



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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24 July 2018

BUSINESS APPOINTMENT APPLICATION: MARTIN CROUCH

The Committee has been asked to consider an application from Martin Crouch, Senior Partner, Improving Regulation, at Ofgem, from January 2016 to June 2018.

His last day in Crown service was 8 June 2018.

Appointment details

Ofgem is the Office of Gas and Electricity Markets. Ofgem works with, but is independent of, government, the energy industry and other stakeholders.

Independent consultancy

Mr Crouch proposes to set up an independent consultancy advising on issues relating to developments in the energy sector (such as infrastructure development, new technology, digitisation, decarbonisation, including heat and transport) and in utility regulation (including energy but also other utility sectors). Advice may include the implications of these areas for other sectors. He said that this would use his understanding of the sector and related expertise built up through his career (including prior to working in the civil service) and his knowledge and understanding of regulatory frameworks (on which he notes there is a vast amount of published information).

He explained: *"I would propose only to work for public sector clients or on projects with substantial public sector funding or international projects (outside the EU) in the first three months after leaving Ofgem or projects outside the regulated electricity and gas sector - that is projects in the public interest which Ofgem would support or beyond Ofgem's remit, so no conflict of interest could be considered to exist. Thereafter, I would potentially also work for private sector electricity and gas clients, but of course agree not to use privileged information and not to lobby Ofgem for up to 2 years."*

Mr Crouch explained that he worked in the energy sector and on utility regulation for 10 years prior to joining Ofgem (in January 2003) and noted that the consultancy work proposed is consistent with his broader career.

He added that a lot of information about how Ofgem operates is in the public domain - the minutes of Ofgem's board are published and it is under legal duties to publish the reasons for its decisions. He said that after three months, the outcome of the great majority of any policy decisions he was involved in whilst at Ofgem would have been published and hence not be

privileged information. He noted that in any event, he understands that he remains bound by the Official Secrets Act and would not utilise or divulge privileged information.

In relation to his responsibilities in office, Mr Crouch provided the following information:

- From January 2016 his role was to oversee Ofgem's enforcement, economics and innovation teams; and whilst he participated in board meetings and had an advisory role for policy teams, he had no direct regulatory policy responsibility.
- Enforcement decisions are taken by Committees comprised of people outside the enforcement team (such as the Enforcement Decision Panel).
- He offered to restrict his consultancy work and agree not to work on or advise on any enforcement cases that the Ofgem was running while he oversaw enforcement.
- On innovation, he was not involved in the detail of any advice the Ofgem Innovation Link team gave to firm. He explained advice is provided on a non-discriminatory basis - that the same advice would be given to the same facts and circumstances.

Mr Crouch has sought advice on taking up the following commissions under this consultancy:

Commission with Ofwat

Ofwat is the economic regulator of the water sector in England and Wales. It is a non-ministerial public body.

Mr Crouch would potentially take up a paid role as an external member of the programme board. He said that Ofwat approached him as they were looking for expertise on energy regulation.

Mr Crouch confirmed he had no contractual dealings with Ofwat while in office. As a fellow independent regulator, he met Ofwat officials periodically, for example, through the UK Regulators' Network along with other regulators - meeting approximately 6 to 8 times per year over the past 2 years.

Commission with Challenging Ideas

Challenging Ideas works with organisations to develop ideas, products, new business models and services.

Mr Crouch said that Challenging Ideas approached him, as an expert in energy sector development, about potentially providing advice on refining the follow-on report mentioned in a report published in October last year on energy regulation called, "Reshaping Regulation: Powering from the Future."

The work with Challenging Ideas would likely be a few days (up to 5) in the next two or three months and would be paid.

Mr Crouch has informed the Committee that Ofgem contributed towards the costs of the project which produced the "Reshaping Regulation" report undertaken by Challenging Ideas, along with several other sponsors. He said Ofgem's contribution of £10,000 was a small proportion of the overall funding provided - approximately 10%. Mr Crouch agreed the amount with Ofgem's CEO and subsequently approved payment. He stated that Ofgem's contribution to the project was agreed prior to any discussions about his exit.

Given Ofgem's interest in the work undertaken by Challenging Ideas, he met them bilaterally a few (3 or 4) times and participated in some of their stakeholder events (approximately 3 events) over a period of about 9 months to spring 2018. He also encouraged Ofgem staff, including some within his division, to participate in other meetings.

He noted that Challenging Ideas is a developer and promoter of ideas, not a participant in the energy market, and not regulated by Ofgem etc. He said that, as can be seen from Ofgem's contribution to their work, this is thinking that Ofgem has been keen to promote and support.

Departmental view

The application was countersigned by Dermot Nolan, Chief Executive of Ofgem. Mr Nolan has no concerns about Mr Crouch working on the proposed commissions with Ofwat and Challenging Ideas.

Ofgem is content that it would not be a conflict at this stage for Mr Crouch to input to a future phase of the Challenging Ideas project which produced the report, "Reshaping Regulation: Powering from the Future."

With regard to Mr Crouch's proposal that his future consultancy work may span the energy sector from September 2018, Mr Nolan confirmed that he does not have concerns regarding propriety as Mr Crouch left Ofgem on 8 June 2018 and he considers a 3-month gap to be sufficient and reasonable.

He commented that Mr Crouch's role over the last two years has largely been with enforcement and quality assurance. Although Mr Crouch attended Board meetings, he did not run a regulatory division and although he was party to decisions he did not make key decisions.

Mr Nolan confirmed Mr Crouch has not had access to information or policy that would give energy companies an unfair advantage. However, he advised it may be prudent to ask him not to work on anything related to "RIIO-2"¹ and "Price Cap"² for 6 months.

Committee's consideration

Independent consultancy

The Committee³ observed that Mr Crouch intends to establish a consultancy with a remit which includes the energy sector and utility regulation more broadly, an area which is related to his responsibilities in office.

Mr Crouch has proposed limiting the client base of his consultancy for the first 3 months after leaving Ofgem to: public sector clients; projects with substantial public sector funding; international projects (outside the EU) or projects outside the regulated electricity and gas sector in the first three months after leaving Ofgem. The commissions he is currently seeking advice on fall within this category.

¹ RIIO-2 will be the next price controls for the network companies running the gas and electricity transmission and distribution networks. RIIO (Revenue=Incentives+Innovation+Outputs) is Ofgem's approach to ensuring the monopoly companies who run the gas and electricity networks have enough revenue to run an efficient network that delivers what customers need. The consultation on the framework for RIIO-2 closed in May. Ofgem will finalise the framework to set the next price controls in the summer of 2018.

² On 1 April 2017, the amount of money suppliers can charge a domestic prepayment meter (PPM) customer per unit of energy became subject to a safeguard tariff (or 'price cap') set by Ofgem. Suppliers can charge less than the set level of the safeguard tariff (leaving headroom for competition between providers), but not more.

³ This application for advice was considered by Sir Alex Allan; Baroness Angela Browning; Lord Michael German; Terence Jagger; Baroness Helen Liddell; Dr Susan Liautaud; Richard Thomas and John Wood. Jonathan Baume was unavailable.

After the 3-month period, Mr Crouch would potentially also work for private sector electricity and gas clients.

The Committee's experience is that applications where there is a connection between former civil servants' responsibilities in Government and the area they are looking to work in outside Government are more likely to give rise to risks under the Rules. In this case there are a number of factors, listed below, which objectively lower the risks:

- The Committee has been advised by Mr Nolan, CEO of Ofgem, that as Senior Partner in Improving Regulation, at Ofgem, Mr Crouch did not run a regulatory division and although he was party to decisions he did not, himself, make any key decisions.
- Mr Crouch has explained that enforcement decisions are taken by Committees comprised of people outside the enforcement team (such as the Enforcement Decision Panel) so there is a strong separation between investigations and decision-making.
- Mr Crouch has explained that with regard to innovation, he wasn't involved in the detail of any advice the Ofgem Innovation Link team. Innovation advice provided to firms is provided by the team on a non-discriminatory basis - the same advice would be given to the same facts and circumstances.
- Mr Nolan has confirmed that Mr Crouch has not had access to information or policy that would give energy companies an unfair advantage. Additionally, Mr Crouch has explained that Ofgem makes public a lot of information about how it operates - the minutes of Ofgem's board are published and it is under legal duties to publish the reasons for its decisions.
- Mr Crouch's understanding of, and his professional experience in, the sector and utility regulation predates joining the civil service. (Equally it should be noted that he has worked in Ofgem for the past 15 years.)

Notwithstanding the factors set out above, the Committee recognises there is a significant risk that it may be perceived that Mr Crouch could offer potential clients an unfair advantage through his consultancy. However, it considers it is possible to mitigate some of the risks by imposing specific conditions. As outlined below, other commissions (particularly within the energy sector) may give rise to further risks.

In addition to the extended lobbying ban and the ban on making use of privileged information set out below, the Committee considered it appropriate to impose a 2-year restriction on advising on the terms of a bid or contract relating to the work of Ofgem.

The Committee has also imposed a condition that Mr Crouch should not become involved in, or advise on, matters relating to any enforcement cases opened by, or pending in, Ofgem during the time that he was responsible for enforcement at Ofgem.

The conditions set out below also include the restriction recommended by Mr Nolan on advising on Ofgem's Retail Price Cap and "RIIO-2". The Committee noted that with regard to RIIO-2, Ofgem will finalise the framework to set the next price controls in the summer and as the 6-month restriction proposed would expire in December, this would extend beyond the decision point on the framework.

Future commissions

Whether the conditions set out below can sufficiently mitigate the risks presented by any future commission Mr Crouch proposes to take up will depend on the specific details of each piece of work. Further conditions may be appropriate. Mr Crouch will need to revert to the Committee to seek advice on each commission.

For example, should Mr Crouch seek to work on matters he had direct responsibility for in office, the Committee would consider whether a waiting period may be required. Commissions with private sector electricity and gas companies may raise issues under the Business Appointment Rules because there are inherent perception concerns presented by former Crown servants taking up work with companies regulated by the public body they have recently been employed by. In such cases the Committee must consider the risk that a former Crown servant might offer an unfair advantage to a company by virtue of information or contacts originating from their time in Government. The Committee will consider such risks on a case by case basis.

Commissions with Ofwat and Challenging Ideas

There is no basis for it to be perceived that decisions taken by Mr Crouch while at Ofgem could have benefited Ofwat. Like Ofgem, Ofwat is a regulator in the public sector with statutory public interest functions. As regulators are not competitors in the way that commercial entities are, the Committee considers there is little prospect of Mr Crouch's appointment providing Ofwat with an unfair advantage.

The commission with Challenging Ideas may appear to present greater risks, given that Mr Crouch was involved in agreeing funding to the organisation for the project on energy regulation that he now proposes to work on.

Often, such a direct connection between decisions taken in office and future employment raises cause for concern. However in this case, there are mitigating factors: the sum involved (£10,000, amounting to 10% of the overall funding for the project); the short-term nature of the commission and, importantly, the type of organisation and nature of the project (a think-tank developing ideas in the energy space that Ofgem have been keen to support). The Committee therefore considers the risk of a perception of a reward is low. Equally, concerns about commercial unfair advantage do not arise given Challenging Ideas is a developer and promoter of ideas rather than a participant in the energy market.

The Committee is satisfied that the conditions imposed by the Committee on the consultancy, adequately mitigate the risks identified by these commissions.

Conditions

The Prime Minister accepted the Committee's advice that Mr Crouch's independent consultancy and commissions with Ofwat and Challenging Ideas be subject to the following conditions:

- he should not draw on (disclose or use for the benefit of himself or the organisations to which this advice refers) any privileged information available to him from his time in Crown office;
- for two years from his last day in Crown service, he should not become involved in or advise on matters relating to any enforcement cases opened by, or pending in, Ofgem during the time that he was responsible for enforcement at Ofgem;
- for six months from his last day in Crown service, he should not become involved in or advise on matters relating to "RIIO-2" and Ofgem's Retail Price Cap;
- for two years from his last day in Crown service, he should not provide advice to any company or organisation on the terms of, or with regard to the subject matter of, a bid or contract relating directly to the work of Ofgem;
- for two years from his last day in Crown service he should not become personally involved in lobbying the UK Government on behalf of those he advises under his independent consultancy or their subsidiaries, partners or clients. Nor should he make use, directly or indirectly, of his Government and/or Crown Service contacts to influence policy or secure business or funding on their behalf; and
- for two years from his last day in Crown service, before accepting any commissions and or/before extending or otherwise changing the nature of any commission, he should

seek advice from the Committee. The Committee will decide whether each commission is consistent with the terms of the consultancy and consider any relevant factors under the Business Appointment Rules, including whether additional conditions should be imposed.

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 Civil Service Code or otherwise.

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."*

I should be grateful if you would ensure that we are informed as soon as Mr Crouch's consultancy is live and he takes up these commissions, or if it is announced that he will do so (I enclose a form for this purpose). We shall otherwise not be able to deal with any enquiries, since we do not release information about appointments which have not been taken up or announced, and this could lead to a false assumption being made about whether he had complied with the rules.

I should also be grateful if you would ask that Mr Crouch informs us if he proposes to expand or otherwise change the nature of his consultancy or these commissions as, depending on the circumstances, it may be necessary for him to make a fresh application.

Once Mr Crouch's consultancy is live and he has announced or taken up any of the commissions above, we will publish this letter on the Committee's website and include the main details of the application, together with the Advisory Committee's advice, in the regularly updated consolidated list on our website and in the next annual report.

Yours sincerely

Nicola Richardson
Committee Secretariat