

ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

30 July 2020

Present

Committee

Rt Hon Lord Pickles (Chair)
Sir Alex Allan
Jonathan Baume
Dr Susan Liautaud
Richard Thomas
Lord Larry Whitty
John Wood
Mike Weir

Secretariat

Andrea Benjamin
Peter Lawrence
Sam Lynch
Cat Marshall
Maggie O'Boyle
Isabella Wynn

Chair's update

1. The Chair reflected on his review of ACOBA from his first quarter as Chair:
 - Advice is thorough, but time consuming to gather the information required in all cases, draft the advice and subsequently give it due consideration
 - The balance relies too much on ACOBA's investigations to establish the risks
 - There should be more onus on the applicant and departments to demonstrate why an appointment is appropriate within the government Business Appointment Rules (the Rules)

The Chair introduced the purpose of the meeting, to discuss how the Committee can best use the influence it has. The most effective way, within the Rules is transparency.

ACOBA's role and remit

2. The Committee discussed what ACOBA's role is:

- to give independent advice under the Rules to former ministers and senior civil servants about the propriety of role or work (paid or unpaid) they wish to do within 2 years of leaving government service
- the Rules are set by the government; all aspects of the rules, including their content, amendment and enforcement are the responsibility of the government
- it is government policy to support career moves between government service and the private sector and other organisations
- the Rules seek to protect the integrity of government, while enabling individuals to move to roles outside of government
- ACOBA applies the Rules at the most senior levels of government, whilst government departments do so at all other levels
- to mitigate potential risks to government integrity associated with such a move, ACOBA applies delays, conditions and restrictions

3. The Committee discussed what ACOBA's role, under the Rules, does not extend to:

- Preventing individuals taking up work in any particular sector
- Judging the appropriateness or number of roles, outside the tests set out in the government's Rules and available evidence
- Endorsing any outside appointment
- Monitoring compliance with the Committees' advice - it is the personal responsibility of applicants to ensure advice is followed

Discussion on what the Committee can do to improve the operation of the Rules, within the current system

4. The Committee noted that it is not possible, within the government's current business appointments system, to introduce monitoring and enforcement powers. However, it considered it was possible to increase transparency around its remit and how it carries out its role by being clear about the responsibility of applicants and departments by:

- requiring evidence of lack of conflict; and
- making it explicit that it is an individual's responsibility to manage propriety under the Rules and the other standards they are held to

Rolling programme of reform

5. The Committee discussed and agreed within the existing Rules, it should build on and extend transparency in several ways:

1. Introduce a transparent, risk-based approach that will allow the Committee to offer prompt, predictable and consistent advice on appointments that are unremunerated or unrelated to an applicant's work in government and concentrate their attention on more complex cases.
2. To do this the Committee agreed that a set of conditions should be agreed for cases as standard; with additional conditions applied in higher risk cases and specific circumstances [see the annex for guidance and conditions].

3. Applicants and departments will be required to provide clear evidence to demonstrate a role they wish to take is appropriate for someone who held their position in government and this will be published alongside the committee's advice.
4. Make it clear to applicants that where they possess commercially sensitive information from their time in government; or where they held direct regulatory or decision making responsibilities - it is not always possible to mitigate the associated risks by applying conditions or a delay. In such cases, the Committee will advise that it is inappropriate for an ex-minister/ex-civil Servant to take up such a role.
5. Where the Committee is made aware that an individual has failed to seek advice or may be acting in a manner contrary to advice received the Committee will take this up with the individual and/or employer and will report breaches to the government as owners of the Rules. This correspondence will be published by the Committee.

Monitoring decisions made below ACOBA

6. The Committee discussed that the vast majority of cases fall to departments for consideration where officials make an application under the Rules¹. The Committee noted that whilst it is now a requirement that all departments ensure their Audit and Risk Committees monitor issues relating to the Rules at regular intervals - it is not 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 below ACOBA.

7. The Committee agreed that this lack of transparency below ACOBA can affect public confidence in the business appointments system, as well as raise questions and concerns about particular appointments, which may be wholly unjustified. The Committee noted that, with the right resources, it could work with departments to look at how things are done, identify areas of improvement and share best practice. The Chair agreed to raise this with the government.

Annual report

8. The Committee discussed publication of the 2018-19/2019-20 Annual Report, which was delayed due to short staffing, but will be published later the 2020-21 reporting year. Members will be provided with an opportunity to comment prior to publication.

¹ 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).

Annex

There are a set of conditions that applicants can expect ACOBA to apply in all cases, as set out below. Applicants and departments are expected to provide clear evidence to demonstrate that this role is appropriate for someone who held their position in government. This includes detailed information about involvement in relevant matters in office; and about the role they wish to take up.

Applicants must provide as much information as possible. The former department will be asked to verify this information in all cases.

All material information will be put into the public domain if the role is subsequently taken up. Until that point, information will be treated in strict confidence.

Standard conditions:

1. Privileged information and lobbying condition

You can draw on skills and experience gained from your time in office. However you must not, at any time, draw on any privileged information² gained in office. Any contact with the government, directly or indirectly must only be where it could not reasonably be perceived as lobbying.

2. Contracts and bids condition

You must not work or advise on any bids to secure governmental funding or contracts. You may only work on or advise on the subject matter of contracts [the organisation] may have with the government (or related matters), provided you do not draw on any privileged information or contacts from your time in office (as per the condition above).

3. Lobbying condition extended to outside contacts where necessary

You are expected to observe acceptable standards of probity, consistent with the behaviour required as a former [Crown servant/minister], when working and engaging with contacts in commercial organisations and other governments which you have gained as a result of your time in office. In particular, you must not lobby any such contacts for the purposes of securing business.

² Privileged information, in this context refers to information which a Minister or Crown servant has had access as a consequence of their time in office or employment and which is not publicly available (for example: private discussions, unannounced or proposed developments in policy and commercially sensitive information about competitors).

Applications to set up an independent consultancy will have the following restriction:

4. Independent consultancy - returning for advice

Before accepting any commissions for your independent consultancy and or/before extending or otherwise changing the nature of any 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.

Applications to join an advisory/consultancy type firm with unknown clients:

5. Unknown clients restriction

Where the organisation is an advisory or consultancy type firm, where the client(s) the applicant may work with are unknown, the Committee cannot assess all the risks associated. The Committee will normally apply a restriction in such cases to limit the scope of the role due the potential conflicts with their responsibilities in office that may arise.

You are expected to observe acceptable standards of probity, consistent with the behaviour required as a former Crown servant/minister when working with a range of clients, however you must not undertake any activity where it relates to any matters you had a material role in developing or determining in office, or where you had a relationship with the relevant client during time as role in office.

The government's Business Appointment Rules set out some standard waiting periods:

6. Standard waiting periods

Former Permanent Secretaries and equivalents and former Cabinet Ministers are subject to a three month waiting period; and senior Ambassadors are expected to wait six months before returning to the country of their last posting, or advise on it, or to have dealings with companies based there.

Where applications give rise to greater risks under the government's Business Appointment Rules, further conditions will be considered:

Where there is a strong overlap between an applicant's responsibilities in office and the role they seek to take up, significant risks are more likely to arise. For example, where an applicant had:

- decision making responsibility for matters affecting the sector and/ or organisation directly
- regulatory and/or policy responsibility for the sector in which the organisation operates
- access to sensitive information on unannounced policy or commercially sensitive information

Where the application raises significant risks under the government's Business Appointment Rules that cannot be mitigated by the minimum conditions set as standard, the Committee will consider:

- Restrictions - where there are risks associated with information and contacts gained in office, conditions which prevent working on specific matters will likely be considered. For example, reducing the scope of a proposed role in specific sectors and/or subject or policy areas.
- A waiting period of up to two years - to put a gap between access to information from an applicants' time in office and taking up a role.
- Suitability - if conditions cannot mitigate the risks. For example, where an applicant has had access to commercially sensitive information from their time in government, it is not always possible to mitigate the associated risks by applying conditions or a delay. In such cases the Committee will advise that it is inappropriate for an applicant to take up such a role.

***Definition of government**

Government in the context of ACOBA's conditions means the government an individual served in office and its arm's length bodies, except in respect of any responsibilities they had for policy in another administration, in which case it refers to the relevant government.