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**Committee on  
Standards in  
Public Life**

**7 April 2016**

**PUBLIC ADMINISTRATION AND CONSTITUTIONAL AFFAIRS SELECT  
COMMITTEE (PACAC) INQUIRY INTO BETTER PUBLIC APPOINTMENTS:  
REVIEW OF THE PUBLIC APPOINTMENTS PROCESS (THE GRIMSTONE  
REVIEW)**

**SUBMISSION OF EVIDENCE BY THE COMMITTEE ON STANDARDS IN  
PUBLIC LIFE**

**Introduction**

This paper sets out the evidence from the Committee on Standards in Public Life to the current PACAC Inquiry into the Grimstone Review of the public appointments process.<sup>1</sup>

The Committee welcomes Sir Gerry Grimstone's statement in the introduction to his Review that the Nolan Principles, which were first set out in 1995, have stood the test of time and are as equally applicable now as they were twenty years ago. The Principles of Selflessness, Objectivity, Integrity, Accountability, Openness, Honesty and Leadership remain the basis of the ethical standards expected of public office holders and continue as key criteria for assessing the quality of standards in public life. The appointment of individuals on merit to lead public bodies is undoubtedly a vital part of public life.

We also welcome the proposals in Sir Gerry's report to improve the transparency of the public appointment process and the intention to ensure that those appointed are from a range of backgrounds and representative of society.

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<sup>1</sup> The background to the Committee is set out at Annex A.

Responsibility for the final decision on any public appointment must remain with Ministers, whether or not this is laid down in statute. (We note that there may be some exceptions for example where institutions are governed by Royal Charter and where an appointment process may be explicitly laid down.)<sup>2</sup> Sir Gerry is right to highlight the importance of Ministers being involved early on in the recruitment process, to agree the job description, its remuneration and the profile or person specification for the post; and to confirm that all appointments should now fall within the regime ‘unless the appointments are clearly transient or have no formal accountability responsibilities’.

The Committee was pleased to see this clearly stated in the Review and is grateful to the Minister for the Cabinet Office for the Government’s Response to the Review. We particularly welcome the Government’s intention to seek further views and consult on the Code of Governance, as the quality of the Code will be vital in ensuring the success of the new system.

The Committee is uneasy however, about the potential cumulative effect of the changes proposed in the Grimstone review. In 1995 the Committee, then chaired by Lord Nolan, set out the broad structure of the public appointment process as it stands today. He recommended that Ministers should retain the final choice over whom to appoint, but recommended independent ‘checks and balances’ on Ministers’ ‘considerable powers of patronage’.<sup>3</sup>

Having considered the Review, the Committee fears that taken together, the changes proposed may remove too many of the checks and balances on Ministerial powers in relation to the public appointments process.<sup>4</sup> Our concerns are greater where the public appointment is to a sensitive or high profile organisation and in particular appointments to regulatory bodies. One of the emerging themes of the Committee’s current review of ethical standards for regulatory bodies is perceptions of excessive ministerial involvement across a number of departments in the appointment of chairs and members of such

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<sup>2</sup> A Royal Charter is a charter of incorporation which confers independent legal personality on a body and defines its objectives, constitution and powers to govern its own affairs.

<sup>3</sup> There have been a number of revisions to the Commissioner’s Code of Practice over the years, the last being Sir David Normington’s review in 2012 which simplified much of the appointment process and reduced the [Code of Practice](#) significantly.

<sup>4</sup> The Committee submitted evidence to Sir Gerry’s review in 2015; the Review’s Secretariat presented their initial findings to the Committee in November 2015; the Chair and a committee member met with Sir Gerry Grimstone on 1 December 2015; and the Committee and the Government’s response were discussed at the Committee’s full meeting in March this year.

bodies. This is seen as a threat to the vital independence of regulators and their integrity. The Committee will be elaborating on these aspects in its report to the Prime Minister later this year.

We fear some of the Grimstone proposals (including the possibility that Ministers may appoint individuals not considered appointable by the appointment panel), may undermine the aims of the Review with regard to widening the appointment base, by deterring a more diverse range of candidates applying from the outset. The proposals may also have the unintended consequence of offering limited protection for Ministers who wish to demonstrate they have made an appointment solely based on merit.

The Committee feels that the cumulative effect of the proposals is to limit independent scrutiny of the system. We strongly suggest therefore that there needs to be a mechanism to address any concerns that an appointment process has strayed from the principles of a merit-based system. One answer might be around enabling the Public Administration and Constitutional Affairs Select Committee (PACAC) – perhaps after an expression of concern from the Commissioner of Public Appointments (CPA) or the independent member of an appointment panel - to review an appointment process (not the suitability of a candidate) in exceptional circumstances. It is not our intention that this option would need to be used regularly or often, but only in exceptional circumstances as a final check when necessary. We explore options further in our submission.

## **1. How significant are the changes proposed to the appointments process by the Grimstone Review?**

Sir Gerry Grimstone has confirmed the Principles of Public Life should continue to form the cornerstone of the public appointments process; that public appointments should continue to be made on merit; and there should be an independent element to the appointment panels.

The Committee is uneasy, however, about the potential cumulative effect of the individual recommendations. The Review recommends that the Government, instead of the CPA, should write the Code of Practice; that Ministers (not the CPA as is currently the case) may decide whether to run an appointment process at all or appoint without one; that Ministers should approve panel members and appoint 'Senior Independent Panel Members'; that Ministers may put names forward for interview; and may choose to appoint someone who has not been assessed as appointable by the panel.<sup>5</sup>

The Committee fully agrees, 'ultimate responsibility for appointments should remain with Ministers'. For those public bodies which have a statutory foundation, the relevant statute usually provides that the 'Secretary of State shall appoint'. However, in all cases, there needs to be sufficient visible, independent scrutiny to safeguard the propriety of the process and provide public assurance that appointments are not made on the basis of personal or political patronage. There is a clear risk that the practical application of Sir Gerry's proposals when taken together may dilute the checks and balances of the system, particularly when considered alongside the proposed reduction of the role and powers of the CPA.

Sir Gerry states, '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'. We fully agree on the need for a proportionate and principles-based approach and would not condone a tick-box exercise, but the Committee is clear that principles do need to be supplemented with guidance and adequate training to be effective in practice. Consistency of treatment of applicants across departments is essential if the appointments process is not to be open to unnecessary challenges which could bring the system into disrepute.

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<sup>5</sup> Currently for senior (chair) competitions, the panel is chaired by an independent Public Appointments Assessor (PAA) appointed by the CPA, and Ministers and the PAA jointly approve the panel membership.

Whilst the Committee welcomes the Review's intention to remove delays and speed up the appointment process, we are concerned about delays that may occur both before and particularly after a panel has met, when decisions await final approval by Ministers. Such delays can deter good quality candidates from applying to posts, as would the sense that Ministers have freedom to appoint whom they wish.

## **2. How would the recommendations of Sir Gerry Grimstone's review serve to undermine the post-Nolan appointments process?**

Nolan's key recommendations with regard to appointments were that:

- appointments should be made on the basis of merit;
- responsibility for appointments should remain with Ministers advised by committees which include independent members;
- a Public Appointments Commissioner should be appointed to regulate, monitor and report on the process; and
- the process should be open and departments should have to justify any departures from best practice. Job specifications should be published and a wide range of candidates should be sought. The suitability of each candidate should be assessed by an advisory committee.<sup>6</sup>

The Committee welcomes Sir Gerry's confirmation that these remain the cornerstone of the public appointments process. Our concern, as noted above, is that application of some of the proposals could, in practice and when taken together, tilt the balance and result in a system which is no longer seen to embrace a merit-based appointment process, with a consequent loss of public confidence.

A key concern for the Committee is that there is a real risk under the new system that Ministers might not be able to demonstrate at the end of an appointment process that they had acted with integrity.

## **3. Does the Grimstone review provide adequate safeguards to prevent Ministerial patronage in public appointments?**

## **4. Does the Grimstone review provide adequate safeguards to ensure that public appointments are still made independently and on merit?**

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<sup>6</sup> [First Report of the Committee on Standards in Public Life](#)

Public appointments are important. They cover all aspects of public life and have responsibility for significant public expenditure. Candidates and the public therefore need to know that people appointed to lead these bodies are capable, that they are properly and independently assessed on their merits, and that the appointment process is fair.

Currently, Ministers announcing important or politically-sensitive appointments (such as the posts of Information Commissioner or BBC Trustees) may refer to the fact that the appointment has been carried out in line with the Commissioner's Code of Practice.<sup>7</sup> The Committee believes this offers an important protection for Ministers against allegations of cronyism or patronage. This protection will be removed if, as is proposed in the review, responsibility for developing the Code is transferred from the Commissioner to the Government.

The Committee fears there is a real risk that the cumulative effect of the Review's proposals might result in a public perception that there has been a drift to a system with heightened political patronage.

Under the new system, the Committee fears it would not be easy for Ministers to demonstrate at the end of the process that they had acted in accordance with the principles of a fair and independent system, that they had acted with integrity and appointed on merit. A system where the regulator has reduced powers and in which Ministers:

- set the rules by drawing up the Governance Code;
- decide whether or not to run an appointment process without referral to the CPA;
- determine the membership of appointment panels, including the independent member;
- include on such panels an official acting as the Minister's representative; and
- may interview and appoint a name marked 'below the line' by the panel,

could all add up to a public perception of a system which was being operated under increased political patronage. It could also run counter to the intentions to increase transparency and diversity.

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<sup>7</sup> <http://www.theguardian.com/society/2016/apr/01/nicky-morgan-under-fire-for-choosing-city-lawyer-to-head-equality-body>

The Committee believes it is important - both for candidates and the integrity of Ministers - to demonstrate that the process has been properly followed and that there is a need now to explore ways as to how best shed public light, when needed, on a potentially 'closed' appointments system.

One way to help inspire public confidence in the process, and to allow Ministers to demonstrate they had acted with integrity, might be to enable PACAC to review an appointment process on occasions when there may be grounds for concern. We are not suggesting that PACAC should become involved in pre-appointment hearings which are the province of departmental Select Committees of the House of Commons and enable them to take evidence from a Minister's preferred candidate for key public appointments, but that PACAC might have the power to review the appointment process.<sup>8</sup> The existence of such a power may have the further advantage of deterring undesirable conduct.

Possible options are that the CPA or the independent member of the panel might flag up any concerns to PACAC about a particular appointment process. In line with their regulatory functions, the CPA might be able to ask for the appointment papers for a particular process, or might be routinely given the papers for all Chair or 'significant' appointments for example. If the CPA remained concerned after examining the papers, the Commissioner might then flag their concerns to PACAC which would then be able to review the process, ideally before the final stages and before a candidate had been identified. We would like to emphasise we are not suggesting that such reviews would need to happen often or regularly, but the Committee is strongly of the opinion that there should be a mechanism along these lines that provides the opportunity for a final check on the appointment process when necessary and that options for such a mechanism should be explored.

##### **5. To what extent is the Grimstone review right that there are some appointments which are not significant enough to require the full appointment process?**

The Review is silent on the criteria to identify 'less significant' appointments and transparency will be essential if the proposed approach is adopted.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/410932/Guidance\\_publication.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/410932/Guidance_publication.pdf)

**6. How far should the appointment procedure laid out in Grimstone and Nolan be relaxed, as Grimstone suggests, in exceptional circumstances?**

**7. What are the exceptional circumstances that should allow the procedure to be expedited?**

The Committee agrees there needs to be, as now, some flexibility in the process, but is strongly of the view that all appointments should be made within an independent, merit-based system.

Sir Gerry states in his Review that 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'.

The Committee agrees that this may sometimes be the case and in such cases, there should always be an independent scrutiny before an appointment is announced and that all such exceptional appointments should be agreed with the CPA. The reason for conducting an exceptional process should be made clear and publicly available when the appointment is announced.

The reasons for any departure from the process should always be made clear and placed in the public domain at the time the appointment is announced.

**8. How does the Grimstone review's recommendations change the nature of the role of Public Appointments Commissioner?**

Lord Nolan's recommendation was that appointments should be subject to the overriding principle of merit and an independent Commissioner should set standards and monitor compliance. The CPA should provide public assurance that those who are appointed to public bodies are appointed fairly, on merit and are capable of doing the job.

The Committee fears that the proposed changes may mean a dilution of the CPA's role with a shift towards departments taking responsibility for monitoring and providing assurance that the proper process has been followed. As we understand it, under the new system, the Commissioner will no longer set the rules for the public appointment process through the Code of Practice as this will in future be determined by Government.



The Committee welcomes the Government's intention to seek further views on the new Governance Code. The quality of the Code will be critical to the success of the new public appointments system and we look forward to the Government's consultation on the Code.

The Committee is concerned that it will be difficult for the CPA to provide independent assurance that departments are complying with the Principles and Governance Code if the CPA is only able to rely on information provided by the departments themselves i.e. it seems that there will be limited regular independent audit of processes followed by departments. This may well undermine public confidence in the process.

**9. Does the Grimstone review create additional risks to the public reputation of the appointments process?**

There are such risks and the role of the CPA and the behaviour and integrity of Ministers will be key in ensuring that the combined effect of the proposed changes does not endanger the public reputation of the appointments process going forward. Ministers will have a responsibility to adhere to the Principles and ensure that they do not drift towards personal and political patronage in a system where the checks and balances have arguably shifted in their favour.

The Committee believes that it will be vitally important for the public reputation of the appointments process that the person appointed to the role of CPA ensures the integrity of the post and takes a strong lead in setting high standards and monitoring the process. Transparency will be crucial in maintaining the public reputation of the process and the CPA will need to be a powerful advocate for merit-based appointments and be willing to challenge Ministers as well as work well alongside them.

The Committee intends to monitor the impact of the new system.

## Annex A

### Committee on Standards in Public Life: Background

The Committee on Standards in Public Life is an advisory Non-Departmental Public Body (NDPB). The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference:

“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life”.

The Principles of Selflessness, Objectivity, Integrity, Accountability, Openness, Honesty and Leadership remain the basis of the ethical standards expected of public office holders and continue as key criteria for assessing the quality of public life.

The Committee’s terms of reference were updated in 2013: “...the Committee’s remit to examine ‘standards of conduct of all holders of public office’ [encompasses] all those involved in the delivery of public services, not solely those appointed or elected to public office” (Hansard (HC) 5 February 2013, col. 7WS).

The Committee’s terms of reference were further clarified in a House of Lords written Parliamentary Question on 28th February 2013 to explain that the Committee’s remit means it “can examine issues relating to the ethical standards of the delivery of public services by private and voluntary sector organisations, paid for by public funds, even where those delivering the services have not been appointed or elected to public office” (Hansard Column WA347).

The Committee’s current membership is:

Lord Bew (Chair)  
Sheila Drew Smith OBE  
Patricia Moberly  
Monisha Shah  
Richard Thomas CBE

Lord Alderdice  
Dame Margaret Beckett DBE MP  
Dame Angela Watkinson DBE MP