



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

G/7 Ground Floor, 1 Horse Guards Road SW1A 2HQ

Telephone: 020 7271 0839

Email: acoba@acoba.gov.uk

Website: <http://www.gov.uk/acoba>

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BUSINESS APPOINTMENT APPLICATION: Sir Jonathan Jones KCB QC - Linklaters

1. Sir Jonathan sought advice from the Advisory Committee on Business Appointments (the Committee) under the Government's Business Appointments Rules for Former Crown servants (the Rules) on an appointment he wishes to take up with Linklaters. The material information taken into consideration by the Committee is set out in the Annex.
2. The purpose of the Rules is to protect the integrity of the Government. As Treasury Solicitor and Permanent Secretary of the Government Legal Department (GLD), Sir Jonathan was the Government's most senior legal official and he wishes to continue to work in the legal sector.
3. Under the Rules, the Committee's remit is to consider the risks associated with the actions and decisions Sir Jonathan made during his time in service, alongside the information and influence he may offer Linklaters, based on the information provided by himself and his former department.
4. The Committee considered whether this appointment was unsuitable given Sir Jonathan's former role as Treasury Solicitor and Permanent Secretary, but the Committee must also consider the information provided by the department about his specific dealings with this employer and the sector. The Committee has advised that a number of conditions be imposed to mitigate the potential risks to the Government associated with this appointment under the Rules; this does not imply the Committee has taken a view on the appropriateness of this appointment for a former Treasury Solicitor and Permanent Secretary in any other respect.
5. The Rules set out that Crown servants must abide by the Committee's advice¹. It is an applicant's personal responsibility to manage the propriety of any appointment. Former Crown servants are expected to uphold the highest standards of propriety and act in accordance with the 7 Principles of Public Life.

The Committee's consideration of the risks presented

¹ Which apply by virtue of the Civil Service Management Code, The Code of Conduct for Special Advisers, The Queen's Regulations and the Diplomatic Service Code

6. Linklaters is a global law firm headquartered in London. While the Committee² noted Linklaters is included in the panel of firms eligible to work with the Government, both Sir Jonathan and GLD confirmed the panels are appointed after an open, public, competitive process and Sir Jonathan had no role in this process. The Committee also noted Sir Jonathan did not meet with Linklaters during his time as Treasury Solicitor and Permanent Secretary. Further, Sir Jonathan and his former department confirmed he did not make any other contractual or policy decisions specific to Linklaters while in office. It is also significant he is continuing his career as a lawyer, moving to private practice having left the Government. The Committee therefore considered the risk he was offered the role for decisions made in or actions taken in office was low.
7. As the former Treasury Solicitor and Permanent Secretary, the Committee noted Sir Jonathan has significant knowledge of legally privileged material. It also noted he seeks to advise on public law including specifically on matters for private sector clients wishing to engage with the Government or seeking to challenge the Government's policies or decisions in the courts. In this regard, there is a risk his access to information while in Government could offer an unfair advantage to Linklaters, particularly in light of the unknown potential clients and matters he may be asked to advise on. There is a risk this could overlap and conflict with matters he had responsibility for as Treasury Solicitor and Permanent Secretary.
8. The Committee noted there are several mitigating factors raised by Sir Jonathan, his former department and the Cabinet Office which reduce the scope of the above mentioned risks:
 - He is prevented from using sensitive information by a number of formal restraints, as well as the Government's Rules. These include: the Bar Code of Conduct, alongside the rules and principles which apply to all former Crown servants. As such Sir Jonathan has a professional and legal obligation not to work on matters where a conflict is present and there are protections for avoiding any conflict of interest with his previous government role embodied in Linklaters' own policies and protocols for managing conflicts.
 - Whilst recognising that as Permanent Secretary and Treasury Solicitor he was involved in legal decisions facing the UK Government, he was only occasionally responsible for individual legal cases.
 - Sir Jonathan gave in his notice of his resignation on 7 September 2020 and from this point onward he had limited access to information and reduced duties in office, before formally stepping down from all duties when an interim Treasury Solicitor and Permanent Secretary of GLD was appointed on 9 November 2020.
 - GLD and the Cabinet Office told us that this passage of time means the information he had access to is no longer relevant.
 - Neither department had any concerns about Sir Jonathan taking up this post, subject to ensuring any potential for conflict is managed appropriately.
9. Whilst he is continuing in his professional career, he held a senior, high profile and pivotal role within the justice system and public law as Treasury Solicitor and Permanent Secretary. He is now moving to a private law firm where he will advise on public law. The Committee's view is that whilst there are mitigating factors, there remains a risk Sir Jonathan may have privileged insight that could be seen as offering an unfair advantage.

² This application for advice was considered by Jonathan Baume; Andrew Cumpsty; Sarah de Gay; Isabel Doverty; The Rt Hon Lord Pickles; Richard Thomas; Mike Weir; Lord Larry Whitty and Dr Susan Liataud.

10. The Committee also noted it could be seen that given Sir Jonathan's role in office, he has privileged insight into the Government's planning around the impact of the UK's departure from the EU. The Committee noted Sir Jonathan left before the UK's departure and had no involvement in the Government's work on these matters following his resignation in early September 2020. However this remains a risk, most likely to arise if he advises on matters related to the UK Government's specific plans for trading relationships or recovery plans.
11. More generally, the Committee considered that given his role and profile as the former Treasury Solicitor and Permanent Secretary, there is a risk it could be perceived his influence might assist Linklaters unfairly.

The Committee's advice

12. The Committee recognised that his role will be limited, within the confines of his personal and professional responsibilities to matters where there is no conflict of interest. However, the Committee noted there are potential unknown risks associated with his time in office, specifically, should a client be an individual, company or organisation he had a direct engagement with whilst in office; or where he had a material role in considering a related legal matter in office. It is difficult to anticipate in advance specific conflicts which may arise, therefore, the Committee considered it would be appropriate to impose a condition which makes it clear Sir Jonathan work should be limited to providing advice on matters that do not conflict with his time as Treasury Solicitor and Permanent Secretary. This is in keeping with the formal restraints placed upon Sir Jonathan, including the Bar Code of Conduct and Linklaters usual management of conflicts of interest.
13. While Sir Jonathan has made it clear he does not intend to lobby the Government, he does propose to have contact with the Government in this role. Sir Jonathan has stated it may be the case he works on cases where Linklaters has been chosen from the panel to provide legal service to a government department. These panels are formed following an open competitive process and government departments choose an approved firm to work with. Whilst the Committee considered this could not reasonably be perceived as lobbying, the Committee would draw Sir Jonathan's attention to the lobbying ban imposed below. In this context the Committee did not consider it would be appropriate for him to initiate contact with the Government on behalf of Linklaters' clients. To do so would risk offering his new employer an unfair advantage via influence and contacts gained within the Government as a result of his time in office. This is particularly relevant should a private client wish to challenge or influence the Government. Further, the restriction below on providing advice on the terms of a bid or contract relating directly to the work of the Government prevents him from providing an unfair advantage to Linklaters or its clients in respect of future work with the UK Government.
14. The Committee considered whether it was necessary for there to be a gap between Sir Jonathan's access to information and his joining Linklaters. The Committee recognised the opportunity for him to offer an unfair advantage is limited as he will be prevented from drawing on such information and/or advising on said matters by the conditions below and his professional obligations as a Barrister. The Cabinet Office and GLD have confirmed his access to information was significantly reduced from September last year as he stepped back from his duties as Treasury Solicitor and Permanent Secretary. In reaching its decision on the appropriate gap, the Committee considered a 6 month wait would normally be considered appropriate. However, it has given weight to Sir Jonathan's limited role and access to information after he resigned in September last year. In the particular circumstances of this case, the

Committee considered a 3 month waiting period from his last day in Crown service appropriate, which is 6 months since his resignation and since his access to information was significantly limited- subject to the conditions below.

15. Taking into account these factors, in accordance with the Government's Business Appointment Rules, the Prime Minister has accepted the Committee's advice that this appointment with **Linklaters** be subject to the following conditions:
 - a waiting period of three months from his last day in Crown service;
 - He should not draw on (disclose or use for the benefit of himself or the persons or organisations to which this advice refers) any privileged information available to him from his time in Crown service. In the context of this general provision, the Committee considers he should specifically avoid giving Linklaters, or its subsidiaries, partners or clients, privileged insight based on information from his time in Crown service into Brexit related issues, insofar as it as it pertains to UK's negotiating strategy post its departure from the EU;
 - for two years from his last day in Crown service, he should not become personally involved in lobbying the UK Government on behalf of Linklaters (including parent companies, subsidiaries, partners and clients); nor should he make use, directly or indirectly, of his contacts in the Government and/or Crown service to influence policy, pursue or resolve a dispute, secure business/funding or otherwise unfairly advantage Linklaters (including parent companies, subsidiaries, partners and clients);
 - for two years from his last day in Crown service he should not undertake any work with Linklaters (including parent companies, subsidiaries, partners and clients) that involves providing advice on the terms of, or with regard to the subject matter of a bid with, or contract relating directly to the work of, the UK Government;
 - for two years from his last day in Crown service, his role with Linklaters should be limited to providing advice on matters that do not conflict with his time as Treasury Solicitor and Permanent Secretary. This includes not advising Linklaters on cases with which he was personally involved in; and
 - for two years from his last day in Crown service any contact with the Government in his role with Linklaters should be limited to where Linklaters has been selected to represent it from the Crown Commercial Services Panels; and he must not directly engage with the Government on behalf of Linklaters or its clients in any other capacity unless at the request of the Government.
14. The Committee also notes that in addition to the conditions imposed on this appointment by virtue of the Rules, there are professional and legal requirements of a practicing member of the Bar.
15. By 'privileged information' we mean official information to which a Minister or Crown servant has had access as a consequence of his or her office or employment and which has not been made publicly available. Applicants are also reminded that they may be subject to other duties of confidentiality, whether under the Official Secrets Act, the Ministerial Code or otherwise.
16. The Business Appointment Rules explain that the restriction on lobbying means that the former Crown servant/Minister "should not engage in communication with Government (Ministers, civil servants, including special advisers, and other relevant officials/public office holders) – wherever it takes place - with a view to influencing a

Government decision, policy or contract award/grant in relation to their own interests or the interests of the organisation by which they are employed, or to whom they are contracted or with which they hold office." This Rule is separate and not a replacement for the Rules in the house

17. Sir Jonathan must inform us as soon as he takes up employment with this organisation(s), or if it is announced that he will do so. We shall otherwise not be able to deal with any enquiries, since we do not release information about appointments that have not been taken up or announced. This could lead to a false assumption being made about whether he has complied with the Rules.
18. Please also inform us if Sir Jonathan proposes to extend or otherwise change the nature of his role as, depending on the circumstances, it may be necessary for him to make a fresh application.
19. Once the appointment(s) has been publicly announced or taken up, we will publish this letter on the Committee's website, and where appropriate, refer to it in the relevant annual report.

Yours Sincerely,

Isabella Wynn
Committee Secretariat

Annex - Material information

The role

1. Sir Jonathan described the role as a paid, part-time appointment as Senior Consultant for Public, Administrative and Constitutional Law with Linklaters. Linklaters is a law firm with offices across the US, Europe and Asia-Pacific. It offers clients services in: Brexit, business crime & investigations, capital markets, public & administrative law, real estate, tax, trade law, corporate/M&A etc. Sir Jonathan said he would be advising Linklaters' clients on public law and on practical engagement with government, including advice on the areas set out below. He said he will be a '*...senior member of Linklaters' Dispute Resolution practice, with shared responsibility for scoping and leading the work of teams on matters and managing those matters in accordance with firm practices, including executing client work directly*'.
2. He described his areas of responsibility as including:
 - a. Judicial Review challenges, risk and strategy;
 - b. public inquiries and reviews of all kinds, including Parliamentary Select Committees;
 - c. processes of policy-making and decision-making in government, including consultation requirements, impact of the Equalities Act 2010, EU law and human rights requirements, and other legal factors in decision-making;
 - d. all aspects of the Human Rights Act 1998 and ECHR, data law, freedom of information;
 - e. EU law, including negotiation and implementation of EU legislation;
 - f. implications of EU exit; and
 - g. the impact of legislation and workings of Parliament
3. Sir Jonathan said he may be involved in advising/working on matters for government departments when they choose to engage Linklaters, in accordance with the panel arrangements in place for instructing external firms. Linklaters is a member of the following panels:
 - a. Crown Commercial Services Panels for General Legal Services;
 - b. Finance & Complex Legal Services; and
 - c. Rail Legal Services
4. Sir Jonathan said he may also be involved in advising/working on matters for private sector clients wishing to engage with the Government or seeking to challenge government policies or decisions in the courts. He confirmed while he is subject to the Rules he will not be involved in lobbying government, or seeking to influence government actions or decisions.
5. Before joining government Sir Jonathan practiced at the Bar³ and this is a continuation of his legal practice outside government.

Sir Jonathan's dealings in office

6. Sir Jonathan said he did not meet with Linklaters during his time at the Government legal Department (GLD). He said he had no involvement in policy decisions or development relevant to Linklaters. He noted the responsibilities of his former department as a whole are very wide, '*embracing*' the legal issues affecting the whole of government. However he said, '*...for obvious reasons I could not remotely*

³ <https://www.barcouncil.org.uk/about/about-the-bar.html>

be personally involved in the vast majority of those issues. I did not personally have a "case load" and would only personally become involved in a very small proportion of specific matters'. He stated that he understands where he has been personally involved in considering a particular matter, he will not in future be able to draw on any privileged or confidential information which was made available to him while at GLD. He confirmed that obligation applies to him as a Barrister in any event (and would apply in any future role) by virtue of the Bar Code of Conduct, which requires him to keep the affairs of the Government (as a former client) confidential, and precludes him from acting in any situation where there would be a conflict of interest.

7. Sir Jonathan said with regard to any '*inside knowledge*' or '*unfair advantage*' becomes irrelevant or out-of-date '*very quickly*' as matters enter the public domain or events move on. He said for the vast majority of legal issues involving government, he had had no '*...personal involvement or "inside information" at all given the huge volumes of issues concerned*'. He said where he had some personal involvement, for example, in relation to some aspects of EU exit, such knowledge is already out of date. He stated his involvement in the negotiation of the EU withdrawal agreement under Theresa May, that was re-negotiated under Boris Johnson (with no input from him) and the resulting agreement is now in the public domain. Similarly, he said the Internal Market Act is now public, and noted he is in the same position as any other lawyer in advising on what it means. Further, he confirmed he has no knowledge in regard to negotiations with the EU, whether any trade agreement(s) will be concluded, or what the legal and policy implications will be.
8. Sir Jonathan said by the nature of its responsibilities, his former department has dealings with many law firms:
 - a. Acting against other law firms in contentious litigation (GLD handles tens of thousands of litigation cases against government)
 - b. Participating in the processes for awarding contracts in accordance with the government panel arrangements for external firms
 - c. Working with particular law firms when they are instructed by government departments in accordance with those arrangements
 - d. Ad hoc engagement with particular firms when supporting government clients e.g. at external meetings
 - e. Ad hoc engagement at conferences, training events, professional events
9. Sir Jonathan said he had no substantive personal contact in his current role: specifically he does not have personal responsibility for handling any litigation case, and had no personal engagement with any law firm on any substantive decision, contractual, policy or regulatory issue.
10. Linklaters as well as many other law firms are members of the Crown Commercial Services Panels. Sir Jonathan stated:
 - a. There are 18 firms on the General Legal Services Panel (+ 9 on the Finance and Complex Legal Services and Panel, and 8 on the Rail Legal Services Panel - there is some overlap between the three), including most of the major UK law firms. They were all appointed following a public competitive process and he had no involvement in the selection of any of those firms. Nor has he had any involvement in decisions about which firms to select from the panels for particular pieces of work. He said such decisions are taken by officials in the relevant departments, not by GLD.

11. Sir Jonathan confirmed he has some access to commercially sensitive information regarding competitors of Linklaters, in relation to their charges:
 - a. The overall spend with Panel firms (including Linklaters) is available to Executive Team members.
 - b. Panel rate cards – whilst at GLD he would have been able to access the rate cards for firms on GLD’s panels (including Linklaters).
12. The Cabinet Office and GLD were consulted on this application. Both confirmed the information provided by Sir Jonathan, including that did not meet with Linklaters while in office.
13. The Cabinet Office said Sir Jonathan’s role was both high profile and senior with access to a wide range of information. It stated some of the information he has had access to is now outdated, but not necessarily all of it and the considerations by senior officials and ministers may still be relevant. The Cabinet Office also said in the case of EU trade negotiations, it has become public as the UK’s departure from EU is now finalised. Due to the seniority of the role, he would not have been aware of the specific advice in many cases as this is drafted by more junior lawyers, but he will have been aware of advice and considerations in high profile and ongoing cases. Cabinet Office also stated since September 2020 Sir Jonathan was not consulted for advice/work related discussions etc. regarding Government legal business. As a barrister he will be bound by a code of conduct and ethics including regarding professional conflicts; breach of which can have professional ramifications.
14. The Cabinet Office confirmed there is a contractual relationship between GLD and Linklaters. However, confirmed Sir Jonathan had no involvement in procurement and had no direct contractual dealings with Linklaters - as the contracts were managed by officials from the departments letting the contracts. The Panels are appointed after an open, public, competitive process. It also confirmed he had access to information on the overall spend with Panel firms and on Panel rate cards. The Cabinet Office said the information he had access to will have lost currency since leaving office.
15. GLD said it is confident that Sir Jonathan is no longer in a position to provide any advantage to Linklaters on matters surrounding the UK’s departure from the EU. It also confirmed Sir Jonathan did not take part in future trade agreements or related negotiations whilst in post. Further, GLD confirmed Sir Jonathan does not have access to sensitive information as sufficient time has passed (since September) so that any information will now be out of date. It confirmed the risk of Sir Jonathan providing an unfair advantage to Linklaters in regards to his access to information is minimal as he is subject to the Bar Code of Conduct published by the Bar Standards Board.
16. GLD also stated where Sir Jonathan proposes to work with clients where the other party is the Government there is minimal risk of Sir Jonathan advising private clients on matters such as potential challenges to government policy. It stated this was because the information he has is out of date and he was not personally involved in most of the policy areas in any event as advice is dealt with by Departmental lawyers.
17. In relation to his access to commercially sensitive information, GLD also stated there is a set process by which panels are appointed, this process did not involve Sir Jonathan and he had no involvement in decisions about which firms to select.

Departmental views

18. The Cabinet Office said Sir Jonathan is bound by a code of conduct and ethics, given he is a barrister - which includes professional conflicts; a breach of which can have professional ramifications. The Bar Code of Conduct requires him to keep the affairs of his former client (the Government) confidential, and precludes him from acting in any situation where there would be a conflict of interest.
19. Nonetheless, it said to guard against perceptions of risk, it suggested the following:
 - a. a condition restricting Sir Jonathan's involvement in contracts or bids for HMG projects, to mitigate any real or perceived risk of unfair advantage or perception of a reward;
 - b. a condition restricting the sharing of privileged information;
 - c. a further specific condition, restricting the provision of advice only to matters that do not conflict with Sir Jonathan's former role; and
 - d. the restriction on lobbying.
20. GLD had no concerns about this appointment, stating there was minimal risk to the Government in Sir Jonathan taking up this role given he is bound by the Bar Code of Conduct.

Further relevant information

21. Sir Jonathan said he gave notice of his resignation on 7 September 2020, to take effect on 7 December 2020, in accordance with his contract of employment. He noted his resignation was prompted by serious concerns he had about legal aspects of the government's approach to the EU Withdrawal Agreement and the Internal Market Bill.
22. He stated *'It was agreed with the Cabinet Secretary and the Attorney General that I would effectively be on "gardening leave" for the period of my notice. During that period I only performed the essential, formal functions of my office until an interim successor could be appointed, together with some discrete staff-related projects for the Cabinet Secretary. I had no substantive involvement in any government policy or legal issues, including any advice or briefing to ministers (including the Law Officers), nor any meetings with ministers. In particular, since 07.09.20 I have had no involvement at all in any legal or policy aspects of EU exit. At that stage I also stepped down from all Civil Service governance roles (for example as member of the CS Board and chair of the People Board).'*
23. On 9 November 2020 an interim Treasury Solicitor and Permanent Secretary of GLD was appointed. At that point he formally stepped down from all aspects of the role. Since then, in addition to having no involvement in the provision of any legal advice or services to the Government or any aspect of government policy, he also ceased to have any role in the governance or management of GLD, and took accrued annual leave. In particular he ceased to chair or attend the GLD board or any other departmental governance committee and has received no relevant papers or briefings. He left Crown service in 7 December 2020.
24. With regards to the Bar Code of Conduct published by the Bar Standards Board, Sir Jonathan stated the most relevant provisions are below:

'Core Duty 6: "You must keep the affairs of each client confidential".

Rule C15: "you must protect the confidentiality of each client's affairs, except for such disclosures as are required or permitted by law or to which your client gives informed consent". The duty of confidentiality is described as "central to the administration of justice".

Rule C21: "You must not accept instructions to act in a particular matter if:
1. due to any existing or previous instructions you are not able to fulfil your obligation to act in the best interests of the prospective client; or
2. there is a conflict of interest, or real risk of conflict of interest, between your own personal interests and the interests of the prospective client in respect of the particular matter; or
3. there is a conflict of interest, or real risk of conflict of interest, between the prospective client and one or more of your former or existing clients in respect of the particular matter unless all of the clients who have an interest in the particular matter give their informed consent to your acting in such circumstances; or
4. there is a real risk that information confidential to another former or existing client, or any other person to whom you owe duties of confidence, may be relevant to the matter, such that if, obliged to maintain confidentiality, you could not act in the best interests of the prospective client, and the former or existing client or person to whom you owe that duty does not give informed consent to disclosure of that confidential information [...]."

25. With regard to him acting against the Government on behalf of Linklaters he stated it is normal for lawyers at different times or at the same time to act both for and against a client. However, he added it would be improper *'...for a lawyer to act both for and against client X in the same or a related matter; or for a lawyer to act against X in one matter, where to do so would entail using any confidential or privileged information obtained about or from X on another matter; or where there would be a conflict of interest between different clients. That would be a breach of confidence and of the professional codes, and is thus precluded by the rules mentioned above, and by the rigorous controls set out in Linklaters' policies and procedures, which you have'*.
26. He concluded by stating protections for avoiding any conflict of interest with his previous government role are also embodied in Linklaters' own policies and protocols for managing conflicts.