

ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

18 May 2023

Present

Committee

Rt Hon Lord Pickles (Chair)

Jonathan Baume

Isabel Doverty

Sarah de Gay

Richard Thomas

Lord Larry Whitty

Mike Weir

Secretariat

Xante Chalwell

Cat Marshall

Maggie O'Boyle

Kate Owen

Kavalneer Walia

Isabella Wynn

Chair's introduction

1. The Chair welcomed:
 - All members, noting that as many as possible had made it to this in person meeting.
 - The newest member of the secretariat team - Xante Chalwell.
 - The new Chief Executive of the Civil Service Commission, Kavalneer Walia and the interim Chief Operating Officer, Kate Owen.

2. The Chair thanked Dr Susan Liautaud in her absence for her work on the Committee whose term came to an end this year. He also thanked Jonathan Baume and Richard Thomas who would continue to support the Committee whilst the Cabinet Office's public appointments process for the recruitment of three new members is ongoing.

Managing Exists in the Civil Service

3. Members discussed the need to support and encourage departments to improve the handling of Crown servants' exits from government. In particular, where someone has been brought in specifically for their expertise and is returning to the private sector. In these cases, it is likely applicants will be returning to the same area of work, raising risks under the government's Business Appointment Rules as a result of the likely overlap between their access to information and decision making in office and the new employment.

4. Members discussed some recent cases of good practice, including from within HMT. Members agreed on the following principles:

- ACOBA encourages departments to take responsibility for managing the risks of bringing in specialists with expertise.
- When someone joins government service and it is expected to be for a relatively short time, departments should aim to have an agreed exit plan at the entry point of employment.
- Where a standard three months wait applies as a result of seniority, ACOBA expects standard minimum waiting periods to be served after leaving paid service as stipulated in the government's Rules. This applies to Permanent Secretaries and equivalents.
- Where the waiting period is being imposed, or lengthened as a result of the risks associated with access to information and decision making it is possible to manage that wait in office. This avoids using public money to pay for a period out of work and can help to deliver other government services.
- In such cases:
 - i. the waiting period should be a minimum of 3 months
 - ii. individuals should be removed from:
 - 1. regulation
 - 2. procurement
 - 3. market sensitive issues
 - 4. policy making in that sector
 - iii. the steps taken to manage waiting periods in office should be transparent - e.g set out in ACOBA's advice.

Lobbying

5. Members discussed the lobbying ban, in the context of various incidents, such as the 'Greensill scandal' [the Parliamentary Commissioner's and the Parliamentary Committee on Standards' investigation into Owen Paterson](#); and ACOBA's findings of [a breach of the lobbying ban imposed](#).

6. Members noted that in recent years it had seen roles where they considered any contact with the government, regardless of the intention, would likely be perceived as the individual using their influence and/or access to contacts to

improperly influence government decisions. In these cases the Committee has prohibited any contact with government. Members agreed this approach should always be considered where the organisation or the individual's role within it carries a high risk of perceived lobbying, alongside the standard lobbying ban.

7. Members discussed and agreed broad principles around what activity would and would not be acceptable, as set out below:

Activity that would be contrary to the lobbying ban (that applies as standard under the two year lobbying ban in the government's Rules), and therefore not appropriate:

- making direct contact with government on behalf of the company to make introductions or ask for meetings; and
- asking the government to make a decision, or take account of their employer's position on matters - unless being done through a formal consultations process or another process initiated by the government.

Roles that are likely to be seen as contrary to the lobbying ban, for example:

- roles with lobbying firms or trade associations focussed on influencing government policy; unless it can be demonstrated the individual's role will be entirely separate from the organisation's lobbying work.

Activities that would be considered in keeping with the lobbying ban and therefore not improper in the majority of cases:

- sharing factual information transparently. For example reporting via published research, opinion pieces, reports, annual reports, or through formal consultation;
- Using existing and therefore already agreed frameworks for contacts within government (and not making use of privileged networks) for routine communication. Examples might include asking for or providing factual information/updates that are not aimed at influencing decisions; and
- responding to a request from the government - e.g. to take part in a roundtable or be invited to a meeting.

Engagement with employers

8. Members discussed ACOBA's approach to engaging employers to strengthen its advice. In particular, where it may be difficult to demonstrate to the public how the conditions will be adhered to. For example, where an individual is joining a lobbying firm (or an organisation with a lobbying arm), there are legitimate questions about what an individual might be doing working for that organisation - if not lobbying?

9. The Chair has raised this with government, and publicly, recommending steps are taken to strengthen the lobbying ban. For example, making it clear that joining a lobbying firm would not be appropriate under the Rules. In the meantime, members agreed to formalise its policy of seeking a written statement from the employer to demonstrate that ACOBA's advice can and will be adhered to, with the response included in the final published advice letter. This should happen where the role has a specific limitation imposed, to prevent application from working in specific matters, and for lobbying, public relations/ advisory firms, trade bodies or equivalents and explores other applicable risk profiles that would warrant engagement with employers.

Ministry of Defence cases

10. Members discussed the risks associated with the applications specifically from the Ministry of Defence (the MOD) and ACOBA's current approach to addressing the risks presented in these applications.

11. Members noted that in ACOBA's experience, MOD cases tend to fall into the higher risk category. Predominantly due to the nature of MOD business and that most applications relate in some way to defence as a result of applicants' careers to date. Factor that may add to the risk profile include, for example:

- the size of the MOD and its significant expenditure.
- senior members of the armed forces tend to be responsible for large amounts of staff, policy, and commercial contracting. At the level the Committee is considering cases from, applicants are often top level budget holders, or they are working very closely with them.
- there is a heavy reliance on private sector partnerships for large scale delivery in defence. The close links between the MOD and industry increases the potential risk that the most senior officers leading the armed forces are close to decisions that are related to procurement or the performance of industry partners.

12. There are also mitigations, for example, whilst there are close links between the MOD and industry, there are also strict governance processes in place to manage the contracting including a number of separate bodies set up to deliver and manage procurement and a number of boards.

13. Members noted that none of these risks and mitigations are entirely unique to the MOD, and ACOBA sees the same issues and mitigations arise in applications from other departments. However, in ACOBA's experience, they are more likely to occur than not in MOD cases. Member noted the risk-based approach meant that such applications are fully considered and mitigated in line with ACOBA's usual approach.

Update on reform

14. Members discussed the ongoing discussions with the government to influence reform of the Rules. Government has come some way - showing willingness to set clear expectations and increase transparency and accountability in this space. ACOBA has some evidence of the awareness of the Rules increasing - from the online check-lists for leavers of the Civil Service, to departments seeking to manage risks more proactively in ACOBA level cases. There are other steps being taken to manage the risk of conflicts in office (e.g. a commitment to publish annual updates of all the outside interests of permanent secretaries and other members of the senior civil service that sit on departmental boards). However, our proposed package of practical reforms is far from complete and ACOBA must continue to press for meaningful change - particularly in relation to sanctions - if the government wants to meet the threshold of credibility on its own Rules.

Communications

15. The Press Officer updated the Committee on recent press coverage.