



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

G/7 Ground Floor, 1 Horse Guards Road SW1A 2HQ

Telephone: 020 7271 0839

Email: acoba@acoba.gov.uk

Website: <http://www.gov.uk/acoba>

April 2024

BUSINESS APPOINTMENT APPLICATION: Dr Michael Grenfell, former Executive Director, Enforcement at the Competition and Markets Authority. Paid appointment with Clifford Chance LLP.

1. Dr Grenfell 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 an appointment with Clifford Chance LLP (Clifford Chance) 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 Dr Grenfell's time in government service, alongside the information and influence he may offer Clifford Chance. The material information taken into consideration by the Committee is set out in the annex.
3. The Committee considered whether this appointment was suitable given Dr Grenfell's former role at the Competition and Markets Authority (CMA). He wishes to advise Clifford Chance and its clients on regulatory and market matters, which directly overlaps with his time at the CMA.
4. The Committee 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 Clifford Chance before joining government. 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 set out that Crown servants must abide by the Committee's advice¹. 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.

¹ 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

The Committee's consideration of the risks presented

6. Clifford Chance is an international law firm providing services in multiple areas, including competition law. Dr Grenfell seeks to advise its clients specifically on competition and consumer protection issues. There is a clear overlap with this work and that of the CMA. Further, Dr Grenfell did have some direct contact with the legal firm whilst he was in post at the CMA. He was the senior responsible officer for two cases where Clifford Chance represented clients involved in the matters being investigated. The CMA did not consider Dr Grenfell made any decisions that could reasonably be seen as benefiting Clifford Chance. The CMA also gave weight to its governance and authorisations process which prevented Dr Grenfell from making a decision in isolation. This limits the risk Dr Grenfell could reasonably be seen to have been offered this role as a result of actions taken, or decisions made, in office.
7. As Executive Director, Dr Grenfell was responsible for the delivery of investigations, decisions and associated matters that relate to competition law and consumer protection issues, including setting CMA policy in these areas. He therefore had significant knowledge of associated privileged material. Given Dr Grenfell wishes to focus his new role in the same area, the risk associated with his access to privileged information is high. He had access to privileged information while in government that could offer an unfair advantage to the firm and its clients/potential clients. This risk is difficult to mitigate where the specific clients and projects he may work on are unknown.
8. The Committee² agreed with the CMA there are some mitigating factors which help to reduce the risk:
 - Dr Grenfell is prevented from using sensitive information by a number of legal and professional provisions including as a result of: the professional standards that solicitors should adhere to under the Solicitors Regulation Authority; the Enterprise Act 2002³; and 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 - as a result of legal advice privilege and litigation privilege.
 - The CMA's process is transparent, it publishes its methodology and the consumer law impacting its decisions is publicly available.
 - The majority of the risks can be tied to the specific work he was involved in at the CMA, which he can be prevented from working on through specific limitations to the role.
 - Dr Grenfell was a legal professional working in this area of law for many years before he entered government and this is a continuation of his professional experience and career to date.
 - The CMA took action as soon as it was made aware of his intention to leave, limiting the opportunity for conflict during his last days in office.

²This application for advice was considered by Isabel Doverty; The Baroness Jones of Whitchurch; Dawid Konotey-Ahulu CBE; The Rt Hon Lord Eric Pickles; Michael Prescott; Mike Weir; and Sarah de Gay. Andrew Cumpsty and Hedley Finn OBE were unavailable.

³ The Enterprise Act 2002 is part of UK competition law.

9. There remain significant risks associated with Dr Grenfell's privileged access to information from his time in office. There is a reasonable concern he could be perceived to unfairly influence the CMA in any future decisions it makes for the benefit of Clifford Chance or its clients. 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. The CMA noted Dr Grenfell's network and influence within government could offer an unfair advantage to Clifford Chance but the CMA's quasi-judicial role and statutory footing help limit the risks. The Committee agreed there would be reasonable cause for concern under the Rules should Dr Grenfell have any direct engagement with the CMA on behalf of Clifford Chance and its clients. The Committee considered this risk applies whilst he is subject to the Rules (during the two years after leaving office).
11. The CMA specifically identified a risk should Dr Grenfell advise the main parties involved in cases he was the Senior Responsible Officer for, alongside three specific tech companies given their high profile nature and they have been at the centre of CMA investigations and decisions. In these cases it argues that a 12 month waiting period would be proportional to the risk. It argued that more than this would be disproportionate to the risk given he is already prevented from working on matters he has any knowledge of, and/or where it overlaps with his time in office.
12. Dr Grenfell's role in government involved contact with businesses and, as a Partner, his role may involve bringing in new business. There is a risk that Dr Grenfell could be seen to use contacts he gained whilst he was at the CMA, but in the private sector, to develop new clients for Clifford Chance.
13. It is relevant to the Committee's consideration that Clifford Chance confirmed that it will establish information barriers around matters that Dr Grenfell cannot be involved in as a result of this advice; and will ensure that teams acting on such matters are aware of the restrictions relating to Dr Grenfell. It also said it would maintain effective oversight to ensure ongoing compliance with the Committee's advice.

The Committee's advice

14. 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 Dr Grenfell from advising on matters that fell to him as Executive Director or where the CMA dealt with specific cases during his tenure, as set out in detail below.
15. The Committee wishes to make it explicit that it would be inappropriate for Dr Grenfell to engage directly with the CMA, or to make use of contacts gained in office (directly or indirectly) to the advantage of Clifford Chance or its clients. This helps to mitigate the risk he may be seen to offer Clifford Chance and its

clients any unfair access and influence on regulatory matters. This would not prevent the CMA liaising with Dr Grenfell if it considered it was necessary. The Committee also advises Dr Grenfell 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 Clifford Chance.

16. The Committee determined it was necessary to put a significant gap between Dr Grenfell's decision making and access to information at the CMA and his joining Clifford Chance. 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 access to information and influence at the centre of UK regulation of mergers and markets. The Committee took into account the CMA's view and the quasi-judicial nature of its work. It recognised the governance around the CMA's decision making and that its methodology and the relevant consumer law is publicly available. In the circumstances, the Committee considered 6 months would be an appropriate gap. This takes into consideration the background that Dr Grenfell already has in this sector and the additional conditions below limiting the role.
17. Together these restrictions 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 Dr Grenfell's role by the CMA for his final days in office. In the particular circumstances of this case, the Committee considered the six months should run from when the CMA took steps to actively manage these risks.
18. Taking into account these factors, in accordance with the government's Business Appointment Rules, the Committee's advice is this appointment with **Clifford Chance LLP** be subject to the following conditions:
 - a waiting period of six months from 16 January 2024;
 - 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 a period of 12 months Dr Grenfell should not act in any capacity, for:
 - any of the main parties involved in the cases where Dr Grenfell was the Senior Responsible Officer, or
 - XXXXXXXXXXXXXXXX.
 - for two years from his last day in Crown service, he should not provide advice to Clifford Chance LLP or any of its clients on any matter which was under consideration by CMA during his time as Executive Director of Enforcement. 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 Enforcement at the CMA; and
 - any matter directly associated with the CMA's current or pipeline of

markets cases as at his last day in office (9 February 2024), including any of the following current or known pipeline merger cases set out below:

XXXXXXXXXXXXXXXXXX

- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX

- for two years from his last day in Crown service, he should not become personally involved in lobbying the CMA, the UK government or any of

its arm's length bodies on behalf of Clifford Chance LLP or its clients(including parent companies, subsidiaries, partners and clients); nor should he make use, directly or indirectly, of his contacts in the government and/or Crown service contacts to influence policy, secure business/funding or otherwise unfairly advantage Clifford Chance LLP (including parent companies, subsidiaries, partners and clients);

- for two years from his last day in Crown service, he should not provide advice to Clifford Chance LLP (including parent companies, 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 CMA, the UK government or any of its arm's length bodies;
- for two years from his last day in Crown service, he should not become personally involved in lobbying contacts he has developed during his time in office in external organisations including other governments for the purpose of securing business for Clifford Chance LLP (including parent companies, subsidiaries and partners); and
- for two years from his last day in Crown service he should not have any engagement on behalf of Clifford Chance LLP (including parent companies, subsidiaries, partners and clients) with the CMA, the UK government or its arm's length bodies.

19. The advice and the conditions under the government's Business Appointment Rules relate to Dr Grenfell's previous role in government only; they are separate from rules administered by other bodies such as the Office of the Registrar of Consultant Lobbyists, the Parliamentary Commissioner for Standards and the Registrar of Lords' Interests⁴. 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.

20. 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.

21. 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

⁴ 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

Rule is separate and not a replacement for the Rules in the house.

22. Dr Grenfell must inform us as soon as he takes up employment with Clifford Chance, 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.
23. 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

Annex - Material information

The role

1. Clifford Chance LLP (Clifford Chance) is an international law firm. The law firm provides services in some of the following areas:
 - Antitrust (competition law)
 - Boardroom Risk and Reputation
 - Capital Markets
 - Corporate
 - Energy Transition
 - Finance
 - Intellectual Property
 - Litigation & Dispute Resolution
 - Real Estate
 - Sustainability and ESG
 - Tax, Pensions, Employment & Incentives
2. Dr Grenfell said his role as partner will be advising business clients on competition and consumer protection issues.
3. Immediately before joining the CMA, in 2015, Dr Grenfell was a Solicitor and Partner at the international legal practice Norton Rose Fulbright LLP (previously Norton Rose), specialising in competition and regulatory law.
4. Clifford Chance confirmed to the Committee how it would ensure compliance with the restrictions imposed:

'Clifford Chance is able to establish internal controls which will ensure that Dr Grenfell will not be able to act on matters identified [in this advice]. In particular, we will establish information barriers around matters that Dr Grenfell cannot be involved in and will ensure that teams acting on such matters are aware of the restrictions relating to Dr Grenfell. The firm will maintain effective oversight of these measures to ensure ongoing compliance with the Committee's advice.'

Dealings in office

5. Dr Grenfell said he had no contractual dealings with Clifford Chance or other law firms. He said his involvement in policy decisions was limited to the extent that consumer protection law practices are affected by the development of CMA policy - and therefore may affect clients of this legal firm and others with competition (antitrust) or consumer protection law practices. As a member of the CMA Board and of its Executive Committee he was involved in the development of CMA policy
6. During the period Dr Grenfell was in post, he was the Senior Responsible Officer for two CMA Investigations where Clifford Chance was involved:

- UK government bonds: suspected anti-competitive arrangements: CMA Case 50601 – Clifford Chance represented one of the parties being investigated, a major financial institution, and he met the lawyers acting on that case when meeting the party concerned. He said there were at most three or four such meetings, over about two years up to May 2023 when the party concerned reached a settlement with the CMA to resolve the investigation.
 - Hydrocortisone tablets: alleged excessive and unfair pricing, anti-competitive agreements and abusive conduct: CMA Case 50277 – Clifford Chance was acting for a private equity firm which was one of the parties to the investigation (it had shareholding in one of the parties alleged to have engaged in anti-competitive practices). In April 2020 Clifford Chance wrote to him as senior responsible officer in connection with a request for disclosure of evidence in the investigation and he responded.
7. Dr Grenfell said in connection with another consumer protection investigation, he was asked by the case team to take part in a meeting (by video call) between the CMA and relevant company personnel; this took place in December 2023.
 8. Dr Grenfell also noted the CMA is currently involved in high-profile competition or consumer protection investigations into certain practices by XXXXXXXXXXXXXXXX. Although he was not the senior responsible officer on any of these, he considered there would be perception issues if he were to act for any of those parties in the near future.

Departmental assessment

9. The CMA said it is a competition authority and an appeals body for regulatory appeals and as such its work will be relevant to law firms. It also noted that Clifford Chance represents clients in relation to a broad range of subject areas both within the UK and internationally. This includes competition law, consumer law and regulatory matters where it will engage with regulatory authorities, including the CMA.
10. The CMA confirmed Dr Grenfell did have official dealings with Clifford Chance as he was involved in two cases where the law firm represented clients during investigations by the CMA. The CMA stated the decisions taken by Dr Grenfell would not have directly affected Clifford Chance. The CMA noted any decisions made were not solely made by Dr Grenfell, as all material decisions would have been taken after consultation with colleagues including senior lawyers. 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). 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.

11. The CMA conformed Dr Grenfell was involved in certain CMA policies that could potentially be relevant to clients of Clifford Chance:

'Whilst in principle, this work could potentially give Clifford Chance LLP 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 [Dr Grenfell's] access to this information could give Clifford Chance LLP an unfair advantage. Additionally, any confidential information will be protected from disclosure by [Dr Grenfell'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'.

12. The CMA said the risks associated with Dr Grenfell's access to information related to:

- Confidential information he has had access to as an Executive Director and Board Member on competition and consumer investigations. There are conflict risks if he was to work on competition and consumer investigations which fell within his overall responsibility as Executive Director, and certain other cases which are current or in the pipeline.
- Perception risks should he act for certain digital corporations who are the subject of high-profile competition or consumer protection investigations and where he was part of the decision-making structures for these cases.
- The Digital Markets, Competition and Consumer Bill (the 'DMCC Bill'), given his involvement in shaping the CMA's policy on new functions to be conferred on the CMA around the regulation of competition in digital markets; and also in relation to direct enforcement of consumer protection law.

13. 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 in that regard.

14. It states that the information he has had access to 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 also confirmed that as soon as Dr Grenfell resigned (16 January 2024), immediate ring-fencing measures were put in place.

15. 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.'

16. The CMA said it had no reservations about Dr Grenfell taking this role 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 law and consumer protection law. However, the CMA is of the view these risks can be addressed through appropriate conditions. The CMA recommended Dr Grenfell start work in January 2024, three months after leaving service. The CMA deemed this was an appropriate gap because:

- The restrictions proposed by the CMA to limit the work Dr Grenfell can undertake over the next two years ensures that any perceived conflict risk arising is managed.
- The CMA removed him from work when he stated his intention to leave at the end of January 2024, reducing his access to information.
- Dr Grenfell is proposing to return to his previous role as a lawyer.

17. The CMA also recommended Dr Grenfell:

- 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 when he left office
- 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 10 February 2025;
- 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
- for a period of 12 months he should not act in any capacity, for
 - any of the main parties involved in the cases where Dr Grenfell was the Senior Responsible Officer; or
 - XXXXXXXXXXXXXXXX

The CMA also note 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 his appointment with the CMA
- not use or in any way disclose any information acquired during his 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 his 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 Clifford Chance and its clients

Current and pipeline cases - enforcement

XXXXXXXXXXXXXXXXXX

- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX
- XXXXXXXXXXXXXXXXXXXX