

OVERVIEW OF MERIT AND EQUALITY

I'm very pleased to be here today and to be invited to give a personal perspective. I plan to talk generally and broadly about trends in regulation, approaches to the interpretation of merit and some of the creative and imaginative ways 'inclusiveness' is being addressed in appointment processes.

I am of course Northern Ireland Commissioner for Public Appointments, as well as being Commissioner for Public Appointments in Wales, Scotland and England, where I am additionally one of the Civil Service Commissioners. However I hold or have held a wider range of roles and positions, for example, Vice Chair of a Mutual Building Society, Pro-Chancellor of Southampton University, Honorary Visiting Professor at York University with a Chair in Creative Leadership and Consultant on Governance, Leadership and Organisation Development out of Mainstream Development.

I list these not to demonstrate that I am in demand but rather to say that it is from this wider background that I share my reflections today.

Regulation

The word 'regulate' means to control or adjust so that whatever it is that is regulated functions correctly. In the Thesaurus words like law, order, edict, rule, dictate, command and

direct are listed as are the somewhat less prescriptive words like monitor, supervise, oversee, modulate and tune.

Historically, regulation usually comes about after a happening or series of incidents which lead to public disquiet about how matters are being conducted and a requirement for more structure, openness and transparency. Initially regulation is addressed in one of two ways.

First Self Regulation, where organisations or sectors respond to the concerns by putting together their own principles, standards and processes, invite some independent involvement but usually oversee themselves.

The General Medical Council, The Law Society, The Press Complaints Commission are examples of this.

The second way is for an Independent Regulatory Body to be set up to be able to impose frameworks, rules and processes. My own office as Commissioner for Public Appointments is one of these, suggested by Lord Nolan and his Committee on Standards in Public Life following allegations of sleaze and 'cash for questions'. And of course the Civil Service Commissioners themselves are an independent group in the same way.

I've been looking at the whole business of regulation with some interest and I detect a trend in the way that we are moving. Initially external regulators take a detailed look at the area they are there to regulate and then produce a list of rules and regulations based on a number of principles. These rules are often comprehensive and are intended to cover every eventuality so that those being regulated can check at every stage in the process to ensure

they are compliant. While this can initially be very successful as an approach there is a danger that the principles on which they are founded fade into the background and the outcome or intention of the process – for example to appoint people who are fit for purpose, can be forgotten. Indeed as someone once remarked to me “in the Civil Service it doesn’t really matter if I get to the wrong place even if it costs a lot of money, so long as I can prove I followed all the rules to get there”. A danger is that over time we add on more and more rules so that those who have to follow the process are weighed down by an ever-expanding rule book where their key skill is to memorise and apply rather than consider and interpret.

This approach reminds me of a passage in the Dickens novel, *Hard Times* where Thomas Gradgrind interrogates a child called girl number 20 about a horse. He asks her to describe a horse. She stammers and stutters in trying to give a picture of the animal. He then turns to a boy called Bitzer and says:

‘Bitzer,’ said Thomas Gradgrind. ‘Your definition of a horse.’

‘Quadruped. Graminivorous. Forty teeth, namely twenty-four grinders, four eye-teeth, and twelve incisive. Sheds coat in the spring; in marshy countries, sheds hoofs, too. Hoofs hard, but requiring to be shod with iron. Age known by marks in mouth.’ Thus (and much more) Bitzer.

‘Now girl number twenty,’ said Mr Gradgrind. ‘You know what a horse is.’

They then call for the children to draw a horse from this description but having only hard facts they could not understand what a horse was and so they could not do so.

The trend I observe is that as both regulators and those being regulated mature we go back to first principles and become less prescriptive in our guidance and more flexible and proportionate. I did it myself in 2002 when I stripped my code of practice down to a flexible framework which is principle based. In order to help support those working with my code to develop good practice an additional guide was developed by the CAU here in Northern Ireland and the Cabinet Office for elsewhere. This good practice guide offers a menu of possibilities for every stage of the process. All of which are compliant but offer choice and flexibility and demand thoughtful involvement of the users.

This trend was further highlighted in October 2003 when the Better Regulation Task Force produced its report on Independent Regulators where they identified the Principles of Good Regulation as being:

PROPORTIONALITY – Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.

ACCOUNTABILITY – Regulators must be able to justify decisions, and be subject to public scrutiny.

CONSISTENCY – Government rules and standards must be joined up and implemented fairly.

TRANSPARENCY – Regulators should be open and keep regulations simple and user friendly.

TARGETING – Regulation should be focused on the problem, and minimise side effects.

It seems to me that the intention of this new Recruitment Code is to live up to these Principles. It is for those of you being consulted to give your views and ideas about how this will work in practice. I recognise that you are all part of this developing agenda and I will wait with interest to see how matters proceed from here.

In my Civil Service Commissioner capacity I might just say that we, too, have been going through the process of revising our Recruitment Code. In doing so our aim has been to produce a Code which is more accessible and user-friendly than the previous version and focussed on principles. Yet we also want it to be a place where guidance can be found on how the principles can best be applied. As regulators we are concerned as much as with the quality of the outcome as with the integrity of the process. So our new Recruitment Code, which we published on 25 March, has been designed to help departments and agencies fully understand the legal framework which governs recruitment into the Civil Service. More than that, it seeks to encourage a more flexible, imaginative and innovative approach to recruitment procedures.

So it is interesting that, in hearing this morning of your plans for your Code, it is clear that there is much in common in our approaches despite the different environments in which we work ‘Firm on principle, flexible on process’ is a mantra we might all share.

Moving on to merit and inclusivity, I want to start with a story of the 1980s. This was a time of unemployment when graduates often left university with little prospect of work. The company at the centre of my story was a large, national dairy company which employed

hundreds, maybe even thousands of milkmen. Having employed people locally and unscientifically to do the job for years they discovered that:

- Graduates applied.
- The company decided education equalled merit.
- They began to compete between dairies to have people with higher degrees to do the job - 'I'll see you a doctor and raise you a professor'.
- They discovered that the turnover was high and expensive and customers were unhappy.
- The combination of self motivating skills, to get up early, properly pack and load their wagons and the doorstep skills in keeping the customer happy whilst collecting the money as well as cashing up accurately, were not necessarily to be found in this new group of highly educated people. So, after some time they went back to the drawing board on merit.

I do not propose to repeat or review the merit principle as it is described in the consultative recruitment code document. Rather I would share with you some of my own deliberations as Public Appointments Commissioner ensuring merit and balance in public appointments.

WHAT ‘MERIT’ MEANS IN THE CONTEXT OF PUBLIC APPOINTMENTS

It is intriguing to find that ‘merit system’ first came into use in 1879 as a ‘system by which appointments and promotions in the civil service are based on competence rather than political favouritism’ (Webster’s Dictionary). There is a strong tradition on which to build.

THE RESEARCH QUESTION

I convened a meeting in October 1999 to consider the issue of merit versus balance in the making of public appointments. The meeting discussed how merit should be defined since, in some cases there appeared to be a conflict between a focus on merit and the need for balance. The general view was that the term ‘merit’ should be interpreted more widely. This research was intended to respond to this request, specifically to:

“provide a broader understanding of what merit means and how that understanding is translated in a practical way”, notwithstanding that, “our principle, which underlines the importance of all public appointments being governed by the overriding principle of selection based on merit, must continue to be maintained”.

This report written by Valerie Hammond of Roffey Park did not set out to make a complete review of the public appointment process but rather to stay within the confines of the research question about merit and balance.

The report states that modern usage of ‘merit’ defines the term variously as ‘excellence’, ‘worth’, ‘quality’, ‘value’ with related meanings being ability, aptitude, capability,

competence, expertise and so on. In the workplace, merit is usually defined as competence – a term that bundles together skills and experience, knowledge and the ability to apply it. In a useful short article on what distinguishes high calibre volunteers Bova

[How to select high-calibre volunteers: qualities to look for in new recruits, Bova, SP, Association Management, January 1999, Volume 5 Issue 1]

sets out the qualities to look for: commitment (including having sufficient time to deliver), proven performance (integrity and action), communication skills (demonstrating good listening skills, an openness to free expression of ideas as well as also being good communicators), big-picture orientation (can think in terms of the organisation's goals and objectives) and team-focussed (can leave personal agendas behind, express ideas without dominating others, offer constructive criticism while honouring earlier decisions and actions, understand the politics of the group, take criticism).

Business makes a huge investment in defining organisational and role competencies. An approach to defining the competencies specifically for a particular organisation is highly valued. This suggests that organisations have their own definitions for key competencies; they are not simply a word or phrase. Often they offer short pen-portraits describing exactly what is meant by the competency. The descriptor uses the language and experience of the environment in which it sits. It has shared meaning for those involved in selecting and working with recruits. The competencies are then expressed in the language of the unique situation. In its purest, and best, form this is a fairly lengthy process but one that also offers the benefit of 'buy-in' to the results.

A big advantage of using a merit-based, competency approach is what flows from it. Selection processes designed to check for or test the specific competency requirements increase objectivity. Also provided the competency statements are accurately expressed, it opens the way for candidates who might otherwise be overlooked or indeed might exclude themselves.

Another benefit is that it leads to fuller and more accurate role and person descriptions. This can help in discouraging frivolous applications.

The private (and often public) sector investment in developing frameworks suggests that it is accepted that merit, or competence, is a situation-specific concept. Some competencies will be common to all public appointments. For example, the 'Seven Principles of Public Life', as well as being an explicit code of conduct, can be developed into testable behaviour. This can provide a foundation onto which other, context-specific, competencies could be added.

WHAT 'BALANCE' MEANS IN THE CONTEXT OF PUBLIC APPOINTMENTS

In everyday usage for selection purposes, balance is taken to mean recruiting from across the whole of a given population, ensuring the widest representatives. Usually the focus is on trying to include more women, people from ethnic minorities, and those with different physical abilities. More recently, age and gender orientation have been included under the label diversity.

The operative word is 'included'. One might substitute 'encouraged to apply' recognising that the way posts have been filled in the past has excluded or at the very least not sought out

people from non-traditional backgrounds. However, it is increasingly accepted that all sectors of society have important contributions to make and often bring fresh perspectives to intractable problems that can lead to effective solutions.

Merit and balance are inextricably linked. Bova, whose comments about merit were quoted earlier went on to say with regard to diversity that this exists ‘not only in age, gender and ethnicity, but also in *perspective*. He sees this adding to the ‘potential for more through decision making’.

In terms of public appointments, it is the concepts like a: ‘balanced board’ and ‘fit-for-purpose’ that are all helpful.

The first Nolan report stated:

“we recommend that a new independent Commissioner for Public Appointments should be appointed, who may be one of the Civil Service Commissioners”.

[First Report by the Committee for Standards in Public Life. Page 75]

The Government of the day accepted this recommendation, agreeing that there would be common elements in the work and that such an arrangement ‘may be desirable’. However, it noted that there were significant differences between the two functions:

“The First Civil Service Commissioner is concerned with the recruitment of employees within the Home Civil Service and Diplomatic Service. He oversees recruitment in accordance with the principle of ‘fair and open competition and selection on merit’ and is responsible for approving

appointments to senior posts. The Commissioner for Public Appointments will be advising, regulating and monitoring the appointment of individuals as members of boards of NHS and non-departmental public bodies in accordance with the ‘overriding principle of appointment on merit’, with Ministers having ultimate responsibility for approving appointments”

There was however a second Nolan recommendation that influenced future developments. The recommendation was that:

“selection on merit should take account of the need to appoint boards which include a balance of skills and backgrounds”

This reflected one of the underlying concerns behind the Nolan enquiry: that appointments to boards of public bodies were being made from a narrow circle of business and professional people and were often acquired through ‘patronage’. From the evidence it had received the Nolan Committee found it difficult to draw any firm conclusions in this respect, but this particular recommendation was a safeguard against both the reality and the perception. There was, however, another consideration. The Committee commented that *“We do however believe that the boards of public bodies should contain a balance of relevant skills and backgroundIf the members [of boards] are too similar in background and outlook there is unlikely to be the sort of healthy debate that is conducive to good governance.”*

This conviction has grown over the past decade in unison with the wider social movements towards equal opportunities and diversity.

As a result of my consideration of Nolan, the Roffey Park Report and the issues raised by departments and Chairs of competitions, I concluded that merit was often too narrowly defined and that there needed to be more creative thinking about what would add up to being meritorious in an appointment.

I do not mean dumbing down or lowering the line but asking some simple questions about:

What is the purpose of the body?

What is the role of the board? That is what mix of Governance-Conformance and Strategic Direction setting – performance is required?

What then are the requirements?

These might include:

- a. a list of the required tasks, knowledge, skills, behaviours
- b. a demonstrable understanding of the specific context
- c. evidence of ability to understand and work with different stakeholders
- d. ability for fast and on-going learning through the work itself
- e. ability to ask pertinent questions and to sift and synthesise the responses
- f. democratic (rather than party political) awareness.

I challenge departments to think beyond the easy to measure

(Nazruddin Story)

In terms of Inclusivity, the simple question relating to diversity is to look at a Board and ask ‘Who isn’t here?’ and then follow it up with ‘Why not?’ The answer lies in the views of a range of people

not just your own. There is a powerful quote – anonymous which says that ‘When people who are not used to speaking are heard by people who are not used to listening, then real changes can take place.’

I’d like to end with some examples of creativity in relation to inclusivity. They relate to Public Appointments and I do not suggest they be replicated here but rather to illustrate an approach to innovation and change to enable a broader range of people to be appointed on merit.

Scotland	- Shadowing - Open Days
Wales	- Remuneration Policy - Apprenticeship Scheme
Northern Ireland	- The Commissioner for Children and Young People Appointment
England	- Open University Project
New Zealand	- References - First day on the job

Thank you for your kind attention to my personal reflections. I leave you with my favourite Einstein quote which demonstrates the need for us all to think creatively if we are to be effective.

‘The problems we face cannot be resolved by the same level of thinking as that which gave rise to them.’

Thank you.

Rennie Fritchie
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