



**OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS**

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Rachel Reeves MP  
Shadow Chancellor of the Duchy of Lancaster  
House of Commons  
London  
SW1A 0AA

12 April 2021

Dear Rachel

Thank you for your letter, which ACOBA received on 6 April 2021.

I think it is important to start by being clear about what ACOBA is and is not. ACOBA is not a regulator, nor a watchdog. It has a very specific and defined role within the Government's business appointments system, which is to apply the Government's Business Appointment Rules (the Rules) to ex-ministers and the most senior Civil Servants. Government departments perform the same function for all other levels for officials.

The Rules are set by the Government and all aspects of the Rules, including their content, amendment and enforcement are the responsibility of the Government.

ACOBA's remit is to consider the risks associated with the actions and decisions an individual has made during their time in office, alongside the information and influence they may offer an employer, based on evidence provided by the applicant and their former department. To mitigate potential risks to the integrity of the Government, ACOBA will apply delays, conditions and restrictions; as should departments. ACOBA makes it explicit that lobbying the Government to unfairly benefit a new employer on leaving office<sup>1</sup> is inappropriate and unacceptable.

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<sup>1</sup> The Government's Business Appointment Rules apply for two years on leaving office.

ACOPA has a membership of nine; three members nominated by political parties: the Scottish National Party, the Labour Party and the Conservative Party; and five independent members<sup>2</sup>. ACOPA's role is first and foremost to consider casework. Given the large volume of cases (well over 200 cases in 2020-21), the Committee is in discussion twice a week on casework. However, the Committee has continued to consider how it can continue to increase transparency around its work within the Rules.

I also recently appeared before the CSPL giving evidence into their inquiry into standards on wider aspects of the system and lobbying. I enclose a copy of my written submission, which I hope you find helpful. My full evidence to the Committee can be viewed on the following link:

<https://www.youtube.com/watch?v=1ztGUOOhU8o&authuser=0>

You have written to me in respect of Greensill Capital. However, I must be clear that any access Lex Greensill<sup>3</sup> may have had to the Government, is not within the remit of ACOPA.

I can confirm that ACOPA has written to the Cabinet Office and Mr Crothers for an explanation on a possible failure of the former Government Chief Commercial Officer to seek the Committee's advice before taking up a post with Greensill. We will publish this correspondence in due course, in line with our commitment to transparency.

I have copied this correspondence to relevant parties in the Cabinet Office for information.

*Yours ever  
Sirie Pickles*

The Rt Hon Lord Pickles

Rachel Reeves MP

Copied to: Darren Tierney, Director general, Propriety and Ethics, Cabinet Office; The Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster and Minister for Cabinet Office; and Chloe Smith MP, Minister of State for the Constitution and Devolution.

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<sup>2</sup> The Chair and independent members are all appointed following a fair and open recruitment competition, in accordance with the Cabinet Office Public Appointments Governance Code.

<sup>3</sup> Or any other individual who is not subject to the Business Appointment Rules.



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Lord Evans

Committee for Standards in Public Life (CSPL)

By email: [public@public-standards.gov.uk](mailto:public@public-standards.gov.uk)

### Response to CSPL Review on Standard Landscape

1. You have invited me, as Chair of the independent Advisory Committee on Business Appointments (ACOBA), to submit evidence as part of your current review into standards. My response is based on my insight from my first year in post at ACOBA, but it also reflects on my experience in public life over many years. I also I enclose a copy of the most recent Annual Report<sup>4</sup>, which sets out ACOBA's role and remit; and how it approaches its work.

2. The current standards system, of which business appointments are part, relies on a number of rules and codes - regulated by a plethora of independent bodies and regulators. The various codes of conduct across the public sector are underpinned by the Seven Principles of Public Life which are a helpful benchmark to measure the appropriateness of behaviour. However, they are a set of principles that can and will be interpreted differently by different audiences. This provides for grey areas between the spirit of the underpinning principles and the letter of the various rules and codes which seek to encourage and secure compliance. Whilst there is value in the UK's current system, it must be made clear to the public, and the individuals concerned, exactly how the Government holds individuals to account in respect of their responsibility to act with honesty and integrity.

### What is ACOBA?

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<sup>4</sup> ACOBA's Annual Report can also be found on the website here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/962428/ACOBA\\_Annual\\_Report\\_for\\_publication\\_2018-2020\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962428/ACOBA_Annual_Report_for_publication_2018-2020_final.pdf)

3. As you will be aware, the Committee operates within the wider business appointment system which the Government has made it clear it favours, over a statutory one, to allow permeability between the public and private sectors, whilst managing propriety. The Government's Business Appointment Rules (the Rules) are a set of principles designed to protect the integrity of the Government. The Rules themselves are set by the Government and all aspects of the Rules, including their content, amendment and enforcement are the responsibility of the Government.

4. It is the personal responsibility of individuals to follow the Rules and manage the propriety of their outside appointments, whilst following the Rules, a requirement which is set out in the various codes of conduct<sup>5</sup>. All applicants are expected to uphold the highest standards of propriety and act in accordance with the Seven Principles of Public Life. It is also the responsibility of the Government to foster a culture that supports this - where senior figures lead by example, demonstrating high standards of propriety with clear systems and processes to underpin this. Civil servants - at all levels - and new Ministers need to be made more aware of the expected standards, principles and the various rules that apply; from their induction to the moment they leave public service.

5. ACOBA is not a regulator nor a watchdog. It has a very specific and defined role within the Government's business appointments system - to apply the Government's Rules at the most senior levels of the Government, whilst government departments do so at all other levels for officials. In doing so ACOBA considers the risks associated with the actions and decisions an individual has made during their time in office, alongside the information and influence they may offer the employer, based on the evidence provided by the applicant and their former department. To mitigate potential risks to the integrity of the Government associated with appointments, ACOBA will apply delays, conditions and restrictions; as should departments.

6. ACOBA's 'approval' of any role is in these terms *only* - that it be subject to a number of conditions to manage risks identified under the Rules. It is not approval of the role in any other respect. For example, it is not a commentary or view on whether the individual is appropriately skilled for the role; nor on whether it might conflict with other roles they may hold, for example as an MP or for another organisation<sup>6</sup>.

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<sup>5</sup> The Ministerial Code, the Civil Service Management Code, The Code of Conduct for Special Advisers, the Queen's Regulations and the Diplomatic Service Code

<sup>6</sup> The exception to this is where the applicant has an ongoing role within the Government - in that potential conflicts under the Rules in relation to any ongoing roles within the Government will be considered.

7. It is perhaps unsurprising the Government supports<sup>7</sup> a system that is broadly compliant and requires significantly less resources than any alternative systems that could be envisaged. Whilst there are some examples of non-compliance, these remain a small percentage of the casework and applications that ACOBA is aware of. ACOBA's transparency regime is closely monitored by the media and members of the public with an interest. Most media reporting on outside appointments is driven by ACOBA's own publication of its decision on its website. However, neither ACOBA or the Government can know what we do not know, and this gap in information is often highlighted by critics of the system as evidence of a problem. The benefits and costs of any significant changes to the system must be balanced against the benefits of the current system, which has strong evidence of overall compliance. I should also take this opportunity to make it clear that contrary to popular belief, ACOBA can and does tell applicants when an application to take on an outside role is unsuitable. Only if that advice were ignored would ACOBA make that public; our experience is that applicants overwhelmingly accept ACOBA's advice.

8. There are some issues with the Government's current approach that I think should be explored, and I will outline those below - namely around: transparency and best practice at departmental level, including some possible gaps in the system; the complexity of the system; and the lack of sanctions. Given the significant public scrutiny of those holding and leaving public office, the Government must do more to demonstrate how it holds individuals to account in respect of their responsibilities to act without impropriety. Having a system is simply not enough if it cannot be understood by those who it is set up to assure; members of the public must be able to see the system working.

### **Where should consideration for improvement be focussed ?**

- **Scope of the rules - best practice and transparency**

9. I am not convinced the Rules or the business appointments system as a whole are visible enough to be understood widely. ACOBA is the most visible part of the system, advising the most senior, and therefore often the most high profile, applicants. Recognising this, ACOBA has increased transparency by publishing increasingly detailed information. However, transparency must increase right across the system.

10. ACOBA has been taking a number of steps to increase its transparency:

- Being transparent about its risk-based approach that will allow ACOBA to offer prompt, predictable and consistent advice on appointments that are

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<sup>7</sup> Read the Government's response to the Public Administration and Constitutional Affairs Committee's report: [Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action](https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/731/73102.htm) here: <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/731/73102.htm>

unremunerated or unrelated to an applicant's work in government and concentrate attention on more complex cases.

- Where there are significant risks, for example where applicants possess commercially sensitive information from their time in government, it will be clear to applicants that it is not always possible to mitigate the associated risks by applying conditions or a delay. In such cases ACOBA will advise that it is inappropriate for an ex-minister/ex-civil servant to take up such a role.
- Applicants and departments are required to provide clear evidence to demonstrate a role they wish to take is appropriate for someone who held their position in government. Submissions will be published alongside ACOBA's advice.
- Where ACOBA is made aware that an individual has failed to seek advice or may be acting in a manner contrary to advice received, we will refer this to the Government and, where relevant, write to the employer. This correspondence will be published in full by ACOBA.
- Any failure to comply with ACOBA's advice will be taken into consideration as part of the vetting process in awarding honours.

11. The vast majority of cases fall to departments for consideration if officials make an application under the Rules<sup>8</sup>. It is now a requirement that all departments ensure their Audit and Risk Committees monitor issues relating to the Rules at regular intervals. This is a welcome addition to the governance arrangements within the business appointment system, and at departmental level (and followed a recommendation made by ACOBA to the Public Administration and Constitutional Affairs Committee (PACAC)<sup>9</sup>). However, it is far from clear how this is being applied and monitored within departments; and there is no aggregated data or reporting available to demonstrate how the Rules are applied below ACOBA.

12. This lack of clarity and transparency can fuel a lack of public confidence about the business appointments system as well as raise questions and concerns about particular appointments, which may be wholly unjustified. ACOBA, with the right resources, could be well placed to share best practice, raise awareness and transparency on the Rules across government and publicly. I have raised this with the Cabinet Office as either a permanent solution, or as an enabler for a longer term policy.

13. Government departments and arm's length bodies, at the very least, should increase the information available on how the propriety of outside appointments are

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<sup>8</sup> Whilst ACOBA considers applications from former ministers, it only considers applications at the most senior levels from officials (members of the Civil Service, the Military, the Diplomatic Service and the Intelligence Services).

<sup>9</sup>You can access ACOBA's evidence to PACAC here:

<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Public%20Administration%20and%20Constitutional%20Affairs%20Committee%20/The%20role%20and%20effectiveness%20of%20ACoBA%20and%20the%20Independent%20Adviser%20on%20Ministers%E2%80%99%20Interests/written/40856.html>

managed - bringing a greater degree of clarity to how the principles in the Rules are put into practice. This echoes PACAC's previous recommendation that the Cabinet Office should publish aggregated data in relation to the applications that departments considered from members of the Senior Civil Service below SCS 3, to allow public scrutiny of practice across individual departments.

14. The Rules and any guidance that accompanies them should be clear about the expectations they set, removing the risks of any misunderstanding and to help move away from a culture of entitlement that exists in some departments. It is not a given that individuals should move seamlessly in and out of the public and private sectors, only that they should do so where there is limited risk to the integrity of the Government.

15. PACAC previously recommended that the Rules should be amended to include '*...a clearly defined principle that at a minimum, public servants should avoid taking up appointments within a two year time period that relate directly to their previous areas of policy and responsibility when they have had direct regulatory or contractual authority within a particular sector.*' Whilst I understand the Government's reticence to unreasonably bar individuals from changing careers and, for example, working in the voluntary sector - there are ways to make improvements here without doing so. Consideration should be given to making it explicit in the Rules, and in employment contracts, that it is not appropriate for individuals to work in areas they have had direct regulatory or contractual responsibilities. This need not preclude individuals from carrying out valuable work or making use of their skills and experience gained in office - where it can be demonstrated it is not a risk to the integrity of the Government; and nor would it require a statutory framework.

- **Remit - the complexity of regulation - demystifying**

16. The landscape is muddled and it cannot be clear to most outsiders who is responsible for what and who is accountable to whom. Within the business appointments system, there are overlapping areas of standards where ACOBA has no role and remit, where other independent bodies are responsible - which is often misunderstood.

17. For example, any conflict that occurs between the outside interests of a member and their duties in either the House of Commons or the House of Lords is governed by the various mechanisms in place:

- The Code of Conduct for MPs<sup>10</sup>

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<sup>10</sup> '*MPs can receive payment for Parliamentary advisory services as long as any such positions are declared on the Register of Interests. Some MPs hold advisory positions for consultancies where they have been recruited to advise on political matters and Parliamentary procedure, or have established political consultancies themselves.*' MPs Outside Interests, Committee for Standards in Public Life, July 2018

- The Parliamentary Commissioner for Standards
- The Commons Committee on Standards
- Code of Conduct for Members of the House of Lords<sup>11</sup>
- The House of Lords Commissioner for Standards

18. Many of the applicants subject to advice from ACOBA are former ministers, who may continue to serve in either House. The public can be confused by the various rules that govern outside appointments which is unsurprising. For example, media coverage often refers to ACOBA in the context of MPs' second jobs despite that being a matter for Parliament; or where a former minister sits in the House of Lords and receives advice from ACOBA with a number of restrictions, including a ban on lobbying - for an application to work with a consultancy firm which has a lobbying arm to its business.

19. Arm's length bodies, where employees are not employed under the Civil Service Management Code are not subject to the same Rules. This includes some regulators and the Government's own departmental non-executive directors. Whilst there can be equivalent arrangements in place<sup>12</sup>, there is no standard requirement to make an application or publish the outcome of any consideration or decisions made upon leaving public office (unlike Senior Civil Servants). The public and media often assume that such appointments come within ACOBA's remit, but they do not. The guidance and transparency regime I talk about in paragraphs 13 and 14 should seek to make the landscape clear.

20. The Office of the Registrar of Consultant Lobbyists (ORCL) administers the statutory Register of Consultant Lobbyists. The Register is based on the power of transparency - in this instance transparency of those seeking to lobby Ministers and Permanent Secretaries on behalf of a third party. Under the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (the Act) a person must not carry out consultant lobbying unless on the Register. This regime sits alongside the Rules which state that, as a general principle, there will be a ban on lobbying Government after individuals leave office; and allows for amendments to be made to that.

21. It is stating the obvious that it is damaging to the integrity of Government if former officials and ministers leaving office are seen to trade on their time in Government - to be paid for access to and or to influence the Government. ACOBA makes it explicit that lobbying the Government to unfairly benefit a new employer on

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<sup>11</sup> *'Outside employment which involves being paid to provide advice on Parliamentary affairs or how to influence Parliament is prohibited for Members of the House of Lords, Members of the Scottish Parliament and Members of the Welsh Assembly.'* MPs Outside Interests, Committee for Standards in Public Life, July 2018

<sup>12</sup> It is for sponsoring departments to agree with arm's length bodies how they will address propriety of outside appointments and it will differ between bodies



leaving office is inappropriate and unacceptable. However, there is no blanket ban or statutory requirement not to lobby the Government on leaving office; and former ministers and officials (and the companies they may seek to work for) can be added to the Register without issue. It should be made easy for the public to understand how the Government protects its interests by preventing improper lobbying, for example - it could be made clear that applications to work with lobbying firms will not be accepted for a certain period of time.

- **Compliance and lack of sanctions**

22. Perhaps the most significant criticism of the Government's business appointment system is the lack of sanctions. Whilst it is a requirement to follow the rules under the various codes of conduct, this is not always clear in ACOBA's experience. Further, CSPL has previously noted the lack of clarity in the enforcement of the Ministerial Code - there is no clear sanction imposed by the Government for failures to comply with the Rules.

23. In respect of ACOBA's role here, breaches (such as failures to seek advice before taking up an outside role) are made public. The court of public opinion can be a useful tool - very few individuals, or their employers wish to be found acting contrary to the high standards expected of officials. However, despite the shame and damage to reputation that can occur to an individual as a result of this transparency, likewise the high profile nature of these cases can damage the reputation of the system as a whole. Whilst I must stress failures to comply account for a small percentage of ACOBA's overall caseload - consideration must be to the consequences of infringing or defying the Rules.

24. The Government is introducing a consultation process with ACOBA, when vetting nominations received for a former Minister or senior civil servants to receive an honour. Therefore, compliance with the Rules will be taken into consideration as part of the Honours and Appointments Secretariat's existing vetting process. When considering what more could be done, this is a helpful starting place - for example could this be extended to cover consideration where an individual seeks to return to any role in public office where appointed by the Government?

25. It should be an explicit post-employment contractual obligation to adhere to the Government's Rules and make clear what the sanction will be.