



Cabinet Office

# Better Public Appointments

A Review of the Public Appointments Process

Sir Gerry Grimstone

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## Foreword

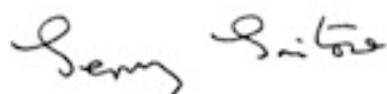
Public appointments made by ministers play an important role in national life in the UK. People appointed in this way chair, supervise, and guide a very wide range of public bodies spanning the arts, science, technology, health and a myriad of other activities, as well as having individual responsibilities. Their individual sense of mission is a key component of civil society. Because the appointments are the responsibility of ministers for which they are accountable to Parliament, it would be surprising if ministers did not want to take a close interest in the process and have confidence in the people that they appoint. It would rightly be a matter for criticism if they didn't. Ministers should want and ensure that good people from a wide range of backgrounds representative of society are appointed to carry out the responsibilities that they are given. The purpose of the processes we follow should be driven by the need to achieve good outcomes.

Equally, it is important that the public have confidence in the system for appointing people and that the processes are efficient, transparent and fair. Good people won't come forward to be considered for appointments if the appointment system appears irrational, blatantly biased or doesn't operate smoothly.

Back in 1995, the Committee on Standards in Public Life, chaired by Lord Nolan, developed a set of principles now commonly referred to as the Nolan Principles. These principles have stood the test of time and are as equally applicable now as they were twenty years ago. Specific recommendations were also made relating to public appointments. Supplemented by a further principle on diversity, I believe these principles and recommendations should continue to form the cornerstone of our public appointments processes.

Having a set of principles is one thing, applying them in practice is another. The needs of various stakeholders need to be considered and a process is required which is not unduly cumbersome. Present processes can generate a huge amount of frustration among candidates. A good process has to have the flexibility to cover a wide range of circumstances. It should result in good people coming forward from whom a selection can be made in a timely fashion. This report describes today's practices, explains briefly how they have evolved and developed and makes various recommendations which I hope will command general acceptance. They build very much on the valuable work done by Sir David Normington, the present Commissioner for Public Appointments, who has already made great strides in tackling a legacy of deeply bureaucratic processes.

I have consulted widely in formulating my recommendations and taken wisdom and challenge from many people more expert than I. Additionally, I have been very ably assisted by Jon Fairclough and Colette Batterbee throughout this Review. Its conclusions are, of course, my own.



Sir Gerry Grimstone

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## Conclusions and recommendations

1. Public appointments are the responsibility of ministers and they are accountable for the decisions that they take and the processes that are followed. Ministers are at the heart of the public appointments system.
2. A set of principles should govern the making of public appointments. These Public Appointments Principles should be based on an updated version of Lord Nolan's original Principles and Recommendations.
3. Public appointments should be made on merit by the well-informed selection of individuals who through their qualifications, experience or qualities match the needs of the public body and the post in question. Ministers should make their final choice from a short list of such 'appointable' people.
4. The Public Appointments Principles and the key associated public interest requirements should be set out in an Order in Council backed up by a concise Governance Code, agreed by ministers, containing the recommendations of this review.
5. It is imperative that public confidence is maintained in the system of appointments. A strong control framework driven by a combination of self-regulation, and robust external scrutiny and regulation is the best way to ensure this, backed up by full transparency.
6. Ministers should be assisted in their decision-making by Advisory Assessment Panels, each of which must contain a strong, independent element composed of people capable of exercising the required judgments. A person judged as independent should be independent in character and judgment without there being relationships or circumstances which are likely to affect, or could appear to affect, the panellist's judgment.
7. An appointment that did not have an Advisory Assessment Panel with an appropriate independent element would not be deemed to have been conducted in line with the Public Appointments Principles.
8. Independent members should be paid expenses and be eligible to be compensated for the time they spend on the panel's work.
9. In a principles-based regime, all appointments made should fall within the regime unless the appointments are clearly transient or have no formal, accountability responsibilities.
10. The process followed when making an appointment should be proportional to the significance of the appointment. All appointments are important but some are more significant than others because of the size of the body concerned, the importance and sensitivity of the role, or because the post carries with it regulatory responsibilities. The Minister for the Cabinet Office in consultation with

the Commissioner for Public Appointments should agree with ministers which appointments within their responsibilities should be deemed as significant and therefore require enhanced handling.

11. The primary responsibility for processing public appointments in a way that inspires public confidence should rest with departments. Ministers should work with their permanent secretaries to ensure that their departments are appropriately resourced to handle public appointments and that the work is given sufficient priority. In the case of significant appointments, there should be enhanced close working with the Centre for Public Appointments in the Cabinet Office who can provide advice and guidance throughout a competition.
12. The Centre for Public Appointments should act as a centre of excellence advising departments on how best to identify potential candidates, the most effective way to advertise posts, and on assessment techniques, including tools for addressing unconscious bias. All potential candidates short listed for posts should be asked if they are happy to have their details shared with the Cabinet Office so that a central pool of potential candidates can be maintained.
13. Permanent secretaries should ensure that every department has someone of appropriate seniority to handle the recruitment processes of that department and they should establish a small unit either separately or jointly with another department to handle the work. Every department's public appointments set-up and contact point should be clearly identified on the government website gov.uk and all public appointments made, or underway, by the department or its associated entities, should be set out. For every competition held, there should be full transparency of the appointee's details, the selection process followed, and the assessment panel.
14. For established arm's length bodies that have the capability to do it, a department may outsource the administrative running of an appointments process to the body concerned, provided ministerial authority and ultimate decision-making is retained throughout.
15. Potential candidates will be deterred from participating if processes are inefficient or insensitive. Customer care should be seen to be an important part of the process, with candidates being kept in touch with progress and, if unsuccessful after being shortlisted, being told why in a constructive way which will not deter them from applying for other appointments.
16. Too many appointments take far too long to conclude which is both inefficient and can deter good candidates from applying. Ideally, the aim should always be to conclude the process within three months of a competition opening. To achieve this, the relevant stakeholders need to be identified at the start of the process, involved as appropriate, and then kept in touch with throughout so their views can be fed into the process. The assessment and selection process should not start until a pool of potentially appointable candidates has been identified.

17. The Prime Minister has a direct role in appointments made by The Queen and in those appointments for which he has statutory responsibility. Additionally, some appointments are so important to public life in the UK, the Prime Minister will understandably want to be involved. In such cases, the process must be designed from the start to accommodate this.
18. Any competition is only as good as the competitors who take part. Much needs to be done to widen the pool of candidates interested in being considered for public appointments. The volume of public appointments is such that departments and the Cabinet Office should be enabled to develop and deploy their own headhunting function.
19. Public appointees can be important role models in their communities and public appointments should be a mechanism for involving a wide range of people in our country's public life. Appointees' skills should be developed and they should be encouraged to maximise their contribution. Encouraging others also to come forward should be seen as part of the role.
20. At the start of every appointment process, ministers should agree the job description for the role and its remuneration. An Advisory Assessment Panel should be set up by their department, the composition of which is also agreed by ministers. Ministers should agree with the Advisory Assessment Panel the profile of the person they are seeking to appoint, and how the post will be advertised including the use of specialist networks and social media.
21. Prior to interviews being conducted, ministers should feel free to put names forward to the Advisory Assessment Panel. If a panel does not think it appropriate to interview such a candidate, the panel chair should inform the minister of the reasons for this before informing the candidate of the rejection. Ministers may want to meet potential candidates themselves to provide input to the panel and there should be no objection to this. Once the final list for interview is agreed, ministers should have no further involvement in the panel's deliberations until presented with the panel's assessment of candidates.
22. The assessment process should be appropriate to the recruitment and reflect the nature and significance of the role. A greater variety of techniques, both less formal and more expert, should be used.
23. The Advisory Assessment Panel should be made familiar with the minister's requirements and views and should provide the minister with a short list of appointable candidates to inform the minister who will make the final choice. The panel's views on the strengths and weaknesses of candidates should be made known to the minister to assist in the final decision. Exceptionally, ministers may ask the panel to rank candidates in order of merit or only to recommend a single candidate.
24. Whether or not someone is appointable should be seen as considering, in the particular circumstances of the appointment, whether it is reasonable to assume that the person is capable of doing the job. If Ministers choose to appoint

someone who is not “appointable”, they should have to justify both publicly and to the regulator, as well as potentially to Parliament, why they had chosen to disregard the views of the panel and therefore the Public Appointments Principles.

25. Ministers should be kept in touch with the progress of appointments at regular intervals by an official from their department serving on the panel and this should also be the mechanism that enables them to feed in their comments to the panel.
26. The Advisory Assessment Panel should be chaired by either an independent member of high standing, a senior civil servant, or the chair of the body to whom the person is being appointed. The composition of this panel should be announced at the start of the process.
27. When an appointment is being made to an existing board, it is not just individual merit that is important but also the fit to the board’s dynamics and skill set. This is important to ensure that the board as a whole is effective and has the range of skills and experience that it needs. The chair of the board is well-placed to judge this and his or her views should be an important part of the assessment process. Ministers retain the ultimate responsibility for appointments but should take into account the views of the board chair when making the appointment.
28. For individuals to contribute fully to the work of a board, they have to serve long enough on it to be fully familiar with its work. This cannot be easily achieved if appointments last for less than three years. There should never be an automatic presumption of re-appointment but individuals who have made a valuable contribution to a board should be able to be considered for a single further term. It is important that the membership of boards is periodically refreshed to promote diversity and to avoid any tendency to group-think. Appointments to a board should be staggered so that refreshing is a regularly recurring process.
29. The effectiveness of a board and each of its individual members should be rigorously evaluated annually by its chair and such evaluations should include a periodic external element. These evaluations should be available to ministers to inform decisions on reappointment.
30. It is the role of ministers and departments to inspire public confidence by demonstrating through their actions that they are complying with the Principles and the Governance Code. It is the role of the Commissioner for Public Appointments to provide independent assurance that they have done so. To ensure that the independence of the regulatory role is maintained, the Commissioner should not play a direct part in recruitments. The Commissioner should not hold any other appointments within the public sector that would compromise his or her independence as a regulator.
31. The Commissioner should be a part-time role of 1 to 2 days a week, have a small, independent staff and work closely with the Centre for Public Appointments but be independent of it.

32. The Commissioner should draw attention to, and, where necessary, intervene in any appointment process that appears to be in material breach of the Public Appointments Principles and the associated Governance Code. The Commissioner's role is to provide an independent check and balance in order to help maintain integrity, including conducting spot checks, responding to any concerns raised by panel members, and considering complaints.
33. The Commissioner should seek to encourage good people from a diverse range of backgrounds to come forward for consideration. He or she should be a powerful advocate for diversity as the perceived integrity of public appointments is inextricably linked to having pools of diverse candidates.
34. The Commissioner should publish an annual report reporting on the overall state of public appointments. This report should inform good practice, and contain statistical data about appointments so that diversity in its widest sense, customer care, and other aspects can be tracked, including, if possible, outcome measures.
35. The Commissioner should conduct occasional thematic reviews aimed at improving the quality of public appointments. These reviews should cover topics such as recruitment and assessment techniques, and how appointees and boards can best be helped to be effective in their work.
36. In the case of significant appointments, the independent element of the panel must contain a designated Senior Independent Panel Member who is knowledgeable about senior recruitment and familiar with and supportive of the Public Appointments Principles and the Governance Code. Departments and the Centre for Public Appointments should maintain up-to-date lists of people willing and able to undertake this role, which might for example, include departmental non-executive board members, former Public Appointments Assessors, or people of similar standing. These lists should not be seen as exclusive.
37. The panel composition, which should be notified to the Commissioner at the start of a competition, should identify the Senior Independent Panel Member. He or she should have specific responsibilities, set out in an appointment letter, to familiarise themselves with the Public Appointments Principles and associated Governance Code and to highlight any material breaches that occur during the process. This should include escalating the matter to the Commissioner or the responsible minister if necessary.
38. Political activity should not affect any judgment of merit nor be a bar to appointment or being a member of an Advisory Assessment Panel. It should be publicly disclosed however if a panel member, or a successful candidate, is employed by a political party, holds or has held a significant office in a party, has stood as a candidate for a party in an election or has made significant donations or loans to a party. Significant loans and donations are those of a size which need to be reported to the Electoral Commission. The key regulatory principle here is transparency.

39. There will be exceptional occasions where ministers may decide that a full appointments process is not appropriate or necessary, for example because of extraordinary time constraints or because there is such an exceptional candidate being appointed or re-appointed that any process would be otiose. However, in such cases, there should always be an independent scrutiny before the appointment is announced, perhaps by the lead non-executive board member of the relevant department, to ensure that the process has been conducted with integrity. All such exceptional appointments should be notified to the Commissioner for Public Appointments who will no doubt intervene if there has been a flagrant breach of process. The reason for conducting an exceptional process should be made clear when the appointment is announced.
40. At the conclusion of every public appointment in which ministers have had a material involvement, the relevant accounting officer or a senior representative should certify that the appointment has been made in accordance with the Public Appointments Principles. Proper details of the process followed should be kept and open to inspection at any time by the Commissioner for Public Appointments.
41. These individual certifications will be an important part of the accounting officer's public appointments annual assurance statement that should be provided to the Commissioner for Public Appointments. This assurance statement should set out details of appointments that a minister has signed off during the year, including the process followed, and certify that all the appointments have been made in accordance with the Public Appointments Principles. These statements should be capable of being audited by the Commissioner if necessary as this will help maintain public confidence in the process.

# Chapter 1

## Introduction

1.1. This report sets out the recommendations and conclusions of the review that I have conducted into the process of public appointments. It describes how I have gone about my work and presents my findings on how well the public appointments system is presently operating. I draw on evidence from stakeholders and other materials to propose improvements that I hope will be taken forward by the Minister for the Cabinet Office, departments and the Commissioner for Public Appointments.

1.2. Details of the review were given in a Written Statement to the House of Commons on 2 July 2015 by the Minister for the Cabinet Office and Paymaster General, the Rt Hon Matthew Hancock MP:

*'I can confirm that the Review of the Office of the Commissioner for Public Appointments will report later this year. The review will consider the role of the Commissioner and the processes around public appointments. The terms of reference for the review are as follows:*

*Terms of reference*

*The role of the Commissioner for Public Appointments was created by the Public Appointments Order in Council 1995 on 23 November 1995, following recommendations made by the Committee on Standards in Public Life (under the chairmanship of Lord Nolan). We are now twenty years on, and this provides a suitable opportunity to review the role of the Commissioner and the processes around public appointments. In the light of the range and diversity of public appointments, it is important to ensure that the procedures are both effective and proportionate and to review whether procedures as practised fit within the intentions of the Nolan principles. The review will be led by Sir Gerry Grimstone and will report to the Minister for the Cabinet Office.'* [HCWS82]<sup>1</sup>

1.3. The review has been informed by a literary review of various documents including the first report from the Committee on Standards in Public Life, subsequent reviews and commentaries of the public appointments system, and reports from Parliament, academia and think tanks. A bibliography is available<sup>2</sup>. I have sought comments from a wide range of stakeholders including ministers, Members of Parliament, the Commissioner for Public Appointments, permanent secretaries, departmental officials, lead non-executive members of departmental boards, public body chairs, and those with direct experience of present processes.

1.4. As required by its terms of reference, this review has focussed on the role of the Commissioner for Public Appointments and processes. The real test of whether a process is appropriate or not is, of course, the outcomes that are achieved, and those responsible for process need to bear this constantly in mind. Nothing I say about process negates the need for this.

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<sup>1</sup> [Review of the Office of the Commissioner for Public Appointments.](#)

<sup>2</sup> Bibliography available from [www.gov.uk](http://www.gov.uk)

- 1.5. There are three main parts to this report:
  - i. the present system and its background
  - ii. how it could be made better
  - iii. maintaining public confidence including the role of the regulator

## Chapter 2

### The present system and its background

- 2.1 Public appointments are made at the prerogative of The Queen, or by the Prime Minister or ministers. Public appointees vary from individual office holders to members of governance structures that hold the executives of public bodies to account on behalf of the public, as well as providing valuable expertise to shape direction. As of 31 March 2015, there were 400 public bodies including 111 larger executive public bodies. Excluding NHS England, they spent £22 billion and employed 77,000 staff. The boards of NHS Trusts collectively oversee £100 billion and 1 million staff.<sup>3</sup>
- 2.2 Appendix 1 sets out key statistical data. Around 2,000 public appointments are made each year of which nearly half represent reappointments. The total stock of public appointees is not collated but it would be reasonable to assume that upwards of 10,000 people are serving their country in this important way.
- 2.3 Public appointees should be representative of our society and, in at least one respect, tremendous progress has been made on this in recent years. Through a sustained campaign overseen by ministers, the proportion of women being appointed to public body boards has risen to 45% in 2014-2015, an increase of over 10% in three years. There has also been strong progress with women being appointed as chairs. Much less progress has been made in increasing the proportion of appointments made from people with a Black, Asian, or Minority Ethnic (BAME) background. The proportion of this demographic rose to 8.9% in 2014-15, well below the 14% figure in the wider population. Around 6.5% of candidates applying for a public appointment declared a disability and even fewer were appointed (4.6%), which is significantly lower than the 16% of working-age adults who do so.
- 2.4 The importance of public appointments was expressed as follows by the Public Administration Select Committee in 2003:

*'Tens of thousands of appointed people are involved in many aspects of the governance of Britain—from the highest courts in the land to magistrates' courts, from central decisions in the NHS to local care trusts, from overseeing the BBC and independent television, the regulation of utilities and inspection of prisoners' conditions to the provision of social housing, post-16 education, tribunals, skills training, museums and local lottery grants. Crucial decisions affecting the health of communities, the preservation of the national heritage, the liberty of individuals and the prosperity of companies are taken by appointees. In short, public appointments matter.'*<sup>4</sup>

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<sup>3</sup> [Public Bodies Report 2015](#)

<sup>4</sup> [Government By Appointment: Opening Up The Patronage State](#)

2.5 Because of the importance of public appointments, it is important that the best people are found to fill them. There has been concern from time to time that that is not always the case. Before 1995, ministers made public appointments based on the advice of their civil servants as well as the chair and sometimes the chief executive of the body concerned:

*'..secrecy blocks questions about how CVs are collected, how the candidates are interviewed and how references are taken up. The Public Appointments Unit's list of potential candidates for quango posts is kept hidden... Information on appointees does not reveal political affiliation.'*<sup>5</sup>

2.6 The Committee on Standards in Public Life was set up in 1995 under Lord Nolan, to investigate 'sleaze' in politics (most notably 'cash for questions'). Early in their inquiry, they encountered significant concerns with public appointments and a widespread belief that these were subject to cronyism. Although not part of the enquiry's scope, Lord Nolan's committee felt they could not ignore these concerns and so included them in their investigation.

2.7 Lord Nolan found use of informal practices was widespread and this undermined public confidence in the system. His committee made several recommendations alongside the publication of their seven principles of public life. His recommendations were pragmatic and sensible which is no doubt why they seem as relevant now as they did back in 1995:

- a. The ultimate responsibility for appointments should remain with ministers;
- b. All public appointments should be governed by the overriding principle of merit;
- c. Selection on merit should take account of the need to appoint boards which include a balance of skills and backgrounds. The basis on which members are appointed and how they are expected to fulfil their role should be explicit. The range of skills and background which are sought should be clearly specified;
- d. All appointments...should be made after advice from a panel or committee which includes an independent element; and
- e. Each panel or committee should have at least one independent member and independent members should normally account for at least a third of membership.<sup>6</sup>

2.8 The adoption of the Nolan Principles and the associated recommendations, including the establishment of the Commissioner for Public Appointments, was a major success, raising both the perceptions and the reality of standards in public life in the UK.

2.9 The Ministerial Code (last issued October 2015) requires ministers to 'observe the Seven Principles of Public Life'. Ministers' role in making public appointments is also covered.

*'Public appointments should be made in accordance with the requirements of the law and, where appropriate, the Code of Practice issued by the Commissioner for Public Appointments.'* (Section 3, Ministerial Code 2015)

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<sup>5</sup> [Welcome to Quangoland: The Independent. 23 October 2011](#)

<sup>6</sup> [The 7 principles of public life. Committee on Standards in Public Life. May 1995.](#)

2.10 The remit and role of the Commissioner for Public Appointments is set out in an Order in Council which is periodically reviewed and updated. The present Order defines the functions of the Commissioner for Public Appointments as follows:

- 1) *The Commissioner shall, in the manner the Commissioner considers best calculated to promote economy, efficiency, effectiveness, diversity and equality of opportunity in the procedures for making public appointments, exercise the Commissioner's functions with the object of maintaining the principle of selection on merit in relation to public appointments.*
- 2) *The Commissioner shall prescribe and publish a code of practice on the interpretation and application by appointing authorities of the principle of selection on merit for public appointments and shall adopt and publish from time to time such additional guidance to appointing authorities as the Commissioner shall think fit.*
- 3) *The Commissioner shall audit public appointment policies and practices pursued by appointing authorities to establish whether the code of practice is being observed by appointing authorities.*
- 4) *The Commissioner may require appointing authorities to publish such summary information as may be specified relating to selection for public appointment.*
- 5) *The Commissioner may from time to time conduct an inquiry into the policies and practices followed by an appointing authority in relation to any public appointment or description of public appointment.*
- 6) *The Commissioner may recruit and train public appointment assessors for the purpose of advising and assisting an appointing authority in relation to any public appointment.*
- 7) *For the purposes of paragraphs (3) and (5), appointing authorities must provide the Commissioner with any information the Commissioner reasonably requires.<sup>7</sup>*

2.11 The original remit given to the Commissioner for Public Appointments only included those public bodies and offices that Lord Nolan focused on, that is executive non-departmental public bodies (NDPBs) and NHS trust boards. The remit was then broadened in 1998 to include advisory NDPBs, public corporations and certain utility regulators. The 2015 Order in Council, which defines the remit, lists 21 departments that sponsor nearly 300 national public bodies and 38 public offices. The Commissioner's remit over the years has been extended to include various other bodies although the list of public bodies covered by the Commissioner is, however, not the totality of such bodies in the UK. The reasons for exclusion are not always clear.

2.12 In addition, successive Commissioners introduced processes covering ministerial responsibility, merit, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality. These became more elaborate over the years.

2.13 An important element of Lord Nolan's recommendations was that all appointment panels should have an independent member. He argued that increased breadth and depth of advice from an independent element to the appointment process would benefit ministers, as well as allowing a range of community interests to be considered in their decision.

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<sup>7</sup> [Public Appointments Order in Council 2015](#)

- 2.14 Central to Nolan's thinking was that independent assurance of proposed appointees' suitability would help regain public confidence in the process. An early development was the introduction of assessors (now known as Public Appointment Assessors or PAAs) to perform the role of the independent element envisaged by Nolan. Initially these were appointed by departments but successive Commissioners exerted increasing control and influence over their use and nowadays appoint them and allocate their duties. Commissioners therefore became increasingly involved in the running of competitions as opposed to regulating them. The effect of this was to increase consistency but at the expense of creating complex bureaucratic processes that blurred the lines between the regulator and departments.
- 2.15 In 2011, Sir David Normington was appointed as both the Commissioner for Public Appointments and the First Civil Service Commissioner. He took the opportunity presented by the combined role to bring public appointments processes more into line with the principles based approach that the Civil Service Commission operates. He defined three core principles: merit, openness and fairness.
- 2.16 Sir David consulted and then introduced a new code of practice for public appointments in 2012. The code sets out how public appointments must be made and is backed up by various detailed guidance. He had inherited around 160 centrally contracted Independent Assessors who sat on all competitions and operated a very prescriptive model for making appointments. He replaced the Independent Assessors with 14 Public Appointments Assessors (PAAs) who were only involved in the key competitions, namely the appointment of public body chairs or other sensitive roles.
- 2.17 Appendix 2 describes how the public appointment processes introduced by Sir David presently operate. The cost of running the Commissioner's Office in relation to its core activities amounted to £338,000 in 2014-15.
- 2.18 The Commissioner has a legal duty to audit public appointments to ensure that the principles of merit, fairness and openness are followed. This is largely done through an audit process presently contracted out to KPMG. Risk ratings are subsequently applied to departments and in 2014-15, three departments were classed as 'green', 13 as 'green/amber', and five as 'amber/red' or 'red'. These five departments accounted for 42% of the appointments made last year and the Commissioner noted that 'this is obviously a matter of concern and something that the Commissioner will be monitoring carefully in the coming year.'<sup>8</sup>

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<sup>8</sup>[Annual Report 2014-15](#)

2.19 In 2014-15, there were five complaints made to departments under the code and only one complaint to the Commissioner's office. This compares to 11 complaints made to departments the previous year. The Commissioner has however drawn attention in his recent annual report to four recurring themes in informal comments that he receives. These are:

- i. a lack of communication both with outgoing chairs about their futures and with candidates during prolonged and delayed competitions*
- ii. the length of the competition process*
- iii. the composition of panels, particularly when those who are politically active have participated*
- iv. the role of ministers and whether their interventions have affected fairness<sup>9</sup>*

I will return to these themes later.

2.20 An important flexibility in the present system is the power of the Commissioner to agree exemptions to the requirements of the code of practice where this is justified in the public interest. 46 specific exemptions were granted to the code of practice in 2014-15 and there were additionally three class exemptions covering the NHS Trust Development Authority, the Independent Monitoring Bodies in the prisons sector, and the chairs of the Advisory Committees on Justices of the Peace. One applied-for exemption was not granted.

2.21 Departments are not left to their own devices when it comes to public appointments. The Cabinet Office's Centre for Public Appointments has responsibility for helping departments to identify potential candidates for a public appointment, to nurture and reach out to new talent, and to provide an executive search service to departments. They also oversee the search process, which is not regulated by the Office for Commissioner for Public Appointments (OCPA), for non-executive members of departmental boards. In doing so, they work closely with departments to progress competitions, providing help and support, and keeping the Minister for the Cabinet Office and No.10 up to date with developments.

2.22 The Centre's website<sup>10</sup> advertises all public appointments, both those that are OCPA regulated and those that are not, is open to anyone and has 11000 subscribers. The Centre also publishes a fortnightly newsletter, with a circulation of over 2000, highlighting key vacancies. There is no information available on the usage of the website or any segmented data on who receives the newsletter.

2.23 This review has focussed on the work of Commissioner of Public Appointments. The Scottish Government and the Northern Ireland Executive have their own respective regulatory frameworks in respect of public appointments for which devolved administrations have responsibility. Details of these are set out in Appendix 3 and I have familiarised myself with these different regimes.

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<sup>9</sup> [Annual Report 2014-15](#)

<sup>10</sup> <http://publicappointments.cabinetoffice.gov.uk/>

- 2.24 I have not considered the processes for making judicial appointments which are the responsibility of the Judicial Appointments Commission. Details of the processes that the Commission follows are also set out in Appendix 3.
- 2.25 The Commissioner has a specific role in relation to the selection of the chair and members of the Recognition Panel for Press Regulation. I have not considered this activity. Any future changes to the Order in Council regarding public appointments as a result of the review should therefore be mindful of the Commissioner's duties under the Royal Charter on Self-Regulation of the Press.
- 2.26 It should be noted that a few appointments are subject to Select Committee pre-appointment hearings. These were introduced in 2008 on an experimental basis, with a view to improving public confidence. There are now over 60 appointments across departments subject to such hearings, mainly chair roles and certain high profile public offices. Ministers notify the relevant Select Committee as part of the planning stage of an appointment and the hearing takes place in public when the preferred candidate has been identified. Ministers are not obliged to accept the Select Committees' recommendations but they must respond to their concerns. I make no comment on this process or the range of posts that are covered in this way.

## Chapter 3

### How the system could be made better

- 3.1 The starting point for my conclusions is quite simple. Public appointments are the responsibility of ministers, who have been democratically chosen, and are accountable to Parliament for their actions. It would be expected therefore that ministers should be at the centre of the appointments process. However, it is vital that public confidence in how appointments are made is maintained otherwise ministers will be exposed to criticism, and the legitimacy and standing of appointees will be questioned.
- 3.2 **Public appointments are the responsibility of ministers and they are accountable for the decisions that they take and the processes that are followed. Ministers are at the heart of the public appointments system.**
- 3.3 So that there is a clear yardstick by which the making of public appointments can be judged, it is important that the process is based on clear principles that must be followed, are simple to understand and widely known.
- 3.4 **A set of principles should govern the making of public appointments. These Public Appointments Principles should be based on an updated version of Lord Nolan's original Principles and Recommendations.**
- 3.5 I believe that the Public Appointments Principles should be as follows:
- a. **Ministerial responsibility** - The ultimate responsibility for appointments and thus the selection of those appointed rests with ministers who are accountable to the public for their decisions and actions;
  - b. **Selflessness** - Ministers when making appointments should act solely in terms of the public interest.
  - c. **Integrity** - Ministers when making appointments must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
  - d. **Merit** - All public appointments should be governed by the overriding principle of appointment on merit and the need to appoint boards which include a balance of skills and backgrounds. When giving advice on merit to ministers, Advisory Assessment Panels must contain an independent element.
  - e. **Openness** - Processes for making public appointments should be open and transparent.
  - f. **Diversity** - Public appointments should 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.
  - g. **Assurance** – There should be established assurance processes with sufficient checks and balances importantly including an independent regulator to maintain public confidence in the public appointment process.

- 3.6 **Public appointments should be made on merit by the well-informed selection of individuals who through their qualifications, experience or qualities match the needs of the public body and the post in question. Ministers should make their final choice from a short list of such ‘appointable’ people.**
- 3.7 Principles-based approaches work best when the principles are clear and easy to understand. They do not need then to be complicated by elaborate ‘guidance’ which all too often can be taken as prescriptive.
- 3.8 **The Public Appointments Principles and the key associated public interest requirements should be set out in an Order in Council backed up by a concise Governance Code, agreed by ministers, containing the recommendations of this review.**
- 3.9 Sir David Normington in his latest report says that public appointments are emphatically not rife with political patronage and personal favouritism. However, he draws attention to the need to avoid exposing ministers and their advisers to the temptation of intervening on behalf of those they know. I agree with this. There is no reason at all why ministers cannot ask for people to be evaluated, and I discuss this later, but of course it needs to be done with integrity. A fully transparent system that clearly demonstrates how ministers and departments have complied with the governance framework and explains any deviations from it will help inspire public confidence.
- 3.10 **It is imperative that public confidence is maintained in the system of appointments. A strong control framework driven by a combination of self-regulation, and robust external scrutiny and regulation is the best way to ensure this, backed up by full transparency.**
- 3.11 The presence of a competent, independent element is the cornerstone of the process that I am advocating. There are clear parallels with the role given to independent non-executives in the private sector by the Corporate Governance Code and there is a useful read-across. For example, independence under that code is in part defined as having been an employee of the organisation to which the appointment is to be made within the last five years, having had a recent material business relationship with it, or having close family ties with any of the organisation’s senior members or employees. Appropriate tests comparable to these are needed in the case of public appointments.
- 3.12 **Ministers should be assisted in their decision-making by Advisory Assessment Panels, each of which must contain a strong, independent element composed of people capable of exercising the required judgments. A person judged as independent should be independent in character and judgment without there being relationships or circumstances which are likely to affect, or could appear to affect, the panellist’s judgment.**

- 3.13 **An appointment that did not have an Advisory Assessment Panel with an appropriate independent element would not be deemed to have been conducted in line with the Public Appointments Principles.**
- 3.14 **Independent members should be paid expenses and be eligible to be compensated for the time they spend on the panel's work.**
- 3.15 Much effort is spent listing in an Order in Council exactly which appointments are within the remit of the Commissioner for Public Appointments. I do not think this effort is well-directed.
- 3.16 **In a principles-based regime, all appointments made should fall within the regime unless the appointments are clearly transient or have no formal, accountability responsibilities.**
- 3.17 Much has been done in recent years to streamline appointment processes and the 2012 Code of Practice has been widely welcomed. My review has shown however that some confusion remains about who is responsible for what, and what rules or guidance should be followed. I am recommending much greater simplification.
- 3.18 Although decisions on appointments may be difficult, there are tried and tested processes, widely operated in the private sector, for finding and assessing candidates. It is really not very difficult to run these processes smoothly and efficiently provided they are thought through and responsibilities are clear cut. Flexibilities are necessary because of the breadth and diversity of appointments and the hunt for talent can be fierce.
- 3.19 **The process followed when making an appointment should be proportional to the significance of the appointment. All appointments are important but some are more significant than others because of the size of the body concerned, the importance and sensitivity of the role, or because the post carries with it regulatory responsibilities. The Minister for the Cabinet Office in consultation with the Commissioner for Public Appointments should agree with ministers which appointments within their responsibilities should be deemed as significant and therefore require enhanced handling.**
- 3.20 All recruitment processes are a mixture of administrative process and decision-making, with the added complication that if candidates think that they will not be treated with respect and consideration they won't come forward to be considered. It is clear that whether or not departments do a good job in this area depends to a large extent on the competence of the people handling it. Resourcing the teams to handle this work requires a mix of expertise in planning, project management, client care, recruitment and assessment.

- 3.21 **The primary responsibility for processing public appointments in a way that inspires public confidence should rest with departments. Ministers should work with their permanent secretaries to ensure that their departments are appropriately resourced to handle public appointments and that the work is given sufficient priority. In the case of significant appointments, there should be enhanced close working with the Centre for Public Appointments in the Cabinet Office who can provide advice and guidance throughout a competition.**
- 3.22 The Centre for Public Appointments in the Cabinet Office has an important role to play coordinating public appointment activity across government. It is ideally placed to spread good practice, and to act as a clearing house for potential candidates for public office.
- 3.23 **The Centre for Public Appointments should act as a centre of excellence advising departments on how best to identify potential candidates, the most effective way to advertise posts, and on assessment techniques, including tools for addressing unconscious bias. All potential candidates shortlisted for posts should be asked if they are happy to have their details shared with the Cabinet Office so that a central pool of potential candidates can be maintained.**
- 3.24 **Permanent secretaries should ensure that every department has someone of appropriate seniority to handle the recruitment processes of that department and they should establish a small unit either separately or jointly with another department to handle the work. Every department's public appointments set-up and contact point should be clearly identified on the government website gov.uk and all public appointments made, or underway, by the department or its associated entities, should be set out. For every competition held, there should be full transparency of the appointee's details, the selection process followed, and the assessment panel.**
- 3.25 The way that competitions are handled reflects not just on the relevant minister but also on the organisation to which the appointment is being made. Their 'brand' is at risk if the competition is handled insensitively or badly. Departments who have to handle a number of competitions simultaneously often get overwhelmed by the sheer weight of administrative process that is involved.
- 3.26 **For established arm's length bodies that have the capability to do it, a department may outsource the administrative running of an appointments process to the body concerned, provided ministerial authority and ultimate decision-making is retained throughout.**
- 3.27 Sir David Normington has drawn attention to the inordinate time that some competitions take and this is very much borne out by the experience of those that I have sampled. There is little hard data on timescales of public appointments but I heard many comments about length of process. I

surveyed 28 public appointees from six departments who also identified with these delays. Of those I surveyed, only 42% said the process from advert to decision took three months or less. The biggest delay was between the panel interview and hearing the result; 37% heard within 1 month, 33% within 2 months, 11% within 3 months and a small number taking much longer.

- 3.28 Although people value and enjoy public appointments once they are in post, it is clear that lengthy delays are both inefficient and can deter good, busy people from applying. The public sector is often competing against other opportunities that a candidate might be considering. The candidate who is happy to wait for months without being told what is going on could well not be the type of candidate that we want. Appointments decisions of course will be competing against many other important matters, which can cause delays. Candidates will understand this if explained to them but are too often left in the dark about what is happening for months after being interviewed. It is in departments' own interests to keep candidates informed of progress and interested in the roles.
- 3.29 Departments should therefore take responsibility for managing the application experience of candidates, especially those unused to public sector processes. They should also make more effort to keep candidates 'warm' through the process. This customer care service should be monitored by departments. Data on timescales for the overall process, and its components stages, should be kept along with candidates' feedback and made available in a suitable form. This should be at the heart of departments' improvement strategies and in securing ministerial confidence in the system.
- 3.30 **Potential candidates will be deterred from participating if processes are inefficient or insensitive. Customer care should be seen to be an important part of the process, with candidates being kept in touch with progress and, if unsuccessful after being shortlisted, being told why in a constructive way which will not deter them from applying for other appointments.**
- 3.31 **Too many appointments take far too long to conclude which is both inefficient and can deter good candidates from applying. Ideally, the aim should always be to conclude the process within three months of a competition opening. To achieve this, the relevant stakeholders need to be identified at the start of the process, involved as appropriate, and then kept in touch with throughout so their views can be fed into the process. The assessment and selection process should not start until a pool of potentially appointable candidates has been identified.**
- 3.32 **The Prime Minister has a direct role in appointments made by The Queen and in those appointments for which he has statutory responsibility. Additionally, some appointments are so important to public life in the UK, the Prime Minister will understandably want to be**

**involved. In such cases, the process must be designed from the start to accommodate this.**

- 3.33 There has been progress in gender diversity but less so in BAME and disability. More needs to be done across all areas of diversity including, for example, occupational background and geographical diversity. Many people I spoke too were concerned that we don't seem able to attract a sufficiently wide range of people to apply to be considered for public appointments and this has an impact not just on diversity but also on being able to secure the services of highly-talented individuals keen to serve their country. Relying on people sufficiently knowledgeable or motivated enough regularly to read the Cabinet Office newsletter or look at the Cabinet Office website is clearly in itself not sufficient as there is a risk that such processes are self-selecting in terms of the individuals that are reached. Much more active processes are needed to reach out to people and to publicise vacancies across, for example, private sector corporate talent programmes, relevant specialist networks and associated social media.
- 3.34 At a time when public expenditure necessarily has to be limited, it is understandable that ministers want selection processes to be run as economically as possible. This has led to administrative constraints being put on the use of headhunters. Headhunters can fulfil a variety of tasks in a recruitment process ranging from project management, market analysis and research, to the identification of potential candidates including those who might not be able to be reached by 'passive' routes, referencing, and client handling. There is no doubt that the best do a very good job, but also in a public sector context, can be seen as expensive. There is no need for departments to use them to carry out jobs they can do themselves but for certain specialised appointments where a particular skill-set is required they may still be necessary.
- 3.35 **Any competition is only as good as the competitors who take part. Much needs to be done to widen the pool of candidates interested in being considered for public appointments. The volume of public appointments is such that departments and the Cabinet Office should be enabled to develop and deploy their own headhunting function.**
- 3.36 As with all new jobs, proper induction, subsequent training, and mutual self-development mechanisms are needed if people's skills on taking up a public appointment are to be fully utilised. If people enjoy their appointments and find them worthwhile they will encourage other people to come forward.
- 3.37 **Public appointees can be important role models in their communities, and public appointments should be a mechanism for involving a wide range of people in our country's public life. Appointees' skills should be developed and they should be encouraged to maximise their contribution. Encouraging others also to come forward should be seen as part of the role.**

- 3.38 When the need to fill a public appointment arises, it is not rocket science to work out what the project requires. The key starting point is a clear vision of what the job involves, and what kind of person would be best suited to fill it. Too often, the criteria expressed in job descriptions are deliberately broadened with the well intentioned objective of encouraging a more diverse field of candidates. However, if expertise in a specialist area is needed, there is little point in pretending otherwise and it wastes much effort in doing so. Requirements should be clearly expressed with efforts subsequently put into promoting the role in diverse communities.
- 3.39 **At the start of every appointment process, ministers should agree the job description for the role and its remuneration. An Advisory Assessment Panel should be set up by their department, the composition of which is also agreed by ministers. Ministers should agree with the Advisory Assessment Panel the profile of the person they are seeking to appoint, and how the post will be advertised including the use of specialist networks and social media.**
- 3.40 Ministers and their special advisers may themselves know candidates who could well be suitable for appointment and may wish to contact them to discuss the role. Given these are ministers' appointments, it would seem strange if they could not themselves put candidates forward for consideration and nothing should be seen as standing in the way of this. Sir David Normington puts this well in his latest annual report:
- 'It is important to trust the process. If an individual known to a minister is competent against the requirements of the role, he or she will be assessed as such by a selection panel and ministers can then appoint in the confidence that there has been a rigorous assessment that they are capable of doing the job. That is the best way of building public confidence that the choice is based on a test of merit, not on personal favouritism.'*<sup>11</sup>
- 3.41 **Prior to interviews being conducted, ministers should feel free to put names forward to the Advisory Assessment Panel. If a panel does not think it appropriate to interview such a candidate, the panel chair should inform the minister of the reasons for this before informing the candidate of the rejection. Ministers may want to meet potential candidates themselves to provide input to the panel and there should be no objection to this. Once the final list for interview is agreed, ministers should have no further involvement in the panel's deliberations until presented with the panel's assessment of candidates.**
- 3.42 Assessment processes in the private sector involve collecting as much information as possible about a candidate including the extensive use of referencing, psychometric testing, and having a range of people meeting the candidate in both informal and formal settings so that a complete picture can be obtained. In the public sector the process can involve the filling in of

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<sup>11</sup> [Annual Report 2014-15](#)

an application form, the candidate self-nominating referees, and a formal panel interview that lasts 45 minutes (although more sophisticated processes can at times also be deployed). More varied forms of assessments in public appointments are likely to lead to better outcomes and a wider, more diverse range of candidates been deemed as appointable.

- 3.43 The assessment process should be appropriate to the recruitment and reflect the nature and significance of the role. A greater variety of techniques, both less formal and more expert, should be used.**
- 3.44 Advisory Assessment Panels are acting on behalf of ministers so they need to know what the minister is looking for and provide a short list of appointable candidates from whom the minister can make the final choice. Some competitions end up with only one appointable candidate being put before a minister with whom the minister is then not happy meaning that the competition has to be cancelled and restarted. That is clearly nonsensical.
- 3.45 The Advisory Assessment Panel should be made familiar with the minister's requirements and views and should provide the minister with a short list of appointable candidates to inform the minister who will make the final choice. The panel's views on the strengths and weaknesses of candidates should be made known to the minister to assist in the final decision. Exceptionally, ministers may ask the panel to rank candidates in order of merit or only to recommend a single candidate.**
- 3.46 **Whether or not someone is appointable should be seen as considering, in the particular circumstances of the appointment, whether it is reasonable to assume that the person is capable of doing the job. If Ministers choose to appoint someone who is not "appointable", they should have to justify both publicly and to the regulator, as well as potentially to Parliament, why they had chosen to disregard the views of the panel and therefore the Public Appointments Principles.**
- 3.47 Ministers should be kept in touch with the progress of appointments at regular intervals by an official from their department serving on the panel and this should also be the mechanism that enables them to feed in their comments to the panel.**
- 3.48 The existing code of practice for public appointments requires Public Appointment Assessors (PAAs) to chair the selection panels for all OCPA regulated public appointments to appoint a public body chair. The PAAs are appointed by the Commissioner for Public Appointments to ensure that the process of selection follows the code of practice. I discuss later the much greater responsibility that I recommend is put on the independent members of panels and I am also recommending a much more streamlined principles-based system. The requirement for PAAs to chair panels therefore

disappears. This will address the frustration that a number of stakeholders have expressed to me about differing interpretations of the code and about guidance being sometimes interpreted as a prescribed process. Doubtless the excellent individuals who have filled these roles to date will continue to be drawn on by departments and the Cabinet Office when Advisory Assessment Panels are being constituted.

- 3.49 **The Advisory Assessment Panel should be chaired by either an independent member of high standing, a senior civil servant, or the chair of the body to whom the person is being appointed. The composition of this panel should be announced at the start of the process.**
- 3.50 During the course of this review, I have received a variety of individual representations from the chairs of Arm's Length Bodies about how the present process of public appointments could be improved. The representations have been strikingly similar. Chairs feel deeply responsible about the responsibility they have to make their boards effective and to be at the heart of the organisations for which they are responsible. A good board is not just a collection of individuals. It should be a carefully constructed team spanning a variety of skills and personalities that is able to function cohesively. There is no-one better placed than a chair to observe a board in action and to ensure that this is happening. A chair who does not do this is not a good chair.
- 3.51 **When an appointment is being made to an existing board, it is not just individual merit that is important but also the fit to the board's dynamics and skill set. This is important to ensure that the board as a whole is effective and has the range of skills and experience that it needs. The chair of the board is well-placed to judge this and his or her views should be an important part of the assessment process. Ministers retain the ultimate responsibility for appointments but should take into account the views of the board chair when making the appointment.**
- 3.52 The focus on individual appointees rather than the board as a whole means that sufficient attention is not always given to the requirement that the board has to work as a collective albeit one where constructive challenge is commonplace and group-think is avoided. Additionally, boards should want to become more effective and to seek constantly to improve their performance.
- 3.53 In the private sector, to be independent no non-executive board member can serve for more than nine years but a more commonplace term of office is a three year term with an appointment for a further three years making six years in total if performance has been satisfactory. All board members are additionally subject to annual re-election by shareholders and chairs appraise each of their board members annually. Board succession planning is the responsibility of the chair and has to allow for periodic refreshing. No

sensible chair would want a situation where several board members leave at once if this can be avoided.

- 3.54 For individuals to contribute fully to the work of a board, they have to serve long enough on it to be fully familiar with its work. This cannot be easily achieved if appointments last for less than three years. There should never be an automatic presumption of re-appointment, but individuals who have made a valuable contribution to a board should be able to be considered for a single further term. It is important that the membership of boards is periodically refreshed to promote diversity and to avoid any tendency to group-think. Appointments to a board should be staggered so that refreshing is a regularly recurring process.**
- 3.55 The effectiveness of a board and each of its individual members should be rigorously evaluated annually by its chair, and such evaluations should include a periodic external element. These evaluations should be available to ministers to inform decisions on reappointment.**

## Chapter 4

### Maintaining public confidence

- 4.1. I am recommending a significant shift to a principles-based approach that will allow more flexibility and streamlined regulatory processes. However, this is only going to command public acceptance and confidence if backed up by a robust governance framework that ensures the Public Appointments Principles and the associated Governance Code are being followed. As is common in the private sector, there need to be three lines of defence:

**First Line** A proper risk and control environment needs to be established as part of day-to-day operations. Line management needs to be properly skilled to ensure this.

**Second Line** There needs to be clear policies and procedures, effective monitoring, and strong internal assurance.

**Third Line** Objective assurance needs to be provided through strong regulatory oversight.

- 4.2. The first line should be properly-resourced public appointment teams within departments; the second line, the relevant accounting officer; and the third line, the Commissioner for Public Appointments.
- 4.3. **It is the role of ministers and departments to inspire public confidence by demonstrating through their actions that they are complying with the Principles and the Governance Code. It is the role of the Commissioner for Public Appointments to provide independent assurance that they have done so. To ensure that the independence of the regulatory role is maintained, the Commissioner should not play a direct part in recruitments. The Commissioner should not hold any other public appointments within the public sector that would compromise his or her independence as a regulator.**
- 4.4. **The Commissioner should be a part-time role of 1 to 2 days a week, have a small, independent staff and work closely with the Centre for Public Appointments but be independent of it.**
- 4.5. The Commissioner will need to be a robust pragmatic individual, concerned with substance rather than form, who will not hesitate to make his or her views known where necessary.
- 4.6. **The Commissioner should draw attention to, and, where necessary, intervene in any appointment process that appears to be in material breach of the Public Appointments Principles and the associated Governance Code. The Commissioner's role is to provide an independent check and balance in order to help maintain integrity, including conducting spot checks, responding to any concerns raised by panel members, and considering complaints.**

- 4.7. A lot more can be done to publicise the importance of public appointments and to make people aware not just of their contribution to society but also the scope they give for self-development. It is not just a question of 'wanting to put something back', laudable though that is.
- 4.8. **The Commissioner should seek to encourage good people from a diverse range of backgrounds to come forward for consideration. He or she should be a powerful advocate for diversity as the perceived integrity of public appointments is inextricably linked to having pools of diverse candidates.**
- 4.9. Transparency is an important part of the system that I am advocating both at the level of individual appointments but also at departmental and national level. The spreading of good practice by the Centre for Public Appointments and the keeping up-to-date with recruitment and assessment techniques is also important, as is making sure that the process is producing good outcomes, for example by collecting net promoter scores from both successful and unsuccessful candidates.
- 4.10. **The Commissioner should publish an annual report reporting on the overall state of public appointments. This report should inform good practice, and contain statistical data about appointments so that diversity in its widest sense, customer care, and other aspects can be tracked, including, if possible, outcome measures.**
- 4.11. **The Commissioner should conduct occasional thematic reviews aimed at improving the quality of public appointments. These reviews should cover topics such as recruitment and assessment techniques, and how appointees and boards can best be helped to be effective in their work.**
- 4.12. It is appropriate that significant appointments are afforded a greater degree of scrutiny than others. This scrutiny to be effective needs to be real-time throughout the appraisal process. Those participating in a process will always know whether it has been fair or not. At present, it is the Public Appointment Assessors who provide that internal scrutiny through chairing the panels that appoint chairmen. These Assessors often do valuable work and, for example, ministers have requested their involvement in a small number of competitions not regulated by the Commissioner. However, they are sometimes perceived as having a 'policing' function rather than contributing to the wider work of the panels on which they serve. I recommend that the specific role of Assessors should be abolished and that there should be a broader cadre of people involved in helping ensure assessment is fair and principles-based.
- 4.13. This will only work and lead to good outcomes, if high-quality independent-minded people can be found to serve on panels. The Commissioner should monitor this and not hesitate to intervene if there are signs that this is not happening.

- 4.14. **In the case of significant appointments, the independent element of the panel must contain a designated Senior Independent Panel Member who is knowledgeable about senior recruitment and familiar with and supportive of the Public Appointments Principles and the Governance Code. Departments and the Centre for Public Appointments should maintain up-to-date lists of people willing and able to undertake this role, which might for example, include departmental non-executive board members, former Public Appointments Assessors, or people of similar standing. These lists should not be seen as exclusive.**
- 4.15. **The panel composition, which should be notified to the Commissioner at the start of a competition, should identify the Senior Independent Panel Member. He or she should have specific responsibilities, set out in an appointment letter, to familiarise themselves with the Public Appointment Principles and associated Governance Code and to highlight any material breaches that occur during the process. This should include escalating the matter to the Commissioner or the responsible minister if necessary.**
- 4.16. Because public appointments are made by ministers in the course of their normal duties, it would be naïve to think that there is not sometimes a perceived political aspect to appointments, whatever the background of the ministers concerned. That is part of the workings of democracy. Society benefits from political activity and from having a wide range of people involved and it would be perverse to think that political activity is somehow a bar to public appointments. The key point however is that merit is the decisive factor and any political activity must be incidental to that.
- 4.17. **Political activity should not affect any judgment of merit nor be a bar to appointment or being a member of an Advisory Assessment Panel. It should be publicly disclosed however if a panel member, or a successful candidate, is employed by a political party, holds or has held a significant office in a party, has stood as a candidate for a party in an election or has made significant donations or loans to a party. Significant loans and donations are those of a size which need to be reported to the Electoral Commission. The key regulatory principle here is transparency.**
- 4.18. Strong principled governance frameworks often have attached to them a 'comply or explain' philosophy. Maintaining confidence in public appointments means that instances of explaining non-compliance with the Principles and Governance Code should be rare and always fully justified.
- 4.19. **There will be exceptional occasions where ministers may decide that a full appointments process is not appropriate or necessary, for example because of extraordinary time constraints or because there is such an exceptional candidate being appointed or re-appointed that**

**any process would be otiose. However, in such cases, there should always be an independent scrutiny before the appointment is announced, perhaps by the lead non-executive board member of the relevant department, to ensure that the process has been conducted with integrity. All such exceptional appointments should be notified to the Commissioner for Public Appointments who will no doubt intervene if there has been a flagrant breach of process. The reason for conducting an exceptional process should be made clear when the appointment is announced.**

- 4.20. There is such a volume of public appointments that it is entirely appropriate that a risk-based approach is taken to the control framework. But this shouldn't mean that individual appointments are not appropriately scrutinised and the process recorded. Such scrutiny should be done through departments' internal assurance processes and there seems no need to involve regularly an external auditing agency in this process unless the Commissioner feels that this is necessary, in particular cases, to maintain confidence in the system.
- 4.21. **At the conclusion of every public appointment in which ministers have had a material involvement, the relevant accounting officer or a senior representative should certify that the appointment has been made in accordance with the Public Appointments Principles. Proper details of the process followed should be kept and open to inspection at any time by the Commissioner for Public Appointments.**
- 4.22. **These individual certifications will be an important part of the accounting officer's public appointments annual assurance statement that should be provided to the Commissioner for Public Appointments. This assurance statement should set out details of appointments that a minister has signed off during the year, including the process followed, and certify that all the appointments have been made in accordance with the Public Appointments Principles. These statements should be capable of being audited by the Commissioner if necessary as this will help maintain public confidence in the process.**

## Appendix 1: Statistical Data

### Analysis of public appointments within OCPA's remit

The 2015 Order in Council lists 21 departments that sponsor nearly 300 national public bodies, 38 public offices and many regional and local bodies. The three main types of public body, over 400 organisations, which fall within OCPA's remit are:

- **Executive NDPBs** (these carry out executive, administrative, regulatory and/or commercial functions; eg museums, galleries, the environment agency)
- **Advisory NDPBs** (these provide expert advice to ministers, eg Low Pay Commission and the Committee on Standards in Public Life)
- **Independent Monitoring Boards** (these are local independent watchdogs attached to each prison establishment, immigration removal centre and holding room in England and Wales)
- **NHS trusts**

In addition, OCPA also regulates public appointments to:

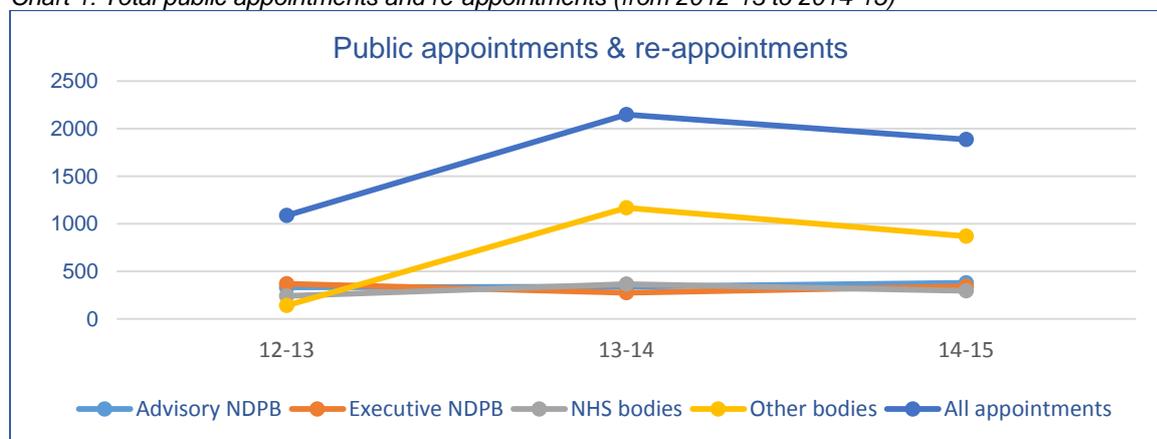
- some public corporations (eg the BBC)
- certain utility regulators (eg Ofwat)
- certain non-ministerial departments (eg OFSTED)
- national park authorities (one for each of the 15 national parks in the UK)
- conservation boards for areas of outstanding natural beauty (2 at present)
- community care councils in Wales<sup>12</sup>

### Analysis of appointments and reappointments

Until three years ago, the number of public appointments was steadily declining, reflecting the impact of public body reforms. The total of appointments and reappointments fell by two thirds from 3,862 in 2006-07 to 1,087 in 2012-13. It then rose to 1,888 in 2014-15 (see Chart 1 and Tables 1-3 below) but still less than half the number eight years previously.

This rise in numbers is largely the inclusion of local Independent Monitoring Boards to OCPA's remit, adding 600 appointments per year. Ministry of Justice ministers delegate these appointments, which can cover any young offenders or prison institution, rather than make them personally.

Chart 1: Total public appointments and re-appointments (from 2012-13 to 2014-15)



<sup>12</sup> [Public Appointments Order in Council 2015](#)

Table 1: Total public appointments (from 2012-13 to 2014-15)

Type of body	Chair			Member			Total		
	2012-13	2013-14	2014-15	2012-13	2013-14	2014-15	2012-13	2013-14	2014-15
Advisory NDPB	29	32	27	303	307	354	332	339	381
Executive NDPB	24	31	34	347	244	308	371	275	342
NHS bodies	39	43	43	204	325	252	243	368	295
Other bodies	20	28	17	121	1140	853	141	1168	870
<b>Total</b>	<b>112</b>	<b>134</b>	<b>121</b>	<b>975</b>	<b>2016</b>	<b>1767</b>	<b>1087</b>	<b>2150</b>	<b>1888</b>

Table 2: New appointments only (from 2012-13 to 2014-15)

Type of body	Chair			Member			Total		
	2012-13	2013-14	2014-15	2012-13	2013-14	2014-15	2012-13	2013-14	2014-15
Advisory NDPB	18	20	22	185	102	282	203	122	304
Executive NDPB	14	15	26	194	148	171	208	163	197
NHS bodies	20	23	18	107	190	151	127	213	169
Other bodies	13	21	10	54	604	327	67	625	337
<b>Total</b>	<b>65</b>	<b>79</b>	<b>76</b>	<b>540</b>	<b>1044</b>	<b>931</b>	<b>605</b>	<b>1123</b>	<b>1007</b>

Table 3: Re-appointments only (from 2012-13 to 2014-15)

Type of body	Chair			Member			Total		
	2012-13	2013-14	2014-15	2012-13	2013-14	2014-15	2012-13	2013-14	2014-15
Advisory NDPB	11	12	5	118	205	72	129	217	77
Executive NDPB	10	16	8	153	96	137	163	112	145
NHS bodies	19	20	25	97	135	101	116	155	126
Other bodies	7	7	7	67	536	526	74	543	533
<b>Total</b>	<b>47</b>	<b>55</b>	<b>45</b>	<b>435</b>	<b>972</b>	<b>836</b>	<b>482</b>	<b>1027</b>	<b>881</b>

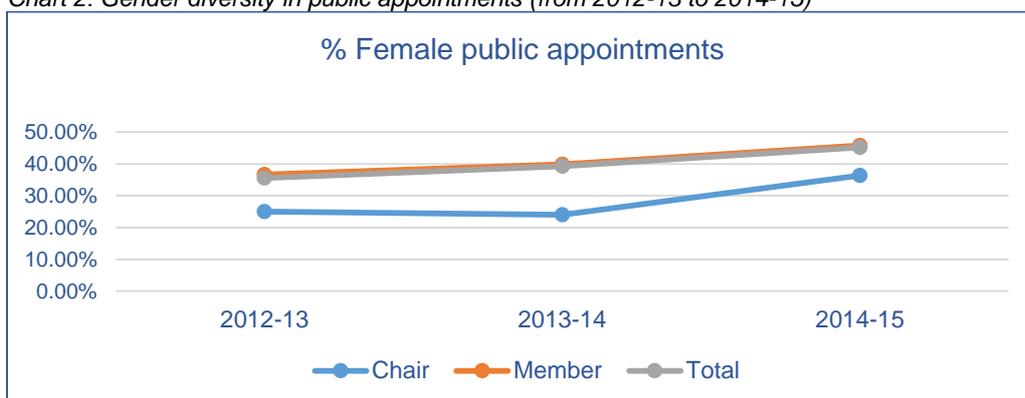
## Diversity

The statistics are taken from OCPA's annual report 2015 and annual statistical releases for 2013, 2014 and 2015. They have been compiled into the following charts and tables below to enable historical trends to be seen.

### Gender<sup>13</sup>

There has been a sharp increase in women being appointed over the last three years, pushing the proportion of public appointments that are women well above 40% in 2014-15 (see chart 2 and tables 4 to 6).

Chart 2: Gender diversity in public appointments (from 2012-13 to 2014-15)



<sup>13</sup> Gender diversity data are expressed as percentages where gender is known rather than as percentages of total appointments and reappointments

Table 4: Gender diversity of total appointments (from 2012-13 to 2014-15)

Female			
	2012-13	2013-14	2014-15
Chair	25.6%	24%	36.4%
Member	36.7%	39.9%	45.8%
<b>Total</b>	<b>35.6%</b>	<b>39.3%</b>	<b>45.2%</b>

Table 5: Gender diversity of appointments only (from 2012-13 to 2014-15)

% Female			
	2012-13	2013-14	2014-15
Chair	24.6%	24%	33.8%
Member	41.8%	42.4%	45.1%
<b>Total</b>	<b>39.9%</b>	<b>41.1%</b>	<b>44.3%</b>

Table 6: Gender diversity of re-appointments only (from 2012-13 to 2014-15)

% Female			
	2012-13	2013-14	2014-15
Chair	27.7%	24.1%	40.9%
Member	30.4%	38.1%	46.6%
<b>Total</b>	<b>30.1%</b>	<b>37.3%</b>	<b>46.3%</b>

### Black, Asian or Minority Ethnic (BAME)<sup>14</sup>

While 8% of chairs appointments were filled by Black, Asian or Minority Ethnic (BAME) candidates in 2014-15, up from 2% two years previously, this only represents seven appointments. It is also barely half the proportion of the country's population that is BAME (14%). The proportion of board roles filled by BAME candidates (7.8%) was slightly down on the previous year but still up overall on 2012-13 (see chart 3 and tables 7 to 9).

Chart 3: BAME diversity in public appointments (from 2012-13 to 2014-15)

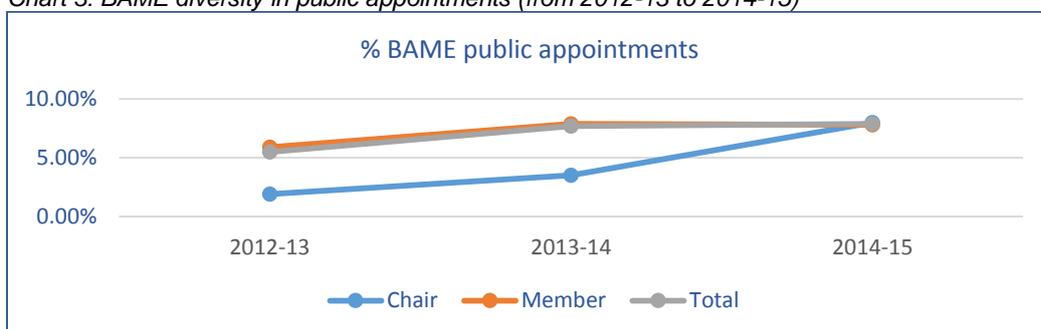


Table 7: BAME diversity of total appointments (from 2012-13 to 2014-15)

BAME			
	2012-13	2013-14	2014-15
Chair	1.9%	3.5%	8%
Member	5.9%	7.9%	7.8%
<b>Total</b>	<b>5.5%</b>	<b>7.7%</b>	<b>7.9%</b>

Table 8: BAME diversity of appointments only (from 2012-13 to 2014-15)

BAME			
	2012-13	2013-14	2014-15
Chair	1.6%	6.1%	9.9%
Member	6.4%	8.6%	8.9%
<b>Total</b>	<b>5.9%</b>	<b>8.4%</b>	<b>9.0%</b>

<sup>14</sup> Ethnicity diversity data are expressed as percentages where ethnicity is known rather than as percentages of total appointments and reappointments

Table 9: BAME diversity of re-appointments only (from 2012-13 to 2014-15)

BAME			
	2012-13	2013-14	2014-15
Chair	2.3%	0%	4.9%
Member	5.3%	7.3%	6.7%
<b>Total</b>	<b>5.0%</b>	<b>6.9%</b>	<b>6.6%</b>

### Declared disability<sup>15</sup>

Appointees with a declared disability, both as chairs and members of boards, were proportionately lower in 2014-15. At 4.6%, this was lower than the proportion of appointees declaring a disability in 2012-13 (5.3%). See chart 4 and tables 10 to 11)

Chart 4: Disability diversity in public appointments (from 2012-13 to 2014-15)

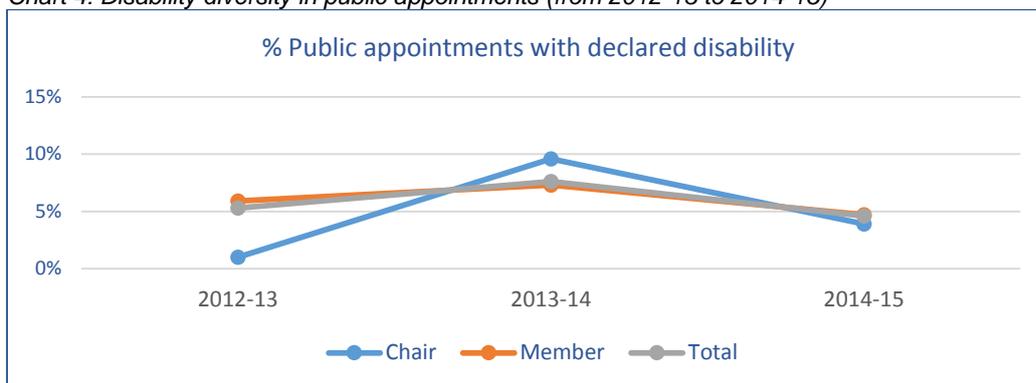


Table 10: Declared disability diversity of total appointments (from 2012-13 to 2014-15)

Declared disability			
	2012-13	2013-14	2014-15
Chair	1%	9.6%	3.9%
Member	5.9%	7.3%	4.7%
<b>Total</b>	<b>5.3%</b>	<b>7.6%</b>	<b>4.6%</b>

Table 11: Declared disability diversity of appointments only (from 2012-13 to 2014-15)

Declared disability			
	2012-13	2013-14	2014-15
Chair	1.7%	8%	3.1%
Member	5.2%	4.5%	5.1%
<b>Total</b>	<b>4.8%</b>	<b>4.9%</b>	<b>5.0%</b>

Table 12: Declared disability diversity of re-appointments only (from 2012-13 to 2014-15)

Declared disability			
	2012-13	2013-14	2014-15
Chair	0%	11.9%	5.3%
Member	6.7%	10.4%	4.1%
<b>Total</b>	<b>6.0%</b>	<b>10.6%</b>	<b>4.2%</b>

<sup>15</sup> Disability diversity data are expressed as percentages where disability is known rather than as percentages of total appointments and reappointments

## Appendix 2: The present process

Ministers and their departments are responsible for public appointments and for operating within the requirements of the Code. They must be able to demonstrate that their processes are open and fair, leading to appointments on merit. As a minimum this means that:

- appointments must be publicly advertised with public information about the selection process to be followed and the criteria against which candidates will be assessed
- the selection process must be objective and impartial with each candidate assessed against the same published criteria
- the final recommendation to ministers about who is appointable must be made on merit with candidates, drawn from a strong and diverse field, whose skills, experience and qualities are judged best to meet the needs of the public body in question

Ministers take the final selection decision from among those candidates assessed by the panel to be appointable to the role.

Provided these principles are satisfied there is wide discretion and flexibility to design a selection process, which is appropriate for, and proportionate to, the role being filled. Indeed the Code is explicit that there is no one 'right' approach which will suit every competition. The process requirements are, therefore, minimal:

- there must be a selection panel to oversee the appointment, assess the candidates impartially and advise the ministers which candidates are suitable for appointment
- the panel must be chaired by a Public Appointments Assessor for chair appointments or by a senior departmental official (or the chair of the public body concerned) for all other appointments
- the panel should include an independent member
- a panel report must be produced, signed by the panel chair, demonstrating how the outcome of the competition meets the original specification and certifying that the candidates whose names are being put to the minister for consideration all meet the requirements of the post
- candidates must declare any significant political activity undertaken in the last five years
- the appointment of a successful candidate must be publicised. Where the successful candidate has declared political activity, that must be made public at the same time

The Code is at its most specific about the role of ministers. Ministers must be asked to agree the selection process, selection criteria and advertising strategy and kept in touch with the process throughout. They can suggest potential candidates at the outset and comment on the skills, experience and expertise of those who have applied. They cannot sit on the panel or add or remove names from the long or short list.

At the end of the process they must be provided with a choice of candidates assessed by the selection panel to be appointable (unless there is only one such candidate). They may meet the candidates before making their choice. They do not have to appoint any of the candidates but in that case the competition will normally have to be rerun. They cannot appoint a candidate not assessed as appointable by the panel.

Further flexibility is provided by a number of specific exemptions where departments have the ability to appoint without following the Code in every respect. The Commissioner also has an overriding power to grant exemptions where it is justified by the public interest. These are usually used where there is an urgent business need or an unexpected resignation or illness.

Finally, the Code sets out a complaints procedure for individuals who believe a competition has not been conducted in compliance with the Code; and an annual process for monitoring compliance and capability.<sup>16</sup>

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<sup>16</sup> [Commissioner's evidence to the Public Appointments Review 2015](#)

## Appendix 3: Comparisons within the UK

	<b>England &amp; Wales and non-devolved appointments in Scotland and Northern Ireland</b>	<b>Appointments devolved to the Scottish Government</b>	<b>Appointments devolved to the Northern Ireland Executive</b>
<b>Length of code</b> <b>Approach of Code</b>	9 pages, last revised 2012.  Principles based code.  Focuses on 'essential requirements' for meeting 3 key principles of openness, fairness and merit.	20 pages, last revised 2013.  Focuses on ministers' responsibilities. Based on principles of merit, integrity and diversity & equality. 'Paramount that people have trust and confidence'.	44 pages, last revised 2015.  Detailed and prescriptive, based on principles of merit, diversity, equality, transparency & openness, independence, integrity, proportionality and respect.
<b>Responsibility for designing and delivering appointment processes</b>	Departments are responsible - processes should vary, be proportionate, and have ministerial input and agreement.	With ministers, who ensure Depts have processes for: - record keeping - providing information to the Commissioner - succession planning	Departments are responsible for ensuring compliance with the code- ministers inform processes at the beginning only.
<b>Role of ministers</b>	Minister must agree the selection process, may suggest candidates to be invited to apply and express views on candidates through the process.  Ministers appoint candidates rated above the line by the panel- they may ask for rankings on merit.	Ministers have more flexibility pre-longlisting and post-assessment but no involvement between these stages. Eg, ministers may ask to have candidates ranked on merit.  Ministers appoint based on ratings of candidates made by the panel, combined with their own judgement against 'fit and proper person' criteria.	Ministers agree selection criteria and whether they want appointable candidates ranked or unranked. They then do not get involved until after the assessment process.  Ministers make the appointment based on merit but also to ensure boards are reflective of communities.
<b>Summary of process requirements</b>	The appointment must be overseen by a panel which writes a report at the end of the process. The panel must be chaired by - a PAA for chair appointments, OR - a department official / chair of the public body for other appointments  The panel must include an independent member, to add an external perspective.	The process: - starts with public bodies' purpose and context, the needs of the appointment - is planned to ensure a diverse field apply - includes appropriate assessment techniques A representative of the Commissioner will be on panels for high profile posts. For other panels, ministers are encouraged to appoint an external member.	Selection criteria allow for non-traditional career paths; application forms must be clear and cater for different needs. Each appointment panel includes a department official (who chairs the panel), a rep from the public body and an Independent Assessor. Interview is most common assessment but other formats are permitted if they are code compliant.
<b>Compliance</b>	Permanent secretaries sign off departmental self-assessments. This information is audited externally each year.  The Commissioner may demand improvement plans and require PAAs to chair some non-chair panels.	Chair of each panel is responsible for compliance with the code and a system of audit is place. The Commissioner has assessors to support key panels in an advisory capacity and has power to intervene with appointments.	Permanent secretaries sign off departments' compliance statements each year. The commissioner may comment publicly on evidence of non-compliance and puts in place audit processes.

## Comparisons with judicial appointments

The Judicial Appointments Commission (JAC) is an executive Arms Length Body that selects candidates for judicial office in courts and tribunals in England and Wales, and for some tribunals whose jurisdiction extends to Scotland or Northern Ireland. Candidates for judicial office are selected on merit, through fair and open competition, from the widest range of eligible candidates.

The JAC seeks to maintain and strengthen judicial independence and make the appointments process clearer and more accountable. Its role in senior appointments is to convene a selection panel. The panel selects one candidate for each vacancy, providing there are sufficient numbers of selectable candidates available for each vacancy, and recommends that candidate for appointment to the Appropriate Authority (the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals). Most court appointments below High Court, and in tribunals those of First-tier and Upper Tribunal, are now made by a senior judge

The JAC quality assures different stages of the assessment process (eg sampling sift decisions and test papers, observing interviews). They also check the progress of candidates, ensuring fairness is maintained and policies are adhered to. Lessons learned are captured at the end of each appointment, informed by customer feedback and timescales. A drive from the Lord Chief Justice since the increased delegation of appointments in 2013 has reduced the overall time it takes to appoint a judge from an average of 30 weeks in 2012/12 to less than 20 weeks.

The Appropriate Authority can accept or reject a recommendation, or ask the Commission to reconsider it. If the Appropriate Authority rejects a recommendation or asks for reconsideration, they must provide written reasons to the JAC. Complaints are handled by the JAC but may be referred to the Judicial Appointments and Conduct Ombudsman if a candidate remains dissatisfied.

The JAC therefore operates a similar process to OCPA – based on principles of merit, openness and fairness, committed to diversity and overseen by a panel. However there are clearer routes of delegation for making appointments, clearer channels for handling disagreements and ministers are only presented with one appointable candidate.

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