

ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

20 May 2021

Present

Committee

Rt Hon Lord Pickles (Chair)

Jonathan Baume

Andrew Cumpsty

Isabel Doverty

Sarah de Gay

Dr Susan Liautaud

Richard Thomas

Lord Larry Whitty

Mike Weir

Secretariat

Cat Marshall

Sam Lynch

Maggie O'Boyle

Isabella Wynn

Chair's update

1. The Chair welcomes the Committee's new members, Andrew Cumpsty, Isabel Doverty and Sarah de Gay. The Chair reflected on how quickly members had got up to speed with the busy and complex caseload and the valuable insight and perspectives they bring.

2. The Chair reflected on the last 6 months, with new ways of work bedding in following the changes agreed in late 2020. The Committee continues to meet virtually twice a week. It has also been a particularly busy period:

- Publishing the Annual Report
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962428/ACOPA_Annual_Report_for_publication_2018-2020_final.pdf
- Submitting evidence to the Committee for Standards in Public Life in relation to their review - Standards Matter 2 (oral:
<https://www.youtube.com/watch?v=1ztGUOOhU8o&authuser=0> and 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; and

- appearing before the Public Administration and Select Committee:
<https://committees.parliament.uk/committee/327/public-administration-and-constitutional-affairs-committee/news/153864/evidence-session-on-the-work-of-the-advisory-committee-on-the-business-appointment-rules/>

3. The Chair welcomed these opportunities to make clear publicly what is and is not ACOBA's role as discussed at the previous Committee meeting:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990927/Minutes - July 2020 2 .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990927/Minutes_-_July_2020_2_.pdf)

4. The Chair introduced the purpose of the meeting, to cement some of the continuous improvement work in respect of:

- the approach to breaches of the government's Business Appointment Rules and ACOBA's risk based approach to casework; and
- to agree what 'good' looks like within the current business appointments system and where improvements can be made by removing ambiguity in the process.

Minutes of the last meeting

5. The minutes of the previous meeting were approved.

Communications

6. The Press Officer updated the Committee on recent press coverage.

Breaches of the Rules

7. The Committee discussed breaches of the Rules. Where an applicant fails to make an application before announcing or taking up a role, this places the Committee in an untenable position given that it constrains the Committee from considering an application fully, freely and in a way that can provide public confidence. Where an applicant fails to follow the Committee's advice the potential impact on the integrity of the process is severe. The Committee noted this is a small percentage of its overall casework.

8. The system ultimately relies on the integrity of individuals. The 'court of public opinion' is a useful tool - very few individuals, or their employers, wish to be found acting contrary to the high standards expected of public office holders. Transparency and the reputational damage that can occur as a result can act as a deterrent - there is anecdotal evidence that this has resulted in lost opportunities to work. However, the high profile nature of specific failures can also damage the reputation of the system as a whole.

9. The Committee agreed its approach to dealing with breaches of the Rules as follows:

- Refuse to provide advice where there has been a breach of the Rules¹.
- Write to individuals and departments where it is made aware that an individual has failed to seek advice or may be acting in a manner contrary to advice received - asking for an explanation.
- Report all breaches to the government.
- Publish correspondence related to breaches in full on its website.

Taking a risk based approach

10. The Committee reflected on its rolling program of reform, its increased transparency and the development of a more risk based approach. This includes being transparent about its broad risk appetite, allowing it to concentrate its limited resources on cases which are more complicated and pose greater risks to the integrity of government:

- **It's approach to unpaid cases:** ACOBA's experience is that the risks related to unpaid roles are limited². The purpose of the Rules is to protect the integrity of government by considering the real and perceived risks associated with former Crown servants joining outside organisations. Those risks include: use of privileged access to contacts and information to the benefit of themselves or those they represent. The Rules also seek to mitigate the risk an individual may make decisions or take action in office in expectation of rewards, on leaving government. These risks are significantly limited in unpaid cases due to the lack of financial gain to the individual. The Committee's approach is to apply standard conditions in these cases.
- **It's approach to public sector cases - such as local councils, NHS trusts and others which deliver public services/government initiatives:** The Committee noted that in the majority of cases the Committee considered that relate to 'public' organisations, such as local councils, NHS trusts and others which deliver public services/government initiatives - raise fewer risks under the government's Rules because they are working to fulfil a government policy or aim; or are working in the public interest for the citizen. Where the organisation is contributing to the government's policy aims, the risk of competitive unfair advantage is usually lower. The Committee noted these roles are more likely to involve some contact with government, often at its request as a stakeholder - for example: to speak at roundtable events; respond to consultation; or answer specific

¹ Unless there are exceptional circumstances

² ACOBA considers 'unpaid' work to be an appointment or employment where no remuneration of any kind is received for the role. Applicants must declare where it is agreed or anticipated they may receive remuneration or some other compensation at some stage in the future - such applications will not be treated as unpaid

questions raised by the government in another forum. The Committee discussed that where interactions between the government and the 'public' organisation are done transparently, there is a limited risk for undue influence, except where there is an obvious potential conflict of interest with someone's regulatory, commercial or policy responsibilities in office.

- Where these roles are unpaid, they will be dealt with as such. Where these roles are paid and the Committee will carefully consider the risk associated with any overlap with the responsibilities in office; and advise on the appropriate conditions.

Independent consultancies

11. The Committee discussed the potential unknown risks when an individual sets up a consultancy for portfolio work. Members noted the risks increase where the type of consultancy work directly relates to an individual's role in office, or where they held very senior and broad ranging positions within government. It is not possible to predict all possible future risks, and seeking advice on setting up an independent consultancy is only the first step in the process. The Committee reaffirmed its current approach, applicants must seek advice before accepting any work under a consultancy. The Committee will then decide whether each individual commission is consistent with the terms of the consultancy and consider any relevant factors under the Business Appointment Rules.

Applications involving foreign agents (a government or associated organisation)

12. The Committee is often asked to consider applications that involve working with governments outside the UK. In those cases the Committee agreed it was appropriate to notify and engage with the Foreign, Commonwealth and Development Office (FCDO) before coming to a final view on its advice.

Discussion on possible improvements to the Business Appointment System

13. The Committee discussed where, based on its experience and casework, there is room for improvement in the current system:

- The government's Business Appointment Rules and any guidance that accompanies them should be clear about the expectations they set and remove the current ambiguity.
- It should be made clear in contracts that it is not appropriate for individuals to work in areas they have had direct regulatory, commercial or contractual responsibilities.
- The lobbying ban should be strengthened. For example, making it clear it is inappropriate for applicants at the most senior level to join commercial lobbying organisations.
- Lower risk cases should be defined and removed from the application process where appropriate, to allow departments and ACOBA to focus on more complex cases.

- Clear sanctions for non-compliance should be set, alongside the publication of non-compliance and consideration by the government in future honours and appointments.
- There should be greater visibility about how the Rules are being applied and monitored within departments; including who is subject the Rules at what level and aggregated, timely data to show how the Rules are applied within departments.