



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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1. You sought the Committee's advice about taking up a role with Macfarlanes LLP (MA) as Head of Public Policy.
2. Your last day in office was 24 July 2019.

The Committee's remit

3. It is the Committee's role to advise on any conditions that should apply to appointments or employment under the Government's Business Appointments Rules for Former Ministers (the Rules), which apply to former Ministers for two years after they leave office.
4. The Rules seek to counter suspicion that:
 - a) the decisions and statements of a serving Minister might be influenced by the hope or expectation of future employment with a particular firm or organisation; or
 - b) an employer could make improper use of official information to which a former Minister has had access; or
 - c) there may be cause for concern about the appointment in some other particular respect.
5. When the Committee considers applications it must have in mind that Government has judged that it is in the public interest that former Ministers with experience in Government should be able to move into business or into other areas of public life, and to be able to start a new career or resume a former one. It is equally important that when a former Minister takes up a particular appointment or employment, there should be no cause for any suspicion of impropriety.
6. It is not the Committee's role to pass judgment on whether an appointment is appropriate or suitable in any other regard.

Appointment details

7. You wish to take up a paid, part-time role involving three days a week with Macfarlanes LLP (Macfarlanes). Macfarlanes is a London based law-firm focusing on the international legal market. It has a range of clients, from alternative asset fund managers, to private or public companies, banks and alternative lenders to private equity sponsors, clients and family offices.
8. You stated your role will be to provide: *'Strategic advice to clients on evolving legal and regulatory matters. This is likely to focus on matters relating financial services and taxation, including policy development as a consequence of the UK's departure from the European Union. I will also engage with industry and sector bodies to contribute to the development of thinking about the future policy framework relating to those industries or sectors. However, this will not involve me in lobbying Government.'* You noted it will involve a 'thought leadership' role in terms of developing policy papers on matters of relevance to Macfarlanes clients and wider participation in the public debate on these matters.
9. You informed the Committee you were a solicitor at Macfarlanes from 1999 - 2005. Prior to this, you were a trainee solicitor at Reid Smith (formerly Richard Butler) between 1995 - 1999.
10. You informed the Committee that as Justice Secretary you *'spoke at a gathering of senior partners of City law firms which the Macfarlanes senior partner attended'*. You had no official dealings with competitors however as part of your responsibilities as Justice Secretary you promoted the UK's legal sector, met with representatives from the sector and discussed matters such as judicial recruitment, the use of technology in the legal sector and the impact of Brexit on legal services. You stated you had no involvement in policy development or decisions affecting Macfarlanes and you are aware of any contractual relationship between previous departments and Macfarlanes.
11. The Department for Work and Pensions (DWP) and the Ministry of Justice (MoJ) were contacted regarding this application. In relation to your involvement in policy and related matter, the MoJ stated:
 - 8 January 2019 – you had a bilateral meeting with German State Secretary to understand the approach Germany is taking to legal innovation, artificial intelligence and LawTech, and to gain insight into initiatives that Germany is planning to take forward as part of their 2020 Presidency.
 - 8 March 2019 – you were at the EU Justice and Home Affairs Council, and participated in a lunchtime discussion on 'The use of artificial intelligence in justice systems'.
 - 4 June 2019 – you gave a keynote speech at the Artificial Intelligence in Legal Services Summit, the official launch of the final report from the Law Society's Technology and Law Commission investigation into the use of AI in the justice system
 - As a Cabinet Minister, you would also have been involved with EU Exit related decisions and had access to relevant papers.
 - As Lord Chancellor you had statutory responsibilities concerning the regulatory framework for legal services in England and Wales, although the profession is run independently of government.

- You were duty bound to ensure legal aid is made available to those who are eligible, giving regard to the principle that access to the courts must not be denied. However, individual decisions on granting legal aid are made independently of Ministers, by the Chief Executive of Legal Aid Agency as Director of Legal Aid Casework.
 - The MoJ Permanent Secretary has no concerns with the role and subject to the appointment being made to conditions on using privileged information and lobbying the UK Government.
12. DWP stated that you did not meet with Macfarlanes or its competitors, highlighting that Macfarlanes are more of a corporate law firm whose clients are almost *'exclusively private and commercial rather than from Government or Public sector'*.
13. Neither department had any concerns with you taking up this role, with the MOJ adding the appointment should be made subject to the bans on using privileged information and lobbying the UK Government.

The Committee's consideration

14. When considering your application, the Committee¹ took into account that you had no official dealings with Macfarlanes other than via a third party event - you spoke on your responsibilities as Lord Chancellor at a Senior Partner event for law firms which a senior partner from Macfarlanes attended. You had official dealings with competitors by way of conducting short telephone calls preparing the sector for No Deal Readiness should we have reached a no deal agreement on leaving the EU and also on promoting the legal services sector on, for instance, topics on artificial intelligence. These points were confirmed by the MoJ. DWP stated you did not meet with Macfarlanes or its competitors. The MoJ confirmed that official contact was made as part of your responsibilities as Lord Chancellor and Justice Secretary. Further, the Committee noted you made no decisions regarding Macfarlanes alone. The Committee considered the risk you were offered the role as a reward for decisions made or actions taken in office as low.
15. The Committee considered that as Justice Secretary, you would have encountered information relating to the regulations on leaving the EU, which could be seen to be of use to Macfarlanes and its clients. However, the Committee noted this would apply to all businesses, rather than a risk specific to this role. While you left office in July 2019, 8 months ago, and much of this information may no longer be relevant, given the UK Government is still in negotiations, privileged information you had access to could be seen to provide an unfair advantage. The Committee would like to draw your attention to the condition which applies to all former ministers, preventing the use of privileged information, including that which may be related to exiting the EU.
16. Given your seniority, the Committee noted that you may have had access to general commercial information that could provide an unfair advantage. Additionally, you would have gained contacts that could provide an unfair advantage over and above competitors if used unfairly. The Committee considered a ban on advising on bids and contracts related to the UK Government alongside the ban on lobbying the UK Government/Whitehall, sufficiently mitigates these risks.

¹ This application for advice was considered by Sir Alex Allan; Jonathan Baume; Dr Susan Liautaud; The Rt Hon Lord Pickles; Richard Thomas; Lord Larry Whitty and John Wood.

17. The Committee noted that you are subject to a minimum three-month waiting period prior to taking up an appointment outside of Government. It has been 8 months since you left your appointment in office. The Committee considered that this is a considerable amount of time, distancing yourself from information that could be used to the unfair advantage of Macfarlanes, their partners or clients. As such, the Committee considered a further waiting period need not apply in this application.
18. Taking into account these factors, in accordance with the Government's Business Appointment Rules, the Committee advises this appointment be subject to the following conditions:
- that 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 Ministerial office. In the context of this general provision, the Committee considers you should specifically avoid giving those you advise under your independent consultancy, or its subsidiaries, partners or clients, privileged insight into the Brexit related issues, insofar as it as it pertains to the negotiating position of the UK Government and other parties to the negotiations prior to the date upon which you left ministerial office;
 - for two years from your last day in office you should not become personally involved in lobbying the UK Government on behalf of Macfarlanes LLP or clients (including parent companies, subsidiaries and partners); nor should you make use, directly or indirectly, of your contacts gained in Government to influence government policy, or secure business or funding on their behalf or otherwise unfairly advantage them; and
 - for two years from your last day in office you should not undertake any work with Macfarlanes LLP or clients (including parent companies, subsidiaries and partners) that involves providing advice on the terms of, or with regard to the subject matter of a bid with, or contract relating directly to the work of, the UK Government.
19. 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.*"
20. The Committee also notes that in addition to the conditions imposed on this appointment, there are separate rules in place with regard to your role in the House of Commons; and applicants are also reminded that they may be subject to other duties of confidentiality, whether under the Official Secrets Act, the Ministerial/ Civil Service Code or otherwise.
21. I should be grateful if you would inform us as soon as you take up this role, or if it is announced that you will do so, either by returning the enclosed form or by emailing the office at the above address. We shall otherwise not be able to deal with any enquiries, since we do not release information about appointments that have not been taken up or announced. This could lead to a false assumption being made about whether you had complied with the Rules and the Ministerial Code.

22. Please also inform us if you propose to extend or otherwise change the nature of your role as, depending on the circumstances, it may be necessary for you to make a fresh application.
23. Once the appointment has been publicly announced or taken up, we will publish this letter on the Committee's website, and where appropriate, refer to it in the relevant annual report.

The Rt Hon Lord Pickles

The Rt Hon David Gauke