



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

G/08 Ground Floor, 1 Horse Guards Road SW1A 2HQ

Telephone: 020 7271 0839

Email: acoba@acoba.gov.uk

Website: <http://acoba.independent.gov.uk>

26 June 2019

Dear Mr Gray,

You sought the Committee's advice on taking up a commission with NHS Grampian under your independent consultancy.

You informed the Committee this is a paid role likely to involve the coaching and mentoring of one or more Executive Board members. You also informed the Committee NHS Grampian's Chair, Dr Lynda Lynch, approached you about this work in May 2019, after you left office having set up your consultancy. You further confirmed you had not been the subject of any discussion with Dr Lynch or others from NHS Grampian prior to, or after, your departure from office.

The Committee understands NHS Grampian provides health services to individuals who live within their catchment area and is overseen by one single NHS board.

You advised the Committee you chaired the panel that recommended Dr Lynch for appointment as Chair. This was a routine part of your role as CEO of NHS Scotland; and was carried out under the process regulated by the Commissioner for Ethical Standards in Public Life in Scotland.

You advised the Committee that Health Board Chair appointments are signed off by the Cabinet Secretary for Health, and by the First Minister. The selection panel itself has 3 members, which includes you as its chair and an independent assessor appointed by the Commissioner for Ethical Standards in Public Life. The selection panel oversees the shortlist selection and the interview process. As in such cases, you chaired a panel consisting of three members and made a recommendation to the relevant Cabinet Secretary regarding appointable candidates. The Cabinet Secretary made the final decision (in this case, Cabinet Secretary for Health, Jeane Freeman MSP, who chose Dr Lynch).

The Scottish Government identified no conflict with this role, confirming the governance process you described for the appointment of the Chair, with the final decision made by the Cabinet Secretary; and as regulated by the Commissioner for Ethical Standards in Public Life in Scotland. The Scottish Government raised no concerns with you taking up this work and said it did not consider you would offer this NHS Board an advantage over any other.

The Committee's consideration

The Committee¹ considered this commission to be consistent with the description of your consultancy which you described as offering leadership, coaching and mediation at an executive level within the public and voluntary sectors.

In your former position as CEO of NHS Scotland, you were responsible for governance, oversight and decision making in relation to NHS Scotland. As such, the recommendation of the appointment for the new Chair of HNS Grampian (in this case, Dr Lynch) fell within your remit. The Committee recognised this appointment raised some risks under the Business Appointment Rules in this case, as you were involved in this decision. Therefore, it has carefully considered whether there is a risk this could be seen as a reward. However, the appointment process was regulated by the Commissioner for Ethical Standards in Public Life in Scotland; and the decision was made by the Cabinet Secretary for Health. In light of this, the Committee considers there is no objective reason it should be perceived you made this decision in expectation of being asked to do this coaching work after you left office.

Given this work is at arm's length from NHS Scotland, the Committee considered there is a risk it could be perceived your contacts gained in office might offer NHS Grampian an unfair advantage, particularly in relation to funding for example. As such, the Committee would draw your attention to the conditions attached to your consultancy which include a ban on being involved in such matters.

The Scottish Government do not believe that you would offer NHS Grampian an unfair advantage over any other NHS Board. In the circumstances, the Committee considers the conditions attached to your consultancy would appropriately mitigate the inherent risks.

In accordance with the Government's Business Appointment Rules, the Committee advises this work with NHS Grampian be subject to the conditions attached to your independent consultancy:

- You should not draw on (disclose or use for the benefit of yourself or the organisation to which this advice refers) any privileged information available to you from your time in Crown service;

¹ This application for advice was considered by Sir Alex Allan; Jonathan Baume; Baroness Angela Browning; Lord Michael German; Dr Susan Liautaud; Richard Thomas and John Wood. Terence Jagger and Baroness Helen Liddell were unavailable.

- for two years from your last day in Crown service you should not become personally involved in lobbying the Scottish Government on behalf of those you advise under your independent consultancy or their subsidiaries, partners or clients, nor should you make use, directly or indirectly, of your contacts in Government and/or Crown service to influence policy or secure business of funding on their behalf;
- for two years from your last day in Crown service, you should not provide advice on the terms, or with regard to the subject matter of, a bid or contract relating directly to the work of the Scottish Government or funding provided by the UK Government (the Committee wishes to be clear this includes the NHS and its commissioning bodies); and
- for two years from your last day in Crown service, before accepting any commissions and or/before extending or otherwise changing the nature of any commission, you should seek advice from the Committee. The Committee will decide whether each commission is consistent with the terms of his consultancy and consider any relevant.

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 could let me know when you take up this commission, or if it is announced that you are to do so. This will enable the Committee to publish this letter on the Committee's website, and where appropriate, refer to it in the relevant annual report.

Yours sincerely

Tiffany Amusu
Committee Secretariat

