



**The Commissioner for
Public Appointments**

ANNUAL REPORT 2016/17

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Commissioner's Foreword



This report covers the 2016-17 financial year and is, unusually in two parts, reflecting the changes that have taken place following the review of public appointments undertaken by Sir Gerry Grimstone which was published in March 2016. Part One considers the final nine months of the operation of the 2012 Code of Practice which expired on 31 December 2016. Part Two reports on the changes during the first three months of the new Governance Code coming into force on 1 January 2017.

Part One

The data which underpin this report, and which appear in the Annual Survey of Ministerial Appointments for 2016-17 being published simultaneously, refer exclusively to appointments and reappointments made under the 2012 Code of Practice which expired at the end of December. A few competitions launched before the old Code expired at the end of December were not completed until early 2017, while none of those launched after 1 January under the new Governance Code were completed by the end of the reporting year at the end of March.

The broad trends are positive and in the right direction, thanks to the hard work of departments and decisions of Ministers. The improvement over the past five years in the number of women appointed and reappointed was maintained at 48.5 per cent; and although the number of women chairs

improved to 28 per cent, this still fell well short of desirable levels. The number of appointments and reappointments of Black, Asian and Minority Ethnic (BAME) candidates rose to a new high of over 9 per cent, but this is still below their proportion of 14 per cent in the population, and, only just over 5 per cent of chairs were BAME. A more encouraging point is that the number of new appointments going to women and BAME candidates was higher than for reappointments. There was some progress in the appointment of more candidates declaring a disability, to around 6 per cent. Strengthening diversity is one of my top priorities as I discuss later in this foreword.

My main conclusion after a year as Commissioner is that the system - in its final months - continued to work well, and I am grateful for the commitment and judgement of the former Public Appointments Assessors in this respect. Breaches of the Code and complaints are recorded later in this report and were relatively few. There are some broader lessons which also apply to the new regime. In particular, it is necessary for departments to be more thorough in addressing potential conflicts of interest among candidates selected for interview. At times, possible conflicts are insufficiently explored, leading to later controversy. Often, remedial action can be taken to mitigate conflicts before an announcement is made. Another issue is the nature of feedback given to unsuccessful candidates. In principle, it is right that applicants are told how they have performed, notably in very strong fields, so as to encourage and assist them to apply in future. Sometimes, however, the feedback can be uninformative or insensitive, hindering rather than helping.

Part Two

The Grimstone review and the subsequent debate attracted media and parliamentary attention during 2016-17 with concerns expressed by my predecessor Sir David Normington, by the Public Administration and Constitutional Affairs Committee of the Commons in various reports, and by the Committee on Standards in Public Life. A key concern was that the powers of ministers would be strengthened, and those of the Commissioner weakened, potentially threatening the checks and balances which, for the past twenty odd years, have sought to ensure that appointments to public bodies are made on merit as a result of fair and open competition. In part, these worries reflected tensions which developed towards the end of 2010-15 parliament over Ministers' decisions under the old Code of Practice. I fully understand these worries.

I took over as Commissioner in spring 2016 in the context of a firm Government commitment to implement the thrust of the Grimstone review. Over the following six months, I sought to address the main concerns expressed by critics of Grimstone in order to achieve a balance between

Ministers' longstanding and legitimate rights to be at the heart of making appointments to public bodies and, at the same time, providing continued independent assurance that decisions will be made on the basis of merit and open competition. I secured a number of significant concessions during lengthy and harmonious discussions with the Cabinet Office and with two successive Ministers responsible for public appointments, Matthew Hancock and Chris Skidmore.

In particular, fairness was reinstated amongst the principles for public appointments after it had been removed by the Grimstone review. This should ensure that all candidates are treated on the same basis during competitions before a final decision is made by Ministers. Moreover, if Ministers want to dispense with a competition or appoint someone who has been judged unappointable by an interview panel, they must consult me before any announcement, rather than merely notifying me as Grimstone suggested. This is intended to allow time for private discussions with departments before any announcement. I reserve the right to go public and notify the relevant Select Committee of the Commons if any disagreement remains. There is a similar process of consultation over the choice of Senior Independent Panel Members who sit on the panels for designated significant appointments, mainly the chairs of public bodies and officeholders/regulators.

In each of these cases, Ministers can override my objections, even though any differences will become public. What matters, however, is not just the terms of the formal Code but the approach adopted by Ministers and departments. My experience is that both under the old Code of Practice and under the very limited experience to date under the Government's Governance Code there have so far been fewer problems than many feared, or had been previously experienced. In particular, the new Senior Independent Panel Members have been people of similar calibre to the former Public Appointment Assessors and, in a welcome number of cases, have been some of the same people. There has been no example to date of a Minister seeking to choose someone judged unappointable by an interview panel. There have always been good reasons where it is in the public interest not to hold an open competition for appointments for a year or two, notably where a body is in financial or other difficulties and an urgent replacement is needed, or where a body is being wound up or reorganised. I have agreed to Exceptional Appointments in these circumstances on the same basis as my predecessor granted exemptions. Broadly the same exemptions have been sought by Ministers since January under the new Code, with only one Minister disagreeing with me about the length of time an Exceptional Appointment should be made for, as was reported on my website.

There have inevitably been some teething problems under the new Code which my Office has been discussing with the Cabinet Office and departments. But all have been of implementation – for instance, keeping the

online 'real time' tracker of competitions up-to-date – and none so far have threatened the spirit of appointment on merit. The increased transparency arrangements are very welcome and should make it easier to monitor – and, if necessary, highlight – unacceptably long delays in competitions, a common and justified cause of complaint among candidates.

These are early days and I am not complacent. I will continue to make public statements, through letters to PACAC and the Committee on Standards in Public Life and through a regular series of blogs on public appointments which I have begun. In particular, I want to improve the quality of the statistics which are the key to understanding the pattern of appointments. There has been progress but the response rates from departments on diversity and political activity are still too patchy. I am exploring with the Cabinet Office the advantages of making the return of a diversity monitoring form compulsory, with the inclusion of a 'prefer not to say' answer among the options. The current statistics cover the flow of new appointments and reappointments, and, unlike Scotland, there is no data yet on the stock of appointments, that is a snapshot of the composition of Boards. The Cabinet Office is, I am pleased to say, committed to making early progress here.

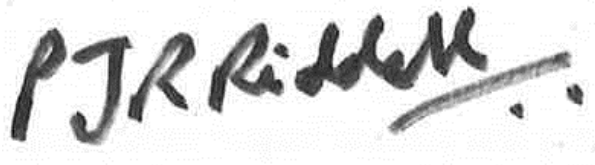
My main concern, like my predecessors, is not just to ensure independent assurance about the process of making appointments on merit, but also to encourage a wide range of high quality applicants. From examining departments' paperwork on competitions I am sometimes disappointed at the quality and range of applicants even for high profile posts. This has led to a few cases of no appointable candidates being found and/or Ministers ordering competitions to be re-run.

The Governance Code requires me to be an active advocate for diversity, an issue which I am championing. The accompanying statistics are encouraging but there is still a long way to go, notably for BAME candidates and those declaring disabilities. The main responsibility lies with Ministers and departments, while my role lies more in monitoring and in highlighting good practice and innovations. I intend to feature these more on my website following a series of meetings I have held with individuals and organisations with an interest in, and knowledge of, appointments for women, BAME and disabled groups.

Looking ahead, I am hopeful that the distraction of the lengthy discussions over changes in the Code is behind us and we can concentrate on ensuring that appointments to public bodies continue to be made on the basis of merit and fair and open competition from a broader and more diverse range of high quality candidates. The general election campaign inevitably resulted in a pause not only in current public appointments but also in discussions about future policy, notably on diversity. The reappointment of Chris Skidmore as the minister responsible for public appointments promises continuity.

Greater transparency should help, but a system that commands public confidence requires both commitment from departments and Ministers, as well as vigilance from myself and my Office. Moreover, Brexit will create fresh challenges over the next few years as regulatory and other functions carried out by EU institutions will over time be repatriated. At the time of writing, it is unclear how many new public bodies will have to be created or how many existing ones will have their remits changed. Over the course of the 2017-22 parliament, there is likely to be a need for Ministers to appoint a sizeable number of chairs and members to non-executive roles to run these bodies.

Finally, I would like to thank Clare Salters, who served as chief executive until the end of July 2016, then Ekpe Attah who was interim chief executive over the late summer and early autumn, and then Peter Lawrence who took over in November. Together with Clive Barbour and Alex Morrow as the dedicated public appointments team; Carrie Aitken dealing with complaints; and Maggie O'Boyle on media and communications, their support and advice has been invaluable in handling both the day-to-day work of the Commissioner and the big issues we have faced.

A handwritten signature in black ink, appearing to read 'PJR Lawrence', with a horizontal line and two dots underneath.

Commissioner for Public Appointments
July 2017

PART ONE

1. The Role of the Commissioner under the 2012 Code of Practice

1.1 What does the Commissioner do?

As Commissioner for Public Appointments, I regulate Ministerial appointments to public bodies and statutory offices that fall within my remit. I am entirely independent of the Government and the Civil Service and was appointed by Her Majesty The Queen as the fifth Commissioner by means of the Public Appointments Commissioner Order in Council 2016.

The Public Appointments Order in Council 2015 provided the legal basis of my role and powers for the period up to 31 December 2016. The formal role it gave me 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.

1.2 How does the Commissioner regulate public appointments?

I regulated public appointments to some 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.

The Order in Council required 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 were legally required to comply with the Code of Practice in making public appointments. The Code, drawn up by my predecessor, Sir David Normington GCB, was in effect from 1 April 2012 until it expired on 31 December 2016.

Throughout the period of this report I carried out my duty of regulating public appointments in accordance with the Code of Practice, investigating complaints, conducting audits of Departments' procedures, and producing this Annual Report.

Public Appointments Assessors (PAAs), recruited and accredited by my predecessor, chaired selection panels throughout the year for the chairs of all public bodies within my remit and a small number of equivalent statutory office holders. They also chaired selection panels for other public appointments upon request from Ministers with my agreement. In some cases they chaired selection panels for board member appointments.

There were eight PAAs in post during the period of this report and they are listed at Annex A along with details of the competitions which they chaired at Annex B.

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 and I wish them well for the future.

The Government agreed with me that that any public appointments competitions that had already commenced before 1 January 2017 when its Governance Code was introduced would be subject to the 2012 Code of Practice until their conclusion.

Under the 2015 Order in Council, the Commissioner could be given additional responsibilities relating to appointments. Usually these were requests by Ministers to allocate a PAA to chair a competition for a body that the Commissioner did not currently regulate or to take on an additional function.

Those competitions have also been identified in Annex B.

1.3 Support for the Commissioner

I took up my position as Commissioner for Public Appointments on 20 April 2016 after my appointment was confirmed by the Public Administration and Constitutional Affairs Select Committee (PACAC).

I receive strategic and administrative support from a secretariat provided by the Civil Service Commission. The Commission secretariat also supports the House of Lords Appointments Commission and the Advisory Committee on Business Appointments. The secretariat staff are all civil servants on secondment with a discrete team of two staff members primarily dedicated to support the work of OCPA. Further details are provided on the OCPA website¹.

Expenditure funding for my office is included within the budget of the Civil Service Commission. The largest elements of expenditure in 2016-17, as in previous years, are OCPA staff costs and the OCPA share of the compliance monitoring audit contract with KPMG and OCPA's share of the overheads.

My remuneration, set by the Cabinet Office, is £56,000 a year.

Further details of this expenditure will be set out in the Civil Service Commission accounts for 2016-17 which is due to be published later in the year.

¹ <https://publicappointmentscommissioner.independent.gov.uk/about-us/contact-details/>

2. Performance against the strategic objectives in 2015-16

2.1 The three objectives

My work has been guided by the three objectives set out in the strategic framework that was 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.

2.2 Objective 1: Improving Diversity

The promotion of more diverse boards of public bodies continues to be at the heart of my 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;
- paying particular attention in the compliance monitoring and follow up to poor Departmental practice;
- drawing attention to job descriptions and essential criteria, where they could 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.

- Meeting with relevant organisations and individuals to canvass their opinions on how diversity in public appointments can be improved.

2.2.1 Considering the diversity of those appointed in 2016-17

I have published the Annual Survey of Ministerial Appointments for 2016/17 in a statistical bulletin at the same time as this Annual Report. The data is collected on an annual basis from Government departments and others representing the Ministers as appointing authorities. The data is compiled from anonymous diversity monitoring forms² which are returned by applicants to Departments as part of the application process.

For the year 2016-17 there were 2,231 appointments and reappointments, compared with 2,240 in 2015-16. Of these 1,275 were new appointments and 956 were reappointments.

I will now report in more detail in respect of the Gender, Ethnicity and Disability of appointments made during the reporting period.

Gender

This year, I am pleased to report again that the total number of appointments and reappointments to female candidates has maintained the improvement of previous years, at 45.5% up 0.1%. (Figure 1).

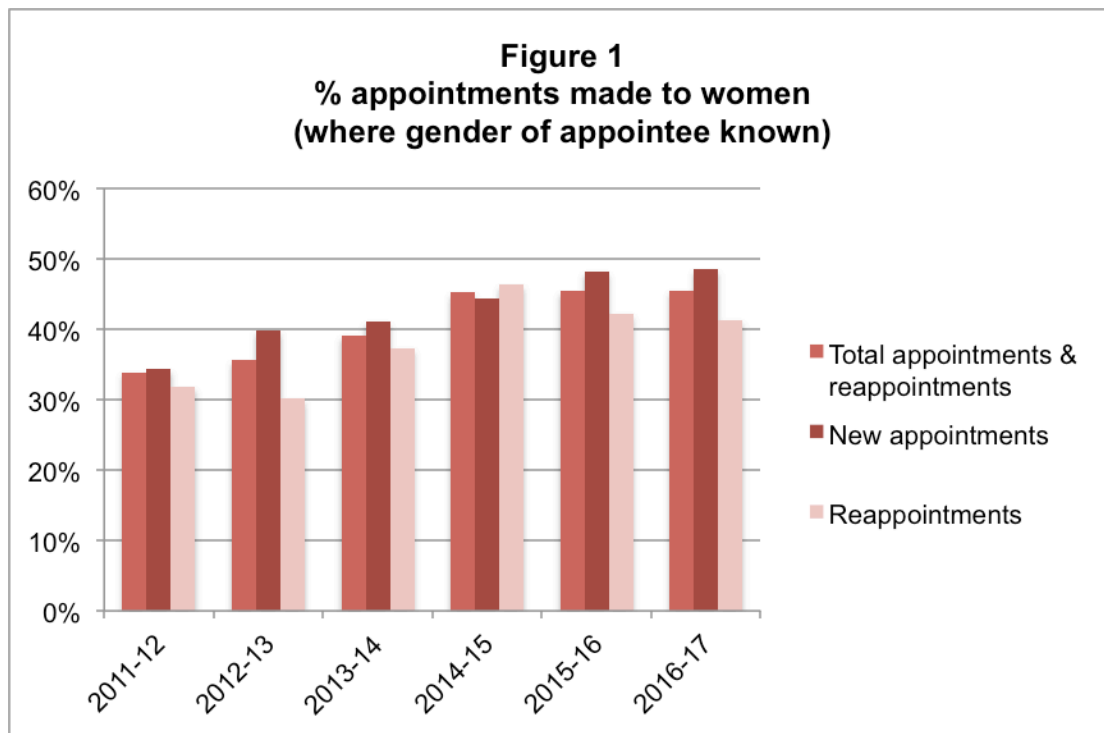
Some 48.5% of all new appointments were women although reappointments to women were lower at 41.3%.

Importantly, the figures for gender are taken from a higher number of returns than in previous years: 98% of appointed candidates declared their gender in 2016-17, compared to just 87% last year.

The continuing upward trend of women being appointed is encouraging when we consider that five years ago the total number appointed and reappointed was only 34%.

I applaud the hard work done by Departments for the steps they have taken to get closer to the 50:50 aspiration although I recognise that there is still more work to be done.

² I have commenced a discussion with Government on ways in which Departments can improve the return rate of the diversity monitoring forms by making their return compulsory with a *prefer not to say* option for all diversity-related questions.



Last year I commented on the disappointing proportion of chair appointments made to women. Whilst there has been some improvement this year (28% of women chairs were appointed compared to 23% in 2015-16) it still falls a long way short of the levels that I would expect to see, and slightly below the figure from 2014-15. Departments will need to continue to work to improve this in the future.

I hope that the marked rise in the number of women appointed as members of boards in the past five years will, before long, feed through into the appointment of more female chairs.

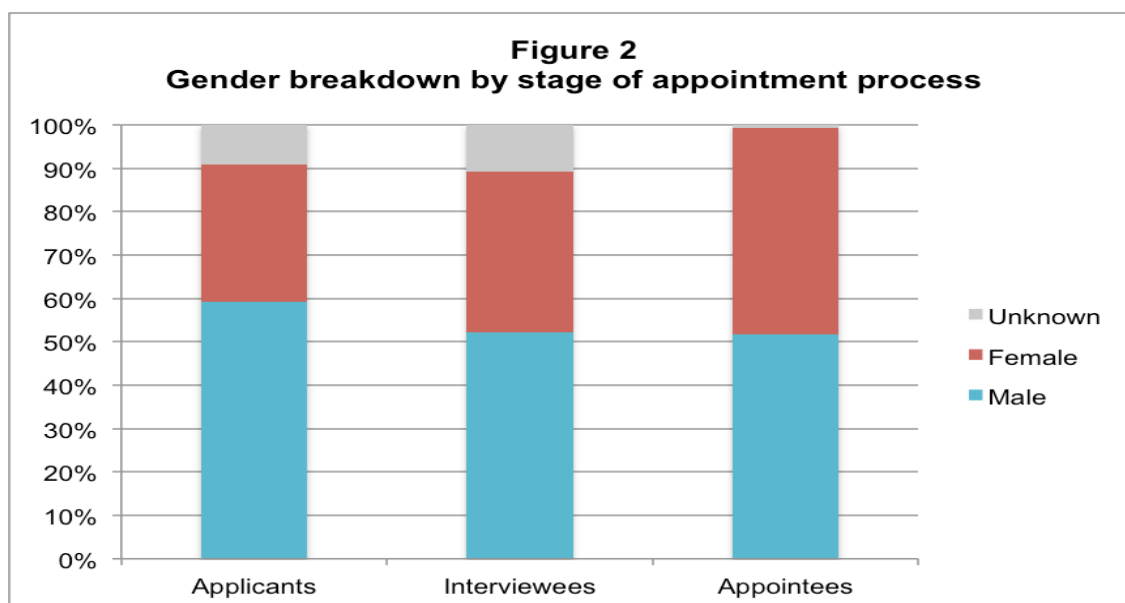


Figure 2 shows that, as has been seen in previous reports, more men than women apply for positions on public bodies. The overall numbers of applicants have remained similar to last year, with nearly 60% of applications submitted by men.

Despite this, the proportion of women selected for interview is higher than the proportion of female applicants, indicating that those who do apply are high quality candidates.

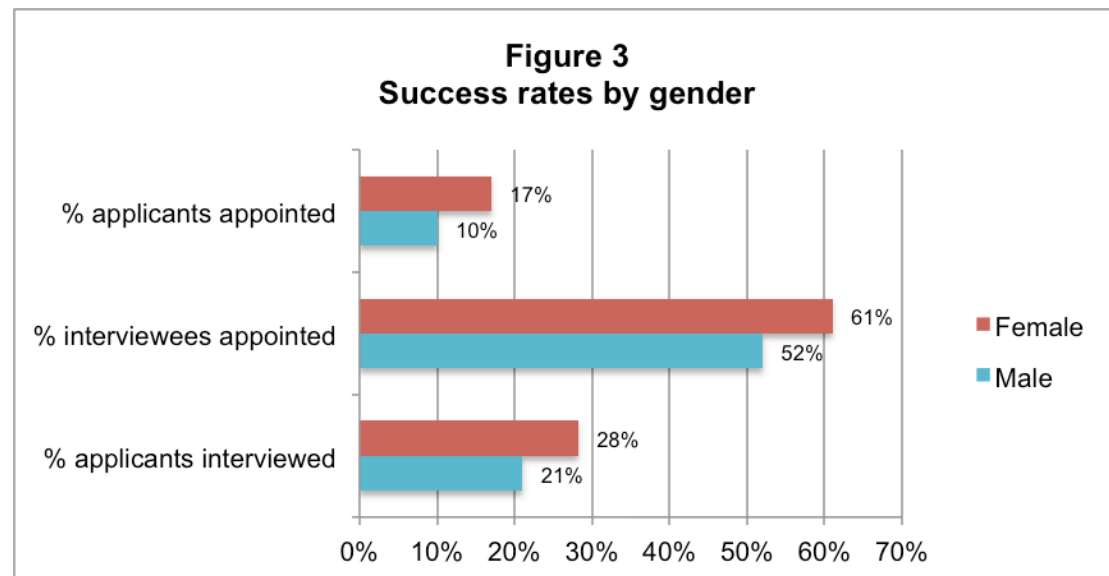


Figure 3 compares figures by gender in relation to success at each stage of the appointments process. It shows that this year, 28% of women who applied were selected for interview. Although this is down from 32% last year, it is still a higher percentage than the number of men (21%) selected for interview.

When we considered this against the proportion of women who go on to be appointed (61% of women compared to 52% of men) appointed, this means that 17% of women who applied for a public appointments role were successful in their application. For men, the corresponding figure is 10%.

This could be interpreted as evidence that female applications are stronger than those of their male counterparts. It is sometimes suggested by academics that women are more likely than men to *deselect* (ie not apply for positions in the first place if they do not think they are likely to succeed) so, if this is indeed the case, it may well be that those women who do apply are more likely to meet the full criteria for the post and come from the higher end of the skills and experience spectrum.

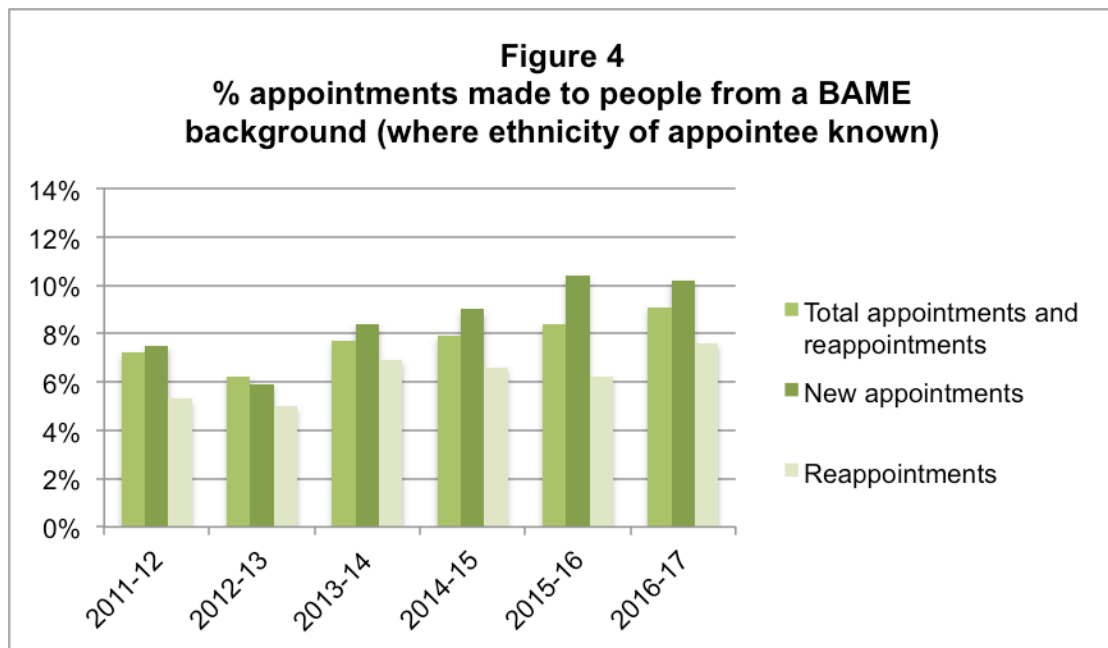
But overall, I am pleased to see that progress continues to be made on securing gender equality in public appointments. Although there is still some way to go in relation to the most senior roles, these figures show we are making progress in other areas.

Ethnicity

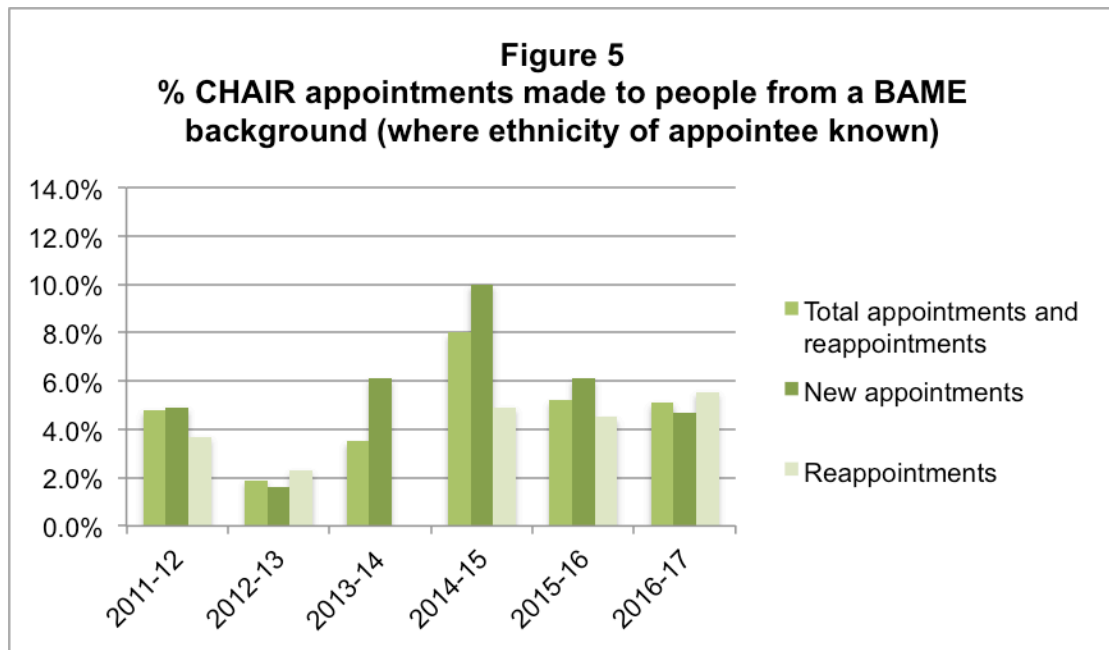
This year, as last, there are encouraging statistics in relation to appointments from the Black, Asian & Minority Ethnic (BAME) community but we have still some way to go to reach 14% of appointments being made to BAME applicants - the accepted figure for the BAME population in England & Wales based on the 2011 census.

Figure 4 shows that the proportion of total appointments made to BAME candidates has risen to 9.1%, which is the highest figure since the Code of Practice was introduced.

Encouragingly, this figure is even higher when we look only at new appointments made to members of the BAME community - some 10.2%.



There is less good news in respect of Chair positions (Figure 5). Out of 136 chair appointments and reappointments, just seven of those posts were made to BAME applicants. This represents 5.2% of the total. As with gender diversity, it is important that Departments continue to work harder to ensure that those chairing public bodies become more representative of the community as a whole.



So while progress has been made, there remains more to be done to secure increased BAME applications and appointments. I will be working with Cabinet Office to try and address this over the coming year.

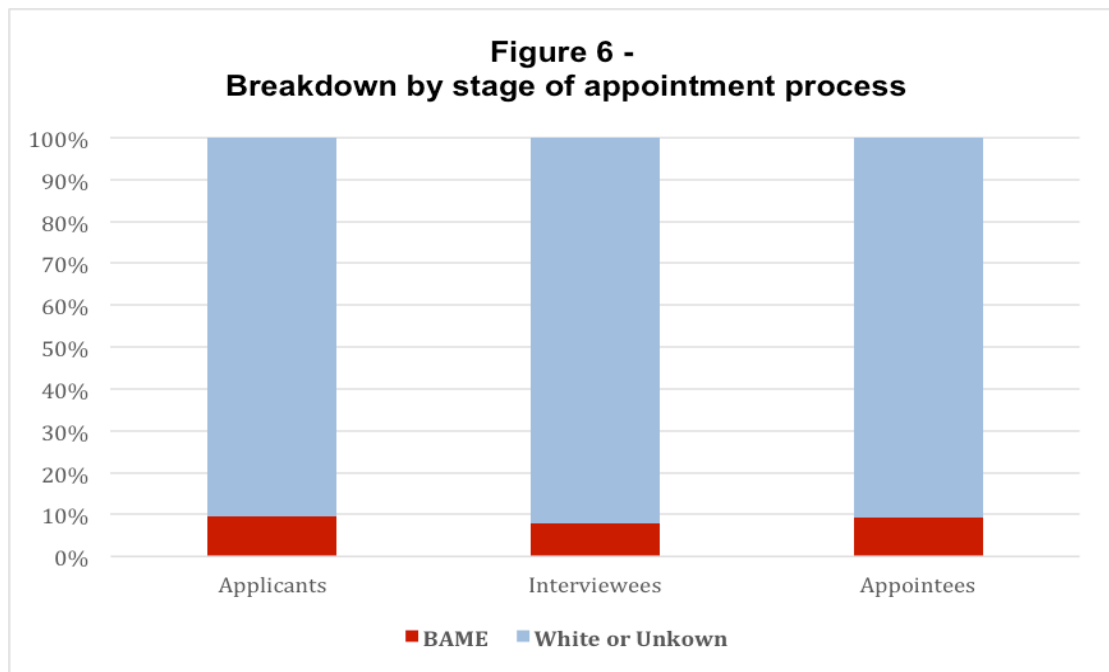
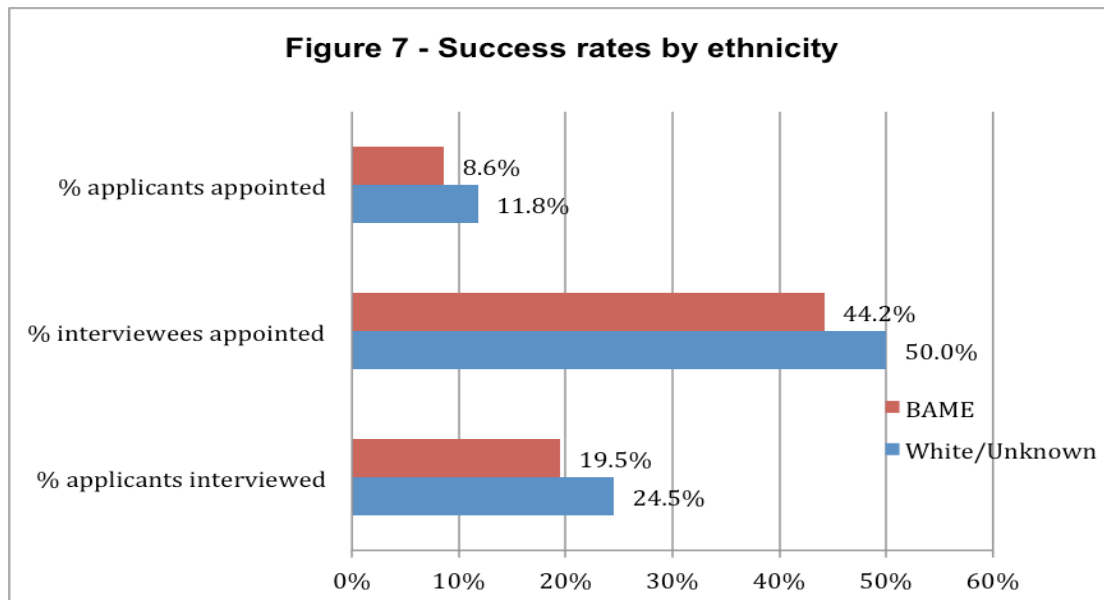


Figure 6 shows a breakdown by of candidates declaring a BAME background at each stage of the appointment process. As the proportion of BAME applicants is smaller than that of the BAME population of England & Wales as a whole and Departments must renew their efforts to attract more applications from BAME communities.



It is clear from Figure 7 that there is a measurable lack of success amongst BAME applicants making it to the interview and appointment stage in comparison their non-BAME counterparts. Understanding the reasons for this will form part of the formal meetings with Permanent Secretaries which I have commenced.

Disability

I have noted that some good progress has been made this year in respect of appointing more disabled candidates (Figure 9). The total number of new appointments and reappointments made to people declaring a disability has risen in comparison to last year to 6%, the second highest level in the past five years. The proportion of disabled people being appointed for the first time is now at 5.5% and reappointments, while not reaching the level of 2013-14, are, at 6.8%, the second highest level in the past five years.

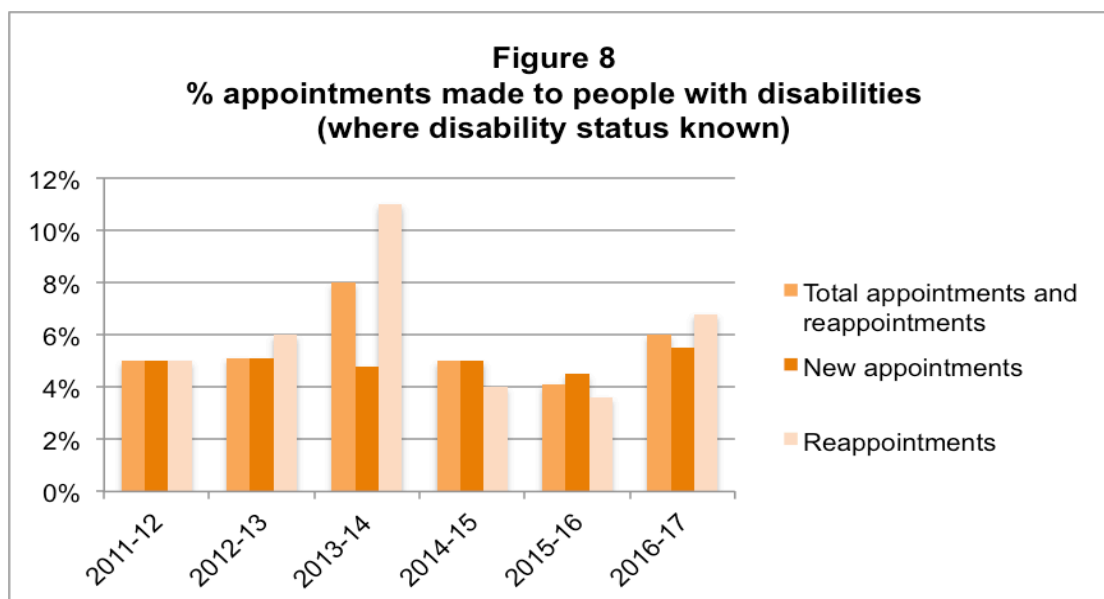
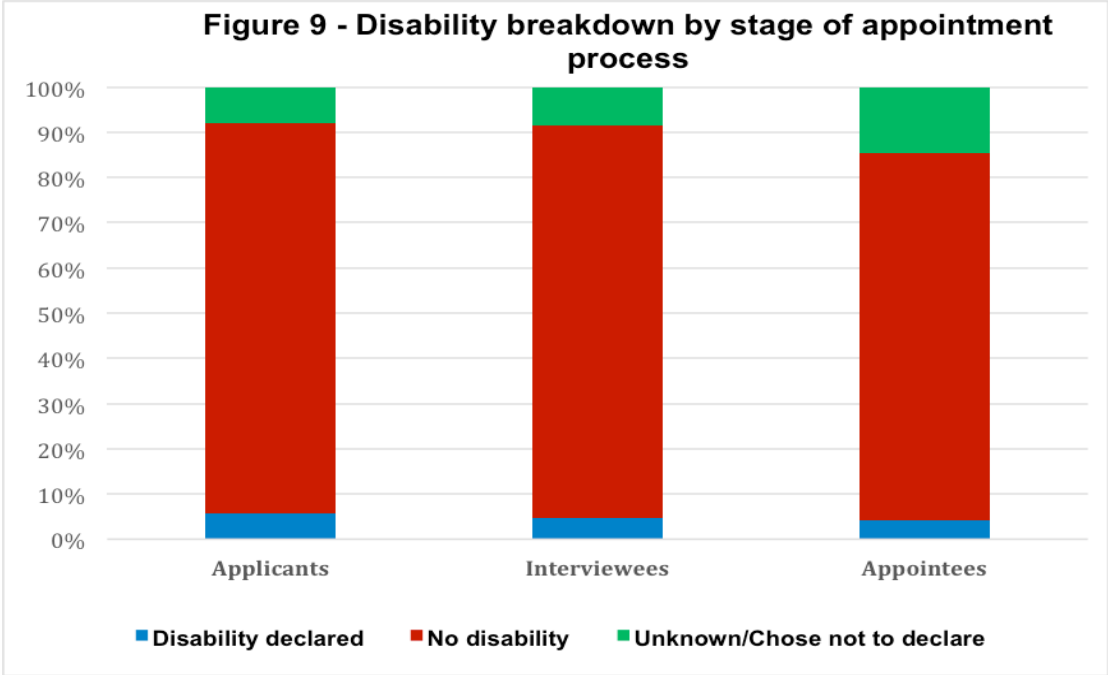
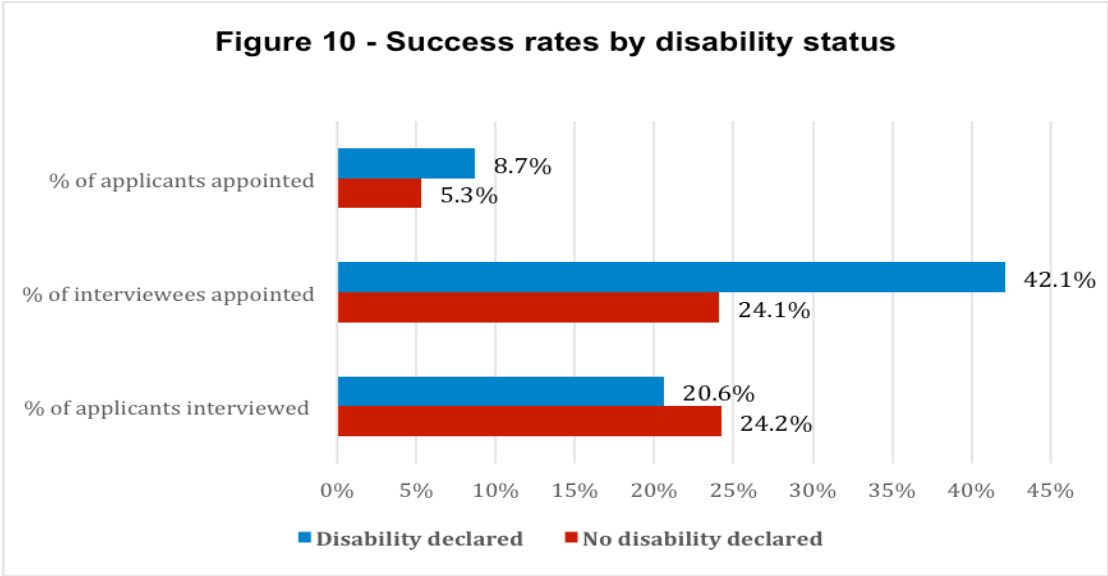


Figure 9 breaks down the success rates of applicants who have declared a disability by stage of the appointment process. There is a slight decrease in the proportion of people declaring a disability that progress from the initial sift when compared to the percentage that apply. That percentage, however, is maintained when we look at the figures for appointees.



As with BAME candidates, there is more work to be done to attract not just more applications, but high quality applications that are more likely to progress right through to interview stage.

Figure 10 shows the success rate of disabled candidates against the success rate of those who did not declare a disability.

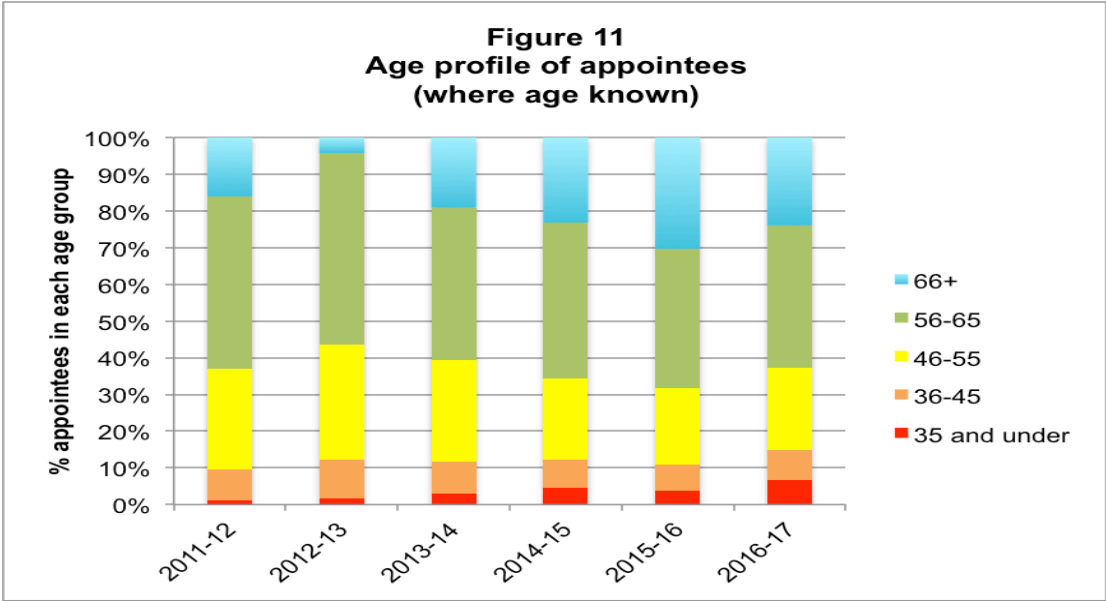


Whilst a disabled candidate is less likely to get to the interview stage, those that do are far more likely to be appointed than those who did not declare a disability. Some 42% of disabled candidates who reached interview went on to be appointed. It is certainly encouraging to see the improvements in

comparison to previous years.

Age

Figure 11 shows the age profile of public appointees. I am pleased to report the increase in the number of appointments made to those aged under 35 is at its highest level since the Code of Practice was introduced.

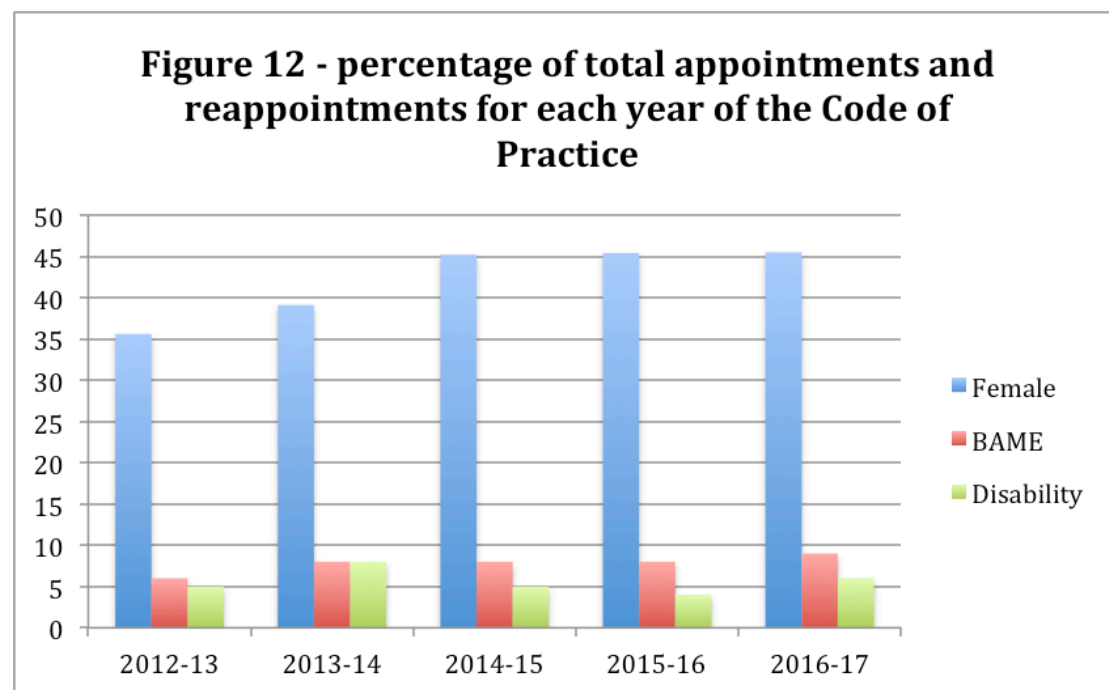


For the first time, appointees aged under 45 account for nearly 15% of the total. The 56-65 and over age groups currently make up well over 60% of total appointments. While it is inevitable that older people will bring more experience that comes with age as well as possibly having more availability to serve on public bodies I strongly encourage Departments to consider the significant benefits that younger board members, and Chairs, can bring.

2.2.2 Summary of the progress made during the operation of the 2012 Code of Practice in achieving Objective 1

The 2012 Code of Practice expired on 31 December 2016. Figure 12 shows the progress made to increase diversity in Public Appointments throughout the lifetime of that Code in respect of gender, ethnicity and disability.

While the objective has largely been met and stronger and more diverse fields of candidates have been identified and appointed, we must not become complacent as there is much more to be done to truly achieve diverse Boards representative of the British people as a whole.



In 2012-13, just 35% of appointments and reappointments were made to women. That has risen in each successive year and the figure is now above 45%. Departments can be proud of the progress they have made, and I look forward to reaching a 50:50 appointment ratio in respect of men and women.

There has been some encouraging progress too in relation to BAME candidates over this period. While the number of BAME appointees is still not reflective of the population as a whole, the figure has nevertheless increased from 6% in 2012-13 to 9% this year. Increasing BAME representation by a half in the space of five years is commendable. But much more work remains to be done in this area, especially in relation to attracting members of the BAME community to succeed in competitions for board Chair positions.

There has also been some good news in relation to disabled candidates. However, this is the only group that did not see a year-on-year increase during the operation of the Code of Practice and appointments currently remain below the 8% level recorded in 2013-14. Departments must continue to work harder to make the public appointments process as accessible as possible to those in our society that have a disability.

2.3 Objective 2: Streamlining the public appointments system

Chairing the Most Significant Appointments (Chair Appointments)

The team of Public Appointment Assessors received good feedback from Departments before their role ceased at the end of 2016, both for their chairing skills and for the value they added to the process, as well as undertaking their primary task to ensure that the Code was adhered to at each stage of the recruitment campaign. I am delighted that many of them have been asked by Departments to take on the role of Senior Independent Panel Member as proposed in the Grimstone Review following the introduction of the Governance Code.

A list of competitions chaired by PAAs during this period is at Annex B.

Non-Chair Public Appointments

In relation to Board member appointments, I have relied on compliance monitoring, currently contracted to KPMG (although this has been increasingly been carried out by the OCPA secretariat staff) to ensure that the Code of Practice was observed.

The total number of member appointments under my oversight in 2016-17 was 2,095 (new appointments and reappointments). This compares with 2,112 in 2015-16.

The Code of Practice permitted Ministers to make reappointments or extend the appointment of serving members (subject to the postholder having a satisfactory appraisal) but prevented an individual from serving in any one post for more than ten years, apart from exceptional circumstances which I was required to approve.

Of the 2,231 public appointments made in 2016-17, some 956 (43%) were reappointments.

Again, this is very similar to last year's figure of 42% reappointments.

Exemptions from the Code of Practice

I had the power to agree, in exceptional circumstances, exemptions to the requirements of the Code of Practice. In most cases this approval was given as a result of urgent operational need, or on grounds of practicality. Common examples of exemptions I granted would be to extend an incumbent's term of office to allow a competition to be held or permit an individual to be appointed without a competition where a Body was due to close down in the near future,

or to enable a review to be carried out that might affect its future.

I granted 25 specific exemption requests in 2016-17 and declined one.

Details of these are set out at Annex C.

Complaints

The number of formal complaints I received remains low. This is partly because complaints come to me to be investigated only after having been first considered by the Department concerned which often provides opportunities for the issues to be dealt with to the satisfaction of the complainant.

In 2016-17 I investigated seven complaints (compared to five in 2015/16) details of which are set out below:

Competition	Complaint	Outcome
An Independent Monitoring Board	A conflict of interest and the interview process	Complaint was not upheld but as the competition paperwork had not been kept for two years as required under the Code of Practice a breach was identified. MOJ were reminded of the Code requirement
Gambling Commissioners	Extending the date of the competition	Complaint not upheld
Independent Reviewer of Terrorism Legislation	Interview pack wording and sifting process	Complaint not upheld
Office of Police Conduct	Manner of the conduct of the interview	Complaint not upheld
Parole Board	Online testing irregularities	Complaint not upheld
Parole Board	Online testing irregularities	Complaint upheld as fairness principle was breached twice: test retaken by some candidates
Pubs Code Adjudicator	Conflicts of interest not properly handled	Complaint not upheld

Requests under the Freedom of Information Act

I received six requests under the Freedom of Information Act during 2015-16. The secretariat was able to answer all these questions within the statutory 20 working day time-frame.

The requests for information were varied and included requests for information on OCPA's Data Protection registration, correspondence with a Permanent Secretary, on-line forms, and pay and working patterns.

Anonymised versions of the responses that were issued have been published on my website³.

Monitoring Compliance with the Code of Practice

As Commissioner, I had a specific 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.

In addition to the breaches found following my investigation of complaints, the following cases were identified as breaches of the Code of Practice in 2016-17:

- the Department of Energy & Climate Change launched a Chair competition without requesting the allocation of a Public Appointments Assessor as required under the Code of Practice;
- the Chair and some board members of a Ministry of Defence public body continued to serve after the expiry of their terms of office without being formally reappointed;
- a further, similar, breach was identified in relation to board members of another Ministry of Defence public body.

A new compliance regime is being drawn up now that the Governance Code has been introduced. I shall say much more about this in next year's annual report.

³ <https://publicappointmentscommissioner.independent.gov.uk/publications/freedom-of-information/>

2.4 Objective 3: Improving Understanding and Public Confidence

The 2012 Code of Practice served its purpose well but has now expired.

The fact that I no longer am required to produce a Code of Practice and that I now regulate the Government's Governance Code has not been universally welcomed. In its follow-up report - HC1062⁴, the Public Administration and Constitutional Affairs Select Committee stated:

"It is a matter of great concern that the Government rather than the Commissioner sets the Public Appointments Code, as it fails to assure PACAC that people will not be deliberately excluded on an arbitrary basis that is not transparent."

As I turn now to discuss the operation of the Governance Code and my regulation of it, I am aware that there are many, including my predecessor, who have expressed doubts about the new system.

In the lengthy discussions between the publication of the Grimstone review in March 2016 and the introduction of the Governance Code in January 2017, I was able to secure some important amendments.

Whatever the details of the regulatory system, its success or failure will depend on the way it is implemented by Ministers and Departments and how they use their increased discretion.

Confidence in the new public appointments arrangements will only be achieved if there are sufficient checks and balances to prevent misuse whilst at the same time allowing ministers to be able to choose the best candidate for the job on the basis of merit following a fair and open competition.

Ensuring that the new Governance Code's checks and balances work, and, most importantly work well, is how I will approach my work in regulating appointments under the new public appointments system, which I now consider in the second part of my report.

⁴ <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmpublicadm/1062/1062.pdf>

PART TWO

3. The Role of the Commissioner under the Governance Code 2017

3.1 A new landscape for public appointments

The report *Better Public Appointments* published by Sir Gerry Grimstone in March 2016 proposed significant changes to the public appointments landscape.

One of the most significant changes related to publication of the Governance Code which Sir Gerry recommended, and the Government accepted, should no longer be drawn up and published by the Commissioner but, for the first time since this post was created in 1995, by the Government itself.

I will say more about the Cabinet Office's consultation with me on the Governance Code, in the next section of my report.

A significant and very welcome aspect of the new arrangements is the transparency regime which supports the new processes. It is now possible to see on the Centre for Public Appointments website, the precise stage that each competition has reached and the timescale for the rest of the process along with the membership and background of the Advisory Assessment Panels.

The system is new, and there have been, understandably, some teething problems not least in ensuring that accurate, real-time data is reflected on the campaign timeline. My Secretariat is working with the Centre for Public Appointments in the Cabinet Office to address these issues.

I entirely agree with the Government's view in its response to Sir Gerry's report that: *"A transparent system with external scrutiny and regulatory oversight from the Commissioner for Public Appointments is the best way to maintain public confidence. Effective scrutiny will be secured by the publication of live data on an individual process and the government welcomes Sir Gerry's recommendations in this area."*

The changes to the new public appointments process were provided for in the Public Appointments Order in Council 2016, made at the Privy Council meeting in July, but they did not come into effect until 1 January 2017 which was also the date the new Governance Code replaced the 2012 Code of Practice.

The Order in Council gives me a number of functions which I am required to exercise with the object of ensuring that appointing authorities act in accordance with the Governance Code, including the principles of public appointments.

I see this as my principal role as Commissioner: put simply it is to provide the necessary assurance that the new system, which allows ministers a much fuller role in making appointments, is balanced with an independent element to ensure that the best people are appointed fairly and openly on merit, and that the public appointment principles and the Government's Governance Code are strictly followed.

A truly independent element on the panel, along with the real time transparency regime that the Grimstone Review recommended, along with the assurance from the Department's Permanent Secretary or nominated senior official, that the process is compliant with the Governance Code (what Sir Gerry called his 'second line of defence') - are the litmus test, of whether the public will judge the new public appointments landscape fair and proper.

3.2 Agreeing the Governance Code

The Government consulted me as the Governance Code was being drawn up and I made a number of suggestions which I believe have improved it. I was pleased that the Government accepted my suggestion that Senior Independent Panel Members (appointed as the independent element in the most important, 'Significant Appointment' competitions) must not be politically active.

I had also pressed for Independent Panel Members (appointed as the independent element for all other competitions) not to be politically active as well, but I was disappointed that the Minister was unable to agree to my request.

My aim has been to balance the power of ministers making appointments with appropriate checks and balances to ensure the system is fair to all candidates. I would therefore have much preferred the Independent Panel member to be just that – independent of the public body concerned, the appointing department and the minister and party of the government of the day. This is because I think that the man or woman in the street would not consider someone truly independent if they had links to the Minister or to his/her party.

I intend to pay specific attention to the number of politically active IPMs in the coming year as Advisory Assessment Panels are set up and operate under the Governance Code - though in the limited experience at the time of writing this has not proved to be a problem

I was also very pleased that in my discussions with Government it was agreed

that the key Nolan principle of fairness – that *selection processes should be fair, impartial and each candidate must be assessed against the same criteria for the role in question* – would be added to become the eighth public appointment principle in addition to the seven that Sir Gerry had originally proposed.

I was also pleased that the Government accepted my suggestion of a live-time Campaign Timeline (similar to the Bill Tracker to monitor the progress of legislation in Parliament) to enable anyone to see the progress of a competition, the membership of the Advisory Assessment Panel and for any political activity or other relevant information to be declared.

I am in discussion with the Cabinet Office to see if the CPA website can be developed for use by Departments to log securely aggregate anonymous competition diversity information. This would make savings and increase the quality of the data collected and published. I hope to say more about this in next year's report.

Inevitably the new Code will need time to settle down and for glitches and transitional problems to be resolved as Departments put new processes in place and adjust to the new regime. No competitions were completed under the new regime during the period of this report.

My intention is, over the coming months, to examine the paperwork relating to the first tranche of completed competitions and to identify any areas where Departments are failing to act in accordance with the Code.

This work has only just begun so I will say much more about this in next year's report and in my blog and other comments and statements throughout the year.

3.3 'Significant Appointments' & Senior Independent Panel Members

Whilst all public appointments are, of course, important, the Governance Code requires a list of 'Significant Appointments' to be agreed. The Minister for the Constitution Chris Skidmore MP, and I decided that this should include all appointments subject to Select Committee pre-appointment scrutiny and other appointments that are particularly important because of the nature of the work which the postholder or body undertakes.

I agreed a list of Significant Appointments on 22 February 2017 with the Minister in respect of appointments made by HM Government Ministers and, a list of Significant Appointments made by Welsh Government Ministers was also agreed, separately, with the First Minister of Wales, the Rt Hon Carwyn Jones AM.

Both lists have been published on my website⁵ and they will be reviewed and

⁵ <https://publicappointmentscommissioner.independent.gov.uk/regulating-appointments/significant-appointments/>

updated from time to time as new bodies are created and old ones cease to operate.

Significant Appointments require a Senior Independent Panel Member (SIPM) to be a member of the Advisory Assessment Panel. Details on the role of the SIPM are set out in section 6 of the Governance Code.

I am required to be consulted by Departments on who the SIPM should be for each competition before the recruitment process commences. I have been consulted by a number of Departments in respect of 23 proposed SIPMs details of which I have set out at Annex D.

The SIPM (unlike an IPM in a non-significant competition) is required to be independent of the Department and of the body that is being recruited to and should not be politically active. This, along with the requirement that the SIPM has senior recruitment experience, gives additional reassurance that the appointment being is made solely on merit.

I was pleased to note, but not at all surprised, that a number of the former PAAs have been asked to become SIPMs given the wealth of their experience that they possess in respect of senior recruitment relating to public appointments.

3.4 Exceptional Appointments without a competition

My position is that whenever possible a fair and open competition should always be held to fill vacancies but there will always be some occasions when it is not in the public interest to do so, for example if a body is being wound up in a few months or if the post is a highly technical one and getting a field of candidates to hold a competition would be very difficult.

Under paragraph 3.3 of the Governance Code, Ministers may decide to appoint a candidate without holding a competition. They must make this decision public alongside their reasons for doing so after consulting me in good time before the appointment is publicly announced.

It is my practice to publish, additionally, a list of Exceptional Appointments on my website⁶ setting out my observations following these consultations. During the period of this report there were six Exceptional Appointments consultations and I was content with Ministers' proposals in each of them.

⁶<https://publicappointmentscommissioner.independent.gov.uk/regulating-appointments/exceptional-appointments-made-without-competition/>

3.5 Delegations & Exemptions

Paragraph 3.1 of the Governance Code allows Ministers to delegate responsibility for certain appointments to an appropriate body to run and make appointments if this is also agreed with the Cabinet Office⁷ and myself.

I agreed to delegations from the Governance Code and special arrangements for some appointments with the Department of Health and NHS Improvements and the Ministry of Justice in respect of appointments to Independent Monitoring Boards, Advisory Committees on Justices of the Peace, the Prisoner Escort & Custody Service and MAPPA Lay Advisors. Fuller details can be found on the OCPA website⁸.

I 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 Governance Code. A summary of these class exemptions are listed below:

- flexibilities allowing 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;
- 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 Governance Code presumption of 10 years). This is 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 Governance Code to allow longstanding arrangements for making those appointments (where the chairs are chosen by the members) to continue.

⁷ This does not include appointments made by Welsh Government Ministers

⁸<https://publicappointmentscommissioner.independent.gov.uk/regulating-appointments/delegated-responsibilities/>

3.6 Priorities for the coming year

I have published a Business Plan on the newly launched OCPA website⁹ which will guide my work for the coming year.

I have set myself four objectives:

Objective 1: to provide independent assurance that appointing authorities act in accordance with the Governance Code and the principles of public appointments¹⁰

This will be the bread and butter of the casework that OCPA undertakes and I will ensure that Departments consult and notify me appropriately, as required in the Governance Code;

Objective 2: to be an active advocate for diversity¹¹

Since taking up post I have held more than 15 separate meetings with a range of groups and individuals with experience in gender, ethnicity and disability issues.

I intend to disseminate best practice across Government Departments and meet their diversity representatives in order to encourage them to advertise and recruit in a way that ensures a diverse a field as possible. I shall take forward this work, where possible, in partnership with the Cabinet Office who have agreed to take a 'diversity snapshot' of the make-up of the public bodies that I regulate.

This, together with plans for better diversity monitoring collection, will provide a solid foundation and benchmark for future work in this area and I will report on this further next year;

Objective 3: relates to Monitoring Compliance with the Governance Code & the principles of public appointments and improving capability¹²

With the first appointments now beginning to be made under the Governance Code, I am finalising my thoughts on the precise way that I shall monitor Departmental compliance with the Governance Code and I expect that this will form much of my report next year;

Objective 4: Improving a wider understanding of the Commissioner's role

I shall continue to communicate my work on the newly designed OCPA website and by using my blog as well as traditional and social media. I have commenced a series of meetings with Departments' Permanent Secretaries and I will meet my Scottish and Northern Ireland counterparts again early next year in London (after meeting them in Belfast in early April).

⁹ <https://publicappointmentscommissioner.independent.gov.uk/publications/ocpa-business-plan/>

¹⁰ based on Article 4(1) of the Public Appointments Order in Council 2016

¹¹ based on paragraph 4.7 of the Governance Code

¹² based on paragraph 4.2 of the Governance Code

Annex A

The former Public Appointments Assessors



Mark Addison



Olivia Grant



John Knight



Dame Anne Pringle



Margaret Scott



Amerdeep Somal



Sir Peter Spencer



Rosie Varley

Competitions chaired by Public Appointment Assessors during 2016/17

DEPARTMENT	PUBLIC BODY	ROLE	PAA	APPOINTED CANDIDATE
BEIS	British Business Bank	Chair	Grant	Lord Smith of Kelvin
BEIS	Industrial Development Advisory Board	Chair	Somal	Kevin Taylor
BEIS	Low Pay Commission	Chair	Somal	Minister declined to choose from appointable candidates
BEIS	Nuclear Liabilities Fund	Chair	Varley	Competition halted ¹³
BEIS	Office for Students	Chair	Grant	Sir Michael Barber
BEIS	UK Research & Innovation ¹⁴	Chief Executive	Spencer	Professor Sir Mark Walport
CO	Electoral Commission ¹⁵	Chair	Addison	Sir John Holmes GCVO KBE CMG
CO	UK Statistics Authority	Chair	Spencer	Sir David Norgrove
DCLG	Homes & Communities Agency	Chair	Varley	Sir Edward Lister
DCLG	Local Government Ombudsman	Chair	Grant	Michael King
DCLG	Valuation Tribunal Service	Chair	Addison	Position was not taken up ¹³
DCMS	BBC	Chair	Spencer	Sir David Clementi
DCMS	National Museums Liverpool	Chair	Varley	Sir David Henshaw
DCMS	UK Anti-Doping	Chair	Somal	Trevor Pearce CBE QPM
DECC	Civil Nuclear Police Authority	Chair	Spencer	Vic Emery OBE
DECC	Committee on Fuel Poverty	Chair	Scott	David Blakemore
DECC	Nuclear Decommissioning Authority	Chair	Varley	Tom Smith
DEFRA	Environment Agency	Chair	Scott	Emma Howard Boyd
DfE	Institute of Apprenticeships	Shadow Chair	Spencer	Antony Jenkins
DfE	OFQUAL	Chair	Grant	Roger Taylor

¹³ the competition was subsequently re-run under the Governance Code

¹⁴ an Article 2(3) request was received for the competition to be chaired as if it were a regulated body

¹⁵ an Article 4(1) request was received to chair competition as an additional function

DfE	OFSTED	Chair	Spencer	Professor Julius Weinberg
DH	NHS Pay review Body	Chair	Scott	Philippa Hird
HMT	NS&I	Chair	Somal	Ed Anderson
HO	Advisory Council on Misuse of Drugs	Chair	Varley	Dr Owen Bowden-Jones
HO	College of Policing ¹⁶	Chair	Spencer	Three shortlisted candidates withdrew and the remainder were not found appointable
HO	Independent Reviewer of Terrorism Legislation	Reviewer	Grant	Max Hill QC
HO	Labour Market Enforcement Director ¹⁶	Director	Grant	Sir David Metcalf
HO	Office of Police Conduct	Chair	Spencer	No appointable candidates found
MOD	Single Source Regulations Office	Chair	Grant	George Jenkins OBE
MOD	Veterans Advisory & Pensions: East Scotland	Chair	Grant	Commander Wilson Fraser
MOD	Veterans Advisory & Pensions: Northern Ireland	Chair	Grant	Lt Col Kingsley Donaldson
NHS Improvements	Avon & Wiltshire Partnership NHS Trust	Chair	Spencer	Charlotte Hitchings
NHS Improvements	Barts NHS Trust	Chair	Varley	Ian Peters
NHS Improvements	Hull & East Yorkshire NHS Trust	Chair	Grant	Terry Moran CB
NHS Improvements	Maidstone & Tunbridge Wells NHS Trust	Chair	Somal	David Highton
NHS Improvements	Royal Cornwall Hospitals NHS Trust	Chair	Scott	Councillor Jim McKenna
Welsh Government	Welsh Revenue Authority ¹⁶	Chair	Varley	Kathryn Bishop

¹⁶ an Article 2(3) request was received for the competition to be chaired as if it were a regulated body

Exemptions from the 2012 Code of Practice granted by the Commissioner during 2016/17

Department	Public Body	Exemption granted
BEIS	Nuclear Liabilities Fund	Interim Chair appointment while open competition was held following resignation of Chair. Interim Board appointment also made to backfill position vacated by interim chair, in order to maintain board balance
BEIS	Low Pay Commission	Interim Chair appointed for 12 months following an unsuccessful competition
DCMS	Visit Britain	3 month extension of tenure to permit a competition to be held to select successor and run alongside Visit England competition
DCMS	OFCOM	Interim board appointment extended for a further year in order to provide stability through a period of significant change
DCMS	National Gallery	Exemption request not approved
DEFRA	Seafish Authority	Extension of the current exemption (to make the Deputy Chair the interim Chair) by 12 months to enable to recruit a successor acceptable to HMG and the devolved administrations
DEFRA	Northumbria Regional Flood and Coastal Committee	Interim Chair appointment without competition for 6 months following the death of the Chair
DfE	UK Commission for Employment and Skills	Interim Chair appointment without competition to permit the body to be wound up within a year
DfE	OFSTED	Interim Chair appointment without competition for 6 months after the resignation of Chair to enable a successor to be recruited
DfT	HS2	Extension of existing exemption for a further 12 months
DWP	Pensions Advisory Service	Interim Chair appointment without competition for 6 months due to the Chair stepping down
MOD	Defence Nuclear Safety Committee	1 year extension of tenure to two members to allow for continued expertise until recruitment round concludes
MOJ	Family Justice Council	3 months exemption from holding a competition to allow for change in policy to be introduced to permit all future appointments to be made by the Lord Chancellor
MOJ	Insolvency Rules Committee	7 months extension of tenure to allow for continued expertise until competition is held
MOJ	Court of Protection Visitors	3 month extension to tenure of two Visitors to enable successor competition to be held
MOJ	Parole Board	A final 2 months extension of to a previously agreed exemption for 16 members of the Parole Board
MOJ	Criminal Procedure Rule Committee	A fair and open competition deemed not to be required given the difficulty in finding candidates for the Lord Chancellor to appoint under section 70(2)(k) of the Courts Act 2003
NHSI	Worcestershire Acute Hospitals NHS Trust	1 year exemption from holding a competition following resignation of key personnel
NHSI	Pennine Acute NHS Trust	Interim NED appointment without competition for 24 months because of difficulties being faced by the Trust
NHSI	Wye Valley NHS Trust	Interim Chair appointment without competition for 12 months due to the Chair stepping down

NHSI	Epsom & St Helier University Hospitals NHS Trust	Interim NED appointment without competition for approximately 12 months
NHSI	Royal Liverpool and Broadgreen University Hospitals NHS Trust	Extension of existing exemption for a further 12 months to enable a fair and open competition to be held
NHSI	Croydon Health Services NHS Trust	Extension of tenure of 6 months for current Chair and 12 months for NED before holding competition to allow changes to Trust to bed in
NHSI	Princess Alexandra Hospital NHS Trust	Interim Chair Appointment for 2 years to help address issues involving the Trust
Welsh Government	Advisory Panel on Substance Misuse	Interim Chair appointment without competition for 3 months to enable a successor to be recruited

Annex D

Senior Independent Panel Members appointed in 2016/17 after consultation with the Commissioner

Name of SIPM	Department
Mark Addison *	MOJ
Carol Black	DCMS
Alan Coppin	DCMS
Angela Dean	DCMS
Peter Donaldson	BEIS
Jeff Farrer	Welsh Government
Mike Goodie	BEIS
Colleen Harris	HO
Vikki Hawes	BEIS
Lord Janvrin	DCMS
Michael King	DCLG
John Knight *	DH
Tracey Long	DCMS
Sir Laurie Magnus	DCMS
Ian McCaig	DCMS
Charles McKay	DCMS
Dame Anne Pringle *	DCMS
Jessica Pulay	DCMS
Nicky Roche	DCMS
Margaret Scott *	DCMS
Lewis Shand-Smith	BEIS
Rosie Varley *	DCMS & MOJ
Libby Watkins *	DCMS & DH

* a former Public Appointments Assessor

Annex E

Exceptional Appointments in 2016/17 under the Governance Code made without a competition

Department	Public Body	Detail of the Exceptional Appointment
DWP	The Pensions Advisory Service	Chair appointment without competition for 2 years to allow TPAS to be wound up
MOJ	Youth Justice Board for England & Wales	Chair appointment without competition for 2 years whilst the youth justice system undergoes significant reform and governance changes
NHS Improvements	North Middlesex University Hospitals NHS Trust	1 year exemption from holding a competition in order to strengthen the Trust's Board
NHS Improvements	Family Justice Council	3 months exemption from holding a competition to allow for change in policy to be introduced to permit all future appointments to be made by the Lord Chancellor
Welsh Government	Advisory Panel on Substance Misuse	Interim Chair appointment for 6 months to allow Panel to continue its work whilst a Chair competition is held
Welsh Government	Sports Wales	Chair appointment without competition for 1 year to permit an investigation into misconduct



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