



# Ten questions the proposed commissioner for public appointments must answer

Dr Matthew Gill and Grant Dalton

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## Introduction

In July 2021 the government announced William Shawcross as the prime minister's preferred candidate for the role of commissioner for public appointments – the independent figure who provides assurance that appointments by ministers to the boards of public bodies are made in line with the Governance Code for Public Appointments.<sup>1</sup> On Thursday 16 September, Shawcross will be questioned by the Public Administration and Constitutional Affairs Committee (PACAC) in a pre-appointment hearing. The committee will then decide whether to recommend his appointment, although its recommendation is not binding on ministers.

The hearing is a key opportunity to assess how well-qualified Shawcross is for the job and what his views are on how public appointments should be regulated. In particular, it offers a space for public scrutiny of his independence from ministers, his track record in other roles and how robustly he would be willing to enforce the letter and spirit of the governance code.

In our view, the public appointments system for which the proposed commissioner will become responsible is strained and needs reform. As such, it is particularly important that the committee asks Shawcross in depth about the way he sees the job and how he might improve the appointments process. This short paper sets out 10 questions the committee should ask him – and the kinds of answers we think a successful candidate should give.

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## The public appointments system is under strain

The public appointments system is used to recruit board members, chairs and some key executive staff to 333 public bodies. The commissioner oversees these – and did so for more than 900 new appointments and 651 re-appointments in the 2019/20 financial year.<sup>2</sup> These appointments are made in line with the Governance Code on Public Appointments, a document drawn up in 2016 by ministers (in consultation with the commissioner) which lays out how the public appointments process should work.<sup>3</sup>

There are signs that the system is not working as it should. Many appointments have been delayed and filled on a temporary basis due to Covid, bypassing the usual open application process, and the process for some appointments has been rerun.<sup>4</sup> The sustainability of the system is also being questioned: the current commissioner, Peter Riddell,<sup>\*</sup> and the Committee on Standards in Public Life have both expressed concern that the balance between ministerial patronage and appointment by merit is under threat. The committee – which advises the prime minister on ethical standards – warned that “it is unlikely that a system so dependent on personal responsibility [both of ministers to act with restraint and of the commissioner to speak out] will be sustainable in the long term.”<sup>5</sup> Shawcross’s appointment, if confirmed, matters because it will be his role to help ministers maintain this balance.

The current public appointments system was shaped by Lord Grimstone’s 2016 review, which gave ministers, rather than the commissioner, the right to appoint the interview panels that assess candidates and decide who is appointable.<sup>6</sup> The commissioner’s role changed from managing a group of public appointments assessors to regulating a system managed by ministers and civil servants. The Grimstone reforms were greeted cautiously by the Committee on Standards in Public Life at the time, which worried that they “might result in a public perception that there has been a drift to a system with heightened political patronage”.<sup>7</sup> Ministers are, however, still required to make any appointments which fall under the commissioner’s jurisdiction (known as ‘regulated’ appointments) from a shortlist of candidates following a merit-based fair and open competition.

Riddell has highlighted several concerns that could together threaten the system, even though not all of them directly contravene the governance code. These include attempts by ministers to appoint political allies as senior independent members of recruitment panels and the frequency with which ministers have vetoed re-appointments.<sup>8</sup> It is the commissioner’s role to identify such problems, raise them with ministers and, as a last resort, to publicly criticise deviations from the governance code and the principles underlying it. To do this effectively the commissioner must be clearly independent of ministers and prepared to confront any problematic developments.

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\* Riddell has been commissioner for public appointments since April 2016. He was previously director of the Institute for Government.

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## Questions PACAC should ask about Shawcross's intended approach to the role and the public appointments process

### 1. Is the public appointments process working – and if not, how could it be improved?

Some aspects of the Grimstone reforms have succeeded on their own terms, with ministers now more influential over appointments alongside a clear role for the commissioner. But concern remains for the future and Riddell has suggested several changes to the system, including removing the right for ministers to appoint candidates deemed unappointable by a selection panel (albeit that this has never yet happened), giving select committees a veto over key standards and ethics appointments, and the commissioner being consulted on the full composition of interview panels for significant appointments.<sup>9</sup> The power to make these changes, however, rests with ministers and not with the commissioner.

The committee should ask Shawcross whether he shares Riddell's views of the changes that should take place, particularly regarding the appointment of candidates deemed unappointable and the role of parliament. It should also explore Shawcross's own views on how well the system is working and how he thinks it could be improved.

### 2. How would you respond if a minister, adviser or official discussed their preferred candidates for an appointment in public?

Ministers and their advisers have been accused of undermining the public appointments process by briefing newspapers about their preferred candidates for a post before recruitment is complete.<sup>10</sup> This could put off potential applicants who may worry that they will not receive fair consideration, as well as putting pressure on recruitment panels to declare the preferred candidate appointable. Julian Knight, chair of the Culture, Media and Sport Select Committee, criticised the government in January 2021 for damaging the recruitment process for BBC chair by discussing named candidates in the media.<sup>11</sup>

Riddell has also been critical of such pre-briefing, but without being able to prevent it. The committee should ask Shawcross how he would seek both to encourage greater discretion and to hold those responsible for leaks publicly accountable.

### 3. How would you make the public appointments system faster?

The Grimstone review was partly intended to make the public appointments process more streamlined and included an ambition for most appointments to be announced within three months of applications closing. This ambition has not been met. A review by Riddell noted that in 2018/19 most appointments took over three months,<sup>12</sup> and the picture is unlikely to have improved since then given the disruption caused by the

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pandemic. As well as leaving posts unfilled or creating a need for interim appointments, lengthy processes risk putting off candidates who do not have the patience or financial security to wait for a decision.

The problem is both a political and an administrative one. Departments have often been too slow in checking and approving candidates, and ministerial approval can take too long due to competing priorities.<sup>13</sup> The proposed commissioner needs to address these problems, or at least hold the government to account for delays, and the committee should ask how Shawcross intends to do this.

#### **4. How would you reduce the number of temporary and unregulated appointments?**

Exceptional appointments made without competition are permitted by the governance code, but ministers must consult with the commissioner before they announce such an appointment and must publicly justify it.<sup>14</sup> These appointments, which are generally made to cover a vacancy due to a delayed appointment, bypass the normal checks and balances, including panel interviews, and so should be avoided if possible. But such appointments are becoming increasingly routine, albeit mainly for limited terms of six months or a year.<sup>15</sup> This is partly understandable given the pandemic, but it should revert to normal as soon as possible. There is also a lack of transparency around unregulated appointments that fall outside of the commissioner's remit, such as the appointments of tsars and heads of taskforces.<sup>16</sup>

The committee should seek to establish how Shawcross intends to reduce the number of temporary appointments, for instance by encouraging departments to start appointment processes earlier, and how he would stand up to the government if the current trend continued. It should also ask whether he agrees with Riddell that departments should publish a list of any unregulated appointments made.<sup>17</sup>

#### **5. Do you think non-executive appointments to departmental boards should be regulated? If so, how would you persuade ministers of this?**

Departmental non-executive directors (NEDs) sit on the boards of government departments, providing independent challenge to government and offering guidance and help to ministers, often from a commercial perspective. But their appointments are not regulated by the commissioner (or anyone else) and there have been suggestions that due process has not been followed in some appointments. Our recent report, published in the wake of Matt Hancock's resignation from the health department after questions were raised about his personal relationship with a departmental NED, recommended that appointments of departmental NEDs should be regulated by the commissioner, as other public appointments are.<sup>18</sup>

The committee should ask Shawcross for his views on whether non-executive appointments to departmental boards should be regulated and if so, how he intends to persuade ministers to bring them within the ambit of regulation.

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## 6. How would you respond to any attempts by ministers to appoint political allies as senior independent panel members?

One of the commissioner's key means of influence is through senior independent panel members, who are chosen by ministers – in consultation with the commissioner – to sit on recruitment panels for certain key posts. Senior independent panel members cannot be “currently politically active”.<sup>19</sup> However, Riddell has complained of repeated “attempts by ministers to appoint people with clear party affiliations”, which he has had to rebuff.<sup>20</sup>

The committee should establish how Shawcross would react if a minister sought to appoint a political ally as a senior independent panel member. It should also ask how he would define “current political activity”, and what sort of candidate he would see as an inappropriate choice for a panel member.

## Questions PACAC should ask about Shawcross's suitability as commissioner

### 7. What experience do you have of making regulatory decisions and of running appointment or recruitment processes?

The job specification for the role states that an understanding or experience of senior recruitment is desirable, and requires candidates to understand operating in a regulatory regime.<sup>21</sup> Shawcross can demonstrate both kinds of experience from his time as Charity Commission chair between 2012 and 2018, but he may have relatively less experience of senior recruitment and the public appointments process.

The Charity Commission, which regulates charities in England and Wales, changed for the better during Shawcross's tenure. The National Audit Office (NAO) gave it a critical report in 2013 but by 2017 found that it had “improved significantly” in a number of areas including its strategic focus, board effectiveness and digital transformation. Shawcross also received praise elsewhere for this achievement, although some felt that it came at the price of an overly disciplinary style of engagement with the charity sector.<sup>22</sup> The committee should explore how Shawcross intends to combine the regulatory function of the commissioner with, for example, encouraging a wide range of applications for regulated appointments.

As it did in Riddell's case,<sup>23</sup> the committee should probe the extent of Shawcross's knowledge and understanding of recruitment and appointments to senior positions in large organisations. Shawcross will be heavily reliant on his Charity Commission experience here. He received some criticism for a perceived lack of sector experience among some of the board members he appointed, but the NAO highlighted an improvement in the board's overall governance and effectiveness and that it had brought in more skills in some key functional areas such as change management and digital.<sup>24</sup>

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## **8. In your recent career, what evidence can you give of having stood up to the government?**

The commissioner's power largely derives from a right to publicly criticise the government. Choosing when to do so, or to threaten to do so, is a key aspect of the role. Commissioners must be prepared to stand up to the government when they perceive it to have made the wrong decision, without losing ministerial or public confidence or becoming partisan.

Shawcross has had a long career in journalism and writing that has involved forming critical opinions on politicians and other figures, although his career in government – as Charity Commission chair and in previous international refugee and crisis roles – has not required him to regulate or directly criticise the UK government itself. But he does have experience from his role at the Charity Commission of standing up to government on funding decisions and navigating a politically controversial brief.<sup>25</sup> The committee should ask him how far he would be willing to stand up publicly to government, and what evidence he could provide that he would be prepared to criticise ministers.

## **9. How would you respond to concerns that you may be too close to ministers to assess their decisions dispassionately?**

Shawcross has never been directly involved in Conservative Party politics, but has served as director of the Henry Jackson Society and been a senior fellow at Policy Exchange, both right-leaning think tanks. His daughter Eleanor is a former advisor to George Osborne and married to Conservative life peer Lord Wolfson.

None of this should rule him out from becoming commissioner or performing well in the role. Public appointees are permitted to hold political views and, as Riddell has stated, even membership of a political party would be “neither a qualification nor a disqualification from appointment”.<sup>26</sup> But the closer Shawcross's relationships with ministers, the greater the onus on him to persuade the committee that he can and will act independently in this key scrutiny position.

## **10. Could any of your past work or public comment make it difficult for you to fulfil any aspects of the role?**

It is important that the commissioner has public credibility in performing all aspects of their role. In Shawcross's case, the committee might probe his plans to increase the diversity of public appointments, which is an explicit responsibility on which the commissioner documents progress in their annual report. Shawcross is a controversial figure in this context: former Conservative Party chair Baroness Warsi, along with numerous third-sector organisations, accused him of targeting Muslim charities in his role as chair of the Charity Commission,<sup>27</sup> although her comments are disputed by Shawcross and by the Charity Commission itself. Shawcross's recent appointment to chair a review of Prevent, a government anti-radicalisation programme, has led to a boycott of that review by many Islamic groups.<sup>28</sup>

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The committee should ask how Shawcross would maintain confidence amongst minorities and show that he understands the importance of diversity in public appointments. It should also explore his plans to encourage applications for public appointments from all faiths and backgrounds. More generally, it should ask what diversity means to him and what plans he has to fulfil the commissioner's obligations in this regard.

## **Conclusion**

William Shawcross is the prime minister's preferred candidate for an important position in national life at a moment when significant questions are being asked about the public appointments system. The role will be a testing one, and Shawcross's appearance before PACAC on 16 September will therefore be worth watching closely. The proposed commissioner's approach will be consequential not only for the public appointments process but, by extension, for the many public bodies to which regulated appointments are made.

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