



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

G/8 Ground Floor, 1 Horse Guards Road, London 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 DAVID GREEN CB QC

The Committee has been asked to consider an application from Sir David, former Director of the Serious Fraud Office (SFO). Sir David wishes to take up an appointment with Slaughter and May (Slaughters) as a Senior Consultant.

Sir David's last day in Crown service was on 20 April 2018, when he stepped down as Director at the SFO.

The SFO is responsible for investigating and prosecuting top level serious or complex fraud, bribery and corruption; pursues criminals for the financial benefit they have made from their crimes; and assists overseas jurisdictions with their cases. The Director of the SFO is superintended by the AGO; and as the Director, Sir David was head of the SFO and its accounting officer. (The AGO provides legal advice to Government and is also responsible for overseeing the main independent prosecuting departments, including the Crown Prosecution Service and the SFO.)

Appointment details

The role

Sir David proposes to join Slaughters, a City and international law firm with offices in London, Brussels, Hong Kong and Beijing. Slaughters describe themselves as '...the leading law firm for the largest UK public companies - we act for more FTSE 100 and FTSE 250 companies than any other law firm.'

Sir David was approached about joining Slaughters by the partners responsible for its white collar and corporate criminal practice. Sir David describes the proposed role as working with Jonathan Cotton and Richard Swallow on corporate criminal practice; advising mainly corporate clients on 'all aspects of criminal litigation, including self reporting to the SFO and Deferred Prosecution Agreements (DPAs)'; and carrying out training internally.

Sir David told the Committee that whilst he expected the new role to involve some dealings with Government, he would abide by the strict rules that exist around ensuring no conflicts of

interest. Sir David also noted that any contact with Government in this role would likely be indirect rather than direct; and that he would avoid attending meetings with SFO staff on behalf of clients for at least the first year. However, he said he did plan to provide advice on how such meetings might be best handled from the clients' perspective. Sir David confirmed he would not be lobbying Government.

Official dealings

Sir David provided the following information about the official dealings he had with Slaughters whilst in office, details of which were confirmed by the SFO.

Slaughters were engaged to represent the SFO in a particular legal battle, for fees of circa £15 million. This followed Judicial Review proceedings which were brought against the SFO in 2012. Sir David inherited the Judicial Review proceedings (and the related SFO investigation) when he became Director of the SFO in 2012. The Judicial review against the SFO was successful and the SFO were subsequently sued for damages (thought to be in the region of £300 million) in January 2013.

General Counsel at the SFO told the Committee he made the decision to engage Slaughters on the basis of advice of lead Counsel on the case. He advised the SFO they should 'urgently rethink our approach to representation to ensure that we had the right levels of commercial experience both in our team of counsel and our solicitors. [Counsel] advised, in the strongest terms, instructing a litigation team from a City firm with good experience of this kind of dispute immediately.' This decision was approved by the Attorney General; and ultimately by Sir David as the accounting officer at the SFO. However, General Counsel told the Committee that Sir David 'played no role in the process'.

The SFO also confirmed that 4 City firms were approached but that Slaughters were selected to represent the SFO as they had no conflicts preventing them from acting; and they offered a lower rate. The case was settled for £4.5 million, with no admission of liability from the SFO (and £3 million in costs). Sir David said his involvement was limited to being briefed on significant developments in the case; and he sanctioned the decision made by General Counsel.

Sir David has confirmed he also had contact with Slaughters in relation to one SFO investigation concerning Rolls Royce. This related to a Deferred Prosecution Agreement (DPA)¹, which was agreed in early 2017. Sir David said he attended one meeting with Slaughters and the CEO and Chair of Rolls Royce in late 2016 to 'reset' negotiations.

Slaughters have also represented a number of other clients who are or have been investigated by the SFO. However, Sir David and Slaughters have confirmed he had no specific dealings with Slaughters regarding these cases.

In respect of competitors, Sir David said he has had indirect dealings with other City firms representing companies subject to SFO investigations - though any direct dealings would have been through the case controller or General Counsel at the SFO.

Sir David told the Committee that in his new role he would not be involved in any current SFO investigations. In addition, Sir David noted that protocols for managing conflicts of interest at

¹ A UK Deferred Prosecution Agreement (DPA) is an agreement reached between a prosecutor and an organisation which could be prosecuted, under the supervision of a Judge.

private sector firms are necessary and law firms are used to, for example, blocking access to information. Sir David also noted the professional obligations on lawyers which underpin the process of managing conflicts of interest.

Slaughters also told the Committee that managing conflicts of new employees is common practice and provided information to the Committee to illustrate how they would deal with any potential conflicts generally, and in this case:

- Slaughters noted that the Solicitors Regulation Authority has a number of relevant professional Rules in its Code of Conduct, including that confidentiality trumps the duty to disclose where there is a confidentiality conflict; and that firms have a duty to ensure effective systems and controls are in place.
- Where necessary, Slaughters will establish what it refers to as an 'information barrier' to prevent individuals from accessing certain information. Slaughters confirmed that any matter including the SFO has been put behind an information barrier, meaning if and when Sir David joins, he would be unable to access that information from the moment he joins.
- All parties (Sir David and members of Slaughters) will be reminded in writing of Sir David's duty not to disclose information relating to investigations that were underway at the SFO during his Directorship.
- Sir David will not be asked to work on matters related to any SFO investigation that during his time in office.
- Any area of doubt would be referred to Slaughters' General Counsel or Head of Compliance.
- Slaughters noted they would not preclude Sir David from working on the following cases:
 - those which came to Slaughters 'completely new after 21st April 2018 (DG's SFO leaving date), unless there was some non-public SFO interest before that date known to DG';
 - existing matters which Slaughters had dealt with before 21st April 2018 but which 'had received no overt or non-public SFO interest known to DG beforehand'; and/or
 - new and existing matters which 'were in the hands only of other agencies, for example the FCA, rather than the SFO'.

Other relevant information

Sir David confirmed he was previously a barrister in private practice, prosecuting and defending criminal cases between 1979-2001 and 2011-2012; he was previously Director of Revenue and Customs Prosecutions between 2004-2010; and both he and his former department noted that he has a high profile in white collar and corporate crime.

Departmental views

The Head of HR and General Counsel at the SFO provided information and views on this appointment; and the AGO was also consulted. The application was countersigned by the DG, Property and Ethics, at the Cabinet Office.

The Cabinet Office confirmed, that provided the appropriate conditions are in place, it has no concerns about the appointment. Due to the level of Sir David's seniority, a 4 month waiting period was recommended, alongside a two year lobbying and restrictions on the use of official information.

The SFO, told the Committee it has no concerns about Sir David's proposed appointment and said the integrity of its casework will be protected by professional conduct rules; and noted its casework decisions are made in accordance with published policy documents. Further, it noted that if SFO '...seeks a DPA, that decision is automatically subject to the scrutiny of the court. If it brings proceedings, the decision to do so and the basis on which the case is put (including the selection of charges) is subject to the detailed forensic scrutiny of the trial process. A decision not to bring charges is subject in principle to judicial review.'

Specifically, with regard to Sir David's involvement in the Rolls Royce case, and other decisions he made in office, the SFO noted that DPA's are a statutory scheme. As such, they said it has no effect '...unless and until a judge declares both that the agreement is in the interests of justice and that its terms are fair, reasonable and proportionate. In deciding whether the company should be permitted to enter into a DPA the judge examined its conduct during the course of the investigation and tested it against published public policy criteria. The reasons for the decision were then set out in a detailed, 144-paragraph long judgment and published...As already noted, Sir David's professional conduct obligations prevent him from having any dealings with this continued strand of the case...Sir David's professional conduct obligations prevent him from having any dealings at all with Rolls Royce or indeed any other Slaughter and May clients either engaged with the SFO or subject to an SFO investigation whilst he was Director of the SFO. Even if he were to advise a Slaughter and May client in which there was no professional conflict obligation, Sir David would not attend any meetings on that case with the SFO or otherwise have any direct dealings with SFO staff on it for at least a year after he ceased to be Director.'

The Committee's consideration

The Committee² carefully considered the risks presented by this application given Sir David is moving from a senior position in public law, to work in the same area of practice for a private City and international law firm.

Under the Government's Business Appointment Rules, the Committee must consider if there might be cause for reasonable concern that '...a civil servant might be influenced in carrying out his or her official duties by the hope or expectation of future employment with a particular firm or organisation, or in a specific sector...'

The Committee noted that Slaughters represented Rolls Royce during the high profile DPA that was reached in 2017. However, the Committee considered it could not reasonably be

² This application for advice was reached by Sir Alex Allan; Jonathan Baume; Baroness Angela Browning; Lord Michael German; Baroness Helen Liddell; Dr Susan Liautaud; and Richard Thomas. Terence Jagger and John Wood recused themselves.

perceived that this decision was influenced by Sir David's hopes or expectations of future employment. The SFO's decisions are taken in line with published policy documents; and all its decisions are subject to scrutiny under Judicial Review and the Courts. Whilst it is accepted that Sir David was instrumental in conducting the DPA in this case, this was a statutory route which followed a transparent and public process; and a Judge ruled on it independently.

The Committee also took into account that there was a large contract awarded to Slaughters under Sir David's Directorship (worth circa £15 million). Sir David and the SFO provided evidence to the Committee about the unusual circumstances that led to the SFO instructing a City firm, including a number of mitigating factors:

- a process of elimination led SFO to choose Slaughters over three other firms;
- General Counsel made the decision on advice from Lead Counsel;
- the Attorney General also approved the decision; and
- Sir David was not actively involved in the choice of firm.

However, the Committee also gave weight to Sir David's responsibility as accounting officer and head of the SFO; and his confirmation he sanctioned this decision. There is no suggestion this decision was made improperly and a number of years has now passed. Nonetheless, it is relevant to the Committee's consideration that Sir David, as head of the SFO, was responsible for decisions which benefitted Slaughters.

Under the Government's Business Appointment Rules the Committee must have regard to whether there is a risk of an employing organisation gaining improper advantage or exploiting privileged access to contacts in Government or sensitive information. This case is unusual in this regard, as it includes potential risks to the perception of the administration of the justice system. The Committee recognised there could be concerns here, where a high profile public office holder moves from a pivotal role within the criminal justice system, to a private law firm operating in the same area.

The Committee considered it was significant here, as well in relation to past cases, that any future SFO decision will be taken in line with published policy; and will be subject to scrutiny under Judicial Review and the Courts. Sir David is also professionally obligated to recuse himself where there is a conflict; and Slaughters have confirmed to the Committee they will take a number of steps to prevent Sir David being conflicted. However, Sir David will be working/ advising on cases that relate to SFO investigations. The Committee therefore considered it was important to advise Sir David he should not work or advise on matters related to any SFO investigation that was opened or pending during his time in office. This is in keeping with Sir David's (and Slaughters') intentions; and in accordance with the professional conduct obligations and rules that apply to Sir David and Slaughters' (separately and in parallel to the Committee's advice).

Slaughters will undoubtedly gain from hiring an experienced public law expert and it is relevant that Sir David has experience across public and private law. However, the Committee also considered there is a risk that Sir David could be seen to offer Slaughters' clients an advantage, should he meet with the SFO on their behalf - given his profile as the former Director of the SFO. Therefore, the Committee considered it would be inappropriate for Sir David to do so and has imposed a condition which prevents this.

There are a number of risks the Committee has mitigated by imposing the conditions below. However, in the circumstances, the Committee has also considered whether a 'waiting period' is necessary to put a gap between Sir David leaving office and taking up this role.

Due to his seniority, Sir David is subject to a minimum waiting period of three months under the Government's Business Appointment Rules. The Committee considers the risks in this case are increased. This is due to the close link between the role Sir David held in public office (which included setting the direction on areas of public law, such as DPA's; and responsibility for cases where Slaughters' have/had an interest), and the role Sir David seeks to take up (which will include working on matters at a City and international law firm which relate to the interests of its clients' subject to SFO investigation). The Committee considered that in particular circumstances of this case, a six month waiting period would be appropriate.

The Prime Minister accepted the Committee's advice that in accordance with the Government's Business Appointment Rules, this appointment be subject to the following conditions:

- a waiting period of six months from his last day in Crown office;
- 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; and in this context the Committee considers that he should not become involved in or advise on matters relating to any investigation opened by, or pending in, the Serious Fraud Office during his time as Director of the Serious Fraud Office;
- for two years from his last day of Crown service he should not directly engage with the Serious Fraud Office on behalf of Slaughter and May or its clients;
- for two years from his last day of Crown service he should not provide advice to Slaughter and May or its clients on the terms of a bid or contract relating directly to the work of the SFO; and
- for two years from his last day in Crown service, he should not become personally involved in lobbying the Government or the Serious Fraud Office on behalf of Slaughter and May, or its clients.

As mentioned in the body of this letter, the Committee notes that Sir David is also subject to separate professional conduct obligations and rules.

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."

Please now ensure Slaughter and May are made aware of the Committee's advice in this case, in line with the Department's responsibilities under the Business Appointment Rules

(which state that '...the Department must also inform prospective employers of any conditions which have been attached..').

I should also be grateful if you would ensure that we are informed as soon as Sir David takes up this position, 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 Sir David informs us if he 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.

Once this appointment has been publicly announced or taken up, we will publish this letter on the Committee's website and, if appropriate, refer to it in the relevant annual report.

Yours sincerely

Catriona Marshall
Committee Secretariat

