



## OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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August 2020

### **BUSINESS APPOINTMENT APPLICATION: MR DERMOT NOLAN**

1. The Committee has been asked to consider an application from Mr Nolan, former Chief Executive Officer for Ofgem, on taking up an appointment with Fingleton.
2. As CEO at Ofgem Mr Nolan was the head and accounting officer of energy regulator, Ofgem. Mr Nolan's last day in Crown service was 31 January 2020.

#### Appointment Details

3. Mr Nolan seeks to work with Fingleton as a Director. Mr Nolan says Fingleton is a strategic and economic consultancy. Mr Nolan described Fingleton as a strategic consultancy business set-up and owned by John Fingleton, which predominantly works in the area of advising clients (mostly private companies, but some public bodies) on their market strategies and decisions. Much of its focus is in the general area of competition policy and law, advising clients on a variety of Competition and Markets Authority (CMA) areas, including merger control and market studies. He said it also has some clients in sectors subject to economic regulation, though currently has very little energy business and none that relate to Ofgem. Mr Nolan also noted that Fingleton does not engage in lobbying Ministers, nor in advocacy before regulatory bodies on behalf of clients. The website states it helps business leaders address novel or complex regulatory challenges. It provides insight and experience to help executives make decisions on regulation and investigations improving outcomes and allowing for sustainable growth.
4. Mr Nolan proposes to take up a position as Director in Fingleton. It is envisaged that he would work 3 days a week on an ongoing basis. He will be working across the business, with a focus on providing advice directly to senior executives. Over time, he will be working to expand the regulatory side of the business (regulation is the area in which he has been working for almost 20 years). He will also be working to support and develop the team within Fingleton. He believes his contact with the government will be limited and he said he has no intention of lobbying Ministers or officials (which he noted he is prevented from doing as a result of the Government's Business Appointment Rules).
5. Mr Nolan stated he did not have any official dealings with Fingleton while in post; there is no relationship between Fingleton and Ofgem and he said he was not

involved in awarding contracts or funding to Fingleton. With regards to competitors Mr Nolan said while it is difficult to know exactly who is a competitor of Fingleton, he has had meetings and attended stakeholder events with economic consultancies and read submissions some have made to Ofgem consultations and decisions. However, he confirmed he has never involved himself directly with contract decisions or was involved in making regulatory decisions that affected economic consultancies themselves. Moreover, he says Fingleton has had very few clients in the energy space and has had very limited involvement in the energy space. He states he does not have any access to commercially sensitive information regarding competitors.

6. The Chair of Ofgem countersigned this application. Ofgem confirmed the details Mr Nolan provided. In addition it confirmed he would have had information on prospective legislation current at the end of January; though this was restricted to general stakeholder discussion in relation to the matters being discussed for inclusion into an energy white paper. Mr Nolan and Ofgem confirmed he has not had sight of the paper. Further, Ofgem noted the white paper is now likely to be dominated by plans for a 'green recovery' given the impact of the current public health crisis - matters that have occurred since Mr Nolan left office. In relation to regulatory action, Ofgem noted Mr Nolan has had significant access in certain areas which may offer him and his employer a privileged position in terms of information.
7. Ofgem confirmed access to information about RII02 was a significant issue as it has been, and will continue to be, one of the major pieces of work that Ofgem is involved in. Ofgem confirmed its plans to publish its Final Determination for the first tranche of RII02 Price Controls in December 2020, at which point it will data and models on which the determinations were based. Ofgem said Mr Nolan was closely identified with the '*multiplicity of Policy issues which make up RII02*' and as a result recommended he should not participate/advise clients on any issue arising from the first tranche (Gas and Electricity Transmission and Gas Distribution). However, it also said the second tranche (Electricity Distribution) scheduled for implementation in April 2023 is much less of an issue because policy development is still in its early stages and more likely to be changed. Further it said there may be risks around his advising/working on matters related to any projects started when he was at Ofgem.
8. However, Ofgem also told the Committee there were mitigating factors in relation to his access to information. It noted that '*..in normal times the GB Energy Space moves quickly, but because of the impact of Covid 19, and decarbonisation, it is moving at an even faster pace*'. As a result, it considered Mr Nolan's privileged access to information will quickly go out of date (or already has). Noting the risks associated with the former CEO advising on matters related to Ofgem projects and RII02, Ofgem suggested he should either not participate in projects from his time in office, or seek clearance on a case by case basis.

#### Committee's consideration

9. The Committee<sup>1</sup> noted Mr Nolan had no official dealings with Fingleton and was not involved in any funding or contractual dealings with Fingleton. Further, there is no relationship between Ofgem and Fingleton. Therefore the risk is low that this role was offered as a reward for actions taken while in service.

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<sup>1</sup> This application for advice was considered by Sir Alex Allan; Jonathan Baume; Baroness Angela Browning; Terence Jagger; Dr Susan Liautaud; Richard Thomas and John Wood. Recused members: Lord Larry Whitty.

10. As the former Chief Executive Officer of Ofgem, the Committee noted he would have had access to privileged information relating to future legislation, regulation and policy which may be seen to offer an unfair advantage to Fingleton and its clients operating in the energy sector. Specifically, the Committee noted Ofgem's comments regarding his access to information regarding price controls (RIIO2) and his access to information regarding projects started and underway when he was with Ofgem. The Committee carefully considered the extent of this risk. Due to Mr Nolan's seniority and role as CEO he will be aware of Ofgem's regulatory process, regulatory responsibilities and its direction on future policy (as yet unannounced). However, the Committee gave weight to Ofgem's view that much of the sensitive information he has had access to will become quickly out of date due to how quickly this policy area moves; and as a result of the impact of the current public health crisis - which has changed the policy landscape.
11. However, Mr Nolan was responsible for regulation at Ofgem, that is in matters of production, transportation and supply of electricity and gas. There is a risk it could be perceived his access to information, contacts and influence might assist Fingleton unfairly. Particularly in relation to RIIO2 and projects from his time at Ofgem. The Committee also noted that without knowing the nature of any potential clients that Mr Nolan may provide services to, there are unknown risks should he become involved in matters related to his time at Ofgem. It is difficult to anticipate in advance specific conflicts which may arise in relation to Fingleton's future clients; given the decisions he may have made in respect of the energy sector, the access to information he had, and his insight and influence in this regard. Therefore, the Committee deemed it necessary, as well as the privileged information ban, to add a restriction which prevents Mr Nolan from advising Fingleton in relation to any work it undertakes on matters that Ofgem regulates. Mr Nolan has asked the Committee if it would consider, on a case by case basis, any future advice he might seek to amend this. For example, where he can demonstrate there are no significant risks associated with any crossover with Ofgem regulation. The Committee will consider any request Mr Nolan submits for advice on amending this condition, provided he submits his reasoning the work should be exempt from this approach. In doing so it will consider any relevant factors under the Government's Business Appointment Rules, including consultation with Ofgem.
12. Additionally, the Committee noted due to Mr Nolan's role and seniority there is a risk it could be perceived his network and influence might assist Fingleton unfairly. Whilst he notes this is not his (or Fingleton's intention), the Committee would draw Mr Nolan's attention to the conditions below which make it clear that he must not (directly or indirectly) make use of his contacts to unfairly benefit Fingleton and its clients in relation to influencing the UK government or Ofgem.
13. The Prime Minister accepted the Committee's advice that, Under the Government's Business Appointment Rules, Mr Nolan's work with **Fingleton** should be subject to the following conditions:
  - he should not draw on (disclose or use for the benefit of himself or the organisations to which this advice refers) any privileged information available to him from his time in Crown office;
  - for two years from his last day in Crown service, he should not become personally involved in lobbying the UK Government on behalf of Fingleton (including parent companies, subsidiaries, partners and clients); nor should he make use, directly or indirectly, of his contacts in the Government and/or Ministerial contacts to influence

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

- for two years from his last day in Crown service, he should not provide advice to Fingleton or its clients on the terms of, or with regard to the subject matter of, a bid with, or contract relating directly to the work of the Government or Ofgem; and
- for two years from his last day in Crown service he should not become involved in, or advise Fingleton (or its clients), on any work it undertakes in relation to Ofgem regulated matters. The Committee will consider future applications for exemptions to this condition. Mr Nolan must provide reasons for the exemption and the Committee will consider any relevant factors under the Government's Business Appointment Rules.

14. 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.

15. 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.*"

16. Please inform us of this work, 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

Isabella Wynn  
**Committee Secretariat**