House of Commons
Transport Committee

Appointment of the Chair of the Office of Rail and Road: Government Response to Committee’s Sixth Report

Sixth Special Report of Session 2017–19

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Transport Committee

The Transport Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Transport and its associated public bodies.

Current membership

Lilian Greenwood MP (Labour, Nottingham South) (Chair)
Jack Brereton MP (Conservative, Stoke-on-Trent South)
Ruth Cadbury MP (Labour, Brentwood and Isleworth)
Robert Courts MP (Conservative, Witney)
Ronnie Cowan MP (Scottish National Party, Inverclyde)
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Grahame Morris MP (Labour, Easington)
Graham Stringer MP (Labour, Blackley and Broughton)
Daniel Zeichner MP (Labour, Cambridge)

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

Publication

Committee reports are published on the Committee's website at [www.parliament.uk/transcom](http://www.parliament.uk/transcom) 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 Gordon Clarke (Committee Clerk), Ed Faulkner (Second Clerk), Louise Butcher (Senior Committee Specialist), Nerys Davies (Committee Specialist), Deborah Courtney (Senior Committee Assistant), Michelle Owens, (Committee Assistant), Estelle Currie (Senior Media Officer) and Oliver Florence (Media Officer).

Contacts

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Sixth Special Report

The Transport Committee published its Sixth Report of Session 2017–19, Appointment of the Chair of the Office of Rail and Road, as HC 1510, on 7 November 2018. The Government response was received on 19 December 2018 and is appended to this report, along with related correspondence from the Chair to the Secretary of State of Transport.

The Committee’s recommendations are in bold text, followed by the Government’s response.

Appendix 1: Government Response

The Government welcomes this report from the Transport Select Committee, which sets out the findings of its hearing into the appointment of a new Chair of the Office of Rail and Road (ORR). The Committee draws a number of conclusions and makes several recommendations, to which the Government responds below. The Committee also wrote to the Secretary of State on 26 November 2018 and this response also replies to additional points made in that letter.

The Recruitment Process

Recommendation 1 (para 11)

The Secretary of State should report back to us on how the Department plans to encourage applications from a more diverse range of applicants for future campaigns. (Paragraph 11)

The Government agrees with this recommendation, as it recognises the need to attract a diverse range of candidates to public appointments. As noted by the Prime Minister in the Government’s Diversity Action Plan for Public Appointments (December 2017), “The role of public bodies in supporting the work of the Government cannot be underestimated and ensuring the boards of these organisations accurately reflect 21st century Britain is key to their success.”

The Government has set a target that by 2022 50% of public appointments should be held by women and 14% by Black, Asian and Minority Ethnic (BAME) appointees. To make progress towards this goal, we are conducting outreach to improve the visibility of our appointments among under-represented groups; developing the networks through which we encourage applicants; working with Chairs and their Boards on succession planning; meeting with diversity specialists to discuss candidate attraction strategies; attending diversity themed networking events such as a recent
CO event in Birmingham; and improving the consistency of our diversity data.

The Government also welcomes the recent report by Lord Holmes of Richmond MBE on making public appointments more open to candidates with disabilities, and we will respond to his detailed recommendations in Spring 2019.

The Government recognises that executive search agencies can play an important role in recruiting high level public appointments, and we seek to ensure that, when search agencies are used, their brief includes delivering candidates who are both appointable on their own merits and who will improve the diversity of our boards.

More broadly the Government is committed to incorporating diversity into our forward planning for public appointments, and Ministers are routinely briefed during recruitment campaigns on the diversity of the incumbent Board and of the field of candidates.

**Appointments by the Department for Transport**

**Recommendation 2 (para 28)**

*The Cabinet Office should set out the reasons why an appointment is subject to a pre-appointment hearing, and the Department for Transport should engage with us to discuss which of the appointments made by the Secretary of State should therefore be subject to such a hearing. (Paragraph 28)*

The Government agrees with this recommendation. Following the recent report by the Public Administration and Constitutional Affairs Committee (PACAC) on pre-appointment scrutiny hearings, the Cabinet Office has consulted with Departments to refresh the list of major appointments which are subject to pre-appointment hearings. We believe the list should be based on criteria which clearly set out why an appointment is included.

The criteria proposed for pre-appointment scrutiny of Public Appointments are:

(i) “posts which play a key role in regulation of actions by Government; or

(ii) posts which play a key role in protecting and safeguarding the public’s rights and interests in relation to the actions and decisions of Government; or

(iii) posts in organisations that have a major impact on the lives of the public where it is vital for the reputation and credibility of that organisation that the post holder acts, and is seen to act, independently of Ministers and the Government.”

On the basis of these criteria, Cabinet Office has been revising the pre-approved list of roles which are subject to pre-appointment scrutiny, including an examination of which DfT appointments meet the criteria.

The Government does however note the ability of the Committee to call whomsoever it pleases to give evidence, and encourages early engagement with the Committee by appointees to major roles who are not subject to pre-appointment hearings.
**Recommendation 3 (para 29)**

We recommend that the Government either agree that these roles will in future be subject to the pre-appointment hearing process, or explain clearly why these roles should not be scrutinised by this Committee when the Chair of the ORR is. Irrespective of whether the Government agrees that these roles should be added to the Cabinet Office’s list of appointments which are subject to pre-appointment hearings, we will seek to conduct hearings for any appointments where we feel there is a case for scrutinising the Secretary of State for Transport’s choice of preferred candidate. (Paragraph 29)

The Government disagrees with this recommendation. A rationale for which appointments should be subject to pre-appointment hearings has been set out in our response to Recommendation 2 above, and appointments made by the Secretary of State for Transport will be subject to the common criteria applied across Government.

The criteria that the Government proposes for whether a public appointment made by a Minister should be subject to a pre-appointment hearing by a Select Committee, in effect sets the test for where this additional layer of scrutiny is appropriate. These are roles where a demonstrable level of independence from Government is required of the post holder. Were a Select Committee to be able to dis-apply the criteria and undertake pre-appointment scrutiny of any public appointment, then it could cause a disproportionate level of parliamentary involvement in posts where this may not be appropriate. The Government believes that wide-scale use of pre-appointment hearings across many public appointments could be detrimental to the quality and diversity of those applying for such roles. The criteria also allow for a common approach across select committees, rather than Public Appointments that are made by Ministers in different departments receiving different treatment.

The Government has however agreed that the list of appointments subject to pre-appointment hearings will be updated on an annual basis, to take account of whether new bodies being created or existing bodies changing their functions fall within the parameters of the agreed criteria for inclusion.

**Recommendation 4 (para 32)**

In future the Department should ensure that its plans for replacing key appointments enable parliamentary scrutiny of those candidates. If an interim appointment is made, then we should be invited to hold a pre-appointment hearing before that appointment is confirmed.

The Government agrees with the principle of this recommendation in respect of those appointments on the Cabinet Office list.

The Government regrets that, due to uncertainty during 2015 and 2016 over the future role of the ORR, and the unsuccessful recruitment campaign in 2017, it has been nine years since the Transport Committee has had an opportunity to hold a pre-appointment hearing for the Chair of the ORR. Although we believe this situation was exceptional, and we have worked to improve succession planning, we recognise the possibility that a similar situation may arise in the future.
The Government therefore believes it is reasonable that, where an interim appointment is made that would normally require a pre-appointment hearing, the relevant select committee should have the opportunity to conduct a confirmation hearing with the Secretary of State’s chosen candidate. The Government would however point out that, where an interim appointment is made, we would endeavour to fill that role with a regular appointment within 12 months, and therefore to avoid the exceptional situation which arose with the role of the ORR Chair.
However, the Government would point out that interim appointments may arise for a variety of reasons, some urgent in nature to ensure the continued governance of a public body, and therefore in practice some flexibility may be necessary. However, if a pre-appointment hearing is not possible in practice, we accept the need for the appointee to promptly engage with the Committee.

Response to letter of 26 November

*We would ask you to consider whether there is a case for including knowledge of the rail and road sectors, and regulation, in the person specification for this role in future recruitment exercises, to ensure that a new Chair has a full understanding of these sectors, and the regulatory functions of the organisation, before assuming their duties.*

The Government agrees with this recommendation to the extent that it will *consider* whether there is a case for including knowledge of the rail and road sectors, and regulation, in the person specification for this role in future recruitment exercises. The Government is also required to take account of the guidance set out in the Cabinet Office’s Governance Code on Public Appointments,¹ which identifies the importance of “emphasising ability over previous experience in job specifications and selection processes” as a key factor in encouraging diversity; and that a public body’s Board should include a mix of skills and experience. The Government would therefore be mindful not to preclude or discourage good candidates from backgrounds other than rail, road or regulation who may possess the exceptional skills and competence that would equip them well for the role.

Appendix 2: Correspondence from the Chair of the Transport Committee to the Secretary of State for Transport, 26 November 2018

Recruitment for Chair of the ORR

You will have seen our Report supporting your appointment of Declan Collier as the new Chair of the ORR. We noted that, while Mr Collier doesn’t have direct experience in the rail and road sectors, or performing a regulatory function, his past experience means he has the professional competence and personal independence to effectively Chair the ORR. We were therefore happy to support his appointment.

That said, we would ask you to consider whether there is a case for including knowledge of the rail and road sectors, and regulation, as part of the person specification for this role in future recruitment exercises, to ensure that a new Chair has a full understanding of these sectors, and the regulatory functions of the organisation, before assuming their duties.

My Committee will consider whether this requirement should be included in the person specification when we are consulted on the recruitment process for Mr Collier’s successor.

I also wanted to draw your attention to our disappointment regarding the lack of diversity of the applicants for this role. We welcome your statement that the Department will consider how to encourage a more diverse field of applicants in future, and we look forward to hearing about the specific steps you will be taking to improve on this in the future.

Best wishes

Lilian Greenwood MP

Chair of the Transport Committee