



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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BUSINESS APPOINTMENT APPLICATION: The Rt Hon James Wolffe QC FRSE, former Lord Advocate, Scottish Government. Unpaid appointment with the Legal Education Foundation.

1. You approached the Advisory Committee on Business Appointments (the Committee) under the government's Business Appointments Rules for former ministers (the Rules) seeking advice on taking up an appointment as a Governor for the Legal Education Foundation. The material information taken into consideration by the Committee is set out in the annex below.
2. The purpose of the Rules is to protect the integrity of the government. Under the Rules, the Committee's remit is to consider the risks associated with the actions and decisions made during time in office, alongside the information and influence a former minister may offer the Legal Education Foundation.
3. The Ministerial Code sets out that ministers must abide by the Committee's advice. It is an applicant's personal responsibility to manage the propriety of any appointment. Former ministers of the Crown, and Members of Parliament, are expected to uphold the highest standards of propriety and act in accordance with the 7 Principles of Public Life.
4. It should also be noted that in addition to the conditions imposed on this appointment under the government's Business Appointment Rules, there are separate rules in place with regard to your role as a member of the Scottish Parliament.

The Committee's consideration

5. When considering this application, the Committee¹ took into account that this role, as a Governor, is unpaid. Generally, the Committee's experience is that the risks related to unpaid roles are limited. The purpose of the Rules is to

¹ This application for advice was considered by Jonathan Baume; Andrew Cumptsy; Sarah de Gay; Isabel Doverty; The Rt Hon Lord Pickles; Richard Thomas; and Mike Weir. Dr Susan Liautaud and Lord Larry Whitty were unavailable.

protect the integrity of government by considering the real and perceived risks associated with former ministers and 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.

6. Though there is a broad overlap in the legal sector here, you did not meet with the Legal Education Foundation while in office and did not make any funding or policy decisions directly affecting the Legal Education Foundation. The Committee also noted that as the former Lord Advocate there is an inherent risk you could be perceived as having access to relevant privileged information and knowledge, which could unfairly benefit the Legal Education Foundation. However, the unpaid nature of this appointment limits the real and perceived risk of you making improper use of information you had access to while in office for your personal benefit, and you have an ongoing duty of confidentiality.

The Committee's advice

7. The Committee did not consider this appointment raises any particular proprietary concerns under the government's Business Appointment Rules. Whilst there are inherent risks associated with your access to sensitive information and contacts, these are sufficiently mitigated by the standard conditions below, preventing you from drawing on your privileged information and using your contacts to the unfair advantage of your new employer.
8. Taking into account these factors, in accordance with the Government's Business Appointment Rules, the Committee advises this appointment with **the Legal Education Foundation** be subject to the following conditions:
 - 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 Scottish Government or its arms' length bodies on behalf of the Legal Education Foundation (including parent companies, subsidiaries, partners and clients); nor should you make use, directly or indirectly, of your contacts in the government and/or ministerial office to influence policy, secure business/funding or otherwise unfairly advantage of the Legal Education Foundation (including parent companies, subsidiaries, partners and clients); and
 - for two years from your last day in ministerial office you should not undertake any work with the Legal Education Foundation (including parent companies, subsidiaries, partners and clients) that involves

providing advice on the terms of, or with regard to the subject matter of a bid with, or contract relating directly to the work of, the Scottish Government or its arms' length bodies.

9. The advice and the conditions under the government's Business Appointment Rules relate to your previous role in government only; they are separate to rules administered by other bodies such as the Lobbying Register or the Standards, Procedures and Public Appointments Committee. It is your personal responsibility to understand any other rules and regulations you may be subject to in parallel with this Committee's advice.
10. 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.
11. 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.*' This Rule is separate and not a replacement for the Rules in the House.
12. You must inform us as soon as you take up this role, 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 complied with the Rules and the Ministerial Code.
13. You must also inform us if you propose to extend or otherwise change the nature of your role as, depending on the circumstances, it may be necessary for you to make a fresh application.
14. Once the appointment has been publicly announced or taken up, we will publish this letter on the Committee's website, and where appropriate, refer to it in the relevant annual report.

The Rt Hon Lord Pickles

Annex - Material information

The role

1. You seek to join the Legal Education Foundation in an unpaid, part-time role as a Governor.
2. You said the Legal Education Foundation is a charity incorporated in 1962 and granted a Royal Charter in 1975. The Object of the Foundation, as set out in its Royal Charter, as amended by Order in Council dated 28th April 2021 is: *'To promote the advancement of legal education and the study of law in all its branches, and the sound development and administration of law'*.
3. You said the Foundation has three current programmes:
 - it gives grants to support education, training and development aimed at addressing systemic gaps in skills in the social justice legal sector and to strengthen the capacity of individuals and organisations in the social justice field to deliver their work effectively and sustainably;
 - it gives grants to support work to increase people's capacity to understand the way laws are made and implemented (with two areas of current focus: the consequences of withdrawal from the EU and automated decision-making); and
 - it undertakes work to support and promote collecting and learning from robust evidence in the design and operation of the UK justice system.
4. The website states it is an independent grantmaking foundation distributing around £6million a year to organisations undertaking charitable work which promotes their strategic objectives. It states it focuses on the essential role of legal education in helping people and organisations to understand and use the law as a tool for change. It states *'...there are significant numbers of people who cannot obtain justice in relation to everyday problems, and that these unmet needs trigger or exacerbate clusters of issues that have a social and economic impact on individuals, communities and wider public policy goals. We believe the law should be readily available at the times and in the places where people need it'*.
5. You said as Governor of the Foundation, you would have the usual responsibilities of a charity trustee in respect of the values, governance, strategy, fiduciary duties, assets and activities of the charity, and ensuring that it carries out its purposes for the public benefit and in compliance with its governing document and the law. The Foundation operates across the four nations of the UK. Its objects, which you quoted above, are concerned with legal education and the sound development and administration of the law. You would bring to the Foundation the experience and insight gained as a practising lawyer, fulfilling various roles in the legal system, over many years - principally in Scotland, but also with strong links with the legal professions in England & Wales and Northern Ireland. It is anticipated that you would contribute at a strategic level, both to Board decision-making and in support of the Foundation's staff, drawing on that legal experience and on the understanding which has given you of the constitutional, legislative and regulatory environment within which the Foundation operates across the UK.
6. You do not expect his role to involve any contact with government.

Dealings in office

7. You said you did not have any involvement with the Legal Education Foundation whilst in office. You confirmed you did not have access to sensitive information relevant to the Legal Education Foundation and did not meet with competitors of the Legal Education Foundation.
8. You also wanted to inform the Committee that:
'I have a track record of involvement in the promotion of rule of law values and the protection of human rights. In particular, as Dean of the Faculty of Advocates (the elected leader of the Scottish bar) between 2014 and 2016, I hosted lectures and seminars on rule of law issues and used speaking and writing opportunities to promote the rule of law and the protection of fundamental rights. I was also a Council member of JUSTICE Scotland (a human rights charity working to reform the justice system) between 2014 and 2016. I have also been actively involved in international engagement with lawyers and judges from other jurisdictions, as Head of the UK Delegation to the Council of European Bars and Law Societies 2013-15, Vice-dean and Dean of Faculty 2013-16 and Joint Chair of the International Council of Advocates and Barristers 2014-16. I was also a founding Trustee of the LawScot Foundation, which seeks to promote social inclusion in the legal profession by providing grant and mentoring support to students from less advantaged backgrounds who wish to study law in Scotland. You were formerly a member of the Advisory Committee of the Clark Foundation for Legal Education, which provides grants to support legal education and research.'

Department Assessment

9. The Scottish Government confirmed the details you provided and confirmed you had no access to information that would provide an unfair advantage. The department has previously noted that any sensitive information you may have been aware of is subject to strict obligations of confidentiality. Those obligations are clear and remain in place after the applicant leaves their current position.
10. The department stated the Foundation has recently funded Scottish Women's Aid to undertake scoping and piloting of a project that will provide holistic services to women, including legal advice. That project will now be funded through the legal aid fund which is administered by the Scottish Government. There may be other similar examples where the Foundation and the Scottish Government are or have been providing funding for similar or the same projects. However, this is not thought to give rise to a conflict of interest as there is no connection between the different funding decisions. In any event, although you are a former minister bound in terms of the Scottish Ministerial Code by collective responsibility for funding decisions made by the administration of which you were a member, you would have had no personal involvement in any such decisions.

11. The department confirmed it had no concerns and recommended the standard conditions.