



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

G/7 Ground Floor, 1 Horse Guards Road SW1A 2HQ

Telephone: 020 7271 0839

Email: [acoba@acoba.gov.uk](mailto:acoba@acoba.gov.uk)

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

December 2020

1. You approached the Committee seeking advice on taking up an appointment with OptiBiotix Health plc under your independent consultancy.

The Committee's role and remit

2. As you will be aware, it is the Committee's role to advise on the 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. The Rules seek to counter suspicion that:

- 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
- an employer could make improper use of official information to which a former Minister has had access; or
- there may be cause for concern about the appointment in some other particular respect.

3. 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.

4. It is not the Committee's role to pass judgment on whether an appointment is appropriate or suitable in any other regard.

The application

5. You sought the Committee's advice on taking up a paid appointment, with OptiBiotix Health plc (OptiBiotix) as a Non-Executive Director, under your independent consultancy. You said OptiBiotix is a life science company which is developing technologies which modulate the human microbiome<sup>1</sup>. You said it is developing a range of technologies which endeavour to manage human metabolic diseases, especially obesity. The website states '*OptiBiotix identifies and develops microbial strains, compounds and formulations for use in*

---

<sup>1</sup> The collective genome of the microbes in the body

*food ingredients, supplements and active compounds that can impact on human physiology, deriving potential health benefits’.*

6. You informed the Committee as a Non- Executive Director giving advice to the company on strategy and finance. You said your role will not include contact with government but it was possible the weight controlled product which is currently being produced and marketed, could be refined for the NHS and as a result the company might have contact with DHSC.

7. You also informed the Committee you neither met, nor made any commercial or contractual decisions with or on OptiBiotix while in office. Nor did you have any involvement in policy development or decisions. You said you did not hold responsibility for health/bio technology during your role at DHSC and wanted to stress that at no stage during your time at DHSC, was drug/treatment development or med tech within your portfolio of responsibilities. You also said you did not meet with competitors, nor did you have access to sensitive information on these competitors.

8. The Department for Health and Social Care (DHSC) were contacted regarding your application. DHSC confirmed the details you gave in your application and also confirmed you would have no access to unannounced policy or information of specific sensitivity that could be seen to benefit OptiBiotix. DHSC did not have any concerns with you taking up this commission.

#### The Committee’s consideration

9. The Committee<sup>2</sup> noted that this appointment is consistent with the description of your consultancy which you described as providing advice in the following areas in which you have expertise in: commercial; financial; regulatory; political; infrastructure; healthcare; and economic.

10. When considering this application, the Committee took into account that you were not involved in any decisions that benefitted OptiBiotix. The Committee also noted DHSC does not have a relationship with OptiBiotix and has no concerns about you taking up this appointment. The Committee therefore considered the risk this appointment could be seen as a reward for decisions taken in office is low.

11. When considering your application, the Committee noted you did not hold responsibility for policy relevant to OptiBiotix. Though, considered as a Minister at DHSC there is an inherent risk you would have general access to sensitive information that could be seen to provide an unfair advantage. However, the Committee put weight behind the Department’s comment that you had no access to relevant sensitive information. Further, it noted the amount of time that has now passed since you were in office (over 16 months). The Committee noted that you are prevented from drawing on your privileged information as with all former Ministers which helps to mitigate this risk.

12. Further, you will have developed contacts which may provide an unfair advantage to a company operating in the health sector. The Committee also noted the possibility of OptiBiotix refining its product for the NHS market. Therefore, the Committee would like to draw your attention to the below conditions preventing you from lobbying and advising on

---

<sup>2</sup> This application for advice was considered by Sir Alex Allan; Jonathan Baume; Dr Susan Liautaud; Richard Thomas; Mike Weir; Lord Larry Whitty and John Wood. I recused myself from this application in line with ACOBA’s published Code of Practice. This letter contains the Committee’s advice, arrived at without my input and which I am sending in my capacity as Chair of the Committee.

*From the Chair*

contracts and bids. These conditions make it clear that you should not use your contacts and influence across government and Whitehall to the unfair advantage of OptiBiotix. However the Committee did note this is in keeping with your role as a Non-Executive Director as described.

13. In accordance with the Government's Business Appointment Rules, the Committee advises your work with **OptiBiotix Health plc** be subject to the same conditions as your independent consultancy. The Committee would also like to make it clear that the conditions in this case, below, would extend to the NHS and therefore this has been added this below:

- 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;
- for two years from your last day in Ministerial office, you should not become personally involved in lobbying the UK Government or the NHS on behalf of those you advise under your independent consultancy (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 to influence policy, secure business/funding or otherwise unfairly advantage those you advise under your independent consultancy (including parent companies, subsidiaries, partners and clients);
- for two years from your last day in office you should not provide advice to any company or organisation on the terms of, or with regard to the subject matter of, a bid or contract with, or relating directly to the work of the UK Government and the NHS; and
- for two years from your last day in ministerial office, before accepting any commissions for your independent consultancy and or/before extending or otherwise changing the nature of your commissions, you should seek advice from the Committee. The Committee will decide whether each commission is consistent with the terms of the consultancy and consider any relevant factors under the Business Appointment Rules.

14. 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.

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 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."*

17. I should be grateful if you would inform us as soon as you take up this appointment, 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

*From the Chair*

complied with the Ministerial Code. Similarly, I should be grateful if you would inform us if you propose to extend or otherwise change your role with the organisation as depending on the circumstances, it might be necessary for you to seek fresh advice.

18. Once this appointment has been publicly announced or taken up, we will publish this letter on the Committee's website and in the relevant next annual report.

The Rt Hon Lord Pickles

Stephen Hammond MP