



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

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**BUSINESS APPOINTMENT APPLICATION: Susan Gray CBE, former Second Permanent Secretary at the Department for Levelling Up, Housing and Communities and the Cabinet Office. Paid appointment, Chief of Staff, Leader of HM Official Opposition**

1. Ms Gray sought advice from the Advisory Committee on Business Appointments (the Committee) under the government's Business Appointments Rules for Former Crown Servants (the Rules) on taking up the role of Chief of Staff to the Leader of HM Official Opposition (the employer).
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 Ms Gray made during her time in office, alongside the information and influence she may offer the employer if and when she takes up the role.
3. The Committee carefully considered the suitability of this appointment given Ms Gray's most recent role as Second Permanent Secretary and the concerns raised publicly about a civil servant taking up a role advising the Leader of the Opposition. Party political matters are outside the Committee's remit. The Committee's deliberations and decisions relate to Ms Gray's time in office and the risks posed under the Rules - this includes relevant information provided by the departments. The material information taken into consideration by the Committee is set out in the annex.
4. The Committee's advice is not an endorsement of the appointment - it imposes a number of conditions and a waiting period to mitigate the potential risks to the government associated with the appointment under the Rules.

5. The Rules<sup>1</sup> set out that Crown servants must abide by the Committee's advice. It is an applicant's personal responsibility to manage the propriety of any appointment. Former Crown servants are expected to uphold the highest standards of propriety and act in accordance with the 7 Principles of Public Life.

6. I am instructed by the Committee to express its disappointment on the level of briefing to the media in relation to this application. Briefings of this nature, wherever they stem from, are injurious to a fair and confidential process. The Committee wants to make this process faster and fairer to applicants and this can only be achieved if all parties provide timely information in confidence and keep it as such.

#### The Committee's consideration of the risk presented

7. The Official Opposition is the largest political party in the House of Commons that is not in government, currently the Labour Party. The role of the Official Opposition is to question and scrutinise the work of government. Ms Gray said that while this role is within a party-political environment, her role will be leading preparations for the machinery of government.

8. Where any senior civil servant takes on a role upon leaving government service which could be construed as political, there are potential risks to the perceived impartiality of the Civil Service.

9. There has been significant public speculation about the timing of Ms Gray being offered a role with the employer and whether that caused a conflict with Ms Gray's time in office. Ms Gray told the Committee no formal job offer was made until 2 March 2023 and that, until then, no terms had been discussed; nor any likely date for her leaving the Civil Service. Ms Gray also said that whilst she had brief personal conversations with the employer during her time in office, no government policy or business was discussed. No evidence to the contrary has been provided to the Committee.

10. It is quite normal for individuals to discuss the possibility of new roles before leaving office. Any potential conflict must be declared. The Committee's remit is concerned with whether any contact with the future employer could lead to reasonable concerns that decisions or actions taken in office may have been impacted by the expectation of a paid appointment in the future. The Committee has not been provided with any evidence to demonstrate this has been the case.

11. There has been media speculation about whether Ms Gray has breached the Civil Service Code. Any breach of the Civil Service Code would be a matter for the government. In relation to the Rules, no evidence has been provided by the departments to demonstrate Ms Gray made decisions or took action in office which favoured the employer in expectation of this role. This includes her role in the 'Partygate' investigation. The Department for Levelling Up, Housing and Communities (DLUHC) and the Cabinet Office confirmed this investigation is not material to the Committee's consideration.

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<sup>1</sup> Which apply by virtue of the Civil Service Management Code, The Code of Conduct for Special Advisers, The King's Regulations and the Diplomatic Service Code.

12. As a Second Permanent Secretary, Ms Gray would undoubtedly have access to a range of sensitive information. Ms Gray's portfolio in office included responsibilities for:

- a. The Union
- b. The Cabinet Manual
- c. Parliamentary Policy
- d. Relations with the Royal Household
- e. Elections
- f. Public Appointments
- g. Infected Blood Inquiry
- h. The Investigation Into Alleged Gatherings in No.10 Downing Street ('Partygate')

13. The risk associated with Ms Gray's access to information is potentially broad. However, the departments identified no particular information that would be of specific risk; and there is evidence that some of the work she was involved in is no longer sensitive. This reduces the risk associated with Ms Gray's access to information and insight. Further, Ms Gray is prevented from drawing on privileged information and has an ongoing duty of confidentiality. Nevertheless, it would be difficult to argue that Ms Gray would not be seen to offer the employer insight into government matters it might not otherwise have access to.

14. There are inherent risks around the influence and access to government that any senior government official may offer their future employer. There is no risk of the employer gaining commercially in this case. There is also an agreed framework for contact between the Official Opposition and government. Any contact to discuss matters of policy initiated by the employer must be on the express permission of ministers. The exception to that is during the pre-election period, once the Prime Minister has given permission for opposition parties to enter into confidential discussions with senior civil servants without the permission or knowledge of ministers. This is in keeping with Ms Gray's request: that she may have contact with officials when it is initiated by the government to discuss matters where the employer would normally be consulted, or in any pre-election period to discuss machinery of government changes.

15. Taking all of this into consideration, there should be limited scope for Ms Gray to offer unfair influence in securing access to government. However, there remains a potential risk to the perceived impartiality of the Civil Service that would be exacerbated if Ms Gray was to take up this role and have direct contact across government immediately on leaving office.

#### The Committee's advice

16. The Committee<sup>2</sup> shared some of the concerns raised by Ms Gray's former departments about the potential risk to the integrity of the Civil Service.

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<sup>2</sup> This application for advice was considered by Andrew Cumpsty, Isabel Doverty; Jonathan Baume; The Rt Hon Lord Pickles; Lord Whitty; Sarah de Gay; and Mike Weir. Richard Thomas was recused.

17. Where any civil servant is leaving office and has had responsibilities and access to information at the highest levels of government, there are associated risks. For this reason the government's Rules impose a three month wait on the most senior civil servants to provide a clean break. The Committee concluded there were limited risks associated with information gained from Ms Gray's time as Second Permanent Secretary and agreed these can be appropriately mitigated by: the conditions which prevent her making use of privileged information in office; her ongoing duty of confidentiality; and a gap between her leaving office and taking up the role.

18. The Committee determined that after an appropriate gap, the contact that Ms Gray has described having with the government in this role would not be improper as long as it is in line with the rules that apply to contact between government and the Official Opposition in relation to government policy. This contact must be on the express permission of ministers or in line with special arrangements during the agreed pre-election period, which can only begin on the authorisation of the Prime Minister. The departments added that there may be reason for Ms Gray to have contact with her former department in relation to pay and conditions as a former civil servant; and that it would be content for Ms Gray to contact government on behalf of the Leader of the Official Opposition, as long as this is channelled through the Cabinet Secretary.

19. There has been no evidence provided to the Committee that Ms Gray's decision making or ability to remain impartial was impaired whilst she remained in her Civil Service role. Given the lack of commercial risk, and the limited scope for undue influence, the Committee determined that twice the standard waiting period would be proportionate to mitigate the risks identified, providing a clear break of six months before Ms Gray takes up the role. The Committee considered a period of three times, or four times the normal waiting period to be disproportionate. The other conditions below prevent Ms Gray from making improper use of her access to information and contacts within government to improperly advantage the employer.

20. In the circumstances, the Committee's advice in accordance with the government's Business Appointment Rules is that Ms Gray's appointment with the Official Opposition should be made subject to the following conditions:

- a waiting period<sup>3</sup> of six months from her last day in Crown service;
- she should not draw on (disclose or use for the benefit of herself or the persons or organisations to which this advice refers) any privileged information available to her from her time in Crown service;
- for two years from her last day in Crown service, she should not become personally involved in lobbying the UK government and its arm's length bodies on behalf of the HM Official Opposition (including subsidiaries, partners and clients); nor should she make use, directly or indirectly, of her contacts in government and/or Crown service to influence policy, secure business/funding or otherwise unfairly advantage the HM Official Opposition (including subsidiaries, partners and clients);

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<sup>3</sup> A waiting period places a gap between certain work and taking up paid employment, in this case from Ms Gray's last day in office when she last had access to information and decision making (2 March 2023). A waiting period prevents any work until the waiting period has passed.

- for two years from her last day in Crown service, she should not provide advice to the HM Official Opposition (including subsidiaries, partners and clients) on the terms of, or with regard to the subject matter of, a bid with, or contract relating directly to the work of the UK government or any of its arm's length bodies;
- for two years from her last day in Crown service, or until the Prime Minister has authorised the pre-election period arrangements for contact with the HM Official Opposition, she can only initiate contact with the UK government or its arm's length bodies, if it is routed via the Cabinet Secretary<sup>4</sup>.

21. The advice and the conditions under the government's Business Appointment Rules relate to an applicant's previous role in government only; they are separate to rules administered by other bodies such as the Office of the Registrar of Consultant Lobbyists or the Parliamentary Commissioner for Standards. It is an applicant's personal responsibility to understand any other rules and regulations they may be subject to in parallel with this Committee's advice.

22. 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/Ministerial Code or otherwise.

23. 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."

24. Ms Gray must tell us if she proposes to extend or otherwise change the nature of this role as, depending on the circumstances, it may be necessary for her to make a fresh application.

25. Once the appointment(s) 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.

Yours sincerely

Cat Marshall  
**Committee Secretariat**

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<sup>4</sup> There is an exception to this should Ms Gray need to contact her former departments in respect of her former Civil Service employment (for example, in relation to pay and pension).

## Annex - material information

### The role

1. Ms Gray seeks to join the Leader of HM Official Opposition. The Leader of the Opposition is viewed as an alternative or shadow prime minister, and is appointed to the Privy Council. They lead an Official Opposition Shadow Cabinet, which scrutinises the actions of the Cabinet and offers alternative policies. Ms Gray said that as Chief of Staff, a full-time and paid role she has asked to '*...play the leading role in preparing him and his team to assume office should they win the next general election*'. Ms Gray noted in her application that the Official Opposition (the employer) has not been in office for over a decade, with little direct experience of government and therefore is seeking someone with extensive knowledge of how government machinery works. The role will involve:

- a. leading the preparation for government work
- b. managing some staff
- c. acting as counsel to the Rt Hon Sir Keir Starmer MP in his constitutional role as Leader of the Official Opposition
- d. It is also likely to involve areas such as: the structure and formation of government and civil service departments, Cabinet and its committees, ministerial appointments and other constitutional questions.

2. Ms Gray said that while this is within a party-political environment, her role will be leading preparations for the machinery of government. Whilst Ms Gray said she would not lobby the government, she said she would expect to have some contact, with the government stating:

- a. There is usually contact between the employer's office and government in areas where the employer is normally consulted. For example, national security matters such as Ukraine, and constitutional and Royal issues. On these issues, for which there is already an agreed framework of contact between government and the employer, usually instigated by government - she would expect to have contact as and when issues arise.
- b. She would expect to lead preparatory contact with the Cabinet Secretary and his team once the normal pre-election contact period begins. In her view it would be helpful to engage with former colleagues '*with the shared objectives of ensuring government transition runs smoothly and a respect and understanding for the role that an impartial civil service plays.*'

### Timing of offer of employment

3. Ms Gray said that in late October 2022 she received a call from the Rt Hon Sir Keir Starmer MP, the Leader of the Opposition. He said they were preparing for government and raised the idea that she might serve the team in a senior capacity – possibly as Chief of Staff. She said she might be open to such a possibility if she were to leave the Civil Service. In addition, she had subsequent brief informal conversations (with his team, not Sir Keir) where she was updated on their developing plans,

including a potential role for preparing for government were she to leave the Civil Service.

4. Ms Gray does not believe there was a conflict with the specifics of her work. Ms Gray told the Committee that there was no formal offer of employment until 2 March 2023. In the meantime she said any discussions were high level, short and she did not discuss:

- a. terms;
- b. government policy or business;
- c. nor was she asked to indicate when she might leave the civil service.

5. In addition Ms Gray noted she was exploring other Civil Service roles as well as thinking about other options external to government. In November 2022, Ms Gray applied for an internal competition for the post of Permanent Secretary at the Department for International Trade, for which she was unsuccessful.

6. On timing Ms Gray said in her application:

*'Following media speculation on 1 March (for which I had no responsibility and to which I did not respond), I realised that I would have to take a decision to leave the civil service if I wanted to pursue the opportunity to take on the proposed role. I therefore spoke to the Leader of HM Opposition the following day about the role in light of the media speculation and he confirmed that he wished to appoint me. In return, I said I hoped to accept subject to the usual procedures. Accordingly, I resigned from the civil service with immediate effect and started the process of ACOBA application before having a formal offer of employment which as of yet I do not have. It would obviously have been my preference for this process to be able to run its course and ACOBA provide its advice in the usual confidential way but sadly this was not possible once my resignation had been disclosed to the media.'*

#### Dealings in office

7. Ms Gray said that in her most recent role, she has had minimal contact with the employer. She said her area of policy responsibility (the Union of the UK) is one of comparatively little disagreement and controversy between government and the employer.

8. Ms Gray said that over the course of her long Civil Service career she has had contact and discussions with all the political parties. Since 2010, with the Labour Party as the Official Opposition, she has had contact with successive leaders and their offices on matters such as the constitution, state occasions and the publication of inquiry reports. She added that she had dealt extensively with *'...Conservative politicians in Government as well as politicians from the main political parties in relation to my work on maintaining the Union. In the past my roles have also included responsibilities involving liaising on behalf of the Government with all political parties'*.

9. Ms Gray stated she did have knowledge of government business but will continue to fully comply with relevant laws and all rules and conventions including the Official Secrets Act and her ongoing duty of confidentiality having left office. Ms Gray

provided a summary of her responsibilities and access to information for her most recent role, as below.

## **The Union**

10. As Second Permanent Secretary for the Union and Constitution Ms Gray said she was primarily focussed on strengthening and maintaining the Union in line with the strategy agreed by successive Prime Ministers. Ms Gray said that rather than policy development, her role was about ensuring the relevant policies being developed sufficiently took account of Union and devolution implications; and that implementation focussed on delivering the best outcomes for all UK citizens.

11. Ms Gray said she held fortnightly meetings with her counterparts in Scotland, Wales and Northern Ireland to discuss issues of current interests - which would be the subject of current public debate and other government officials were in attendance. She said the role was focussed on building strong collaborative relationships with the devolved administrations, representing and protecting government's interests on key constitutional issues (e.g - a second Independence referendum in Scotland).

12. Ms Gray described the role, as agreed by the Prime Minister and the Levelling Up Secretary of State, as showcasing the benefits of the Union - meeting and engaging with a wide range of stakeholders from academia, politicians, civic society and the private sector. *'For example, in Scotland this included attendance at a conference chaired by the Rt Hon Gordon Brown with the SNP and the CBI represented on the panel, (other officials were also in attendance), meetings with the (SNP) Leader and CEO of Glasgow City Council to discuss levelling up funding and city and growth deals, and with the Hutton Institute about levelling up funding.'*

13. Ms Gray was also responsible for the Economic and Domestic Affairs (Union) Cabinet Committee which she said would meet as and when needed.

## **Constitution**

14. Ms Gray said this team reported to her and covered a broad range of issues including:

- the Cabinet Manual
- Parliamentary Policy
- the Restoration and Renewal programme for the Houses of Parliament
- relations with the Royal Household

15. She also noted that a lot of the team's work was commissioned by or was directly for the Cabinet Secretary working with other teams in the Cabinet Office. For example, the team was commissioned directly and reported directly to the Cabinet Secretary on issues relating to the death of HM The Queen.

## **Referenda**

16. Ms Gray said she was not particularly active in this area but had been involved in some policy discussions.



## **Elections**

17. Ms Gray said the focus has been the passing of the Elections Act and its subsequent implementation:

- a. The introduction of a Voter ID programme which she was closely involved in delivering, including recruitment for a new Senior Responsible Officer and Programme Director for the Electoral Improvement Programme to deliver the reforms.
- b. It is a matter of public record that the employer is opposed to the new system of voter ID. Ms Gray noted she had '*... throughout been focussed on the delivery of the policy for Ministers. The final go live implementation decision was taken at the end of January this year. For completeness, I should also add that I had no discussions with the [the employer] on this policy.*'

## **Public Appointments**

18. Ms Gray said her role was focussed on ensuring a strong and diverse talent pool for a range of public appointments, including: discussions about prospective candidates and being part of selection panels in accordance with due diligence - and aligned with the framework and processes related to the appointments process.

## **Infected Blood Inquiry**

19. Ms Gray said she was the lead government sponsor for the Infected Blood Inquiry, involving:

- a. engagement with the affected community and those that represent them, including a cross-party APPG.
- b. chairing a number of meetings with Whitehall counterparts to ensure government was ready to respond to an interim report from the Inquiry which is expected before Easter - <https://www.infectedbloodinquiry.org.uk/>. Ms Gray argued these were fast-moving discussions and that she has no knowledge of the current position of government's response. (Nor is she aware of this being the source of any dispute with the employer).

## **The Investigation Into Alleged Gatherings in No.10 Downing Street ('Partygate')**

20. Ms Gray said she was asked to lead on this after the Cabinet Secretary recused himself from the investigation. An initial 'update' was published in January 2022 and the Investigation was completed in May 2022 following the completion of a separate Metropolitan Police investigation.

## Departmental view

21. The departments raised concerns about the perception Ms Gray was in talks with the employer for a number of months whilst she was still in post as Second

Permanent Secretary and the potential conflict that raises. To summarise, the departments said:

- a. Ms Gray had '*...significant influence in decisions relating to the Labour Party - given her senior role supporting the Government, and given that each Government decision - to a greater or lesser extent - is relevant to the Opposition.*' For example, in her most recent role, part of her remit was '*to be the key adviser to the Prime Minister on Union and constitutional matters, and lead the delivery of innovative policy solutions to nationally critical challenges*'.
- b. The departments noted the appointment could be (and had been) perceived by some as a reward - '*For example, there have been suggestions by some commentators that certain decisions the applicant has taken in the past have been part of a widespread effort to support her proposed employer*'. When asked the departments confirmed they did not support this view and there was no evidence Ms Gray made any decisions in expectation of this role. The departments also confirmed that the Partygate report was not material to this application in their view.
- c. Ms Gray taking this role on questions the impartiality of the Civil Service: '*...the main risk relating to this proposed appointment goes beyond giving her prospective employer a narrow policy or political advantage - it threatens to weaken public trust in the impartiality of the Civil Service, and in the democratic system more generally, if the public comes to the view that the Civil Service is inherently partial. To that end, the only reasonable mitigation is the imposition of a waiting period.*'

22. The departments said that Ms Gray '*...has had deep and extensive access to information relating to competitors of her proposed employer (principally the Government). While this is not commercial information, the information could be potentially politically valuable. The applicant has had a long career at a senior level in government, and therefore has a deep understanding of both how government works and what the overall government position is with regard to many salient issues.*' In summary, the departments provided the following information about Ms Gray's access to information:

- a. Confirmation of Ms Gray's areas of responsibility as listed in her application (as above).
- b. In relation to the specific information Ms Gray is privy to (for example any salient issues or matters that have not yet been decided and to which she is aware of current government thinking and possible unannounced policy) the departments said:
  - i. The Rules state that all Permanent Secretaries have access to a wide range of sensitive information leading to a minimum wait period of 3 months. In Ms Gray's case this would include papers, access to senior leadership meetings and meetings

between Head of Departments - though it was '*...not possible to determine the exact nature of this information*'.

- ii. Ms Gray is highly knowledgeable about the government's current plans, concerns and priorities in relation to the Union and constitution. '*This information could give her prospective employer a potential advantage by alerting them to areas of political weakness/ vulnerability. This risk could be managed if the applicant is reminded of, and adheres to, their ongoing duty of confidentiality*'
- c. They added '*Competitors in the sense of this application refers to the Government and one of the primary objections to this appointment is the perception the wider public may have regarding the role and impartiality of the Civil Service. As this issue relates to such perceptions, the main means of mitigating this risk is a waiting period.*'

23. The departments' view is that the central position of this role with the Labour Party is of concern. They said the role of Chief of Staff is typically inherently political and will be seen as such publicly. The departments' view is that it may not be practical to perform the role in the limited way described. They said that a high profile senior civil servant taking on '*...a visible political role will clearly have implications for the perceived impartiality of the Civil Service. Public confidence in the service relies on our ability to demonstrate adherence to the Civil Service Code - especially at the most senior levels*'. Beyond the widely publicised perception risks, the departments were invited to demonstrate whether Ms Gray's impartiality had been affected in office and confirmed this was not their view.

24. The departments said the unprecedented circumstances under which Ms Gray left her role had led to commentary in public and in Parliament which questions the impartiality and integrity of the Civil Service, which would be exacerbated by contact with members of the government in the near future in a political role. Given the '*potential for public concern and criticism are sufficiently material*' the departments were of the view that a waiting period in excess of the minimum three months was warranted; and made the following initial recommendations:

- a. '*While the Rules do not specifically preclude such a role, they exist to avoid reasonable concerns regarding the propriety of the proposed appointment. Given this, the proposed employment risks lowering public trust in the Civil Service. To that end, in order to ensure that the currency of any government information held has degraded by the time the applicant takes up the role, and to create a clean break between government and political service, we recommend a waiting period of 12 months.*'
- b. '*There are also risks relating to the range of information held by the applicant. She should be reminded of her ongoing duty of confidentiality, and her ongoing responsibility not to divulge privileged information.*'
- c. '*Permanent Secretaries are ordinarily barred from lobbying the government for two years after they leave Crown service. This is normally imposed to prevent commercial gain for the new employer. In*

*this instance - given that it is a political rather than a commercial appointment - we recommend that the lobbying ban is imposed for 18 months. This should be formulated in a manner to prohibit direct contact between the applicant and government for 18 months, but this would not prevent the applicant advising and working with those who will be in direct contact with government.'*

25. The departments subsequently amended the recommendation in relation to the prohibition on contact with government. In particular, that there should be a caveat which allows Ms Gray to have some contact with government before the formal start of the pre-election period, but only in the following circumstances:
- a. contact with the DLUHC in relation to matters relevant to a former employee (for example, pay and pension etc) providing it is routed via the Permanent Secretary at DLUHC.
  - b. contact with the government on official Leader of the Official Opposition business, providing that it is routed via the Cabinet Secretary or the Propriety and Ethics Team.