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Parliamentary scrutiny of executive patronage: The relationship between institutional norms, reputation and accountability

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Abstract

While executive patronage brings important benefits in terms of governance and control, political influence over the selection of agency staff entails a democratic dilemma: how should the exercise of executive patronage be controlled? This article addresses this critical issue, examining Westminster's system of pre-appointment scrutiny by analysing an original database that encompasses every pre-appointment hearing held between 2007 and 2018. The article demonstrates that although the conduct of hearings accords with select committees' longstanding commitment to cross-party working, members have not prioritized pre-appointment scrutiny relative to their other committee activities. By systematically disaggregating the factors which affect how select committees dispatch this account-holding responsibility, the article deepens previous analyses of pre-appointment scrutiny, and dovetails with scholarship examining the institutional determinants of select committee power. More broadly, it draws attention to the reputational dynamics of accountability, and how institutional norms can serve as vital reputational resources, enabling account-holders to demonstrate 'responsible' account-holding.

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1 | INTRODUCTION

While executive patronage brings important benefits in terms of governance and control (Bearfield 2009; Flinders and Matthews 2010; Kopecký et al. 2016; Panizza et al. 2019), political influence over the selection of agency staff entails a democratic dilemma: how should the exercise of executive patronage be controlled? This article addresses this critical issue, focusing on the oversight of executive patronage in the context of parliamentary democracy. In contrast with the US, where the Senate confirmation process for presidential appointments is effectively enshrined in the Constitution, few parliamentary legislatures enjoy such oversight (but see Pond 2008a, 2008b); and parliaments have been regarded as 'the great outsider' because of their limited capacity to scrutinize agencies (OECD 2002). Against this backdrop, the system of pre-appointment scrutiny established in the United Kingdom's national legislature stands out. Since 2007, Westminster's parliamentary (select) committees have undertaken pre-appointment hearings with the minister's preferred candidate for top-level appointments to key public bodies; and in relation to some of the most salient positions, Parliament has acquired formal 'advice and consent' powers. However, the way that Parliament has sought to position itself as a proactive legislature in relation to executive patronage also stands out because, *prima facie*, there are few incentives to undertake such account-holding activities. First, there is limited evidence that ministers directly engage in politicized appointment practices; and the prevalence of politicized appointments in the UK is amongst the lowest in Europe (Flinders and Matthews 2012; Kopecký et al. 2016). Second, there is limited evidence that pre-appointment scrutiny directly affects outcomes as hearings are explicitly predicated on the principle of ministerial discretion and rarely reverse ministers' decisions. This raises important questions about the motivation of select committees to undertake pre-appointment scrutiny; and, in turn, about the extent to which parliaments can operate as 'venues of influence' (Waterman et al. 1998) *vis-à-vis* the exercise of executive patronage.

To answer such questions, this article brings together literature that has examined the institutional determinants of select committee influence (e.g., Benton and Russell 2013; Fisher 2015; Bates et al. 2017; Russell and Gover 2017; Matthews 2018) and a wider body of scholarship that advances a reputational-based explanation of the motivations of accountability actors (e.g., Waterman et al. 1998; Schillemans and Busuioc 2013; Koop 2014; Busuioc and Lodge 2016) to argue that pre-appointment scrutiny has been driven by a concern of committees to extend their reputation as autonomous, independent and credible counterweights to executive power. The article tests this argument by analysing every pre-appointment hearing held between May 2007 and July 2018 ($n = 98$) and each individual question posed ($n = 5,713$); and comparing pre-appointment hearings to a representative sample of other select committee inquiries ($n = 310$). This analysis reveals that the institutional norms which structure select committee behaviour and, in turn, undergird their reputation have governed the conduct of pre-appointment hearings, with committee members from government and opposition parties setting aside partisan loyalties to discharge their account-holding responsibilities. However, this analysis also reveals significant differences in the extent to which committees have engaged in pre-appointment scrutiny relative to their other committee activities, which suggests that members have prioritized other activities as means of exerting influence and advancing reputation.

Through this analysis, the article makes four key contributions. First, by systematically appraising the institutional determinants of select committee behaviour, it extends and deepens previous analyses of pre-appointment scrutiny at Westminster (Hazell et al. 2012, 2017; Flinders and Geddes 2014; Matthews and Flinders 2015; Hazell 2019). Second, by highlighting the way that select committees mobilize institutional norms for reputational purposes, it dovetails with scholarship that has examined the sources of select committee powers (e.g., Benton and Russell 2013; Fisher 2015; Bates et al. 2017; Russell and Gover 2017; Matthews 2018); and offers a further counterpoint to comparative scholarship that has typically regarded select committees as toothless and weak (e.g., Mattson and Strøm 1995; Powell 2000; Saalfeld 2003). Third, in doing so, it provides empirical evidence of the 'reputational' dynamics of accountability (Schillemans and Busuioc 2013; Busuioc and Lodge 2016) that encourage account-holders to enter the accountability space. Finally, through this, the article moves beyond the narrow

conceptualization of accountability implicit in principal–agent analyses of parliamentary democracy to demonstrate the ‘multiple-principal’ (Waterman et al. 1998) accountability relationships that operate in parliamentary settings.

To develop these strands, the article proceeds as follows. It commences by bringing together the literature above to generate theoretically informed research questions concerning the operation of pre-appointment scrutiny. It then details the research design and reports the results of the analysis. The article concludes by locating these findings within a series of debates about the relationship between political appointments and pre-appointment scrutiny, and sets out an important future research agenda regarding the effects of accountability on agency performance, responsiveness and legitimacy.

2 | DELEGATION, POLITICAL APPOINTMENTS AND THE IMPORTANCE OF SAFEGUARDS

Delegation is a double-edged sword as the divestment of policy responsibilities results in countervailing pressures to restore political control over policy-making. To reconcile these tensions, the installation of policy allies to high-level positions within public agencies has become an attractive strategy for governments worldwide (Dahlström and Niklasson 2013; Hollibaugh et al. 2014; Ennser-Jedenastik 2015). As this suggests, executive patronage is rarely motivated by a sole concern to reward the party faithful (Kopecký et al. 2016). Instead, executive patronage can be regarded as a tool of ‘governance’ (Flinders and Matthews 2010) based upon ‘trust’ (Panizza et al. 2019), which allows elected politicians to reconcile the ‘natural tension’ between ‘firm control over public policy’ and ‘the need for credible commitment’ (Ennser-Jedenastik 2015, p. 823). In turn, the strategic use of appointments can facilitate a range of organizational, democratic, tactical and reform outcomes (Hamilton 2000; Bearfield 2009; Flinders and Matthews 2010; Schillemans and Boven 2019). However, despite such benefits, politicized appointments jeopardize the credibility gains associated with agency independence (Ennser-Jedenastik 2015) and risk politicizing the hitherto ‘unimpeachably professional and neutral’ (Mulgan 1998, p. 7). More broadly, politicized appointments risk several spillover effects, as a proliferation of underqualified appointees may reduce careerists’ incentives to acquire relevant experience, and make it difficult for agencies to recruit and retain personnel (Mulgan 1998; Lewis 2011; Cooper 2018).

There have been calls to ‘eliminate’ political appointments by ‘removing from ministers the discretionary power of selection’ (Aucoin and Goodyear-Grant 2002, p. 304). Others are more pragmatic, recommending a ‘balance between patronage and merit’ via strategies ‘to attract qualified and capable people’ with ‘safeguards against over-zealousness’ (Hamilton 2000, p. 21). However empirical evidence demonstrates the challenge of instituting such safeguards. Much of this has been gathered in the US, where presidential appointments have become a key battleground in ‘an era of increasingly polarized congressional parties’ (Moore 2018 p. 72). During this time hearings have become longer, questions more numerous and probing, the time to confirmation subject to increasing delays, and the overall rate of rejection has increased substantially. The US experience also demonstrates several unintended consequences, as the lengthy and often fraught confirmation process has deterred would-be appointees, and encouraged presidents to circumvent the appointments process (Lewis 2011; Moore 2018).

It has been suggested that such risks are more acute in the US, where the ‘convoluted’ presidential system results in ‘putative principals lurk[ing] everywhere’ (Rockman 2009, p. 4). Yet in Canada, too, where the provincial parliaments of Ontario and Nova Scotia have formal powers to scrutinize ministerial appointments, evidence suggests similar patterns of polarization. In Ontario, the Standing Committee on Government Agencies has been ‘institutionalised as an opposition forum’ used for ‘extracting politically useful information from witnesses ... which can be put to immediate use in the parliamentary environment’ (Pond 2008a, p. 69). In Nova Scotia, parliamentary committees ‘have reliably rubber-stamped appointments as long as the government has enjoyed a majority’ despite holding a legislative veto (Pond 2008b, p. 372). Reflecting on such evidence, some have argued that because parliamentary committees ‘are themselves partisan-based structures’, such processes ‘cannot secure merit-based appointments’ (Aucoin and

Goodyear-Grant 2002, p. 318). However, because few parliamentary legislatures enjoy formal powers of oversight, such arguments are largely asserted rather than demonstrated; and some have called for greater parliamentary involvement to counter the shift towards politicized appointments (e.g., Amado 2002).

As the UK is the only parliamentary democracy whose national legislature exercises a formal role in scrutinizing executive patronage, the case provides a fertile testing ground for such arguments; and a handful of studies have examined the extent that Westminster's select committees have acted as a bulwark against executive excess (Hazell et al. 2012, 2017; Flinders and Geddes 2014; Matthews and Flinders 2015; Hazell 2019). These studies paint a mixed picture. There is general agreement that while formal opportunities for select committees to intervene in appointments appear limited, pre-appointment hearings 'entail a strong anticipatory effect or preventative influence that permeates the whole appointments process' (Matthews and Flinders 2015, p. 173). However, there remains disagreement about the motivation of committee members. Matthews and Flinders provide evidence of 'committees engaging in inappropriate, even aggressive, cross-examination', which they argue has 'effectively re-politicis[ed] an otherwise independently regulated appointments process' (2015, p. 154). In contrast, while Hazell et al. did find instances of 'hostile and even random questioning', they made a 'reverse' criticism that 'committees sometimes give candidates too easy a time' (2017, paras 7.10–7.11). However, although existing studies are comprehensive in scope, the institutional norms that structure the environment in which pre-appointment hearings are conducted have been neglected. In particular, extant studies have not examined whether pre-appointment hearings are conducted along party lines, or whether pre-appointment hearings are prioritized relative to the many other tasks that select committees undertake. This is a significant lacuna, which results in an incomplete understanding of the ability and motivation of select committees to control executive patronage. This article therefore responds to this gap by disaggregating the factors that affect how select committees dispatch this account-holding responsibility.

3 | THE PENDULUM OF POLITICAL APPOINTMENTS IN THE UNITED KINGDOM

In the UK, government ministers are formally responsible for all appointments to public bodies, making around 2,000 appointments and re-appointments annually (OCAPA 2018). However, whereas ministers previously enjoyed 'virtually unbridled power over public appointments' (McTavish and Pyper 2007, p. 147), recent decades have witnessed a 'silent revolution' whereby their 'capacity and discretion' became 'highly constrained' (Flinders and Geddes 2014, p. 44). This was precipitated by a series of scandals regarding political impropriety in the 1990s, which drew attention to the scale of the 'patronage' (Wright 1995) or 'appointed' (Skelcher 1998) state, and the prevalence of party 'placemen' with 'their snouts in the trough' (Stott 1995). This led to the establishment of the independent Office for the Commissioner for Public Appointments (OCAPA) in 1995, with powers to regulate around 10,000 appointments; and under successive Commissioners, OCAPA's scope expanded, with appointments governed by an increasingly elaborate Code of Practice. Intended to ensure transparency and appointment on merit, while reconciling independent scrutiny with ministerial responsibility, the Code effectively depoliticized the appointments process. Indeed, the UK has amongst the lowest rates of politicized appointments in Europe (Flinders and Matthews 2012; Kopecký et al. 2016), with fewer than one in ten appointees declaring any significant political activity or affiliation (see OCAPA 2018). However, while successive governments were willing to abrogate their patronage powers, calls for select committees to scrutinize appointments were continuously rebuffed.

To outside observers, this reticence may appear surprising as comparative scholarship portrays select committees as 'weak' (Powell 2000, p. 106), 'deviant' (Mattson and Strøm 1995, p. 260) and having 'little impact on specific government policy' (Saalfeld 2003, p. 635). However, a sole focus on legislative scrutiny neglects the many other ways that select committees exert direct, indirect or anticipatory influence (Benton and Russell 2013), which is strengthened by how they have been instituted to work on a cross-party basis (Benton and Russell 2013; Fisher 2015; Russell and Gover 2017). Indeed, the reputation of select committees has been forged on their 'lauded

tradition of avoiding the adversarialism often seen on the floor of the Commons' (Fisher 2015, p. 421), which is underpinned by the institutional norms of collegiality and consensus that structure the conduct of committee activities, and is reinforced through a continuous process of 'behavioural socialisation' (Rush and Giddings 2011).

Moreover, the reputation of select committees has been enhanced by a series of reforms, particularly those recommended by the Wright Committee to 'rebuild the House' following the MPs' expenses scandal. Building on previous reforms such as an additional salary for committee chairs (2002) and the adoption of a common set of 'core tasks' (2003), the Wright Committee proposed a package of measures intended to enhance the 'credibility of select committees' (HC 1117 2009, para. 74), including the election of chairs by the whole House, and the election of members by secret ballot within each political party (para. 80). Anticipating that 'greater competition for places' would 'generate a greater sense of ownership and would lead to higher levels of attendance and participation' (para. 94), it also noted that there 'should be clear consequences for unreasonable absence' (para. 55). The election of chairs was agreed by the House in March 2010, and secret ballots followed in June 2010. The House also endorsed the election of select committee members by party caucuses, and agreed a process to enable the removal of members whose attendance fell below 60 per cent (*Hansard*, 4 March 2010, c.1095). Together, these reforms have been regarded as 'burnish[ing] the autonomy, independence and credibility of the committees' (Fisher 2015, p. 419), contributing to a 'new confidence and authority' (Institute for Government 2015, p. 2).

Against this backdrop, the Liaison Committee concluded that 'government departments are taking committees seriously and engaging positively with them' (HC 954 2015, para. 16). Nonetheless, successive governments have been less positive about engaging select committees in public appointments. In 1998, the government rejected the Treasury Select Committee's request to hold confirmatory hearings with Bank of England appointees, claiming that it would 'raise important constitutional issues' (HC 502 1998, para. xii). Undeterred, the Committee commenced informal post-appointment hearings for appointments to the Monetary Policy Committee (HC 571 1998). However, when the Liaison Committee sought 'statutory acknowledgement' of the right to hold such hearings (HC 300 2000, para. 24), the government argued that '[a]ny indication that a Ministerial appointment relied upon the approval of a select committee ... would break the clear lines of accountability by which Ministers are answerable to Committees for the actions of the executive' (Cm. 4737 2000). The Liaison Committee returned to public appointments in 2002 when the requirement to 'scrutinise major appointments' was included in the list of 'core tasks' (HC 558 2002, para. 13), which encouraged several committees to hold confirmation-style hearings with newly appointed officials. Nonetheless, the government continued to reject calls for pre-appointment scrutiny (see HC 165, 2003), maintaining that it would risk 'the perception of politicising appointments' (Cm. 6056 2003, para. 22).

The situation changed unexpectedly in 2007 when Gordon Brown used his first speech as Prime Minister to announce 'a bigger role' for Parliament 'in the selection of key public officials' via pre-appointment hearings (*Hansard* 3 July 2007, c.816). It was made clear that these arrangements would be based on voluntary accountability: that hearings 'would be non-binding, but in light of the report of the committee, Ministers would decide whether to proceed' (Cm. 7170 2007, para. 76). This announcement was not universally welcomed. In particular, the then Commissioner for Public Appointments Janet Gaymer expressed concerns that pre-appointment hearings could lead to a 'perceived politicisation' of appointments (HC 152 2008, Q. 9). Yet, given that successive governments had stonewalled Parliament's previous demands, this constituted a critical juncture. In response, the Public Administration Select Committee (PASC) stressed the need to focus on the 'professional competence' and 'personal independence' of candidates, otherwise 'the reputations of committees are likely to suffer' (HC 152 2008, para. 34). These principles were subsequently enshrined in Cabinet Office guidance (2009) which covered an initial list of 53 positions, and in Liaison Committee guidance (2012) which set out the principles governing the conduct of hearings.

Prima facie, the commitment to 'good behaviour' as a reputational safeguard has manifested itself in a seeming reluctance to challenge government decisions. To date only six negative reports have been issued, and only once has the minister publicly withdrawn their support for the candidate (in another, the candidate pre-emptively withdrew). Moreover, successive governments continue to resist demands to extend select committees' role in the

appointments process (see HC 912 2012; HC 1773 2018). Perhaps unsurprisingly, parliamentarians have expressed their frustration. As one committee chair complained, '[i]t begs the question: why should we take time out of our very busy schedule to hold these hearings if there is no value attached to them?' (HC 909 2018). Such tensions have been exacerbated by the wide-ranging changes following the 2016 Grimstone Review of OCPA. This made a series of recommendations to fully restore ministerial discretion at all stages of the appointments process (Cabinet Office 2016a), which the Public Administration and Constitutional Affairs Committee (PACAC) argued 'threatens to undermine the entire basis of independent appointments' by 'effectively demolishing the safeguards' built up since 1995 (HC 485 2016, para. 85).

Nonetheless, the government accepted the Review's recommendations and in 2017 a new Governance Code came into force, with provisos to allow ministers to override the recommendations of independent appointments panels, and to appoint a candidate without a competition (Cabinet Office 2016b). Although there is little evidence that ministers have abused these powers, concerns have arisen about the implications of these reforms regarding the quality of appointments and public confidence in the system. Indeed, PACAC recently asserted that 'to maintain the equilibrium between pragmatism and propriety', the 'swing of the pendulum towards direct ministerial influence over appointments requires a counter-balancing increase in parliamentary scrutiny' (HC 909 2018, para. 38).

4 | ACCOUNTABILITY, REPUTATION AND THE POTENTIAL OF PARLIAMENT AS A VENUE OF INFLUENCE

The accrual of select committee powers vis-à-vis executive patronage has been uneven and disordered; and many members remain frustrated about their seeming lack of influence over what is a small number of (albeit top-level) appointments (see HC 909 2018). However, while such frustrations are keenly felt, focusing on the limits of their formal powers risks overlooking the informal and anticipatory ways that committees can control executive patronage. Put simply, 'an absence of conflict does not necessarily indicate an absence of committee influence' (Hazell et al. 2012, p. 228), and existing studies have highlighted a 'deterrent effect' (Matthews and Flinders 2015) whereby 'ministers will be reluctant to put forward weak candidates who will not pass muster' (Hazell 2019, p. 234). To critically appraise how select committees scrutinize executive patronage, it is therefore necessary to look beyond the 'obvious traps' (Hazell et al. 2012, p. 228) of formal powers and visible influence. To do so, and to locate this case within broader debates regarding accountability in the delegated state, this article draws on literature advancing a reputational-based explanation of the motivations of accountability actors. This literature looks beyond the formal, hierarchical control of the bureaucracy associated with principal-agent theories of delegation. Instead, it recognizes the 'possible role that other nonhierarchical actors can play' (Waterman et al. 1998, p. 18) as 'venues of influence' (Waterman et al. 1998) or 'accountability forums' (Schillemans and Busuioc 2013; Busuioc and Lodge 2016), while highlighting the ways that that accountability can be 'voluntary' (Koop 2014), 'transactional' (Carpenter and Krause 2012) and 'self-imposed' (Bovens 2007). This literature also anticipates that 'higher reputational investment' will result in 'more intensive account holding' to demonstrate that 'accountability is a core task for account-holders' (Busuioc and Lodge 2016, p. 256).

It is evident that the recent period of select committee expansion and activism reflects a concern on the part of committees to extend their reputation as autonomous, independent and credible account-holders (Fisher 2015); operating in accordance with an 'ethos of continuous scrutiny' (Wright 2010, p. 302) as opposed to adversarial partisanship. As the Liaison Committee put it, the 'quality of investigation, rigour of questioning, depth of analysis and value of reports' are crucial to 'extend longer-term beneficial influence on government' and to 'sustain [their] reputation with stakeholders' (HC 954 2015, para. 114; emphasis added). Furthermore, reforms such as chair elections and attendance thresholds were specifically intended to inculcate ownership, intensify engagement and—in doing so—strengthen the reputation of committees' work as 'the most constructive and productive aspect of Parliament'

(HC 954 2015, para. 115; see also HC 1117 2009). It is against this backdrop that select committees have continually advocated a greater role in scrutinizing ministerial appointments. However, the extent to which select committees are actually invested in pre-appointment scrutiny has not been established. This matters, as while legislatures are 'vital institutions for securing accountability', the act of account-holding remains 'only one among a number of their purposes' (Mulgan 2000, p. 565); and for Westminster's select committees, pre-appointment scrutiny is one of a series of ten 'core tasks' that also includes examining department activities, scrutinizing draft Bills, and public engagement. Moreover, for their members 'committee work is only one aspect of their job' alongside the manifold constituency, party and parliamentary demands competing for their time (Bates et al. 2017, p. 795; see also Rush and Giddings 2011); and as detailed above, committee members have expressed reservations about the value of pre-appointment hearings (HC 909 2018). It is therefore necessary to ask:

RQ1: Are select committees engaged in the scrutiny of executive appointments?

It is also evident that the institutional norms of collegiality and consensus are regarded by select committees as intrinsic to their reputation, and have a mutually constitutive relationship with shared understandings of 'good' or 'responsible' account-holding. In particular, select committees have stressed the need for 'good behaviour' concerning the treatment of witnesses. As the Liaison Committee put it:

It can be legitimate and necessary for committees to subject witnesses to tough questioning (and the public expects us to do so); but they should always be treated with respect and courtesy, and given a fair hearing—and it *damages the reputation of select committees when they are not*. Members of Parliament are used to an environment in which we are quite rude to each other without taking personal offence; witnesses may not be. (HC 697 2012, para. 102; emphasis added)

Regarding pre-appointment scrutiny specifically, PASC stressed that is incumbent on members:

... to ensure that pre-appointment hearings are conducted appropriately. If they are not, the *reputations of committees are likely to suffer* and the Government is likely to reconsider whether pre-appointment hearings are appropriate. (HC 152 2008, para. 34; emphasis added)

Yet despite this rhetoric, the existing research paints a mixed picture of the conduct of pre-appointment hearings. The seeming gap between the rhetoric of appropriate behaviour and the actual conduct of hearings resonates with the argument of Schillemans and Busuioac, who assert that because a forum is not the principal, it 'cannot always be assumed to have an interest in the performance of the actor' and cannot be assumed to 'actually (diligently) discharge their accountability obligations' (2013, p. 210). To deepen our understanding of the reputational drivers of pre-appointment scrutiny, it is therefore imperative to examine the conduct of hearings:

RQ2: Do select committees act appropriately when scrutinizing executive appointments?

In particular, it is necessary to determine whether pre-appointment hearings are part of the 'engrained culture of consensus' (Russell and Benton 2011, p. 37) that is predicated on avoiding the adversarialism and partisanship of the Main Chamber. However, while existing studies have examined the political character of the (relatively infrequent) formal divisions over a candidate's endorsement (e.g., Matthews and Flinders 2015; Hazell et al. 2017), none have examined the extent to which the conduct of the hearing itself is differentiated along party lines. To determine whether this is the case, it is therefore necessary to ask:

RQ3: Do select committees act cohesively when scrutinizing executive appointments?

5 | RESEARCH DESIGN

To determine whether select committees are relatively engaged in pre-appointment scrutiny (RQ1), 'attendance' (members present) and 'participation' (questions asked) were adopted as proxies to directly compare pre-appointment hearings and evidence sessions for other inquiries. As detailed above, the Wright Committee regarded attendance as an important indicator of esteem, with low attendance signalling that members regard committee work 'as a burden best avoided' (HC 1117 2009, para. 54). This approach also dovetails with existing studies that use attendance as a proxy for MPs' overall engagement with select committees (e.g., Rush and Giddings 2011; Bates et al. 2017); and builds on the observations of Hazell et al. regarding the 'not great' attendance at pre-appointment hearings (2017, p. 45) to establish the relative esteem attached to this 'core task'. However, the separate analysis of attendance and participation recognizes that committee members can be present without being engaged. This challenge has been recognized by the Liaison Committee, which questioned the effectiveness of the 'tradition of going round the table, with each member asking questions in turn'. However, while it encouraged 'committees [to] experiment with different approaches such as appointing a rapporteur to lead on a particular inquiry, or choosing "lead questioners" for an evidence session', it also recognized that 'members may not be very keen to sit through meetings at which they have no, or little, opportunity to contribute' (HC 697 2012, para. 77). Comparing patterns of questioning across pre-appointment hearings and 'other' evidence sessions will therefore reveal any systematic differences in how evidence sessions are structured.

To determine whether committees act appropriately (RQ2), the analysis focuses on the content of questions posed in pre-appointment hearings. Individual questions were analysed by 'topic' to determine whether they fell within the remit of the Liaison Committee's guidance (2012), and by 'tone' to determine whether they accorded with PASC/PACAC's longstanding commitment to 'appropriate' conduct (HC 152 2008, para. 34). This approach contrasts with the unidimensional approach of existing studies (e.g., Hazell et al. 2017; Hazell 2019), and recognizes that questions may be appropriate in scope but inappropriate in presentation. A committee member may ask a question that is ostensibly about a candidate's integrity, for example, but pose it in a leading way that implies that the candidate is a party stooge. To determine whether committees act cohesively when scrutinizing appointments (RQ3), the extent of intra-committee divisions was examined. Each of the pairings above (attendance/participation and topic/tone) were broken down by 'government' and 'opposition' to determine whether distinct patterns of behaviour exist amongst committee members drawn from different sides of the House.

A unique dataset was then constructed which captured the following data. First, it registered committee members' attendance and participation in all pre-appointment hearings held between May 2007 and July 2018 ($n = 98$), and in a representative sample of 'other' inquiries. The sampling strategy was purposefully constructed to ensure comparability. For each pre-appointment hearing held, an inquiry that the same committee undertook within the same parliamentary session was randomly selected (total $n = 98$), with all evidence sessions held as part of that inquiry being subject to analysis (total $n = 310$). Attendance was calculated for the full sample of 'other' evidence sessions, and a random sub-sample was analysed in detail to capture participation ($n = 31$). This sampling strategy recognized that some select committees have had more experience of pre-appointment hearings, and weighted the sample accordingly. It also ensured that the sample encompassed the range of committee activities.

Second, the dataset captured every question asked within all pre-appointment hearings ($n = 5,713$), and subjected them to a content analysis. A pilot analysis of 15 pre-appointment hearings was undertaken, using a provisional list of codes derived from the Liaison Committee's guidance and existing research. This pilot involved a close reading of the official transcript, and listening to/watching the recording of the hearing on ParliamentLive.tv/commons. Through this iterative process, six 'topic' categories (and 32 sub-categories) and two 'tone' categories (and six sub-categories) were decided upon (for categories, see Table 1; for sub-categories, see Tables A1a and A1b in the online appendix); and to establish 'unitizing' reliability (Neuendorf 2017, p. 41), categories were verified by a research assistant following the same two-step process. Individual questions were then manually coded by the author in a relatively short time period to reduce the risk of variance. Once coding was completed, the research assistant independently cross-checked a 10 per cent random sample. All data were extracted from the transcripts published on

TABLE 1 Question topic and tone categories*

Topic categories	Tone categories
1. Personal suitability	1. Appropriate
2. Approach to the role	2. Inappropriate
3. Powers and resources	
4. Governance and stakeholders	
5. Political contact, activity and alignment	
6. Other	

*A detailed breakdown of sub-categories can be found in Tables 1a and 1b in the online appendix.

Parliament's website after each pre-appointment hearing and 'other' evidence sessions, which provides a register of attendance, party affiliation and a verbatim record of proceedings.

The data were then subject to the following tests. To determine whether select committees are relatively engaged in pre-appointment scrutiny (RQ1), attendance and participation rates were interrogated via separate regression analyses. Observed attendance and participation rates cannot be regarded as independent as it is likely that members respond to, or are influenced by, the behaviour of their committee colleagues. For example, if one 'faction' begins to attend more assiduously, this may encourage the other 'faction' to do so. Recognizing this, the data were unlooped and stacked so that the unit of analysis became government/opposition engagement, with the inquiry variable being stretched over the two stacks. The following variables were then incorporated into the regression model. First, to determine the effects of inquiry type, a dummy variable was created ('inquiry type') and the covariate took on the value '1' for a pre-appointment hearing, with 'other' evidence sessions comprising the reference group. Second, to determine whether engagement varied among different groups of members, a dummy variable was created ('affiliation') and the covariate took on a value of '1' for government-affiliated members, with opposition-affiliated members comprising the reference group.

Third, to identify variation over time, the data were periodized. Here, pragmatism was necessary as while 2007–18 encompasses four parliaments (2005–10, 2010–15, 2015–17 and 2017–present), the sample size for the 2017–present parliament (hearings $n = 5$; questions $n = 335$) was smaller than that required for a 95 per cent level of confidence with a ± 5 per cent sampling error (Neuendorf 2017, p. 91). To resolve this, three periods were created (2007–10, 2010–15, 2015–18), with 2007–10 comprising the reference group. This periodization remains broadly coterminous with the wider parliamentary context, with 2007–10 according with the final three years of Labour-led (majority) government; 2010–15 encompassing the entirety of the Conservative-Liberal Democrat (minimal winning coalition) government; and 2015–18 covering the overall period of Conservative-led (majority and minority) governments.

Attention then shifts to the conduct of pre-appointment hearings. To determine whether questions were appropriate (RQ2), frequency analyses of the 'topic' and 'tone' categories were undertaken. Building on this, to determine whether there were significant differences in government-affiliated and opposition-affiliated members' behaviour (RQ3), and whether behaviour changed over time, patterns of questioning were interrogated via a series of Pearson's chi-square (χ^2) tests. For these tests, analysis was conducted at the category level to provide a sufficient number of cases for robust statistical analysis once the covariates of 'affiliation' and 'parliamentary period' had been introduced.

6 | PRE-APPOINTMENT SCRUTINY AT WESTMINSTER

6.1 | Are select committees engaged in the scrutiny of executive appointments?

While formally constituted as a 'core task', pre-appointment scrutiny remains one of ten tasks that select committees undertake, and faced with a myriad of competing demands on their time, committee members have expressed

TABLE 2 Participation in pre-appointment hearings and other evidence sessions, 2007–18

		Average attendance rate (%)			Average per capita questioning rate (%)	
		All members	Government members	Opposition members	Government members	Opposition members
Pre-appointment hearings	Mean	61.9%	65.9%	57.9%	14.9	14.8
	N	98	98	98	98	98
	Std. deviation	21.99	22.49	20.80	6.03	6.61
Other evidence sessions	Mean	67.9%	71.4%	64.0%	15.4	13.0
	N	310	310	310	31	31
	Std. deviation	22.84	20.91	24.08	6.30	5.26

reservations about its added-value (HC 1230 2011; HC 909 2018). Such tensions are partially reflected in the data. As the descriptive statistics in Table 2 show, the overall average attendance rate is lower at pre-appointment hearings (61.9 per cent) than at 'other' evidence sessions (67.9 per cent); and the average attendance rate of government-affiliated members is higher than their opposition counterparts at both pre-appointment hearings (65.9 per cent vs. 57.9 per cent) and 'other' evidence sessions (71.4 per cent vs. 64.0 per cent). The first regression model (Table 3) confirms these observations. This demonstrates that the inquiry type has a statistically significant effect on overall average rates of attendance, with pre-appointment hearings associated with a 6.1 per cent decline; and that affiliation is significant, with government affiliation associated with a 7.4 per cent increase in attendance. However, it shows that there is no statistically significant interaction between inquiry type and affiliation, that is, that differences in the attendance rates of government-affiliated and opposition-affiliated members are not related to inquiry type.

Building on this, the descriptive statistics in Table A2 (appendix) suggest a clear trend in attendance over the three parliamentary periods, with the gap in the rate of attendance at pre-appointment hearings and 'other' evidence sessions widening over time. Whereas the average attendance of all members at pre-appointment hearings and 'other' evidence sessions was 58.5 per cent and 60.0 per cent, respectively, during 2007–10, these averages stood at 62.5 per cent and 76.6 per cent during 2015–18; a trend that broadly holds for government and opposition members alike. The second regression model confirms these observations, showing that 2015–18 is associated with a 16.0 per cent increase in attendance by all members at all inquiry types. More importantly, it also shows a statistically significant interaction between inquiry type and the 2015–18 period; that is, that this period is associated with a 12.6 per cent difference in attendance rates, with pre-appointment hearings experiencing a lower rate of attendance.

Turning to participation, a slightly different picture emerges. As discussed above, select committees discharge a wide range of responsibilities, and inquiries range from those that are short term, specialist and focused in nature to those that are extensive in terms of timescale, scope and public significance. Such variation is reflected in the sample of 'other' evidence sessions, with topics including blood safety and CJD, the Draft Civil Service Law Reform Bill, and disinformation and fake news; and reflecting this diversity, the number of questions per evidence session ranged from 42 to 307 (with the number of witnesses ranging between one and seven). To control for this, participation focuses on the average per capita questioning rate of government-affiliated and opposition-affiliated members. As Table 2 shows, government-affiliated members have only a slightly higher rate of questioning in 'other' evidence sessions (15.4 per cent vs. 13.0 per cent), and the difference is minimal in pre-appointment hearings (14.9 per cent vs. 14.8 per cent). Moreover, the detailed breakdown in Table A2 suggests little variation over time. These observations are confirmed by the regression analyses. Model 1 confirms that there is no statistically significant difference in the questioning rate of government and opposition members in either inquiry type; and model 2 confirms that there is no significant variation over time.

TABLE 3 Regression analysis of participation in pre-appointment hearings and other evidence sessions, 2007–18

		Average attendance rate (%)	Average per capita questioning rate (%)
Model 1	(Constant)	63.962 (1.269)	13.048 (1.140)
	Inquiry type	−6.083* (2.589)	1.764 (1.308)
	Affiliation	7.443** (1.795)	2.355 (1.613)
	Inquiry type × affiliation	.588 (3.662)	−2.234 (1.850)
	Model 2	(Constant)	57.695 (3.014)
	Inquiry type	−1.895 (4.507)	−.169 (2.430)
	Affiliation	4.671 (3.953)	.578 (2.330)
	2010–15	3.452 (3.334)	−2.025 (2.485)
	2015–18	16.031*** (3.744)	−4.857 (2.902)
	Inquiry type × affiliation	.698 (3.586)	−2.129 (1.853)
	Inquiry type × 2010–15	−1.166 (4.760)	1.362 (2.543)
	Inquiry type × 2015–18	−12.588* (5.553)	4.739 (2.974)
	Affiliation × 2010–15	4.231 (4.302)	2.499 (2.077)
	Affiliation × 2015–18	1.088 (4.870)	1.086 (2.453)

Note: Standard error (in parentheses).

* $p < .05$; ** $p < .01$; *** $p < .001$.

Together, this evidence suggests that committee members are somewhat less engaged in the task of pre-appointment scrutiny relative to their other activities. The low attendance rate at pre-appointment hearings provides systematic evidence of anecdotal accounts of members' frustrations. Moreover, while the substantial increase in attendance at 'other' evidence sessions may reflect the emergence of a 'greater sense of duty to attend meetings', as per the objectives of the Wright reforms (HC 1117 2009, para. 74), the relatively static attendance at pre-appointment hearings suggests that any such duty is unevenly distributed and task-dependent. This is further underlined by the significant widening of the gap in attendance during 2015–18, suggesting that during an institutionally favourable period of diminishing government majorities, committee members have not regarded pre-appointment scrutiny as the most effective use of their time. To an extent, this negative picture is ameliorated by the limited variation in patterns of participation: government-affiliated and opposition-affiliated members have consistently similar

TABLE 4 Topic and tone of questions asked in pre-appointment hearings, 2007–18

Question topic	Questions asked by all members		Questions asked by government party members		Questions asked by opposition party members	
	N	%	N	%	N	%
Personal suitability	1495	26.2%	853	25.5%	642	27.0%
Approach to the role	1589	27.8%	994	29.8%	595	25.1%
Powers and resources	921	16.1%	543	16.3%	378	15.9%
Governance and stakeholders	703	12.3%	404	12.1%	299	12.6%
Political contact, activity and alignment	402	7.2%	212	6.3%	190	8.0%
Other	603	10.6%	333	10.0%	270	11.4%
<i>Question tone</i>						
Appropriate	5251	91.9%	3104	93.0%	2147	90.4%
Inappropriate	462	8.1%	235	7.0%	227	9.6%

rates of questioning across both inquiry types. A note of caution is required when interpreting this result, as the distribution of questions may reflect the particular working practices of that committee or the approach of its chair (see HC 697 2012, para. 77), rather than the motivation of individual members to actively contribute. Nonetheless, at the very least, this finding demonstrates that there are no systematic differences in the way that committees structure the distribution of questions in pre-appointment hearings and ‘other’ evidence sessions, with all members similarly included.

6.2 | Do select committees act appropriately when scrutinizing executive appointments?

Attention now turns to the scope of questioning in pre-appointment hearings. Table 4 demonstrates that the overwhelming majority of questions posed (89.4 per cent) are on topics relevant to the post in question, a finding which accords with previous analyses (e.g., Hazell et al. 2017; Hazell 2019). Whether such questions are answerable, though, is a different matter. The detailed breakdown in Table A3 (appendix) shows that there have been numerous occasions when candidates have been asked to comment on the agency's scope and remit (7.1 per cent of questions), budget and resources (2.9 per cent), performance (2.9 per cent), governance structures (4.1 per cent) and its relationship with external stakeholders (5.0 per cent). While such questions clearly relate to select committees’ (other) core task of ‘examin[ing] the expenditure plans, outturn and performance of the department and its arm's length bodies’, someone whose appointment has not been confirmed cannot necessarily provide a fulsome response. Indeed, asking candidates to comment on their predecessors or to critique the agency's performance risks souring the relationship between the appointee and their future colleagues. In a similar vein, asking the candidate to comment on the role's remuneration (0.9 per cent) or its scope and remit (2.3 per cent) places the candidate in an invidious position by pitting them against their ministerial sponsor, as do questions which seek to elicit their views of government policy (1.7 per cent) or the process through which they have been appointed (1.2 per cent). The challenge of answerability was acknowledged by PASC, which was ‘not convinced ... that nominees can reasonably be held to account for their performance in positions they have yet to take up’ (HC 152 2008, para. 10); and by PACAC, which recommended that ‘[w]here a committee has concerns about the appointment process, or the policy implications reflected by a Minister's choice of candidate, it should take evidence from the relevant Minister or officials’ (HC 909 2018, para. 34).

TABLE 5 Distribution analysis of questions asked in pre-appointment hearings

Test	Number of valid cases	Pearson chi-square value	df
1. Distribution of question topics asked by government and opposition members, 2007–10 to 2015–18	5713	20.585***	5
2. Distribution of 'appropriate' and 'inappropriate' questions asked by government and opposition members, 2007–10 to 2015–18	5713	11.891***	1
3. Distribution of sub-categories of 'inappropriate' questions asked by government and opposition members, 2007–10 to 2015–18	462	42.828***	4

* $p < .05$; ** $p < .01$; *** $p < .001$.

In terms of the tone of questions, Table 4 also shows that the overwhelming majority of questions are appropriate (91.9 per cent). Nonetheless, questions that could be perceived as rude (0.5 per cent), aggressive (0.8 per cent) or personal (0.4 per cent) will do little to put a candidate at ease (see Table A4, appendix, for a breakdown). One candidate was accused of having 'friends in high places' (Conservative member, 2015), another for being a 'shoe-in' (Labour member, 2011); and on several occasions candidates' answers were derided as 'preposterous' (Labour member, 2010), 'in the field of absurdities' (Labour member, 2012), and for 'seeming oblivious' to the issue under discussion (Labour member, 2012). On occasion, members have also sought to advance their own agenda by posing questions that are leading (2.7 per cent) or intended to make a wider political point (3.6 per cent). One Conservative member, for example, asked the candidate for Chair of the BBC Trust whether 'the BBC has an institutional left-wing bias?' (2011); and one Labour member asked the appointee for the Chair of the UK Statistics Authority if they 'see the role of UKSA to make sure that the workers are treated decently with proper salaries that are worthy of the work that they do?' (2017).

6.3 | Do select committees act cohesively when scrutinizing executive appointments?

It is necessary to determine whether these patterns of questioning vary between government-affiliated and opposition-affiliated members. Table 4 shows that in terms of question topic, government and opposition members alike have focused on the candidate's suitability and approach to the role; and the detailed breakdown in Table A5 (appendix) shows that this broad pattern is sustained over time. Nonetheless, one point of departure worth noting is that during 2015–18, opposition-affiliated members asked substantially more questions than their government-affiliated counterparts on the topic of 'political contact, activity and alignment' (13.7 per cent vs. 6.3 per cent). To ascertain the significance of these differences, χ^2 tests were undertaken (Table 5). Test 1 confirms a statistically significant difference in the overall distribution of question topics among government and opposition members, and further tests (not reported) show that these differences are significant within each individual period ($p \leq .002$). To determine whether any specific category affected these results, further tests (not reported) were undertaken, which removed each topic category in turn for each of the three periods. Through this process, just one point of difference was isolated. By excluding questions on 'political contact, activity and alignment', the difference in the distribution of questions asked by government-affiliated and opposition-affiliated members during 2015–18 was no longer significant ($p = .308$). Thus, notwithstanding this point of departure, this suggests that there are no systematic differences in the focus of questioning by government-affiliated and opposition-affiliated members across the three periods.

Moving on to question tone, Table 4 shows that opposition-affiliated members have asked slightly more 'inappropriate' questions than their government-affiliated counterparts (9.6 per cent vs. 7.0 per cent); and the detailed breakdown in Table A6 shows that these differences are concentrated in the 2010–15 and 2015–18 periods (10.5 per cent vs. 7.0 per cent, 9.7 per cent vs. 7.0 per cent). Furthermore, this breakdown shows that opposition members

have been slightly more willing to use questions to make a wider political point in all three periods (4.7 per cent vs. 3.9 per cent, 5.0 per cent vs. 3.1 per cent, 4.6 per cent vs. 0.9 per cent). Again, χ^2 tests were undertaken to ascertain the significance of these differences. Test 2 confirms a statistically significant difference in the overall balance of appropriate and inappropriate questions asked by government and opposition members over the three periods. However, further tests (not reported) revealed that these differences were only significant during 2010–15 ($p = .001$), and not during 2015–18, as indicated by the frequency analysis ($p = .079$). Further tests examined the distribution of the sub-categories of inappropriate questions. Test 3 confirms a statistically significant difference in the overall distribution of sub-categories of inappropriate questions asked by government and opposition members, and further tests (not reported) demonstrate that these differences are significant for the 2010–15 and 2015–18 periods specifically (for both, $p = .000$). However, while the frequency analysis shows that opposition members are more likely to use questions to make a political point, the relatively small number of ‘inappropriate’ questions in each period (85, 266, 111) militates against a stepwise analysis of the sub-categories to isolate any specific points of difference. Indeed, when interpreting these results, it must be remembered that statistical significance is indicative of association and not magnitude; and while there are some statistically significant differences in the tone of questions posed by government-affiliated and opposition-affiliated members, the scale of such differences is small.

Together, this evidence shows that the vast majority of questions accord with the Liaison Committee's guidance (topic) and PASC/PACAC's longstanding commitment to ‘appropriate’ conduct (tone), with few systematic differences between government-affiliated and opposition-affiliated members. Moreover, this picture remains largely unchanged over the three periods of analysis, which suggests that the conduct of hearings has been unaffected by changes of government or shifts in the balance of power between the House and the executive. Put simply, there is little evidence to suggest that pre-appointment hearings have been systematically co-opted for party-political or institutional ends, a finding that contrasts with earlier analyses (e.g., Matthews and Flinders 2015). Moreover, the way that select committees have maintained a cohesive approach also suggests that they are well placed to act as a ‘counter-balance’ (HC 909 2018, para. 38) to any undue ministerial interference that may result from changes in the 2017 Governance Code. However, while members have upheld high standards of ‘appropriate’ conduct, it is vital that select committees guard against any gap between their actual conduct and perceptions of their conduct. Undoubtedly, pre-appointment scrutiny should not ‘give candidates too easy a ride’ (Hazell 2019, p. 235) and it is entirely ‘legitimate and necessary for committees to subject witnesses to tough questioning’ (HC 697 2012, para. 102). However, as PACAC acknowledged, ‘the occasions where a committee has drifted into inappropriate questioning are likely to have a disproportionate impact on future candidates’ impressions of the pre-appointment hearing process’, which may further compound ‘existing difficulties in recruiting candidates from under-represented groups’ (HC 909 2018, para. 95). More broadly, such misperceptions risk weakening the hard-won reputation of select committees as effective counterweights to executive power.

7 | CONCLUDING REMARKS

Reflecting on how select committees have undertaken pre-appointment scrutiny, a number of conclusions can be drawn. As this article has shown, the approach of select committees to pre-appointment scrutiny underlines their determination to develop their reputation as autonomous, independent and credible account-holders. Accordingly, the institutional norms of collegiality and consensus that are intrinsic to committee reputation have governed the conduct of pre-appointment hearings, wherein government-affiliated and opposition-affiliated members have been similarly assiduous in terms of participation, and the overwhelming majority of questions accord with the commitment to ‘appropriate’ behaviour. Moreover, despite executive recalcitrance, select committees have continuously sought to expand their involvement in the appointments process; and have recently called for greater autonomy in determining the scope of pre-appointment hearings to offset the appointment powers repatriated to ministers in the 2017 Governance Code (HC 909 2018).

Nonetheless, pre-appointment scrutiny remains one of many competing committee demands; and the relatively low attendance rate suggests that members have not regarded pre-appointment hearings as the most effective vehicle for exerting influence and advancing reputation. The widening gap in attendance at pre-appointment hearings and 'other' evidence sessions, particularly during a period of diminishing government majorities, is further evidence of such selectivity; which in turn suggests that any benefits accrued from the Wright reforms (HC 1117 2009) have been unevenly distributed (see Bates et al. 2017 for a longitudinal analysis).

Overall, this research extends existing analyses of Westminster's system of pre-appointment scrutiny. By benchmarking attendance and participation at pre-appointment hearings against that of 'other' inquiries, it provides the first systematic analysis of the significance attached to pre-appointment scrutiny by select committee members. Similarly, by examining the institutional determinants of the conduct of hearings, it provides a more nuanced contribution to extant debates regarding the extent to which pre-appointment hearings have politicized the appointment process (Matthews and Flinders 2015; Hazell et al. 2017; Hazell 2019). More broadly, this research provides further evidence of the way that the reputations of select committees have been predicated upon an approach to account-holding that privileges consensus over division (Benton and Russell 2013; Fisher 2015; Russell and Gover 2017) and, in doing so, has shown that such institutional norms are intrinsic to their reputation, and have a mutually constitutive relationship with shared understandings of 'good' or 'responsible' account-holding.

Moving beyond the case, this research suggests that although parliaments have ostensibly limited direct 'investment' (Bovens 2007) or 'interest' (Schillemans and Busuioic 2013) in the delegation of executive functions to independent agencies, a range of reputational factors nonetheless encourage parliaments to enter this accountability space. As this article has shown, select committees have sought to expand their account-holding responsibilities, despite the fact that they are not the formal principal of the appointee, and despite hearings being non-binding and rooted in the principle of ministerial responsibility. This underlines the limitations of formal principal-agent models and adds empirical credence to theoretical arguments regarding the necessity of 'mov[ing] from a dyadic model to a multiple principal model' to capture 'the possible role that other non-hierarchical actors can play' (Waterman et al. 1998, p. 18). Parliament is not 'the great outsider' (OECD 2002) in the delegated state, and it is imperative that research is attuned to the informal, anticipatory or latent dynamics of account-holding, exercised across a network of principals. By doing so, it is possible to arrive at a more nuanced understanding of the multi-dimensional and contingent flows of accountability that govern both the exercise and the oversight of executive patronage.

This article has examined the motivation of account-holders to scrutinize politicized appointments, and has identified the reputational benefits accrued. In turn, future research should examine the motivations of account-givers to determine whether nominees welcome the opportunity to establish their reputation in advance of their appointment being confirmed; or whether pre-appointment scrutiny entails a reputational risk, which deters would-be nominees from entering the race. By integrating insights from the fields of executive patronage, accountability politics and delegation, future research should also examine the wider effects of account-holding and account-giving on agency performance. As executives worldwide rely on patronage appointments to reconcile the imperatives of delegation and control, the existence of effective safeguards is of critical importance; and in taking this agenda forward, future research can build on this article to ascertain the longer-term effects of such precautions in terms of performance, responsiveness and legitimacy.

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SUPPORTING INFORMATION

Additional supporting information may be found online in the Supporting Information section at the end of this article.

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