



House of Commons  
Public Administration Select  
Committee

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# **The Business Appointment Rules**

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**Sixth Report of Session 2006–07**





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*Report and Appendix, together with formal  
minutes*

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## The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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### Committee staff

The current staff of the Committee are Eve Samson (Clerk), James Gerard (Second Clerk), Lucinda Maer (Committee Specialist), Anna Watkins (Committee Assistant), Louise Glen (Secretary) and James Bowman (Senior Office Clerk).

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# 1 Introduction

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1. Over the last year we have examined proposed changes to the “Business Appointment Rules”, as part of our broader inquiry into Ethics and Standards. Since the Rules and their application are a discrete subject, we have decided to comment in an individual report, rather than to include their detailed consideration in a report whose main thrust was concerned with the structure of ethical regulation overall. This Report should be read in conjunction with the main Report from that inquiry, which was published on 29 April 2007.<sup>1</sup>

2. In the course of that wider inquiry we took evidence on the system for regulating business appointments from Sir Patrick Brown, who had recently conducted a review of the rules, Lord Mayhew of Twysden, the Chairman of the Advisory Committee on Business Appointments (ACoBA), the committee currently charged with advising on business appointments, and Mr Tony Nichols, the Secretary to ACoBA. We received written evidence from Lord MacLennan of Rogart, a member of ACoBA, and the Campaign Against the Arms Trade. We also touched on matters relating to business appointments with some of the other witnesses in our main inquiry. We are very grateful to all those who contributed.

## 2 The Business Appointment Rules

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3. It is perhaps misleading that *The Rules on the Acceptance of Outside Appointments* are better known as the Business Appointment Rules, as they do not apply solely to appointments in commercial organisations. They set out the circumstances in which civil servants and others, including members of the Armed Forces and diplomats, need to obtain government approval to accept an outside appointment within two years of leaving Crown service. An “appointment” is defined as “any form of full, part-time or fee-paid employment” in the United Kingdom, or overseas in a public or private company or in the service of a foreign government or its agencies.<sup>2</sup> The rules do not apply to unpaid appointments in non-commercial organisations, appointments in the gift of Ministers or, in the case of part-time staff, appointments already held with the agreement of their departments.

4. The rules are aimed at ensuring that, when a Crown servant leaves and takes an outside job, there is no cause for any suspicion of impropriety, in particular that such a job might:

- be a “reward for past favours” granted by the applicant to the employer;
- be one which could enable a particular employer to gain an improper advantage by employing someone who had access to what its competitors “might legitimately regard as their own trade secrets or information relating

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1 Fourth Report of Session 2006-7, Ethics and Standards: The Regulation of Conduct in Public Life, HC 121-I

2 Business Appointment Rules, para 6 (the rules and Cabinet Office guidance are published in the Annual Reports of the Advisory Committee on Business Appointments)

to proposed developments in government policy which may affect that firm or its competitors”; or

- be sensitive for other reasons.<sup>3</sup>

5. All applications for approval are initially made to the employing department. According to the procedure set out in the Rules, the Department will send them to either the independent Advisory Committee on Business Appointments (ACoBA) or the Cabinet Office or deal with them itself. The seniority of the applicant and the sensitivity of the particular case determine how it is handled. Currently decisions are taken as follows:

- the **Prime Minister** or the **Foreign Secretary**<sup>4</sup> approves applications from Permanent Secretaries and the next most senior civil servants, and their equivalents (other than special advisers), on advice from the Advisory Committee;<sup>5</sup>
- the **employing department** approves applications from other members of the Senior Civil Service and all those below it, after consultation in appropriate cases with the Head of the Home Civil Service or the Cabinet Office (the same team providing the Secretary to the Advisory Committee). The responsibility for the decisions taken in departments (other than on applications from special advisers) rests with the **Minister in charge**, although they may delegate this function;
- the **Head of the Home Civil Service** or the **Permanent Secretary** of the department concerned approve applications from special advisers. Ministers are not involved in these decisions, although the Advisory Committee will advise on the most senior cases.

As well as considering cases at the highest level, ACoBA also reviews a wider sample of applications in order to ensure consistency and effectiveness.<sup>6</sup> Any application may be referred to the Cabinet Office for advice, and to ACoBA if the Head of the Home Civil Service and the departmental Minister agree.

6. A similar system for former Ministers was introduced following a recommendation from the Committee on Standards in Public Life in 1996, although under these arrangements ACoBA gives its advice directly to the former Minister. However, while adherence to the Business Appointment Rules is described as a contractual obligation for civil servants,<sup>7</sup> Ministers (who have no contract) are only required to seek ACoBA’s advice

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3 Cabinet Office guidance on the Business Appointment Rules

4 The PM takes decisions on civil servants, members of the Armed Forces and MI5; the Foreign Secretary decides on applications from members of the Diplomatic Service, and the SIS.

5 Posts which satisfy **all** the following criteria; a JESP score of 18 or more; pay range within the top three bands, Head of a Department or Agency or reporting directly to a Permanent Secretary, and Specialist and Special Advisers of equivalent standing.

6 Business Appointment Rules, paragraph 2

7 Except where otherwise noted, references to evidence are to the Fourth Report of Session 2006-07, *Ethics and Standards: The Regulation of Conduct in Public Life*, HC 121-II; Q 442.

and are not obliged to follow it. Acting as a Joint Body, the Advisory Committee advises former Ministers in Scotland and Wales as well as those in Westminster.

### Sir Patrick Brown's Review

7. On 22 July 2004 the Prime Minister announced that he had appointed Sir Patrick Brown to review the rules. The terms of reference for the review were “To review the Business Appointment rules to ensure that they are compatible with a public service that is keen to encourage greater interchange with the private and other sectors which is essential for effective delivery in today's public service. The review will consider the operation of the system, taking account of practice overseas. It will also consider the current machinery for dealing with applications and the necessary resources”.<sup>8</sup> On 9 September 2004, in answer to a question from Lord Goodhart, asking the reason for the review, Lord Bassam of Brighton explained that:

the rules were last reviewed in 1996. The Government therefore feel that a review would be timely to ensure the rules remain compatible with a public service that is keen to ensure greater interchange with the private and other sectors, which is essential for effective delivery in today's public service.<sup>9</sup>

8. The Review was concluded in February 2005 and was published on 20 December that year. The short report recommended, principally, that:

- when individuals leave Crown service they should be required to sign an affirmation that they are aware of their duty of confidentiality;
- there should be a single test of propriety: “has the individual during the last three years of State Service had a material influence on a decision to deliver a benefit to the prospective employer?”
- if this is the case there should be just one sanction: a two year ban on that employment; and
- applications should be scrutinised by a team of people independent of Departments or Agencies under the aegis of the Civil Service Commission.

9. Arrangements for former Ministers were not considered by the report, but in recommending that the civil service system should be administered by the Civil Service Commission, Sir Patrick's report implicitly reverses the arrangements put in place in 1996 which brought Ministers within the ambit of the Advisory Committee on Business Appointments. It also implies the creation of separate machinery to administer similar rules for Ministers.

10. In his response the Prime Minister said the Government was attracted by some of the recommendations, but sought this Committee's views, in particular on the transfer of

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8 HC Deb, 22 July 2004, col 462W

9 HL Deb, 9 Sept 2004, col 693

responsibility for Crown servants to the Civil Service Commission and the consequent dispersal of oversight to more than one body, and on the “one test one sanction” rule.<sup>10</sup>

## Crown Servants

11. Sir Patrick considered that the current rules were unsatisfactory when interchange between the public and private sector was becoming increasingly common. Those who came into the civil service for short periods could find that they were blocked from using their professional expertise on return to the private sector. He warned that “People genuinely do not understand when they come into the civil service the fact they may be denied immediate employment when they leave”.<sup>11</sup> Although Sir Patrick acknowledged that it was important that the public should be reassured that there could be no impropriety, he considered that “decisions on cases are often made on the basis of what people think public perception would be” and that “the present arrangements do lack clear criteria and are not transparent”.<sup>12</sup> In contrast, ACoBA told us this

description of the system as one in which “decisions on cases are often made on the basis of what people think the public perception would be” is misleadingly incomplete. The business appointments process for Crown servants is founded on a detailed account by an applicant of the relevant facts, which is subject to confirmation by a countersigning officer who is best placed to give it. The completed document is then considered first by the employer Department and then by the Advisory Committee with the benefit of the employer Department’s advice. Since the purpose of the process is to maintain public confidence, each of these will assess, bearing in mind the relevant facts, whether the appointment will give rise to a reasonable suspicion of impropriety.<sup>13</sup>

12. Lord Mayhew considered that his Committee’s task was to administer the rules as they stood; if different results were wanted, then the rules themselves should be changed.<sup>14</sup> The current rules cover cases in which the applicant might be thought to have had some degree of influence on the departmental dealings with his or her prospective employers, whether or not it involved personal contact. As we discuss below, the influence is wider than influence over contracts. The approach is to deal with each case on its individual merits. A range of safeguards is available to take account of the circumstances of each case, such as a delay in taking up an appointment, restrictions on approaches to former colleagues, or on working on particular government contracts. Such conditions can be imposed for up to two years, although ACoBA can also advise that it considers an appointment to be unsuitable. The Advisory Committee publishes details of the cases it has considered in its Annual Report each year. This provides transparency about the conditions imposed. However, although the purpose of the current rules is clear, they do not attempt to define precisely what forms of employment would be unacceptable. This case-by-case approach

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10 HC Deb, 20 Dec 2005, col 201WS

11 Q 71

12 Review of the Business Appointments Rules, p 4

13 Ev 116

14 Q 415

means that evolution and flexibility are possible, but can also mean that applicants are not clear whether a particular employment would be acceptable.

13. The current rules take into account matters such as the use of confidential information and lobbying. Sir Patrick's proposals have a narrower aim: "to reassure the public that a Crown servant can have no incentive to provide favours to an external body in return for future employment".<sup>15</sup> However, the concerns expressed to us were not simply about straightforward corruption, but about more general and insidious influence.

14. Indeed, Lord Maclennan of Rogart, a member of ACoBA, told us that, in his view, the existing rules were too lax. He considered that:

The danger is not so much that an individual may be offered the explicit reward of a subsequent appointment for a favour received during the final period of public service but rather that when the Crown servant is contemplating a post-service move into the private sector the interest of the Department's client is more salient in the mind of the Crown servant than is the need to serve and protect the public interest.<sup>16</sup>

15. Like Lord Maclennan, the Campaign Against the Arms Trade (CAAT) was concerned with wider issues than simply preventing corruption:

CAAT's concern is not primarily that a former civil servant will divulge a particular secret. Rather it is that the cumulative effect of the many movements between the public service and industry will reinforce the relationship between the two, giving industry an influence over government which others with an interest in an issue cannot hope to emulate. For instance, movement between the civil service and military companies might predispose decision-making towards solutions that involve spending on equipment, rather than on non-military alternatives.<sup>17</sup>

## **Confidentiality**

16. The current rules can require Crown servants to wait for some months before joining an employer. However, as Sir Patrick noted, some trade secrets may remain valuable for longer than any delay imposed.<sup>18</sup> Ultimately, the protection of sensitive information has to rely on the law of confidentiality; and those determined to give prospective employers confidential information are already able to break that law.<sup>19</sup> Sir Patrick proposes that those leaving Crown service should be reminded of their legal obligations:

when individuals leave Crown service they should be required to sign an affirmation that they are aware of the duty of confidentiality, and that they may not to disclose to their new employer (or anyone else), any confidential information acquired during their contract with the State, and that they are aware that if they do so, they will be

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15 Review of the Business Appointment Rules, p 6

16 Ev 132

17 Ev 131

18 Q 92

19 Q 106

subject to legal action. I believe this process, if carried out face-to-face, will be a powerful reminder to the individual of the duty he or she has.

As an additional safeguard I suggest that the prospective employer should agree formally that it will not seek to acquire confidential information from the new employee.<sup>20</sup>

This approach is welcomed by the CAAT.

17. Sir Patrick rejects the idea that those who have been involved in drawing up government policy should, for that reason, have appointments blocked or delayed:

The assumption that “access to policy issues at the highest levels” provides a reason to denying some individuals the right to join an, or indeed any, employer for a period of time seems to me to be unfounded. The duty of confidentiality remains. But even if it did not, it seems unlikely that the knowledge of a general policy in the process of development could easily be translated into benefit to a particular business, not least since policies can and do change as a result of presentations and second thoughts.<sup>21</sup>

In contrast, ACoBA noted:

Sir Patrick’s proposals appear to entail the removal from the rules of the present option to delay an appointment where a Crown servant has had, for example, commercially sensitive information that could distort competition for a Government contract. The Committee would not expect this to enhance public confidence. While it shares the general sentiments expressed by Sir Patrick about the integrity of the public services, it has seen no specific evidence that companies competing for business would always be content to depend entirely on an ingrained adherence by a former Crown servant to the duty of confidentiality, even if reaffirmed by the individual before accepting an appointment with a new employer. Nor does it feel confident that the proposed legal sanction would work in practice.<sup>22</sup>

18. Knowledge of departmental thinking, or even of those most closely involved in formulating policy, may be commercially useful. Mr Nichols told us:

Wherever one goes one will find people who are responsible, for example, at a particular time for policies relating to energy and a whole host of things where the knowledge of those involved in the direction of those policies, which may have not been made public, will be of immense value to people outside who would readily be able to use that knowledge for commercial benefit.<sup>23</sup>

The usefulness of such knowledge may reduce over time, as policies are developed and changed, and individuals move on, but it can be substantial. It should be emphasised that those involved in drawing up policy are currently subject to the rules. Lord Mayhew and

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20 Review of the Business Appointment Rules, p 5

21 Review of the Business Appointment Rules, p 6

22 Ev 116

23 Q 438

Mr Nichols were particularly concerned that special advisers, who did not usually have any influence over contract decisions, might not realise that the Business Appointment Rules also applied to them. However, it appeared that there have not been any problems in practice.<sup>24</sup>

**19. We agree with Sir Patrick Brown that it would be appropriate for those leaving Crown service for other employment to be reminded of their continuing duty to keep confidential material confidential. However, we do not agree that this alone would be sufficient. We believe it is appropriate for the Advisory Committee to take into account the extent to which former Crown servants have been involved in particular policy issues and, if necessary, to ask applicants to delay taking up particular appointments. It may be helpful to redraft the rules to make clear that special advisers could be caught by this consideration.**

### **Lobbying**

20. Current sanctions can include a ban on lobbying, where it is considered appropriate. The most recent report from ACoBA shows that the most frequently imposed condition is that former Crown servants should not be personally involved in lobbying government for a period of 12 months.<sup>25</sup> Sir Patrick considers this inappropriate, since the level of mutual “misunderstanding or ignorance” between public or private sectors is so great that it is desirable to encourage as much contact as possible between them, and public servants are well able to resist lobbying. He concedes that:

it would be unhealthy if public servants were to be swayed in their decisions because they were dealing with a former member of the Department. The answer to this potential problem is for officials to exercise proper caution and to inform their colleagues when negotiating with individuals with whom they have previously had a working relationship. This should then be subject to formal audit to ensure that proper disclosure has been made.<sup>26</sup>

The difficulty with this is that, although contacts between officials and former colleagues might be properly noted, in many cases it would be impossible to tell whether that contact had in fact “swayed” a decision. It seems far more satisfactory to prevent such undue influence by delaying a particular appointment than by imposing a bureaucratic and potentially ineffective system of disclosure and subsequent audit. **We believe it is inappropriate for former Crown servants to move almost directly to positions in which they may lobby former Ministers or colleagues.**

### **One test: one sanction**

21. The Brown report recommends that the public reassurance offered by the rules should simply be that “a Crown servant can have no incentive to provide favours to an external body in return for future employment”.<sup>27</sup> Sir Patrick considered that sanctions should be

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24 Qq 430-434

25 The Advisory Committee on Business Appointments, Eighth Report 2005-06,

26 Review of the Business Appointment Rules, p 9

27 Review of the Business Appointment Rules, p 6

imposed only if a Crown servant had a “material influence” on a decision to deliver a benefit to the prospective employer.<sup>28</sup> In such a case there should be a single sanction of a two year delay in appointment. The Campaign against the Arms Trade (CAAT) considered that the “material influence” test “simply raises other questions. In particular, what is a ‘material interest?’”<sup>29</sup> Judging by the examples Sir Patrick gave the Committee, the criterion of “material influence” is relatively narrowly drawn, and does not cover the wider policy issues discussed earlier:

if a senior official overruled a proposal of his team to award a contract to one body and decided, on what appeared to be reasonable grounds, to award it to another, made a specific choice, that would seem to me to be “a material influence”. If you are an official who has the responsibility for deciding the criteria against which tenders are judged, that seems to me to be a material influence. The manager of a regulatory team dealing with setting pricing for one company in an industry, for example, seems to me to be “a material influence”.<sup>30</sup>

**22. We acknowledge that the current case by case approach means that those who wish to take up appointments will not be sure that they will be approved. Nonetheless we are concerned that a single sanction to be applied against a single test would not be adequate. We think there could be cases where the criterion of “material influence” would operate in ways which blocked appropriate appointments but did not prevent inappropriate ones. We do not believe that this will provide the public with reassurance that impropriety is prevented.**

23. We are also concerned by the rigidity of the proposed sanction. Sir Patrick told us he thought a delay of two years before taking up employment might be upheld by the courts. We believe that may be challenged and, if it is challenged, might well prove unenforceable.<sup>31</sup> **An approach which is more clearly tailored to individual cases is both more likely to win the assent of those to whom it applies, and is more easily defended on the grounds of public interest.**

## Conclusion

24. Our current inquiry into *Skills for Government* has looked at the increasing interchange between the Civil Service and the private sector. Both Sir Patrick and ACoBA expressed concern that those entering Crown service from other backgrounds would not necessarily be aware of what was expected of them, and called for better induction arrangements.<sup>32</sup> The new Civil Service Code may be a step toward this, but it will only be effective if it is reinforced by management. **We agree that if the public service ethos is to be maintained, those coming into Crown service from backgrounds in other fields should be properly inducted, and be given a clear explanation of what conduct is considered proper.**

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28 Review of the Business Appointment Rules, p 6

29 Ev 131

30 Q 109

31 Q 113 See also memorandum from Speaker’s Counsel, appended to this Report.

32 Q 108, Ev 117

25. We consider it likely that the judgement about what transfers are appropriate will change in response to the pattern of civil service careers, and that experience will guide those changes. **Although Sir Patrick Brown makes some valuable suggestions for improving the Business Appointment Rules, we consider that his single test and single sanction approach is not satisfactory. It might prevent straightforward corruption, but would not deal with more insidious uses of influence, and would not command public confidence.**

## Ministers

26. The Ministerial Code provides that former Ministers should seek the advice of the Advisory Committee before taking up appointments. However, ACoBA told us the current situation was unsatisfactory:

For former Ministers, the Ministerial Code requires that they seek the Committee's advice on outside appointments. However, in their case there is no obligation to act on that advice. As the matter now stands, it is possible for them to go through the motions of consultation without regard to the apparent spirit or intention of the Code. The Committee does not view the disparity in its present form as satisfactory. An alternative might be a 'comply or explain' approach, under which the former Minister would be expected either to follow the advice given or, if he or she did not accept it, to explain why.<sup>33</sup>

Indeed, as we explored in evidence, in some cases former Ministers may not even seek ACoBA's advice. In such cases, the only sanction ACoBA has is transparency. The Committee told us:

The central aim of these schemes, both for Crown servants and former Ministers, is to sustain public confidence in the propriety of any appointments taken up after leaving their posts. The Committee believes that such confidence can only be achieved through openness and transparency in their application. It therefore reports extensively on its work, and its annual reports and website ([www.acoba.gov.uk](http://www.acoba.gov.uk)) include a record of the advice it has given on those appointments that have been taken up. It will correspondingly say, if asked, whether its advice has not been sought in any particular instance.<sup>34</sup>

The resignation of Mr Blunkett in November 2005 demonstrated that public information about whether or not advice has been sought can be an extremely effective sanction. However, its strength is greatest when former Ministers remain within Parliament (especially if they have returned to Government) and political pressure can be brought to bear. Parliamentary accountability is no weapon against those who have left Parliament altogether. Lord Mayhew told us:

I do not think it is satisfactory that the committee should concern itself in the detail and assiduity that it does with applications by Ministers only to find that it might as

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33 Ev 116

34 Ev 115

well have saved its breath because they do not have to abide by the committee's recommendation or advice.<sup>35</sup>

27. Some of the difficulties may have arisen because the wording of the Ministerial Code is ambiguous. We consider it should be made clear that where the Code stipulates that Ministers “should” seek the advice of ACoBA before taking up an appointment, this is mandatory, not advisory.<sup>36</sup> If necessary, the Code should be redrafted to put it beyond a doubt. It is also right that former Ministers should be required to take the advice that is given, and this should also be made clear in the Ministerial Code. **We believe that, as ACoBA itself proposes, former Ministers should be required to submit proposed appointments to the scrutiny of a Business Appointments Committee. They should accept the advice given to them.**

### ***A single committee?***

28. The question then arises as to whether the Committee dealing with applications from Crown servants should also consider Ministerial cases. We consider there are practical advantages in having a single body dealing with both groups.

29. As its Annual Report says, ACoBA's members “have experience at the most senior levels of Parliament, the Home Civil Service, the Diplomatic Service, the Armed Forces or business”. The current membership is:

- The Rt Hon Lord Mayhew of Twysden QC DL (Chairman)
- Sir John Blelloch KCB (Vice Chairman)
- The Rt Hon Lord Maclennan of Rogart
- The Rt Hon Lord Morris of Aberavon KG QC
- The Lord Wilson of Tillyorn KT GCMG FRSE
- Admiral Sir Kenneth Eaton GBE KCB FREng FIEE
- Sir Bryan Nicholson GBE

We agree with ACoBA that administering a system for vetting business appointments at a senior level is likely to require such a spread of expertise. In particular, we consider that the involvement of Parliamentarians is essential to ensure that there is broad agreement across the political spectrum that former civil servants behave with propriety, but also that they are not having employment blocked for partisan political reasons.

30. If such a body is necessary to consider civil service applications, it seems perverse to create a parallel structure to consider applications from former Ministers. More than that, it would be fundamentally unsatisfactory for applications from former Ministers to be measured against different criteria from those applied to Crown servants. At the very least, it would raise public suspicion that one group was being more favourably treated than the

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35 Q 450

36 Q 427

other. We believe that, to ensure consistency, the body which considers applications to take up business appointments from Crown servants should also be responsible for advising former Ministers on such appointments.

### Who should administer the rules?

31. As we describe in paragraph 5, currently decisions about business appointments for former senior Crown servants are taken by the Prime Minister or the Foreign Secretary; others are delegated to departments, sometimes after advice has been taken from the Cabinet Office or the Head of the Home Civil Service. Sir Patrick's report suggests that the Civil Service Commission should initially provide an investigating team to decide whether or not there was a prima facie case that an official had influenced a decision which benefited the prospective employer. It would then provide a panel to decide whether the facts required a ban on that employment.

32. If the rules remain as they are, we question the need for an investigating team. The current rules already require completion of a questionnaire about an applicant's relationship with the prospective employer, which is commented on by the countersigning officer. The countersigning officer should be able to ensure the accuracy of the information provided, either from his or her direct knowledge, or from making further inquiries. Moreover, we consider that there is merit in having a single body to consider all applications for business appointments from senior people, whether ex-Ministers or former Crown servants. This calls for political expertise, as well as experience in business and public service, and is not clear that the Civil Service Commission is best placed to provide that expertise.

33. Indeed, in its written evidence ACoBA raises a concern about handing the work of the Committee to the Civil Service Commissioners stating that "to hand the work as an 'add-on' to a body originally appointed for a different purpose could foreseeably lead, because volume, to it having to be delegated, probably to a body not dissimilar to the present one".<sup>37</sup>

34. However, there are two issues here: who should investigate and advise, and who should take decisions based on that advice. There is an arguable case for transferring responsibility for *decisions* about proposed business appointments for senior civil servants to the Civil Service Commissioners, rather than the Prime Minister, Foreign Secretary or the Head of the Home Civil Service. Currently, the Advisory Committee and its secretariat advise a range of "clients":

- former Ministers, who are currently under no obligation to accept that advice;
- the Prime Minister and the Foreign Secretary, on matters relating to extremely senior personnel;
- the Head of the Home Civil Service and/or permanent secretaries on Special Advisers at appropriate grades.

35. Both the former and current First Civil Service Commissioner seemed well disposed to the idea of the Civil Service Commissioners taking on some responsibilities related to business appointments. Baroness Prashar, the former First Civil Service Commissioner, told the Committee that “It seems to me that if Civil Service Commissioners are concerned with entry into the Civil Service, we could also be made responsible for exit”.<sup>38</sup> Janet Paraskeva, who has now succeeded her, concurred: “As a regulator of the Civil Service it would seem to me to be logical to have an end-to-end process so that one audited entry and also complaints against the Civil Service Code, which is something that we do, and also the exit arrangements. There is logic to that”.<sup>39</sup>

36. The civil service is no longer necessarily a job for life. Interchange is seen as the way of both progressing within the civil service and bringing in the range of expertise required by government—the current Head of the Home Civil Service has even declared “if you want to get on, get out”.<sup>40</sup> This trend will only increase the need to ensure consistency and good practice within the more fluid system. The Civil Service Commission is well placed to do that. Departments are expected to administer the application of this system to most civil servants, seeking advice from ACoBA as appropriate; this is analogous to the system to civil service recruitment, in which responsibility for the bulk of appointment is delegated to departments. We note that when cases are sent to the “Cabinet Office” for advice that advice is produced by the team which provides the secretariat for ACoBA and can be audited by the Chairman of ACoBA itself. **If the Civil Service increasingly recruits to senior posts from outside the civil service, it will become more important for the Civil Service Commissioners to be aware of the likely career paths of those recruits. It seems at the least odd that Ministers should be formally responsible for taking decisions about what jobs are suitable for former Crown servants, when their involvement in recruitment is so carefully regulated.**

37. But such transfer of decision-making would not be straightforward. Paragraph 23 of the Business Appointment Rules notes:

There may be occasions when a Minister decides that the national interest is the overriding consideration, regardless of the circumstances of the case. In all such cases, the normal procedures dealing with applications must first be followed, including reference to the Advisory Committee where that is appropriate. A decision that the national interest should override other considerations may only be taken by the Minister in charge of the department or, in the case of applications referred to the Advisory Committee, by the Prime Minister.

This provision was used in December 2003, when the Prime Minister decided that there was a national interest in permitting Air Chief Marshal Sir John Day to take up an appointment as Military Adviser to BAe Systems subject only to the normal three month waiting period, rather than the one year recommended by ACoBA.

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38 Third Report of Session 2006-07, *Politics and Administration: Ministers and Civil Servants*, HC 122-II, Q 146

39 Q 513

40 Oral Evidence taken before the Committee on 11 October 2005, HC (2005-06) 513-I, Q5.

38. If the Commission took decisions about business appointments, Ministers could make representations about the national interest in allowing a particular appointment to them. However, either the Commission's view of the national interest would prevail, or there would have to be a mechanism for Ministers to overturn its decisions. We can see clear difficulties in delegating decisions about the national interest to an unelected body. On the other hand, some might question the value of removing responsibility from Ministers, if they could reassume that responsibility in the most important cases.

39. There is a further unrelated difficulty, in that the concept of Crown service goes wider than the Home Civil Service alone. It might be possible to extend the Commissioners' remit, in this area, to all Crown servants; there might be operational reasons why this would not be appropriate.

**40. The Advisory Committee on Business Appointments has operated effectively, and we see little benefit in changing its composition, or its way of working. However, we recommend that the Government considers whether decisions about future business appointments of senior Crown servants would be better taken by the Civil Service Commission than the Prime Minister or Head of the Home Civil Service. We acknowledge there are arguments in favour of the status quo, as well as arguments for change, but we believe the proposal deserves serious consideration.**

41. Our report on *Ethics and Standards* acknowledged there was no simple way to rationalise our current system, but also considered the current plethora of monitoring bodies was undesirable. It favoured a "direction of travel" which would encourage a more collegiate way of working. Whether or not responsibility for deciding on appointments remains as it is now or is transferred to the Civil Service Commission, we think there would be advantages in appointing the Chairman of ACoBA as a Civil Service Commissioner ex officio, if he is willing to serve. The Commissioner for Public Appointments is so appointed and the arrangement appears to work well. The Commission would then have direct access to information about the way in which people were moving from the Civil Service into other organisations, as well as monitoring the flow of outsiders into the service. The Commission would be able to assess whether the Rules were disrupting desirable interchange between Crown service and employment in the private sector, or the wider public sector, or whether they remained a proportionate safeguard. If the Commission becomes responsible for approving applications, then the Chair of ACoBA could stand aside from the approval process. **We believe it would be appropriate for the Chairman of the Committee on Business Appointments to be a Civil Service Commissioner, to ensure a coherent and collegiate approach to both appointment and exit from the civil service.**

42. The rules on business appointments perform an important and necessary function in ensuring propriety and providing public reassurance. It is right that, when there is increasing interchange between public and private sectors, the rules are kept under review. They should not work as a barrier to such interchange; but nor should the purpose behind them be compromised. This requires a sensible balance to be struck, with careful application to the circumstances of particular cases. In this way flexibility can be combined with propriety.

## Conclusions and recommendations

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1. We agree with Sir Patrick Brown that it would be appropriate for those leaving Crown service for other employment to be reminded of their continuing duty to keep confidential material confidential. However, we do not agree that this alone would be sufficient. We believe it is appropriate for the Advisory Committee to take into account the extent to which former Crown servants have been involved in particular policy issues and, if necessary, to ask applicants to delay taking up particular appointments. It may be helpful to redraft the rules to make clear that special advisers could be caught by this consideration. (Paragraph 19)
2. We believe it is inappropriate for former Crown servants to move almost directly to positions in which they may lobby former Ministers or colleagues. (Paragraph 20)
3. We acknowledge that the current case by case approach means that those who wish to take up appointments will not be sure that they will be approved. Nonetheless we are concerned that a single sanction to be applied against a single test would not be adequate. We think there could be cases where the criterion of “material influence” would operate in ways which blocked appropriate appointments but did not prevent inappropriate ones. We do not believe that this will provide the public with reassurance that impropriety is prevented. (Paragraph 22)
4. An approach which is more clearly tailored to individual cases is both more likely to win the assent of those to whom it applies, and is more easily defended on the grounds of public interest. (Paragraph 23)
5. We agree that if the public service ethos is to be maintained, those coming into Crown service from backgrounds in other fields should be properly inducted, and be given a clear explanation of what conduct is considered proper. (Paragraph 24)
6. Although Sir Patrick Brown makes some valuable suggestions for improving the Business Appointment Rules, we consider that his single test and single sanction approach is not satisfactory. It might prevent straightforward corruption, but would not deal with more insidious uses of influence, and would not command public confidence. (Paragraph 25)
7. We believe that, as ACoBA itself proposes, former Ministers should be required to submit proposed appointments to the scrutiny of a Business Appointments Committee. They should accept the advice given to them. (Paragraph 27)
8. We believe that, to ensure consistency, the body which considers applications to take up business appointments from Crown servants should also be responsible for advising former Ministers on such appointments. (Paragraph 30)
9. If the Civil Service increasingly recruits to senior posts from outside the civil service, it will become more important for the Civil Service Commissioners to be aware of the likely career paths of those recruits. It seems at the least odd that Ministers should be formally responsible for taking decisions about what jobs are suitable for

former Crown servants, when their involvement in recruitment is so carefully regulated. (Paragraph 36)

10. The Advisory Committee on Business Appointments has operated effectively, and we see little benefit in changing its composition, or its way of working. However, we recommend that the Government considers whether decisions about future business appointments of senior Crown servants would be better taken by the Civil Service Commission than the Prime Minister or Head of the Home Civil Service. We acknowledge there are arguments in favour of the status quo, as well as arguments for change, but we believe the proposal deserves serious consideration. (Paragraph 40)
11. We believe it would be appropriate for the Chairman of the Committee on Business Appointments to be a Civil Service Commissioner, to ensure a coherent and collegiate approach to both appointment and exit from the civil service. (Paragraph 41)

## Appendix

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### Memorandum from Speaker's Counsel

#### Employment of former civil servants

1. You have asked whether, without new primary legislation, senior civil servants can be compelled to observe restrictions on the taking up of paid employment for which knowledge acquired in the public service is a marketable asset.

2. The difficulty here is that covenants which restrict the activities of a former employee have invariably been considered by the courts in a commercial context. The criteria which the courts have laid down for balancing the freedom to follow a trade or calling with the enforcement of a bargain freely entered into cannot easily be translated from the commercial context into that of the public service. I do not think that you are particularly concerned with preventing the disclosure of information in breach of a duty of confidence. Your concern is with a person profiting immediately upon leaving employment in the public service from contacts, skills, experience, general knowledge and so on gained in public employment. The courts have been disinclined to restrain former employees from exploiting such skills in future employment unless they can be shown to relate to confidential information.

3. I think, nonetheless, that a short term restriction (by which I mean one not exceeding six months) which is tailored to the particular circumstances of the employment of the person entering into the covenant, may be enforceable. Thus, a senior official in the Ministry of Defence who had dealt with particular suppliers could be restrained from entering into employment with the defence sector for a six month period. It follows that I think that a generally applicable covenant restraining entry into the employment of a prospective employer within two years of leaving Crown service whenever the former civil servant has materially influenced a decision in favour of that employer is unlikely to be enforceable.

21 May 2007

# Formal Minutes

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**Thursday 7 June 2007**

Members present:

Dr Tony Wright, in the Chair

Paul Flynn  
David Heyes  
Kelvin Hopkins

Julie Morgan  
Mr Gordon Prentice  
Mr Charles Walker

Draft Report [*The Business Appointment Rules*], proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 42 read and agreed to.

*Resolved*, That the Report be the Sixth Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

A memorandum was ordered to be appended to the Report.

[Adjourned till Tuesday 12 June at 3.45 p.m.]

## Reports from the Public Administration Select Committee since 2005

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2006-07

First Report	The Work of the Committee in 2005-06	HC 258
Second Report	Governing the Future	HC 123
Third Report	Politics and Administration: Ministers and Civil Servants	HC 122
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523

### Session 2005-06

First Report	A Debt of Honour	HC 735
Second Report	Tax Credits: putting things right	HC 577 ( <i>HC 1076</i> )
Third Report	Legislative and Regulatory Reform Bill	HC 1033 ( <i>HC 1205</i> )
Fourth Report	Propriety and Honours: Interim Findings	HC 1119
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689
Sixth Report	Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications	HC 1081
Seventh Report	The Ministerial Code: the case for Independent Investigation	HC 1457
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690
Second Special Report	Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Fifth Report (Session 2004-05)	HC 853
Third Special Report	Inquiry into the Scrutiny of Political Honours	HC 1020