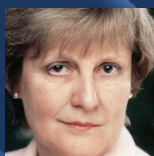


Conferência

Corporate Governance e o Sector Empresarial do Estado “Critérios políticos na nomeação de gestores?”



Instituto Português de Corporate Governance



Orador

Dame Janet Gaymer CBE

Comissária Régia para
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Apresentação

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Fundação Calouste Gulbenkian
7 de Novembro, 17.00h

“Nomear os melhores entre os melhores ...”



João Talone
Presidente do
Instituto Português
de Corporate
Governance

Pode-se impor um comportamento ético por regulamento? Não! Mas as Sociedades serão tanto mais éticas quanto mais transparente e responsabilizante forem os seus princípios e regras organizativas. E os modelos do Governo das Organizações (Corporate Governance), sejam estas públicas ou privadas, têm um papel estruturante nessa eficácia da ética.

No início dos anos 90, no Reino Unido, rebentaram uma série de escândalos que minaram a confiança dos cidadãos nas suas organizações públicas. O impacto estava a gerar graves danos de coesão social e levou o então Primeiro Ministro John Major a criar em Outubro de 1994 um Comité que avaliasse e ponderasse os padrões da “vida pública”: o Nolan Committee.

Essa experiência de auto-regeneração de todo um sistema que pretendia passar das nomeações por compadrio político ou pessoal para a escolha dos “... melhores entre os melhores ...” é-nos descrita no artigo “Comissioner for Public Appointments for England and Wales” que Janet Gaymer (CBE) publica nesta iniciativa do Instituto Português de Corporate Governance.

Janet Gaymer tem uma longa carreira de sucessos pessoais e profissionais sempre na base de um grande rigor, independência e muito trabalho.

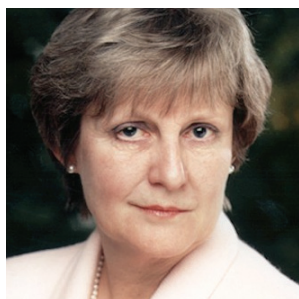
Trabalhou na City de Londres como jurista desde 1971 chegando a Managing Partner da Simmons & Simmons. Em 1998 foi-lhe atribuído o Prémio “Law Partner of the year Award” e em 2004 foi identificada como uma das 50 mais poderosas Mulheres do Reino Unido.

Podemos aprender com esta experiência? Estou seguro que sim!

João Talone

Lisboa, Novembro 2007

Appointing the best of the best in public life The British experience



**Dame Janet
Gaymer CBE**
Commissioner
for Public
Appointments
for England
and Wales

Introduction

1. In September 1986 the Chairman of the British Broadcasting Corporation, the BBC, Stuart Young, died. There was much speculation in the newspapers about the identity of his successor.
2. At this time, one Marmaduke Hussey, known as “Dukie” to his friends, had enjoyed a glorious holiday, salmon fishing in Scotland. Mr Hussey had been Chief Executive of “The Times” and “Sunday Times” newspapers and Vice-Chairman of Times Newspapers Ltd. Shortly after his return from holiday, he received a telephone call at about 930 in the evening. The caller was Douglas Hurd, a Minister in Mrs Thatcher's Government. He said: “Oh Dukie, it's Douglas Hurd here, with a very odd question to ask you. Would you like to be Chairman of the BBC?”. Marmaduke Hussey replied: “Good Lord, no! That's a ridiculous idea. I'm far too old and it's an appalling job anyway.” Douglas Hurd replied: “No, this is a serious proposal which I am making to you formally on behalf of the Cabinet. The only problem is that I must have the answer by lunchtime on Saturday.” Marmaduke Hussey records in his memoirs that he put down the receiver after this telephone call and went to bed in a state of shock, leaving all the lights on. On the next day, Mr Hussey was called out of a board

meeting to speak to his wife, whose brother, William Waldegrave, was also a Junior Minister in the Government. Mr Waldegrave had a message from Douglas Hurd. This was to the effect that Mr Hurd had forgotten to tell Marmaduke Hussey that no-one else had been offered the job of Chairman of the BBC and that, secondly, the whole Cabinet wished him to accept it. On the following Saturday Marmaduke Hussey accepted the job as Chairman of the BBC. When Mr Hussey asked about a briefing, he was told “You'll find out what's necessary when you get there”. The announcement of his appointment was made at midnight on the following Wednesday.

3. In April 1991 another Minister, Mr Kenneth Baker, telephoned Marmaduke Hussey. He said: “Hello Dukie, it's Kenneth here. I've been talking to John (Major) You're doing a good job in difficult circumstances and we'd like you to do another five years. I hope that's fine with you. I must dash. I am seeing the Prince of Wales in three minutes.”
4. Marmaduke Hussey served as Chairman of the BBC for a total ten years.
5. This was how appointments were made to key posts in public life in Great Britain in the 1980s and early 1990s - the so called “tap on the shoulder” approach. However in the mid

1990s the approach to public appointments in the United Kingdom changed radically.

The Nolan Committee

6. The immediate impetus for change came from a number of highly publicised cases and concerns. There were also broader concerns about ethical standards. At the time the Prime Minister was John Major and he found his government beset by an overall allegation of “sleaze”. There had been claims that the highest public standards were not being adhered to on occasion during the 1980s. However in the early 1990s there was a spate of such accusations. There were a series of allegations of sexual misbehaviour made against public figures, followed in most cases by resignation. These allegations were essentially private rather than public in character and the performance of official duties had not been compromised. However, there had been other cases which had raised questions about financial propriety. These had included payment for asking Parliamentary questions and other action on behalf of clients in Parliament; the employment of ex-Ministers and former officials by firms that they had privatised or with whom they had other direct dealings; alleged links between political donations and appointments; fraud and misspending in certain public bodies such as the Welsh Development Agency; and allegations that Ministers had accepted personal favours which created conflicts of interest with their public duties. Allegations had also been made about the real or alleged abuse of governmental power. These had included corruption and wrongdoing in local councils of all political persuasions, the appointment of people to public bodies on purely political grounds and the reluctance of Ministers to resign over their mistakes. Public concern about these matters led John Major to set up a committee in October 1994 whose inquiry was to cover standards in public life.
7. The chairman of this committee was Lord Nolan and the committee has been referred to frequently since as the Nolan Committee. John Major described the committee as “an ethical workshop”. The committee still exists today. The name of the committee today is the Committee on Standards in Public Life.
8. The new committee consisted of ten individuals. Each of the three major political parties nominated a senior representative to the committee, in each case a former Cabinet Minister, while others were distinguished public servants, business people and academics. The committee was originally set up as an informal advisory body.
9. When established, the committee was given the following terms of reference:

“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”
10. The definition of “holders of public office” was very wide indeed. It included:-
 - Ministers, civil servants and advisers;
 - Members of Parliament and UK Members of the European Parliament;
 - members and senior officers of all non-departmental public bodies and of bodies in the National Health Service;
 - non-Ministerial office holders;
 - members and other senior officers of other bodies discharging publicly funded functions; and
 - elected members and senior officers of local authorities.

The reference to “other bodies discharging publicly funded functions” was an important factor which shaped the way in which the Committee approached its work.

11. Lord Nolan was asked to complete the Committee's First Report within six months and decided to concentrate initially on Parliament, central government and major public bodies. During the inquiries made by the Nolan Committee, the Committee encountered a range of concerns about so called “quangos” - quasi autonomous non-governmental organisations. The concerns included:-

- whether appointments were being unduly influenced by party political considerations;
- whether there was sufficient openness both in the appointments process and in the proceedings of the bodies concerned; and
- whether enough was being done to maintain standards of propriety.

The committee concentrated on executive quangos and bodies in the National Health Service whose Boards were appointed by Ministers. These had some 9,000 Board members and spent some £40 billion a year. The committee made some important recommendations which set the handling of public appointments in the United Kingdom on a new path.

12. The First Report of the Nolan Committee was duly published in May 1995.

Conclusions of the Nolan Committee

13. The Nolan Committee concluded that the great majority of people in public life were meeting the high standards expected of them by the public. However there were weaknesses in the procedures for maintaining and enforcing these standards. As a result, people in public life were not always as clear as they should be about where

the boundaries of acceptable conduct lay. This, the Committee considered, was the principle reason for public disquiet. It called for urgent remedial action.

14. Lord Nolan began the First Report of his committee by setting out what he called the Seven Principles of Public Life - now known as the Nolan Principles. These were intended to be simple principles, easily understood by everyone and applicable to any organisation providing public services. Lord Nolan was of the view that these principles needed to be restated. The Seven Principles of Public Life are as follows:-

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty; and
- Leadership.

15. The Seven Principles of Public Life enunciated by the Nolan Committee were intended to apply to any organisation providing public services. Lord Nolan himself noted that the Principles struck a chord with many organisations in Britain which had been grappling with public doubts about ethical standards and had been looking for a clear base on which to build. The Principles set out universal values of public service which may apply in many countries and cultures. This principles-based approach has allowed adaptation of the means by which they are to be achieved in response to changing circumstances.

16. The Principles were to be given effect by the use of administrative procedures, rather than the law. So, the Committee considered that all public bodies should draw up codes of conduct incorporating these Principles. Internal systems to maintain standards should be supported by independent scrutiny. It recognised that more needed to be done in order to promote and reinforce

standards of conduct in public bodies, in particular through guidance and training, including induction training.

The Nolan Committee's Approach to Public Appointments

17. The Nolan Committee acknowledged that there was much public concern about appointments to quango boards and a widespread belief that these were not always being made on merit.
18. The Committee accepted that the final selection of candidates by Ministers should remain with Ministers. As well as legal safeguards, the most fundamental safeguard was to be the establishment of clear published principles governing selection for appointment so that all public appointments should be governed by the overriding principle of appointment on merit. Selection on merit should take into account the need to appoint boards which include a balance of skills and backgrounds. The basis on which members were to be appointed and how they were expected to fulfil their role should be explicit. The range of skills and background sought were to be clearly specified. Political affiliation should not be a criterion for appointment save in limited circumstances. However, candidates should be required to declare any significant political activity (including office holding, public speaking and candidature for election) undertaken in the last five years. All appointments should be made after advice from a panel or committee which included an independent element. On each such a panel or committee there should be at least one independent member and independent members should account for at least a third of the membership.
19. Finally, the Committee recommended that there should be a public appointments commissioner to monitor, regulate and approve departmental appointments procedures. The new commissioner was to publish an annual report on the operation of the public appointments system. The commissioner should also 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.
20. On 23 November 1995 Sir Len Peach was appointed Commissioner for England, Scotland and for Wales and, by a separate Order, Commissioner for Public Appointments for Northern Ireland. The original remit of the Commissioner was 274 executive non-departmental public bodies and 760 National Health Service bodies which between them accounted for some 8,400 public appointments.
21. The general perception was that the public were in need of public reassurance at a time when there was a disillusion with politics and a need for transparency. Some thought that for Ministers it took public appointments off the political agenda. It appeared that the only way in which the Government was going to correct the perception of a “tap on the shoulder” in relation to appointments was to appoint an independent regulator. The appointment of a commissioner as a regulator was therefore a political response to a perception which was damaging to public life in general and the government of the day.
22. I am the third Commissioner for Public Appointments. So, have Lord Nolan's recommendations been workable in practice?
23. In order to answer this question I need to describe briefly the characteristics of my office and its work.

24. First, my office. I am appointed by The Queen and am independent of government. As well as being the Commissioner for Public Appointments, I am also ex officio a Civil Service Commissioner. (A First Civil Service Commissioner and fellow Civil Service Commissioners regulate the appointment of civil servants). Although I am independent of government, I do appear from time to time before Select Committees in our Parliament which are comprised of elected members of Parliament from all parties in order to deal with queries and explain my work. My staff comprise eight civil servants, not all of whom are full-time. My staff and funding are supplied by the Cabinet Office. (The Cabinet Office sits at the very centre of government and, together with the Treasury, provides the “head office” of government.)

25. Secondly, my work. I regulate in the region of 10,000 appointments made by Ministers to just over 1,000 public bodies in England and Wales. There are some 20,000 public appointments which I do not regulate. There are now separate Commissioners in Northern Ireland and Scotland. I do not make appointments or become involved in appointments processes. I do, however, investigate complaints about public appointments processes which I regulate. If I uphold a complaint, I have no power to order the payment of compensation or to stop or rescind an appointment process. However, I may conduct an inquiry into the policies and practices followed in relation to any appointment and make public my findings. I audit public appointments processes on a regular basis, using external auditors. I also publish an Annual Report, which includes an account of these audit procedures.

26. In order to carry out my regulatory role, there are three tools which, in my view, have proved to be invaluable. These are the setting out of seven principles which provide

the foundation of the public appointments process, the operation of a mandatory Code of Practice and ensuring independent scrutiny of the public appointments process.

The Seven Code Principles

27. The Seven Principles were included in the first Code of Practice which was incorporated into Guidance published on 23 April 1996. The Code Principles were, and remain:-

- Ministerial responsibility;
- Merit;
- Independent scrutiny;
- Equal opportunity;
- Probity;
- Openness and transparency; and
- Proportionality.

28. The first Commissioner, Sir Len Peach commented that of these Principles the first, second, fourth and fifth Principles were strengthened reassertions of what was in place prior to the Nolan Committee's Report. The remaining three represented a new and important emphasis designed to increase public confidence in the public appointments system. All of the Principles were, however, based directly on the Nolan Committee's recommendations.

The Code of Practice

29. The stated aim of the Nolan Committee was “to rebuild public confidence and to restore clarity and direction wherever moral uncertainty had crept in.” The main issue during the years since the committee

reported has been how to reinforce ethical behaviour in relation to public appointments in a practical way, giving effect to the original Nolan Principles. The approach has not been to encourage such behaviour through a legal framework but through my Code of Practice. There is much to recommend this approach.

- 30.** The Code of Practice is mandatory on those who are in charge of public appointments processes which I regulate. There is a 4 stage process consisting of planning, preparation, selection and decision. Interview panels normally consist of a Chair from the Government Department concerned, a representative from the public body and an independent assessor. Ministers make a final selection from (usually) two appointable candidates. Ultimate responsibility for appointments rests with Ministers. This process has now been generally accepted, although initially some were irked by it. As Sir Len Peach, the first Commissioner remarked, in his Annual Report:

“One of the arguments which is currently used by those who criticise the Code and Guidance is the “bureaucracy” associated with it. My experience is that this description is frequently used as an alternative to “inconvenient”. For example, there is a need for certain basics such as the presentation of information about candidates and a common format and the need for interviews, so as to enable the choice of appointees to be made on a consistent basis. But the details of the chosen approach must be left to Ministers and Departments. The insistence on the rigid application of detailed rules would indeed constitute bureaucracy and every effort is made to avoid this in the Guidance in the interest of all parties.”

- 31.** This approach continues today. Where practicable, procedures have allowed Departments flexibility to develop their own approach as they see fit.

- 32.** One interesting development in relation to the Code of Practice has been the desire exhibited by public bodies which I do not regulate to follow the Code of Practice in any event. There is a thirst on the part of bodies who have stewardship of public funds to ensure that the very best people are appointed to leadership positions and to ensure that they are appointed in an open and transparent way. This leads to a natural desire for knowledge, education and training, which I seek to give, so far as I am able. However, more can always be done.

Independent Scrutiny

- 33.** As well as reinforcing ethical behaviour through the application of principles and the following of a Code of Practice, supported by adequate training and education, a key requirement has been independent scrutiny. The Nolan Committee considered independent scrutiny within the public appointments process to be an important additional safeguard in maintaining public confidence. It said in particular that “including an independent element would mean that Ministers' assumptions would not go unquestioned, increase the breadth and the depth of advice given to Ministers, and enhance public confidence.” It has been my and my predecessors' responsibility to translate this principle into practice. Independent scrutiny is provided in a number of ways. First, there is a body of independent assessors, who are individuals with expertise in recruitment and selection procedures or practice, who participate in the selection process in relation to each public appointment regulated by me. They sit on the final selection panel and generally seek to ensure that the Code of Practice is followed. Some independent assessors are retained by government departments and some retained by my office. I am currently in the process of developing an

accreditation scheme for these assessors. The second manner in which public appointments are scrutinised is by means of audit. The audit consists of an examination of the appointments processes of government departments on a rotational basis from year to year. I publish the results of this audit in my Annual Report, drawing attention to both good and bad practice. Finally, I myself am subject to scrutiny when I appear from time to time before a Parliamentary Select Committee in order to explain the work of my office. The importance of independent scrutiny was recognised by Parliament's Public Administration Select Committee when it carried out an examination of the new appointments procedures for public bodies between 2002 and 2003. The Committee concluded that “the creation of the post of Commissioner for Public Appointments, combined with independent assessment in every department, has brought integrity to these processes. Overall, there has been considerable improvement in the public appointments system in recent years.” However, more remains to be done. Apart from the introduction of an accreditation scheme for assessors, I hope that all independent assessors will eventually come within the control of my office so that their absolute independence may be guaranteed.

34. So, has the system of regulation of public appointments processes, which the Nolan Committee recommended, worked in practice? The first Commissioner for Public Appointments, Sir Len Peach, stressed on many occasions that the development of the public appointments process was “experimental” in nature. He cautioned that, although the Code of Practice addressed problems which had been well ventilated by the Nolan Committee, its solutions produced “new pressures and new problems”. I have to say, as the third Commissioner, that this is still the position today. Some issues continue to recur in the

annual audit or feature in complaints which I receive and investigate. Many of the issues which I am about to describe are issues which any country seeking to regulate its public appointments processes will need to address.

Merit versus Diversity

35. First, how can one reconcile the need to make an appointment on merit while offering equality of opportunity (which is one of the Seven Code Principles but was not expressly referred to in the Nolan Principles)?
36. The Nolan Committee noted that the principle of appointment on merit “is deeply engrained in British public life but there remains some doubt about how it should be applied.” It was argued that the boards of public bodies had become unbalanced with appointments being made from a narrow circle of business and professional people. This was described by one trade unionist as “the cult of the businessman”. There was low representation of users and consumers. A new class of “quangocrats” had emerged. The Nolan Committee thought that selection on merit should take account of the need to appoint boards “which include a balance of skills and backgrounds” “the range of skills and backgrounds which are sought should be clearly specified, normally as part of the job specification prepared for particular posts, and should be sufficiently wide to promote a healthy debate within the board.” Today, academics and business commentators debate what makes an effective board. Those who argue for diversity on boards point to better corporate governance where there is fostering of open dissent, better decision making and creativity. Diversity makes effective use of human capital, not wasting talented resources and better connects boards with their market places, users or consumers

leading to greater responsiveness. Those arguing against diversity say that diversity does not guarantee in itself improved board performance and board members may be recruited as representatives of a group rather than because of ability as a board member. Some argue that too much diversity may upset the dynamics of a board, as, for example, when younger board members join a board which has been composed of members in their fifties and sixties. In relation to public appointments, the approach has been to seek to appoint candidates on the basis of their abilities to contribute to the effectiveness of the board. Attention has been focussed on widening the pool of candidates who apply for public appointments through positive action as opposed to positive discrimination which is illegal in Great Britain. Attempts to widen the pool of candidates has had some effect.

37. In 2006 to 2007 Ministers made over 3,800 appointments and reappointments to the boards of public bodies. The key statistics in relation to these show:

- 36.2 per cent of those appointed and reappointed in 2006-07 were women.
- 9.2 per cent of those appointed and reappointed in 2006-07 were from an ethnic minority background. This represents an increase from 8.6 per cent in 2005-06. The proportion of Chairs from an ethnic minority background also increased from 6.1 per cent in 2005-06 to 7.7 per cent.
- 6.1 per cent of those appointed and reappointed in 2006-07 declared a disability. This represented an increase for the fourth successive year from 4.4 per cent in 2005-06. This also represents the highest proportion since statistics on the number of appointees and reappointees declaring a disability were first collected in 1999. The proportion of Chair appointees and reappointees declaring a disability rose from 3.2 per cent in 2005-06 to

3.5 per cent in the last reporting year.

38. However, the percentage of women holding public appointments has fallen rather than risen (the percentage of appointments and reappointments of women fell slightly from 36.6 per cent in 2005-06). Also, the large majority of members of public body boards continue to be aged 46 or more, male and white. They accounted for 85.3 per cent of the total. There was also an increase in the proportion of appointees and reappointees aged 66 or above (from 11.5 per cent in 2005-06 to 13 per cent in 2006-07).

The Role of Ministers

39. The second area which continues to cause debate is that of the role of Ministers and politics generally in relation to public appointments. At the time of the Nolan Committee, the concerns were that there was endemic political bias in the system of appointment by Ministers and an unhealthy concentration of the power of patronage in very few hands. Were appointments being influenced by party political considerations and was there sufficient openness in both the appointments and proceedings? The Committee rejected the notion that appointments should not be made by Ministers but by some other independent body. The reason for this was the need to retain public accountability. Accountability to Parliament is an important constitutional principle which was not to be weakened. However, Ministers should not act with unfettered discretion. Accordingly, Ministers retained the right to make appointments from one or more appointable candidates proposed by the selection panel. The extent to which Ministers are involved in the selection process itself has, however, been the subject of continuing debate. I am currently conducting a consultation with Ministers and other interested parties into this very

issue. Currently, my Code says that Ministers should only be involved at the beginning and end of the selection process. However, in some cases Ministers have been shown shortlists of candidates and been asked views on these shortlists. This has led to adverse comment and criticism on the basis that Ministers have been perceived to have been interfering in public appointments processes. The tension here is between the Minister's concern that he or she is accountable for the performance of the candidate appointed and public concern that any appointments process should be open and transparent at all times.

40. The concern about political bias has been dealt with by seeking information about the political activity of candidates. All candidates are asked to declare any significant political activity which might be considered to be a matter for public record. The term “political activity” covers activity already in the public domain on behalf of a political party or candidate during the previous five years. Examples include standing for public office, acting as a political agent or canvassing on behalf of a political party. It also includes making a recordable donation to a political party totalling more than £5,000 in any calendar year or more than £1,000 if made to a subsidiary accounting unit (such as a constituency association). This information is not made public unless the candidate is appointed and is not made available to the selection panel. This enables me to monitor the success rate of candidates of different political persuasions. The year 2006-07 saw the first proportional increase since 2001 in appointees and reappointees declaring political activity. The number was 612 out of 3,862 (15.8 per cent) compared with 386 out of 2,907 (13.3 per cent) in 2005-06. Of the 612 who declared political activity, the majority (394) were active on behalf of the Labour Party, marking a 62.8 per cent increase on the previous year (where the

largest increase on the previous year was 70 per cent in the case of the Liberal Democrats). These figures caused much comment in the British Press. The headlines included: “Labour cronies given key public positions” and “Labour activists get four times more quango jobs than Tories”. However, the fact remains that politically active individuals are not prohibited from applying for positions on public bodies and, indeed, in the case of a small number of public bodies there is a requirement for representation of public bodies, such as, on the Committee on Standards in Public Life itself. One might also argue that those who are politically active are more likely to be interested in serving on a public body. Also, at times of heightened political engagement, interest in public bodies may increase. These type of arguments, however, have not been able to eradicate a continuing public perception that in some areas the “tap on the shoulder” approach still exists.

The Role of Proportionality, Openness and Transparency

41. The area which has proved to be particularly challenging has been that of ensuring that the public appointments process put in place is not too cumbersome, over-bureaucratic or costly while achieving the overall purpose of ensuring appointment on merit after an open and transparent process. Two of the Seven Code Principles are proportionality and openness and transparency.
42. There are a number of aspects to the concept of proportionality. They include the amount of public expenditure, the importance of the public functions in question, the degree of power or influence exercised by the public body and the impact of any appointments procedures on potential appointees. These considerations have nothing to do with the remuneration payable for the appointment or the hours to

be spent on it. Indeed, the majority of public appointments in Great Britain are unpaid and part-time. Over the years, the issue of proportionality has had to be addressed in many different ways. For example, the broad range of bodies which I regulate causes difficulties. These include executive or advisory bodies, public corporations, utility regulators and bodies in our national health service. Currently all public bodies which I regulate are divided into one of two tiers. The upper tier has a more rigorous process. One aspect of this is how vacancies are publicised. Departments are required to publicise all posts to upper tier bodies on the Government website which details public appointments opportunities and to use some other form of publicity. Unpaid posts in lower tier bodies must be publicised on the website but departments have discretion to use any additional publicity in the most effective and proportionate way.

43. The need to ensure proportionality and the manner in which this will be done will continue to be a pre-occupation of the public appointments process in the future. The challenge is to strike a balance between ensuring that the appointments process is open and transparent, thereby creating and maintaining public confidence, while adopting measures which are cost-effective and not unnecessarily cumbersome or bureaucratic.

The Broader Lessons

44. I should like to finish by reflecting on some of the broader lessons which may be drawn from our experience of regulating public appointments processes in Great Britain - in particular how they assist ethical leadership and good corporate governance.

45. First, ethical leadership and the reinforcement of ethical behaviour. Ethical

regulation is now a permanent feature of Great Britain's constitutional landscape. Ethical behaviour is also an increasing pre-occupation for both government and business. I have described how principles and having a code of practice have assisted me in my role as Commissioner for Public Appointments. However, I believe that it is important to embed ethics in organisations so that the attitude of an organisation to ethical behaviour is visible not only to the man or woman in the street but also to those with whom the organisation may interface and indeed its own staff. The awareness and demonstration of ethical behaviour needs to be embedded not only in the overall structure of an organisation but also to be led from the top. From my own point of view, the working of any regulatory system requires adherence not only to a set of rules (which some people will seek to circumvent) but also to high ethical standards of behaviour. In this respect, the board of an organisation has an important role in setting the values of the organisation as a critical first step in good corporate governance. An organisation's ethical stance may be reflected in its relationship with the wider community, for example, through its corporate responsibility agenda and also how it does its business. Corporate organisations have an important role to play in relation to this area. One commentator has remarked that the powerful multi-national organisations “now have an output larger than the GNP of 90 per cent of the countries around the globe. They have supplanted governments as the system of social responsibility in our world”.

46. Secondly, good and effective appointments processes are an essential part of corporate governance. As Derek Higgs, who recently carried out a review of non-executive directorships in the UK, has said: “If the best and most appropriate people can be harnessed in a constructive atmosphere, the results will be just as satisfactory whether in

the public sector or private.” Ensuring that the appointments process leads to the appointment of the best person for the job is an essential part of good corporate governance. This includes being open and transparent, making an appointment on merit while ensuring that the widest possible pool of candidates is accessed.

47. Finally, there is the question of how independence and accountability are to be safeguarded. As Commissioner for Public Appointments my independence has been a crucial factor in assisting me in my regulatory role. Independence is similarly relevant in the corporate context - for example, the existence and independence of a nominations committee which publishes its terms of reference and operates independently is one aspect of making good corporate appointments.

48. One of the vexed questions in the public sector is whether it is possible to reduce a regulatory body's dependence upon the executive (for example, for funds and resourcing as in my case) and yet retain accountability. When one compares the public and private sector, these issues become more complex. For example, the objectives of the public sector may be more complex than the simple private sector aim of maximisation of profits. As I have already indicated, there is greater variety in the nature of public sector organisations as opposed to companies and their unitary boards. What is appropriate in the private sector may not be appropriate for the public sector and vice versa. Finally, the mechanisms of accountability differ between the two sectors. Compare the relationship between boards and shareholders, managers and their owners with those in the public sector. The relationship between central government and departments of government may be clear but other areas may be less so.

49. The debate on these issues will, I am sure, continue as will the evolution of the public appointments process in Great Britain.

50. The public appointments process in Great Britain has undoubtedly extended in administrative terms beyond the boundaries which were originally mapped out by the Nolan Committee. However, it continues in the spirit of the recommendations made in 1995. The appointments process itself has evolved in line with wider changes in society. The latter is exemplified by the growing pre-occupation with the need to encourage diversity. The Public Administration Select Committee put it like this in July 2003:

“The appointed state is now central to the way we are governed and likely to remain so. It is essential, therefore, that those appointed are of the highest merit, represent our society in all its diversity, and are untainted by cronyism and patronage.”

51. The world of public appointments in Great Britain today is very different from the time when Marmaduke Hussey received that telephone call. The BBC Trust has recently appointed its new Chairman. There was no telephone call from a Minister but an appointments process which the Department sought to conduct in accordance with a principles-based system, seeking to ensure the appointment of the best of the best in our public life.