



**The Constitution Unit**

# **An Evaluation of Pre-Appointment Scrutiny Hearings**

**Prepared for**  
**the House of Commons Liaison Committee**  
**and the Cabinet Office**

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## **Preface and credits**

This document is the outcome of a research project commissioned by the Cabinet Office and the Liaison Committee of the House of Commons from the Constitution Unit of University College London, in the autumn of 2009.

The report has been written by Peter Waller, a former senior civil servant and Honorary Senior Research Associate and Mark Chalmers a research assistant at the Unit.

Our report has been largely driven by over 60 interviews with people who have participated in the pre-appointment hearings covered by this report. All of them gave their time generously and we would like to thank them for doing so.

We would also like to thank Sue Gray and Rob Wall of the Cabinet Office and Robert Wilson and Steven Marks, clerks to the Liaison and Public Administration Committee respectively, all of whom helped us structure our research and guided us on our way. Professor Robert Hazell, the director of the Constitution Unit was also an invaluable source of guidance and comment.

But the end result is very much our own work and we are happy to take full responsibility for anything contained within. It is for others, of course, to decide what to do next with the issues covered by our report and we wish them well in that task.

Peter Waller & Mark Chalmers

Constitution Unit, UCL

February 2010

## **Executive Summary**

- 1 This report has been commissioned from the Constitution Unit at University College London by the Cabinet Office and the House of Commons Liaison Committee.
- 2 It is a research-based report into the effectiveness of pre-appointment scrutiny hearings, which were introduced in 2008 for just over 60 high-profile public appointments. The broad intention was that the Government would identify a “preferred candidate” for those roles, in many cases under the supervision of the Commissioner for Public Appointments; and would then invite the relevant House of Commons Select Committee to carry out a pre-appointment hearing in public with the preferred candidate. The Committee would then report back on that hearing to the Secretary of State concerned who would then decide whether to confirm the appointment. In short, the Committees’ report were to be advisory in nature. This new regime was introduced on a pilot basis – hence this evaluation report.
- 3 Chapter 1 gives a brief overview of the background to the system of pre-appointment hearings; and the discussions between the Cabinet office and Parliament which led to its introduction.
- 4 Chapter 2 gives a factual account of experience to date. It shows that by the end of 2009, there had been 18 hearings covering 19 appointments; and records the issues discussed in those hearings. It also records that to date there has been one instance in which a select committee did not endorse the appointment, with a positive endorsement of the candidate in the other 18. In two of those cases, however, the Committee divided before issuing a positive report on the candidate concerned. In the one case where a select committee did not endorse the appointment, namely the Children’s Commissioner for England, the Secretary of State concerned decided to confirm the appointment of the preferred candidate, identified by an independent recruitment process. That case is discussed throughout this report but examined more fully in Annex A.
- 5 Chapter 3 covers the heart of our research, namely over 60 interviews with i) Committee Chairs, members and clerks; ii) preferred candidates, iii) Departmental officials and iv) search consultants. We had an excellent response to our request for interviews and have conducted at least three interviews relating to each case – in many cases more than three. (Many interviews covered more than one appointment.)

- 6 Chapter 3 records the results of those interviews, grouped around i) Parliamentarians ii) candidates iii) Departmental officials and iv) search consultants. The interviews were carried out on a confidential basis, so we have given views by category rather than named individuals. We have used quotes extensively to give the range of views received but sought to disguise individual cases. In broad overview, our research from interviews shows;
- Parliamentarians have found the new approach frustrating and were overall the most disappointed with the new approach. They have no real confidence that the Government will take a negative recommendation seriously. Many, though not all, would like to go further in having a wider range of candidates to consider and/or having a power of veto over the preferred candidate;
  - the majority of preferred candidates have supported the hearings and felt that they were beneficial to them, as well as justified on “democratic grounds”. The remainder have been neutral rather than opposed to the hearings. A majority of candidates have also told us that in the event of a negative report, they would have probably decided not take up the appointment even if the Department had wanted them to do so;
  - Departmental officials were broadly neutral about the hearings, being largely focussed on the mechanics of the additional processes involved and the lengthening of the timetable for appointments, while acknowledging these were usually not substantive concerns. They did not feel, however, that there was much value-added in the new approach; and
  - search consultants were mildly negative. Their initial concerns that the new system would be a significant deterrent to candidates had not been realised, but there were some residual concerns as to the longer term deterrent effect.
- 7 Chapter 4 supplements this interview-based approach with an analysis of media coverage of the new system. It concludes that there has been consistent but modest reporting of most of the appointments and strong reporting of a couple of cases.
- 8 Chapter 5 gives our conclusions on some of the key issues raised by the new approach. Our principal conclusions as discussed in that Chapter are;
- there has been a positive benefit from the new approach in terms of democracy and transparency in relation to these appointments – though it has been a modest step not a giant stride;

- there has been no significant deterrent effect to good quality candidates arising from the hearings. Those who might object to them in principal are unlikely to be strong candidates for this sort of role in the first place;
- the new system does, however, tend to favour candidates who have previous experience of sector committees, whether through previous experience on public boards or other engagement in public life. There are, however, strong pressures favouring such candidates already, especially for roles of such seniority;
- it is wrong to assume that negative reports will never have any impact, based solely on the fact that in the one case to date, the candidate concerned had their appointment confirmed. A majority of the candidates we interviewed told us they would have chosen not to take up the post following a negative report, even if the Department wished them to do so. We also believe that departments will take negative reports seriously, even if they will have a starting inclination to confirm the candidate;
- there is an inherent tension between the formality of the public appointment recruitment processes - which place a high priority on consistent procedures - and the informality of Committee hearings which tend not to be constrained in the same way; and
- there is scope for further consideration as to which posts should be covered by hearings.

9 Chapter 6 contains our thoughts on possible ways forward for the Cabinet Office and Parliament to consider. We discuss various options, notably;

- the case for greater involvement of Committees in the process, as many Parliamentarians would wish;
- the case for continuing the current approach, with modest changes and improvements;
- the case for a step back, effectively making hearings “post” rather than pre appointment, thus removing some of the tensions referred to above; and
- the possibility that Parliament could have greater involvement in a smaller subset of the current list of appointments subject to hearings.

## **Chapter 1: A Brief History of and background to the introduction of PAS**

### **1.1 Introduction**

1.1.1 In the July 2007 *Governance of Britain* Green Paper the Government announced plans to involve Parliament in the appointment process to key public offices.<sup>1</sup> The move was part of a broad package of reforms designed to submit the powers of the executive to greater scrutiny while enhancing the role of Parliament. Specifically on this subject, it proposed that Select Committees should hold pre-appointment scrutiny hearings for certain positions in which Parliament had a “particularly strong interest”. For certain “market-sensitive” positions, such as members of the Monetary Policy Committee, it proposed that the hearings would take place after the appointment had been confirmed but prior to the appointee taking up the position.

1.1.2 The hearings were to be conducted by the relevant Select Committee and focus on “issues such as the candidate’s suitability for the role, his or her key priorities, and the process used in selection”. Most importantly, the Green Paper stated that “the hearing would be non-binding, but in light of the report from the committee, Ministers would decide whether to proceed”. Thus, pre-appointment hearings were not intended to conflict with the principle of ministerial responsibility for the appointments concerned, a responsibility which was enshrined in legislation for many of the appointments concerned.

1.1.3 Following the Government’s proposals, the Public Administration Select Committee (PASC) published the report *Parliament and Public Appointments: Pre-appointment hearings by select committees* in January 2008.<sup>2</sup> PASC welcomed the introduction of pre-appointment scrutiny hearings, noting that the proper role of Select Committees in the appointments process should be informing the “final ministerial decision, not in influencing the impartial process that precedes the decision”.<sup>3</sup> The Committee identified certain “obvious candidates” for pre-appointment scrutiny hearings: major auditors, ombudsmen, regulators and inspectors, as well as those responsible for the appointments system itself.<sup>4</sup> Moreover, PASC stated that the hearings should only apply to those appointments made by politicians.

1.1.4 In January 2008 the then Cabinet Office Minister (Ed Miliband) wrote to the chairman of the Liaison Committee with a list of posts which the Government believed were suitable to be subject to pre-appointment scrutiny hearings.<sup>5</sup> The letter noted that the hearings would be targeted at posts which exercised statutory or other powers in relation to protecting the public’s rights and interests, as well as those that played an important role in the regulation and administration of the public

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<sup>1</sup> Ministry of Justice, *The Governance of Britain*, July 2007, Cm 7170.

<sup>2</sup> Public Administration Select Committee, *Parliament and Public Appointments: Pre-appointment hearings by select committees*, 16 January 2008, HC 152.

<sup>3</sup> *Ibid.*, para 13.

<sup>4</sup> *Ibid.*, para 19.

<sup>5</sup> Letter dated 23 January 2008 from Ed Miliband MP to Alan Williams MP, Chair of the Liaison Committee, re pre-appointment hearings by select committees. Printed as Annex A to the Liaison Committee, *Pre-appointment hearings by select committees*, 5 March 2008, HC 384 2007-08.

appointments process. The Government's initial list consisted of 29 posts, including, *inter alia*, the Chair of Ofcom, Chair of the Statistics Board, the Commissioner for Public Appointments, and the Information Commissioner. The Government stated that Committee hearings would focus on the "professional competence" of the appointee and should be conducted so as to ensure that the appointments process was 'proportionate and continued to attract high quality candidates.'<sup>6</sup>

1.1.5 The Liaison Committee, which also welcomed the proposal, issued its response to the letter from Ed Miliband in March 2008.<sup>7</sup> Based on a consultation with individual Select Committees, the Liaison Committee published a list of additional posts that the considered should be subject to pre-appointment scrutiny hearings. The list consisted of 41 appointments, most of which fell into the various categories of suitable posts suggested by PASC (i.e. inspectors, regulators, auditors, and complaint investigators).<sup>8</sup> The Liaison Committee also agreed to a draft set of guidelines for the conduct of pre-appointment hearings.

1.1.6 The Liaison Committee guidelines on pre-appointment hearings are in the box below:

*Preparing for the session*

The Committee should aim to give the witness at least a week's notice of the session. Standard briefing should be available to the candidate on what to expect from the session. The candidate should also be informed how long the session is likely to last.

*During the session*

The Chairman should ensure that Members are aware their questions must remain relevant to the professional competence and personal independence of the candidate. Questions eliciting background information about the candidate's past career and about the selection process for the post are normally acceptable.

The candidate will need to be able to withstand parliamentary and public scrutiny should they take up the post, and the purpose of the session is to test this. Questioning may therefore be robust, and it may cover some areas that might not be appropriate at interview, such as party political activity. The Chairman should intervene, however, if questions are irrelevant, unduly personal, or discriminatory.

*After the session*

Immediately after the evidence session, the Committee should meet in private to agree a report to the House containing its views on the suitability of the candidate. This will ensure both that the evidence is fresh in Members' minds and that Members who were not present at the evidence do not influence the content of the report. It will also avoid unnecessarily prolonged speculation about the candidate's fate. The Committee may also wish to instruct the Chairman to write to the relevant Minister with any opinions that it prefers to express privately, to supplement the published report.

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<sup>6</sup> Ibid.

<sup>7</sup> Liaison Committee, Pre-appointment hearings by select committees, 5 March 2008, HC 384 2007-08.

<sup>8</sup> Ibid., pp 7-8.



The Committee's report should be published as soon as possible after the evidence session. Reports should be subject to a 24 hour embargo to allow the candidate and the Minister to prepare a response to any negative comments. They should be provided under embargo only to the candidate and the Minister.<sup>9</sup>

1.1.7 Also in March 2008, the Government published a White Paper on *Constitutional Renewal* along with the *Draft Constitutional Renewal Bill*.<sup>10</sup> The White Paper outlined the progress made on appointment hearings and emphasised the commitment of the Government to work with the Liaison Committee in order to agree to a final list of posts suitable for pre-appointment hearings.<sup>11</sup> This was followed in June 2008 by the Government's response to the Liaison Committee's March 2008 report.<sup>12</sup> It stated that,

the Government believes that the introduction of pre-appointment hearings will help ensure that the Executive is properly accountable to Parliament and will provide greater public reassurance that those appointed to key public offices are appointed on merit.<sup>13</sup>

1.1.8 Furthermore, the report reiterates Ed Miliband's earlier promise that the Government will work with Parliament to evaluate the success of pre-appointment hearings. While emphasising that it would not be practical to hold pre-appointment hearings for all public appointments, the report states that they should apply to "posts in which Parliament and the public have a particularly strong interest".<sup>14</sup> Accordingly, the Government produced a revised list of 60 key public appointments which should be subject to pre-appointment hearings (the list is reproduced at Annex B).<sup>15</sup>

## **1.2 Other Scrutiny Hearings for Public Appointments**

1.2.1 The *Governance of Britain* Green Paper identified the Chair of the new UK Statistics Authority as suitable for a pre-appointment hearing and a vote in the House of Commons.<sup>16</sup> Due to the need to ensure public confidence in official statistics, the Government felt the appointment was of sufficient importance to require a confirmation vote by the House. On 18 July, the Treasury Select committee held an evidence session with the Government's preferred candidate Sir Michael Scholar and published its report on 23 July recommending in favour of his appointment to the House. On 25 July, following a debate, the House endorsed Sir Michael's nomination. In addition to the Chair of the Statistics Authority, the appointments of the Comptroller and Auditor General and members of

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<sup>9</sup> Ibid., p 9.

<sup>10</sup> Ministry of Justice, *The Governance of Britain – Constitutional Renewal*, March 2008, Cm 7342.

<sup>11</sup> Ibid., para 252.

<sup>12</sup> Liaison Committee, *Pre-appointment hearings by select committees: Government Response to the Committee's First Report of Session 2007-08*, 22 May 2008, HC 594 2007-08.

<sup>13</sup> Ibid., p 1.

<sup>14</sup> Id.

<sup>15</sup> Ibid., pp 5-8.

<sup>16</sup> Ministry of Justice, *The Governance of Britain*, July 2007, Cm 7170, para 80.

the Electoral Commission are also subject to approval by the House of Commons.<sup>17</sup> But these latter appointments are made by Parliament, not by the Government.

1.2.2 Since 1998, the Treasury Select Committee has also held hearings to scrutinise each new appointee to the Monetary Policy Committee of the Bank of England.<sup>18</sup> The hearings were not specified in the Bank of England Act 1998, so were on a non-statutory basis. The aim of the hearings is to ensure that those nominated possess “demonstrable professional competence and personal independence of the Government”.<sup>19</sup> Because appointments to the MPC raise issues of market sensitivity, they take place after the appointment has been made but prior to the appointee formally taking up the position.<sup>20</sup>

1.2.3 Separately, it is a policy of the Foreign Affairs Committee to hold hearings for any major diplomatic or consular appointment of a person from outside the diplomatic service.<sup>21</sup> The Committee has argued that where an appointee is a politician or a person with “close links to the governing party,” it is essential for there to be parliamentary scrutiny to ensure they are based on merit rather than patronage. For its part, the Government does not accept that these types of appointments should be subject to pre-appointment scrutiny hearings. Consequently, this category of appointments was not included in the list of posts identified as suitable for pre-appointment hearings.<sup>22</sup>

1.2.4 To date, the Foreign Affairs Committee has held two “pre-commencement hearings”. In both cases, the Committee endorsed the appointment but expressed frustration with the Government’s insistence that they should not be subject to pre-appointment hearings.

### **1.3 Objections to Pre-Appointment Hearings**

1.3.1 The Government’s proposals for greater parliamentary involvement in public appointments were not without their critics. In particular, the Commissioner for Public Appointments, Janet Gaymer, while welcoming some type of select committee hearing as a “democratic check,” has expressed some concerns about introduction of pre-appointment (as opposed to post-appointment) hearings.

1.3.2 The Commissioner’s concerns can be summarised as follows:

- i) Pre-appointment hearings may dissuade candidates from applying due to the perception of potential reputational risk to the candidate or his/her employer, the effect on the candidate’s current position, or the potential for regulatory or share dealing consequences. The Commissioner fears that public hearings may damage efforts to

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<sup>17</sup> Lucinda Maer, Parliamentary Involvement in Public Appointments, House of Commons Library, Research Paper 08/39, 23 April 2008, p 19.

<sup>18</sup> Ibid., pp 30-31.

<sup>19</sup> See Treasury Select Committee, Confirmation Hearings, 25 February 1998, HC 571, para 6, and Treasury Select Committee, The Monetary Policy Committee of the Bank of England: Confirmation Hearings, 24 May 2000, HC 520.

<sup>20</sup> Ministry of Justice, The Governance of Britain, July 2007, Cm 7170, para 79.

<sup>21</sup> Lucinda Maer, *ibid.*, p 34.

<sup>22</sup> *Ibid.*

widen the pool of candidates which, in turn, would be detrimental to the overall diversity of the candidates.

- ii) The introduction of pre-appointments hearings may be seen by the public as politicising the appointments process.
- iii) The Commissioner is concerned that the Select Committee members might ask inappropriate questions of the appointee which will erode the public's confidence in the entire appointments system.
- iv) The time taken to complete a public appointments process may be unreasonably extended if, for example, the appointment process falls during periods when the House is not sitting or logistical difficulties are encountered in arranging the hearing.
- v) There is a risk that if a Minister disagreed with the recommendation of a Select Committee, and if such disagreements become a regular feature of the process, the system will be brought into disrepute.
- vi) The Commissioner has also raised concerns regarding the effect which pre-appointment hearings will have on appointments already regulated by her Office. As she stated in evidence to PASC in December 2007, "If there has been a properly regulated selection process, then I have to ask...what is the point of the pre-appointment hearing".<sup>23</sup>

#### **1.4 Overseas comparisons**

1.4.1 Compared to other "Westminster-style" parliaments, the current system of pre-appointment hearings in the United Kingdom is unique. For example, in New Zealand, the House's recommendation of the appointment of Officers of Parliament is a statutory requirement. In these cases a committee of members effectively makes the appointment itself. However, no public hearings are held. There are a small number of appointments to statutory offices which require the House's recommendation or endorsement, but even in these cases there has been no practice of holding pre-appointment committee hearings.

1.4.2 In Canada, the Standing Orders of the House of Commons for Order in Council (prerogative) appointments allow for committees to question appointees after they have been appointed.<sup>24</sup> It is not mandatory and, in practice, few Order in Council appointments are scrutinized by House committees. There are various possible explanations for this, including time constraints, or a feeling among Members that the present procedure is not worthwhile or useful. All such appointments continue to be tabled in the House of Commons.

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<sup>23</sup> Public Administration Select Committee, Parliament and public appointments: Pre-appointment hearings by select committees, 16 January 2008, HC 152, pp Ev15 – Ev20.

<sup>24</sup> House of Commons Canada, Compendium of Procedure, *Committees Order-in-Council Appointments*, March 2006, [http://www.parl.gc.ca/compendium/web-content/pdf-e/committees-e/c\\_d\\_ordercouncilappointments-e.pdf](http://www.parl.gc.ca/compendium/web-content/pdf-e/committees-e/c_d_ordercouncilappointments-e.pdf)

1.4.3 The system of congressional confirmation hearings used in the United States is a useful point of contrast with the UK. Many public officials and Parliamentarians in the UK have at least some familiarity with the American system. That familiarity shapes views on and expectations of the UK system of pre-appointment hearings.

1.4.4 Article II Section 2 of the US Constitution provides that the president “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court...”.<sup>25</sup> During each two-year session of Congress, roughly 4,000 civilian and 65,000 military nominations are submitted to the Senate.<sup>26</sup> Since 1931, over 97% of presidential appointments have been approved by the Senate.<sup>27</sup>

1.4.5 The American confirmation system is however fundamentally different from pre-appointment hearings. In the UK, Select Committees can only make a recommendation regarding the appointees’ suitability for the post. The ultimate decision to appoint or not remains with the relevant secretary of state. In the US, the Senate can formally approve of or veto an appointment as well as delay it. Furthermore, the US system has a reputation of being “abusive to appointees”.<sup>28</sup> Some are subjected to questioning which is highly intrusive, embarrassing and often irrelevant. In contrast, pre-appointment hearings in the UK cannot, on any reasonable interpretation, be described as “abusive to appointees”.

1.4.6 Perhaps the most salient difference is that Ministers in the US are not members of, and therefore accountable to, the legislature as they are in the UK. Appointments in the US are overtly political, and the appointees are not subjected to a rigorous and impartial selection process as is used in the UK and overseen by OCPA using agreed processes and procedures.

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<sup>25</sup> The Constitution of the United States, Article II, Section 2.

<sup>26</sup> Lucinda Maer, *ibid.*, p 48.

<sup>27</sup> Lauren Cohen Bell, “Senatorial Discourtesy: The Senate’s Use of Delay to Shape the Federal Judiciary,” (September 2002) *Political Research Quarterly* 590. See also Lorraine Tong, “Senate Confirmation Process: An Overview,” *Congressional Research Service*, 4 April 2003.

<sup>28</sup> *Ibid.*, 49.

## Chapter 2: the hearings to date: an overview

### 2.1 Introduction

2.1.1 By the end of 2009, there had been 19 pre-appointment scrutiny hearings covering 20 public appointments (see Annex C). Two pre-appointment hearings took place before the Government's expanded list of appointments was published in June 2008. The first, Sir Michael Scholar, was appointed as Chair of the Statistics Authority in July 2007; and this was followed by Baroness Barbara Young who was appointed Chair of the Care Quality Commission in May 2008. Since the Government's Response to the Liaison Committee there have been an additional 17 pre-appointment hearings.

2.1.2 The Innovation, Universities, Science and Skills Committee (now Science and Technology) and the Communities and Local Government Committee (CLG) have each held three hearings. The CLG's covered both preferred candidates for Deputy Chairs of the Infrastructure Planning Commission at a single hearing. The Public Administration, Justice and Health Committees have each held two hearings, while the Transport, Children Schools & Families, Environment, Food & Rural Affairs, and Home Affairs Committees have each held one hearing. The Business and Enterprise Committee (now BIS) and Culture, Media and Sport held a joint hearing for the appointment of the Chair of Ofcom. The Treasury Committee has held one pre-appointment hearing; however the final decision in that case was with the House of Commons.

2.1.3 In terms of the appointees to date 13 (65 per cent) are male with 7 appointments (35 per cent) going to female candidates.

2.1.4 Under the current system, reappointments are not subject to a scrutiny hearing. Paragraph 2.3 of the Cabinet Office publication, *Pre-Appointment Hearings by Select Committees: Guidance for Departments*, states that,

*Departments should note that pre-appointment hearings only apply to appointments of new candidates – and not to extensions or re-appointments. Select committees already take evidence from serving post-holders as part of their on-going scrutiny of public bodies and public appointments.*<sup>29</sup>

2.1.5 The issue of whether there should be scrutiny hearings for reappointments has generated some discussion. For example, the TaxPayers' Alliance has argued that the reappointment of Dame Suzi Leather as Chair of the Charity Commission should have been subject to a scrutiny hearing

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<sup>29</sup> Cabinet Office, *Pre-Appointment Hearings by Select Committees: Guidance for Departments*, August 2009, para 2.3. As of January 2010 there have been five reappointments: Dame Suzi Leather as Chair of the Charity Commission; Michael O'Higgins as Chair of the Audit Commission; Mr. D. Evans as Chair of the Agricultural Wages Board; Trevor Phillips as Chair of the Equality and Human Rights Commission; and Kathleen Tattersall as Chair of Ofqual.

because of the changes she has introduced in relation to the charitable status of many private schools.<sup>30</sup>

## **2.2 Questioning**

2.2.1 Questioning during the hearings held to date has generally focused on five broad issues. The first is the appointee's overall suitability for the role and the recruitment process. Committee Members have asked the appointee how his or her skills, professional and/or educational background match the requirements of the post. For example, the preferred candidate for Chair of the Office of Rail Regulation was asked whether her lack of experience in the rail industry was a weakness.<sup>31</sup> Appointees have also been asked to discuss aspects of the recruitment process, such as how they were made aware of the position.<sup>32</sup> It should be noted that, although the Committees have had access to the formal criteria used for the departmental recruitment process, they have not generally focused on those criteria in their questioning.

2.2.2 The second area of questioning focuses on whether the candidate has the requisite personal integrity and independence for the position. These questions probe any potential conflicts of interest as well as the appointee's previous political activities or affiliations. During his pre-appointment hearing, for example, Sir Michael Scholar was asked whether his son, who was chief of staff at No 10 at the time, was aware that he was in contention for the post.<sup>33</sup> Questions concerning his past as a Labour Cabinet Minister arose in the hearing of Lord Rooker as Chair of the Food Standards Agency.<sup>34</sup>

2.2.3 The third area of questioning is the candidate's priorities once in office and his or her vision for and interpretation of the post. This issue featured prominently in the appointment hearing of the preferred candidate for the Children's Commissioner which will be discussed further below. For certain posts, especially those which potentially involve the post holder in public criticism of the Government, Committees have been particularly concerned to test the preferred candidate on their independence of mind. Appointees have not, however, generally been able to answer very specific questions regarding the operational details of a particular agency, given they have not at the time of the hearing been in post. For example, Sir Michael Scholar was asked whether the estimated cost of the Census sounded correct. He explained that he was unable to respond to this detailed question as he lacked the necessary knowledge which could only be acquired after assuming the post.<sup>35</sup>

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<sup>30</sup> Ben Farrugia, "Equality, Charity and the Red Ermine," The TaxPayers' Alliance, 21 July 2009, available at: <http://www.taxpayersalliance.com/bettergovernment/2009/07/equality-charity-and-the-red-ermine.html>

<sup>31</sup> Transport Committee, Appointment of the Chair of the Office of Rail Regulation, 29 April 2009, HC 433, Ev1 Q6.

<sup>32</sup> Innovation, Universities, Science and Skills Committee, Pre-Appointment Hearing with the Chair-elect of the Biotechnology and Biological Sciences Research Council, Professor Sir Tom Blundell, 13 May 2009, HC 506, Ev1 Q2.

<sup>33</sup> Treasury Committee, The appointment of the Chair of the Statistics Board, 18 July 2007, HC 934-I, Ev2 Q11.

<sup>34</sup> Health Committee, The Appointment of the Chair of the Food Standards Agency, 6 July 2009, HC 856-I, Ev9 Q43.

<sup>35</sup> Treasury Committee, *The appointment of the Chair of the Statistics Board*, 18 July 2007, HC 934-I, Ev7 Q59. In the Report, *Selection of a new Chair of the Advisory Committee on Business*

2.2.4 The availability of the candidate and how much time he or she planned to devote to the post is the fourth common area of questioning. During the hearing for the Chair of Ofcom, for example, Dr Colette Bowe was asked whether she would have sufficient time to carry out her duties given her other professional commitments. Dr Bowe stated that she intended to devote 60% of her time to the post. In its report, the Committee noted that it would hold her to that promise of 60%.<sup>36</sup>

2.2.5 Finally, for certain posts Committee Members have asked whether the candidate feels the remuneration is fair in light of the amount of time and nature of the work required. For example, Dr Bowe was asked whether she felt that the £200,000 per year salary was excessive for a public service appointment of three days a week.<sup>37</sup> During the hearing for the appointment of the Chair of the Office for Legal Complaints, for example, the Committee Chairman asked the appointee, “What is the justification for paying you more than an MP is paid to work 80 days a year?”<sup>38</sup> However, during her pre-appointment hearing for the Chair of the Care Quality Commission, Baroness Young was asked whether she felt the pay was too low “for such an important post of national significance”.<sup>39</sup>

### **2.3 Select Committee Reports**

2.3.1 In general, Committee reports on pre-appointment hearings have followed a consistent approach, in line with standard practice for most Committee reports. There has been a good degree of background material, usually including a memorandum from the Department responsible for the appointment which has set out the criteria which were used in assessing candidate’s suitability for the appointment, together with an account of the recruitment process at a level of detail which would not previously have been routinely disclosed by Departments. The candidate’s CV has also usually been published; as have the minutes of the hearing itself. The “core” of the Report has, however, been short, often a single paragraph, usually concluding that the Committee is content with the appointment of the preferred candidate though with varying degrees of positive endorsement. (It should be noted, however, that the reports are invariably published very quickly after the hearing, limiting the scope for longer discussion about the candidate’s merits.)

2.3.2 On a number of occasions, however, Committees have gone beyond simply expressing a view as to the suitability of a particular candidate and used their reports to communicate concerns as well as their own vision for a particular post. The Justice Committee, for example, used its report on the appointment of the Information Commissioner to signal to the Government its belief that the

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*Appointments*, 26 November 2009, HC 42-I, PASC noted at para 13 that there were “advantages” associated with the fact that the appointee had been in post on an interim basis prior to the pre-appointment hearing, “in that we could question him on the work that he already begun to carry out.”

<sup>36</sup> Business and Enterprise and Culture, Media and Sport Committee, *Pre-appointment hearing with the Chairman-elect of Ofcom*, Dr Colette Bowe, 13 January 2008, HC 119, para 11.

<sup>37</sup> *Ibid.*, Ev2 Q10.

<sup>38</sup> Justice Committee, *Appointment for the Chair of the Office for Legal Complaints*, 28 October 2008, HC 1122, Ev4 Q19.

<sup>39</sup> Health Committee, *Appointment of the Chair of the Care Quality Commission*, 8 May 2008, HC 545-I, Ev4 Q10.

Office of the Information Commissioner was lacking sufficient resources.<sup>40</sup> Even in such cases, however, the comments have been short – single sentences rather than full discussion of the issues.

2.3.3 In the case of the Children’s Commissioner for England, the Children, Schools and Families Committee commented that its role in the appointments process was “closely circumscribed”, and that they should have the ability to examine other candidates.<sup>41</sup>

2.3.4 The Home Affairs Committee’s recommendation for HM Inspector of Constabulary was, uniquely, communicated by the Chairman in a letter sent directly to the Secretary of State, rather than via a Committee report.

## **2.4 Attendance of Select Committee Members**

2.4.1 Attendance of Committee Members for pre-appointment hearings, as indicated in the formal minutes, seems to be around the average for committee hearings generally. For most hearings, approximately half of Select Committee Members were in attendance. The hearing for the preferred candidate for HM Inspector of Constabulary had the highest attendance rate, with 12 of 14 members of the Home Affairs Committee listed as present. In contrast, the hearing for the Chair of the Science and Technology Facilities Council was attended by only four members of the Innovation, Universities, Science and Skills Committee.

2.4.2 It should however be noted that recording attendance at select committees by using the formal minutes can be problematic. As the Liaison Committee stated in its report, *Shifting the Balance: Select Committees and the Executive*, “it is strange that that the House’s convention of recording attendance...should mark a Member as present if, for example, he or she were in the committee room for only the first minute...”.<sup>42</sup> For that reason, the report concludes that “the formal record of a Member’s attendance may thus be wholly misleading”.<sup>43</sup>

## **2.5 Select Committee Recommendations**

2.5.1 Almost all pre-appointment hearings have resulted in unanimous committee reports endorsing the appointees’ candidature.

2.5.2 There is only one case where a select committee did not endorse a proposed candidate. In its report on the appointment of the Children’s Commission, the Children, Schools and Families Committee concluded that, despite being convinced of Dr Atkinson’s professional competence, “we feel unable to endorse her appointment, as we would like to have seen more sign of determination to assert the independence of the role, to challenge the status quo on children’s behalf, and to

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<sup>40</sup> Justice Committee, The work of the Information Commissioner: appointment of a new Commissioner, 3 February 2009, HC 146, para 36.

<sup>41</sup> Children, Schools and Families Committee, Appointment of the Children’s Commissioner for England, 14 October 2009, HC 998-I, para 6.

<sup>42</sup> Liaison Committee, *Shifting the Balance: Select Committees and the Executive*, 2 March 2000, Session 1999-2000, para 27.

<sup>43</sup> *Id.*



stretch the remit of the post...".<sup>44</sup> This particular case – in which the candidate was subsequently appointed by the relevant Secretary of State, as recommended by the independent appointment panel, is discussed at various places in this report and particularly at Annex A, which also gives the factual background to that case.

2.5.3 In two other cases, the Select Committees have formally divided on the endorsement of the candidate. The Health Committee divided 3 – 2 on the endorsement of Lord Rooker as Chair of the Food Standards Agency.<sup>45</sup> Similarly, the Communities and Local Government Committee divided 2 – 1 on the appointment of Dr Jane Martin as Local Government Ombudsman and Vice Chair of the Commission for Local Administration in England.<sup>46</sup> Finally, Paul Flynn MP proposed an amendment to the draft report on the appointment of Lord Lang as Chair of the Advisory Committee on Business Appointments (ACoBA), effectively proposing the Committee advise against his appointment. That amendment was rejected without a formal vote being recorded. None of these committee reports comment on or explain the background to the issues on which the Committee were divided – but that applies to all Committee reports.

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<sup>44</sup> Children, Schools and Families Committee, Appointment of the Children's Commissioner for England, 14 October 2009, HC 998-I, para 18.

<sup>45</sup> Health Committee, The Appointment of the Chair of the Food Standards Agency, 6 July 2009, HC 856-I, p 14.

<sup>46</sup> Communities and Local Government Committee, Appointment of the Local Government Ombudsman and Vice-Chair of the Commission for Local Administration in England, 12 October 2009, HC 1012, p 11.

## Chapter 3: Our interview based research

### 3.1 Introduction

3.1.1 Our research was based on interviews with four categories of people. These were;

- i) Parliamentarians, primarily the Chairs and clerks of the Select Committees which had held pre-appointment scrutiny hearings, but also including a number of committee members;
- ii) the preferred candidates who had been subject to hearings;
- iii) the Departmental officials who had been primarily responsible for the appointments concerned; and
- iv) the search consultants (“headhunters”) who had been responsible for the management of the recruitment process, including the identification of potential candidates.

3.1.2 We received an excellent response to our request for interviews with response rates from, committee clerks, candidates, Departments and headhunters all over 90%. We conducted 63 interviews in total.

3.1.3 We have set out the results of these interviews in the rest of this chapter, summarising to the extent that seem to us to reflect consensus views, but also pointing out differences of views where we received them. We have used quotations extensively to reflect as far as possible the words of those involved. As all our interviews were all based on the principle of anonymity, however, we have sought to disguise all quotations which might be attributable to any particular individual.

### 3.2 The views of Committees

3.2.1 During our research we interviewed 8 committee chairs, 5 other Committee members and 10 Committee clerks.

3.2.2 **In broad summary**, the views of Committees were largely negative about pre-appointment hearings, though “frustrated” might be a more precise term. The prevailing concern was that the purpose behind the hearings was not clear: and Committee Members by and large thought that it was window dressing with little real power. The majority of those we interviewed felt that Committees should be more involved in the process, see the short list and be given a choice of candidates, though a minority thought that Committees were not really designed to be able to take on such a role. The case of the Children’s Commissioner had also led to a strong expectation that Ministers would simply ignore a recommendation not to appoint and impose the preferred candidate regardless. There was some support for the view that the hearings had added to transparency but generally most of those we interviewed wanted to go further, with others wishing to step back. Support for the approach that had been established in the trial hearings was thus limited.

### **3.3 Anticipating the hearings**

3.3.1 When originally announced, it was clear that the hearings were regarded by most Parliamentarians as a step forward. One Chair said;

*I reacted very favourably to the opportunity to hold PAS hearings. Select committees have very little power, only influence, and this was a chance to enhance that influence...I wouldn't call it power yet. So much government policy is delivered through quangos etc...so the people who run these organisations are of huge significance to Parliament. I would expect all of the members of my Committee to share that view.*

3.3.2 And another commented;

*We were initially very pleased to hold PAS hearings. I think often there is a mystique which surrounds the appointments process; the bodies for which these people are responsible spend millions of pounds of taxpayer's money so it was a good step forward.*

3.3.3 While a clerk said;

*The Chairman was very positive. And a couple of the members were quite enthusiastic, thinking it was like Congress.*

3.3.4 There was also a clear recognition of the potential benefits. One Chair said that it should have a positive impact on the quality of candidates;

*So much of what committees do is damage control. If the Minister knows their policy will be subject to public scrutiny you are presented with a better policy from the beginning. So if they know that their appointees are subject to scrutiny they will make sure to present us with good candidates.*

3.3.5 while another suggested that public hearings added something positive to the recruitment process;

*a committee hearing tests whether people can handle themselves on public platforms and under attack. The internal process doesn't test that – so the hearings genuinely test something which would otherwise not be tested. If someone can't hack it, that should be shown up.*

3.3.6 And that Chair also saw benefits to candidates in the US approach;

*our committee went to the States some time back to look at congressional hearings. We were rather impressed. They were doing lots of training. It is also politicised in a way that our hearings aren't, but if you were a candidate and survived that, there is no doubt that you walked taller in the job. That's a positive side.*

3.3.7 **But**, it was equally clear that, even at the time there were reservations. A Chair said;

*it was not a burden, and we [the committee] welcomed the opportunity. We were told at the time, however that our views would not change the course of events and that the Minister was not obliged to listen to us.*

3.3.8 And a Member of one Committee commented;

*The members of the committee did not take the hearing seriously, very few MPs actually showed up. Most members had just come along to rubber stamp the appointment...they were just going through the motions. There was little preparation; it was not flagged up as being an important meeting. We received some limited background briefing but if we were doing a normal evidence session we would have a fairly lengthy briefing beforehand.*

3.3.9 Another member said;

*I and many others on the committee were very puzzled as to the point of it all. We were not given the power to turn anyone down, and it was really a rubber stamping exercise.*

3.3.10 While a clerk commented;

*My Committee took it seriously. But I do not think they really knew what the point was. They asked in discussion before the meeting what would happen if they did not like the candidate – and there wasn't really a good and clear answer to that other than saying that the Minister would probably still appoint. We did wonder whether there should be another process whereby the Committee could transmit to the Minister privately what they thought if their views were adverse. The Committee were seized of the fact that they were interviewing the lead candidate for the role, that they had no role in identifying other candidates, had no role in considering the attributes needed for the role and so on.*

3.3.11 A member also pointed out the limitations of the “preferred candidate” concept;

*When we were first asked to hold the PAS hearing it seemed simply like a rubber-stamping exercise, but it was almost impossible for us to do our jobs because we didn't know who the other candidates were. For that reason, it is difficult to fully endorse someone since we can't be sure that they were the best candidate.*

### **3.4 The hearings**

3.4.1 In broad terms, the Committees seemed satisfied with the conduct of the hearings in practice. One Chair said;

*ours have been worthwhile. It was right for the candidate to be tested. In both cases it was perhaps less about the individuals than the systems they were presiding over. We have had a good discussion after the hearings about the candidates; and views have changed in those discussions.*

3.4.2 Another Chair said;

*It was worthwhile. In our work we deal with a lot of matters that relate to the [body concerned] and the candidate lacked direct experience in the [relevant area]. I think that*

*before the hearing there were members that were concerned about that lack of experience but the candidate convinced them that it was in fact a strength, giving a different perspective and not being captured by the vested interests.*

3.4.3 A member expressed some reservations, however, about the practicality of forming a view through a hearing;

*I don't think a Select Committee is in a position to comment on a candidate's ability before they are in the job. These appointees hire consultants to prepare them for the hearing – they simply show up and go through the motions. I don't see what the committee can learn from that. Maybe after a year or so we can form a judgement once the appointee has a track record, which is what we already do. So post-appointment makes more sense but by then it's too late to do anything if we don't like the person.*

3.4.4 It was also clear that after the hearings some Committees felt uncertain as to what they should do. One member said;

*We did feel some reluctance to express a negative view and cast a shadow over the appointment.*

3.4.5 And a member - who was opposed to the appointment of the candidate concerned - said;

*I blame myself for not being forceful enough when expressing my concerns. It was not a good session at all, not like our usual sessions. I think the reason I was not so forceful, as well as some of my fellow members, was because we couldn't see the point if our recommendation did not matter in the end.*

3.4.6 Overall, the impact of the hearings on candidates was of limited concern. One clerk commented;

*for anyone going before a Committee, it's a sensitive issue – being examined in public on their competence. But the Committee would not think that unreasonable. It's important to recognise that MPs have to put themselves on the line in a very public way when they are seeking re-appointment; and they transfer that mentality across when looking at these sorts of roles*

3.4.7 Another clerk saw potential value for both sides;

*The hearings are certainly valuable from the stand point of the appointees – it must enhance their legitimacy if they receive the endorsement of a Committee composed of MPs from different parties. And it's a good opportunity for the Committee to get to know the candidate in a way which sessions about particular issues do not readily allow*

3.4.8 And a member was forthright about candidates having to stand up to public scrutiny;

*I don't think PAS hearings should deter qualified candidates – it is an essential skill to be able to speak publicly and respond to difficult and complex question. The only people who should be deterred are those hiding something.*

### **3.5 The likely outcome a of a negative report**

3.5.1 The issue which came through most forcefully in the issues was the strong sense that a negative report would be disregarded. A Chair commented;

*in the two we have done, I have to say we thought that endorsing the candidate was a bit of a formality. We ought to be clearer as to what these actually are. If they are “on appointment” hearings that is one thing. But if we are to have a serious prospect of aborting an appointment, then that needs to be made much clearer.*

3.5.2 Another said;

*If Ministers become too casual in rejecting the Committees’ recommendations than I would not be in favour of continuing with PAS. Whatever the merits of the argument, if the Government showed it wasn’t listening then there is no point*

3.5.3 And a third said;

*There is a very cynical view held by members of the Committee who feel that this has become a PR exercise...and I must say that I now share that view. We only get to scrutinise the appointment after it has been made, it’s more of an affirmation hearing.*

3.5.4 A Committee member put the point more strongly;

*The principle is absolutely correct but if we say no that should be accepted by the Minister. We have already seen a case where the Minister egregiously disregarded a committee recommendation and I think that is a travesty. There is no point in having the hearings if the result is set before the Committee meets.*

3.5.5 And another Member spoke on similar lines;

*We would be extremely disappointed if the Secretary of State made an appointment which we advised against. Committees don’t have power but they should have influence. Our reports demand a Government response. We are in a position to closely examine the issues (we have expertise which the Government does not necessarily have on every issue) and therefore our recommendations should be respected.*

3.5.6 Another member commented;

*If Ministers regularly ignored the Committee’s recommendations, than I think most MPs would rather not continue this process. It’s terribly disrespectful – the Minister may genuinely disagree, that’s ok. But to habitually ignore the Committee would be fatal to the future of PAS hearings.*

3.5.7 Another Member wanted the reports to be at least taken seriously;

*I would hope that if the committee did not recommend the candidate, then the Minister would discuss the issues with the Chair before making a decision. If we uncovered something*

*unknown to the Minister then the candidate should be asked to explain him or her self to the Minister before the Minister made a decision. However, I expect that the Minister would proceed with the appointment regardless of our recommendation unless we had uncovered a major problem during the hearing. I would expect a reasoned response from the Minister if he or she ignored the select committee.*

### **3.6 The impact of the Children's Commissioner case**

3.6.1 Inevitably the Children's Commissioner case was the subject of comment in our interviews. A Chair said;

*I will admit that I don't think the Children's Commissioner appointment did us any good. At the same time, I don't think that simple ratifying everyone who comes through the process would do any good. You are going to get rogue outcomes. There is an element of uncertainty in the process but that's inevitable.*

3.6.2 Another Chair said;

*I fear there is a dangerous ambiguity which was thrown up by the Children's Commissioner case. Is there a serious prospect of any appointment being overturned by this process? I think indeed that would be wrong. When these appointments were made on a patronage basis then there would have been something to be said for hearings with real power, as the only way to give real challenge. But when there is, as now, a proper process for appointments, it would be wrong to assume that one hearing by the Committee, without a proper structure, should be allowed to change the outcome of the process. I remain nervous that a single meeting with a Committee should ever determine whether someone is the right candidate for the job.*

3.6.3 A member also said;

*I've been told by fellow MPs that the Children's Commissioner case was purely about a conflict between some MPs and the minister. The candidate was dragged into it unfortunately...but that's politics. Committees should be professional and not play these sorts of games.*

### **3.7 The future**

3.7.1 There was very limited support for the status quo. But views differed as to how to move forward. One Member expressed a strong preference for widening the approach;

*PAS hearing should apply, like in the US, to the Chancellor, Home Secretary, and Foreign Minister...important government positions. We are doing these hearings for some really trivial positions; why not do them for the government jobs that actually matter? There is too much patronage in our country and parliamentary scrutiny is the best way to stop it. The executive should do the selecting, we should hold the power to confirm or not.*

3.7.2 While others wanted greater engagement in the process;

*I think there should be a debate on the floor of the House and a vote if there is a disagreement between the Government and a Select Committee over a particular appointment. That would be a better way of dealing with disagreement (better for democracy), even though the Minister would be likely to get his or her way should there be a vote in the House.*

3.7.3 And another Chair said;

*We don't want to be part of the whole process, but maybe to see the short listed candidates. But only if we thought our answer was going to carry weight. We would not want to spend a lot of time on this if what we said wasn't going to count. Maybe if we said that we were not satisfied then we could see the other candidates.*

3.7.4 A Member also suggested greater involvement with the short-list;

*Committees are coming into the process far too late – after they effectively have the job (at least in reality if not formally). We should perhaps create small subcommittees within the select committees to meet with the top 2 or 3 candidates, make a recommendation on that basis but still leave the decision with the Government.*

3.7.5 As did another;

*If this process is to become more relevant, Committees should interview the top 3 candidates and express a view as to who we feel is the best.*

3.7.6 But others disagreed with this approach. A Chair said;

*We need to understand the limits of the Select Committee role. I note that on [one appointment] the Committee were concerned they hadn't seen the shortlist. But that is to misunderstand the nature of the Committee's role.*

3.7.7 Another Chair went into more detail as to his concerns;

*if Committees were to be given a real role in appointments we would have to do much more, to know who the other candidates were, to see the scores they were awarded and so on – in short be asked to do the job properly. In which case we need to be properly briefed, see a range of candidates and make sure our processes would stand up to scrutiny by an Industrial Tribunal. When Parliament does make its own appointments, we have a formal Board system and go through a process. We certainly don't do it through a Select committee. The Committees are there to talk about the issues with the person concerned, not appoint them.*

*So overall I don't favour it. The process we have for these posts is now pretty good; and if it can be improved we should be trying to do that – not replace it with a judgement by a Committee that is not geared up for that role.*

3.7.8 The Chair concerned also made clear his preference for post-appointment hearings;

*I think it would be far better if we had a hearing with the successful candidate after they had got the job but before they had taken up post; so we could make clear to them how we saw*



*the role and its priorities. That would serve a useful purpose and get rid of the current ambiguity*

3.7.9 Another Chair expressed a different reservation;

*Another potential danger is that if we continue with this process – and some Committees start to exercise their power with negative reports – then Ministers will start to get irritated and there will be more pressure through the Whips on Government backbenchers on the committees to vote on party lines. That would be very bad.*

3.7.10 Finally a member summarised the broad view effectively;

*The principle underlying the process is sound but I'm not sure we are implementing it the right way. We seem to be second interviewing people and I don't think that's the point. We should be more probing, not just replicate the interview stage. Ultimately the purpose is not clear and that is where the confusion and misunderstandings originate.*

### **3.8 The views of candidates**

3.8.1 During our research we interviewed all but one of the candidates who had gone through a pre-appointment hearing.

3.8.2 **In broad summary**, the views of candidates were generally positive or neutral towards both the principle and experience of hearings, with a clear majority finding at least some positive aspects of the process. There were some reservations, however, about the nature of the recruitment process overall; and about what was seen as – in a very small number of cases – the rather unprofessional behaviour of the Select Committees. A key finding is that a majority of candidates told us they would have stood down in the face of a negative Committee report.

### **3.9 Why do candidates seek these roles?**

3.9.1 Our interviews demonstrated that candidates had a wide variety of reasons for seeking these roles. Indeed the roles differed. Several – the majority – were part-time Chair roles which essentially appealed to experienced people who had retired from their full-time career and were now in “portfolio” careers. To such people the idea of “public service” was a strong motivator, much more so than the potential pay or status. For example;

*when you are retired you need to be more selective – for example I wanted to work only up to half time. So when they approached me for [this role] I was deeply sceptical- especially as it was not an area where I considered myself expert. But they explained that the Chair needed to be neutral and objective; and I could understand that so agreed to put myself forward. So that sounded a good fit for me. And the public duty thing also kicked in.*

3.9.2 For a minority of candidates, however, the appointments concerned were full time roles, where the motivation was more to develop the candidate’s career.

### **3.10 The candidates’ initial expectations of the need for a hearing and their reactions to it**

3.10.1 Candidates (except one) were aware from the outset that a pre-appointment hearing was part of the process. Some were unclear as precisely what to expect or what the purpose was; in particular whether it was really to test their suitability for the post or simply to have a very early discussion after their appointment. One said;

*In my own case, I took the line that they were there to ask about my background, my skills, my suitability for the job, but it wasn’t possible for me to discuss the specifics of how I would set about the role because I hadn’t started yet. But I think the Committee members themselves were unsure about the purpose and structure of the discussion – it was the first one they had done.*

3.10.2 But most understood the intention behind the hearing and the clear majority welcomed it. Certainly, none of the candidates was in any way deterred from proceeding with their application because of the hearing. Several acknowledged that there were potential downsides in being cross-examined in public in such a way but one commented;

*if you are going to do jobs at this sort of level, you do have to take some risks.*

3.10.3 Several candidates were, however, concerned at the additional time it took before their appointment could be confirmed. In general, candidates found the application process for public sector roles of this sort too long; and the addition of a Select Committee hearing made it longer still, especially when (as happened in a minority of cases) the hearing had to be delayed because of a Parliamentary recess. This was a particular issue when candidates had other roles they were considering at the same time; or where they were unable to step back from an existing role because of the uncertainty. It was not uncommon amongst those we interviewed for the time taken from application to final confirmation to be six months or longer – a period that was generally considered far too long. Those who had been the “preferred candidate” for several months (e.g. when the hearing had to be deferred because of the summer recess) found it frustrating that they could not start in the role. One commented that because her potential appointment had been announced, it was widely assumed that she had been appointed – and it was curious to be congratulated on an appointment that was still not certain.

3.10.4 The majority of those we interviewed said that they had devoted considerable time to preparing for the hearing, often with the support of the relevant Department; and it was clear that all the candidates took it seriously. All but a few had appeared before Select Committees before - and some had done so on numerous occasions - but the standard view was that time taken in preparation for Committees was entirely justified. Several candidates had made a point of reading the transcripts of previous pre-appointment hearings.

### **3.11 The candidates’ views of the hearings**

3.11.1 The very clear consensus of the candidates was that the hearings had been reasonable. Some found the experience rather less “tough” than expected, having found the questioning quite reasonable and straightforward. Others thought that they had been pressed rather more, but still within reasonable limits. In general the candidates were complementary about the way the Committees had set about their task. One said, for example;

*the members were genuinely concentrating hard on the issue and I thought thinking hard but fairly as to whether I was suitable for the role. They were positively engaged. That was genuinely welcome. And at no point was I asked questions which I did not think legitimate. Even when they asked about my pay I thought it was fair.*

3.11.2 and another candidate echoed this as follows;

*I thought it was tough but fair, which is what you would expect from this process. You must always be on your guard and think very carefully about your answers. On the whole, it was a fairly good experience.*

3.11.3 While a third said;

*It was much as I expected, covered the ground I expected, and they wanted to check me out; whether I could stand up to the pressure you have to deal with in this sort of job. There was nothing which was unexpected. You must always be on your metal and prepare very carefully. Treat it very seriously. The difference from other Committees is that normally you*

*are doing damage limitation as the Committee members want headlines. This was different, not so inquisitorial; it was less difficult than other Committees I've appeared before but not qualitatively different.*

3.11.4 Overall there was only one candidate who had a low opinion of the process;

*Frankly it was a shambles bordering on farce. The Chair did a good job I thought of conducting the hearing, although I have been told second hand that he was not happy with the number of MPs who turned up. But if you read the transcript there are points when you think I had applied for the job of Bob the Builder*

3.11.5 And a couple of other candidates commented adversely on the approach of the Select Committee members, one saying, for example, that;

*There is a tendency for some MPs to look incredibly disinterested – like they are there because they have to be. They are not good listeners, they tend to do other things, such as reading papers or looking at their blackberries; and that gives a bad impression to candidates – that's not fair – these are important positions and MPs should take the process seriously.*

3.11.6 Another candidate, responding to a comment by the interviewer that his hearing had been “relatively gentle” said;

*Well that's true. But let's get real. If I had been given a tough time, I would have simply got up and walked out. Why on earth should I be faced with hostile questioning? I wasn't in Court. I was prepared to carry out this role in the public interest but I didn't need it as such. My hearing was robust and was fair. But this process has got to be civilised or it will just fail.*

### **3.12 Benefits of the hearings**

3.12.1 Almost all of the candidates thought the hearing had had benefits for them as they took up their new role. Most common was the view that they had had an additional and welcome public endorsement of their appointment. One said;

*After the hearing I really felt quite good about it all. I think that giving a good performance at the Committee gave me an additional legitimacy in the role which I would not otherwise have. I have also been quite astonished by how many people watched the hearing on the parliamentary channel - including many of the staff at [the organisation I chair] - so I think it helped me there too.*

*And there was one additional advantage. I do not expect to be called regularly by the Committee and if I am it will probably be about something specific that has gone wrong. So the pre-appointment hearing was the one opportunity I had to set out my stall and explain the type of chair I intended to be and what my priorities were. I thought that opportunity was well worth having – I welcomed it.*

3.12.2 Another spoke in similar terms

*I think there are two primary benefits: legitimacy mainly within the organisation you will be in charge of, and it's a good opportunity to establish a good relationship with the Committee at the outset. I feel as though the endorsement of the Committee was a real advantage to me when I took up the position. Another advantage is that you get to learn what the Committee members are concerned about which is useful when determining future priorities and policies.*

3.12.3 While a third said

*it's important to feel that Parliament is behind you. I also think that in doing a job of this kind, you've got to be consciously aware that you are accountable and that you will be held accountable. Being scrutinised in this sort of way makes you think carefully about the decisions you make, about how transparent the process is, are you going to be able to explain why you have taken a particular decision. It's all about transparency in government.*

**3.13 Possibility of rejection**

3.13.1 Some, but not all, of the candidates had considered in advance whether they might receive an adverse report from the Committee. We also asked them all the hypothetical question as to their likely reaction should they have been rejected.

3.13.2 Most of the candidates said that, in the event of an adverse report, it was unlikely that they would have persevered. A typical view was;

*I would have stood down, irrespective of the reasons as to why [the report was negative]. It seems to me that the process is about the accountability of heads of certain organisation to Parliament. That is entirely appropriate, and if you don't have the confidence of the people to whom you are accountable you shouldn't take the job, and I wouldn't have.*

3.13.3 and another candidate said;

*I'd have walked away. Life's too short to get into anything that is controversial. I'm in my sixties, I have had my career, I have had a number of public roles, but if a Committee decides they don't want me, well, I'll happily walk away.*

3.13.4 though other candidates acknowledged they would need to consider the issue in more detail;

*[Rejection is] always in the back of your mind; its high risk low probability on the risk matrix. I was confident, having been through the recruitment process. But the Department would have had to really persuade me to take up the appointment if the Committee had recommended against. In any public appointment you need the confidence of all the stakeholders, including parliamentarians. I don't think I would have taken it but it really depends on what the reasons were.*

3.13.5 and another thought they would probably accept the role;

*my instinctive reaction is that I would have wanted to do it regardless. I am very keen to do this job and it would take a lot to deter me. But you would have to think quite carefully about the impact of that. In any job you want as much public support as possible. It would certainly give me serious pause for thought but at the end of the day, I would probably decide that I had been through the formal process which had chosen me as the best candidate and I would have wanted to proceed.*

3.13.6 An issue for candidates in this context was the long term impact on their reputation. One said;

*I am sure I would not have wanted to continue. It would have felt very personal. I think I would have felt that I had in some way failed to demonstrate that I was a credible performer in a public role. And my credibility would have been severely damaged overall. And if I had failed once in an arena like this, then that would be it, not only for that job but for further roles as well. I would not have wanted to come back into the public arena at all in those circumstances.*

3.13.7 And another candidate said;

*I would have considered the Committee's position very carefully. Had they issued a negative report it certainly would have damaged my reputation and possibly my ability to do the job. On that basis, I would likely have stood down, but it does depend on the Committee's reasons for rejecting me. Select Committees do not have an agreed view and different MPs have different views on what these hearings are for. You do worry about certain MPs who may have an axe to grind with either myself, the Minister, the Department, etc. You could get caught in the cross-fire of that.*

### **3.14 Concerns about the future**

3.14.1 Despite their generally positive view of the process, some candidates did express clear reservations about the system;

*If it's found to have worked well for the first 20 – 25 appointments then it is likely that it will be opened up to include any and every public appointment - there will be a real battle – standard civil service appointments, permanent secretaries, ambassadors – where do you draw the line? There will be huge resource implications and it may slow down the whole public appointments process. Another danger is that appointments will become a political game and would lose the rationale for having PAS hearings. The other danger, as seen in the case of the Children's Commissioner, is that Committees will start to say that we've got to show that we have teeth – and then start turning people down for political reasons. This cannot happen; it must be about accountability to Parliament not party politics.*

3.14.2 And there was little sympathy for the idea of Committees seeing more than one candidate;

*I'm entirely against this. You have to have a proper, transparent, completely non-political selection process. I believe that is what we currently have. MPs have no place on selection panels. Nor do I think that Committees should be able to second guess by choosing between*

*candidates. It would make life impossible if they said that A had merits but that B is better for the job; I think that would undermine the whole process.*

3.14.3 There were also residual concerns that candidates might be put off – even if it did not apply to those we interviewed;

*We must be careful that this does not become a political football. Candidates must be judged on whether they can do the job and not on what their political affiliation is or how close they are to a Minister – this would bring the process into disrepute and probably cause people not to apply. There is a lot of stress and aggravation that goes with doing these jobs and politicising the appointments process so it becomes like a lottery will only deter good people from applying.*

3.14.4 While another candidate commented;

*It was a very good process so I don't have any recommendations as to how it could be improved. However, I was lucky to have been in front of [X] Committee, they are very professional and thoughtful. A good Committee can make all the difference. But if Committees start playing politics with public appointments then I would say get rid of PAS hearings. They must act responsibly and consider the reputations of those nominated for appointments, although I don't know how to guarantee that.*

3.14.5 And a third said

*If these hearings are to become permanent then it needs to be made clear who is subject to them and the purpose of PAS hearings. There is no point to them if the Committee does not endorse a candidate and nothing happens. I don't think anyone expected the Children's Commissioner case to turn out like that. If it's a rubber stamp, I don't see the point in continuing. Are the hearings to say yes or no to an appointment or are they to test and prepare the person so the Committee can come back and probe them in the future. If it's a confirmation hearing than the Committee must be listened to but it's not entirely clear. There is also a real possibility that this process will deter people who don't come from the public sector and aren't used to answering to MPs.*

3.14.6 But another candidate was less concerned about the risk of putting off candidates;

*The nature of these jobs – high level of public responsibility – means that you will be in the media and have to deal with stressful situations. Personally, I don't think that a PAS hearing should deter the kind of people that they are after to fill these positions. If it does, then they are not cut out to do the job. That said, I can see how someone with excellent skills may decide that they don't want to go through a hearing. But there will always be someone else with the same skills who is willing to do it. The level of scrutiny for the public sector is different and people applying for these jobs have to understand that and accept it in order to be successful.*

### **3.15 Overall comments**

3.15.1 Finally, one candidate summed up the overall view well;

*I think PAS is a healthy process. I've been involved in politics and I'm also technically qualified. I personally had no difficulty with it. For people without experience in politics I can see this as a potential problem. Also, in academia I was able to tell my current employer what I was thinking about doing in the future...that's normal in academia. However, that might be more difficult in the private sector. As long as it doesn't become like the hearings in the US, I think it's a good thing. We need to work to get the good things out of the process and minimise the negatives*

3.15.2 while another said;

*this was undoubtedly the most nerve wracking thing I have done in my career, but I totally agree with it. I have long been an exponent of public accountability in all its forms and think this is wholly appropriate for these sorts of public appointments.*



### **3.16 The views of Departments**

3.16.1 During our research we interviewed the Departmental officials responsible for all [but one] of the appointments which had been subject to pre-appointment hearings.

3.16.2 **In broad summary**, Departments were largely neutral about pre-appointment hearings. The hearings were primarily seen as an additional piece of process which had been added on to the end of the existing processes and the impact of which was no more than marginal. There was no evidence of candidates being deterred by the need for hearings, and all candidates were perceived to have taken it seriously. But most officials were unable to point to any real benefits arising from the system, though they could see that candidates might welcome the opportunity to set out their case before the Committee. Most officials were also wholly confident that “their” candidate would be endorsed; so there had been very little thought given to the consequences of a negative report, though most thought that a re-run of the competition might prove necessary if the appointment did not proceed.

3.16.3 The most common comment from officials concerned the impact of the hearings on the appointment timetable. There was already a concern that appointments were taking too long; and the additional step of hearings added to the timetable, especially in cases where the hearing caused the appointment to be delayed beyond a Parliamentary recess. That said, most of those we interviewed had planned the timetable at the outset – while some of those who complained most strongly about the delays seemed to have planned the least.

### **3.17 Managing the new approach**

3.17.1 One official gave an overview of the process;

*We were one of the first Departments to go through this new process. There was not much to go on in terms of what we should and should not do. My team, along with the Cabinet Office and the Office of Commissioner for Public Appointments arrived at a process for the competition itself. But once that had finished and we had a preferred candidate we were in uncharted territory. Normally we would inform the Secretary of State of the successful applicant and he would say yes or no. This time around we said you can only appoint in principle – the final decision must wait until after the hearing. It was essential to find the language to explain to the preferred candidate that they have been appointed subject to this PAS hearing. Once that had been established it was a matter of finding a suitable date for the hearing because we really wanted to get this going and have a Chair in place. Fortunately there was an open slot and we had the hearing fairly quickly. I worked closely with the committee clerk – i.e. to understand what material the Committee wanted and the types of questions they would ask – we sent them a background document which was included in the Committee’s report. We gave the candidate the same material as we gave the Committee in order to help them prepare. The whole thing went much more smoothly than I thought. In the absence of precedents I was always a bit nervous; however, having attended the hearing,*

*it was apparent that the Committee was pleased with the candidate and our role in the process.*

### **3.18 Impact of hearings on quality and range of applicants**

3.18.1 We asked about the impact of pre-appointment hearings on the range of candidates. Several said they had feared there would be candidates put off by the Hearings but in practice this had not happened. For example, one official said;

*We were nervous that it would affect the quality of candidates for the role. But based on the quality of the candidates we got for the short list, that concern proved unfounded. We don't know if anyone was put off – you'll need to ask the headhunters - but we were quite satisfied with the field the role attracted.*

3.18.2 There were some concerns, however, about the potential narrowing of the field. Another official commented;

*I think with all high profile public appointments you see the same kind of people – they go from one appointment to the next. Its difficult to know whether people of different backgrounds don't apply because they perceive themselves as outsiders and therefore at a disadvantage. I don't remember there being any ethnic minorities who applied for this position; most were people who have held similar roles in the past.*

3.18.3 There was also a general view that potential applicants who would be deterred from applying by the hearings were unlikely to be serious contenders for the role in any event;

*for the sorts of posts to which this applies, if any candidate really can't handle an appearance before a Committee I would be worried. Yes, they can be nervous about it, but they shouldn't really be unable to cope with it. Most of these jobs are reporting to Parliament, many of them are making big decisions. So they should be ready and able to manage public accountability, through Select Committees.*

### **3.19 The impact of a negative report**

3.19.1 We asked all the Departments if they had prepared for a negative report. The great majority had not, essentially because they felt a negative report was unlikely. For example, one official said;

*we knew it was possible. But we were very confident in our appointee who was sane and sensible. We had a discussion about it but concluded that the risk was minimal. So we concentrated on sitting down with the candidate and making sure they handled it well.*

3.19.2 And another said

*We had no contingency plan, primarily because we had no worries that [the candidate] would not be able to cope very well. I suppose if new evidence had come up we would have been obliged to think again. But it is unlikely that anything new would come up which had not been considered in the interview process.*

3.19.3 And a third said;

*We certainly had no Plan B. We would have had to consider the nature of the Committee's report and the strength of the concern. I think it's rather unlikely we would back down. If anyone ever did do so, then I really would begin to worry about deterring future candidates from going through this process. If we had a more modest recommendation –for example a question mark over the time the person had available - then I suppose we would have another conversation with the candidate. But that conversation should have happened anyway.*

3.19.4 Others had at least given some thought to the possibility that the competition might need to be re-run;

*The only thing that concerned me was what's plan B if the committee don't like the candidate? Although I was aware that the Secretary of State could ignore the committee's recommendation, I didn't think that would happen as it seems to undermine the whole process; although I have since been proven wrong with the Children's Commissioner. But I think we would have had to start the process all over again. Because the preferred candidate was public knowledge, you couldn't really turn around and pick the next best applicant – they would always know that they were the second choice. We accepted that the only realistic option was to go out and advertise again. If this was a closed process then maybe we could have gone down the line of applicants but not once it had become public.*

3.19.5 While another was concerned along similar lines;

*The whole process took around 9 months and if we had to go back to the start it would have been a real problem for us. It also costs money to do this. If the Minister decided not to appoint the preferred candidate I am sure we would have to start over again despite the fact that there were at least 2 other appointable candidates, at a cost of around £30,000*

### **3.20 Additional time added to the process**

3.20.1 One regular concern of officials was the time that the hearings added to the process, especially where there was a delay because of the summer recess. One was quite vehement on this issue;

*What other senior management process would be delayed by two or more months by the fact that those involved in the process were away from their place of work?*

3.20.2 Most others simply recorded the additional time taken and recognised that officials needed to plan the timetable to accommodate the hearings;

*the need for a hearing added roughly six weeks to the length of the process as we were ready to make the appointment just before Xmas, but we had to wait till Parliament resumed after Xmas for the hearing – though we had known this was likely and had started the process in very good time.*

### **3.21 Overall views**

3.21.1 Most of the officials we interviewed saw little overall impact of the Hearings on the outcome of the process. Typical comments were;

*my overall conclusion is that this was a piece of additional process which had no impact on the final outcome, beyond making it longer. It added no obvious value. But I accept I start from the position that we will have done a thorough job, taken every care over the choice and unlikely to have put forward an unsuitable candidate. If those assumptions are not accurate, then the arguments could be different.*

3.21.2 Another said;

*I don't think [the need for a Hearing] really featured heavily in the thinking of the selection panel – it might just have made them a bit more conscious that their decision would have an additional degree of public accountability, but it was pretty marginal.*

3.21.3 Doubts were expressed as to whether any value can be added by hearings

*we already have a thorough process for appointing people to those roles, based on a fairly rigorous process of assessing competencies. Its hard to see what Select Committee hearings add to that – and the risk is they will consider candidates from a different perspective, using other criteria.*

3.21.4 Some acknowledged potential benefits to the candidate;

*it certainly gave [the candidate] an up-front opportunity to meet the Committees and I do believe that he took that opportunity and it will stand him in good stead in the future.*

3.21.5 And another said;

*It also arguably helps the candidate's legitimacy – it makes clearer that they are not simply a political appointee. And there is a bit of value added in adding transparency to the process. But in terms of making sure we get the best candidate, other than keeping us honest, I think it's very marginal*

3.21.6 One official commented more generally;

*[If this system continues,] I would be more explicit about what its purpose is as it's misunderstood by lay people and insiders. It's an opportunity for MPs to question about suitability. To say you have to go through a scrutiny hearing before appointment suggests to me that the Committees have power – they don't. There needs to be clarity. If Committee members want to influence the process then maybe they should be part of the selection panel – then they can influence the decision – but I'm not convinced that's a good idea.*

3.21.7 Whereas another commented;

*to be blunt, the hearing added a bit of time to the process but that was about it. If the appointment process has been properly managed and there has been no undue political interference then I can't see that it adds much value. Unless you have made a strange appointment or they have an agenda of their own, the Committee will come to the same conclusion. If you wanted to make a real impact, then you would have to get the Committee involved at a much earlier stage and given a real role in the selection process.*

3.21.8 A further official questioned the process in similar terms;

*There were some reasonable discussions about high level issues. All interesting enough, but I don't really think it added anything to the sum of human knowledge or would have persuaded the public that this was an important new democratic innovation – there were hardly any members of the public there of course. Nor was the Report anything more than factual and anodyne.*

3.21.9 One official was asked whether Select Committee might consider more than one candidate. He responded;

*I don't think that's possible: it flies in the face of the purpose of PAS hearings – it's to scrutinise the Minister's preferred candidate – not to pick from a list. It's not the role of an MP to do that. Their role is to scrutinise the preferred candidate. You would have to change the process from one of scrutiny to candidate selection. And I don't think it would be right for the Select Committee to have more power than the secretary of state.*

3.21.10 One concern raised was whether Committees' decisions on candidates would be influenced by the overall relationship with the Department;

*A concern is that Committees do have changing relationships with Departments. It would be fundamentally unfair if a candidate could get through in January when relationships were good – but might have a negative report in June when they weren't.*

3.21.11 While another remarked that Committees might be compromised by a positive report;

*To be honest, I think it somewhat compromises the freedom of the Committee to criticise post hoc. If there proves to be a major failure down the line for which the candidate is culpable, I think it weakens the Committee's authority a little if they have endorsed the candidate.*

### **3.22 The views of Search Consultants**

3.22.1 During our research we interviewed the Search consultancies (“headhunters”) responsible for all but two of the appointments which had been subject to pre-appointment hearings, one of which had not used search consultants.

3.22.2 **In broad summary**, the views of search consultants were mildly negative about pre-appointment hearings. The initial concerns that candidates would be deterred by the hearings had not been realised, though the Children’s Commissioner case meant that they remained anxious about the potential future impact.

3.22.3 But the consistent view of the search consultants was that the overall public sector recruitment process was already a very real deterrent to some potential candidates. In their view there were a good number of people who had a lot to offer the public sector but who were put off by the processes of recruitment and found it bureaucratic, excessively time consuming and lengthy; and generally unengaging. Many potentially good candidates were also put off by what they saw as the potential bear-pit of public criticism which would result from taking up a role in public life.

3.22.4 Moreover, they considered there was an inherent tendency in Whitehall to recruit people for such major roles who were already well used to public life as they would be comfortable with the public accountability of the role and exposure to public challenge. So requiring the preferred candidate people to go before a Select Committee prior to appointment could not really be said to be reducing the chances of those from other backgrounds – as those candidates had usually been deterred or rejected before the final stages.

### **3.23 Do headhunters have evidence that candidates have been deterred?**

3.23.1 On the whole, search consultants could point to no direct evidence that candidates were being deterred by the process of Hearings. The view below was typical;

*I started off, much like the Appointments Commissioner, by fearing that there was a big risk of people being deterred - especially for private sector people with a public reputation. But the overall impression I have is actually that this is something that has not had the impact we thought.*

3.23.2 Another consultant said;

*there was a great worry at the start that it would be seen by candidates as a major and difficult hoop. I don't think that has been an issue for me. The people who have gone through the hoop seem to have coped with it very well and without undue anxiety. That may have been because they were not really aware of the risks of a negative report – I told them that it wasn't a fait accompli but they may not have listened. But more probably it is because they were the sort of people who were big enough and good enough that in practice it really wasn't a major obstacle for them. So it hasn't been as quite as scary as we first thought. Indeed, I have found that candidates who have been through it have hardly mentioned it. So*

*there may be an argument which says that it wasn't enough of a hurdle for them. If its worth doing at all, perhaps it should be tougher.*

3.23.3 But it was still seen as a potential issue of concern. For example;

*I always felt that the main concern would be how private sector candidates would cope with the process and whether it would be enough of a disincentive to cause them to withdraw. I still have that concern but have no tangible evidence.*

and

*my top line view is that, while you can never be definitive, as people do not wholly tell you the full truth, this may be an issue which is putting off candidates. And we have no way of knowing who might have been put off without telling us.*

### **3.24 Concerns about the overall process**

3.24.1 Most of those we interviewed, however, thought that it was too often an uphill struggle trying to attract high quality candidates for some of these public roles, especially from the private sector

*the public appointments process is fraught with issues which put off candidates and the Hearing is just one, though not particularly a key one.*

3.24.2 And there was a recognition that some Select Committee hearings were part of a general concern felt by candidates about being subject to public scrutiny;

*The first issue is whether a candidate who was intimidated by having to appear before a Select Committee would be credible. I don't think they would be. But the second issue – which has always been my main concern – is whether a candidate from the private sector and with no relevant public experience would be willing to contemplate even the possibility of being rejected by a Select Committee in such a public way. People from the private sector are not used to that; and might well be put off by it. The recent examples of both Maggie Atkinson and Professor Nutt might well lead a private sector person to stand back as they will see a risk to their reputation.*

3.24.3 Another commented

*There are a whole bunch of people who select themselves out of these processes because they say, 'is it worth it?' It is a protracted process with many hurdles which people are not used to. One major problem is the time between when the panel makes its decision and the Minister confirming that view...that is way too long. If you separate the hearing aspect from the rest of the process, the rest of the process gives you 90% of the deterrent factor.*

3.24.4 And a third search consultant said;

*Hearings are a marginal issue, compared to the wider concerns about working within Government – and just at the moment people don't want to apply for posts at a time of major political uncertainty. People do think that they might in theory be independent chairs but in practice will be leant on. People are also worried that if things get difficult it will be*

*the Chairs not the Ministers who take the rap. So the Select Committee requirement is pretty marginal as an additional disincentive.*

3.24.5 Another comment was

*there are people who could make a real contribution to public life who look at the goldfish bowl of being in public life – and the way the press behave in particular – and simply back away from it. That’s impacting on people’s willingness to be politicians, of course, not just being a candidate for a public appointment.*

### **3.25 Importance of being able to perform credibly with Select Committees**

3.25.1 Most consultants emphasised the importance of candidates being able to perform on public platforms. One said;

*it is clear these are high profile jobs overall, so if a candidate is not up for a Select Committee hearing, I doubt they are really up to the challenges of the appointment overall. From my experience what looms large in some people’s minds, is what they see as the general horror of the exposure to public scrutiny and the very real possibility that they will come across in a bad light. So the pre-app hearing is rather a good proxy for whether they are really willing to do these roles. If the aversion is so great that they pull out, they almost certainly weren’t suitable for the appointment.*

3.25.2 It was accepted in this context that the process favoured those who were already used to Westminster;

*it really does favour insiders. The whole system militates towards the senior reaches of the public sector.*

3.25.3 A view which was repeated by another search consultant;

*when I look at the people who have gone through this, it seems to me they are almost exclusively people who know and understand the public sector and not people who are new to it. It seems to me that this new process of hearings is re-enforcing that.*

3.25.4 One consultant pointed out the downsides of this;

*If there is one area I am concerned with its whether we are only getting the great and the good – can we get someone with all the skills but has never done it before. We need to make these people feel comfortable.*

3.25.5 But considerable scepticism was expressed as to whether “Whitehall” genuinely wanted more diverse candidates;

*When I look at the people who have been appointed, I am sure they would have got the jobs regardless of this new process. So I find it difficult to say that the pre-appointment hearings have as yet had any impact on the field. For these sorts of jobs, you are very likely to only give serious consideration to people who have considerable experience of the public sector; and who would thus not be put off by the process.*



And

*The civil service is genuinely risk averse when it comes to appointments. Its in the culture. They recruit in their own mould. When we bring in a candidate who we think they should consider but might be a bit of a risk they invariably say No.*

### **3.26 Conduct of the Hearings**

3.26.1 In broad terms there was a feeling that the hearings had gone well. One said;

*Having seen the hearings, I thought it was a very reasonable process. It was an intelligent conversation, not a political forum. We feared there would be some politics in the hearing because of the circumstances surrounding the setting up of the body, but the candidate did very well. I suppose this attracts people who enjoy those processes, that is political people.*

3.26.2 Another who attended a hearing said;

*I was struck by how well [the candidate] handled it – but I realised they were only able to do so because they had had such a long career in the public sector and was used to the environment of select committees. Indeed the candidate told me it had been a walk in the park; but I am very sure it would have been much, much harder for others. But I could see why the OCPA head would be concerned that it would deflect a more diverse group of people from applying. I was also struck by the loneliness of it – it is rather unusual for someone to be appearing before a Select Committee on their own. It did look rather intimidating.*

3.26.3 And another consultant expressed a similar view more forcefully;

*the final thing I would say would be about the extent to which the MPs on the Committees recognise that recruitment is about both buying and selling. Some of the questioning seems to be along the lines of “why do you think we should let you do this job”; whereas many of the candidates might reasonably say that they are only considering doing the job because they have been asked to do so and are willing to do something for the public and certainly not because they need to do it.*

### **3.27 Benefits from Select Committee hearings**

3.27.1 There was a clear recognition that a successful hearing might enhance the reputation of a candidate;

*Although the PAS hearing introduces some uncertainty and irrationality in the process, the candidate can walk in knowing that they have already succeeded – they have the endorsement of the department and the minister. They may hate the process but when they go into the hearing I imagine they feel fairly good about it. These are big people well before they get to the PAS hearing. I don’t think that is any different from those coming out of the private sector. I was genuinely concerned about this process but I have not seen evidence suggesting that PAS deters good people. There is an upside to all this; if you get through you have three endorsements – that has to be empowering.*

3.27.2 That said, there was some views to the contrary

*It seems to me that people have a justified prejudice as to what they can expect from a Select Committee; and don't have much respect for it. Its mechanistic, many members just trying to use it to get publicity for themselves and so on. No one will think that appearing before a Committee will do them or their reputation any good.*

3.27.3 One commented on the impact of the Children's Commissioner case;

*I think it has changed the game. There was a lot of politics involved. The process had gone through, a panel had made a recommendation, the Committee had an opportunity to express a view and the Minister decided to make the appointment. So I think the formal process was maintained. I don't know how much damage it has done to the Children's Commissioner, but it has made clear to all potential candidates for other roles that it is a highly politicised environment...that's what went on here; it was about politics. Unfortunately a candidate got kicked around as a result.*

### **3.28 The future**

3.28.1 Looking to the future, there was a general concern that it might become harder to fill these roles in future. One search consultant commented;

*Whitehall is recognising that in the future it is going to have to deliver more for less, something which it traditionally struggles to do and is going to need to bring in private sector skills it does not have. But it simultaneously restricts itself by recruitment processes which aim to be transparent and equitable and by apparently wanting to backtrack from a willingness to pay the rates necessary to attract the best talent – so the current rhetoric about forcing all pay to below that of the Prime Minister is going to make the public sector a less attractive place for people of talent. And we load on top of that requiring people to go before Parliament in a very public way and crawl over their record in ways which can belittle the candidates. I just don't know how that circle is going to be squared.*

3.28.2 And another commented

*[pre-appointment hearings have] not been a big factor in the appointments I have done so far, but that has been because of the nature of the appointments. But I still think that there is a genuine risk that in the future people - and particularly private sector people - will be deterred. First because they decide they cannot take any risk, however, remote to their reputation by being "recommended against"; and second, because they cannot accept that a bunch of MPs, who they do not consider have any relevant skills to make judgements on them, will have the opportunity to do so. Some people I have met in the past will certainly think along those lines.*

3.28.3 A third said;

*if we are to continue with hearings I think we have to consider much more carefully which of these appointments pre-app hearings should apply to and which they shouldn't. We might well want to take certain appointments out of the system, simply because we genuinely want to broaden the candidates to include people who might not be prepared to go through with a hearing – and I certainly don't think we risk bad appointments as a result.*

## **Chapter 4: Our media research**

### **4.1 Methodology**

4.1.1 A media analysis using Lexis Nexis UK was conducted in order to determine the extent and nature of media coverage which pre-appointment hearings have received. This involved searching the appointees' name and the title of the position to which he or she had been appointed both separately and together. Searches were restricted to all UK publications so as to include industry publications as well as national and local newspapers. The search dates were restricted to the time the appointee was announced as the preferred candidate until a month after the pre-appointment hearing.

### **4.2 The Extent of the Media Coverage**

4.2.2 Based on the media analysis it is clear that pre-appointment hearings received fairly wide-spread coverage by the major media sources in the UK. However, the extent of coverage varied depending on the appointment. Almost all appointments received at least a small mention in two or more major publications. However, the appointment of Lord Jay of Ewelme as the Chair of the House of Lords Appointments Commission was mentioned in only one major publication; the "Other people on the move" section of the Guardian. A search related to the appointment of the Local Government Ombudsman returned zero results.

4.2.3 Conversely, searches related to Colette Bowe's appointment as Chair of OFCOM returned multiple articles in all of the major publications, including: *The Guardian*, *The Times*, *The Independent*, *The Evening Standard* and *The Daily Mail*. Not surprisingly, the Children's Commissioner's appointment hearing and its aftermath generated the most coverage of all the appointments with over thirty print-based articles. The appointment of the Chair of the Statistics Authority also generated considerable media coverage with searches returning 14 articles.

4.2.4 Appointments which were regarded as high profile, either because of the appointee or due to the position itself tended to receive greater media coverage. The appointment of the Chair of the Care Quality Commission (CQC), for example, received more coverage in the national press than the appointment of the Information Commissioner. This is despite the fact that the Information Commissioner has a comparable remit to the Chair of the CQC, arguably more so given the significant executive powers vested in the former.

4.2.5 Coverage of appointments to bodies which are considered highly technical or which have relatively narrow remits were more likely to appear in trade and industry publications rather than mainstream media sources. With the exception of one local newspaper, searches related to the appointment of the Chair of the Infrastructure Planning Commission returned results from publications such as *Building Design*, *Planning and Regeneration* and *Renewal*.

**Table 4A: Media Coverage of Appointments**

<b>Appointment</b>	<b>Number of Search Results</b>
Chair of the Statistics Authority	14
Chair of the Care Quality Commission	8
Chair of the House of Lords Appointments Commission	1
Chair of the Office for Legal Complaints	2
Chair of OFCOM	24
Information Commissioner	6
Chair of the Infrastructure Planning Commission	7
HM Inspector of Constabulary	2
Chair of the Office of Rail Regulation	3
Chair of the Economic and Social Research Council	3
Chair of the Biotechnology and Biological Sciences Research Council	2
Chair of the Food Standards Agency	5
Chair of the Science and Technology Facilities Council	3
Deputy Chairs of the Infrastructure Planning Commission	2
Children’s Commissioner	32
Local Government Ombudsman	0
Chair of Natural England	2
Chair of ACoBA	3

### **4.3 The Nature of the Media Coverage**

4.3.1 The nature of the coverage of pre-appointment hearings has been relatively fair – though with a depressing degree of gender bias as demonstrated below. Most articles simply stated that a particular person has been appointed to the post, provided some background on the appointee and the position, and explained that he or she had been obliged to attend a pre-appointment hearing. However, some appointees have been treated in a distinctly prejudicial way by certain media sources, notably in terms of salaries, which are obviously not set by the candidates themselves.

4.3.2 Most of the coverage of Colette Bowe’s appointment, for example, focused on her £206,000 a year salary. Anna Walker’s £125,000 a year salary was also reported in certain publications. However, some went further, discussing issues such as Dr Bowe’s clothing and jobs from when she was a university student. One headline in the *Daily Mail* simply stated, “Quango Queen Colette”.<sup>47</sup>

4.3.3 In the case of the Children’s Commissioner, the *Daily Mail* published a very short mention of Maggie Atkinson’s appointment which read,

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<sup>47</sup> Ephraim Hardcastle, ‘Quango Queen Colette,’ *Daily Mail*, 4 December 2008, p 17.

*The next £138,000-a-year head of the fancy-titled quango with the job of making children's rights-type noise with minimal effect is Dr Maggie Atkinson. Who she, you ask? A former teacher, she is currently children's services director at Gateshead council. Oh, and she has no children of her own. C'est la vie.*<sup>48</sup>

Without exception, male appointees were not subject to this type of coverage, including those with high salaries.

4.3.4 On some occasions, stories in the press have formed the basis of members' questions during pre-appointment hearings. On the day of his hearing, the *Financial Times* published an article noting that the Sir Michael Scholar's son was the Chief of Staff at No 10. In order to test his independence, Sir Michael was asked by the committee chairman whether his son was aware of the appointment. Stories were published in the days prior to the appointment hearing of Lord Lang as Chair of ACoBA detailing past and outstanding legal claims against US financial services firm Marsh & McLennan. Lord Lang, who is a director of the company, was questioned extensively about these issues by some members of PASC.

4.3.5 Some media coverage of the introduction of pre-appointment hearings presented a highly simplified, and perhaps even inaccurate, picture of the new system. Certain members of the press were quick to point-out the apparent similarities between pre-appointment hearings in the UK and congressional confirmation hearings in the US. For example, an article from the *Guardian* on 3 June 2008 states, "The announcement [of the introduction of pre-appointment hearings] is a move towards the US system of government, where Congress has a role in top White House appointments." An article from the *Sunday Times* uses the phrase "American-style 'confirmation hearings'". This is unfortunate given that the two systems differ significantly as noted in Chapter 1 of the report.

#### **4.4 New Media**

4.4.1 In addition to traditional print-based media sources, coverage of and opinions on pre-appointment scrutiny hearings are also transmitted via blogs on the internet. The recent appointment hearing for the Chair of ACoBA illustrates this new and growing phenomenon. Following the hearing, Paul Flynn MP, a member of PASC, used his personal blog to criticise both the appointee, Lord Lang, and the Committee's decision to endorse the appointment.

4.4.2 In his blog entry from 27 November 2009, titled, "Lang the problem, not the solution", Mr Flynn wrote,

*The final decision by a majority of the committee was wrong. Rejection was judged to be a nuclear option. If holding pre-appointment hearings is justified, rejections must be seriously considered. One unique feature in this case is that the appointment had already been made*

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<sup>48</sup> Ephraim Hardcastle, *Daily Mail*, 7 October 2009.

*and retrospective rejection would have created a messy situation. That's no excuse for taking the wrong decision.*<sup>49</sup>

4.4.3 Other MPs have used both personal and party blogs to express their views on pre-appointment hearings and the work of Select Committees. On his personal blog, Douglas Carswell MP has stated that the appointment of “quango chiefs” should be subject to “confirmation hearings” by Select Committees.<sup>50</sup> Peter Luff MP has argued on a Conservative Party blog that some public appointments should require a debate and vote in the House of Commons.<sup>51</sup>

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<sup>49</sup> Paul Flynn, ‘Lang the problem, not the answer,’ Personal Blog, 27 November 2009, available at: [http://paulflynnmp.typepad.com/my\\_weblog/2009/11/index.html](http://paulflynnmp.typepad.com/my_weblog/2009/11/index.html).

<sup>50</sup> Douglas Carswell, ‘How do we cull the quangos?’ Personal Blog, 9 September 2009, available at: <http://www.talkcarswell.com/show.aspx?id=974>.

<sup>51</sup> Peter Luff, ‘We need fewer but more powerful select committees,’ Conservative Party Blog, 13 January 2009, available at: <http://conservativehome.blogs.com/platform/2009/01/peter-luff-mp-w.html>.

## **Chapter 5: The key issues**

### **5.1 Introduction**

5.1.2 Based on our research, we have identified five key issues which justify discussion. (We distinguish this from the identification of possible options going forward – a subject discussed in chapter 6.) Those issues are

- Has the system of pre-appointment hearings added to democracy?
- What are the impacts of hearings upon the supply and willingness of candidates to come forward?
- What have we learnt about the potential impacts of a negative report?
- Is there an inherent contradiction between the formality of the appointments process within Whitehall and the informality of Select Committees?
- Are the right appointments being tested?

5.1.3 In this chapter we consider the arguments and evidence in each of these areas.

### **5.2 Impact on democracy and democratic transparency**

5.2.1 In this context, a key argument for hearings was based on a broad view that significant public appointments should have an additional degree of transparency by engaging Parliament in the process of making those appointments. This was assumed to have a wider benefit in terms of democratic transparency, recognising that the post-holders for the various roles subject to scrutiny were exercising considerable powers in the public interest. While there was no suggestion that there was a significant “democratic deficit” in the previous approach - which, after all, involved appointment by an elected Government, following a formal process approved by the Commissioner for Public Appointments - the chosen roles were seen as of such importance that a greater degree of transparency was justified.

5.2.2 **Our research suggests that this objective has been achieved.** Regardless of views on the conduct of hearings (discussed below), the fact that public hearings have been held seems a clear democratic gain. Under the previous system, Departments announced that appointments had been made at the end of the process but very little was made public about the nature of the recruitment process. There was a degree of transparency about the system as a whole through the public availability of the OCPA code of practice, coupled with the regular reports from the Commissioner herself. But there is little doubt that the Committee hearings have attracted a degree of publicity and at times press comment which had not previously been routine. And the reports of the Committees have contained more information on the process for individual appointments than had previously been the case.

5.2.3 Moreover, the views of the candidates we interviewed suggest that the majority of them felt some tangible, if not easily defined, benefit in terms of their “legitimacy”. There were various comments along the lines that they felt they had received an additional and very public endorsement of their appointment which would not otherwise have been the case. And several noted that their standing with the organisation they were leading had been enhanced, because they had already been seen to perform creditably in public.

5.2.4 It is important, of course, not to overstate this conclusion. It could not be remotely claimed that pre-appointment scrutiny has transformed the situation from the earlier practice. It is only the preferred candidate whose name enters the public domain; and the media interest, though consistent, has generally been low key. It is also fair to record that not all the candidates we interviewed saw any additional benefit to them from the hearing but regarded it instead as simply another hurdle in the process. So, even though we conclude that there has been a step forward in terms of democratic transparency, it is simply an incremental step - and quite a small one.

5.2.5 Finally under this heading, we should note the question as to whether there is any benefit in hearings in reducing the risk of - or perception of - “political bias” in making appointments to these roles. This is clearly a sensitive issue; and we found no evidence whatsoever of there being any such bias in practice, something which OCPA processes should already pick up and prevent. We are thus confident that no candidate who has not demonstrated they can meet the specified criteria for the role could be appointed, with or without Committee hearings. But it would be equally wrong to deny that there is not at least some perception of a political element in a number of potential appointments. And we think that at the margin there is legitimate scope within the system for appointments which allow some political issues to be considered when choosing between well-qualified candidates. But several of those we interviewed, both Parliamentarians and officials, thought that there was something about the public nature of the hearings which “kept the process honest”; and thus ensured that all preferred candidates were capable of performing the role, regardless of their background. We agree; and conclude that pre-appointment hearings provide an additional safeguard against the potential for abuse.

### **5.3 Impact on the supply of candidates**

5.3.1 A clear concern from the outset of the new system was that;

- i) it would deter some good quality candidates from applying; and
- ii) it would tend to favour the “usual suspects” rather than encourage greater diversity.

5.3.2 **Our research suggests strongly that to date there has been no significant deterrent effect on applications.** The headhunters we interviewed said consistently that they had been initially concerned that candidates would be put off by the prospect of Hearings, but that in practice they had not discerned any such impact. Departments had had similar concerns but could report no evidence of short-listed candidates being put off by the requirement for hearings.

5.3.3 It is, of course, hard to prove a negative; so there must remain a possibility that people who might have been credible candidates were indeed deterred but never got as far as a serious discussion with the headhunters. Moreover, in our interviews with candidates and Departments, a



couple of examples were given to us of specific cases where the interviewees were confident that certain individuals would have been deterred by the prospect of hearings. (For example, two cases were mentioned to us where our interviewees were confident that if particular posts had been included on the list, the current post holder would not have been prepared to go through a hearing for reasons which it is not appropriate to discuss in this report but which seemed to us entirely credible.)

5.3.4 It was also clear that the headhunters were giving us a more nuanced response than a simple “no impact”. They all recorded a view that they encountered many individuals who they felt could do an excellent job in public roles of this sort but who were unwilling to take them on because they perceived them as more trouble than they were worth. Frequent concerns were expressed about what was seen as an overly-complex and time consuming recruitment process; and the potential downsides, if appointed, of taking on roles which were perceived as modestly paid but with major potential for public criticism. The introduction of pre-appointment hearings would undoubtedly be seen by such reluctant candidates as a negative. But the point was that such people were already deterred from applying for public appointments - so the addition of a public hearing had no discernible additional impact. Other candidates, in contrast, were prepared to accept the inevitable public elements of public roles, including the hearings. One preferred candidate put the same point to us very clearly;

*I can see how someone with excellent skills may decide that they don't want to go through a hearing, but there will always be someone else with the same skills who is willing to do it.*

5.3.5 At the time of our interviews, the Children’s Commissioner case had become a very public issue and this was obviously the source of additional comment about its potentially deterrent effect. Our broad conclusion is that *occasional* recommendations not to appoint will have little deterrent effect especially if they are perceived – as the Children’s Commissioner case was undoubtedly perceived – as being one-off events where a broader political agenda was in play. But there is no doubt that the headhunters we interviewed felt that if adverse recommendations became commonplace, then the deterrent effect could come to have real substance.

#### **The Children’s Commissioner Case**

*The Children’s Commissioner for England post is unique amongst those which posts have been subject to pre-appointment hearings in that it resulted in a report by the Children, Schools and Families Committee, concluding that they could not endorse the appointment of Maggie Atkinson, the preferred candidate identified by an independent recruitment process. The Secretary of State decided, however, to proceed with the appointment recommended by the independent panel. Inevitably this became a very public issue, with considerable media comment.*

*This case had a clear impact on this research and many of those we have interviewed - including those involved directly in that case- spoke to us about it. Those views are reflected in this report, in so far as they have implications for the concept of hearings overall. The details of the case itself and our analysis of it are set out in Annex A.*

5.3.6 **On the related issue of “diversity”, our conclusion is that pre-appointment hearings clearly favour candidates who have already been engaged in public positions** . But it is again a nuanced conclusion in that we believe that there are already very strong pressures in the appointments

system which favours candidates with such a background. So the impact on diversity, though real, is a marginal one and we have not found any indication that any of these appointments would have been more likely to go to “outsiders” if there had been no pre-appointment hearings.

5.3.7 It is important to make clear that we define “diversity” for the purposes of this report not in terms of gender or ethnic background but in terms of distinguishing between people who are experienced in public life from people who have no track record in public matters. (Whether the former are termed as the “establishment”, the “great and the good” or “the usual suspects” is a matter of choice.) In broad terms, the government has made clear it wishes to open up public appointments to a wider range of candidates than has traditionally been the case, so it would obviously be a concern if the requirement for hearings were to discourage the consideration of a wider range of candidates.

5.3.8 It is clear, however, that the vast majority of the candidates who have been subject to pre-appointment scrutiny hearings to date have been of people already experienced in public life. Almost all, for example, had appeared before Select Committees before, in some cases on numerous occasions. So, on the face of it, the concern that hearings might have a negative impact on diversity seems justified.

5.3.9 It is important to recognise, however, that the posts chosen for scrutiny by Committees are the most senior public appointments. For all such posts a strong CV is essential, demonstrating that the candidate has experience of issues such as public accountability and the need for public appearances. Very few candidates with no previous public appointment would be able to demonstrate this. Moreover, the Departmental officials we interviewed said that they would be very reluctant to select someone for appointment unless they had absolute confidence that the chosen candidate would perform credibly on public platforms such as in front of Committees. So an ability to operate in the public domain is already built in to the criteria for the appointment, usually explicitly. Moreover, we note that Departmental officials, by their own admission in our interviews, tend not to be risk-taking in recommending public appointments to Ministers and often give a high priority to selecting “a safe pair of hands”. This again favours experienced candidates.

5.3.10 In substance, therefore, while we conclude that pre-appointment hearings do not encourage wider diversity in that they discriminate against “outsiders”, we do not think that genuine outsiders are likely to be appointed to roles at this level. We do not challenge the importance of promoting greater diversity in public appointments, but we suggest that objective is best achieved by focusing on the more junior public appointments – which of course are the great majority of appointments made.

#### **5.4 the potential impact of a negative report**

5.4.1 A consistent comment we received from those we interviewed from Parliament was that the Children’s Commissioner case demonstrated that there was no value in pre-appointment hearings “because the government will simply press on with the appointment regardless”. Based on our research, we believe that this view is wrong. Indeed **our conclusion is that a negative report may well lead to the proposed appointment not proceeding**. While this is a “hypothetical” conclusion, we certainly think it would be wrong for anyone to assume that the outcome of the one negative report to date means that all negative reports would have the same outcome.

5.4.2 Our view is based on the following assessment;

- A clear majority of the candidates we interviewed said that in the event of a negative report they would not have wanted to be appointed. This particularly applied to those who were being appointed to “Chair” roles where the post holder was likely to have a portfolio career and to have, in a typical phrase, “plenty of other good uses of my time”. Attitudes to a potentially negative report varied somewhat from a genuine respect of the Committee’s right to recommend against appointment to a more robust “plague on all their houses” attitude. But most candidates thought that it would be difficult to proceed without Committee endorsement – and that they would not want to. It may be appropriate to discount this research finding to a degree because it is arguably easier to take a principled stance when the issue is hypothetical rather than actual. But we are clear that several preferred candidates would not have proceeded in the event of a negative report;
- separately, it should not be assumed that Departments or Ministers will simply over-ride a negative report without considering it in detail. In our analysis of the Children’s Commissioner case, we point out that that DCSF considered the Children’s Committee’s report in considerable depth and gave a thorough and detailed response to the report - in practice far more detailed than the report itself. It is clear to us that the special circumstances surrounding that case - especially the Committee’s focus on the nature of the post as much as the candidate - made the Department’s response an entirely legitimate one, given the Committee’s role was to offer advice not exercise a veto. (We also note the spontaneous support for that candidate from third parties after the Committee’s report was published.) But it certainly cannot be assumed that because the Secretary of State rejected the Committee’s advice in the one negative case to date, then the Committee’s advice would always be rejected.

5.4.3 Of these two issues, we believe the first is more likely to come into play than the second in that we would expect that candidates would be more likely to withdraw in the face of a negative report than that Department would withdraw their support for the candidate. But both are certainly possible.

5.4.4 We have yet to see, of course, what would happen if a negative Committee report was accepted by the relevant Secretary of State or the candidate concerned decided not to proceed. Our expectation is that it is unlikely that the Department would be able to promote any other candidate from the original recruitment round (who would already know that they were not first choice and might well be reluctant to proceed or quite possibly be unavailable by that point). Instead a new recruitment round would then be needed with the inevitable additional costs and delay. In some cases this could lead to real operational issues, with a post left vacant for some time.

5.4.5 A further consideration in those circumstances would be whether a subsequent re-run of the recruitment would be overshadowed by concerns among candidates about applying for a role which had already been the subject of political controversy. The odds are certainly that some candidates would be deterred.

## **5.5 Is there an inherent contradiction between the formality of appointments subject to the process and the informality of Select committees?**

5.5.1 A strong concern of the Commissioner for Public Appointments was that the Select Committee process would compromise the integrity of the public appointments process, which is generally determined by the OCPA code of conduct. **Our conclusion is that there is an inherent contradiction between the two approaches which experience has demonstrated.** It does not follow, however, that such logical contradictions cannot exist – indeed they are quite common in public life.

5.5.2 In essence, the OCPA rules subject appointment processes to a standard set of procedures and a “competencies” based approach. In brief, this means that Departments decide in advance what personal skills and abilities are required if the post-holder is to carry out the role effectively; and candidates are assessed as to how far they match those competencies. The qualities required are generally graded as either “essential” or “desirable” – so that a candidate who does not meet all the essential competencies will not be appointed, but it is possible that a candidate may not meet all the “desirable” requirements. At the same time, the use of competency-based assessments ensures that appointments are made on the basis of criteria set at the outset – and that other information is not considered relevant.

5.5.3 As part of the preparation for hearings, Departments have made these competence criteria available to the Committee through the clerks as part of the factual background to the appointment. It is clear, however, from our reading of the transcripts (and attendance at the more recent hearings), backed up by the interviews we have conducted, that the Committee hearings have in no significant way sought to assess the preferred candidate against those competencies.

5.5.4 Instead, the hearings have tended to be wide ranging and cover the whole range of issues which seemed relevant to the Committee at the time. Candidates have been questioned, for example, about their personal background, their views on current operational issues, the legitimacy of their salaries, whether the terms of reference of the role concerned are correct and so on. Some Committees have clearly – backed up by the evidence of our interviews - regarded the hearings as in effect their first meeting with the newly appointed post holder rather than assessing whether the post-holder meets the criteria. Others have focussed more on the candidate but even those have strayed from that narrow agenda into wider issues. A few have clearly challenged the definition of the requirements for the role laid down by the Department or set out in statute, an approach which overlay the discussion of the Children’s Commissioner case but also affected others. (For example in the case of one regulatory Chair, the Committee clearly questioned the preferred candidate’s lack of sector specific experience in relation to the industry being regulated, though the Department had not made such experience an essential competence for the role.)

5.5.5 This does not remotely mean that Committees have exceeded their brief in conducting these hearings. It was never intended that Committees should confine their hearings to the issues raised by the formal competency based recruitment process and it was always accepted that Committees would be able to adopt their usual approach under which anyone giving evidence to a Committee can expect to be pressed for views on a wide range of issues. Moreover, simply asking Committees to assess against pre-determined criteria would seem a rather pointless process as those criteria will already have been used in the identification of the preferred candidate by the Department.

5.5.6 But the fact that Committee hearings are so wide ranging in the issues they discuss with candidates does create an inherent tension between the formality of the OCPA approach, testing defined competencies, and the informality (by comparison) of the Select Committee hearings seeking to form an overview of the candidate. And, given that candidates have a legitimate expectation that they will be assessed against the stated requirements for the role rather than other criteria, then it is conceivable that a candidate rejected after a negative hearing could object on “due process” grounds about their rejection. We do not think, however, that this is remotely likely to happen in practice, given that candidates for these types of roles know they are in a political arena and knew the potential for a negative report in the first place.

5.5.7 Moreover, it is possible for the circle to be squared. For most roles at this level, the ability to perform successfully with stakeholders and on public platforms is likely to be an “essential” requirement and that is certainly being tested by the hearings. And the fact that the Secretary of State is free to reject a negative report means that a candidate has a degree of protection from a Committee which seeks to “rewrite the job description” and reject the candidate by new criteria. But there is no doubt that a conflict between the formal process and the hearings remains.

## **5.6 Are the right appointments being tested?**

5.6.1 The current list of just over 60 appointments subject to this process came about through discussion between Government (represented by the Cabinet Office) and Parliament (represented by the Liaison Committee and the Public Administration Committee). The original Government proposal was for a smaller number of appointments, but Committees were invited to suggest additions to the list and several did so. Most of their requests were accepted (with some exceptions, most notably, perhaps, the rejected request to include the Chair of the BBC Trust), but Committees did not have any universal template against which to request additions. Given the “pilot” nature of the hearings, this seemed entirely appropriate.

5.6.2 **We are clear, however, that the resultant list is somewhat illogical** in a number of areas. Most of those we interviewed felt that the list was about right in length but less sensible in detail. The Transport Committee has only one appointment on the list (the Rail Regulator) and the other economic regulator in their area – the Civil Aviation Authority) is not covered. The Chair of the Office of Legal Complaints is on the list, but not the Chair of the Legal Services Board, which is the more senior body (and which appoints the Chair of the OLC). The Chair of the Agricultural Wages Board is included but not the Chair of the Low Pay Commission. In some cases, Departmental officials gave technical reasons for distinguishing between bodies on and off the list, but other Departments appeared not to be applying the same logic.

5.6.3 We are not suggesting that the list is wrong in terms of the majority of posts currently included on it. But we suggest in the next chapter some possible thoughts on the way that a future list could be constructed.

5.6.4 We also note briefly that some interviewees suggested to us that different categories of appointments should also be included in the process – in one case Cabinet Ministers, but more regularly Permanent Secretaries or senior diplomatic posts (which are already subject to a post appointment but pre-commencement hearings if going to a non career diplomat). But we consider that widening the scope of this report in such a way would be beyond our terms of reference. We

observe, however, that Select Committees have considerable demands on their time which make it unlikely that they could prioritise significantly greater numbers of appointment-related hearings.

## **Chapter 6: possible ways forward**

### **6.1 Introduction**

6.1.1 In compiling this report, we have sought to focus on gathering the evidence and identifying the key issues. In this chapter we turn to identifying possible ways forward.

6.1.2 In doing so, **we are clear that we are not making recommendations**. The issues raised in this report are essentially about the balance of responsibilities between Parliament as the legislative body and the Government as the executive body. That balance can only be determined in discussion and dialogue between Parliament and Government and is not a matter for us. What does concern us, however, is what the possible options might be - and whether they are likely to be workable.

6.1.3 We have grouped our thoughts around four possible ways forward as follows;

- A greater role for Parliament - e.g. engagement with more than one candidate, a power of veto etc;
- The status quo, perhaps with some modest adjustments to the appointments subject to hearings and the current processes;
- A slight step back – effectively to replace pre-appointment scrutiny with post-appointment or pre-commencement hearings;
- A hybrid approach – a greater role for Parliament in a smaller number of appointments.

6.1.4 This is certainly not a complete list of possibilities but provides a focus for the discussion which will be needed between Parliament and Government in taking the next steps.

### **6.2 A greater role for Parliament**

6.2.1 We discuss this issue first because the strongest views expressed in our research were by Parliamentarians, the majority of whom saw the existing process as unsatisfactory and wanted to go further. The two main types of proposal were;

- The power to recommend against the appointment of the preferred candidate should become a formal veto on their appointment; and
- Committees should not be limited to a hearing with a single candidate but should have some form of access to the short list of candidates and possibly be able to interview more than one.

6.2.2 We can understand the thinking behind both concepts. There is currently a widespread view amongst Chair and Committee members that the government will simply press ahead with the preferred candidate, so a negative report will have no impact - in which case “what’s the point”. We can also understand why Committee members feel that they are being asked to identify too narrow a question - “is this candidate suitable for appointment?” - and would prefer to be able to

answer the question “is this the best candidate for the post?”, a question which would obviously require a deeper engagement in the process.

6.2.3 An absolute veto would in effect mean that no appointment would proceed unless the Committee had approved the appointment. It is effectively the system in operation for many posts in the USA where senate agreement is needed to ratify a wide range of Presidential nominations. There are important differences, however, between the UK and the USA. The logic for the US veto is that candidates have not gone through an application process which formally tests their competence to perform the role but are essentially put forward as political nominees. That approach is not followed in the UK where posts of this nature are open to public application and there is very limited scope - in principle none - for party political considerations.

6.2.4 While we have not specifically tested the proposition in our interviews, our expectations are that very few candidates for these roles would be prepared to accept that they should run the risk of going through a complete process - which can already take six months – only to be vetoed by a Committee which might have a low turn out or be motivated by considerations going beyond the immediate competence of the potential post holder. Most of the candidates we interviewed thought that the risk of an adverse report was a risk worth running – but we believe the fact that the Committee role was essentially advisory was an important component of their personal risk assessment.

6.2.5 Separately, we do not see that a veto concept is compatible with the reality that these appointments are Government appointments rather than Parliamentary ones. This is both a practical and technical issue. On the practical side, most of the postholders report directly to the Ministers and officials of the Government Department concerned, receive their budgets from them and require their approval for their activities, for example through approval of their annual plans. In turn, Ministers are then answerable in Parliament for the bodies concerned, a concept which we feel would be undermined by Ministers not being directly responsible for the appointment of the head of the organisation concerned. On the technical side, most of the posts concerned are statutory appointments with the legislation assigning the appointment decision to Ministers. While it is compatible with such legislation for the Secretary of State to seek advice on the appointment, it would not be compatible to make the appointment subject to a third party veto; and primary legislation would almost certainly be needed for a formal veto to be given effect.

6.2.6 We would conclude therefore that a veto for Parliament on these appointments would be far more radical than a mere evolution of the current system of pre-appointment hearings. It would involve a wholesale replacement of the current appointments process in the UK with a system based around government nominations for such posts with the approval of the legislature being required before the appointment could be made. Such an approach is clearly possible but beyond the scope of this report.

6.2.7 The possibility of Committees having a wider engagement with the short-list raises different considerations, as this would still retain the essential advisory nature of the Committee role. There are possible variations, ranging for example, from a formal interview with all the short listed candidates to a paper list made available to a Committee in confidence. The Committee might thus recommend which candidate be appointed, but have only an advisory role with no power of veto.



6.2.8 We are again doubtful, however, whether this is in practice compatible with the current system of appointments. Although the sort of appointments covered by this survey are public appointments, they are not posts for which people compete in public. There is accordingly no expectation amongst those applying for these roles that their interest will become known unless and until they are appointed to the role – or at least until they become the preferred candidate. This is not simply a question of personal preference but can have practical consequences – for example, candidates may not wish to inform their current employers of the fact that they are applying for one of these roles, until they have a reasonable prospect of succeeding. We would expect any system which involved the short list becoming public knowledge, therefore, to be a serious deterrent to a wide range of potential candidates.

6.2.9 We do accept, of course, that MPs are in exactly this position of being public candidates for public roles whenever there is an election – and that many of them feel, and indeed told us, that they cannot see why there should be any anonymity for those wishing to take on high-profile public appointments. But that would require a very significant shift in the way that these roles are filled, effectively with full disclosure and, no doubt, moves towards people beginning to campaign for public appointments. That would again be a radical shift, beyond the scope of this report.

6.2.10 More practically, we are also unclear how a system of the Committee being provided with the short-list could be managed in logistical terms. If the Department had nominated a preferred candidate, we consider it would be unfair to that candidate to reject them after a hearing against the possibility that a subsequent candidate might be better. In practice we think this short list approach could only work if all short listed candidates were interviewed - an approach which, as noted, we think would deter many candidates. (It would also require the Committees to spend considerably more time on each appointment.)

6.2.11 Finally, we would note that the more responsibility that is given to Committees in relation to appointments, the higher the expectations would be that they should follow processes which are compliant with best practice in interviewing techniques against a background of employment law. There is no reason in principle why that could not be done - but it would undoubtedly be alien to the overall approach of Select Committees to expect them to depart from their current freedom to interrogate witnesses “without fear or favour”.

6.2.12 A variation on this approach – under which Committees might have some confidential engagement with the process – is considered in the next section.

### **6.3 The status quo, probably with some adjustments to the appointments subject to hearings**

6.3.1 We noted in chapter 3 that the majority of those we interviewed in Parliament were critical of the process to date, with considerable frustration as to the limited role that has been given to Committees.

6.3.2 As we pointed out in chapter 5, however, a good degree of the frustration has been caused by the assumption that any adverse views on candidates would be disregarded by the Government. We believe that this assumption is unjustified - and that even if Government were to wish to press ahead following a negative report, many candidates might choose to withdraw. In short, the influence of Committees is probably rather greater than they are currently assuming.

6.3.3 The other concern with the status quo has tended to come from the other direction and to be concerned with the incompatibility of the current process with the formal OCPA processes. While we understand this concern, we also note that many of the specific concerns were about potential detrimental effects which have not in practice occurred. And we also note the strongest advocates of the new approach have been the candidates themselves who have in most cases rather welcomed the introduction of a public element to the process which was not previously present.

6.3.4 In short, therefore, we believe that there is a clear case for the maintenance of the current process as instituted in 2008 and for the trial process to become a permanent one. If that approach were to be followed, however, we suggest a number of possible improvements could be considered in the following areas;

- Shared guidance for Committees, Departments and candidates making clear what hearings are meant to test – and what is beyond the process. At the moment, the Cabinet Office guidance to Departments is separate from the guidance issued to Committees by the Liaison Committee – and this caused some confusion in the Children’s Commissioner case. Ideally there should be a single statement on the nature of the hearings agreed between Parliament and Government – and available to the candidates;
- A recognition by Committees that they are primarily focussed on the candidate’s ability to engage with stakeholders in discussing the issues facing the organisation concerned and on assessing their qualifications for the role as defined. It is entirely reasonable for Committees to argue for a different specification for the role concerned – but not to assess the candidate against that different specification. This is not to suggest that the hearing itself should not be wide-ranging in the issues discussed – but the Committee’s advice should be focussed on the suitability of the candidate for the role they have applied for;
- Whether it might be possible for Committees to be more fully briefed (probably privately but this would be for discussion) by the Department concerned on the background to the appointment before a decision is made to hold a hearing. The Committee could then decide whether, in the circumstances of the case, a hearing was a good use of their time and how best to focus the discussion. The Committee would not be given the names of other members of the short list, but would be better able to understand what might happen if they advised against the preferred candidate. In some cases, the Committee might decide that they would prefer not to have a formal hearing – or replace it with a post appointment hearing;
- whether there is scope for some confidential discussion between the Committee and the Department concerned (or perhaps the Chair and the Minister) so that Committees can express reservations in a less public form. The Liaison Committee guidelines (para 1.1.6 above) provide for this in certain circumstances but we are not aware that this provision has been used and it could be further developed;

- whether there is a case for an additional piece of Parliamentary procedure in cases where the Government receives a negative report from the Committee but decides to proceed with the appointment. The Secretary of State could commit, for example, to a statement in those circumstances which would enable him or her to be challenged on the decision. (There have also been suggestions that there should be a vote on the floor of the House as is required – exceptionally - for the Chair of the Statistics Authority.) If this option is pursued, however, we believe the focus should be on the decision of the Secretary of State concerned, not the merits of the candidate;
- further consideration as to which posts should be subject to hearings, with a focus on posts which have major elements of Parliamentary accountability. As noted above, our impression is that the current list evolved from the various discussions between the Committees and the Government prior to the introduction of Hearings but was based more on pragmatism than seeking to identify a rational basis to decide whether posts should be on the list or not. In the box below, we consider in outline what posts might be covered, though we do not claim this approach would necessarily produce a better outcome.

**Possible criteria for deciding which posts should be included**

In broad terms, pre-appointment scrutiny should be applied to the most important posts - those which have considerable power. Potential characteristics which would favour inclusion might be;

- Where the post-holder is expected to call Government to account - and where a Select Committee can test the candidate's independence of mind and willingness to criticise Government;
- Where the post-holder (or organisation) is making decisions which have a strong ethical or moral dimension, for example making decisions based on assessments of public taste or decency. There is potential benefit in a Select Committee asking the candidate about those issues in a public forum;
- Where the post is particularly high profile in terms of public interest and political debate;
- Where the post holder is making decisions of particular interest to Parliament (for example the House of Lords Appointments Committee);
- Where the post holder is making decisions of direct impact on third parties - whether individuals or private companies.

In contrast, posts for which recruitment is focussed on professional skills - engineering, economics or legal – and which are rather less likely to be in the public eye should be less of a priority for hearings. We also think that making decisions on whether a post should be on the list by virtue of its “technical” classification (e.g. the formal legal status of the body concerned) should generally be avoided.

6.3.5 In making these suggestions for possible improvements to the current approach, we are conscious of one counter-argument, namely that the greater the detailed engagement of Committees with the process, the more Committees are potentially compromising their traditional role of calling Government to account “without fear or favour”. As a number of those we interviewed pointed out, Committees are primarily there to hold the Government to account and are not engaged in the decision making process. It is certainly arguable that the more that Committees are drawn into joint decision making, the more that their traditional role is compromised.<sup>52</sup>

6.3.6 Finally in this section we note that a number of those we interviewed - committee members, candidates and Departments – commented on whether there should be some opportunity for Select Committees to be consulted to **whether the existing post-holder for these appointments should be re-appointed at the end of their first term**. The argument put forward for this was that Committees were in practice better able to comment on the performance of someone who had been in post for a number of years than they were able to comment on someone before they took up the post. Some Committees suggested they should be able to conduct “pre-reappointment” hearings, while others thought their views should be sought through the Chairman on a confidential basis, to inform the Department’s decision on whether to re-appoint a candidate.

6.3.7 This might, therefore, be an additional potential reform for the Cabinet Office and Parliament to consider. We note, however, the argument put to us by one Committee Chair that all appointments of this nature should essentially be “single term” appointments of four or five years, as he considered that would be a far better guarantee of the independence of mind of the post holder. That approach is already the case for certain appointments.

#### **6.4 A slight step back - to make Parliament’s role more about early dialogue with the appointment holder, rather than whether they should be appointed**

6.4.1 A very clear option for the future would be to reconstitute the hearings so that they took place after the candidate was appointed but before they took up post (or very shortly thereafter). A minority of Committee Chairs suggested that this was, in effect, how they regarded hearings at the moment.

6.4.2 The principle attraction of such a reform is that it would remove the concerns that the current approach is inherently confused and contradictory. In particular that approach would remove the inherent contradiction between the integrity of the OCPA rules and processes and the introduction at the later stages of the process of the “wild card” of committee hearings. We are confident that many Departments would support that approach as would some Committee members, who find the current approach so frustrating and who might prefer a step back to the status quo, if a step forward is not on offer.

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<sup>52</sup> We cannot resist including a quote from John Stuart Mill in his 19<sup>th</sup> century book Representative Government p. 239: "Instead of the function of governing, for which it is radically unfit, the proper office of the representative assembly is to watch and control the government: to throw the light of publicity on its acts..."

6.4.3 Our concern, however, would be that such an approach would in effect be abandoning the system of hearings completely. We note in particular that it has always been open to Committees to hold hearings with new appointees to significant roles in their area of responsibility – and some indeed have done so. But it has very much been an occasional event and the majority of Committees have not chosen to hold such hearings. We consider it is essentially the fact that Committees have had the power to recommend against a candidate’s appointment that has added a degree of substance to the hearings; and believe that few Committees would choose to hold such hearings if they had no potential influence on the appointment itself. If Committee members feel at present sceptical about the value of these hearings under the current regime, we doubt they would feel more positive about hearings with less obvious substance.

6.4.4 We also believe that something worthwhile would be lost as a result. We continue to be struck by how candidates – while still regarding the hearings as challenging – have welcomed the opportunity they were given to set out their stall and to have a dialogue with the Committee on their approach to the role – as well as taking the Committee’s views at such an early stage. We think this would be lost if we had a system of post-appointment hearings – as we doubt that many such hearings would be held.

6.4.5 But this nonetheless remains a clear option for the Cabinet Office and Parliament to consider. We have shown how much frustration the current arrangements are causing and this is very much the “clarity” option.

## **6.5 A hybrid – a greater role for Parliament in a smaller number of appointments**

6.5.1 Finally, we consider that there is an option of a stronger role for Parliament in a smaller number of particular appointments. These would in effect become joint appointments between Parliament and the Government, thus removing the need for Committee hearings.

6.5.2 The logic of this is that there is a particular type of public appointment where the post holder is by definition required to be critical of Government (and on some occasions Parliament) in performing their role effectively – in effect to be on the side of the citizen against those who hold power over them. These are often grouped together under the broad heading of “constitutional watchdogs” though there is no precise definition of that term. Several of the posts already covered by the requirement for pre-appointment hearings would fall within this category, for example the Parliamentary Commissioner for Administration. Some of the cases where there have already been pre-appointment hearings, for example the Information Commissioner, the Chair of the Statistics Authority and the Chair of the House of Lords Appointment Commission, seem to share the same characteristic of being appointments where independence of Government is “part of the DNA” of the role.

6.5.3 We think there is a case, therefore, for consideration as to whether Parliament could be more directly engaged in these appointments than is currently given through pre-appointment hearings. One simple option, which would not undermine the principle of Ministerial accountability for the final decision, would be for Parliament to nominate a member of the selection panel, possibly but not necessarily the Chair of the relevant Departmental committee. But other approaches might be possible. In the longer term, it might be possible for legislation to recognise that such appointments should be formally carried out on a dual basis. We would not overstate the

case for such a reform but we believe there would be some value in terms of public perception if Government were less open to the criticism than, at least in some of these cases, it is inevitably compromising the independence of the post holder by being solely responsible for their appointment.

6.5.4 It would then be for consideration as to the impact a more intensive engagement by Parliament in a sub-set of appointments should have on the other appointments – and, indeed whether there should still be a formal hearing in all cases.

## Annex A

### The Children Commissioner's case

The essential facts of the case are as follows;

- The Secretary of State for Children, Schools and Families wrote to the CSF Committee Chairman on 6 October 2009, to say that Maggie Atkinson, Director of Children's Services at Gateshead Council, had been identified as the Government's preferred candidate to take up the post of Children's Commissioner for England when the term of office of the incumbent, Professor Sir Al Aynsley-Green, came to an end in February 2010.
- The Department also provided a supporting memorandum about the recruitment process and the criteria that had been used in assessing the candidates. The process followed standard OCPA rules, the only unusual feature being that the short listed candidates had had an interview with a number of children, observed by the OCPA assessor and a member of the recruitment panel.
- The Committee held a hearing with Maggie Atkinson on Monday 12 October 2009.
- The Committee informed the Department of its intention to recommend against her appointment later that week, enabling the Department to prepare its response before the report was published.
- The Committee issued its report on 19 October. It concluded as follows;

***While we are satisfied that Maggie Atkinson demonstrated a high degree of professional competence, we feel unable to endorse her appointment, as we would like to have seen more sign of determination to assert the independence of the role, to challenge the status quo on children's behalf, and to stretch the remit of the post, in particular by championing children's rights.***<sup>53</sup>

- The Secretary of State simultaneously released a letter to the Chairman of the Committee (dated 18 October) discussing the issues in considerable detail and making clear that he intended to proceed with the appointment.<sup>54</sup>
- The appointment was formally announced on 21 October.

### **Parliamentary and press coverage**

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<sup>53</sup> Children, Schools and Families Committee, Appointment of the Children's Commissioner for England, 14 October 2009, HC 998-I, para 6.

<sup>54</sup> Letter dated 19 October 2009 from Ed Balls MP to Barry Sheerman MP, Chair of the Children, Schools and Families Select Committee, re the appointment of the Children's Commissioner for England. Available at: [http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn\\_id=2009\\_0192](http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2009_0192).

- Following the Committee’s report and the Secretary of State’s announcement that he was proceeding with the appointment, the Speaker granted an Urgent Question from the Conservative Front bench on the afternoon of 19 October which was answered by the Secretary of State. The Chairman of the CSF Committee took part in these exchanges.<sup>55</sup>
- There was considerable coverage in the press the next day, with some commentators arguing that the new system of hearings had failed in that the government had rejected the first recommendation not to appoint from a Committee; or that this was part of a wider political conflict between the Committee and the Secretary of State; or that Maggie Atkinson would indeed be strongly independent in the way she performed the role and the Committee had been mistaken.
- A further short discussion was held between the Committee and the Secretary of State at a Committee hearing on 21 October. Part of those exchanges focussed on the Cabinet Office guidance for pre-appointment hearings and in particular the fact that those guidelines – which the Committee had apparently not seen – suggested that recommendations not to appoint by Committees based on the candidate’s performance at the Committee would be “exceptional”.

### **Our observations**

- This case was the first and so far only example of a recommendation not to appoint by a Committee. It demonstrates that the new approach of Committee hearings has substance and are not just rubber stamping exercises.
- The Committee’s advice was in this case rejected. But it does not follow - as has been asserted by some - that it “proves the hearings are a sham”. Because the system is based not on a principle of veto but on Committees offering advice to the Secretary of State, it would be reasonable to expect that their advice would be followed in some cases but not in all of them. It is not sensible to make overall judgements on a single case.
- It has also been argued that the speed of the Government’s response to the Committee meant that their report has been casually dismissed. We disagree with this. The Department responded quickly because it wished to avoid leaving the candidate in limbo, as would have been the case had there been a delay before the response. But the Secretary of State’s response was detailed, indeed almost forensic in its analysis. We are satisfied that the Department took the Committee’s report seriously.
- A clear factor in this case was that the Committee had reservations about the nature of the role of Children’s Commissioner (a role which is set out in statute); and that, it was this, rather more than the competence of the candidate which dictated their conclusion. As noted above, the Committee had expressed the view that they did not think the candidate would “stretch the remit of the post”. Indeed, the Chair of the Committee spoke as follows in the debate on 21 October;

***“Can I just put it on record that there has been some discussion that this Committee, and the Chairman in particular, have undermined the reputation of the person who was put forward? Can I say that in all the deliberations, in all the interviews I have done, I have***

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<sup>55</sup> HC Deb 19 October 2009 cc639-643.



***tried to go out of my way to say that this woman is highly qualified, highly competent, and, for many jobs, if I had been sitting on the panel, I would have hired her on the spot.***

***But this Committee did have reservations about her rightness for this particular role. We at no time tried to undermine this woman's reputation. Can I put that on the record today? That is not our intention and never was our intention. For us, we had reservations about this particular role, and that came out of the questioning".<sup>56</sup>***

Clearly the Committee were entitled to their view on what the nature of the post ***should*** be. But the Secretary of State was, in our view, equally entitled to take the line that the candidate had been recruited against a particular specification for the role – and that the Committee had in effect endorsed the candidate against that specification. He was certainly not obliged to endorse the Committee's different view of the right emphasis for the role.

The case does, however, make clear that there is still a lack of a common understanding between the Government and the Select Committees on the scope of the hearings. This is not a criticism – that understanding was always more likely to be tested through specific cases than through hypothetical discussions.

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<sup>56</sup> Children, Schools and Families Committee, Oral Evidence given by Rt Hon. Ed Balls, Secretary of State for Children, Schools and Families, and David Bell, Permanent Secretary, Department for Children, Schools and Families, 21 October 2009, HC 174.

## **Annex B**

### **List of Appointments Subject to Pre-Appointment Hearings**

<b>Title of Post</b>	<b>Committee</b>
HM Chief Inspector of the Crown Prosecution Service	Justice
Chair of the Advisory Committee on Business Appointments	PASC
Chair of the Charity Commission	PASC
Chair of the Committee on Standards in Public Life	PASC
Chair of the House of Lords Appointments Commission	PASC
Chair of the Statistics Authority	Treasury, now PASC
Commissioner for Public Appointments	PASC
First Civil Service Commissioner	PASC
Parliamentary Commissioner for Administration	PASC
Chair of the Gas and Electricity Markets Authority (GEMA)	BIS
Chair of OFCOM	BIS/CMS
Chair of the Competition Commission	BIS
Chair of the Office of Fair Trading	BIS
Chair of the Postal Services Commission	BIS
Chair of the Qualifications and Curriculum Development Agency	CSF
Chair of Ofqual	CSF
Children's Commissioner for England	CSF
HM Chief Inspector of Education, Children's Services and Skills	CSF
Chair of Tenant Services Authority	CLG

Chair of the Audit Commission	CLG
Chair of the Infrastructure Planning Commission	CLG
Chair of Standards for England	CLG
Chief Fire and Rescue Officer	CLG
Local Commissioners for Administration in England	CLG
Chair of the Agricultural Wages Board	EFRA
Chair of the Committee on Climate Change	EFRA
Chair of the Environment Agency	EFRA
Chair of the Gangmaster Licensing Authority	EFRA
Chair of Natural England	EFRA
Chair of the Water Services Regulatory Authority (OFWAT)	EFRA
Rural Advocate	EFRA
Chair of the Economic and Social Research Council	S&T
Chair of the Arts and Humanities Research Council	S&T
Chair of the Biotechnology and Biological Sciences Research Council	S&T
Chair of the Engineering and Physical Sciences Research Council	S&T
Chair of the Medical Research Council	S&T
Chair of the Natural Environment Research Council	S&T
Chair of the Science and Technology Facilities Council	S&T
Chair of the Higher Education Funding Council for England	S&T
Director of the Office for Fair Access	S&T
Chair of the Office of Rail Regulation	Transport
Chair of the Social Security Advisory Committee	W&P
Pensions Ombudsman	W&P
Pensions Protection Fund Ombudsman	W&P
Chair of the Appointments Commission	Health
Chair of the Care Quality Commission	Health
Chair of the Food Standards Agency	Health
Health Service Commissioner for England	Health

Chair of the Commission for Equality and Human Rights	CLG
Comptroller and Auditor General	PAC
HM Chief Inspector of Constabulary	Home Affairs
Service Complaints Commissioner	Defence
Chair of the Judicial Appointments Commission	Justice
Chair of the Office for Legal Complaints	Justice
HM Chief Inspector of Prisons	Justice
HM Chief Inspector of Probation	Justice
Information Commissioner	Justice
Prison and Probation Ombudsman	Justice
Deputy Chairs of the Infrastructure Planning Commission	CLG

**Other appointment hearings held by select committees not included in the Government's list of positions subject to pre-appointment scrutiny (see paras. 1.2.2 – 1.2.4)**

Member of the Bank of England's Monetary Policy Committee	Treasury
Member of the Bank of England's Monetary Policy Committee	Treasury
Member of the Bank of England's Monetary Policy Committee	Treasury
Member of the Bank of England's Monetary Policy Committee	Treasury
Deputy Governor of Bank of England	Treasury
Deputy Governor of Bank of England	Treasury
Chairman of Financial Services Authority	Treasury
British High Commissioner to Malawi	Foreign Affairs
British High Commissioner to Australia	Foreign Affairs

## **Annex C**

### **List of Pre-Appointment Hearings** **(As of 1 February 2010)**

18 July 2007 (*date of hearing*)

Chair of the Statistics Board

Treasury Committee

8 May 2008

Chair of the Care Quality Commission

Health Committee

22 July 2008

Chair of the House of Lords Appointments Commission

PASC

21 October 2008

Chair of the Office for Legal Complaints

Justice Committee

13 January 2009

Chair of OFCOM

Joint Business and Enterprise and Culture, Media and Sport Committees

27 January 2009

Information Commissioner

Justice Committee

16 March 2009

Chair of the Infrastructure Planning Commission

Communities and Local Government Committee

21 April 2009

HM Inspector of Constabulary

Home Affairs Committee

29 April 2009

Chair of the Office of Rail Regulation

Transport Committee

5 May 2009

Chair of the Economic and Social Research Council

Innovation, Universities, Science and Skills Committee

13 May 2009

Chair of the Biotechnology and Biological Sciences Research Council

Innovation, Universities, Science and Skills Committee

6 July 2009

Chair of the Food Standards Agency  
Health Committee

13 July 2009

Chair of the Science and Technology Facilities Council  
Innovation, Universities, Science and Skills Committee

20 July 2009

Deputy Chairs of the Infrastructure Planning Commission  
Communities and Local Government Committee

12 October 2009

Children's Commissioner  
Children, Schools and Families

12 October 2009

Local Government Ombudsman  
Communities and Local Government

25 November 2009

Chair of Natural England  
Environment, Food and Rural Affairs

26 November 2009

Chair of ACoBA  
PASC

12 January 2009

HM Chief Inspector Crown Prosecution Service  
Justice Committee

## Annex D

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