OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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BUSINESS APPOINTMENT APPLICATION: PHILIPPA LLOYD

The Committee has been asked to consider an application from Philippa Lloyd, Director General for Higher and Further Education at the Department for Education (DfE).

Her last day in the Civil service will be 28 September 2018.

Appointment details

Role and responsibilities

Ms Lloyd proposes to take up an appointment as Vice-Principal, Policy and Strategic Partnerships at Queen Mary University of London (Queen Mary). This is a paid position, involving 4 days' work per week. She applied for a post advertised in the Times Higher Education Supplement.

Ms Lloyd informed the Committee; *'the aim of the role is to provide leadership in the development and implementation of a strategy for Queen Mary relating to policy and strategic partnership development locally, regionally and internationally. The role will provide leadership to harness the strengths of Queen Mary, to help with local development (health and well-being, skills, inward investment, culture and raising aspirations), contributing to national policy, supporting UK plc, and enhancing international partnerships.'*

She said; *'the role is likely to have some contact with Government in relation to laws and policies it is subject to; set by the Department for Education, UK Research and Innovation; and the Office for Students. However, I would expect the lead to be taken by other Vice-Principals – those responsible for Education and Research respectively. It is also likely ideally to have some contact with other Government Departments on matters of public policy, for example, with the Department for Business, Energy and Industrial Strategy and the Department of Health and Social Care.'*

Ms Lloyd added that engagement in national and international discussions about higher education could involve direct dialogue with Ministers, although much of the dialogue is through representative bodies. Queen Mary will look to her for support in understanding how Government works and her knowledge and experience of policy development.

She said that her likely contact would be to describe and explain the work of Queen Mary, and where invited by Government, contribute to formal and informal sessions to brainstorm and shape

government thinking in areas such as widening participation in higher education and health/wellbeing.

Ms Lloyd said she has explained the business appointment rules to Queen Mary, and they understand that her interactions with Government are highly likely to be restricted for two years from her last day in service, and that she needs to ensure that none of her actions could be considered as lobbying Government.

Dealings with Queen Mary whilst in office

Ms Lloyd said she has had some contact with Queen Mary while in office - she visited on 13 June 2016, and attended a dinner there on 17 November 2016.

Queen Mary was announced in March 2018 as one of 16 applicants through to Stage 2 of the competition for Institutes of Technology. In December 2017 employers, education and training providers were invited to apply for a share of £170m to establish new Institutes of Technology, which will specialise in delivering the higher level technical skills that employers need.

One of Ms Lloyd's teams is responsible for the set-up and design of the two-stage competition, and appraisal of the proposals. Ms Lloyd told the Committee she has not been directly involved in consideration of the proposals, nor the development of the final stage 2 guidance, expected to be published in September. Government expects to announce the outcome of stage 2 in March 2019.

Queen Mary is part of the Russell Group of institutions. Ms Lloyd said she and her teams have regular discussions with the Russell Group and other mission and representative groups to discuss current issues (such as vice-chancellor's pay, grade inflation, entry standards, widening participation, the teaching excellence framework, the new regulatory framework for higher education now being implemented by the Office for Students, and the ongoing Review of Post-18 Education and Funding). An independent panel, led by Philip Augar, will provide input to the Review of Post-18 Education and Funding and is currently due to publish its report this November, before the Government concludes the overall review in early 2019.

Ms Lloyd said Queen Mary carries out research and public engagement relevant to a number of policy areas such as: health and wellbeing, inclusive growth, air quality, transport, housing and urban innovation. Ms Lloyd noted these are not policy areas she has been responsible for while in the Civil Service, apart from regional economic development between 2007 – 2011, and the skills aspects of inclusive growth, for which she is responsible now, as part of the DfE's role in the industrial strategy programme led by BEIS.

Dealings with higher and further education sector whilst in office

Ms Lloyd said she routinely visits institutions in the sectors for which she is responsible to understand the issues they face and the impact of government policy on higher and further education on the ground.

Ms Lloyd said she is not responsible for directing any funding towards any specific institution, and the policies that DfE is working on are general and affect the sector as a whole. She said higher education and student finance policy is widely discussed and consulted on in the sector through opinion-formers and representative and mission groups.

Ms Lloyd explained the sector is now independently regulated by the Office for Students (OfS) and before that by the Higher Education Funding Council for England (HEFCE). Block grant funding for research and teaching was the responsibility of HEFCE, and from 1 April 2018, is the responsibility of OfS for teaching block grants, and UK Research and Innovation for research and innovation funding. She noted that funding is formula-based or competitive, based on excellence

and assessment against fund criteria. The Board of the funding body (of which she is an Assessor with no voting rights) agrees the principles underpinning allocations, in line with guidance issued by the Government. The detailed institutional allocations that flow from this are determined by the funding body, separately from Government. Tuition fees are paid directly to institutions by the Student Loans Company on behalf of eligible UK and EU students.

Ms Lloyd added that up to and including 2018/19, DfE is the regulator responsible for alternative providers (APs) of higher education. There are 114 APs with specific course designation, which means the DfE has approved them as meeting the criteria to be eligible for student support funding. Ms Lloyd is responsible for a team which reports to one of her Directors that deals with the regulation and annual course designation of these institutions. DfE is in the process of passing over responsibility for regulation of APs to the OfS as part of the new regulatory framework for higher education that is being established post the passage of the Higher Education and Research Act. The OfS is setting up a register of higher education providers that will then be subject to the regulatory framework.

Ms Lloyd said that to mitigate any risk of conflict or perceived conflict, she has now delegated responsibility for discussions on this (with the OfS) to one of her Directors. She also delegated responsibility for attending the July and future OfS Boards, so she will have no direct access to these discussions and registration decisions.

Ms Lloyd explained that the team that reports to her on alternative providers of higher education has access to commercial information about these providers as part of their regulatory responsibilities, but this information has not been shared with her.

Departmental view

Jonathan Slater, the Permanent Secretary at the Department for Education has been consulted on this application.

In summary, he has no reservations about Ms Lloyd taking up this appointment.

He raised the following points in his advice to the Committee:

- DfE engages with the Russell Group (Queen Mary is one of its institutes) on matters such as higher education and student finance policy but this is at a sector level rather than institute specific.

- Dealings with the prospective employer/ its competitors/ the wider sector have focused on the issues faced and the impact of government policy on higher and further education on the ground. However the applicant's influence is focused on the sector as a whole rather than specific institutions. Ms Lloyd does not have influence over any funding towards specific institutions and therefore in his view this appointment could not be perceived as a reward.

- Ms Lloyd has operated at a senior level within central government for a significant part of her career. She will have had access to policy and departmental information at the most senior levels as well as in-depth knowledge of the sector given her most recent role. However, DfE is confident it has minimised the risk that Ms Lloyd will have access to privileged information that may put Queen Mary at a competitive advantage. Specifically:

    - In relation to the Review of Post-18 Education and Funding Ms Lloyd stopped any involvement in the report from the start of August and will not have any access to any papers/information regarding the review as thinking/recommendations develop for a full three months before the review is due to report in November.

- Ms Lloyd has not personally attended the Board of the OfS since May – so there is a significant gap since she would have had access to individual institution data in that forum.
- Ms Lloyd's Group within DfE has a role in regulating alternative provision. This would entail access to data about relevant institutions, but this regulatory function is handled on a day-to-day basis at a more junior level. The only information that would be shared at Ms Lloyd's level (DG level) would be single, high-profile cases that require escalation. As above, DfE has ensured that Ms Lloyd does not and will not have access to any cases from the start of August.

- The Permanent Secretary is satisfied that Ms Lloyd will not have had access to any privileged information that could risk Queen Mary being seen to be at an advantage for some time before she takes up the role. He does not think that a waiting period is therefore necessary and does not believe it would do anything to add to the measures DfE has already taken regarding her remaining time in office.

Committee's consideration

The Committee[1] recognised that as Director General with responsibility for leadership of policy and delivery across the higher and further education sector, Ms Lloyd has had extensive contact with, and in-depth knowledge of, this sector during her time at DfE.

When considering this application the Committee took into account the view of the Permanent Secretary that Ms Lloyd's engagement on matters such as higher education and student finance policy is, and has been, general, rather than specific to particular institutions and the same can be said about the influence she has within the sector.

The Committee's consideration of the specific issues presented by this application is set out below.

Funding

Ms Lloyd was the DfE assessor on the Board of the OfS (and before 1 April, the Board of the Higher Education Funding Council for England). Whilst she has been an Assessor on these Boards, she had no jurisdiction to make decisions. She told the Committee that funding awarded to institutions is formula-based or competitive; and the Permanent Secretary has confirmed she did not have influence over any funding towards specific institutions. Further, Ms Lloyd has not personally attended an OfS Board since May. In light of this evidence the Committee has assessed the risk of this appointment being perceived as a reward for funding decisions made in office as low. This is supported by the fact that the appointment was made following a public advertisement.

Institutes of Technology competition

A team reporting to Ms Lloyd is responsible for assessing bids for the competition that is underway to appoint Institutes of Technology. Ms Lloyd said she has not been directly involved in consideration/appraisal of the proposals, nor the development of the final guidance for stage 2 of the competition, which is expected to be published in September.

While the stage 1 decision was made at a time when she was responsible for the team assessing the bids, the competition is at an early stage and it is not known whether Queen Mary will

[1] This application for advice was considered by Sir Alex Allan; Jonathan Baume; Baroness Browning; Lord Michael German; Terence Jagger; Baroness Helen Liddell; Richard Thomas and John Wood. Dr Susan Liautaud recused herself from this application in line with ACOBA's published Code of Practice.

ultimately be successful. Therefore, the Committee considered the risk this appointment could be seen as a reward in relation to this competition is small.

However, Ms Lloyd was responsible for the team assessing bids for the competition. In light of that, the Committee's view is it would not be appropriate for her to advise Queen Mary in relation to phase 2. The Committee has imposed a condition precluding this, to mitigate the risk she could offer Queen Mary an unfair advantage over other providers on the short-list.

Proposed contact with Government in new role

Ms Lloyd has said that the role is likely to involve contact with DfE and other Government departments in relation to the laws and policies it is subject to. She described this as likely to be explaining the work of Queen Mary, and where invited by Government, contributing to formal and informal sessions to brainstorm and shape government thinking in areas such as widening participation in higher education and health/wellbeing.

The Committee notes Ms Lloyd's assurance that she understands she needs to ensure that none of her actions could be considered as lobbying Government. The Committee's view is that the contact that Ms Lloyd intends to have with Government is not inappropriate. However, it is mindful that having recently left Government, Ms Lloyd will have close connections in DfE and may be viewed as having influence within the department. The Committee has therefore imposed the lobbying ban below to make clear that contact may take place where it is at the invitation of Government.

There is also a risk here that Ms Lloyd could be seen to offer Queen Mary an advantage when it comes to securing DfE funding in future. To mitigate that risk, the lobbying ban imposed also makes clear that she should not make use directly or indirectly, of her Government and/or Crown Service contacts to influence policy or secure funding or business on behalf of Queen Mary; and, as above, the Committee has also imposed a ban on advising Queen Mary in relation to bids or contracts with DfE.

Engagement with universities and representative groups while in office

The Committee has taken into account the engagement Ms Lloyd has had with institutions and representative bodies while at DfE.

It is mindful that the independent Review of Post-18 Education and Funding (currently being carried out by Philip Augar), is an area where Ms Lloyd might be considered to have access to privileged information. However, it has taken into account the steps taken by the Department to ensure she has no access to information regarding the review as thinking develops in the 3 months leading up to the review reporting in November. In order to address any remaining risk of unfair advantage, the Committee has imposed a condition that precludes her from advising Queen Mary in relation to any aspect of the review until after the final Government report has been published.

The Committee has also noted the steps taken by the Department to ensure Ms Lloyd has not and will not have access to information relating to alternative providers of higher education from the start of August, preventing access she may have had to information relating to potential competitors in this regard.

Conclusion

The Committee assessed that the main risks associated with this application relate to the possibility of Queen Mary gaining an unfair advantage over competitor institutions through Ms Lloyd's appointment.

The Committee noted the areas of sensitivity that have been identified by the department; and the specific measures put in place since August to guard against Ms Lloyd having access to information that could provide a competitive advantage. The Committee has also imposed a number of conditions, set out below, which mitigate the specific risks identified.

However, the Committee remained concerned about the clear link between the areas for which Ms Lloyd had responsibility whilst in post at DfE, and Queen Mary. In the circumstances, the Committee considered that a waiting period would be appropriate to put some space between her role at DfE and taking up this post.

The Prime Minister accepted the Committee's advice that the appointment be subject to the following conditions:

- a waiting period of three months from her last day in Crown service;
- she should not draw on (disclose or use for the benefit of herself or the organisations to which this advice refers) any privileged information available to her from her time in Crown office;
- for two years from her last day in Crown service, she should not become personally involved in lobbying the UK Government on behalf of Queen Mary University of London. This would not prevent her from contributing to Government discussions on higher education or other matters of public policy where invited to do so by Government. However, she may not make use, directly or indirectly, of her contacts in Government and/or Crown service to influence policy or secure business or funding on its behalf;
- she should not provide any advice to Queen Mary University of London in relation to any aspect of the Review of Post-18 Education and Funding until after the final Government report has been published; and
- for two years from her last day in Crown service, she should not provide advice to Queen Mary University of London on the terms of, or with regard to the subject matter of, a bid or contract relating directly to the work of the Department for Education, including in relation to the Institute of Technology competition.

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 Ms Lloyd takes up this appointment, or if it is announced that she 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 she had complied with the rules.

I should also be grateful if you would ask that Ms Lloyd informs us if she proposes to expand or otherwise change the nature of this appointment as, depending on the circumstances, it may be necessary for her to make a fresh application.

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

Yours sincerely

Nicola Richardson
Committee Secretariat