



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

Room G/8, 1 Horse Guards Road, London, SW1A 2HQ

Telephone: 020 7271 0839

Email: acoba@acoba.gov.uk

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

August 2020

Dear Mr Gray,

1. The Committee has considered your application to take up an unpaid role with the Open University.

Details

2. The Open University is the largest academic institution in the UK, and has a significant global reach in over 150 countries. Its mission is to provide an education which reaches people of all ages and backgrounds and allows them to achieve their potential.

3. You told the Committee that following a recruitment campaign, you have been offered an unpaid role as a Member of Council for Scotland, at the Open University. The Council is collectively responsible for overseeing the Open University's activities, determining its future direction and fostering an environment in which its mission is achieved, and the potential of all learners is maximised. You said you the role would not involve contact with the Scottish Government and responsibilities included:

- a. Assuring the University's corporate responsibilities and obligations under law, regulation, and public and University policy as appropriate
- b. Membership the Council's committees
- c. Attending University functions
- d. Working with the Chair to provide appropriate support and challenge to the executive.

4. In your application, you explained the Open University in Scotland's public funding is mainly sourced from the Scottish Funding Council, at circa £24m per year. The Open University is funded directly for places on its pre-registration nursing programme by the Scottish Government through the Chief Nursing Officer's Directorate.

5. In relation to your time in office you noted that you had no involvement in policy decisions or policy development affecting Scottish Universities; nor for regulatory work in this area. Further, though there is a relationship with the Scottish Government (and with the directorate for which you had responsibility), you had no involvement in the awarding of grants or contracts; nor any role of any kind in bids, tenders or contracts with the Open University.

6. You confirmed you did not meet with the Open University in office, but did meet with other universities in a general capacity, including to visit medical educational facilities (at the University of St Andrews, Glasgow University and Dundee University); and with Vice Principals of the main universities from time to time at the Scottish Leaders' Forum – Edinburgh, Dundee, Glasgow, St Andrews and Aberdeen.

7. The Permanent Secretary of the Scottish Government confirmed that as Chair of the Health and Social Care Management Board, you were responsible for the governance, oversight and decision making relating to NHS workforce planning in Scotland. This would have affected all universities providing clinical education in Scotland. The Scottish Government confirmed you had no direct influence on decisions affecting the Open University. Therefore, the Scottish Government said it sees no unfair advantage to the Open University over other universities. The Permanent Secretary added that the proposed appointment could not be regarded as improper and it has no reservations about this appointment. The Scottish Government recommended the standard 2 year ban on lobbying the Government be applied.

The Committee's consideration

8. The Committee¹ noted you had no contact with the Open University whilst in office, nor did you make any decisions in office specific to it. The Committee considered the risk of this unpaid role being considered as a reward for decisions or actions taken in office is low.

9. The Committee is satisfied that the appointment is broadly consistent with the terms of your consultancy which you describe as offering leadership, coaching and mediation at an executive level within the public and voluntary sectors. The Committee assessed any risk of the Open University gaining an unfair advantage as a result of any information you are privy to as low. The Scottish Government has no concerns; and the nature of this role is to provide governance at board level.

10. In the circumstances, the Committee considered the conditions attached to your consultancy appropriately mitigate the inherent risks in this case. It would bring your attention to the conditions below which prevent you using your contacts in Government to the unfair advantage of the Open University or those it works with.

11. Under the Government's Business Appointment Rules, the Committee's advice is that this role with the **Open University** should be subject to the conditions attached to your independent consultancy, as below:

- 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;
- 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

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

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).

- 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 factors under the Business Appointment Rules.

12. 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.

13. 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."

14. 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

Cat Marshall
Committee Secretariat