



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

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September 2020

1. You sought advice from the Advisory Committee on Business Appointments (the Committee) under the Government's Business Appointments Rules for Former Ministers (the Rules) on an appointment you want to take up with Withersworldwide LLP (Withers). The material information taken into consideration by the Committee is set out in the Annex.
2. The purpose of the Rules is to protect the integrity of the Government. As Attorney General, you were chief legal adviser to the Crown and continue to work in the legal sector.
3. Under the Rules, the Committee's remit is to consider the risks associated with the actions and decisions you made during your time in office, alongside the information and influence you may offer Withers, based on the information provided by you and your former department.
4. The Committee considered whether this appointment was unsuitable given your former role as Attorney General, but the Committee must also consider the information provided by the department about your specific dealings with this employer and the sector. The Committee has advised that a number of conditions be imposed to mitigate the potential risks to the Government associated with this appointment under the Rules; this does not imply the Committee has taken a view on the appropriateness of this appointment for a former Attorney General in any other respect.
5. The Ministerial Code sets out that ministers must abide by the Committee's advice. It is an applicant's personal responsibility to manage the propriety of any appointment. Former ministers of the Crown, and Members of Parliament, are expected to uphold the highest standards of propriety and act in accordance with the 7 Principles of Public Life.

**The Committee's consideration of the risks presented**

6. Withers is a law firm with offices across the US, Europe and Asia-Pacific. It states it advises people and businesses with complex legal needs. It's practice includes: banking and finance; divorce and family; employment; immigration; private clients; and corporate. The Committee noted you did not meet with Withers during your time as Attorney General. Further, you and your former department (the Attorney General's

Office - the AGO) confirmed you did not make any policy or contractual decisions specific to Withers while in office. It is also significant that you are returning to private legal practice. The Committee therefore considered the risk you were offered the role for decisions made in post was low.

7. As former Attorney General and member of the Cabinet, the Committee noted you have significant knowledge of legally privileged material and central government information. The Committee recognised this information could be perceived to offer an unfair advantage to Withers, though it recognised the risks here are broad, and would likely be seen to be advantageous to any business. However, the Committee also noted that without knowing the nature of any potential clients and the advice you may be asked to provide, there are unknown risks, as you may be asked to advise on matters you had responsibility for as Attorney General.
8. The Committee noted there are several mitigating factors raised by you and the AGO which reduce the scope of the above mentioned risks:
  - You are prevented from using sensitive information by a number of formal restraints, as well as the Rules. These include: the constitutional Law Officers' Convention (which prohibits disclosure of the fact of his previous advisory activities, and the content of any advice, without the express permission of the serving Attorney General) as well as legal professional privilege and client confidentiality, alongside the rules and principles which apply to all former ministers.
  - Whilst recognising that as Attorney General you were involved in significant legal decisions facing the UK Government at the time, your involvement in matters of law was at the highest level and therefore you were involved in a relatively small number of individual legal cases.
  - Your role in supervising the SFO and AGO did not involve specific regulatory, policy or financial oversight functions.
  - You have a professional and legal obligation not to work on matters where a conflict is present.
  - You confirm there are specific conflict management protocols that exist in relation to your work with Withers, including that arrangements be put in place for you to identify conflicts and discuss with the AGO where necessary.
  - The passage of time, 6 months has passed since your last day in office and therefore your access to information.
  - The AGO and Cabinet Office have no concerns about you taking up this post, subject to ensuring any potential for conflict is managed appropriately.
9. However, there remains a risk you may have privileged insight that could be seen as offering an unfair advantage. Whilst you are returning to your long held career, as Attorney General you held a senior, high profile and pivotal role within the justice system and public law; and are moving to a private law firm. Further, the Committee noted due to your role as principal legal adviser on questions of EU and international law, it could be seen you have privileged insight into the Government's planning and the impact of various scenarios for the UK leaving the EU. The Committee considered the risks under the Rules would likely arise should you advise on matters: related to the UK Government's specific plans for trading relationships or recovery plans in relation to the UK leaving the EU; or of interest to the AGO, in particular matters related to investigations at the SFO and CPS where you were involved; or matters of law related to the UK Government where you provided advice.
10. More generally the Committee considered that given your role and profile as the former Attorney General, there is a risk it could be perceived your influence might assist Withers.

## The Committee's advice

11. The Committee recognised that your role will be limited, within the confines of your personal and professional responsibilities to matters where there is no conflict of interest. However, the Committee<sup>1</sup> noted there are potential unknown risks associated with your time in office, specifically, should a client be an individual, company or organisation you had a direct engagement with whilst in office; or where you had a material role in considering a related legal matter in office. It is difficult to anticipate in advance specific conflicts which may arise, therefore, the Committee considered it would be appropriate to impose a condition which makes that clear. This is in keeping with the plans you have put in place with Withers to manage specific conflicts of interest, including with the assistance of the AGO where appropriate. You should consult the AGO at the earliest possible opportunity to seek advice in any case in which a risk might reasonably be considered to arise from a perception of overlap between your previous role and your new appointment.
12. While it is not your intention to lobby the Government, the Committee would draw your attention to the restrictions below which prevent you making use of contacts to unfairly advantage your new employer in relation to policy, funding or contractual matters related to the UK Government. Further, the Committee considered it was important to advise it would be inappropriate for you to have any direct engagement with the AGO (including the SFO and CPS), except where it is to consult on matters relating to the appropriateness of any of your assignments.
13. The Committee considered if it was necessary for there to be a gap between your access to information and you joining Withers. The Committee recognised the opportunity for you to offer an unfair advantage is limited as you are prevented from drawing on such information and/or advising on said matters by the conditions below. Further, the Committee noted the 6 months that have already passed since you were in office. The Committee has determined this gap, alongside the conditions below, appropriately mitigates the risks under the Rules in relation to insight derived from any information you had access to as Attorney General.
14. Taking into account these factors, in accordance with the Government's Business Appointment Rules, the Committee advises this appointment with **Withersworldwide LLP** be subject to the following conditions:
  - you should not draw on (disclose or use for the benefit of yourself or the persons or organisations to which this advice refers) any privileged information available to you from your time in Ministerial office. In the context of this general provision, the Committee considers you should specifically avoid giving Withersworldwide LLP, 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, whether generally or regarding legal matters;
  - for two years from your last day in Ministerial office, you should not become personally involved in lobbying the UK Government on behalf of Withersworldwide LLP (including parent companies, subsidiaries, partners and clients); nor should you make use, directly or indirectly, of your contacts in the Government and/or Crown service

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

to influence policy, secure business/funding or otherwise unfairly advantage Withersworldwide LLP (including parent companies, subsidiaries, partners and clients);

- for two years from your last day in Ministerial office you should not undertake any work with Withersworldwide LLP (including parent companies, subsidiaries, partners and clients) 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;
  - for two years from your last day in Ministerial office, your role with Withersworldwide LLP should be limited to providing advice on matters that do not conflict with your time as Attorney General. This includes not advising Withersworldwide LLP or its clients on matters such as: SFO or CPS investigations or cases with which you were personally involved or have knowledge from your time in office; or where the Attorney General/the AGO has an interest where your involvement could be perceived as giving rise to a conflict of interest. Where you are in doubt you must consult the Attorney General's Office as to the appropriateness of any particular assignment; and
  - for two years from your last day in Ministerial office you can contact the Attorney General's Office to consult on matters relating to the appropriateness of any of your assignments. But you should not directly engage with the Attorney General's Office and the Law Officers' Department on any other matters relating to Withersworldwide LLP or their clients.
14. The Committee also notes that in addition to the conditions imposed on this appointment by virtue of the Rules and the professional and legal requirements of a practicing member of the Bar, there are separate rules in place with regard to your role as a member of the House of Commons.
  15. 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 Ministerial Code or otherwise.
  16. 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." This Rule is separate and not a replacement for the Rules in the house
  17. You must inform us as soon as you take up employment with this organisation(s), or if it is announced that you will do so. 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.
  18. 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.

19. Once the appointment(s) 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 Geoffrey Cox QC MP

## **Annex - Material information**

### **The role**

You seek to take up a paid, part-time appointment as Consultant Global Counsel with Withersworldwide LLP (Withers), a law firm with offices across the US, Europe and Asia-Pacific. It describes itself as advising people and businesses with complex legal needs. Its practices include: banking and finance; divorce and family; employment; immigration; private clients; and corporate etc. You said, you are seeking to be retained part-time by Withers under a contract for services as consultant counsel. You will provide legal advice and representation to the firm in respect of the legal affairs of its domestic and international clients, assisting in international business promotion and marketing of the firm; and give strategic advice on handling specific types of legal work in the UK and overseas.

You told the Committee you have discussed with Withers that, with the assistance of the Attorney General's Office (the AGO), arrangements would need to be put in place for identifying and avoiding potential conflicts of interest - for example, should any question arise for your consideration as retained counsel that might touch upon individual cases and/or matters considered by you as Attorney General. You noted that, regardless of any governmental interest, you are bound by the Code of Conduct for Barristers, a basic professional conduct requirement as a barrister authorised to practice and regulated by the Bar Standards Board. You said your main functions under the agreement will be to give legal advice. You do not expect this work to involve contact with the Government.

You informed the Committee that before becoming Attorney General you continuously practiced at the Bar for 36 years and this is a continuation of your legal practice outside government.

### **Your dealings in office**

You told the Committee you had no official dealings with Withers during your time as Attorney General. You confirmed you had general responsibility for the legal professions and as Attorney General you dealt with the Law Society and representatives of the Bar on general policy issues and matters relevant to the professions, or in which they had an interest. You said you were consulted by the Secretary of State for Justice on matters connected with policy on legal aid, the courts, and the administration of justice generally. You also had overall superintendence of the Serious Fraud Office (SFO) and Crown Prosecution Service (CPS).

You said that in the course of the exercise of your functions, you attended one-off events from time to time by invitation that were hosted by law firms but not by Withers.

The AGO, Cabinet Office and Ministry of Justice were consulted on this application. The AGO confirmed you did not meet with employees or representatives of Withers during your tenure as Attorney General. It said the only dealings it was aware of between the department and Withers during your tenure concerned a litigation case which engaged the exercise of your public interest functions in a charity matter. The case concerned the Children's Investment Fund Foundation and Withers acted for one of the respondents. The Supreme Court has recently ruled in the case, effectively bringing it to an end. It doesn't consider your appointment to give rise to any conflict of interest issues on this account. The AGO said although the Attorney General is the formal head of the legal professions, there is no specific relationship between the AGO and Withers.

The AGO further said the head of profession function of the Attorney General does not entail any regulatory, policy or financial oversight functions. It also said you were not involved in

any relevant policy decisions and developments that specifically impacted Withers. The AGO confirmed you were not in a position to, and did not, have involvement in any decisions to instruct Withers professionally or to award Withers contracts or funding, or any other relevant funding decisions.

The AGO said it is unaware of any specific sensitive information to which you had access to while in office which could give Withers an unfair advantage. However, as a regular attendee at Cabinet, you had access to a great deal of information about the conduct of the previous administration. You would also have had access to a great deal of legally privileged material which it said you would be professionally prevented from using to give Withers an unfair advantage.

The AGO said legal firms with comparable practices may, to a degree, be regarded as competitors, but you would not have engaged with any other legal firm in a capacity in which its status as a potential competitor was meaningful. The AGO thought it was relevant to note that Withers is not on the General Legal Advisory Services panel of law firms from whom government departments routinely obtain legal advice.

### **Departmental views**

The AGO also said it has no specific concerns about this appointment. It noted other Law Officers in the past have taken up appointments with law firms. However, it noted unlike most law officers, you were privy to a large swathe of central government information in an advisory capacity, but a relatively small number of individual legal cases or policy issues in a decision-making capacity. The AGO said you are constrained from disclosing or using material to which you had access in office by a number of formal restraints, including: your obligations to collective Cabinet responsibility; the constitutional Law Officers' Convention (which prohibits disclosure of the fact of your previous advisory activities, and the content of any advice, without the express permission of the serving Attorney General); as well as legal professional privilege and client confidentiality.

The AGO said it would have no hesitation in accepting your assurances that you will be diligent in respecting these restraints. However, it said the role of Law Officers is a sensitive one, and it does have a strong interest in maintaining the highest standards of public probity and transparency in the management of subsequent appointments. Overall, the AGO said it would support this appointment being subject to conditions which prevent you from:

- using or referring to any information to which you had access whilst in office which is not in the public domain and to which a quality of confidence attaches;
- lobbying the Government in order to influence policy, or secure funding or business for Withers;
- working on matters in which the Attorney General's Office has an interest and there might be a real or perceived conflict.

The AGO proposed that you be asked to consult the AGO at the earliest possible opportunity to seek advice on any case in which a risk might reasonably be considered to arise from a perception of overlap between your previous role and your new appointment. It said it was always happy to advise previous Law Officers on their continuing obligations and to support them in managing issues of potential conflict.

Due to your role and involvement with Cabinet, the Cabinet Office was also contacted in relation to information you had access to and decision making in Cabinet. Cabinet Office said it agreed with the assessment from the AGO and the conditions it supports. Subject to imposing conditions supported by the AGO, it had no concerns. The Ministry of Justice was also contacted and raised no concerns with this appointment.