



**The Commissioner for  
Public Appointments**

**Rt Hon Peter Riddell CBE**  
**Commissioner for Public Appointments**  
G/07, 1 Horse Guards Road, London, SW1A 2HQ

Hon Bernard Jenkin MP, Chair, Public Administration and Constitutional Affairs Committee

*Dear Bernard,*

I realise that it is some time since I updated you formally on developments on public appointments. Much has been going on recently with the controversies over the appointments to the Office for Students and the Charity Commission, the Government's Diversity Action Plan and more than a year of operation of the Government's new Governance Code, about which you and your committee have had a number of worries.

On the Code first, your committee, and others including Sir David Normington, my predecessor, were worried about the shift in the balance towards strengthening the power of ministers following the recommendations of Sir Gerry Grimstone's review in spring 2016. I share most of those concerns about the possible implications. But, so far, ministers have not used these powers in the way that PACAC and others feared when the Grimstone report was published. This is both because of the attitude so far of ministers and departments and because of some safeguards I negotiated in autumn 2016- notably the inclusion of the principle of fairness in the core principles for appointments, and the requirement for me to be consulted rather than just notified on certain key aspects of appointments. The latter provision was intended to give time for discussion and second thoughts in private before public differences emerged.

There was, for instance, rightly concern over the new power to allow ministers to appoint candidates who had been assessed as unappointable by an advisory interview panel. I disagreed with that provision, and it has not been used yet. There was one case when a minister sought to invoke this power after an interview panel had twice rejected a candidate, first at the sift stage of applicants, and then following an interview after the minister had asked that the individual be re-considered. Despite the double rejection, the minister then proposed to appoint but was required to consult me. I strongly advised against, not least since the minister was at risk of breaking the Governance Code by invoking a different reason for appointing the candidate than under the advertised criteria for the post. The minister then, sensibly, opted for a fresh competition. This showed the advantages of consultation and second thoughts being conducted in private first. Had the minister persisted in appointing the unappointable candidate, the full correspondence would have been published by my office..

There was concern also over provisions to allow appointments to be made without an open competition. There had anyway been scope beforehand for such exemptions with the consent of the Commissioner for sensible public policy reasons, though under the new Code, I have lost my veto and just have to be consulted. So far, and I emphasise so far, there has not been a significant change in the pattern or number of such exemptions which are often sought because public bodies are going through financial problems or reorganisation-- nearly a third are sought by NHS Improvement for health trusts. The main discussion has been about the length of exemptions with departments knowing they can push for a longer period and I pressing for a year or less.

The other main change has the replacement of Public Appointments Assessors appointed by the Commissioner with Senior Independent Panel Members appointed by departments, with senior civil servants taking over chairing the panels. The apparent impact on the outcome of competitions has been minimal so far. The SIPMs have often been the same people, or similar in background, to the previous assessors and departments have been assiduous in consulting me about who should serve. Two departments which make a lot of appointments have pre-cleared with me a list of potential SIPMs to simplify the process, and that has so far worked well, and shortened the consultative process. There have been a few times when departments have forgotten to consult, and that has been because of teething problems, and initial unfamiliarity, with the new Code rather than anything deliberate. There have been a few minor examples of panel members not being sufficiently fully independent of the industry or department concerned. I have been encouraging departments to ensure that a properly independent voice is represented on panels.

There has recently been comment on the practice of ministers encouraging people to apply for appointments or suggesting names. There is nothing new or wrong in this: indeed, it is specifically recognised in any candidates suggested by ministers are treated in the same way as others by interview panels, as required by the fairness principle in the Code. My experience so far of the new Code is that advisory interview panels have been robust. They have taken ministerial views into account- at times, but not always, adding a candidate to the list of those to be interviewed- but the panels have then not been swayed in their assessment of who is or is not judged to be appointable. It is common to find candidates mentioned by ministers being rejected by interview panels as unappointable.

I am certainly not complacent about this picture. Different ministers and different circumstances could produce more problems and conflicts, and the 2017 Governance Code creates that potential. Moreover, because of the time lags involved in appointments and the long hiatus caused by last year's general election and its aftermath, the new system has really only been in full swing since last September. So it is still only possible to offer interim observations on many issues.

The post-Grimstone Code made no difference to the two recent controversies, over the appointments to the Board of the Office for Students and the new Chair of the Charity Commission. As I have already written to you, I have reported extensively on the Office for Students, and the Government has responded positively and promised to consult me over improvements to due diligence arrangements, particularly in relation to social media. There was a clear disparity between the extent of due diligence checks made on some candidates

compared to others. The Department for Education failed formally to consult me over an appointment without competition to the student experience role of the Board after the three candidates judged appointable had been rejected-- a breach under both the old and new Codes. While I would have had a veto under the old Code, the outcome-- after belated consultation- of a temporary appointment of no more than six months is one which I would have been likely to have agreed to under the old arrangements. This case, and some others I have reviewed, also underline the need for clear and consistent criteria against which candidates are assessed. Departments should not invoke vague catch-all criteria about supporting government policy aims or, in practice, devise new criteria to block candidates if these have not been advertised.

The controversy over the appointment of Baroness Stowell to chair the Charity Commission appears to lie largely outside the main provisions of the Governance Code. I kept in close touch with the competition and reviewed the report of the advisory interview panel before an announcement was made. What I have so far seen suggests that the panel operated in a fair and open way, while no preference was expressed between Baroness Stowell and two other candidates judged appointable. The decision to appoint her, rather than the two other candidates was then one for the DCMS Secretaries of State (they changed after the January reshuffle) and the Prime Minister. All this was exactly as would have happened under the old Code. In view of complaints made to me, I am reviewing the full papers.

I was not involved in the decision by Matt Hancock to press ahead with the appointment despite the opposition of the DCMS Select Committee after a pre-appointment hearing. Pre-appointment hearings and their consequences are outside my regulatory remit. I am, however, concerned about maintaining wider trust in public appointments, of which parliamentary backing, or its absence, is obviously a key part. I therefore welcome the debate over pre-appointment hearings which the Liaison Committee has started, and to which the DCMS committee has contributed in its recent report on the Charity Commission appointment. Public confidence in the appointments system is fragile and needs to be sustained.

The other main, and welcome, development was the publication of the Cabinet Office's Diversity Action Plan on 14th December 2017. Considerable progress has been made over the last few years in appointing more women candidates, and the trends are in the right direction, though patchily, for those from ethnic minorities. The Government has set ambitious, though achievable, targets for ensuring that 50 per cent of all public appointees should be women by 2022, against 45 per cent now, and a third five years ago, and that the number of new appointments for ethnic minorities should rise from the current, roughly 10 per cent to 14 per cent, their share of the overall population. The Cabinet Office Plan includes some sensible initiatives for achieving these goals, such as developing pools of talent and broadening networks in under-represented groups so that they know about new appointments being advertised. I will be encouraging departments to implement the Plan over the coming year.

I welcomed the Plan but have three concerns. First, the record on appointing those with disabilities is inadequate and no quantified target is being set here. The Government has promised to set up a review of the barriers to those with disabilities taking up public appointments. There needs to be visible progress here. Second, ministers need to do more

to increase the diversity of chairs, as well as all public appointees. This requires active succession planning, Third the Government needs to look more at social, geographic and age diversity. Public appointments are spread across the country, not least because of the many made by the devolved administrations, but also because of the locally-based NHS trusts, Independent Monitoring Boards and Parole Boards. Departments and boards should also nurture and encourage talent from a variety of social backgrounds. There are still not enough people aged under 45 being appointed, but it is often hard to make a public appointment compatible with a full-time career or family and other responsibilities. But the data on the residence and social backgrounds of members of national public bodies are still inadequate.

My office will be working with the Cabinet Office to ensure that the method of the collection of statistics is improved and made more efficient and comprehensive, such as through their website, which should produce more accurate data. We will also be working with the Cabinet Office to ensure that the promised transparency over public appointments-- on the composition of interview panels, key timings in the process, length of competitions-- works better. At present, performance is patchy.

I would be happy to discuss any of these points with you and with your committee. I will be copying this letter to Lord Bew, Chair of the Committee on Standards in Public Life, and will be putting it on my website.

*All best wishes  
yours sincerely  
Peter*

**Peter Riddell**  
**Commissioner for Public Appointments**