



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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By email

Dear Mr McNeil

Thank you for your detailed response to my letter as Chair of the Advisory Committee on Business Appointments (ACOBA), dated 25 July 2023 in which you say you disagree that your actions were contrary to the ban on lobbying. The exchange of correspondence is annexed to this letter.

Having considered the latest correspondence my views on your actions remain unchanged. I confirm that Committee members are sighted on this correspondence which reflects ACOBA's views and our policy in relation to breaches of the government's Business Appointment Rules (the Rules).

The lobbying ban

The intention behind the lobbying ban in the government's Rules is to address legitimate public concern that on leaving office an individual might improperly exploit their privileged access to contacts and influence in government, affording the organisation they work for unfair advantage over others.

It might help to set out what kind of contact might be deemed reasonable under the Rules:

- Sharing factual information transparently. For example reporting via published research, opinion pieces, reports, annual reports, or through formal consultation;
- When it is not transparent, sharing information/updates that are not aimed at influencing decisions may be appropriate
- Responding to requests from the government- e.g. to take part in a roundtable or be invited to a meeting.

Interpretation

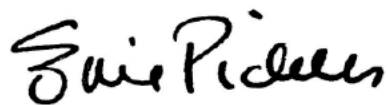
In your most recent correspondence, you argue it is likely that 'any contact I have for operational reasons will necessarily be designed to influence to some degree'. I agree which is why ACOBA advised you to be careful if entering into any interactions with the government for this reason. We also suggested to you that another member of the company may be better placed to do so. It is a matter of some regret that you ignored that advice.

It is an applicant's personal responsibility to make a judgement about whether their actions are in keeping with the Rules and the advice received. Given your blatant disregard to the Committee's advice no reasonable person would believe ACOBA's interpretation of the Rules on this matter goes too far. You were specifically advised that contacting the government to help secure a licence or solve a regulatory issue would not be in keeping with the lobbying ban, but you still chose to do so. This was inadvisable and when the department contacted ACOBA about your attempted lobbying an investigation naturally followed. Having done so, ACOBA found no good reason that you personally had to correspond with government officials and ministers on these matters. It was therefore reported to the government as the owners of the Rules and this breach made public in line with ACOBA's policy.

Interchange between government and other sectors

ACOBA agrees the smooth operation of the Rules is important to allow the government to benefit from the interchange of skills and experience between the public, private and charitable sectors, while protecting the government's integrity. The desire to encourage a smooth interchange should not be used to disguise covert lobbying or a failure to follow advice.

In line with your request and ACOBA's policy of transparency, correspondence on this matter will be published on our website.

A handwritten signature in black ink that reads "Sue Pickles". The signature is written in a cursive, flowing style.

The Rt Hon Lord Pickles

Correspondence from Rupert McNeil to Lord Pickles, 25 July 2023

Dear Lord Pickles

I refer to your letter to me dated 4 July 2023 and the related letter to the Deputy Prime Minister of the same date, both of which are now published on the Advisory Committee on Business Appointments (“ACCOBA” and “the Committee”) section of the Government website.

I would expect, in the light of the avowed commitment to the principles of transparency, referred to in those letters and in the Business Appointment Rules for Crown servants (“the Rules”), which govern the functions of the Committee, and the Committee’s adoption of the Model Publication Scheme of the Information Commissioner’s Office, that this response will also be published.

I respectfully wish to set out a number of serious concerns that I have about the adequacy and transparency of the process adopted by you and the conclusions that you set out in those letters. I say at the outset that I consider, with respect, that the process is flawed and lacking in transparency, and that your conclusions are analytically flawed and wrong. Given the publication of the letters on the Government website and their potential to mislead and cause reputational damage, the process in this instance is of serious concern to me; and the systemic inadequacies evident in the way this matter has been dealt with are, I would suggest, of wider public concern as to the fitness for purpose of ACOBA and its processes.

Flaws in ACOBA’s process and its lack of transparency

In accordance with the Rules, my application, as the former Government Chief People Officer to take up employment as the Executive Chair of Lincoln Storm Group Limited, was referred to the Committee. The Committee communicated its approval of that employment, subject to conditions, in its advice letter, acknowledging (as I pointed out in my previous letter of 30 May 2023) that I openly stated that my role might involve contact with Government regarding matters that relate to, amongst other things, licences. All subsequent correspondence from the Office of the Committee to me has been written by you personally, stating that you are writing in your capacity as Chair of the Committee. The Rules are silent and opaque as to what process is adopted by the Committee with respect to the investigation and adjudication of concerns relating to whether the advice of the Committee has been complied with by a person taking up employment. That lack of transparency is not made good by any elucidation in your subsequent letters. What appears, on the face of those letters, is that you are expressing your personal opinions as the Chair of the Committee, rather than communicating any view, formed as a result of a transparent and fair process undertaken by the Committee acting as a whole, and with the authority vested in it as an advisory non-departmental public body by the Cabinet Office. If the Committee has authorised a delegation of authority to the Chair in such matters, it is not stated in your letters or otherwise apparent from anything in the public domain stating the functions of ACOBA. Further, such a delegation of authority in relation to matters of

this importance would itself raise questions about the appropriateness of ACOBA's processes. Accordingly, it is not obvious that you have any authority to use the Government website to voice these seemingly personal, and damaging, opinions.

Analytical errors in your letters

The conclusions expressed in your letters are analytically flawed and wrong.

Your letters fail to get to grips with the central point that I made in my detailed representations to the Committee in my letter of 30 May 2023. You content yourself, in your letter to me and the related letter to the Deputy Prime Minister of 4 July 2023, with the observation that my communication with the Environment Agency and the Secretary of State for DEFRA (who bears governmental responsibility for the former) in connection with licences can only be interpreted as an attempt to influence the decision of Government. However, as I set out in my letter of 30 May 2023, the advice of the Committee acknowledged, but failed to give me clear advice as to the scope of, an excepted category of permissible communications in relation to such matters as licences.

You refer to, without identifying or publishing, email correspondence between me and the Secretariat to the Committee on this subject, which reiterates that some contact would be likely to fall foul of the lobbying ban. I take this to be a reference to the email to me from the Secretariat dated 26 September 2022, which stated: "*... as currently described some of the forms of contact could be construed as lobbying, for example contacting HMG to secure a permit or licence. I respect these may be routine, and with departments that are separate to your specific responsibility in government but a former senior official contacting government to help secure a licence or solve regulatory issues falls would likely fall foul of the lobbying ban put on all civil servants at your seniority. As such the Committee will likely prevent this proposed contact in its advice. Of course if in the course of your role, government wishes to sit down with the Executive Chair of Lincoln Storm to discuss any of these matters, and sought to do so this would not prevent that from happening. **Nor would it prevent you ever contacting HMG, but you must be careful about how and what that contact looks like.** Instigating contact designed to influence a decision - whether strategic, operational, or policy related, it would likely be more appropriate for another member of the team, not subject to the Business Appointment Rules to make that contact.*" (Emphasis added.)

As I set out in detail in my letter to the Committee of 30 May 2023, my contact with the Environment Agency and the Secretary of State for DEFRA was not to secure a licence but to point out errors of process and mistakes of fact in the Environment Agency's consideration of ongoing licensing and regulatory matters. It seems to me that the email to me from the Secretariat to the Committee, dated 26 September 2022, in fact illustrates the point that I made in my letter to the Committee of 30 May 2023 in relation to the advice letter, which you have failed to address. As I said then, by "*recording in the advice letter both my reservation and my understanding that I would abide by the lobbying prohibition and the conditions imposed, [the Committee] effectively acknowledged that the 2 were not incompatible, but left me to do the best I could to make sense of their compatibility. I believe that I have done so in a sensible and reasonable fashion.*"

Conclusion

I was entitled to take from these various Delphic comments made by or on behalf of ACOBA that I was not prohibited from contacting Government, and that I was to exercise my own judgment when doing so, with regard to the demarcation between impermissible lobbying and permissible contact. All correspondence I have had with Government has been within the letter and spirit of the Rules and that advice. Any contact I have for operational reasons will necessarily be designed to influence to some degree. There could be no other purpose for my communications with a regulatory body. No matter how many times "*influencing a government decision*" is repeated as the meaning of the word "*lobbying*"; that itself is meaningless without reference to context and the mischief that the Rules are there to prevent. I do not accept I was "*influencing*" a Government decision, within the meaning intended by the Rules, given the existence of the excepted category of permissible contact acknowledged by the Committee.

One thing our exchange of views shows is that ACOBA is not fit for purpose. It requires a level of precision not present in the Rules or the advice routinely given by or on behalf of the Committee. Given the consequences to the future reputation, remuneration and respect that receiving a letter such as yours could have on dedicated civil servants, they deserve better from the process. If your blunt interpretation of the Rules were to prevail, the risk to senior managers from the private sector moving to a Government role would be unacceptably high. Having served as Chief People Officer of His Majesty's Government (as it now is), I fear that this erroneous precedent will have a chilling effect on the ability to attract the talent needed in Government.

I am copying this letter to the Deputy Prime Minister, to whom your letter of 4 July 2023 was addressed. I also copy it to the clerk of the Public Administration and Constitutional Affairs Committee, given that I was asked a specific question about the Rules when giving evidence to that Committee¹, and expressed then views as to the fitness for purpose of ACOBA and its governing Rules in line with those that I set out above. I also copy in my professional bodies, to address the damage to my reputation which might otherwise be caused by the errors I refer to above, if left uncorrected. Finally, I have copied the Civil Service Commission, given the implications for prospective appointments to the Civil Service.

Yours sincerely

Rupert McNeil

<https://committees.parliament.uk/oralevidence/13351/pdf/>

¹ <https://committees.parliament.uk/oralevidence/13351/pdf/>