

PUBLIC APPOINTMENTS REVIEW CIVIL SERVICE COMMISSION SUBMISSION TO THE REVIEW TEAM

1. This submission to the review lead by Sir Gerry Grimstone into the role of the Commissioner for Public Appointments addresses a number of issues raised in the review's terms of reference, as issued by Francis Maude as Minister for the Cabinet Office, and subsequently slightly revised by his successor, Matt Hancock.
2. We will address three issues in particular:
 - i. The continuing need for the role
 - ii. The coverage of the Commissioner's role
 - iii. Whether the role should be linked to the role of First Civil Service Commissioner

The Civil Service Commission and the Commissioner for Public Appointments

3. The role of Commissioner for Public Appointments has, since inception, had a close relationship with the Civil Service Commissioners. From the creation of the role the Commissioner was ex-officio also a Civil Service Commissioner (though did not chair competitions as the other Civil Service Commissioners did). Since 2010, the same individual, David Normington, has held the roles of Commissioner for Public Appointments and of First Civil Service Commissioner.
4. The Government's declared intention in 2010 was to bring the Commissioner for Public Appointments regulatory approach closer to the principles-based approach recently developed by the Commission.
5. Since inception the secretariat of the Commissioner has been closely aligned, and has shared common management, with the Civil Service Commission. Currently all the Commissioner's support is provided by the Civil Service Commission.

The continuing need for the role

6. The Nolan Report in 1995 endorsed the principle of merit for public appointments. It further recommended that Ministers should remain the ultimate decision makers.
7. The Report said that among the key questions relating to appointments to public bodies was: *Is there an endemic political bias in appointments by Ministers?* It concluded: *Although the perception of bias has become quite widespread, the evidence is circumstantial and inconclusive. It believed the suspicions of bias remain nearly impossible to prove or disprove. The resulting uncertainty does not provide solid ground on which to build public confidence in the system.*

8. Nolan considered the main weakness in the arrangements that applied at the time was that there was no effective external scrutiny. This led to the recommendation of the creation of an independent Commissioner for Public Appointments.
9. We are not aware of any specific research on public attitudes to appointments processes and outcomes for public bodies. However the Survey of Public Attitudes to Conduct in Public Life published by the Committee on Standards in Public Life in March 2015, that compared findings in 2014 with the results of its biennial surveys since 2004, found a generally negative, and deteriorating, view about standards of conduct of people in public life.
10. This leads us to the view that the conclusions Nolan reached in 1995 remain valid, and there remains a strong case for an independent Commissioner for Public Appointments.

The coverage of the Commissioner's role

11. The Public Appointments Order in Council (most recently revised in July 2015) lists all the bodies and public offices that are regulated by the Commissioner for Public Appointments. In the absence of a published list of the totality of public bodies, this leaves it unclear which public bodies and offices are not regulated by the Commissioner, and the reason for their exclusion.
12. We believe it would be more transparent to adopt the approach that governs our regulation of the Civil Service, where all roles and parts of the Civil Service are included, unless they are specifically excluded.

Whether the role should be linked to the role of First Civil Service Commissioner

13. The roles of Commissioner for Public Appointments and First Civil Service Commissioner both became vacant at the end of 2010. The Government decided to seek one individual to hold both roles, with the declared intent of bringing the regulation of public appointments closer to the principles-based approach that had been adopted by the Civil Service Commission.
14. There have been significant benefits in linking the roles: it enabled a swift and comprehensive recasting of the process-bound OCPA regime of 2010 into something closely aligned to the Commission's approach. It also facilitated cost savings, both at First Commissioner-Commissioner for Public Appointments level, and within the supporting secretariat.
15. These benefits now having been gained, some of the demerits are becoming evident. The two regimes have a different legal underpinning:

the role of the Civil Service Commission is spelt out in primary legislation which needs Parliamentary debate and agreement before changing; while the role of the Commissioner for Public Appointments is in an Order in Council which can, in effect, be changed by the Government of the day as it chooses.

16. There has always been a decisive Ministerial role in public appointments. They are Ministerial appointments, and while Nolan considered whether the final choice should be taken away from Ministers, he concluded that it should not. The role of Ministers in Civil Service appointments has always been more proscribed.
17. This difference is not well understood by the public and can cause confusion even among informed commentators. This misunderstanding and confusion is compounded when the same individual holds the roles of First Civil Service Commissioner and Commissioner for Public Appointments. It is not always clear to busy Ministers why different rules apply. There is a group of senior appointments in the department and its significant NDPBs that are most important to the Minister; he or she deals with the same organisation in relation to these appointments, yet the rules are not the same.
18. Apart from the confusion that is caused by the current arrangements, there is also the real danger, which was manifest to some extent in the last Parliament, that a robust exchange between regulator and Government in one regime, which is inevitable from time to time, can influence, in a negative way, the relations between regulator and government in the other regime.
19. The Commission recognises that some of the resource savings that have been made since 2010 may to an extent be reversed if the two roles are again separated, but on balance believes that this should now happen. This will provide greater clarity for the public and all stakeholders. It will allow each regime to develop according to its individual circumstances, free from concerns about how that might affect the other.

Civil Service Commission

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