

Reforming Public Appointments



Michael Pinto-Duschinsky
and Lynne Middleton



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Executive Summary

Since 1995, government ministers have been restricted in their powers to appoint the heads of major public bodies such as the chair and members of the British Broadcasting Corporation Trust, the Court of Directors of the Bank of England, the UK Atomic Energy Authority, NHS Trusts, the chair and members of the Equality and Human Rights Commission and many more so-called ‘Arms Length Bodies’ or ‘quangos’ (Quasi-Autonomous Non-governmental Organisations).

These appointments are now made by a complex system in which the Office of the Commissioner for Public Appointments (OCPA) plays a central role. This body was set up in 1995 by John Major’s Conservative administration to ensure that appointees were chosen on ‘merit’ and not because they were ‘cronies’ of the governing political party. Nevertheless, government ministers retain the ultimate responsibility for making appointments and have a role in the selection process.

The Labour governments of Tony Blair and Gordon Brown introduced an additional feature. Though appointments were still to be made on merit, the selection process also was to promote equal opportunity and a diversity of appointees. Moreover, since 2005, there have been even more severe limitations on the Minister of Justice (the ‘Lord Chancellor’) in the appointment of judges.

Policy Exchange set up a study of the new appointments system as part of its Constitutional Affairs project to investigate concerns about the way this was working. Two particular concerns were that it had excessively changed the power relationship between ministers and senior civil servants to the advantage of the latter, and that so many more appointees were Labour Party activists than protagonists of the two parties in the governing coalition.

As the research progressed, however, one of the most significant issues relating to public appointments turned out to be around the policy of ‘diversity’.

1. In broad terms, the public appointments system set up by the government of John Major in 1996 is working satisfactorily.

Though complex, the system succeeds in its main objective, which is to combine appointment on merit with a considerable degree of ministerial discretion. Political parties are able to influence appointments by encouraging their members and activists to apply, but applicants are then required to go through a selection procedure that is largely independent of government ministers. However, ministers have the final say in making a selection from a short list drawn up by the independent selection committee and have other powers. Without changing the current framework, important changes are needed.

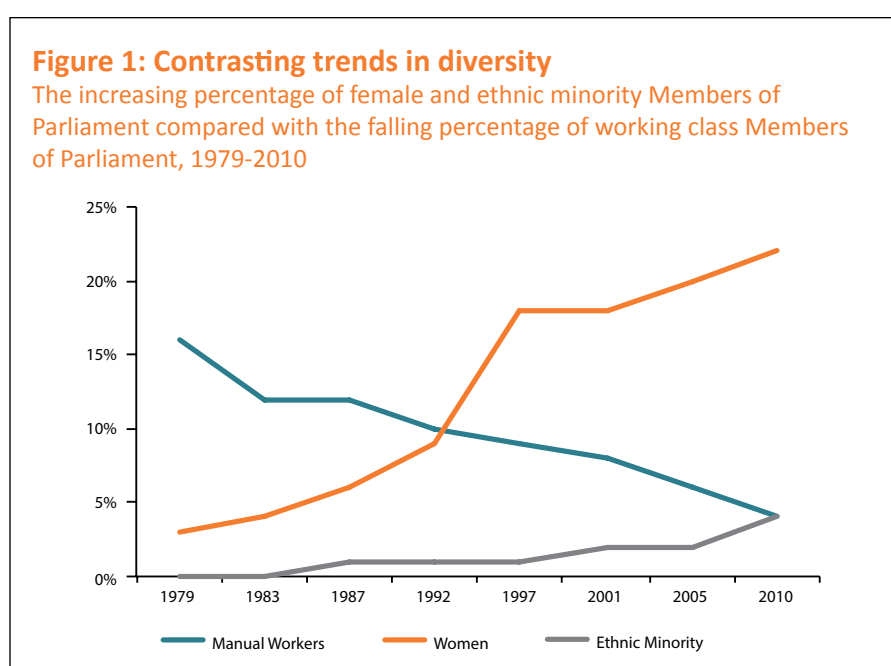
2. Class: the forgotten dimension of ‘diversity’

One central aspect of appointment policy is to encourage ‘diversity’. Whilst ‘equal opportunity’ and ‘diversity’ are essential concepts, this study has found

that the implementation of ‘diversity policy’, both under the Labour government and the current coalition has a fundamental flaw.

‘Diversity’ as currently measured, in terms of gender, ethnicity and disability is too narrow. Whilst these are central and essential dimensions of diversity, this focus distracts from other crucial dimensions such as occupational and socio-economic diversity.¹

Contemporary public life in the UK is dominated, nearly exclusively by those from ‘higher-managerial’ occupations, with both those in ‘intermediate’ and ‘routine and manual’ occupations barely represented at all. This applies to both MPs and appointments to public bodies. As Figure 1 illustrates, the proportion of MPs who are women or members of ethnic minorities, while still too low, has been growing steadily. By contrast, the percentage of working class MPs has been falling sharply since the late 1970s.



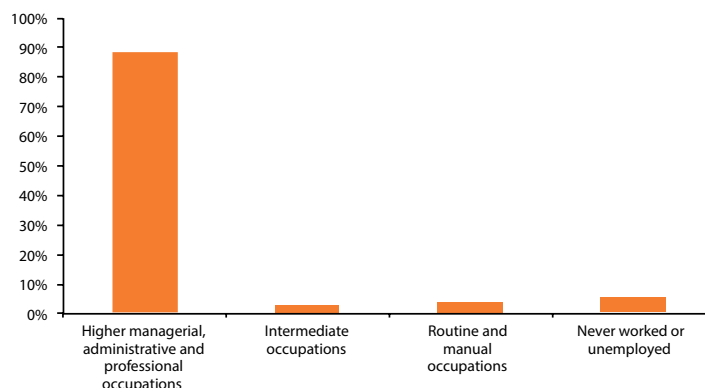
Such was the last Labour government’s disregard for its traditional political base that it failed to include the socio-economically deprived in the nine ‘protected characteristics’ in the Equality Act of 2010. As far as the Office of the Commissioner for Public Appointments is concerned, its annual reports rightly trace the percentages of women, ethnic minorities and disabled among those gaining public appointments; but it provides no similar statistics on occupational diversity (or the lack of it). This is typical of the current state of most official statistics, in which socio-economic diversity is not deemed worthy of attention.

Special research carried out for this study, albeit partial in its scope, has shown clearly how few appointees are drawn from those in manual occupations. For some posts (such as judgeships) advanced training is a pre-requisite. But the dearth of working class appointees is seen also in appointments for which there is no such requirement. Figure 2 shows the absence of individuals from both manual occupations and intermediate occupations among magistrates in Oxfordshire and in Manchester and Salford.

¹ Rather than measures of ‘class’, the Office for National Statistics since 2001 has used the National Statistics Socio-Economic Classification (NS-SEC). We have classified our data using the three tiered schema which comprises of Higher managerial, administrative and professional occupations, Intermediate occupations and Routine and manual occupations.

Figure 2: The dearth of appointees from manual and intermediate occupations

Case study: lay magistrates serving in Manchester and Salford

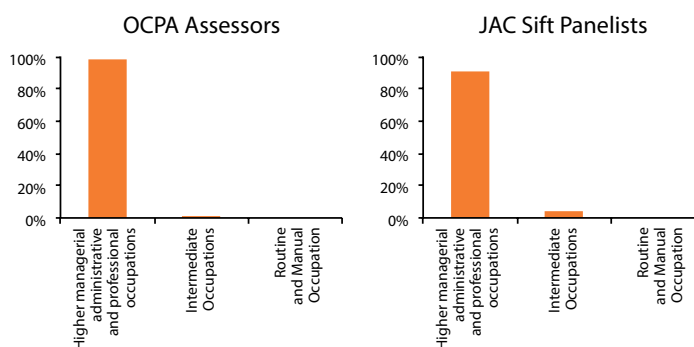


Information on the occupational backgrounds of public appointees similar to that for lay magistrates, shown in Figure 2, is in short supply. The data for Figure 2 were specially prepared for this study by the relevant judicial authorities. In general, occupational diversity has been off the radar and simply has not been recorded in standard official publications on public appointments.

Three further analyses were carried out during the preparation of this publication. All showed the same result as for lay magistrates. Whilst not surprising that the same striking lack of occupational diversity is to be seen in those appointed to the most senior positions (defined as those subject to pre-appointment hearings before parliamentary committees), what is striking is the lack of occupational diversity among the public appointments 'selectorate'. The 'selectorate' are those who either are or have been independent assessors for the Commissioner for Public Appointments or, at a lower level of the selection process, individuals who act as 'sift panellists' responsible for the initial cull of applicants for judicial positions.

Figure 3: The dearth of individuals from manual and intermediate occupations among those responsible for participating in the selection process for public appointees

Independent assessors for the Office of the Commissioner for Public Appointments and 'sift panellists' for the Judicial Appointments Commission (JAC) 2012.

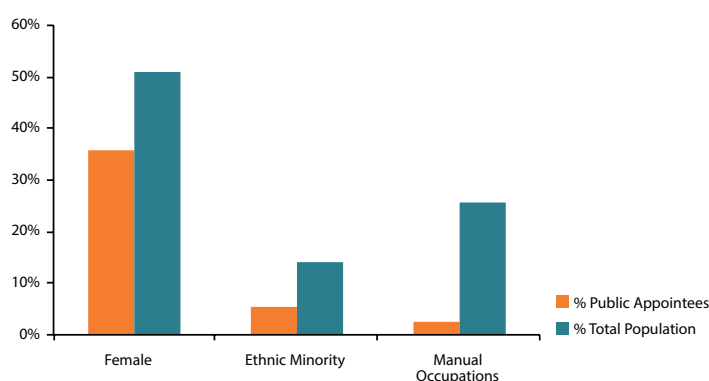


Note: The statistics are based on information obtained about the occupational backgrounds of 53 independent assessors serving until 2011 or appointed in 2011, and on 45 'sift panellists' employed by the Judicial Appointments Commission.

In strictly statistical terms, the deficit in British public life of people in routine and manual occupations is far greater than even the deficits of women and of ethnic minorities. This holds true both in the House of Commons and among appointees to public bodies. The number of women on public bodies still needs to increase by more than 40% of above their present number before they reach parity with their percentage in the general population. For ethnic minorities there would need to be an increase of some 150% to achieve parity. But for those in routine and manual occupations the increase needs to be no less than 873%. In other words, they are nearly 10 times under-represented.

Figure 4: Comparative Disadvantage

The percentage of women, members of ethnic minorities and individuals in routine and manual occupations appointed to public bodies and their percentage in the population, 2012-13.²



There is an urgent need for concerted efforts to promote the participation of those in manual occupations in the system of public appointments. These must be additional to current work to encourage other forms of diversity that is focused on improving the proportion of working class and other under-represented socio-economic groups.

Action to encourage individuals in manual occupations should not be in the form of quotas or statistical ‘targets’. Rather, there should be special schemes to help those in manual occupations to apply for roles and to persuade employers to grant time off to carry out public duties. Among a number of detailed recommendations, the study puts forward as models the schemes run by the Magistrates’ Association and by Operation Black Vote for the recruitment of lay magistrates. However, these are no more than examples.

3. Need for an immediate inquiry into special initiatives to encourage men and women from ‘routine and manual’ occupations to apply for public appointments

This report recommends an extension of the entire equalities policy and of the missions of the Government Equalities Office and of the Equality and Human Rights Commission in order to include the key issues of socio-economic deprivation and the lack of working class and lower middle class representation both in public appointments and in elective office.

² For women and members of ethnic minorities, the percentages are for all appointments regulated by the Office of the Commissioner for Public Appointments. For individuals in manual occupations, the percentage of appointees is for lay magistrates Oxfordshire and in Manchester and Salford.

An inquiry should be set up in the next three months with a report six months later. It should be run by the Government Equalities Office and the Equality and Human Rights Commission and should report on the facts about the percentage of public appointees from routine and manual occupations, recommend special initiatives to encourage such appointments and set out how socio-economic equality will be made an integral part of their future work.

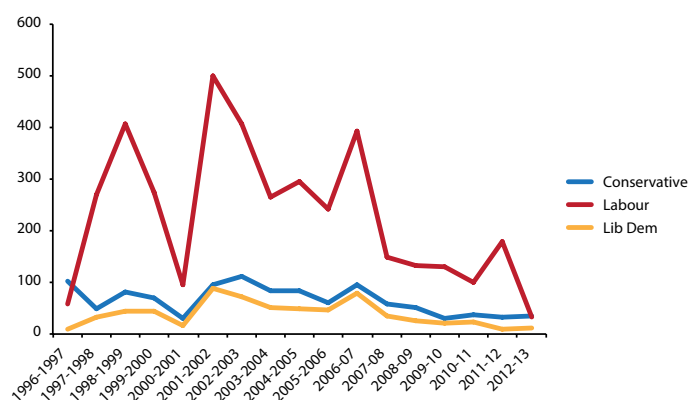
A new stress on socio-economic opportunity will be additional to current policies to promote gender and ethnic equality and equality for those with disabilities. The new policy should not involve quotas, targets or legislative stipulations but focus on special initiatives to harness the unused talents of under-represented groups.

4. The Conservatives and Liberal Democrats should be more active in encouraging their political supporters to apply for public appointments.

Conservatives and Liberal Democrats cannot just blame the appointments system for the fact that considerably more Labour supporters appear to land public appointments. While existing published statistics are unreliable because declarations of political affiliations are voluntary, they show a distinct Labour advantage since the party came to office in 1997, a lead that continued for two years under the current coalition but was not present in the third year of the coalition (see Figure 5).

That there were so many more pro-Labour appointees every year between 1996-97 and 2011-12 may in part reflect the fact that Labour was in power for most of this period; the fact that many more declared Labour supporters have gained appointments also seems to be because more Labour supporters have applied.

Figure 5: Annual number of appointees with declared Conservative, Labour and Liberal Democrat affiliations, 1996-2013



5. Need for parliamentary approval of the most senior judicial appointments.

The selection of justices of the Supreme Court and of UK nominees as judges on the European Union's Court of Justice (Luxembourg) and the European Court of

Human Rights (Strasbourg) should be subject to confirmation by the House of Commons.

Vital constitutional changes since 1998 have given what effectively are far-reaching political powers to justices of the UK Supreme Court and of the international courts in Luxembourg and Strasbourg. Moreover, senior civil servants play a considerable role in the unduly secretive nomination process governing the nomination of the UK judge on the Luxembourg Court.

There need to be checks and balances to this expanded judicial power. We need a system akin to that laid down in the Constitution of the United States whereby the legislature must approve the nomination of the most senior judges. This recommendation was included in the Policy Exchange study of 2011 *Bringing Rights Back Home: Making human rights compatible with parliamentary democracy in the UK*.

Side-stepping the merit-appointment system: both ministers and civil servants do it but civil servants appear to do it more.

Not all appointments are governed by the rules of the Office of the Commissioner for Public Appointments. There is a shortage of information both about unregulated advisory appointments made by ministers (to positions as so-called ‘tsars’) and about appointments to positions as temporary civil-servants, to post-retirement positions within government departments for ex-civil servants, and to posts as contractors or holders of research awards.

More information needs to be placed in the public domain about all such positions. It appears that civil servants have at least as much opportunity as ministers to side-step the rules of the Civil Service Commission and of the Office of the Commissioner for Public Appointments (both of which are run by a single commissioner, Sir David Normington, a former senior civil servant). Steps need to be taken to assure greater transparency of appointments of civil servants to temporary or part time civil service jobs following their retirement.

1

Introduction

Who really runs Britain? Is it the Prime Minister and the Cabinet? The most senior civil servants? Members of Parliament? Bankers, captains of industry, Brussels bureaucrats, or foreign press barons? Whatever the preferred answer to the question may be, two propositions are beyond reasonable doubt.

First, power has been flowing away from elected politicians and from essential instruments of democracy such as political parties and the House of Commons. Unelected individuals and institutions are becoming ever more important. It is a paradox that elective bodies have sprouted (with elections for the European Parliament, devolved assemblies, mayors and police commissioners); yet, sadly, there has been a sharp decline in the influence of our core democratic bodies - particularly the national Parliament and of the government which is accountable to it. Even when they are duly elected and form the government of the day, ministers are boxed-in and frustrated by a whole variety of forces.

Second, one of the key groups of powerful but non-elected people who possess a major governing role consists of those who have received high-level public appointments. This collection of what is conventionally termed the 'Great and the Good' ranges from judges to members of the boards of National Health Service Trusts; it includes the chairs of the British Broadcasting Corporation Trust and OFCOM (the body which regulates television and radio), the chairs and members of the Electoral Commission, Financial Services Authority, as well as the Governor of the Bank of England and many more.

Some of the top appointments confer so much power that the former editor of *The Times*, Sir Simon Jenkins, has compared their importance to those of junior government ministers - and that may itself even be an understatement.

Until the mid-1990s, appointments to such prestigious, highly influential (and sometimes lucrative) positions generally were made by the government of the day. They were a valuable form of political patronage and a vital tool of governance. The prospect of a part-time or full-time job on the public payroll as a reward for services to a political party could be a strong incentive to members and activists to participate in party work and to recruit others to do the same.

However, the appointments system has changed. The decline in job patronage has been seen as a factor contributing to the decline of political parties and of party government. Reforms which started in the final years of the long period of Conservative rule from 1979 to 1997 were designed to limit the discretion of government ministers over public appointments. No longer would they be awarded to the party faithful but to the most able.

When Labour came to power in 1997, it accepted the reformed system but stressed an additional element. Now appointments were not just to be made on

Box 1: What are public appointments?

The Cabinet Office explains:

“A public appointment is generally a ministerial appointment to the board of a public body or advisory committee. Public bodies across the UK deliver important and essential public services. This includes large public bodies managed by boards of directors and small, advisory committees made up of lay members, experts and specialists. Examples of public bodies include:

- National museums and galleries, including the British Museum, the Natural History Museum, the Tate and the National Gallery
- Key regulatory bodies such as the Competition Commission, the Equalities and Human Rights Commission and the Health and Safety Executive Expert, advisory bodies such as the Low Pay Commission, the Committee on Standards in Public Life and the House of Lords Appointments Commission
- A number of specialist scientific and technical committees for examples the Science Advisory Council”

Source: Cabinet Office ‘About public appointments’, http://publicappointments.cabinetoffice.gov.uk/about_appointments.

Box 2: Some key appointments 2010-13

Chair of the BBC Trust (2011)

Lord (Chris) Patten, £110,000 a year (part time salary)

Chair of the Electoral Commission (reappointed 2012)

Jenny Watson, £101,500 a year (part time salary)

President of the UK Supreme Court (2012)

Lord (David) Neuberger, £214,165 a year

Chair of Independent Police Complaints Commission (2012)

Dame Anne Owers, £60,000 (part time salary)

Chair of the Equality and Human Rights Commission (2012)

Baroness (Onora) O’Neill, Up to 100 days a year at a pro-rated salary of £130,000

Governor of the Bank of England (2013)

Mark Carney, £874,000 (non pensionable and including housing allowance)

Chair of the Care Quality Commission (2013) (Hospitals and care homes)

David Prior, £60,000 a year (part time salary)

Note: The chair of the Electoral Commission is appointed by the Speaker’s Committee of the House of Commons.

merit rather than on political recommendation, they would be made in a manner which resulted in a greater social diversity of those selected.

With the change of government in 2010 and the emergence of the Conservatives as the senior partner in the coalition government, expressions of

considerable frustration about the constraints of the appointments system soon emerged. Some Conservative ministers let it be known that they were thoroughly dissatisfied with their apparent inability to place individuals sympathetic to their policies at the head of major public bodies which had functions vitally important to the work of their departments and which were potentially able to block implementation of their preferred policy initiatives. Concern about the operation of the new system of public appointments also came from the Sheffield University academic Matthew Flinders. Following a placement within the Cabinet Office as a Whitehall Fellow during the last years of the Labour government of Gordon Brown, Flinders concluded that the pendulum had swung too far away from the previous practice of political party and ministerial influence over appointments.

A sense of frustration is not unusual for incoming ministers and for new governments. But these feelings were especially intense following the 2010 General Election. Pro-Conservative newspapers strongly reflected the discontent, for example, *The Daily Mail* ran a number of stories about ‘quango kings’ and ‘quango queens’ – allegedly pro-Labour holders of portfolios of important public appointments for which they had been selected during the prolonged Labour administration of 1997 to 2010. The struggle between Conservative ministers in the coalition government and senior civil servants for influence over major appointments became part of a wider tussle between senior members of the government and their officials.

According to the policy inherited from the premierships of John Major and Tony Blair, the new appointment procedures are designed to assure appointment on merit, to eliminate the social exclusivity, and to promote diversity. Yet, the reforms which had been introduced from 1995 onwards proved controversial. The depth of concern about them led Policy Exchange to make this subject the first of several to be considered as part of its project on constitutional affairs.

This study will address several themes and questions:

1. **Ministers and civil servants.** To what extent has the power to make public appointments passed from government ministers to civil servants? If so, what has been the effect?
2. **Diversity.** Has the new system resulted in more diverse and more representative appointees? Are those chosen for the most desirable jobs still ‘male, pale and stale’?
3. **Political bias.** Which political parties and which institutions have been the winners and losers of the new appointments method?

The number and range of public bodies is so great that it is hard to establish the basic facts alone or to evaluate how the system works in practice or the extent to which it has changed. In order to reduce this study to more manageable proportions, the study will focus on the Ministry of Justice in special detail while at the same time drawing on examples from other parts of the public service.

The newly-created Committee on Standards in Public Life set out in its first report, published in 1995, the case for reform of the procedures for making public appointments which became the basis for the current system. The main aim was to eliminate corruption and cronyism. With particular reference to some 900 quangos (Quasi-autonomous Non-governmental Organisations), which then spent some £40 billion of public money each year, the Committee on Standards

in Public Life recommended that appointments of their 9,000 board members be made ‘purely on merit’. Moreover, there should be an “appropriate mix of relevant skills and backgrounds” of those chosen (Recommendation 31).

These objectives of anti-corruption and social diversity deserve full support, and it is no part of this publication to cast any doubt on them. But, there is ground for concern about the side-effects of the post-1995 reforms – unintended and unforeseen consequences are a hazard of political reform.

There has been an implicit assumption that political parties and leading politicians are especially prone to cronyism while civil servants are freer from prejudice or favouritism. On this basis, the way to eliminate this was to give civil servants a greater role and ministers a lesser one in appointment decisions. It is no coincidence that regulations introduced in recent years have had party organisations and politicians as particular targets. Politicians may indeed have cronies, interests and ideological views, and there is a strong case for scrutinising and controlling the way in which ministers exercise their powers of job patronage. Where the reformist approach deserves healthy scepticism is in the premise that senior officials are neutral in their opinions on policy, and that they are able to judge the merits of applicants for public appointments in a purely objective manner. This may be an unrealistic and potentially harmful delusion.

It is not only in the new rules for public appointments that ministers and political parties have been the special targets of regulation. There has been the same focus in recent legislation about political finance. In comparison with lobby organisations, parties are at a disadvantage in Britain when it comes to raising money. By putting political parties in the spotlight and by enacting restrictions which apply to them alone, the reforms arguably have encouraged the growth of pressure groups, and organisations that have strong political agendas but are technically independent from parties. Politicised but officially ‘non party’ bodies enjoy tax advantages, since they frequently have charitable status. They are normally able to operate in the shadows (the distinguished political scientist S. E. Finer dubbed them the “Anonymous Empire”); and they sometimes have close links with particular government departments and with the relevant select committees in the House of Commons. Some of them are even able to use public funds to lobby the government for more public funds.

The social as well as the political effects of the reforms need to be examined. What has ‘diversity’ meant in practice? Many of the barriers impeding the advancement of women into public positions have been lowered, though there is a considerable way to go before the objective of gender parity is achieved. The low percentage of senior judges who are female or come from ethnic minorities has rightly been a matter of comment and concern. While there is much still to be achieved concerning the representation of members of the three categories of people especially singled out in current diversification policies (women, ethnic minorities and the disabled), there are further issues which have not received the attention they deserve.

To what extent has ‘diversity’ created a genuinely open society or has it merely favoured new elites? Have large numbers of women or members of ethnic minorities been the gainers? Or have the appointment procedures promoted the advancement of relatively limited networks of so-called quango kings and quango queens who have held multiple positions? Moreover, has the term ‘diversity’ been

used in a highly restricted sense which has itself been anything but diverse? In its focus on three particular dimensions of diversity, it may be argued that other essential categories have been ignored. This study will draw attention to an additional dimension of diversity: socio-economic class.

If class is defined according to occupation, there are some appointments for which manual and blue collar workers will be excluded automatically because they lack the professional qualifications. Judgeships are one example, however, this limitation does not apply to the bulk of public appointments. It is therefore both surprising and noteworthy that the analyses of appointees provided in official reports have normally failed to include statistics on occupational background. A comprehensive examination is beyond the scope of this study but sufficient data will be presented to show that there is significant working class under-representation.

The study will also consider the extent to which appointees are drawn from private or public sector jobs and careers. For Conservatives in particular, this is a potentially important factor.

Complexity, technicality, ambiguity and secrets

High profile jobs provide honour, power, money and occasionally a degree of fame. The questions of who gets chosen and how they are appointed are rightly viewed with fascination by the press and with envy by members of the political class.

Yet, finding out the inner workings of the appointments system is no easy matter. It is possible to set out the formal procedures and the official powers of ministers and of the Office of the Commissioner for Public Appointments and to record changes in the mechanisms. These are summarised in Chapter 2. But assessing how the system actually operates is a different matter altogether. It is first necessary to surmount several difficulties.

Complexity

Statistics about the number of public bodies, number of appointees and overall costs are typically flawed because they depend so heavily on decisions about what to include. When the lead author embarked on this study, he asked a senior official what was meant by a 'public appointment', he was told it was a position regulated by the Office of the Commissioner for Public Appointments (OCPA), a body created in 1995. He then asked about appointments which fell outside the remit of OCPA, the answer was that these, by definition, were not 'public appointments' but were 'ministerial appointments'.

It is all too easy to become trapped in a quagmire of fairly meaningless statistics. In 1994, a campaigning body called Democratic Audit published exceptionally high totals by including a broader range of organisations than those conventionally referred to as quangos. It used a new acronym 'EGOs' to describe them. On 14 October 2010, Francis Maude, the Conservative Minister in the Cabinet Office charged with culling the number and cost of quangos told the House of Commons:

It may sound absurd but it was and remains incredibly difficult to gain firm information on such bodies. Many do not publish accounts, there is no central list and there are myriad different types all with different statuses. The official list of non- departmental public bodies

has 679 bodies, excluding those in Northern Ireland, but that does not include non-ministerial departments, government-owned public corporations or trading funds. Our review covered 901 bodies and we believe, but cannot be certain, that that is the true extent of the landscape.³

According to the annual Cabinet Office review of Public Bodies for 2012, there were 590 Non Departmental Public Bodies, 186 of which were ‘Executive Non Department Public Bodies’.⁴ These Executive Non Departmental Public Bodies employed a total of 104,794 people and had combined expenditure of £31.2 billion of which £25.8 billion came from government funds. As Oonagh Gay of the House of Commons Library has stressed, such statistics “vary based on the definition used”.⁵ Thus, special care needs to be taken when comparing statistics for different years in different official sources.

The variation of definition is not the only problem. There is the reality that appointments include a very wide range of functions. They include the Governor of the Bank of England; but they also comprise unpaid lay magistrates. In July 2013, the positions advertised by the Cabinet Office ranged from that of Deputy Governor of the Bank of England to 32 positions at eight prisons that called for volunteers to give two or three days a month visiting a prison as independent monitors. The posts were open to anyone over 18 years old. The advertisements invited applications from students as well as retirees.

Technical terms

The Civil Service is bound to be exact. Officials sometimes also speak in ways that are accurate but, at the same time are misleading. In the area of appointments a special vocabulary of words has developed and it may be unclear whether they are merely official substitutes for common terms or whether they bear subtly different meanings.

The term **quango** became popular in the late 1970s to denote Quasi-autonomous Non-governmental Organisations. (Its origins and transmission from the USA to Britain are described in Chapter 2.) In some quarters, it had a derogatory tinge. Within Whitehall, an alternative was preferred: **NDPB** or ‘Non-departmental Public Body’. More recently, Whitehall insiders use another acronym: **ALB** or ‘Arms Length Body’. As mentioned already, Democratic Audit attempted to popularise another term: **EGO** or Extra-governmental Organisation. (For a detailed explanation, see Appendix 1)

It may reasonably be objected that ‘quango’ is an inaccurate term since the relevant bodies, though ‘quasi-autonomous’ are not ‘non-governmental’. Indeed the term NGO (Non-governmental Organisation) itself tends to be misleading since many of the bodies to which it is applied are heavily dependent on public grants and are, in practice, quasi-governmental. All the same, quango has become the word used most often in general parlance.

Ambiguity

Many writings about appointments have been seriously compromised by ambiguities in the use of words such as ‘merit’, ‘diversity’, ‘equal opportunity’, and even ‘appointment’. Problems about the words are not coincidental. In political conflicts, words are powerful weapons.

‘Merit’ implies that there is a fairly objective rank order of suitability. In the United States, applicants for under-graduate and post-graduate courses at

3 Francis Maude cited in Lucinda Maer and Fergal McGuinness (2011). *Public Bodies Bill [HL]. Research papers RP 11/50*. London: House of Commons Library, p. 10. <http://www.parliament.uk/briefing-papers/RP11-50>.

4 Cabinet Office (2013a). *Public Bodies 2012*. London: The Stationery Office.

5 Oonagh Gay (2010). *Quangos*. London: House of Commons Library. http://www.parliament.uk/documents/commons/lib/research/key_issues/Key%20Issues%20Quangos.pdf.

universities typically are obliged to take tests consisting of questions with a multiple choice of answers. These tests are designed to give a numerical score for each potential student. This is akin to the 11-plus examination given in Britain after the Second World War for selection of children to grammar schools and secondary modern schools. Exams for entrants to the UK Civil Service were originally highly academic. The process has developed so that it tests for non-academic capabilities too.

Different methods of testing and selection reflect the reality that, for some jobs, it is by no means evident what constitutes 'merit'. A candidate for appointment as a judge needs to be accomplished in his or her knowledge of the law. But that is not enough. Also required are integrity, reliability and possibly other qualities as well.

If 'merit' may be understood in different ways, there may be a temptation to adapt the criteria to benefit a particular type of applicant. Decisions about what constitutes 'merit' may be taken on the basis of political pressure or prevailing cultural fashion. This will be discussed in Chapter 4.

In practice, merit selection has come no mean little more than selection in which government ministers do not play a role.

'Equal opportunity' and 'diversity' also may bear different meanings. It is central to the approach of this study that the aims they encapsulate are wholly to be accepted and promoted but that their meanings and thus the policies which follow from them need to be reconsidered. 'Equal opportunity' tends to be used too narrowly to apply to gender, ethnicity, disability and often sexuality.

Finally, the word 'appointment' may be a trap for observers of the current UK system. This is because there are forms of disguised appointment. If there are strict rules governing employment within a government ministry or a public body, they may be side-stepped by providing a consultancy, contract, temporary employment status, or an unpaid advisory role instead.

Secrets

Apart from the complexity which results from the large number and variety of appointments, a study of the process is made harder by the reality that influences over some of the most important selections are not obvious. A review of the formal procedures may not reveal the techniques whereby some appointments may be at least partly fixed. There is some evidence, not least from the Civil Service itself about senior officials versed in the dark arts of manipulating the procedures; there are other stories of indirect ministerial influences.

Certainly, there is room for officials and ministers alike to influence the process by selecting the criteria for appointment, by encouraging certain people to apply, by influencing the membership of appointment panels, and even by a word in the ear of some of its members about the merits of a particular applicant. In 2005, the Committee on Standards in Public Life published evidence about the working of the new appointments process after its first decade in operation. It paid special attention to disagreements about the reasonable extent of involvement by ministers at various stages of the selection process and painted a picture of considerable involvement by ministers in selections for high-level posts.⁶

However, Flinders has argued that there is scope for ministerial manipulation but that it is limited and that the formal changes since 1995 have been broadly effective.

⁶ Committee on Standards in Public Life (2005) *Tenth Report – Getting the balance right: Implementing standards of conduct in public life*, Cm 6407. London: The Stationery Office. <http://www.public-standards.gov.uk/our-work/inquiries/previous-reports/tenth-report-getting-the-balance-right-implementing-standards-of-conduct-in-public-life>.

The big picture

The main ‘losers’ in the contest for public appointments are working class citizens. They are notable by their exclusion. The policies of diversity and equal opportunity have largely passed them by. While government documents such as the annual reports of the Commissioner for Public Appointments monitor the percentage of public appointees on gender, disability, ethnicity and age, there is nothing on the percentage of members of the manual working classes who have been selected. As one prominent person involved in the world of equalities told us, class does not feature in the diversity policy enacted in legislation by the last Labour government.

It is worth looking at the website of the Government Equalities Office. It rightly stresses programmes to promote economic opportunities for women and campaigns to encourage a healthy body image for teenagers. However, most striking about the portfolio of activities of the Government Equalities Office is the low priority given to promoting opportunities and ambitions for those in manual occupations or for the unemployed, thus there is a huge swathe of Britain’s population that appears virtually forgotten and ignored.

A major recommendation therefore will address the issue of encouraging the recruitment of appointees from a wider range of occupations and social backgrounds.

A second set of substantial ‘losers’ are people from business and the private sector. The fact that may help to explain why there are a disproportionate number of non-Conservatives in public appointments.

This conclusion should not be overstated since Conservative ministers have been reasonably successful since 2010 in ensuring that compatible people have been selected for certain sensitive positions. Nevertheless, the official statistics of political backgrounds of all appointees published annually by the Office of the Commissioner for Public Appointments show that a strikingly small percentage have previous Conservative Party affiliations. Liberal Democrats emerge as even greater losers.

These statistics do not give a complete picture of the political allegiances of office-holders since the rules about declaration of political connections are fairly narrow. Probably they considerably underestimate the proportion of appointees who had some involvement in party politics.

Table 1: Declared party political activity of those appointed and reappointed to positions governed by the Office of the Commissioner for Public Appointments in England and Wales, 2010-2013.⁷

Conservative	105
Labour	312
Liberal Democrat	45
Other	57
All appointees	4,698

⁷ Office for the Commissioner for Public Appointments (2013) Annual Survey of Ministerial Appointments and Reappointments to the Boards of Public Bodies Regulated by the Commissioner for Public Appointments – Statistics and Analysis, Table 23. <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2013/06/130624-Final-OCPA-Statistics-2012-13.pdf>

2

The Rules: Past and Present

Following the 1995 reforms, when there is a change of government in the United Kingdom, an incoming Prime Minister now has relatively little scope to reward political friends and party supporters. There are fewer than a hundred ‘Special Advisers’ to the Prime Minister and to members of the Cabinet who are appointed on political criteria and who are free from selection on merit according to rules of selection for the Civil Service. Even the award of honours for political service is restricted and subject to independent scrutiny. The number of political appointees to policy-making positions in central government is much smaller in the United Kingdom than in countries such as the United States or Canada. Moreover, the scope for ministerial choice in making public appointments has been severely curtailed.

This Chapter will outline the development of the system of appointments and how it has changed since the 1990s.

The Old Corruption and pre-1995 reforms

In the days before the Northcote-Trevelyan report of 1854, the notion of appointment on merit was poorly developed in Britain. The idea that “none but those qualified will be appointed” to the permanent civil service had been associated more with the Chinese system of choosing mandarins than with domestic practice.

From 1820, John Wade had exposed the corruption of the existing system of public appointments in successive editions of a work finally named *The Extraordinary Black Book: An Exposition of Abuses in Church and State, Courts of Law, Representation, Municipal and Corporate Bodies; with a Précis of the House of Commons, past, present, and to come*. Many of the examples more than justified the hyperbolic title. Relatives of influential politicians (or of aristocratic landowners to whom the government owed gratitude for delivering votes) had been appointed as ambassadors to far off countries and had received lifelong pensions despite the fact that they had served for no more than two or three years. Even if they had never arrived at all but had turned back en route pleading ill health they became entitled to the same reward. Some judicial offices involved no duties at all and were given to well-connected people with no legal qualifications. Then there were the highly-paid sinecures for phantom jobs. A baroness received a stipend for her imaginary duties as sweeper of the Mall in the Park; part of Lord W. Bentinck’s role as Clerk of the Pipe was “to attend the man who holds up the Lord Chancellor’s robe”. Many office-holders were permitted to employ others receiving a fraction of their pay to carry out their duties.

After Gladstone became Prime Minister in 1868, he introduced a number of reforms which aimed to curtail aristocratic privileges. The system of purchase of commissions in the army was abolished. Competitive examinations for entry into the Civil Service fulfilled the recommendations of the Northcote-Trevelyan Report.

Despite the reform of the Home Civil Service, political patronage by no means disappeared. There remained widespread political influence over appointments in several areas of British public life such as local government. With the extension of the franchise and the growth of political party organisations outside the House of Commons in the late nineteenth century, there were demands for tangible rewards. In some parts of the country, especially Labour Party strongholds, party supporters reputedly could expect favoured treatment when they applied for jobs as school teachers.

Positions as local magistrates, though unpaid, brought kudos and tended to appeal to Conservative activists, especially in rural areas. In 1909, the Liberal government set up a Royal Commission to inquire into the appointment of Justices of the Peace and not surprisingly “demonstrated how far the local administration of justice was in the hands of those with Conservative sympathies.”⁸ In response to Liberal Party concerns and, after 1945, to those of the Labour government, recommendations for appointments were made by county committees on which there was a balance of political representation. Another Royal Commission, set up in 1946 by Labour, found that the members of the county committees in that year were 37 percent Conservative, 31 percent Labour, 26 percent Liberal and 6 percent independent.⁹ The system meant that positions as magistrates in any particular county were shared between the parties and produced a degree of political balance. But it also meant that that political allegiance still played an important role in securing appointments and while this process may have helped to satisfy those political groups previously under-represented, it was “quite irrelevant to the problem of obtaining justices of the highest calibre.”¹⁰

For a considerable period after the Second World War, the extent of party political influence over appointments to public bodies was barely a topic of public debate despite their constant growth and importance. The number and variety of such bodies, the sheer complexity of listing them and describing how they were run, and their semi-independence meant that the question of how they were governed and managed and how those in positions of responsibility were chosen went largely unnoticed. Yet these bodies presented considerable new opportunities for political patronage. A half century later, in 2010, a study by Flinders spoke of these developments as opening the door to a ‘new corruption’. But such an interpretation would have been unfashionable at the time,

In 1963, the political scientist Peter G. Richards published a book on Patronage in British Politics which made the same point but in cautious terms and in a style sufficiently boring as to protect the author from accusations of scandal-mongering or being ungentlemanly. He complained that “the lack of public discussion about public patronage in recent years is almost total.”¹¹ He made the valid point that the great expansion of state activities in the twentieth century had led to the development of “many boards and commissions with differing degrees of independence from ministerial supervision.”¹² It had also produced new opportunities for patronage in making appointments to these boards.

8 Peter G. Richards (1963), *Patronage in British Government*. London: Allen and Unwin p. 159.

9 Ibid. p. 164.

10 Ibid. p. 174.

11 Ibid. p. 259.

12 Ibid. p. 89.

In 1958, the leader of the then beleaguered Liberal Party, Jo Grimond, complained at its Assembly about the “patronage and privilege by which both Tories and Socialists manipulate our politics”. Such was the convention of the time to deny the possibility of political favouritism in appointments, that Lord Atlee, the Labour ex-Prime Minister demanded an apology. Grimond, though refusing to comply, assured Atlee that he “did not intend my remarks as a personal reference to yourself.” When he reported the exchange in his book, Richards himself felt obliged to declare that “Ministerial patronage is operated so smoothly that there are no easy targets for criticism. Obvious excesses are avoided ... Venality is held at bay...”¹³

Within the political elite, there were no such illusions. When the Deputy General Secretary of the Labour Party, the late Gwyn Morgan, spoke in the late 1960s to the authors of the Nuffield election studies, he stressed the importance for party management of several thousand patronage positions available to the Harold Wilson’s Labour government for the benefit of party activists.

With the increasingly sharp policy divisions in the 1970s between Labour and the Conservatives, and in the aftermath of a major corruption scandal relating to the architect John Poulson, there was a greater willingness to bring the issue of political patronage into the open. In 1978, the Conservative headquarters published a work by Philip Holland and Michael Fallon that was to popularise the word ‘quango’ - Quasi Autonomous Non-governmental Organisation. The authors reported an ‘explosion’ of such bodies, then under the control of the Labour government. Margaret Thatcher’s victory in the 1979 General Election and the long period of Conservative rule from 1979-1997 meant that it became the turn of anti-Conservatives to complain about the use of quangos as opportunities for party patronage. The term ‘quango’ originated in the USA in 1967 and was imported by the Essex University political scientist Anthony Barker.¹⁴

In the 1990s, as the Conservatives neared the end of an exceptionally long period in office, the pressure group Charter 88, together with a quasi-academic project titled Democratic Audit, attacked the government of John Major for sleaze in general and for abuse of the system of appointments to quangos in particular. The role of Charter 88 and of organisations associated with it will be described in a further report. One of the moving spirits of Charter 88, the former editor of the *New Statesman* Stuart Weir, published a critique which drew very considerable attention in the media.

Weir charged that spending on what he termed ‘Extra governmental Organisations’ had grown under the Conservatives by 24 percent, that they tended to be secretive and free from the mechanisms of accountability which applied to bodies directly controlled by ministers and that it remained entirely up to ministers - effectively to political parties - to decide who would sit on their boards. As a result, there was insufficient effort to secure a diverse range of applicants for board positions. He reported that the growth of quangos and similar bodies at local government level meant that unelected ‘quangocrats’ outnumbered local councillors by a ratio of two to one.¹⁵

In 1995, a Labour MP and former academic, Tony Wright, took up the same theme in a Fabian Society pamphlet “Beyond the Patronage State”. He acknowledged that the issue of patronage appointments to the boards of public bodies had not started when Thatcher was elected to Number 10 Downing Street in 1979. By then, he reported, members of the General Council of the Trade

13 Ibid. p. 247-48.

14 See Alan Pifer (1987). “Letter to the Editor”. *The New York Times*, 5 September <http://www.nytimes.com/1987/09/05/opinion/l-letter-on-quasi-public-organizations-whence-came-the-quango-and-why-969587.html?pagewanted=1>.

15 See Stuart Weir and Wendy Hall (1994) *EGO TRIP: Extra Governmental Organisations in the UK and their Accountability*. Colchester: Democratic Audit and Nick Cohen and Stuart Weir (1994) “Welcome to Quangoland”. London: *The Independent*, 22 May, <http://www.independent.co.uk/news/uk/home-news/welcome-to-quangoland-now-there-is-a-quango-for-every-10000-people-in-this-country-nick-cohen-and-stuart-weir-on-the-growth-of-unaccountable-government-1437732.html>.

Union Congress “were in particularly heavy demand as utility players across the quango park.” Nevertheless, he was highly critical of the Tories for appointing four ‘quango Kings’ to a “range of public appointments” in Wales and he commented that there had been “financial irregularities of a high order” in two Welsh authorities. He accused the Conservative government of seeking to use its powers of appointment to strengthen the party in an area where it was politically weak. Wright also mentioned an article in *The Independent*, which claimed that of 185 chairs of National Health Service trusts, 62 had clear Conservative Party links and that nearly three quarters of them had private business backgrounds.¹⁶

These charges came at a time when John Major and his party were already unpopular after fifteen years of Conservative Party rule. Democratic Audit, the body headed by Weir that conducted some of the main studies of the alleged Conservative abuses of quangos as sources of political patronage, was heavily funded by the pro-Liberal Democrat funding organisation the Joseph Rowntree Reform Trust Limited. Its underlying aim was to form an alliance between Labour and the Liberal Democrats which could defeat the Conservatives and then reform the electoral system to Liberal Democrat advantage. It is open to argument that some of the accusations of sleaze relating to quango appointments made against the Conservatives in the mid 1990s were considerably exaggerated. However, it is beyond question that they had a major resonance.

Moreover, there was no doubt about the scandal in 1994 relating to the acceptance by Conservative Members of Parliament of cash in exchange for asking questions in the House of Commons. Though Major had already been considering ways to reform the appointments system¹⁷, it was this scandal that led the Prime Minister in October 1994 to set up a Committee on Standards in Public Life, under the chairmanship of a law lord, Lord Nolan. The work of this body was to lead to important changes.

New rules proposed in 1995: the merit principle

The Committee on Standards in Public Life included nominees from the main political parties and a variety of prominent public figures. Though set up and appointed by the Prime Minister, the new body commanded widespread confidence and its recommendations formed the basis of new rules and institutions to govern public appointments to the governing boards of quangos.

In its first report, published in 1995, the Committee on Standards made a series of recommendations set out in Box 3 overleaf.

The Conservative government lost little time in implementing the recommendations, establishing a Public Appointments Commission by Order in Council on 23 November 1995 with Sir Len Peach as the Commissioner. His successors were Dame (now Baroness) Rennie Fritchie, and Janet (now Dame Janet) Gaymer. Following the General Election of 2010, a former senior civil servant, Sir David Normington, was appointed to the dual positions of Commissioner of Public Appointments and First Civil Service Commissioner. There are separate commissioners for public appointments in Scotland and Northern Ireland.

In accord with the recommendation of the Committee on Standards in Public Life that final responsibility for appointments remain with ministers, selection

16 Tony Wright, 17 March 1994. Since 1975, there had been a Public Appointments Unit (PAU) in the Cabinet Office. This held a list of some 5,000 names of individuals who had expressed an interest in applying for an appointment on a public boards or who had been recommended. The PAU regularly recruited names from businesses, universities and other bodies. However, it is an indication of the relatively modest role of the Cabinet Office that only a small proportion of appointments derived from the PAU. See Gay (1996).

17 As mentioned below in the section on Diversity and Public Appointments, Major worked on this issue as far back as 1991.

18 Committee on Standards in Public Life (1995). *First Report of the Committee on Standards in Public Life: MPs, Ministers and Civil Servants, Executive Quangos*, Cm 2850. London: Her Majesty's Stationery Office. <http://www.public-standards.gov.uk/our-work/inquiries/previous-reports/first-report-of-the-committee-on-standards-in-public-life>. Quangos (Quasi Autonomous Non-governmental Organisations) were defined in the Report as “Executive Non-Departmental Public Bodies and National Health Service Bodies”.

Box 3: Rules for appointments to quangos proposed by the Committee on Standards in Public Life, First Report, 1995.¹⁸

1. The ultimate responsibility for appointments should remain with Ministers.
2. All public appointments should be governed by the overriding principle of appointment on merit.
3. Selection on merit should take account of the need to appoint boards which include a balance of skills and backgrounds. The basis on which members are appointed and how they are expected to fulfil their role should be explicit. The range of skills and background which are sought should be clearly specified.
4. All appointments to executive NDPBs or NHS bodies should be made after advice from a panel or committee which includes an independent element.
5. Each panel or committee should have at least one independent member and independent members should normally account for at least a third of membership.
6. A new independent Commissioner for Public Appointments should be appointed, who may be one of the Civil Service Commissioners.
7. The Public Appointments Commissioner should monitor, regulate and approve departmental appointments procedures.
8. The Public Appointments Commissioner should publish an annual report on the operation of the public appointments system.
9. The Public Appointments Unit should be taken out of the Cabinet Office and placed under the control of the Public Appointments Commissioner.
10. All Secretaries of State should report annually on the public appointments made by their departments.
11. Candidates for appointment should be required to declare any significant political activity (including office- holding, public speaking and candidature for election) which they have undertaken in the last five years.
12. The Public Appointments Commissioner should draw up a code of practice for public appointments procedures. Reasons for departures from the code on grounds of 'proportionality' should be documented and capable of review.

committees set up under the supervision of the Office of the Commissioner for Public Appointments drew up short lists of the applicants considered of greatest merit and the relevant minister was then able to choose from the short list.

Reforms under the Labour governments of 1997-2010

When Tony Blair succeeded John Major as Prime Minister, the new mechanism of an Independent Commissioner for Public Appointments was in place. Blair had inherited Major's commitment that ministers, though still responsible for appointments to the boards of quangos and other public positions, would make them in accord with a procedure run by a Commissioner for Public Appointments and on the principle of appointment on merit.

The reforms made by the Conservatives near the end of their time in office, were not the end of the matter. The Labour government was to carry the process of reform further. Its initiatives fell into two categories: measures to promote equal opportunity and diversity in appointments and further limits on ministerial powers.

Promoting Equality of Opportunity and Diversity

Procedures for promoting ‘Equal Opportunity’ became part of the remit of the Office of the Commissioner for Public Appointments in 2002.¹⁹ Promotion of ‘Diversity’ was added in 2008.²⁰

Further limitations on ministerial powers

The establishment in 2000 of an NHS Appointments Commission took away from ministers the responsibility for selecting boards members of National Health Service trusts. As Flinders and Matthews have written, the NHS Appointments Commission was established by the Labour government in 2000 in response to a criticism in the 2000 annual report of the Commissioner for Public Appointments which suggested the existence of clientelist practices. Rather than simply regulating appointment, the NHS Appointments Commission “assumed responsibility for making all appointments across the spectrum of NHS boards.” For Flinders and Matthews, the fact that the new body was completely responsible for making appointments (rather than for drawing up a short list of names for the minister) made the change “a critical reference point for studies of party patronage in the UK because it marks the complete end of ministerial capacities in one specific policy area”.²¹

The Constitutional Reform Act of 2005 limited the Lord Chancellor’s power over judicial appointments. The Act merged the role of the Lord Chancellor into that of the newly created Minister of Justice who would head a Ministry of Justice. Under the new system, a fifteen person Judicial Appointments Committee was created on 3 April 2006.

A further check on ministerial choice of appointees was added in June 2008 with the introduction of pre-appointment hearings before relevant Select Committees of the House of Commons. These were to be held for individuals selected for a number of especially significant positions. With one exception, Select Committees do not have the power to veto candidates.²²

Following the change of government in 2010, the Conservative-Liberal Democrat coalition has retained the essential institutional features of the reformed system of appointments to public bodies and to the judiciary. It has concentrated on the task of reducing costs by abolishing what are seen to be unnecessary quangos.

In April 2013, a new limitation on ministerial discretion over appointments came into law with the passage of the Crime and Courts Act. This transferred from the Lord Chancellor – that is, the Minister of Justice – to the Lord Chief Justice the final power of approving appointees to the lower judiciary proposed by the Judicial Appointments Commission.²³

Flinders has stressed the cumulative effects of the changes made since 1995 claiming that they constitute

“The rapid growth of a dense regulatory architecture in recent years that has significantly constrained the previously unfettered patronage powers of ministers. This fettering is not, however, solely due to the introduction of new regulatory processes and mechanisms but it is also due to reforms that have significantly increased the role and capacity of the House of Commons select committees vis-à-vis ministerial appointments.”²⁴

19 Order in Council, 30 July 2002 <http://www.london-gazette.co.uk/issues/56648/notices/1006>

20 Public Appointments (Amendment No 2) Order in Council 2008. <http://www.publications.parliament.uk/pa/spconf/167/167we91.htm>

21 Matthew Flinders and Felicity Matthews (2011). “Party Patronage in the United Kingdom”. In *Party Government and Party Patronage: Public Appointments and Political Control in European Democracies*. Edited by Petr Kopecky, Peter Mair and Maria Spirova. Oxford: Oxford University Press.

22 The Chancellor of the Exchequer agreed to the Treasury Select Committee having a power of veto over appointments to the Office for Budget Responsibility which was created in 2010. See Paul Bowers, Richard Kelly, and Lucinda Maer (2012). “Parliamentary involvement in public appointments.” London: House of Commons Library Standard note SN04387. <http://www.parliament.uk/briefing-papers/SN04387>

23 The judges covered by the new arrangement are District Court Judges, Deputy and Temporary Masters, Deputy District Judges, Deputy District Judges (Magistrates) and Lay Justices. See <http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted/data.htm>, Part 4. See also the commentary in Kate Malleson and Graham Gee (2013). “Who should have the final say in lower level judicial appointments?” UK Constitutional Law Blog, 30 January. <http://ukconstitutionallaw.org>. Who express fears that that change is likely to put back the campaign to increase appointments of female judges on the ground that the Lord Chief Justice is less likely than the Minister of Justice to heed the campaign.

24 Flinders (2012). “Heaven’s talent scout: Prime ministerial power, ecclesiastical patronage and the governance of Britain.” *Political Quarterly*. 83(4) 792-805.

How appointments are currently made: the main actors

The system is not at all simple. Apart from government ministers, their Special Advisers and their party organisations, the list of the main actors and institutions is long.

1. The Commissioner for Public Appointments

The position has been held since 2011 by Sir David Normington, the retired permanent secretary of the Department for Education and Skills and for the Home Office. He serves also as the First Civil Service Commissioner with responsibility for ensuring appointments on merit to the Civil Service. A small secretariat based in the Cabinet Office services both functions.

The Commissioner has overall responsibility for ensuring that there are clear procedures and that they are followed. As will be seen, the rules provide some leeway for ministers but they are designed to ensure that all those who are selected are able to do their jobs properly - in civil service jargon that they are 'appointable', that selections are made on merit and that ministers follow a set code of practice in their involvement in the selection process.

Sir David Normington has attempted to introduce two amendments. First, he has aimed to ensure that substantially all appointments are covered by the rules of his office and to limit so-called 'ministerial appointments' that are unregulated. Second, he has had the policy of reducing administrative costs by differentiating between different levels or 'tiers' of appointment and permitting less formal and less costly procedures for lower level, frequently unpaid positions.

2. Independent assessors appointed by the Commissioner for Public Appointments.

Sir David Normington reduced the number of assessors from 153 to 14. The assessors were themselves appointed following an open competition. These 'central' assessors are used to sit in on interviews for senior appointments.

3. Cabinet Office Appointments Section

This significant body is responsible to Sue Gray, a senior Civil Servant with the rank of Director-General, Propriety and Ethics Team and Head of Private Offices Group. The team "oversees the provision of advice to all government departments on standards and ethics issues, corporate governance in public bodies, and makes and manages public appointments." Her added responsibility for investigating alleged ministerial conflicts of interest gives her additional clout.

4. No 10 Policy and Implementation Unit

The Policy Unit was established in 2011 as a Civil Service led unit designed to serve both of the parties in the governing coalition. Appointed as head of implementation was a former television presenter and behavioural psychologist, Kris Murrin. Before leaving for a year's sabbatical at the end of 2012, part of her role was to act as a liaison between the Cabinet Office and the Prime Minister's political team within No 10 Downing Street on issues relating to major public appointments. She received Civil Service status.

5. Departmental appointments units

These are relatively small units of civil servants who are responsible for administering competitions for middle level appointments.

6. Departmental appointments assessors

While assessors on the central list maintained by the Office of the Commissioner for Public Appointments sit on interview panels for the most important departmental appointments, other assessors are used for contests considered of lesser sensitivity. These assessors appear to be chosen more on an ad hoc basis and without input from the Office of the Commissioner for Public Appointments.

7. Specialist appointments bodies

These include the Judicial Appointments Commission created by the Constitutional Reform Act of 2005. The new rules concerning the appointment of members of the judiciary are complex and vary for different posts. In broad terms, the new system was devised greatly to lessen but not to eliminate the role of the Minister of Justice (the Lord Chancellor) in the process. A second aim was to encourage greater social diversity judges and, in particular, to lessen the male preponderance among senior judges.

8. Parliamentary Select Committees

The role of Parliamentary pre-appointment hearings has been summarised above.

9. The Commissioner for Public Appointments in Scotland.

Designated in 2013 as the Commissioner for Ethical Standards in Public Life in Scotland, the incumbent appointed in 2011 by the Scottish Parliament is Stuart Allen. He was previously Chief Investigating Officer to the Standards Commission and the Scottish Parliamentary Standards Commissioner.

10. The Commissioner for Public Appointments in Northern Ireland.

The Commissioner since 2011 has been John Keanie, formerly the Town Clerk of Strabane and Derry. The Commission monitors the religion of appointees, where the information is volunteered. Applicants not giving this information have tended to have a higher degree of success.²⁵

11. Head-hunters

Professional search consultants have been used increasingly by Whitehall as part of the process of recruiting senior civil servants. They are regularly used to assist in the search for chief executives of quangos and for candidates for important public appointments.²⁶ Some executive search companies employ consultants who specialise in recruitment to public sector positions. These consultants may be former civil servants themselves.

The head-hunters sometimes meet with both the minister and civil servants from the department which sponsors the public body concerned. They may make a large number of approaches to people with relevant experience to inform them about the vacancy, to encourage them to apply and to meet with them. They typically send detailed reports to members of the interview panel, which are likely to influence their decision about whom to invite for the formal interviews.

Head-hunters may also have other functions. According to the Ministry of Justice, “Gatenby Sanderson, a firm of recruitment consultants with whom we have a contract to undertake certain public appointment and executive search exercises” also provides some names of independent interviewing panel members.

²⁵ Office of the Commissioner for Public Appointments for Northern Ireland (2005). *Report of the Short Term Working Group on Diversity in Public Appointments*. <http://www.publicappointmentsni.org/working-group-diversity.pdf>. Figure 3

²⁶ See evidence by Deborah Loudon and Peter Smith, to Public Administration Select Committee Public Appointments: regulation, recruitment and pay (2011) <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpubadm/1389/11090603.htm>.

12. Lobby groups and commercial consultancies

Several governmental and non-governmental groups encourage citizens to apply for appointments and some provide assistance. Among public institutions which have participated in such initiatives have been the Appointments Commission (a body set up by the Labour government to administer National Health Service Appointments which was abolished by the coalition government), the Government Equalities Office and the Office of the Commissioner for Public Appointments.²⁷

One of the best known non-governmental organisations involved in encouraging people from different backgrounds to apply for public appointments is Common Purpose. This is a high profile educational charity which runs leadership development courses for individuals from a broad range of 'political, ethnic, institutional, social and economic backgrounds'. Its founder, Julia Middleton has had close contacts with the former Civil Service College, the Cabinet Office and the Government Equalities Office. One aim of Common Purpose is to encourage the graduates of its training courses to apply for public appointments.

Several commercial consultancies such as Awards Intelligence advertise their services in assisting and coaching candidates for appointments. Coaching for applicants for legal positions (such as the rank of Queen's Counsel) appears to be a particularly active field.

How appointments are currently made: the selection process

The entire selection process is based on two underlying contradictions. The first is the contradiction between appointment on 'merit' - the objective laid out in 1995 in the First Report of the Committee on Standards in Public Life and the principle of ministerial responsibility. If an independent selection process results in the choice of public appointees whose subsequent performance leads to intense public criticism (perhaps for a low standard of care in hospitals, for suicides within prisons or for police misconduct), the government minister responsible will carry the can. This is despite the minister having had little choice in the appointment of the people whose perceived failures were the cause of the criticism.

Another way to express the same point is that at least some public roles inevitably involve discretionary decisions and policies which reflect the values, prejudices and political allegiances of the office-holder. In other words, the positions are inherently political. For these positions - in Whitehall language, the most 'sensitive' roles - it may be very hard to select according to supposedly a-political 'merit'.

Second, the dual aims of appointment on merit and appointment to encourage diversity may at times turn out to be inconsistent. As a result, the existing procedures involve a highly complex interplay between ministers, civil servants, outside assessors and MPs. Who wins and who loses in this tussle for control will be debated in the next Chapter. The objective in this Chapter is to set out the different stages in this chess game.

1. The planning stage

Both ministers and civil servants may be involved at the crucial planning stage when there are decisions to be made about the remuneration (if any) and duties

27 Matthew Flinders, Felicity Matthews and Christina Eason (2011b). "Public appointments are still 'male, pale and stale': new recruitment strategies and recognition of the value of a variety of backgrounds are needed to change this." *British Politics and Policy at LSE*, London School of Economics, 5 October. <http://blogs.lse.ac.uk/politicsandpolicy/archives/15625>

of the appointee, about the criteria on which applicants are to be judged, about the method of advertising the vacancy, about whether to hire head-hunters, and about membership of the interviewing panel. These are no mere details.

Decisions about criteria may have potentially far-reaching, politically relevant implications. Consider, for instance, the example that will be explored in Chapter 4 of the selection in 2012 of the British nominee for a judgeship on the Court of Justice of the European Union in Luxembourg. For the UK, the political importance of the position consists in the appointee's views on Euro-federalism. The more the British judge supports progressive European integration, the less will he or she be inclined to resist the expansionist, Euro-federalist judgements typically made by the Luxembourg judges. Yet, the selection procedure will be on merit and not directly on the political opinions of the applicants.

As one senior legal academic specialising in European law has pointed out, a matter as simple as candidates' fluency in French may provide a powerful clue as to applicants' likely stances. Lawyers with advanced linguistic abilities are more likely to have spent a considerable proportion of their previous careers in pleadings before the Luxembourg Court and thus are more likely to be sympathetic with its jurisprudence than candidates firmly rooted in British legal traditions.

Likewise, the choice of members of the interviewing panel may steer the likely choice in one direction or another as the example of the British nominations for a judgeship to the European Court of Human Rights in Strasbourg, also in 2012, appear to indicate. This too will be discussed in Chapter 3.

2. Recruiting candidates

Though it is open to anyone to apply, ministers, civil servants and head-hunters employed to assist the search may all make suggestions. Formally, those who have been asked to put their names forward are not given preferential treatment.

3. Sifting and interviewing.

According to a written code produced in 2009 by the Office of the Commissioner for Public Appointments,²⁸ ministers should not interfere in decisions about which candidates to invite for interview and whom to place on the final short list. When the Committee on Standards in Public Life examined actual practice in its Tenth Report published in 2005, it found that some ministers had failed to adhere to this expectation.

4. Ministerial selection from the short list.

Interviewing panels normally present more than one name from which the minister makes a final choice.

Summary

Since the nineteenth century, there have been various waves of reform aimed at limiting political corruption and cronyism by restricting ministerial discretion over appointments to the permanent civil service and later to the boards of quangos. Rules introduced progressively since 1995 have been devised severely to constrain the appointment powers of ministers but not to eliminate them altogether.

How the system actually works, methods of evading its constraints and the operation of the policy of diversity in appointments are discussed in the next two Chapters.

28 Office of the Commissioner for Public Appointments, 2009

3

The Appointments System in Practice

This Chapter will examine how the public appointments system works in practice. This is an almost impossible task since there are so many appointments as well as several categories of appointments which are disguised as something else. It is not only government ministers who may seek to work the system to their advantage. Civil servants also employ techniques of their own.

The objectives are, first, to investigate whether the reforms proposed by the Committee on Standards in Public Life and implemented by the government of John Major in 1995 resulted in an unacceptable power shift from ministers to civil servants; Second, to look into the contention that the new system works in a politically biased.

For purposes of simplification, the following will be considered:

1. Concerning appointments regulated by the Commissioner for Public Appointments, how much leeway do ministers have? This will be addressed by examining detailed information provided by the Ministry of Justice.
2. Why do the headline figures indicate a much higher percentage of appointees with Labour Party backgrounds than those with attachments to other political parties?
3. Does the appointment of 'tsars' permit ministers to evade the public appointment rules?
4. Are civil servants able to place individuals within their ministries without using the normal competitive examination procedures for civil service appointments?
5. Are there particular examples of recent appointments which illustrate the working of the system under the coalition government? Do these examples show success or failure by the current coalition government and, in particular, by the senior partner in the coalition, the Conservatives?
6. What are the implications of recent senior selections for future policy on the making of judicial appointments?

How much leeway do the appointment rules allow ministers?

The constitutional conundrum about public appointments is that government ministers bear the 'ultimate responsibility' for making them and are accountable to Parliament for any serious problems arising from poor choices. Yet, the rules for

such appointments since the reforms introduced in 1995 stipulate that they must be made on merit and through a defined process independent from ministers.

In an attempt to resolve this contradiction, current procedures give ministers a number of powers short of selecting people for appointments who have been deemed ‘non-appointable’ by an independent interviewing panel. If ministers do not like the candidate or candidates selected as ‘appointable’, they may ask for a further selection process. In addition, as described in Chapter 2, ministers may have an input into the selection process by helping to determine the members of the interview panel and by specifying criteria according to which the interviews are to make their judgement. Moreover, an interviewing panel need not select the applicant it considers of greatest merit but may forward the names of all those it considers to be ‘appointable’, leaving the minister to make a choice between them.²⁹ Ministers may themselves propose candidates but cannot select any of them unless they have passed the interview panel’s ‘appointability’ test.

In theory, ‘appointability’ means that an applicant must be above a certain minimum standard and that a large number of applicants could be above the standard. In practice, as explained by the Office of the Commissioner for Public Appointments, a finding that a large number of candidates were ‘appointable’ would lead to a tightening of the standard so that only a limited number of names would be sent to the minister. In other words, ‘appointability’ is used to justify selection by interviewing panels either of one person per vacancy or a limited number per vacancy.

In order to ascertain how the system works in practice at the departmental level, the authors asked a set of questions to the departmental appointments unit at the Ministry of Justice. The information given in reply indicates a system where departmental civil servants rather than the minister have the most important role but where there is some fairly limited ministerial leeway. It is unclear whether this is a general situation or whether it reflects practice in a particular department under a particular minister (at the time, Kenneth Clarke MP).

The information supplied by the Ministry of Justice relates to 21 competitions run in 2011-12 by its appointments unit. A total of 94 people were appointed, 53 of them to three roles: as forensic psychologists or independent members of the Parole Board and as members of the Office of Judicial Complaints Review Body. For these 53 appointments, only 55 of the 1,053 applicants were deemed ‘appointable’, which meant that the process was virtually entirely decided by the interview panels.³⁰

Four other selections were determined completely or virtually completely by the interview panels, including an appointment to the European Fundamental Rights Agency and to the Legal Services Board. Given the controversial character of the European Fundamental Rights Agency, it is noteworthy that the choice was made entirely by two officials (from the Ministry of Justice and the Foreign and Commonwealth Office) with a senior international law solicitor as the independent panel member. Out of 30 applicants, only a single name was selected as ‘appointable’ thus giving the minister the choice either of ordering a new selection competition or of accepting the civil servant-led choice.

In two-thirds of the selection exercises, the minister was presented with a choice of ‘appointable’ candidates from whom to make a final selection. He was given 72 names from which to make a selection of 32 candidates. In these

29 Commissioner for Public Appointments (2012a). *Code of Practice for Ministerial Appointments to Public Bodies*. <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2012/02/Code-of-Practice-20121.pdf>

30 See Appendix 4

competitions, the number of ‘appointable’ names per vacancy ranged from two names per vacancy to a maximum of four names per vacancy (for the chair of the Law Commission).

Information was unavailable as to whether any candidates were nominated by government ministers and, if so, how many were considered ‘appointable’ by the relevant interview panels.

Concerning the membership of the interview panels, there was heavy representation of senior civil servants, former senior civil servants, senior judges and sitting members of the bodies to which appointments were to be made.

The information supplied by the Ministry of Justice is given in full in Appendix 4.

Why have there been more appointees with Labour Party backgrounds?

When the editor of *The Spectator*, Fraser Nelson suggested in October 2012 that David Cameron had, according to his political allies, been “too much of a gentleman to play Labour’s game and start stuffing quangos with Tory placemen”,³¹ he based this view on figures issued by the Office of the Commissioner for Public Appointments for 2011-12 showing that “77 percent of politically active quango appointees last year were Labour supporters.” He warned of serious political consequences, calling Labour-supporting quango appointees a Labour Party ‘government-in-exile’.³²

Nelson was expressing a concern frequently repeated in Conservative Party circles. It is therefore important to look into the appointment statistics and to discover why so few Conservative supporters gained public appointments even after the party came to power in 2010. The annual percentages of appointees declaring political activity are shown in Table 2

It is certainly striking that most of the appointees declaring political activity ever since Labour came to office in 1997 have been from that party. Far from diminishing when they lost power in 2010, Labour’s lead grew substantially in 2011-12.

The figures need to be treated with caution for several reasons. Appointments vary greatly in importance. The overall numbers take no account of this. As will be seen, for the purpose of governance, it is important for parties to control a limited number of politically-sensitive, top appointments. The figures do not differentiate between members and chairs of quangos. Nor do they differentiate between appointments to National Health Service bodies and others. (It is on National Health Service bodies that Labour’s advantage is especially pronounced, 83% of individuals serving on these bodies who declared political activity were Labour). The rules for political declarations specify political activity in the previous five years and thus fail to catch those with earlier activism. Finally, declarations of political activity do not appear to be checked and it is unclear how many fail to acknowledge such activity.

Apart from all these provisos, the key question is whether Labour’s clear lead in the number of supporters obtaining appointments results from a bias in the appointments system or whether it reflects a lead in the numbers of supporters making applications. According to research by the Commissioner for Public Appointments, it is the latter. The proportion of appointees to applicants is similar for Labour and for the Conservatives. This suggests a considerable grassroots Conservative deficit.

31 Fraser Nelson (2012). “Gordon Brown’s secret army could defeat the Coalition’s welfare reforms: Britain’s charities and quangos are now stuffed to the gunwales with Labour placemen.” *The Telegraph*, 25 October.

32 Fraser Nelson (2012). “Gordon Brown’s secret army could defeat the Coalition’s welfare reforms: Britain’s charities and quangos are now stuffed to the gunwales with Labour placemen.” *The Telegraph*, 25 October.

Table 2: Declared party political activity of persons appointed and reappointed to positions governed by the Office of the Commissioner for Public Appointments in England and Wales 1996-2013.³³

	Con %	Lab %	Lib Dem %	Total declaring political activity % (including other parties)
2012-13	3.3	3.0	1.0	9.0
2011-12	1.8	10.2	0.6	13.3
2010-11	2.0	5.4	1.3	10.3
2009-10	1.3	5.9	0.9	8.4
2008-09	2.1	5.5	1.0	10.2
2007-08	2.2	5.7	1.3	10.4
2006-07	2.5	10.2	2.0	15.8
2005-06	2.1	8.3	1.6	13.3
2004-05	2.5	8.9	1.5	14.4
2003-04	2.9	9.2	1.3	15.2
2002-03	3.2	11.7	1.6	18.6
2001-02	2.7	14.3	1.3	20.7
2000-01	3.9	11.7	1.3	19.0
1999-2000	2.5	9.7	1.6	14.8
1998-99	2.5	12.5	1.4	17.1
1997-98	2.5	14.0	1.7	18.7
1996-97	5.9	3.3	0.5	10.3

A further Conservative problem stems from the manner in which political declarations operate. They are not shown to members of interview panels during the selection process so that political affiliation does not distort merit selection. However, the fact that so many more Labour than Conservative supporters were appointed during Labour's terms of office between 1997 and 2010 means that they were able to gain experience and seniority. This gives a solid reason for their reappointment upon the expiry of their current terms of office and for their appointment to new positions. The system thus has a self-sustaining political momentum. The Prime Minister made clear his wish that automatic reappointment without competition should, if possible, be avoided. However, this has not in practice been the case. Although the proportion of reappointments was much lower - 15% in 2011-12 compared to 45% in 2010-11, by 2012-13 it had risen again to 44%.³⁴

Does the appointment of 'tsars' permit ministers to evade the public appointment rules?

Apart from battling for influence over public appointments, both ministers and civil servants are able to find a way around the rules by making appointments that do not fall under the aegis of the Commissioner for Public Appointments in the first place. It is hard to trace some of these appointments and the present Commissioner, Sir

³³ Office of the Commissioner for Public Appointments, 2012, Table 23; 2004, Table 1.2; 1998, Table 1b.

³⁴ Office for the Commissioner for Public Appointments (2013). Annual Survey of Ministerial Appointments and Reappointments to the Boards of Public Bodies Regulated by the Commissioner for Public Appointments – Statistics and Analysis <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2013/06/130624-Final-OCPA-Statistics-2012-13.pdf>

David Normington, has set about changing the rules to ensure that all appointments come within the ambit of his office unless they are specifically exempted. Part of the problem is that the meaning of the term ‘appointment’ may be slippery. Indeed, verbal dexterity is essential to the Whitehall game. The question is whether ministers or civil servants have the greater scope to side-step the rules.

Ministers can also appoint what have come to be known as ‘policy tsars’. In the words of Ruth Levitt and William Solesbury, the authors of a 2012 study on the subject:

‘[t]sar’ is the popular, unofficial, name given to individuals from outside government who are appointed by a minister for a limited period of time to advise on a particular policy. Although tsars have no executive authority they do have the personal power to influence a minister’s thinking and decisions and can make a significant difference to policy or legislation or to wider understanding of big issues³⁵.

Tsars are sometimes very well-known public figures. For example, Prime Minister Gordon Brown appointed the multi-millionaire businessman and television star Lord Sugar as the ‘enterprise tsar’ in 2009.³⁶ In 2011, it was David Cameron’s turn as premier to bring in another television presenter, Mary Portas, known as the ‘Queen of Shops’, to find ways to save the high street from decline.³⁷ ‘Tsars’ have included the inventor of the worldwide web Sir Tim Berners-Lee, and former government ministers Frank Field, Lord (Michael) Heseltine, Lord (John) Hutton, Alan Milburn, Lord (Chris) Patten, Lord (David) Sainsbury, Lord (Chris) Smith, and Lord (David) Young.

Levitt and Solesbury report that only a few ‘tsar’ appointments are under the terms of the normal rules of the Commissioner for Public Appointments and their use to side-step the rules for such appointments is one of the attractions to ministers. Of 267 appointments made between 1997 and 2012, women accounted for 15% and ethnic minorities for 5% of those chosen. The pace of appointments of ‘tsars’ has increased steadily. In its first term of office (1997-2001), Labour appointed 14 ‘tsars’, in its next term (2001-05), this increased to 45, and in its final term (2005-10) to 130. In their first two years in office, the coalition government reappointed 15 of Labour’s ‘tsars’ and chose 78 more. According to the same authors, “[o]vert party political support is rarely a consideration.” Instead, those invited to become ‘tsars’ “usually come from a circle of people active in the relevant policy domain, whether in business, as academics, practitioners, retired public servants, politicians or people with other kinds of relevant expertise.”³⁸

Levitt and Solesbury found it difficult to obtain information about whether ‘tsars’ were paid. The authors of this study therefore made a series of Freedom of Information requests to probe the matter again but received only patchy responses. Information was obtained on 78 appointments between 1997 and 2012. The results are shown in Appendix 3. In summary, only 31% of the appointments we obtained information about were paid. Even this percentage exaggerates the position since some of the appointments listed as being paid only dubiously fell within the category of ‘tsar’ and were better defined as normal contracts.

Unpaid but high profile jobs as ‘tsars’ have frequently brought considerable reputational and career benefits to the holders. The broadcaster, Dame Joan Bakewell, appointed in 2008 as the Voice of Older People, became a peeress. Peter

35 Ruth Levitt and William Solesbury (2012). *Policy tsars: here to stay but more transparency needed*. London: Kings College London, p. 175 <http://www.kcl.ac.uk/sspp/departments/politiceconomy/research/tsarsreport/Tsars-Final-Report-Nov-2012.pdf>

36 British Broadcasting Corporation (2009). “Sir Alan hired in government role.” London: *BBC News*, 5 June. <http://news.bbc.co.uk/2/hi/business/8085254.stm>

37 Rebecca Smithers (2011). “‘Queen of Shops’ brought in to help save UK high street.” London: *The Guardian*, 17 May. <http://www.theguardian.com/lifeandstyle/2011/may/17/queen-shops-revive-uk-high-street>

38 Ruth Levitt and William Solesbury (2012). *Policy tsars: here to stay but more transparency needed*. London: Kings College London, p. 175 <http://www.kcl.ac.uk/sspp/departments/politiceconomy/research/tsarsreport/Tsars-Final-Report-Nov-2012.pdf>

Gershon reviewed civil procurement (1998). After recommending the creation of a new Office of Government Commerce, he became its first chief executive. Levitt and Solesbury give these and several other examples.³⁹

Recent complaints about the ‘tsar’ system by Levitt⁴⁰ and others on the ground that it provides a way to evade the bureaucracy and the constraints on ministers involved in appointments under the regulation of the Commissioner for Public Appointments merely illustrate the point that this precisely its function.

Are senior civil servants able to bypass the normal competitive examination procedures?

The same experience and skill that permits civil servants to enforce rules also enables them to find ways around the rules and they may be more adept at doing this than their ministers. Just as there are rules concerning public appointments, so there also regulations to guarantee merit selection for the recruitment of civil servants. The Commissioner for Public Appointments has a second role as the First Civil Service Commissioner.

Ways to side-step the regulations for recruitment of permanent civil servants by competitive examinations include: employment of individuals as temporary civil servants or as contractors as well as the re-employment of retired civil servants (including those already in receipt of pensions). A further method is to obtain money from an outside body such as one of the research councils to fund people to carry out studies on topics chosen mainly by civil servants, though sometimes with the formal approval of ministers. Contracts are subject to formal procedures but the specifications may be drawn up in a manner which drives policy in a particular direction and which even may favour some potential grantees.

Thus, the ways in which civil servants may take the initiative for discretionary payments appear to be at least as great as and arguably greater than those available to ministers. Despite the rules imposed by the incoming coalition government for publication of contract awards, it is in practice difficult to obtain information about some categories of departmental payments.

Freedom of Information requests and informal inquiries addressed to the Ministry of Justice were notably unproductive. The questions which the Ministry of Justice declined to answer on the grounds that the cost limit for replies to Freedom of Information requests acted as a barrier were:

- Has the Ministry of Justice made any ministerial appointments, either paid or unpaid, [other] than those regulated by OCPA [Office of the Commissioner for Public Appointments]? If so, who was appointed? How much was paid in each case?
- Has the Ministry of justice paid any former senior civil servants within 2 years of their retirement either as consultants or employees? This request relates to information about employees other than that regulated by and published by ACOBA [Advisory Committee on Business Appointments]. If so, who was employed? For what purpose? How much was paid in each case?
- How many temporary civil servants were employed by the Ministry of Justice in each year since its formation?
- Were any persons other than permanent civil servants employed in 2010 to work on the preparation of the Cabinet Manual?

39 Ruth Levitt and William Solesbury (2012). *Policy tsars: here to stay but more transparency needed*. London: Kings College London, p. 64-66 <http://www.kcl.ac.uk/sspp/departments/politicaconomy/research/tsarsreport/Tsars-Final-Report-Nov-2012.pdf>

40 Ruth Levitt (2013). “Tsars: the need for better appointment practices and greater transparency.” *Constitution Unit blog*, 10 June. <http://constitution-unit.com/?s=levitt>.

In the absence of comprehensive data, it is the experience of the senior author that there are considerable loopholes in the system of controls and that they tend to operate in favour of civil servants since they are mainly responsible for the day-to-day workings of their ministries and understandably appreciate the virtues of former colleagues and of like-minded researchers.

Examples of appointments under the coalition government

It is instructive to examine three controversial examples from 2012, the appointment of the chairs of the Charity Commission and of the Office of Fair Access (OFFA) and the reappointment of the chair of the Electoral Commission. They illustrate, first, the way in which the choice of the interview panel - subject to ministerial input - influences the outcome; second, that outcomes depend not only on the appointments system but on the political determination and good organisation of the governing parties; third that government legislation may crucially affect appointments and that changes in legislation may be a more effective way to influence outcomes than merely securing the appointment of an amenable quango appointee. A fourth conclusion, the influence of civil servants on some key selections, will emerge in the next section from case studies of recent senior judicial appointments. The analyses are based on a combination of public and private sources.

Professor Les Ebdon and the Office for Fair Access

After a pre-appointment hearing in February 2012, the House of Commons Business, Innovation and Skills Committee voted against the appointment of Ebdon as Director of the Office for Fair Access (OFFA).⁴¹ However, House of Commons committees, as explained in Chapter 2, have no power (except for one single office) to overturn ministerial recommendations. As a result, Ebdon's appointment went ahead.

The issue of substance was Ebdon's forthright anti-elitist stance on access to universities. As Vice-Chancellor of the University of Bedfordshire and as chair of the Million+ campaign, a coalition of low-ranking universities, he was a firm advocate of rapidly expanding student numbers in order to make higher education accessible to those young people from socially disadvantaged backgrounds similar to his own. The controversy was not about the desirability of encouraging access for the disadvantaged but the manner of achieving this objective. Ebdon's approach had considerable support within the Labour Party but also opposition from a former Labour Education Minister, Lord (Andrew) Adonis.⁴² To Ebdon's critics, he stood for the dumbing down of universities. His powers as Director of the Office for Fair Access would give him statutory powers to pursue this aim.⁴³

As mentioned in Chapter 3, Ebdon's critics feared that, if appointed, he would use his statutory powers under the Higher Education Act of 2004 Office for Fair Access to prevent universities from charging fees above £6,000 a year (instead of the maximum of £9,000 a year) unless they agreed to 'positive discrimination' in university entrance by admitting students from disadvantaged backgrounds with lower A-level scores.

Ebdon's emergence as the 'preferred candidate' resulted from the choice of the interviewing panel and then from the confirmation of the choice by Vince Cable MP, the Liberal Democrat who headed the Department for Business, Innovation

41 House of Commons Business, Innovation and Skills Committee (2012). *Pre-Appointment Hearing: Appointment of Director of the Office for Fair Access. 13th Report of Session 2010-12*. London: The Stationery Office. <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmbis/1811/1811.pdf>.

42 Lord (Andrew) Adonis (2012). "Is Les Ebdon up to the job?" 30 November. <http://andrewadonis.com/2012/11/30/is-les-ebdon-up-to-the-job/>

and Skills and by his deputy within the Department, David Willetts MP, the Conservative Minister for Higher Education. The interviewing panel consisted of Sir Adrian Smith (formerly Principal of Queen Mary, University of London and Director General, Knowledge and Innovation, at the Department for Business, Innovation and Skills), Tim Melville Ross (Chair of the Higher Education Funding Council for England), Sheila Drew Smith (independent assessor appointed by the Commissioner for Public Appointments) and Alan Milburn (a former Labour MP and Cabinet Minister and an independent expert on social mobility).

The presence on the interviewing panel not only of Milburn but of a second, albeit inactive, former Labour Party member may be seen as one factor which had some effect on the outcome. A further consideration was the acceptance of Ebdon's proposed appointment by Willetts, possibly in deference to the fact that his titular Liberal Democrat boss, Cable, headed the Department for Business, Innovation and Skills. The acceptance of the appointment in turn by Number 10 Downing Street may also be interpreted as a Conservative concession to the Liberal Democrats and to Deputy Prime Minister Clegg's strong views in favour of policies seen to be on lines similar to Ebdon's.⁴⁴

Since the power of the Director of the Office for Fair Access to impose severe financial penalties on universities stemmed from an Act of Parliament, the best way to eliminate what some saw as a potential mischief was to amend or repeal the statute. This option was not open to the Conservatives in 2012 because of their coalition with the Liberal Democrats. Under a government with a clear parliamentary majority, the option of legislation would become practical and more attractive.

The Charity Commission: Dame Suzi Leather and William Shawcross.

During the Labour governments of 1997-2010, Leather became a frequent target of severe criticism in several popular newspapers, including the *Daily Mail*, as a 'quango queen' whose appointments to a large number of public bodies were sources of unreasonable enrichment and influence. According to her critics, her Labour Party sympathies led her to mount attacks on traditional family values as chair of the Human Fertilisation and Embryology Authority (2002-06) and to assault the charitable status of private schools when she became chair of the Charities Commission in 2006. The fairness of the attacks on her is not relevant to this study.

It is worth noting that she made a powerful point in defence of her activities as Chair of the Charities Commission, namely that she was implementing the legislative changes enacted by the Labour government in 2006. According to the revised law, charities were obliged to show that they were acting in a 'public interest'. This meant that it was no longer enough for leading public schools to claim charitable status and the tax breaks such status provided with reference to the fact that they were educating pupils. In addition they would be required to show to the satisfaction of the Charities Commission that they were also providing benefit to the wider public. Such benefit might consist in giving bursaries to pupils whose parents could not afford the full school fees, by making their facilities available to neighbouring state schools or in other ways.

Once again, a majority government which disapproved of the 'public interest' test for independent schools could amend the legislation. Under the constraints of

43 For a defence against this criticism, see Ivor Gaber (2012). "Hacking book: Mail's campaign of vilification against a university professor." Greenslade Blog, London: *The Guardian*, 10 September. <http://www.theguardian.com/media/greenslade/2012/sep/10/dailymail-universityofbedfordshire>

44 Tim Ross (2012). "Vince Cable defies Tories to appoint Professor Les Ebdon as university access tsar". *The Daily Telegraph*, 20 February, <http://www.telegraph.co.uk/education/universityeducation/9093269/Vince-Cable-defies-Tories-to-appoint-Professor-Les-Ebdon-as-university-access-tsar.html>

coalition, however, it was simpler for the Conservatives to seek to replace Leather with a Charity Commission chair likely to be less active in pursuing independent schools. In this case, they succeeded with the selection of William Shawcross, a distinguished journalist seen by his critics as being too close to the Conservatives. The Public Administration Select Committee split on party lines after the pre-appointment hearing held to question Shawcross and the Conservatives were in a narrow majority.

The interviewing panel for the appointment was less unfavourable to the Conservatives than the one which selected Ebdon. Chaired by Mark Addison, a former senior civil servant who had acted as the interim Commissioner for Public Appointments in 2011 along with Lynne Berry (until 2011 the Executive Director of the Charities Commission), Sue Gray (Director General of Propriety and Ethics at the Cabinet Office) and the Crossbench peer and academic Lord (Paul) Bew.

The reappointment of Jenny Watson as chair of the Electoral Commission.

In an effort to dislodge some sitting chairs and members of public bodies appointed under the previous Labour government, Cameron circularised his wish that re-appointments without an open re-election procedure were undesirable.⁴⁵ In the case of the re-appointment of the chair of the Electoral Commission in 2012, this posed problems.

Under the terms of the Political Parties, Elections and Referendums Act 2000 (3.2.1), the appointment and re-appointment of the chair of the Electoral Commission is under the aegis of the Speaker of the House of Commons, John Bercow MP. Though a former Conservative MP, Bercow was seen by many in his former party as unsupportive of it. Moreover, the Conservatives did not command a majority. Under the terms of the 2000 Act, the Conservative leader, along with the leader of every other party in the House of Commons with at least two seats, was entitled to be consulted about the appointment but the Act does not confer the power of veto.

Watson, another person dubbed a ‘quango queen’ as well as a ‘Modern Militant’ in the press⁴⁶, was an object of suspicion by some in the Conservative Party. This was partly on the ground that her long-term partner, Andrew Puddephat, was a former Labour leader on Hackney Borough Council and had other associations with the New Establishment which will be considered in a following publication. She also had been associated with Charter 88, a body that had campaigned for changes in the voting system, a policy opposed by most Conservatives. Moreover, Watson had come in for criticism for the lines of electors who were left queuing up to cast their votes when the General Election polls closed in 2010. (Again, the validity of the criticisms is not part of the discussion of this study. Individual Electoral Returning Officers are not under the control of the Electoral Commission.)

In September 2010, hostilities against Watson escalated with press reports that Eric Pickles, Minister for Communities and Local government, would refuse to renew her term as a member of the Audit Commission (another of her several quango appointments).⁴⁷ There followed a row over unattributed critical remarks about her performance. These led to protests and a reported, strongly worded letter on Watson’s behalf sent to the Prime Minister by the Cabinet Secretary Sir Gus O’Donnell.⁴⁸

45 See Cameron’s subsequent letter as Conservative leader to the Speaker of 11 September 2012, published in House of Commons Speaker’s Committee on the Electoral Commission (2012b), Re-appointment of the Chair of the Electoral Commission. London: The Stationery Office <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmspeak/611/61103.htm> Appendix B.

46 James Chapman (2010). “Eric Pickles fires the left-wing quango queen blames for election night shambles”. The Daily Mail, 8 September <http://www.dailymail.co.uk/news/article-1310025/Eric-Pickles-fires-left-wing-quango-queen-blamed-election-night-shambles.html>

47 James Chapman (2010). “Eric Pickles fires the left-wing quango queen blames for election night shambles”. The Daily Mail, 8 September <http://www.dailymail.co.uk/news/article-1310025/Eric-Pickles-fires-left-wing-quango-queen-blamed-election-night-shambles.html>

48 Allister Hayman (2011) “Sir Gus reprimands PM over Watson smear.” Local Government Chronicle, 3 March. <http://www.lgcplus.com/new/people/eric-pickles/sir-gus-reprimands-pm-over-watson-smear/5026676>. article

Watson's term of office as chair of the Electoral Commission was due to come to an end on 31 December 2012. Early in 2012, it was proposed in the Speaker's Committee on the Electoral Commission that Watson be given a further term subject to a satisfactory independent review. It was proposed that the review be carried out by Ann Abraham, who had served from 2002-11 as the Parliamentary and Health Service Ombudsman.

A member of the Speaker's Committee was Grant Shapps, the Minister for Local Government under Pickles in the Department for Communities and Local Government. Against the background of the non-renewal of Watson's term as an Audit Commissioner (the precise circumstances of which were disputed by Watson), Shapps argued that Watson should not be re-appointed without an open competition and that, in any case, if there was to be a review of her performance it should not be carried out by Abraham on the ground that Abraham had had some professional association with Watson's partner. Whether this association was strong enough to merit Abraham's exclusion from the contract to carry out the review was a matter of opinion.

The Speaker's committee decided at its meetings of 7 and 27 March to "require an appraisal of Jenny Watson's performance as a basis for considering a recommendation for her re-appointment" and to ask the Conservative MP Gary Streeter to chair a sub-committee to carry out the review without outside assistance.⁴⁹ At the next meeting, held on 19 June, 2012, with the unanimous support of the sub-committee and on the basis of the review Streeter recommended Watson's re-appointment. Shapps not only objected but took the matter to a formal vote. Streeter was supported by the Labour MP Sir Gerald Kaufman and by the representative of the Northern Ireland Alliance Party, Naomi Long MP, who had sat with him on the sub-committee.⁵⁰ He subsequently wrote to Speaker Bercow on 11 September 2012 agreeing to Watson's new term lasting until after the next General Election. However, he expressed concern about the re-appointment process and referred specifically to Shapps, whom he had, in the interim, promoted to the Cabinet as party chairman:

The Committee will be aware of the concerns expressed throughout the appointment process by the Rt. Hon. Grant Shapps MP, in his previous position as Minister for Local Government. I believe that Grant's concerns have some merit. Indeed, I have shared with you my own belief that Commission appointments should be opened more to outside competition with the aim of appointing individuals to the Board with greater experience of the private and/or voluntary sectors. ...

Following my previous correspondence with you, I would again encourage you and the Committee to consider opening future appointments to outside competition ... I believe more open competition and transparency in future would strengthen both the appointments process and the work of the [Electoral] Commission.⁵¹

During the decisive meeting of the Speaker's committee on 27 June 2012, Shapps was isolated in his attempt to unseat Watson partly because his Conservative colleague and supporter Sam Gyimah was absent from the meeting. This was not the crucial factor. The support for Watson by the other Conservative member, Streeter, together with the support for her by the two non-Conservative members of his sub-committee meant that her position was secure.

49 House of Commons Speaker's Committee on the Electoral Commission (2012a), Third Report: Re-appointment of electoral commissioners. London: The Stationery Office <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmspeak/201/201.pdf> and House of Commons Speaker's Committee on the Electoral Commission (2012b), Re-appointment of the Chair of the Electoral Commission. London: The Stationery Office <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmspeak/611/61103.htm>. The other members of the sub-committee were Kaufman and Long.

50 House of Commons Speaker's Committee on the Electoral Commission (2012a), Third Report: Re-appointment of electoral commissioners. London: The Stationery Office <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmspeak/201/201.pdf>

51 House of Commons Speaker's Committee on the Electoral Commission (2012b), Re-appointment of the Chair of the Electoral Commission. London: The Stationery Office <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmspeak/611/61103.htm> Appendix B, 466.

The questions, therefore, are how hard the Conservative Party leadership was prepared to push their demand for an open competition for the position of chair of the Electoral Commission on the completion of Watson's first term and whether there was any concerted effort to persuade Streeter to line up behind Shapps. In short, there may be a lesson to be drawn from this example about the role of party management in some appointment contests.

Policy implications of some recent judicial appointments

Senior judicial appointments raise issues different from those of non-judicial appointments and different from more junior judicial appointments. In particular, justices of the Supreme Court have exceptionally important powers of interpretation of constitutional and human rights matters and the jurisdiction to find a wide range of laws passed by the UK legislature incompatible with the rights set out in the European Convention on Human Rights and incorporated into UK law by the Human Rights Act of 1998. The appointment of the UK judge to the European Court of Human Rights in Strasbourg and to the Court of Justice of the European Union also bears on fundamental constitutional issues about which there is deep political disagreement within the UK.

In 2012, new judges were chosen for the position of President of the Supreme Court, for the UK judge on the Strasbourg Court as well as the UK judge on the Luxembourg Court. It is worth commenting on all three of these appointments.

Of the three selection processes, that for the UK judge on the Strasbourg Court proved the most controversial but all three appointments involved a considerable political element.

Appointment of Paul Mahoney as UK judge on the European Court of Human Rights (Strasbourg)

In the final year of his tenure as the UK judge on the Strasbourg Court, Sir Nicholas Bratza had the honour of being elected by his peers as the President of the Court. It was to be an unhappy time as the Court came under increasing scrutiny within the UK and Bratza became the butt of personal criticism. The appointment of his successor inevitably raised the question of the stance of the new British judge on the core issue of the jurisprudence of the Court. Would he or she subscribe to the expansionist doctrines of interpretation of the European Convention on Human Rights, which were causing such a political storm in the UK? Or would the new person use the British seat on the Court to help to restrain it?

According to the procedure for choosing the Strasbourg judges, each member state of the Council of Europe is entitled to one judge no matter how small or large its population. Russia and Andorra have one judge each. When a vacancy arises, the relevant country may nominate three candidates from which the Parliamentary Assembly of the Council of Europe makes a selection. In addition, there is an internal mechanism for scrutiny which was added to meet the criticism that some countries submitted a list of names on which no one was properly qualified.

The first stage of the process - the selection of three UK nominees - is not subject to the normal process of judicial appointments under the aegis of the Judicial Appointments Commission since it does not concern an appointment to a UK court.

The appointment panel consisted of two UK Supreme Court justices; Lord (John) Dyson was the chair and was joined by the Scottish judge and recently appointed

Supreme Court justice Lord (Robert) Reed. From Northern Ireland, there was a lay member of the Northern Ireland Judicial Appointments Commission, the clinical psychologist Professor Nichola Rooney. From the Foreign and Commonwealth Office, the Legal Adviser, Iain Macleod, and from the Ministry of Justice the Legal Director, Rosemary Davies, were the other members.⁵²

There was concern about the appointment process both among some MPs and among the Conservatives on the Commission on a Bill of Rights, which at the time was continuing its long deliberations. One of the Conservative lawyers on the Bill of Rights Commission proposed, with the support of his colleagues, that a communication be sent to the Prime Minister's office as a prelude to a possible formal letter suggesting the need for parliamentary input into the drawing up of the list of nominees for the Strasbourg judgeship. Whether as a result of this or not, MPs who were members of the British delegation to the Parliamentary Assembly of the Council of Europe were later reported to have conducted informal interviews with the nominees.⁵³

The selection process was affected by a reported shortage of applications from sitting UK judges. When the list of three nominees was announced, there was considerable anger on the Conservative parliamentary benches along with pointed Parliamentary Questions from Priti Patel MP.⁵⁴

The front runner of the three nominees, Ben Emmerson Q.C., was a prominent and highly respected member of Matrix Chambers⁵⁵ whose record indicated that he was likely to be in favour of the very policies that were anathema to the majority of MPs.

A considerable amount of lobbying against Emmerson appears to have followed.⁵⁶ When the choice between the three UK nominees came to a vote on 27 June 2012 in the Parliamentary Assembly of the Council of Europe, the campaign to stop Emmerson proved successful. The greatest number of votes went to the lesser known Paul Mahoney. As a former registrar of the Strasbourg Court, he too was likely to be a supporter of the doctrine that the European Convention was a 'living instrument' and was thus not ideal from the viewpoint of the critics in Westminster.⁵⁷ His virtue as a choice was that his relatively advanced years and the existence of a compulsory retirement age meant that he would not be able to serve for a full nine-year term.

Concerning the original selection process, significant points are that one of the Supreme Court justices on the appointment panel, Lord Reed, was closely attached to the Strasbourg Court and was unlikely to favour an applicant bent on challenging its general direction. He was himself an *ad hoc* judge of the Strasbourg Court and had been active on a number of international legal bodies. The inclusion among the selectors of two senior civil servants from the Ministry of Justice and from the Foreign and Commonwealth Office, reputedly government departments sympathetic to the country's involvements in international courts, was also significant. But the key point is the inherently political character of the appointment.

Appointment of Christopher Vajda QC as UK judge on the Court of Justice of the European Union (Luxembourg)

The most notable aspect of the appointment process was its secrecy. The fact that the names of the members of the interview panel were not published and were only released after each of the members gave specific permission for the purposes

52 Kenneth Clarke (2012). European Court of Human Rights: selection panel. Reply to Parliamentary Question, 19 June. <http://www.theyworkforyou.com/wrans/?id=2012-06-19a.112468.h&s=college>.

53 Owen Bowcott (2012a). "MPs secretly vet judges for European court of human rights role." The Guardian, 22 May. <http://www.theguardian.com/law/2012/may/22/mps-secretly-vet-judges-european-court-of-human-rights>

54 Kenneth Clarke (2012). European Court of Human Rights: selection panel. Reply to Parliamentary Question, 19 June. <http://www.theyworkforyou.com/wrans/?id=2012-06-19a.112468.h&s=college>.

55 This will be discussed in further detail in a later report.

56 Owen Bowcott (2012b). "Paul Mahoney appointed UK's new judge in Strasbourg." The Guardian, 27 June. <http://www.theguardian.com/law/2012/jun/27/paul-mahoney-european-court-judge>

57 James Slack (2012). "Meet our new Euro human rights judge ... who's not even a real judge: Top Strasbourg job for man who's never sat in a British court." The Daily Mail, 27 June. <http://www.dailymail.co.uk/news/article-2165769/Paul-Mahoney-Top-Strasbourg-job-man-whos-sat-British-court.html>

of this study is remarkable given the importance of the post as well as its political implications. During 2012, the focus of attention and controversy in the press and among MPs was on the Strasbourg Court. This took attention away from the Court of Justice of the European Union despite the fact that it too is of great importance as the arbiter of final resort of matters pertaining to the European Union treaties. Its case load is largely in the area of important trade and regulatory matters. It will become more involved in human rights issues following measures agreed in the Lisbon Treaty of 2007. According to the Treaty, the European Union is due to become a corporate member of the Strasbourg Court. The reason why human rights matters provide a means to aggrandise the role of international courts is the broad wording and thus the great room for interpretation of human rights codes.⁵⁸

The composition of the seven person selection panel and the terms of reference for the appointment (“an excellent understanding and experience of EU law”) made it very likely that the successful candidate would be a lawyer with direct experience of taking cases before the Luxembourg Court and likely to have an interest in and sympathy for a growing role for European Union institutions. Also notable was the heavy presence of serving and former civil servants and of judges from the devolved areas of the UK.

Chair of the selectors was Sir Muir Russell, a former Permanent Secretary at the Scottish Office and chair of the Judicial Appointments Board for Scotland. Lord (Robert) Carswell was a former Lord Chief Justice of Northern Ireland; Lord (Matthew) Clarke was a former Scottish judge and a justice of the UK Supreme Court. Professor Sir Alan Dashwood QC was a former senior European Union civil servant and specialist in European Union law. Baroness Ruth Deech, chair of the Bar Standards Board was a legal academic. Jane Hill was the Joint Director, Legal, in the Ministry of Justice’s Law, Rights and International Group and Iain Macleod, who served also on the nomination panel for the UK judge on the Strasbourg Court, was Legal Adviser to the Foreign and Commonwealth Office.

According to European Union rules, the British nominee (in this case one person rather than three) had then to be confirmed by a cross-national standing committee, again consisting of seven members. They included Lord (Jonathan) Mance, one of the most internationalist justices on the UK Supreme Court.⁵⁹

The appointments of Mahoney and Vajda exemplify wider issues relating to the most senior judicial appointments. Clearly, they are essentially political. At stake is not the judicial ‘merit’ of the candidates but their tendencies and prejudices in determining cases which, to all intents and purposes, create new laws. This is especially the case with the tribunals in Strasbourg and Luxembourg but also with the UK Supreme Court in London. In the much-cited words of Lord (Johan) Steyn, the enactment in 1998 of the Human Rights Act along with other developments has created a ‘new legal order’ under which the judges in these courts are politicised. It is no coincidence that several senior judges have made statements and given lectures in which they have set out their contrasting stances and have identified themselves with different camps popular with different political parties and with factions within parties. The current President of the UK Supreme Court, Lord (David) Neuberger, has warned of the dangers.⁶⁰

There are several problems with the current methods of judicial selection. The eminent legal journalist, Joshua Rozenberg, has commented repeatedly

58 Under the Labour Government, the UK opted out of aspects of the Lisbon Treaty relating to human rights. The effect of the opt-out is partial and uncertain even among experts in European Union law.

59 See Journal of the European Union, 2010.

60 Joshua Rozenberg (2012). “Neuberger to be announced as supreme court president.” The Guardian, 12 July. <http://www.theguardian.com/law/2012/jul/12/lord-neuberger-appointed-supreme-court-president>

on some of the drawbacks of a regime which subjects experienced judges to impromptu essays, simulations and other test devices. Another contentious issue, to be discussed in detail in Chapter 4, is the extent to which a policy of diversity conflicts in practice with the practices of merit appointment.

But the most basic question is whether it is mere play-acting under the new circumstances following the increasing powers of the Strasbourg and Luxembourg Courts and the passage of the Human Rights Act to pretend that it is possible or useful to try to ignore political considerations in making top judicial appointments in the UK. The danger is that the pretence that that selection is non-political opens the way for indirect political influence-peddling. Decisions as to the criteria for appointment of judges to the Strasbourg and Luxembourg Courts embody political judgements, namely whether to favour candidates who support or oppose a united European legal order. The extent of civil servant involvement in judicial selection may equally have indirect effects on the type of candidates selected in view of the collective trends of opinion found within some parts of government departments. The procedures adopted for the recent selections to the Strasbourg and Luxembourg Courts made it very hard for any candidate who shared the qualms expressed by MPs concerning the Strasbourg Court to be selected. Had it been desired to find a new judge to inject a breath of fresh air into the Luxembourg Court, it would have been better to specify a preference for lawyers who had not so far had extensive dealings with it.

The gap that has been opening between majority opinions within each of the main political parties the House of Commons on the one hand and the judicial world on the other, is a cause for serious concern. Constitutional reformers may need sooner or later to consider a change that has so far been anathema to the judiciary - the confirmation of the most senior judicial appointments by the elected chamber of the legislature. A step towards this has been suggested by a legal academic, Alan Paterson but was rejected by the House of Lords Select Committee on the Constitution in its report in 2012 on *Judicial Appointments*.⁶¹

In a publication for CentreForum, issued in 2012, Paterson (together with Chris Paterson) recommended:

*A move away from the present system of ad hoc appointing commissions with a predominating judicial influence towards a more enduring, expanded senior judicial appointments commission, with a balanced input from the senior judiciary, cross-party parliamentarians and lay members. It will also argue that an appropriately designed system of post-appointment parliamentary hearings should be introduced for newly appointed Supreme Court justices (drawing on the process used in Canada). The purpose of these hearings would not be to alter or impact on the nomination but to facilitate a dialogue between parliament and the senior judiciary ...*⁶²

The modesty of this proposal may have been designed to make it more acceptable, in which case it failed in this objective as far as the House of Lords Constitution Committee was concerned. If one accepts the realistic premise of the authors that the appointment of senior judges has become a political act, the logical conclusion is to consider giving the House of Commons a power of confirmation similar to that of the US Senate. Such a change would not politicise the UK judiciary. That, to a large extent, has happened already. It would reduce the influence of civil servants and the existing judiciary and slightly increase that of

61 House of Lords Select Committee on the Constitution (2012). *Judicial Appointments*, <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf>

62 Alan Paterson and Chris Paterson (2012). *Guarding the guardians? Towards an independent, accountable and diverse senior judiciary*. London: Centre Forum, p.6.

elected officials who are accountable to the public. Judicial independence would be maintained by providing security of tenure to senior judges once confirmed and by similar means.

A further, more modest, proposal is that the names of members of judicial selection panels should always be a matter of public record so that the secrecy surrounding Christopher Vajda's selection cannot be repeated.

Conclusions and recommendations

Given the wide range of appointments and the variety of issues arising from them, the major issues need to be separated from matters of detail. In particular, it is advisable to distinguish between the relatively small number of top positions and the many thousands of others.

Though ministers are restrained by the post-1995 rules, they have considerable leeway in affecting and making choices about the holders of the most important jobs. Press complaints about the lack of effectiveness of the current government in managing to place politically compatible individuals in senior positions have been overstated.

Given the constraints of working as the senior partner in a coalition, the Prime Minister and his senior colleagues have been able to score what must count, in purely political terms, as a good number of 'wins' in the appointments process. The Chair of the BBC Trust, Lord (Chris) Patten is not only a former Conservative Cabinet Minister but formerly employed the Chief of Staff in the premier's office at Number 10, Ed Llewellyn. Other former Conservative MPs in positions requiring parliamentary pre-appointment hearings - three of them ex-ministers - are Lord Deben (the former John Selwyn Gummer), Michael Jack, Lord (Ian) Lang (until 2012), and David Prior.

Three of the most sensitive posts - the chairs of the Charities Commission, Committee on Standards in Public Life and the Equality and Human Rights Commission - have been filled by distinguished non-party figures likely to be satisfactory not only to the Conservatives but to other parties. The post of Chair of the Office of Budget Responsibility was deliberately set up to be wholly independent of the Chancellor of the Exchequer.

A number of other senior positions on public bodies either continue to be filled by individuals appointed under the previous administration whose terms of office have yet to expire or bear largely technical or expert responsibilities. What may be rated as 'losses' for the Conservatives, such as the appointment of the Chair of the Office of Fair Access, were due in considerable part to the constraints of being in a coalition?

The simple conclusion from this experience is that the current procedures relating to top quango appointments have not worked so much to the detriment of either of the partners in the current coalition government as to justify any fundamental change in the system of regulation by the Commissioner for Public Appointments. The main lesson for an incumbent government is to ensure that ministers and their Special Advisers pay close attention to the details of the appointments process, something which may be tempting to ignore in view of the severe constraints on ministerial time and the shortage of special advisers.

Ministers are able to have a considerable input by influencing the criteria for each major appointment, by exercising a say on the composition of

the interviewing panel, and by encouraging particular individuals to apply. Interviewing panels usually give ministers a choice of nominees from whom to make a final selection. If a minister still is dissatisfied, he or she has the option of asking for a fresh selection exercise. Further sources of ministerial influence over quangos are provided by the ability to reduce or increase their budgets, to abolish or set up quangos and to amend or repeal the legislation under which they operate. It is harder, of course, to exercise these powers freely when the main governing party lacks a majority in the House of Commons and is part of a coalition.

However, there are two important recommendations and four others.

Concerning lower-level appointments, the statistics in Section 1 about the political affiliations of appointees are disappointing both for the Conservatives and Liberal Democrats. But the answer does not require changes in procedure. The problem appears to lie mainly in poor grass roots party organisation. This will be discussed more fully in a later report as it is an issue of major importance. For present purposes, it is enough to flag up the following recommendation:

1. Political parties - especially Conservatives and Liberal Democrats - need to make it a priority of local party organisation to inform their members about local vacancies for appointments to public bodies and to encourage them to apply.

The most far-reaching and doubtlessly controversial recommendation about the senior judiciary is:

2. Appointments of nominees for UK judgeships on the European Court of Human Rights, the Court of Justice of the European Union and the UK Supreme Court should be subject to confirmation by the House of Commons.

The other recommendations follow from the findings and examples in this Chapter.

Quango appointments

3. Clearer rules are needed about re-appointments and number of permitted terms of office.

It is understandable that there be room for flexibility but there arguably needs to be more clarity too. David Cameron has encouraged the policy of rejecting automatic re-appointment. However, it needs to be made firmer if it is to be effective. Unless open competition for a position which comes up for re-appointment becomes the norm, such a procedure will be viewed as a vote of no-confidence in a sitting chair or a sitting member of a public body. (This was specifically stated by a member of the Speaker's Committee on the Electoral Commission as an argument against holding an open competition for the position on the expiry of Watson's first term of office as chair.) A further difficulty with open competition for re-appointment is that new applicants may be reluctant to put themselves forward if they feel that the procedure is a mere formality and that the incumbent will be re-selected almost automatically.

Some positions carry the stipulation that they are for a single, non-renewable term. This avoids the above re-appointment issues but at the cost of losing what might be invaluable experience and service on the part of a sitting chair or member.

4. There should be greater transparency about membership of interviewing panels and about the identity of independent assessors, sift panellists, and commercial search companies employed in selection competitions.

Currently, practices about transparency of the selection process are unclear. Although the names of the independent assessors currently employed by the Commissioner for Public Appointments are included on his website, the information was not available about the assessors employed by his predecessors until it was revealed in a reply to a Freedom of Information request. Similarly, names of the sift panellists used by the Judicial Appointments Commission were kindly made available for this study but had not previously been a matter of public information. Only after the individual interview panellists had given their permission did the Foreign and Commonwealth Office supply the names of the members of the interview panel for the nomination of the new UK judge on the Luxembourg Court in 2012.

It is recommended that government departments publish the following information as standard concerning each senior and middle tier appointment:

- Number of applicants,
- Number short-listed as ‘appointable’,
- Names of any commercial search agencies employed,
- Names of sift panellists (if applicable),
- Names of interview panellists.

The names of unsuccessful applicants should not be revealed since this would deter people from putting their names forward. Concerning sift panellists and interview panellists, names of serving civil servants should be identified with their current positions. Others should be identified by area of residence or in a similar manner which gives a guide to the identity of people with common surnames but preserves privacy.

In addition appointments by ministers to ‘tsar’ positions should be transparent and recorded by each department together with relevant summary information about any pay or expenses offered. Apart from transparency, such positions should not be subject to regulations for appointments to public bodies supervised by the Office of the Commissioner for Public Appointments.

Civil service jobs and contracts

It has been the policy of the present government that all contracts above a low threshold amount as well as the salaries of civil servants should be a matter of public record. In practice, it is hard to obtain some types of information, as the experience described in Section 4 shows. There is a real gap in the accessibility of information about some expenditure by civil servants. These gaps are important for a study of public appointments.

There has arisen an assumption that politicians are wont to employ cronies and need to be restrained and subjected to a regulatory regime but that there is less need to scrutinise the activities of civil servants. It will be argued a further report that some links - including financial connections - between civil servants and members of pressure groups also require attention. Research contracts or offers of employment as temporary civil servants may have similar functions to those of ministerial appointments to public bodies or to 'tsar' positions. Especially significant are some jobs given to recently retired civil servants for work within the civil service. Since one reason to study changes in the rules for appointments to public bodies is to gauge their consequences on the balance of power between ministers and their civil servants, this additional information is needed.

There are several reasons why ex-civil servants are keen to obtain part-time positions and reasons why their former colleagues are inclined to help them. For example, civil service cuts and early retirement ages which have been standard in the civil service. It is reasonable and desirable that civil servants should be considered for such work but there can be a problem if they are informally given preference or if there constitute too high a proportion of those hired.

Among the most important research and short-term employment contracts awarded by government departments are those which impact of the making of policy.

It is difficult to tell what information is and is not in the public domain since some of it may be difficult to find. The fact that requests under the Freedom of Information Act were declined, as set out in Section 4 above; indicate at the very least that the information is not readily accessible.

5. There is a need for greater transparency about the employment within ministries of ex-civil servants in the two years after they have left the public service, about the employment of temporary civil servants and contracts to outside bodies and individuals relating to policy research and appointments.

Judicial appointments

6. There should be a stated and publicly-known procedure for the selection of nominees for the Strasbourg and Luxembourg Courts.

4

Diversity

Despite changing rules and attitudes plus several initiatives by all of the main political parties to recruit more women and members of ethnic minorities as MPs there is still a long way to go. While female students have broken down the barriers to university entry and generally outperform their male peers in school examinations and university entrance, the Afro-Caribbean population has so far been less successful, with low representation at the top universities.

However, this Chapter will argue that a focus on the three standard categories of diversity: ethnicity, gender and disability, overlooks other key issues, specifically socio-economic diversity which has been virtually neglected over the past decade.

The prevailing rhetoric of diversity tends to be skewed. It rightly promotes the case for gender and ethnic equality but fatally neglects social equality. According to the British Social Attitudes Survey 2013 61% of the population self-identify as being working class. However, members of the working class, or what the Office for National Statistics (ONS) refers to as 'routine and manual workers' are almost wholly unrepresented in public life, particularly in public appointments.

Issues of diversity within public appointments are often illustrated by the phrase 'male, pale and stale' used by some campaigners – including the former Commissioner for Public Appointments Dame Rennie Fritchie – to express their impatience with what they see as the failure to achieve adequate representation on public boards of women and of members of ethnic minorities.⁶³ However, although this criticism is frequently raised, it is only the 'male' and 'the pale' aspects that have received attention, whilst the 'stale' (a term that is often construed as a dig at upper-middle class, elderly Oxbridge educated gentlemen) remains unaddressed.

This Chapter will examine evidence concerning diversity policies in public appointments. It then discusses possible tensions between this policy and that of appointments on merit. The conclusions stress the need to develop multi-layered diversity policies, which take into consideration occupational and social diversity, in addition to the traditional and essential measures of gender, ethnicity and disability.

The main 'protected characteristics' of diversity: gender, ethnicity and disability

Diversity itself is somewhat of a problematic and ill-defined term. In July 2005, a working group set up by the Office of the Commissioner for Appointments in Northern Ireland started with a definition of 'diversity' that was so vague that it highlighted the inherent problem in the using the term as a basis for public

63 See Andrew Sparrow (2002). "Too many 'pale, stale southern males' on quangos, says watchdog." London: *The Telegraph*, 18 July. <http://www.telegraph.co.uk/news/uknews/1401751/Too-many-pale-stale-southern-males-on-quangos-says-watchdog.html>, and Matthew Flinders, Felicity Matthews and Christina Eason, (2011a.) Are Public Bodies Still 'Male, Pale and Stale'? Examining Diversity in UK Public Appointments 1997–2010." *Politics*, 31(3), 129–139.

policy. This report drew on the work of a previous Cabinet Office working group in which 'diversity' was explained as:

*"A term used to describe the wide variety of individuals that make up our society. The concept of diversity, therefore, encompasses any sort of difference between two or more individuals. Those differences exist in terms of race, age, gender, ethnicity, nationality, sexual orientation, religion, political opinion, impairment and social background – in fact, anything that might affect our relationships with others. These differences are, of course, not mutually exclusive. It is not uncommon for individuals to fall into one or more of the above categories."*⁶⁴

Diversity is not just about those drawn from minority groups; each of us in our own way contributes to the diverse make-up of our society and as a result, diversity considerations apply to us all. For example: "Ultimately, every individual is different, and the management of diversity is about recognizing and encompassing those differences rather than pretending that they do not exist. It is about respecting and valuing individuals as they are, rather than encouraging their assimilation into a mould that conforms with preconceived ideas about what is acceptable. Most of all, diversity is about inclusiveness, learning about how others live and feel, listening to their viewpoints and drawing in their different perspectives when making decisions".⁶⁴

In practice, a diversity policy cannot accommodate virtually unlimited dimensions of difference between members of a society. Some dimensions of diversity inevitably will be given special attention due to contextual factors. For example, in Northern Ireland, the deep-rooted divisions between Protestant and Catholic communities mean that the term 'diversity' must include religious and communal diversity. In the rest of the United Kingdom, 'diversity' has been understood to refer to three main criteria: gender, race, and disability. The Equality Act of 2010 singled out the following nine 'protected characteristics':

- Age;
- Disability;
- Gender reassignment;
- Marriage and civil partnership;
- Pregnancy and maternity;
- Race;
- Religion or belief;
- Sex;
- Sexual orientation.

Though factors of religion and sexuality are specifically mentioned in the Equality Act, it is the promotion of equality in gender, race and disability that have the main policy objectives both of the Labour government until 2010 and thereafter of the Conservative-Liberal Democrat coalition. It is these particular 'protected characteristics' that are mainly subject to monitoring. This focus has been accompanied by a notable lack of attention in most official documents to other dimensions of diversity. Whilst there has been some monitoring of the age distribution of public appointees it has proved extremely difficult to track down statistics relating to the occupational or class profile of public appointees.

⁶⁴ Office for the Commissioner for Public Appointments for Northern Ireland (2005). *Report of the Short Term Working Group on Diversity in Public Appointments*, p. 17 <http://www.publicappointmentsni.org/working-group-diversity.pdf>

Gender

The gender balance in different fields of public life in the UK is summarised in Table 3 using data reported by the House of Commons Library and the Judicial Appointments Commission. This demonstrates both the advances made by women in different public fields and also the varying degrees of male preponderance still to be found.

Table 3: Women in British Public Life and Professions⁶⁵

Position (year)	Women
University professors	20%
Cabinet (2012)	22%
House of Lords (2012)	22%
MPs (2013)	23%
Judiciary (2013)	29%
Welsh Legislative Assembly (2012)	32%
NHS Consultants (2012)	32%
Scottish Parliament (2011)	35%
Secondary head teachers (2012)	37%
NI Assembly (2011)	40%
GPs	47%
FTSE 250 Directorships	13%

65 Richard Cracknell (2013). *Women in public life, the professions and the boardroom*. London: House of Commons Library Standard Note, amended 4 June, SN05170. <http://www.parliament.uk/briefing-papers/SN05170/women-in-public-life-the-professions-and-the-boardroom> and Judicial Appointments Commission (2013). "Equal merit provision" consultation. <http://jac.judiciary.gov.uk/about-jac/2334.htm>

66 Office for the Commissioner for Public Appointments (2013). Annual Survey of Ministerial Appointments and Reappointments to the Boards of Public Bodies Regulated by the Commissioner for Public Appointments – Statistics and Analysis <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2013/06/130624-Final-OCPA-Statistics-2012-13.pdf>

67 Office for the Commissioner for Public Appointments (2013). Annual Survey of Ministerial Appointments and Reappointments to the Boards of Public Bodies Regulated by the Commissioner for Public Appointments – Statistics and Analysis <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2013/06/130624-Final-OCPA-Statistics-2012-13.pdf>

68 Cabinet Office (2013b). "Drive to increase number of women on public boards." *Press release*, 25 June. <https://www.gov.uk/government/news/drive-to-increase-number-of-women-on-public-boards>

Concerning public appointments, statistics issued by the Commissioner for Public Appointments show that in 2012-2013 383 women received appointments or were reappointed to existing positions. This represented 35.6% of the total.

According to the Commissioner "[t]he proportion of women has fluctuated between 32.6% and 39% since statistics began to be collected in 2001-2, suggesting that the number of women being appointed to public bodies has plateaued. This is a matter of concern, particularly given the reduction in the number of bodies in the health service which have traditionally had a higher proportion of women."⁶⁶

It is not only the disparity between male and female appointees that provides ground for the Commissioner's concerns. Female disadvantage emerges all the more clearly in senior positions outside National Health Service bodies. In 2012-2013, just a quarter of those selected to chair Executive Non Departmental Public Bodies (25.4 %) were female.⁶⁷ Furthermore, if pre-appointment hearings by Parliamentary committees are used as the criterion for categorising appointments as being of the top importance, the gender imbalance is similar. Of 53 current appointees subject to such hearings since 2008, only 13 (25%) were female. (See Appendix 1)

In June 2013, the Cabinet Office launched a fresh drive to recruit women to public bodies with the aim of reaching a target of 50% of female appointees by 2015.⁶⁸ These active efforts to encourage public appointments for women are reflected in the choice of public appointments assessors, who are involved in sifting lists of applicants for interview and in participating in the interviews and decisions on short-listing. Of the 14 independent assessors appointed in 2011 by Sir David Normington, 9 were women (64%). These assessors participate in the

selections for the highest tier of appointments. Of the 153 central assessors who served until 2011, women also comprised nearly 60% of the total.

Similarly, a study of the gender balance within the Judicial Appointments Commission reveals mixed results.⁶⁹ Women form a minority of Commissioners, with four out of the ten non-judicial Commissioners being female. When including judicial members (sitting judges) there are 6 women out of a total 15 (40%). However, on the sift panels used by the Commission to pre-select applications, the figures are reversed. Of the 60 sifters employed in 2012, 63% were female.⁷⁰ In the words of a member of the staff of the Commission, this high female percentage “was not seen to be a concern” in view of the preponderance of male judges sitting on the selection panels. Furthermore, among the 51 departmental assessors used by the Ministry of Justice for selections for non-judicial appointments in 2011-12, 49% were female.

A key breakthrough in gender equality in the UK has been in educational attainment. So unusual was the fact that boys scored higher than girls in achieving A star grades at A-level in 2012 (albeit by the minute margin of 8.0% to 7.9% of total entries) that the fact was the subject of a newspaper headline. Buried in the text was the news that for all A and B grades, girls easily outscored boys (54.7% to 50.2% of total entries).⁷¹

Coming to university entry, Mary Curnock Cook, the chief executive of the Universities and Colleges Admissions Service (UCAS), reported in December 2012 that, on the basis of the final statistics for the 2012 admissions cycle. Young women are now a third more likely to enter higher education than men, a difference that has increased this cycle. The fact that women remain more likely to enter higher education than men are to apply, is a striking and worrying finding (emphasis added).⁷²

However, whilst women have success in their educational performance, at university and even early in their careers, attrition rates increase as women progress through their careers. In 2012, 46% of those selected as judges for District Courts, 17% of High Court judges, 18% of County Court judges and 44% of Tribunal judges were female however; there is only one Supreme Court judge.⁷³ Some have argued that statistics about women in top jobs may be less relevant than those in positions near the top, as well as for school and university examination results as there is a career ladder and therefore with time, gender disparity with naturally decrease. However, in light of the above statistics and the number of women on boards, arguably statistics about women in top jobs are of increasing relevance.

The implications of these statistics and trends for policymakers will be discussed in the concluding section.

Ethnicity

According to the 2011 Census, members of ethnic minorities and those of mixed race accounted for 14 % of the population of England and Wales. Afro-Caribbean's amounted to 3.3%, and those of Asian ethnicity to 7.5%.⁷⁴ This was a sharp increase since the figures in 1991 and 2001. According to the 1991 Census, minorities constituted 5.9% of the population in England and Wales. In 2001, the percentage was 8.7%.⁷⁵

A broad picture of ethnic minority representation in public and professional life as presented by the House of Commons Library and by the Judicial Appointments Commission is shown in Table 4.

69 In December 2013 the Judicial Appointments Commission released statistics stating that across 17 selection exercises for court and tribunal posts completed between April and September 2013 52% of those recommended for appointment were women. Judicial Appointments Commission (2013). “Women the majority of successful applicants for judicial office for first time”, 5 December, <http://jac.judiciary.gov.uk/about-jac/2641.htm>

70 Information supplied by the Judicial Appointments Commission.

71 Laura Clark and Bob Preece (2012). “Boys are top of the class! Teenagers celebrate as they get A-level marks... and lads do better than girls at getting A* grades.” London: *The Daily Mail*, 15 August. <http://www.dailymail.co.uk/news/article-2188974/A-Level-Results-Day-2012-Boys-better-girls-achieving-A-grades.html>

72 Universities and Colleges Admissions Service (2012a). “Final end of cycle figures for 2012.” <http://www.ucas.com/news-events/news/2013/final-end-cycle-figures-2012>

73 Catherine Baksi (2012). “Diversity boost for lowest rung of judiciary.” London: *The Law Society Gazette*, 7 December. <http://www.lawgazette.co.uk/news/diversity-boost-lowest-rung-judiciary-and-judiciary-of-england-and-wales> (2013). *Diversity statistics and general overview*. <http://www.judiciary.gov.uk/publications-and-reports/statistics/diversity-stats-and-general-overview>.

74 British Broadcasting Corporation (2012). “Census 2011: The population of England and Wales, by ethnic group.” London: *BBC News*, 11 December. <http://www.bbc.co.uk/news/uk-20687168>

75 Office for National Statistics (2006). A guide to comparing 1991 and 2001 Census ethnic group data. Titchfield: Office for National Statistics, Table 17, <http://www.ons.gov.uk/rel/ethnicity/focus-on-ethnicity-and-identity/a-guide-to-comparing-1991-and-2001-census-ethnic-group-data/comparing-1991-and-2001-ethnic-group-data.pdf>

Table 4: Members of ethnic minorities in British Public Life and Professions⁷⁶

Position (year)	Ethnic minority
Scottish Parliament (2011)	2%
Head teachers (2010)	2%
Welsh Legislative Assembly (2011)	3%
MPs (2011)	4%
Local councillors in England	4%
House of Lords (2011)	5%
Senior civil service (2011)	5%
Judiciary	6%
NHS Consultants (2010)	31%
FTSE 100 Directorships (2010)	4%

76 Richard Cracknell (2012). "Ethnic Minorities in Politics and Government." London: House of Commons Library Standard Note SN01156. <http://www.parliament.uk/briefing-papers/SN01156/ethnic-minorities-in-politics-and-government-and-judicial-appointments-commissioner> (2013). "Equal merit provision' consultation." <http://jac.judiciary.gov.uk/about-jac/2334.htm>

77 See Office for the Commissioner for Public Appointments (2012). *Annual Report 2011-2012*. London: Office for the Commissioner for Public Appointments, Table 12. <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2012/10/OCPA-Annual-Report-2011-12-Final.pdf>

78 Office for the Commissioner for Public Appointments (2013). *Annual Survey of Ministerial Appointments and Reappointments to the Boards of Public Bodies Regulated by the Commissioner for Public Appointments – Statistics and Analysis* <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2013/06/130624-Final-OCPA-Statistics-2012-13.pdf>

79 See Office for the Commissioner for Public Appointments (2012). *Annual Report 2011-2012*. London: Office for the Commissioner for Public Appointments, Table 12. <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2012/10/OCPA-Annual-Report-2011-12-Final.pdf>

80 Richard Cracknell (2012). "Ethnic Minorities in Politics and Government." London: House of Commons Library Standard Note SN01156. <http://www.parliament.uk/briefing-papers/SN01156/ethnic-minorities-in-politics-and-government>

81 Catherine Baksi (2012). "Diversity boost for lowest rung of judiciary." London: *The Law Society Gazette*, 7 December. <http://www.lawgazette.co.uk/news/diversity-boost-lowest-rung-judiciary>

In 2011-12, ethnic minorities were appointed to about half as many public appointments as might be expected from their percentage of the population. Appointments and reappointments of candidates from ethnic minority backgrounds were 5.5% of the total. "This percentage has varied between about 7.0% and 9.0% since statistics began being collected in 2001-2; the 2011-12 outturn is at the lower end of this range."⁷⁷ In 2012-13, 1.8% of those appointed or reappointed as chairs of public bodies were members of ethnic minorities.⁷⁸

In order to assess trends in the fairness of ethnic minority representation among public appointees, it is necessary to take account of the rapid increase of ethnic minorities as a proportion of the population. In 2001-2, when members of ethnic minorities won 8.6 % of public appointments, this virtually exactly corresponded with their percentage of the population.

It is difficult to interpret the decline since 2001-2 in appointment of ethnic minorities relative to their size without demographic investigation into factors such as the relative age distribution of the UK's communities. The decline relative to the growing ethnic population was already taking place during the final years of the Labour government.⁷⁹

When high profile appointments are considered, there have been notable appointments of individuals from ethnic backgrounds, including Baroness Prashar, who served from 2000 to 2005 as the First Civil Service Commissioner, and Professor Lord Kakkar, who was appointed as chair of the House of Lords Appointments Committee in July 2013. By 2012 the House of Lords included 42 members from ethnic backgrounds; the House of Commons has 28.⁸⁰

As for gender, these figures need to be read against the background both of a firm upward trend and of some significant achievements of younger ethnic minority people. As recently as 1983, there was not a single ethnic minority MP. Now there are 28. Despite the fact that there is not a single ethnic minority Supreme Court justice, a quarter of those selected in 2012 as judges in District Courts were members of ethnic minorities. This constituted a considerably higher percentage than that of ethnic minorities in the population at large and implies a desire to lessen the overall deficit in representation on the judicial bench of ethnic minorities.⁸¹ But there is a considerable way to go. Among High Court judges,

4% are from ethnic minority backgrounds compared with 6 % of County Court judges, and 12.5% of Tribunal judges.⁸²

In 2013, the Judicial Appointments Commission reported an upward trend in the appointment of ethnic minority judges but questioned whether it was fast enough:

Trends in research since 1998 showed that the number of women applying and being recommended has risen across most levels of the judiciary up to, and including, the High Court. Appointments of Black, Asian and Minority Ethnic (BAME) candidates are also increasing but more needs to be done especially at senior levels. The Judicial Appointments Commission has selected 1,040 women (38%) and 267 (10%) BAME candidates out of 2,743 selections to legal and non-legal roles from April 2006 to December 2012. However, women only constitute 28.8% of the judiciary, and only 5.8% have a BAME background.⁸³

Thus, as for gender, the implications of the raw statistics are open to debate. Moreover, the ‘ethnic minority’ category is a blunt analytical tool insofar as it provides no indication of contrasts between different communities.

Disability

In the general population, almost a fifth has a degree of disability.⁸⁴ Among those receiving public appointments, those with declared disabilities rose from 2.9% in 2001-2 to 5.3% in 2011-12. Part of this rise was due to a difference in the method of calculation.⁸⁵ However, it is very hard to interpret the implications of these figures because the official definition of ‘disability’ presents a problem. Under the Equality Act 2010, a person has a disability if they have a physical or mental impairment which is ‘substantial’ and ‘long-term’. For the purposes of the Act, the term ‘substantial’ itself is vague. It is understood to mean ‘more than minor or trivial’. There are further definitional issues too.⁸⁶ Statistics which do not differentiate between different forms of disability do not provide a clear guide as to the extent of under-representation of the disabled on public bodies. To add to the problems of statistical interpretation, not all people with disabilities wish to declare them.

Forgotten dimensions of diversity

Whilst campaigns for gender equality, racial equality and social inclusion of individuals with disabilities have yielded some positive results and progress, they have been accompanied by a neglect of other important dimensions of diversity and disadvantage.

This can be seen, for instance, in the otherwise thorough 2010 report of a working group chaired by Baroness Julia Neuberger on promoting diversity among judges. The report begins by stating the problem as being that:

“[t]he judiciary of England and Wales has historically reflected the demographic composition of the Bar, drawing its membership from well-educated middle-class white male barristers.”⁸⁷

“On this basis, the Advisory Panel listed a wide range of desirable dimensions of diversity: We have considered all aspects of diversity, but have focused particularly on gender, ethnic origin, disability, sexual orientation, geographical location, socio-economic background, and the implications of being a solicitor rather than a barrister. This choice has been influenced by our research, the available statistics and our consultees. Where there is little data available, we have consulted with under-represented groups to find evidence of the barriers they experience.”⁸⁸

82 Judiciary of England and Wales (2013). *Diversity statistics and general overview*. <http://www.judiciary.gov.uk/publications-and-reports/statistics/diversity-stats-and-general-overview>.

83 Judicial Appointments Commission (2013). “Equal merit provision” consultation.” <http://jac.judiciary.gov.uk/about-jac/2334.htm>

84 Papworth Trust (2012). *Disability in the United Kingdom 2012: Facts and Figures*, <http://www.papworth.org.uk/downloads/>

85 Office for the Commissioner for Public Appointments (2013). *Annual Survey of Ministerial Appointments and Reappointments to the Boards of Public Bodies Regulated by the Commissioner for Public Appointments – Statistics and Analysis* <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2013/06/130624-Final-OCPA-Statistics-2012-13.pdf>

86 Judicial Appointments Commission (2013). “Equal merit provision” consultation.” <http://jac.judiciary.gov.uk/about-jac/2334.htm>

87 Judicial Diversity Taskforce (2011). *Improving Judicial Diversity: Progress towards delivery of the ‘Report of the Advisory Panel on Judicial Diversity 2010’*. London: Ministry of Justice, September. para. 17-18. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217305/Judicial-diversity-taskforce-annual-report-2012.pdf.

88 Judicial Diversity Taskforce (2011). *Improving Judicial Diversity: Progress towards delivery of the ‘Report of the Advisory Panel on Judicial Diversity 2010’*. London: Ministry of Justice, September. para. 17-18. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217305/Judicial-diversity-taskforce-annual-report-2012.pdf.

Yet while they offer rich data on the numbers of women and members of ethnic minorities in both the judiciary and the legal profession, the detailed statistical analyses included in the report ignored the crucial matter of socio-economic background. This neglect of ‘socio-economic background’ is all too typical of official government documents and parliamentary inquiries. This can also be seen in the report on Judicial Appointments published in 2012 by the House of Lords Select Committee on the Constitution which gave lip service to the need to cover different aspects of diversity but did not follow up on its own argument. According to the report:

“[A]lthough considerations of judicial diversity tend to focus on women and BAME candidates for judicial appointment, and certain aspects of this report are focused on the particular needs of women, we stress that diversity incorporates a number of different elements including disability, sexual orientation, legal profession and social background. The arguments in favour of a diverse judiciary are even stronger if diversity is approached in its widest sense.”⁸⁹

Occupation

Any analysis of the extent of exclusion of members of the ‘working class’ (now classified through having ‘routine and manual’ occupations) from positions in public and professional life is affected by the simple fact that some of the positions concerned require special skills and qualifications. For example, appointments as judges or medical consultants require specific qualifications. However, there are a considerable number of categories of job to which this restriction does not apply. Moreover, as they represent a large section of society, ‘working class’ individuals may play a helpful role in the appointment process for senior, technically complex roles for which they themselves are unqualified.

Whereas focus on the inclusion of women and of members of ethnic minorities has yielded some positive progress, it is far from clear whether the same has applied to those in ‘routine and manual’ occupations. MPs are a group for which there is statistical data both on occupation and on gender and ethnicity. The falling number of working class MPs contrasts with the rising number of female and minority ethnic MPs.

This is seen in Table 5.

Table 5: Contrasting trends: The falling percentage of working class MPs versus the rising percentage of female and ethnic minority MPs (Numbers in brackets)⁹¹

Year	Manual workers	Women	Ethnic minority
1979	16% (98)	3% (19)	- (0)
1983	12% (74)	4% (23)	- (0)
1987	12% (73)	6% (41)	1% (4)
1992	10% (63)	9% (60)	1% (6)
1997	9% (56)	18% (120)	1% (9)
2001	8% (53)	18% (118)	2% (12)
2005	6% (38)	20% (128)	2% (15)
2010	4% (25)	22% (143)	4% (27)

89 House of Lords Select Committee on the Constitution (2012). *Judicial Appointments. 25th Report of Session 2010-12*. London: The Stationery Office., para. 69. <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/27206.htm>

90 Richard Cracknell and Feargal McGuinness (2011). ‘Social Background of Members of Parliament. London: House of Commons Library Standard Note, amended 4 November, SN01528.

91 A graphic representation of this table can be found overleaf in Figure 6.

The sharp fall in working class representation in the House of Commons over the past thirty years along with the equally significant rises in the proportion of women and ethnic minority MPs, shown in the statistics in Table 5, is also illustrated graphically in Figure 6.

Figure 6: Contrasting trends: The falling percentage of working class MPs versus the rising percentage of female and ethnic minority MPs⁹²



The sharply declining proportion of MPs from manual working class occupations has become a matter of increasing concern among supporters of the Conservative and Labour Parties alike. It was the subject of research by Policy Exchange and of a panel discussion held in 2012 in which the participants included the former Labour Minister Hazel Blears MP and David Skelton, then deputy director of Policy Exchange.⁹² A former Conservative parliamentary candidate in Durham, Skelton left Policy Exchange in 2013 to set up Renewal, an organisation specifically to campaign in the North of England.⁹³

After the 2010 General Election, a Labour parliamentary researcher pointed out in *The Guardian* that in the House of Commons as a whole “the current crop of MPs from manual-working backgrounds is a mere 4%.” This compared with 6% in 2005, and 8% in 1997. Specifically among Labour MPs, the percentage with a working class background was down to 9%. In 1951, 37% of the Parliamentary Labour Party came from working class backgrounds, in 1966; this had fallen to 30% and by 1997 to 13%.⁹⁴

Further evidence, albeit indirect, comes from an analysis by the Universities and Colleges Admissions Service (UCAS) of entrants from disadvantaged areas. Statistics by area act as a surrogate for those on socio-economic background. In the 2012 university admissions cycle: “[E]ntry rates for 18 year olds in advantaged areas remain three to four times higher than for those in disadvantaged areas.”⁹⁵

In the absence of official data about the socio-economic backgrounds of public appointees, the authors have attempted to examine the occupational backgrounds

92 Policy Exchange (2012). “The decline of working class MPs.” Video of discussion, 26 March. <http://www.policyexchange.org.uk/modevents/item/the-decline-of-working-class-mps>, Hazel Blears (2012). “Where have the working class MPs gone? *Labour Uncut*, 26 March. <http://labour-uncut.co.uk/2012/03/26/where-have-the-working-class-mps-gone/>

93 Andrew Sparrow (2013). “David Cameron urged to turn Tories into party for working class: New Conservative group calls for policies including higher minimum wage to win support in Midlands and northern England” London: *The Guardian*, 15 July. <http://www.guardian.co.uk/politics/2013/jul/15/david-cameron-tories-working-class>

94 James Mills (2010). “Why Labour would do well to favour working-class candidates” London: *The Guardian*, 13 June. <http://www.guardian.co.uk/commentisfree/2010/jun/13/labour-working-class-candidates>. For comprehensive statistics drawn from the Nuffield election studies, see Richard Cracknell and Feargal McGuinness (2011). “Social Background of Members of Parliament”. London: House of Commons Library Standard Note, amended 4 November, SN01528.

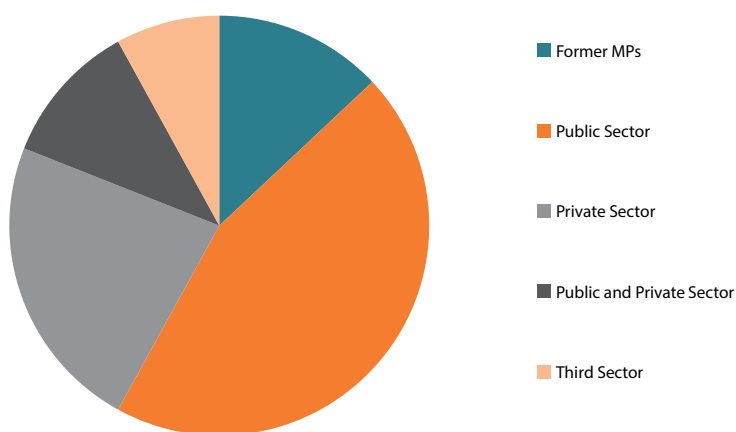
95 Universities and Colleges Admissions Service (2012a). “Final end of cycle figures for 2012.” <http://www.ucas.com/news-events/news/2013/final-end-cycle-figures-2012>, p. 5.

both of appointees and of those chosen as independent assessors in the selection of appointees ('the selectorate'). They have also obtained impressionistic information from interviews. That the data is partial reflects the current reality that socio-economic background currently is neglected by most governmental bodies responsible for public appointments and for equality policies. Moreover, the definitions of socio-economic class themselves have been altering in ways that are confusing, which make time-series of data difficult to draw up, and which reflect in part a desire by statisticians to create standardised categories across the European Union.⁹⁶

However, whether using the Office for National Statistics schema and talking about 'routine and manual occupations', the old social class schema and talking about a skilled and unskilled working class, or whether using the new classification developed as a result of the BBC 'Great British Class Experiment' and talking about the 'traditional working class' or 'emergent service workers' the conclusion remains the same – these groups are under-represented in public life.

Information is supplied below on the occupational breakdown of (1) those chosen since 2010 to positions subject to pre-appointment hearings by parliamentary select committees, (2) the 14 independent assessors selected in 2011 by the Commissioner for Public Appointments and 65 of the 157 assessors until 2011 for whom it was possible to discover information, (3) the 60 sift panellists used by the Judicial Appointments Commission.

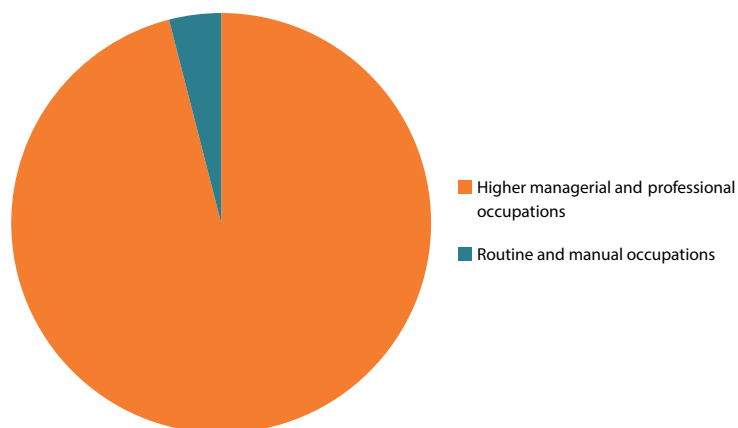
Figure 7: Public versus private sector backgrounds of top appointees (Appointees to positions subject to parliamentary pre-appointment hearings)



⁹⁶ Social class, colloquially referred to as upper, middle and working class, is not currently measured in British official statistics. 'Socio-economic classification' is instead characterised by occupation. The Office for National Statistics uses a schema which can be broken down into three broad categories: higher managerial, administrative and professional occupations, intermediate occupations and routine and manual occupations. This was not however introduced until 2001 in an effort to create standardised categories of socio-economic classification across the European Union.

Among the 53 holders of positions subject to pre-appointment hearings by a House of Commons select committee, 96% come from 'higher managerial and professional occupations, 4% from 'intermediate' occupations and none from 'routine and manual' occupations.

**Figure 8: Socio-economic backgrounds of top appointees
(Appointees to positions subject to parliamentary pre-
appointment hearings)**



Likewise, the vast majority of independent assessors used by the Office of the Commissioner for Public Appointments are from occupations considered as 'higher managerial and professional'. Of the 53 assessors (both before and after 2011) whose occupational background could be ascertained, none came from occupations classified as 'routine or manual'. Again, 96% came from occupations classed as 'higher managerial, administrative and professional'. These groups constitute only 31 % of the population.

Of the 45 Judicial Appointments Commission sift panellists for whom information was found about occupation, the percentages were the same. Ninety-six percent were from 'higher managerial and professional' groups, 4% from 'intermediate' occupations and none from 'routine and manual' occupations.

These statistics are in line with studies by the Organisation for Economic Cooperation and Development (OECD) showing the growth of economic inequality in many developed countries. OECD fears that such inequality intensifies the lack of trust in politicians that emerges from international surveys, including those of opinion in the United Kingdom. The trend toward exclusion of those in 'routine and manual' occupations from public life is a serious matter. In this Chapter, the socio-economic structure of magistrates is given as a case study. This is in large part because the relevant information became available. It is no more than an illustration of a far broader problem.

In view of the intractable character of socio-economic disadvantage in the United Kingdom, it is too much to hope that any single policy will be fully effective in lessening it. Appointments to quangos can be no more than part of the solution. All the same, their significance should not be under-estimated. Some of these positions do not require technical expertise or advanced training but character and public spirit. There are strong grounds for supposing that the apparent under-representation of people in routine and manual occupations

results in large part from their lack of knowledge of the appointment process and their perceptions that they are unlikely to be selected.

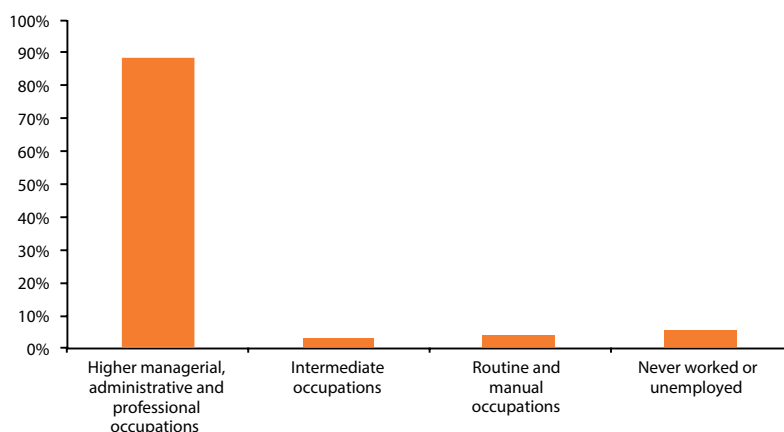
The latest OECD survey evidence shows that the UK was exceptional in witnessing a growth in confidence in government between 2007 and 2013. Only ten out of the 34 member countries recorded a growth in confidence in government during the world economic crisis and the rise in confidence in the UK was fourth out of the 34. This result may be seen as a reflection of confidence in the careful economic policies of the current government. By contrast, the UK scores far worse when the survey question concerns trust in government and in political parties.⁹⁷ The reasons for this comparatively severe lack of trust in the UK are uncertain. But it is reasonable to suppose that it stems in considerable part from a diffuse feeling on the part of many citizens that they are excluded from full participation in public life.

As far as the House of Commons is concerned, the data given in Table 5 and shown graphically in Figure 6 show that there is a solid basis for such a perception. It is for the political parties themselves to consider whether and how they should deal with the severe shortage of those considered ‘routine manual’ workers among Members of Parliament. When it comes to public appointments, there is a prime national interest in paying attention to the apparent lack of socio-economic diversity among appointees.

Case Study: Magistrates

Inquiries about the occupations of most magistrates elicited the opinion that they are predominantly middle-class, occupying higher managerial, administrative and professional occupations following the same trend as other public appointments. This is of particular interest with regard to the magistracy as magistrates are volunteers and do not need to achieve legal qualifications or a particular career level.

Figure 9: Backgrounds of Lay Magistrates from Manchester and Salford



⁹⁷ Organisation for Economic Co-operation and Development (2013) *Government at a Glance*. Paris: OECD, Figures 1.1 and 1.5. <http://www.oecd-ilibrary.org/docserver/download/4213201e.pdf?expires=1385254515&id=id&accname=guest&checksum=30E07757B22BE9041A3E86FBF7066E01> On the significance of trust in government and the threats to it, see Organisation for Economic Co-operation and Development (2013) “Investing in trust: leveraging institutions for inclusive policymaking.” Background paper. Paris: OECD. <http://www.oecd.org/gov/ethics/investing-in-trust.pdf>. The publication, issued by the OECD’s Public Governance and Territorial Integrity Division, stresses the need for “[a] policy making process conducive to trust” and the resulting need for openness and public participation.

Public versus private sector backgrounds

A concern frequently expressed by Conservative politicians has been that too many of those selected for public appointments have come from the public sector. The ground for this concern is that people who have spent their careers in the public sector are more likely to resist expenditure controls and are often likely to be Conservative supporters.

There is a more specific point too about the selection of former civil servants. Since serving civil servants have such prominent roles in the selection procedure, there may be too much of a tendency to see the merits of former colleagues or of individuals with backgrounds and talents similar to their own.

This tendency is illustrated by an example. In 1991, the Conservative government, in agreement with the leaders of the main opposition parties, decided to create a cross-party, arms length body to provide financial assistance to foreign political parties and other organisations involved in establishing democracy. Yet, it was simply assumed that the Westminster Foundation for Democracy would be run by a former diplomat. Accordingly, the Foreign and Commonwealth Office prepared a dossier consisting of the biographies of three recently-retired ambassadors. Only later was it decided by the founder governors to conduct an open search for a chief executive.

In order to give an idea about the extent to which public appointees are drawn from public sector occupations, information is given as before on (1) those holding positions defined in 2008 as subject to pre-appointment hearings by parliamentary select committees, (2) independent assessors selected in 2011 by the Commissioner for Public Appointments and assessors until 2011 for whom it was possible to discover information (71 in total), (3) 58 of the 60 sift panellists used by the Judicial Appointments Commission, and (4) 42 of the 51 panellists and assessors used in 2011-12 by the Ministry of Justice for selections to non-judicial appointments for whom information could be obtained. Categorisation is difficult in some cases because candidates come from varied careers and combine experience both in the private and public sector and occasionally in the independent non-profit sector (the 'third sector').

Of the 53 holders of appointments defined in 2008 as being subject to parliamentary pre-appointment hearings, 13% are former MPs, 45% come from public sector occupations, 23% from the private sector, 11% have both public and private sector backgrounds and 8% come from third sector careers.

Analysis of the assessors for the Office of the Commissioner for Public Appointments shows that 44% have come from the public sector and a further 23% from a combined public and private sector background, 31% from the private sector and 3% from the third sector.

The equivalent figures for the members of the sift panels employed by the Judicial Appointments Commission are public sector - 45%, public and private sectors combined - 14% (a figure which includes former civil servants), private sector 38% (including human resources specialists), third sector 3%.

The panellists and assessors used by the Ministry of Justice for competitions for non-judicial appointments came predominantly from the public sector (64%). A further 17% had mixed public-private sector backgrounds and 19% had private sector backgrounds alone.

According to the normal selection procedures, serving civil servants are included on interview panels but not as independent assessors. The statistics (except for non-judicial appointment competitions run by the Ministry of Justice) thus under-estimate the proportion of selectors who belong to the public sector.

The statistics from the four sources which have been mentioned are consolidated into Table 6.

Table 6: Employment sector of people winning 53 top public appointments and employment sector of the selectorate.⁹⁸

Employment Background	Top Appointees	Selectorate
Former MPs	13%	-
Public sector	45%	49%
Mixed public/Private sector	11%	18%
Private sector	23%	30%

98 Top appointees are the 53 persons subject to pre-appointment hearings by House of Commons Committees. 2.

The selectorate consists of 171 persons: 71 assessors employed by the Commissioner for Public Appointments, 58 sift panellists employed by the Judicial Appointments Committee and 42 panellists and assessors used by the Ministry of Justice.

99 Another dimension of diversity which is too often forgotten is the geographical distribution of appointees to public bodies. The suspicion is that persons living in and around London and in the areas served by devolved governments are well catered-for while those in outlying English regions are under-represented. However, it is difficult to collect evidence about the place of residence of appointees. Geographical information was collected instead for 53 of the assessors used by the Office of the Commissioner for Public Appointments and, thanks to assistance from the Judicial Appointments Commission, about the geographical distribution of its 60 sift panellists. The over-representation of London and the South was noticeable among the sift panellists, of whom 62% were drawn from London and the South compared with 34% of the OCPA assessors. Only 5% of the sift panellists came from the devolved areas compared with 34% of the OCPA assessors. For the sift panellists, 22% came from the Midlands and the North, a figure similar to the 24.5% of OCPA assessors from the same areas. These limited statistics are insufficient to establish whether or not regional bias is a serious issue.

The implications of the relatively high proportion of holders of public appointments coming from the public sector was considered more fully in Chapter 3.⁹⁹

Statistics about the backgrounds of appointees are not always informative and may be misleading, this is especially because they follow from definitions of categories which themselves are selective, unclear, too broad and subject to misunderstanding. The figures given in this Chapter are no exception. However, the most striking results concern the occupational background of public appointees, which is the best indicator of social class. Here, the statistics are decisive. Important policy issues arise from this forgotten dimension of diversity. Before these are considered, a further question needs to be asked.

Is the policy of promoting diversity consistent with appointment on merit?

Understandably, there has been a huge literature on the rights and wrongs of policies which aim to promote the selection of members of particular social groups for entry to university, for jobs in the public service, for positions as candidates for parliamentary and other elections, to hold government contracts, or for public appointments. University admissions policies in the United States which have given preference to applicants from socio-economically disadvantaged communities over others with higher marks - so-called 'positive discrimination' - have been challenged in the Supreme Court.

Rules providing for statutory quotas for chosen groups have been a cause for particular controversy. They have been accepted and advocated as an international norm by such institutions as the Sweden-based International Institute for Democracy and Electoral Assistance in works produced in association with the United Nations and the European Commission. Within the UK, the Labour Party has adopted the device of all-women short lists for selections of candidates

in some parliamentary constituencies. The Conservative Party encouraged the selection of female candidates by a measure which fell short of being a quota but which promoted female candidates by placing them on an 'A List' of candidates drawn up by the Conservative Campaign HQ.

In practice, policies to promote the interests of disadvantaged, under-represented groups take many forms and have different purposes. At one end of the spectrum, a policy of positive discrimination may be driven by the desire to detect merit. If candidates from a particular background or social group persistently fail to win, this may itself be evidence of a biased selection system that ignores merit on the part of the poorly-educated or those who have not had the type of education favoured by the selection procedure.

In the United States, aptitude tests which are intended to measure a candidate's intelligence rather than the quality of their coaching have become a standard part of university admission processes. By contrast, the requirement for an applicant to write an essay setting out his or her dreams for the future may favour those willing to pay (often handsomely) for consultants who will help to compose the all-important 1500 words. Interviews either may detect hidden talents or they may provide a chance for interviewers to act according to their prejudices. Some Oxbridge colleges are informally known to have admissions tutors who are inclined either to favour or to discriminate against applicants from certain backgrounds.

At the very least a system that produces socially skewed results needs to be examined closely to detect whether it is working fairly and whether it really does select on merit.

At the other end of the spectrum, the case for special procedures to promote disadvantaged groups may not be based on the objective of detecting hidden merit. Rather, it may express the view that top jobs and opportunities should be divided between individuals from different social groups irrespective of considerations of merit. According to this reasoning, it matters less whether those chosen as judges are 'the best' in terms of past academic and professional honours achieved. A judiciary composed of a narrow elite – however talented and meritorious — is unlikely to command confidence and respect if it is grossly unrepresentative.

Matters are complicated by the reality that 'merit' itself is a slippery term. Academic talent may be only one dimension. In the selection of judges, it is accepted that 'good character' constitutes a further merit criterion. Assessment of character may be given some quasi-objectivity by the use of personal references. But this is by no means foolproof. The lack of measures of merit which are agreed to be objective makes it easier to base selection on the social profile of an applicant and to argue that an applicant with the desired social characteristics also is the most meritorious.

There are at least four different ways to selections with a view to promoting under-represented groups:

- quotas
- 'targets'
- tie-breakers
- special measures

A system of quotas involves a set of separate and parallel selections on merit for members of each chosen group. If it is pre-determined that 50% of those selected will be male and 50% female, and if there are ten places to fill, then the top five men and the top five women will win. The quota system becomes more complex if several different quotas operate for the same contest. Perhaps there will be a policy of 50% female, 20% ethnic minority and 20% disabled. What happens if the top five women and the top five men include 50% rather than 20% from ethnic minorities? What if they include none from ethnic minorities? Meeting several types of quota for a contest for a relatively small number of positions may be difficult if not impossible. These practical difficulties of multi-dimensional quotas are a separate issue from the principled objections to quotas.

Modern proponents of quotas usually assume that they are a useful and just device in the interests of the under-privileged. But they involve losers as well as winners. They have been used in the past to enforce policies of religious, racial and class prejudice. Quotas were used by some top private schools in London to control the number of Jewish students admitted. It was not only the notorious *numerus clausus* (quota) in Central European countries that was used as a fairly blatantly anti-Semitic policy after the First World War, there were similar quotas to restrict Jewish entry into medical colleges at leading United States universities too.

Short of the formal quota, there is the ‘target’. Selectors are not obliged to give a set proportion of places to particular categories of candidate but they are given percentages for which they must aim. This is the method currently in operation in the UK. For example, the recently-retired Cabinet Secretary set himself a target of 50% female permanent under-secretaries (head civil servants) in government departments. For public appointments, there is a similar 50% female target. If the selections within a particular government department fall below the targets, it will be expected to take remedial action. The question is whether such action will be possible within a limited period of time without positive discrimination in favour of members of the under-represented target groups.

In 2010, the Government Equalities Office reported the ‘targets’:

New government wide targets on new appointments for gender, ethnicity and disability were launched on 17th June 2009. By 2011 across government for all new UK public appointments regulated by the Commissioner for Public Appointments, our aim is for¹⁰⁰

:

- 50% of public appointments to be women
- 14% of public appointments to be disabled people
- 11% of public appointments to be people from ethnic minorities.

A third approach has been called the ‘tie-breaker’. This is incorporated in Section 159 of the Equality Act of 2010.¹⁰¹ Selection (for instance, for judicial office) will always be on merit alone except in cases when there are two candidates of equal merit. In that case, the ‘tie breaker’ policy advocates preference for the candidate from the under-represented target group. The ‘tie-breaker’ was advocated for judicial appointments by the 2010 report of the Advisory Panel on Judicial Diversity chaired by Baroness Neuberger.

The ground for criticism both of the policy of ‘target’ percentages of selections of members of chosen categories of applicant and, to a lesser extent, of the ‘tie-breaker’

100 Government Equalities Office (2010). “Representation in public life: Diversity in Public Appointments.” http://webarchive.nationalarchives.gov.uk/20100413151441/equalities.gov.uk/what_we_do/representation_in_public_life.aspx

101 Lord (Jonathan) Sumption (2012). “Home Truths about Judicial Diversity.” *Bar Council Law Reform Lecture*, 15 November. <http://www.supremecourt.gov.uk/docs/speech-121115-lord-sumption.pdf>.

is that they may effectively be quotas in disguise. Indeed, as a former member of the Judicial Appointments Commission, the Supreme Court justice Lord Sumption has argued in a lecture provocatively titled ‘Home Truths about Judicial Diversity’,¹⁰² it is very hard to combine appointment on merit with full representation of members of disadvantaged groups if the aim is to overcome the effects of disadvantage in a hurry. The pool of those likely to be appointed to top judicial posts today reflects the patterns of entry into the legal profession some 30 years ago and the pattern of university entry even further back. According to Sumption:

“You can simply take the received clichés off the shelf. That was probably my position in 2006, when I became a member of the Judicial Appointments Commission upon its creation. I was of course aware that the whole issue of diversity was important, politically sensitive and controversial. But I had no particular preconceptions, apart from an instinctive feeling that the reasons for the domination of the judiciary by white males were complex, and that the selection process was probably no more than part of the problem. By the time I left the Commission at the end of last year, I had come to the rather depressing conclusion that the whole subject was bedevilled by an unthinking resort to sterile formulae and an unwillingness to ask awkward questions or address real dilemmas. This does no justice to an important and difficult issue which calls for a more honest and objective appraisal than it has usually received.”

If it is recognised that time is needed to provide a ladder of opportunity, then the conflict between quotas and targets on the one hand and merit appointment on the other hand will lessen. A virtue of the report of the Advisory Panel on Judicial Diversity is that it gives detailed and varied examples of a fourth approach, that of ‘special measures’ designed to open the legal profession and to stimulate the ‘Yes We Can’ aspirations so effectively advocated by President Barack Obama and his wife, Michelle.

It is significant that the measures suggested by the Advisory Panel on Judicial Diversity focus on the long-term. For instance, judges are encouraged to engage in work with schools and colleges to promote a career in the law and to demonstrate “to young people that lawyers may come from a diverse range of backgrounds and are people just like them.” In addition, the Panel recommends a “High Court judicial assistant scheme operated by the Directorate of Judicial Offices (DJO) provides students to spend up to a week with a High Court or Circuit Judge” and a similar scheme at the Supreme Court.¹⁰³

However, there has been pressure to step up the pace of judicial diversification to the point where the principle of appointment on merit has come under threat. Some witnesses who gave evidence to the House of Lords Select Committee on the Constitution during its inquiry into judicial appointments, published in 2012, gave ingenious arguments for the case that appointment on merit could realistically be combined with a policy of rapid diversification of senior levels of the UK judiciary. There was discussion of the difference between quotas and targets, between ‘targets’ and ‘benchmarking’, between merit as an absolute and as a ‘threshold’, and about whether or not diversity could itself be regarded as an aspect of merit. There was further discussion about whether candidates are likely to be of equal merit so that the ‘tie-breaker’ policy is realistic.¹⁰⁴

Recent selections of district court judges by the Judicial Appointments Commission have resulted in such significant victories for applicants from ethnic

102 Lord (Jonathan) Sumption (2012). “Home Truths about Judicial Diversity.” *Bar Council Law Reform Lecture*, 15 November. <http://www.supremecourt.gov.uk/docs/speech-121115-lord-sumption.pdf>.

103 Judicial Diversity Taskforce (2011). *Improving Judicial Diversity: Progress towards delivery of the ‘Report of the Advisory Panel on Judicial Diversity 2010’*. London: Ministry of Justice, September. para. 55f. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217305/judicial-diversity-taskforce-annual-report-2012.pdf.

104 House of Lords Select Committee on the Constitution (2012). *Judicial Appointments. 25th Report of Session 2010-12*. London: The Stationery Office., para. 69. <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/27206.htm>.

minorities that they are open to the alternative explanations that a degree of positive discrimination may be seen to have occurred or that the ethnic minority applicants were of exceptionally high quality (or both).¹⁰⁵

In the most recent round of appointments of 28 district court judges, a quarter came from ethnic minority backgrounds. This compared with 14% of the population belonging to ethnic minorities, 10% minority members in the eligible pool of lawyers and 18% of the applicants. Of the successful applicants, 46% were women and 75% were under 45 years old and 7 were 35 and under.¹⁰⁶

Though this Chapter will focus in the next section on “special measures” (as opposed to quotas, ‘targets’ and ‘tie-breakers’) as a recommended pathway to diversity, this is in large part because it is the approach likely to command the widest agreement. There are strongly held views that the appeal to gradualism is unduly cautious and may itself be an expression of bias. Certainly Lady Hale, the only woman so far appointed to the UK Supreme Court, hardly disguised her disagreement with Lord Sumption’s gradualism when she delivered the Kuttan Menon lecture in February 2013 (Hale, 2013). The “perceived macho culture” of the senior judiciary reflected unconscious prejudices as well as their extremely narrow and privileged social and educational background. Her fellow members of the Supreme Court, she said, “are a very varied bunch in some ways but they mostly fit the stereotypical pattern of boys’ boarding school, Oxbridge college and the Inns of Court. All of them were very successful barristers in private practice before going on the bench, although two did other things first (I was not). All but one of them has a degree from Oxford or Cambridge (as indeed do I). All but one of them went to an independent fee-paying school (I did not). Indeed all but three of them went to boys’ boarding schools ...”

She argued further that ‘merit’ does not consist only in academic and professional achievement but in the background and perspective brought by judges to their work. Having themselves come up against inbuilt prejudices, women judges were likely to be in a better position to grasp the experiences of some of those whose cases come before the courts.

Hale’s plea for greater gender and social diversity at the top of the judiciary was reflected by Sir John Major in a speech given to Conservative Party members in South Norfolk in November 2013. He said that “the privately educated or the affluent middle class” dominated “every single sphere of British influence”. He found this “truly shocking” and blamed the last Labour government for the situation. (Hope, 2013.) However, for the former Conservative Prime Minister improved educational opportunity rather than short term measures was the key to social mobility. “Our education system should help children out of the circumstances in which they were born, not lock them into the circumstances in which they were born.”

Conclusions and recommendations

It will be evident that there are some features of the current diversity policy for public appointments which the authors thoroughly approve as well as others which are open to criticism. The recommended approach is to retain and build on most of the initiatives to encourage the appointment to public bodies and to the judiciary of individuals from the three main targeted categories - gender, ethnicity minorities and disability.

105 The choices made by the Judicial Appointments Commission are subject to the existing confirmation procedures outlined in Chapter 2

106 Catherine Baksi (2012). “Diversity boost for lowest rung of judiciary.” London: *The Law Society Gazette*, 7 December. <http://www.lawgazette.co.uk/news/diversity-boost-lowest-rung-judiciary>.

But this is not enough. For a strategy that sets out to foster ‘diversity’, the usage of the term is far too narrow and the opposite of diverse. Gender, ethnicity and disability should not be allowed to become the near exclusive focus of attention, monitoring and financing.

Four principles and four policies that stem from them are recommended.

The principles are:

1. The first task is to detect and root out underlying prejudice against people or groups of people.
2. In pursuing the aim of diversity in public appointments, the definition of ‘diversity’ must itself be more diverse than it is at present and must include socio-economic diversity.
3. There need to be special measures to encourage those from grossly under-represented groups to apply for public appointments.
4. Measures to encourage diversity in public appointments should fall short of ‘positive discrimination’.

The policy implications are:

1. The neglect of the appointment of men and women in working class occupations to public bodies is the most striking shortcoming of the current system. It needs to be addressed as a priority. There must be active efforts to ensure that class bias - whether concerning those in manual working class occupations, ‘Middle England’, or the unemployed - is treated as no less important than bias on the grounds of gender, race or disability.

The advanced academic, professional and technical accomplishment required for some public positions, effectively exclude those without the necessary qualifications. But there are many positions on public bodies for which this barrier does not apply. For example, legal qualifications are not required for magistrates, school governors, health authority trusts and many other posts.

- a. **Monitoring.** Clearly, decisions as to which aspects of diversity need to be reported in detail in official reports carry the strong implication that these are the most significant. The gaping hole in reporting of socio-economic statistics is both a reflection of the tunnel vision of those responsible for choosing ‘privileged characteristics’ and a cause of further distortions of policy.

If more attention is to be paid to the under-representation of manual workers and of socially-deprived groups on public bodies, the first requirement is to put socio-economic backgrounds on the radar. Therefore, the occupations of appointees to public bodies need to be monitored and the relevant statistics should be published alongside those of gender, ethnicity and disability. Monitoring need not take the form of questionnaires on occupation to be filled by all those appointed to public bodies. Sample surveys may be more accurate and less intrusive.

- b. **Special initiatives.** Already there have been a number of schemes which have aimed to encourage individuals from disadvantaged groups to gain the

confidence and information to put their names forward for appointment as magistrates, school governors and for NHS bodies. As to be expected, some have been more successful than others.

Operation Black Vote was funded by the Ministry of Justice to run a scheme that involved would-be applicants from ethnic minority communities for the magistracy shadowing a magistrate and learning about their work.¹⁰⁷ Nearly 100 participants subsequently were selected as magistrates.¹⁰⁸ The Magistrates' Association also has carried out initiatives to encourage those in manual occupations to apply for the magistracy.

It is strongly recommended that similar schemes are organised to encourage individuals from manual occupations, regardless of race, gender and disability, to put themselves forward for positions as magistrates, members of employment tribunals, school governors and other similar public roles. To maximise their success, the initiatives need to involve major employers. This is because workers who become magistrates need agreement from their employers to take the necessary time off from their work.

The Magistrates' Association stresses that Go-Ahead London, a bus company, has already cooperated with its workers wishing to serve as

Box 4: Bus driver magistrates: a model scheme to promote occupational diversity among holders of public appointments

In an effort to address issues of occupational diversity among magistrates, Go-Ahead London and the Magistrates Association partnered to encourage employees at Go-Ahead London to become magistrates. The Magistrates Association produced a number of leaflets aiming to increase awareness of opportunities to become magistrates among what are now considered to be 'routine and manual occupations'.

Go-Ahead London employs 5,000 staff. In 2010 they provided 16% of London's bus drivers and, in one bus garage alone, they employ four people who are magistrates. The Managing Director John Trayner explained that although this is a tough commitment it means that Go-Ahead has more well rounded and experienced people working for the organisation. Trayner stated that Go-Ahead makes a business judgement on how many others are doing such 'extra-curricular' activities and if individuals are involved in frontline operations, the organisation works with them to make it work, as they can see the benefit for both parties.

In 2010, the Magistrates Association made a business case for being a magistrate employee titled Juggling Work with Judicial Duties. However, encouragement and engagement by employers is also essential in order to address issues of occupational diversity. The magistracy offers a unique opportunity for the judiciary to engage with those in routine and manual occupations, or the 'traditional working class' as magistrates are volunteers and do not need to achieve legal qualifications or a particular career level.

Employee magistrates are unpaid but may receive a modest loss of earnings allowance from public funds as well as expenses.

Policy Exchange regards this as a model scheme that needs to be replicated widely not only for magistrates but for other public positions

107 Operation Black Vote (2011). "Do you want to become a magistrate?" <http://www.obv.org.uk/news-blogs/do-you-want-become-magistrate>.

108 Red Hot Curry (2012). "OBV launches West Midlands' Civic Leadership Programme" <http://www.redhotcurry.com/news/2012/obv-civic-leadership.htm>

magistrates has found that driver-magistrates have special loyalty to their firm and that employee morale benefits. If service as a magistrate, which is unpaid, is to become a practicality for employees, it will be necessary either for employees to allow time off without deduction of pay or for some remuneration to be offered from public funds.¹⁰⁹

Against the background of public expenditure cuts, there will be limits on the amount of public funding that can be expected for organisations carrying out such initiatives. It is not the intention that initiatives with a focus on those in manual occupations should substitute for those that focus on women, minority ethnic groups and the disabled. They should be additional to them. However, a crucial element of all such projects is to enrol the help of major employers as well as private trusts.

Reforming the Government Equalities Office, the Equality and Human Rights Commission and the Office of Fair Access.

The neglect of the issue of encouraging service on public bodies by those from a wide spectrum of occupations stems in considerable part from shortcomings in three statutory bodies responsible for 'equality' matters.

It is recommended that the mission and performance of all of these bodies should be re-examined as well as the legislation under which they have operated so far. If Liberal Democrat agreement to this is not forthcoming, these proposals will need to wait until after the General Election of 2015.

The problem concerning two of them - the Government Equalities Office and the Equality and Human Rights Commission - is their focus on the 'protected characteristics' set out in legislation. In general, this has meant neglect on their part of socio-economic inequalities. By contrast, the Office of Fair Access, under the chairmanship of the controversial Professor Les Ebdon, has addressed social deprivation but in a provocative, unsuitable manner that led the former Schools Minister Lord Adonis to write in November 2012 "Is Les Ebdon up to the job?"¹¹⁰

The Office of Fair Access (OFFA) has powers under the Higher Education Act of 2004 to penalise universities which OFFA considers have made inadequate efforts to attract students from under-privileged backgrounds. Offending universities may be banned by OFFA from charging the higher fees permitted by the Act. At issue is not the policy of special efforts to attract under-privileged students but the manner proposed to meet the objective. Adonis's charge, made also by Conservatives and by parts of the press, was that Ebdon proposed to force universities to lower their admissions standards in an exercise of 'positive discrimination'. The alternative approach is to support outreach by universities to under-performing schools, to run summer courses at universities for talented students in these schools, and other schemes to encourage access without lowering standards.

It is proposed that OFFA should no longer enjoy the statutory power to prevent universities from charging fees up to the generally permitted level, but that there should be financial incentives for universities to run access schemes.

109 Operation Black Vote points out that there is a current moratorium on the recruitment of magistrates. But this is only a temporary consideration

110 Lord (Andrew) Adonis (2012). "Is Les Ebdon up to the job?" 30 November. <http://andrewadonis.com/2012/11/30/is-les-ebdon-up-to-the-job/>

Under the coalition, the Governmental Equalities Office has backed inquiries by the Labour MPs Frank Field and Graham Allen into patterns of social deprivation among young children with a view to find ways to break inter-generational cycles of deprivation. However, the main focus of the Office has been on gender equality and on the protection of LGBT persons as set out in the Equality Act of 2010. It is recommended that the Office should widen its remit to include special initiatives to promote access to public appointments for socio-economically disadvantaged groups.

The Equality and Human Rights Commission, which operates under the sponsorship of the Government Equalities Office, was (at least until the appointment as chair of the distinguished academic Baroness Onora O'Neill) a politicised, badly-run organisation. Like the Government Equalities Office, it is open to the criticism that it has defined 'equality' too narrowly. In addition, its status as a statutory "National Human Rights Institution" has meant it has been involved in the serious ongoing conflict between the House of Commons and the European Court of Human Rights in Strasbourg about prisoner voting in particular and about the role of the Strasbourg court in general.

- c. **Recommendation for an immediate inquiry into apparent shortage of appointees from 'routine and manual' occupations.** Policy Exchange recommends that there should be an immediate inquiry into this core problem. This is necessary to draw public attention to its importance, to assess its dimensions, to propose special initiatives, and to ensuring continuing emphasis on socio-economic diversity as part of its overall diversity policy.

Box 5: Operation Black Vote: Magistrates Shadowing Scheme

Operation Black Vote works within the democratic and civic framework to ensure greater racial justice and equality throughout the UK. In order to do this they work in four main areas: **political education, political participation, political representation and the promotion of equality and human rights.**

In 2001 the Magistrates Shadowing Scheme was established in partnership with the Ministry of Justice and it encourages Black and Asian minority individuals to apply and become magistrates. The focus of the OBV scheme is to redress the balance between those who are subject to the courts and those who are represented within it. Over 60 Shadowing Scheme graduates were appointed to the bench as Justices of the Peace, a success celebrated by the House of Commons in 2010.

In 2010, as part of the scheme, in an effort to target potential candidates from the Somali community Operation Black Vote organised a free one-day seminar 'A Judiciary for All', led by magistrates and court officials. The seminar provided a forum for attendees to deliberate sample cases and to discuss the application process, including outlining the time commitment required as a magistrate and how it would work in conjunction with a full time job.

Policy Exchange sees this as a potential model for addressing not only issues of diversity in terms of ethnicity, but age diversity, gender diversity and of particular relevance to the conclusions of this Chapter – social diversity.

The inquiry should be of short duration. It should be set up by the end of March 2014 and should report within six months – that is, by the end of September 2014, so that it can be implemented within the current Parliament.

The Government Equalities Office and the Equality and Human Rights Commission (a body under the aegis of the Government Equalities Office) should run the inquiry. It should (i) arrange with the Office of the Commissioner for Public Appointments to gather information on a sample basis of the occupational backgrounds of public appointees; (ii) conduct a consultation about special initiatives to encourage applications for public appointments from citizens from diverse social backgrounds; (iii) devise a policy to ensure that occupational diversity in public appointments and in other aspects of public life becomes a significant part of an on-going equality policy, (iv) consider other dimensions of diversity including geographical distribution of appointees and urban versus rural appointees.

The proposal that the inquiry focus on special initiatives is in line with the argument in this Chapter against quotas and statistical targets.

2. The policy of statistical targets for desirable proportions of women, ethnic minorities, and disabled candidates to be given public appointments come to close to being a system of de facto quotas. It thus puts strain on the principle of appointment on merit and should be reconsidered.

By abandoning ‘targets’, inconsistencies of the current policy also will be avoided. On the one hand, it is policy, as cited above, that the targets for percentages of women, ethnic minorities and disabled are to apply “across government” for all new UK public appointments regulated by the Commissioner for Public Appointments. On the other hand, the House of Lords Select Committee on the Constitution reported in 2012 that, concerning such targets, “the government are ... currently against their use.”¹¹¹

3. More care should be taken both by the Office of the Commissioner for Public Appointments and by ministers to ensure that civil servants and individuals from public sector occupations should not have a predominant role on sift and interview panels for public appointments. The selectors should include more members from the private sector and those from a variety of occupations.
4. It is important to avoid short-termism in policies about diversity of appointments to the most academically and technically demanding public positions, including senior judicial appointments. It is no coincidence that two of the most far-sighted politicians of our time, Lord Adonis on the Labour side and Michael Gove on the Conservative side have seen educational opportunity and excellence as the key to social mobility. The logic of this is both to improve school standards and to provide special opportunities for especially talented students from deprived backgrounds.

111 House of Lords Select Committee on the Constitution (2012). *Judicial Appointments. 25th Report of Session 2010-12*. London: The Stationery Office., para. 105. <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/27206.htm>.

5

Conclusions and List of Recommendations

The public appointments system is undoubtedly complex. Ministers complain about it on that ground. The multiple steps in the process, summarised in Chapter 2, indicate the potential for confusion and for competing influences. It would make for simplicity if ministers either could make free choices of appointees or if they were not involved at all in the selection procedure. Yet, the benefit of the method of making appointments as it emerged in 1995 is that it represents a workable compromise between complete political neutrality – the system of competitive examinations and tests used to select civil servants – and ministerial responsibility. Complexity is a price worth paying to achieve this result. For this reason, this report does not recommend root and branch reform.

However, it does not endorse all aspects of the status quo and makes both recommendations for major changes as well as detailed but nonetheless significant amendment.

The reform likely to attract the greatest criticism from many senior members of the legal profession is that put forward in Chapter 3 that appointments of nominees for UK judgeships on the European Court of Human Rights, the Court of Justice of the European Union and the UK Supreme Court should be subject to confirmation by the House of Commons. When a similar proposal was included in the lead author's 2011 Policy Exchange study *Bringing Rights Back Home*, it attracted the dissent in the introduction written by one of Britain's most senior and most respected former judges, Lord Hoffman. The apparent politicisation of the judiciary and the Americanisation of the UK method of choosing the most senior judges will attract some horror, especially as the reforms enacted in 2005 were designed to promote judicial independence from the Lord Chancellor.

The problem is that the judiciary already has been politicised. Its role has fundamentally changed. This has happened because recently retired judges and judges who are still sitting are now permitted to present views in lectures and in other statements that mark them out as supporters of a particular policy line and as sympathetic to one political party or other. Moreover, the work of the Luxembourg and Strasbourg Court and of the UK Supreme Court has crossed the boundary between law and politics. Those institutions are able to review parliamentary legislation for its conformity respectively with the European Union Treaty, with the European Convention on Human Rights and with the Human Rights Act. The intrusion of judges of these courts into the law making powers of the British legislature will make it hard in the long run to avoid some checks

and balances that will permit Parliament to have some say in the selection of their judges. Whether the selection of other top UK judges, such as the Lord Chief Justice, also should be subject to Parliamentary confirmation is not addressed in this report. The underlying principle of the recommendation is that the selection of judges who will exercise what effectively are legislative powers should themselves be appointed with the approval of the elected legislative chamber.

A separate set of major proposals concerns the implementation of the policy of encouraging diversity of appointees. The stress in this report on the need for class diversity involves a sweeping change in social and political attitudes. Attention to promoting the appointment of members of the working class and lower middle class must not be at the expense of policy relating to opportunities for women, ethnic minorities or the disabled. It is not proposed that quotas or targets of working class appointees be introduced. But there need to be active appeals to those from largely excluded groups to enter appointment competitions. Where working hours are a barrier to fulfilling public roles, employers have a role to play by adapting conditions of service. Policy Exchange has highlighted schemes run by the Magistrates' Association and Operation Black Vote as examples with the aim of encouraging similar initiatives and in order to draw attention to the priority that should be given to making the UK a multi-class polity.

Policy Exchange recommends that both the Government Equalities Office and the Equality and Human Rights Commission reconsider and extend their fields of action to combat de facto social exclusion in the field of public appointments. There also are potential rewards for political party organisations for running training and mobilisation schemes to encourage the widest possible range of their supporters – potential as well as existing members – to put themselves forward for selection.

A third significant proposal is that the remit of bodies such as the Government Equalities Office (part of the Department for Culture, Media and Sport) and the Equality and Human Rights Commission needs to be extended to cover socio-economic inequality. Moreover, in order to focus attention on socio-economic diversity and as a spur to rapid action, Policy Exchange calls for the establishment of a short-term inquiry by the Government Equalities Office and the Equality and Human Rights Commission with the timetable and objectives set out in the final section of Chapter 4.

A fourth series of recommendations relate to the government agenda of Open Government. There is a limit to the information and the statistical analysis that the public may reasonably expect at a time when there are pressures to reduce the number of civil servants. Nevertheless, additional information should be placed in the public domain, especially since the procedure of requesting information through the Freedom of Information Act is time consuming and often proves unproductive. The authors of this study, like Levitt and Solesbury in their research on policy 'tsars', found this when they attempted to discover which 'tsars' were paid. A prime example of lack of information is the fact that the list of persons responsible for the selection of the nominee for the UK judge on the Court of Justice of the European Union was initially confidential. It was released only by seeking the permission of each of those involved for the purpose of this report. The absence of statistics in the annual reports of the Office of the Commissioner for Public Appointments on the socio-economic backgrounds of public appointees

is another notable gap. The Office of the Commissioner for Public Appointments currently refuses to make raw data that would be needed for outside researchers to produce such statistics. This is on the reasonable ground of the need to protect personal information. However, the logic of this is that the Office itself needs to carry out such analysis not only for socio-economic backgrounds of appointees but for other dimensions of diversity apart from the three ‘privileged’ categories of gender, ethnicity and disability.

There are at least three different visions of diversity. A mainly metropolitan vision is of gender equality, active acceptance of different forms of sexuality, and the promotion of opportunities for members of different ethnic groups and for the disabled. The second vision is of the equal protection of rural interests and lifestyles against urban encroachment. The third is of socio-economic diversity in public life. In a successful polity, all three of these visions need to be addressed.

For convenience, the recommendations in Chapter 3 about the working of the public appointments system in general and in Chapter 4 about diversity in appointments are reproduced here as a comprehensive list. The numbering of the recommendations from Chapter 4 has been changed to produce a comprehensive list. The numbering given for each recommendation in Chapter 4 is given in parentheses.

1. Political parties – especially Conservatives and Liberal Democrats - need to make it a priority of local party organisation to inform their members about local vacancies for appointments to public bodies and to encourage them to apply.
2. Appointments of nominees for UK judgeships on the European Court of Human Rights, the Court of Justice of the European Union and the UK Supreme Court should be subject to confirmation by the House of Commons.
3. Clearer rules are needed about re-appointments to quangos and number of permitted terms of office.
4. There should be greater transparency about membership of interviewing panels and about the identity of independent assessors, sift panellists, and commercial search companies employed in selection competitions. Government departments publish the following information as standard concerning each senior and middle tier appointment:
 - Number of applicants,
 - Number short-listed as ‘appointable’,
 - Names of any commercial search agencies employed,
 - Names of sift panellists (if applicable),
 - Names of interview panellists.
5. There is a need for greater transparency about the employment within ministries of ex-civil servants in the two years after they have left the public service, about the employment of temporary civil servants and contracts to outside bodies and individuals relating to policy research and appointments.
6. There should be a stated and publicly-known procedure for the selection of nominees for the Strasbourg and Luxembourg Courts.
7. There must be active efforts to ensure that class bias - whether concerning those in manual working class occupations, ‘Middle England’, or the unemployed - is treated as no less important than bias on the grounds of gender, race or disability. (Chapter 4, Recommendation 1.)

8. The occupations of appointees to public bodies need to be monitored and the relevant statistics should be published alongside those of gender, ethnicity and disability. (Chapter 4, Recommendation 1a.)
9. It is strongly recommended that special schemes are organised to encourage individuals from manual occupations, regardless of race, gender and disability, to put themselves forward for positions as magistrates, members of employment tribunals, school governors and other similar public roles. (Chapter 4, Recommendation 1b.)
10. The Government Equalities Office and the Equality and Human Rights Commission should set up and inquiry into special initiatives to encourage applications for public appointments from citizens drawn from diverse occupational backgrounds. (Chapter 4, Recommendation 1c.)
11. The Higher Education Act of 2004 should be amended to deny the Office of Fair Access the statutory power to prevent universities from charging fees up to the generally permitted level, but that there should be financial incentives for universities to run access schemes. (Chapter 4, Recommendation 1b.)
12. The policy of statistical targets for desirable proportions of women, ethnic minorities, and disabled candidates should be reconsidered. (Chapter 4, Recommendation 2.)
13. Civil servants and individuals from public sector occupations should not have a predominant role on sift and interview panels for public appointments. The selectors should include more members from the private sector and those from a variety of occupations. (Chapter 4, Recommendation 3.)
14. Improving school standards and providing special opportunities for talented students from deprived backgrounds is key to long-term improvements in diversity in public appointments. (Chapter 4, Recommendation 4.)

Appendix 1

Table 7: Posts Subject to Pre-Appointment Hearings

Title of Post	Candidate	Summary of Former Position
Chair of the Gangmasters Licensing Authority	Margaret McKinlay	Managing Director British Gas and Programme Director Centrica
Groceries Code Adjudicator	Christine Tacon	Experienced Director in Food, Farming and the Environment across both the commercial and public sector
Chair, Ofcom	Colette Bowe	Economist, having held a number of chief executive roles
Chair, Office of Tax Simplification	Rt Hon Michael Jack	MP from 1987-2010 following a career in business
Chair, Economic and Social Research Council	Dr Alan Gillespie	Various Managing Director positions at Goldman Sachs, Ulster Bank Group and Citigroup
Chair, Competition Commission	Roger Witcomb	Non-Executive director of Anglian Water from 2002 to 2010 and Finance Director of National Power from 1996 to 2000, having previously been at BP and Cambridge University, where he taught economics
Chair of the Audit Commission	Jeremy Newman	Lawyer BDO LLP
Chair of the Water Service Regulatory Authority	Jonson Cox	Director of Anglian Water and Yorkshire Water
HM Chief Inspector of Constabulary	Tom Winsor	Lawyer White and Case LLP
Chair of the Judicial Appointments Commission	Christopher Stephens	Director of DHL and Civil Service Commissioner
Chair of the Engineering and Physical Sciences Research Council	Dr Paul Golby	Chief Executive E.ON
Chair of the Medical Research Council	Donald Brydon CBE	Chief Executive AXA
Chair of the Social Security Advisory Committee	Deep Sagar	Senior Management roles at Coca-Cola and Unilever
Chair of the Higher Education Funding Council for England	Tim Melville Ross (reappointed until December 2016)	Chief Executive of Nationwide Building Society and Director General of the Institute of Directors
Tax Director, Office of Tax Simplification	John Whitting	Former Tax Partner at Price Waterhouse Coopers
Chair, Natural England Board	Poul Christensen CBE	Farmer and Chairman of a number of Milk Group organisations
Chair, Ofgem	David Grey	Career in Energy Investment Banking for 30 years, Director Specialist Corporate Finance Team HSBC. Managing Director of Ofgem 2004 - 2007
Chair, Natural Environment Research Council	Edmund Wallis	Chairman and Chief Executive of Powergen
Chair of the Postal Services Commission	Millie Banerjee CBE	Director BT and ICO Global Communications. She has also held board positions on a number of public-sector organisations
Chair of Ofqual	Glenys Stacy	Various chief executive positions since 2000 solicitor by training

Health Service Commissioner for England	Dame Julie Therese Mellor DBE	Human Resource Manager at TSB, Corporate Human Resource Director of British Gas then Chair of the Equal Opportunities Commission and finally PWC Health Consulting Practice, prior to PWC
HM Chief Inspector of Probation	Diana Fulbrook	Chief Probation Officer
Service Complaints Commissioner	Dr Susan Atkins	Legal Academic, Local Government Solicitor and Senior Civil Servant
Chair, Legal Services Board	Elizabeth France	Senior Civil Servant
The Parliamentary and Health Service Ombudsman	Dame Julie Therese Mellor DBE	Human Resource Manager at TSB and then served as Corporate Human Resources Director of British Gas she also then was an employment consultant for a number of government departments
Children's Commissioner for England	Dr Maggie Atkinson	Teacher for 10 years before becoming an advisor on the National Curriculum
Chair, Office of Rail Regulation	Anna Walker	Various director roles within the civil service
Director of the Office for Fair Access	Professor Les Ebdon	Vice Chancellor of the University of Bedfordshire
HM Chief Inspector of Education, Children's Services and Skills	Sir Michael Wilshaw	Teacher
Chair of the Committee on Climate Change	Lord Deben	Formerly Member of Parliament for Suffolk Coastal
Chair of the Care Quality Commission	David Prior	MP for North Norfolk, Chief Executive of the Conservative Party and Chairman of Norfolk and Norwich University Hospital NHS Trust
Her Majesty's Chief Inspector of the Crown Prosecution Service	Michael Fuller	Chief Constable Kent Police
Prison and Probation Ombudsman	Nigel Newcomen	10 years in the probation service, joining the Home Office in 1991 and held a number of senior posts, last 8 years in the Inspectorate of Prisons
Chair of the Science and Technology Facilities Council	Sir Michael Sterling (reappointment)	Academic, former Vice-Chancellor of Brunel University and the University of Birmingham
Chair, Homes and Communities Agency Regulation Committee (took over from Tenant Services Authority)	Julian Ashby	HACAS Chapman Hendy, 30 years' experience in the Social Housing Sector
Chair, Social Security Advisory Committee	Paul Gray	Formerly Executive Chairman of HM Revenue and Customs and, before that, the Second Permanent Secretary in the Department for Work and Pensions
Chair, Social Mobility and Child Poverty Commission	Rt Hon Alan Milburn	MP for Darlington 1992-2010 held a number of positions in Cabinet and Secretary of State
Chair House of Lords Appointments Commission	Lord Kakkar	Professor of Surgery at UCL and Consultant Surgeon at UCL Hospitals NHS Foundation Trust
Chair, National Institute for Health and Care Excellence	Professor David Haslam	GP in Cambridgeshire
Chair, Environment Agency	Rt Hon Lord Smith of Finsbury	MP for Islington South and Finsbury, secretary of state for culture, media and sport and chairman of the millennium commission
Information Commissioner	Christopher Graham	BBC Radio and TV Journalist Director General of the ASA
Chair, Arts and Humanities Research Council	Professor Sir Alan Wilson	Professor and Former Vice Chancellor at the University of Leeds
Chair, Biotechnology and Biological Sciences Research Council	Sir Tom Blundell FRS	British biochemist at the University of Cambridge
Chair, Committee on Standards in Public Life	Lord Bew	Professor of Irish Politics at Queens University Belfast since 1991
Chief Fire and Rescue Officer	Peter Holland CBE	Senior Fire Officer
Chair, Food Standards Agency	Jeff Rooker	MP for Birmingham Perry Barr from 1974 - 2001

Chair, Advisory Committee on Business Appointments	Rt Hon Lord Lang of Monkton	MP for Galloway 1979-1997
The Commissioner for Public Appointments and First Civil Service Commissioner	Sir David Normington	Civil Servant, Per Sec Department for Education and Skills and then the Home Office until 2011
Chair of the Commission for Equality and Human Rights	Baroness O'Neill	Professor of Philosophy - former President of the British Academy and chaired the Nuffield Foundation
Her Majesty's Chief Inspector of Prisons	Nick Hardwick	Chief Executive of Centrepoin and Chief Executive of the Refugee Council then Chair of the Independent Police Complaints Commission
Chair of the Charity Commission	William Shawcross	Writer, journalist and broadcaster
Chair of the Statistics Authority	Andrew Dilnot	Institute for Fiscal Studies Director and Principal of St Hugh's College, Oxford
Pensions Ombudsman and Pension Protection Fund Ombudsman	Tony King	18 years career in a variety of administrative, trustee and consulting roles in the pensions industry

Appendix 2

Table 8: Interviewing panels for selected appointments

Title of post	Candidate	Appointed/ Reappointed	End of Term	Pre-Interview Hearing Panel
Chair of the Gangmasters Licensing Authority	Margaret McKinlay	10 July 2011	10 July 2014	Panel Short listing Meeting 30 March 2011: <ul style="list-style-type: none"> • Brian Harding (DEFRA Chair), • John Taylor (CEO, ACAS), • Judith Alderton (OCA).
Chair, Economic and Social Research Council	Dr Alan Gillespie	Appointed 10th June 2009. Reappointed 25th February 2013	9 June 2017	<ul style="list-style-type: none"> • Professor Adrian Smith (Director General Science and Research at DIUS) (Chair), • John Neilson, Director Research Base Group, • Baroness Onora O'Neill, President of the British Academy, • Professor Robert Burgess, Vice Chancellor Leicester University.
Chair, Audit Commission	Jeremy Newman	Appointed 1st October 2012	Till closure	<ul style="list-style-type: none"> • Sir Stephen Bubb (Public Appointment Assessor) – Chairman, • Patrick White (Director Local Government Policy and Productivity, DCLG), • Janet Perry (NHS Chief Financial Controller).
Chair of the Water Service Regulatory Authority	Mr Johnson Cox	Assumed full responsibility on 1st November 2012	31st October 2015	<ul style="list-style-type: none"> • Peter Unwin, Director General (DEFRA) (Chair), • Matthew Quinn, Director (Department for Environment, Sustainability and Housing, Welsh Government), • Chris Bolt, former Chair of the Office of Rail Regulation and ex LUPPP Arbitrator, • Cindy Butts, OCA Assessor. <p>Rockpools were employed to assist with the recruitment and headhunting</p>
HM Chief Inspector of Constabulary	Tom Winsor	Appointed 4th July 2012	N/A	<p>Five candidates were shortlisted for interview by a panel of five people, which included:</p> <ul style="list-style-type: none"> • Permanent Secretary of the Home Office, • A non-executive director of the Cabinet Office, • Lord Dear, the former Chief Constable of the West Midlands, a former HM Inspector
Chair of the Engineering and Physical Sciences Research Council	Dr Paul Goldby	Appointed 1st April 2012	April 2017	<ul style="list-style-type: none"> • Professor Sir Adrian Smith, Director General of Knowledge and Innovation at the Department for Business Innovation and Skills (BIS) (Panel Chair), • Jeremy Clayton Director Research Base BIS, • Ray Mingay, OCA Independent Public Appointments Assessor (IPPA), • James Smith, former Chair of Shell UK.
Chair of the Medical Research Council	Mr Donald Brydon CBE	Appointed on 1st October 2012	October 2016	<ul style="list-style-type: none"> • Professor Adrian Smith, Director General Knowledge and Innovation at the Department for Business Innovation and Skills (Chair), • Jeremy Clayton Director Research Base Group, • Ray Mingay, OCA Independent public appointments assessor • John Tooke Vice-Provost (Health) at UCL.
Chair, Natural England Board	Mr Poul Christensen CBE	Appointed 3rd December 2009	End of term 31st December 2013	<p>Interview Selection Panel:</p> <ul style="list-style-type: none"> • Peter Unwin (Director General, Environment and Rural Group, DEFRA), • Dame Fiona Reynolds (Director General, National Trust), • Andrew Wells (Director of Planning, Department for Communities and Local Government), • Judith Alderton (the OCA accredited Independent Public Appointments Assessor).

Appendix 3

Table 9: Policy tsars

Name	Position	Department	Paid/Unpaid
Steve Boorman	Chair, Review of NHS Health and Wellbeing	Department of Health	Unpaid but paid expenses from April – September 2009 (£2,970.77) this was paid to his employers at Royal Mail and not to him.
Alan Milburn MP	Review on Social Mobility	Cabinet Office	Unpaid
Andrew Murrison MP	Review of mental health care provision for former service personnel	Ministry of Defence	Unpaid
Baroness Corston	Review of Vulnerable Women in the Criminal Justice System	Ministry of Justice	Unpaid but paid expenses
David Norgrove	Chair, Family Justice System Review Panel	Ministry of Justice	Unpaid but paid expenses
David Rhodes	Review of the Private Rented Sector	Department for Communities and Local Government	Unpaid
Des Browne	Special Envoy to Sri Lanka	Foreign and Commonwealth Office	Unpaid
Elliot Morley MP	Special Representative for Gleneagles Climate Change Dialogue	Department for Energy and Climate Change	Unpaid
Frank Field	Review of Poverty and Life Chances	Cabinet Office	Unpaid
Gerry Grimstone	Review of the use of civilians in defence	Ministry of Defence	Unpaid (waived his fee)
Jack McConnell MSP	PM's Special Representative for conflict resolution mechanisms	Foreign and Commonwealth Office	Unpaid
Julie Rugg	Review of the private rented sector	Department for Communities and Local Government	Unpaid
Kate Barker	Review of the land use planning system in England	Department for Communities and Local Government	Unpaid
Lord Ashcroft	Review of military bases on Cyprus	Ministry of Defence	Unpaid
Lord Ashdown	Chair, Review of Humanitarian Response	Department for International Development	Unpaid
Lord Boyce	Chair, Review of the armed forces compensation scheme	Ministry of Defence	Unpaid
Lord Browne	Review of higher education funding and student finance	Department for Business Innovation and Skills	Unpaid
Lord Chris Smith	Review of the British Film Industry	Department for Culture Media and Sport	Unpaid (minor travel expenses which were not disclosed in the FOI Response)
Lord Davies	Chair, Review of Women on Boards	Department for Business Innovation and Skills	Unpaid
Lord Heseltine	Review of Liverpool City Region Review of public-private sector collaboration	Department for Business Innovation and Skills	Unpaid

Lord Hodgson	Review of the Charities Act 2006	Cabinet Office	Unpaid
Lord Lester	Adviser on aspects of constitutional reform	Ministry of Justice	Unpaid
Lord Levene	Chair, Review of the structure and management of the MOD	Ministry of Defence	Unpaid
Lord Patten	PM's Special Representative for the Papal visit to Britain	Foreign and Commonwealth Office	Unpaid
Lord Patten	MP's Special Representative for the Papal Visit to Britain	FCO	Unpaid
Lord Wei	Big Society Ambassador	Cabinet Office	Unpaid
Malcolm Wicks MP	PM's Special Representative on international energy	Department for Energy and Climate Change	Unpaid
Mark Lazarowicz MP	MP Special Representative on Carbon Trading	Department for Energy and Climate Change	Unpaid
Mark Walport	Review of Data Sharing	Ministry of Justice	Unpaid
Mary Portas	Review into the future of the high street	Department for Business Innovation and Skills	Unpaid
Michael Clapham	Chair, Review of Coalfields regeneration	Department for Communities and Local Government	Unpaid
Michael Clapham	Chair, Review of Coalfields Regeneration	DCLG	Unpaid
Mike Potter	Review Panel for Government Support for Maritime Training	Department for Transport	Unpaid
Prince Charles	NHS Hospital Design Champion in November 2001.	Department of Health	Unpaid
Professor George Bain	Chair, Review of the fire service	Department for Communities and Local Government	Unpaid
Professor George Bain	Chair, Review of the Fire Service	DCLG	Unpaid
Professor Hew Stachan	Review of Military Covenant	Ministry of Defence	Unpaid
Professor John Hills	Review of Social Housing	Department for Communities and Local Government	Unpaid
Professor John Hills	Review of Social Housing	DCLG	Unpaid
Professor Martin Cave	Review of social housing regulation	Department for Communities and Local Government	Unpaid
Professor Martin Cave	Review of Social Housing Regulation	DCLG	Unpaid
Richard Caborn MP	Ambassador for 2018 World Cup Bid	Department for Culture Media and Sport	Unpaid
Richard Thomas	Review of Data Sharing	Ministry of Justice	Unpaid
Shaun Bailey	Big Society Ambassador	Cabinet Office	Unpaid
Sir Adrian Montague	Chair, Review of the potential for institutional investment in the private rented sector	Department for Communities and Local Government	Unpaid
Sir Adrian Montague	Chair, Review of the Potential for Institutional Investment in the Private Rented Sector	DCLG	Unpaid
Sir John Egan	Chair, Constructive Task Force,	Department for Communities and Local Government	Unpaid
Sir John Egan	Chair, Constructive Task Force	DCLG	Unpaid
Sir Phillip Green	Review of Efficiency of Government Spending	Cabinet Office	Unpaid

Tim Breedon	Non-Bank lending task force	Department for Business Innovation and Skills	Unpaid
Wayne MacGregor	Youth Dance Champion	Department for Culture Media and Sport	Unpaid
Sir Michael Lyons	Head of Inquiry into local government	Department for Communities and Local Government	Total Amount Paid from 12/01/2005 – 02/05/2007 was £385,195.22
Lord Currie	Review of single source pricing regulation	Ministry of Defence	Total amount paid £83,200 ¹
John Bercow MP	Review of services for children and young people with speech, language and communication needs	Department of Health	Unpaid
John Ashton	Special representative for climate change	Foreign and Commonwealth Office	Salary of between £130,000 – 134,999
Mark Sedwill	Special representative on Afghanistan and Pakistan	Foreign and Commonwealth Office	Salary of between £130,000 – 134,999
Rod Aldridge	Chair, Dance Champions Group	Department of Health	Rod Aldridge received no remuneration from the Department for his work as Chair.
Andrew Williamson	Review of the Use of restraint in juvenile secure settings Monitor implementation of changes arising from the review of restraint	Ministry of Justice	Remuneration of a daily rate of £600 plus expenses, working a pattern of 2 days per month.
Peter Smallridge	Review of the Use of restraint in juvenile secure settings Monitor implementation of changes arising from the review of restraint	Ministry of Justice	Remuneration of a daily rate of £600 plus expenses, working a pattern of 2 days per month.
Sir Ian Magee	Review of Legal Aid Delivery and Governance	Ministry of Justice	Remuneration of £104,204.98 This is the total cost from October 2009 – March 2010. Information on day rate not held
Liz Sayce	Review of Disability Employment Support	Department for Work and Pensions	RADAR was reimbursed for the time that Liz was unable to do her Chief Exec duties. The money was paid via the Framework agreement between DWP and Capita Resourcing Ltd. The details of payment are commercial in confidence.
Lord Carter	Review of NHS pathology services 2006-08	Department of Health	Originally Lord Carter took the review on an honorarium rate of 150 per day. When his appointment was extended from September 2006 onwards an agreement was made to compensate Lord Carter a daily rate of £900 for around one day per week.
Professor Ragnar Lofstedt	Review of Health and Safety Legislation	Department for Work and Pensions	Lofstedt was seconded from King's College London, during the period of secondment DWP paid no fees directly to him, reimbursement was made to KCL for the amount equivalent to his salary, this information is withheld.
Paul Johnson	Chair, Review of Automatic Enrolment in Pension Schemes	Department for Work and Pensions	Frontier Economics (who Johnson worked for) were recompensed for Johnsons contribution, however the information about pay is being withheld.
Dame Carol Black	Review of the health of the working population	Department of Health	During the period of Dame Carol's secondment, reimbursement was made directly to her employer for an amount equivalent to her salary. Her post was funded as part of the cross government health, work and wellbeing programme, which was funded jointly by DH, DWP, HSE and the Welsh and Scottish Governments.

Professor John Hills	Review of fuel poverty policy target and definition	Department for Energy and Climate Change	Daily rate of £787.94 (excluding VAT) Total paid: £47,867.36. This amount was based on full economic costs to the LSE of salary, on-costs and overheads.
Tom Winsor	Review of Police Officers and Staff Remuneration and Conditions	Home Office	Agreed payment of £300 per day however Winsor did not request any payment. Expenses: £3, 910.19
Professor Geoffrey Maitland	Chair, Review of oil and gas exploration safety	Department for Energy and Climate Change	£700/day for attendance at panel meetings and at meetings relating to the panel's work. £300/day for time spent preparing for meetings and observing drafts of the reports. Total paid: £9,417.46 (including reasonable expenses)
Sir John Vickers	Independent Commission on Banking	Treasury	£60,000/annum on the basis of 2 days a week work.
Sir Steve Redgrave	2012 Sports Legacy Champion	Department for Culture Media and Sport	£59,062.50 was paid to Sir Steve Redgrave between December 2009 and September 2011 after which the contract was taken over by Sports England. The terms agreed in November 2009 were for 25,000 a year + VAT plus reasonable expenses.
Sir Andrew Burns	UK Envoy for post-Holocaust issues	Foreign and Commonwealth Office	£400 per day and his gross pay for this financial year has been between £10,000 and £14,999
Sir Roy McNulty	Independent Rail Value for Money Study	Department for Transport	£218, 215 (including travel expenses)
Baroness Newlove	Champion for Active Safer Communities 2010-11	Home Office	£20,000 over a 6 month period on a 3 days per week basis. Expenses: £11, 940.43
Jan Berry	Reducing Bureaucracy in Policing Advocate 2008-2010	Home Office	£128,330.12 (including expenses)
David Quarmby	Review of the Resilience of England's Transport Systems in Winter 2009-10 and Audit of the Resilience of England's Transport System Winter 2010.	Department for Transport	£1000 per day exclusive of VAT and expenses, with a maximum 34 ½ days for the review and 10 days for the audit. The total paid for the review was £34,500 and £10,000 for the audit.
Peter Neyroud	Review of police leadership and training	Home Office	'Chief Executive Salary'
Alan Cook	Review of the strategic road network	Department of Transport	Paid his normal remuneration for the role of non-executive chair
David Freud	Review of the Welfare to Work System	Department for Work and Pensions	Unpaid

Appendix 4

Table 10: Analysis of Ministry of Justice appointment competitions, 2011-12

Body	Competition	No. applied (Q2)	No. sought	No. appointable (Q4)	No. appointed	Panel members representing the Department, Other Government Departments where appropriate, and the Arm's Length Body (Q10)	Independent members (Q5, Q10)
Civil Justice Council	1 ILEX member	23	1	3	1	Jo Gordon ¹ , Deborah Prince ²	Geoff Thompson ³
Civil Justice Council	1 Consumer affairs expert	4	1	2	1	Peter Farr ⁴ , Amanda Finlay ⁵	Mike Wicksteed ⁶
Civil Justice Council	1 Lay advice sector practitioner member	3	1	2	1	Peter Farr ⁷ , Amanda Finlay ⁸	Prof. Neil Andrews ⁹
Criminal Cases Review Commission (CC RC)	4 Commissioners	435	4	7	4*	Sophie Langdale ¹⁰ , Richard Foster ¹¹ , Dame Anne Owers ¹²	John Churchill
European Fundamental Rights Agency (FRA)	1 Member & 1 Alternate Member	30	2	1	1**	Anna Deignan ¹³ , Louise de Sousa ¹⁴	Rae Lindsay ¹⁵
Family Justice Board	Chair	20	1	3	1	Tom Jeffrey ¹⁶ , Helen Edwards ¹⁷ , Matt Dunkley ¹⁸	Lord Justice Goldring ¹⁹
Family Procedure Rule Committee	1 Solicitor member & 1 Justice's Clerk member	11	2	4	2	Stuart Moore ²⁰ , Alasdair Wallace, Nicholas Aspley ²¹	John Churchill
Insolvency Rules Committee	1 Barrister member & 1 Solicitor member	7	2	5	3	Nick Howard ²² , William Trower ²³	Harbinder Kaur
Judicial Appointments Commission	3 Commissioners	114	3	8	3	Rachel Lomax ²⁴ , Christopher Stephens ²⁵ , Lord Justice Goldring ²⁶	Jane Wesson ²⁷
Judicial Appointments Commission	3 Commissioners	131	3	3	3	Rachel Lomax ²⁸ , Christopher Stephens ²⁹ , Mr Justice Hickinbottom ³⁰	Jane Wesson ³¹
Judicial Appointments Commission	5 Lay Members	151	5	11	5	Rachel Lomax ³² , Christopher Stephens ³³ , Lady Justice Hallett ³⁴	Jane Wesson ³⁵
Law Commission	Chair	6	1	4	1	Helen Edwards ³⁶ , Lord Neuberger (Master of the Rolls) ³⁷ , Christopher Stephens ³⁸	Dr Bernard Kingston ³⁹
Legal Services Board	1 Lay Member	95	1	1	1	Paul Kett ⁴⁰ , Davis Edmonds ⁴¹	Julie Ferguson ⁴²
Legal Services Board	1 Non-Lay Member	39	1	3	1	Paul Kett ⁴³ , Davis Edmonds ⁴⁴	Julie Ferguson ⁴⁵
Office for Judicial Complaints Review Body	15 Lay members, 5 Reserved members	268	20	20	20	Philip Hales ⁴⁶ , Judy Anckorn ⁴⁷	Gi Cheesman ⁴⁸
Parole Board	20 Forensic Psychologists	36	20	12	12	Elinor Howard ⁴⁹ , Chitra Karve ⁵⁰ , Caroline Friendship ⁵¹	Louise Rose
Parole Board	21 Independent Members	799	20	23	21	Maggie Garrett ⁵² , Chitra Karve ⁵³	Nick Griffin ⁵⁴
Prison Service Pay Review Body (PSPRB)	1 Trade Union Member & 1 Public Sector Member	85	2	3	1***	Pat Lloyd ⁵⁵ , Geoff Dart ⁵⁶ , Peter Knight ⁵⁷ , Anthony Segal ^{58****}	Louise Rose

PSPRB	3 Members	123	3	7	4	Pat Lloyd ⁵⁹ , Geoff Dart ⁶⁰ , Peter Knight ⁶¹ ,	Gi Cheesman ⁶²
–	Victims' Commissioner	93	1	3	1	Paul Kett ⁶³ , Kevin McGinty ⁶⁴	Isobel Hunter ⁶⁵
Youth Justice Board	4 Members	268	4	4		Helen Judge ⁶⁶ , Frances Done ⁶⁷	Joyce Moseley ⁶⁸
Sentencing Council	4 Members	186	4	9	4	Helen Judge ⁶⁹ , Lord Leveson ⁷⁰	Theresa Carter Johnson

Notes to Appendix 4

* As the field was particularly strong, five commissioners were originally appointed; however, one had to withdraw due to time commitments.

** The panel identified only one appointable candidate; no Alternate Member was appointed.

*** Three candidates were deemed appointable as Trade Union Member; none as Public Sector Member. The one appointment was therefore the Trade Union Member

**** Anthony Segal only sat on the panel for the interviews of candidates for Public Sector Member.

***** The panel identified four appointable candidates, and recommended the appointment of three. It was unable to identify a new appointee with the required judicial expertise.

1. Deputy Director, Judicial Office

2. Head of Legal at British Heart Foundation

3. Sport England

4. Private Secretary, Master of the Rolls

5. Vice Chair at Low Commission and Member of Civil Justice Council

6. Civil Service member for 22 years

7. Private Secretary, Master of the Rolls

8. Vice Chair at Low Commission and Member of Civil Justice Council

9. Director of Studies in Law, Professor of Civil Justice and Private Law, Clare College Cambridge

10. Ministry of Justice, Deputy Director Judicial Policy and Criminal Trials

11. Chairman, Criminal Cases Review Commission

12. Chair, Independent Police Complaints Commission

13. Deputy Director, Human Rights and Security, Ministry of Justice

14. Head of Human Rights and Democracy Department, Foreign and Commonwealth Office

15. Partner, Clifford Chance

16. Director General, Children's Services and Departmental Strategy

17. Director General, Localism, DCLG

18. Outgoing Director for Children's Service, East Sussex County Council

19. Assistant Deputy Coroner, South Yorkshire and the West Yorkshire Districts

20. Policy Advisor, Ministry of Justice

21. Head of Family Law, Marchants Solicitors

22. Director of Policy, The Insolvency Service

23. QC, South Square Chambers

24. Justice Appointments Commission Panel Chair

25. Chairman, Judicial Appointments Commission

26. Assistant Deputy Coroner, South Yorkshire and the West Yorkshire Districts

27. Former Independent Assessor for Public Appointments at the office of the Commissioner for Public Appointments

28. Justice Appointments Commission Panel Chair

29. Chairman, Judicial Appointments Commission

30. High Court Judge

31. Former Independent Assessor for Public Appointments at the office of the Commissioner for Public Appointments

32. Justice Appointments Commission Panel Chair

33. Chairman, Judicial Appointments Commission

34. Chairman of the Judicial College

35. Former Independent Assessor for Public Appointments at the office of the Commissioner for Public Appointments

36. Director General, Localism, DCLG

37. President of the Supreme Court

38. Chairman, Judicial Appointments Commission

39. University Consultant

40. Director, Justice Reform

41. Chairman of the Legal Services Board

42. Partner, Christchurch Solicitors

43. Director, Justice Reform

44. Chairman of the Legal Services Board

45. Partner, Christchurch Solicitors

46. Head of Customer Service and Business Development at Office for Judicial Complaints

47. Head of the Office for Judicial Complaints, Ministry of Justice

48. Management Consultant and Interim Manager at Gi Cheesman and Associates Ltd

49. Head of Media Competition Policy at Department for Culture, Media and Sport

50. Director of Performance and Development, The Parole Board

51. Forensic Psychologist at Parole Board for England and Wales

52. Arm's Length Bodies Governance Division, Ministry of Justice

53. Director of Performance and Development, The Parole Board

54. Independent Panel Member, Judicial Appointments Commission

55. Head of the ALB Governance Division, Ministry of Justice.

56. Director, Office of Manpower Economics

57. Chair, Prison Service Pay Review Body

58. HM Treasury

59. Head of the ALB Governance Division, Ministry of Justice

60. Director, Office of Manpower Economics

61. Chair, Prison Service Pay Review Body

62. Management Consultant and Interim Manager at Gi Cheesman and Associates Ltd

63. Director, Justice Reform

64. Director of Criminal Law and Deputy Head of the Attorney General's Office

65. Trustee of the Overseas Development Institute and Trustee of REDR UK

66. Director of Sentencing and Rehabilitation Policy, Ministry of Justice

67. Chair, Youth Justice Board

68. Director of Social Services London Borough of Hackney Member of Youth Justice Board

69. Director of Sentencing and Rehabilitation Policy, Ministry of Justice

70. Chairman, Sentencing Council for England and Wales

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