

Public Appointments - Two Years on from Grimstone - Finding the Right People to Run Public Bodies

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My theme tonight is how public appointments are decided and the balance between a minister's right - as an elected office holder - to appoint to the boards of public bodies and statutory offices, and the principle of selection by fair and open competition - with independent oversight and regulation. I also want to address the issue of widening the range of people appointed. My starting point is a lecture which my predecessor Sir David Normington gave here over two years ago in December 2016 on the ebb and flow of debate since the mid-1990s from the pre-Nolan era of unfettered ministerial patronage up to the years of ministerial activism during the Cameron Government - and then the review by Sir Gerry Grimstone which was published in spring 2016 just as his term was running out.

Throughout it has been a balance between ministerial involvement in appointments to public bodies which execute their policies and for which they are accountable, and independent oversight. In practice, it has been as much about the behaviour of ministers and their advisers as what is laid out in successive Codes. Sir David streamlined the appointments process but from 2012 onwards faced an unusual period of ministerial activism on appointments and the announcement of a review by Sir Gerry Grimstone of the regulatory system. It was against this background that Sir David expressed serious worries about several of the changes proposed by the Grimstone review which he felt undermined and dismantled almost everything that he and the three previous Commissioners had sought to do in the public interest. In particular, the Grimstone changes transferred ownership and control of the Code from the Commissioner to the Government; the Commissioner's central team of public appointments assessors who had chaired panels for major public appointments were abolished; ministers could dispense with a competition altogether and could appoint candidates who had been assessed as unappointable by the selection panel. And the Commissioner was to be notified not consulted about key phases of appointments. The Public Administration and Constitutional Affairs Committee echoed Sir David's worries and said the changes threatened to undermine the entire basis of independent appointments. There were also some important positives in terms of increased transparency about the process of appointments and a suggested three month goal for completion of competitions, hard though that is, in practice, to achieve. And some in Whitehall felt that Grimstone reflected the reality of ministerial involvement in appointments.

This was the situation against which I was proposed as Public Appointments Commissioner in spring 2016. But my time has not worked out as the critics of the Grimstone review feared. In part this was because I negotiated a number of changes with the Cabinet Office in the draft Code before it was finally introduced at the start of 2017. In particular, these discussions led to the principle of fairness being included among the core principles of public appointments-- that is all applicants should be treated equally whether they had been suggested by a minister or applied independently. Moreover, I ensured that the Commissioner would be consulted, not just notified, if a minister wants to appoint without a competition or appoint someone who had been judged unappointable. This has turned out

to be very important since it has permitted a time for reconsideration in private before a decision is made and announced. Yet, by definition, it is hard to point to successes here when, by definition, they are confidential.

But, most important of all, ministers have so far largely behaved with self-restraint, and, with officials, have wanted to follow the thrust of the longstanding system of fair and open competition. So, in contrast, to the activism which Sir David faced under the old Code of Practice, I have generally seen a less activist phase under the Government's own code. I have experienced a spirit of co-operation from the Cabinet Office and the three ministers responsible for public appointments over the past three years. I may have been the fortunate beneficiary of the change of Prime Minister in July 2016 and the subsequent focus of ministers on Brexit.

So, for instance, there have been no real problems over the appointment of senior independent panel members who have often been the same as, or with a very similar background to, the former public appointments assessors. The main difference is that the old public appointments assessors were directly involved and could intervene on the Commissioner's behalf. I have relied on contacts with departments and the requirement to consult to discuss, investigate and comment when necessary.

Ministers have not sought to appoint without competition except in rare cases, as before, and the main debate has been about extending people in office, reflecting a problem of inadequate succession planning in some departments. There has been no case so far of a minister appointing someone judged unappointable by a selection panel. The only attempt to do so, in the summer of 2017, was successfully and confidentially defused and a fresh competition was held.

My office has operated by encouraging departments to consult with us in case of potential problems and on interpretation of the Code, I had a tour around all the relevant Permanent Secretaries in charge of departments in the late summer of 2017 and my team has been conducting compliance visits to look at competition papers and procedures. This has, on the whole, been a positive and encouraging process, highlighting evidence of good practice, as well as a few shortcomings. The OCPA office will later this year conduct a number of thematic reviews on, for instance, the workings of the three month aspiration for completion of competitions.

The Commissioner, as before, considers complaints from people who have not been satisfied with the answers from departments and my adjudications are published. In addition, I have a duty under the Code to undertake inquiries where there is a matter of wider public concern, or where MPs have raised questions. I have sought to be as transparent and open as possible publishing complaints and investigations, as well as regular blogs on issues and areas of concern. The main example was a year ago over two appointments to the board of the new Office for Students - one where the Education Department had conducted insufficient due diligence and a separate case where a student representative was blocked by a Downing Street adviser on grounds which were different from the job specification and a replacement was put forward without proper consultation. I think it is fair to say that lessons have been learned and departments have adopted sensible

and proportionate due diligence checks on social media activity to alert interview panels and ministers to any potential questions.

One result has been a greater involvement with Parliament and, in particular, with Select Committees who have asked questions about appointments - in particular whether a candidate has been judged appointable on the basis of a fair and open competition by a properly constituted panel with independent representation. That issue has arisen in a handful of cases where people, peers and former MPs, have been nominated to chair important public bodies.

The issue of politicisation tends to be exaggerated. The total number of appointees declaring significant political activity (holding office, making a declarable donation or being a candidate) remains at around 6 per cent. It should be stressed that there is nothing wrong with political activity-- it is an important part of public service but it cannot be the sole reason for an appointment. At the top level, ministers of all parties have been picked people sympathetic with their objectives to chair bodies. The key issue is whether they have emerged from a fair and open competition. In my time as Commissioner I have generally been impressed by the robustness of the system. Civil servants who now chair panels have not felt they either have to interview all candidates favoured by ministers and their advisers, or then to assess such politically favoured candidates as appointable if they do not meet the essential criteria relevant to the role. I have, however, observed a tendency at times by special advisers to object to some strong candidates because of their links to Opposition parties. A less blinkered view would be welcome.

My role is to provide assurance that the process has followed the Code. It is a matter for ministers to select from candidates judged appointable and then, if relevant, for the appropriate Select Committee to take a view at a pre-appointment hearing. There has, of course, been an inquiry by PACAC into pre-appointment hearings and I am pleased that the Government in its response noted that:-

‘The Commissioner for Public Appointments provides independent assurance that public appointments are made in accordance with these principles (in the Governance Code). The Commissioner has powers to investigate complaints, launch investigations and audit procedures and practices. In his evidence to the Committee, the Commissioner gave examples of where he has ensured that Ministers acted in accordance with the Code. He also noted that he has the ability make public where he has concerns that an appointment is being made contrary to the Code without good reason. This could include giving evidence to a select committee. The Commissioner has, on several occasions, conducted further investigation into appointments where there has been public concern over the processes.

I regard these comments from the Government as supporting a robust view of the process in my role as Commissioner. I do not want to be complacent since so much depends on the attitude of ministers and departments. These could obviously change and make it much harder for a Commissioner to uphold the key principles of fair and open competition. That is where Sir David’s warnings are still relevant. It will always be necessary for the Commissioner to be vigilant and robust.

Finally, some words on diversity. One of my specific roles is to be a public advocate of diversity in appointments. Since I don't appoint anyone myself, this involves two functions - collecting and publishing data submitted by departments from applicants and highlighting initiatives to improve diversity. The record is patchy - on the whole good and sustained progress on the appointment and reappointment of women at around 48 per cent. This is just short of the Government's target of 50 per cent by 2022. But the performance for Black, Asian and other ethnic minorities remains stuck at around 10 per cent for new appointments, against the 14 per cent goal by 2022, and at 7 per cent for candidates who declare a disability.

The Government commissioned a review by Lord Holmes of Richmond, a former Paralympian swimmer and Conservative peer, into the factors holding back disabled applicants. His report, published last December, made a number of welcome suggestions which should not apply only to those with disabilities but also more widely. Amongst those suggestions was a greater understanding of public appointments, reaching out to disadvantaged groups, reviewing application and interview procedures, and mentoring and support schemes. My office recently organised a workshop with the Public Chairs Forum to hear about mentoring initiatives - in Northern Ireland, in the black community in London and from NHS Improvement- specifically aimed at helping younger people and from target groups to gain experience and skills to make them stronger candidates for Boards. I believe that schemes like Boardroom Apprentice in Northern Ireland with its twelve month offer of experience of shadowing a charity or public body offer a way forward to help make the non-executive members of public bodies more representative of the public they serve. While there are risks in raising expectations which can be disappointed, many of the leaders of public bodies are themselves enthusiastic.

Successive ministers have committed themselves to the aim of increasing diversity but I fear there has been insufficient follow up - a by product perhaps of distractions elsewhere, as well as insufficient motivation to deliver change. Permanent Secretaries eagerly promote diversity in the Civil Service but do not give this goal nearly the same priority in public appointments. When the single departmental plans were published a few months ago, only the Cabinet Office and DCMS specifically highlighted diversity in public appointments as among their objectives. I fear that over my remaining two and a bit years as Commissioner, progress will be limited unless there is a greater commitment in detail and resource from the centre and from departmental leaders. This danger is underlined by the current uncertainties over Brexit. There is a risk that the shift in resources could result in a negative impact on diversity, and a department's ability to build up networks among target groups. I hope the Government's contingency arrangements will safeguard the priority of greater diversity.