



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

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**BUSINESS APPOINTMENT APPLICATION: ALISON SAUNDERS CB**

The Committee has been asked to consider an application from the former Director of Public Prosecutions (DPP) at the Crown Prosecution Service (CPS). Ms Saunders wishes to take up a post at Linklaters. Ms Saunders left her post in October 2018 when her five year tenure as DPP came to an end.

The DPP is the most senior public prosecutor in England and Wales and head of the CPS. It is a statutory function operating under the superintendence of the Attorney General. As head of the CPS, Ms Saunders is responsible for the CPS and all its work. The CPS is responsible for prosecutions on criminal cases that have been investigated by the police and other investigative organisations in England and Wales. (The Attorney General's Office provides legal advice to Government and is also responsible for overseeing the main independent prosecuting departments, including the CPS and the SFO.)

Ms Saunders joined the CPS the year it was formed (1986) as a barrister. She served as Deputy Legal Advisor to the Attorney General (2003-2005) before rejoining the CPS to set up and head the Organised Crime Division; was later appointed Chief Crown Prosecutor for CPS London; and subsequently appointed to her current role as DPP in 2013.

Timing

First, I would like to register the Committee's concern that Ms Saunders sought advice on this appointment after it was announced she was joining Linklaters at the end of her term as DPP.

The Government's Business Appointment Rules for Civil Servants (the Rules) specify that individuals should not accept or announce a new appointment/ offer of employment before advice has been received; and that retrospective applications will not normally be accepted. In such cases the Committee is constrained from considering applications fully and freely; and in a manner that will command public confidence if an appointment has already been announced and/ or taken up.

The Committee recognises the reasons provided by the Attorney General's Office (the AGO), the CPS and Ms Saunders for making the information public when they did. This was due to hostile press coverage following a leak of Ms Saunders' decision not to stay on after her 5 year term as DPP. Linklaters' public statement subsequently noted that Ms Saunders is *'expected to join Linklaters shortly after the end of her term as DPP, which concludes in October 2018. She will join Linklaters' Business Crime team within the firm's Dispute Resolution practice, and will be based in London.'* This formal announcement made no mention that as a senior civil servant, Ms Saunders' is subject to the Rules.

Whilst the Committee acknowledges Ms Saunders' apology for this oversight, it remains disappointed that the departments concerned did not ensure adherence to the Rules. As you will be aware, it was not in keeping with the Rules for Ms Saunders to announce or accept a role with Linklaters without first seeking and receiving advice from the Committee.

In the particular circumstances of this case, the Committee considered there were potentially significant risks under the Rules which should be explored; and not to do so would leave those risks unchecked. Therefore the Committee decided, exceptionally, to provide advice in this case.

#### Appointment details

Ms Saunders told the Committee she was headhunted and asked to join Linklaters as Dispute Resolution Partner. Linklaters is a City and international law firm operating in 20 countries. Ms Saunders described her role as providing advice to corporate clients including managing risk and avoiding litigation, including participation in mediation, adjudication and regulatory regimes; and taking part in *'...investigations on sensitive and complex issues for clients and advising them on cooperation with regulators and possibly law enforcement. This will include advising on global issues working with colleagues across other jurisdictions'*. Ms Saunders notes that the role may involve some *'very limited'* contact with the SFO, should her clients be witnesses or regulatory bodies (and therefore be in touch with the SFO as part of their investigations). She also said there will be no lobbying of government or contact with Ministers in this role.

Ms Saunders confirmed she has had no contractual or official dealings with Linklaters in her role as DPP. However, she notes she had some contact with competitors via functions - such as a breakfast at Freshfields where she spoke. Ms Saunders told the Committee that Linklaters have a strong conflicts department and that she would meet with them to ensure that there is no conflict in the new role. Further, should there be an investigation in which Linklaters' clients may be perceived as presenting a conflict - she would recuse herself.

The Director of Corporate Services at the CPS countersigned the application. As responsible officer for all procurement, contract and commercial management at the CPS he confirmed the details provided by Ms Saunders were correct and she had no involvement in commercial activity with Linklaters or competitors.

Sue Gray in her role as DG, Propriety and Ethics countersigned the application on behalf of Sir Jeremy Heywood, Cabinet Secretary. The Cabinet Office raised no concerns about the appointment; though given her level of seniority, they advised the three month waiting period that is standard for Permanent Secretaries and their equivalents, alongside a two year lobbying ban.

In relation to the potential for conflict around Ms Saunders' involvement on past or future casework, the CPS/AGO said they were not aware of any cases where Linklaters were involved or would have received any benefit from a CPS decision. They noted the amount of cases prosecuted (nearly 600,000 cases within England and Wales in 2016/17); and said '*it is likely that a case which would involve a firm like Linklaters would be a case that the DPP would have highlighted to the Attorney directly. We think there is almost no risk of her partnership being seen as any form of 'reward' for the DPP or CPS approach to cases in which Linklaters was involved, and in fact the press coverage at the time did not suggest this.*' Further they noted Linklaters '*.....do not regularly undertake any criminal work as they are a commercial firm.*'

The CPS/AGO confirmed they were unaware of anything else that would present actual or perceived conflict of interest in this case, or that could be considered to offer Linklaters an unfair advantage.

Linklaters also provided information to the Committee to illustrate how they deal with potential conflicts generally, including:

- Linklaters have a Conflicts Team of 40 people in 5 countries providing almost 24 hour support.
- A 'New Matter' form must be completed every time a lawyer is instructed and the Conflicts Team run a search for commercial and legal conflicts; there is an escalation process should a further decision need to be made; and Linklaters carry out due diligence on new clients in line with regulatory requirements.
- All new clients are put through a 'New Client Approval Process' by the Conflicts Team.
- Where there is a conflict and/ or they need to restrict access to information they use '*information barriers*'. This will be done by the Conflicts Team as part of the new matter opening process, or at any other time it becomes relevant. This includes locking down access to relevant document folders; restricting access to the billing system; requesting undertakings from team members that they will abide by the terms of the information barrier; and the Conflicts Team monitoring compliance and investigating any potential breach (which would be treated as a potential disciplinary offence).
- Every new partner hired is screened for conflicts. This includes recording on the system matters they previously advised on, so any confidential information held by them is identified and protected using the appropriate safeguards.

#### The Committee's consideration

The Committee<sup>1</sup> carefully considered the risks presented by this application given Ms Saunders is moving from her role as the most senior public prosecutor, to work in private practice as a Partner.

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...*'

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<sup>1</sup> The decision in this case was reached by Sir Alex Allan; Jonathan Baume; Baroness Angela Browning; Lord Michael German; Baroness Helen Liddell; Dr Susan Liautaud; Richard Thomas and John Wood. Terence Jagger recused himself.

The CPS and AGO told the committee they were '*unaware*' of any cases that involved Linklaters that would give rise to any risks under the Rules. Although this was not a definitive response; and they pointed to the sheer size of the CPS and number of cases prosecuted each year; the Committee gave weight to their view that any such case would likely have been escalated to the Attorney General. Further, the CPS confirmed there is no contractual arrangement or relationship with Linklaters; and Ms Saunders had no official dealings with Linklaters as DPP. Therefore, the Committee considered the risk this role could be considered as a reward for actions Ms Saunders took in office to be low.

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 around the perception of the administration of the justice system. The Committee recognised there could be potential risks under the Rules in this regard. Ms Saunders held a senior, high profile and pivotal role within the criminal justice system; and is moving to a private law firm. Given her seniority, Ms Saunders will have a vast knowledge of the inner workings of the CPS; and will have a network of contacts with UK '*regulators and counterparts at the highest level globally*' as suggested by Linklaters' own press release on the matter.

The CPS and the AGO have no concerns about the move and indicate that potential conflicts are unlikely to arise, as it is unusual for Linklaters to become involved in CPS cases as a commercial firm. However, the Committee noted Ms Saunders is going to work in an area that includes Business Crime; and considered there is *potential* for Linklaters to be instructed by an individual, or more likely an organisation, that is involved with any CPS or SFO proceedings.

Ms Saunders is professionally obligated to recuse herself where there is a conflict. Linklaters have also confirmed to the Committee the steps taken to prevent conflicts in general, in particular for new business and when a new partner joins. The Committee also noted the CPS' casework is carried out in line with published policy; and its decisions are subject to scrutiny under Judicial Review and the Courts. However, to avoid the risk Ms Saunders could advise Linklaters in relation to cases of relevance to her time as DPP, the Committee considered it was important to impose a condition preventing this. This is in keeping with her intention to recuse herself in such cases; and in accordance with the professional conduct obligations and rules that apply to Ms Saunders and Linklaters' (separately and in parallel to the Committee's advice).

Linklaters will undoubtedly gain from hiring an experienced prosecutor with Ms Saunders' skills and experience. However, it is also relevant that Ms Saunders has spent her career in public office and there is a risk she could be seen to offer Linklaters' clients an advantage, should she meet with the CPS on their behalf. Further, the Committee noted the closeness between the CPS and other agencies of the AGO, in particular the SFO (for example, the DPP and Director of the SFO issue joint guidance). Whilst there may have been little contact on individual casework matters between Ms Saunders as DPP and the SFO, there are parallels of procedure and approach, especially in so far as the SFO is a prosecuting authority. Therefore, the Committee considered it would be inappropriate for Ms Saunders to meet with the CPS or other agencies of the AGO and has imposed a condition which prevents this.

The Committee has also imposed a condition preventing Ms Saunders from advising on bids and contracts related to her former department, should the CPS ever require representation or training from a commercial or City law firm.

The Committee also considered whether a 'waiting period' is necessary to put a gap between Ms Saunders leaving office and taking up this role. Due to her seniority, Ms Saunders is subject to a minimum waiting period of three months under the Government's Business Appointment Rules. The Committee considers there are risks associated with this case under the Business Appointment Rules given the link between the role Ms Saunders holds in public office and the role she seeks to take up on leaving. However, the Committee determined these are most likely to arise should Ms Saunders be seen to have an influence in relation to CPS or SFO related matters. Therefore the Committee imposed the specific conditions below, which include preventing Ms Saunders from working on matters relating to CPS cases; and preventing direct engagement with the CPS and agencies of the AGO (in particular the SFO), and judged that these, in conjunction with a three month waiting period, appropriately mitigate the risks in this case.

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 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 service; and in this context the Committee considers she should not become involved in, or advise on, matters relating to any investigation opened by, or pending in, the Crown Prosecution Service during her time as Director of Public Prosecutions;
- for two years from her last day in Crown service she should not directly engage with the Crown Prosecution Service (or any other agency of the AGO) on behalf of Linklaters or their clients;
- for two years from her last day of Crown service she should not provide advice to Linklaters or their clients on the terms of a bid or contract relating directly to the work of the Crown Prosecution Service; and
- for two years from her last day in Crown service, she should not become personally involved in lobbying the Government or the Crown Prosecution Service on behalf of Linklaters, or their clients.

As mentioned in the body of this letter, the Committee notes that Ms Saunders 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."*

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

As this appointment has been publicly announced, we will now arrange to 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