins MP’s view was that Ministers did not pay any particular attention to the pre-appointment hearing process in selecting candidates.⁵⁸

41. In its report on the appointment of the Chair of the Charity Commission the DCMS Committee recommended that if a Minister decided to proceed with an appointment despite a negative report from a committee that there should be an automatic ninety-minute debate on the floor of the House of Commons on a substantive motion.⁵⁹ This should be achieved through a change in standing orders.⁶⁰ This was intended to build in a “period of reflection” after a negative report, and force Ministers seriously to consider the strength of their arguments before rejecting a committee’s recommendation.⁶¹ In his oral evidence Mr Collins suggested that it might be appropriate to explore whether such a debate should only be triggered following an unanimous recommendation by a committee.⁶²

53 First Report from the Liaison Committee of Session 2010–12, Select Committees and Public Appointments, HC 830, para 61.

54 [Q9](#)

55 [Q9](#)

56 [Q9](#)

57 [Q9](#)

58 [Qq92–93](#)

59 Digital, Culture, Media and Sport Committee, Third Report of Session 2017–19 “[Appointment of the Chair of the Charity Commission](#)” HC 509, 28 February 2018, para 53. A substantive motion would allow the House to express support for the committee’s recommendation, or the Government’s rejection of it, not to simply “consider” the matter.

60 *ibid*

61 [Qq103–104](#)

62 [Q109](#)

42. Mr Collins argued that such an arrangement would not undermine Ministers' accountability for appointments because, ultimately, "if the Government felt very strongly, they would be in a position to make sure their candidate was still approved" given its majority.⁶³ In any event the House would not be proposing an alternative candidate.⁶⁴ Legally a resolution of the House would not be binding on Ministers, but "If the motion was going to be put to a vote of the House, then I would expect the decision of the House to stand..."⁶⁵

43. Nicky Morgan MP, Chair of the Treasury Committee, was concerned that the possibility of having their qualities debated on the floor of the House might be "traumatic" for some candidates, and they would choose to withdraw rather than go through it.⁶⁶ This could result in a good candidate, who had potentially underperformed in a hearing or had not been given a fair opportunity, being lost to public service.⁶⁷

44. The Minister opposed the idea of introducing further mandatory stages into the process, arguing they would add delay and uncertainty for candidates and undermine ministerial accountability.⁶⁸ He suggested that "An urgent question can be raised by the Chair of the Committee, or any other Member of Parliament, and it is for the Speaker to determine whether that merits a discussion on the Floor of the House".⁶⁹ Mrs Morgan suggested, based on her recent ministerial experience, that both No.10 and the Government Whips would "have a very clear view on... whether this was a debate [the Government] wanted to get into on the Floor of the House", based in part on the strength of the candidate and whether alternatives were available.⁷⁰

45. The Minister also argued that Ministers took negative reports from committees very seriously, and appointing a candidate after a negative report was rare and other candidates had withdrawn in anticipation of a negative report. However, in fact, there have been six formal pre-appointment hearings that have resulted in a negative report since 2008, and the candidate has been subsequently appointed on four of those six occasions.⁷¹ Only one candidate is known to have withdrawn prior to a report being issued in anticipation of a negative recommendation.⁷²

46. The evidence does not support the contention that Ministers invariably give serious consideration to negative reports from committees. The majority have been rejected, sometimes apparently out of hand. We support the DCMS Committee's recommendation that if a Minister wishes to set aside a negative committee report there should be a mechanism that ensures there is a pause for reflection on all sides. Granting a power for committees to require Ministers to defend their decision in a ninety-minute debate on the floor of the House on a substantive motion within a reasonable time frame would require them to consider seriously the arguments made by a committee. It would also ensure that committees made a negative report only where they were confident that they had a good case to make.

63 [Q104](#)

64 [Q109](#)

65 [Q108](#)

66 [Q111](#)

67 [Q111](#)

68 Cabinet Office ([PAP0007](#))

69 [Q183](#)

70 [Q118](#)

71 Liaison Committee, "[Pre-appointment hearings held by select committees of the House of Commons](#)" accessed 02/07/2018.

72 Professor Robert Hazell CBE ([PAP0002](#)) this is not one of the six cases mentioned in the preceding paragraph.

47. **The option proposed by the Minister of relying on the granting of an Urgent Question does not meet the need for certainty of outcome and a clear and fair process. An Urgent Question is not a debate and does not have a conclusion. We do not believe it is appropriate to presume that Mr Speaker will grant an Urgent Question in all such cases. Nor do we believe that the uncertainty of whether an Urgent Question would be granted or not until a few hours before it occurred would be fair on the candidate. Nor do we consider that reliance on an emergency debate under Standing Order No. 24 would be an appropriate mechanism. Not only would it entail the same requirement to draw the Speaker into the decision-making process, it would be inconclusive as a motion under S.O. No. 24 can only be a general debate that the House has “considered” a matter.**

48. In its report on the candidate for appointment to Chair of the Charity Commission, the DCMS Committee concluded that the time may have arrived:

... at which it would be of benefit to both the Government and the House if arrangements for responding to pre-appointment hearings were put on a surer and clearer footing. We intend to consult with other interested committees with a view to bringing forward a new Standing Order which, in the event of a negative finding by a committee in relation to a proposed public appointment, would trigger an automatic ninety-minute debate on the floor of the House where Ministers would have the opportunity to set out their arguments for disagreeing with a Committee and the House as a whole would have the opportunity for coming to a decision on whose arguments it found more persuasive. We are sure the Government would welcome the opportunity to reassure the public that all major public appointments are made on the basis of an unimpeachably fair and open process, and that the candidates would be strengthened in their ability to deliver what was being asked of them (often a very challenging task) by the knowledge that they had been endorsed by the House of Commons.⁷³

49. Greater involvement by the House in the appointment process would not be a constitutional novelty. Many appointments currently require a level of Parliamentary approval, and in a limited number of cases Parliament leads on selecting the preferred candidate. In his written evidence Professor Hazell ordered these into a ladder of parliamentary control, demonstrating the range of ways the House is currently involved in decision making:

- a) Parliament makes the appointment with no involvement of the executive (as with the Chair of the Electoral Commission, and the Independent Parliamentary Standards Authority).⁷⁴
- b) Government and Parliament make the appointment jointly, giving each a veto (as with the Comptroller and Auditor General (C&AG), and since 2011 the Parliamentary Ombudsman (PHSO)).

73 Third Report from the Digital, Culture, Media and Sport Committee of Session 2017–19, Appointment of the Chair of the Charity Commission, HC 509, para 53.

74 In practice Ministers are members of the [Speaker’s Committee on IPSA](#), and the [Speaker’s Committee on the Electoral Commission](#), which select candidates.

- c) Government can only make the appointment with the consent of a select committee, or its chair: giving the committee a formal veto (as with the Office for Budget Responsibility).
- d) Government makes the appointment but agrees to abide by a Resolution of the House: giving parliament an effective veto (as with the Chair of the UK Statistics Authority).
- e) Government makes the appointment but agrees to abide by the select committee's recommendation: giving the committee an effective veto (as with the Information Commissioner).
- f) Government makes the appointment but with a select committee chair on the panel.⁷⁵

50. Some of these processes are prescribed in legislation, such as the appointment of the C&AG, others are by convention, such as the appointment of the PHSO, and others by agreement between the Minister and the relevant committee.⁷⁶ These varied provisions do not seem to have precipitated any constitutional crises so far, or obviously to have deterred potential candidates.

51. We concur with the DCMS Committee that the time has come to build on the first ten years of pre-appointment hearings by introducing an enhanced degree of parliamentary scrutiny, involving the House, not just its select committees, where there is an unresolved conflict between a Minister and a committee. Such a step would not undermine ministerial accountability. Ultimately Ministers are accountable to Parliament. They must be willing and able to defend their decisions and persuade the House.

52. We are conscious of the potential impact on individual candidates of their appointment being scrutinised on the floor of the House. But candidates for, and holders of, these major public offices must accept, and be able to handle, the degree of public scrutiny that should appropriately accompany the holding of such positions of public trust. Their decisions and judgements will be, rightly, scrutinised in the House and its committees if they are appointed. In any case, we expect that such debates will occur very rarely.

53. Our intention is to ensure that Ministers, and committees, pause for reflection if a negative recommendation is likely, not to provoke confrontation. The right to decide when to publish their report into a pre-appointment hearing rests with the committee. Ministers have accepted, and we expect will continue to accept, that where a committee has concerns about a candidate that they will normally delay publishing their conclusions to allow for private discussions.

75 Professor Robert Hazell CBE ([PAP0002](#))

76 The preferred candidate for C&AG can only be appointed on the basis of a humble address moved by the Prime Minister and supported by the Chair of the Public Accounts Committee, (Budget Responsibility and National Audit Act 2011, [S 11](#)). The Parliamentary Commissioner is a Crown appointment. Since 2011 the Parliamentary and Health Service Ombudsman has been appointed following a process led by the House of Commons Service, involving both a Permanent Secretary and the Chair of PACAC as members of the selection panel; PACAC Eighth Report of Session 2016–17 "[Appointment of The Parliamentary and Health Service Ombudsman](#)" HC 810, 19 January 2017. Professor Robert Hazell CBE ([PAP0002](#))

54. **Therefore, committees should be given the right to choose to have a debate on a substantive motion if a Minister ignores a recommendation and where they consider that it merits the attention of the whole House. Committees will be aware that in any debate the strength of their arguments for opposing a candidate, and their fair handling of the pre-appointment hearing process, is likely to be as closely scrutinised as the Minister's response to them.**

55. *We recommend that the Procedure Committee should examine how such a process could be written into Standing Orders.* A draft of a possible standing order is at annex C.

3 Which posts should be subject to parliamentary scrutiny?

56. The Cabinet Office guidance to Departments on pre-appointment hearings contains a list of appointments that the Government consider suitable for pre-appointment hearings (the Cabinet Office List).⁷⁷ This is reproduced at appendix 1. The current version of the list itself was drawn up by the Government following exchanges between the Liaison Committee and the Cabinet Office at the start of the 2010–15 Parliament. Ministers and committees can also agree other appointments that will be subject to a pre-appointment hearing, and the Liaison Committee Guidance states that this should set a precedent.⁷⁸

57. Several witnesses agreed with Peter Riddell’s assessment that there is “no obvious logic” as to what positions are covered.⁷⁹ For example many “Chief Inspector” positions are on the list, but the Independent Chief Inspector of Borders and Immigration is not.⁸⁰ The list has not been updated since 2013.⁸¹

58. Both Dr Matthews and Professor Hazell advocated that committees should take the Cabinet Office list as a starting point for deciding which appointments to scrutinise, rather than being “prisoners” of it.⁸² This would involve a longer list of appointments that could be subject to a hearing, as well as Committees reasserting their inherent right to scrutinise any ministerial decisions.⁸³ Dr Matthews questioned the need for a list at all.⁸⁴ Professor Hazell also suggested that committees should consider at the beginning of a Parliament which appointments were likely to occur and prioritise which ones they wished to scrutinise, whether they were on the Cabinet Office list or not.⁸⁵

59. Such an approach would allow committees to focus their attention on those appointments that most needed scrutinising, either because of their inherent importance, or because of the specific circumstances of an appointment. Mr Collins observed that that the Chair of the BBC was always likely to warrant a pre-appointment hearing,⁸⁶ but given recent scandals in the governance of football and cycling the next appointment of the Chair of UK Sport may now require closer scrutiny than before.⁸⁷

60. In response to concerns that a longer or more flexible list of appointments potentially subject to pre-appointment hearings would lead to committees being overburdened, Professor Hazell proposed that all committees should adopt the Treasury Committee’s practice of giving written questionnaires to candidates to complete in advance of the oral hearing.⁸⁸ Professor Hazell’s suggested model questionnaire is appended at appendix 2.⁸⁹

77 Cabinet Office [“Pre-appointment scrutiny by House of Commons Select Committees”](#), 2013, Annex A

78 Liaison Committee Guidelines, para 8

79 Commissioner for Public Appointments (PAP0003)Qq10–12, Q56

80 [Pre-appointment scrutiny by House of Commons Select Committees](#) Annex A

81 [Q162](#)

82 [Qq6–8](#)

83 Dr Felicity Matthews ([PAP0009](#)) Professor Robert Hazell ([PAP0010](#))

84 [Q10](#)

85 [Q6](#)

86 [Q95](#)

87 [Q96 & Q11](#)

88 [Q15 & Q81](#) [Nicky Morgan], for an example see, Treasury Select Committee, written evidence relating to “Appointment of Andy King to the Budget Responsibility Commission, Office of Budget Responsibility” Session 2017–19 HC 1340, Andy King [AKG001](#)

89 Professor Robert Hazell ([PAP0010](#))

Asking some standard questions in advance would, he argued, allow committees to focus their questioning in the oral hearing on areas of “concern” or of greatest public interest.⁹⁰ In some cases, a committee may decide based on the answers to the questionnaire that there was no need for an oral evidence session.⁹¹

61. The use of written questionnaires presumes that committees will be notified of preferred candidates in sufficient time to provide them with the questionnaire, for it to be completed, and the answers analysed in advance of a hearing. The current Cabinet Office guidance suggests that the name and other details of the preferred candidate should be sent to the Committee only “at least one week” before the hearing unless otherwise agreed with the Committee.⁹²

62. The Cabinet Office Minister rejected the suggestion that Ministers should lose the right to determine which posts are subject to pre-appointment hearings.⁹³ Pre-appointment hearings are, he asserted, a “tool” for Ministers as part of the “assurance on the principles of public appointments”.⁹⁴ As Ministers are accountable for both the appointment and the application of the principles, in the Government’s view it should be for them to ultimately decide whether a pre-appointment hearing is appropriate.⁹⁵

63. In their submissions several committees identified posts that were not on the current list but, in their view, should be. These are collated in annex B. Some of these were posts that had superseded appointments on the current list, for instance the Chair of UK Research & Innovation, or new appointments that it had been agreed should be subject to pre-appointment hearings.⁹⁶ Others were appointments where the committee had requested a pre-appointment hearing, for example for the Chair of the National Infrastructure Commission, and Ministers had refused.⁹⁷ Finally the International Trade Committee and the Environmental Audit Committee identified new bodies being created to take on important regulatory powers being repatriated from the European Union where the Government had failed to commit to their heads being subject to pre-appointment hearings.⁹⁸ Following the close of our call for evidence the Joint Committee on the draft Health Service Safety Investigation Bill recommended that the Chair and Chief Investigator of the new independent Health Service Safety Investigation Branch should be subject to a pre-appointment hearing.⁹⁹ The Chief Investigator of the interim organisation, created within the NHS, was subject to a pre-appointment hearing in 2016.¹⁰⁰

64. The Minister accepted that the list was out of date and that the Cabinet Office was now reviewing it.¹⁰¹ They had identified five posts not on the current list that had been subject to pre-appointment hearings following a bilateral arrangement between the

90 Professor Robert Hazell ([PAP0010](#))[Qq14–15](#) & [Q81](#)

91 [Q15](#), [Q40](#) & [Q95](#) [Nicky Morgan]

92 [Pre-appointment scrutiny by House of Commons Select Committees para 9](#)

93 [Qq168–171](#)

94 [Q171](#)

95 [Q171](#)

96 Clive Betts MP ([PAP0017](#)), Norman Lamb MP ([PAP0012](#))

97 Rt Hon Nicky Morgan MP ([PAP0011](#)) & [Q91](#)

98 Angus Brendan MacNeil MP ([PAP0018](#)) Mary Creagh MP ([PAP0013](#))

99 The Joint Committee was chaired by Sir Bernard Jenkin, and Mr David Jones was a member. Joint Committee on the Draft Health Service Investigation Bill “[Draft Health Service Safety Investigation Bill: A new capability for investigating patient safety incidents](#)” HL 180, HC 1064, 2 August 2018, para 283.

100 PACAC, Second Report of Session 2016–17 “Appointment of the Chief Investigator of the Healthcare Safety Investigation Branch” HC 96, 9 June 2016.

101 [Q162](#)

department and select committee and would now be added to the list.¹⁰² He did not give a timescale for this review, or how the list would be kept up to date in the future, except that it would not be reviewed annually.¹⁰³ He did commit the Government and Departments to consulting the Liaison Committee and individual select committees once there was “an agreed governmental view” on which posts should be covered.¹⁰⁴

65. In relation to new public bodies which might be created after the UK had ceased to be a member of the EU, he suggested that Ministers were seeking to fold repatriated powers into existing bodies where possible. The Government would consider whether new appointments should be subject to pre-appointment hearings in line with the existing principles.¹⁰⁵

66. In its written evidence the Cabinet Office said that “the general principle underpinning the list is that it includes significant appointments and it consists mainly of regulators, chief inspectors and ombudsmen.”¹⁰⁶ Mr Dowden explained that this meant:

... the first bit deals with appointments that have a regulatory function and “significant” refers to appointments that have a major impact on public life. For example, if we look at the list, I would say an appointment such as the Chair of NHS England, which has huge influence over the administration of the NHS, is something that has a major impact on public life. Some have both. For example, the Chair of Ofcom has a regulatory role and has a major impact on public life.¹⁰⁷

67. In evidence he also referred approvingly to the principles the Government suggested to the Liaison Committee in 2011, namely:

- i. posts which play a key role in regulating Government;
- ii. posts which play a key role in protecting and safeguarding the public’s rights and interests particularly in relation to the actions and decisions of Government; and
- iii. posts where it is vital for the reputation and credibility of the public body in question that the post holder is, and is seen to be, independent of Ministers and Government.¹⁰⁸

These were also endorsed by the current Liaison Committee Chair, Dr Sarah Wollaston MP.¹⁰⁹ The Minister agreed with the proposition that the Government’s policy and principles needed “some attention to detail and some hardening”.¹¹⁰

102 [Q160](#)

103 [Q165](#)

104 [Q167](#)

105 [Q165](#)

106 Cabinet Office ([PAP0007](#))

107 [Q161](#)

108 Liaison Committee, First Report of Session 2010–12, “[Select Committees and Public Appointments](#)”, HC 1230, 4 September 2011, Para 58

109 Dr Sarah Wollaston MP ([PAP0015](#))

110 [Q165](#) [Dame Cheryl Gillan]

68. One consequence of the list not being kept up to date is that it can lead to confusion within the department as to whether to consult a committee about an appointment, either because the post has been created or its name changed since the last revision of the list. For example, the Cabinet Office recently failed to inform this Committee about the forthcoming appointment of a new Registrar for Consultant Lobbyists, a position that it had been agreed in 2014, after the last revision of the Cabinet Office list, would be subject to pre-appointment hearings.¹¹¹ This led to the recruitment process having to be extended once the mistake had been pointed out, as well as preventing the Committee from commenting on the job description and proposed application process, as required by the Cabinet Office guidance.¹¹²

69. The Minister put recent failings in the Cabinet Office and other Departments down to a lack of resource and institutional memory in teams not used to carrying out public appointments.¹¹³ He said that in the future the Centre for Public Appointments at the Cabinet Office would “step up and ensure” the principles reflected in the guidance was respected by departments.¹¹⁴

70. Pre-appointment hearings are not a “tool” for Ministers as Mr Dowden suggests. Such a description fundamentally misunderstands Ministers’ and Parliament’s relationship in respect of pre-appointment hearings. Select committees can and should scrutinise any appointment they feel is necessary to hold the Government to account. They should not be confined by the Cabinet Office’s list. Ministers, as part of their accountability to Parliament for their decisions, should facilitate this. However, in practice, a list agreed in advance provides Departments, committees and potential applicants with more certainty and allows both Departments and committees to plan their work more effectively.

71. We therefore recommend the revision of the Cabinet Office list to provide a guide to Departments as to which appointments they can expect to be subject to pre-appointment scrutiny by select committees. Such a list is only useful, however, if it is kept up to date. Once it is agreed that a post should be subject to a pre-appointment hearing it should be added immediately. Similarly, the list should be updated to reflect restructuring of organisations, machinery of government changes, and decisions by committees as to which appointments they wish to scrutinise.

72. The guidance to Departments and the Liaison Committee guidance should make clear that select committees are not bound by the list. Departments should therefore share information early with committees as to forthcoming major appointments that a committee may wish to scrutinise. Committees may also find it helpful to indicate to Departments where current or recent inquiries have suggested to them that they will want to take a closer interest in particular appointments in the future.

73. The Cabinet Office List will constantly evolve. The Government should therefore agree clear and detailed principles with Parliament that can be applied consistently and transparently by Departments across all posts. These should be based on the principles proposed by the Government to the Liaison Committee in 2011. Clear principles will also help guide Departments as to which appointments that are not on the list may still

111 [Qq142–155](#)

112 Chancellor of the Duchy of Lancaster to the Chair 4 June 2018

113 [Q142](#) & [Q153](#)

114 Q154

be of interest to committees and therefore brought to their attention. We recommend that the Government agrees these principles with the Liaison Committee as a matter of urgency, so that they can underpin the review of the Cabinet Office list.

74. The Government's review should either propose including those appointments suggested by committees in their evidence to this inquiry, (annex B) or set out clearly why they are not. We also support the recommendations of the Joint Committee on the draft Health Service Safety Investigation Bill, that the Chair and Chief Investigator of HSSIB be subject to pre-appointment hearings, in-line with the precedent set by our predecessor Committee. Whether the addition of responsibilities repatriated from the European Union to existing posts means they should now be subject to pre-appointment hearings needs to be considered as part of the review, as well as the status of newly created posts.

*75. Public appointments are an important ministerial responsibility, as the Government has repeatedly stressed to this and other inquiries. It is therefore a matter of concern that some Departments, according to the Minister, appear to have chosen not to resource them sufficiently to prevent simple administrative mistakes. Providing Committees with an opportunity to comment on job descriptions and the proposed selection process, as well as providing proper notice of forthcoming appointments as the Cabinet Office's guidance requires is not merely a matter of politeness. They can alert both committees and departments to potential issues in advance, allowing them to be discussed in a constructive way. *The Centre for Public Appointments in the Cabinet Office must ensure that Departments are following their guidance. That guidance must be kept up to date, and accurately reflect the Liaison Committee's guidance to committees on the procedure for pre-appointment hearings. Where necessary extra support should be provided to those Departments who have limited experience in making senior appointments. The Centre should also be engaged in a continuous review of the performance of Departments in discharging their responsibilities to the House with respect to public appointments. We expect the Government to set out in its response its action plan for achieving this.**

76. The completion of written questionnaires by preferred candidates has clear advantages for both committees and candidates in allowing oral evidence sessions to be shorter and more focussed. Departments need to provide the name of the preferred candidate to a committee significantly earlier than a week before a hearing to facilitate this. We recommend that all committees use written questionnaires where possible, and that this practice is reflected in both the Cabinet Office and Liaison Committee guidance, including allowing for sufficient time, at least two weeks, prior to a hearing, for a candidate to fill out and return the questionnaire, and then for the committee to analyse it.

4 Pre-appointments and diversity

77. The Grimstone Review, which was implemented in December 2017, (see paragraphs 13 to 16) added “diversity” to the list of public appointment principles, which are supposed to guide the appointments process.¹¹⁵ Public appointments should now:

... reflect the diversity of the society in which we live. Ministers should have this front of mind when making appointments including when agreeing the composition of their Advisory Assessment Panels.

78. Several committees have expressed concerns about the diversity of the candidates for the appointments they have scrutinised,¹¹⁶ measured both by the protected characteristics in equalities legislation, and in particular gender, but also candidates’ backgrounds.¹¹⁷ There was a perception that too many top appointments went to the “London Great and Good” or “Westminster Insiders”.¹¹⁸ Overall, the Liaison Committee has noted how the lack of diversity in very senior public appointments is visible in the lack of diversity in the witnesses representing the Government and public bodies in front of select committees.¹¹⁹

79. Concerns have also been raised since pre-appointment hearings were first proposed that the prospect of public and potentially hostile questioning by a select committee would deter some underrepresented groups from applying for senior roles.¹²⁰ Writing in 2015, Dr Matthews reported concerns about a “deterrence effect” as a result of the approach committees had taken to questioning candidates.¹²¹ She quoted one MP as saying:

What we seem to be doing is creating a new form of patronage that is even more exclusive than the old forms because you have to be able and willing to survive a select committee hearing that is increasingly adversarial. That might be fine if you are schooled in Westminster survival strategies and have the skin of a rhino but this serves to narrow the pool of candidates.¹²²

80. In his evidence Peter Riddell cautioned that there was a limit to the positive change committees could achieve through pre-appointment hearings as the problems were most acute in the “pipeline” of applicants putting themselves forward, and departments’ efforts to attract a diverse pool of applicants.¹²³ However he did stress that “leadership matters” and committees could reinforce the importance they placed on diversity to Departments and Ministers through pre-appointment hearings.¹²⁴

115 Grimstone “Better Public Appointments” para 3.5

116 Digital, Culture, Media and Sport Committee (PAP0001), Rt Hon Nicky Morgan MP (PAP0011)

117 The nine protected characteristics defined in the Equality Act 2010 are; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation; Equality Act 2010, [section 4](#). In this report we have used “gender” in preference to “sex”.

118 Centre for Public Appointments, “[Public Appointments Diversity Action Plan](#)”, December 2017 p8 & [Q89](#)

119 Liaison Committee Second Report of Session 2017–19, “[Witness Gender Diversity](#)” HC 1033, 7 June 2018, para 17

120 Maer, “Parliamentary Involvement in Public Appointments”

121 Felicity Matthews & Matthew Flinders “The watchdogs of ‘Washminster’ – parliamentary scrutiny of executive patronage in the UK”, *Commonwealth & Comparative Politics*, 53:2, pp 153–176.

122 *ibid*

123 [Q68 & PAP0003](#)

124 [PAP0003](#)

Gender, ethnicity and other protected characteristics

81. In March 2017, 43% of positions on the boards of public bodies in England and Wales were held by women and 30% of Chairs were female. 10% of posts were held by people from an ethnic minority (compared to 14% of the population), and 4% of Chairs.¹²⁵ The Government's *Public Appointments Diversity Action Plan*, published in December 2017, set an ambition that public bodies' boards would represent the wider working age population on these measures by 2022.

82. In 2016–17 49% of new appointments, excluding re-appointments of existing members, were women, up from 34% in 2011–12.¹²⁶ The Minister cited this increase as evidence of the effectiveness of the Grimstone reforms.¹²⁷ However, as Sir Gerry's own report noted, the proportion of female appointees had already risen to 45% in 2014–15.¹²⁸ The Grimstone reforms were fully implemented on 1 January 2017, 3 months before the end of financial year 2016–17 the last year data is available for.¹²⁹

83. Peter Riddell was concerned that disability had been a “neglected area” by Government and progress had been “disappointing”.¹³⁰ The Government has not set an aspiration for increasing the number of people with disabilities on boards as they do not believe their current data is reliable owing to poor coverage and underreporting.¹³¹ For the 65% of appointees where data was available only 5% reported having a disability, compared to 18% in the working age population.¹³² In June, the Government announced a review by Lord Holmes of Richmond to examine why the proportion of appointees declaring a disability is so low, and to encourage more people with a disability to apply for public roles.¹³³ He also reported that Departments' performance on improving the diversity of applicants was variable. Some, especially those with many appointments to make, had made a significant investment in widening the pool of applicants, while others lagged.¹³⁴

84. Nicky Morgan MP outlined how the Treasury Committee now requested anonymised data from the Treasury on the breakdown of male and female applicants, and those shortlisted.¹³⁵ This pressure was “beginning to concentrate minds” but overall improvements in diversity in Treasury appointments was “very, very slow”.¹³⁶ Subsequent to giving evidence to this inquiry, Mrs Morgan wrote to the Treasury's Permanent Secretary, alongside two reports on pre-confirmation hearings to positions at the Bank of England, expressing frustration at the lack of progress on diversity at the Bank, requesting an action plan from the Department, and warning the Committee may take the lack of progress into account in scrutinising future appointments.¹³⁷

125 Public Appointments Diversity Action Plan.

126 *ibid*

127 [Qq195–197](#)

128 Better Public Appointments, p.13

129 The Commissioner for Public Appointments “[Orders in Council](#)” accessed 03/07/2018

130 [Q69](#)

131 Public Appointments Diversity Action Plan p12

132 Public Appointments Diversity Action Plan, p 12.

133 Cabinet Office, “[Review launched to encourage more disabled people to take up high profile public appointments](#)” 6 June 2018

134 [Qq69–71](#)

135 [Q88](#)

136 [Q92](#)

137 [Rt Hon Nicky Morgan MP to Sir Tom Scholar](#), 28 June 2018

“Westminster insiders”

85. Damian Collins MP explained that his Committee had had concerns prior to the nomination of a recent leader of the House of Lords as Chair of the Charity Commission that DCMS Ministers were selecting from “an increasingly narrow field of experience”, a lot of whom “could be considered as Westminster insiders, even if they had not been politicians”.¹³⁸ The Minister accepted that this was a problem, but insisted that the Government was “on a journey” to address it.¹³⁹

86. The DCMS Committee was concerned that people from different backgrounds, who may be as, or more, suitable for the role, were not being invited to apply or considered by Ministers.¹⁴⁰ There was a risk, in Mr Collins words, of:

Ministers seeing [public appointments] as a form of patronage: “Old Fred is a good person; we feel sorry that he was kicked out of the Government, so we are going to give him this job because we feel we owe him something”. Those are the sort of appointments we have to flush out.¹⁴¹

However, in his evidence the Commissioner for Public Appointments Peter Riddell reported that this form of patronage had not occurred, despite some media speculation about Ministers seeking to “look after” MPs who lost their seats in the 2017 General Election.¹⁴²

87. Professor Hazell cautioned that “with these very senior, mainly public-sector appointments, the field of candidates who are going to be appointable will largely consist of people with previous public sector experience. That is just a fact of life”.¹⁴³ In part this was because of the “daunting” nature of select committee hearings, of which candidates from outside of the public sector had less experience.¹⁴⁴

88. Nicky Morgan MP also raised the question of the membership of interview panels. If Ministers or Departments drew from a shallow pool of people to sit on panels, then it was likely that they would be presented with a narrow range of candidates deemed appointable.¹⁴⁵ Peter Riddell suggested that the proposed interview panels he reviewed “can be a bit cosy, a bit too much ‘that sector’”.¹⁴⁶ The Minister suggested that the Cabinet Office would raise questions if a Department suggested an “all-white male” panel, but did not give any details of how this was monitored systematically or if the diversity of professional background and experience of panels was considered.¹⁴⁷

Impact of pre-appointment hearings on diversity

89. The challenging nature of select committee hearings for people without public sector experience was an issue several witnesses raised.¹⁴⁸ Robert Hazell reported that one recent appointee from the private sector had required approximately fifty hours of preparation

138 [Q89](#)
 139 [Q205](#)
 140 [Q89 & Q126](#)
 141 [Q127](#)
 142 [Q53](#)
 143 [Q29](#)
 144 [Q29](#)
 145 [Q129](#)
 146 [Q51](#)
 147 [Q207](#)
 148 [Qq29–32](#)

for his hearing.¹⁴⁹ Nicky Morgan MP went as far as to describe the experience of a hostile hearing for an inexperienced witness as potentially “traumatic”.¹⁵⁰ Mrs Morgan drew a distinction between “robust and challenging” questions to a candidate and being “unnecessarily aggressive”.¹⁵¹ Damian Collins MP agreed that questioning should be “professional”, but reflect the duty of select committees to “rigorously scrutinise” the work of office holders, and the fact that accounting to Parliament would be part of their role.¹⁵²

90. In their recent analysis of the transcripts of pre-appointment hearings Professor Hazell’s team had only identified five per-cent of questions as having been “inappropriate”.¹⁵³ However, Dr Matthews argued that the important factor was not the total number of inappropriate questions but the likelihood that they would be the ones that would “stick in the mind” of people watching who might then be deterred from applying in the future.¹⁵⁴

91. **The main burden of increasing diversity in public appointments falls on the Government, primarily through securing a more diverse field of applicants. We welcome the progress that is now being made on gender and ethnicity, but note with concern Peter Riddell’s comments about disability being a neglected area. We therefore welcome Lord Holmes’s review, and expect the Government to update their action plan to reflect its conclusions. It is clear that some Departments need to do more to encourage people from a more diverse range of backgrounds to put themselves forward for public appointments, and the Centre for Public Appointments should consider how best practice can be shared with those Departments which make fewer appointments. Ministers should also set clear expectations about the diversity of interview panels, ensuring that they draw on a range of advice when making appointments. The Centre for Public Appointments should monitor this systematically.**

92. **It is highly likely that the majority of people applying for senior posts subject to pre-appointment hearings will continue to have previous experience of public service. In many, but not all, cases such experience will be beneficial. Government, and committees, need to be careful however that they do not draw the boundaries of relevant experience too narrowly. The key to increased diversity of appointments is increased diversity of applicants, and greater energy needs to be directed to ensuring that these posts do not appear to belong to a closed shop of those already in public life.**

93. **As the Treasury Committee has shown on gender, committees can “concentrate minds” in Departments by consistently pressing them to be more transparent about the breakdown of who is applying, and being shortlisted for appointments, and the composition of interview panels. The Cabinet Office should amend its guidance to Departments to require them to provide anonymised information on the diversity of applicants and shortlisted candidates, as well as the names of the interview panel. In the interim we recommend that committees request this information from their Departments for all future appointments, and where necessary hold Ministers and Permanent Secretaries to account for delivering increased diversity of appointments made by their Departments at all levels.**

149 [Q14](#)

150 [Q111](#)

151 [Q85](#)

152 [Q81& Q84](#)

153 Hazell et al “Improving Parliamentary Scrutiny of Public Appointments”

154 [Qq30–31](#)

94. Parliament's duty to hold the Government and Ministers to account requires committee scrutiny of preferred candidates to be robust and searching. This is central to building public confidence in appointees. Sometimes this will be uncomfortable for candidates, and *Ministers need to ensure that applicants understand this from the start of the recruitment process and are properly prepared and supported.*

95. However, appearing in front of a select committee should not be "traumatic". Although they are rare, we agree with Dr Matthews that the occasions where a committee has drifted into inappropriate questioning are likely to have a disproportionate impact on future candidates' impressions of the pre-appointment hearing process. Although the evidence of a deterrent effect is limited, the existing difficulties in recruiting candidates from under-represented groups means it is something committees should be mindful of. Chairs of committees have a particular responsibility to ensure courtesy and moderation in the questioning of candidates. Committee staff should also work actively alongside departmental officials to ensure that candidates are prepared properly for the nature of the hearing, including making any reasonable adjustments that are necessary to reflect a candidates specific needs.

Conclusions and recommendations

The purpose of pre-appointment hearings

1. Pre-appointment hearings are not “just another check” for Ministers. They are an important part of parliamentary scrutiny of Ministers’ decisions, and of the public appointments process. They provide assurance to the public that Ministers are appointing suitable people to important public offices. (Paragraph 26)
2. The evidence suggests that most pre-appointment hearings are already constructive and non-contentious. They provide enhanced transparency and credibility to the appointment process. They provide an opportunity for candidates to introduce themselves to the committee, and often the public, and begin building a working relationship that can support effective scrutiny later. Pre-appointment hearings are an opportunity to build trust and understanding between committees and public bodies, as well as an opportunity to scrutinise individual ministerial decisions. (Paragraph 27)
3. The Liaison Committee’s purposes and objectives therefore remain relevant. Select committees should also consider how they can use pre-appointment hearings as a way of beginning to build a positive professional relationship with an appointee if they are subsequently confirmed. Committees should also be mindful that the hearing may be the first public opportunity for a preferred candidate to set out their approach and priorities for stakeholders and to the wider public. (Paragraph 28)
4. The Government correctly asserts the importance of ministerial accountability for public appointments. In doing so, however, it should remember that Ministers have these powers because Parliament has legislated to give them to them, and they are accountable to Parliament for how they are used. Committees should not seek to substitute their judgement on an appointment for the Minister’s, especially on matters of policy. But, the select committee does have a duty to assure itself, and the public, that the Minister’s candidate has been appointed on merit and can carry out the role, and is able to exercise independent judgement and demonstrate the highest ethical standards. Ministers should expect to have to robustly defend their reasons for making a controversial decision. (Paragraph 33)
5. *Where a committee has concerns about the appointment process, or the policy implications reflected by a Minister’s choice of candidate, it should take evidence from the relevant Minister or officials. It may wish to do this prior to issuing a report on the pre-appointment hearing. We recommend the Liaison Committee guidance is amended to reflect this.* (Paragraph 34)
6. We remain very concerned about the long-term implications of the Grimstone reforms for the quality of public appointments and especially for public confidence in them. Even if Ministers have, so far, been restrained in using the new powers available to them there is no guarantee that this will continue. Before the changes brought about by the Grimstone review, the Liaison Committee and others had been pressing for a clearer requirement upon Ministers to respond properly to select committee reports following pre-appointment hearings. Given the weakening of the

assurance provided by the Commissioner for Public Appointments, the role of pre-appointment hearings in reassuring the public and improving diversity is now even more important. The Government must accept that to maintain the equilibrium between pragmatism and propriety in the public appointments system the swing of the pendulum towards direct ministerial influence over appointments requires a counter-balancing increase in parliamentary scrutiny to reflect the increased vulnerability of the system to political patronage. (Paragraph 38)

7. The evidence does not support the contention that Ministers invariably give serious consideration to negative reports from committees. The majority have been rejected, sometimes apparently out of hand. We support the DCMS Committee's recommendation that if a Minister wishes to set aside a negative committee report there should be a mechanism that ensures there is a pause for reflection on all sides. Granting a power for committees to require Ministers to defend their decision in a ninety-minute debate on the floor of the House on a substantive motion within a reasonable time frame would require them to consider seriously the arguments made by a committee. It would also ensure that committees made a negative report only where they were confident that they had a good case to make. (Paragraph 46)
8. The option proposed by the Minister of relying on the granting of an Urgent Question does not meet the need for certainty of outcome and a clear and fair process. An Urgent Question is not a debate and does not have a conclusion. We do not believe it is appropriate to presume that Mr Speaker will grant an Urgent Question in all such cases. Nor do we believe that the uncertainty of whether an Urgent Question would be granted or not until a few hours before it occurred would be fair on the candidate. Nor do we consider that reliance on an emergency debate under Standing Order No. 24 would be an appropriate mechanism. Not only would it entail the same requirement to draw the Speaker into the decision-making process, it would be inconclusive as a motion under S.O. No. 24 can only be a general debate that the House has "considered" a matter. (Paragraph 47)
9. We concur with the DCMS Committee that the time has come to build on the first ten years of pre-appointment hearings by introducing an enhanced degree of parliamentary scrutiny, involving the House, not just its select committees, where there is an unresolved conflict between a Minister and a committee. Such a step would not undermine ministerial accountability. Ultimately Ministers are accountable to Parliament. They must be willing and able to defend their decisions and persuade the House. (Paragraph 51)
10. We are conscious of the potential impact on individual candidates of their appointment being scrutinised on the floor of the House. But candidates for, and holders of, these major public offices must accept, and be able to handle, the degree of public scrutiny that should appropriately accompany the holding of such positions of public trust. Their decisions and judgements will be, rightly, scrutinised in the House and its committees if they are appointed. In any case, we expect that such debates will occur very rarely. (Paragraph 52)
11. Our intention is to ensure that Ministers, and committees, pause for reflection if a negative recommendation is likely, not to provoke confrontation. The right to decide when to publish their report into a pre-appointment hearing rests with the

committee. Ministers have accepted, and we expect will continue to accept, that where a committee has concerns about a candidate that they will normally delay publishing their conclusions to allow for private discussions. (Paragraph 53)

12. Therefore, committees should be given the right to choose to have a debate on a substantive motion if a Minister ignores a recommendation and where they consider that it merits the attention of the whole House. Committees will be aware that in any debate the strength of their arguments for opposing a candidate, and their fair handling of the pre-appointment hearing process, is likely to be as closely scrutinised as the Minister's response to them. (Paragraph 54)
13. *We recommend that the Procedure Committee should examine how such a process could be written into Standing Orders.* (Paragraph 55)

Which posts should be subject to parliamentary scrutiny?

14. Pre-appointment hearings are not a "tool" for Ministers as Mr Dowden suggests. Such a description fundamentally misunderstands Ministers' and Parliament's relationship in respect of pre-appointment hearings. Select committees can and should scrutinise any appointment they feel is necessary to hold the Government to account. They should not be confined by the Cabinet Office's list. Ministers, as part of their accountability to Parliament for their decisions, should facilitate this. However, in practice, a list agreed in advance provides Departments, committees and potential applicants with more certainty and allows both Departments and committees to plan their work more effectively. (Paragraph 70)
15. *We therefore recommend the revision of the Cabinet Office list to provide a guide to Departments as to which appointments they can expect to be subject to pre-appointment scrutiny by select committees. Such a list is only useful, however, if it is kept up to date. Once it is agreed that a post should be subject to a pre-appointment hearing it should added immediately. Similarly, the list should be updated to reflect restructuring of organisations, machinery of government changes, and decisions by committees as to which appointments they wish to scrutinise.* (Paragraph 71)
16. *The guidance to Departments and the Liaison Committee guidance should make clear that select committees are not bound by the list. Departments should therefore share information early with committees as to forthcoming major appointments that a committee may wish to scrutinise. Committees may also find it helpful to indicate to Departments where current or recent inquiries have suggested to them that they will want to take a closer interest in particular appointments in the future.* (Paragraph 72)
17. *The Cabinet Office List will constantly evolve. The Government should therefore agree clear and detailed principles with Parliament that can be applied consistently and transparently by Departments across all posts. These should be based on the principles proposed by the Government to the Liaison Committee in 2011. Clear principles will also help guide Departments as to which appointments that are not on the list may still be of interest to committees and therefore brought to their attention. We recommend that the Government agrees these principles with the Liaison Committee as a matter of urgency, so that they can underpin the review of the Cabinet Office list.* (Paragraph 73)

18. *The Government's review should either propose including those appointments suggested by committees in their evidence to this inquiry, (annex B) or set out clearly why they are not. We also support the recommendations of the Joint Committee on the draft Health Service Safety Investigation Bill, that the Chair and Chief Investigator of HSSIB be subject to pre-appointment hearings, in-line with the precedent set by our predecessor Committee. Whether the addition of responsibilities repatriated from the European Union to existing posts means they should now be subject to pre-appointment hearings needs to be considered as part of the review, as well as the status of newly created posts. (Paragraph 74)*
19. Public appointments are an important ministerial responsibility, as the Government has repeatedly stressed to this and other inquiries. It is therefore a matter of concern that some Departments, according to the Minister, appear to have chosen not to resource them sufficiently to prevent simple administrative mistakes. Providing Committees with an opportunity to comment on job descriptions and the proposed selection process, as well as providing proper notice of forthcoming appointments as the Cabinet Office's guidance requires is not merely a matter of politeness. They can alert both committees and departments to potential issues in advance, allowing them to be discussed in a constructive way. *The Centre for Public Appointments in the Cabinet Office must ensure that Departments are following their guidance. That guidance must be kept up to date, and accurately reflect the Liaison Committee's guidance to committees on the procedure for pre-appointment hearings. Where necessary extra support should be provided to those Departments who have limited experience in making senior appointments. The Centre should also be engaged in a continuous review of the performance of Departments in discharging their responsibilities to the House with respect to public appointments. We expect the Government to set out in its response its action plan for achieving this. (Paragraph 75)*
20. The completion of written questionnaires by preferred candidates has clear advantages for both committees and candidates in allowing oral evidence sessions to be shorter and more focussed. Departments need to provide the name of the preferred candidate to a committee significantly earlier than a week before a hearing to facilitate this. *We recommend that all committees use written questionnaires where possible, and that this practice is reflected in both the Cabinet Office and Liaison Committee guidance, including allowing for sufficient time, at least two weeks, prior to a hearing, for a candidate to fill out and return the questionnaire, and then for the committee to analyse it. (Paragraph 76)*

Pre-appointments and diversity

21. The main burden of increasing diversity in public appointments falls on the Government, primarily through securing a more diverse field of applicants. We welcome the progress that is now being made on gender and ethnicity, but note with concern Peter Riddell's comments about disability being a neglected area. *We therefore welcome Lord Holmes's review, and expect the Government to update their action plan to reflect its conclusions. It is clear that some Departments need to do more to encourage people from a more diverse range of backgrounds to put themselves forward for public appointments, and the Centre for Public Appointments should consider how best practice can be shared with those Departments which make*

fewer appointments. Ministers should also set clear expectations about the diversity of interview panels, ensuring that they draw on a range of advice when making appointments. The Centre for Public Appointments should monitor this systematically. (Paragraph 91)

22. It is highly likely that the majority of people applying for senior posts subject to pre-appointment hearings will continue to have previous experience of public service. In many, but not all, cases such experience will be beneficial. Government, and committees, need to be careful however that they do not draw the boundaries of relevant experience too narrowly. The key to increased diversity of appointments is increased diversity of applicants, and greater energy needs to be directed to ensuring that these posts do not appear to belong to a closed shop of those already in public life. (Paragraph 92)
23. As the Treasury Committee has shown on gender, committees can “concentrate minds” in Departments by consistently pressing them to be more transparent about the breakdown of who is applying, and being shortlisted for appointments, and the composition of interview panels. *The Cabinet Office should amend its guidance to Departments to require them to provide anonymised information on the diversity of applicants and shortlisted candidates, as well as the names of the interview panel. In the interim we recommend that committees request this information from their Departments for all future appointments, and where necessary hold Ministers and Permanent Secretaries to account for delivering increased diversity of appointments made by their Departments at all levels.* (Paragraph 93)
24. Parliament’s duty to hold the Government and Ministers to account requires committee scrutiny of preferred candidates to be robust and searching. This is central to building public confidence in appointees. Sometimes this will be uncomfortable for candidates, and *Ministers need to ensure that applicants understand this from the start of the recruitment process and are properly prepared and supported.* (Paragraph 94)
25. However, appearing in front of a select committee should not be “traumatic”. Although they are rare, we agree with Dr Matthews that the occasions where a committee has drifted into inappropriate questioning are likely to have a disproportionate impact on future candidates’ impressions of the pre-appointment hearing process. Although the evidence of a deterrent effect is limited, the existing difficulties in recruiting candidates from under-represented groups means it is something committees should be mindful of. Chairs of committees have a particular responsibility to ensure courtesy and moderation in the questioning of candidates. Committee staff should also work actively alongside departmental officials to ensure that candidates are prepared properly for the nature of the hearing, including making any reasonable adjustments that are necessary to reflect a candidates specific needs. (Paragraph 95)

Annex A: Proposed Revised Liaison Committee Guidance

1. The Liaison Committee has established the following guidelines for select committees conducting pre-appointment hearings with the Government's preferred candidate for certain public appointments.

2. In these guidelines, the term 'relevant select committee' means the committee appointed under Standing Order No. 152 to examine the expenditure, administration and policy of the Government department which sponsors the public body to which the appointment is to be made, or, in the case of appointments sponsored by the Cabinet Office, the Public Administration and Constitutional Affairs Select Committee.

Purpose and objective of pre-appointment hearings

3. Select committee pre-appointment hearings have the following purposes and objectives:

- scrutiny of the quality of ministerial decision-making, which is a proper part of ministerial accountability to Parliament;
- providing public reassurance, in addition to the processes of the Office for the Commissioner of Public Appointments, that those appointed to key public offices have been selected on merit;
- providing public evidence of the independence of mind of the candidate;
- enhancing the appointee's legitimacy in undertaking his or her function.

4. The process involves the relevant select committee taking evidence from the Government's preferred candidate for an appointment, and subsequently publishing a report setting out the Committee's view on that candidate's suitability for the post. Any concerns the Committee has about the recruitment process, including policy concerns it may highlight, should be directed to the appointing Minister or the departmental permanent secretary not the preferred candidate. In such cases the Committee may wish to call Ministers or officials to give evidence. The Committee may also wish to consider any information provided by the Commissioner for Public Appointments about the appointment process.

5. While committee observations on a candidate's suitability are, in most cases, not binding on Ministers, it is expected that the appointing Minister will consider any relevant observations made by a committee before deciding whether to proceed with an appointment.

6. Committees are not obliged to hold a hearing. They may take written evidence, including from the candidate in the form of a questionnaire, to inform any decision about whether or not a hearing should take place. In all cases the decision on whether to hold a pre-appointment hearing or scrutinise an appointment in any way rests with the relevant select committee.

Posts subject to pre-appointment hearings

7. The posts which the Government considers suitable for pre-appointment hearings to be held by select committees are listed in [Annex A to the Cabinet Office publication Guidance on pre-appointment scrutiny by House of Commons select committees](#). The Liaison Committee will publish periodically on its website a list of pre-appointment hearings held by select committees.

8. Committees are not confined by the Cabinet Office list. They may wish periodically to review the list of public appointments in their subject area and decide which merit a scrutiny hearing. In 2017 the Commissioner for Public Appointments published a [longer list of 'significant appointments' which require a Senior Independent Panel Member](#) to be a member of the Advisory Assessment Panel which committees may wish to consider. The Committee should give notice to the Department so that arrangements can be made to notify the committee in good time of the proposed appointment.

9. The presumption is that the relevant select committee will hold the hearing. There may be occasions where appointments may be scrutinised by a committee or committees other than the relevant select committee, including through a joint hearing. Such arrangements should in the first instance be negotiated between the committees concerned, in consultation with the appointing Minister. Any dispute which cannot be thus resolved may be referred to the Liaison Committee.

10. For certain posts it may be appropriate for the select committees that scrutinise the work of the Northern Ireland Office, the Scotland Office and the Wales Office to be consulted.

11. Nothing in these guidelines shall be considered to fetter any select committee's right to invite, and power to summon, any individual.

Preparation for a pre-appointment hearing

12. Cabinet Office guidance requires the sponsor department to consult the Chair of the relevant select committee on the proposed selection process to fill a post subject to a pre-appointment hearing before any recruitment exercise begins. Committees may expect to receive drafts of the job description and person specification for comment.

13. The appointing Minister may wish to invite the Chair or another Member of a committee to be part of their Advisory Assessment Panel. Before accepting they should seek the agreement of the Committee, and recuse themselves from any subsequent Committee proceedings on the appointment.

14. Departments are expected to discuss a suitable date for the eventual hearing with the relevant select committee at an early stage. Committees will want to consider how far in advance of the scheduled hearing it will require the Department to notify it of the name of the preferred candidate, in order that the Committee has sufficient time to prepare for the hearing. The Cabinet Office requires Departments to ensure that the end of the selection process for a post subject to pre-appointment hearing does not coincide with any long periods of adjournment.

15. Where an incumbent reaching the end of a term of office is to be reappointed to the post, the Cabinet Office requires the sponsor department to inform the relevant select committee before the reappointment takes effect. It will be for that Committee to decide whether it wishes to hold a further formal hearing or whether it wishes to examine the post holder in the course of its programme of scrutiny.

16. Departments are required to provide to the relevant select committee the name of the Government's preferred candidate for a post, relevant details about the candidate (including a CV and any declaration of interests) together with information on the selection process and the field of candidates. This information should include the number of applicants, the numbers shortlisted and interviewed, diversity information about the field of applicants and those progressed to each stage, and the membership of the Advisory Assessment Panel.

17. In preparation for the hearing, committees are encouraged to issue a written questionnaire to the candidate, inviting the candidate to disclose any conflicts of interest, to demonstrate their experience and expertise, their independence, and to indicate their initial priorities once in post. This may help to avoid the need for a hearing, or to shorten the hearing by enabling the committee to focus solely on matters of interest.

18. The presumption is that all material received by the Committee will be made available to the public at the hearing and published with the Committee's report.

19. The Clerk of the select committee may brief the preferred candidate on the format of the hearing and the Committee's likely approach.

Conduct of pre-appointment hearings

20. Select committees holding pre-appointment hearings should observe the following guidelines:

- The Chair of the Committee should ensure that committee members are aware that their questions must remain relevant to the professional competence and personal independence of the candidate. Questions eliciting background information about the candidate's past career and about the selection process for the post are also normally acceptable.
- The candidate will need to be able to withstand parliamentary and public scrutiny should he or she take up the post, and part of the purpose of the session is to test this. Questioning may therefore be robust, and it may cover some areas that might not have been appropriate at the candidate's interview, such as party-political activity or political donations.
- The Chair should intervene if, in the opinion of the Chair, questions are irrelevant, unduly personal or partisan, or discriminatory.
- A candidate unable or unwilling to answer a question put to him or her by a committee member in the course of a hearing is entitled to appeal to the Chair.

21. Committee members with pecuniary or non-pecuniary interests relevant to the hearing should declare them at the start of the hearing.

The Committee's report on the hearing

22. A committee undertaking a pre-appointment hearing should meet in private immediately after the end of the pre-appointment hearing to consider a report to the House on the candidate's suitability. This will ensure that the evidence is fresh in the minds of Members and that Members not present to hear the evidence do not influence the content of the report. It also ensures that speculation over the outcome of the hearing is not unnecessarily prolonged.

23. In cases where it is not possible to meet immediately after the hearing concludes, or where agreement on a report cannot be secured at that meeting, the committee should reconvene at an early opportunity to consider a report. In such cases, only those members of the committee who participated in the pre-appointment hearing should deliberate and vote on the eventual report.

24. A copy of the agreed report on a pre-appointment hearing should be provided to the candidate, and to the appointing Minister, at least twenty-four hours before the intended date and time of publication of the report.

25. Pre-appointment hearings provide opportunities for exploring the priorities of the candidate on taking up post and for allowing the candidate to understand Parliament's expectations of the post-holder. It is therefore appropriate for the committee to set out in its report the priorities, approaches to the job and areas of interest which it has discussed with the candidate. It may also be appropriate for the committee's report to refer to any resources, support, or in-service training needs which the hearing has brought to light. The committee may also wish to direct its Chair to write to the relevant Minister with any opinions on the candidate it wishes to express privately, to supplement the published report.

26. A committee which has reservations about the suitability of a candidate, should normally raise such concerns privately with the Minister in the first instance rather than issuing a report immediately. Ministers may wish to consider, in the light of such representations, whether it is advisable to press ahead with the appointment, and may advise the candidate of the reservations expressed. Ministers and candidates may also be asked, or choose, to provide further information or assurances to the committee in response to the issues raised.

27. A committee holding a pre-appointment hearing may wish to conduct a broader inquiry into the work of the body to which the appointment is to be made. In such circumstances the pre-appointment hearing should be undertaken separately from any evidence sessions relating to the inquiry. Any report on the hearing should normally be issued as a separate report and not subsumed into the report of the inquiry.

The Ministerial decision

28. The appointing Minister is expected to ensure that the decision on appointment is made fairly and takes all relevant considerations into account. Such considerations should include the views of the relevant select committee on the suitability of the candidate (particularly if they are negative).

29. In all cases (including those where the Committee may have declined an invitation to hold a pre-appointment hearing) the Minister should write to the Chair of the Committee with formal notification of the decision.

30. Certain appointments are made under statute, and there may in such cases be statutory constraints on the considerations the appointing Minister may take into account when making a final decision on appointment. Where an appointment subject to a pre-appointment hearing is a statutory appointment, the Department is expected to notify the relevant select committee of the statutory provision concerned and the requirements (if any) which the Minister must observe in making the appointment.

Arrangements for specific posts

31. Appointments of the Chair and of the independent members of the Office of Budget Responsibility are subject to procedures laid down in Schedule 1 to the Budget Responsibility and National Audit Act 2011. The provisions of this Act require the Treasury Committee of the House of Commons to agree to these appointments. While the procedures for such appointments should broadly follow those described above, local variations to meet the requirements of the Act can be expected, and the explicit consent of the Committee must be formally recorded in a report.

32. Statutory procedures for appointments to the parliamentary posts of Comptroller and Auditor General the Parliamentary Commissioner for Administration and Health Service Commissioner for England, members of the Electoral Commission and members of the Independent Parliamentary Standards Authority require parliamentary approval in the form of an Address to the Crown and are subject to separate procedures which do not normally involve pre-appointment hearings. In the case of the Chair of the UK Statistics Authority, it has been agreed that the preferred candidate will be made available for a pre-appointment hearing by the Public Administration and Constitutional Affairs Committee before the motion for an Address is moved.

33. Appointments to the Monetary Policy Committee and the Financial Policy Committee of the Bank of England are made by the Chancellor of the Exchequer and then subject to a confirmation hearing by the Treasury Committee. Such hearings proceed under arrangements made between that Committee, the Bank of England and the Treasury. The Government has given an undertaking that if the Treasury Committee requests that a proposed appointment of a Chair of the Financial Conduct Authority is put as a motion to the House time will be made available for a debate. The Government has also given an undertaking that it will not appoint a person to the office of Information Commissioner in the face of an adverse recommendation from the relevant select committee.

Annex B: Posts proposed to be added to the Cabinet Office list in evidence

Work and Pensions

- Chief Executive of the Pension Protection Fund
- Chief Executive of the Pensions Regulator

Health

- Chair of Healthwatch
- Chair of NHS Digital (Health and Social Care Information Centre)

Treasury

- Chair of the National Infrastructure Commission

International Trade

- Trade Resolution Authority (when created)

Science and Technology

- Chair of UK Research & Innovation

Environmental Audit

- Environmental oversight body (to be created to take powers to be repatriated from the EU)

Digital, Culture, Media & Sport

- Chair of UK Sport

Business, Energy and Industrial Strategy

- Chair of the Climate Change Committee
- Chair of the Low Pay Commission
- The Director of Labour Market Enforcement
- The Pubs Code Adjudicator
- The Small Business Commissioner

Transport

- Chair of the Civil Aviation Authority
- Chair of Network Rail
- Chair of Highways England
- Senior Transport Commissioner

Annex C: Draft of a proposed new standing order

Pre-appointment hearing reports

1. This order applies where a committee of the House has made a report on a Minister's preferred candidate for an appointment to a post listed as a significant appointment by the Commissioner for Public Appointments.
2. The conditions for this order to apply are that—
 - a) a committee has held a pre-appointment hearing with a preferred candidate;
 - b) the committee has reported that it does not recommend that the Minister proceed with the appointment; and
 - c) the committee has given the relevant Minister an opportunity to respond in private to its proposed recommendation and any accompanying comments and questions provided to that Minister at least five working days before it made its report.
3. If a committee has made a report to which paragraphs (1) and (2) of this order apply, a motion that the House agrees with the Committee in its recommendation may be made.
4. The Speaker shall put the questions necessary to dispose of proceedings on any motion made under paragraph (3) of this order, including the questions on any amendments which may have been selected, not later than one and a half hours after the commencement of proceedings on the motion; and a motion made under this order may be proceeded with, though opposed, at any hour.
5. If no motion under paragraph (3) of this order has been made and disposed of within five sitting days after the relevant report of the committee was made to the House, the Speaker, on the application of the Chair of the relevant committee made at the commencement of business of any subsequent sitting day, may determine that a debate on the motion shall be held on a subsequent day, naming the day and time at which it will be held.

Appendix 1: Cabinet Office's "List of Public Appointments subject to pre-appointment hearings"

NB: this list was last published in 2013. It therefore does not reflect subsequent changes in the names or responsibilities of government departments or public bodies.

Attorney General's Office

HM Chief Inspector of the Crown Prosecution Service

BIS

Chair of the Higher Education Funding Council for England

Chairs of the Research Councils

Director of the Office for Fair Access

Chair of Competition and Markets Authority

Chair of the Technology Strategy Board

Groceries Code Adjudicator

Cabinet Office

Chair of the Advisory Committee on Business Appointments

Chair of the Charity Commission for England and Wales

Chair of the Committee on Standards in Public Life

Chair of the House of Lords Appointments Commission

Chair of the UK Statistics Authority

First Civil Service Commissioner and Commissioner for Public Appointments

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

CLG

Local Commissioners for Administration in England

Chair of the Homes and Communities Agency

Chair of the Homes and Communities Agency's Regulation Committee

DCMS

Chair of OFCOM

Chair of the BBC Trust

Chair of S4C

Chair of the Equality and Human Rights Commission

DECC

Chair of the Committee on Climate Change

Chair of the Gas and Electricity Markets Authority (GEMA)

DEFRA

Chair of Natural England

Chair of the Environment Agency

Chair of the Gangmaster Licensing Authority

Chair of the Water Services Regulatory Authority (OFWAT)

DfE

HM Chief Inspector of Education, Children's Services and Skills
Children's Commissioner for England
Chief Regulator for Ofqual
Chair of the Social Mobility and Child Poverty Commission

DFID

Chair of the Independent Commission for Aid Impact

DH

Chair of the Care Quality Commission
Health Service Commissioner for England (office also held by Parliamentary Commissioner for Administration)
Chair of the Food Standards Agency
Chair of Monitor
Chair of NHS England
Chair of the National Institute for Health and Care Excellence

MoJ

Chair of the Judicial Appointments Commission
Chair of the Office for Legal Complaints
HM Chief Inspector of Prisons
HM Chief Inspector of Probation
Information Commissioner
Prison and Probation Ombudsman

HO

HM Chief Inspector of Constabulary

DfT

Chair of the Office of Rail Regulation

HMT

Comptroller and Auditor General
Chair and Members of the Budget Responsibility Committee

DWP

Chair of the Social Security Advisory Committee
Pensions Ombudsman
Pension Protection Fund Ombudsman

MoD

Service Complaints Commissioner

Additions to and withdrawals from the list should be agreed between the appointing Secretary of State and the relevant committee chair. In cases where there is disagreement the Liaison Committee and the Cabinet Office should be consulted

Appendix 2: Model questionnaire for preferred candidates

Personal

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

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

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

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

Please explain how your experience to date has equipped you to fulfil your new responsibilities. In which areas do you feel well qualified to make a contribution; and in which will you have to acquire new skills, or knowledge?

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

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

The organisation

What will be your main priorities?

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

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

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

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

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

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

Formal minutes

Tuesday 11 September 2018

Sir Bernard Jenkin, in the Chair

Ronnie Cowan Dr Rupa Huq
Mr Marcus Fysh Mr David Jones
Kelvin Hopkins

Draft Report (*Pre-Appointment Hearings: Promoting Best Practice*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 95 read and agreed to.

Summary agreed to.

Annexes agreed to.

Ordered, that the appendices be appended to the Report.

Resolved, That the Report be the Tenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till 13 September 2018 at 09.30am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 15 May 2018

Question number

Professor Robert Hazell, Constitution Unit, University College London and
Dr Felicity Matthews, University of Sheffield

[Q1–43](#)

Peter Riddell, Commissioner for Public Appointments

[Q44–79](#)

Thursday 28 June 2018

Rt Hon Nicky Morgan MP, Chair, Treasury Committee; **Damian Collins MP**,
Chair, Digital, Culture, Media and Sport Committee

[Q80–135](#)

Tuesday 3 July 2018

Oliver Dowden MP, Minister for Implementation

[Q136–218](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

PAP numbers are generated by the evidence processing system and so may not be complete.

- 1 Betts MP, Clive ([PAP0017](#))
- 2 Business, Energy and Industrial Strategy Committee ([PAP0008](#))
- 3 Cabinet Office ([PAP0007](#))
- 4 Commissioner for Public Appointments ([PAP0003](#))
- 5 Committee on Standards in Public Life ([PAP0005](#))
- 6 Creagh MP, Mary ([PAP0013](#))
- 7 Digital, Culture, Media and Sport Committee ([PAP0001](#))
- 8 Field MP, Frank ([PAP0014](#))
- 9 Hazell CBE, Professor Robert ([PAP0002](#))
- 10 Hazell, Professor Robert ([PAP0010](#))
- 11 Lamb MP, Norman ([PAP0012](#))
- 12 Lewis MP, Dr Julian ([PAP0016](#))
- 13 Liddington MP, David ([PAP0019](#))
- 14 MacNeil MP, Angus Brendan ([PAP0018](#))
- 15 Matthews, Dr Felicity ([PAP0009](#))
- 16 Morgan MP, Rt Hon Nicky ([PAP0011](#))
- 17 NCVO ([PAP0004](#))
- 18 Transport Select Committee ([PAP0006](#))
- 19 Wollaston MP, Dr Sarah ([PAP0015](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration	HC 484
Second Report	Parliamentary Boundary Reviews: What Next?	HC 559 (HC 1072)
Third Report	PHSO Annual Scrutiny 2016–17	HC 492 (HC 1479)
Fourth Report	Ensuring Proper Process for Key Government Decisions: Lessons Still to be Learned from the Chilcot Report	HC 854 (HC 1555)
Fifth Report	The Minister and the Official: The Fulcrum of Whitehall Effectiveness	HC 497
Sixth Report	Accounting for Democracy Revisited: The Government Response and Proposed Review	HC 1197
Seventh Report	After Carillion: Public sector outsourcing and contracting	HC 748
Eighth Report	Devolution and Exiting the EU: reconciling differences and building strong relationships	HC 1485
Ninth Report	Appointment of Lord Bew as Chair of the House of Lords Appointments Commission	HC 1142
First Special Report	Will the NHS never learn? Follow-up to PHSO report 'Learning from Mistakes' on the NHS in England: Government Response to the Committee's Seventh Report of Session 2016–17	HC 441
Second Special Report	The Future of the Union, part two: Inter-institutional relations in the UK: Government Response to the Sixth Report from the Committee, Session 2016–17	HC 442
Third Special Report	Lessons still to be learned from the Chilcot inquiry: Government Response to the Committee's Tenth Report of Session 2016–17	HC 708
Fourth Special Report	Government Response to the Committee's Thirteenth Report of Session 2016–7: Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action	HC 731
Fifth Special Report	Parliamentary Boundary Reviews: What Next?: Government Response to the Committee's Second Report	HC 1072
Sixth Special Report	PHSO Annual Scrutiny 2016–17: Government and PHSO Response to the Committee's Third Report	HC 1479

Seventh Special Report Ensuring Proper Process for Key Government Decisions: HC 1555
Lessons Still to be Learned from the Chilcot Report:
Government Response to the Committee's Fourth
Report