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Preface and credits

Like most Constitution Unit projects, this has been a team effort. It was led by Robert Hazell, working with Peter Waller, a member of the original team who conducted our first review of pre-appointment scrutiny in 2008.

received a negative report from the committee. Of these four, one was not appointed, two were appointed nonetheless and one withdrew. In a fifth case a candidate withdrew following the pre-appointment hearing, in anticipation of a negative report. In a sixth case, the committee persuaded the government to run a competition, which led the JRYHUQPHQW·V QRPLQHH WR ZLWKGUDZ ,Q D VHYHQWK during his pre-appointment hearing were significant factors in a subsequent decision to resign.

7. Our study gained added topicality ZLWK 6LU *HUU\ .HOO\ ¶V review of public DSSRLQWPHQWV[3]. From January 2017, ministers have chosen all members of the interview panel, including the HSPM, though only after consultation with the Commissioner for Public Appointments. Ministers will also have the power to appoint someone who had been judged unappointable, or decide to dispense with a competition and just appoint their favoured candidate. In such cases the Commissioner must be consulted; the Commissioner may in turn decide to inform the relevant select committee.

Our conclusions

8. Pre-appointment hearings continue to be of value. Select committees have a significant influence over appointments, but do not ultimately have a power of veto. That accords with the established balance of power between select committees and the departments they scrutinise.

9. Select FRPPLWWHHV· LQIOXHQFH LV UHDO &DQGLGDWHV KDYH withdrawn after pre-appointment hearings, and others have been forced to resign, so they are far from toothless. And pre-appointment scrutiny does help to deter ministers from making unsuitable appointments or exercising naked political patronage. We found no evidence that pre-appointment hearings deter good candidates from applying.

10. The changes flowing from the Grimstone review may require the role of select committees to change. The new rules give ministers more scope to make appointments outside the rigorous requirements for open and fair competition, and reduce the veto powers of the Commissioner for Public Appointments. It does not follow that ministers will abuse the new rules by making appointments on political grounds. But select committees will need

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

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1.3

- the new system intended to favour candidates with previous experience of the public sector; but there were

into three different categories: first tier posts should require a joint appointment by government and parliament; second tier posts should be subject to an effective veto; and for posts in the third tier, a pre-appointment hearing should be at the discretion of the committee.[12] The first tier posts were all constitutional and ethical watchdogs: the Parliamentary Ombudsman, Chair of the Statistics Authority, Information Commissioner, Chairs of the House of Lords Appointments Commission and Judicial Appointments Commission, First Civil Service Commissioner, Commissioner for Public Appointments, Chair of the Committee on Standards in Public Life, and of the Equality and Human Rights Commission. The Committee also recommended greater consultation with select committees at the start of the recruitment process on the definition of the post and the criteria for selection, and asked for more information to be provided to committees in advance of hearings about the field of candidates from which the preferred candidate had been selected. It also suggested that it might be appropriate in some cases for the chair of a committee to discuss privately with the minister any reservations the committee might have about a candidate before issuing its report and before the minister proceeded to a decision. The committee also recommended that a single consolidated guidance document should be produced jointly by the Cabinet Office and parliament.

1.9 The government rejected the first tier appointments, but in other respects the procedural matters has been more accommodating, although it did not go along with the Liaison Committee's wish to publish Committee chairs at the start of each recruitment exercise about the job description and person specification, and to provide select committees with details of the competition, in terms of the number of applications, and the number shortlisted and interviewed; but without identifying any one individual. The choreographed exercise in November 2013, the Cabinet Office and the Liaison Committee issued revised guidelines, which contained a lot of agreed and overlapping material.[13]

1.10 The Cabinet Office guidance includes a revised list of appointments that should be subject to a pre-appointment hearing. The guidance states that additions and withdrawals from the list must be agreed by both the Secretary of State and the relevant committee. It remains up to the relevant committee whether or not to hold the pre-appointment hearing, so hearings are discretionary. E

Commissioner to Malawi in 2008, and the Culture, Media and Sport Committee did so with the preferred candidate Chair

& R P P L V V L R Q H U · V G L U H F W position.[30] X&OHDQWLURDQO RDQO VWR KHW R D*NU
review was his recommendation that in each department the permanent secretary should get a grip on public appointments, with a requirement to certify each year that all appointments had been made in accordance with a new set of Public Appointment Principles.

1.16 But alongside this streamlining and tightening of Whitehall practice went a loosening of the constraints on ministers. The Commissioner for Public Appointments and his independent assessors would no longer be directly involved in appointments, safeguarding the integrity of the process. The Commissioner would instead become a long-term regulator and whistleblower. In exceptional cases ministers could appoint someone they favoured without running any competition, or appoint a candidate who had been judged unappointable by the selection panel. Such exceptional cases should be notified to the Commissioner; and in every appointment in which ministers V K D G ¶ D P D W H U L D O L Q the permanent secretary or a senior official should certify that the appointment had been made in accordance with the Public Appointment Principles.

1.17 The government was quick to announce that it accepted all the main recommendations in the Grimstone review, in a detailed statement by the Cabinet Office Minister Matt Hancock MP.[31] But behind the scenes the outgoing Public Appointments Commissioner, Sir David Normington, had been fighting a rearguard battle to defend the integrity of the V \ V W H P D Q G W K H & R P P L V V L R Q H U guardian. In his last weeks V P D L in office in March 2016 he sounded a public warning in an article in which he concluded:

> The Commissioner is taken right out of the equation. W R J H W K H U * U L P V W R Q enable Ministers to set their own rules, change those rules whenever they want; appoint their own V H O H F W L R Q S D Q H O V J H W S U H I H U H Q W L D O W U H D W P G R Q · W O L N H L W D Q G D S S R L Q W V R P H R Q H F R Q V L G H U[32]

1.18 PACAC, in L W V - X O \ L Q T X L U \ L Q W R W K H * U L P V W R Q H U H

> We do not question the merits of holding a review of the public appointments process, but t should have aimed to reinforce the changes made by Sir David Normington. Instead, the Grimstone review threatens to undermine the entire basis of independent appointments. Rather than 6 L U ' D Y L G · V Z R U N L W H I I H F W L Y H O \ G H P R O L V K H V * R Y H U Q P H Q W · V D G R S W L R Q working with the Commissioner, Ministers must make significant changes to the proposals in order to robustly deliver a public appointments p which the public can have confidence.[33]

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[20] Public Administration and Constitutional Affairs Committee, Better Public Appointments?: The Grimstone Review on Public Appointments, HC 495, 7 July 2016, para 39

[21] ¶ * R Y H U Q P H Q W · V U H V S R Q V H W R Grimstone review, GOV.UK, 11 March 2016, www.gov.uk/government/news/better-public-appointments-review-government-response, last accessed 16 July 2017.

[22] Sir David Normington, ¶ 3 X E O L F $ S S R L Q W P H Q W V · Finally, DPHQGHG WR 7DNH H Q W The Independent, 18 March 2016.

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

1.19 It was left to the new Commissioner, Peter Riddell, to negotiate with the Cabinet Office the new set of Public Appointment Principles and Governance Code which will underpin the new system. The new Governance Code for Public Appointments and accompanying Order in Council were eventually published in December 2016. The Commissioner's remit was extended to public bodies in 2015.[24] The new Code is produced by the Cabinet Office, not the Commissioner: it represents a significant shift away from the Commissioner, whose role is reduced, towards ministers, whose discretion is greatly increased. Ministers have always made the ultimate decision, and had the right to be consulted about the job and person specifications, to suggest possible candidates, and to be kept informed about every stage in the process. But the competition was run independently of ministers, in a process overseen by the Commissioner, with the panel being chaired by a Public Appointments Assessor chosen by the Commissioner; in future that role will be performed by an ISPM chosen by the minister

1.20 The Commissioner will be consulted about the selection of ISPMs, but has no veto. Similarly, the Commissioner has no power to prevent ministers from occasionally doing

1.21 In keeping with the shift from hard to soft controls on the public appointment system, the Cabinet Office website now houses a publicly available tracker of public appointments competitions.[26] It went live in December 2016 and became fully populated in early 2017.

2. Research q uestions

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

P H U L W H Q K D Q F H W K H D S S R L Q W H H · V O H J L W L P D F

J R Y H U Q P H Q W · V G H F L V L R Q "

2.2 In carrying out this project, we adopted essentially the same approach as in our initial study

3. Methodology

3.1 We adopted a similar set of research methods to our earlier study. We began by reading all the official literature on pre-appointment scrutiny, which is listed in the Bibliography. This includes on the parliamentary side, successive reports of the Commons Liaison &RPPLWWHH LQFOXGLQJ WKH /LDLVRQ &RPPLWWHH · V appointments from the Public Administration Select Committee (PASC), and later PACAC. On the government side, this included statements by Cabinet Office Ministers, responses to Liaison Committee reports, Cabinet Office guidance to government departments, reports by the Commissioner for Public Appointments, the Grimstone UHYLHZ RI SXEOLF DSSRLQWPHQWV DQG WKH JRYHUQ

3.2 Next, we conducted a systematic analysis of the transcripts, and subsequent reports, of the 17 pre-appointment h

4. Analysis of committee hearings and reports

4.1 This chapter reports on our analysis of the transcripts and subsequent committee reports of the 71 pre-appointment hearings that took place between February 2010 (the publication date of WKH 8QLW·V ILUVW WUDQVFULSWHG KHDULQJ[34]) and September 2016.[35]

4.2 Our purpose in analysing hearing transcripts and reports was to find answers to five of our main research questions. First, is the primary purpose of pre-appointment hearings to scrutinise the recruitment process; or the ability of the preferred candidate; or to discuss their initial priorities once appointed (**RQ2**)? Second, how effective are pre-appointment hearings in fulfilling these different purposes, and what is the impact of committee criticism or negative reports (RQ5-RQ5A)? And third, how closely do select committees follow the Liaison Committee guidelines in asking questions which are appropriate, relevant and not too hostile (RQ6)?

4.3 In general, committee reports on pre-appointment hearings have been brief, averaging 10 - 20 pages. Reports have normally been consistent in providing an introduction to the organisation and/or role; an outline of the appointment process, including the job description; details of the preferred candidate; the areas explored in questioning at the hearing; and the committee·V YLHZ RQ WKH VXLWDELOLW\ RI WKH

4.4 In cases where committees have endorsed candidates, they have usually stated that they are content to endorse the candidate in two to three lines, without elaborating reasons for their decision. A common phrase across reports has been that the committee is "satisfied that the candidate has the professional competence and personal independence required for the role".[36]

4.5 In three of the four cases where committees issued a negative report, they were more outspoken about their reasons, though these typically still spanned only one or two paragraphs. The Justice Committee report on Diana Fulbrook suggested that most successful inspectors in the criminal justice system had come from outside the system, and expressed disappointment that the DGYHUWLVHPHQW GLG QRW

[34] Peter Waller and Mark Chalmers, "$ QHZ SURFHVV IRU SUH-appointment hearings", The Constitution Unit, UCL, February 2010, www.ucl.ac.uk/constitution-unit/research/consultancy/consultancy-projects/PASreport, last accessed 17 July 2017.

[35] See Appendix 1 for a full list of hearings.

[36] See, for example, Environment, Food and Rural Affairs Committee, Pre-Appointment Hearing: Chair of The Water Services Regulation Authority (Ofwat), HC 471-I, 6 July 2012; Culture, Media and Sport and Welsh Affairs Committees, Pre-Appointment Hearing with the Government's Preferred Candidate for Chairman of the S4C Authority, HC 1061-I, 26 May 2011.

a committee has tended to focus on policy-based questioning rather than on the F D Q G Lsu Gab Wy H-n Ve role.

4.9 The third area of questioning is about the ² specifically, whether the role should be reformed or its ambit widened or narrowed. This was particularly evident in the case of a new role for PASC

example, during his

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

Diana Fulbrook	11/05/11	HM Chief Inspector of Probation	Yes	Not appointed
Professor Dame Janet Finch	28/06/11	Chair of the UK Statistics Authority	No	Withdrew anticipating negative report
Professor Leslie Ebdon	02/02/12			

4.15 Diana Fulbrook

the Chief Commissioner.[85] The Justice Committee made a similarly strong recommendation in its report on the hearing with Nigel Newcomen for the position of Probation Ombudsman for England and Wales, [illegible] will proceed to put the Ombudsman on a statutory basis at an early opportunity.[86]

4.32 Two further examples demonstrate committee activism in situations where the political landscape was ripe for reform, and where committees may therefore have perceived that they would wield the most influence. The Treasury Committee used its hearing and report with Mark Carney as Governor of the Bank of England to provide very detailed opinions on individual reform proposals for the banking sector. Likewise, PACAC used its report on the hearing with Keith Conradi for his role as Chief Investigator of the Hillsborough

monitoring, assessment and drafting of follow-up reports.[91] Systematic follow-up was also sought by the Treasury Committee during its hearing with Andrew Bailey for his position as Chief Executive Officer of the Financial Conduct Authority.[92] The committee asked the candidate to set out, in writing, how he hoped to address certain issues.

4.35 Candidates can hardly refuse such invitations. Paul Gray, the preferred candidate for Chair of the Social Security Advisory Committee, said that it would be useful to him to have a regular dialogue, both formal and informal, with the Work and Pensions Committee.[93] Lord (Ajay) Kakkar, the preferred candidate for Chair of the Judicial Appointments Commission, likewise made clear his intention to return on a regular basis to discuss work of the Commission and seek guidance from the committee.[94]

4.36 The most explicit examples are those where committees have asked candidates to appear before them, either to review progress or to consider proposals once the candidate has had the opportunity to draw up a more concrete strategy. PACAC requested Sir David Normington to re-

Appointments were both viewed as watchdogs without teeth.[102] Even where MPs did divide on party lines, such divisions were not always predictable: the hearing with Prof Les Ebdon was followed by the unusual spectacle of Conservatives voting against

disclosed that his family business had donated to the Conservative Party; and his SUHGHFHVVRU ZKR ZDV DOVR D GHSXW\ FKDLU

5.5 At the other end of the scale hearings which attracted a minimal number of media mentions were mainly for low-profile public bodies such as Ofqual, the Social Security Advisory Committee, and the Office for Legal Complaints. But there were also some VXUSULVHV 'DPH -XOLH 0HOORU·V KHDULQJ IRU WKH Professor 'DYLG +DVODP Chair of the UK National Institute for Health and Care Excellence in 2012 attracted no media interest. There were also surprises in relation to some high-profile LQGLYLGXDOV ZKR OHG WR &KDLUV 3DQHOV KHDULQJV DWWUDFWHG lots of media interest, As did 0V EXUQ·V Chair of the Equality and Human Rights Commission in 2012. Poverty Commission attracted none.

5.6 This should not detract from the overall position, where around 73 per cent of the hearings we analysed attracted significant (six or more) or moderate (three to five) mentions, or were covered in at least one source of mainstream media. And for specialist positions, coverage in specialist journals, whether in the field of health care, pensions or the environment, may be sufficient to inform the prof* n BT /ll po5<0003>42 12nvper cent are, p

6.5 Finally, in reporting on traffic between committees and Whitehall departments, we should record how well departments comply with the Cabinet Office and Liaison Committee guidance. Here the committee clerks said that departments were good at notifying them of forthcoming appointments, and consulting them well in advance about the job description and person specification. And departments are responsive: we learnt that there have been cases where the department has altered the search criteria in response to feedback from the committee. What was not so good was feedback on arranging the timing

express reservations or recommend against the appointment being confirmed. Another advantage V W K D W K H D U L Q J V W H V W W K H S U H I H U U H G F D G questioning on a public platform something which is not easily tested at an earlier stage in the process. And finally there is a deterrent effect on government the knowledge that a candidate will be tested in public by a parliamentary committee should help to dissuade ministers from putting forward weak candidates or government stooges.

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

, Q I O H [L E L O L W \ R I W K H O L V W R I ¶ W R S

7.5 The Cabinet Office list of appointments subject to pre-appointment scrutiny is both over- and under-inclusive. It is certainly not the product of the consistent application of criteria to all public posts. For example, five Chief Inspectors are on the list, yet the Independent Chief Inspector of Borders and Immigration is not. Equally, there are many posts on the list which need not be. We asked our interviewees for their suggestions of which posts could be dropped, and which should be added. They suggested dropping the Chair of the Judicial Appointments Commission and of the Office for Legal Complaints; others would drop the chairs of the research councils. Suggestions for posts which could be added were the Chair of the House of Lords Appointments Commission, and the Legal Services Board; the Chairs of Ofsted and Ofqual (in addition to the Chief Inspectors, already included), and the National Schools Commissioner; the Chair of NHS Improvement, and of Health Watch; the Independent Reviewer of Terrorism Legislation; and the Prime 0 L Q L V W H U · V $ G Y L V H U R Q 0 L Q L V W H U L D O , Q Y H V W H U H V W V list are the Governor of the Bank of England, the Chair of the Financial Conduct Authority, and of the NAO Board; the Director of Public Prosecutions; the Chairs of the Arts Council, and of the Big Lottery Fund. Further additions could be selected from the O L V W R I ¶ V L J Q L I L F D Q W D S S R L Q W P H Q W V · the J U H H G Commissioner for Public Appointments in 2016.[104] That was the product of a more recent and more systematic trawl through a longer list of all senior public appointments to decide which required an ISPM, as required by paragraph 6.1 of the new Governance Code. It could provide a very useful starting point if the Liaison Committee and the Cabinet Office were minded to conduct a similarly systematic review of appointments which merited pre-appointment scrutiny.

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

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

7.7 Our interviews were full of examples of timing difficulties, of delays, of short notice, of committees' schedules being messed around. Committees were asked to hold certain dates for a pre-appointment hearing which then had to be vacated because of ministerial delays; they were asked to hold hearings at short notice; and they received details of the candidate only days beforehand. To give one example, the pre-appointment hearing for Deep Sagar as Chair of the Social Security Advisory Committee had to be rescheduled twice at short notice.[105] Departments may struggle to handle appointments in a timely fashion because they necessarily come around infrequently. This all takes place in the context of scarce parliamentary time, with the House of Commons sitting for less than half the year. This has given rise to difficulties at the start of a parliament, when select committees are still

of the Equalities and Human Rights Commission, due to their concerns about conflict of interest; they eventually reported over a month after the hearing.[106] The committee noted W K H ¶ F R Q Q L F W L Q W H U H V W D L Q W [107] it became difficult to exclude Select Committee members during long periods of deliberation, although the Liaison Committee J X L G H O L Q H V only those members who participated in the pre-appointment hearing should deliberate and vote on the eventual decision.[108]

7.9 Given the criticism by Matthews and Flinders, we wanted to test their thesis that questioning had become unreasonable and unfair to candidates. In our detailed analysis of W U D Q V F U L S W V Z H I R X Q G Y H U \ O L W W O H H Y L G H Q F H paragraphs 3.4-3.5 for an explanation of our coding). Almost 90 per cent of the questions were judged to be appropriate; and less than 5 per cent were deemed to be irrelevant, aggressive or politicised. We also found very little evidence to support their thesis amongst the candidates we interviewed. Only one complained of hostile questioning. More typical Z H U H F D Q G L G D W H V Z K R V D L G L W Z D V O L N H Z D W H U R more hostile questioning from other select committees. One candidate said they were glad to be asked of examples where they had given unwelcome advice to ministers, because that had not been tested in the departmental interviews. Another interviewee said that the committee was the first to ask the candidate about being a Conservative Party donor: in R X U D Q D O \ V L V P R V W Y H K H O S I X O Q H V V Z H U H F O H D U O \ W K R X J K W R I D S S U R S U L D W H , and justified. As one committee F K D L U I U R P W K H J R Y H U Q L Q J S D U W \ S X W L P S U H V V L R Q W K D W W K H \ D U H D S S R L Q W L Q J F U R Q L H V W K H P D O R W R I J U L H I ·

7.10 We would make rather different criticisms of pre-appointment hearings. One is the reverse of Matthews and Flinders: that committees sometimes give candidates too easy a ride. The most obvious case is that of Deep Sagar, endorsed by the Work and Pensions Committee to be Chair of the Social Security Advisory Committee, only to see him resign six months later, when the committee had noted that he lacked any experience in social security policy.[109] Another candidate let off lightly was Lord Kakkar, who listed a number of other commitments which would make it difficult to give sufficient time to the Judicial Appointments Commission; but the Justice Committee did not make their approval conditional on his giving up any of those appointments.[110]

[106] Women and Equalities Committee, Appointment of the Chair of the Equality and Human Rights Commission, HC 599, 9 May 2016, paras 20-22.
[107] Women and Equalities Committee, Appointment of the Chair of the Equality and Human Rights Commission, HC 599, 9 May 2016, para 21.
[108] Liaison Committee, Guidelines for select committees on Pre-appointment Hearings, 27 November 2013, para 20.
[109] Work and Pensions Committee, Appointment of the Chair of the Social Security Advisory Committee, HC 297, 22 June 2012, para 4.
[110] Justice Committee, Pre-Appointment Scrutiny of the Chair of the Judicial Appointments Commission (Designate), HC 416, 12 July 2016, Q 91.

7.11 Committee questioning can nonetheless sometimes be inappropriate. First, questioning

F R P H V I U R P W K H - X V W L F H & R P P L W W H H · V M R L Q W K H D U
and of Probation. It transpired during the hearing that both candidates had received a telephone call from the Secretary of State Michael Gove, encouraging them to apply. Alberto Costa MP repeatedly asked about this; but the person to ask was Michael Gove, not the candidates.[113] Second, the current system allows the committee very little consideration of the recruitment process until after the process is completed. By this time, it is often too late to rectify any problems.

7.15 Committees struggle to assess a candidate's appointability when G D W H · V D S S R L Q W D E L O L W \ Z K H Q W R W K H U F D Q G L G D W H V < H W L W L V G L I I L F X O W W R M X V W domain when they are not the preferred candidate. This difficulty stands even when committee members are F F H S W W K D W W K H L U U R O H L V W R G H W H U rather than to assess which candidate is the best for the role. Determining appointability requires the establishment of a threshold of appointability, which is difficult without any other candidates to use as a benchmark.

7.16 Finally, there is still some concern that pre-appointment hearings will deter good candidates. Sir David Normington told us that he had believed this when first appointed as Commissioner for Public Appointments; but in office he found no evidence of a deterrent effect. Our research similarly failed to uncover evidence for any such effect derived from pre-appointment scrutiny. Good candidates may be deterred by the length and complexity of the whole public appointment process, and a general reluctance to put themselves into the firing line. Candidates who are deterred by the possibility of a committee hearing should think twice about pursuing posts which are in the public arena. Furthermore, there is evidence that candidates see the pre-appointment hearing as beneficial, not least in giving them public legitimacy.[114]

[113] Justice Committee, Pre-Appointment Scrutiny of HM Chief Inspector of Prisons and HM Chief Inspector of Probation (oral evidence), HC 624, 24 November 2015, Q89, Q92, Q100, Q111-12, Q114.

[114] Peter Waller and Mark Chalmers, $ Q (Y D O X D W L R Q R I W K H 3 U H - $ S S R L Q W P H Q W S U R F H V V, The Constitution Unit, UCL, February 2010, para 3.12.1, www.ucl.ac.uk/constitution-unit/research/consultancy/consultancy-projects/PASreport, last accessed 17 July 2017.

8. Problems in the future post - Grimstone

8.1 In Chapter 1 of this report we described the new system of public appointments following the Grimstone review, under which ministers choose the interview panel, including its independent members, and ministers can appoint someone judged to fall below the line, or decide to dispense with a competition and just appoint their favoured candidate. In such cases the new Governance Code requires the Commissioner for Public Appointments to be consulted in good time, before the appointment is publicly announced.[115] Peter Riddell has indicated that he would wish first to engage in private discussion with the department; and second, if still dissatisfied, he would express his doubts publicly and inform the relevant Commons select committee.[116]

8.2 It is too early to say whether the post-Grimstone changes will lead to many

hold the minister to account for the conduct of the recruitment process, and then, if they wish, have a hearing with the appointee post appointment, early into their tenure.

9. Possible improvements to the system

9.1 Most of this report has been about the dynamics of individual pre-appointment hearings. Along the way we have made suggestions for improvement. This chapter pulls together those recommendations on how to make each hearing, and the system as a whole, more effective.

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

9.3 It is fanciful to suppose that pre-appointment hearings can be reduced to a single purpose. As this report has shown, they generally serve multiple purposes, with the main ones being to probe the openness and fairness of the recruitment process; to scrutinise the suitability of the candidate; and to discuss their initial priorities. There is nothing wrong in pursuing multiple purposes in the same hearing. But it can appear chaotic and unpredictable, to candidates and committee members alike, to arrive at the hearing without knowing which purposes will be pursued, or in what order. So our first recommendation is that at the start of each hearing the chair will announce what is the main purpose of the hearing, and what issues the committee wishes to pursue. That will make clear the structure to be followed, and whether the hat (tabl(iocu)5( )-10bl(s)4( )-171(to)-101(be)2120(or)-9( )4171(toe)-120-

Treasury Committee, but has yet to be adopted by other committees.[117] To illustrate the kind of questions which might be included, we have drafted a model questionnaire in Appendix 2, focusing first on the personal independence and professional competence of the candidate, and second on the strengths and weaknesses of the organisation.

9.5 It would only involve minor redrafting of the Liaison Committee guidelines to encourage committees to use questionnaires, and to encourage chairs to announce at the start of a hearing the main issues which they wish to pursue. One further change suggested to us would be to widen the two alternatives proposed in the Cabinet Office guidance, that after a hearing a committee may issue a report or express reservations privately to the Minister,

- Government makes the appointment subject to pre-appointment scrutiny
- Government makes the appointment with no reference to parliament

9.8 The top four or five rungs of this ladder (highest in parliamentary control) are unlikely to be extended to a much larger number of public appointments: as the Liaison Committee recognised in their 2011 report, the case for some form of parliamentary veto is strongest in relation to the main constitutional and ethical watchdogs, nine of whom were in the category.[123] They are unlikely to be shifted up the ladder. What is more likely is that some will gradually be upgraded as their governing statutes are renewed, the next in line likely to be the new unified Public Service Ombudsman.[124]

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

9.10 The Grimstone review has changed the rules of the game, and may require committees to focus on a smaller number of more significant appointments. The challenge in future may be one of quantity, not quality. This is how it was put by the outgoing Commissioner for Public Appointments, Sir David Normington:

> If the Grimstone review is implemented, then the case for extending Select Committee scrutiny of individual appointments becomes unanswerable. At present such pre-appointment scrutiny, as it is known, is limited to a list of appointments agreed with the Government, which contains a number of regulators, inspectors and others where independence from the executive is a requirement. In the Commissioner's view, if the Grimstone proposals are implemented pre-appointment scrutiny may need to be extended to all significant appointments.[125]

9.11 When asked how many appointments that might comprise, Sir David suggested perhaps 120.[126] That would require a big change in the frequency of pre-appointment hearings, which would be resisted by the Cabinet Office, and would not be welcomed by the select

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

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

[125] Sir David Normington, talk at Constitution Unit seminar on 8 December 2016, www.constitution-unit.com/2016/12/20/the-grimstone-proposals-to-reform-the-public-appointments-process-are-a-step-in-the-wrong-direction, last accessed 18 July 2017.

[126] In discussion at the Constitution Unit seminar on 8 December 2016.

nise other appointments, but they rarely do so.[128] The Treasury Committee has
e trail, routinely scrutinising six public appointments in addition to those
Office list; where the Treasury Committee has led the way, other committees can

ond the scope of this report to draw up a comprehensive list of hearings outside
50. But to give a couple of examples, the Treasury Committee currently goes
he list in scrutinising the appointment of the Governor of the Bank of England,
uty Governors and the Chair of the Financial Conduct Authority. Following that
, the Culture, Media and Sport Committee might want to scrutinise the
ment of the Chair of the Arts Council, the Big Lottery Fund and the Director
of the BBC. Pre-appointment hearings currently apply to only a tiny proportion
00 or so public appointments made each year.

asury & R P P L W W H H F D O O V - F W R X R P K H Q F H D P U H Q W V - U ¶ S W K H U
ment hearings, because strictly the candidate has been appointed, and are
ally required by the Cabinet Office to consider committee recommendations in
e way that they do for appointments on the Cabinet Office list. But the Treasury
ee applies exactly the same criteria, of personal independence (including lack of
and professional competence, that they apply to pre-appointment hearings, and
H W K H V D P H W R R O V L Q F O X G L Q J Z U L W W H Q T X H V
the lack of formal recognition on the Cabinet Office list, these pre-
cement hearings can produce equally dramatic results, as illustrated by the recent
R I & K D U O R W W H + R J J : K H Q V K H F R P S O H W H G W K H
on for her hearing as a newly appointed Deputy Governor of the Bank of
she realised that K D G Q R W I R U P D O O \ G H F O D U H G P \ E U R
R W K H % D Q N 7 K H I L U V W W L P H W K D W , I R U P D O O \
questionnaire which I submitted to the committee in advance of my recent
[130] This led to the Bank instituting disciplinary proceedings for failing to declare a
O L F W R I L Q W H U H V W D Q G W R + R J J · V U H V L J Q D W L
eport from the Treasury Committee.[131]

ode brings out one of the ma9bp53I75500480056>4<000F0003>-20<00570052000

it decides to make a fuss, even with respect to an appointment that it has no requirement to oversee. The same is true of the other committees which have issued negative reports, or given candidates a hard time at the hearing: the fact that four candidates have withdrawn following pre-appointment scrutiny shows the effectiveness of the process, even though committees have no power of veto.

9.18 The second lesson worth emphasising is how much select committees can achieve through sheer dogged persistence. The Treasury Committee has never received any encouragement from successive Chancellors for its keen interest in public appointments. But for 20 years it has persevered, and improved its procedures, in particular through pioneering the use of questionnaires. It has also extended the range of appointments being scrutinised beyond the Cabinet Office list. Its experience shows that Parliament has all the powers that it needs ( )30(pe -796G [(that)-79(it)-78(nt9b.32 841.92 00008v 841.: re98v 841y)6 57

Paul McDowell	08/10/13	HM Chief Inspector of Probation	Justice
Stephen Green	10/12/13	Chair of the Office for Legal Complaints	Justice
Kevin McGinty	11/03/15	Chief Inspector of the Crown Prosecution Service	Justice
Peter Clarke	24/11/15	HM Chief Inspector of Prisons	Justice
Glenys Stacey			

Peter Riddell	21/03/16	Commissioner for Public Appointments	Public Administration and Constitutional Affairs
Keith Conradi	07/06/16	Chief Investigator of the Healthcare Safety Investigation Branch	Public Administration and Constitutional Affairs
Ian Watmore	06/09/16	First Civil Service Commissioner	Public Administration and Constitutional Affairs
Phil Smith	24/10/11	Chair of the Technology Strate Board	

Anthony Arter	11/02/15	Pensions Ombudsman and

Appendix 2 ±Model questionnaire

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?

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

This report is based on a study of a further 70 pre-appointment hearings conducted between 2010 and 2016. It concludes that pre-appointment scrutiny has real value: candidates have not been appointed as a result, and others have been forced to resign, so select committees are far from toothless. Following the Grimstone review, which gives ministers more scope for political patronage, pre-appointment scrutiny is all the more important. The report recommends that committees should not be UHVWULFWHG E\ WKH &DELQHW 2IILFH OLVW RI W set their own priorities, and be more selective but also more systematic in their approach to pre-appointment scrutiny.

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