



House of Commons  
Public Administration Select  
Committee

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**Government By  
Appointment: Opening  
Up The Patronage  
State**

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**Fourth Report of Session 2002–03**

*Volume I*





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Public Administration Select  
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# Government By Appointment: Opening Up The Patronage State

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**Fourth Report of Session 2002-03**

***Volume I***

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## The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and the committee shall consist of eleven Members.

### Current membership

Tony Wright MP (*Labour, Cannock Chase*) (Chairman)  
Mr Kevin Brennan MP (*Labour, Cardiff West*)  
Annette Brooke MP (*Liberal Democrat, Mid Dorset and Poole North*)  
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Mr Gordon Prentice MP (*Labour, Pendle*)  
Hon Michael Trend, CBE MP (*Conservative, Windsor*)  
Mr Brian White MP (*Labour, Milton Keynes North East*)

The following members were also members of the committee during the parliament.

Mr Anthony Steen MP (*Conservative, Totnes*)  
Mr Anthony D Wright MP (*Labour, Great Yarmouth*)

### Powers

The committee is one of the select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/parliamentary\\_committees/public\\_administration\\_select\\_committee.cfm](http://www.parliament.uk/parliamentary_committees/public_administration_select_committee.cfm). A list of Reports of the Committee in the present Parliament is at the back of this volume.

### Committee staff

The current staff of the Committee are Philip Aylett (Clerk), Clive Porro (Clerk), Chris Carrington (Committee Specialist), Jackie Recardo (Committee Assistant) and Jenny Pickard (Secretary).

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*'There is existing in man, a mass of sense lying in a dormant state, and which unless something excites it to action, will descend with him, in that condition, to the grave. As it is to the advantage of society that the whole of its facilities should be employed, the construction of government ought to be such as to bring forward, by quiet and regular operation, all that capacity'*

(Thomas Paine<sup>1</sup>)

*'In all the work that we do what we have discovered is that leadership talent comes in all shapes, sizes, colours and genders'*

(Hamish Davidson, chairman of the recruitment agency, Veredus Executive Resourcing, in evidence to the Committee, 13 February 2003<sup>2</sup>)

## Summary

This report is the first major Parliamentary examination of the new appointments procedures for public bodies. The system, established in the 1990s, sought to base appointments on merit and to subject them to independent scrutiny. The creation of the post of Commissioner for Public Appointments, combined with independent assessment in every department, has brought greater integrity to these processes. Overall, there has been considerable improvement in the public appointments system in recent years. Nevertheless, we make a series of recommendations that are designed to improve the resilience and further increase the integrity of the process. In particular, we argue that

- the Commissioner for Public Appointments should assume full responsibility for recruiting and training independent assessors, the Commissioner's 'eyes and ears';
- the independent assessors should be involved in every stage of appointments;
- the remit of the Commissioner and her Office should be extended to a fuller range of public bodies;
- whether particular bodies should come under the Commissioner's remit should be recommended by the Commissioner and reported to Parliament;
- the Commissioner and her Office should become wholly independent of the executive; and
- the Commissioner and her Office should be funded sufficiently to fulfil this wider range of responsibilities.

We recommend that departments employing recruitment consultants in public appointments should ensure that they are fully conversant with the statutory Code of Practice governing appointments and the principles that underlie the Code, and comply with these provisions.

The general public still believes that appointments are the preserve of the privileged few,

<sup>1</sup> The Rights of Man, 1791

<sup>2</sup> Q1291

even if not always a 'fix', or the product of 'cronyism' as often alleged by the media. We are satisfied that the Government is genuinely committed to opening up appointments to a wider range of people, and especially to increasing the proportions of women, members of ethnic minorities and people with disabilities on the boards of public bodies. There has been real progress in doing so since 1997, but appointed members of these boards are still overwhelmingly (in the Commissioner's phrase) 'male, pale and stale'.

Diversity on public bodies must be increased. In our view, more representative bodies would assist the Government's goal of increasing public confidence in the integrity of the appointments process.

We do not believe that merit and diversity are incompatible. We are satisfied that attempts to achieve greater diversity have not led either to unlawful positive discrimination or a dilution in standards. Greater diversity on public bodies is not simply a desirable goal. It is a significant component of the basic human right to equal regard and treatment, regardless of difference. The Government should bring forward a Single Equality Bill to promote equality and end discrimination for all minorities. This would provide a statutory framework for equality and more diverse appointment as well as satisfying international and EU commitments to equal treatment for all. The duty upon the National Assembly of Wales to promote equality has made a significant contribution to its determined strategy to make its public bodies representative of Welsh society.

Socio-economic background is a major barrier to increasing diversity on public bodies, not only inhibiting the recruitment of women, people from ethnic minorities and people with disabilities, but also a wider range of white men. Age and regional background are also likely to create barriers.

We have been impressed by the efforts of the Commissioner for Public Appointments and the Cabinet Office to encourage women and members of minorities to put themselves forward for places on public bodies. But we do not believe that these efforts yet match the scale of the task. It is necessary to counter long-established traditions that prejudice efforts to recruit more widely. Departmental policies on remuneration reflect these older traditions, with no real coherence or consistency. The majority of places, especially on advisory bodies, are unpaid. We found no evidence that remuneration is tailored to encouraging a wider range of people to apply for posts. We are also persuaded that meeting times, hours, expenses and benefit rules are not geared to the needs of working people, women, or those with caring obligations or disabilities.

Thus we recommend a high-profile national strategy to increase diversity and lay representation on public bodies. We recommend that the criteria for membership of boards should be widened from the current narrow terms to a wider competency-based approach; that more chairs and members of boards should be paid appropriately; that the terms on which people serve on boards should be made more flexible; and that mentoring and apprenticeship schemes should be more widely used to assist non-traditional members of boards to acclimatise to the demands on them.

More could be done to recruit able people from existing networks of women, ethnic minorities, people with disabilities and working people. But we also recommend that the

Government should enter into an experiment with appointment by a form of lot, using as a model the pioneering work of the National Lottery Community Fund's regional committees, which randomly recruit people from the electoral roll and rigorously ensure their ability and suitability for public service. We also recommend the use of elections in some circumstances, especially at local level.

We assess the case for a more assertive Parliamentary approach to public appointments. We recommend that, in the case of key posts, select committees should have the power, after a hearing with proposed appointees, to issue a Letter of Reservation which would lead to the re-opening of the competition for a post.

Finally, we make the case for a Public Appointments Commission, on the model of the successful NHS Appointments Commission, to take over the actual process of appointment from ministers. Our view is that a single body of this kind, operating a transparent and standard process independently of ministers and fully accountable to Parliament, is necessary to create public confidence in the integrity of the system, to eradicate any element of patronage, and to provide a unified and professional focus within government for work on appointments. Ministers would continue to determine the roles of public bodies and the criteria and qualifications for board members, but would not be directly involved in making actual appointments. In the absence of such a commission, we recommend a new structure for co-ordinating public appointments within government.

All our recommendations flow from a recognition of the centrality of appointment in governance arrangements. This is why it is important to ensure that the process of appointment has integrity and is free from the taint of patronage. It is also why the public appointments system should be seen as an opportunity to enlist large numbers of people, of all backgrounds and groups, for the task of public service. Reform aimed at securing better public services therefore needs to include attention to the process of appointing those people who run many of these services.



# 1 Introduction

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1. Public appointment, and patronage, are integral to all levels of government in the United Kingdom. The system extends from the centre of power, where some unelected Ministers still hold major offices of state, down to the level of local authorities and local services. This is the case in all modern democracies, but patronage runs especially deep in Britain because of our history as a constitutional monarchy, with the royal prerogative allowing Ministers to exercise wide, diverse and often ancient powers of patronage.

2. The establishment in recent decades of hundreds of unelected public bodies—referred to in the Committee’s Fifth Report of Session 2000–2001<sup>3</sup> as the “quango state”—has further entrenched the role of appointment. But the “appointed state” ranges far wider than the “quango state”. Tens of thousands of appointed people are involved in many aspects of the governance of Britain—from the highest courts in the land to magistrates’ courts, from central decisions in the NHS to local care trusts, from overseeing the BBC and independent television, the regulation of utilities and inspection of prisoners’ conditions to the provision of social housing, post-16 education, tribunals, skills training, museums and local lottery grants. Crucial decisions affecting the health of communities, the preservation of the national heritage, the liberty of individuals and the prosperity of companies are taken by appointees. In short, public appointments matter.

## Our focus

3. In this inquiry, we have had two central objectives. Firstly, we have sought to discover whether government is applying proper and consistent principles in public appointments, and to consider what procedural improvements may be needed. Secondly, and more positively, we have examined ways in which the system might be enhanced to encourage a wider and more diverse range of people to apply for public service. Taken together, these improvements will make public appointments fairer. They should also, as we shall see, help to produce more effective public services, delivered and guided by bodies which better reflect the reality of life in Britain today.

4. This report does not, however, seek to examine all types of public appointment. Judicial and tribunal appointments, for instance fall within the remit of another select committee. Public appointments under devolved authorities are a matter for their own representative bodies. Thus we concentrate in this report on public appointments within the sphere of central government and also confine our inquiry largely to ‘the quango state’—Non Departmental Public Bodies (NDPBs), public corporations, ‘other’ public bodies, task forces and ad-hoc advisory bodies sponsored by government departments.

## A census of the appointed state

5. Before examining these issues, we found it instructive to attempt to calculate how many people were involved in the operation of this “appointed state”. We discovered early on

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<sup>3</sup> HC 367

that there are no precise figures for the very large number of people who are appointed to this great variety of public bodies and positions, nor even for how many public bodies exist.

6. The Committee first attempted to ‘map’ public bodies in its report “Mapping the Quango State”, identifying some 300 executive NDPBs and over 530 advisory NDPBs in central and devolved government; more than 5,300 local quangos; and some 2,300 local partnerships, boards of action zones etc, bringing together local authorities and public agencies, local voluntary bodies and private enterprises.<sup>4</sup> The latest official count of public bodies sponsored by government departments and regulators at central level found 834 of them in April 2002.<sup>5</sup>

7. For this report we have tried to estimate the numbers of appointees on these bodies. These figures can only be indicative: the data are collected on different bases, and some are out-of-date (most notably for ‘local public spending bodies’ which include training bodies that have been replaced in England and Wales by Learning and Skills Councils). Nor is the list comprehensive—for example, service on social security, employment and various other tribunals is omitted. Even with these reservations, which would make it misleading to come up with a headline total, it is a formidable list.

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<sup>4</sup> Fifth Report of the Public Administration Select Committee, Mapping the Quango State, HC 367, 2000-2001, paragraphs 8, 27 and 28.

<sup>5</sup> Public Bodies 2002, Cabinet Office, TSI, 2003, Table 1.



## Chapter 1: The principles of public appointment

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9. This report examines the central issues that have emerged since the previous government adopted the recommendations of the Committee on Standards in Public Life (the Nolan Committee)<sup>7</sup> relating to public appointments in July 1995. These issues are:

- the continuing role of ministers in the appointments process;
- the scope of independent regulation of appointment to public bodies;
- the integrity of the system of public appointments;
- public confidence in the system;
- the balance between merit and diversity in appointments; and
- progress on diversity.

10. The Nolan report was the product of widespread public unease at standards in public life. One of the problems was the suspicion that Ministers were politically biased in making public appointments, and ‘Nolan’ had far-reaching implications for these appointments, as for other aspects of public life. Appointment on merit, with an independent element on all selection panels, was recommended as the way forward for public bodies, an approach that was widely welcomed and largely accepted by government. Today, the majority of appointments to NDPBs—and about half of central government appointments in general—are made through procedures which are based on ‘Nolan’ principles. As also recommended in the Nolan report, the Government appointed a Commissioner for Public Appointments, currently Dame Rennie Fritchie, to monitor appointments to public bodies and her Office (OCPA) oversees between 11,000 and 12,000 out of some 26,000 public appointments a year.<sup>8</sup>

11. The Commissioner is central to the integrity and good practice of public appointments. The Commissioner’s Code of Practice, revised in July 2001, provides the regulatory framework for the process and OCPA’s external auditors conduct rolling departmental reviews over a three-year period to ensure that departments comply with the Code and standards of good practice. The Code covers ministerial appointments to the boards of executive and advisory non-departmental public bodies (NDPBs), NHS bodies, public corporations, nationalised industries and some utility regulators.

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<sup>7</sup> First Report, Cm 2850

<sup>8</sup> Ibid Rec 32

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## Nolan in Practice: from the OCPA Code of Practice for Public Appointments, 2002

### 1. Ministerial Responsibility

The ultimate responsibility for appointments rests with Ministers.

### 2. Merit

All public appointments should be governed by the overriding principle of selection based on merit, by the well-informed choice of individuals, who through their abilities, experience and qualities, match the needs of the public body in question.

### 3. Independent Scrutiny

No appointment shall take place without first being scrutinised by a panel which must include an Independent Assessor.

### 4. Equal Opportunities

Departments should sustain programmes to promote and deliver equal opportunities principles.

### 5. Probity

Board members must be committed to the principles and values of public service and perform their duties with integrity.

### 6. Openness and Transparency

The principles of Open Government must be applied to the appointments process, its workings must be transparent and information must be provided about appointments made.

### 7. Proportionality

The appointments procedures need to be subject to the principle of 'proportionality'. That is, they should be appropriate for the nature of the post and the size and weight of its responsibilities.

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## Securing public confidence

12. Some of the seven principles that the Nolan Committee set out to help raise public confidence in public life in general have played a vital role in securing public confidence in appointments, notably *integrity*, *objectivity*, *accountability* and *openness*. Accountability and openness have been continuing concerns of this Committee's surveys of the quango state and we are in no doubt about their equal importance in appointments to these bodies. It is also vital that those on public bodies demonstrate that they understand the Nolan principles of *leadership* and *selflessness*.

13. But one principle, not included in the original Nolan list, is also very important in public appointments. *Proportionality* must constantly be kept in mind. In other words, the strict criteria, procedures and resources that are properly devoted to a major appointment will not always be right for lesser appointments. There is a danger of ‘overkill’, as Professor Anthony King, a former member of the Committee on Standards in Public Life, has warned.<sup>9</sup> This is not to argue for a relaxation in standards, but simply to suggest that ministers, officials, the media and public need to maintain a sense of proportion when considering these issues. We hope that we have done that.

## Ministerial responsibility and accountability

14. Appointees play a major role in the governance of Britain. In this Report we do not attempt to challenge that role, or to enter into a broad debate about the respective functions of elected and unelected bodies in public life. We pay tribute to the public service performed by appointees. However the whole process of appointing people to public bodies and their performance of their public duties must be made accountable, to Parliament, other elected bodies, and also to the public. The Nolan Committee recommended that ministers should retain formal responsibility for public appointments, and Ministerial responsibility is the ‘first principle’ of the OCPA Code of Practice (see panel).

15. How does ministerial responsibility work under the current ‘Nolan’ process? In summary, ministers play a limited, but influential, role in making appointments. With major ministerial appointments at least, ministers first set out for their officials the balance of skills required for the post on a particular body; and they may volunteer or be asked for any names that they would like to be considered for the post. If any of those named do apply, they go forward along with other applicants and are treated and considered on the same terms as them, under the eye of an independent assessor. At the end of the process, officials give a minister the choice between two or three candidates proposed by the selection panel with its independent element. These interventions raise major issues of principle, including questions such as:

- is this process sufficiently rigorous and independent to protect public appointments from the taint of the political ‘cronyism’ that disfigured previous appointments regimes?
- Are all significant appointments fully regulated by the Commissioner and made sufficiently transparent ?

We explore these issues further in Chapter 4.

## Diversity and better public services

16. The original ‘Nolan’ recommendations left another major issue unresolved: how best to combine the qualities of merit and diversity in the way in which ministers and departmental officials appoint people to public bodies. Diversity in appointments is not

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<sup>9</sup> Sixth Report of the Committee on Standards in Public Life Cm 3447–II paras. 15–19

merely a desirable goal. It is an aspect of the human right of equal worth and treatment that, regardless of difference, should form one of the cornerstones of modern British society. Merit and diversity are often juxtaposed as if they were contradictory qualities between which it is necessary to choose. The Committee's view is that these are qualities that can and should be combined; and we have heard expert evidence that "a more diverse group of people will tend to make better decisions".<sup>10</sup> Such diversity should also lead to greater public confidence in the system, to more effective and responsive bodies—and to better public services. This is a major theme of Chapter 3.

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<sup>10</sup> Q 1284

## Chapter 2: Overseeing the appointments system

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### The scope of regulation

17. The remit of the Commissioner for Public Appointments covers ministerial appointments to executive and advisory NDPBs (or quangos), public corporations, NHS bodies, nationalised industries and some utility regulators. But, as this Chapter makes clear, the Commissioner's writ does not run to a wide variety of other public bodies. We explore the implications below.

18. We sought initially through our questionnaire to government departments to establish how many NDPBs and 'other' public bodies exist within central government and are either regulated by OCPA or not. Delays and gaps in this process have prevented us from doing so. Thus far, therefore, we have been able simply to analyse the data published in *Public Bodies 2002* in January 2003; and this does not of course extend to 'other' public bodies, though the volume does usefully publish information on task forces, ad-hoc advisory bodies and policy reviews, all of which by definition are not OCPA regulated.

### *The regulated and the unregulated—looking for a rationale*

19. We were intrigued and concerned to discover how many public appointments were not regulated or even monitored by OCPA. Despite the importance of the Office to integrity and public confidence in public appointments, OCPA's writ does not run everywhere. Nor does there seem to be any convincing rationale to explain why some bodies are free from direct regulation and some are covered.

20. Analysis of all NDPBs, public corporations and nationalised industries within the remit of central government, as listed in *Public Bodies 2002*—a total that includes other departments and agencies, such as the Inland Revenue and Ofcom—shows that some 85 per cent of these bodies—1,163 bodies out of 1,375—are OCPA regulated. Thus nearly one in six of these bodies—212, or 15 per cent—are not independently regulated.

21. The Commissioner explained to the Committee on 27 February that it might be that all such unregulated appointments were not 'ministerial appointments', and that OCPA regulation only covered appointments 'made directly' under the authority of ministers. In many cases, however, she said, the Nolan principles are 'voluntarily' applied to the process.

22. Our inquiries into how many 'other' public bodies exist within Whitehall are not yet complete. Departments had difficulties in identifying 'other' public bodies in reply to the Committee questionnaire. However, one department seems to have compiled a full census of these bodies—the Department of Health. Its response listed 43 bodies which are not NDPBs and do not appear in *Public Bodies*—37 'other' bodies, including six sub-groups, plus six medical councils like the General Medical Council, which the department classes as 'external bodies'. We have also noted a variety of bodies that were not listed in departmental returns to the questionnaire and do not appear in *Public Bodies*. The following bodies, for example, are not classified as NDPBs for a variety of reasons: BTI, the

Civil Service Commissioners, the Electoral Commission, the Financial Services Authority, the Parades Commission in Northern Ireland and Partnerships UK, an advisory body attached to the Treasury. Appointments to these and similar bodies are not regulated or monitored by OCPA and are not necessarily bound by ‘Nolan’ rules.

23. Other appointments which can currently escape the Nolan process include those for a number of formal and ad-hoc advisory bodies, and many Prime Ministerial Appointments. We examine each of these in turn.

### **Hidden corners**

#### **British Trade International**

24. British Trade International was established in 1999 under a board chaired by DTI and FCO ministers and subsumed the existing British Overseas Trade Board, an advisory NDPB sponsored by the DTI. British Trade International is neither an executive agency nor an NDPB. This public body was set up following a review by Sir Richard Wilson, then Secretary of the Cabinet, of arrangements for the support and promotion of exports. The former BOTB consisted of high-ranking government officials and representatives of major construction and other companies and co-ordinated the activities of a set of advisory bodies. In a Parliamentary Answer in 1999 the then Foreign Secretary, Robin Cook, announced that the BTI board would be drawn predominantly from the private sector with senior officials from the FCO, DTI and Export Credits Guarantee Department and representatives of the Scottish, Welsh and Northern Ireland administrations<sup>11</sup>. The BTI website, annual review and *Civil Service Yearbook* simply refer to the BTI as an organisation “responsible to both the FCO and DTI”.

#### **Partnerships UK**

25. Partnerships UK (PUK) is a good example of an important body which has undergone several transformations. PUK, which plays a significant role in the processes of the Private Finance Initiative (PFI), began life as a non-regulated task force, briefly became an NDPB, subject to OCPA, and was then privatised as a merchant bank (with the government retaining a 49 per cent share). As a ‘private body’, PUK is not reported in *Public Bodies* and is outside the sphere of OCPA and possibly other forms of public accountability, even though its activities are very influential within the public sphere and raise conflict of interest issues. Is Partnerships UK a ‘one-off’ case or a potential precursor of other public bodies that are or may be privatised and thus removed from various forms of public scrutiny; or has it been given special attention as a politically sensitive body best kept out of sight?

#### **Prime Ministerial appointments**

26. The Prime Minister makes a large range of appointments under royal prerogative and statutory powers, of which a relatively small number are to executive and advisory NDPBs, public corporations and other public bodies. For the sake of completeness, we publish a full

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<sup>11</sup> Official Report, 12 March 1999, Col 399/400

list of Prime Ministerial appointments to individual posts and public bodies in the Annex, divided into two categories—Crown appointments made by the Queen on the advice of the Prime Minister, and appointments made by the Prime Minister. For Crown appointments, we indicate those in which the Secretary for Appointments at 10 Downing Street is involved in the consultation process and the formulation of advice to the Prime Minister. His office has a more formal or executive role in most of the other appointments, generally limited to processing them, though he engages in “more proactive involvement from time to time”. For those appointments made by the Prime Minister, we also indicate in the Annex the appointments for which he has sole responsibility.

27. Our remit is confined to appointments to public bodies and we make no comment on the arrangements for the accountability of appointments to individual posts, political, ecclesiastical, judicial, scholastic or royal appointments (such as the Astronomer Royal or Poet Laureate). The Prime Minister appoints to some bodies, such as the boards of Customs & Excise and Inland Revenue, the Civil Service, Forestry, Crown Estate, and Surveillance Commissioners, and Public Works Loan Board, which are not designated as NDPBs or public corporations. Below we recommend that appointments to such bodies should be made more transparent.

28. As for NDPBs, we note that the Prime Minister is involved in appointments to royal commissions, 11 boards of trustees of museums and galleries, and some 20 executive or advisory NDPBs or public corporations, including the governors of the Bank of England and BBC, the Criminal Cases Review Commission, the House of Lords Appointments Commission, the Millennium Commission, the Police Complaints Authority (chair) and the Honours Scrutiny Committee. The Prime Minister also approves appointments made by his ministerial colleagues to an indeterminate number of bodies on grounds of statute and custom. We list those cases we have been able to identify in the Annex. As we understand the position, most Prime Ministerial appointments to NDPBs and public corporations are made on the advice of the sponsoring departments and fall fully within the OCPA remit. In making Crown appointments officials follow the principles in OCPA’s Code of Practice. On the three NDPBs for which the Prime Minister is solely responsible for appointments—the Advisory Committee on Business Appointments, the Committee on Standards in Public life and the Senior Salaries Review Body—the Public Appointments Order in Council 2002 gives the Commissioner a formal regulatory role.

### ***Ad-hoc advisory bodies***

29. The Cabinet Office records that, as of 31 March 2002, there were in existence in central government 41 task forces, with nearly 300 members from outside government; 137 ad-hoc advisory groups, with almost 1,200 external members; and 35 policy reviews, with some 125 external members.<sup>12</sup> In all, then, some 1,600 appointed members served on such bodies in 2002. The justification for releasing appointments to these bodies from the full weight of the Nolan process is that they are simply temporary bodies: i.e. the proportionality principle applies. We accept that this is an appropriate course of action. However, 85 of these 213 temporary bodies are shown to have existed for more than the two-year period,

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<sup>12</sup> ‘Task Forces 2002: by Sponsor Departments’, pages 163-224, Public Bodies 2002, Cabinet Office 2003, TSO

recommended by the Committee on Standards in Public Life, during which they might remain unsupervised before being classified as an NDPB or wound up.<sup>13</sup>

30. Some of the 85 longer-lived bodies are apparently quite significant, covering, for example, funding social housing, the health impact assessment strategy, youth homelessness, road haulage, and shipping. The Chancellor of the Exchequer chairs the Standing Committee on Euro Preparation, an ad-hoc advisory body set up in May 1998; a third of its members are from the private sector. This is one of several bodies that are described as being ‘ongoing’, but are also deemed to be ‘more akin to an internal official committee than an external body’—even though they have appointed members—and thus not eligible to be classed as an advisory NDPB. Others among the 213 ad-hoc bodies seem to be defunct or lead an exiguous existence.

### **Executive agencies**

31. There are some 128 executive agencies attached to government departments. Most of the agencies have ‘an independent [i.e. external] source of strategic advice’, according to the Cabinet Office.<sup>14</sup> Basically there are three models for such advice-giving, none of which is formally subject to Nolan rules:

- *Ministerial Advisory Boards (MABs)*, comprising senior departmental officials, external members and the Chief Executive, typically meet about four times a year;
- ‘*Fraser figures*’, or Senior Departmental Sponsors, who take their name from Sir Angus Fraser’s 1991 report, are senior figures within a department who act as the main source of external advice on the performance of an agency. As Fraser figures are likely to perform a variety of functions, the Cabinet Office warns departments to ensure that there are no conflicts of interest with other roles they may have in a department;
- Departments are encouraged to boost the number of *non-executive directors* on agencies with no MAB (as is usually the case with agencies that are also departments) to provide particular business or technical expertise and represent major stakeholders. On some agencies without MABs, non-executive directors comprise up to half the management board.

32. Most executive agencies within departments have ministerial advisory boards. Where there is a Fraser figure as well, he or she usually chairs the board. These boards are not regarded as public bodies and are not formally subject to the Nolan rules on public appointments. The Cabinet Office urges departments to observe Nolan rules ‘in spirit’. Fraser figures and non-executive directors are also appointed outside the Nolan process.

33. We identified another anomaly. While the House of Lords Appointments Commission is OCPA regulated, its own appointments are not. Yet surely the choice of ‘people’s peers’ ought to be rigorously examined in the public interest for the merits and diversity of those chosen? Billy Bragg, the singer-songwriter-activist, drew our attention to the symbolic significance of representation in a reformed House of Lords. He said that if appointments

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<sup>13</sup> Op.Cit, Recommendation 41.

<sup>14</sup> see Cabinet Office Guidance on Review of Executive Agencies and Public Bodies

to the Lords, “at the centre of our democratic process”, could draw in people from outside Westminster circles, they could reinvigorate the whole process of making appointments at all levels and inspire people to want to be part of it.<sup>15</sup>

34. It is the responsibility of the Cabinet Office to classify a new body as an NDPB or not, and the Cabinet Office is responsible for the Public Appointments Order in Council, which sets out those bodies which fall within the OCPA remit. We do not consider that this ad hoc, opaque arrangement is adequate. The decision whether or not an important public body is regulated should not be made in this way.

### *A radical new look at public bodies*

35. It is our view that the terms on which appointments to public bodies are subjected to independent scrutiny should be made more comprehensive, transparent and precise than they currently are. We appreciate that the role of ministers in making public appointments was prominent among the issues that the Committee on Standards in Public Life was set up in 1994 to address; and it is natural enough that ministerial appointments remain central to the application of Nolan principles and process. But time has moved on. There are public bodies to which ministers do not directly make appointments that ought nevertheless to fall within the full OCPA remit. There are public bodies to which the Prime Minister makes Crown appointments that are automatically excluded from OCPA regulation. We see no justification for this exclusion in and of itself, and below we make recommendations which would tighten up regulation and increase accountability and transparency.

36. More generally, our inquiry has demonstrated the need for much more clarity about the role, status and activities of public bodies. As we have seen, there is a constant flow of new bodies which start life, change their status and merge with others. Some have ministerial appointments, some do not. Some are designated as NDPBs and are included in official lists, some lurk as ‘other bodies’ in departmental corners, no doubt doing good and necessary work, but not very transparent or accountable. Most importantly for this inquiry, there is no clarity or consistency about the application of the Nolan rules.

37. We believe that there should be a radical new examination of public bodies. Nearly a quarter of a century ago, amid political and public concerns about an unchecked ‘spread of patronage’ and ‘a concealed growth of government’,<sup>16</sup> Sir Leo Pliatsky was asked to inquire into quangos. The Pliatsky report adopted the wide-ranging NDPB category specifically to encompass the wide variety of bodies that the survey uncovered. It appears to us that the NDPB category itself may have outlived its usefulness. Considering how rapidly the world of public bodies is changing, it would be very useful to undertake a new review of this world.

**38. We recommend that the Cabinet Office undertake a new fundamental review of all public bodies attached to central government and ‘map’ them. If necessary, the definition of non-departmental public bodies should be revised according to precise,**

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<sup>15</sup> Q 57

<sup>16</sup> Report on Non-Departmental Public Bodies (the Pliatsky report), Cmnd 7797, HMSO, January 1980

comprehensive and transparent criteria to encompass as far as practicable all relevant public bodies. This comprehensive review should be repeated at regular intervals.

39. We recommend that all public bodies, whether executive or advisory, statutory ‘other’ or ‘private’, ‘ad-hoc’ or ‘ongoing’, within the remit of central government, should be placed on the public record in Public Bodies and departmental websites, with information on their roles, accountability and appointment arrangements.

40. We recommend that Crown appointments to public bodies should not be excluded from regulation by the Office of the Commissioner for Public Appointments in the absence of specific justification for their exclusion.

41. We recommend that the review of public bodies, recommended above, should consider on a case-by-case basis whether public bodies not now subject to OCPA regulation should come under the OCPA remit.

42. We recommend that the Commissioner for Public Appointments should report to Parliament the list of public bodies that she considers should come within her remit; and that there should be an opportunity for Parliamentary scrutiny and approval of the list, possibly through a select committee.

43. We recommend that any variation from OCPA regulation should be placed on the public record with reasons given.

### ***The local appointed state***

44. Our visit to Bristol demonstrated that these issues are not important simply at the national level. As we stated above, the Committee identified some 5,300 local quangos in the UK as part of its 2001 ‘mapping exercise’. These include Boards of Visitors to prisons and other penal establishments (now called Independent Monitoring Boards), which have an important local role in ensuring standards in the criminal justice system. Of these local bodies, 847 were NHS bodies and trusts that are OCPA regulated. But the great majority of such bodies, many classified by the Nolan Committee as ‘local public spending bodies,’ fall outside the OCPA remit.

45. Most local quangos are wholly or largely self-appointing; and very few appointments are subject to ministerial or departmental oversight. Most of what is known about the processes of appointment derives from a study, published in 1996, which found that that they were ‘a word-of-mouth affair, with a consequent lack of transparency’.<sup>17</sup> There is no reason to believe that this judgement is seriously out of date.

46. There are no official statistics on local partnerships, despite their growing significance in local and sub-regional governance. These bodies—New Deal for the Community, regeneration, crime reduction, anti-drug and other schemes, action zones, etc.—bring together representatives of local authorities and public agencies, local voluntary bodies and private enterprises. In 2001, we identified some 2,300 local partnerships. In their paper for

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<sup>17</sup> *Opening the Board Door: the Membership of Local Appointed Bodies*, Skelcher C and Davis H, Joseph Rowntree Foundation, York, 1996

this Committee, Professor Chris Skelcher, University of Birmingham, and Dr Helen Sullivan, University of the West of England, calculate that twice as many—some 5,500 partnerships—exist; and even this figure, they say, is a significant under-estimate.<sup>18</sup> For example, it does not include partnerships funded through EU programmes.

47. When we visited Bristol we found a complex range of inter-agency partnerships, partnership programmes funded by various government departments and the EU, and partnerships and other co-operative arrangements initiated by the local authority. John Savage, Chief Executive of Bristol Chamber of Commerce and High Sheriff, says that his involvement in the ‘network of connectivity’ in Bristol—that is, in at least six partnerships with the City Council and other bodies—is a full-time job. Business in Bristol “paid for us to have a unit that could do the interface” and the “structures of connectivity” had bridged the gap between the public and private sectors.<sup>19</sup>

48. Bristol City Council has identified all the partnerships with which it has a relationship and has published a short and long list. The long list runs to 76 Bristol-wide partnerships, forums and strategy groups, etc; 46 neighbourhood partnerships and groups; 36 regional partnerships and groups, including the South West RDA and regional assembly; and ten national and international networks. There is no monitoring of the memberships of key partnership and analogous boards, let alone the potential for unseen or undesirable influences being brought to bear by concentrated or overlapping memberships of key partnerships.

49. Clearly there is a need for greater accountability and transparency here. The activities of, and appointments to, all local public spending bodies and partnerships carrying out public functions on behalf of government, the EU or local authority should be properly monitored. The importance of these bodies (and the complexity of their ‘connectivity’) leads us to conclude that while these local bodies need not be subject to full OCPA oversight, they need some form of credible regulation.

**50. We recommend that the Government should consult with local authorities to determine the most effective and proportionate means of achieving public oversight of the boards of local public bodies and partnerships.**

### **Tribunals**

51. Appointments to tribunals form a significant proportion of the appointed state. Overall, tribunal appointments account for almost half of public appointments in England.<sup>20</sup> Our figures for NDPBs, set out in Table 2, do not include tribunals classified as NDPBs, all of which fall outside OCPA’s remit. There are 617 such tribunals, with 11, 572 members (of whom 617 are chairs and 419 are deputy chairs), according to Public Bodies 2002. Tribunal NDPBs fulfil a quasi-judicial function and are as such close to the judicial system. Those appointments that the Lord Chancellor currently recommends or makes—chair persons, legal and non-legal (such as medical or lay) members of tribunals—fall within the scope of the Commission for Judicial Appointments. However, tribunal

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<sup>18</sup> PAP 70

<sup>19</sup> Q 1063

<sup>20</sup> Supplementary evidence from Dame Rennie Fritchie, PAP B/P 19

appointments for which other ministers are responsible are not regulated. The Leggatt Report on tribunals, currently out for consultation, recommended that the Lord Chancellor should take over these appointments from other ministers; they would then fall within the scope of the Commission for Judicial Appointments.<sup>21</sup>

52. The situation has been changed by the recent announcement on judicial appointments, which envisages the establishment of an independent and statutory appointments commission, sponsored by the new Department for Constitutional Affairs. We hope that, under the new arrangements for judicial appointments, the logic of the recommendations of the Leggatt Report as they apply to tribunal appointments will be applied.

**53. We therefore recommend that the new independent Judicial Appointments Commission should assume responsibility for tribunal appointments currently made by ministers.**

### **“Most of them think it is a fix”—public confidence in the appointments process**

54. We turn next to the issue of the integrity of the public appointments process and to the degree of public confidence that it inspires. There is no doubt that a cloud continues to hang over the public perception of the process. Several witnesses did tell us that they believed public confidence in the probity of public appointments had recently increased.<sup>22</sup> However, a MORI poll carried out on behalf of OCPA in 2000 found that the public held “very vague—but overwhelmingly negative—impressions” of how the appointments process operated. For instance, almost two thirds (63 per cent) of those who said that they “knew at least a little” about the ministerial appointments process believed that appointments were “politically influenced”, more than one in four (28 per cent) thought them “bureaucratic” and one in ten (10 per cent) agreed that they were “corrupt”.<sup>23</sup>

55. We heard other evidence that pointed in the same direction. The broadcaster Fi Glover, became convinced after several programmes on public appointments that most people “just do not think it is for them”. She said: “There is this idea that somewhere there is a group of people who always go on committees, they all know each other, it is definitely a kind of old boys’ network”. She was astounded at the lack of audience response to her programmes.<sup>24</sup> Julia Middleton, chief executive of Common Purpose, an organisation which tries to increase participation in public life, who is herself an independent assessor, summarised for us the perceptions of some 12,000 people who had been on her organisation’s programmes designed to promote wider access to public appointments:

“Firstly, they have no idea what public appointments are, what the scope or what the system is strikes them as deeply non-transparent. Most of them think it is a fix. Most people sit back and say, ‘It couldn’t possibly be me, absolutely not’”.<sup>25</sup>

<sup>21</sup> *Tribunals for Users: One System, One Service*, report of the Review of Tribunals by Sir Andrew Leggatt, TSO, March 2001

<sup>22</sup> Q 1351

<sup>23</sup> Fifth Annual Report, 1999–2000

<sup>24</sup> Q 463

<sup>25</sup> Q 641

56. She added that most people believed that “you wait to be approached” for a public appointment and that “there is a deep conviction that there is not much point in doing it anyhow, because nothing is going to change”.<sup>26</sup>

57. Julia Middleton’s evidence suggested that public unease about public appointments and possible abuse of the system extends beyond concerns about alleged partisan cronyism. The radical television comedian, Mark Thomas, spoke of the perception in some quarters that members of public bodies “use these committees to advance their own careers”. He went on: “Whether there is actual corruption on it, I do not know. The point is if you do not come forward and say, ‘We are going to be completely open’, then you will always be open to those charges”.<sup>27</sup>

58. In similar vein, Billy Bragg complained about the absence of accountability in general, posing the question, “How accountable are those people who have political power over us?”. Public bodies were a crucial component of accountability. He said:

“Obviously that is the key with patronage—the message it sends to the electorate about their participation in the process is wholly negative. It is saying, ‘We do not really care what you think. We are going to put these people in, we know and we trust them, we do not care if you trust them or not... they are going to be people we know from our professional circle’”.<sup>28</sup>

### **Views from public bodies**

59. Public perceptions of a closed and opaque system were also reflected in evidence we received from people in official circles. For example, Philip Champ of the NHS Logistics Authority,<sup>29</sup> while acknowledging that the new independent NHS Appointments Commission was a step forward, said that the process for NHS appointments “is still perceived as obscure and secretive”. English Heritage<sup>30</sup> identified continuing “cynicism” about patronage, observing that the current process created “the opportunity for impropriety to be perceived”. The National Museum Directors’ Conference took a similar view, saying<sup>31</sup> that placing the power of patronage in the hands of ministers “lays the system open to accusations of the abuse of power”. Suhail Aziz, Chair of the London Probation Board<sup>32</sup> told us that “There is evidence that Nolan principles and the OCPA Code of Practice have been systematically undermined”.

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<sup>26</sup> Ibid.

<sup>27</sup> Q 317, Mark Thomas gave us additional evidence about the differing standards for the declaration of members’ interests and the information on committees’ registers of interest and the dangers of possible conflicts of interest. We have already reported on the extent of registers of interest in the previous Committee report, *Mapping the Quango State*, Fifth Report, HC 367. We have not been able to examine Mr Thomas’s information in detail, but the clarity and consistency of interest rules is an issue to which we shall return in a later inquiry.

<sup>28</sup> Q 89 & 90

<sup>29</sup> PAP 19

<sup>30</sup> PAP 17

<sup>31</sup> PAP 34

<sup>32</sup> PAP 35

### *Evidence on 'cronyism'*

60. We found no evidence of any systematic subversion of Nolan principles and practice, nor of the OCPA Code. More to the point, while the Commissioner's latest annual report describes deficiencies and failures in process, she reports broad progress in terms of compliance with the Code and gives only two examples of what she and we consider to be undue ministerial involvement in making appointments. On one occasion, under the aegis of the National Assembly for Wales, a decision was taken that ministers and officials should meet informally with some possible candidates for a post before it was advertised. In another case, a Treasury minister requested that a particular candidate (who had not applied) should be added to the interview shortlist for a post.<sup>33</sup>

61. However Ivy Cameron, a consultant with experience of employment issues, asserted that "some appointments are openly advertised (albeit in a restricted context) whilst others continue to be a tap on the shoulder"; adding that other candidates may be short listed for reasons of "respectability"<sup>34</sup> Ms Cameron also told us: "I know some trade union officers, for example, who are tapped on the shoulder for particular jobs. I know employers who are tapped on the shoulder".<sup>35</sup>

62. The Commissioner saw the role of the independent assessor as a safeguard against improper pressure from ministers or senior civil servants, as had happened, to place a candidate who was not up to the job 'above the line' (i.e., to be appointed or considered for appointment). She said that if a minister did insist on appointing someone who was not deemed to have the capacity for a post, she would insist that the press release would make it clear that they had not been appointed 'in accordance with my rules' and that the case would be likely to become public in her annual report.<sup>36</sup>

63. A civil servant may also act as a minister's proxy. Dame Rennie told us that independent assessors had reported to her that, if a "Minister is particularly keen on a set of skills and may know one of the names", the senior civil servant involved appeared to "be pushing a particular candidate when there is no evidence to suggest that they have anything better than the others". She added: "That is when the independent assessor must be impartial and independent from that department and say, 'The rest of us do not think this... You are out on a limb'".<sup>37</sup> The Commissioner, however, told us that "in general, I would say that we have a good public appointments system of regulation... and not a great deal would need to be done to change the regulation." Asked whether cronyism had now been banished from the world of public appointments, she replied that cronyism had been "put in a very dark, far-back corner, I would say. I have to make sure that I shine a light in every corner".<sup>38</sup>

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<sup>33</sup> Commissioner for Public Appointments Seventh Report 2001–02

<sup>34</sup> PAP 64

<sup>35</sup> Q 1214

<sup>36</sup> Q 1349

<sup>37</sup> Q 17

<sup>38</sup> Q 1352

### ***Media allegations of ‘cronyism’***

64. The print media certainly do not hide allegations of ‘cronyism’ in a very dark, far-back corner. The era of ‘sleaze’ put issues of ‘cronyism’ high on the news agenda and the series of reports from the Committee on Standards of Public Life and ensuing reforms since 1995 have not relieved the pressures of intense media attention. Indeed, ‘sleaze’ and ‘cronyism’ have become partisan issues between the parties and print media.

65. We suspect that the rhyming appeal of ‘Tony’ and ‘Crony’ is too strong for some newspapers to resist, despite the absence of evidence to support many of the allegations. One prominent recent case was the appointment of Trevor Phillips to the chair of the Commission for Racial Equality, which was greeted by a chorus of newspaper allegations of cronyism.<sup>39</sup> Yet Hamish Davidson of the Veredus recruitment agency, who was closely involved in the CRE appointment up to the point at which the appointment panel, made up of relevant officials and independent members, took the process over, gave us a radically different account. He told us that “the process used for the CRE appointment was one of the most rigorous we have done”.<sup>40</sup>

66. The difficulty for ministers—the Home Secretary in this case—is that the best they can hope for in any such case is a ‘not proven’ verdict. By his own admission Mr Davidson was not involved in the initial processes of determining the criteria for the post and his role stopped at the door of the appointments panel. He had no say in the construction of the panel and Dame Rennie’s influence was confined to the choice of independent assessor. Neither is privy of course to any private, political or official discussions that may or may not have taken place elsewhere. Thus neither Mr Davidson nor Dame Rennie could give us categorical assurances that cronyism or other abuses are not taking place. This enables allegations to be made, however unfounded.

67. Ministers now find themselves in a half-way house: they can no longer determine appointments in a partial (or even impartial) way as their predecessors once could; yet they retain enough direct involvement in the process to leave them open to allegations of cronyism. This state of affairs harms public confidence in government and politics in this country as well as in any particular government, minister or quango board.

### ***Effect of suspicions on work of public bodies***

68. Doubts about the propriety of the appointments process can have serious long-term effects on the work of public bodies. Lord Puttnam, chair of the General Teaching Council,<sup>41</sup> provided a vivid illustration of the problems which the mere perception of cronyism can cause. He told us that opponents of this new professional body had “felt it advantageous both to exaggerate the proportion of Secretary of State appointments and misrepresent their role on Council. The appointees were dismissed at a recent teaching

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<sup>39</sup> Daily Mail, The Sun & The Daily Telegraph, 18 January 2003

<sup>40</sup> Q 1274 & 1283

<sup>41</sup> PAP 37

union conference as ‘Blair’s cronies’. In reality, of the 13 appointments, I am the *only* one with an affiliation to a political party”.<sup>42</sup>

69. Lord Puttnam believed that it would have been preferable if the Secretary of State’s appointees could have been typified from the outset as the independently appointed members that they were, instead of being unfairly branded as ‘political appointees’.

70. Party political activity or affiliation should not disqualify able people from playing a role on a public body. It is important that candidates who have recently been active on behalf of a political party should declare their activity to ensure that political representation on particular bodies and the appointed state in general is reasonably balanced; and to keep the appointments process transparent. Yet we fear that adverse publicity for the appointments of those who, like Trevor Phillips, have been politically active may harm their capacity to carry out their duties or even deter others from putting their names forward. This would be extremely damaging.

### ***The influence of civil servants***

71. If there has been a withdrawal from close involvement by ministers in the appointments process, have senior civil servants simply moved into the patronage vacuum?

72. Civil servants of course service the whole process of public appointments within government departments. Their departments are subject to a three-year rolling programme of audit by OCPA as well as to the OCPA Code of Practice. But there are two significant points in the process when senior civil servants could be said to have the opportunity to exert or inject undue or unchecked influence. First, when they take instructions from the minister on the criteria for an appointment, with any suggestions for potential applicants; and secondly, when they write and make submissions to the minister on the final choice between candidates at the end of the appointment process. In between these two key stages, they play a continuing role. A senior official usually establishes the appointment panel, takes the chair and shares in the interviewing, short-listing and final selection of successful candidates.

73. Julia Middleton, of Common Purpose, said of her experience as an independent assessor for appointments that there were occasions when she protested, ‘Look, these are not the rules’, only to be informed that, for example, ‘there is a waiver on the rules’. She stated:

“...there are whole issues about real consistency and making sure that not just some government departments, but that all government departments, really begin to do what the system says they should do”.<sup>43</sup>

74. So how far can civil servants be said to exert a powerful and largely unaccountable influence on the appointment process? Brian Rowntree, the Chairman of the Probation Board for Northern Ireland, was in no doubt.<sup>44</sup> He told us that

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<sup>42</sup> PAP 37

<sup>43</sup> Q 648

“The present system gives departments too much power to influence the composition of the body through assessments, short-listing and selection panel membership. Civil servants who are not panel members may have an undue influence, e.g., by expressing their views either privately beforehand or during the selection process. There is a case for a selection process with the emphasis on independence rather than departmental wishes”.<sup>45</sup>

75. Some of this concern could be obviated if the independent assessors could share fully in all stages of the process, and especially if it were established that they should be able to check the final submissions that go to ministers. At present, it is established ‘best practice’, agreed between OCPA and the Cabinet Office, that assessors should have a final look at submissions, but it is not made mandatory under the OCPA Code. Practices therefore vary: some departments do give independent assessors the opportunity to ensure that submissions accurately reflect the views of a panel, others do not.

**76. We recommend that independent assessors should be involved in every stage of the appointments process, with full opportunity to ensure that submissions to ministers accurately reflect the views of appointment panels; and that the OCPA Code of Practice should be revised to make this reform mandatory.**

77. We have a further, and more general, concern about the potential for unseen influence that the senior civil service can bring to bear on appointments. Despite recent progress on diversity within the Senior Civil Service,<sup>46</sup> there must be questions about the active commitment of officials to widening the net. Public appointees need to be representative and this should include those who can provide the ‘grit in the oyster’ that should be one of the aims of the public appointments system. We return to this issue in Chapter 3. Here we stress the need to ensure that there is targeted professional training for all civil servants involved in appointments with the aim of ensuring an active commitment to diversity and proper representation.

**78. We recommend that all civil servants who play a role in making public appointments should receive appropriate professional training in equal opportunities and appointments procedures.**

## The role of independent assessors

79. The keystone of good practice and the restraint of undue influences, under the current procedures, is the independent assessor—one of the major innovations introduced through the recommendations of the Committee on Standards in Public Life. How is this independent contribution to monitoring appointments working out?

80. There are currently two distinct categories of these independent assessors. The first and largest category consists of assessors appointed by government departments themselves. There are some 300 such appointees. The second category is much smaller, and consists of the 22 independent assessors recruited by OCPA to set standards of independence and

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<sup>44</sup> PAP 48

<sup>45</sup> Ibid.

<sup>46</sup> Cabinet Office Press Release CAB 093/02

diversity for Whitehall. The OCPA Central List of Independent Assessors is at the disposal of departments should they choose to use them. The Public Appointments and Public Bodies etc (Scotland) Act 2003 makes provision for the Commissioner for Public Appointments for Scotland to appoint independent assessors.

81. The committee is firmly of the view that the assessors should be truly 'independent': that is to say, they should be entirely separate from the appointing department and should have no vested interest in the outcomes. The Commissioner has revised the OCPA Code to prohibit departments from recruiting independent assessors who hold any kind of departmental position. Yet there is no such prohibition on recruiting former civil servants. This is clearly unsatisfactory and inconsistent. Former officials can naturally offer a great deal of experience to the process of selecting candidates for semi-official posts. On the other hand, they are likely to share implicit assumptions with the departmental civil servants with whom they would work that could influence their assessments. Moreover, there are almost bound to be suspicions, however unjustified, that any appointment of a former civil servant as an independent assessor is in some way evidence of bias. Below we make recommendations designed to secure the independence of formal officials in relation to departments under the aegis of the Commissioner.

**82. We recommend that, as soon as is practicable, the Commissioner for Public Appointments should be made solely responsible for appointing and supporting all independent assessors.**

**83. We recommend that in the meantime the Commissioner should assume responsibility for the recruitment and training of all newly appointed independent assessors; and that all existing assessors should undergo OCPA training.**

**84. We recommend that the Commissioner should include in her annual reports an account of the processes by which she recruits and trains independent assessors.**

### The role of recruitment consultants

85. Government departments employ recruitment consultants, or head-hunters, to play various roles: advertising, searching for and sifting applicants, managing the application process, and interviewing and short-listing candidates. Use of these agencies varies, with one of the 30 departments responding to an OCPA review using them more than ten times in the previous year and 14 departments not employing them at all in the same year. Why did departments employ them?

- 45 per cent used them to ease their administrative burden;
- 27 per cent to make high-profile appointments;
- 22 per cent to broaden the field of applicants; and
- 5 per cent because their own in-house resources were insufficient.<sup>47</sup>

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<sup>47</sup> OCPA Review on working with Recruitment Consultants in the Public Appointments Process: Stage 2: Report, Annex, page 21, March 2003, OCPA

86. We heard conflicting evidence on the value of using head-hunters. On the one hand, Ms Cameron spoke of the “laziness and lack of vision” of recruitment agencies: “They like to get their money as quickly as possible so they do not really want to put too much effort into trawling for meritorious people, so they already have lists which they will refer to. It is a recycling all the time”.<sup>48</sup> On the other hand, Hamish Davidson and Ms Alison Cawley, of the leading recruitment agency Veredus, gave impressive evidence of their understanding of OCPA principles and process and the public service ethic.

87. The OCPA review found considerable variety in the quality and experience that consultants supplied. On the one hand, they could provide a “more professional service” than the department, with “longer, more stretching interviews” that gave candidates more opportunity to demonstrate their qualities; often brought greater experience and knowledge to bear; could run ‘targeted searches’ to identify good quality candidates; could supply administrative mechanisms and recruitment systems; and could even “act as umpires and provide an independent element”. On the other hand, they did not always understand the idea of public appointments or the Code; could be casual in their approach; sometimes showed a distinct bias towards “searched candidates”; and “tended to be less scrupulous on openness, fairness and diversity issues than the civil service”.<sup>49</sup>

88. We believe that Nolan principles, the OCPA Code and best practice, as recommended by OCPA and the Cabinet Office, should apply just as much when consultants are employed as when any other approach is taken. The process must be fair, open and accessible and lead to the appointment of people who have demonstrated their fitness for the posts that they are chosen to fill. We are not satisfied that this is always the case. We are particularly alarmed to discover that more than half (54 per cent) of departments failed to supply their consultants with the OCPA Code of Practice; and that while 27 per cent of departments asked their consultants if they were aware of the Code, another 27 per cent *assumed* that they were.<sup>50</sup> Slackness in this area is unacceptable, and the rules need to be tightened.

**89. We recommend that prior to a trained OCPA cadre of assessors being introduced, such assessors should be involved alongside consultants in any stages of the appointments process in which they are involved.**

90. More broadly, we are not at all convinced that departments are sufficiently thorough and systematic in deciding whether it is appropriate to use recruitment consultants. A more rigorous and methodical approach must be taken, with greater emphasis on proper use of public money and the need to appoint the right person for the job. There should also be an evaluation of the benefits, or otherwise, of using recruitment consultants, in terms of the quality of those recruited and the subsequent performance of public bodies.

**91. We therefore recommend that departments should satisfy themselves fully about the expertise and qualities of recruitment consultants who will be involved in any stage of the appointment process; that they should at the outset establish the aims and purposes of the body involved; and that they should then thoroughly brief the**

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<sup>48</sup> Q 1226

<sup>49</sup> Q1226

<sup>50</sup> OCPA Review on Working with Recruitment Consultants in the Public Appointments Process March 2003

consultants on their requirements, the Nolan principles and the OCPA Code. Steps should be taken by the Government to increase the accountability of recruitment consultants and the transparency of the processes by which they are appointed.

92. We also recommend that the Government should undertake research to determine whether the employment of recruitment consultants adds value to the process of public appointments.

### *A stocktake for the appointments system*

93. We are satisfied that solid progress has been made towards fair and open appointments since the Nolan principles were accepted, and that progress continues to be made. However, a variety of evidence, including the instances of slack practice, gaps in communication and avoidable weaknesses in procedure revealed in the OCPA report on the use of consultants, suggests that there is a need for a thorough overhaul of public appointments processes in central government.

94. We believe that our report creates an opportunity for stocktaking. We can learn from the lessons of the past eight years and also from the proposals for parallel appointments jurisdictions in Scotland and Wales. We think that the time has come to insist upon consistent application of the rules governing public appointments across Whitehall and to remove anomalies. In line with the Committee's recommendation, Dame Rennie now specifically names in her annual reports those departments which were not following the Code of Practice, a mandatory code, or best practice. She described this as a "culture shock"<sup>51</sup> to departments who were used to anonymity, but we believe it is a welcome and constructive culture shock.

95. We also consider that the powers and status of the Commissioner and her Office require strengthening. Legislation for the Scottish Commissioner gives the postholder a whistle-blowing role whereby they must report to the Parliament any 'material' non-compliance with the Code of Practice known to but neglected by ministers. Similar powers are needed south of the border.

96. We recommend that the Commissioner for Public Appointments should be given formal whistle-blowing powers to report material non-compliance with the Code of Practice by any department, minister or official. It is for discussion whether the Commissioner should report such breaches to the First Civil Service Commissioner or to another body, such as a Parliamentary committee.

### *Separation of powers*

97. The Scottish legislation also recognises the importance of the separation of their Commissioner's Office from the executive. The funding for the new Scottish Commissioner's Office will be paid for by the Parliamentary Corporation.

98. The Cabinet Office currently funds OCPA and houses the Office. The London staff of eight officials is drawn from officials from the Lord Chancellor's Department, the Cabinet

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<sup>51</sup> Q 1371

Office and other departments on secondment.<sup>52</sup> We regard this as an unsatisfactory state of affairs that has potential practical consequences. The simple fact that the Commissioner and her Office are funded and serviced from Whitehall creates the impression that she works for and reports to ministers.

99. Just as independent assessors working in different departments should be truly independent of those departments, so too should the Office that assumes overall responsibility for the independence of the process in central government be independent of the executive. The Commissioner recognises that there are advantages in employing officials who are well versed in the ways of government departments, but she has long argued that OCPA should be funded and housed independently of the executive; and that she should have the power to appoint staff permanently.<sup>53</sup> If the Commissioner's office is to be independent of the executive, it should be rooted in Parliament. The Commission should therefore be an officer of Parliament, as one of the key constitutional watchdogs. The appointment should be approved by Parliament and it is to Parliament that the Commissioner should report.

100. We also have concerns about the small size of a staff with responsibility for between 11,000 and 12,000 appointments a year, especially given Dame Rennie's new statutory duty to promote diversity and the work she undertakes to this end. Dame Rennie describes the staffing as "not generous" and says that she "could do a great deal more with more people".<sup>54</sup> We think that she should be enabled to do so. In particular, we believe that OCPA should be sufficiently well-funded to take responsibility for all independent assessors.

**101. We recommend that the Office of the Commissioner for Public Appointments should be funded through the Parliamentary Vote with the Commissioner approved by Parliament and reporting to it, and that the Office should be housed and staffed separately from the executive.**

**102. We recommend that there should be a review of the staffing needs of OCPA in the light of the Office's current and future responsibilities and of action on other proposals that we make in this report.**

## Parliamentary oversight

103. Ministers are formally responsible to Parliament for public appointments, but in practice Parliament plays hardly any role in making appointments or supervising public patronage. The most visible attempt to give substance to Parliament's formal responsibilities has come from the Treasury Select Committee. In 1997 that committee announced its intention to hold confirmation hearings to establish whether those nominated to the new Monetary Policy Committee of the Bank of England fulfilled two criteria: demonstrable professional competence and personal independence of the Government. In the event, the Bank of England Act 1998 did not require such hearings, as

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<sup>52</sup> Q 1364 Dame Rennie informed the committee that she also has two officials in Northern Ireland and one in Scotland.

<sup>53</sup> Q 1368

<sup>54</sup> Q 1365

committee members had hoped, but the committee has nevertheless held such hearings on a non-statutory basis in the succeeding years.<sup>55</sup>

104. Is there room for greater and more formal Parliamentary involvement in the process of public appointments? And what would be the advantages and disadvantages of the form it might take? The Rt Hon Tony Benn put to us some very radical proposals for such involvement.<sup>56</sup> He argued for the transfer of “all Crown prerogative powers of appointment and patronage” to Parliament; and for the appointment of chairs of public authorities by a select committee after a public hearing as part of an open procedure in which all candidates would be interviewed. Bill Morris, then General Secretary of the Transport & General Workers Union, advocated something similar.<sup>57</sup> He urged that the Committee should consider making nominations, or recommendations for appointments, to public bodies subject to Parliamentary scrutiny and approval. This would, Mr Morris told us, increase the legitimacy of these bodies, allow Parliament to hold ministers to account on their statutory duties on equality, and increase public awareness and acceptance of public bodies.

105. The democratic spirit behind such propositions is admirable, but there are practical and constitutional difficulties. The sheer numbers of chairs and members involved would overwhelm select committees and prevent them from tackling other matters, even if their staffs were vastly expanded. Moreover many of these bodies are specialist in nature and neither Members nor the general public would be well equipped to decide or oversee appointments to them. There is also the issue of whether the scrutiny role is compromised by an involvement in appointments.

106. Further, the risk that appointments could become the subject of intense political or media debate, or political horse-trading, as confirmation hearings sometimes do in the United States, may well deter possible candidates from allowing their names to go forward. In recent months, for example, there has been controversy in the US Senate about the appointment of the new chairman of the Securities and Exchange Commission. Nominations of senior judges are also drawn into controversy, and the Washington Post recently referred (30 April 2003) to “the Senate’s increasingly contentious partisan impasse over judicial appointments”.

107. The appointment of the Scottish Information Commissioner in December 2002 also became politically contentious. The wide-ranging debate in the Scottish Parliament included the public revelation of the fact that the new Commissioner had been appointed on a majority vote and detailed discussion of the merits of the candidates.<sup>58</sup> We do not criticise the proceedings of another legislature, but simply remark that it would be very hard to square the principles of Nolan with such a discussion.

108. However, notwithstanding this evidence, we believe that there are solid reasons for Parliament to take a more assertive approach to public appointments. This is one of the

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<sup>55</sup> The history of these hearings is summarised in the Treasury Select Committee’s Ninth Report of Session 2001-02, HC 1189

<sup>56</sup> PAP 11

<sup>57</sup> PAP 03

<sup>58</sup> Scottish Parliament Official Report, 12 December 2002, col 16346

main prerogative powers enjoyed by ministers, and our thinking on this issue is influenced by the general inquiry we are currently conducting into those powers. We were also influenced by our recent visit to Canada, where Parliamentary committees already have a power to review appointments after they are made but where the perceived inadequacy of this arrangement is now prompting moves towards a more 'confirmatory' role. We see benefits in a more explicit, though still proportionate, role for select committees in key appointments. The aim should be to secure more effective scrutiny of ministers' actions, in a realistic form and without allowing party political considerations to dominate the process.

109. We are therefore attracted to the idea that there should be a requirement for ministers to inform the relevant select committees of the proposed appointee in the case of the most major public appointments. The list of these appointments could be agreed between the minister and the committee, and would confine itself to such 'peak' appointments as the chair of the BBC, industry regulators, and the major watchdogs. The relevant committee would have the right to hold a hearing, if it chose to do so, before the appointment of the candidate was confirmed. We do not propose that the committee would explicitly confirm such appointments, but that in those cases where it was the view of the Committee that a proposed appointee was unsuitable then it should have the power to enter a Letter of Reservation, leading to the competition for the post in question to be reopened. We believe that this approach strikes a sensible balance. We envisage that the committee's new powers would be used only rarely, but they could help to readjust the balance between Parliament and the executive, as well as providing a salutary quality control check for the public appointments system.

**110. We therefore recommend that ministers should agree a list of key appointments with relevant select committees and notify them of the names of proposed appointees for these posts as they arise. Committees could decide, if they chose to do so, to hold a meeting with proposed appointees, and would be able to enter a Letter of Reservation as a result of such a hearing in any case where there was a decision to do so. In such circumstances the competition for the post would be re-opened.**

## Chapter 3: Building a new civic tradition: more diversity and better access

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111. We have examined some possible remedies for the weaknesses of the appointed state. But our inquiry has also explored concrete proposals to increase participation in public bodies. As we have said, it should be a high priority of government to involve as wide a range of people as possible in the decisions that affect them.

112. The concept of the active citizen is not new. There has long been popular involvement in charitable societies, self-help groups, trade unions and trade associations, and campaigning groups of all kinds. The millions of people involved in such voluntary groups embody an active civic tradition that shows no evident sign of diminishing, unlike the decline in voting and membership of political parties over the past decade. For example, a recent survey of the top charities found that more than two million volunteers were involved in the work of the 156 charities that replied.<sup>59</sup> The social and political issues addressed by public bodies are scarcely less important than those tackled by charities and pressure groups. In certain obvious respects public bodies are more influential. But the numbers coming forward to join public bodies, especially from under-represented groups, are very disappointing in comparison. Throughout our inquiry, we tried to find reasons for that discrepancy, and to explore ways of renewing the civic tradition. Public appointments should be seen as presenting opportunities for extending civic participation.

### Progress towards diversity

113. In the debate about diversity, the Government has been judged largely by its success in raising the proportions of women, people from ethnic minorities and people with a disability on public bodies to the proportions of these groups in the population at large. Our concerns range even wider, especially in relation to the representation of social class on public bodies. We take the view that socio-economic background is a significant barrier across the board: that is, that socio-economic background affects not only the representation of women and minorities on public bodies, but also leads to an unduly narrow recruitment of white males. Regional differences and age are also diversity issues.

114. But we first consider progress towards gender equality and minority representation. Government targets for 2005 are for 50 per cent of public appointments to be held by women, about 7–8 per cent by people from ethnic minorities (in line with their representation in the economically active population), and for a simple increase for people with disabilities.<sup>60</sup> As at the latest census, the proportion of women in the population was 51.3 per cent; and of people from ethnic minorities, 8.7 per cent. Less reliably, census

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<sup>59</sup> See, for example, *Democracy under Blair*, Beetham D et al, Politico's 2002, Chapter 11, 'Active Citizenship'

<sup>60</sup> Public Bodies: Opening Up Public Appointments 2002–2005, Cabinet Office, 2002

figures suggest that as many as 18.2 per cent of the population has a disability or long-term illness (the figure for ‘people reporting limiting long-term illness’.<sup>61</sup>)

115. There has been solid progress in increasing the representation of women and minorities on public bodies since 1997. As at 31 March 2002, the figures were as follows:

	March 2001*	March 2002**	2005 Target
<b>Women</b>	34%	34%	50 %
<b>People with a disability (self-identified)</b>	1.5%	3.3%	Increase on 2001 figure (1.5%)
<b>Ethnic minority</b>	4.8%	6.2%	7-8%
* includes appointments made by devolved administrations			
** includes appointments made by UK government departments only (i.e., excludes devolved administrations)			

116. The proportion of women on NDPBs varied between 20 per cent at the Home Office and MOD and 47 per cent among the 12 Cabinet Office NDPBs. The proportion of people from minority ethnic backgrounds in 2002 varied from none at the Treasury, MOD and Scotland Office to 11 per cent at the Department of Health; and the proportion for ethnic minority women was 1.5 per cent. The 3.3 per cent rate for people with a disability varied between nil at the Treasury and DEFRA to 12 per cent at Transport.

117. What progress is government making towards more equal representation? In 2001–2002, ministers made over 3,500 appointments and re-appointments to the boards of public bodies subject to OCPA regulation. The key statistics<sup>62</sup> are as follows:

- 39 per cent of those appointed and re-appointed in 2001–2002 were women. This means that the proportion of women being appointed and re-appointed to the boards of these bodies has remained constant (around the 38–39 per cent mark) for the last five years;
- Just under 9 per cent of those appointed and re-appointed in 2001–2002 were from an ethnic minority background. Thus the number of people from an ethnic minority background being appointed and re-appointed to the boards of public bodies remains relatively high. Numbers have now remained between 8.5 and 9 per cent for the past four years;
- Nearly 3 per cent of those appointed and re-appointed in 2001–2002 declared a disability. Figures on disability have only been collected since 1999.

118. These figures may seem encouraging, but there are only about 3,000 new appointments each year (together with about the same number of re-appointments). It will therefore take several years for the composition of these bodies to become significantly more diverse.

<sup>61</sup> Census 2001, National Statistics. Figures for the extent of disability vary with how they classify disability. For example, the Disability Rights Commission website suggests that there are 6.9 million disabled people of working age in Great Britain (nearly a fifth of the working age population), see <http://www.drc-gb.org/campaigns/campaigndetails.asp?id=262>

<sup>62</sup> Seventh Report of the Commissioner for Public Appointments, 2001–2002, OCPA, 2002

### *Male, pale, stale*

119. Meanwhile, much of the evidence we have received suggests that the public image of the corps of people who man (too often literally) public bodies is broadly right—they are, in the Commissioner’s phrase, ‘male, pale and stale’<sup>63</sup> (and with Alison Cawley’s addition,<sup>64</sup> also ‘hale’.)

120. There are structural imbalances. For example, as the Equal Opportunities Commission pointed out,<sup>65</sup> women fill just about a third of national and regional public posts, while around half of all local public appointments (school governorships, magistrates, NHS trustees) go to women. There are also, as we note above, significant differences between the proportions of women on boards sponsored by different departments.

121. We recognise the Government’s commitment to more equality and diversity in public appointments through its plans to ‘Open Up’ public bodies published in 1998. We have also heard a great deal of evidence from OCPA and the Cabinet Office on the efforts since then to improve the balance of women, people from the ethnic minorities and people with a disability on public bodies.<sup>66</sup> Government departments have adopted targets for appointing women, ethnic minority people and people with disabilities to NDPBs. The majority of public appointment vacancies are publicly advertised. The criteria for the level of advertising are set out in the OCPA Code of Practice. The Commissioner has sought to promote increased diversity through road-shows, training and other initiatives. The Cabinet Office has published plans, produced by each department, to increase diversity on their public bodies. The Women and Equality Unit in the Office of the Deputy Prime Minister has held seminars aimed at encouraging more women to apply for public appointments at national level (although the fact that they were ‘invitation only’ ran the risk that the seminars reached only the converted).<sup>67</sup>

122. At the Cabinet Office, a ministerial group—the Short Life Working Group—is considering plans to improve diversity in public appointments. Recently, the Cabinet Office has moved to replace the obsolete Public Appointments Register, universally recognised (and criticised by many of our witnesses) as an ineffective ‘dinosaur’, with a single and more usable appointments website on which departments post their ‘live’ and future vacancies. More generally, we also recognise that the civil service is now more sensitive to issues of equality and diversity than most other organisations in the private or public sphere. But the problems of inequality and imbalance persist. We asked our witnesses the reason for this.

123. ‘Awareness’,<sup>68</sup> said Ms Helen Ghosh, then Director of the Central Secretariat in the Cabinet Office. ‘Apprehension’,<sup>69</sup> said the minister, Mrs Barbara Roche. They were

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<sup>63</sup> Q 02

<sup>64</sup> Q 1284

<sup>65</sup> PAP 40

<sup>66</sup> Cabinet Office press release, CAB 012/02

<sup>67</sup> PAP 43

<sup>68</sup> Q 389

<sup>69</sup> Ibid.

describing the most recent DETR research which found that women on the lower rungs of the appointed state were unaware of the opportunities that exist at national level and were not confident that their competencies fitted the model for national bodies. The panel sets out the findings of the research into women's attitudes. Ms Cameron took the issue of 'confidence' deeper. For her, "working people, women and black and ethnic minority people are discouraged by the status quo. They do not have the role models". She argued that pay—"the recognition of worth"<sup>70</sup>—was a vital issue in diversifying service on public bodies. We return to this issue below.

### Evidence on Obstacles to Women's Greater Participation

#### *Obstacles*

The Government's most recent research—a DETR survey—found that the most significant obstacles were:

- **Awareness of the opportunities**—a feeling that appointments are not for 'people like them'; difficulties in finding out about vacancies
- **Attractiveness of public appointments**—the image of the public sector—a perception that public bodies are a bureaucratic collection of the great and the good; a protracted selection process
- **Confidence in applying**—women undervaluing their competencies compared with men; concern about the ability to do the job
- **Time**—balancing the demands of a busy life, the timing and location of meetings, getting time off from employers
- **Child and elder care**—not only the costs of replacements cover, but also the time spent away
- **Cash**—the lack of remuneration for some posts and/or the inequitable levels of remuneration across different appointments. Some people simply cannot afford to take up a public appointment that is unpaid, or cannot risk time away from their paid employment.

#### *Encouragement*

Research by the Cabinet Office's Women and Equality Unit supports many of these findings. In terms of what would *encourage* more women to apply for public appointments, interviewees cited as priorities:

- knowing where to find information about public appointments in general and about specific vacancies
- the opportunity to shadow someone holding an appointment

<sup>70</sup> Q 1215

- the opportunity to learn more about the area relevant to the appointment
- being part of a network

### **Barriers**

As for the main *barriers*, interviewees identified:

- lack of awareness of opportunities
- women’s perception that their gender and background would be judged negatively by the interview panel members
- the intimidating image of current public appointees
- daunting interviews involving large interview panels (particularly an issue for women with non-professional backgrounds)<sup>71</sup>

### **The image barrier**

124. Most people clearly think that service on public bodies, and especially national bodies, is not for them, as the evidence from MORI (quoted above) and other sources confirm.<sup>72</sup> Such perceptions are reinforced by socio-economic background, gender, ethnic status and disability. Even such a conspicuously confident individual as the broadcaster Fi Glover told us that she was influenced by the idea that she was not properly qualified to enter this closed preserve.<sup>73</sup> Such perceptions need changing. The less people believe that the appointments process is a closed circle in which personal links and background matter most, the more likely are people from all walks of life to apply or let their names go forward. The present image of public bodies is a barrier to wider participation.

125. Moreover, as we argued earlier, diversity and merit are mutually reinforcing goals. The more diversity the system achieves, the greater public confidence in its integrity grows. We are therefore pleased to note that the Commissioner for Public Appointments is now officially tasked with improving diversity; and that she has revised her working definition of merit to reconcile both goals. The revised OCPA Code of Practice now defines ‘merit’ to allow departments to take into account “the balance of a board, in terms of skills, gender and background, when deciding the criteria against which candidates are assessed”.<sup>74</sup>

### **Lay representation**

126. A drive to increase the representation of lay people—that is, able and competent people who may not have the ‘traditional’ qualifications and experience for public service—must be an important part of future policy on public appointments. The Government must make it clear that it is actively committed to broadening and developing

<sup>71</sup> *Report of the Short Life Working Group on Improving Diversity in Public Appointments*, Cabinet Office, February 2003, paras 16-18.

<sup>72</sup> see para 55

<sup>73</sup> Q 465

<sup>74</sup> *Op.cit.* page 10

the role of ‘lay persons’ on public bodies. The idea of lay representation, even on expert bodies, is far from revolutionary. The General Social Care Council<sup>75</sup> must by statute have a *majority* of lay members. Some of the most specialist of advisory bodies—for example, the Committee on the Safety of Medicines (CSM) and the Committee on Pesticides—already recruit lay members as a matter of course (two each in both cases.)

127. Professor Alasdair Breckinridge, chair of the CSM, made a valuable distinction between the two types of members on specialist committees like his: first, there were those who require “technical scientific expertise in very precise areas”; secondly, there were those who had broad experience but not in the specific area. Professor Breckinridge advised us that, for the ‘expert’ posts, appointments panels often chose a candidate from a list of appropriate candidates; “whilst this is not strictly speaking an election, it has a greater semblance of democracy than merely choosing one person”. But while applicants for ‘expert’ posts on the Committee on the Safety of Medicines must possess the ‘relevant scientific expertise’ for the CSM to function, it would be ‘entirely relevant’ for the committee’s lay members to be elected; or for that matter, we suggest, chosen by a process of random selection (or lot).<sup>76</sup> Mark Thomas also argued that each public body should contain a minimum quota of ‘lay’ members—that is, people with no previous direct experience of the relevant issues.<sup>77</sup>

128. There is also another aspect to the question of diversity. We have referred above (para. 77) to the need for public bodies to have within them alternative voices, to cultivate some ‘grit in their oyster’. On ‘expert’ advisory bodies, it can be very useful to have voices that question the prevailing consensus. Different, even maverick voices can help clarify issues and prevent the easy acceptance of hasty and ill-considered decisions. There should always be a place for the constructively awkward customer. In particular, we would oppose any suggestion that simply balancing party representation on a public body will always achieve a true representation of the spread of political views. Where political nominations are made, they should reflect as far as possible the diversity of attitudes in the party, rather than simply the opinions and preferences of the leadership.

129. On the other hand it is important to recognise realities. Public bodies often exist to implement policies decided by a properly elected government. Someone who persists in purely destructive opposition to those policies is unlikely to make an effective member of such a body.

### **A national strategy**

130. We have paid tribute to the Government’s commitment to diversity and briefly reviewed some of its initiatives. Encouraging and positive though such initiatives have been, they have nevertheless been unco-ordinated and modest in scale, and fall short of what is required. In the eight years since the first report of the Nolan Committee, progress has certainly been made, but it is now vital that a more active and coherent approach should be taken to widening the pool of candidates for public life.

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<sup>75</sup> PAP 22

<sup>76</sup> PAP 14

<sup>77</sup> PAP 08

131. Simon Woolley of Operation Black Vote was among those who made this point. ‘In the absence of a plan,’ he said, ‘you are just crossing your fingers’.<sup>78</sup> Julie Mellor, chair of the Equal Opportunities Commission, made the same point more strongly. Why, we asked her, was the Government having so much of a problem in achieving diversity? She replied that, so far as gender was concerned,

“The biggest reason is because there is not a consistent approach. There are lots of *ad hoc* initiatives, which are very welcome, but until every department looks at every aspect of its process... and builds in the gender aspect here, then I do not think that we will see the progress to more representation that we seek”.<sup>79</sup>

132. The National Assembly for Wales is not just crossing its fingers. The Assembly’s statutory obligation to promote equality is at the heart of a plan to “achieve applications for public appointments which are broadly representative of the Welsh population”. This is closely linked to the Assembly’s wider aspiration not simply to get a more diverse range of people onto its NDPBs and public bodies, but to enable them to “deliver appropriate services to the diverse population we have in Wales”.<sup>80</sup> The Assembly is collecting a considerable amount of information about the current range of people on public bodies, and has a detailed action plan to make sure progress is made.

133. As part of its research, the Assembly plans to establish the facts on diversity on Welsh public bodies, the motivations of public appointees, their expectations, training needs and barriers to effective participation. There will be regular reviews to check on progress and benchmarking with UK departments to see whether practices can be improved. The voluntary sector will be brought in and asked for assistance in attracting more applications from suitable people in under-represented groups. The departments of the Assembly are to agree minimum standards for induction training for the bodies which they sponsor. We believe that the Assembly’s plan, even if easier to implement in an area the size of Wales, provides a valuable model for a UK-wide national strategy.

**134. We recommend that the Government build upon the report of the ministerial Short Life working group on diversity in public appointments to develop a high-profile national strategy to involve the public in a concerted drive to increase diversity and strengthen lay representation on public bodies.**

### ***Elements of a national strategy***

135. Among the elements of a new national strategy should be these main recommendations already made in this report:

- the current system of regulation for public appointments needs to be strengthened; and, in particular, the remit of the Commissioner should be extended to public bodies as a whole;
- the Office of the Commissioner should be established independently of the executive;

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<sup>78</sup> Q 718

<sup>79</sup> Q 760

<sup>80</sup> ‘Mainstreaming Equality in Public Appointments’

- the Office should be responsible for the independent assessors who should in future be involved in every stage of the appointments process.

136. We now go on to develop another series of recommendations more specifically designed to increase lay representation and diversity on public bodies. Among the issues that we now consider are:

- a review of the roles of public bodies, criteria for their non-executive board members and detailed examination of levels of diversity on public bodies;
- a shift in the appointments criteria from previous experience to competencies and ability;
- the role of selection by lot or election in widening representation;
- issues of remuneration, care responsibilities, time off and benefit losses;
- the need for induction courses, apprenticeships, mentoring and other support, especially for non-traditional candidates;
- improvements to the processes of appointment to make them more accessible and flexible for a wider range of applicants.

137. A thread that runs through our consideration of measures to widen the pool of people on whom public bodies draw is an insistence on professionalism in the appointments process. We go on in this report to consider two ways in which the whole business of making appointments could be made more professional and efficient: either creating a National Appointments Commission, on the model of the NHS Commission, or creating specialist appointments units in and, where necessary, between departments.

138. We take the view that a national strategy to raise public awareness and a new emphasis on lay representation and diversity in Whitehall is an essential next step. But the recommendations that we make also stand on their own, with or without a new national strategy.

### ***Review of the roles of public bodies and their members***

139. The huge diversity of public bodies, with their different specialisms, needs and functions, demands a sensitive appraisal if a wider range of members is to be attracted and recruited to serve on them. We have already made the case for a comprehensive survey of public bodies and how they are categorised.

140. We heard authoritative evidence on the way in which the set of conventional criteria for recruiting people onto public bodies can frustrate the goal of increasing diversity. Sir William Wells, chairman of the NHS Appointments Commission, explained how the detailed criteria set by Frank Dobson, as Health Secretary, can unintentionally limit the diversity of people who make it onto public bodies. Sir William said that a cross-section of non-executive NHS board members showed them to be mainly white and middle class “and that is not representative of the people for whom they are going to be responsible”. Mr Dobson’s criteria were not achieving their original objectives and were “confining the

field rather than expanding it” and creating a self-perpetuating group of people. “Why?” Sir William asked, and replied:

“Because they are concentrating on knowledge and skills. Knowledge and skills do preclude large numbers of people who we believe would have the competency to carry out the role... I have talked to both the Secretary of State and the Minister of State about it and they are supportive of us coming up with an appraisal which actually changes the way in which we recruit people to a competency-based interview process which we will make quite structural”.<sup>81</sup>

141. Julie Mellor, chair of the Equal Opportunities Commission, argued that all departments had a responsibility to examine whether their processes would deliver Nolan principles. ‘If you look for an experience profile, you can end up with the same group of people; whereas, if you look for competence and skills, you are more likely to find a variety of people who may not have a traditional experience profile but actually do have the skills and expertise to contribute. And that is where merit and... what it is that is required to fulfil this public appointment, what are the skills and competence, have made a difference’.<sup>82</sup>

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## CORE COMPETENCIES FOR BOARD MEMBERS OF PUBLIC BODIES

In written evidence to the Committee, Dame Rennie Fritchie, Commissioner for Public Appointments, said that the calibre and experience of the people needed to perform differing roles on differing public bodies varied, but experience suggests that there are certain core competencies which each member of a board should have:<sup>83</sup>

To be capable of original thinking

The ability to give a balanced view

The ability to keep an open mind and offer dispassionate advice

An appreciation of working within the public sector

The ability to make an effective contribution to the work of the body

A commitment to the aims of the body

An ability to negotiate

Leadership qualities

Sound judgement

Influencing skills

Public speaking skills

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<sup>81</sup> Q 855

<sup>82</sup> Q 765

<sup>83</sup> PAP 66

142. We share this emphasis on the need for a fundamental shift in attitudes towards conventional measures of merit. We believe that those can limit the field of potential non-executive board members and carry a risk of re-cycling the same kinds of narrowly-based candidates.

**143. We recommend that the Government should reconsider the existing assumptions for measuring merit in the interests of competency-based recruitment and diversity as part of a wider review of the role of non-executive board members on public bodies.**

144. A more sensitive appraisal of the statistics on gender, diversity and disability is also required. For example, Bert Massie CBE, chair of the Disability Rights Commission, made the point about the wide and diverse range of people with disabilities, who include people in wheelchairs (a minority, he said), people who are “overtly disabled”, people using sticks, blind people, people who have epilepsy.<sup>84</sup> There are doubts about the capacity of self-reporting accurately to catch and reflect this diversity and some departments, as we heard from the Engage Network, do not record or set targets for the number of disabled people they appoint. The Engage Network<sup>85</sup> noted with alarm (which we share) that “different departments have different approaches to evaluating the number of disabled people they have appointed to public bodies... There also appears to be no agreement around the definition of disabled people with some departments unable to come up with a definition. It is unclear why the departments concerned did not consult the Disability Rights Commission for advice on this matter”.

145. While the overall figure for the proportion of people from ethnic minorities serving on public bodies stands at 6.2 per cent, that for women from ethnic minorities is only 1.5 per cent. We also know very little about the breakdown between different groups; the Government should be able to say, for instance, how many Muslim women present themselves as candidates for public appointments—and how many succeed.

146. Only through systematic monitoring could Government collect the data to identify the gaps in diversity on public bodies and take steps to promote equality. Moreover, such monitoring would have to be complemented by a rigorous survey of the needs of public bodies for various types of expertise and experience.

**147. We recommend that, as part of the national strategy, the Government review of public bodies should carefully monitor applications and appointments to public bodies with a view to promoting diversity.**

**148. We further recommend that Government should consider the requirements of public bodies for various types of expertise and experience and the variety of roles non-executive board members can play in order to gauge the prospects of increasing diversity and lay representation on such bodies.**

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<sup>84</sup> Q 804

<sup>85</sup> PAP 57

### ***A single equality act***

149. The diversity plan of the National Assembly for Wales is driven in the first instance by the fact that the Assembly is under a statutory duty to promote equality, a general duty that also exists in Northern Ireland, but not in England or Scotland, or the United Kingdom as a whole. Professor Teresa Rees, former Equal Opportunities Commissioner for Wales, believed that a similar all-embracing duty to promote equality would “turn the whole thing around”.<sup>86</sup> As she pointed out, there is a great deal of inconsistency in legislation on race, disability, women’s opportunities, and so on. The Race Relations (Amendment) Act 2000 obliged all public authorities in the UK to eliminate unlawful racial discrimination and to promote equality for ethnic minorities. The Government has committed itself to extending this duty to grounds of gender and disability, but has taken no steps to implement this commitment.

150. Julie Mellor of the Equal Opportunities Commission said that a statutory duty on the public sector to promote equality “across all the grounds” (of possible discrimination) would constitute “the biggest stimulus” to progress on diversity:

“if we had it across all the grounds, combined with political leadership and senior management leadership, you would have a legal responsibility to be looking at every aspect of your policy design... it would look at the whole lot, including public appointments... that would be a huge stimulus for change—we have seen it where the Welsh Assembly have such a duty, and the combination of political will and having that duty has meant that they have made enormous progress in a very short space of time”.<sup>87</sup>

151. Moreover, when the Committee took oral evidence from her and representatives of the CRE and Disability Rights Commission, we were told that a single Equality Act would be a necessary backdrop to Government proposals to merge the EOC, CRE and DRC into a new single wider equality body which in itself also had the potential to advance the diversity agenda.<sup>88</sup>

**152. We recommend that the Government should introduce a single equality act that would lay a duty on all public authorities to promote equality and tackle discrimination.**

### **Remuneration**

153. The Cabinet Office is currently engaged upon a study of remuneration policies on public bodies, including the basis on which remuneration is determined; the costs of extending remuneration to more or all posts; and the likely impact upon diversity.

154. The weight of evidence that we have received convinces us that the existing arrangements for remunerating those who serve on public bodies are a significant barrier to wider participation, especially among people who are low paid or self-employed. Dame

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<sup>86</sup> Q 982

<sup>87</sup> Q 773

<sup>88</sup> Q 784–87

Rennie Fritchie told us: “Remuneration is a diversity issue. About 80 per cent of public appointments are unpaid and I am told by many people that the lack of remuneration and the inconsistent level of remuneration across different bodies are real barriers to enabling a broad cross section of people to participate on public bodies”.<sup>89</sup> The Equal Opportunities Commission drew particular attention to the effect of lack of remuneration and different levels of pay across different bodies which “introduced a barrier for many women, who are more likely to be in lower-paid work”.<sup>90</sup> Simon Woolley, of Operation Black Vote emphasised the deterrent effect of unpaid posts on ethnic minority candidates: “it does rule out a lot of ordinary people, but also a lot of high-flyers, simply because to take time off has an effect on what they can and cannot do”.<sup>91</sup>

155. Our analysis of *Public Bodies* and other data revealed that the total number of chairs and members of all the NDPBs, executive and advisory, is 10,016, of whom 1,165 are chairs and 8,941 members.<sup>92</sup> It also shows that, of the chairs, 846 are remunerated and 319 are not. Of the members, 5,058 are remunerated and 3,883 are not. As Table 2 shows, there is a marked divergence between executive and advisory bodies. Only 5.4 per cent of executive chairs and 17.5 per cent of executive members are not remunerated, whereas 71.4 and 76.1 per cent respectively of chairs and members of advisory bodies are unpaid.

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<sup>89</sup> Q 02

<sup>90</sup> Q 755

<sup>91</sup> *Ibid.*

<sup>92</sup> See *Public Bodies* 2002

Table 2: Chairs and Members of Executive and Advisory Quangos (NDPBs) and their Remuneration, as at March 2002 (a)

Department	Executive NDPBs				Advisory NDPBs			
	Paid Chairs	Unpaid Chairs	Paid Members	Unpaid Members	Paid Chairs	Unpaid Chairs	Paid Members	Unpaid Members
Cabinet Office	1	0	15	0	4	7	43	61
Duchy of Lancaster (b)	-	-	-	-	0	21	0	179
DCMS	17	25	142	310	1	12	10	179
Defence	1	4	1	51	6	18	51	289
ODPM	9	1	91	8	0	3	24	49
DfES	8	3	16	100 (c)	0	1	0	8
DEFRA	29	1	144	95	45	7	178	120
Export Credits Guarantee Department	-	-	-	-	0	1	0	9
FCO	1	5	0	80	1	2	7	15
Food Standards Agency	-	-	-	-	8	0	105	1
Health	10	0	127	0	20	13	297	179
NHS Bodies (d)	595	0	2,840	0	-	-	-	-
Home Office	6	1	161	18	4	4	29	70
DfID	-	-	-	-	1	1	0	20
LCD (e)	3	0	17	0	4	150	26	1,398
Northern Ireland Court Service (f)	-	-	-	-	0	11	0	74
Northern Ireland Office	6	0	60	0	0	0	2	0
Oftel	-	-	-	-	6	0	40	0
OFWAT	10	0	0	131	1	0	0	9
Royal Mint	-	-	-	-	0	1	0	7
Scotland Office	-	-	-	-	0	1	2	1
DTI	24	2	329	79	5	22	56	275
Transport	10	0	123	2	1	1	12	19
HM Treasury	-	-	-	-	1	0	17	7
DWP	5	0	46	0	3	1	47	40
<b>Totals</b>	<b>735</b>	<b>42</b>	<b>4112</b>	<b>874</b>	<b>111</b>	<b>277</b>	<b>946</b>	<b>3009</b>

Source: Public Bodies 2002, modified by information from Departmental returns

- Notes: (a) This table excludes chairs and members of public corporations, who are invariably paid. Because of the differing reporting practices adopted by departments, it also excludes ex-officio members and vacancies on bodies.
- (b) Figures are for advisory committees on Justices of the Peace in Lancashire, Greater Manchester and Merseyside.
- (c) This figure does not include the 47 unpaid chairs of local Learning and Skills Councils.
- (d) Figures include health authorities, NHS trusts and primary care trusts, whose members make up 2,552 of the total 2,840 paid members on NHS bodies.
- (e) Figures for the LCD's advisory bodies include advisory committees on Justices of the Peace in England and Wales.
- (f) Figures include advisory committees on Justices of the Peace in Northern Ireland.

156. We believe that the assumptions that govern the levels of remuneration and the divisions between paid and unpaid service reflect the values of a pre-Nolan era. Moreover, the rates of pay and criteria for payment and non-payment are evidently inconsistent, as the data we received from departmental responses to our questionnaire showed, across departments and even across sponsoring divisions within departments.

157. The Committee asked some of the larger government departments to describe their policy on payment for public appointments. We found that the main principle was ‘the rule of thumb’. Officials set or agreed rates of pay that reflected the status of bodies, the level of grant and staffing provided, the weight of responsibilities that appointees took on, and their relevant experience. The FCO response was fairly typical. The FCO has ‘no fixed policy on the remuneration of outside appointees... Each case is treated on its own merits. The main criteria are the relevant experience of the appointee and how demanding the task is’.<sup>93</sup>

158. We have been able to discern several main strands in remuneration policies. First, there is the straightforward attempt to gauge what a market rate for chairs and members of executive NDPBs and public corporations might be. This is a delicate and difficult task, as is vividly illustrated by the controversy about alleged excessive executive salaries in the private sector. Our survey of departments may, on further analysis, throw more light on any discrepancies.

159. Secondly, there is the question of prestige. A previous study of advisory NDPBs found that specialist members were relatively low paid because service on such committees was regarded as a mark of distinction within their professions. As one expert informed the researchers, ‘it is an honour to serve’.<sup>94</sup> Thirdly, there is sometimes an old-fashioned assumption that service on many public bodies is largely to be undertaken by men of experience near or at retirement age, or (less commonly now) the wives of managerial and professional men, neither of whom really require adequate remuneration. People of experience, such as those newly retired, clearly have much to offer and we do not believe that there should be arbitrary (and often inconsistent) age barriers for public appointments, but nor should the pool of potential appointees be implicitly narrowed. Bert Massie, chair of the Disability Rights Commission (DRC), said: ‘I really got the impression, when I came to the DRC, that what they were looking for was somebody who already had a decent pension, that this was a job for somebody, “You’ve made your money, old boy, and, you know, it’s a nice little bit of pin money to keep going”’.<sup>95</sup> None of the departments we surveyed seemed to consider the fairly obvious point that suitable payment could help attract a more diverse, perhaps less prosperous, range of candidates for public office, while retaining the sense of public service. There is some evidence that paying members does increase interest in service on public bodies. For example, the Rail Passengers Council’s annual report for 2001–02 notes that the first year of payment had a ‘dramatic’ impact

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<sup>93</sup> Letter from FCO, 12 March 2003

<sup>94</sup> *Behind Closed Doors: Advisory Quangos in the Corridors of Power*, Weir, S, and Hall, W, Channel 4/Human Rights Centre, University of Essex, 1995

<sup>95</sup> Q 792

upon the network of rail passengers' committees. Applications for membership grew fourfold and diversity improved as a result.<sup>96</sup>

160. Many witnesses<sup>97</sup> suggested that the number of paid public appointments should be expanded and remuneration generally made more generous. We summarise below the arguments for and against such an expansion:

*Against:*

- Common Purpose argued that more frequent payment could encourage the growth of the semi-professional committee person, who makes a portfolio job out of public bodies. This could risk the replacement of the ideal of public service with career calculation;<sup>98</sup>
- Voluntary service frees public appointees completely from any suggestion of obligation to the government, or anyone else. A concerted move away from that principle could lead to pressure from government paymasters, and a tendency to make safe decisions at times when re-appointment was in prospect;
- It could be expensive to provide appropriate remuneration, especially for heavily-loaded or expert posts;

*In favour:*

- An increase in the number of paid posts would assist the Government's goal of increasing diversity. The Transport and General Workers Union argued that 'Whilst such increased remuneration would require a significant increase in resources allocated to public appointments, this would seem a price worth paying for a more representative and therefore more effective system of public bodies'.<sup>99</sup> We heard evidence from Operation Black Vote that suggested that payment for service on public bodies would make it more attractive for people from ethnic minorities to apply for posts on such bodies;<sup>100</sup>
- A more generous system could produce more consistency and fairness between bodies and posts, allowing the same pay to be provided for the same work;
- There are increasing demands to make the members of public bodies more professional, and professionals should be paid;
- Councillors are paid through a comprehensive and developed allowance scheme. There is no reason why members of public bodies, which may carry out similar functions, should not be paid in a similar way.

161. We agree that the ethic of voluntary public service is an ideal that government should be reluctant to cast aside; and there is no doubt that the absence of financial obligation

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<sup>96</sup> Rail Passengers Council Annual Report, 2001-2002, page 7 (Chairman's foreword)

<sup>97</sup> for example, Sir William Wells, Q 856, Operation Black Vote, Q 754, and Mark Thomas, Q 288.

<sup>98</sup> Q 659

<sup>99</sup> PAP 03

<sup>100</sup> Q 755

could encourage independence of mind and avoid any suggestion of a conflict of interest. However, we are convinced by the arguments that payment can be an important tool in securing diversity on public bodies; and that the ideal of voluntary service, almost by definition, is in present circumstances normally fulfilled by those who can afford it.

162. Nor have we found any evidence that paid public appointees are any less independent or courageous than those who are unpaid. On the other hand, we have received convincing evidence that more generous but still modest payments could help to encourage a more diverse range of people to apply for public appointments.

**163. We therefore recommend that the Government should develop a more consistent approach towards paid and voluntary service on public bodies with an emphasis on developing competence-based lay representation and diversity in appointments.**

### *Pay-related issues*

164. There are other pay-related issues which need to be addressed if the new civic tradition is to be securely established. Bert Massie pointed out the financial difficulties that face those who take paid public appointments while still of working age. He suggested that the Civil Service Pension Scheme could be adapted to provide appropriate security for those who take on paid public appointments which demand a substantial commitment of time.<sup>101</sup> The broader question of how people in full-time work can be encouraged to apply for such demanding posts also needs to be addressed. It is important to take account of the conflicting pressures that are brought to bear on those who have to balance their commitments in this way.

165. This means looking freshly at provisions for time off from work for public duties. There are existing arrangements for councillors, and for trade unionists, but no general provisions for time off from work for public service. Such service should be encouraged and valued by employers in both the public and private sectors, and a genuine opening up of the public appointments system to a wider range of people will require attention to this issue. We therefore recommend that the Government should put in hand a review of this area, with a view to establishing a coherent set of arrangements for workers to have time off for public duties.

166. Several witnesses said that the appointments process needed to recognise the need for child and other caring obligations to be met if more women in particular were to be recruited. As Sir William Wells observed, ‘it is very important that we do not preclude people with children because they are important to us to have on the board’.<sup>102</sup> Sir William also emphasised the need to adopt convenient meeting times and to shape working practices to make service on public bodies family and employer friendly.

167. We are persuaded that improved and consistent arrangements for child-care and similar costs, along with family and employer-friendly meeting patterns, should be a Government priority.

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<sup>101</sup> Q 791

<sup>102</sup> Q 856

168. We recommend that the Cabinet Office should consult the Commissioner for Public Appointments over guidance to departments, aimed at improving facilities and payments for the care of dependants and meeting other reasonable costs; and making meeting times and frequency of meetings more family and employer friendly.

### *Benefit losses among people with disabilities*

169. Social security rules can penalise people who take on appointments, especially people on incapacity and other income-related disability benefits. People with disabilities can lose their benefit if they receive remuneration for public service, and with it their ‘passport’ to other benefits and facilities. The Engage Network<sup>103</sup> gave us general evidence on this issue and Bert Massie cited the case of a man who has multiple sclerosis. He serves on the Chester hospital board, but as a result of changes in social security legislation would, said Mr Massie, lose his higher-rate benefit entitlement and might never regain it if he remained on the board. Here was a ‘very able man’ who would have to surrender his place on the board because of the hostile benefits system.<sup>104</sup>

170. We recommend that the Government undertake an urgent review of the rules on incapacity and income-related disability benefits to ensure that they do not discourage people with disabilities from applying for public appointments.

### *Selection by lot—talent hunting*

171. One possible way of strengthening diversity on public bodies would be to adopt the process of selection by lot pioneered by the National Lottery Community Fund.<sup>105</sup> The Fund’s nine regional awards committees in England select two of their 10 members by way of an initially random process. People are first chosen at random to receive a letter inviting them to apply for membership of a committee. Those who show an interest then go through a rigorous selection process, described to us by Andy Freeney, the Fund’s regional manager for the north-west, and the successful candidate is chosen on merit in accordance with the committee’s needs and balance at the time.<sup>106</sup> In this way, both diversity and merit are combined. Other members are appointed after public advertisement and interview in the conventional way.

172. So far 26 people have been chosen by lot, aged between 18 and 55, and include an electrician, swimming instructor, police officer, and housewife. Janet Paraskeva, who developed the scheme while she was at the Fund, described the process as “head-hunting” in the community at large. Such rigour should overcome objections that it is a fundamental departure from the merit principle. Ms Paraskeva said that it drew from a “wide range right across the community, whether you are looking for diversity in age, intellectual capacity, ethnicity, gender from which you can select”:

“Having run a small quango and having myself been on a health trust, I know that on both those occasions I got there partly on merit, but also, in terms of the trust,

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<sup>103</sup> PAP 57

<sup>104</sup> Q 782

<sup>105</sup> PAP 52

<sup>106</sup> Q 1134–5

because somebody knew whose shoulder to tap on... We [at the Fund] were tapping the shoulders of lots of folk and saying, ‘Have you thought of this?’<sup>107</sup>

173. This is an imaginative and innovative approach to extending the range of people involved in public appointments, which we would like to see taken up more widely. We are in favour of a modest pilot scheme using ‘lot’ to attract candidates for lay positions on public bodies, and which would in turn enhance public perception of these bodies as more open and inclusive. This approach can be combined with a final decision based on the principle of merit. We are aware that there is a possible tension between using this technique and the case for making more effective use of existing networks to access already active talent from under-represented groups.<sup>108</sup> But we believe that these different approaches can be reinforcing. We are also aware of the objection that selection by lot might seem to lack the dignity deemed necessary for appointments to major national bodies. We are not deterred by that argument either. Jury service, based on random selection, is a jealously-guarded cornerstone of the constitution and is less rigorously conducted than the Fund’s processes. We see no reason why a system of selection based on the same principle should not be used to offer to a wide range of people the chance to take part in public life.

**174. We therefore recommend that the Government should organise and publicise a pilot scheme for public appointments involving an element of random selection by lot, with the final selection still made on the basis of merit.**

### An extension of voting

175. The ballot confers democratic legitimacy; and extending voting, directly or indirectly, to public bodies at all levels would allow citizens to share in a wider range of political decision-making. As English Heritage acknowledged in evidence to us, elections would help “alleviate the criticism of appointed board members and the perceived misuse of ministerial patronage”.<sup>109</sup> But while the idea may seem immediately attractive, it is fraught with practical difficulties and strong counter-arguments.

176. We are wary in general of laying down rules to fit all cases. In the case of national and regional bodies, we take the view that ministerial responsibility must remain the democratic anchor for an almost wholly appointed set of bodies, although with the role of Parliament strengthened as we have suggested.<sup>110</sup> We appreciate that some bodies will in effect have nomination rights in particular cases, and that partial electorates may be involved in certain others. However appointment will usually offer the best prospect of achieving gender balance and due representation of minorities on such bodies. We repeat our view that there should be a national plan to spread lay representation on all national and regional public bodies.

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<sup>107</sup> Q 1143

<sup>108</sup> Q 1227 & 1235

<sup>109</sup> PAP 17

<sup>110</sup> Though once an elected regional authority is up-and-running in any region, then clearly responsibility should shift to the authority.

### *National and regional bodies*

177. For most public bodies at national and regional level, the first major difficulty lies in determining the electorate. Is it really conceivable, or even desirable, that there should be nationwide elections to vote for board members across the spectrum of public bodies from the Access Task Force at the Department of Health to the Zoos Forum? Would the electorate even turn out to vote in elections to, say, significant bodies like the Environment Agency or Housing Corporation or Health and Safety Commission? Would partisan party politics dominate in elections, or would factional special interest groups vie for control, as they already do for example in elections to the National Trust?

178. Moreover, would elections provide national or regional public bodies with the blend of knowledge, skills and expertise that they require? The Environment Agency, for example, said that in the case of national bodies “appointment rather than election is the appropriate model to ensure that membership of the bodies concerned comprises a cross-section of suitably qualified and experienced people”.<sup>111</sup> Would elections provide the diversity, gender balance and fuller representation of minorities that is properly the major aim of government policy? As NESTA pointed out, elections are unlikely to do so and may indeed simply confirm the imbalance between the ‘usual suspects’ of public life and the rest.<sup>112</sup>

179. We acknowledge that there are special circumstances in some cases that may justify an elective element in the workings of some national public bodies. Already some specialist bodies have partial and indirect election: for example, 25 of the 64 board members of the General Teaching Council, established under the 1998 Teaching and Higher Education Act, are elected<sup>113</sup> and the Home Grown Cereals Authority has a minority of members elected via their respective trade organisations.<sup>114</sup> The Horticultural Development Council offers another example of partial election. The Council is funded through a compulsory levy on horticultural growers above a certain size. It is an appointed body, but growers within specified groups may elect members to panels, or sub-groups, of the board and it has become the practice, in deference to grower demands, for the minister to appoint elected panel chairs to the Council’s board. There may well be a case for a fully elected Council in this case, given that there is a defined ‘electorate’ of subscribing growers, under the principle of ‘no taxation without representation’. There may well be other public bodies that could benefit from strengthening their representative nature and legitimacy through an element of election.

**180. We recommend that sponsoring departments should be required to assess the scope for introducing elections to the boards of public bodies to leaven the appointed membership with appropriate representation. These assessments should be made every five years, beginning in 2004.**

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<sup>111</sup> PAP 36

<sup>112</sup> PAP 53

<sup>113</sup> PAP 37 Appendix

<sup>114</sup> PAP 16

### *Local public bodies*

181. There is a stronger case for elections to local public bodies. The electorates for such elections would be more clearly defined and they could thus become more representative bodies, accountable downwards and not simply upwards. However, there are also arguments against elections at local level. Paula Ridley, chair of the Victoria and Albert Museum and of the Liverpool Housing Action Trust, told us that:

‘there is a huge resistance to standing for election amongst many people who currently staff the majority of our public boards. Indeed, these very people have chosen non-political public service as they do not wish to be involved in the cut and thrust of political life. Many, like myself, regard impartiality and independence from political connections to be a critical safeguard’.

182. She also pointed out that ‘there is considerable doubt about whether the electorate wants to turn out endlessly’.<sup>115</sup>

183. Ms Ridley’s preference for a model of public service, other than that deriving from elections, and thus prone to party politics, has force. However, there are also strong arguments for elections to local public bodies. Elections could

- confer greater legitimacy on such bodies
- secure a local accountability that is currently missing, since local authorities do not have the means or resources fully to make the local quango state accountable
- introduce more direct popular and user influence over policies and actions
- raise public awareness and interest in their work. We noted while in Bristol that local people were able to elect a majority of residents onto the boards of four community regeneration partnerships for their areas, with turnouts initially higher than in City Council elections in the same wards.
- widen popular participation in public life by offering further local opportunities for election, especially in a context where there is growing evidence of a shift away from traditional party political patterns at local level.

184. One possible way of reconciling public service considerations locally—fitness for purpose and independence from party politics with electoral legitimacy and accountability—may be to develop the trend towards hybrid bodies which combine appointed and elected elements. For example, Housing Action Trusts have members elected from resident groups. Many social landlords have tenant representatives on their boards. Local regeneration bodies around the country have locally-elected members on their boards. The proposed foundation hospitals will have at least partly elected boards. As Sir William Wells reminded us, the appointed NHS patient forums will be able to elect one of their number to be a non-executive director of the relevant trust.<sup>116</sup> Elected councillors

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<sup>115</sup> PAP 45

<sup>116</sup> Q 866

often serve on public bodies as representatives of their authorities or in a personal capacity, another widespread form of indirect election.

185. In summary, a modest shift towards an element of election seems to be in tune with the ‘new localism’ proclaimed by the Government. At local level we believe that the opportunities for election should be further explored, whether direct or indirect. Not only can election breathe new life into an institution, but it can also introduce local accountability into a significant area of public life, involving major public services, that is now almost entirely missing.<sup>117</sup> However we are anxious that any new moves towards directly-elected bodies or service boards should not dismember the service base of local authorities and thus erode still further the democratic integrating role that they play in local community life. Indeed, we would like to see a strengthening of the scrutiny role of local authorities in relation to the local appointed state, building on the scrutiny of local health bodies that has recently been established. The most obvious candidates for new elective status would probably be the police authorities, on which local authorities are represented, and the Primary Care Trusts in the NHS in England, which are the commissioning bodies for healthcare. But, as we discuss below, a hybrid body with a significant element of election might well be the most promising way forward.

186. The current debate over new forms of part-elected governance—as envisaged for foundation hospitals and public interest companies for example—suggests that this is an issue that needs careful consideration and regular review. The public appointments system needs to be ready to respond robustly to changes as they occur.

**187. We recommend that the Government should examine the scope for extending elections, both direct and indirect, for local bodies, giving special attention to the development of hybrid bodies (part-elected, part-appointed); and should report to Parliament on its findings.**

## Positive action

188. There is concern that the emphasis on diversity in public appointments may take precedence over the primacy of merit. As the Equal Opportunities Commission explained to us, positive action is frequently confused with positive discrimination. ‘Positive discrimination,’ their evidence said, ‘which means appointing someone because they come from an under-represented group, regardless of whether they have the relevant skills and qualifications, is unlawful. However, lawful positive action allows an organisation to encourage applications from men or women where they have been under-represented in the past’.<sup>118</sup>

189. Of all those who gave evidence on the need to increase diversity, including specialists in equal opportunities, only two advocated positive discrimination or fixed quotas in any form. Representatives of the CRE and EOC rejected any dilution of merit tests to achieve diversity objectives.<sup>119</sup> Professor Rees, pressed to choose between a general duty to promote

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<sup>117</sup> This was one of the themes of our previous report, *Mapping the Quango State*, Fifth Report, Session 2000-01, HC 367: I and II, March 2001

<sup>118</sup> PAP 40

<sup>119</sup> Q 766

equality and a specific duty in relation to gender balance on public bodies, chose the general duty, but added, “Statutory legislation about gender balance... is well worth considering... those countries that have gone down this road<sup>120</sup> are well worth studying, not simply to look at the effects but to look at what bunking up exercises have been introduced to make it work”. Bert Massie, of the DRC, said that discrimination could be valuable in special cases. He said that people with learning difficulties, who would not have passed the usual test on merit, had contributed “a great deal” to two public bodies on which he had served, “they actually have an insight which many of us miss”.<sup>121</sup>

**190. We agree that there should be no general conflict between merit and diversity, but we believe that study of quotas for gender balance in other European nations may enable us to learn from their experience, and we also accept that it could be appropriate in some circumstances to dilute merit tests in the cause of a wider range of experience and background on certain boards.**

### *Dilution of standards*

191. Is a dilution of standards creeping through under the guise of diversity? Perhaps the most pertinent evidence we heard on this came from Hamish Davidson and Alison Cawley, of the recruitment consultants Veredus. They rejected the idea of any such dilution. Hamish Davidson said, “Certainly, in those sectors faced with a choice of two candidates who are absolutely equal the woman will have the advantage... and in the public sector it is undoubtedly a dramatic advantage to be a black woman currently”. But there was no compromise of the merit test.<sup>122</sup> Ms Cawley confirmed that the advantage was not “about being a woman, it is about being a woman with those talents”.<sup>123</sup> And though they identified the advantage women gain from being in demand, they also both agreed that women could face prejudice, or preconceptions, about whether they could be tough enough; “there will often be a prejudice”, said Mr Davidson, “that men can be tough and women less so”. Alison Cawley told us:

“I think it is still the case unfortunately that women need to prove themselves more than men do. If a man has got to a certain level in a job... it will be assumed that he has qualities A, B, C and D, including toughness; a woman will still be interrogated more and required to prove that she has done these things even if she has a parallel career record”.

192. Further, a woman who has, for example, lost five years of a career through child-care could also encounter the unthinking preconception, “Oh, if that is the level she has got to at that age, it is not as good as the chap who is at a higher level”.<sup>124</sup>

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<sup>120</sup> Q 949, Italy, Finland, Sweden and now France, as she informed us earlier in her evidence.

<sup>121</sup> Q 771, There is growing recognition of the importance of this issue. In one landmark case, the European Court of Justice upheld a German state law which, where there is gender imbalance in a certain grade, requires that a woman should be given priority over an equally-qualified man. *Marschall v Land Nordrhein-Westfalen*, court of Justice of the European communities, 11 November 1997, Case No. C-409/95, <http://europa.eu.int/ju>

<sup>122</sup> Q 1308–09

<sup>123</sup> Ibid.

<sup>124</sup> Q 1292–93

### *Routes to diversity*

193. The Committee received a wealth of suggestions in written and oral evidence that would assist in promoting diversity in practice. These included:

- measures to enable the duties of board members to be less time-consuming, and convenient meeting times to make service on public bodies compatible with other employment and family demands (Alison Cawley,<sup>125</sup> and Sir William Wells<sup>126</sup>);
- shorter and simpler application forms and more flexibility, education and understanding in the appointments processes (Sir William Wells,<sup>127</sup> and Hamish Davidson<sup>128</sup>);
- advertising vacancies more widely than in the broadsheet and professional press;
- running general advertisements for non-executive opportunities in the minority press, instead of only for disability, or race, or gender-specific areas (Daniel Silverstone<sup>129</sup>);
- government offices in the regions should play an active role in identifying people of ability who are active locally who should be encouraged to apply for vacancies on national and regional bodies (Mr Silverstone<sup>130</sup>);
- Government should make allies of the vast range of civic organisations that exist specifically to assist people to enter public life, such as Common Purpose which has so far involved 12,000 people in its outreach and training programmes, and MEWN Cymru (the Minority Ethnic Women’s Network in Wales) whose branches seek to develop an engagement with public services, trade unions, trade associations and others to create an awareness of the opportunities for service on public bodies.<sup>131</sup>

194. We also received warnings, from Judalene Ross of the Bristol Racial Equality Council among others, against making progress on diversity that relied upon ‘community gatekeepers, usually male,’ and choosing from a small known pool of people from ethnic minorities. It is important, Ms Ross said, not to appoint “the same safe faces—mine Judalene has been around for long enough—but to try to generate diversity within that diversity”.<sup>132</sup> She was discussing the position locally in Bristol, but our visit made clear to us that at national as well as local level, recruitment to public bodies must endeavour to go beyond the ‘community gatekeepers’ in order to achieve diversity within diversity.

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<sup>125</sup> Q 1296

<sup>126</sup> Q 856

<sup>127</sup> Q 855

<sup>128</sup> Q 1296

<sup>129</sup> Q 791

<sup>130</sup> Ibid.

<sup>131</sup> Q 641 and Q 948

<sup>132</sup> Q 1087

## Mentoring and shadowing

195. The value of ‘apprenticeships’ on boards, along with ‘shadowing’ and mentoring schemes, was a constant theme in our evidence. The point is to enable people to apply for vacancies and to secure appointments.<sup>133</sup> We were interested to hear of the work of Operation Black Vote in providing opportunities for ethnic minority people to ‘shadow’ a magistrate, giving them the chance to get first-hand experience of how the courts work and what is involved in applying to become a magistrate. A scheme for shadowing MPs was successful in giving a number of other people an insight into the work of Parliament. Similar schemes are now in prospect for public bodies,<sup>134</sup> and we hope that such projects will be fully supported. Judalene Ross spoke of a mentoring scheme for the Home Office in Bristol in which established ethnic minority post-holders pass on the benefit of their experience to others who have just joined a public body, with the use of videos and CD-Roms for the same purpose.<sup>135</sup>

196. We support the need for mentoring and training, especially for people who join boards without previous experience of such service, but also for changes in the practice and attitudes of boards to make them more receptive to a wider range of members. Simon Woolley, national co-ordinator of Operation Black Vote, said fears of tokenism, the difficulties of being “the only black face in the room”, and the experience of cultural differences once black people did find a place on a public body lead to “a conscious opt-out” within ethnic minority communities where people feel about public bodies, “There’s no place for us there”.<sup>136</sup> We do not know how typical Mr Woolley’s observations may be and we do not have figures on drop-out rates for members of public bodies. But we believe that the Cabinet Office should conduct a census of drop-out rates, especially among those from diverse backgrounds, and collect evidence on their reasons.

**197. We recommend that the Government should introduce apprenticeship, mentoring and shadowing schemes for public bodies to increase access and support, as part of a package of measures to increase the participation of under-represented groups.**

**198. We recommend that the Cabinet Office should conduct research into the drop-out rates from the boards of public bodies.**

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<sup>133</sup> Q 31

<sup>134</sup> Q 748

<sup>135</sup> Q 1050

<sup>136</sup> 725

## Chapter 4: A public appointments commission

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199. We have become convinced in the course of our inquiry that determined action needs to be taken to move toward the twin goals of securing greater integrity and diversity in public appointments. One method would be to introduce a national Public Appointments Commission, building on the model of the recently-established NHS Appointments Commission.

200. The NHS Commission was set up in 2001 in the light of OCPA's inquiry into allegations of political bias in NHS appointments, and a recommendation of this Committee. The NHS Commission and the NHS bodies to which it makes appointments come within OCPA's remit. The Commission is responsible for making the actual appointments to NHS bodies but does so in accordance with criteria set out by the Secretary of State for Health; and while ministers are no longer responsible for individual appointments, they are accountable to Parliament for the *totality* of the appointment process. Thus the principle of ministerial responsibility is preserved while the new system is perceived as independent, with the great advantage that public confidence in the process is no longer undermined by suspicions of possible cronyism. We believe that, as long as departments retain sole control of their appointments processes, under officials of varying degrees of seniority, experience and competence, the requisite degree of professionalism, experience, consistency and training required will be hard to achieve. It is particularly hard for departments which make few appointments to sustain the high standards required. In addition, direct ministerial involvement in selection is always likely to give rise to accusations (even if wholly unfair) of personal or political bias.

### ***The case for a public appointments commission***

201. By contrast, an independent organisation, on the model of the NHS Appointments Commission, running an open and transparent appointments process, has considerable advantages in encouraging public confidence in the process and citizen involvement in public life. The NHS Commission and Dame Rennie Fritchie set out the advantages of the NHS appointments system in separate, but largely overlapping, terms in memoranda to the Committee.<sup>137</sup>

- it is perceived as independent as it can make appointments based on merit without ministers being involved and without political interference.<sup>138</sup> (It is, however, important to note that the NHS Appointments Commission itself has recently concluded that the political balance of appointments made under its supervision appears not to be different from the balance that emerged from the previous system);

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<sup>137</sup> PAP 61 and PAP 66

<sup>138</sup> Ev 158

- its procedures are open and transparent. Because the process of advertisement, short-listing and interview is standard and familiar to people, they have confidence in its inherent fairness;
- compared to government departments, the commission can specialise in appointments and become increasingly professional, competent, proactive and consistent;
- it leads to increased efficiency in the appointments process
- there can be economies of scale in giving a single body responsibility for a large number of appointments.

202. The Commissioner has advanced a major alternative reform proposal that may prove more acceptable to ministers. This proposal is that departments should create their own professional teams specifically to make appointments; and that departments which make few appointments should combine with other departments to create joint teams. This is clearly a more flexible approach, which has the advantage that the teams will be run by the departments that are responsible for running the public bodies and thus are best placed to determine the balance of skills required on their boards. The disadvantage is that ministers and senior civil servants would continue to be involved in the appointments processes which would still therefore not be perceived as being independent.

203. In our view, the first advantage of establishing a single visible body responsible for all public appointments, on the model of the NHS commission, is that its appointments would demonstrably be independent of ministerial and senior civil servant influence. It would also have the advantages of being open and transparent, with standard procedures and becoming increasingly professional over time. We accept that it might well be more difficult for a single Whitehall-wide body to be sufficiently flexible to cope with a wide range of different types of public appointments. However, ministers and officials from departments would be directly involved in drawing up the criteria for membership of the boards of bodies that they sponsor and, where appropriate, officials with knowledge of specialist bodies could be invited to join appointment panels. The Government, having announced its intention of establishing an independent judicial appointments commission, appears to be increasingly well-disposed towards this approach.<sup>139</sup>

## Ministerial Responsibility

204. It is important to stress that under our proposed Public Appointments Commission, ministers and departments would not lose control over the purposes and role of the public bodies for which they are responsible, nor over the mix of skills and experience required of the chairs and members of their boards. They would delegate only the actual choice of individuals to the independent body. Further, if our proposal for a parliamentary role in key appointments was accepted, then it may be desirable to confine a Public Appointments Commission to other appointments.

205. Our chairman asked both Dame Rennie Fritchie and Sir William Wells whether we should turn the whole process of making public appointments over to a single body like the

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<sup>139</sup> Department for Constitutional Affairs, press release, 25/03 19 June 2003

NHS Commission. Dame Rennie said that as the first OCPA principle was that of ministerial responsibility, it would be odd for her to say that ministers should no longer be involved; ‘however, if others and ministers themselves felt there should be another way to do it, then it would be an interesting and much broader debate’.<sup>140</sup> Sir William replied:

“If government wishes to have appointments made professionally, and which quite self-evidently are made independently, openly and transparently, I cannot see that there is any other way in which they can do it than through an independent organisation which is professionally set up to do it, has the expertise to do it, and has no axe to grind. It will always be perceived that the minister has an axe to grind whether they have or not”.<sup>141</sup>

We concur.

**206. Therefore we recommend that the Government, in the interest of independent, professional and transparent processes of public appointment, should consult on the establishment of a single Public Appointments Commission to take over public appointments to NDPBs, public corporations and other public bodies from government departments.**

207. This recommendation carries with it a host of considerations about which ministers would wish to consult. In particular, complicated issues of accountability, independence and status would arise in the new commission’s relationships with the Commissioner for Public Appointments, the Government, departments and Parliament.

208. We believe that the new Appointments Commission should be a statutory body. In the first instance, the commission should be accountable to the Commissioner for Public Appointments, as the NHS Commission is, for the actual process of appointment, the independence and integrity of appointments, and progress on achieving diversity targets. It could be argued that, after the establishment of a new independent appointments commission, there will be no need for an office that appears to duplicate its role. But there will continue to be a requirement for an auditor of the process and a guarantor of probity, as well as, and separate from, an executive body to make the appointments. We note that the Commissioner recently issued a strongly critical report on the conduct of an appointment by the NHS Appointments Commission, which clearly demonstrates the continuing importance of the Commissioner’s role.<sup>142</sup> On funding, we have already stressed the need for the Commissioner to be made financially and constitutionally independent of the executive. In our view, the new Commission should similarly be funded out of the Consolidated Fund, as are analogous bodies and officers, to secure its financial independence from the executive.

209. We would of course expect Parliament to be involved in the appointment of the chair of the Commission on the same basis as the other appointments discussed earlier. If ministers wish to retain a role in this category of major appointments, then our earlier recommendation for a pre-confirmation review for these appointments by select

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<sup>140</sup> Q 52

<sup>141</sup> Q 929

<sup>142</sup> OCPA Annual Report 2002–03

committees becomes even more imperative. In this case, the proposed Public Appointments Commission could confine itself to the more routine appointments, with the added advantage that this would release ministerial time for other activities.

210. There are a number of models for Parliamentary and public accountability to ensure high standards in this important area. For example, the Commissioners of the Electoral Commission are appointed only after consultations with leaders of all main parties and with the agreement of the Speaker. An Address from the House is also required before any appointments are made. In addition, a Member representing the Commission answers questions in Parliament

**211. We recommend that the Government consult widely on the constitutional and administrative arrangements for a Public Appointments Commission, with a view to making the Commission fully accountable to Parliament for its establishment, operation and reporting.**

212. We do not believe that our recommendation would lead to substantial extra expenditure. We envisage that the Public Appointments Commission would have a staff which would be modest in number, with the aim of keeping the overall size roughly equivalent to the sum of the staff employed currently in public appointments work in departments. Some extra expense would be incurred by the expansion of the remit of the Office of the Commissioner for Public Appointments, but again it should be modest.

## Conclusion

213. It is just 150 years since the Northcote-Trevelyan report provided the basis for a reformed civil service, clearing away the detritus of patronage and installing the principle of selection on merit. It is now time to perform a similar exercise for the modern appointed state. As we record, progress has already been made, but this report argues that there is much more still to be done.

214. The appointed state is now central to the way we are governed, and likely to remain so. It is essential, therefore, that those appointed are of the highest merit, represent our society in all its diversity, and are untainted by cronyism and patronage. Unless these conditions are met, the appointed state will not be as effective as it needs to be, or inspire the necessary public confidence in its operation. The world of public appointments provides an arena for civic participation and public service, which should be actively nourished and cultivated.

215. Our proposals are framed to this end. We have sought to curb ministerial patronage, while strengthening ministerial accountability to Parliament for major appointments. We have also sought to open up the appointed state in new ways and to a more diverse range of people. Taken together, we believe that this provides the basis for a concerted initiative to enlist all those who have something to contribute to the enterprise of public service.

## Conclusions and recommendations

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1. We recommend that the Cabinet Office undertake a new fundamental review of all public bodies attached to central government and ‘map’ them. If necessary, the definition of non-departmental public bodies should be revised according to precise, comprehensive and transparent criteria to encompass as far as practicable all relevant public bodies. This comprehensive review should be repeated at regular intervals. (Paragraph 38)
2. We recommend that all public bodies, whether executive or advisory, statutory ‘other’ or ‘private’, ‘ad-hoc’ or ‘ongoing’, within the remit of central government, should be placed on the public record in Public Bodies and departmental websites, with information on their roles, accountability and appointment arrangements. (Paragraph 39)
3. We recommend that Crown appointments to public bodies should not be excluded from regulation by the Office of the Commissioner for Public Appointments in the absence of specific justification for their exclusion. (Paragraph 40)
4. We recommend that the review of public bodies, recommended above, should consider on a case-by-case basis whether public bodies not now subject to OCPA regulation should come under the OCPA remit. (Paragraph 41)
5. We recommend that the Commissioner for Public Appointments should report to Parliament the list of public bodies that she considers should come within her remit; and that there should be an opportunity for Parliamentary scrutiny and approval of the list, possibly through a select committee. (Paragraph 42)
6. We recommend that any variation from OCPA regulation should be placed on the public record with reasons given. (Paragraph 43)
7. We recommend that the Government should consult with local authorities to determine the most effective and proportionate means of achieving public oversight of the boards of local public bodies and partnerships. (Paragraph 50)
8. We recommend that the new independent Judicial Appointments Commission should assume responsibility for tribunal appointments currently made by ministers. (Paragraph 53)
9. We recommend that independent assessors should be involved in every stage of the appointments process, with full opportunity to ensure that submissions to ministers accurately reflect the views of appointment panels; and that the OCPA Code of Practice should be revised to make this reform mandatory. (Paragraph 76)
10. We recommend that all civil servants who play a role in making public appointments should receive appropriate professional training in equal opportunities and appointments procedures. (Paragraph 78)

11. We recommend that, as soon as is practicable, the Commissioner for Public Appointments should be made solely responsible for appointing and supporting all independent assessors. (Paragraph 82)
12. We recommend that in the meantime the Commissioner should assume responsibility for the recruitment and training of all newly appointed independent assessors; and that all existing assessors should undergo OCPA training. (Paragraph 83)
13. We recommend that the Commissioner should include in her annual reports an account of the processes by which she recruits and trains independent assessors. (Paragraph 84)
14. We recommend that prior to a trained OCPA cadre of assessors being introduced, such assessors should be involved alongside consultants in any stages of the appointments process in which they are involved. (Paragraph 89)
15. We recommend that departments should satisfy themselves fully about the expertise and qualities of recruitment consultants who will be involved in any stage of the appointment process; that they should at the outset establish the aims and purposes of the body involved; and that they should then thoroughly brief the consultants on their requirements, the Nolan principles and the OCPA Code. Steps should be taken by the Government to increase the accountability of recruitment consultants and the transparency of the processes by which they are appointed. (Paragraph 91)
16. We also recommend that the Government should undertake research to determine whether the employment of recruitment consultants adds value to the process of public appointments. (Paragraph 92)
17. We recommend that the Commissioner for Public Appointments should be given formal whistle-blowing powers to report material non-compliance with the Code of Practice by any department, minister or official. It is for discussion whether the Commissioner should report such breaches to the First Civil Service Commissioner or to another body, such as a Parliamentary committee. (Paragraph 96)
18. We recommend that the Office of the Commissioner for Public Appointments should be funded through the Parliamentary Vote with the Commissioner approved by Parliament and reporting to it, and that the Office should be housed and staffed separately from the executive. (Paragraph 101)
19. We recommend that there should be a review of the staffing needs of OCPA in the light of the Office's current and future responsibilities and of action on other proposals that we make in this report. (Paragraph 102)
20. We recommend that ministers should agree a list of key appointments with relevant select committees and notify them of the names of proposed appointees for these posts as they arise. Committees could decide, if they chose to do so, to hold a meeting with proposed appointees, and would be able to enter a Letter of Reservation as a result of such a hearing in any case where there was a decision to do so. In such circumstances the competition for the post would be re-opened. (Paragraph 110)

21. We recommend that the Government build upon the forthcoming report of the ministerial Short Life working group on diversity in public appointments to develop a high-profile national strategy to involve the public in a concerted drive to increase diversity and strengthen lay representation on public bodies. (Paragraph 134)
22. We recommend that the Government should reconsider the existing assumptions for measuring merit in the interests of competency-based recruitment and diversity as part of a wider review of the role of non-executive board members on public bodies. (Paragraph 143)
23. We recommend that, as part of the national strategy, the Government review of public bodies should carefully monitor applications and appointments to public bodies with a view to promoting diversity. (Paragraph 147)
24. We further recommend that Government should consider the requirements of public bodies for various types of expertise and experience and the variety of roles non-executive board members can play in order to gauge the prospects of increasing diversity and lay representation on such bodies. (Paragraph 148)
25. We recommend that the Government should introduce a single equality act that would lay a duty on all public authorities to promote equality and tackle discrimination. (Paragraph 152)
26. We recommend that the Government should develop a more consistent approach towards paid and voluntary service on public bodies with an emphasis on developing competence-based lay representation and diversity in appointments. (Paragraph 163)
27. We recommend that the Cabinet Office should consult the Commissioner for Public Appointments over guidance to departments, aimed at improving facilities and payments for the care of dependents and meeting other reasonable costs; and making meeting times and frequency of meetings more family and employer friendly. (Paragraph 168)
28. We recommend that the Government undertake an urgent review of the rules on incapacity and income-related disability benefits to ensure that they do not discourage people with disabilities from applying for public appointments. (Paragraph 170)
29. We recommend that the Government should organise and publicise a pilot scheme for public appointments involving an element of random selection by lot, with the final selection still made on the basis of merit. (Paragraph 174)
30. We recommend that sponsoring departments should be required to assess the scope for introducing elections to the boards of public bodies to leaven the appointed membership with appropriate representation. These assessments should be made every five years, beginning in 2004. (Paragraph 180)
31. We recommend that the Government should examine the scope for extending elections, both direct and indirect, for local bodies, giving special attention to the

development of hybrid bodies (part-elected, part-appointed); and should report to Parliament on its findings. (Paragraph 187)

32. We agree that there should be no general conflict between merit and diversity, but we believe that study of quotas for gender balance in other European nations may enable us to learn from their experience, and we also accept that it could be appropriate in some circumstances to dilute merit tests in the cause of a wider range of experience and background on certain boards. (Paragraph 190)
33. We recommend that the Government should introduce apprenticeship, mentoring and shadowing schemes for public bodies to increase access and support, as part of a package of measures to increase the participation of under-represented groups. (Paragraph 197)
34. We recommend that the Cabinet Office should conduct research into the drop-out rates from the boards of public bodies. (Paragraph 198)
35. Therefore we recommend that the Government, in the interest of independent, professional and transparent processes of public appointment, should consult on the establishment of a single Public Appointments Commission to take over public appointments to NDPBs, public corporations and other public bodies from government departments. (Paragraph 206)
36. We recommend that the Government consult widely on the constitutional and administrative arrangements for a Public Appointments Commission, with a view to making the Commission fully accountable to Parliament for its establishment, operation and reporting. (Paragraph 211)

# Annex

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## Prime Ministerial Appointments to Public Bodies/Crown and Individual Posts

### *Appointments made by the Crown on the advice of the Prime Minister*

Commissioner for Public Appointments  
 Board of Customs and Excise  
 Board of Inland Revenue  
 Clerk of the Crown in Chancery  
 Civil Service Commissioners  
 Procurator General  
 Head of the Home Civil Service  
 Registrar General  
 Comptroller and Auditor General  
 Parliamentary Commissioner for Administration (Health Service Commissioner for England, Scotland and Wales)  
 Northern Ireland Parliamentary Commissioner for Administration and Northern Ireland  
 Commissioner for Complaints  
 Information Commissioner

### *Constables of*

Dover Castle  
 Caernarfon Castle  
 Harlech Castle  
 Tower of London  
 Flint Castle

Captain of Deal Castle

### *Ecclesiastical Appointments*

Archbishops of Canterbury and York  
 32 Diocesan Bishops (England)  
 28 Deans of Cathedral (England) and two Royal Peculiars  
 Crown Canonries at six Cathedrals and two Royal Peculiars  
 200 Crown Livings (England)  
 Three Church Commissioners  
 High Commissioner to the General Assembly of the Church of Scotland  
 Court of Ecclesiastical Causes Reserved  
 Judge of the Court of Arches of Canterbury and the Chancery Court at York

Churches Preservation Trust  
City Parochial Foundation  
Redundant Churches Advisory Board

### *Government and Parliament*

Government Ministers  
Clerk of the Parliaments  
The Speaker  
Clerk of the House of Commons  
Members of the House of Lords  
Intelligence and Security Commission  
Privy Councillors

### *Judicial Appointments*

Lord Chief Justice of England  
Master of the Rolls  
Vice-Chancellor  
President of the Family Division  
Lords of Appeal in Ordinary  
Lords of Appeal  
Lord Justice Clerk for Scotland  
Lord Justice General and Lord President of the Court Session in Scotland  
Lord Clerk Register of Scotland

### *Royal Appointments*

Astronomer Royal  
Honorary Physicians to the Crown  
Poet Laureate

### *Royal Commissions on*

Criminal Justice  
Long Term Care  
*Environmental Pollution*  
*Historical Manuscripts*  
Historical Monuments in England  
*Historical Monuments in Wales*

Board of Governors, executive and non-executive directors, *Bank of England*  
Board of Governors, *BBC*  
Chancellor of the County of Palatine of Durham  
Commissioner for the Interception of Communications  
*Criminal Cases Review Commission*  
Crown Estate Commissioners  
Forestry Commissioners

Governor of the Isle of Wight  
 Chairman, *Historic Royal Palaces Trust*  
 President and three Governors, King Edward's Hospital Fund for London  
 Lord Great Chamberlain  
 Lord Lieutenants and Vice Lord Lieutenants for the United Kingdom  
 Lord Warden of the Cinque Ports  
*Millennium Commission*  
 Official Verderer of the New Forest  
 Chairman, *Police Complaints Authority*  
 Public Works Loan Board,  
 Receiver-General of Guernsey  
 Receiver-General and Deputy Receiver-General of Jersey (Bailiff)  
 Members, Security Services Tribunal  
 Senior Officers in the Armed Forces

NB. Bodies set above in italics are listed in *Public Bodies 2002*

### ***Appointments made by the Prime Minister***

**All posts are chairmanships unless indicated otherwise.**

Advisory Committee on Business Appointments (all members)  
 Armed Forces Pay Review Body  
 British Museum (trustees only)<sup>143</sup>  
 Committee on Standards in Public Life (all members)  
 Doctors' and Dentists' Review Body  
 Honours Scrutiny Committee (all members)  
 House of Lords Appointments Commission (all members)  
 Imperial War Museum<sup>143</sup> (trustees only)  
 Intelligence Services Commissioner<sup>143</sup>  
 Interception of Communications Commissioner<sup>143</sup>  
 Museum of London<sup>143</sup> (trustees only)  
 National Gallery<sup>143</sup> (trustees)  
 National Heritage Memorial Fund<sup>143</sup> (trustees and Chair)  
 Natural History Museum (trustees only)<sup>143</sup>  
 National Maritime Museum<sup>143</sup> (trustees only)  
 National Museum of Science and Industry<sup>143</sup> (trustees and Chair)  
 National Portrait Gallery (trustees only)<sup>143</sup>  
 Nurses, Midwives, Health Visitors and Professions Allied to Medicine Pay Review Body  
 Police Arbitration Tribunal (members)  
 Police Negotiating Board (Chair and Deputy)<sup>143</sup>  
 Prison Service Pay Review Body for England, Wales and Northern Ireland (all members)<sup>143</sup>  
 School Teachers' Review Body<sup>143</sup>  
 Security Commission (Chair and Alternate Chair)  
 Senior Salaries Review Body (all members)  
 Surveillance Commissioners (all)<sup>143</sup>  
 Tate Gallery (trustees only)<sup>143</sup>  
 Victoria and Albert Museum<sup>143</sup> (trustees and Chair)

Wallace Collection<sup>143</sup> (trustees only)  
Women's National Commission

***Appointments on which the Prime Minister is expected to be consulted***

**All posts are chairmanships unless indicated otherwise.**

Adult Learning Inspectorate  
Arts Council England  
Audit Commission for Local Authorities and the NHS in England and Wales  
Boundary Commission for Northern Ireland<sup>143</sup>  
British Nuclear Fuels plc  
British Waterways Board  
Broadcasting Standards Commission  
Central Arbitration Committee  
Chairman of the Office of Fair Trading  
Chief Charity Commissioner  
Chief Electoral Officer for Northern Ireland  
Civil Aviation Authority  
Commission for Health Improvement  
Commission for Racial Equality  
Community Fund  
Competition Commission  
Council for Science and Technology  
Countryside Agency  
Director General of Telecommunications  
Director General of Water Services  
Disability Rights Commission  
Encounter (British Joint-Chair)  
English Nature  
Environment Agency  
English Heritage  
Equal Opportunities Commission  
Film Council  
Financial Services Authority  
Food Standards Agency  
Health and Safety Commission  
Higher Education Funding Council for England  
Housing Corporation  
Independent Television Commission  
Invest Northern Ireland  
Legal Services Commission  
London Regional Transport  
National Consumer Council

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<sup>143</sup> Appointments on which the Prime Minister is expected to be consulted and which are based on statutory requirements

National Learning and Skills Council  
New Opportunities Fund  
NHS Appointments Commission  
Occupational Pensions Regulatory Authority  
Office of Gas and Electricity Markets (OFGEM)  
Postal Services Commission (*known as Postcomm*)  
Qualifications and Curriculum Authority  
Radio Authority  
Regional Development Agencies

- Advantage West Midlands
- East Midlands Development Agency
- East of England Development Agency
- Northwest Regional Development Agency
- One North East
- South East England Development Agency
- South West of England Regional Development Agency
- Yorkshire Forward

Resource The Council for Museums, Archives and Libraries  
Research Councils

- Biotechnology & Biological Sciences Research Council
- Council for the Central Laboratory of the Research Councils
- Economic & Social Research Council
- Engineering & Physical Sciences Research Council
- Medical Research Council
- Natural Environment Research Council
- Particle Physics & Astronomy Research Council

Royal Mail Holdings Plc  
Security Vetting Appeals Panel (all members)  
Social Security Advisory Committee  
Spongiform Encephalopathy Advisory Committee  
Sport England  
Strategic Rail Authority  
Sustainable Development Commission (all members)  
United Kingdom Atomic Energy Authority  
UK Sport

## Formal minutes

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**Thursday 26 June 2003**

Members present:

Tony Wright, in the Chair

Mr Kevin Brennan  
Annette Brooke  
Mr David Heyes  
Mr Kelvin Hopkins

Mr Ian Liddell-Grainger  
Mr John Lyons  
Mr Gordon Prentice

The Committee deliberated.

Draft Report (Government By Appointment: Opening Up the Patronage State), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 215 read and agreed to.

Summary agreed to.

An Annex (Prime Ministerial Appointments to Public Bodies/Crown and Individual Posts)—(*The Chairman*)—brought up, read and agreed to.

*Resolved*, That the Report be the Fourth Report of the Committee to the House.

*Ordered*, That the provisions of Standing Order No. 134 (Select Committee (Reports)) be applied to the Report.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.—(*The Chairman*)

[Adjourned till Monday 7 July at a quarter to four o'clock

# Witnesses

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## Thursday 7 March 2002

**Dame Rennie Fritchie DBE**, Commissioner for Public Appointments. Ev 1

**Billy Bragg**, Musician. Ev 11

## Thursday 14 March 2002

**Dame Helena Shovelton**, Chief Executive, British Lung Foundation Ev 21

**Mr Graham Mather**, President, European Policy Forum Ev 21

## Thursday 11 April 2002

**Rt Hon Tony Benn**, former Member of Parliament Ev 39

## Thursday 18 April 2002

**Mark Thomas**, Comedian and Activist Ev 54

## Thursday 25 April 2002

**Mrs Barbara Roche MP**, Minister of State, **Mr Christopher Leslie MP**, Parliamentary Secretary and **Ms Helen Ghosh**, Director of the central Secretariat, Cabinet Office Ev 69

**Ms Fi Glover**, BBC Radio Five Live broadcaster Ev 87

## Thursday 9 May 2002

**Baroness Prashar CBE**, Member of the House of Lords and First Civil Service Commissioner Ev 98

### Thursday 23 May 2002

**Ms Julia Middleton**, Chief Executive, and **Ms Amelia Sussman**, Chief Operating Officer, Common Purpose Ev 110

**Mr Simon Woolley**, National Co-ordinator, and **Mr Ashok Viswanathan**, Deputy Co-ordinator, Operation Black Vote Ev 121

### Thursday 13 June 2002

**Ms Julie Mellor**, Chair, and **Mr John Sharman**, Equal Opportunities Commission Ev 144

**Mr Bryan Heiser**, Steering Group Member, Engage Network Ev 144

**Mr Daniel Silverstone**, Chief Executive, Commission for Racial Equality Ev 144

**Mr Bert Massie CBE**, Chairman, Disability Rights Commission Ev 144

### Thursday 24 October 2002

**Sir William Wells**, Chairman, and **Dr Roger Moore**, Chief Executive, NHS Appointments Commission Ev 161

**Professor Teresa Rees**, School of Social Sciences, Cardiff University Ev 173

### Thursday 31 October 2002

**Mr Douglas Alexander MP**, Minister of State, and **Ms Helen Ghosh**, Secretariat Director, Cabinet Office Ev 185

### Monday 9 December 2002

**Ms Judeline Ross**, Bristol Race Equality Council Ev 200

**Mr John Savage**, High Sheriff of Bristol Ev 200

**Councillor Diane Bunyan**, Leader, Bristol City Council Ev 200

**Mr Tom Dowell**, Chair, Bristol South and West Primary Care Trust Ev 200

**Thursday 12 December 2002**

**Mr Martin Wainwright**, Northern Editor, The Guardian Ev 213

**Ms Janet Paraskeva**, Chief Executive, The Law Society Ev 213

**Ms Linda Parkinson, Mr Andy Freaney and Mr Martin Gray**, The Community Fund Ev 213

**Ms Ivy Cameron**, Consultant, Cameron Woods Associates Ev 225

**Thursday 13 February 2003**

**Mr Hamish Davidson**, Chairman, and **Ms Alison Cawley**, Associate Director, Veredus Ev 233

**Thursday 27 February 2003**

**Dame Rennie Fritchie DBE**, Commissioner for Public Appointments Ev 252

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2	Mr Mark Thomas (PAP 8)	Ev 53
3	Mrs Barbara Roche MP (PAP 43)	Ev 80
4	Cabinet Office (PAP 43(a) and 56)	Ev 81
5	Equal Opportunities Commission (PAP 40)	Ev 130
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8	Mr Bryan Heiser, Engage Network (PAP 57(a))	Ev 157
9	NHS Appointments Commission (PAP 61)	Ev 158
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20	Anthony Sadler, Archbishop's Secretar for Appointments (PAP 6)	Ev 271
21	Alex Neil, Member of the Scottish Parliament (MSP) (PAP 7)	Ev 272
22	Philip Mawer, The Church of England Archbishop's Council (PAP 9)	Ev 275
23	The Rt Rev. Rt Hon. Lord Habgood of Calverton (PAP 10)	Ev 275
24	J.H.G. Woollcombe CBE, Chairman, Dartmoor Steering Group (PAP 12)	Ev 276
25	Professor Alasdair Breckenridge, Department of Pharmacology and Therapeutics, Liverpool University (PAP 14)	Ev 277
26	Brian Peacock, Chairman, Milk Development Council (PAP 15)	Ev 279
27	Home Grown Cereals Authority (PAP 16)	Ev 281
28	English Heritage (PAP 17)	Ev 283
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42	Chairs of Probation Boards in the North West of England Region (PAP 32)	Ev 304
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60	The Women's National Commission (PAP 55)	Ev 336
61	Probity (PAP 60)	Ev 338
62	NHS Alliance (PAP 63)	Ev 340
63	Mr Douglas Alexander MP, Minister of State, Cabinet Office (PAP 65 and 65(a))	Ev 346: Ev 349
64	Commission for Racial Equality (PAP 67)	Ev 350
65	Observers to the Board of the NHS Appointments Commission (PAP 68)	Ev 351
66	Professor Chris Skelcher (University of Birmingham) and Dr Helen Sullivan (University of the West of England) (PAP 70)	Ev 352

## List of unprinted written evidence

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Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons library where they may be inspected by members. Other copies are in the Record Office, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1. (Tel 020 7219 3074) hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

Mr Mark Thomas (PAP 8(a))

The Reverend Chris Stone, Diocese of Rochester (PAP 13)

Competition Commission (PAP 23 and 23(a))

Partnerships UK plc (PAP 30)

Sir Anthony Cleaver (PAP 47)

Medical Research Council (PAP 58)

## Reports from the Public Administration Select Committee since 2001

The following reports have been produced.....

### Session 2002–03

First Special Report	The Public Service Ethos: Government’s Response to the Committee’s Seventh Report of Session 2001–02	HC 61
First Report	Ministerial Accountability and Parliamentary Questions: The Government Response to the Ninth Report from the Committee (Session 2001–02)	HC 136
Second Report	The Work of the Committee in 2002	HC 447
Third Report	Ombudsman Issues	HC 448
Fourth Report	Government By Appointment: Opening up the Patronage State	HC 165

### Session 2001–02

First Report	Public Participation: Issues and Innovations: The Government Response to the Committee’s Sixth Report of Session 2000–01	HC 334
Second Report	The Ministerial Code: Improving the Rule Book: The Government Response to the Committee’s Third Report of Session 2000–01	HC 439
Third Report	Special Advisers: Boon or Bane: The Government Response to the Committee’s Fourth Report of Session 2000–01	HC 463
Fourth Report	Ministerial Accountability and Parliamentary Questions: The Government Response to the Committee’s Second Report of Session 2000–01	HC 464
Fifth Report	The Second Chamber: Continuing the Reform	HC 494
Sixth Report	The Second Chamber: Continuing the Reform: The Government Response to the Committee’s Fifth Report	HC 794
Seventh Report	The Public Service Ethos	HC 263
Eighth Report	“These Unfortunate Events”: Lessons of Recent Events at the Former DTLR	HC 303
Ninth Report	Ministerial Accountability and Parliamentary Questions	HC 1086