



**The Commissioner for  
Public Appointments**

# **ANNUAL REPORT**

## **2015-16**

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# 1. Commissioner's Foreword



This is my first report as Commissioner since I took office at the end of April 2016. This was after the end of the period formally covered in the following pages, though my foreword will also address key developments since then in what has been a period of change, controversy and uncertainty in public appointments.

First, I want to pay tribute to my predecessor, Sir David Normington, who did so much over his five year term to streamline the public appointments process and to uphold the values of appointment to public bodies on the basis of merit. Together with the assiduous work of the Public Appointments Assessors in chairing panels, he ensured that the vast majority of appointments have been made on an open and

fair basis, and, although there remains more to do, he helped drive improvement in the diversity of appointees.

David's final months in office were overshadowed by the Government-appointed review conducted by Sir Gerry Grimstone, whose main conclusions about increasing ministers' roles in appointments, and making the process more transparent, are covered later in this report.

David raised concerns about the overall impact of the Grimstone proposals potentially weakening both the position of the Commissioner and the checks and balances on the exercise of ministerial patronage envisaged by Lord Nolan's report in 1995 which led to the creation of the Office of the Commissioner for Public Appointments.

This controversy, reinforced by public hearings and a report by the Public Administration and Constitutional Affairs Committee of the House of Commons, has been the background to my first few months as Commissioner. The Government has accepted the thrust of the Grimstone proposals, in particular that ministers, rather than the Commissioner, should issue the Governance Code and that the Public Appointments Assessors should be abolished.

Within this context, since taking up role as Commissioner I have had extensive and constructive discussions with the Cabinet Office on their draft Code and also the transparency regime proposed by Sir Gerry Grimstone to allow competitions for appointments to be followed in real time.

My concern throughout these discussions has been that, within the framework of Ministerial primacy in making appointments, proper independent assurance of the appointments process should continue and that designated independent members of panels are properly independent of the appointing department, of ministers and of the governing political party.

I have also been arguing for the Commissioner to be consulted fully on the appointment of the Senior Independent Panel Members; where an exemption from the process of open competition is to be used; and if a minister seeks to select a candidate who was not assessed as appointable by a panel. The indications are that the Government will make a commitment to consulting me on the appointment of the Senior Independent Panel Members and on any exemptions to the Governance Code. This is reassuring. My officials have also been working with the Cabinet office to ensure that the transparency arrangements are introduced across Whitehall at the same time as the launch of the new appointments system.

At the time of writing, the final form of the Code has not been published. Given the major changes in government in July, and, in particular, of the Minister responsible for Public Appointments, this is hardly surprising and may have the welcome side-effect of allowing more time for preparations ahead of the introduction of the new regime.

Meanwhile, appointments are continuing to be made as usual with no interruption and regulated under the existing regime. Indeed some key national appointments such as the Chairs of the new BBC Board and of Ofsted are to be made under the existing Code.

My main conclusion after nearly six months in office is that, as important as the wording of the government's Code will be, what matters most will be the spirit in which it is interpreted by ministers and departments. A fair and open system will work if everyone involved wants it to work that way- and, in particular, that independent assurance is preserved and that the key principles of appointment on merit are maintained. There are risks, of course, as Sir David Normington has pointed out. I am fully aware of them, and will highlight any abuses.

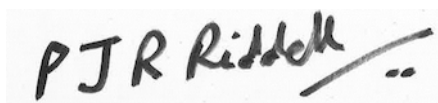
The other two areas occupying me in recent months have been data and diversity. One of the main responsibilities of the Commissioner is to monitor and report on what happens in appointments. The data published by my Office each summer are dependent on returns from departments and public bodies. The response rates on diversity and political activity are still far too patchy and I hope that the new transparency arrangements will make it easier to produce a more complete picture. Moreover, it will be possible to highlight unacceptably long periods between the start of a competition and the announcement of the outcome, a common cause for complaint now among candidates- addressing what Sir Gerry Grimstone described as 'customer care'.

The current statistics indicate broad trends in new appointments- notably the sustained improvement in the number of women becoming members of boards- but they measure flow, that is, change, and not the overall position, the stock of appointments. As happened in Scotland, I believe it is essential that a stock take is now done by the Government to provide that overall picture.

Accurate data is particularly important to me since I have a specific remit to champion greater diversity, building on the progress made under Sir David Normington. The Commissioner has few levers since Ministers ultimately decide who gets appointed. However, I can try to influence expectations and monitor how departments handle applications. I have had several meetings with individuals and organisations with interests in, and knowledge of, appointments among BAME and disabled groups. I will be discussing proposals both to encourage more applications for appointments from these groups and to reduce perceived barriers in the approach and behaviour of departments, such as the form and length of application forms and the composition of interview panels. My Office will be monitoring how departments improve their processes as well as reporting on the outcomes. The nature of the monitoring of departments, and the associated risk ratings, will change in future.

The year ahead will be one of major transition in public appointments both for departments and my office, since, at the time of writing, there are still uncertainties about the final form of the new Governance Code and the precise timing of its introduction. But I am hopeful that the basic principles of openness, fairness and appointment on merit will continue and I intend to speak up if they are not.

Finally, I would like to thank Clare Salters who served as chief executive until the end of July, and then Ekpe Attah as interim chief executive, who, together with their staff, provided invaluable guidance and support in helping me to take up the reins as Commissioner and to handle the flow of issues and decisions that cross my desk. I am also very grateful to the Public Appointments Assessors, both for their wise advice when I started this role and for their continuing hard-work and good judgement behind the scenes.

A handwritten signature in black ink that reads "PJR Riddell" followed by a long horizontal stroke and two dots.

**Rt Hon Peter Riddell CBE**  
Commissioner for Public Appointments

## **2. The Role of the Commissioner**

### **2.1 What does the Commissioner do?**

The Commissioner for Public Appointments<sup>1</sup> regulates Ministerial appointments to public bodies and statutory offices that fall within his remit. The Commissioner is independent of the Government and the Civil Service and is appointed by Her Majesty The Queen by means of an Order in Council. The Commissioner's remit during the period of this report was to promote economy, efficiency, effectiveness, diversity and equality of opportunity in the procedures for making public appointments, with the object of maintaining the principle of selection on merit after a fair, open and transparent process.

### **2.2 How does the Commissioner regulate public appointments?**

The Public Appointments Order in Council 2015 (and its 2014 predecessor) provided the legal basis of the Commissioner's role and powers for the period covered by this report. The Commissioner regulated public appointments to nearly 300 national public bodies, as well as appointments to a significant number of local and regional bodies. This wide range of organisations includes:

- Executive non-Departmental public bodies
- Advisory non-Departmental public bodies
- Public corporations
- certain utility regulators
- NHS trusts
- National Park Authorities in England and Wales
- Conservation Boards of Areas of Outstanding National Beauty
- Community Care Councils in Wales
- National Park Authorities
- Independent Monitoring Boards (notably for prisons)
- certain non-Ministerial Departments.

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<sup>1</sup> For the period covered by this Report, the Commissioner for Public Appointments was Sir David Normington CCB

The Order in Council requires the Commissioner to publish a Code of Practice on the interpretation and application of the principle of selection on merit for public appointments. Appointing authorities are legally required to comply with the Code of Practice in making public appointments. The Code has been in effect since 1 April 2012.

In addition to publishing a Code of Practice, the Commissioner carried out his duty of regulating public appointments by issuing additional guidance from time to time, investigating complaints referred to him, conducting regular audits of Departments' procedures, and producing an Annual Report.

Public Appointments Assessors (PAAs), recruited and accredited by the Commissioner, chaired selection panels throughout the year for the chairs of all public bodies within his remit and a small number of equivalent statutory office holders. They also chaired selection panels for other public appointments at the discretion of the Commissioner.

There were thirteen PAAs in post during the period of this report and further details are set out at Annex A and the competitions they chaired at Annex B.

The terms of office of five PAAs (Sarah Anderson CBE, Sir Stephen Bubb, Michael Kaltz, Sarah Nathan OBE and Libby Watkins) came to an end on 31 March 2016. I would like to thank them all for the important contribution that they each made as Public Appointment Assessors, upholding the principle of appointment on merit following a fair and open competition.

I wish them well for the future.

The Government has agreed with me that when the new Governance Code (see section 2.4) is introduced by Cabinet Office, that any public appointments competitions that have already commenced under the 2012 Code will be subject to the former Code until their conclusion.

This means that the existing PAAs will continue to chair a number of competitions over the coming months until they conclude. I would, similarly, like to thank each of the continuing PAAs for their important contributions during a lengthy period of uncertainty and to wish them well for the future.

Under the Order in Council, the Commissioner can be given additional responsibilities relating to appointments. Usually these are requests by Ministers to allocate a PAA to chair a competition for a body that the Commissioner does not regulate.

Those competitions are identified in Annex B.

## **2.3 Support for the Commissioner**

I took up my position as Commissioner for Public Appointments on 20 April 2016 following the conclusion of Sir David Normington's term of office on 4

April 2016. During this short interregnum the functions of the Commissioner were not exercised.

OCPA is supported by a joint secretariat provided by the Civil Service Commission. The secretariat also provides strategic and administrative support to the House of Lords Appointments Commission and the Advisory Committee on Business Appointments. The secretariat staff are all civil servants on secondment and there is a discrete team primarily dedicated to support the work of OCPA. Further details are provided on the OCPA website.

Expenditure funding for the Commissioner's office is included within the budget of the Civil Service Commission. The largest elements of expenditure in 2015-16, as in previous years, were OCPA staff costs (£163,000) and the OCPA share of the compliance monitoring audit contract with KPMG (£94,000).

Sir David Normington's remuneration as dual post holder of Commissioner for Public Appointments and First Civil Service Commissioner was £85,000 per annum (unchanged since 2011-12), of which approximately 40% in this reporting period related to his work as the Commissioner for Public Appointments.

Following the decision of the Government to separate the two roles held by Sir David (which led to my appointment as Commissioner for Public Appointments and Ian Watmore as the First Civil Service Commissioner) my remuneration has been set accordingly at £56,000 per annum.

## 2.4 The Grimstone Review

In July 2015, the Government asked Sir Gerry Grimstone to undertake a review into the public appointments system.

In a written Ministerial Statement, the then Minister for the Cabinet Office the Rt Hon Matt Hancock MP said:

*'The review will consider the role of the Commissioner and the processes around public appointments. The terms of reference for the review are as follows: The role of the Commissioner for Public Appointments was created by the Public Appointments Order in Council 1995 on 23 November 1995, following recommendations made by the Committee on Standards in Public Life (under the chairmanship of Lord Nolan). We are now twenty years on, and this provides a suitable opportunity to review the role of the Commissioner and the processes around public appointments. In the light of the range and diversity of public appointments, it is important to ensure that the procedures are both effective and proportionate and to review whether procedures as practised fit within the intentions of the Nolan principles. The review will be led by Sir Gerry Grimstone and will report to the Minister for the Cabinet Office.'*



The review consulted and took evidence from a number of interested parties. My predecessor (who had intended separately to consult on a review of the Code of Practice prior to the announcement of the Grimstone review) submitted evidence to the review which is published on the OCPA website.

Sir Gerry Grimstone reported on 11 March 2016. His report and the Government's response to it are accessible on the [www.gov.uk](http://www.gov.uk) website.

Sir Gerry's report contained 41 conclusions and recommendations that significantly change the public appointments landscape. His recommendations included:

- shifting the responsibility for the Code of Practice from the Commissioner for Public Appointments to the Minister for the Cabinet Office who would produce a new Governance Code;
- a new set of Public Appointment Principles should be adopted based on an updated version of the original 'Nolan Principles';
- Advisory Assessment panels would oversee the competitions for public appointments but the appointing Minister would not be bound by their advice if s/he wished to appoint another person, provided that the reasons for this were made public;
- the role of Public Appointments Assessors would be abolished and an Independent Panel member (IPM) would be a member of each Advisory Assessment Panel with a Senior Independent Panel Member (SIPM) present in the case of enhanced competitions;
- public confidence in the new system would be provided for by a strong control framework driven by a combination of self-regulation, robust external scrutiny and regulation, backed up by full transparency.

On 23 March 2016 the Public Administration and Constitutional Affairs Committee (PACAC) launched an inquiry into the public appointments process and the Grimstone Review. Sir Gerry Grimstone, Sir David Normington and the then Minister for the Cabinet Office, the Rt Hon Matt Hancock MP all gave oral evidence in April, as did I as part of my pre-appointment hearing.

On 7 July 2016 The Public Administration and Constitutional Affairs Committee reported and *"found 'widespread disquiet' about the proposals recommended in the Grimstone review of public appointments. The Grimstone proposals threaten to undermine, perhaps 'weaken', the basis of independent appointments and the safeguards built in by Lord Nolan."*

At the time of publication of this report the Government has yet to respond to the PACAC report. It is expected that the Cabinet Office's new Governance Code, on which I have been consulted, will come into operation before the

end of the year. My report next year should therefore cover the period of on the introduction of the new Code and the Transparency Regime that will underpin it.

## 3. Performance against strategic objectives in 2014-15

### 3.1 The three objectives

The Commissioner's work was guided by the three objectives set out in the strategic framework that he published in 2013.

These are:

OBJECTIVE ONE: working to improve outcomes in public appointments through the attraction of stronger and more diverse fields of candidates;

OBJECTIVE TWO: ensuring full and effective implementation of a more streamlined and less bureaucratic public appointments system;

OBJECTIVE THREE: improving understanding of the Commissioner's role and confidence that the public appointments system is delivering appointments on merit and free from patronage.

The rest of this chapter describes progress under each priority.

### 3.2 Objective 1: Improving Diversity

The promotion of more diverse boards of public bodies continues to be at the heart of the Commissioner's work. This includes:

- ensuring that in their chairing of competitions PAAs are constantly challenging long and shortlists which lack diversity, sometimes encouraging a renewed period of advertising or search where the field is particularly weak in this respect;
- monitoring the performance of search consultants, where they are used, and challenging those which fail to produce diverse lists of candidates;
- paying particular attention in the compliance monitoring and follow up to poor Departmental practice;

- shining a light on job descriptions and essential criteria, where they seem to deter a wide range of applicants;
- working with the Centre for Public Appointments in the Cabinet Office to spread best practice and to support Ministerial efforts to increase diversity.

### 3.2.1 Diversity of those appointed in 2015-16

I published the Annual Survey of Ministerial Appointments in August 2016. The data is collected on an annual basis from Government departments and others representing the Ministers as appointing authorities. For the year 2015-16 there were 2,240 appointments and reappointments, compared with 1,888 in 2014-15.

Of this 2,250 there were 128 chair appointments and 2,112 member appointments.

In last year's Annual Report, my predecessor wrote of an urgent need to remove the barriers which currently discourage those from Black, Asian and Ethnic Minority (BAME) backgrounds from applying for, and being appointed to, public roles. He stated that departments must make a much more determined effort to attract BAME candidates.

To that end, during 2015-16 the OCPA secretariat conducted an exercise whereby the statistical variations between departments were examined. Each stage of the process was looked at separately – applications received, numbers reaching interview stage, and numbers successfully appointed. Those departments which had performed well in attracting BAME applicants were identified, as were those who had done less well.

Four different departments (Department for Education, Department for International Development, Department for Transport and the Welsh Government) were commended on their successes at attracting significantly higher proportion of BAME applicants than would be expected over the past year, whereas a separate department (HM Treasury) appointed a large proportion of BAME candidates following interview.

Conversely, there were ten departments<sup>2</sup> (Department for Culture, Media and Sport, Department for Communities and Local Government, HM Treasury, Ministry of Justice, Business Innovation and Skills, Home Office, Department of Energy and Climate Change, Ministry of Defence, Department for Work and Pensions and Department for Environment, Food and Rural Affairs) who attracted a lower than average number of BAME applications. Many of those departments also returned a lower than average number of BAME candidates

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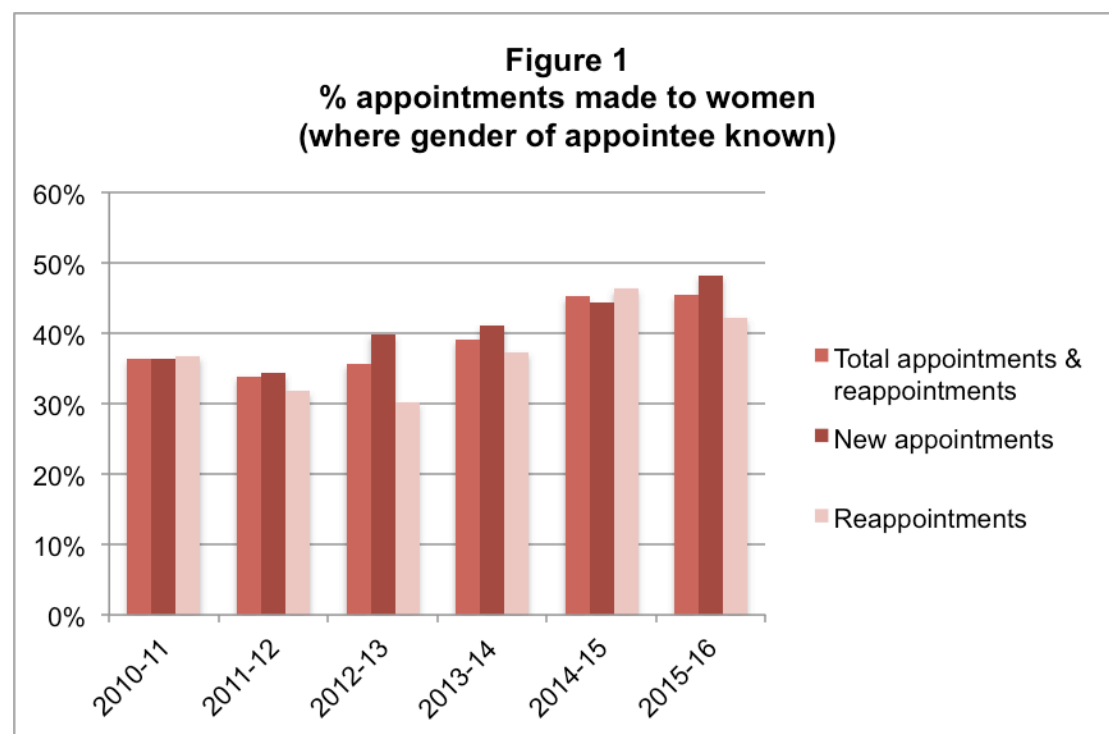
<sup>2</sup> The list predates the most recent machinery of Government changes which saw new Departments created

succeeding at interview. Departments that performed well were encouraged to share best practice with those at the other end of the scale.

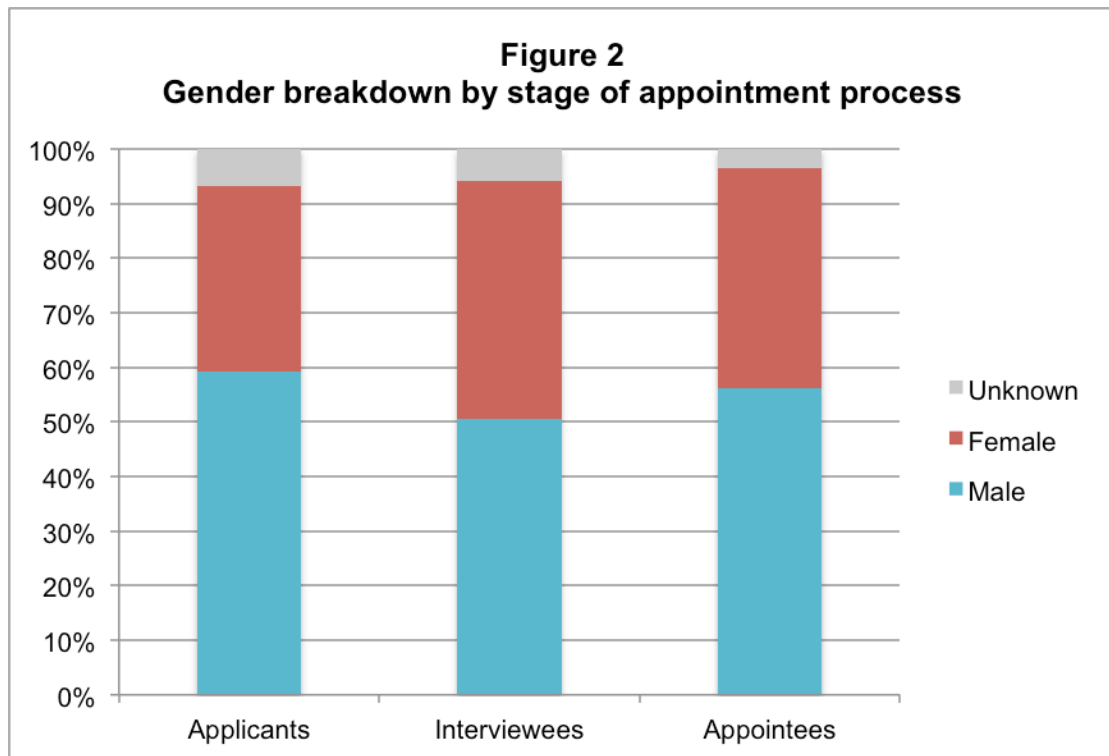
This is something that I intend to encourage further in the coming year and I will monitor the procedures and performance of departments on diversity.

## Gender

As with last year's report, there is a positive story to tell in terms of gender equality this year. The proportion of appointments where female candidates have been appointed has remained at just over 45% - 45.2% of all appointments and reappointments were made to females in 2015-16 (Figure 1). In particular, the proportion of new appointments where female candidates were appointed has increased significantly, by almost four percentage points this year compared to 2014-15, with women now accounting for 48.2% of all new appointments where the gender of the appointee is known.



But the proportion of chair appointments made to women continues to lag behind the proportion of member appointments and there has been an unwelcome drop since 2014-15. This year, 23% of chair appointments (where gender was recorded) were made to women compared with 36% in 2014-15. By contrast, however, 47% of member appointments were made to women (up from 46% last year). It is particularly pleasing to record an almost 50-50 split in new member appointments where gender is known (481 female, 489 male).



The data in Figure 2 shows that, as in previous years, the majority of those applying for public appointments are male – 59%, compared to 55% last year. 34% of applicants are female, which is also an increase of 4% on 2014-15. ‘Unknown’ applicants account for just 6.7% this year, compared to 15% last year. This gives us a slightly more accurate picture, but helps to confirm that there is work to be done in attracting more female applications.

There is slightly better news in relation to the proportion of females which made it to the interview stage. This year, 44% of interviewees were female, compared to 38% in 2014-15. However the total proportion of females appointed after interview has remained at 40%.

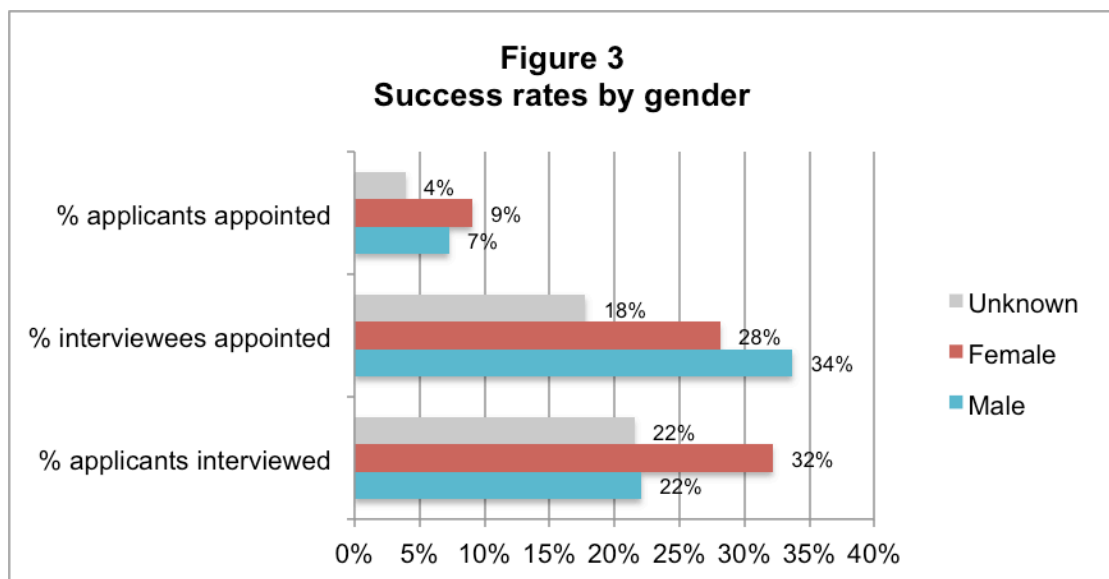


Figure 3 shows comparison figures between the genders in relation to success at each stage. It shows that 32% of female applicants proceed to interview stage. This compares to just 22% when we look at only male applicants. This could be interpreted as showing that female applications are often stronger than those of their male counterparts. Wider research has shown that women are more likely than men to de-select (ie not apply in the first place if they do not think they are likely to succeed) and it may be therefore that women who do apply are at the higher end of the skills spectrum. However, there is evidence that suggests males are more successful at the interview stage as 34% of those males that are interviewed go on to be appointed, whereas only 28% of women interviewees are appointed at the conclusion of the process.

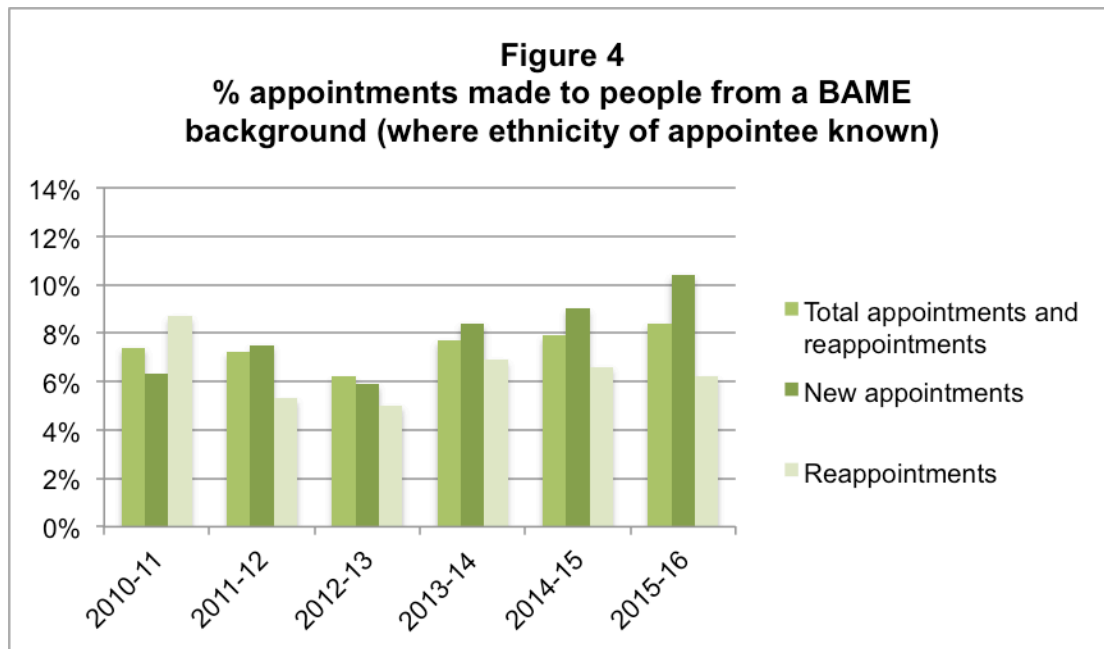
Overall, these results continue to suggest that the Government's aspiration to increase the proportion of women on the boards of public bodies is having a real impact. While we are still slightly under 50%, the continued improvement, in particular in relation to new appointees, gives rise to the possibility of hitting that level before long.

## Ethnicity

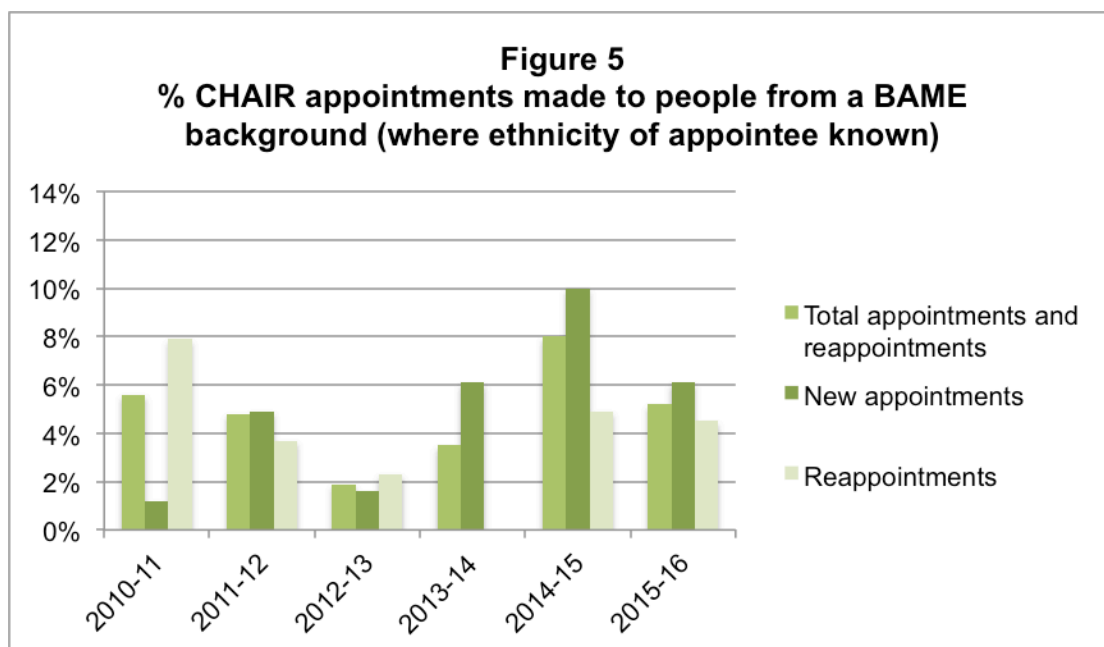
It is estimated that the BAME communities make up some 14% of the UK population<sup>3</sup> and whilst there is some way still to go, there has been some encouraging news in respect of appointments from this group of people. (Figure 4). For the fourth year in a row, the proportion of appointments of BAME candidates has increased, rising above 8% for the first time in a decade. On new appointments, as for gender, the figure is higher yet. Over 10% of new appointees came from BAME backgrounds.

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<sup>3</sup> Using the 2011 Census for England and Wales as a proxy for the UK population.



There is less good news, however, when looking solely at chair appointments. (Figure 5). This has fallen back to a total of 5%, down from 8% in 2014-15. This represents just 6 appointees from the total of 115 Chair appointments made this year where ethnicity is known. Clearly there is more work to be done by Departments in attracting quality applications for Chair appointments from members of the BAME community.



Despite some progress, it is clear that the ethnic make-up of public bodies does not yet reflect the diversity of society. As Commissioner, I am committed to improving the diversity of the boards of our public bodies. I will be helping Departments – in partnership with the Public Appointments Unit at



Cabinet Office – to improve their performance in attracting talented individuals from a diverse range of backgrounds to serve and chair public bodies .

I will return to this in future reports.

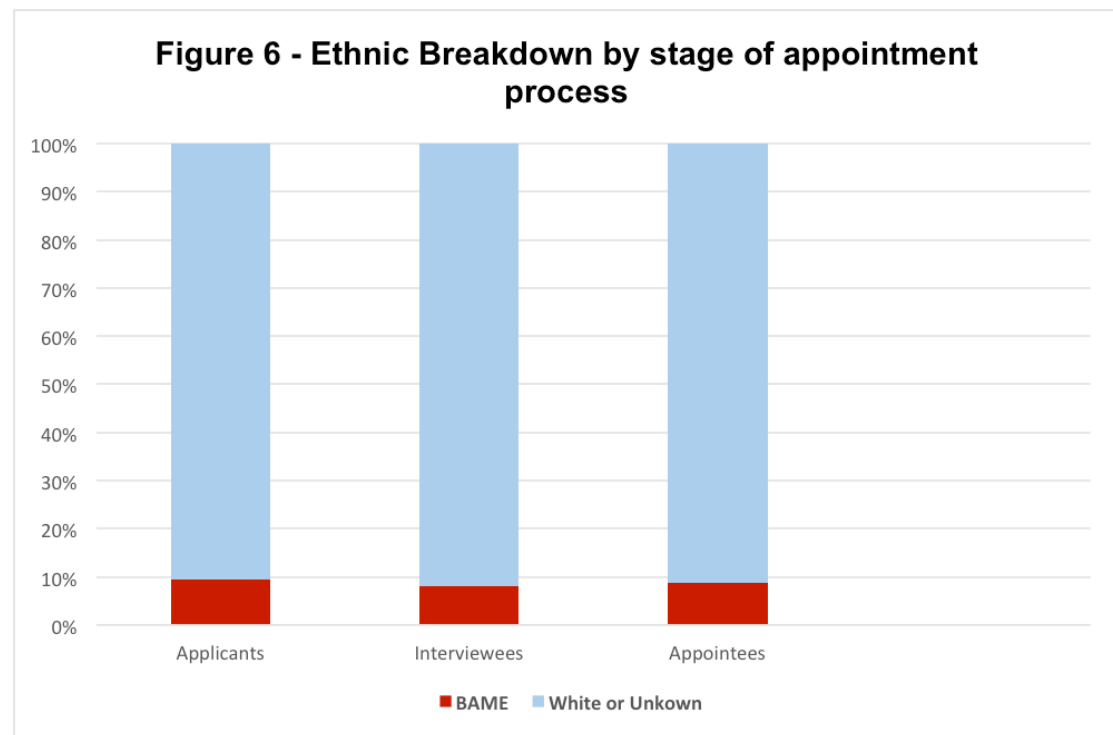


Figure 6 shows a breakdown by of candidates declaring a BAME background by stage of the appointment process. As mentioned above, the proportion of BAME applicants appointed is lower than that of the population as a whole. Additionally, it is clear that BAME applicants make up a lower proportion of interviewees than they do of applicants. But it is clear from Figure 7 that there is a measurable lack of success amongst BAME applicants making it to the interview stage in comparison with their non-BAME counterparts.

We continue, therefore, to look for reasons why this might be happening. This will be one area that I will focus on in the coming year.

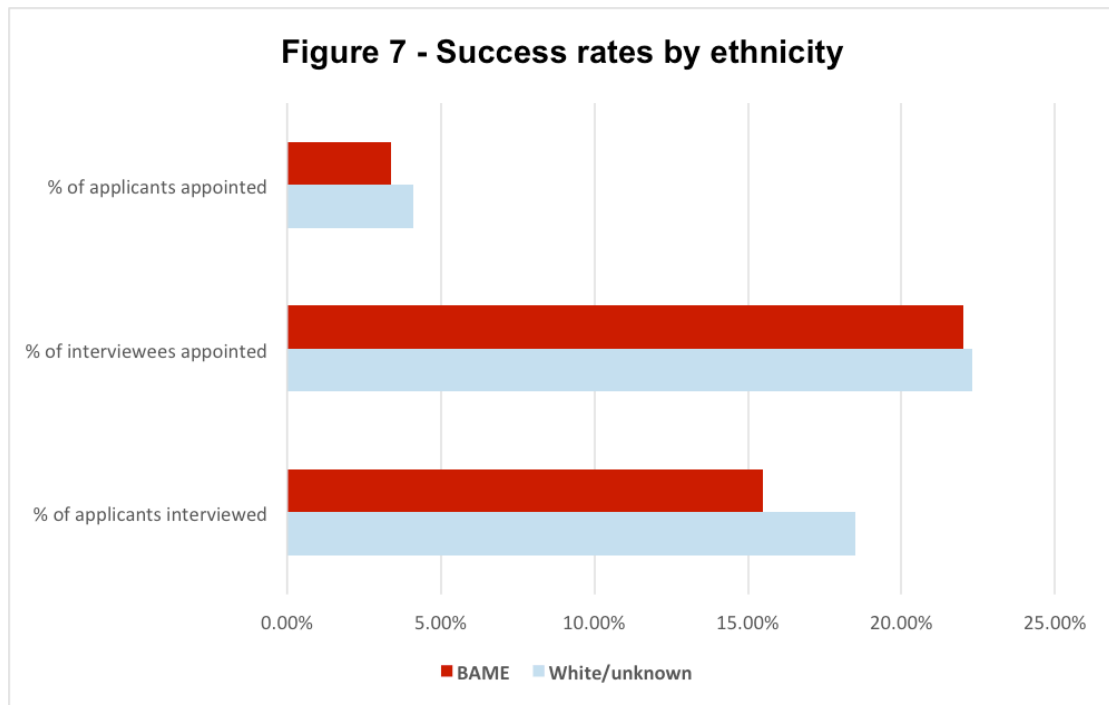
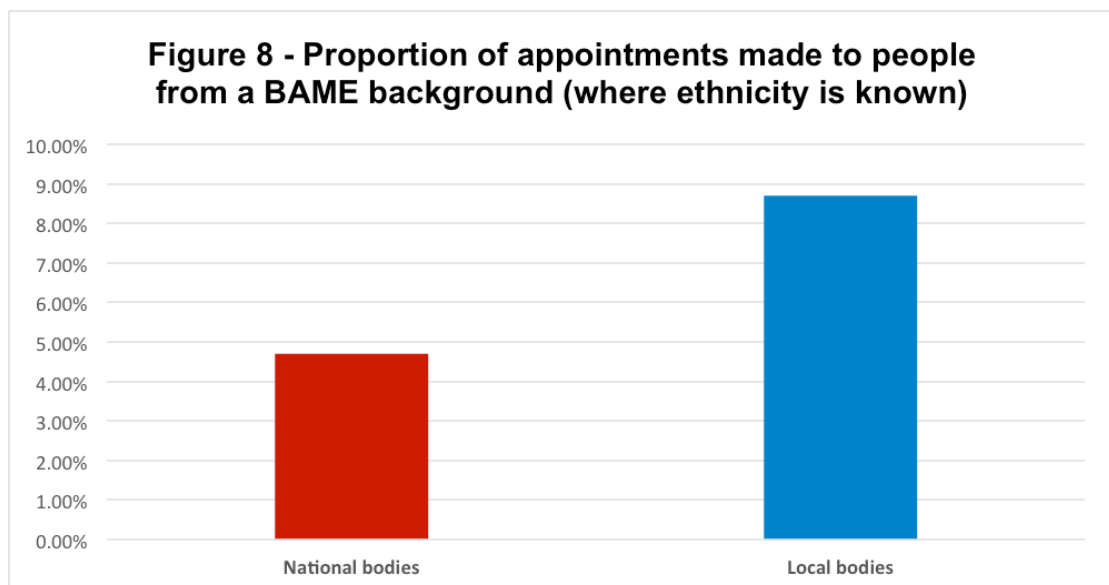


Figure 8 shows the make up of national bodies compared to local ones. Local bodies includes organisations such as Independent Monitoring Boards and certain health trusts. As last year, the proportion of appointments at national level made to people from a BAME background was significantly lower than the proportion at local level.

It is unclear as to why this should be the case, given that the BAME population of London is at a higher level than other areas of the country, and most national bodies have their Headquarters based there.

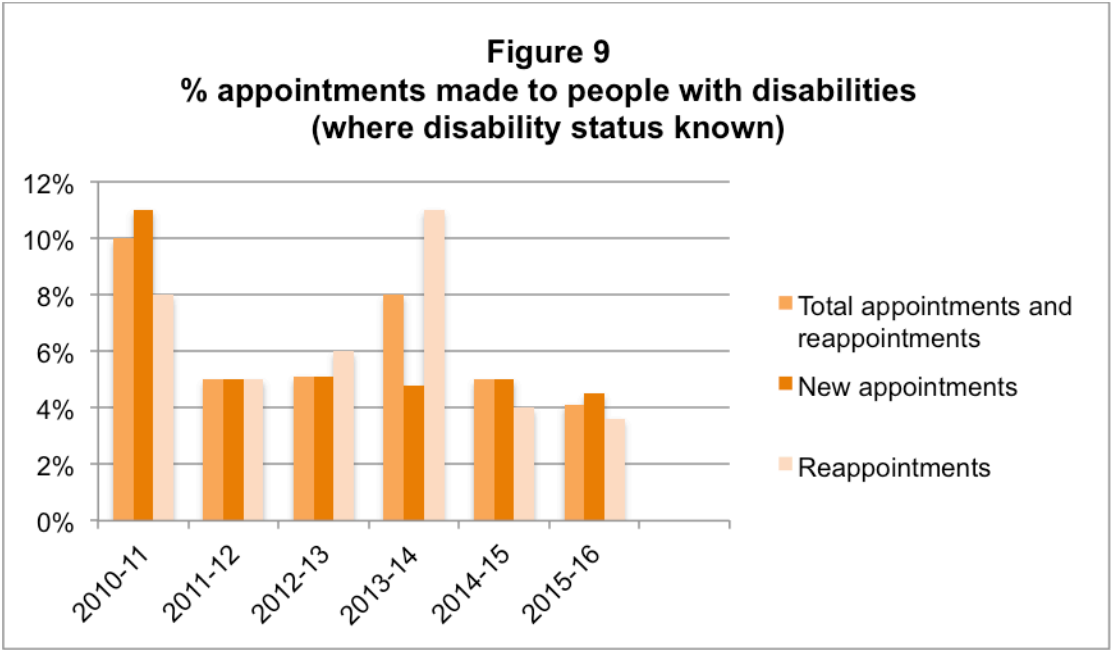


Overall, as last year, we have seen BAME candidates less likely to apply for a public appointment, less likely to succeed in getting to interview stage when

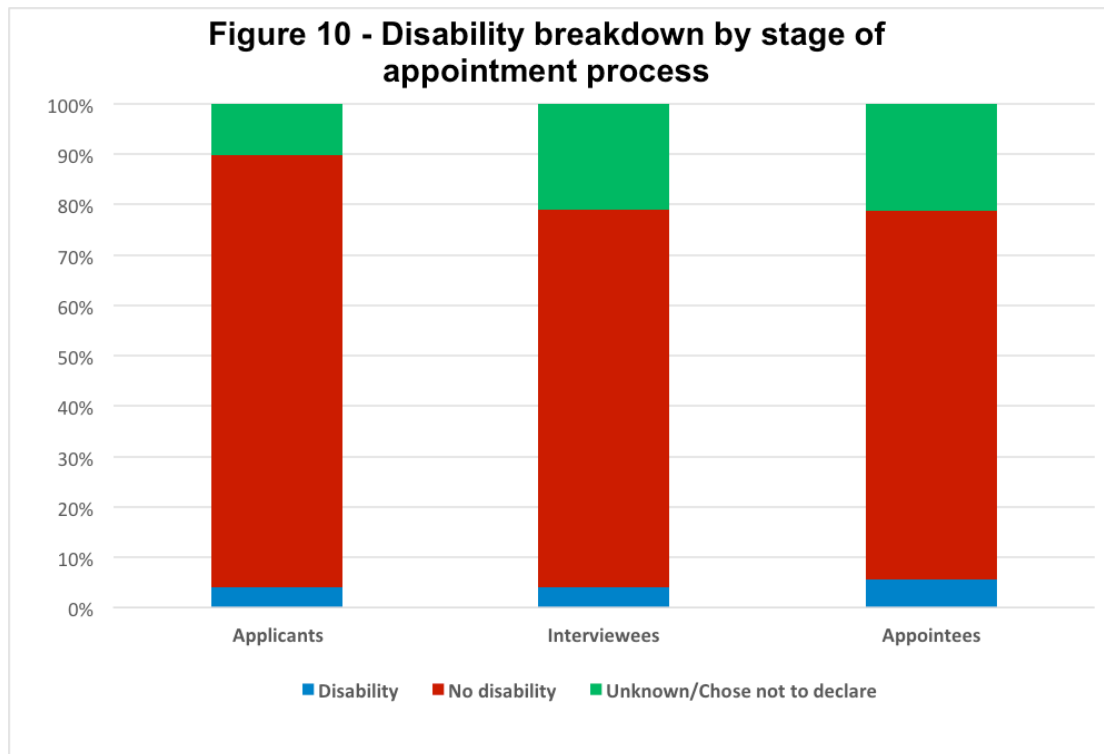
they do apply, and less likely to be appointed to a national body rather than a local one.

I will be working with Departments to try to understand and address this disparity over the coming year.

Disability

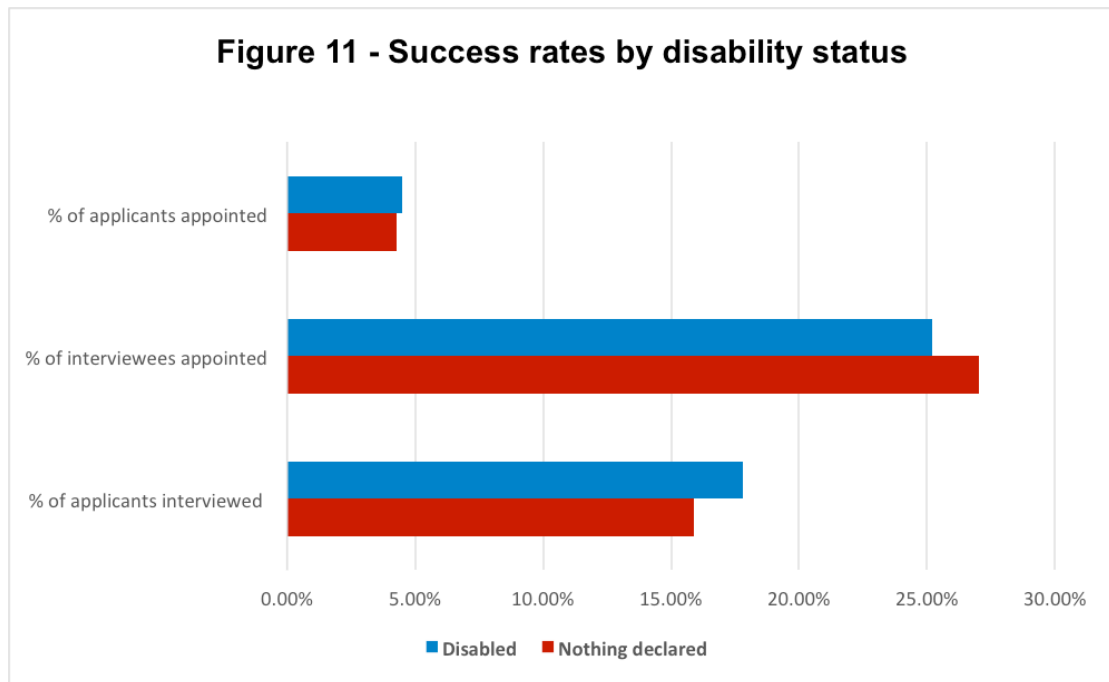


As last year, the proportion of new appointments of disabled people has outstripped the number of reappointments. While this is a positive, I am very concerned that the overall proportion of appointments made to disabled people has fallen for the third year in a row and I shall be discussing with the Cabinet Office how this can be addressed in future years.



The numbers in Figure 11 show that disabled candidates (as a proportion) fare less well than other candidates at the final stage, with fewer of those candidates being appointed. However, in contrast to last year, there has been a reversal in the success rates of disabled applicants when measuring the proportion of those reaching the interview stage. In 2015-16 a higher proportion of the disabled candidates reached interview stage than was the case for non-disabled applicants.

This is encouraging, because it demonstrates that those disabled candidates who apply for public appointment roles are of a standard that is high enough to reach the interview stage. However, their success at interview does not match the success of their non-disabled counterparts.



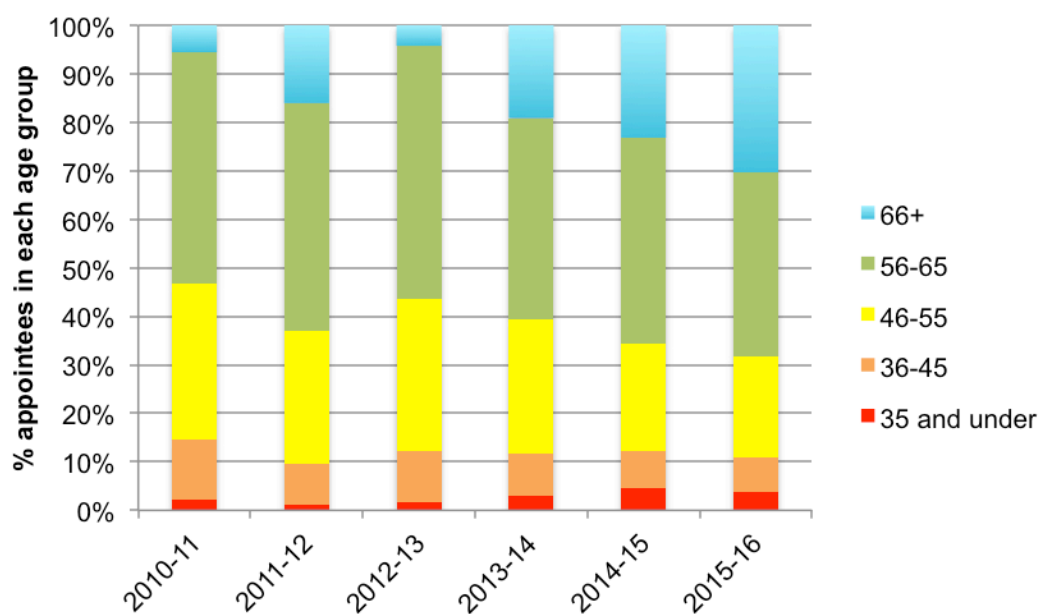
It is hard to be sure of the reasons for this, given the nature of public appointment roles and their suitability to a disabled job-holder, but I will be redoubling efforts in the coming year to attract more applications from the disabled community.

## Age

Where age is known, the shift towards an older demographic profile has continued for the fourth year in a row, as shown in Figure 12. This year, 30% of appointments went to those over the age of 66. The proportion of those aged 56-65 has remained roughly the same and is still the largest age group - almost 40% of appointments were given to candidates within that range..

2015-16 saw a slight decline in appointments of those aged under 35 in comparison to last year's totals, but that group is still represented at a higher level than in any of the previous years of this decade.

**Figure 12**  
**Age profile of appointees**  
**(where age known)**



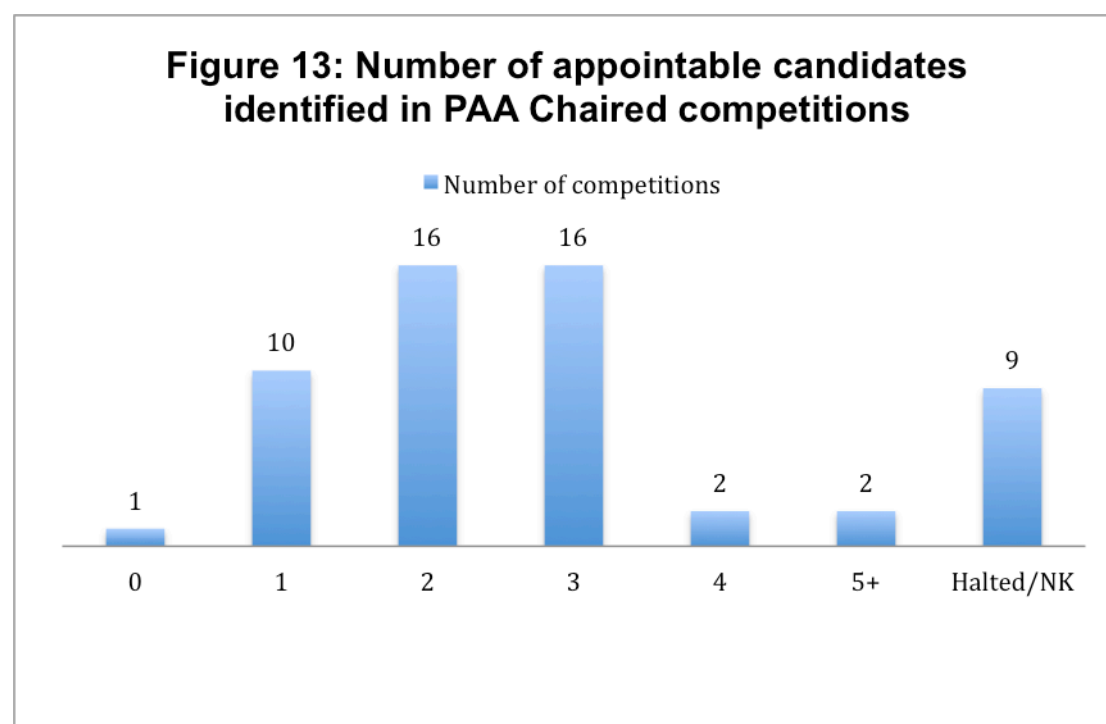
### 3.3 Objective 2: Streamlining the public appointments system

#### Chairing the Most Significant Appointments (Chair Appointments)

Once again, the team of Public Appointment Assessors has received good feedback from Departments this year, both for their chairing skills and for the value they add to the process, as well as undertaking their primary task to ensure that the Code is adhered to at each stage of the recruitment campaign. I am confident that many of them will be asked by Departments to take on the role of Senior Independent Panel Members as proposed in the Grimstone Review when the Governance Code is introduced.

PAA's chaired 57 competitions in 2015-16. A list of all the completed competitions can be found at Annex B.

Ministers were given a choice of more than one appointable candidate in 77% of competitions for Chair posts. This is an increase on last year (73%).



In 13% of competitions Ministers were only offered a choice of one appointable candidate and there was only 1 competition where no appointable candidate was identified. The question of whether or not to use search consultants to help provide the strongest possible field is a matter for Government but it can sometimes be a useful course, especially where there

is likely to be difficulty in attracting suitable candidates for more specialist posts.

## **Non-Chair Public Appointments**

In relation to Board member appointments, the Commissioner relies on compliance monitoring, currently contracted to KPMG and the OCPA secretariat staff, to ensure that the Code of Practice is observed.

The total number of public appointments covered by the Commissioner in 2015-16 was 2,240 (new appointments and reappointments). This is a 16% increase on the 1,888 of 2014-15. The Code of Practice permits Ministers to make reappointments or extend the appointment of serving members (subject to the postholder having a satisfactory appraisal) but prevents an individual from serving in any one post for more than ten years, except in exceptional circumstances which I must improve.

Of the 2,240 public appointments made in 2015-16, 932 (some 42%) were reappointments. This is a slight drop on last year's figure of 47% reappointments.

## **Exemptions from the Code of Practice**

The Commissioner has the power to agree, in exceptional circumstances, exemptions to the requirements of the Code of Practice. In most cases this approval is given as a result of urgent operational need, or on grounds of practicality. Common examples of exemptions granted would be to extend an incumbent's term of office to allow a competition to be held or appointing an interim Chair where a Board member has stepped down unexpectedly and a replacement has needed to be in place to allow the body to continue to function. A third example might be allowing a Chair to continue in their role where a Body is due to close down in the near future or to enable a review to be carried out that might affect its future.

The Commissioner granted 41 specific exemption requests (in two cases these were for multiple Board members) in 2015-16. He declined 2 requests. These are set out at Annex C.

The Commissioner has also agreed to a number of class exemptions, where appointments or reappointments can be made to certain public bodies without following the exact requirements of the Code of Practice and without his specific agreement. These class exemptions are listed below:

- flexibilities allowing the NHS Trust Development Authority (now called NHS Improvement) to manage appointments pragmatically throughout



the transition of NHS trusts to Foundation Trust status. These flexibilities allow the appointment of candidates to local health trust boards who have already been appointed to another local health trust through an open competition, or who have been on a reserve list for no more than 24 months. The NHS TDA has additionally been granted authority to reappoint members originally appointed under these flexibilities and is required to report back to the Commissioner on the use of these flexibilities every quarter;

- a dispensation meaning that all current members of IMBs in the prisons sector (including members of Military Corrective Training Centre Independent Monitoring Boards) can serve for a maximum term of 15 years (as opposed to the standard Code maximum of 10 years). This dispensation has been agreed by the Commissioner in recognition of the fact that these are unpaid roles where accumulated experience is important and it can be difficult to attract replacements; and
- agreement that appointments of chairs of Advisory Committees on Justices of the Peace, should be exempt from the Code to allow longstanding arrangements for making those appointments (where the chairs are chosen by the members) to continue.

## Complaints

The number of formal complaints to the Commissioner remains low. This is partly because complaints will normally only be investigated after they have been considered by the Department concerned which often provides opportunities for issues to be dealt with at that stage.

In 2015-16 the Commissioner received 5 complaints (there was 1 in 2014-15). In two cases we asked the complainants to raise their complaints with the Departments first. Two further complaints related to the BBC Trust Chair competition and, in both cases, the Commissioner found no breach of the Code. The remaining complaint was from a candidate for the competition to appoint the Information Commissioner. The complaint related to the extension to the deadline for applications, the change to the person specification since that used in 2009 and a slight change in the marking criteria. The Commissioner did not find a breach of the Code in this case.

I have decided in future that wherever possible all complaints I receive will be put up on my website in an anonymised form.

## **Requests under the Freedom of Information Act**

The Commissioner received a small number of requests under the Freedom of Information Act during 2015-16. These were all from one individual who sought details of a recruitment competition in which the individual had been unsuccessful and felt unfairly treated. Further FOI requests arose following the first responses being sent. The secretariat was able to answer all these questions within the statutory time-frame.

FOI requests are always examined thoroughly by the secretariat, and where necessary legal advice is obtained.

## **Monitoring Compliance with the Code of Practice**

The Commissioner currently has a legal duty, under the terms of the Order in Council 2015, to audit public appointments and policies used by appointing Departments to verify that the principles of merit, fairness and openness are followed.

The following cases were identified as breaches of the Code of Practice in 2015-16:

- The Department for Culture, Media & Sport failed to record its reasons for reviewing its decision and shortlisting a candidate who had previously failed to be shortlisted for the role.
- DCMS also failed to publish the candidate's political donations upon his appointment.
- The Department for the Environment, Food & Rural Affairs appointed an Interim Chair of the Environment Agency without seeking the approval from the Commissioner. The Commissioner granted retrospective approval for the appointment.
- The Welsh Government allowed three members to continue to sit on the Board of the Advisory Panel on Substance Abuse after the expiry of their terms without formally reappointing them. The Commissioner granted retrospective approval for these reappointments.

Areas identified for improvement have been communicated to Departments but because the public appointments landscape is to change significantly in the near future and a new compliance regime will be drawn up once the Governance Code is introduced I have decided not to publish the previous year's risk ratings for Departments as has been customary in previous annual reports.

### 3.4 Objective: Improving Confidence in Public Confidence

Sir David had signalled that he intended to consult on changes to the Code of practice after the 2015 General Election but following the announcement by the Government to undertake a review into the office of Commissioner for Public Appointments in March 2015 he concluded that it would not be possible to do so pending the outcome of the review - which in the end did not report until March 2016.

Sir David identified a particular issue with the independent element of panels having identified an increasing number of people with links to the appointing Minister either in terms of political affiliation or personal association. This led him to issue guidance in November 2015 to Permanent Secretaries on this and on diversity matters.

It is worth quoting some of his letter as the issue of independence is a matter which, as I have said in my foreword, will continue to be of relevance when the new Governance Code is introduced.

Sir David said in his guidance to Departments:

“The test of independence should, I suggest, be a simple common sense one i.e. would an ordinary member of the public regard the individual as properly and demonstrably independent of the Department and its Ministers? Unfortunately there continue to be examples where that common sense test is failed.

“The other related issue which is central to public confidence is the role of Ministers. I have always been clear – and repeat the point in my Annual Report – that these are Ministerial appointments. This means that Ministers must be consulted at each stage and make the final selection of the successful candidate. However, it is an important part of the checks and balances on Ministerial powers of appointment, which were first recommended by Lord Nolan back in 1995, that there are limits on Ministers’ powers to influence the outcome. Every time these appear to being ignored or circumvented, they do disproportionate harm to public confidence”.

I agree with the advice that my predecessor issued. Having an independent panel member who is truly independent of the body, the Minister, the Minister’s Department *and* the Minister’s political party is all the more important given that Ministers will have a greater say over the composition of interview panels once the new Governance Code is introduced.

A truly independent element on the panel, along with the real time Transparency regime that the Grimstone Review recommended, will become the litmus test, of whether the public judges the new public appointments landscape fair and proper.

I shall return to this issue when I report on the operation of the Governance Code in future years.

## **Annex A: Public Appointments Assessors**



**Mark Addison**



**Sarah Anderson**



**Stephen Bubb**



**Olivia Grant**



**Michael Kaltz**



**John Knight**



**Sara Nathan**



**Anne Pringle**



**Margaret Scott**



**Amerdeep Somal**



**Peter Spencer**



**Rosie Varley**



**Libby Watkins**

## Annex B: Appointment competitions chaired by Public Appointment Assessors in 2015-16

DEPARTMENT	PUBLIC BODY	ROLE	PUBLIC APPOINTMENT ASSESSOR	APPOINTED CANDIDATE(S)
BIS	Post Office	Chair	Anderson	Timothy Parker
BIS	Pubs Code Adjudicator	Adjudicator	Grant	Paul Newby
DCLG	Housing and Communities Agency	Chair	Addison	Sir Edward Lister
DCMS	British Film Institute	Chair	Nathan	Josh Berger
DCMS	National Museum Liverpool	Members	Watkins	Jenny Baxter Heather Lauder Clive Wilson
DCMS	Horserace Betting Levy Board	Members	Nathan	Neal Goulden Lord Risby
DCMS	Visit Britain	Member	Nathan	Angela Bray
DCMS	Equalities and Human Rights Commission	Chair	Knight	David Isaac
DCMS	Information Commissioner	Commissioner	Varley	Elizabeth Denham
DCMS	Royal Armouries	Chair	Addison	Competition abandoned and appointment made under exemption
DCMS	Royal Parks	Chair	Scott	Loyd Grossman
DCMS	National Portrait Gallery	Member	Anderson	Competition halted by Secretary of State
DCMS	National Portrait Gallery	Member	Pringle	Rob Dickins
DECC	National Nuclear Laboratory	Chair	Spencer	Sir Andrew Matthews
DEFRA	Regional Flood and Coastal Committees	4 Chair posts	Somal	Competition cancelled
DEFRA	Seafish Industry Authority	Chair	Kaltz	Competition cancelled
DH	Care Quality Commission	Chair	Watkins	Peter Wyman
DH	Monitor	Chair	Anderson	Competition abandoned and appointment made under exemption
DFT	Office of Rail Regulation	Chair	Nathan	Stephen Glaister

DFT	British Transport Police Authority	Chair	Spencer	Esther McVey
DWP	Deputy Pensions Ombudsman	Dep Ombudsman	Grant	Karen Johnson
DWP	The Pensions Advisory Service	Chair	Grant	Museji Takolia
DWP	Health and Safety Executive	Chair	Varley	Martin Temple
DWP	Pension Protection Fund	Chair	Grant	Arnold Wagner
FCO	Board of the British Council <sup>4</sup>	Chair	Varley	Christoper Rodrigues
FCO	Marshall Aid Commemoration Commission	Chair	Addison	Christopher Fisher
HO	Immigration Services Commissioner	Chair	Varley	Competition suspended pending a triennial review
HO	Independent Chief Inspector of Borders and Immigration	Chair	Scott	David Bolt
HO	Deportation with Assurances	HMG Special Representative	Varley	Michael Ryder
HO	Retention and Use of Biometric Material	Commissioner	Kaltz	Paul Wiles
MOD	Veterans Pensions & Advisory Committees	2 Chairs	Varley	Julian Francis (South West) John Lighten (North West)
MOJ	Chief Recall Adjudicator <sup>5</sup>	Office holder	Somal	Competition abandoned
MOJ	Mental Capacity Forum	Chair	Kaltz	Baroness Findlay of Llandaff
MOJ	Compensation for Miscarriages of Justice	Chair	Scott	No appointable candidate
MOJ	HM Inspectorate of Probation	Chair	Addison	Glenys Stacey
MOJ	Parole Board <sup>6</sup>	Chair	Varley	Nick Hardwick
MOJ	HM Inspectorate of Prisons	Chair	Addison	Peter Clarke
MOJ	Judicial Appointments and Conduct Ombudsman	Ombudsman	Varley	Paul Kernaghan

<sup>4</sup> an Article 4(1) request was received to chair competition as an additional function

<sup>5</sup> an Article 2(3) request was received for the competition to be chaired as if it were a regulated body

<sup>6</sup> MOJ requested that the Chair position (which the 2015 Order in Council currently excludes) be treated as if it was regulated under Article 2(3) pending an update to the Order



MOJ	Independent Advisory Committee, Deaths in Custody	Chair	Anderson	Juliet Lyon
NHS TDA	Barts Health NHS Trust	Chair	Spencer	John Bacon
NHS TDA	Royal Cornwall NHS Trust	Chair	Nathan	Dr Jon Andrews
NHS TDA	East & North Hertfordshire NHS Trust	Chair	Kaltz	Ellen Schroder
NHS TDA	West Hertfordshire Hospitals NHS Trust	Chair	Anderson	Dr Steve Barnett
NHS TDA	Isle of Wight NHS Trust	Chair	Anderson	Eve Richardson
NHS TDA	Ipswich Hospital NHS Trust	Chair	Anderson	David White
NHS TDA	Leicestershire Partnership NHS Trust	Chair	Watkins	Cathy Ellis
NHS TDA	United Lincolnshire Hospitals NHS Trust	Chair	Nathan	Dean Fathers
NHS TDA	North Staffordshire Combined Healthcare NHS Trust	Chair	Spencer	David Rogers
NHS TDA	East Sussex Healthcare NHS Trust	Chair	Grant	David Clayton-Smith
NHS TDA	Worcestershire Acute Hospitals NHS Trust	Chair	Kaltz	Caragh Merrick
WG	Career Choices Wales	Chair	Bubb	Debra Williams
WG	Violence Against Women, Domestic Abuse and Sexual Violence	Chair	Spencer	Rhian Bowen Davies
WG	Arts Council of Wales	Chair	Nathan	Phil George
WG	National Library of Wales	President	Watkins	Rhodri Glyn Thomas
WG	Community Health Councils	Chair	Varley	Mutale Merrill
WG	Natural Resources Wales	Chair	Watkins	Diane McCrea
WG	Sports Wales	Chair	Bubb	Paul Thomas

## Annex C: Exemptions granted by the Commissioner for Public Appointments in 2015-16

Department	Public Body	Exemption
BIS	Engineering and Construction Industry Training Board	Interim Chair appointed to allow time for Government to consider future of the Board
DCLG	Valuation Tribunal Service	Extension of tenure to cover period until Board is wound up
DCLG	Valuation Tribunal Service	Exemption granted in order for a majority of Board members to be Chairmen of Valuation Tribunal England, as laid down by legislation
DCLG	Homes and Communities Agency	Interim Chair to fill period between incumbent leaving and new appointment taking up post
DCMS	Royal Armouries	Extension of tenure to provide stability
DEFRA	Seafish Industry Authority	Interim Chair appointed to allow a competition to be run at a more suitable time
DEFRA	Environment Agency	Retrospective approval granted for the appointment of a Deputy Chair as Interim Chair appointment following the sudden resignation of the previous office holder
DEFRA	HEFCE	Extension of tenure to cover period until Board is wound up
DFE	Equality and Human Rights Commission	Interim Chair appointed while Parliament continued scrutiny of the preferred candidate
DFT	High Speed 2	Commissioner agreed to Secretary of State's request to appoint member without the need for competition due to his unique skill set
DFT	High Speed 2	Extension of tenure to allow Chair to continue deemed in the public interest
DFT	British Transport Police Authority	Commissioner agreed it was in the public interest to appoint a particular individual to the Board
DFT	British Transport Police Authority	A board member was appointed without a competition in order to prevent it from becoming inquorate
DFT	Office of Road and Rail	Interim Chair appointed to allow Government to complete reviews of the railway relevant to the future remit of this Board
DH	Care Quality Commission	Extension of tenure to allow time to run an open competition
DH	Human Fertilisation and Embryology Authority	Extension of tenure due to specialist nature of the role and for business needs
DH	Monitor/TDA	Interim appointment due to urgent business needs
DH	Trust Development Authority	Interim board member appointment due to urgent business need
DH	Commission on Human Medicine	Two exemptions to tenure due to specialist nature of role
DH	Food Standards Agency	Commissioner agreed to an appointment under exemption following failure of appointing bodies to agree on candidate from the list of appointable candidates

DH	NHS Improvement	Exemption granted to allow new Board member to be recruited without competition due to unique skill set of individual
DH	Healthwatch England	Interim Chair appointed following resignation of incumbent to allow time for open competition to be held
HMT	Royal Mint Advisory Committee on the Design of Coins Medals Seals and Decorations	Appointment under exemption due to the nature of role and the limited availability of the specialist skills required
HMT	UK Financial Investments	Interim appointment to cover the period before Board is wound up
HO	Parole Board	Member extension in tenure agreed to allow completion of complex case
MOD	Service Complaints Ombudsman	Extension to allow the transition to Ombudsman status
MOD	National Employer Advisory Board	Three exemptions from fair and open competition for reasons of diversity
MOD	Single Source Regulations Office	Interim chair appointed while competition was held
MOJ	HMCIP	Extension of tenure to enable competition to be run
MOJ	Judicial Appointments Commission	Exemption granted to allow Lord Chancellor to choose Chair of selection committee as required by the Constitutional Reform Act 2005
MOJ	Youth Justice Board	Appointment under exemption allowed in order for Board to remain quorate
MOJ	IAP	Temporary Chair appointed to bridge gap between end of previous term and publication of Triennial Review
MOJ	Assessor of Compensation for Miscarriages of Justice	Extension to tenure agreed as the body is to be removed from OCPA regulation.
MOJ	Parole Board	Sixteen extensions to tenure granted in order to provide stability and mentoring of new Board members
NHS TDA	Hinchinbrooke Healthcare NHS Trust	Exemption to fair and open competition due to business needs
NHS TDA	Croydon Health Services NHS Trust	Exemption granted to cover period until Trust no longer falls under Commissioner's jurisdiction
NHS TDA	Manchester Mental Health and Social Care NHS Trust	Interim chair appointed to cover period of winding up of Trust
NHS TDA	Penine Acute NHS Trust	Interim appointment while Government finalises re-organisation of Trusts in local area
NHS TDA	Portsmouth Hospitals NHS Trust	Three month extension agreed to allow for open competition to be held
NHS TDA	Mersey Care NHS Trust	Member approved on exemption following failure of competition to find suitable candidate
WG	Advisory Panel on Substance Abuse	Three exemptions granted for members who had not had appraisals conducted in appropriate timeframe (recorded as breach of the Code of Practice)