

**PUBLIC ADMINISTRATION AND CONSTITUTIONAL AFFAIRS SELECT COMMITTEE
PRE-APPOINTMENT HEARINGS INQUIRY**

WRITTEN EVIDENCE FROM THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

EXECUTIVE SUMMARY

- **The Committee on Standards in Public Life has a long-standing interest in the public appointments process. We remain of the view that the process must be based on the overriding principle of appointment on merit.**
- **We affirm the importance of pre-appointment hearings in providing an independent check on the outcome of the appointment process; but such hearings should not be seen as a direct substitute for the role of the Commissioner for Public Appointments, who provides a check on its process.**
- **The Committee accepts the ultimate right of Ministers to confirm an appointment against a Select Committee recommendation.**
- **When Ministers confirm an appointment against a Select Committee recommendation, Ministers should provide for proper accountability to Parliament, providing to Select Committees the reasons for their decision, and responses to specific questions and objections that they raise.**
- **Clear and unambiguous conventions are needed surrounding Ministers confirming public appointments against Select Committee advice. Even where Select Committees and Ministers disagree on individual cases, they should not disagree in relation to the process.**
- **The Committee stands by its recommendation in *Striking the Balance (2016)* that “each government department should publish a list of the appointments which are subject to pre-appointment scrutiny hearings and the justification for those decisions”¹. The government should, in consultation with the Commissioner for Public Appointments, publicly give reasons for making a particular post subject to a pre-appointment hearing, and also be prepared to justify why it has not done so in any particular case.**
- **Measures to promote diversity in public appointments are needed primarily at the beginning of the appointments process. Any extension of pre-appointment hearings should ensure that there is no negative impact on diversity.**

¹<https://www.gov.uk/government/publications/striking-the-balance-upholding-the-7-principles-in-regulation>

The Seven Principles of Public Life

The Principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office 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.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

FULL SUBMISSION

Introduction

1. The Committee on Standards in Public Life (“the Committee”) has a long-standing interest in the public appointments process. The Committee’s first report, *Standards in Public Life (1995)*, considered the public appointments system and recommended, among other measures, the appointment of an independent Commissioner for Public Appointments. The Committee revisited issues relating to public appointments in its fourth report, *Review of Standards of Conduct in Executive NDPBs, NHS Trusts and Local Public Spending Bodies (1997)*, and its sixth report, *Reinforcing Standards (2000)*. The Committee’s report on upholding the Seven Principles of Public Life in regulation, *Striking the Balance (2016)* considered the issue of pre-appointment hearings for appointments to regulatory bodies.
2. The Committee remains of the view first put forward by the original Nolan Committee, and reinforced in its public statements since, that appointment on merit must be the overriding principle of the public appointments system. Any role given to pre-appointment hearings must therefore uphold, protect, and contribute to a system based on appointment on merit.
3. The Committee affirms the importance of pre-appointment hearings for senior positions in order for Ministers to be held effectively to account by Parliament for public appointments, and as an independent check on the appointments process to ensure that it is based on merit.

What are the implications of the weakening of the formal powers of the Commissioner of Public Appointments (CPA) following the Grimstone Review for the purposes and practices of pre-appointment hearings?

4. The Committee affirms the importance of pre-appointment hearings in providing an independent check on the public appointments process in the case of the most senior appointments.
5. Nevertheless, strengthening the procedures and conventions surrounding pre-appointment hearings should not be seen as a replacement for the previous powers of the Commissioner for Public Appointments (CPA) or as a means of filling any potential gaps left by the 2016 reforms to the CPA. Effective checks are needed both on the process (by the CPA) and on the outcome (by pre-appointment hearings).

The purpose of pre-appointment hearings

6. Considering the purpose of pre-appointment hearings more broadly, the Liaison Committee defined the purpose of pre-appointment hearings in 2012 as:
 - a. Scrutinising the quality of ministerial decision making;

- b. Providing public reassurance, in addition to the processes of the Office for the Commissioner of Public Appointments, that those appointed to key public offices have been selected on merit;
 - c. Enhancing appointee's legitimacy in undertaking their function; and
 - d. Providing public evidence of the independence of mind of the candidate.
7. Given the Committee's commitment to the principle of appointment on merit, and the need therefore for pre-appointment hearings to safeguard and protect the principle of appointment on merit, we suggest that the first two functions should be considered as the primary purpose of pre-appointment hearings. The second two functions are welcome outcomes, and benefit the public appointments process as a whole, but should not be considered to be the main purpose of pre-appointment hearings; and we would add that such hearings can provide evidence of the merit of the candidate in general, not just their independence of mind.
 8. We also would note that pre-appointment hearings provide a check on the merit of a candidate by incentivising Ministers only to put forward candidates likely to withstand Select Committee scrutiny.
 9. Recommendations by Select Committees against an appointment should not therefore be based - and we have seen no evidence that they are - on the preference of the committee for a particular sort of candidate, but rather if the candidate does not have sufficient merit in relation to the role, including evidence that they are unable to uphold the Seven Principles of Public Life; or on any indication that the process as a whole has failed to meet the requirement of appointment on merit. This principle is crucial to promoting greater diversity in public appointments.
 10. The Committee would add to the list of functions of pre-appointment hearings that such hearings can effectively test the merit of a candidate in one specific regard: namely whether the candidate can withstand public and parliamentary scrutiny. Cabinet Office guidance suggests at least one aspect of pre-appointment hearings is to test whether a candidate is able to withstand public and parliamentary scrutiny.² Recent reports following pre-appointment hearings have also specifically referred to this function.³

Whether Parliamentary procedure should be strengthened to ensure that prior to confirming an appointment despite a negative Committee report that Ministers properly consider the Committee's recommendation and account to Parliament for their decision to set it aside?

11. The Committee is of the view that when Ministers disagree on individual cases, they should not disagree on the process. There should be clarity about the expectations on both sides.

² Cabinet Office Guidance: pre-appointment scrutiny by House of Commons Select Committees, para 12

³ Digital, Culture, Media and Sports Committee, 3rd Report, *Appointment of the Chair of the Charity Commission*, HC 509

12. Disagreement between Select Committees and Ministers over the processes and conventions surrounding pre-appointment hearings does not aid effective scrutiny, and is also unfair to candidates themselves.
13. Current Cabinet Office guidance states that if a Minister wishes to proceed with a candidate against the advice of a Select Committee, they should respond to the committee explaining the reason(s) why.⁴
14. There is no suggestion under the Governance Code or existing guidance that it is improper for Ministers to confirm an appointment against a Select Committee recommendation.
15. The Committee accepts the right of Ministers to confirm an appointment against a Select Committee recommendation. As we stated in our submission to this committee's inquiry into the Grimstone Review, "The Committee fully agrees, 'ultimate responsibility for appointments should remain with Ministers'".⁵ As long as public appointments remain Ministerial decisions, then for Ministers to be accountable to Parliament cannot require a Select Committee veto on those decisions. Accountability as defined in the Seven Principles of Public Life necessitates submission to scrutiny: it is characterised by providing reasons for making a decision and responding to questions and objections relating to that decision. It is properly the decision of the Minister as to whether to proceed given the judgment of the Select Committee.
16. If Ministers were to confirm appointments against Select Committee recommendations without providing sufficient reasons, these might be considered grounds for a more robust convention, such as a debate or resolution taken on the floor of the House. The Committee sympathises with this concern, given that accountability for Ministerial appointments ought primarily to involve Ministers offering reasons for their decision and responding to objections.
17. However, it may be possible to address this concern within the present system. For example, it would be possible for the present convention to be clarified so that Ministers providing reasons as to why they are making an appointment against the recommendation of a Select Committee must respond to each point raised individually, and, for each point, must provide reasons either (a) why they disagree with the Committee's assessment or are (b) content to proceed despite the Committee's assessment.

⁴ Cabinet Office Guidance: pre-appointment scrutiny by House of Commons Select Committees, para 6

⁵ Committee on Standards in Public Life written evidence to Public Administration and Constitutional Affairs Select Committee inquiry into Better Public Appointments: A review of the public appointments process (the Grimstone Review)

18. The Committee accepts that a short debate on the floor of the House, arising on a motion in the name either of the Minister concerned or the chair of the Select Committee, would give a more substantial opportunity both for a Minister to provide the reasons for which they are minded to confirm an appointment and for Parliament to probe the cogency of those reasons. We note that Urgent Questions have recently been used in order to hold Ministers to account for an appointment when Parliament has had a concern over the process, even when no pre-appointment hearing has taken place.⁶ Given the existing means of holding a Minister to account on the floor of the House, we would suggest that moving to a debate or resolution convention would only be necessary were Select Committees to find that, following clarification of the existing convention, Ministers were not responding adequately to Select Committee scrutiny.
19. Nevertheless, we reiterate that what is most needed are clear, unambiguous conventions, such that Select Committees and Ministers both know what is expected of each other in the case of a Minister confirming an appointment against the recommendation of a Select Committee.

Parliamentary 'veto' over appointments

20. Cases where Select Committees, or the House of Commons as a whole, are given a formal veto or effective veto, differ importantly in kind from other public appointments subject to a pre-appointment hearing.
21. The House of Commons is treated as an 'equal partner' with the Minister in the appointment process, for, most notably, the Comptroller and Auditor General, but is also afforded a veto over the appointment of the Parliamentary and Health Service Ombudsman, the Chair and independent members of the Office of Budget Responsibility, and (effectively) the Information Commissioner and the Chief Executive of the Financial Conduct Authority. The Liaison Committee concluded in their 2012 report that this formal or effective veto should only exist for "posts where the remit is associated with the functions of Parliament or to holding the Executive to account as a constitutional proxy for Parliament".⁷
22. In these cases, Parliament is not so much holding Ministers to account for decisions as jointly making decisions with Ministers. During these appointments processes, the House of Commons is not primarily *guarding* the Seven Principles of Public Life and the principle of appointment on merit (which underpin the Governance Code) but is itself *subject* to them in making a decision on an appointment. The process for these cases cannot therefore be taken as a blueprint or aspiration for other forms of pre-appointment scrutiny, since, as the Liaison Committee concluded, the appointments differ in kind.

⁶ For example, Hansard HC Deb 8 January 2018, Vol 634, Col 40

⁷ House of Commons Liaison Committee, *Select Committees and Public Appointments*, HC 1230 (July 2011)

23. In the case of the Treasury Select Committee veto on the appointment of the Chief Executive of the Financial Conduct Authority, both the Treasury Select Committee's report on pre-appointment scrutiny, and the government's response, made appeals to the independence of the post and the post-holder.⁸ However, the vast majority of public appointments subject to pre-appointment hearings are for an independent chair of an importantly independent body, which could in theory justify a Select Committee veto on the grounds offered by the Treasury Select Committee.
24. The Committee believes that the Liaison Committee were correct in their conclusion that an effective veto, whether by a Select Committee or by the House of Commons as a whole, is only required where the post has a remit importantly associated with the functions of Parliament, or where the post is acting as a constitutional proxy for Parliamentary scrutiny or accountability; and further believes that this convention should now be confirmed and reinforced. This would not, however, preclude a department and a Select Committee mutually agreeing an effective veto over a particular post if they wished to do so. However, they should publish an explanation and reasoning for such a decision.

Whether the list of appointments subject to pre-appointment hearings should be updated or expanded?

25. The Committee recommended in *Striking the Balance (2016)* that "each government department should publish a list of the appointments which are subject to pre-appointment scrutiny hearings and the justification for those decisions", noting a lack of clarity as to why some posts are subject to pre-appointment hearings and others not, and that the published list did not accurately reflect Select Committee practice.⁹
26. The Committee stands by its previous recommendation. The principles of openness and accountability apply not just to decisions on individual public appointments following a pre-appointment hearing, but also to the decision to make an appointment subject to a pre-appointment hearing in the first place.
27. The Committee suggests that the Cabinet Office should regularly update the list of appointments subject to pre-appointment hearings to reflect current practice, in consultation with the Commissioner for Public Appointments. The government, again in consultation with the CPA, should publicly give reasons for making a particular post subject to a pre-appointment hearing, and also be prepared to justify why it has not done so in any particular case.

⁸ Treasury Select Committee, *The Treasury Committee's scrutiny of appointments*, HC 811 (February 2016)

⁹ Committee on Standards in Public Life, *Striking the Balance: Upholding the Seven Principles of Public Life in regulation* (2016), para 26.

How the pre-appointment hearing process can contribute to increasing the diversity of public appointments?

28. The Committee believes that measures to promote diversity in public appointments are primarily required at the beginning of the appointments process. Any extension in the use of pre-appointment hearings should ensure that there is no adverse effect on the diversity of public appointments, particularly for those who have not previously held prominent roles in public life. Fairness in the process could be promoted by departments providing preparation ahead of a pre-appointment hearing, and by Select Committees being clear about the purpose of the hearing and the likely lines of questioning.

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May 2018**

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