



HM Treasury

The Treasury Committee's scrutiny of appointments: government response



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Presented to Parliament by
the Chancellor of the Exchequer
by Command of Her Majesty

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Government response to the Treasury Committee's scrutiny of appointments

Introduction

The Treasury Committee's report, *The Treasury Committee's scrutiny of appointments*, makes a series of recommendations on how the Committee should be involved in the appointments process for several posts at the Office of Tax Simplification (OTS), the Bank of England and the Financial Conduct Authority (FCA).

During the passage through the House of Commons of the Bank of England and Financial Services Bill, these issues were discussed in the context of appointments to the Chief Executive of the FCA, with the process for appointments to this post attracting considerable attention during debates on the Bill, both from members of the Treasury Committee and from other MPs. In response, at Report Stage on 19 April 2016, the government introduced an amendment to the process for appointing the Chief Executive of the FCA and announced an agreement between the Chancellor of the Exchequer and the Chair of the Treasury Committee on how it would conduct future appointments.

After noting the government's general approach to appointments, this response sets out the details of that amendment and agreement for the Chief Executive of the FCA. It then notes why the government believes it is not right to extend a similar arrangement to the Governor of the Bank of England or to the OTS, before responding to the remaining recommendations.

The Treasury Committee's scrutiny of appointments

Recommendation 1: The Office of Tax Simplification (OTS) has been put on a statutory basis. This is welcome. The independence of the Office of Tax Simplification's senior staff should be entrenched. Those nominated as the Chairman and Tax Director of the OTS should be available for pre-appointment hearings before this Committee. The legislation should ensure that such appointments, and any dismissals, should be made with the consent of the Treasury Committee. This will mirror the statutory requirements for appointments to the Budget Responsibility Committee of the Office for Budget Responsibility. It is crucial that the scope and limitations of that independence are fully understood by HM Treasury, the OTS, Parliament and the public.

Recommendation 2: This Committee agrees with its predecessor, and with the Parliamentary Commission on Banking Standards, that giving Parliament the effective veto over the appointment and dismissal of the Governor of the Bank of England would bolster his or her independence. The Bank of England Bill should be amended to reflect this.

Recommendation 4: In the last Parliament, the Treasury Committee recommended that there should be pre-appointment hearings for the Chief Executive of the FCA. We agree. The government should ensure that it nominates its preferred candidate for the current vacancy sufficiently in advance of the proposed start date of the Committee to enable this Committee to undertake a pre-appointment hearing. The independence of the FCA from interference from the executive is essential. That independence can and should be entrenched by a statutory veto on appointments and dismissals to the post of Chief Executive of the FCA.

General approach to appointments

The government believes that ministers must be solely responsible and accountable for appointments to executive posts unless there is a strong policy case for departing from this principle. The men and women who fill senior positions with significant policy-making power exercise responsibilities on behalf of government that impact large numbers of British people. For this executive authority to be wielded legitimately, voters must be able to identify clearly whom to hold to account for the selection of an appointee.

The government notes an important difference when one of the roles of an appointee's office is to help Parliament hold the government to account. For example, the Office for Budget Responsibility (OBR) has a duty to "examine and report on the sustainability of the public finances" partially to help Parliament hold the government to account for its fiscal policy decisions. It is therefore both right and necessary that the Treasury Committee has a strong statutory role in appointments to the OBR's Budget Responsibility Committee.

The government made this point to the Liaison Committee in 2012:

*"The government agrees that there are some posts where it is appropriate for Parliament to exercise a formal control over appointments. This is exceptional and where the remit is associated with the functions of Parliament. We agree with the Committee on appointments to the Office for Budget Responsibility and the Comptroller and Auditor General. We would also include the Parliamentary and Health Service Ombudsman."*¹

And in January, the Chancellor wrote to the Chair of the Treasury Committee:

*"The OBR was established to examine and report on the sustainability of public finances and, by doing this, to help Parliament hold the government to account for its fiscal policy decisions. As such, it has a unique model of dual accountability to government and Parliament."*²

The government does not believe the same considerations for the OBR apply for appointments to the OTS, Bank of England, or FCA and therefore disagrees that we should necessarily mirror the provisions for the OBR for appointments that do not exist at least partially to assist Parliament's scrutiny role.

Chief Executive of the FCA

During the passage through the House of Commons of the Bank of England and Financial Services Bill, the process for appointment to the Chief Executive of the FCA attracted considerable attention, both from members of the Treasury Committee and from other MPs. As a result of this debate, the government sought a means of bolstering Treasury Committee scrutiny of appointments to this post that would not dilute the government's accountability for the appointment. Following discussions with the Chair of the Treasury Committee, the government was able to make an amendment to the statutory provisions and announce an agreement to the House during Report Stage.

The government amendment ensures that the Treasury Committee will always have time to hold a hearing with an appointee to the post of Chief Executive of the FCA before he or she starts work.

It provides that no-one who is appointed as Chief Executive of the FCA may take up that appointment before they have appeared before the Treasury Committee or 3 months have passed. This gives the Committee time to call in the appointee and scrutinise the government's choice. Only once the Committee has questioned the appointee in relation to the appointment

¹ House of Commons Liaison Committee (2012), *Select Committees and Public Appointments: the Government's response*, 17

² Letter from the Chancellor of the Exchequer to the Chair of the Treasury Committee, 29 January 2016

may they start work. There is an exception to this if the appointment of a Chief Executive is made on an acting basis: for example where an appointment must be made urgently in response to a sudden vacancy.

The Chancellor and the Chair of the Treasury Committee have reached an agreement that further reinforces the Treasury Committee's scrutiny role. This is set out in a letter from the Chancellor to the Chair of the TSC that has been published on the TSC's website. This explained the agreement as follows:

"During the passage of the Bank of England and Financial Services Bill, we have considered at several occasions the role of the Treasury Select Committee (TSC) in scrutinising the appointment of the Chief Executive of the Financial Conduct Authority (FCA).

*This scrutiny is important and welcome. I will therefore ensure that appointments to the Chief Executive of the FCA are made in such a way to ensure the TSC is able to hold a hearing, after the appointment is announced but before it is formalised. Should the TSC recommend in its report that the appointment be put as a motion to the whole House, the government will make time for this motion and respect the decision of the House."*³

Across all roles, select committees provide important scrutiny, which the government welcomes. The government believes that the statutory amendment and non-statutory commitment outlined above represent the best means of reinforcing the Treasury Committee's important scrutiny role in relation to the appointment of the Chief Executive of the FCA.

Although not mentioned in the Treasury Committee's report, the Chancellor also agreed with the Chair of the Treasury Committee to seek, at the earliest opportunity, to alter the legislation governing appointments to the Chief Executive of the FCA to make the appointee subject to a fixed, renewable, 5-year term. Currently the statute governing appointments does not set a term length and this change will bring the appointment length into line with appointments to the Deputy Governors of the Bank of England. Andrew Bailey, who was recently appointed as the next Chief Executive of the FCA has been appointed for a fixed, renewable, 5-year term and the government intends for this statutory provision to apply first to his successor.

Other Posts

This bespoke arrangement for the Chief Executive of the FCA emerged from debates in the Bank of England and Financial Services Bill. As explained below, the government does not believe it should be extended to positions at the OTS or the Bank of England, for different reasons in each case. Nor does the Government believe this agreement sets a precedent for other appointments. The strength of the policy rationale for departing from the principle set out above, that ministers must be solely responsible and accountable for appointments to executive posts, will need to be considered on a case by case basis.

OTS

The role of the OTS means the arrangements for the Chief Executive of the FCA would not be proportionate. The role of the OTS is limited to providing advice to the Chancellor on the simplification of the tax system. Ministers then make the final decisions on tax policy, balancing the objectives of simplification, fairness and growth.

The government is clear that the independence of the OTS is critical to its success. That is why the government has strengthened the OTS Board and introduced legislation that will put it on a statutory footing.

³ Letter from the Chancellor of the Exchequer to the Chair of the Treasury Committee, 19 April 2016

This legislation will reinforce the ability of the OTS to operate independently, allowing it to advise the Chancellor on the simplification of the tax system as it considers appropriate.

The government believes that these measures, as well as the TSC's right to hold a pre-commencement hearing for the OTS's Chairman and Tax Director, are sufficient to achieve the independence proportionate to the function of the OTS.

Governor of the Bank of England

The appointments process for the Governor of the Bank of England means the arrangements for the Chief Executive of the FCA would not be appropriate. Unlike the Chief Executive of the FCA, the Governor and Deputy Governors of the Bank are appointed by the Crown, on the advice of the Chancellor and the Prime Minister.

Under the newly agreed arrangements for the appointment of the Chief Executive of the FCA, the Treasury must announce the appointment but not confirm it until the TSC has held a hearing and, if recommended by the TSC, it has been considered the whole House of Commons. Such an arrangement would clearly not be appropriate where the appointment is made by the Crown, rather than by the Treasury.

Recommendation 3: The Bank of England and Financial Services Bill will create a Prudential Regulation Committee (PRC). Should the Bill be enacted, it is the intention of this Committee to hold pre-appointment hearings with those who will sit on the PRC, in line with the current arrangements for those who sit on the Monetary Policy Committee and the Financial Policy Committee. The Treasury Committee will use the same criteria of personal independence and professional competence to assess appointments to the PRC as for the other policy committees of the Bank of England.

Recommendation 5: The Committee has acted on the Treasury's recommendation to conduct pre-commencement hearings with the Chairman of the FCA's Regulatory Decisions Committee and intends to continue this practice. It also intends to conduct pre-appointment hearings for the Chairman of the PRA's Decision-Making Committee, if and when it is constituted.

For the avoidance of doubt, the government notes a difference between pre-appointment and pre-commencement hearings and believes that the same, pre-commencement, basis should continue to apply to the MPC and FPC. The government welcomes the scrutiny this provides.

The government would welcome the extension of pre-commencement hearings to members of the new PRC. Similarly the government would welcome the extension of pre-commencement hearings to PRA decision-makers. The government recommended this in its 2014 *Review of enforcement decision-making at the financial services regulators*.⁴

Recommendation 6: It has been the practice of Treasury Committees, in former Parliaments, to consider two criteria when considering appointments to the Monetary Policy Committee, the Financial Policy Committee, the Budget Responsibility Committee, the Office of Tax Simplification and the FCA's Regulatory Decisions Committee. These criteria are personal independence and professional competence. The Committee will continue with that practice for all appointments to these bodies during this Parliament.

Recommendation 7: In considering the appointment of the Governor of the Bank of England, the additional executive responsibilities of the position were reflected in the TSC's detailed cross-examination and more extensive reporting, two months prior to taking up post. Governors of the Bank of England and those who hold executive functions within an organisation, may also

⁴ HM Treasury (2014), *Review of enforcement decision-making at the financial services regulators*, 5

expect additional commentary, along with the Committee's consideration of their personal independence and professional competence.

Recommendation 8: Consideration by the Treasury Committee of appointments to the Chairman of the Court of the Bank of England or to the Chairman of the Financial Conduct Authority will be more wide-ranging, and the Committee may decide to provide a more detailed conclusion in its Reports on appointments to these posts.

Recommendation 9: Treasury Committees, in former Parliaments, have found it useful, at times, to provide additional commentary on both the appointees and the process of appointment in their Reports. To enhance the transparency of the Committee's work, the Committee has concluded that there may be merit in expanding such commentary.

Pre-commencement hearings provide a valuable opportunity for Parliamentary scrutiny of appointees to these important roles. The government would therefore welcome the continuation of pre-commencement hearings for appointees to the MPC, FPC, OTS, the FCA's Regulatory Decisions Committee, the Governor of the Bank, and the Chairs of Court and the FCA.

Recommendation 10: The Treasury Committee will be clear about whether an appointment has its approval. Where the questioning of the Committee raises concerns that need to be addressed by an appointee, these will be specified in the Report of the Committee on that appointment.

Recommendation 11: The Committee will undertake to provide its approval (or not) of an appointment by publishing its Report as soon as reasonably possible after a hearing. This may mean a longer interval of time between the hearing and notification of the Committee's decision.

Recommendation 12: Should the Treasury Committee disagree with any putative appointment, and should the person making the appointment, whether the Chancellor or another, not be swayed by its disapproval, it may refer its Report on that appointment for debate by the whole House, may call the Chancellor before the Committee for an explanation of his decision, or both.

The Chancellor and the Chair of the Treasury Committee have agreed a process for the appointment of the Chief Executive of the FCA, which includes a commitment by the government, should the TSC recommend in its report that the appointment be put as a motion to the whole House, to make time for this motion and respect the decision of the House.

As explained above, the government does not believe it would be appropriate to extend similar arrangements to the OTS or to the Governor of the Bank of England.

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