

RESTRICTED - APPOINTMENTS

ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

Minutes of the meeting held at 35 Great Smith Street, SW1P 3BQ  
Wednesday 16 June 2010 at 2.30pm

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PRESENT

The Rt Hon Lord Lang of Monkton DL (Chairman)  
The Rt Hon Lord Macdonald of Tradeston CBE  
General The Lord Walker of Aldringham GCB CMG DL  
Sir Hugh Stevenson

Secretariat

Ms Sue Pither  
Mrs Navita Seedhar  
Mr Roger Sampson  
Ms Beth Watson

Apologies

Dame Juliet Wheldon  
Sir Colin Budd  
Lord Dholakia

Item 1 – [REDACTED]

Lord Lang welcomed colleagues and set out how he proposed to conduct the meeting. All had received a briefing note from the Secretary along with the original recommendation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RESTRICTED - APPOINTMENTS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## RESTRICTED - APPOINTMENTS

[REDACTED]

[REDACTED]

[REDACTED]

### **Item 2 - Discussion on the Secretary's 'Note to Committee – Guidelines for Former Ministers'**

The Committee read the legal advice received from Treasury Solicitor (Tsol). They asked that it be circulated to members who were not present.

The Committee thought that the PM should be sent a copy of the legal advice but it should be suggested that he seeks independent legal advice.

Keeping the legal advice in mind the Committee considered the Secretary's paper on responding to the PM's request for advice on the proposal to increase to 10 years the time during which a former Minister must seek advice from the Committee. It was agreed that the Committee response should include advice and comment on other issues with regard to both the guidelines for former Ministers and the Rules for Crown servants.

With regard to the new 2 year automatic ban on lobbying the Committee agreed that:

- It should be made clear that Committee will still have to consider each case on its merits
- No waiting periods or conditions should be called mandatory. Legal advice strongly advises against using words like automatic and any mandatory ban's may not be legally enforceable
- There is scope for rewording the guidelines so that it is stated that that former Ministers would "usually" (or something similar) be required to observe a certain condition/waiting period
- The suggested changes and recommendations need to be presented as an expansion and rationalisation of the system.
- As to whether a 2 years lobbying restriction is the right length or whether longer is needed, it can be pointed out that in the past a two year restriction has usually had the effect of discouraging applications or individuals have chosen to withdraw their applications.
- The need to ensure that Crown servants are treated in the same way as former Ministers with regard to the lobbying ban, which is highlighted in TSol's advice should be taken into consideration when finalising the new BARs for Crown servants.

## RESTRICTED - APPOINTMENTS

The Committee then considered the proposal that former Ministers should be required to seek advice for 10 years after leaving office. Members saw problems with the practicalities of this and asked for the following points to be made:

- It will be difficult to obtain relevant information from the departments after that length of time (it is already difficult in some cases after 2 years)
- The membership of ACOBA will have changed at least once so there is a risk of lack of continuity in advice
- Therefore ACOBA would advise that the requirement for seeking advice should remain as it is i.e. 2 years, although members thought that the option of extending conditions and waiting periods beyond 2 years may be a possibility and should be looked into.

On the question of the imposition of mandatory waiting periods the Committee wished the following points to be made:

- ACOBA has already been moving towards the imposition of 3 month waiting periods in a wider range of cases
- It is important that the Committee can still exercise its discretion

The Committee also asked for the response to cover these issues:

- The need for consistency of treatment between Crown servants, Special Advisers and Ministers.
- ACOBA would not wish to become involved in enforcement. It is very difficult to control what Ministers do after they leave office and it is not clear what sanctions could actually be imposed.
- ACOBA, the PM's Office and the Cabinet Office need to keep track of the appointment of Tsars, Special Representatives etc and their position in relation to the guidelines needs to be made clear. They should also be subject to a two year period for seeking advice rather than one as currently suggested.
- Efforts need to be made to ensure that all incoming Ministers are made aware of the guidelines and possible restrictions which could be placed on them when they leave.
- The guidelines should set out that ACOBA is very likely to contact former Ministers' potential employers to seek undertakings and/or to inform them of the restrictions once advice has been given.

**ACTION:** The Secretary will circulate a draft letter to members for comments with the aim of sending final version to PM in very early July.

### **Item 3 - Outstanding cases**

## RESTRICTED - APPOINTMENTS

M166 – ACOBA agreed that confidentiality regarding a recent application could be respected but reviewed after 3 months. Members were happy with a new request for advice.

M165 – Committee agreed on 3 month wait. Precedent to be followed for M167.

4044– Members were given a letter about this case. It was agreed that they would circulate emails with their views.

### **Item 4 - Date of the Next Meeting**

The next meeting was agreed for 7 July 2010 at 2.30pm.

