

## **Public Administration and Constitutional Affairs Committee**

### **Inquiry into Better Public appointments: the review of the public appointments process (the Grimstone Review)**

#### **Written evidence from the Better Government Initiative**

##### **Executive Summary**

1. The public appointments system seeks to reconcile two fundamental principles: that public appointments are the responsibility of ministers who are accountable for them to parliament; and that, given the scale and importance of the roles of many of those appointed, appointments should be made on the basis of merit rather than patronage. Following the work of Lord Nolan's Committee in the 1990s, much strengthened independent processes were introduced which were designed to allow ministers to continue to make public appointments while seeking to reduce the scope for abuse. The Better Government Initiative (BGI) is concerned that key recommendations of the Grimstone Review, while presented as little more than incremental enhancements to the existing system, would in practice lead to a decisive shift away from appointments being made on the grounds of merit rather than as a result of personal and political connections with appointing ministers.

##### **Background**

2. This submission is by the Better Government Initiative ([www.bettergovernmentinitiative.co.uk](http://www.bettergovernmentinitiative.co.uk)) - a group of former very senior public servants with no links to any particular political party all of whom have had considerable personal experience of operating public appointment processes at the most senior level.

##### **Introduction**

3. The Committee has invited respondents to address a series of questions about the Grimstone Review all of which appear to the BGI to be important and relevant. The BGI would like to focus on three of these questions in particular which we consider to be particularly significant:

- does the Grimstone review provide adequate safeguards to prevent Ministerial patronage in public appointments?
- how far should the appointment procedure laid out in Grimstone and Nolan be relaxed, as Grimstone suggests, in exceptional circumstances? and
- how do the Grimstone review's recommendations change the nature and role of the Public Appointments Commissioner?

Does the Grimstone review provide adequate safeguards to prevent Ministerial patronage in public appointments?

4. In the view of the BGI it does not. On the contrary its recommendations would place far more power with ministers to nominate, interview and ultimately select their chosen candidate or candidates. As illustrations of this shift the BGI has particular concerns about the following recommendations:

- a. The proposal that ministers should be 'assisted' in 'their' decision-making (our emphasis) by 'Advisory Assessment Panels'. Currently the Public Appointments Commissioner oversees a series of selection panels whose job is to recommend the most suitable candidate or candidates for appointment to particular roles. The presumption of the present system is that it is for the Panel to make the choice subject to the ability of ministers to intervene, or ultimately reject, the panel's choice in exceptional circumstances. The Grimstone recommendations would reverse this presumption. It would be for ministers to make the choice subject to considering the 'advice' of the Panel. In the BGI's view this would be far from being 'a distinction without a difference'. In practice it would put ministers firmly in the driving seat which the Public Appointments Commissioner currently occupies.
- b. The proposal that, in advance of Advisory Assessment Panel interviews, 'ministers may want to meet potential candidates themselves to provide input to the panel and there should be no objection to this' would further tip the scales in favour of ministers. While under existing rules ministers may meet candidates prior to interview for the purpose of identifying issues they would wish the Panel to probe at interview, the open ended invitation under the Grimstone proposals to provide 'input' to the Panel ("the Secretary of State has met Mr Smith and, in the light of his discussion, considers him overwhelmingly the best candidate for appointment") would put enormous pressure on Panels in practice simply to concur with the minister's preference.
- c. The proposal that the Panel should be chaired by 'either an independent member of high standing, a senior civil servant, or the chair of the body to whom the person is being appointed' raises similar concerns compared to the present position where it is the norm for the Chair to be an independent. As would be expected, the BGI has confidence in the integrity of senior civil servants but it is idle to believe that a senior civil servant from the minister's own department chairing such a Panel would not be likely to give greater weight to his own minister's known preferences than would a wholly independent Chair.

How far should the appointment procedure laid out in Grimstone and Nolan be relaxed, as Grimstone suggests, in exceptional circumstances?

5. The proposition in the Grimstone review that 'there will (our underlining) be exceptional occasions where ministers may decide that a full appointments process is not appropriate or necessary, for example because of extraordinary time constraints or because there is such an exceptional candidate being appointed or re-appointed that any process would be otiose' is, in the BGI's view, so wide and unconstrained as to effectively drive a coach and horses through any semblance of fair and open competition. The proposed safeguards in this respect are threadbare. Saying, for example, that 'all such exceptional appointments should be notified to the Commissioner for Public Appointments who will no doubt intervene if there has been a flagrant breach of process' would be of little practical value once the appointment had been announced.

6. There will always, of course, be occasions - though in the BGI's experience very few genuine ones - where circumstances do require the normal selection process to be set aside in the public interest. Currently, however, even in these circumstances there still needs to be agreement by the Public Appointments Commissioner prior to an appointment being made. To remove this key safeguard would, in practice, make ministers the sole judge of when to invoke the 'exceptional circumstances' procedure with no effective constraint on the exercise of such discretion. The result, in these cases at

least, would be to make any pretence that such appointments had followed any form of due process little more than a sham.

How do the Grimstone review's recommendations change the nature of the role of the Public Appointments Commissioner?

7. The BGI is particularly concerned with this aspect of the review's proposals. It is hard to see the proposals as other than an attempt to neuter the role of the Commissioner to the point where he or she becomes little more than a piece of window dressing with far less influence or control. By contrast with the present position:

a. The Commissioner's role would be 'to provide an independent check and balance in order to help maintain integrity'. Contrast that with the current situation where it is fundamentally for the Commissioner, answering directly to Parliament, to uphold and maintain the integrity of the independent appointments process.

b. The Commissioner should have 'a small, independent staff and work closely with the [proposed] Centre for Public Appointments but be independent of it'. Contrast that with the current situation where the Commissioner is ultimately in direct control of the appointments process.

c. 'To ensure that the independence of the regulatory role is maintained, the Commissioner should not play a direct part in recruitments'. Contrast that with the current situation where the Commissioner may decide to chair particular selection panels personally where he or she considers that they are of particular importance or sensitivity. The BGI considers this last to be a particularly unwelcome change removing a valuable safeguard against the exercise of improper influence or patronage.

8. Overall it is hard to avoid the suspicion that this section of the review's proposals is to some degree at least a reaction to the efforts of the recently retired Commissioner for Public Appointments to seek to maintain the integrity of the current system in the face of considerable pressures over recent years to bend the system to meet ministerial wishes.

### **Conclusion**

9. No system should be unreceptive to change. The Grimstone review has some sensible proposals to make and its recommendations should be considered on their merits. But at stake here is not simply some set of arcane rules as to how public sector posts are filled. An unequivocal requirement for the most senior public appointments in this country - with enormous impact for better or worse on the lives of its citizens – to be made on merit without fear or favour is at the root of good government. The BGI is greatly concerned that the Grimstone review recommendations, if implemented, would undermine that principle.