



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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1. This statement of evidence provides context with regard to the work of the independent Advisory Committee on Business Appointments (ACOBA) - as part of the government's business appointment and conflict management process - insofar as it may be relevant to your inquiry. I submit the following observations and recommendations for improvement as Chair of ACOBA and alongside my ongoing discussions with the Cabinet Office on these areas for improvement.

ACOBA's limited role

2. The government's Business Appointment Rules (the Rules) are a set of principles designed to protect the integrity of government, whilst allowing permeability between the public and private sectors. The Rules themselves are set by the government and all aspects of the Rules, including their content, amendment and enforcement are the responsibility of the government. ACOBA is the visible aspect of a much wider business appointments system.

3. ACOBA is not a regulator nor a watchdog. It has a very specific and defined role - to apply the government's Rules at the most senior levels of government, whilst government departments do so at all other levels for officials. Under those Rules ACOBA considers the risks associated with the actions and decisions an individual has made during their time in office, alongside the information and influence they may offer the employer, based on the evidence provided by the applicant and their former department. Under the Rules, to mitigate potential risks to the integrity of the Government associated with appointments, ACOBA will apply delays, conditions and restrictions; as should departments.

4. ACOBA's 'approval' of any role is in these terms *only* - that it be subject to a number of conditions to manage risks identified under the Rules. It is not approval of the role in any other respect. The wording in government's Rules is particularly

unhelpful in this respect. For example, ACOBA cannot comment or offer a view on whether the individual is appropriately skilled for the role; nor on whether it might conflict with other roles they may hold, for example as an MP or for another organisation¹. Applicants are actively discouraged from claiming a wider approval.

5. ACOBA's transparency regime is closely monitored by the media and members of the public with an interest, as recent events prove. Most media reporting on outside appointments is driven by ACOBA's own publication of its decisions on its website.

6. It is perhaps unsurprising the government supports² a system that is broadly compliant and requires significantly less resources than any alternative systems that could be envisaged. Whilst there are some examples of non-compliance, these remain a tiny percentage of the casework and applications that ACOBA considers. Further, evidence suggests breaches of the Rules consist predominantly of the muddled and confused.

Recommended areas for improvement

Leadership and culture

7. All government ministers and officials are expected to uphold the highest standards of propriety and act in accordance with the relevant codes of conduct and the Seven Principles of Public Life. It is also the responsibility of the government to foster a culture that supports this - where senior figures lead by example, demonstrating high standards of propriety with clear systems and processes to underpin this.

8. Civil servants - at all levels - and new ministers need to be made more aware of the expected standards, principles and the various rules that apply; from their induction to the moment they leave public service. I know that ministers are required to sign the Ministerial Code on joining office, and reminded upon leaving. I am less clear on how well the requirements and expectations under the various codes and principles are shared and built into the daily lives of ministers more generally; or how they are embedded into the recruitment, selection and culture of Civil Servants.

9. The Rules and any guidance that accompanies them should be clear about the expectations they set, removing the risks of any misunderstanding and to help move away from a culture of entitlement that exists in some departments. It should

¹ The exception to this is where the applicant has an ongoing role within the Government - in that potential conflicts under the Rules in relation to any ongoing roles within the Government will be considered.

² Read the Government's response to the Public Administration and Constitutional Affairs Committee's report: [Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action](https://publications.parliament.uk/pa/cm201719/cmselect/cmpublicadm/731/73102.htm) here: <https://publications.parliament.uk/pa/cm201719/cmselect/cmpublicadm/731/73102.htm>

not be a given that individuals should move seamlessly in and out of the public and private sectors, only that they should do so where there is limited risk to the integrity of the government.

10. Consideration should be given to making it explicit in the Rules, and in employment contracts, that it is not appropriate for individuals to work in areas they have had direct regulatory, commercial or contractual responsibilities. This need not preclude individuals from carrying out valuable work or making use of their skills and experience gained in office - where it can be demonstrated it is not a risk to the integrity of the government; and nor would it require a statutory framework.

Visibility and transparency in decision making

11. The Rules and the wider business appointment system is not visible enough to be understood widely; nor is any other process that exists to manage propriety surrounding moves in and out of government.

12. The vast majority of applications under the Rules fall to departments for consideration if officials make an application under the Rules³. It is a requirement that Audit and Risk Committees in departments monitor issues relating to the Rules at regular intervals. However, it is far from clear how this is being applied and monitored within departments; and there is no aggregated data or reporting available to demonstrate how the Rules are applied within departments, below ACOBA.

13. There are also gaps in the coverage of the Rules that means some senior office holders are not subject to the visibility and transparency that ACOBA applies⁴. It can be a somewhat complicated process to ascertain who is subject to what level of scrutiny. As a useful illustration, it would be helpful for the government to publish a list of those Special Advisers who are subject to consideration by ACOBA, rather than departmental permanent secretaries, so it is clear to members of the public and the media where applications are expected to be made transparently - and help reduce confusion.

14. This lack of transparency also arises in relation to other internal processes in place in relation to outside appointments whilst individuals remain in office. For example, [the Cabinet Secretary's recent correspondence to PACAC](#) indicated the government is unaware of any individuals in office who hold outside roles that conflict with their roles within government. However, the lack of transparency on what these roles are, how government departments consider the possible conflicts,

³ Whilst ACOBA considers applications from former ministers, it only considers applications at the most senior levels from officials (members of the Civil Service, the Military, the Diplomatic Service and the Intelligence Services).

⁴ For example, secondees into government or appointees to arm's length bodies, where they may not be subject to the same Rules - including some regulators and the government's own departmental non-executive directors.

and how any possible conflict is subsequently managed makes that hard to demonstrate.

15. Having a system is simply not enough if it cannot be understood by those who it is set up to assure - members of the public must be able to see the system working; and the lack of clarity and transparency can fuel a lack of public confidence about the system as well as raise questions and concerns about particular appointments, which may be wholly unjustified.

16. The government must do more to demonstrate how it holds individuals to account in respect of their responsibilities to act without impropriety. At the very least, government should increase the information available on how the propriety of outside appointments are managed - whether these outside roles are agreed whilst in service, after leaving office, or are where an individual holds an outside role when the government appoints them to a new role (advisors, tsars, reviewers, envoys, taskforce leads, formal appointments etc).

17. The Office of the Registrar of Consultant Lobbyists (ORCL) administers the statutory Register of Consultant Lobbyists. Under the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (the Act) a person must not carry out consultant lobbying unless on the Register. This regime sits alongside the Rules - which say that as a general principle, there will be a ban on lobbying Government⁵. However, former ministers and officials can be added to the Register without issue.

18. It is damaging to the integrity of government if former officials and ministers leaving office are seen to trade on their time in government - to be paid for access to and or to influence the government. ACOBA makes it explicit that lobbying the government to unfairly benefit a new employer on leaving office is inappropriate and unacceptable. The government should make it easier for the public and officials to understand how the government protects its interests by preventing improper lobbying, for example, in regard to the Rules, it could be made clear that applications to work with lobbying firms will not be accepted for a certain period of time.

19. Transparency again is key to limiting any suggestion of impropriety. For example, the government's current review of the Act might usefully consider whether former ministers and the most senior civil servants should be on the Register where they are employed in the capacity of an in-house lobbyist for a set period of time⁶. Alongside greater clarity on when lobbying roles would be improper, this

⁵ This principal does not extend to blanket ban or statutory requirement not to lobby the government on leaving office.

⁶ My own view is that transparency for two election cycles (or 10 years, whichever is greater) would usefully limit the potential for any conflict to arise without any restraint on trade.

transparency would increase the government's ability to demonstrably manage the potential for conflicts of interest to arise.

Sanctions

20. For those within ACOBA's remit, breaches of the Rules⁷ are made public and, as of this year, are formally reported to the government. The court of public opinion can be a useful tool - very few individuals, or their employers wish to be found acting contrary to the high standards expected of officials. There is anecdotal evidence of this resulting in loss of work as a result.

21. However, the high profile nature of these cases can damage the reputation of the system as a whole. There is currently no clear sanction imposed by the government for failures to comply with the Rules and no transparency at departmental level. Whilst I must stress failures to comply account for a tiny percentage of ACOBA's overall caseload - consideration must be to the consequences of infringing or defying the Rules.

22. Compliance with the Rules is taken into consideration as part of the Honours and Appointments Secretariat's vetting process. This is a helpful starting place for future consideration - for example, extending this consideration to apply when an individual seeks to return to any role where appointed by the government. However, this would not impinge on the Prime Minister's right to make the final decision. It should also be an explicit post-employment contractual obligation to adhere to the government's Rules and make clear what the sanction will be.

Additional information

23. Further background information is available via my evidence to the Committee on Standards in Public Life's (CSPL) as part of its review into standards on wider aspects of the system and lobbying; and to the Public Administration and Constitutional Affairs Committee (PACAC). Please find links to my full evidence to these Committees and also to ACOBA's most recent Annual Report:

- CSPL oral: <https://www.youtube.com/watch?v=1ztGUOOhU8o&authuser=0>
- CSPL written:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972449/Standards_Matter_2_-_Evidence_from_Witnesses_for_Online_Evidence_Sessions.pdf
- PACAC:
<https://committees.parliament.uk/committee/327/public-administration-and-co>

⁷ Such as failures to seek advice before taking up an outside role, or not adhering to advice

[nstitutional-affairs-committee/news/153864/evidence-session-on-the-work-of-the-advisory-committee-on-the-business-appointment-rules/](#)

- Annual Report:
- [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962428/ACOBA_Annual_Report_for_publication_2018-2020_final.pdf](#)

The Rt Hon Lord Pickles