

Public Administration and Constitutional Affairs Committee

Oral evidence: Pre-Appointment Hearings, HC 909

Tuesday 15 May 2018

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Members present: Bernard Jenkin (Chair); Ronnie Cowan; Mr David Jones; Dame Cheryl Gillan; Kelvin Hopkins; Dr Rupa Huq; David Morris.

Questions 1 - 79

Witnesses

I: Professor Robert Hazell, Constitution Unit, University College London and Dr Felicity Matthews, University of Sheffield.

II: Peter Riddell, Commissioner for Public Appointments.

Written evidence from witnesses:

- [Commissioner for Public Appointments](#)
- [Professor Robert Hazell](#)

Examination of witnesses

Witnesses: Professor Robert Hazell and Dr Felicity Matthews.

Q1 **Chair:** I welcome our first two witnesses to this first evidence session in our inquiry on pre-appointment hearings conducted by Select Committees in the House of Commons. I should emphasise that after one or two controversial pre-appointment hearings, some opinions expressed by Committees, some decisions taken by Ministers, and some controversy around some public appointments, there was a very strong appetite in the Liaison Committee for us to conduct this inquiry. We are receiving a lot of evidence from other Select Committees on their views on these matters. Can I ask each of our witnesses to introduce themselves for the record, please?

Professor Hazell: I am Robert Hazell and I am Professor of Government and the Constitution in the School of Public Policy at University College London.



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Dr Matthews: I am Felicity Matthews. I am a senior lecturer in politics at the University of Sheffield.

Q2 **Chair:** Welcome to you both and thank you for your written evidence. Can you summarise, based on your research, what you think Committees intend to achieve by holding pre-appointment hearings?

Professor Hazell: There are two useful source documents. One is the Green Paper issued by Gordon Brown in 2007, in his first week in office as Prime Minister, entitled "The Governance of Britain" in which the Government first announced—11 years ago now—that it intended to proffer the Government's preferred candidate for senior public appointments before the relevant Select Committee for a pre-appointment scrutiny hearing. That Green Paper usefully summarised the purpose of such a hearing as being threefold: to scrutinise the recruitment process, the candidate's suitability for the role, and his or her key priorities. You will know that there then followed a process of negotiation between the Government and Parliament about which senior public appointments might be suitable for pre-appointment scrutiny hearings, and subsequently the Cabinet Office and the Liaison Committee have both issued guidelines about pre-appointment scrutiny. The Liaison Committee guidelines themselves contain a fourfold set of objectives, which are: scrutiny of the quality of ministerial decision making; to provide public reassurance that the candidate has been appointed on merit; to provide public evidence of the candidate's independent-mindedness; and to enhance the appointee's legitimacy. The Liaison Committee objectives are slightly narrower than the Government's and to my mind the Government's broader, threefold objectives are a rather more useful framework for analysing the effectiveness of pre-appointment scrutiny. However, the one set complements the other.

Q3 **Chair:** To what extent do you think Committees that have conducted pre-appointment hearings intend to achieve those objectives? How consciously do you think Committees are engaged with those objectives?

Professor Hazell: I think the hearings have been very effective in testing the candidates' independence and independent-mindedness and also their suitability for the role, including testing their professional experience and competence. However, they have been less effective in scrutinising the recruitment process because, to my mind, the candidate is the wrong person to have before the Committee if the Committee has concerns about the selection process. If the Committee does have such concerns, it should summon the Minister or possibly the permanent secretary of the Department concerned.

Chair: Thank you. Dr Matthews?

Dr Matthews: If I may, I will pick up on some of the points that Robert made. I broadly agree that the Committees that have held hearings have been incredibly successful in giving the preferred candidate a good workout in assessing their competency for the job, in uncovering things



around conflicts of interest that maybe were not revealed through the recruitment process, and in demonstrating the legitimacy or otherwise of that candidate. However as Robert has said, where there may be tension is around the testing of the process, because the applicant, the preferred candidate, is the wrong person to hold to account for the appointment process itself. The hearing and inquiry that we are having now provides a fantastic opportunity to reconsider the role of pre-appointment scrutiny, and maybe clarify that distinction between what I would term person and process.

Q4 **Ronnie Cowan:** I am wondering about your view on what you think the pre-appointment hearings should achieve and what they are actually achieving. Are there differences there? Are there gaps in what we are doing?

Dr Matthews: At present there is a gap around holding the process to account more robustly. It is important for Select Committees to think carefully about how that might be done more effectively. Maybe a pre-appointment hearing is not about speaking to the preferred candidate but about speaking to the Minister who is responsible for appointing that candidate. That would obviously require a different approach to pre-appointment scrutiny but, if we are interested in looking at the person and the process, maybe we need to be more imaginative about who we bring in front of the Committee to examine those issues.

Q5 **Ronnie Cowan:** So we should be asking the Ministers why they are putting this person forward as the preferred candidate.

Dr Matthews: Yes, that should be something that Select Committees have in reserve, that they may wish to pursue if it is deemed appropriate to do so. In the post-Grimstone world that we are in, Ministers have a lot more discretion to make appointments. They have a lot more discretion to be active throughout the appointments process. They can override the appointments process and still appoint a person otherwise deemed unappointable. For Select Committees to have that power in reserve would maybe send out—"deterrent" is possibly too strong a word—that important message that you are there watching, but it would also be useful in those instances, if they were to occur, and they haven't yet, to be able to hold a Minister to account that way. That would also, in turn, support the Commissioner.

Chair: Anything to add, Professor Hazell?

Professor Hazell: The Select Committee is typically given some bare statistics about the recruitment process—how many people applied, how many people were shortlisted, how many people were deemed appointable by the selection panel—and if the Committee has concerns about the candidate selected after that appointment process, the only person, as Felicity Matthews has said, who can explain the thought process and decision making, is the Minister who chose the preferred candidate from those deemed appointable or, in exceptional cases, which



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so far as we know have not yet happened, has possibly plucked someone from further down the line who was deemed non-appointable.

Q6 Ronnie Cowan: Professor Hazell, you have suggested that pre-appointment hearings are of value as a “wild card” in the process. Can you expand on that?

Professor Hazell: Something that I may have said in my written evidence, and have certainly written about in articles, is that I think Select Committees could be more systematic in their approach to pre-appointment scrutiny and more selective. Being more systematic may be something we come onto later.

Select Committees do not have to hold a pre-appointment hearing; the Liaison Committee guidelines are quite clear about that. I think they always have in practice, if the post is one on the Cabinet Office list of positions subject to pre-appointment scrutiny. I think Committees could be more strategic. For example, at the start of a Parliament, an individual Select Committee could ask the relevant Department for a list of all the public appointments made by that Department, could go through that list, perhaps with the help of the Clerk and the Committee staff, and say, “Over the next five years, the course of this Parliament, we are going to be really interested in these, say half dozen, appointments, which will come up for renewal” and they may or may not be on the Cabinet Office list, but they can signal in advance to the Department, “These are the appointments that we wish to scrutinise”. In that way, Committees will no longer feel that they are prisoners of the Cabinet Office list. They will not be responding to an agenda set by the Government. They will themselves be setting the agenda in terms of the appointments they are interested in and they wish to scrutinise.

Q7 Ronnie Cowan: So we should be more proactive in the appointment process.

Professor Hazell: Yes.

Q8 Chair: I want to press on one matter, which is that, in my experience, when an appointment panel is in process, you get a bit of backchat about the drama going on around this particular appointment. I have found myself briefing other Committees about what I have heard is going on about a particular appointment, which is in no way information that is made formally available to the Committee. Is there some way that this should be formalised a little more, that the process should be a bit more open?

Professor Hazell: I do not think the Committee can or should set itself up as a kind of second interview panel. I know that Committees find it very frustrating that they are not given details of any of the other candidates, save in terms of bare statistics. However, I really do not think Committees should press for further details about the other candidates. That way confusion lies. We need to be very clear about the different



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roles and responsibilities of the Government Department that is making the appointment and the Committee that is scrutinising that appointment.

Chair: Dr Matthews, you are nodding at that.

Dr Matthews: I would agree with a lot of what has been said. A lot of attention has previously focused on the list in terms of what positions should be on the list, what positions are no longer suitable to be on the list. I think the list is helpful to send signals out about what are deemed significant appointments, and indeed we now have a list of significant appointments that are subject to enhanced scrutiny under the code, but I do feel that Select Committees ought not, as Robert said, to be prisoners of that list. I think it is entirely appropriate for Select Committees to hold post-commencement hearings with any appointee who may of interest to them and it is entirely fitting with Select Committees' pre-existing powers.

Practically, there would be issues around timing, if Select Committees wanted to deviate from a list, or not have a list, because any appointment that will be subject to a pre-appointment hearing has to be very clearly stated in the adverts, so for Select Committees to maybe hold post-hoc ad-hoc hearings as they go would require a degree of thought as to how that might work procedurally. It might be that you have post-commencement or post-appointment hearings, maybe on the lines of the Treasury Committee model.

The list is useful in some respects but is problematic in that we are expending a lot of energy thinking about what needs to be on the list whereas Select Committees ought to be able to hold hearings with anyone, as they see fit.

Chair: We might have a bit more to ask about these subjects later.

Q9 **Mr David Jones:** Professor Hazell, you have suggested that Select Committees do not fully understand the extent of their influence. Could you explain what you mean by that?

Professor Hazell: Yes. I know that individual Committees have found it frustrating, when they have expressed serious concerns about a candidate or in certain cases issued a negative report recommending that candidate not be appointed, and the Government have occasionally nevertheless gone ahead with that appointment. However, in our research we examined all the pre-appointment scrutiny hearings that have taken place over the last 10 years—in round numbers, it is almost 100—and we identified nine cases where the Committee had expressed concerns, either at the time or in terms of how matters turned out subsequently, about things expressed at the hearing that led to the suitability of a candidate being questioned. Of those nine cases—they are in the appendix to my written evidence, so forgive me, I am going to summarise them very crudely—in four the candidate was not appointed and in two, the candidate subsequently resigned, so out of the nine cases



we identified, in only three cases was the appointment nevertheless made.

I wholly understand that for an individual Select Committee, or Committee Chair, it is very rare to have, as it were, scored a hit in terms of preventing an appointment from being made and therefore the Committees may feel powerless—many of those Committee members and Chairs that we interviewed expressed frustration; they felt that pre-appointment scrutiny hearings were a waste of time, that the appointment in effect was a *fait accompli*—but our analysis and our evidence shows that is clearly not the case. Committees do have significant influence. In addition, they have a really important deterrent influence, which we cannot measure because we will never know how many candidates the Minister or the Department has not dared to put forward as the preferred candidate, saying to themselves, “That candidate will not withstand scrutiny by the Select Committee”. So you have an important deterrent effect on what we might loosely call political patronage.

Chair: We have a lot of questions to go through. We have had some very full opening answers. We will try to go a little bit faster. Also, one or two of my colleagues are having difficulty hearing you, because you are so far away. Can we have a little bit more volume, whether that is done by your voice or the technology?

Q10 **Dr Rupa Huq:** Dr Matthews, I think you started answering this when you said, “Any appointee—” but in principle, what posts should be subject to pre-appointment hearings? Anything? We could be here all day—

Dr Matthews: You could think imaginatively and not have a list at all or you could say we will have a much-condensed list where we will focus on the absolutely top key appointments where that independence from Government or that significant degree of public accountability matters; I am thinking chief inspectors, regulators of main sectors and so on. More broadly, you could think around appointments in terms of the salience at any given point and that is where maybe the list is not so helpful, because it does not allow flexibility in between periods of negotiation. There are appointments that in their own right should be there, absolutely, subject to pre-appointment scrutiny but I think flexibility is required to allow a degree of judgment at the time, whether it be around the person who has been appointed, around any particular issues in that sector, around it being a new body or it being a body that has been subject to a merger; that flexibility is also necessary.

Q11 **Dr Rupa Huq:** Would you say the same, Professor Hazell?

Professor Hazell: Yes, I entirely agree. The risk of any list is it becomes too rigid. New appointments are created, public bodies are merged, and so on, and there is always that risk of inflexibility. It is very difficult to crystallise the underlying principles about which are the most important senior public appointments. I think Felicity Matthews has done very well



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with an almost impossible task. You will know that there is the Cabinet Office list.

Dr Rupa Huq: We have it here, yes.

Professor Hazell: In round numbers, it comprises about 50 senior public appointments subject to pre-appointment scrutiny. Peter Riddell, your next witness, as Commissioner for Public Appointments, published a couple of years ago a list of in effect the top 100 significant public appointments and I would defy anyone to distinguish, frankly, between the two lists or to distil the underlying principles from either. Another point to make is that the sense of which appointments are regarded as sufficiently important to merit a hearing may change over time. To take one recent example, the DCMS Committee has said recently, publicly, that it wants UK Sport to be on the list. I am not sure that that Committee, or its predecessor, would have said that 10 or 15 years ago. Equally this Committee, over the next three to five years might suddenly decide that a particular Cabinet Office appointment is now of sufficient interest or importance, perhaps because of a recent controversy, to justify holding a hearing. One can get too obsessed about lists and a point that Felicity and I have both made is that Committees must never become prisoners of a particular list and feel that they cannot stray beyond it.

Q12 **Dr Rupa Huq:** I was going to ask if there were any anomalies on this list, but I guess if you are both saying, do away with the list, and do it the other way round, there is no need to ask what is anomalous about it. I remember the Office for Students; that is not on this list. It was my constituent, Toby Young, who caused a lot of controversy when he was appointed. Can you foresee new post-Brexit posts that may be needed?

Professor Hazell: Indeed, because there are very important regulatory agencies that currently operate in the European sphere, which, post-Brexit, will have to be in effect repatriated and operate probably at national level in the UK. I think the Government have spoken in round numbers of about 30 such agencies and some of those undoubtedly will be very important regulatory bodies, which will merit parliamentary scrutiny over their appointments.

Dr Matthews: Again, I think that points to the fact that a list can become problematic, particularly when it is negotiated between Parliament and Government. There will need to be that degree of flexibility and responsiveness as we move through the process of leaving the European Union, and engaging in tussles about which appointments should and should not be on the list might be somewhat distracting.

Q13 **Dr Rupa Huq:** I think the Cabinet Office does not really want to rewrite this quite old list now, so do you have any ideas of who should monitor this?

Professor Hazell: You have made the point yourself by mentioning the Office for Students. It would be a matter for the Education Committee to



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decide in future that that was an appointment that it wanted to make subject to pre-appointment scrutiny. It is up to the individual Select Committees themselves to set the agenda and to decide which senior public appointments they wish to scrutinise.

- Q14 **Chair:** There is something of a tussle that goes on constantly about what posts are being offered by the Government for pre-appointment hearings and the Cabinet Office periodically tries to get the Liaison Committee to agree this list. I have always been very insistent that we should agree no such thing; that we Committees decide who we interview and for what purpose and it is not for the Government. It is like the Osmotherly Rules; they are the Government's rules, they are not our rules, and they constantly try to get us to agree the Osmotherly Rules, as well. How constructive is this tension? Is there a way of resolving what is essentially potentially a constant conflict between the posts the Government want to offer and the posts that the Committees want to subject to pre-appointment hearings?

Professor Hazell: As we have both been saying, it is up to individual Select Committees to decide which posts they wish to scrutinise. If you want to look at a very strong example of a Committee clearly setting the agenda itself, it is the Treasury Committee over the last 20 years. I am not just talking about the chairmanship of Nicky Morgan or Andrew Tyrie, but of their predecessors. Over the last 20 years, that Committee gradually has developed and increased the list of senior public appointments that it wishes to scrutinise and there are now half a dozen public appointments, none of them on the Cabinet Office list, which are regularly scrutinised by the Treasury Committee. That is a process that has been completely accepted by the Treasury. They go through, in effect, exactly the same process in terms of issuing a questionnaire to the candidate and holding a hearing, as if it were a pre-appointment hearing, although technically it is pre-commencement hearing. I know that candidates take that scrutiny process very seriously. In a recent example of just a few months ago, I learnt that the candidate had spent 50 hours in preparation for the scrutiny hearing by the Treasury Committee.

- Q15 **Kelvin Hopkins:** My question carries on from some of the things you have been saying. Professor Hazell, your evidence suggests that Committees should be able to examine a wider list of appointments, but be more selective about which appointments they hold hearings on. Can you explain how that would work in practice and what the benefits would be?

Professor Hazell: Yes. It goes to another example of good practice developed over the last 20 years by the Treasury Committee, which I hope other Select Committees might adopt, and that is the use of written questionnaires before the hearing. The Treasury Committee routinely, before any hearing, sends the candidate quite a detailed written questionnaire, which the candidate is required to complete. It goes to their professional experience, expertise and competence. It goes to their independence and independent-mindedness. It also asks them questions



about their initial set of priorities when they take up the new post. Again, candidates take that very seriously.

If you look at some of the responses to the Treasury Committee's questionnaires, they can run to tens of pages and the Committee, therefore armed with all that information and evidence in advance, could in certain cases say, "We have now seen what the candidate has to say and we have heard details about the selection process. We have no concerns. We do not want to waste any Committee time in inviting the candidate to come before us at this stage". Committees can decide, if they wish, not to hold a hearing. As you know, Committee time is extremely precious, so that could be a bonus for the Committee. Equally, Committees can be more selective, when they do hold hearings, in identifying the matters of concern with perhaps the Chairman, at the start of the hearing, saying to the candidate, "Thank you for the evidence you have submitted through your written questionnaire. The Committee has three concerns—A, B and C—and those are the matters we are going to explore today". Thus you can cut short quite a lot of the preliminary information exchange that takes place at a typical pre-appointment scrutiny hearing, which in part is a slight rerun of the interview, where the Committee is simply gathering information that could have been supplied more efficiently in advance through a written questionnaire.

Kelvin Hopkins: You have talked, Professor Hazell—both of you have—about the negative power of Select Committees, even if it is informal and not recognised, to stop certain candidates being likely to be appointed by Ministers. If the Committee is aware of people who are eminently qualified, who may or may not have applied for the post, could they not have a positive role in suggesting privately and informally to Ministers that certain people ought to be on a list, for example, eminent professors of economics who might be appropriate for the Treasury to appoint?

Professor Hazell: I think that is confusing roles and responsibilities. This is a process of open competition. Eminent professors could have applied. Perhaps they chose not to. It may be frustrating for the Committee to never get to the bottom of that. The Chairman of a Select Committee might want to suggest to the Minister, before the competition starts, "I hope that you might have approached, tapped on the shoulder, X or Y to apply" but that is as far, I think, as ever a Committee should go in getting involved itself in the selection process.

Q16 **Mr David Jones:** What types of public appointment do you consider Parliament should have greater involvement in when it comes to the selection of candidates?

Professor Hazell: In my written evidence, I analyse towards the end the different ways in which Parliament has been involved in some senior public appointments. They are mainly what we might loosely call constitutional watchdogs. These are bodies where independence, in particular from Government, and independent-mindedness, are really important qualities. It is in paragraph 10 of my written evidence. You will



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find there in effect a ladder with varying degrees of parliamentary control. At the top of the ladder are a couple of bodies where Parliament itself makes the appointment; that is the Chair of the Electoral Commission and the members of the Independent Parliamentary Standards Authority.

There are some very important watchdogs, like the Comptroller and Auditor General, and the Parliamentary Ombudsman where, in effect, Government and Parliament make the appointment jointly because Parliament has a very clear veto. Going further down the ladder, there are appointments where Government can make the appointment only with the formal consent of a Select Committee or its Chair, as with the Office for Budget Responsibility. Then there are appointments where Government can only make the appointment following a resolution of the House giving Parliament an effective veto and so on.

There are certain appointments where, by recent practice, the Select Committee Chair—you, Chair, have experience of this as did your predecessor, Tony Wright—is a member of the selection panel. The positions I have in mind are for the Parliamentary Ombudsman and also I think more recently the Chair of the UK Statistics Authority, where you have been a member of the appointments panel and then you have had no involvement, as I understand it, in the subsequent pre-appointment scrutiny. You have, in effect, recused yourself.

Q17 Chair: We will come to that question later, if we may. Dr Matthews, do you have anything to add?

Dr Matthews: It is again important to recognise that we do not need to simply look at the formal powers of Select Committees in Parliament more generally in holding Ministers and Departments, to account for the appointments that are made. Again, it is important to recognise the informal power that Select Committees and Parliament have. That is not something to be sniffed at.

Robert talked in his previous response about the use of questionnaires and that led to a really high profile resignation, when Charlotte Hogg resigned as the Deputy Governor of the Bank of England, having realised that she had not been quite as transparent as she might have been around her brother's involvement in the banking sector. She resigned. That was a pre-commencement hearing and to me that demonstrates the informal power that Parliament and its Committees have in terms of shining light on certain issues that might not have otherwise been picked up in the appointment process.

Q18 Chair: Can I interject one question? There is one category of public appointment that is not covered by any of this, which is the appointment of permanent secretaries. Permanent secretaries are very significant public appointments, but the Civil Service has clearly guarded its sovereignty over these appointments very carefully, both from Ministers' direct involvement and from parliamentary scrutiny. Where should



permanent secretaries lie in this spectrum of accountability of public appointments?

Dr Matthews: That raises an interesting question again around the flexibility of what appointments ought or ought not to be on the list. You could make a similar argument about why we are looking at chairs of major bodies. Why are we not looking at chief executives of major bodies as well? After all, they are the ones with the day-to-day responsibility for budget, manpower and so on. I think there possibly is a role for Select Committees holding hearings with permanent secretaries or other senior members of the Civil Service. Whether that would be a pre-appointment hearing, though, is a different matter. Maybe it would be a post-appointment, pre-commencement hearing. I think some thought would need to be given to that around market sensitivities too, but it would be entirely appropriate to me for a Select Committee to hold that sort of evidence session.

Professor Hazell: I was going to make the same point about the importance of some chief executive roles in relation to major public bodies, and there is nothing to prevent a Select Committee from also holding a scrutiny hearing over the appointment of a new chief executive, bearing in mind that that appointment has been made by the public body, not by the Minister. If you have any concerns about the appointment, the people to call in would be the chair of the public body and the people responsible for making the appointment.

Q19 **Chair:** What about Ministers? If the Americans were looking at our system, they would think it very odd that we do not scrutinise who is appointed to which ministerial role. It was a favourite saying of a former Chief Whip in my party, "How good you are at the job has got nothing to do with it when organising reshuffles" and some quite remarkable appointments are made by Prime Ministers in their Governments, perhaps not reflecting the experience or track record of the ministerial candidate. What do you think we should be doing about the appointment of Ministers?

Professor Hazell: As you know, Select Committees have regular sessions with Ministers, in particular Secretaries of State, in which, among other things, they discuss his or her priorities for their particular Department. I think it is through those hearings that Select Committees can expose any weaknesses that you might feel the particular Minister has. Select Committees also, through those hearings, try to influence the policy agenda, sometimes very constructively. I do not think I would go beyond that current existing practice.

Dr Matthews: I agree. I think it would be a huge shift in constitutional principle for Select Committees to be involved in scrutinising the appointment process, the appointee, prior to them taking up that role. It would also, in procedural terms, reduce the flexibility of the Prime Minister to conduct full reshuffles, small reshuffles, at a point where it was politically necessary.



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Q20 Mr David Jones: Taking that forward, what about the Supreme Court, which is rapidly becoming a constitutional court of the UK, post devolution? To what extent should appointments to the Supreme Court be subject to scrutiny?

Professor Hazell: I have written separately about this. Quite a long time ago, I argued that the Justices of the Supreme Court, in those days it was the Members of the House of Lords Appellate Committee, and the senior judges in the Court of Appeal, by which I mean the Heads of Division in the Court of Appeal, should be subject to a hearing with the relevant parliamentary Committee. It would be the Commons Justice Committee and possibly, in the House of Lords, the Constitution Committee. As you will know that commands very little support among the judges or indeed among most politicians, because of the practice in the US Senate of their confirmation hearings, which are very politicised, because the appointments are very politicised, and that casts a very long shadow over any kind of sensible debate here. Our judicial appointments are not in any way politicised. They are now run in an open, competitive process, which is managed by the Judicial Appointments Commission, and so appointments are genuinely on merit. However, I do think, given the growing power that you have referred to of the Supreme Court as a constitutional court, it is of great interest to Parliament who the most senior judges are, and we are in a new age when there is much less contact between the worlds of politics and the law.

When I was a young barrister it was quite common still—just—for MPs also to practise at the Bar. That has now almost completely ceased and you, as parliamentarians, have much less regular contact with the law and with senior lawyers and judges. To my mind the purpose of such a hearing would as much be about scrutiny as an introduction, an opportunity for Parliament to meet some of those most senior judges and to develop a dialogue between them. There is a really important dialogue, particularly through the Justice Committee and the Lords Constitution Committee. They do now, I am very glad to say, have regular evidence sessions with the Lord Chief Justice and with the President of the Supreme Court and that is a very healthy thing.

Q21 Chair: Would you suggest that a Commons Committee should do the same?

Professor Hazell: The Commons Justice Committee does have an annual session with the Lord Chief Justice, and he is quite open in saying he regards that as parliamentary scrutiny of his leadership of the judicial system.

Q22 Mr David Jones: Which appointments should be the subject of formal approval by Parliament, for example by resolution?

Professor Hazell: I mentioned some of the major constitutional watchdogs, and those are referred to in what I called the ladder, showing varying degrees of parliamentary involvement set out in my written



evidence and I think primarily it is the major constitutional watchdogs that should be included in that list. Some of them are already there.

Q23 **Mr David Jones:** Which additional ones would you suggest?

Professor Hazell: The Judicial Appointments Commission is one. The Civil Service Commission, the Commissioner for Public Appointments, and the House of Lords Appointments Commission is an important constitutional watchdog. There are others that could come within that frame.

Dr Matthews: The only one I would add to that list is the one that is already there, which is the Chair of the UK Statistics Authority, so anything to do with questions around the veracity and integrity of information that is going to be put out there in the public domain I think is important to have that degree of agreement.

Q24 **Kelvin Hopkins:** Going beyond that to another suggestion for the role of Parliament, what is your view of the proposal to introduce a requirement to hold a vote in the House if a Minister wishes to set aside a negative report?

Dr Matthews: I think it is an interesting dilemma. This is something that has come out with the new code. The code allows for such ministerial discretion and it would be entirely appropriate, as long as the due process of the code has been followed, for a Minister to set aside the recommendations of the panel and appoint their own appointee. That is obviously something that has not happened yet. It could happen in the future. The code does seem to me to rely on a great deal of good faith in upholding the code and encouraging Ministers to act responsibly. Whether that should automatically trigger a vote on the Floor of the House I am not so sure that formal requirement needs to be in place. This comes back to what we were saying earlier around Select Committees being more responsive around the process of appointments, not necessarily always looking at the person who is appointed, but in such instances having at their disposal the opportunity to hold an evidence session with the appointing Minister or sponsoring Department.

Professor Hazell: It is important to think through before we discuss particular mechanisms what we are trying to achieve. I think there are two things that we have in mind. One is the desirability of what we might call a cooling off period for the Minister to reflect on the Committee's concerns, before coming to a final decision and to engage in dialogue if necessary in private with the Committee. That is envisaged in the Liaison Committee guidelines, I think at paragraph 23.

Secondly, coming to your question of whether there should be a debate on the Floor of the House, there are various different procedures by which that might be achieved. One is by tabling an urgent question. That has happened more than once when a Minister has gone ahead with an appointment against the recommendation of the Select Committee. The



Minister has been required by the Speaker to come and respond to an urgent question, so that weapon is always available. There might be other procedures requiring the Minister to make an oral statement. For example, it might be enshrined in a resolution of the House or in Standing Orders. I know that Standing Orders have been suggested as one possible route, but before rushing ahead and recommending new Standing Orders or a change to Standing Orders, we need to be aware that there is a risk of them reducing flexibility. Governments tend to narrow down Standing Orders to limit their effect, and Standing Orders generally are unlikely to be agreed by the House unless they are supported by Government.

- Q25 **Kelvin Hopkins:** Of course we are talking about having a vote, not just a debate, and there has been a practice in recent times, even in matters that are controversial, where debates have taken place, but for one reason or another, votes have not happened. This is talking about holding a vote, which would be rather different from just having a debate.

Professor Hazell: Yes, well these are matters on which you will need to take advice from the senior Clerks in the House, who are the experts on procedure. I have talked in rather general terms, having spoken to only one of them, about different mechanisms that might be available and I am simply uttering cautionary words about going down the route of a possible change to Standing Orders. I think there are other mechanisms available that could be explored, which might lead to a debate and then a vote.

- Q26 **Chair:** If there is a vote that backs up a negative report, what should be the intended effect of the vote and how should the Government respond to that vote?

Professor Hazell: I would be very surprised if the House formally in a vote disapproved of an appointment if the Government would then go ahead with that appointment.

Dr Matthews: I agree.

- Q27 **Dr Rupa Huq:** You suggested that the nature of pre-appointment hearings could reduce the pool of candidates, it might put people off, basically, from putting themselves forward. Given that appearing before a Select Committee is core to most roles that are subject to pre-appointment hearings, what is the evidence that they have a deterrent effect?

Dr Matthews: In some respects this is the unknown. We do not know who has not put themselves forward and who is self-selecting out of such appointment processes. When I published my initial research, this was quite early on in the days of pre-appointment hearings, and since then statistically there does not appear to be too much evidence in terms of diversity statistics and so on that there has been the deterrence that I anticipated caused by Select Committee hearings. Of course we must be mindful of the fact that pre-appointment scrutiny is not just about the



appointees of today but we need to consider what that looks like to the public at large, which might also include the appointees of tomorrow. I think we need to ensure that there is not a longer-term deterrent effect; that this is not portrayed to the public as a sort of repoliticisation of the appointments process. We need to manage the signals that hearings create.

Q28 **Dr Rupa Huq:** I think you said the same as well, Professor Hazell?

Professor Hazell: I did, and one of the issues you wish to explore in this inquiry is whether pre-appointment scrutiny hearings might help to increase diversity. I think we are both saying there is very little chance of that because it is simply too late in the process when a preferred candidate has been selected. Efforts to increase diversity have to take place much more upstream in the recruitment process and the best witness to talk about that is your next witness, Peter Riddell.

Dr Matthews: If I might just add something there. I was giving some thought to the issue of diversity and how Select Committees could further support the Commission's work on that. It might be through looking at certain Departments where they have low diversity rates and seeing what needs changing in that Department and if there is something going on there that we as a Committee can explore. That would be for the departmental Committees to maybe look at in more detail.

Q29 **Dr Rupa Huq:** Yes, there is the sense that it is the same old, same old, type of person who would put themselves forward for this role. What specifically do you think that Select Committees have done that may put candidates off?

Professor Hazell: As you know, the questioning is quite rigorous and testing. Candidates who have a lot of public sector experience and possibly have appeared themselves more than once already before a Select Committee in previous roles do not find that daunting, but candidates, for example, from the private sector with very little experience of appearing before a parliamentary Committee get much more nervous about a Select Committee appearance. It is inevitable with these very senior, mainly public sector appointments, that the field of candidates who are going to be appointable will largely consist of people with previous public sector experience. That is just a fact of life.

Q30 **Dr Rupa Huq:** Yes. When I was on the Justice Committee it did feel that the prisons person was then swapping over to the Parole Board or whatever, that it was a merry-go-round. How often do Committees stray from the Liaison Committee guidance, and what impact does that have?

Dr Matthews: I think Robert and I have slightly different opinions about this. It is probably the only bit of the hearing where we do. Our research suggests slightly different things and maybe we are using slightly different qualitative judgments to reach our conclusions. Robert's research suggest that only 5% of questions posed by Select Committees have strayed from that guidance, whereas I would suggest it is not the



number that matters but the fact that those questions and those responses stick in the mind of people who might be reading those transcripts or watching those appointments on the internet. It is not about necessarily the number of times that the questions or the Committee's processes stray from that guidance, but that lingering residual effect in the public mind.

I could quote verbatim quite a few examples now where I have gone, "Oh, gosh, that question was a bit pointed" or, "I wouldn't have liked to have been asked that" and again that is about perception. I think the numbers do not matter so much but it is the perception and the lingering memory it creates.

- Q31 **Ronnie Cowan:** We are talking about appointing very senior positions here. I would be really surprised if someone was put off by sitting in front of a Committee and being questioned about a job they had applied for. If they are, they should not have applied for the job in the first place. Surely that is part of this process, where someone gets to have a cooling off period themselves, where they can take a step back and say, "I have been sold this job and been told I am the person for it, but if I am pressed on this matter here by a Committee maybe it is not the job for me".

Dr Matthews: By and large I would agree with that, but I think we would also need to bear in mind that the pre-appointment hearings are not just about the appointee but also about maybe future appointees. We need to make sure that we have robust scrutiny, robust questions are posed, but it does not create that wider impression of a highly politicised part of what should otherwise be a depoliticised appointment process.

- Q32 **Ronnie Cowan:** So you think the process is putting off people from applying in the future?

Dr Matthews: I think there is a risk of that. We do not know that yet but we certainly have statistics that show us that we are recruiting from largely the same pool of people. We have people who look alike going for these appointments; we have people who hold multiple appointments putting themselves forward, and I think we need to be mindful of the wider perceptions and wider issues around diversity and so on throughout the whole process—not just the pre-appointment hearing, but throughout the appointments process.

Professor Hazell: May I add one thing? You will perhaps know at the start of pre-appointment scrutiny 10 years ago the then Commissioner for Public Appointments, Janet Gaymer, expressed concerns that it might have a deterrent effect. In our first research study on this, of the first 20 or so pre-appointment scrutiny hearings, one of the things that we did was talk to the appointing teams in Government Departments and also to the headhunters, the recruitment consultants, and we asked them specifically, "Do you think the pre-appointment hearings are having a deterrent effect?" and the evidence that we received from them,



particularly from the headhunters, was, "No, the deterrent effect is in relation to the very cumbersome process involved in any senior public appointment", that it takes months and months, sometimes as long as a year, and for non-traditional candidates, particularly people from the private sector, that is daunting, to put themselves through such a slow-grinding mill. The headhunters said having a pre-appointment hearing at the end of that honestly is not any further deterrent; it is the whole process of public appointment, which Gerry Grimstone in his review set out to try to streamline in order to make it less cumbersome and therefore less daunting.

Q33 Mr David Jones: Dr Matthews, you suggested that to apply too much constraint to ministerial patronage in making public appointments can be inimical to good governance and democratic accountability. Could you explain why you think that is the case?

Dr Matthews: Robert and I have approached the issue of public appointments posing slightly different research questions. My own interest in public appointments stems from looking at the delegatory relationships that exist between Ministers and their agencies. As you all know, the pendulum swings between, "We need less ministerial control; we need more quangos" and, "Too many quangos! We need more ministerial control". Key public appointments provide Ministers with really important capacity in an increasingly complex, delegated state, so the ability for Ministers to have a degree of discretion to appoint, not someone for nepotistic or crony reasons, but someone who they can trust to deliver, who has that capacity, that skillset, who would be there on merit but nonetheless is trusted by the Minister, is really important. Ultimately, they are ministerial appointments and the Minister has to be accountable and if the Minister is to be accountable he has to have a degree of confidence.

In my original research, this was taking place in the very highly regulated arena where I think there was a code of practice of 210 pages for any public appointment, a checklist of hundreds of things every appointment process had to go through and it really did squeeze out that important degree of ministerial discretion that I think is necessary in this complex state. Now, in the post-Grimstone world, that pendulum has swung back towards Ministers and there are questions to be raised about whether it has gone too far the other way.

Q34 Mr David Jones: You mentioned cronyism. Presumably you regard the issue as being the distinction between patronage on the one hand and corruption on the other?

Dr Matthews: Absolutely.

Q35 Mr David Jones: How should Committees judge whether an appointment is acceptable patronage and not corruption?

Dr Matthews: It is a really difficult line, but if merit is borne in mind as the overriding principle, that should be the basis on which all



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appointments are made. There is nothing wrong with being politically active and involved in public life. It does not send any signals out whatsoever about your lack of capacity to do that job. Where I think the line is being crossed is where the merit is not there but there are those clear political connections, and I think that is an important line in the sand.

Q36 Mr David Jones: How does the advent of the Grimstone reforms affect your view on the role of pre-appointment hearings?

Dr Matthews: We will hear more about this in the next evidence session, but to my knowledge and based on last year's report by the Commissioner, there have not been any major issues around Ministers making appointments that have deviated from the code in spirit or in letter. It allows for that discretion in the future, though, and then the robustness of the code will be tested if there are any accusations around cronyism and patronage in the traditional sense of the word.

As yet there is nothing to suggest that has happened. Again, perception is important. We have seen recent examples in relation to Baroness Stowell, for example, being appointed as Chair of the Charity Commission. There was a suggestion in the press that that owed more to her political allegiances than her expertise. The Commissioner's investigation showed that was not the case, but again perceptions matter. It is incumbent upon Ministers to ensure that people are not only appointed on merit, but seen to be appointed on merit, and very visibly so.

Q37 Dame Cheryl Gillan: I always felt that the pre-appointment hearings that I have been involved in are very impotent. It feels like Hobson's choice. It just does not feel like a process that has any great merit, because I am still not really sure doing a pre-appointment hearing in the way we have done some of them in the past is meaningful. What, therefore, would be the objections or the risks and benefits of a Committee having greater information on the unsuccessful candidates and even—to make a recommendation—interviewing the last three, which would seem much more like normal practice in the commercial world or for any other high appointments?

Professor Hazell: I think that would be really undesirable because it is confusing roles and responsibilities. Dame Cheryl, when you were a Secretary of State, you no doubt made many appointments to public bodies in Wales and you were the appointing body, not the Welsh Affairs Committee. I do not think you would have welcomed the Welsh Affairs Committee rerunning the interview or the appointment process. These are public appointments made by the Government, made by Ministers. It is absolutely right for Parliament to scrutinise the appointment process, to scrutinise the suitability and experience of the candidate, but I think it is quite wrong for Parliament to try to step into the shoes of the appointing Minister and play a role in the appointment.



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Q38 **Dame Cheryl Gillan:** Do you concur with that?

Dr Matthews: I do concur and it is important to remember what we said in some of our earlier responses around while individual hearings might sometimes feel a bit pointless, a bit rubberstamping because they are not making a difference to that individual process, collectively, over the past 10 years, Select Committees have affected the regulatory landscape. They have affected the way Ministers bear in mind what may happen. They have that deterrent effect. It is important to celebrate what has been achieved collectively even while individually it might sometimes feel somewhat impotent.

Q39 **Dame Cheryl Gillan:** What if, instead of a whole Committee, the Chair of a Select Committee was involved in selecting the candidate and then stood down from the pre-appointment hearings? Would that satisfy your objections, Professor Hazell?

Professor Hazell: Yes. As you know it does occasionally happen and your Chair today has been involved in some very high profile appointments to very important constitutional watchdogs. Individual Select Committees could push for the involvement of their Chair in other very senior public appointments if that is what they wanted to do. For example, the Chair of the DCMS Committee might say to the Department next time the chairman of the BBC is to be appointed, "Could I please be on the selection panel?" I would have no difficulty in the Committee seeking that or indeed if the Department agreed that happening so long as the Chair is then not involved in any of the scrutiny hearing.

Dr Matthews: I agree. I think maintaining that clear distinction between the appointments process and the scrutiny of that appointments process matters and that is one workaround there that has been proposed.

Q40 **Dame Cheryl Gillan:** Have either of you done any work on the timings of all this process? I am very conscious at the moment that we are very short of parliamentary time on the Floor of the House and in other arenas and also the Select Committees always seem to be flat out. Certainly this one does under the chairmanship of Mr Jenkin. Have either of you estimated how that time could increase if all your ideas and recommendations were adopted?

Dr Matthews: Some of the recommendations we proposed would streamline the process. If the list was abolished and there was always that latent threat of a hearing in relation to any appointment or the Minister being held to account for any recruitment process, you would reduce the number of hearings you are holding, you have that latent deterrent always there in the background, and you can be more strategic about the use of your time.

Professor Hazell: I have suggested, through the use of written questionnaires, the process can be streamlined. In certain cases a Committee might decide not to hold a hearing because it has no concerns, or it might decide to hold a hearing that is much shorter



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because, thanks to the information from the questionnaire, it can identify in advance, let us say, two matters of concern and the hearing might last 20 or 30 minutes instead of typically taking an hour or more.

- Q41 **Dame Cheryl Gillan:** Lastly, if a successful candidate goes through all this scrutiny, or if a successful candidate, at any stage during this scrutinising process, has doubts cast on either the process or their ability, do you see that as having an effect on the efficacy of that person once they are in that job if they are subsequently appointed?

Professor Hazell: In effect, we have one real life example of that. When I was talking earlier to your colleague about the nine cases where a Select Committee has had some influence, one of the cases I had in mind was the appointment of Philip Dilley as Chair of the Environment Agency. He was appointed, but he made comments during the hearing about his willingness to be present—you may remember the case—during any emergency. Then when there were winter floods one Christmas and it turned out he was sailing in the Caribbean, those comments led to his subsequent resignation. So the kind of information and undertakings that are elicited during a pre-appointment scrutiny hearing can affect subsequent conduct.

- Q42 **Chair:** Can I just press a bit more on your thoughts about the relationship between Select Committees and the appointment of their departmental permanent secretary? There is something rather unsatisfactory about the complete remoteness of this, and whether there is a pre-appointment hearing or a post-hoc hearing, what expectations should Select Committees try to generate in the Department with perhaps even the Cabinet Secretary about consultation, however informal? There should be something better than exists now.

Professor Hazell: If you want to go down that road, you might want to call in the Civil Service Commission to discuss with them the current process for appointing permanent secretaries. If individual Select Committees want to have a hearing with a newly appointed permanent secretary, they can request that. It would more likely take the form of a discussion about their priorities for the management of their Department. That is an important element in current pre-appointment scrutiny hearings that we have not discussed very much today. There is nothing to prevent Select Committees from asking a newly appointed permanent secretary to appear before them, but I suggest it would be more to discuss their initial priorities and any concerns they have about the management of their Department.

- Q43 **Chair:** What about their expertise or experience in the field of that Department?

Professor Hazell: That could be included in the discussion.

Dr Matthews: I largely agree with that. Again, I think we need to maintain that distinction between the person being appointed and the process through which they have been appointed, and maybe that is



where an evidence session with the Civil Service Commissioner would be very useful to look at the process.

Chair: Thank you both very much indeed. You have demonstrated again today how much thought you have both given to this topic, the research and work you have conducted, and it has been very valuable for the Committee to be able to draw upon that. I hope you will be pleased with our eventual report. Please follow our inquiry and if you want to submit anything else in writing that would be extremely welcome from either of you. Thank you very much indeed.

Professor Hazell: Thank you for inviting us.

Dr Matthews: Thank you.

Examination of witness

Witness: Peter Riddell.

Q44 **Chair:** We will go straight to our next witness. Can I invite you to identify yourself for the record, please?

Peter Riddell: My name is Peter Riddell. I am the Commissioner for Public Appointments and have been for just over two years.

Q45 **Chair:** How time flies when we are having fun. Thank you very much for joining us.

Peter Riddell: One or two things have happened in between.

Q46 **Chair:** Can I start by asking you what role you think pre-appointment hearings should play in the wider scrutiny and regulation of public appointments?

Peter Riddell: I think they have a very important role for the top level of appointments. There are a lot of appointments made; there are 10,000 public appointees, so roughly 2,000 a year. One is talking about the top level of them, the chairs of public bodies, independent office holders and so on and so forth. It is very important that they have public confidence, and pre-appointment hearings are an essential part, but only part, of establishing public confidence.

They are, as was said in Robert Hazell's introductory remarks, which I very much endorse, a sense of testing out in various ways the decision of a Minister to recommend a person. Are they properly independent? Are they suitable for the post? Then what are their priorities? Pre-appointment hearings have an important role, but it is a beginning of a relationship that I believe someone holding one of these important public roles should have with the relevant Select Committee.

Q47 **Chair:** That is a very interesting final comment because the pre-appointment hearing can and does establish the tone of that relationship



between that accountable public appointment and the Committee. What do you observe in the way Committees have conducted hearings that is good and supportive in that scrutiny or damaging and counterproductive in terms of developing that relationship?

Peter Riddell: It varies enormously depending on the nature of the Committee, the nature of the appointee and how comfortable they are with working with Parliament. Observations have been made that some people coming from private sector backgrounds are not necessarily as comfortable operating with Select Committees as those who have appeared in front of them lots of times and so on. That will determine the relationship.

The danger is that it is regarded as a hurdle. I regard it as an opening of a door. For example, in my own case, I made a point of writing to the Committee at intervals over the two years, just to keep you informed, realising that there were not likely to be oral hearings, but just to keep the Committee informed on a number of rather important developments. That is in addition to my annual report. That, I would hope, would be followed by other office-holders, who regard it as part of their role, particularly the regulators, of briefing and keeping in touch with the Committee.

Q48 **Chair:** What would you say are the most obvious dos and don'ts for a Committee conducting a public appointment?

Peter Riddell: The dos and don'ts are these. Dos are: to establish independence—indeed if you look at the list Robert Hazell provided of those who had run into trouble, in some cases it is queries about independence—and commitment to the role. Some people can take on too much and every public appointment I have known of, when they say it is two days a week, it is more than that and the Committee should take that into account. Those are the possible advantages of the system and where it works well.

Where it can work badly is where it goes off on a tangent sometimes. This can be caused by the candidate themselves or by the Committee, or, and this has been true in the past, where there has been a disagreement between the Committee Chair and a particular Minister. That sometimes has soured things and there were a couple of occasions of that way in the past with the Education Committee.

Q49 **Chair:** When you say “go off at a tangent”, what do you mean? Do you have an example?

Peter Riddell: Asking issues at a pre-appointment hearing that a new candidate cannot necessarily possibly answer because they do not have their feet under the table.

Q50 **Chair:** Generally how effective do you think pre-appointment hearings are in achieving a good appointment?



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Peter Riddell: With some of the caveats that were discussed earlier, such as the list is not as rational, to put it politely, as it should be in what should be in pre-appointment hearings. The point Robert Hazell made about written questionnaires is a very good one. Given it is a limited amount of time, you want to maximise its effectiveness. They could be made more systematic than they have been. What Andrew Tyrie did with the Treasury Committee was really good and I am very glad to see it was taken on. I think that can be done. Those are the clear positives one can see going forward.

Q51 **Mr David Jones:** Mr Riddell, what impact has the introduction of the Grimstone reforms had on the type of individual who is now the subject of ministerial appointments?

Peter Riddell: Much less than you feared or were warned two years ago. There is a variety of reasons for that. If you look through the type of people being put forward, I do not see any dramatic difference between three years ago and the last six months necessarily in the range of people being put forward.

There are two reasons for that. First, after I was appointed, I negotiated with the Cabinet Office on the terms of the code and I had two important concessions. One was the principle of fairness that was reinstated as one of the principles, which had been left out deliberately by Gerry Grimstone. Secondly, I would be consulted, not just notified on things. That was very important. Also something we may want to discuss is appointing unappointables, which is a very important issue.

That happened and also there was a change of Government, and the change of Government has resulted in somewhat different behaviour by many Ministers. They have operated in a more restrained way. That is not to say that you couldn't see a different crowd of Ministers either appointing unappointables or seeking to push the exemptions. I am very vigilant on that and that is why I have interpreted my role quite strongly as being more active in relation to Parliament and Committees. I have talked to half a dozen Select Committee Chairs in the last two months about pre-appointment hearings and also non pre-appointment hearings. The whole Office for Students thing was nothing to do with pre-appointment hearings. I have been taking a quite active role in that to say, "Look, there may be a problem here" or "Those processes are okay".

Grimstone has raised questions. So far, and I am alert to that, the major changes have been, oddly enough, not Ministers appointing cronies or seeking to distort the system, but Departments, in a rather bureaucratic way, trying to push the limits a bit. For example, if they want an exemption from a competition because a public organisation is in trouble they say, "Look, can we extend this person by 18 months?" They know they can override me on that and then a debate occurs on whether it is 18 months or 12 months. That is the type of thing that has been happening. A little bit of, curiously not politicisation of appointment panels with the senior independent members, but sometimes it can be a



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bit cosy, a bit too much that sector. But I do not regard it as nearly as worrying as some of the alarms of two years ago. However, vigilance!

Q52 Mr David Jones: Is it the case that Ministers have been rather reticent about utilising their new discretion?

Peter Riddell: The key discretionary elements were seeking exemptions and wanting to appoint people outside competitions. There has been no real change in pattern on that. What there is on that is mainly in public bodies that have problems or are about to be reorganised or there has been an illness. There is a big issue in the health service. NHS Improvement accounts for at least a third of the exemptions, as it did before. There is not a dramatic change in pattern on that. We will have the latest statistics in a few weeks' time. That is because quite a lot of health trusts have severe problems and they are desperate to find anyone to run it so there has been no change there.

On appointing unappointables, which is a discretionary thing, there was an attempt to do it last August. I wrote to the Chairman about it. A Minister was very keen on a particular candidate. The panel, which of course was appointed by the Minister, did not choose to interview the person. The Minister said, "I would like you to interview them" so the panel said, "Okay, we will interview them" and then rejected them for a second time. Then the Minister concerned said, "I still want to appoint them and I will change the criteria". That is strictly against the code. You cannot change the rules in the middle of a competition.

I had a lively exchange with the Minister concerned—the consultation is of course confidential—the Minister was assured that all this would remain confidential provided they changed their mind. After a fairly sharp exchange of letters, the Minister accepted my suggestion that it would be sensible to have a fresh competition and a fresh competition was held and someone completely different, rather suitable, was picked.

The deterrent effect there was that everything would become public, and the exchange of letters and the circumstances were such that I would not have thought they were great from the Minister's point of view. I pointed that out to the Minister and duly everything ended up satisfactorily. But behind that was we would have total publicity. You would have been informed and the relevant Select Committee would be informed. That has not happened, I am relieved to say, and I think it has been a deterrent effect.

Q53 Mr David Jones: Is there any evidence that advisory assessment panels deem certain candidates appointable that they would not under the old system?

Peter Riddell: It is very difficult to measure that. I do not sense that. One quite interesting thing happened. After the election at the end of July, there was a buzz around that No. 10 and the Cabinet Office wanted to look after those Ministers and MPs who had lost their seats in the June election. I raised my eyebrows at that. I am not sure how a commissioner



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raises his eyebrows but I had a discussion with the Cabinet Office and said I was a bit worried about that.

It was interesting that the Civil Service-chaired panels proved pretty robust. Some people who had been your former colleagues were interviewed, but they were not appointed. I think there was one case of an ex-Minister who was up for three posts and did not get any of them. It is wrong to think that, merely because special advisers or Ministers suggest names, they go through. They do not necessarily at all. That is the hidden bit of the iceberg and quite rightly so. It has to be confidential, so I am reassured on that point.

Q54 Mr David Jones: To what extent if at all is the new system more responsive to ministerial preferences?

Peter Riddell: It has always been responsive. One of the things you heard from David Normington when he was here—one of his complaints in his last two years—was that there were quite a lot of ministerial, No. 10 activity. That applied under the old code as the new code. I do not see any change and indeed in some respects it is interesting to say the current Prime Minister is a less active user of patronage than her predecessor.

It was mentioned as an example that a chair of a public body came a cropper when there were floods. That had been quite a controversial appointment where 10 Downing Street had been quite active. It was way before my time, but it had been quite active.

Q55 Mr David Jones: You mentioned the Office for Students episode. What lessons if any should we draw from that?

Peter Riddell: It was two different episodes. It was a rather bizarre thing that happened when I came back on 2 January. One was the appointment of Toby Young. Incidentally, I make it clear it was nothing to do with pre-appointment hearings because he was proposed as one of a 14 strong board. There had been a hearing for Michael Barber, who was the chair of the Office for Students.

The lesson from that is very straightforward. In the age of social media, you have to do a bit more due diligence. It is as simple as that. Jo Johnson, before he was reshuffled, admitted they had not done due diligence. I was concerned to say, if within a day of him being suggested, the papers and Twitter are full of pretty lurid things, the Department, without straining its resources very much, could have done what I call a tripwire. In other words, identify: "Here are some problems that should have been asked by the interview panel, the advisory assessment panel, and then should have been passed to the Minister, Jo Johnson, and then Justine Greening, the Secretary of State."

They should have been alerted to that. I was not taking any view on whether Toby Young was a right or wrong person to appoint, but I was taking a view that the panel and the Minister did not have sufficient



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information. Indeed, Michael Barber in evidence to the Education Committee has admitted that they were a bit naive on it.

I suggested that people need to do a bit more due diligence. The Education Department responded very positively to that. They got very sensible new guidelines. I had a meeting with the officials who do appointments around Whitehall. They had been prearranged to discuss diversity mainly, but we discussed this and my concern was to avoid gold plating, and saying you have to employ promote lots more officials. I am not saying that. I think it is quite simple to do.

That was one lesson. The other, and in a sense more worrying, aspect was the student representative. Under the statute setting up the Office for Students, there was one person who had to be a student representative. The Department backed someone—this is all in my report—10 Downing Street intervened and said, “We do not want this person who is too involved with the National Union of Students and has been critical”. There was to-ing and fro-ing. There was a deadline at the end of last year because of the coming into force of the shadow body and eventually backed down. They then plucked someone who had been on an advisory group, so it was not unappointable or anything like that, but someone as a temporary appointee. They did not announce it properly, did not consult me properly, so there was quite a lot of argument on that. The end result is what should have happened in the first place. Yes, they had to have a temporary person, but they are having a proper competition now. I think that aspect of it has been a warning shot to Departments that I am alert and if that happens, I will be robust.

Q56 Kelvin Hopkins: You said in your written evidence that there is no obvious logic to what appointments are currently subject to pre-appointment hearings, but also that it would not be appropriate to use the former list of significant appointments. What do you think the logical starting point for revising the list should be?

Peter Riddell: I take what the Chairman said about not having the hands tied by what is a Government list. The origins of it are essentially bargaining between the Cabinet Office, Departments and Committees going back 10 years. It is a fairly ad hoc process of doing it. If you look through the list, as was pointed out by Robert Hazell, of which ones follow and which do not, there are, as Sarah Wollaston wrote in her evidence to you, criteria that probably should be looked at: posts that play a key role in regulating Government, play a key role in protecting and safeguarding the public’s rights and interests and where the reputation and credibility of the public body in question means that it has to be independent.

Fine, but then you look down the list of significant appointments and it defies logic on that. I am arguing for, and it is not my job because I am fortunately not involved at that stage, Commons Committees to discuss with Departments and, indeed, the Liaison Committee with the Cabinet Office, recognising the reality of where negotiations lie, to revise the list.



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I think applying those criteria that Sarah Wollaston says in her letter are very sensible ones, of the nature of bodies that should have it—and it should be at the top level; looking at that again is desirable. There is an interesting point Robert Hazell made: you do not always know what is going to be important. That is absolutely right and it does change. I am more sceptical of his idea of you sitting down at the beginning of Parliament and planning it out. If only the process was so ordered and clear, but it is not. It tends to be rather more chaotic, I am afraid.

But I do think there is an argument for revising the list. What the Treasury Committee did was great with a lot of financial regulatory bodies but essentially they were doing pre-commencement hearings where there is less power and authority. The advantage of pre-appointment hearings is they are pre-appointment and therefore if the objection is strong enough Ministers can think again and the appointee can think again.

There has been a case of someone resigning after a pre-commencement hearing, but it is after the point of appointment. I would certainly, from my own experience, and this is very much a personal view, argue for flexibility. I think this should be looked at again.

Q57 Kelvin Hopkins: I think Professor Hazell said that if a questionnaire had gone round beforehand and the questions were answered satisfactorily the Committee could decide not to hold a hearing.

Peter Riddell: Absolutely. There are two elements to that. One is it is desirable anyway to have a familiarity meeting with people chairing important bodies and I think that is useful for priorities, but that could happen a bit later on. I find strongly in favour of questionnaires because questionnaires can clarify things, establish what really matters and what you want to follow up.

Q58 Dr Rupa Huq: How far do you think the pre-appointment hearing process should change to reflect the Grimstone recommendations and also your views?

Peter Riddell: Grimstone said nothing about pre-appointment hearings. It was entirely about the internal Government processes. As I said in my evidence, both myself as a Commissioner and Committees need to be more alert to the potential for things happening wrong. I regard it as part of my duty when there is a danger—I alerted the Education Committee and I had a dialogue with Robert Halfon on this when I was leading the inquiry on the Office for Students to keep him in touch with what was going on.

The post-Grimstone changes, because they create the potential for Ministers to have more power and some of the worries that Mr Jones and others expressed, therefore the Committees have to be potentially more active, but I do not believe that means they have to do everything. They just need to be alert. It also involves a dialogue with me and being able



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to say, "There are problems on process there" or "There aren't problems on that", or "It is an issue for you and the Minister, not for process".

- Q59 **Dr Rupa Huq:** How can you assure Committees that the process to select preferred candidates has been fair and open so they feel comfortable not being presented with the whole range?

Peter Riddell: What I have done myself is I look at the high profile ones. Also when there is one of controversy I will in many cases have seen the report of the interview Committee. The key document, as a preliminary to everything, is the report of the Advisory Interview Committee, which is the Minister's recommendation on who are judged the appointable candidates, two or three normally out of however many interviewed. I will look at that and if I can get it quickly, I will be able to see from that whether the nominated candidate was appointable and about the process. That will lead me in some cases to do a fuller inquiry, or in other cases to be able to say at that level this looks okay.

- Q60 **Dr Rupa Huq:** What further information can you provide to Committees to assist them with pre-appointment hearings?

Peter Riddell: I regard my role as not judging among the appointables. That is a matter for Ministers and Committees. It is absolutely not to second guess the panel. It is to say: was the process fair and open? Were the criteria applied to each of the candidates the same? That did not happen on the student representative case where they invented a new reason to object to someone. Was it a fair and open process? Were people treated in the same way? Were the criteria fair? That is where I view my process, not judging between appointable candidates. That is absolutely a matter for Ministers and in dialogue with Select Committees.

- Q61 **Dr Rupa Huq:** So there is a rubber stamp at the end.

Peter Riddell: No, sorry, you said rubber—

Dr Rupa Huq: Stamp.

Peter Riddell: No, I do not think that. I think it is to advise. For example, over the Charity Commission, various assertions were made from the charity sector about what had happened in the selection process, some of which were wrong. I talked to the Chair of the DCMS Committee. I wrote to him, and I copied this Committee in, explaining what had happened.

The interesting point was that Baroness Stowell had been judged appointable in an absolutely proper selection process. There was then an argument that the Committee had where they did not think she was suitable after her appearance at the pre-appointment hearing. That was a separate matter. Someone in the charities sector said, "Oh no, she was not the favoured candidate". There was not a favoured candidate because the advisory committees do not work like that. What they do is judge



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who is appointable, then leave it to Ministers. There was then a debate among Ministers about who to pick.

Q62 **Ronnie Cowan:** Mr Riddell, you have experienced two pre-appointment hearings, and on your appointment, this Committee said we would be your critical friend.

Peter Riddell: Indeed.

Ronnie Cowan: Can you reciprocate and be a critical friend to us and tell us how we should be running these pre-appointments better from your own personal experience?

Peter Riddell: One thing I have done, Mr Cowan, to follow up what was said in the report on me is keep you informed. One of the key things you said in the pre-appointment hearing was keep in touch, and I think that is really, really important.

I have two reflections. One is I would not produce a report changing the rules on which an appointee was appointed at the same time as you are nominating a new commissioner, because that complicated things enormously and put me in quite a difficult position.

Q63 **Ronnie Cowan:** I think you had three days to get your feet under the table, did you not?

Peter Riddell: Yes. Anyway, there was a problem, but that was something I had to live with. This touches on a point that Robert Hazell and Felicity Matthews made, which is about Ministers—I think they are the underspoken people in this process. You got along Matt Hancock, who was the relevant Minister, for the second hearing. I think that was dead right. When there is a doubt, when there is a question mark, Ministers are after all the people who make the recommendation. The poor candidate certainly does not know who the other candidates are and they can be judged on their own terms for suitability and independence, but the real person you want is the Minister. Ministers write the Committee a fairly bland letter saying, "This is the most wonderful person who has ever been and here is the CV". To get the Ministers more involved, I think, is a desirable thing. That is another lesson.

The other one would be having a written questionnaire. I think some of the questions you raised with me could have been dealt with in a written questionnaire, but that is a reflection. What I draw from it is positives. It is an important post and I damn well should be questioned, but equally I think it was right to get the Minister, too.

Q64 **Ronnie Cowan:** The difficulty with a written questionnaire is you can Google the answers.

Peter Riddell: No, a questionnaire properly done. You can Google answers but it is not really that.

Ronnie Cowan: Well, research answers.



Peter Riddell: It is, for example, things like conflicts of interest, which comes across occasionally as a problem, and details of background, which sometimes the formal CV you fill in does not really capture. You can probe a bit more on that. I always look at the pre-appointment hearing reports when they come out from Committees. I think some of the questionnaires are rather good because they probe properly both on experience and people's views. As I say, the conflict of interest issue is a kind of running sore with some appointments. Those are the lessons I draw from that on that score.

Q65 **Dame Cheryl Gillan:** I was going to ask you about the Minister being called to give evidence because you obviously set a great deal of store by that. Do you think that you should have been subject to scrutiny by more than one Select Committee?

Peter Riddell: I noticed a smile on the face of the Chair on that. While you are having fun, why not? I think in practice this is entirely the appropriate Committee for it to be. However, I think the more important point is not restricting my relationship to just this Committee. For example, I mentioned when it was the Office for Students, I talked to Robert Halfon and his Committee. I appeared in front of his Committee. They had a private session on it. I have talked to other Select Committee Chairs. I always copy the Chair in on any letters or anything like that I do, but I think having a multitude of things—the only alternative would be the Liaison Committee.

Dame Cheryl Gillan: That is where I was going.

Peter Riddell: Yes, I know.

Q66 **Dame Cheryl Gillan:** With an appointment such as yours, it strikes me that at least a pre-appointment hearing with the Liaison Committee would have been more apposite because you have touched on—

Peter Riddell: I think it is a very interesting suggestion.

Q67 **Dame Cheryl Gillan:** I am not trying to undermine this Committee because I think we have a lead role, but I would have thought that at least one other, perhaps the Liaison Committee, for something like your appointment would have been very reassuring.

Peter Riddell: What I would say is—and the Chairman was present, in fact, in this room—there was a meeting with the Liaison Committee to discuss various issues leading up to this inquiry, and I thought that was helpful, not least because a lot of Committees are much less familiar with pre-appointment hearings than this Committee. I was quite struck that the Chairs of some quite big Committees have said to me, "I have not done one of these. Could you explain to me some of the background?" I think you are right on the Liaison Committee, yes.

Q68 **Dr Rupa Huq:** In your written evidence, and also the panel before made the same point, you make clear that the majority of the work that needs



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to be done on increasing diversity should happen in the run-up during the actual recruitment process. What should Committees be pushing Departments to see in the information that they give us about the recruitment process?

Peter Riddell: I very much agree with what was said earlier. The pre-appointment hearing is far too late a stage. Diversity is a very important part of my job, and I regard myself acting as a scrutineer on that as very important. What really matters is Departments themselves having plans for reaching out to underrepresented groups, which they vary a lot in doing, setting up mentoring schemes, and succession planning. What you want is a pipeline of people. That is where it really matters. When you get to chairs, you are talking, as someone pointed out earlier, about very senior positions, so you are expecting people to have gone through the ranks of being members of Committees and so on and so forth.

That is what I have been doing in talking to Departments. Last autumn I went round all the permanent secretaries of Departments and it was a really interesting experience. You have four Departments that make the bulk of appointments, and then you have some very, very significant Departments that do not make many appointments. The Treasury makes some very, very big ones like Bank of England and other things, but it does not make many in quantity. The Foreign Office I think has a couple. DfID equally has a tiny number. The Ministry of Defence has practically nothing.

Q69 **Dr Rupa Huq:** Who are the big four then?

Peter Riddell: The big four are Health, some of which is devolved to NHS Improvement, which appoints non-foundation trusts; Business, because there are a lot of business advisory bodies; DCMS, which is a really big one and some of those appointments are the most sensitive, especially since it now has charities, the National Citizen Service and so on, and it has quite a complicated legal framework there; and the other one is Justice. The Judicial Appointments Commission was discussed earlier, but there are a lot of appointments in Justice. For example, bizarre though it may seem, independent monitoring boards, what used to be called prison visitors, count as public appointments. They are getting on for 40% of public appointments. They are voluntary, unpaid. Parole boards count in that. There are a lot of Justice bodies. The list of bodies is on the website, but those are the big four.

Then you have ones that do a medium number, like the Home Office and Education. As I say, there is an asymmetry of them and those who do not have many bodies basically do not have strategies for diversity. Justice is doing rather a good job, and so is Health, of particularly reaching out to ethnic minorities. The record, I am afraid, on disability is disappointingly poor. I met groups for both physical and mental disability and the Government have promised to set up an inquiry looking at what the obstacles are on disability. I look forward to that being set up because I think that is the neglected area. There has been a lot of progress on



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women, as you know, on public appointments. Progress is being made on ethnic minorities, not sufficient, but disability I am worried about.

Q70 Dr Rupa Huq: If it is this uneven number of appointments across Departments, how committed do you think the Government are to increasing diversity?

Peter Riddell: The previous Minister, Chris Skidmore, produced a diversity action plan, which I thought was very strong. I talked to him about it before that was produced in December. Oliver Dowden, who is the new Minister, I think will be saying things on this and I look forward to what he says on that.

You have actually put your finger on it. While there is co-ordination at the centre and it goes through a Committee and groups at the centre that meet frequently, it is basically up to Departments. Obviously, a Department that makes lots of appointments is going to have more expertise. I have been to events in Departments where they have talked about it and had a wide range of people, particularly now with ethnic minorities, and I have been quite impressed by what they were trying to do. It requires sustained commitment to work.

Q71 Dr Rupa Huq: There is a sense on the outside that there is a narrow gene pool. How much effort do you think is going into tackling the perception that public appointments are for the London-based great and good chattering classes type people?

Peter Riddell: There are 10,000 public appointments. People naturally focus on the chair of the Charity Commission, the chair of the BBC, all that stuff. First, you have members of the boards. Secondly, a lot of public bodies are locally based: health trusts, for example. Independent monitoring boards and parole boards are locally based.

The other factor that I would add, which is very significant, is devolution. For Scotland, Wales and Northern Ireland, the massive majority of public appointments in those nations are made by the devolved Governments. Obviously, there is a problem at present in Northern Ireland, but Scotland and Wales make their appointments. In fact, when Mr Jones and Dame Cheryl were doing it, they now have control of a pretty small number of appointments in Wales compared with the First Minister.

You have those, and one thing I would add on that is we learn a lot from the experience elsewhere in the UK. I have learnt a lot from what is happening in Scotland because I meet my Scottish opposite number on that. They were able to do some very interesting things on diversity, for example. Within the UK, it is spread. I think there is a legitimate question. We are trying to do some research on where people live in terms of bodies. I think it is not just a protective characteristic, it is also social, too. It is trying to say to chairs of public bodies it is not like a private sector board. All right, you want your finance person, you want your legal person, but you are serving the public. Therefore, you want



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people who reflect the consumers of your services and you have to be a bit more adventurous. That is also saying to Departments, too, they have to broaden their mental span on that. Some of the health bodies—NHS Improvement—have done some good work on that.

Q72 Chair: How satisfied are you with the scrutiny of public appointments in Northern Ireland in the absence of the Assembly and the Executive?

Peter Riddell: I fortunately am not responsible for that. We have a meeting every year of, effectively, the appointments commissioners—my Scottish opposite number has a slightly broader remit—and we discussed that. It was about three weeks ago. There are problems. As was shown in a legal case in the courts yesterday on Northern Ireland and what the political authority is for appointments, there are some quite big issues there. Certainly, reappointments can be done but it is very difficult to do fresh appointments. That is within a very different legal framework from the one I operate under because obviously the legal framework in Northern Ireland is to balance out sectarian divisions and try to prevent them from distorting it. There are undoubtedly problems there.

Q73 Chair: What discussions have you had with the Northern Ireland Committee about that?

Peter Riddell: I haven't because, as I say, most of the appointments are done by the Northern Ireland Government and covered by my opposite number in Northern Ireland rather than by me. The number of appointments covering Northern Ireland that come under my remit is very small indeed.

Q74 Chair: In the absence of devolved rule, Westminster rules, so how does your counterpart in Northern Ireland interact with the Northern Ireland Committee or, indeed, this Committee?

Peter Riddell: I do not know how she interacts with the Northern Ireland Committee. I am certainly happy, if I take that as a suggestion, to talk to the Northern Ireland Committee on that. I have regarded it so far as very much a matter for my Northern Ireland opposite number, Judena Leslie, and what happens in Belfast. I take your point on that. If we move to direct rule, it obviously becomes—

Q75 Chair: I would hazard a guess that it is more to do with the Northern Ireland Committee than with this Committee, but somebody should be substituting the role that the Northern Ireland Assembly would be playing in the scrutiny of these public appointments.

Peter Riddell: Or in cases of non-appointments.

Q76 Kelvin Hopkins: Following on from my colleague Dr Huq's point about diversity, I represent a very, very diverse constituency, as indeed does Dr Huq. There has to be some sensitivity about the differences within minority communities. If I go back some 30 years, a local authority I know was appointing lots of people and very proud of the fact they had



minorities, but they were appointing from one minority and all the others were very conscious of that fact. There has to be some sensitivity in the system about different minorities.

Peter Riddell: That is a very good point indeed. When I was going around the permanent secretaries, I was at the Department of Health and there the discussion was that they did not like the BAME category for exactly that reason, because it disguised more than it disclosed on that. There are certainly particular elements within ethnic minorities who are just very poorly represented, others that are much more strongly represented. That is true. Certainly, in relation to the health service they were keen to break that down and address that point.

I am conscious of that when I meet groups. For example, there is a very active group supporting women on boards and so on, but you also ask, which groups of women? Are working class women or people outside London fully represented? There was a question mark there some of the time. Certainly, what you say on ethnic minorities is true. There are certain groups that are not adequately represented.

Q77 **Chair:** One last question. This hearing, this whole inquiry, is very much provoked by the controversy surrounding the appointment of the new chair of the Charity Commission.

Peter Riddell: Indeed, yes.

Chair: There was a discomfort about a former Minister being chosen by a Government of the same party and it would seem that there should perhaps be a higher threshold in order to justify such appointments. Or are you quite happy with the way the appointment was conducted and the political fallout from what some might regard as a more political appointment is just an inevitable consequence of a Minister exercising that discretion?

Peter Riddell: I think that having been politically active should not be a bar to anyone being an appointee at all. The key point there is that in the appointments process the person is judged on the same basis as everyone else. That is what my concern as commissioner is. Indeed, in this case Baroness Stowell, as the various comments have emerged, was judged appointable by the panel, a very strong interview panel, and was judged on that basis. It was then a matter for Ministers to decide, taking account of the points you make on the likely political controversy, whether to take that decision. I regard that as a point for Ministers.

There is then another issue, which is the one you raise, about what should happen if a Committee, as the DCMS Committee did, reject it and then immediately the Secretary of State says, "No, I am going to appoint". That is a separate issue, but I do think that my role is very much to ensure that when something like this happens—and indeed I took a very close interest in the Charity Commission one—there is a fair and open competition and people are judged on the same criteria. I can assure you that, reading the report, the six people who were shortlisted



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were interviewed on the same basis and also, contrary to what has been said, there was no sense of preference or anything like that at all. I think two or three were judged appointable. Then it was a matter for Ministers and, of course, the Secretary of State changed in the January reshuffle. Then there is an issue, which I think you are rightly addressing, of what happens if somebody is then rejected by a Committee.

Q78 Chair: It is up to the Minister to appoint from a list of appointable candidates, though how happy would you be if a panel decided to submit only one candidate?

Peter Riddell: I have been thinking about this. There was one case in my time of a significant appointment where the panel recommended one candidate. It was someone who did have political links. Reading the panel report, I took a very close look at it—this was just after I took over two years ago—and I thought it was a perfectly reasonable report by the panel and the person sailed through their pre-appointment hearing. Normally, I would be unhappy with that and certainly there would be something wrong in a process that produces only one appointable candidate. Normally, one would say two or three. There are also cases where Ministers, perfectly understandably, say, “We do not want any of them. We want to go back to square one”. We have about four or five of those a year. You can argue whether the background work was done properly, but I would rather have that than the wrong person.

Q79 Chair: I think we have concluded our questioning. Mr Riddell, thank you very much for being with us. You are clearly well embedded in your role and steeped in all the issues and we have enjoyed your wisdom today. Thank you very much indeed.

Peter Riddell: A pleasure, and good luck with the rest of the inquiry. If there is anything you would like to know, I am, as you know, happy to respond at any time.

Chair: Thank you very much.