



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

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**BUSINESS APPOINTMENT APPLICATION: David Stewart, former Executive Director, Markets and Mergers, Competition and Markets Authority. Paid appointment with Towerhouse LLP .**

1. Mr Stewart sought advice from the Advisory Committee on Business Appointments (the Committee) under the government's Business Appointment Rules for former Crown servants (the Rules) on an appointment he wished to take up with Towerhouse LLP (Towerhouse) as a Partner.
2. The purpose of the Rules is to protect the integrity of the government. The Committee has considered the risks associated with the actions and decisions made during Mr Stewart's time in government service, alongside the information and influence he may offer Towerhouse. The material information taken into consideration by the Committee is set out in the annex.
3. The Committee considered whether this appointment was unsuitable given Mr Stewart's former role at the Competition and Markets Authority (CMA). He wishes to advise Towerhouse and its clients on regulatory and market matters, which directly overlaps with his time at the CMA.
4. The Committee also considered the information provided by the department about his specific dealings with this employer and the sector, including his previous experience in the sector and with Towerhouse before joining government. The Committee's advice is not an endorsement of the appointment. It has imposed 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 set out that Crown servants must abide by the Committee's advice<sup>1</sup>. It is an applicant's personal responsibility to manage the propriety of

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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

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.

### **The Committee's consideration of the risks presented**

6. Towerhouse is a law firm with a focus on the regulated sectors of the economy. There is a clear overlap with its work and that of the CMA. Mr Stewart and the CMA confirmed there he made no policy, regulatory or funding decisions specific to Towerhouse. Whilst Towerhouse represents or advises some clients in their dealings with the CMA, Mr Stewart was not involved in these matters. This is as a result of managing any potential conflict associated with his previous role at Towerhouse, which he left to join the CMA. The Committee<sup>2</sup> considered that the risk he could reasonably be seen to have been offered this role as a result of actions taken or decisions made in office is low.
7. As Executive Director, Mr Stewart was responsible for the delivery of investigations, decisions and associated matters that relate to mergers and markets, including setting CMA policy in these areas. He therefore had significant knowledge of privileged material in these areas. The Committee noted that the role he seeks to take up includes advising Towerhouse and its clients in the same general area. In this regard, there is a risk his access to privileged information while in government could offer an unfair advantage to the firm and its clients. This risk is difficult to mitigate where the specific clients and projects are unknown.
8. The Committee considered several mitigating factors identified by the CMA which reduce the scope of the risks:
  - He is prevented from using sensitive information by a number of legal and professional provisions, including: as a solicitor with the SRA he is held under professional standards that solicitors should adhere to; the Enterprise Act 2002; the Rules and principles which apply to all former Crown servants. Further, he must not disclose information acquired during his employment with the CMA which is subject to legal professional privilege, including both legal advice privilege and litigation privilege.
  - The CMA confirmed his role was limited from July 2023 in order to limit his access to information and reduce the potential for any conflict to arise prior to leaving his role. This included removal from various decision-making boards and committees, including removing all access to the related information, taking leave and working away from the office.
  - The CMA's process is transparent as it publishes its methodology; and consumer law impacting its decisions is publicly available.

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<sup>2</sup>This application for advice was considered by Dawid Konotey-Ahulu CBE, Andrew Cumpsty; Sarah de Gay; Isabel Doverly; Hedley Finn OBE; The Rt Hon Baroness Jones of Whitchurch; The Rt Hon Lord Pickles; Michael Prescott; and Mike Weir.

- The CMA considered the risks attached to his access to information can be mitigated through conditions which limit the role with Towerhouse to avoid areas of conflict.
  - This is a continuation of his professional experience and career to date - he is returning to the same employer he left to join the CMA
9. Whilst Mr Stewart is returning to the same company he worked with prior to joining government, he is leaving the regulator and seeks to work, in part, on regulated matters. There are significant risks associated with his privileged access to information from his time in office, and his influence. There is a reasonable concern he could be perceived to unfairly influence the CMA in any future decisions it makes for the benefit of Towerhouse or its clients. The Committee recognised the CMA's quasi-judicial role and statutory footing helps to limit the risks. The CMA recommended that he observe a waiting period and be prevented from working on any matters he was involved with, or which were in the pipeline of work from his time at the CMA to help mitigate the associated risks.
10. It is also relevant that Towerhouse said that '*...as a law firm, we are well practised at managing our professional obligations, both as individuals and as a firm. We take them extremely seriously, not least because the consequences of non-compliance are serious*'. It therefore confirmed it would use its well established processes and procedures for managing potential conflicts and would also take further steps to ensure the conditions applied to Mr Stewart will be followed.
11. The CMA noted Mr Stewart's network and influence within government, and most likely the CMA, would offer an unfair advantage to Towerhouse. The Committee agreed there would be reasonable cause for concern under the Rules should Mr Stewart have any direct engagement with the CMA on behalf of Towerhouse and of clients whilst he is subject to the Rules (during the 2 years after leaving office). This would not prevent the CMA liaising with Mr Stewart if it considered it necessary.
12. Mr Stewart's role in government involved contact with business and as he will be advising Towerhouse on business development. The Committee noted there was a risk that Mr Stewart could use his network outside of HMG to develop new clients for Towerhouse.

### **The Committee's advice**

13. This role could involve matters directly related to his time in office. As such, the Committee agreed with the CMA it would be appropriate to impose a condition which prevents Mr Stewart from advising on any matters that might have fallen to him as Executive Director, or that the CMA dealt with during his tenure - as set out in detail below.
14. The Committee wishes to make it explicit that it would be inappropriate for Mr Stewart to engage directly with the CMA, or to make use of contacts gained in office (directly or indirectly) to the advantage of Towerhouse or its

clients. This helps to mitigate the risk he may be seen to offer Towerhouse and its clients any unfair access and influence on regulatory matters. The Committee also advises Mr Stewart that he must not make use of contacts developed during his time in office in other governments and external organisations for the purpose of securing business for Towerhouse.

15. The Committee also determined it was necessary to put a significant gap between Mr Stewart's decision making and access to information at the CMA and his return to Towerhouse. There are risks that cannot be mitigated with restrictions alone. In particular, the perception that he offers a significant advantage to potential clients due to his unique access to information and influence at the very centre of UK regulation of mergers and markets. The Committee took into account the CMA's view and the quasi-judicial nature of the CMA. It recognised the governance of its decision making, including that it is transparent about its methodology and that the relevant consumer law is publicly available. In the circumstances, the Committee considered 6 months would be appropriate. This takes into consideration the background that Mr Stewart already had with Towerhouse and the addition of the conditions below. Together, these appropriately mitigate the risks under the Rules in relation to insight and influence derived from any information he had access to as Executive Director of the CMA. In respect of the specific timing, the Committee gave weight to the limitations imposed on Mr Stewart's role by the CMA for his final months in office. In the particular circumstances of this case, the Committee considered the 6 months should run from when the CMA took steps to actively manage these risks.
16. Taking into account these factors, in accordance with the government's Business Appointment Rules, the Committee's advice is this appointment with **Towerhouse LLP** be subject to the following conditions:
- a waiting period of 6 months from 23 July 2023;
  - he should not draw on (disclose or use for the benefit of himself or the organisations to which this advice refers) any privileged information available to him from his time in Crown service;
  - for two years from his last day in Crown service, he should not provide advice to Towerhouse LLP or any of its clients on any matter which was under consideration by CMA during his time as Executive Director of Markets and Mergers and Executive Director of Markets, Regulation and Remedies. Without limiting the generality of this restriction, this includes in particular:
    - any cases he was involved in personally by virtue of his role as Executive Director of Markets and Mergers and Executive Director of Markets, Regulation and Remedies at the CMA
    - any matter directly associated with the CMA's current or pipeline of markets cases as at his last day in office (8 September 2023), including any of the following current or known pipeline merger cases set out below:  






Registrar of Consultant Lobbyists, the Parliamentary Commissioner for Standards and the Registrar of Lords' Interests<sup>3</sup>. 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.

18. 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 Ministerial Code or otherwise.
19. 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.
20. Mr Stewart must inform us as soon as he takes up employment with Towerhouse, or if it is announced that he will do so. He must also inform us if he proposes to extend or otherwise change the nature of his role as, depending on the circumstances, it may be necessary for him to make a fresh application.
21. 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.

Yours sincerely,

Isabella Wynn  
**Committee Secretariat**

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<sup>3</sup> All Peers and Members of Parliament are prevented from paid lobbying under the House of Commons Code of Conduct and the Code of Conduct for Members of the House of Lords. Advice on your obligations under the Code can be sought from the Parliamentary Commissioners for Standards, in the case of MPs, or the Registrar of Lords' Interests, in the case of peers

## Annex - Material information

### The role

1. Mr Stewart said Towerhouse is a law firm. Its website states it is '*...a law firm for the regulated sectors of the economy*'. It advises clients on:
  - Competition law and regulatory investigations
  - Consultations, including market reviews and market studies
  - Regulatory public law and litigation, including judicial reviews
  - Commercial disputes with a regulatory dimension
  - Enforcement by regulators including complaints and investigations
  - Consumer and data protection law in regulated sectors
  - Strategic transactions
  - Policy and legislative development
  - Price controls
2. Mr Stewart said his role as partner will include business development, staff management, delivery of legal services to clients, including litigation and commercial transactions. Mr Stewart said it is possible that his role will involve contact with the CMA (in its capacity as a competition authority and also as the appeals body of decisions from sector regulators). He also said his role may involve contact more widely with government but stated this would be through the official channels already set up by Towerhouse.
3. Before joining the CMA Mr Stewart was a Partner at Towerhouse for over 8 years. His career centred around markets and mergers and regulation:
  - Competition Policy Director at Ofcom and Director of Investigations at Ofcom (2007-2013);
  - Director of Regulatory and Public Affairs at Energis;
  - Lawyer at Gilbert Tobin (1999-2000) and at Minter Ellison (1995-1999).
4. Towerhouse provided the following statement, '*...as a law firm, we are well practised at managing our professional obligations, both as individuals and as a firm. We take them extremely seriously, not least because the consequences of non-compliance are serious. So, while [Mr Stewart] individual conditions will be new, the task of ensuring compliance with ongoing obligations to avoid conflicts and ensure that confidential information is kept protected by a Towerhouse lawyer who is a former agency official is a regular and routine part of our practice management*'. It further stated '[Mr Stewart] has a professional and legal obligation not to work on matters where a conflict is present. The Towerhouse practice policy is clear on rules for managing conflicts, including non-client partner review of all potential conflict considerations and the creation of appropriate information barriers'.
5. Towerhouse said its core tools to manage Mr Stewart's conditions will therefore be its existing process for deciding whether to accept new instructions (ie at the level of individual client matters) and its established policies and practices. Further stating '*all new matters are considered individually by all partners to establish that there is no conflict or other reason*



*why we either could not accept those instructions or would need to accept them on a conditional or specific basis (for example, ensuring restrictions on confidential information to specific individuals in the firm). Compliance with [Mr Stewart] obligations will now form an automatic part of this process’.*

6. The law firm concluded ‘*we will make sure that compliance with [Mr Stewart] obligations is a standing item at our Senior Leadership Team meetings’.*

## **Dealings in office**

7. Mr Stewart said the CMA’s policies are potentially relevant to clients of Towerhouse. The relevant areas of policy are:
  - Merger regime
  - Markets regime
  - Remedies regime
  - Regulatory appeals
  - Subsidy control regime/Subsidy Control Act
  - Office for the Internal Market
  - Concurrency review
  - Digital regime
8. During the period when Mr Stewart was in post, Towerhouse has represented a party to a regulatory appeal before the CMA on two occasions:
  - Heathrow Airport Licence modification appeals: Heathrow Airport Limited/Civil Aviation Authority (Heathrow Airport Limited as the appellant); and
  - Energy licence modification appeals 2021: Various/Ofgem 2021 energy price control (British Gas as an intervenor).
9. In accordance with the CMA’s established process for identifying potential conflicts of interest, these matters were identified in advance and the applicant had no involvement in those decisions. This was because he previously worked for the firm.
10. He said he was involved in line managing advisory staff (who are not decision-makers but who had access to confidential information and knowledge of the matter as it proceeded) involved in those matters. But stated he had no direct discussion or contact in relation to substantive issues before the CMA.
11. Mr Stewart said he had dealings with external legal advisers in the course of his duties but has not had access to any commercially sensitive information in relation to these firms.
12. For completeness Mr Stewart noted he engaged with the companies listed below while he was dealing with merger cases but these were not competitors of Towerhouse and confirmed he had access to commercially sensitive information

about these companies:

- Ritchie Bros/Euro Auctions
- Norton/Avast
- Assa Abloy/Arran Isle
- NEC/Capita
- LSEG/Quantile
- Mzurri/Shuttercraft
- Capco/Shafsbury
- Yokohama/Trelleborg
- Broadcom/VMWare

13. Mr Stewart further added he had Board accountability and operational oversight of the work in the following programmes:

- Markets
- Mergers
- Regulatory appeals
- Remedies
- Office for the Internal Market
- Subsidy Advice Unit

## **Department Assessment**

14. The CMA stated Mr Stewart's role as Executive Director for Markets, Regulation and Remedies he was involved in being part of collective decision-making this included:

- As a member of the CMA Board, There are approximately 9 board members in total: The CMA Board is the decision-maker in limited circumstances which are set out in Schedule 4 of the Enterprise and Regulatory Reform Act 2013. The Board makes decisions to launch market studies and decisions to make a market investigation reference to a CMA Panel Group.
- As a member of various CMA Committees, namely: Executive Committee; Resourcing, Portfolio and Pipeline Committee; Case and Policy Committee; Subsidy Advice Unit Committee. There are between 8 and 16 members in each Committee, and decision-making is collective.
- He also had oversight and membership of a number of steering groups and/or decision making groups in the areas he was responsible for (markets and remedies) but, where the group had delegated authority to take decisions, the decision-making was collective.
- He was the decision-maker with respect to a limited number of Phase 1 merger matters. However, he was not the decision-maker at Phase 2 (where Phase 1 matters are referred) – at Phase 2 decisions are made by an Inquiry Group made up of CMA Panel members. In depth investigations are overseen by independent panel members, appointed by the Department for Business, Energy and Industrial Strategy (BEIS), not the CMA. These decisions are independent of the CMA. This is enshrined in law and means there is no influence from the Board and

CEO in these decisions.

- Where the CMA investigates breaches of competition law, there are 2 or 3 decision makers - no one person is required to make a decision and therefore influence cannot be brought to bear on any one individual.
15. The CMA noted Mr Stewart has been responsible for people who have had dealings with Towerhouse, (who are not decision-makers but who had access to confidential information and knowledge of the relevant matters). However, Mr Stewart did not enter into direct discussions or contact in relation to the substantive issues before the CMA.
  16. Towerhouse represents clients including in the UK in relation to competition law and regulatory matters. The CMA said most of these involve other regulatory agencies, but there are some matters where Towerhouse represents or advises clients in its dealings with the CMA, as a competition authority and an appeals body for regulatory appeals.
  17. The CMA also noted there were a number of legal and specialist economic advisory firms that have intimate knowledge of the law and CMA methodology and process. Towerhouse is one of these law firms focused on regulatory and markets, working with a narrower focus than a law firm offering a full service competition practice.
  18. The CMA stated Mr Stewart has not had access to information relating to competitors of Towerhouse which could be regarded as commercially valuable or sensitive. But stated he may have had access to commercially sensitive information which could be relevant to the prospective employer's work, though the department noted such information should be protected from disclosure, as a result of the applicant's statutory obligations of non-disclosure under Part 9 of the Enterprise Act, and other confidentiality obligations referred to below.
  19. The CMA also noted Mr Stewart was involved in working on certain CMA policies that could potentially be relevant to clients of Towerhouse. The CMA said *'Whilst in principle, this work could potentially give Towerhouse and their clients an insight into thinking in these areas by the CMA, most of these policies have been published online and are publicly available. It is therefore unlikely that [Mr Stewart's] access to this information could give Towerhouse an unfair advantage. Additionally, any confidential information will be protected from disclosure by [Mr Stewart's] as a result of his statutory obligations of non-disclosure under Part 9 of the Enterprise Act, and other confidentiality obligations he will be subject to'*.
  20. The CMA has confirmed it is purposely transparent about its methodology and consumer law is clearly laid out so the CMA does not believe that he has inside knowledge. As above, there are a number of legal firms that have intimate knowledge of the legal and CMA process.

21. The CMA said the areas of work Mr Stewart focussed on mergers, markets and regulatory appeals related work represents 'limited risks':
- confidential information the applicant has had access to about merger cases and markets work (including market studies) while working for the CMA;
  - the conflict should he work on merger, market and regulatory appeals-related work which fell within his overall responsibility as Executive Director - with those which were active and/or in the pipeline during the period of his employment with the CMA;
  - his involvement in shaping the policy work on matters relating to the Digital Markets, Competition and Consumer Bill (the "DMCC Bill"), given his knowledge of the CMA's policy position.
22. The CMA noted Towerhouse is a boutique law firm, with expertise focused on regulatory and markets work, and therefore it has a narrower focus than a law firm offering a full service competition practice. It confirmed *'Mr Stewart did not have a decision-making role in relation to regulatory appeals, and was part of collective decision-making at the Board in relation to markets work in the narrow manner identified above. As such, when coupled with the relatively narrow focus of Towerhouse's work, perception risk is likely to be quite focused and is, in our view, adequately managed by the conditions proposed'*.
23. Information should be protected from disclosure, as a result of the applicant's statutory obligations of non-disclosure under Part 9 of the Enterprise Act, and other confidentiality obligations. The CMA stated as soon as Mr Stewart resigned (24 July 2023) immediate ring-fencing measures were put in place which consisted of:
- his removal from all meetings requiring his attendance as Executive Director (for example, meetings of the Board, Board Committees, senior leadership groups, etc),
  - his removal from all email groups relating to those;
  - removal from email groups concerning cases, policies and projects for which he was responsible and these responsibilities were passed to the CMA's Chief Operating Officer and the CEO;
  - His responsibility for managing his direct staff reports was also transferred to the CMA's Chief Operating Officer.
  - He spent a proportion of the 6 weeks between resignation and leaving the CMA on annual leave (8-27 August) and was required to work remotely, away from the office, until his departure.
24. As such the CMA said Mr Stewart stepped back from his role from 24 July 2023, which would mean a time period of approximately 5 months would have passed prior to the start of the proposed appointment at the beginning of January 2024.
25. When Mr Stewart came into the CMA from Towerhouse it set up conflict management measures (including recusal in certain cases) to ensure that Mr Stewart did not work on any CMA matters on which Towerhouse were instructed, or any cases that involved Towerhouse clients. It stated *'Some conflict management measures were still "active" until he left, due to the fact*

*that he left within 2 years of joining the CMA (our Conflicts of Interest policy identifies interests from previous roles to be generally relevant for up to 2 years from joining the CMA)'.*

26. Mr Stewart is proposing to return to his previous role as a lawyer with his previous employer, having been with the CMA for approximately 2 years. The CMA said this limits the risk stemming from Towerhouse being seen to benefit from Mr Stewart's experience whilst at the CMA, and any benefit that could be seen to stem from his access to confidential information can be addressed by the proposed restrictions in the application.
27. A large mitigating factor is the nature of the CMA as clearly articulated previously and confirmed for this application. The CMA stated: *'The CMA is a statutory body subject to a requirement to take decisions on an independent basis (with certain decisions taken independently of the CMA Board by a group of CMA panel members). Given the extensive legal powers held by the CMA, and the often-contentious nature of its work and market interventions, parties are ready and willing to take legal action to defend their interests. Accordingly, and in order to adhere to principles of public law, the CMA has a complex set of governance arrangements and authorisations for decision taking on cases which guard against the possibility of outside influence being unduly brought to bear. We have therefore been very aware of the need to protect the organisation's decision-making processes, and avoid even the perception of undue influence.'*
28. The CMA said it had no reservations about Mr Stewart taking this up, but noted there are some risks with the appointment. In particular the perception of a former senior CMA official joining a consultancy to advise them on regulation, including competition regulation and mergers. However, the CMA is of the view these risks can be addressed through appropriate conditions, which would ring fence him from certain work whilst at Towerhouse.
29. The CMA recommended Mr Stewart start work in January 2024, 3 months after leaving service. The CMA deemed 3 months was sufficient because:
- The restrictions proposed by the CMA to limit the work Mr Stewart can undertake over the next 2 years ensures that any perceived conflict risk arising from his return to Towerhouse is managed.
  - The CMA removed him from work when he stated his intention to leave at the end of July 2023, significantly reducing his access to information.
  - Mr Stewart is proposing to return to his previous role as a lawyer with his previous employer.
30. The CMA also recommended Mr Stewart:
- not work on the current or known pipeline merger cases as set out below;
  - not work on any matter directly associated with the CMA's current or pipeline of markets cases as of 8 September 2023, when he left office
  - not work on any matters relating to the CMA's implementation/monitoring of remedies in relation to Open Banking

Limited, Private Healthcare Information Network and Airwave/Motorola charge controls;

- not work on any matters relating to the DMCC Bill up to and including the date on which it receives Royal Assent;
- not engage or appear before the CMA on any case being considered by the CMA, with this condition ceasing to have effect on 8th September 2024;
- not advise on cases in which he was personally involved at the CMA or those where information obtained in her role as Executive Director at the CMA would give rise to a conflict.

The CMA also noted that he must:

- continue to comply with the duty of confidentiality and other obligations as provided for in the Civil Service Code, the Official Secrets Act 1989, and under the terms of her appointment with the CMA;
- not use or in any way disclose any information acquired during her employment with the CMA which is protected by Part 9 of the Enterprise Act 2002;
- not use or in any way disclose information acquired during the staff member's employment with the CMA which is subject to legal professional privilege, including both legal advice privilege and litigation privilege;
- not use or in any way disclose any confidential information obtained while working on the matters for Towerhouse and its clients.

**Current and Pipeline merger cases - confidential**

[Redacted content]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]