



**The Commissioner for  
Public Appointments**

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The Rt Hon Nick Herbert MP  
The Rt Hon John Healey MP  
House of Commons  
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*Dear Nick and John,*

### **Govern Up project for effective Government**

Thank you for the opportunity to comment on the discussion papers you published on 11 February. This letter contains the comments of the Civil Service Commission, which, as you know, has a statutory responsibility for overseeing recruitment to the Civil Service to provide assurance that selection is on merit, following fair and open competition; and for hearing complaints that the Civil Service values of honesty, integrity, impartiality and objectivity have been breached.

We sense that at this stage you are not looking for detailed comments, so we have concentrated on the most important points in the three areas of greatest relevance to the Commission's remit. As you know we signalled our willingness to be involved last July and we remain ready to discuss our views in more detail with you or your researchers.

### **Increasing support for Ministers**

The Commission recognises the case for Ministers to have more support than now in their offices. This can be done perfectly well within the existing law by appointing more special advisers or by increasing the number of permanent civil servants deployed in the private office or by making short term, time-limited appointments of people with specific skills or expertise.

However, the proposals in your paper on the role of politicians go very much further than anything which has so far been contemplated in the UK. The combined effect of greatly extended Ministerial offices, headed by a political Chief of Staff, plus up to a further 10 policy advisers in large Departments headed by a Principal Policy Adviser would be to create a class of people in government – possibly several hundred – who are personally appointed by the Minister and either politically or personally aligned with him. There is throughout the proposals ambiguity about the status (politically restricted or unrestricted) of those appointed. We detect a reluctance to call them all special advisers, but they are not impartial civil servants in any current sense of the word, and certainly not in the sense required by the Civil

Service Code which requires civil servants to be able to serve the Government of the day, whatever its political persuasion, retaining the confidence of their current Ministers while also ensuring that they will be able to establish the same relationship with future Ministers.

Setting aside whether the proposal is desirable or publicly defensible (which is a matter for Parliament, not the Commission), it is not compatible with the current legal framework contained in the Constitutional Reform and Governance Act 2010. That Act, which at the time represented the political consensus, is clear that there are only two distinct types of Government employee: special advisers, who are appointed personally by their Minister and are not legally bound to act impartially and objectively; and civil servants who are appointed on merit after fair and open competition and must act with impartiality and objectivity. The Civil Service Commission is required by law to enforce this settlement. It can and does allow time-limited appointments of civil servants without competition to bring in skills and expertise which are in short supply or where there is an urgent need to increase resources. But this does not alter the base legal requirement that everyone has to be either a politically aligned special adviser or an impartial civil servant.

These are not legal niceties. They are about the current constitutional settlement, which underpins the 2010 Act and has been in place for over a century. Of course, the law can be changed and, in such circumstances, a future Commission would enforce the different legal settlement, which Parliament had put in place. But until that happens, our responsibility is to the present law, which we judge is not compatible with these proposals in their present form. If, therefore, they become your final proposals, we hope it will be made clear that they cannot be shoehorned into the present legal framework and will require a change to the 2010 Act.

### **An expanded role for the Civil Service Commission**

Your paper on 'Repurposing Whitehall' also recommends very substantial change to the Civil Service and the constitutional framework. Within that context, there is a proposal that the Civil Service Commission be charged with safeguarding the Civil Service as a national asset and offering external scrutiny of its effectiveness and performance as well as its ethics and integrity. The Commission welcomes the judgment that the Civil Service is a national asset and the recognition of the need to continue to protect its impartiality and ethical standards. We agree that, in the context of the wider constitutional changes which are proposed in this and other papers, there is a strong case for the Commission to take on this wider role.

A proposal for widening the Commission's role has also been made in the recent Triennial Review of the Civil Service Commission conducted by Sir Gerry Grimstone, albeit in the context of retaining the current constitutional settlement. We have, ourselves, been reluctant to advocate an expanded role for the Commission, in part because there has not seemed to be much external appetite for this and, in part, because we are wary of any additional role that risks taking attention and resources away from our current statutory role – regulating recruitment and hearing complaints that the Civil Service values have been breached. For us the key must always be whether we can, by what we do, make a difference in improving the effectiveness of the Civil Service and how any changes would sit with our core role.

We think this is another area where it would be necessary to change the 2010 Act. There is a provision in the Act for the Government of the day by agreement to confer on us additional functions. But such a major change to our role as the discussion paper has proposed would, in our view, require primary legislation, so that the Civil Service Commission's independence and powers were underwritten and safeguarded by Parliament.

## **Skills**

Finally, we welcome the proposals in your paper 'Tackling the Skills Gap', which chime with many of the points the Commission has been consistently making in the last few years. We have, however, seen some improvements in recent years, with a greater willingness on behalf of the Civil Service and Government to recruit externally – including at senior level – to develop new skills and to improve the management of talent. Of course there is a lot more to do, but we think that your paper too readily accepts the conventional view of the structure of, and deficiencies in, the Civil Service, without looking at the changes that have begun. We strongly agree that the Government's capability plan of 2013 'Meeting the Challenge of Change' is a good basis from which to drive improvements in the skill and capability of the Civil Service. It should be pursued with vigour and commitment. Sustaining that plan, rather than starting again from scratch, is most likely to deliver the desired results.

There are two other points in the paper, which we want to reinforce. First, the recruitment and development of more specialist skills in the Civil Service is essential. But real transformation in organisations comes from effective leadership. That requires a broader range of capabilities, as the paper points out. It also, in our view, requires the injection of challenge and fresh perspective from highly-effective, externally-recruited leaders from other sectors. Secondly, that is undoubtedly made difficult at the most senior levels by rewards which are in too many cases too far out of line with market expectations. There are very few organisations which would embark on an ambitious programme to develop talent without reviewing their rewards and incentives. As we said in our paper to the Public Administration Select Committee in March 2013, the Commission believes there is an urgent need 'to link any strategies for developments in leadership and skills to a pay and reward structure which incentivises people, whether from inside or outside the Civil Service, who have key skills and are successful in using them'.

*Yours sincerely*

*David Normington*

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