

BALANCING ACT

The Right Role for Parliament in Public Appointments

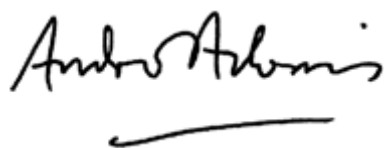
Akash Paun and David Atkinson

Foreword

The Coalition government is committed to improving parliamentary authority and scrutiny. One of its early acts was to confer on the Treasury Select Committee of the House of Commons the right to veto the government's nominee as the second Chairman of the new Office for Budget Responsibility (OBR). It took this radical step – following suggestions about political interference in the operation of the OBR under its first chair – in order to bolster the standing of a vital state institution whose whole *raison d'être* is that it should operate independently of the government and be seen to do so.

This raises fundamental questions about the role of Parliament in other major public appointments. In this paper, we suggest that there are a small number of other institutions – about 25 in all – whose heads should be regarded as on a par with the Chairman of the OBR in terms of their importance to the state and the imperative for their independence to be highlighted and safeguarded by parliamentary ratification. They should therefore be subject to a similar appointment process as the Chair of the OBR, including close scrutiny by the relevant select committee and, crucially, the requirement for parliamentary consent over their appointment, reappointment and dismissal. We also set out proposals for more effective parliamentary scrutiny of a wider range of major public appointments, including by means of a reformed system of pre-appointment hearings by select committees.

In a parliamentary democracy, effective parliamentary scrutiny and accountability are vital to the legitimacy of government. These proposals, which build on existing good practice, will serve to enhance that legitimacy.



Andrew Adonis

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Contents

Foreword	2
About the authors	4
Acknowledgements	5
Executive summary	6
Our recommendations	7
1. The changing relationship of government and Parliament	9
2. The growing role for Parliament in public appointments	12
3. The costs and benefits of parliamentary involvement	18
4. The next phase of parliamentary involvement	25
Appendix A: Proposed 'A List' of public appointments	37
Appendix B: Pre-appointment hearings, 2007–10	38
Appendix C: List of posts currently subject to pre-appointment hearings	41
Endnotes	43

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Our work is indebted to previous studies in this area. In particular, we draw on the study of pre-appointment committee hearings by Peter Waller and Mark Chalmers from the UCL Constitution Unit. Our recommendations have also been informed by *Read Before Burning*, the 2010 report on arm's length government by our colleagues Tom Gash, Sir Ian Magee, Jill Rutter and Nicole Smith. Paul Drinkwater, Nadine Smith and Kerry Burkett have also given us invaluable help in bringing this report to publication. We are grateful to all the above.

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Akash Paun and David Atkinson

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Executive summary

This report explores the involvement of Parliament in the public appointments process. Historically, public appointments have generally been a responsibility of the executive alone. However, Parliament's role has increased substantially over the past decade. An array of mechanisms has been developed to enable MPs to hold government to account for the appointment decisions it makes. Most notably, the previous Labour government created a new system that sees Commons select committees cross-examining ministers' preferred candidates for senior positions in the public sector. The House of Commons also gets to debate and vote on certain categories of appointment.

Involving Parliament in the public appointments process brings a number of advantages. Cross-party committees can assess the independence from government of candidates and test their ability to withstand robust public scrutiny. Parliamentary scrutiny can also increase the transparency of the appointment process and the democratic accountability of executive functions carried out at 'arm's length' from ministers. For these reasons we argue in favour of a greater role for Parliament.

There are potential risks too. These include the possibility of deterring prospective candidates, politicising the appointments system and introducing delays into the process. Reform therefore involves a balancing act between these different factors. Below we make 15 recommendations for reform which we believe would maximise the benefits that parliamentary involvement can bring, without greatly increasing the risks. Our overall conclusion is that a stronger Parliament in this area would contribute to more effective government.

Our report is divided into four chapters. First, an introductory chapter places this issue in the context of the broader relationship between government and Parliament. In chapter 2, we discuss the evolution in recent years of Parliament's involvement in public appointments. Next, in chapter 3, we weigh up the benefits and risks of involving MPs in appointment processes, presenting evidence from our research and previous studies. Finally, in chapter 4, we consider the options for reform, and set out our blueprint for more effective scrutiny.

Our recommendations

1. A review of the list of public appointments subject to parliamentary scrutiny should commence immediately. This should be carried out by the Liaison Committee and the Cabinet Office on the basis of a clearer set of criteria.
2. In particular, we suggest that parliamentary involvement is most important for posts where some or all of the following four criteria apply:
 - a) Perceived and actual independence from government are vital to the effective functioning of the role or body in question, and to its credibility in the eyes of the public and/or the financial markets.
 - b) The post in question will require the appointee to play a significant role in public debate and representation of the public interest in dealings with the executive.
 - c) There is strong public interest in the vision and priorities of the office holder in question, and in the performance of the organisation.
 - d) The post or body plays a role integral to the conduct of Parliament or the exercise of its key powers and responsibilities.
3. Instead of the current undifferentiated list, we recommend that 'variable geometry' be built into the system, meaning that those posts scoring most highly on the proposed criteria are subject to more stringent forms of parliamentary involvement
4. We suggest that for an 'A List' group of about 25 of the most important public appointments measured by the criteria set out above, there should be an effective veto power granted to Parliament. This list would be in addition to appointments to the Office for Budget Responsibility where a formal veto power for the Treasury Select Committee already applies.
5. For appointments to 'A List' posts, the minister should be required to appear before the relevant select committee in the event that the committee has concerns about a proposed appointment following a hearing with the candidate. Further, as a last resort, appointments should be referred to the House for resolution if agreement between the minister and committee is not forthcoming.
6. The Liaison Committee should lead on drawing up the 'A List' and the criteria for inclusion, after consulting as appropriate with select committee members more widely, and it should then seek to reach agreement with the Cabinet Office. Future alterations to the list should also be agreed between the Liaison Committee and Cabinet Office.

7. For appointments where a select committee has the right to hold a pre-appointment scrutiny hearing, the committee should have the right to hold a hearing on the same terms when the government chooses to reappoint a post holder. When the government chooses to not reappoint a post holder eligible for a further term in office, the relevant minister should also be prepared to appear before the committee to explain his or her decision.
8. Parliament should also have an effective veto power over dismissals from top level posts. As is the case for the executive directors of the OBR, government would need to seek the agreement of the relevant select committee before dismissing an 'A List' post holder. If agreement could not be reached, the matter should be referred to the House.
9. For a second tier of public appointments, which the Liaison Committee should take the lead on drawing up, we recommend a continuation of the current pre-appointment hearing system but with an expectation that the minister would appear before the committee to explain his or her decision, in the event that there is disagreement.
10. For these top two categories of public appointment, the relevant committee should also be consulted at the start of the process about the job and person specification.
11. A single consolidated guidance document should be agreed between the Cabinet Office and the Liaison Committee. This should set out more clearly the purpose of pre-appointment hearings (including a greater emphasis on using these hearings as the start of an ongoing accountability relationship). It should also be clearer about what lines of questioning are inappropriate.
12. We further suggest early post-appointment hearings with new ministerial appointees from outside Parliament ('GOATs').
13. We recommend that when a major public inquiry is being established, the lead department should inform the relevant select committee. The committee should then be given the opportunity to hold a pre-appointment hearing with the proposed chair of the inquiry.
14. We recommend small changes to the process by which Parliament itself makes certain appointments. Specifically, future candidates selected by a Speaker's Committee for appointment to the Chairs of the Electoral Commission or the Independent Parliamentary Standards Authority (IPSA) should appear before a select committee for a pre-appointment hearing before the final decision is taken by the House.
15. Finally, Parliament should be given full control of the appointment process for the Chair of the House of Lords Appointments Commission, and joint control with the executive of the appointment process to the post of Parliamentary Ombudsman, along the lines of the model already operating for the Comptroller and Auditor General.

1. The changing relationship of government and Parliament

This report is a study of parliamentary involvement in the public appointments process, in particular through the pre-appointment scrutiny hearings held by select committees to scrutinise senior public appointments since 2007. Public appointments, historically, have been an area of governance almost entirely controlled by the executive. Most public appointments are made by ministers under prerogative or statutory powers (following recruitment processes managed by the civil service, often regulated by the Commissioner for Public Appointments). Parliament has been able to scrutinise particular appointment decisions after the fact, but not to influence these decisions directly.

But this has started to change. During the past decade (in particular, the period since 2007) MPs have taken on a markedly increased role in a range of public appointment processes, from members of the Monetary Policy Committee (MPC) of the Bank of England to the chairs of regulators, inspectors and other arm's length bodies (ALBs) such as Ofcom, Ofsted and the Arts Council.¹

This growing role in an erstwhile preserve of the executive is part of a broader evolution in the relationship of government and Parliament. Perhaps the most significant change in this relationship since the political scientist Anthony King addressed the subject 35 years ago has been the rise of the departmental select committee system.² King argued that partisan forms of “*executive-legislative relations*”, between government and opposition (the “*opposition mode*”) and within the governing party itself (the “*intra-party mode*”), were the most important features of the Westminster system, and that there was little evidence of the “*non-party mode*”, in which backbenchers from across the House work together to call government to account.

The creation in 1979 of permanent committees to shadow each government department was a deliberate attempt to carve out a larger space at Westminster for such cross-party activity. Select committees are designed, in theory, to create an environment where MPs hang their party rosettes at the door and work together as parliamentarians to scrutinise the work of the executive. Although it would be naive to suggest that party political concerns never intrude on their work, select committees are surprisingly often able to facilitate such cooperation across the House.

As the Hansard Society concluded in 2001, “*The strength of select committees is that they are largely free from the interference of the political parties... once they have been established the committee tend to derive their influence from effective cross-party collaboration.*”³

Westminster select committees lack the constitutional status of their US Congressional counterparts or the formal role in the legislative process played by committees in most European legislatures. At Westminster, the decision-making body is in almost all cases the plenary Chamber. There is also evidence that MPs continue to see committee work as a relatively low priority compared with other activities such as dealing with constituency matters⁴ and working their way up the ministerial ladder.⁵

Nonetheless, over the past three decades select committees have grown in influence, with chairs paid an extra salary since 2003 to raise the status and attractiveness of committee work as an alternative career path.⁶ Committees have also taken on new functions along the way. The increased (though still relatively rare) use of draft legislation, for instance, has resulted in committees playing a larger role than previously in legislative scrutiny. Additional resources have also been set aside to assist committees in their work, notably through the creation of a central Scrutiny Unit.⁷

Another significant development has been the growing role of the Liaison Committee (comprising the chairs of all other committees) in coordinating the work of committees and advocating for committee interests. Since 2002, the Liaison Committee has set out “*Ten Core Tasks*”, which each committee is expected to carry out and to report back on annually.⁸ These tasks include the scrutiny of legislation, other policy announcements, spending decisions, departmental performance and public appointments.

More recent changes include reform of the procedures for selection of committee chairs and members, which is expected to make for a more autonomous and assertive committee system. In 2010 for the first time, for most major committees, chairs were directly elected by all MPs in a secret ballot, potentially raising significantly the authority of these figures as representatives of the House as a whole. Committee members are also now elected by their party colleagues rather than being selected by the whips, so avoiding upsetting the party leadership is no longer necessarily the best strategy for gaining a spot on one’s favoured committee. The creation of the Backbench Business Committee has also created new opportunities for committees to place business on the agenda of the House itself, an important way to raise the profile and influence of committee work.

During recent years there have been moves to ‘tame the prerogative’ in various ways, such as in proposals (many as yet unimplemented) to reduce government’s untrammelled discretion in areas such as dissolution, war-making powers, machinery of government changes, and, as we discuss in depth below, over public appointments.⁹

The overall picture is therefore of an evolving relationship between executive and legislature. Government still dominates in terms of being able to push through legislation and budgets, so long as it holds a majority of seats and can maintain discipline on its backbenches. But governments are elected to take such decisions, and any realistic programme of reform must be built around the continued ability of the executive to govern.

The change has been the growing consensus in favour of increasing the opportunities for Parliament to scrutinise the executive and require it to account for its decisions and actions (in what has been described as “*government by explanation*”¹⁰). One central purpose of such accountability mechanisms is to improve the effectiveness of government policy-making, spending decisions, and management of the wider public sector. As the former Leader of the House Robin Cook put it in 2001, “*good scrutiny makes for good government*”.¹¹ Select committees in particular have come to be recognised as a more effective mechanism for extracting information and explanations from government than the often ritualised confrontations in the House itself.

The developments in the specific area of public appointments are a microcosm of the evolving nature of the executive-legislative relationship. These changes also serve to illustrate that the balance between government and Parliament has not yet reached a stable equilibrium, and that Parliament’s role continues to develop.

Below, we describe the history of parliamentary involvement in public appointments, with a particular focus on the recent creation of a formal system of pre-appointment committee hearings with government nominees for important public sector jobs. We then assess the evidence from the past few years of experience in this area, and from some 30 interviews we conducted across Westminster and Whitehall. We also make a number of recommendations for further reforms.

2. The growing role for Parliament in public appointments

Context

In recent years there has been significant change in the involvement of Parliament in public appointments processes. After years of scepticism about granting MPs any role in this area, the Labour government in 2007 proposed a pilot scheme of committee hearings with major public appointees as part of a wider package of constitutional reforms. These 'pre-appointment scrutiny hearings' have since become a central means by which government is required to justify the appointment decisions it makes. The Coalition government is committed to strengthening this system, and has taken the radical step of granting a select committee formal veto powers over important public appointments for the first time.¹² In recent years Parliament has also been given direct control of the appointments processes for certain bodies, such as the Electoral Commission.

The reasons for such developments are varied, but one important factor has been the growing size and of arm's length government (as documented by the Institute for Government in *Read Before Burning*¹³). The creation of a wide array of arm's length bodies (ALBs) since the 1980s has stemmed from the privatisation of nationalised industries and the desire to place certain government functions outside the direct control of ministers. From a parliamentary perspective, such changes make it more difficult to exercise democratic accountability over important areas of governance, since ministers themselves are not directly responsible for the day-to-day running of these bodies (an issue addressed in the Institute for Government's forthcoming report on accountability¹⁴).

One specific concern that emerged around the growth of the ALB landscape related to the appointments process. Specifically, as the influential Nolan Report on Standards in Public Life put it in 1995, there was "*much public concern about appointments to Quango Boards, and a widespread belief that these are not always made on merit*".¹⁵

Responding to the unease, the Conservative government of the time had created the Committee on Standards in Public Life (under the chairmanship of Lord Nolan) and subsequently established a Commissioner for Public Appointments to regulate the process by which ministers make public appointments, and to preserve the principle of merit-based recruitment in the public sector. But parliamentary involvement was not seen as the solution. The reports from the Committee on Standards in Public Life between 1995 and 1997 included no recommendations about the involvement of Parliament in appointments to quangos. Nor was it mentioned in the 1997 Labour manifesto, making the rapid development of parliamentary involvement in public appointments since then all the more noteworthy.

Momentum builds towards a role for Parliament

The idea of involving select committees in public appointments actually dates back to at least 1979. In the debate on the establishment of the present-day departmental select committee system, Tony Benn MP told the House that select committees "*should have the right to vet at*

least the chairmen of all the major public corporations before they are appointed... A select committee should be able to recommend to the House that a candidate should not be confirmed."¹⁶

For a long time, arguments in favour of involving MPs in major public appointments fell on deaf ears. Almost the only significant exception was the Comptroller and Auditor General (C&AG), who is an Officer of Parliament but until 1983 was appointed by the executive. Since the passage of the National Audit Act of that year, the C&AG has been appointed following a vote in the Commons on a motion proposed by the Prime Minister with the agreement of the Chair of the Public Accounts Committee (PAC). The selection process preceding this is run by an unusual partnership between Parliament and government, with the Chair of PAC sitting on the selection panel with representatives of the executive.

The next major development came in 1997, when the Treasury Select Committee (TSC) announced its intention to hold "*confirmation hearings... to establish whether those nominated to the new Monetary Policy Committee (MPC) of the Bank of England fulfilled the criteria [of] demonstrable professional competence and personal independence of the Government*". It was hoped this would mean only suitable candidates would be put forward by the government and that the independence, credibility and competence of the Bank would be ensured.¹⁷

The TSC pushed for this arrangement to be included in the Bank of England Bill. But the government felt there were "*substantial difficulties with this proposal... [and that] such hearings would, of course, raise important constitutional issues which go far wider than the Bank of England*".¹⁸ Provision for these hearings was subsequently not included in the bill, but the TSC decided to proceed with the hearings on a non-statutory basis.

The first such hearing was held in 1998 and since then there has been a total of 24 MPC hearings (including for some, but not all, reappointments), with candidates asked to complete a questionnaire on their experience and views beforehand. On only one occasion has the committee recommended against an appointment, asking the government to "*think again*" about the appointment of Christopher Allsopp.¹⁹ On that occasion, the government exercised its prerogative to proceed with the appointment. Reflecting on the Chancellor's decision to disregard its objections, the committee concluded that the hearings played an important function nonetheless:

*We think that confirmation hearings, even on a non-statutory basis, act as a stimulus to the Chancellor to choose candidates who are competent and independent. We also believe that our questionnaire and hearings provide essential information about the background of the appointees which is not otherwise readily available. Above all, the hearings underline the fact that MPC members are accountable to Parliament and to the public.*²⁰

While maintaining a tight grip on executive appointments of this kind, the government showed a willingness to concede to Parliament power over other types of appointment. Notably, when establishing the Electoral Commission in 2000, the government took the decision to make appointments to this new body a matter for Parliament alone. The Political Parties, Elections and Referendums Act led to Electoral Commissioners becoming the second type of post (following the C&AG) to be appointed by the Queen following an address from the House. The new legislation created a Speaker's Committee to oversee the Commission's spending plans and

strategy and to conduct the recruitment process for Electoral Commissioners, before its nominees would be put to the Commons as a whole.

Initially, the government appeared to struggle with the culture shock of having important public officials appointed by the legislature. The Home Office (then lead department on electoral policy) prematurely announced the appointments to the new Commission as a *fait accompli* before the required debate and vote in the Commons had taken place. MPs were further angered because the Speaker's Committee had not been established in time, so the recruitment process was instead conducted by government officials.²¹ Subsequent appointments to this body have been made by the Speaker's Committee as planned, though not without controversy. The Independent Parliamentary Standards Authority has also followed this model, with a separate Speaker's Committee established to oversee the new body and to run the recruitment process. Final appointments are made following a vote in the House.

During this period, momentum was building behind the idea of involving MPs in a wider set of appointments. Tony Wright, then Chair of the Public Administration Select Committee (PASC), was one prominent supporter of the idea of pre-appointment hearings for major appointments. Scrutiny of major public appointments was also included in the list of ten core tasks for select committees drawn up by the committee chairs' group the Liaison Committee in 2002.²² This had followed an earlier recommendation by the Modernisation Committee chaired by the Leader of the House, Robin Cook, which the House then endorsed.

More concrete proposals were then developed by PASC in 2003, which recommended that for a list of key appointments, select committees should have the right to meet government's preferred candidates. In the event that they were against the nomination, "*they would be able to enter a Letter of Reservation*", in which case "*the competition for the post would be re-opened*".²³ PASC also made a specific proposal that the Commissioner for Public Appointments should be appointed by and should report to Parliament rather than the executive.

In the face of this growing support, the Blair government remained sceptical. The PASC recommendations, for instance, were rejected, with concern being expressed about a "*perception of politicising appointments*". The government argued that the status quo was able to "*combine the key elements of fair and open competition: independent scrutiny; equal opportunities; and Ministerial responsibility*" and to "*provide a clear line of accountability*".²⁴ The proposal to change the reporting arrangements for the Commissioner for Public Appointments was also rejected, although the government did commit to consulting Opposition leaders over future appointments to this post.

Meanwhile, however, there was growing interest in the idea on the Opposition benches. The Conservative Democracy Taskforce in 2007 proposed "*an interview procedure to cover a small number of 'peak' appointments*" though without a right of veto for select committees.²⁵ The Liberal Democrats signalled their support for even more radical reform. In its report *Real Democracy for Britain* in June 2007, the party's 20 proposals included "*introducing confirmatory hearings of key ministerial appointments (particularly those unelected members who are elevated to the House of Lords specifically and immediately to place them in Government), civil service and quango appointments*".²⁶

The Governance of Britain proposals

The turning point on the government side was the arrival of Gordon Brown in No. 10. His first major policy initiative, largely forgotten after the banking and economic crises that followed, was to set out a package of ideas for constitutional reform, including a stronger role for

Parliament in the public appointments system. *The Governance of Britain* green paper published in July 2007 proposed that candidates for “key positions” – a definition not finalised in the report – would be subject to pre-appointment hearings with the relevant select committee, though appointments would remain for ministers to decide, so committees would have no veto powers.²⁷

The government listed some examples of the type of posts that would be subject to this new system. These included important watchdogs and ombudsmen, such as the First Civil Service Commissioner, the Commissioner for Public Appointments, and the Parliamentary Commissioner for Administration. “*Independent Inspectors*” such as the Chief Inspector of Prisons and the Chief Inspector of Probation for England and Wales were also mentioned.

In response, PASC quickly published a report assessing the government’s draft proposals. While welcoming the thrust of the proposals, the committee called for a wider group of posts to be made subject to hearings. Specifically, PASC advised that the hearings should apply to “*major auditors, ombudsmen, regulators and inspectors, as well as to those responsible for the appointments system itself*”, while recommending against involvement in judicial appointments.²⁸

Also mentioned were situations where “*a ministerial appointment might otherwise appear to be improperly partisan, particularly where there had been no transparent process of appointment on merit*”. The example was given of senior diplomats being appointed from outside usual recruitment processes (for instance, direct appointments of former or current politicians).

There were dissenting voices. Dame Janet Gaymer, Commissioner for Public Appointments, used the opportunity of the PASC inquiry to register six concerns about the system:

- 1) *that there might be a reduction in the pool of candidates;*
- 2) *that there might be a perceived politicisation of the appointments process;*
- 3) *that there is a risk that committees would ask inappropriate questions;*
- 4) *that hearings might have an effect on the timing of the appointments process;*
- 5) *that the role of ministerial accountability for appointments might be changed;*
- 6) *that changes might have an effect on the OCPA [Office of the Commissioner for Public Appointments] regulated processes.*²⁹

While noting these concerns, the government subsequently confirmed its intention to proceed with a pilot trial of pre-appointment hearings in a white paper in 2008.³⁰ It also clarified the kinds of posts that should be subject to this process, stating that “*pre-appointment hearings should be held for posts that play a key role in the regulation and administration of the appointments process itself*” in addition to “*posts which exercise statutory or other powers in relation to protecting the public’s rights and interests*”.

The white paper also provided more detail on what committee hearings should cover; the government’s view was that committees should focus on candidates’ professional competence and suitability for the role in question.

Negotiations then commenced between government and Parliament (through the Cabinet Office and Liaison Committee) over the final list of posts to be subject to pre-appointment hearings. In January 2008 Ed Miliband, then Minister for the Cabinet Office, wrote to the Chairman of the Liaison Committee with a list of 30 posts.³¹

Following consultation among select committees, the Liaison Committee then made a counterbid which requested parliamentary oversight of an additional 41 posts. The final agreed list stretched to 60 posts (see Appendix C), but the government refused the request to allow pre-appointment hearings with the Chief of the Defence Staff, the Chair of the BBC Trust, the UK's European Commissioner and "*any major diplomatic or consular appointment of a person from outside the diplomatic service*".³²

The new system in practice

The first hearing to be held under the new system, for the proposed appointment of Sir Michael Scholar to the Chair of the Statistics Board, was actually conducted before negotiations had concluded on the final shape of the new system. After questioning him, the TSC concluded that Sir Michael Scholar was "*a suitable nominee for the post of Chair of the Statistics Board*" and that he had "*demonstrated to us his commitment to the independence, integrity and importance of statistics*".³³ Reflecting on the system, the committee criticised the government for not having given it sufficient time to prepare for the session. Uniquely, the government subsequently also put the nomination of Sir Michael to the House as a whole (this was a specific commitment made in the green paper on the governance of Britain, but not placed in statute). In its report on the process, the TSC also asked that the government consider whether a vote by the House should be introduced for a wider range of "*high status appointments*".³⁴

As documented by the Constitution Unit in its study of the pre-appointment hearings framework, a total of 20 hearings were held under the new system during the Gordon Brown administration. In 2008, PASC (later echoed by the Liaison Committee) had predicted:

*It will be only in very exceptional cases that committees will recommend against the appointment of a candidate; but the test of the Government's commitment to pre-appointment hearings will be how Ministers react in such cases.*³⁵

Both parts of the prediction were to be borne out: 20 of the first 24 appointments were unanimously confirmed by the respective select committees and on a further three occasions the proposed candidates were backed by a majority of committee members (see Appendix B). But the test case eventually occurred in October 2009, when the Children, Schools and Families Committee rejected the proposed appointment of Maggie Atkinson as Children's Commissioner in the following terms:

*While we are satisfied that Maggie Atkinson demonstrated a high degree of professional competence, we feel unable to endorse her appointment, as we would like to have seen more sign of determination to assert the independence of the role, to challenge the status quo on children's behalf, and to stretch the remit of the post, in particular by championing children's rights.*³⁶

In the event, Secretary of State Ed Balls decided to proceed with the appointment, explaining his decision and responding to the committee's criticisms in a detailed letter.³⁷

Following a positive review of the first two years of pre-appointment scrutiny by the Constitution Unit, the Liaison Committee made a set of recommendations for how the system should be reformed. Specifically, it proposed a revision of the list of posts subject to pre-appointment scrutiny, a new set of guidance for those involved in the process, a new right for committees to be consulted over job specifications, and provision for a private meeting between minister and committee in the event of disagreement over particular appointments.³⁸

Recent developments

The Liaison Committee report was published in the run-up to the 2010 general election, which might ordinarily have guaranteed that its proposals would be buried. Unusually, however, this was a period when constitutional and parliamentary reform was high on the political agenda, following the expenses scandal and the damage this was perceived to have done to trust in the political system.

It was in this context that important reforms were made to procedures for selecting committee chairs and members and setting the Commons agenda, following the work of the Wright Committee on Reform of the House of Commons.³⁹ In addition to backing these changes, the Coalition government formed in May 2010 committed to "*strengthen the powers of Select Committees to scrutinise major public appointments*".⁴⁰

The most significant development since then has been the decision by Chancellor of the Exchequer George Osborne to grant the TSC a veto over appointments to the three most senior positions in the government's new Office for Budget Responsibility (OBR), rightly described as "*a major constitutional innovation*" by committee chair Andrew Tyrie.⁴¹ This veto, not used by the committee over the first set of appointments in 2010, is now being enshrined in legislation for future appointments, marking a very rare example of a select committee power being given statutory form.

The legislation enacting this veto, the Budget Responsibility and National Audit Bill, also contains provisions that further strengthen the independence of the C&AG from the executive, including that the post will become a non-renewable fixed term of ten years, and that the C&AG can only be removed from office on an Address of both Houses of Parliament.

In autumn 2010, the new administration also published its response to the Liaison Committee's pre-election report. The only concrete commitment was to "*offer pre-appointment hearings for major public appointments to select committees on a permanent basis*".⁴² The government also promised to consider the committee's recommendations. Further reform will need to be guided by assessment of the costs and benefits that further parliamentary involvement can bring.

3. The costs and benefits of parliamentary involvement

Just a few years after having virtually no role in public appointments, Parliament today is thus routinely involved in a wide range of important appointments, through various mechanisms. There is also cross-party backing in this once controversial area for further development of the role of Parliament. The government is currently engaged in discussions about reform of the system of pre-appointment committee scrutiny, with one Cabinet Office official speaking of “*moving on to the next stage*” of parliamentary involvement. Below we examine the key issues to consider as a contribution to this ongoing debate, before, in the final chapter, we develop our own recommendations for reform.

What value can Parliament add?

The previous government came under criticism⁴³ for failing to set out a clear rationale for its policy of “*strengthening the role of Parliament in scrutinising public appointments*”.⁴⁴ For this reason, several Westminster officials we interviewed emphasised that discussion of this “*first order question*” should be the starting point for any discussions about how to reform the current system. After three years of pre-appointment scrutiny by select committees, and longer experience of other mechanisms of involving MPs, we believe that a number of governance benefits can be identified.

First, the credibility and authority of senior posts in important arm’s length bodies (ALBs) – from the Charity Commission to the BBC Trust to the Bank of England – rests in large part on their **actual and perceived independence** from the executive. Parliamentary committees have proved themselves well placed to assess the independence from ministerial control of proposed candidates and, by scrutinising the appointment process itself, to provide reassurance to the public and (in some cases) to financial markets that such posts are not being filled through patronage or on the basis of party-political considerations. Treasury sources confirmed that the decision to give MPs a veto over appointments to the Office for Budget Responsibility (OBR), for instance, was motivated by this desire to ensure that the independence of the new body was put beyond question. Those involved in the process also believed that the credibility of the new body had been enhanced by the three OBR executive directors having gone through this scrutiny process.

Second, this public nature of pre-appointment hearings and other forms of parliamentary scrutiny enhances the **transparency** of the appointments process. This rationale was emphasised by the UCL Constitution Unit in its assessment of the first two years of pre-appointment hearings, which concluded that “*there has been a step forward in terms of democratic transparency*”, albeit “*a modest step not a giant stride*”.⁴⁵ The public nature of the committee scrutiny process can allow for any areas of potential dispute to be aired and assessed before an appointment is finalised. As one official put it: “*There is a public interest in this: if they do it beforehand then any possible public uproar comes then.*”

Third, the transparent nature of committee scrutiny can be a way to put pressure on government to **follow better practice during the appointment process itself**. Andy Love MP, a long-

serving member of the Treasury Select Committee (TSC), told us that TSC scrutiny of Monetary Policy Committee (MPC) appointments had succeeded in this regard:

As a consequence of ventilating all these things publicly – one of the issues that we always went into was ‘how did the appointment happen?’ – we have been able to influence what happens in terms of appointments... there is [now] a much more open and transparent procedure [for MPC appointments].

Fourth, Parliament can also test the **ability of the chosen candidate** in certain respects. Some interviewees pointed out that MPs rarely have the expertise to exercise meaningful assessment of professional competence in highly specialist areas (such as fiscal forecasting in the case of OBR appointments). However, many top-level public posts are not particularly technical and instead require the post holder to be able to exercise appropriate ethical judgements (the various regulators of appointments processes, for instance) so the critique does not necessarily always hold. Furthermore, a specific competence that MPs can test is the ability to stand up to robust public scrutiny. This is a requirement for successful performance in high-profile public sector jobs, but it is difficult to assess during the recruitment process. Government officials confirmed that it has been useful to see how their chosen candidate has performed in front of a committee at a stage when there was still time to change their mind.

Fifth, pre-appointment hearings offer an opportunity for MPs to question a candidate about his or her **vision and priorities** for the role for which they are being put forward. Having established this in a public forum, the committee and others can then use this information to hold the individual to account for their future performance. In this way, as former Public Appointments Commissioner Dame Janet Gaymer has put it, the hearing should mark “*the beginning of the road of accountability*” (but should not, in Dame Janet’s view, form part of the selection process itself).⁴⁶ From the government’s perspective, strengthening the role of Parliament in this area can also be seen as part of its wider focus on bringing quangos under closer democratic control.

Overall, we concur with the assessment of the Constitution Unit and Liaison Committee that the expansion of parliamentary scrutiny of public appointments has delivered (albeit small) benefits in terms of improved governance and accountability. The government has also accepted this case, as indicated by its decision to place the select committee pre-appointment hearing system on a permanent footing. But nervousness remains in both Whitehall and Westminster about moving much further. There are indeed costs as well as benefits to parliamentary involvement, and these tradeoffs must be closely considered. We examine these issues below.

Deterrence of candidates?

One common concern about parliamentary scrutiny of appointees for public jobs is that potential applicants may be deterred from applying by the prospect of public embarrassment and possible rejection. However, the Constitution Unit analysis found that “*On the whole, search consultants could point to no direct evidence that candidates were being deterred by the process of hearings*”,⁴⁷ and indeed concluded that many candidates themselves welcomed the added credibility they had received as a result of passing through a public scrutiny process.

According to interviews we conducted, the executive feels that deterrence of candidates remains a risk, particularly if parliamentary involvement were to be increased. Certain hearings, from the executive perspective, have strayed close to or over the line of appropriate questioning, contributing to a combative atmosphere that could feasibly put some people off submitting an

application in the first place. Examples include MPC candidate Christopher Allsopp being asked whether he agreed that while the person he was replacing “*was premier division of the quality of Arsenal, maybe Manchester United, you are likely to turn out to be Vauxhall League of the quality of Yeovil, maybe Kidderminster*”⁴⁸ and Sir David Normington being quizzed on “*the difference between a gerund and a verb*” after a minor grammatical slip-up.⁴⁹ As one interviewee argued, experienced figures such as Sir David are unlikely to be unsettled by such questioning, but those with less experience of Whitehall and Westminster might well be deterred from applying, to the detriment of diversity in the public appointments pool.

Some senior public officials who had been appointed before the current system was set up confessed they would have had second thoughts about applying for their roles had they been required to appear before a committee. Many MPs, however, take the view that tough questioning comes with the territory, and that, as Charles Walker MP put it, “*If you want to earn a pretty good living off the back of a taxpayer then you should be subject to high levels of scrutiny... higher levels than perhaps you are used to*”, which includes the risks of being criticised in public. Further, as noted, the ability to withstand public scrutiny is or ought to be part of the job description for chairs of major quangos.

Tough questioning can also be the only way for committee members to ensure that the candidate has the requisite abilities and independence from government and party politics for the role in question. Graham Parker, now a Deputy Director of the OBR, was grilled over his record as a fiscal forecaster in the Treasury:

*These tax revenue forecasts were consistently wrong. Not only were they always wrong in the same way, but they were wrong seven years in a row. That doesn't give us much confidence for your work going forward, does it?*⁵⁰

The exchange that followed led to the committee surmising that Parker himself was professionally competent, but that Treasury ministers had overruled his advice. It therefore paved the way for Parker's endorsement by the committee.

There must be, of course, a line that committee members should not cross, and chairs already have the prerogative to call to order members who transgress that boundary. Arguably, there have been cases where the chair should have stepped in earlier. Indeed, in the case of Christopher Allsopp quoted above, the committee did latterly accept that it had gone too far in its questioning.⁵¹ As discussed below, refinement of guidance for committees might help reduce the chances of controversy arising.

Politicisation of appointments?

Another perceived risk is that involving Parliament may ‘politicise’ the recruitment process (meaning the intrusion of party politics into a neutral process). The United States is often cited as a cautionary tale in this regard. In the US, the appointment of “*Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States*” with some exceptions are subject to a vote of confirmation in the US Senate and such hearings are often highly polarised along party lines.⁵² One reason for this is that the appointments processes for these jobs are themselves nakedly politicised, with these posts filled by direct political appointees. It is not wholly surprising that Senate committees subsequently divide on party lines when deciding whether to confirm these appointments. Bipartisanship is also in

notoriously low supply on Capitol Hill at present, and the polarised nature of party relations more generally spills over into confirmation hearings.⁵³

The point is that this experience is not obviously applicable to the UK. The British public appointments system is designed to run on open and merit-based lines, under the supervision of the Commissioner for Public Appointments. This non-politicised appointments system is strongly entrenched in British political culture and enjoys cross-party backing. As discussed, the non-partisan character of select committee work is also a vision that enjoys support from all sides, even if the practice does not always live up to the ideal.

That is not to say that political considerations never come into play. Christopher Allsopp, for example, was closely questioned about his links to the Labour Party amid accusations of 'cronyism' surrounding his appointment to the MPC. Controversy has also occurred when active politicians have been put forward for public appointments. Former Conservative Cabinet minister Lord Lang was given a rough ride (though ultimately endorsed) by the Public Administration Select Committee (PASC) over his appointment to the chair of the Advisory Committee on Business Appointments. The committee's report expressed "*serious concerns about the appointment of a former Cabinet Minister with business appointments of his own to a role that needs the perception of independence if it is to attract public confidence*".⁵⁴ Another former minister, Lord Rooker, was only narrowly approved by a select committee for the chairmanship of the Food Standards Agency. The two MPs who opposed him had queried his ability to act independently from government, and objected to his role as a minister in approving certain housing developments in England.

The Foreign Affairs Committee (FAC) has also repeatedly drawn attention to the appointment of political figures to diplomatic posts. Outside the formal pre-appointment scrutiny system, FAC has held pre-commencement hearings with two such appointees, expressing concern about the bypassing of normal recruitment procedures without opposing the candidates in question.⁵⁵

What such cases suggest is that political figures nominated for impartial roles are more likely to incite controversy and criticism from select committees. For some people, these disputes may appear to mark a dangerous step towards politicisation of appointments processes. But such exchanges can be viewed simply as committees fulfilling their remit of checking that candidates will exercise sufficient independence from political pressures. As TSC former chairman John McFall explained, his questioning in 2007 of Sir Michael Scholar about whether his son (and Prime Ministerial adviser) had played a role in winning him the role of Chair of the Statistics Board had actually enabled the committee to "*put to bed the issue of politicisation*".⁵⁶

Analysis of voting records also shows that even when committees have split on particular appointments, this has not necessarily been along party lines. Lord Rooker, for instance, was backed by one of the two Conservative members present, while the other opposed him (see Appendix B).

Politics of a more personal kind is believed by many to have marred certain appointments processes, most notably in the rejection of Maggie Atkinson as Children's Commissioner. As noted above, the committee took exception to what it perceived as an excessively narrow conception of the role by the proposed candidate. However, according to a number of observers, this dispute was also in part a product of the poor relationship between then Children's Secretary Ed Balls and committee chair Barry Sheerman, who labelled his Labour colleague "*a bit of a bully... who likes to get his own way*".⁵⁷ Atkinson, according to one interviewee, was simply "*caught in the crossfire*" between the two. The same committee also later criticised the government for not having offered them a pre-appointment hearing with the new Chair of

Ofqual, although it appears that the root of this conflict too was a failure to maintain effective communication between committee and department.⁵⁸

The cases above illustrate the importance of building positive relationships between government and select committee chairs, especially in the light of chairs' enhanced authority under the new direct election procedures. They also illustrate that involving MPs in public appointments increases the unpredictability of the process, since Members and committees are free to oppose appointments or criticise the government on any grounds they choose. But we would suggest that outright politicisation has not occurred so far thanks to the strength of commitment to a non-political public appointments system and to the non-partisan nature of select committees.

Political controversy has occasionally been a greater problem when the House as a whole (rather than a select committee) has been involved in the appointment process. For instance, a bitter debate in 2008 ended in the House voting to reduce the salary of the incoming Chair of the Electoral Commission, Jenny Watson, though her appointment was approved. In October 2009, there was also an attempt to block the appointment of former Liberal Democrat MP Jackie Ballard to the board of the Independent Parliamentary Standards Authority (IPSA) on the grounds that she had insufficient experience at Westminster. And back in 2001, when the Electoral Commission was first established, a number of Opposition MPs seized on the fact that two of the proposed candidates had worked on the BBC as evidence of partiality in the selection process. Conservative members also alleged a bias against England and the south in particular. One MP, apparently on the basis of candidates' surnames alone, surmised that a number of the candidates, including proposed chair Sam Younger, "*sound Scottish*".⁵⁹

There were specific reasons for these controversies, namely the opposition of many members to the very existence of the Electoral Commission and IPSA. Other appointments led by the House have proceeded without any controversy. In the brief debate in 2008 on the appointment of John Lyon as Parliamentary Commissioner for Standards, for instance, the only point of contention centred on who could pay for tea at meetings between MPs and constituents. Nonetheless, to minimise the chances of such disputes arising again, we set out recommendations for reform in this specific area below.

Confusion of accountability?

A different kind of concern is that increasing the role of Parliament in executive-led appointments processes will lead to what one official called a "*blurring of the lines of accountability*" between government and ALBs. The point is that if appointments to such bodies are no longer the sole preserve of the executive, then it might become harder to hold the government to account in the event of future poor performance or misconduct. And if parliamentary committees themselves have a stake in the appointee, will they feel constrained about asking tough questions and exposing problems?

We found no evidence that these problems have occurred to date. Committees have shown a willingness to call back in for tough questioning appointees to whom they have previously given their blessing.⁶⁰ But involvement in most appointments has so far been limited to a single pre-appointment or pre-commencement hearing. If the role of committees were to be enhanced, then might this become an issue of greater concern? For instance, having formally confirmed the membership of the OBR senior team, will the TSC find it difficult to examine the new Office rigorously if problems emerge with, say, its fiscal forecasting model or its internal management? Our view is that MPs are rarely likely to feel constrained in expressing criticism of a poorly performing "quango". And so long as MPs' role remains confined to approving or rejecting a

single proposed candidate, we feel this is unlikely to be a serious problem. This is nonetheless an issue that should continue to be monitored.

Soft power or rubber stamp?

The above sections discuss problems that might arise if Parliament is given too great a role. However, there is a case for arguing that the biggest weakness of the current system is that MPs have insufficient power to influence appointments, and that this undermines the important accountability function that scrutiny of appointments is intended to deliver.

Aside from a handful of exceptions such as the Electoral Commission, IPSA and now the OBR, MPs have no formal power over major public appointments. The logic of the pre-appointment scrutiny system is that committees get a chance to have their say before an appointment is confirmed, but that it remains for ministers to make the ultimate decision.

From one perspective, this is an advantage. Unsurprisingly, perhaps, the executive is nervous about diluting its control of additional appointments. Less expected was the ambivalence we heard among many in Westminster about a more formalised role for committees. One reason is the view that select committees *“operate with influence not with power”* as one interviewee put it, and that their autonomy from the control of government and the whips rests on this fact. Indeed, committees have often been reluctant to wield even those formal powers they do possess, such as the power to summon witnesses who refuse an invitation to appear.⁶¹

The ability of committees to determine their own agendas is also highly prized. As one official put it, *“there is too much ought in politics”*, in that well-meaning reformers too frequently make recommendations about the activities to which Parliament and its committees should devote their limited time and resources. Obliging, rather than merely enabling, committees to scrutinise particular appointments would undermine this principle. Finally, there is a fear that putting committee powers into statute might open up parliamentary proceedings to judicial interference (provoking potential conflict with the doctrine of parliamentary sovereignty dating back to the Bill of Rights of 1688).

There is some merit in these arguments. In particular, we agree that prescribing committee functions in law should be seen as a step of last resort. Committees' autonomy to set their own agenda should also be preserved as a cornerstone of any reformed system. One should likewise be careful before departing from the convention that the exercise of statutory power is a matter for the House in plenary rather than committees, which are subordinate to the House and typically report to it rather than taking final decisions on its behalf. There is also evidence in support of the view that committees can exercise meaningful influence without needing formal power. The Constitution Unit found that many successful candidates professed that they would have stepped down had the committee advised against their appointment. In addition, government would of course prefer to avoid the negative publicity of a row with a select committee, and so has an incentive to avoid appointments that may draw the ire of backbenchers.

But this rather indirect form of influence may not provide sufficient incentive for MPs to prioritise this area of work. Further, on the two occasions a committee has recommended against a nominee, the candidate has not stepped down and government has proceeded with the appointment. As a result, many in Parliament share a feeling that most pre-appointment scrutiny serves little purpose except as a 'rubber stamp' for the benefit of the executive. Bernard Jenkin, the Chair of PASC, expressed this view well:

You've got one nuclear button to push which is to refuse to appoint him and even then it has no power, the Government could go ahead and appoint the person anyway. So it's a nuclear weapon that might not fire.

There is, in other words, a danger of disengagement of MPs from the process, and associated low attendance among MPs (a wider problem identified in previous studies⁶²). During the hearing with the proposed Chair of Ofcom, jointly conducted by the Department for Business, Innovation and Skills (BIS) and Culture, Media and Sports (CMS) committees, for instance, low attendance and early departures led to the CMS committee losing its quorum, with the result that the two remaining members had to sit silently for part of the session. One can also find examples of flippant questioning such as an exchange over whether the candidate (again for the Chair of Ofcom) watched *Strictly Come Dancing* and which football team she supported. Such exchanges may help develop a positive working relationship between the appointee and committee, but they do not give the impression of hard-hitting scrutiny in action.

On balance, therefore, we take the view that to gather the benefits that Parliament can bring, including accountability, transparency and independence from executive control, greater powers should be granted to select committees over some public appointments. This should be done carefully, to avoid overburdening select committees, undermining the non-political nature of the appointments process, or deterring quality candidates. But in a number of areas we feel there is potential to move further than current practice. We set out our specific recommendations below.

4. The next phase of parliamentary involvement

Reviewing the list of posts subject to parliamentary scrutiny

The government has already committed to reviewing the list of posts subject to pre-appointment scrutiny in partnership with the Liaison Committee. One reason to press ahead with this review is simply to reflect the changes being made to the arm's length body (ALB) landscape (with a number of major ALBs being abolished, merged and some new bodies being created).

But reform is also needed because of what most observers consider to be the “*somewhat illogical*” nature of the current list.⁶³ This lack of consistency is in large part a result of the process by which the list was drawn up. As discussed, the list emerged through complex negotiations between government and Parliament, coordinated by the Cabinet Office and Liaison Committee, but involving virtually all government departments and the respective select committees.

By all accounts, some committees were more interested than others in gaining oversight of a long list of posts, and some departments were more relaxed than others about opening up to committee scrutiny. Unsurprisingly, in this context, the final list was not entirely consistent. For instance, Defra and DCLG appear to have taken a relatively permissive approach, meaning that comparatively inconsequential posts such as the chairs of the Agricultural Wages Board and Tenant Services Authority are on the list. Meanwhile, there are few posts on the list in the areas of foreign policy and defence, despite select committee requests.

Even within departments there are apparent inconsistencies between policy areas. Hence the Transport Committee was granted oversight of the Office of Rail Regulation Chair but not the Civil Aviation Authority Chair.⁶⁴ Similarly, the Chair of Ofcom was put before the Culture, Media and Sports (CMS) committee, but until recently the Chair of the BBC Trust was not, a regular gripe of the committee.⁶⁵ And the Treasury, despite going further than any other department in granting a veto in the case of the OBR, has continued to resist allowing the Treasury Committee to question Monetary Policy Committee (MPC) candidates until after they have been appointed, because of the perceived ‘market sensitivity’ of such appointments.⁶⁶

We recommend that **the review of the list of public appointments subject to parliamentary scrutiny should commence immediately**, and that it should proceed **on the basis of a more consistent approach** about which posts to include (**Recommendation 1**).

Establishing clearer criteria

Almost all those we spoke to in Westminster and Whitehall agreed that **a clearer set of criteria for inclusion on the list of posts subject to pre-appointment scrutiny by MPs should be developed**. The criteria should be agreed through the Cabinet Office-Liaison Committee axis (subject to consultation with other government departments and select committees), and should then be consistently applied across all government departments to determine the final list.

Building on the work of the Constitution Unit, and our discussion of the value that Parliament can add, we suggest four factors that should be borne in mind in drawing up the list of appointments that Parliament should be involved in. Specifically, we believe that **parliamentary involvement is most important for posts where some or all of the following four criteria apply (Recommendation 2)**:

- a) Perceived and actual independence from government are vital to the effective functioning of the role or body in question, and to its credibility in the eyes of the public and/or the financial markets.
- b) The post in question will require the appointee to play a significant role in public debate and representation of the public interest in dealings with the executive.
- c) There is strong public interest in the vision and priorities of the office holder in question, and in the performance of the organisation.
- d) The post or body plays a role integral to the conduct of Parliament or the exercise of its key powers and responsibilities.

Some interviewees suggested that one should also take into account the size of the organisation (in terms of budget controlled and staff employed). However, others persuasively argued that this should not be seen as a decisive factor since certain very important functions are carried out by relatively small bodies such as the Information Commissioner's Office and the Parliamentary Ombudsman. Meanwhile, large sums of money are spent by bodies like the academic research councils, for instance, whose heads are on the list at present, but arguably do not merit inclusion in the top tier of posts. We also concur with the Constitution Unit that *"posts for which recruitment is focussed on professional skills – engineering, economics or legal – and which are rather less likely to be in the public eye should be less of a priority for hearings"*.⁶⁷

A multi-tier approach

A further weakness of the current mechanisms for involving Parliament in public appointments is that, for the most part, an undifferentiated approach has been taken to the list of appointments. Special ad hoc arrangements have been for a handful of public appointments (notably for bodies that are formally 'owned' by Parliament such as the Electoral Commission and the National Audit Office). But the general pattern is that major regulators such as the Chair of the Competition Commission and constitutional watchdogs like the Information Commissioner are put through the same scrutiny process as heads of comparatively minor quangos like the Gangmaster Licensing Authority, which have a more technical function.

We find this situation unsatisfactory, and unlikely to inspire confidence in the value and credibility of the appointment scrutiny system. We therefore recommend that **variable geometry should be built into the system**. The review of pre-appointment scrutiny should give explicit recognition to different categories of appointment, **with those posts scoring most highly on the criteria discussed subject to more stringent forms of parliamentary involvement (Recommendation 3)**.

An 'A List' of top-tier public appointments

Except for a handful of posts where government should have no role in the appointment process (such as to the Electoral Commission, as discussed below), major public appointments should continue to be made by ministers (or by the Crown on the recommendation of ministers),

following selection processes conducted by civil servants and regulated by the Commissioner for Public Appointments. However, **for an 'A List' of about 25 of the most important appointments** (set out in Appendix A), **we recommend that Parliament should be granted an effective veto power over appointments (Recommendation 4).**

In *Read Before Burning*, the Institute for Government argued for the creation of a new ALB category of "*independent public interest bodies*", a category that would "*comprise bodies whose credibility depends on them being clearly insulated from ministerial interference*".⁶⁸ The Institute recommended that appointments to senior positions in these bodies should be subject to a 'dual lock', with minister and select committee both needing to approve the appointment. This is, in other words, the model that has been adopted for the Office for Budget Responsibility.

The OBR confirmation hearings held in September 2010 were seen as a success by those we spoke to in Westminster and Whitehall. The hearings were not marred by partisanship and MPs from across the House took seriously their responsibility for assessing the suitability of the candidates before them. The credibility of the OBR is seen to have been enhanced as a result.

The government's position is that this sets no precedent for other posts, and that the OBR is 'unique' because it needs to be seen as independent but work closely with government.⁶⁹ A broader look at the public appointments landscape, informed by the preceding discussion of the benefits of parliamentary involvement, casts doubt on this claim of uniqueness.

Although the Chairman of the OBR is undoubtedly among the most important posts according to the criteria we have outlined, there are a number of other posts for which it is equally important that independence from government is preserved, because of their role as regulators of government or agents of the public in dealings with government.

For instance, we would argue that it is of equal importance that the Governor of the Bank of England, the Chair of the Statistics Authority and the head of the successor body to the Competition Commission and Office of Fair Trading are, and are seen to be, entirely independent from executive control.

In addition, there is a set of constitutional and ethical watchdogs whose function is to act as a check on the executive, a guarantor that due process is followed in important constitutional areas, and/or a representative of the people in dealing with government. This group includes the Chair of the Equalities and Human Rights Commission, the Chair of the Committee on Standards in Public Life, the First Civil Service Commissioner, the Commissioner for Public Appointments and the Information Commissioner. Indeed, in January 2011 the government announced that the next time the post of Information Commissioner falls vacant it will not make an appointment if the Justice Committee is opposed to the nominee. This is, in other words, a commitment to granting the committee a (possibly non-statutory) veto, which immediately calls into question the government's claim that the OBR is entirely *sui generis*.

Finally, there are a number of highly important utilities regulators and public service inspectorates whose independence from government control is of great importance to their credibility, and in which there is significant public and parliamentary interest. This would include the chairs of Ofsted, Ofcom, Monitor, the Care Quality Commission, the Chair of the BBC Trust, and the heads of the police and prisons inspectorates.

Enhanced parliamentary involvement for 'A List' appointments

For this 'A List' of posts, we recommend that Parliament should have a similar level of oversight to that granted over the OBR, with an effective veto power over appointment. However, we do not favour a direct extension of the OBR model, which grants a statutory veto power to the Treasury Select Committee (TSC) but does not provide for a final decision to be taken by the whole House. On the whole, for reasons discussed above, it is our view that the powers and functions of committees should only rarely be placed into legislation. We also consider it advisable to allow the Commons as a whole to make the final decision in the event that a minister and committee are at loggerheads.

This process should work as follows. As at present, the government would name its preferred candidate, following a selection process regulated by the Office of the Commissioner for Public Appointments (OCPA). The candidate would then appear before the relevant select committee for a pre-appointment scrutiny hearing. **Should the committee have concerns about the proposed appointment, the job description or the selection process itself, then the relevant minister should be required to appear before the committee** to discuss these issues at the committee's request (**Recommendation 5a**). Of course, if outright opposition to the candidate was expressed by the committee, the minister might decide simply to withdraw the appointment, as the government recently committed to doing in future if the Justice Committee opposes its nominee for Information Commissioner.⁷⁰

A committee hearing with the appointing minister might well have been the preferred course of action over the recent appointment of Sir David Normington to the positions of Commissioner for Public Appointments and First Civil Service Commissioner. Following the hearing, the Public Administration Select Committee (PASC) opted to endorse the appointment on the grounds that the candidate himself was deemed to have the requisite professional competence. However, the committee criticised in strong terms the decision of the government to combine these two important roles in a single individual without wider consultation, and to appoint a retiring senior civil servant.⁷¹

A committee hearing with the minister in such circumstances would offer an opportunity to air these concerns in public but also potentially to resolve the dispute in a way that does not undermine the candidate – for instance, the minister might provide further evidence in defence of how the selection process was run. Of course, in some cases, the committee might be unconvinced by the explanations of the minister. In this eventuality, **where the committee is firmly against the appointment but the minister wishes to proceed**, we recommend that **the matter should be referred to the House of Commons** for a debate opened by the committee chair. We would envisage referral to the House itself occurring very rarely, but if this stage were reached, and **if the Commons voted against the appointment, then the appointment process would need to be reopened (Recommendation 5b)**. This process could be placed into statute, perhaps via an amendment to the Public Bodies Bill. Alternatively, the government could simply declare its intention to abide by the will of the House as, for instance, Gordon Brown's government did over the 2007 appointment of the Chair of the UK Statistics Authority.

We further recommend that **the Liaison Committee should lead on drawing up the 'A List' and the criteria for inclusion**, after consulting as appropriate with select committee members more widely, **and it should then seek to reach agreement with the Cabinet Office**. Future alterations to the list should also be agreed between the Liaison Committee and Cabinet Office (**Recommendation 6**).

Power over reappointment and dismissal

Committees are also well placed to assess whether people employed on a renewable fixed-term basis should be reappointed for a further term. To some extent, committees can do this already. As discussed, the Treasury Committee has questioned many (but not all) of those granted second terms on the MPC. However, unless the government gives notice that it plans to reappoint a public official, a committee's ability to influence the decision is limited. We therefore propose that **for all appointments where a select committee has the right to hold a pre-appointment scrutiny hearing, government should make time for a reappointment hearing on the same terms (Recommendation 7)**. The committee would thus have the same power as it does at the initial appointment stage. Ministers might therefore be required to justify their decision in person in front of the relevant committee. For 'A List' appointments, there could also be a vote in the House as described above. This should happen for both reappointments and when a reappointment does not occur (an effective dismissal).

Parliament should also be given a veto over attempts by government to dismiss holders of 'A List' category jobs (Recommendation 8). As noted, the government has bound its hands in the case of the OBR. If it, or a future government, wishes to dismiss one of the OBR directors, it will have to gain the consent of the TSC. In the words of TSC Chair Andrew Tyrie, this means that *"if and when an OBR chairman produces a fiscal assessment or forecast which is inconvenient or embarrassing to the Government, his or her independence can be protected by the Treasury Committee"*.⁷² We believe that in the event that the government wishes to dismiss someone from an 'A List' post, the minister should have to explain his or her decision to the relevant select committee. If the committee disagrees then the matter should be referred to the House for resolution. Thus we do not recommend a direct extension of the OBR model, although in practice we would envisage that the government would very rarely seek to go ahead with a dismissal in the face of outright opposition from the relevant select committee.

Scrutiny of appointments below the top tier

Below the top tiers of posts discussed above, there are a few dozen bodies, which require day-to-day operational independence from the executive, but which carry out a lower profile and less constitutionally significant function than those discussed above. This second tier of public appointments might include a number of the posts already on the pre-appointment list, such as the Service Complaints Commissioner, the Children's Commissioner and the Rural Advocate.

This list might also include certain posts currently not on the pre-appointment scrutiny list including MPC members below the level of the Governor (who is grouped in our 'A List'). We also agree with the Foreign Affairs Committee (FAC) and Liaison Committee that it should be standard practice for diplomatic appointments to appear for pre-appointment scrutiny when normal meritocratic recruitment procedures for such posts have been bypassed.

For this second tier of public appointments, which the Liaison Committee should take the lead on drawing up, we do not propose a parliamentary veto. Rather we favour a continuation of the current guarantee of a pre-appointment hearing with the relevant select committee. Unlike at present, however, there should be an expectation that in the event that a committee fails to endorse a candidate but the government wishes to proceed regardless, **the minister responsible for the appointment should appear before the committee to explain his or her decision**, should the committee request this (Recommendation 9). There would not be any expectation that the government could be forced to reconsider its choice, though it might choose to do so should new information come to light during the hearing, or

should the minister be convinced by the case made by the committee. A committee would also have the option of requesting a debate in the House or Westminster Hall via the Backbench Business Committee, though there would be no obligation on the minister to await the outcome of this debate before making any decision on the appointment.

Below this level, there are dozens of lower level appointments, including heads of bodies with no significant constitutional or regulatory function, but where an ongoing accountability relationship with the select committee is appropriate. This group might include heads of advisory and grant-making non-departmental public bodies such as the Advisory Council on the Misuse of Drugs or the Arts Council. Committees will have limited interest in or time for scrutiny of many of these appointments, but as a matter of good practice and courtesy, government departments should continue to inform select committees when such appointments are being made. Committees could then decide on a case by case basis whether or not to hold a hearing before the candidate takes up the role. The principal purpose of such a hearing would be to discuss the individual's vision and priorities for the role in question (i.e. it would be a pre-commencement discussion, rather than an assessment of the appointment process itself).

Involving committees at an earlier stage

At present, Parliament is only involved in public appointment processes at the final stage, with select committees having a single opportunity to question the government's preferred candidate. The minister then decides whether to proceed with the appointment on the basis of the committee's report. However, the Liaison Committee has recommended that committees should be involved at an earlier stage of the recruitment process. The proposal was that *"departments consult the relevant select committee on the job specification of any post that is to be subject to a pre-appointment hearing prior to the start of the recruitment process"*.⁷³

In our interviews we heard mixed views of the desirability and practicability of such a step. Some interviewees wondered whether committees would have the requisite expertise or level of interest to engage in what are seen as technical HR matters, such as drawing up job criteria. Engagement at an earlier stage also raises the question of whether committees are supposed to be involved in the recruitment process itself, or rather to act as an external check on the process. This idea leads some to worry about further confusion of accountability for appointments to key public sector posts. However, the proposal of the Liaison Committee is simply for committees to be consulted over job specifications; responsibility for the recruitment process would remain a matter for the executive.

Some interviewees also wondered whether there would be sufficient interest among members, and if it was appropriate to give committees another task on top of their existing workload. But given that the Liaison Committee itself called for this new scrutiny mechanism, it would seem that there is interest among MPs in taking on this new function. Simply giving committees the option of expressing an opinion on any particular job specification would also not undermine their right to set their own agenda. For these reasons, we recommend that the Liaison Committee proposal should be implemented, and that **committees should be consulted about the job and person specifications for the top two categories of public appointment (Recommendation 10)**. Consideration might need to be given to the issue of the impact of such a change on OCPA regulations, and to whether any safeguards might be needed to ensure that the process did not undermine the Seven Principles of Public Life. Given that committees would have a purely consultative role, however, we do not foresee serious problems in this regard.

To avoid undue delays in the appointments process, careful planning would also be required. Government should inform the committee as soon as it is known that there will be a vacancy to fill, giving committees as much time as possible to plan their scrutiny activities. The relevant committee and department would then need to liaise closely in order to set a timeline for the scrutiny process, including when the committee would be sent the draft job specification, and when it would report back. We also feel that it would be appropriate to set a time limit within which the committee must report back to government.

Committees would be free to decide on the most appropriate scrutiny mechanism(s) to apply in a particular case; for instance, whether to take evidence from stakeholders, to consider the document in a formal public hearing, and to involve the whole committee or perhaps just the chair. In many cases, we expect that committees would opt for a light-touch approach.

Sometimes, however, there is likely to be greater interest, particularly when an important new post is being created (as for the head of the new Financial Conduct Authority) or the remit of an existing post is being altered. Indeed, the Department of Education's review of the role of Children's Commissioner, which reported in December 2010, specifically recommended that "*The committee should also have an opportunity to consider and comment on the job description prior to the Children's Commissioner's post being advertised*", further pointing out that this might have helped avoid the controversy over the appointment last time around.⁷⁴

Another potential reform would be for committees to cross-examine more than one candidate, and to make a recommendation to the minister on the final choice he or she should make. For instance, the Labour Party, having rejected any pre-appointment scrutiny at all for the Chairman of the BBC Trust when in power, recently called for the Culture, Media, Sport Committee to be allowed to choose between the final two candidates, though this was rejected by the government.

Our view is that **inviting committees to choose between candidates would probably bring with it more problems than benefits**. In particular, there would be a deterrent effect, since at least one candidate would be sure to suffer public rejection. In cases where an individual (perhaps from the private sector) did not wish their employer to know they were seeking alternative employment this would be a particular problem. Involving the committee directly in the recruitment process in this way might also confuse the lines of accountability between government and heads of ALBs in a more fundamental way. As a result, we are not in favour of movement in this direction. **Committees should be involved at the outset of the recruitment process** at the stage when the recruitment criteria are being drawn up, **but should not be involved again on an official basis until a preferred candidate has been selected**, although informal consultation with the relevant committee chair might take place at the discretion of ministers and departmental officials.

Building an ongoing accountability relationship

In addition to involving committees at an earlier stage of the appointment process, a number of interviewees emphasised that **committees should place greater emphasis on developing an ongoing accountability relationship with important ALBs and their leaders**.⁷⁵ Pre-appointment hearings should therefore focus at least in part on forward-looking issues such as the priorities and plans of the candidate, as well as backward-looking questions about candidates' past experience and so on. Then committees could use the opportunity of the pre-appointment hearing to discuss and agree performance criteria against which the candidate can be judged. This happened recently with Sir David Normington, for instance. He asserted that in

his first year the committee should “judge me on whether we have made progress in streamlining the public appointments side of this job”.⁷⁶ The proposed Ofcom Chair was also pressed to make a commitment that she would devote 60% of her time to the job.⁷⁷ Extracting such commitments (ideally proper SMART targets⁷⁸) could become a more common feature of pre-appointment scrutiny.

Committees could also plan in advance to hold reviews of the performance of particularly important ALBs and to call in the candidate to discuss progress against commitments made at the pre-appointment stage. This would be in line with the Health Committee’s 2010 declaration – following its pre-appointment hearing with Jo Williams, the nominated candidate for Care Quality Commission Chair – that it would “review the work of the CQC on an annual basis, and intend to invite Dame Jo to appear before the Committee again in the summer of 2011”.⁷⁹

Providing additional information to committees

Another issue that has arisen is whether committees need to be provided with additional information to inform their consideration of the candidate in front of them. There is guidance on what information committees should be provided with, prepared by the Cabinet Office.⁸⁰ It states that committees should be given ‘relevant background information’ consisting of an ‘information pack’ and CV but not information on the application process itself. Some committees have also collected further information by sending a questionnaire for candidates to complete before the hearing.

A number of our interviewees wondered whether committees could be provided with additional information on the recruitment process and on unsuccessful candidates for the job. There was near unanimity that **non-anonymised details of unsuccessful applicants should not be released**. We agree. There would be a serious risk of deterring applications if there was any possibility that names of unsuccessful candidates would become known to MPs, the media or candidates’ employers. The key question is therefore whether useful anonymised information could be provided to committees. We believe there is scope for improvement in this area. In particular, **committee deliberations could benefit from receiving anonymised details of the background of the applications received and those shortlisted**, as well as further information about the basis on which the final ministerial decision was taken.

The point of this would not be to involve MPs in selecting the final candidate, but to allow the committee to satisfy itself that due process had been followed, and that the selectors had looked at a sufficiently wide pool of candidates. As Bernard Jenkin, Chair of PASC, put it to us:

To make the pre-appointment hearing itself meaningful, we need to have far more information about the other candidates, the process that’s been gone through, where the post was advertised, the terms on which the head hunters were used, if they were used, and so on.

Fellow PASC member Charles Walker argued that if similar information were to be provided for a sequence of similar appointments, it would also enable MPs and others to assess whether there was a pattern of selecting ‘usual suspects’ at the expense of a more diverse range of appointments.

Committees might also themselves consider how to gather further information to inform their pre-appointment scrutiny of a candidate. For instance, committees might call for

written evidence or might question other experts about the challenges of the role in question. One example to note is the Justice Committee, which held an evidence session with the outgoing Information Commissioner, his deputy, and the Office's chief operating officer before the pre-appointment scrutiny hearing with the new Commissioner, Christopher Graham.⁸¹

Consolidating and revising the guidance documents

The Liaison Committee recommended that the separate guidance provided to committees and to government departments should be consolidated into a single document. We concur. **A single guidance document should be agreed between the Cabinet Office and the Liaison Committee, setting out the purpose and scope of pre-appointment hearings, as well as the procedures that should be followed before, during and after such hearings (Recommendation 11).**

In some areas current guidance should be extended. On the committee side, current guidance consists of a single page. One parliamentary official described the guidance as *"more of a procedural thing rather than what you should be asking [the candidates] or what committee members should be probing them on. I think that's almost left to the discretion of the committee."*

It is important that committees are free to decide on their own line of questioning and the focus of inquiries they hold. However, we feel that the limited nature of the current guidance may contribute to two distinct problems. First, there is insufficient clarity about what hearings should cover, which in turn leads to a lack of focus and possible disengagement of MPs from the process. Second, there is potential for disagreement over what are acceptable lines of questioning. We address these points in turn.

On the scope of hearings, the guidance emphasises that questioning should cover *"the professional competence and personal independence of the candidate"* and might also ask about *"information about the candidate's past career"* and *"the selection process for the post"*.⁸² What is not mentioned is questioning the candidate about his or her future plans and priorities. It was noted above that pre-appointment hearings can play an important role in establishing an ongoing accountability relationship between committees and appointees. This should be emphasised in the guidance.

As for what are acceptable lines of questioning, the guidance states that questioning *"may... be robust, and it may cover some areas that might not be appropriate at interview, such as party political activity... [but must not be] irrelevant, unduly personal, or discriminatory"*.⁸³ This leaves significant room for interpretation, and as a result, government observers believe that committees have on a number of occasions overstepped the mark while committee members feel they are fulfilling a valid scrutiny function by putting candidates on the spot. We conclude that **revised guidance in this area should seek to clear up confusion over whether it is acceptable to ask candidates about a number of contentious issues**, including the level of remuneration candidates will receive, their business dealings, their personal political or moral beliefs, or knowledge of grammatical forms. Any such guidance should be drawn permissively, with committee chairs ultimately free to interpret the guidelines as they see fit.

Certain specific challenges emerge when two committees hold a joint hearing with a single candidate (as occurred with the proposed Ofcom Chair, jointly appointed at the time by the Department for Business, Innovation and Skills (BIS) and the Department for Culture, Media and Sport). Joint working by select committees remains very much the exception, and according to one official, the *"logistics of it [joint hearings] are quite difficult"*. Additional guidance and support

should perhaps be provided for future joint committee work, though this is an issue that applies to other types of committee work, not just pre-appointment scrutiny.

Extending scrutiny to a wider range of appointments

One issue raised in our interviews is whether the principle of parliamentary scrutiny should be applied to a wider range of posts, not just the formal public appointments processes for ALB positions discussed above. For instance, should select committees be given the opportunity to scrutinise appointments of special advisers or even ministers? We do not feel that committees would be able to add value to the processes by which these posts are filled, since they are explicitly partisan roles. Neither would committee oversight be constitutionally appropriate. Once a government is in office, such appointments are a matter for the Prime Minister (and Deputy PM at present). Similarly, we do not consider it advisable for committees to be given a role in scrutinising appointments of Permanent Secretaries or other senior civil servants, since these are servants of ministers, not independent actors akin to the heads of the economic regulators and constitutional watchdogs discussed above. Committees can of course use their existing powers to scrutinise the performance of officials, advisers and ministers once they are in post.

One sub-category it is worth mentioning separately is that of the so-called 'GOATs' (from the phrase 'government of all the talents'), meaning individuals brought in from outside Parliament, appointed to the House of Lords and made directly into ministers. It is unrealistic to expect that the government would grant any kind of role to a cross-party committee of backbenchers over approval of ministers. Such a step would also mark a major constitutional change, and would therefore need more careful consideration. What might be feasible, however, would be a **guaranteed early post-appointment hearing with new ministerial appointees from outside Parliament** (should the committee request this). This could offer the committee the opportunity to inquire into the relevant professional expertise and experience of the new minister, and also to discuss their priorities for ministerial office (**Recommendation 12**).

Finally, one interviewee (Elfyn Llwyd MP) wondered why the choice of members of major independent inquiries, such as the Chilcott Inquiry on Iraq, is subject to no parliamentary involvement. We are persuaded that it should not be left to government alone to select the members of such bodies since such inquiries are established for the explicit purpose of examining decisions and actions of the executive. Their credibility therefore rests on demonstrable independence from government control. For these reasons, we recommend that **when a major public inquiry is being established**, the lead department should inform the relevant select committee. **The committee should then have the opportunity to hold a pre-appointment hearing with the government nominee for the chair of the inquiry.** In the case of disagreement with the committee, the minister should at least be required to appear before the committee to explain his or her decision (**Recommendation 13**).

Reforming the process for direct parliamentary appointments

As discussed, there are already a handful of appointments for which Parliament itself is formally responsible (either alone or jointly with government). Electoral Commissioners and the Chair of IPSA are appointed by a dedicated Speaker's Committee established in statute. Another example is the Parliamentary Commissioner for Standards, who is selected following a process run by the House of Commons Commission (chaired by the Speaker). Preferred candidates in all these cases are then put to the House as a whole for confirmation. The advantage of this process is that it preserves and explicitly demonstrates the independence from the executive of these important

bodies. In the case of the Electoral Commissioners, there is also mandatory consultation with all major party leaders as an additional check.

Occasionally, as noted, there have been controversies when these appointments have reached the floor of the House. These disputes were caused in part by ongoing opposition to the existence of the Electoral Commission and IPSA. But we conclude that there are certain features of this process that make confrontation and unsubstantiated allegations more likely. It is in the nature of the House to amplify confrontation, in contrast to the consensus-seeking culture of the committee room. The appointment may also suffer from not having received the backing of the relevant select committee and its chair, with the cross-party authority this stamp of approval brings with it. Further, this process presents no opportunity for candidates to answer concerns about their appointment in public.

We therefore conclude that **for the positions of Chair of the Electoral Commission and IPSA (though not necessarily for other members), future candidates put forward by the relevant Speaker's Committee should appear in public before the appropriate select committee for a pre-appointment hearing** if the committee were to request this (in the case of both the Electoral Commission and IPSA this would most likely be the Political and Constitutional Reform Committee). As at present, the final decision should then be taken on the floor of the House (**Recommendation 14**).

The benefit of this change would be that disquiet among MPs about the appointment process or candidate could be raised in public in the less charged atmosphere of a select committee. Furthermore, the committee hearing would allow the candidate to answer in person any concerns that MPs might have about their appointment (such as the alleged Scottishness of the 2001 Electoral Commission Chair). Gaining the backing of the committee with responsibility for the policy area in question should also help to smooth the passage through the House of the appointment motion. Should disputes still occur, the debate would at least be better informed by the earlier public hearing with the select committee.

We further note that this proposal is in keeping with the spirit of the TSC recommendation of 2007, which the government accepted in principle, that *"in any case where a nomination for a public appointment is subject to a vote in the House of Commons, that vote should be preceded by an opportunity for the relevant select committee to take evidence from the Government's nominee and to report"*.⁸⁴

Giving Parliament formal control of further appointments

A final question we address is whether Parliament should be given direct control over additional appointments. In *Read Before Burning*, the Institute for Government set out a package of proposals for rationalising the messy arm's length governance landscape, which included a proposal for a new category of 'Constitutional Bodies'.⁸⁵ These would be freed from executive control along the lines of the Electoral Commission model, with a budget set by Parliament and the recruitment process for their senior leaders handled by Parliament itself.

There may be a case for this radical shift in a few cases. One post we considered was the Comptroller and Auditor General (C&AG), who heads the National Audit Office (NAO). The C&AG is currently appointed by the House on a joint motion of the Prime Minister and the Chair of the Public Accounts Committee (PAC), following a recruitment process in which the Chair of PAC is closely involved along with government officials. There is also a pre-appointment hearing with PAC. The current process for appointment of the C&AG thus already offers significant opportunity for Parliament to ensure that the successful candidate will exercise the requisite

independence from government. Given that the C&AG is an Officer of the House not an agent of government, we considered whether it would be neater for the process to be run entirely by Parliament – most logically through the Public Accounts Commission.⁸⁶ This argument is intuitively convincing, but we concluded on balance that there was no need for such a radical shift at present, since Parliament already has a strong lock on both appointment and dismissal of the C&AG, and since the operational independence of the NAO is not in dispute. In addition, interviewees pointed out that the C&AG benefits from having the explicit confidence of the government as well as Parliament. This is an issue that might warrant further research and consideration in future.

A stronger case for change can be made in the case of the Parliamentary Commissioner for Administration (the 'Parliamentary Ombudsman'), who is also an Officer of the House of Commons, but is currently appointed by the government, subject to a normal pre-appointment hearing with PASC. The government does recognise the special status of the Ombudsman, inviting the Chair of PASC to participate in the recruitment process last time round, for instance, and consulting the Opposition Leader before making an appointment. Given that the same individual also fills the post of Health Service Ombudsman, there is a case for continued executive involvement in the appointment. But our view is that it is illogical for the executive to have sole control of the appointment procedure for this post, as the role of the person in this post is to hold government to account for maladministration on behalf of members of the public. We therefore recommend that **the House of Commons should be given joint control of the appointments process for the Parliamentary Ombudsman**, with a formalised veto for the Chair of PASC along the lines of that played by the Chair of PAC in the C&AG appointment. The preferred candidate should also be subject to a pre-appointment hearing with PASC and a statutory confirmation vote in the Commons (**Recommendation 15a**).

A final special case is the House of Lords Appointments Commission (HoLAC), which is currently a non-statutory body, with a chair appointed by government, but whose function manifestly relates to the legislature rather than the executive. In the case of the Chair of HoLAC, we conclude that **it would clarify rather than confuse accountability to give Parliament full control of the appointment process**, along the lines of the Electoral Commission model. For instance, a small joint committee of Lords and Commons (including the Chairs of the Lords Constitution Committee and PASC) could be established to consider applications for the post and to conduct interviews. The preferred candidate should then be subject to a public pre-appointment hearing with a select committee as at present, followed by a vote in the Commons (and perhaps the Lords too). If and when HoLAC is placed on a statutory basis, parliamentary control of the appointments process should be written into the legislation (**Recommendation 15b**).

Conclusion

In this report we have set out what we consider to be a sensible and evidence-based package of reforms to the mechanisms by which Parliament is involved in public appointments. This is a complex area that strikes at the heart of the relationship between executive and legislature, and one in which there are strong views about the best way forward. Expanding the power of Parliament to influence or even decide on senior public appointments does carry with it risks as well as benefits, and we have recognised these tradeoffs in the preceding pages. Getting it right is indeed a balancing act. We do, however, conclude that the cause of effective government can be aided by further enhancement of Parliament's role along the lines proposed. Undoubtedly our recommendations will not find favour on all sides, but we hope at least to make a constructive contribution to the ongoing debate in this area.

Appendix A: Proposed 'A List' of public appointments

Proposed list of posts to be subject to effective parliamentary veto

Economic regulators

Chair and deputies of the Office for Budget Responsibility
Chair of the Competition Commission and Office of Fair Trading (being merged)
Governor of the Bank of England
Chair of the Financial Conduct Authority (being created out of FSA)
Chair of the UK Statistics Authority

*Constitutional watchdogs**

Chair of the Charity Commission
Chair of the Commission for Equality and Human Rights
Chair of the Committee on Standards in Public Life
Commissioner for Public Appointments
First Civil Service Commissioner
Information Commissioner

Public service and utility regulators

Chair of Monitor
Chair of Ofcom
Chair of Ofgem
Chair of Ofqual
Chair of Ofwat
Chair of the BBC Trust
Chair of the Care Quality Commission
Chair of the Civil Aviation Authority
Chair of the Committee on Climate Change
Chair of the Food Standards Agency
Chair of the Office of Rail Regulation

Independent inspectorates

HM Chief Inspector of Constabulary
HM Chief Inspector of Prisons
HM Chief Inspector of Probation
HM Chief Inspector of Schools

** We also recommend that Parliament should control the appointment processes for the House of Lords Appointments Commission Chair and, jointly with government, the Parliamentary Ombudsman. At the least these should be included on the 'A List' above.*

Appendix B: Pre-appointment hearings, 2007–10

Appointment	Committee	Candidate	Party affiliation of candidate (if any known)	Date of hearing	Members recorded as present	Recommendation	Division*	Ayes by party	Noes by party
Chair, Statistics Board	Treasury	Sir Michael Scholar		18 July 2007	6 (of 14 on the committee)	Positive (with recommendations on the process)	NR		
Chair, Care Quality Commission	Health	Baroness Young		8 May 2008	6 (of 11)	Positive	NR		
Chair, House of Lords Appointments Commission	Public Administration (PASC)	Lord (Michael) Jay of Ewelme	Crossbench peer	22 July 2008	7 (of 11)	Positive	NR		
Chair, Office for Legal Complaints	Justice	Elizabeth France		21 October 2008	7 (of 14)	Positive	NR		
Chair, Ofcom	Joint Business and Enterprise and Culture, Media and Sport	Dr Colette Bowe		13 January 2009	7 (of 11) BER 4 (of 11) CMS	Positive (stated intention to hold Dr Bowe to time commitment)	NR		
Information Commissioner	Justice	Christopher Graham	Lib Dem (ex-councillor)	27 January 2009	6 (of 14)	Positive	NR		
Chair, Infrastructure Planning Commission	Communities and Local Government	Sir Michael Pitt		16 March 2009	6 (of 11)	Positive	NR		
HM Inspector of Constabulary	Home Affairs	Sir Denis O'Connor		21 April 2009	12 (of 14)	Positive	NR		
Chair, Office of Rail Regulation	Transport	Anna Walker		29 April 2009	9 (of 11)	Positive	NR		
Chair, Economic and Social Research Council	Innovation, Universities, Science and Skills	Dr Alan Gillespie		5 May 2009	6 (of 14)	Positive	NR		

Chair, Biotechnology and Biological Sciences Research Council	Innovation, Universities, Science and Skills	Sir Tom Blundell		13 May 2009	6 (of 14)	Positive	NR		
Chair, Food Standards Agency	Health	Lord Rooker	Labour (former minister)	6 July 2009	6 (of 11)	Positive	3-2	Labour: 2 Cons: 1	Cons: 1 Indep: 1
Chair, Science and Technology Facilities Council	Innovation, Universities, Science and Skills	Professor Michael Sterling		13 July 2009	4 (of 13)	Positive	NR		
Deputy Chairs, Infrastructure Planning Commission	Communities and Local Government	Robert Upton and Dr Pauleen Lane		20 July 2009	7 (of 11)	Positive	NR		
Children's Commissioner	Children, Schools and Families	Dr Maggie Atkinson		12 October 2009	9 (of 14)	Negative (concerns expressed about candidate's independence)	NR		
Local Government Ombudsman	Communities and Local Government	Dr Jane Martin		12 October 2009	6 (of 11)	Positive	2-1	Labour: 2	Cons: 1
Chair, Natural England	Environment, Food and Rural Affairs	Poul Christensen		25 November 2009	11 (of 14)	Positive	NR		
Chair, Advisory Council on Business Appointments	PASC	Lord Lang	Conservative (former minister)	26 November 2009	8 (of 11)	Positive (expressed concerns about candidate's business appointments)	6-1	Labour: 4 Cons: 2	Labour: 1
HM Chief Inspector Crown Prosecution Service	Justice	Mike Fuller		1 February 2010	8 (of 14)	Positive (supported an annual appraisal by stakeholders and peers)	NR		
Chief, Inspector of Prisons	Justice	Nicholas Hardwick		18 March 2010	7 (of 14)	Positive	NR		

Chair of the Care Quality Commission	Health	Dame Jo Williams		9 September 2010	8 (of 11)	Positive (proposed annual reviews of CQC by the committee)	NR		
Chair of the Office of Budget Responsibility	Treasury	Robert Chote		21 September 2010	9 (of 13)	Positive	NR		
Additional Members of the Budget Responsibility Committee	Treasury	Professor Stephen Nickell and Graham Parker		25 October 2010	10 (of 13)	Positive	NR		
First Civil Service Commissioner and Commissioner for Public Appointments	PASC	Sir David Normington		16 November 2010	6 (of 11)	Positive (serious concerns expressed about selection process)	2-1	Cons: 1 Lib Dem:1	Labour: 1

* NR = None recorded (presumed unanimity)

Sources: Select Committee reports; UCL Constitution Unit data

Appendix C: List of posts currently subject to pre-appointment hearings

(List agreed in 2008 between Liaison Committee and Cabinet Office)

Title of post	Committee
Chair of the Gas and Electricity Markets Authority	BIS
Chair of the Competition Commission	BIS
Chair of the Office of Fair Trading	BIS
Chair of the Postal Services Commission	BIS
Chair of Ofcom	BIS and CMS
Chair of the Tenant Services Authority	CLG
Chair of the Audit Commission	CLG
Chair of the Infrastructure Planning Commission	CLG
Chair of Standards for England	CLG
Chief Fire and Rescue Officer	CLG
Local Commissioners for Administration in England	CLG
Chair of the Commission for Equality and Human Rights	CLG
Deputy Chairs of the Infrastructure Planning Commission	CLG
Chair of the Qualifications and Curriculum Development Agency	CSF, now Education
Chair of Ofqual	CSF, now Education
Children's Commissioner for England	CSF, now Education
HM Chief Inspector of Education, Children's Services and Skills	CSF, now Education
Service Complaints Commissioner	Defence
Chair of the Agricultural Wages Board	EFRA
Chair of the Committee on Climate Change	EFRA
Chair of the Environment Agency	EFRA
Chair of the Gangmaster Licensing Authority	EFRA
Chair of Natural England	EFRA
Chair of the Water Services Regulatory Authority	EFRA
Rural Advocate	EFRA
Chair of the Appointments Commission	Health
Chair of the Care Quality Commission	Health
Chair of the Food Standards Agency	Health
Health Service Commissioner for England	Health
HM Chief Inspector of Constabulary	Home Affairs
HM Chief Inspector of the Crown Prosecution Service	Justice
Chair of the Judicial Appointments Commission	Justice
Chair of the Office for Legal Complaints	Justice
HM Chief Inspector of Prisons	Justice

HM Chief Inspector of Probation	Justice
Information Commissioner	Justice
Prison and Probation Ombudsman	Justice
Comptroller and Auditor General	PAC
Chair of the Advisory Committee on Business Appointments	PASC
Chair of the Charity Commission	PASC
Chair of the Committee on Standards in Public Life	PASC
Chair of the House of Lords Appointments Commission	PASC
Commissioner for Public Appointments	PASC
First Civil Service Commissioner	PASC
Parliamentary Commissioner for Administration	PASC
Chair of the Economic and Social Research Council	S&T
Chair of the Arts and Humanities Research Council	S&T
Chair of the Biotechnology and Biological Sciences Research Council	S&T
Chair of the Engineering and Physical Sciences Research Council	S&T
Chair of the Medical Research Council	S&T
Chair of the Natural Environment Research Council	S&T
Chair of the Science and Technology Facilities Council	S&T
Chair of the Higher Education Funding Council for England	S&T
Director of the Office for Fair Access	S&T
Chair of the Office of Rail Regulation	Transport
Chair of the Statistics Authority	Treasury, now PASC
Chair of the Social Security Advisory Committee	W&P
Pensions Ombudsman	W&P
Pensions Protection Fund Ombudsman	W&P

Source: Reproduced from Waller and Chalmers (2010), *An Evaluation of Pre-appointment Scrutiny Hearings*, pp.125–126.

NB. List does not include posts such as members of the Monetary Policy Committee, who are questioned by a select committee outside of the formal pre-appointment scrutiny framework.

Endnotes

¹ We use the neutral term ALB instead of the somewhat loaded and inaccurate 'quasi-autonomous non-governmental organisation' (quango).

² Anthony King, 'Modes of executive-legislative relations: Great Britain, France, and West Germany', *Legislative Studies Quarterly*, Vol. 1, No. 1, 1976, pp. 11–36.

³ Hansard Society Commission on Parliamentary Scrutiny, *The Challenge for Parliament: Making Government Accountable*, 2001, p. 20.

⁴ A survey of nearly 200 MPs in 2004 found that while constituency work was rated as 'very important' by 90% of MPs, just 61% answered likewise for parliamentary committee work. Source: Jonathan Bradbury and Meg Russell, 'The local work of Scottish MPs and MSPs', *Regional and Federal Studies*, 2005, p. 10. A 2006 study also found that new members spent less than 15% of their time on committee work, compared with nearly 50% on constituency casework. Source: Gemma Rosenblatt, *A Year in the Life: From Member of Public to Member of Parliament*, Hansard Society, 2006, p. 31.

⁵ This was illustrated in autumn 2010, when a number of members resigned their committee posts just two months after being selected in order to take up positions as ministerial aides (parliamentary private secretaries), junior ministers and shadow ministers.

⁶ Following recommendations made in Modernisation Committee, First Report, *Select Committees*, HC 224, 2002.

⁷ Most notably in the decision of the House of 14 May 2002.

⁸ Liaison Committee, Second Report, *Select Committees: Modernisation Proposals*, HC 692, 2002.

⁹ See Public Administration Select Committee, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, Fourth Report of Session 2003–04, HC 422, 2004; Ministry of Justice, *Governance of Britain – Constitutional Renewal*, Cm 7342-I, 2008; HM Government, *The Coalition: Our Programme for Government*, 2010.

¹⁰ Andrew Tyrie, *Mr Blair's Poodle Goes to War*, Centre for Policy Studies, 2004.

¹¹ Robin Cook, 'A reform programme for consultation, memorandum submitted by the Leader of the House of Commons to the House of Commons Modernisation Committee' in *Modernisation of the House of Commons – Memoranda*, 2001, www.publications.Parliament.uk/pa/cm200102/cmselect/cmmodern/440/44003.htm

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- ⁵⁰ Question asked by Michael Fallon MP, Treasury Committee, *Appointments to the Budget Responsibility Committee*, Minutes of Evidence, 25 October 2010, Q. 98.
- ⁵¹ Phillip Thornton, 'MPs admit football jibe was an own goal', *Independent*, 19 March 2001.
- ⁵² US Constitution, Article II, Section 2, Clause 2 (also known as 'the appointment clause').
- ⁵³ See for instance George Packer, 'The empty chamber: just how broken is the Senate?', 9 August 2010, *New Yorker*, www.newyorker.com/reporting/2010/08/09/100809fa_fact_packer
- ⁵⁴ PASC, *Selection of a new New Chair of the Advisory Committee on Business Appointments*, : Third Report of Session 2009–10, 2009, p. 4.
- ⁵⁵ Former Scottish Labour leader Jack McConnell to the post of High Commissioner to Malawi, a post he was ultimately unable to fill; and Baroness Amos to the post of High Commissioner to Australia.
- ⁵⁶ Oral evidence to Public Administration Select Committee, cited in Public Administration Select Committee, *Parliament and Public Appointments*, 2008, p. 8.
- ⁵⁷ Jenny Booth, 'Schools Secretary Ed Balls branded a bully after overriding MPs', *The Times*, 19 October 2009, www.timesonline.co.uk/tol/news/politics/article6880607.ece
- ⁵⁸ The position of Ofqual Chair was not on the original list of positions subject to committee hearings published in January 2008. It was added in June 2008. Having started the selection process in December 2007 and advertised the role in January 2008, Ed Balls had written to Parliament in April saying he wanted Kathleen Tattersall as Chair as both an interim and later permanent head of Ofqual. The Children, Schools and Families Committee Chair and some members expressed annoyance that they had not held a hearing on the head of this new body, although the minister later stated that he would have been open to a formal request to this effect.
- ⁵⁹ Jonathan Sayeed, *House of Commons Hansard*, 9 January 2001, Col. 845.
- ⁶⁰ For instance, the TSC has frequently called in MPC members during their time in office.
- ⁶¹ According to media reports and interview evidence, the CMS committee almost issued a warrant to compel Rebekah Brooks of News International to appear as part of its inquiry into phone hacking, but ultimately backed down. See Nicholas Watt, 'MPs backed down from calling Rebekah Brooks to Commons', *Guardian*, 10 September 2010.
- ⁶² The Hansard Society states that "the increased demands on select committee time and the commitment clashes that Members often experience between committee, other parliamentary and constituency duties, result... in low attendance levels at some committee meetings". Evidence to Committee on Reform of the House of Commons, *Rebuilding the House*, HC 1117, 2009, Ev. 27.
- ⁶³ Waller and Chalmers, *An Evaluation of Pre-appointment Scrutiny Hearings*, 2010, p. 114.

⁶⁴ Ibid.

⁶⁵ See for instance, Culture, Media and Sport Committee, *Work of the Committee in 2007–08*, Second Report of Session 2008–09, HC 188, 2009, paras 28–29. In early 2011 the Coalition government confirmed that it would allow its preferred candidate to replace Sir Michael Lyons in this post to be questioned by the CMS committee at the pre-appointment stage.

⁶⁶ This case was made in Ministry of Justice, *The Governance of Britain*, Cm 7170, 2007, p. 29.

⁶⁷ Waller and Chalmers, *An Evaluation of Pre-appointment Scrutiny Hearings*, 2010, pp. 119–120.

⁶⁸ Gash et al., *Read Before Burning*, 2010, p. 56.

⁶⁹ Indeed, TSC chair Andrew Tyrie reports that a senior government member said: “*This is a one-off, you know. We don’t want this to serve as a precedent.*” See Andrew Tyrie, ‘Government by explanation: the future of select committees’, speech to the Institute for Government, 7 March 2011.

⁷⁰ See written statement by Lord McNally, Minister of State in the Ministry of Justice, *House of Lords Hansard*, 16 February 2011, Col. 80WS.

⁷¹ Public Administration Committee, Fourth Report, *Pre-appointment Hearing for the Dual Post of First Civil Service Commissioner and Commissioner for Public Appointments*, HC 601, 2010.

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⁷⁴ John Dunford, *Review of the Office of the Children’s Commissioner (England) (Department for Education)*, 2010, p. 35.

⁷⁵ Moyes and Wood, *Ministerial Accountability in an Era of Devolved Public Services*, 2010.

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⁷⁷ Business and Enterprise and Culture, Media and Sport Committees, *Pre-appointment Hearing with the Chairman-elect of Ofcom, Dr Colette Bowe*, first Joint Hearing Report of Session 2008–09, HC 119, 2008.

⁷⁸ SMART targets are ‘specific, measurable, achievable, realistic and time-limited’.

⁷⁹ Health Committee, *Appointment of the Chair of the Care Quality Commission*, First Report of Session 2010–11, HC 461, 2010, p. 5.

⁸⁰ Cabinet Office, *Pre-Appointment Hearings by Select Committees: Guidance for Departments*, 2009.

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⁸³ Cabinet Office, *Pre-appointment hearings by Select Committees*, 2009, p. 12.

⁸⁴ See Treasury Committee, *The Appointment of the Chair of the Statistics Board: Government Response to the Committee’s Ninth Report of Session 2006–07*, Ninth Special Report of Session 2006–07, HC 1065, 2007, p. 2.

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⁸⁶ The Public Accounts Commission is a separate body from the Public Accounts Committee, established in statute to examine the NAO’s estimates and budgets.

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