

House of Commons
Public Administration Select Committee

Business Appointment Rules

Written Evidence

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Written evidence submitted by Campaign against Arms Trade (BA 01)

1. The Campaign Against Arms Trade (CAAT) in the UK works to end the international arms trade, which has a devastating impact on human rights and security, and damages economic development. CAAT believes that large scale military procurement and arms exports only reinforce a militaristic approach to international problems. Established in 1974, CAAT receives around 80% of its funding from its individual supporters.
2. The chair of the Advisory Committee on Business Appointments (ACoBA), Lord Lang, in his message on the home page of the ACoBA website, says that "it is in the public interest that those with experience in government should be able to move into business". CAAT does not think this is self-evident.
3. There should be a clear distinction between work in the public service, where the needs of the UK people must come first; and that in the commercial sector, where the ultimate goal is shareholder profit. Moves from the public to the commercial sector need to be more tightly regulated with much longer waiting periods to ensure the public interest is not compromised by commercial and personal interests. CAAT sees the threats to the public interest mainly coming from the prospect of future employment and the lobbying of former colleagues.
4. There is significant public suspicion regarding the relationship between government, both elected politicians and civil servants, and large businesses. CAAT thinks this demands a wholesale review, not only of the business appointments system, but of the implications generally of encouraging movement between the sectors. Such a review should look at the negative effects, as well as the undoubted benefits.
5. It is in this broader context that rules for employment of former ministers and civil servants and the body to administer and enforce them should be determined.

Arms trade

6. Looking more specifically at your current Inquiry, CAAT has an interest in the business appointments rules and ACoBA since many of former ministers and civil servants moving to the private sector are from the very departments concerned with the arms trade. Some of examples, from 2010 and 2011, of those moving into posts with the arms industry follow.
* July 2011 - Air Marshal Peter Ruddock, formerly Director General of the MoD's Saudi Armed Forces Project which exists to sell arms to Saudi Arabia, became Director of Business Development for Lockheed Martin UK (Private Eye, 5.8.11, and ACoBA);
* May 2011 - Geoff Hoon, formerly Defence Secretary, who awarded AgustaWestland a billion pound order without competition, became senior Vice-President of international business of AgustaWestland (Financial Times, 16.5.11 and Times,

25.3.05);

* February 2011 - Sir Sherard Cowper-Coles, formerly UK Ambassador to Saudi Arabia who pressured the Serious Fraud Office to drop its investigation into BAE-Saudi arms deals, became International Business Development Director of BAE Systems (Guardian 18.2.11 and Daily Telegraph 18.2.11, 14.3.11);

* January 2011- Graham Wright, formerly of the Cabinet Office's Office of Cyber Security & Information Assurance, took "key leadership roles in the UK" for Northrop Grumman (Northrop Grumman, 4.1.11);

* January 2011 - Air Chief Marshal Sir Glenn Torpy, formerly Chief of the Air Staff, became a Senior Adviser to BAE Systems (ACoBA);

* December 2010 - Baroness Taylor of Bolton, formerly Minister for Defence Equipment and Support, became a member of the advisory board of Thales Corporate Services (ACoBA);

* October 2010 - Air Marshal Iain McNicoll, formerly Deputy Commander-in Chief, became an Associate Partner of Defence Strategy & Solutions LLP (ACoBA);

* September 2010 - General Sir Richard Dannatt, formerly Chief of the General Staff, became a consultant to Control Risks Group (ACoBA).

7. Looking at the ACoBA report in 2010/11, of the 38 civil servants who applied to ACoBA, ten were from the Ministry of Defence (MoD), three from the Foreign and Commonwealth Office, five from the Department of Business, Innovation and Skills and its predecessors, and one from UK Trade and Investment (UKTI). This is half the total of all applicants. Between them they accounted for 32 of the 64 individual applications. The ACoBA figures refer only to ministers and the most senior civil servants, middle and junior civil servants will also have moved to the corporate sector.
8. Some private sector people are temporarily brought into the public sector with a view, usually, of returning to the private sector. This has always been true of the Government's arms sales unit, now the UKTI Defence and Security Organisation. More recently, it has also been true of the unit's political bosses, Trade Ministers Lord Digby Jones and Lord Stephen Green. With them, there is the additional concern that, though overseeing a controversial area of government work, they are unelected.
9. The cumulative effect of the movement from the public sector to commercial bodies must inevitably reinforce the relationship between the two, giving commerce an influence over government which others with an interest in an issue cannot hope to emulate. For instance, those ministers, civil servants and military personnel moving from the MoD to military companies will certainly predispose decision-making, by way of their lobbying and contacts, towards solutions that involve spending on equipment, rather than on non-military alternatives.

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Written evidence submitted by the Office of the Advisory Committee on Business Appointments (BA 02)

1. The Advisory Committee on Business Appointments (ACOBA) welcomes the opportunity to provide evidence to the Committee on the operation of the Business Appointment Rules.
2. This evidence covers:
 - The role of the Advisory Committee as part of the operation of the government's Rules, not the owner of them.
 - The extent of the conditions available to ACOBA to impose, under the Rules.
 - Examples of steps that ACOBA has taken to improve its own effectiveness within the framework of the Rules.
 - The membership and composition of ACOBA; responsibility for this rests with the Prime Minister.
 - ACOBA's ability to respond to short-term rises in numbers of applications.
 - The legal and practical limitations for ACOBA, as it is currently constituted, in being asked to take on responsibility for enforcement.

Role of the Advisory Committee on Business Appointments

3. The Government's Business Appointment Rules state that "it is in the public interest that people with experience of public administration should be able to move into business or other bodies outside central Government, and that such movement should not be frustrated by unjustified public concern over a particular appointment. It is equally important that when a former civil servant takes up an outside appointment there should be no cause for justified public concern, criticism or misinterpretation." This is the key principle of the Rules, under which the Committee operates.
4. As the Committee will be aware, ACOBA is responsible for providing advice on the take-up of appointments following employment in the Civil Service or service as a Minister. It advises individuals within the framework of the Rules, given to it by the Government.
5. The Business Appointment Rules for Civil Servants¹ apply at every level of the Civil Service. The Rules require ACOBA to advise only on the most senior levels; departments themselves are required to administer the Rules at lower levels.
6. The Business Appointment Rules for Civil Servants were revised by the Government and published in February 2011. ACOBA and other organisations were consulted on

¹ In this context, references to Civil Servants include members of the Armed Forces, Intelligence Agencies and the Diplomatic Service, all of whom have equivalent versions of the Rules.

the draft of the new Rules. The Rules for Former Ministers were revised in May 2010 as part of the Ministerial Code. Both sets of Rules apply to individuals for two years after leaving service/office and they also limit the conditions that can be applied by ACOBA to a maximum of a two-year waiting period and a two-year lobbying ban. ACOBA does not have any power to “veto” an appointment. The strongest sanction it has is to recommend a delay in an appointment being taken up, with the maximum delay being two years from the last day in service. The Rules allow ACOBA to add a rider to its recommendation that it would regard a particular appointment to be “unsuitable”; in practice this can be a powerful deterrent, as in all cases to date where this has been ACOBA’s provisional view, the applicant has then chosen to withdraw their application.

7. Further details of the role of ACOBA and its work in practice can be found in its Annual Report which is available on its website <http://acoba.independent.gov.uk>.

The Committee’s questions

8. With regard to the Committee’s issues and questions paper, the Advisory Committee itself does not take a view on the issues covered in questions 1 to 4; these are matters for the Government and others to comment on. However, ACOBA would comment that it believes it is important that both Ministers and Civil Servants are made fully aware of the Rules both at the point of entering office/service and again at departure. To this end, ACOBA has written to all former Ministers on departure and again one year after leaving office to remind them of the need to follow the Rules for two years after leaving office.

Effectiveness

9. With regard to the Committee’s question on the effectiveness of ACOBA, the Advisory Committee is acutely aware of public perception and that it must work within the framework given to it by Government. ACOBA continues to look at ways it can improve its effectiveness within the framework of the Rules, and in particular the transparency of its advice on those appointments that are subsequently taken up.
10. Transparency is critical as ACOBA has no policing powers itself. The view of Lord Nolan in setting the current structure was that “the threat of hostile public reaction and media comment would be a powerful disincentive”² against non-compliance with the Rules by individuals. To be effective, such public scrutiny must include the media, Parliament and other commentators. To this end ACOBA publishes details of appointments taken up that it has advised upon, the content of its recommendation including the substance of its letters of advice and, increasingly, more information about a case – for example any undertakings given by an applicant in relation to the appointment they are about to take up. Furthermore, ACOBA is keen to encourage

² *First Report of the Committee on Standards in Public Life*, May 1995. Cm 2850, p.54.

departments themselves to publish greater information about conditions and restrictions imposed on those civil servants outside of ACOBA's remit in appointments they take up on departing the Service.

11. ACOBA has over the past year revised its approach to applications from individuals wishing to set up as independent consultants. In response to its increasing concern around the use of consultancies and emerging variations of consultancy, ACOBA decided that it would require all independent consultants for two years after leaving office/service to seek its confirmation that each commission was permissible under the agreed terms of their consultancy, before accepting the work. The details of the commission once taken up will be published on ACOBA's website alongside its advice on the consultancy itself. This will significantly increase transparency. ACOBA is yet to see how this approach will operate in practice and the impact it will have on its resources. However, ACOBA will seek to ensure that the necessary resources are made available.

Membership

12. Turning to the specific questions in the Committee's paper, the membership of ACOBA is a matter for the Prime Minister. Successive Prime Ministers have appointed a membership with a mix of political nominees and those who have had involvement in the armed service, civil service, diplomatic service and business. The Advisory Committee currently comprises three independent members and three party-political nominees: the Cabinet Office is at the moment recruiting two new independent members. These vacancies have been advertised by the Cabinet Office - which is responsible for the appointment of new members - and will be filled by open competition in line with the Commissioner for Public Appointment's Code. The three party-political members are nominated by their respective party leader, in line with the practice of other similar bodies.
13. Any changes to the composition or membership of ACOBA would be a matter for the Government.

Increase in applications under the Rules

14. ACOBA believes that its current structure allows it to handle a short-term rise in civil servants leaving the service. Following the change of government in 2010 the Committee saw a sharp rise in the number of applications from former Ministers. The number of cases advised upon during 2010/11 (95 appointments) was over double that usually considered during the course of a year. ACOBA was able to cope with this short term rise with over half of applications being advised upon within the published target of 15 working days or less. With regard to the departure of Civil Servants, under the current Rules ACOBA is responsible for advising only on the most senior level of Civil Servants. Many departures may be below this level, for which departments

themselves are responsible, and so the rise may not impact directly on ACOBA. However, the Committee will be carrying out informal compliance checks to ensure that the new Rules are being effectively managed within individual departments. Indeed, ACOBA has been using its resources increasingly in monitoring the work of departments to ensure compliance and consistency with the Rules.

15. During this financial year, in order to meet its contribution to administrative cost savings, the Committee's secretariat has started to share resources with another advisory NDPB. One of the main benefits of this is that it allows the Advisory Committee to have access to additional resources during temporary surges in its work. To date the Advisory Committee has worked effectively by addressing its resources as issues arise. However, if there is a longer-term increase in the number of applications from senior Civil Servants, or a change in the nature of ACOBA's work, there would be a need to revisit the question of resources.

Enforcement

16. While ACOBA remains an advisory, non-statutory committee it is difficult to see how it could operate as an enforcement body. Considerable change in its legal basis, structure and resourcing would be required to enable it to undertake the necessary investigatory, inquiry, judicial and enforcement functions. Effective enforcement would also require a range of legal or contractual sanctions to be provided for. ACOBA is a small organization with a small secretariat; it is not clear how and whether it would deal with such a significant change in its remit as currently constituted.

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Written evidence submitted by Transparency International (BA 03)

Summary

1. TI-UK believes that the revolving door between government and the private sector can be of benefit to both sectors, provided the system for regulating movements of personnel is sufficiently transparent and robust in order to ensure that there is no cause for any suspicion of impropriety. Unfortunately, several scandals in recent years have revealed that the current system for regulating the revolving door is weak and in urgent need of reform. These weaknesses were assessed in the TI-UK 2011 Report, 'Cabs for Hire – Fixing the Revolving Door between Government and Business.'³ TI-UK believes the following recommendations for reforms, if implemented, would help to reduce the risk of conflicts of interest and make the revolving door work to the benefit of government, the private sector and UK society more broadly:

TI-UK Recommendations

- i. The Advisory Committee on Business Appointments (ACoBA) should be replaced with a new statutory body with sufficient resources and powers to regulate the post-public employment of former Ministers and crown servants. The rulings of this new body should be mandatory and enforceable;
- ii. The composition of the new body should be more representative of UK society - for example, by including representatives of civil society;
- iii. The new body should begin its work by carrying out a thorough audit of all positions under its remit, to assess potential risk areas. New rules could then be drafted to reflect the severity of risk associated with particular roles (e.g. those that involve major decisions on public procurement of goods and services from the private sector). It should be mandatory for the new regulatory body to consult departments for advice on the risks associated with particular appointments;
- iv. The period during which former Ministers and crown servants must undergo scrutiny for appointments in the private sector should be extended from two years to three. The implications of this change for recruiting individuals to government should be fully assessed;
- v. Parliament should enact legislation as soon as possible in order to make it mandatory for individuals and organisations engaged in significant lobbying activity to register and disclose information on their activities;

³ <http://www.transparency.org.uk/publications>

- vi. The remit of regulation should be extended to include appointments to non-commercial entities;
- vii. The new body should disclose full information about the procedures for assessing applications and the reasons for its judgements; and
- viii. The Independent Parliamentary Standards Authority should draw up post-public employment rules for MPs – this is an area that is not regulated at present.

Submission by TI-UK

2. TI-UK welcomes this inquiry by the House of Commons Public Administration Select Committee (PASC). Weaknesses in the current system for regulating the revolving door are undermining public trust in government, chiefly because of the potential for conflicts of interest. The conflicts of interest associated with revolving door movements can occur before, after, or during a role in government. For example:

- Public officials might allow the agenda of their previous private-sector employer to influence their government work;
- Public officials might abuse their power while in office to favour a certain company, with a view to ingratiating themselves and gaining future employment;
- Former public officials who accept jobs in business might influence their former government colleagues to make decisions in a way that favours their new employer; and
- Former public officials may use confidential information to benefit their new employers – for example during procurement procedures.

3. A survey of public perceptions of the most corrupt sections of British public life carried out for TI-UK in 2010 revealed that the revolving door comes a close second in the public's ranking of potentially corrupt activities. A public official taking a job with a company that s/he was previously responsible for regulating was rated as potentially corrupt by 80% of respondents, a close second to the 86% who rated a peerage for a businessman who has been a large political party donor as potentially corrupt (See *Corruption in the UK- Part One, 2010*⁴). More recently, in a YouGov survey conducted in January 2012, 69% of respondents agreed that it was too easy for former Ministers to get jobs that allow them to make improper use of their time in government⁵.

⁴ Available at www.transparency.org.uk/publications

⁵ The Sunday Times, 15 January 2012, <http://www.thesundaytimes.co.uk/sto/news/Politics/article856922.ece>

4. The rest of this submission responds to specific questions raised in the PASC's Issues and Questions Paper. (The text of the questions is reproduced in full in italics.)

Question 1: How can Government draw in and benefit from external expertise without giving rise to concern over propriety and undue influence?

5. TI-UK believes that the Government can achieve this objective by putting in place a more transparent, robust and enforceable system for regulating the revolving door between government and business. Our specific recommendations for improvements are set out below in our responses to Questions 4 and 5.

Question 2: Does the Big Society model of government, under which officials will increasingly procure public services from the private sector and civil society, require a change in approach to business appointments after employment in the public services?

6. TI-UK believes that a change in approach is essential. Unless urgent reforms are implemented there is a growing risk of conflicts of interest and corruption (defined by TI as the abuse of entrusted power for private gain) as public procurement from the private sector increases and the downsizing of government leads to greater movement of senior personnel to the private sector. The present system of regulation is weak and overly reliant on voluntary compliance. There are no mechanisms for monitoring the enforcement of ACoBA's rules and imposing sanctions for their violation.

Question 3: Do the Business Appointment Rules work against recruitment of experts into Ministerial and official ranks?

7. TI-UK is concerned primarily with the need for more effective regulation of movement of personnel from the public to the private sector. However, a pertinent question to address is whether there are potential conflicts of interest and corruption risks associated with movements from business to government. This is an area that requires greater scrutiny by the PASC.

Question 4: Whose responsibility should it be to monitor the contact between Government and outside interests for signs of undue influence, and how could this be achieved in a proportionate manner?

8. TI-UK believes this responsibility should be given to a new statutory body that would be responsible for strengthening, monitoring and enforcing rules governing the movement of personnel from government to business. A case-by-case approach for scrutinising post-public employment is appropriate, since the risks vary considerably depending on the nature of an individual's public role and the content of the proposed private sector role. For example, in the case of individuals who have had responsibility for procurement decisions, the current ban on lobbying should be extended to three years. For high-risk government

departments (e.g. defence), and in exceptional situations, it may be necessary to impose lifelong restrictions on employment in the associated industry.

9. The proposed new regulatory body should begin its work by carrying out a thorough audit of all positions under its remit, to assess potential risk areas. New rules could then be drafted to reflect the severity of risk associated with particular roles.

TI-UK recommends that the period during which former Ministers and crown servants must undergo scrutiny for appointments, should be extended from two years to three. In other cases, there should be a two-year ban on employment in the associated industry. The implications of this policy for the ease of recruiting individuals to these departments should be fully assessed.

10. TI-UK is concerned that, at present, there is no obligation to consult departments for appointments of former Ministers. Moreover, it is not clear that departments engage with ACoBA in a consistent manner. Departments are arguably in the best position to understand potential conflicts that might arise, since they have the most detailed knowledge of what the individual has worked on and what information he/she has been able to access.

TI-UK recommends that it should be mandatory for the new regulatory body to consult departments for advice on the risks associated with particular appointments.

11. Another issue that needs to be addressed under this Question is the possibility that former Ministers, civil servants and MPs engage in lobbying. TI-UK welcomes the government's May 2010 decision to ban former Ministers from engaging in lobbying for two years after leaving office and the similar provision for civil servants of level SCS3 or above in the new Rules. However, ultimately this issue is best addressed through tighter regulation of lobbying in general. TI-UK welcomes the Government's ongoing public consultation on this subject (to which TI-UK will be making a submission).

TI-UK recommends that following the consultation, Parliament enact legislation as soon as possible that would make it mandatory for individuals and organisations engaged in significant lobbying activity to register and disclose information on their activities.

12. It has been alleged that, currently, former Ministers and officials are able to exploit a loop hole in ACoBA rules and conceal their business interests by setting up as consultants to work for private clients⁶. A new regulatory system covering the revolving door and lobbying should close this loophole.

Question 5: How effective is the Advisory Committee on Business Appointments?

⁶ The Sunday Times, 15 January 2012, <http://www.thesundaytimes.co.uk/sto/news/Politics/article856922.ece>

13. As the PASC's Issues and Questions Paper points out, neither the Ministerial Code nor civil servants' terms and conditions of employment are directly enforceable after an individual leaves office. The Paper also points out that since ACoBA is a purely advisory body, compliance with its advice tends to be a matter of goodwill and acceptance by the individual and new employer of the benefits of being seen to be behaving with propriety. This assessment is consistent with TI-UK's conclusions in its 2011 Report, 'Cabs for Hire'.

TI-UK therefore recommends that ACOBA be replaced with a new statutory body with sufficient resources and powers to regulate the post-public employment of former Ministers and crown servants. The rulings of this new body should be mandatory. The new body could be partly financed by companies that employ former Ministers or crown servants (within the appropriate period since leaving office) paying a fee towards the cost of the scrutiny process.

14. ACoBA is not currently bound to publish reasons for its advice and the data that it does publish is inadequate to allow public or media scrutiny, not least because it does not publish information on applications that have been withdrawn. This lack of transparency raises doubts about the criteria ACoBA uses to make its decisions and arguably adds to uncertainty for the individuals going through the process.

15. Full transparency about the regulatory body's decision-making would increase confidence that the business appointments process is sufficiently robust to minimise the risk of impropriety. Improved data would also help to establish whether there are any relevant patterns in the types of applications that are made or that ultimately fail, and might benefit crown servants and Ministers too.

TI-UK recommends that the new statutory body should disclose full information about the procedures for assessing applications and the reasons for its judgements.

16. Another issue that needs attention is unpaid appointments to non-commercial organisations – for example, charities and NGOs – that are not regulated by the current system. This suggests that it is the furtherance of private interests that is the main concern of regulators. However, it seems an anomaly that the appointment of, say, a former environment Minister, to an unpaid role at a major environmental advocacy NGO, would go unregulated, given that risks relating to undue influence and use of information gathered while in public office are present. These concerns would be partially addressed by adequate regulation of lobbying.

TI-UK recommends that the remit of regulation be extended to include appointments to non-commercial entities.

17. It is also important to address the issue of regulating post-public employment of MPs. Although arguments can be made that the future employment of elected MPs should not be

regulated, some MPs do have considerable access to power – those who have previously served as Ministers, and chaired select committees, for example.

TI-UK recommends that the Independent Parliamentary Standards Authority should draw up post-public employment rules for MPs, taking into account differences in the incidence of conflict-of-interest risk between various roles, and being sensitive to the job insecurity that elected MPs face. Consideration of this issue should be linked to an examination of the remuneration of MPs.

a) Should the membership of the Advisory Committee on Business Appointments be revised to better reflect the make-up of society?

18. TI-UK believes that the current composition of ACOBA leaves it open to criticism that it is not representative of UK society. This is highly unfortunate for an institution charged with a scrutiny role.

TI-UK therefore recommends that the composition of a new statutory body should be more representative of UK society - for example, by including representatives of civil society. The new body should be more independent of the decision-makers it scrutinises.

b) Is the current structure of Advisory Committee on Business Appointments ready to handle a short-term rise in civil servants leaving the service, and in the longer term a growing traffic between the Civil Service and private/third sector?

19. The current system of regulation is woefully inadequate and it is for this reason that TI-UK has recommended replacing ACoBA with a new statutory body.

c) Should the remit of the Advisory Committee on Business Appointments be extended to allow the Committee to enforce compliance with its advice?

20. ACoBA's inability to monitor compliance reduces public confidence in the system. The new statutory body that TI-UK proposes should have the authority and resources to monitor and enforce compliance with its rules for business appointments. Individuals should be required to certify on an annual basis that they are complying with any restrictions imposed by the new body. Their employers should do the same. These declarations would be filed with the regulatory body, and made available to the public. In cases of non-compliance, sanctions should be imposed on both individuals and their employers.

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Annex

Transparency International UK (www.transparency.org.uk), the UK national chapter of TI, fights corruption by promoting change in values and attitudes at home and abroad, through programmes that draw on the UK's unique position as a world political and business centre with close links to developing countries.

TI-UK:

- Raises awareness about corruption;
- Advocates legal and regulatory reform at national and international levels;
- Designs practical tools for institutions, individuals and companies wishing to combat corruption; and
- Acts as a leading centre of anti-corruption expertise in the UK.

TI-UK's vision is for a world in which corruption is greatly reduced and the UK has zero tolerance for corruption both at home and abroad.

Written evidence submitted by Spinwatch (BA 04)

David Miller⁷, William Dinan⁸, Tamasin Cave⁹, Melissa Jones¹⁰

Summary

1. This submission expresses the views of Spinwatch, which campaigns for greater transparency in governance in the UK and EU. Spinwatch is a project of Public Interest Investigations, a not-for-profit company based in the UK. Our views are based on many years academic research on transparency issues by two of the authors as well as a number of years experience of campaigning for greater transparency and ethics regulation in the UK and EU. We should also note that Spinwatch was a founder member of the Alliance for Lobbying Transparency.
2. In summary, we are of the view that ACOBA has failed to enhance public confidence or to effectively handle the many challenges of conflict of interest in public life with which it is charged.
3. We think that part of the reason for this is the inadequate basis of the committee and we thus believe that ACOBA should be abolished and replaced with a statutory body responsible for ethical conduct in the public service, which significant powers to investigate and hold civil servants and ministers to account where necessary.
4. We draw attention to the work of the OECD, which has established a series of principles and guidelines on conflict of interest and post-employment. We note in particular the key statement on the need to create a public service culture in which conflicts of interest are 'properly identified and resolved or managed'.¹¹ This can be contrasted with the implicit model in the UK where it is deemed sufficient to simply declare conflicts of interest.
5. In what follows we respond to the questions asked by the PASC issues paper and then raise a number of other issues.

Question 1: How can Government draw in and benefit from external expertise without giving rise to concern over propriety and undue influence?

6. The issue here is how to balance expertise and vested interests. The main issue under successive governments has been specifically in relation to the recruitment of senior people from corporate management. There has been no similar concern about propriety and influence in relation to the recruitment of expertise from citizen groups, NGO's, trades unions and representatives of the professions. On the other hand it is clear that some practical way to deal with the increased role for business in government. Rather than pretend that this is not happening, it seems clear that transparency and accountability require significant new thinking in how to manage the revolving door phenomenon and the conflicts of interest it raises. We include as an **annex** two examples of the practical problems of the revolving door in relation to the National Health Service,

⁷ Professor of Sociology, University of Bath; Director of Public Interest Investigations.

⁸ Lecturer in Sociology, University of the West of Scotland; Director of Public Interest Investigations.

⁹ Transparency campaigner, Spinwatch; Director of Public Interest Investigations.

¹⁰ Managing Editor, Powerbase (a project of Spinwatch)

¹¹ OECD *Post-Public Employment: Good Practices for Preventing Conflict of Interest*, Paris, 2010.

<http://dx.doi.org/10.1787/9789264056701-en>

based on Freedom of Information disclosures and research by Spinwatch. We should also point to the report on the financial crisis and the revolving door that two of the authors of this paper completed for the OECD in 2009, which highlighted the problems of regulatory capture by the banks.¹²

7. Fortunately these issues have been grappled with in a number of countries and the OECD has done significant work on this issue. The UK can learn much from investigating the experience of other countries - especially those that have moved to create new regulatory bodies with power to rule on ethical and conflict of interest situations.¹³

Question 2: Does the Big Society model of government, under which officials will increasingly procure public services from the private sector and civil society, require a change in approach to business appointments after employment in the public services?

8. Yes. The greater volume of interactions means increased potential for conflicts of interest and possibilities of corruption in pre and post-public employment situations.

Question 3: Do the Business Appointment Rules work against recruitment of experts into Ministerial and official ranks?

9. There is little evidence to support such a contention. There appears to be little difficulty in government attracting secondees to work in the civil service on fixed term contracts, with the expectation that they will return to the private (and less often, the voluntary) sector. In order to ensure the probity of governance and decision making it is very important that clear rules and guidelines exist and are enforced, to ensure that the public interest is served by a system of secondment and business appointments to official positions in public service. It is also important that private interests do not gain a competitive advantage by virtue of the inside knowledge, contacts and networks developed while in (temporary) public service. The risk of revolving door conflicts is well recognised, and guidelines have been developed in many different polities to mitigate these risks. The OECD recently produced guidance on this matter, and we would recommend that the UK system of business appointments is aligned with best practice in this area.¹⁴

Question 4: Whose responsibility should it be to monitor the contact between Government and outside interests for signs of undue influence, and how could this be achieved in a proportionate manner?

10. In our view this should be the responsibility of a statutory body, which should have the following features:

¹² David Miller and William Dinan *Revolving Doors, Accountability And Transparency - Emerging Regulatory Concerns And Policy Solutions In The Financial Crisis* GOV/PGC/ETH(2009)2 pdf, 1,059kb, English, Paper prepared for the OECD and the Dutch National Integrity Office organized Global Forum on Public Governance "Building a Cleaner World: Tools and Good Practices for Fostering a Culture of Integrity" on 4-5 May 2009 in Paris.

<http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/ETH%282009%292&docLanguage=En>

¹³ OECD *Post-Public Employment: Good Practices for Preventing Conflict of Interest*, Paris, 2010.

<http://dx.doi.org/10.1787/9789264056701-en>

¹⁴ OECD *Post-Public Employment: Good Practices for Preventing Conflict of Interest*, Paris, 2010.

<http://dx.doi.org/10.1787/9789264056701-en>

- a. Responsible to Parliament (and not to Ministers)
 - b. Powers to order disclosure of documents
 - c. Powers to take testimony under oath and compel attendance
 - d. Independently resourced
11. Such a body might be tasked with pre and post employment issues only or this role might be one of a number undertaken by a larger ethics regulator or superintendent. Any larger body might take on responsibility for a number of disparate roles currently undertaken by disparate organizations on a piecemeal basis. For example such a body might also take responsibility for compiling and hosting the new lobbying register. This would make sense since relevant data and background information would already be gathered by such an organization. This body might also collect together other relevant data such as that on ministerial meetings with outside interests, the register of members interests, members expenses etc. At present there are already similar bodies in existence such as the Office of the Information Commissioner, which has similar powers.

Question 5: How effective is the Advisory Committee on Business Appointments?

12. We believe that ACOBA is an ineffective body that should be abolished and replaced with a statutory regulator. In its current configuration its guidance is regularly flouted by ex-ministers, and civil servants in some instances. For example, in November 2007, senior members of the armed forces stopped submitting applications to ACOBA.¹⁵ Lord Lang has said military officers had received legal advice that they were not obliged to seek the committee's advice, though the matter has now been settled and ACOBA is now accepted as having the responsibility for vetting such applications.¹⁶ This two-year lapse in scrutiny from the committee appears to have attracted little public or media attention but is potentially of considerable importance. Campaigners against the 'revolving door' between the public and private sectors have long seen the defence industry as an area of particular concern, as officials responsible for awarding multi-million pound contracts move easily to companies that have benefited from these deals and then lobby their successors.¹⁷ ACOBA itself has said that the numbers of former Ministry of Defence employees seeking jobs in the defence industries were arguably 'so significant as to amount to a "traffic" from the Department to the defence contractors who supply it.'¹⁸
13. It also appears that ACOBA takes an overly relaxed view of the post-public employment activities of senior civil servants and rarely blocks the revolving door between Whitehall and the private sector. In theory, ACOBA can advise applicants not to take jobs that may raise conflicts, but such instances have been extremely rare. In 2008, the then-head of the committee's secretariat said ACOBA had only ever told 'one former minister and probably two, maybe three, Crown servants' not to take a job.¹⁹ Lord Maclennan of Rogart, the Liberal Democrat nominee on the committee from 2002 to 2009, believed that

¹⁵ ACOBA (2008) *Ninth Report 2006-2008*, p.13. <http://acoba.independent.gov.uk/publications/reports.aspx>

¹⁶ Gray, A (2010) Unpublished MSc project, Investigate Journalism, University of Strathclyde. Interview with Lord Lang, 27/4/2010

¹⁷ See for example Call the Shots Campaign Part 1: The Revolving Door. Campaign Against Arms Trade website. <http://www.caat.org.uk/campaigns/calltheshots/CTS-briefing.pdf>

¹⁸ ACOBA (2004) *Fifth Report, 2003-2004*, p.9.

¹⁹ House of Commons Public Administration Select Committee 2009b, p.Ev 53

the majority of his fellow ACOBA members were sometimes too lenient with applicants. "I...found myself the odd man out rather more often than I would have liked to have been," he says.²⁰

14. This culture and practice has given rise to concerns about undue influence on government decision-making, procurement and regulation. In part the weakness of ACOBA reflects the fact that it is an under-resourced and poorly respected watchdog. The committee describes itself as independent in the sense that it is not formally part of the government. It is, however, supported by a small secretariat²¹ from the Cabinet Office. The secretariat cost £184,000 to run in 2010/11.²²

Question 5a: Should the membership of the Advisory Committee on Business Appointments be revised to better reflect the make-up of society?

15. We believe the Committee's current cross-party membership of four peers and two knights is too elitist and should be broadened to include a wider cross section of civil society. Some commentators and politicians²³ have suggested the inclusion of lay members, which we would support.
16. With public trust in politicians and government officials at an all time low, the 'Establishment' makeup of ACOBA and its choice of chairman does little to instil confidence in the impartiality and independence of a 'watchdog' tasked with the scrutiny of former public servants to ensure there is 'no suspicion of impropriety' when they join the corporate world. We note with concern that ACOBA's chairman, the former Cabinet minister Lord Lang, was appointed despite having a raft of lucrative company directorships himself, and despite the questions raised over him being caught up in a high-profile Channel 4 *Dispatches* sting that exposed other former ministers keen to cash in on their contacts.²⁴ Committee members who sit in judgement on those moving into profitable private sector jobs must themselves be perceived to act with the utmost integrity. This inevitably includes, not merely the declaration of specific conflicts of interest, but the management of such conflicts such that they are minimised or eliminated. One key argument against ACOBA is that an independent regulator would employ staff whose conflicts of interest could be much more effectively managed or eliminated.

Question 5b) Is the current structure of Advisory Committee on Business Appointments ready to handle a short-term rise in civil servants leaving the service, and in the longer term a growing traffic between the Civil Service and private/third sector?

17. The current structure of the Committee is not adequate for the present scale of business in that it is not able to properly investigate and assess applications or monitor or enforce

²⁰ Gray, A. (2010) Interview with Lord MacLennan 29/4/2010

²¹ Gray, A. (2010) Interview with Lord Lang 27/4/2010

²² ACOBA (2011) *Twelfth Report 2010-2011* <http://acoba.independent.gov.uk/publications/reports.aspx>, p.6.

²³ Business Appointment Rules - Public Administration Committee, Examination of Witnesses Lord Lang of Monkton DL 8 February 2011

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpublicadm/780/11020802.htm>

²⁴ Channel Four 'Politicians for hire', *Dispatches*, 2010 <http://www.independent.co.uk/news/uk/politics/pms-watchdog-dragged-into-politicians-jobs-row-1928741.html> and

<http://www.channel4.com/programmes/dispatches/episode-guide/series-57/episode-1>

them. The occasional nature of the Committee's deliberations also suggests that it would struggle to do anything but cursory inspections of an increased number of applications, with the implication that conflicts of interest and potential corruption may flourish.

18. Under the current Rules on the Acceptance of Outside Appointments by Crown Servants,²⁵ also known as the Business Appointment Rules, a civil servant is obliged to obtain official approval before taking up a job within two years of leaving government service, except in a limited range of circumstances. Such advice can come from the ministry or agency of the applicant if the applicant is junior in rank and the proposed job is seen as uncontroversial. There would appear to be grounds for extending ACOBA's scrutiny of the revolving door to include civil servants well below the level of Permanent Secretary, though ACOBA's powers and resources should be considerably expanded. Applications from more senior civil servants and others that may be seen as sensitive are referred to the Cabinet Office while ACOBA itself deals with those from top-level civil servants such as Permanent Secretaries. ACOBA also reviews a sample of the other applications sent to the Cabinet Office to check the advice given.
19. ACOBA passes on its advice on applications from civil servants and members of the armed forces to the prime minister while its recommendations on diplomats go to the foreign secretary. ACOBA's advice is almost always accepted but the prime minister can overrule a recommendation from the committee if it is believed to be in the national interest to do so.

Question 5c: Should the remit of the Advisory Committee on Business Appointments be extended to allow the Committee to enforce compliance with its advice?

20. Yes. We believe that the Committee's effectiveness is undermined by its non-statutory 'advisory' status. It lacks the necessary teeth to ensure that ex-ministers and senior civil servants comply with the business rules and guidelines or act with propriety in their post-government careers.
21. ACOBA's website, for example, discloses a number of occasions in the past year where applications for the Committee's advice were made retrospectively after a minister or official had already accepted or started a new job in the private sector.²⁶ In December 2011 the *Sunday Telegraph* reported that 'seven former ministers and top civil servants this

²⁵ <http://acoba.independent.gov.uk/media/acoba/assets/rules.pdf>

²⁶ Former ministers were Jane Davidson (Minister for Environment, Sustainability and Housing, National Assembly of Wales); Baroness Morgan of Drefelin (Parliamentary Under Secretary of State Children and Families); Baroness Thornton of Manningham, (Parliamentary Under Secretary of State at the Department of Health); Lord Adonis, Secretary of State Department of Transport. Former civil servants included Sir Andrew Cahn former UK Trade and Investment Chief Executive; Bill Hughes Serious Organised Crime Agency, Chief Executive; Carolyn Downs Ministry of Justice, Chief Executive of the Legal Services Commission; Stella Manzie Director General Justice and Communities Scottish Government; Dr Andrew Tyler, Ministry of Defence Chief of Material (Joint Enablers), Defence Equipment and Support Organisation

year alone did not bother to approach ACOBA for approval [until afterwards]... ACOBA retrospectively approved six of the jobs, declined to consider the seventh, and took no action other than noting its “concern” on its website²⁷. That those seven jobs represented 25 per cent of ACOBA’s cases in 2011 implies that the rules and guidelines are treated with a distinct lack of seriousness by some of those covered. They appear to fear neither sanction nor censure.

22. In a similar vein, we believe ACOBA’s greatest weakness is its inability to monitor whether ex-ministers and officials respect its advice or to impose sanctions when they flout it. Widening ACOBA’s remit to give it the necessary powers to ensure compliance would be a welcome move.
23. However we would argue that greater reform is needed and support the calls from Transparency International and others to make ACOBA a statutory body. We also back the idea of a requirement for ex-ministers and officials, along with their new employers, to make periodic public declarations that they are abiding by ACOBA’s advice.²⁸ In addition, ACOBA could consider a ‘register of interests’ that requires them to publish their annual earnings from any approved business or appointment during the specified period.
24. Finally, we would add there is also a need for full transparency and disclosure of the reasoning behind the advice ACOBA gives, including on those applications it turns down. This will allow better public scrutiny of potential conflicts of interest and also help ACOBA to avoid charges of inconsistency. For example, it is not clear why the former permanent secretary at the Department for Business, Sir Brian Bender, received unconditional approval without any restrictions to take up his position as senior adviser for a large PR and lobbying firm in July 2010,²⁹ given that ACOBA’s chairman is on record as stating ‘that lobbying is the most sensitive area that we have to deal with’.³⁰

Principles for reform

25. Many countries face similar issues to those currently faced in the UK. A number of countries have recently taken steps to tighten the way in which the ‘revolving door’ phenomenon is handled. We note that the OECD has devoted considerable resources to examining the experience around the globe and has developed a number of principles on how to handle conflict of interest situations.³¹ The OECD commissioned report on the

²⁷ Andrew Gilligan, A Whitehall scandal that's bigger than lobbying? *Sunday Telegraph*, 10 December 2011, <http://www.telegraph.co.uk/news/uknews/defence/8948475/A-Whitehall-scandal-thats-bigger-than-lobbying.html>.

²⁸ Transparency International, *Cabs for Hire? Fixing the Revolving Door Between Business and Government*, London, 2011.

²⁹ The firm is Mandate Communications, now known as MHP. Bender took up the position in July 2010, having left the civil service in April 2009.

³⁰ Business Appointment Rules - Public Administration Committee, Examination of Witnesses Lord Lang of Monkton DL 8 February 2011 <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpubadm/780/11020802.htm>

³¹ OECD *Post-Public Employment: Good Practices for Preventing Conflict of Interest* 2010 http://www.oecd-ilibrary.org/governance/post-public-employment_9789264056701-en

revolving door and the financial crisis contains significant data on the problem of the revolving door in relation to banks and other financial institutions and regulators.³² We also draw attention to the work of ALTER-EU (of which Spinwatch is a founder member) on the revolving door³³ and similar work in the US. All of this evidence could be reviewed by the committee and in particular the principles and practical suggestions for reform considered.

³² David Miller and William Dinan *Revolving Doors, Accountability And Transparency - Emerging Regulatory Concerns And Policy Solutions In The Financial Crisis* GOV/PGC/ETH(2009)2 pdf, 1,059kb, English, Paper prepared for the OECD and the Dutch National Integrity Office organized Global Forum on Public Governance “Building a Cleaner World: Tools and Good Practices for Fostering a Culture of Integrity” on 4-5 May 2009 in Paris.

³³ Jens Clausen et al., *Revolving Door Provides Privileged Access: Why the European Commission needs a stricter code of conduct*, Brussels, Alliance for Lobbying Transparency and Ethics Regulation February 2011. http://www.alter-eu.org/system/files/documents/revolving_door_provides_privileged_access.pdf; Jens Clausen and Vicky Cann et al *Block the Revolving Door: why we need to stop EU officials becoming lobbyists* Brussels, Alliance for Lobbying Transparency and Ethics Regulation November 2011. http://www.alter-eu.org/sites/default/files/AlterEU_revolving_doors_report.pdf

Annex: Recent issues in relation to health policy

McKinsey, the revolving door (and corporate capture of DH)

26. McKinsey has long been associated with market-driven reforms of the health service. This latest - and most radical – round of reforms are no exception.
27. McKinsey’s involvement extends from helping to craft national policy in the Department of Health, to designing programmes to implement the reforms on the ground. Today, it advises everyone from the prime minister, NHS management board, the regulator Monitor, regional bodies, and foundation trusts.
28. At the very local level, McKinsey has also won contracts to provide commissioning support for at least 25 of the new GP consortia. This presents McKinsey with a potential conflict of interest, given its involvement in the design of the NHS Commissioning Board.
29. It has earned at least £13.8million from Government health policy since the Coalition took office.
30. McKinsey maintains a database of ex-McKinsey-ites, or its alumni network as it calls it, which is exploited to further its influence.
31. David Bennett and Adrian Masters, respectively chair of Monitor and its director of strategy, are both ex-McKinsey. As reported in the *Mail on Sunday*, both have enjoyed many benefits from their old employer.³⁴
32. Bennett has received trips and dinners worth £6,500 from McKinsey since May last year. In June 2011 alone, he enjoyed a two-day trip to New York and a £250-a-head dinner as a guest of McKinsey’s Penny Dash at the Health Investor Awards.³⁵ As well as being ex-head of strategy at the Department of Health, Dash is also a former director of Monitor.
33. Other senior officials to have passed through the ‘revolving door’ between McKinsey and the NHS include: Tom Kibasi who started at McKinsey in 2004, left two years later to become Senior Policy Advisor to chief executive of the NHS David Nicholson, and moved back to McKinsey in 2008, where he’s been busy helping the DH reform the system³⁶; David Cox, who worked in the NHS, jumped ship to McKinsey, then moved to the Conservative Party’s ‘Implementation team’ for 9 months, before settling at NHS London as ‘Strategy Manager’ responsible for ‘cutting-edge system-wide design and planning of London’s healthcare system strategy’;³⁷ ex-NHS hospital chiefs like Mark Goldman who is now an adviser for the McKinsey Hospital Institute, (which contracts its services to NHS hospitals); ex-McKinsey consultant Nick Moberly who is now CEO of Royal Surrey County Hospital; Dr. Doug Russell, ex-medical director of Tower Hamlets and now senior advisor to McKinsey. The list goes on.
34. Such links can help generate further contracts. In May 2011, McKinsey emailed Mr Masters at Monitor, saying: ‘Would you be happy to provide a reference [on behalf of McKinsey] for Maidstone and Tunbridge Wells Trust who are looking for a two-year contract to support the development of the Board?’

³⁴ FOI DOC: MONITOR_GIFTS & HOSPITALITY REGISTER 2010.XLS; MONITOR_Gifts and Hospitality_2011-12 Q1.xls

³⁵ Summary McK Monitor gifts and hospitality.xls

³⁶ <http://www.worldcongress.com/speakerBio.cfm?speakerID=5933>

³⁷ <http://www.linkedin.com/pub/david-cox/a/55b/39b>

35. Mr Masters's office replied: 'Adrian is happy to provide a reference for the policy work but he wouldn't want it to be inferred that he had been involved in any application decisions.'
36. McKinsey's close ties to DH could prove invaluable for its private health clients. So has the firm been exploiting its privileged access?
37. An email from an unnamed McKinsey executive from May 2010, suggests it has. It states: 'We have been gathering our thinking on the implications of the new Government programme for the NHS [and] have started to share this with clients. Would you like to meet to discuss it?'
38. The recipient of the email? Monitor's Mr Bennett, whose role is to police the relationship between the private and public sectors.

Civil servants in DH and KPMG

39. Mark Britnell made his way up the ladder in the Department of Health, making Director General in charge of commissioning in summer 2007. According to Britnell, GPs will have to effectively buy in bulk to get costs down. He said in Oct 2010: 'There will be a big opportunity for those companies that can facilitate this.'
40. After a couple of years in the job he moves to the accountancy giant KPMG (left in June 2009, started at KPMG in October 2009). According to AcoBA, he had to wait just 3 months before he could take up the post... and not lobby for 12 months.
41. During Britnell's 12 month cooling off period the job of DG for Commissioning was left in the safe hands of Britnell's colleague Gary Belfield. (June 2009 – May 2010)
42. Belfield stayed in post less than a year before himself moving to join Britnell in KPMG (Autumn 2010 -)
43. It was in the Autumn of 2010 that Britnell addressed a conference of private healthcare executives that it was open season in the NHS: 'In future, the NHS will be a state insurance provider not a state deliverer.... The NHS will be shown no mercy and the best time to take advantage of this will be in the next couple of years.'
44. Months later (Jan 2011) KPMG was awarded one of the first contracts to a private company to provide support to GPs on commissioning. Announced by Belfield, in his new role as an associate partner at KPMG.

February 2012

Written evidence submitted by Cabinet Office (BA 05)

- **The Government welcomes the Committee’s inquiry into the role and operation of the Business Appointment Rules (the Rules) and the Advisory Committee on Business Appointments (the Advisory Committee).**
- **The Government believes that the inquiry provides a timely opportunity for a fundamental re-examination of the effectiveness of the arrangements for former Ministers and Crown servants given the fast-changing requirements of a modern public service.**
- **There is no doubt that as a result of current policy and structural reform, movement between central government and other sectors has increased, and that this trend is set to continue for the foreseeable future.**
- **There is a need for appropriate arrangements that meet legitimate propriety concerns, but that are also fair to individuals, some of whom are facing enforced departure from the public service mid-career.**
- **It is also critical that arrangements do not act as a deterrent to individuals taking up public service appointments, particularly short-term specialist and ‘expert’ roles.**

Background

The Rules

1. The fundamental aim of the Rules is to uphold the core values set out in the Civil Service Code and the principles set out in the Ministerial Code. The Government is clear that there is a continuing need for robust, but proportionate, arrangements that allay reasonable public concerns over propriety, but also recognise that there is a public interest in people with experience of public administration moving into business or other sectors outside of central Government. The Government is also clear that arrangements need to strike an appropriate balance, and should not act as a deterrent to individuals from taking up roles in the public service.

2. Revised and updated Rules for former Ministers and Crown servants were issued in February 2011 to reflect strengthened arrangements introduced following the general election. These included the extension of the Rules to cover **all** prospective appointments or employment; a two year ban on former ministers and the most senior Crown servants from lobbying Government on behalf of their new employer; a requirement for applications from all special advisers to be considered by the Advisory Committee regardless of their seniority; and departmental Permanent Secretaries assuming responsibility for decisions on all applications under the Rules from staff at SCS2 (Director) level and below. The requirements

for former Ministers and special advisers are set out in their respective Codes of Conduct. The Rules for civil servants are set out in the Civil Service Management Code, and there are equivalent versions of the Rules in place for members of the Diplomatic Service, the Intelligence Agencies and the Armed Forces. At the same time, both sets of Rules were re-drafted to make them clearer and more straightforward in order to assist applicants, departments, and the wider public in their understanding of the principles behind the Rules, and the consideration processes involved.

3. All applications made under the Rules are considered on a case-by-case basis. The Rules do not have a statutory base. In relation to Crown servants, for the Rules to be enforceable, they have to be shown to have been incorporated into the relevant terms and conditions of service. It would be difficult to invoke sanctions for non-compliance with the Rules, as these will tend to be individuals no longer in our employment. In extreme cases, it may be possible to seek legal injunction to prevent an individual from taking up an external appointment or employment, although such an injunction has never been sought. In practice, however, adverse publicity and consequential reputational damage to the individual concerned and the future employer has acted as a powerful and effective disincentive to break the Rules.

4. It should be noted that the business appointment regime for those public servants covered by the Rules for Crown servants and the Rules for Former Ministers are stricter and more transparent than arrangements in operation in other parts of the public sector, for example in local government.

The Advisory Committee on Business Appointments

5. The Advisory Committee is an advisory non-departmental public body, sponsored by the Cabinet Office. It is supported by a small secretariat which also supports a separate independent Committee, the House of Lords Appointments Commission. The Advisory Committee operates within the framework of the Rules set by Government. It provides its advice direct to the Prime Minister on applications from officials at SCS3 level and above (and equivalent level members of the Armed Forces); to the Foreign Secretary on applications from members of the Diplomatic Service of equivalent level; and to the relevant departmental Permanent Secretary on applications from special advisers. These office-holders make the decision on applications based on the advice received. The Advisory Committee publishes its final advice on an appointment once the appointment has been taken up or announced.

6. The Advisory Committee provides its advice direct to former Ministers in line with the requirement in the Ministerial Code that on leaving office Ministers must seek the Advisory Committee's advice about any appointments or employment they wish to take up within two years of leaving office.

7. The Government is currently running an open competition to recruit two new members to the Advisory Committee. The recruitment process is being undertaken in accordance with the Commissioner for Public Appointments' Code of Practice and, with the exception of the three party-political members nominated by their respective party leaders, all future appointments to roles on the Advisory Committee will be made in line with the Commissioner's requirements.

The Committee's Inquiry

8. The Committee has posed a number of specific questions about the effect of the Rules on movement into and out of central government, and the ability to attract the right talent to take up critical public service roles. The Government welcomes the Committee's focus on

these issues. There is no doubt that policy and structural reform in the civil service is creating a significant increase in the numbers of people moving between Whitehall and other sectors, and that this is set to continue for the foreseeable future. Whilst it is important to maintain appropriate arrangements that ensure high standards of propriety, it is equally important that the arrangements are able to take account of changing patterns of employment, and that individuals are not inappropriately restricted from taking up other work.

9. One area of particular concern is waiting periods. Traditionally, the Rules have overwhelmingly come into play at the point when individuals retire from Crown service, and they are in receipt of their pension. Waiting periods are now applying in circumstances when individuals leave the service mid-career, sometimes as a result of enforced departure, or on completion of a fixed term appointment of just a few years' duration and with no severance or other compensatory payment. The Government would welcome the Committee's views on whether the Rules are operating fairly in such circumstances. For example, should there in exceptional circumstances be provision to continue to pay individuals who are required to observe a waiting period before they take up outside employment and are not in receipt of any other compensatory payment from the public purse?

10. It is also the case that increasingly individuals are recruited into the Civil Service on fixed term appointments, rather than as career civil servants. This is often the case where individual experts are recruited into specialist areas to provide specific expertise to support a particular project. In these circumstances, there is a real danger that business appointment requirements can act as a disincentive in attracting good quality candidates because of concerns that they may not be able to return unconditionally to a job in their sphere of expertise at the end of the fixed term. The Government would welcome the Committee's views on whether there is a case for having modified business appointment arrangements for these sorts of appointments. One option might be to adopt arrangements analogous to the confidentiality clauses that operate widely in the private sector. These would be agreed on a case-by-case basis at the outset as part of the appointment package, and would be reflected in the contract. Lobbying restrictions could also be included where appropriate.

11. The Committee also poses the question about whose responsibility it should be to monitor in a proportionate way, the contact between Government and outside interests for signs of undue influence. The Committee will of course be aware that the Government already publishes data on a quarterly basis about Ministers' and Permanent Secretaries' meetings with external organisations, and hospitality received by Ministers, special advisers, and senior civil servants. The Government's recently published proposals for a register of lobbyists would further enhance transparency in this area.

12. The Committee's inquiry will also focus on the operation of the Advisory Committee. The Government values greatly the Advisory Committee's work, and believes that the business appointment system is considerably strengthened by the fact that applications from former Ministers, special advisers, and the most senior Crown servants are scrutinised and advised upon by an independent external body whose members collectively have a wide range of experience.

13. The revised Rules for Crown servants have freed up the Advisory Committee to focus on applications from staff at SCS3 (Director General) level and above (and equivalents), with departmental Permanent Secretaries assuming responsibility for applications at levels below this. This has meant that the increase in numbers of people leaving Crown service has not so far had a marked impact on the Advisory Committee's workload, but there may be a future impact.

14. Given its role in providing advice direct to former Ministers on their applications under the Rules for Former Ministers, the Government continues to believe that it is appropriate to have a nominee from each of the three main political parties on the Advisory Committee. However, the Government would welcome the Committee's views on whether there should be a shift in the balance of experience and expertise amongst the membership to ensure that the business and third sectors are adequately covered given the increase in movement between these sectors.

15. The Committee will be aware that in December last year, the Government announced that the triennial review of the Advisory Committee will commence before the end of this current financial year. The review will include consideration of the Advisory Committee's future structure and resource requirements. It is the Government's intention that the triennial review should take account of this inquiry. The Committee's findings and recommendations will therefore form an important part of the review's considerations.

March 2012

**Written evidence submitted by Sir David Bell, Vice-Chancellor, University of Reading
(BA 06)**

BUSINESS APPOINTMENT RULES AND THE ROLE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS (ACOPA)

Thank you very much for your letter of 7 March 2012 regarding the above subject.

I was appointed Vice-Chancellor of the University of Reading on 29 September 2011. The University made it clear that its procedures required my appointment to be confirmed by a meeting of the Senate on 17 October 2011.

Officials at the Cabinet Office were aware of my new appointment on 1 October and undertook to assist with the ACOPA process. I made it very clear from the outset that the University had its own decision making processes which I could not change, and nor should I seek to. Furthermore, Cabinet Office colleagues and I agreed that there should not be a conflict of interest in my taking up my new role, as the Department for Education (DfE), where I was Permanent Secretary, had not been responsible for higher education for over four years. Given DfE's involvement in Initial Teacher Training, which is linked to universities, I had expected the Committee to take a view on this, and seek to place limits on my future contract with Government in this aspect of my role.

It became clear from the outset that the ACOPA arrangements were not designed to deal with a situation where a prospective new employer, not unreasonably, wanted to move at a pace in confirming a decision. In these circumstances, I felt that I could not be bound by a process that would have put me in a difficult position with the University.

Before the University was able to ratify its decision, and before ACOPA was able to give advice on my case, news of my appointment was leaked to The Sunday Times, and a story to that effect appeared on Sunday 16 October. This article also included some comments that were both damaging and offensive to me personally, as well to other senior colleagues in the Department for Education. In the light of this article and the damaging effect it had on the Department, I had no choice but to confirm my appointment formally via a DfE news release on 17 October.

So to answer the question you posed in your letter directly, I was aware of the ACOPA process and, occasionally, had operated it within the Department. I also accept that the rules are in place so as to avoid ex-civil servants being seen to gain commercial advantage from their previous positions. However, this system has become a 'catch-all' for all sorts of other scenarios where it is clearly inappropriate. In an age when fast turnaround times are expected, a process that takes weeks to consider and sign off does not, in my view, seem fit for purpose.

I think it is a matter worthy of much closer attention if the Civil Service is to encourage people to move in and out of its ranks, as has been the case in my situation. Although I enjoyed my time as a civil servant immensely and look back with pride on all that I achieved, I have to be honest and say that the ACOPA process left a rather sour taste. Furthermore, it is

hardly conducive to encouraging a more dynamic labour market in Whitehall, something that politicians of all persuasions have sought to encourage in recent years.

I trust that you find this explanation clear and informative.

March 2012

Written evidence submitted by Sir Andrew Cahn (BA 07)

I am grateful to the Committee for the chance to input on the process applied to senior civil servants when they take up business appointments after leaving public service.

I appreciate this opportunity to share my thoughts with the Committee. These are my personal views, gained from my own experience, and do not reflect the views of my employers.

During my career, I have been privileged to work at a senior level in the civil and diplomatic services. I have twice worked in international organisations. I have also worked at more than one private sector organisation. In other words, I have been a serial interchanger. I know this had made me personally more effective and I believe it has been valuable for the organisations for which I worked.

Increased traffic between the civil service and private business would benefit both the economy and society more broadly. The civil service is enriched by people with experience of other walks of life coming in at senior levels. And senior civil servants deliver a real service if they are able to put their skills and experience to work in new areas, particularly as they are still encouraged to retire at 60.

As a strong advocate of interchange between the public and private sectors, I believe the ACOBA process could be improved. Civil servants take up fewer appointments in the private sector than in many comparable economies to our own and the movement from the private sector to public service should be increased. I believe the “revolving door” is broadly beneficial and should be more encouraged than now, providing there are adequate safeguards.

In this submission, I outline where I believe improvements could be made and why I feel such improvements are important.

- First, civil servants can be of most benefit to the private sector in areas where they have most experience. Likewise, people from the private sector can most usefully contribute to the public sector if they are given the opportunity to work in areas they know well. Of course, I appreciate that this type of interchange requires particular care and oversight. But, the ACOBA process starts from the presumption that it is precisely these areas which need to be discouraged.
- Present stipulations may indirectly reduce the UK’s appeal to foreign companies. These firms appreciate advice and guidance from those formerly in government service and, if onerous restrictions are placed on civil servants taking up such appointments, it can present the UK in an unflattering light.

- The current process appears to place more importance on procedure and appearances than principles. While an element of procedure is essential, it may be advantageous to place greater trust in people's experiences, integrity and good conduct.
- The process is slow, particularly with reference to private sector timescales and practices. This can dissuade the private sector from employing civil servants and would-be civil servants from entering public service. Companies do not expect to have to wait months before being told whether or not they can employ someone and if so with what conditions.

As someone with experience of both sectors, I would like to explain further where I believe changes to the current process could most usefully be made

Useful experience should be encouraged: Civil servants are naturally most likely to be useful to outside employers in areas where they have experience. And the same principle applies to people from the private sector who wish to contribute to the public service. But the ACOBA process is most onerous in these very situations. While the diligence behind this approach is commendable, it would be helpful if current procedures could be adapted so as to ensure civil servants and would-be civil servants can be as useful and productive as possible when they move from one sector to another.

Lifting restraints on movement: The ACOBA process asserts with no authority that civil servants above a certain grade must obtain authorization to work for two years and frequently instructs them not to take a job for a period of time. Civil servants often approach the process with nervousness because of the lack of clarity. Sometimes, they even feel the wish to join the private sector is somehow reprehensible. Clearly, the Committee would not wish to foster such attitudes so there may be benefits in changing the process so it offers more encouragement to civil servants considering appointments in the private sector.

Promoting foreign investment: Foreign companies considering investment in the UK need local expertise, knowledge and experience. They seek advice on how things work here, which factors to take into account in their business decisions and the intricacies of our business, political, economic and social milieu. The services of former civil servants can be genuinely helpful, but current restrictions around their employment can prove perplexing to foreign companies. There would be advantages in promoting a more transparent and open process.

A principled approach: We can never guarantee that people will not behave improperly but we can put in place a culture and a set of values to encourage them to do so. Fortunately, the civil service is built around probity, integrity and proper conduct. This is the best possible insurance against impropriety when people move between the private and public sectors.

Contractual obligations: Most people who join the civil service at a senior level are given contracts, at the end of which they may have to wait for three months before returning to the private sector. This is tantamount to a 10 per cent reduction in salary and often comes as a surprise since clear guidance is not provided at the outset. The civil service reaps meaningful benefits from private sector input. If the process could be made more welcoming, two-way traffic would undoubtedly increase, to the advantage of both sectors and the public at large.

Potential for improvement: Clearly, there is a need for care and caution when civil servants move into the private sector and vice versa. But I believe increased transparency may prove helpful in this regard, enhancing the ACOBA process and perhaps allowing it to change in emphasis.

When a public servant takes up a position in the private sector, I would suggest that it should be in the public domain so Parliament, the press and the Civil Service itself can observe how that individual acts and how former colleagues act towards him or her. This would be of real value whilst a three or six month cooling off period is of little real benefit if someone is bent on misusing their position.

Clearly no process, however fastidious, can regulate employment in such a way as to completely prevent irregularities. Ultimately, public servants must be trusted to act with integrity after their departure. Nonetheless, complete transparency would act as a useful deterrent to abuse.

Conclusion: I have been a serial interchanger throughout my career and I firmly believe that I have been more effective and better able to contribute to the public good as a result.

Across the UK, civil servants and the private sector contribute enormously to the country's wellbeing. Each can provide valuable advice and guidance to the other. Using the skills and experience of both in the most productive way must be in everyone's best interest. Effective and efficient interchange allows the civil service to benefit from new blood and new thinking, while the private sector can benefit from civil servants' expertise and understanding.

With this in mind, it may be helpful to shift the focus of the interchange process towards self-regulation. A culture of probity already exists across the civil service and in much of the private sector too. Perhaps we should be more mindful of that when dealing with the very real benefits that interchange can bring.

An act I witnessed in my first few weeks as a civil servant in 1973 has stayed with me. My principal was sent a large bouquet of flowers for having done something entirely properly and efficiently. She sent a gracious letter of thanks, noting that she had sent the flowers on to a children's home and suggesting that next time she would prefer not to be put in a difficult position by an inappropriate gift. I think I learnt more from that than from the guidance on ACOBA's website.

March 2012

**Written evidence submitted by Office of the Advisory Committee on Business
Appointments (BA 08)**

Following my oral evidence to the Committee on its inquiry into the Business Appointment Rules, I wanted to update and clarify a couple of points concerning the Advisory Committee on Business Appointments.

As the end of the financial year 2011/12 has just passed, the Advisory Committee has reviewed its performance in meeting its case completion targets during the year. Our published targets are 15 days for former Ministers and 20 days for Civil Servants. During the year we considered 26 applications from former Ministers and 56 from Civil Servants, and I am pleased to say that the Committee met both targets in 77% of cases, with the average completion time being 11 days for former Ministers' cases and 18 days for Civil Servants. These are a marked improvement on the figures for the previous year which we reported on in our last annual report. The earlier figures obviously reflect the significantly higher number of cases handled by the Committee following the General Election.

I also noted during my session – and from reading the transcripts of others – that there appeared to be some confusion about what information the Advisory Committee publishes. I would like to take this opportunity to clarify that we publish our advice on all appointments that are taken up. This would include where an individual has ignored or disregarded our advice, should such a situation occur. We do not publish our advice on appointments that have not been taken up. There are various reasons why an appointment may not be taken up; in some instances we are made aware it is because of our advice, in others we are simply informed that the individual does not intend to take up the post or that the job offer has been withdrawn. We publish the number of cases we consider that are not taken up but not the confidential detail of those cases.

The committee may wish to be reassured that we do follow up on all cases to ensure that when an individual has taken up an appointment, we are able to publish the relevant information.

I hope this additional information is helpful to the Committee as it considers its report on the inquiry.

May 2012

Supplementary written evidence submitted by Cabinet Office (BA 09)

You asked for clarification about the number of members appointed to the Advisory Committee on Business Appointments.

From 2001 until the recent open recruitment exercise, the Committee had seven members. Before 2001, there had been a complement of eight members, two of whom, Sir Bryan Nicholson and Sir Denys Henderson, had experience in business. When Sir Denys stood down, it was decided, in consultation with the then Chairman, Lord Mayhew of Twysden, to run the Committee with one less member. There has, therefore, been a longstanding capacity to appoint an additional member, should this be deemed to be desirable.

Following consultation with the current Committee about the balance of membership and the workload, the Government decided to use the opportunity of the recent recruitment exercise to appoint two new members, one to replace Dame Juliet Wheldon, and the other to fill the longstanding vacancy, which will widen the breadth of experience amongst the membership. It is also the case that the Committee now meets on a regular basis, and the additional member provides greater flexibility, enabling the Committee to remain quorate during holiday periods, for example.

July 2012