



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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BUSINESS APPOINTMENT APPLICATION: Dame Bernadette Kelly DCB, former Permanent Secretary at the Department for Transport. Paid appointment with the National House Building Council.

1. Dame Bernadette sought advice from the Advisory Committee on Business Appointments (the Committee) under the government's Business Appointment Rules for Former Crown Servants (the Rules) on a paid role she wishes to take up with the National House Building Council (NHBC) as a Non Executive Director (NED).
2. The purpose of the Rules is to protect the integrity of the government. The Committee has considered the risks associated with the actions and decisions taken during Dame Bernadette's time in office, alongside the information and influence she may offer the NHBC. The material information taken into consideration by the Committee is set out in the annex.
3. The Committee's advice is not an endorsement of the appointment – it imposes a number of conditions to mitigate the potential risks to the government associated with the appointment under the Rules.
4. The Rules¹ set out that Crown servants must abide by the Committee's advice. It is an applicant's personal responsibility to manage the propriety of any appointment. Former Crown servants are expected to uphold the highest standards of propriety and act in accordance with the 7 Principles of Public Life.

The Committee's consideration of the risks presented

5. The NHBC provides warranty and insurance for new homes, and is an approved Inspector for Building Regulations. As a non-profit company limited by guarantee, it operates independently of government and the construction industry, reinvesting profits to support its core purpose of building confidence

¹ Which apply by virtue of the Civil Service Management Code, The Code of Conduct for Special Advisers, The King's Regulations and the Diplomatic Service Code.

in the construction quality of new homes and protecting homeowners. It works with key stakeholders, including government, to contribute to all aspects of the housing agenda. There is no direct overlap with Dame Bernadette's role at the Department for Transport (DfT). Dame Bernadette did not meet with the NHBC and was not involved in decisions specific to the company as Permanent Secretary. The Committee² therefore considered the risk that she was offered this role as a reward for decisions or actions taken in office was low.

6. While there is no specific overlap between Dame Bernadette's recent role in government and the proposed position with the NHBC, she will have had access to a wide range of information. In particular, DfT confirmed that she participated in cross-government discussions about government's housebuilding objectives and the response to the Grenfell Tower Inquiry. The Committee agreed with her former department there are factors reducing the risk around her access to information. DfT was unaware of any specific information at risk, noting it was unlikely to be commercially sensitive. It also noted the waiting period of three months Dame Bernadette is subject to before being able to take up any role - to allow for a gap between her general access to information and working with any organisations, including NHBC.
7. The Committee considered the potential risk of unfair influence arising from Dame Bernadette's recent role as Permanent Secretary at DfT. The NHBC has a clear interest in government policies, regulation and funding decisions related to the housebuilding sector. While the NHBC already has a relationship with government, there is a risk that Dame Bernadette could be seen to offer unfair access to or influence within government. This is potentially heightened by her specific contacts within the department responsible for housing, Ministry of Housing, Communities & Local Government, as noted by the department.
8. Dame Bernadette told the Committee that although she would not lobby the government, she expects to attend events at which officials or ministers may be present. Further, she expects to advise the Chair and Chief Executive on how best to manage their dealings with government and regulators. The lobbying ban that applies to all former senior officials for two years on leaving office does not prevent all contact with government. However, in this role she must be careful not to directly, or indirectly, lobby the government for changes to policy, contracts or funding, as to do so would risk granting the NHBC an unfair advantage. It is also significant that NHBC confirmed your role will be separated from any lobbying of the UK government.

The Committee's advice

² This application for advice was considered by Isabel Doverty; Hedley Finn OBE; Michael Prescott; and the Baroness Thornton. Sarah de Gay and Dawid Konotey-Ahulu CBE DL were unavailable.

9. For the reasons set out above, the Committee considered the risks associated with her access to information to be limited, following a three month waiting period and in light of the conditions applied below. The most significant risk in her case is that she could be seen to be potentially offering unfair access to and influence within government. Dame Bernadette has set out to the Committee her intention to fully comply with the lobbying ban that applies to her. The Committee therefore gave weight to the employer's confirmation that Dame Bernadette's role with NHBC will not involve lobbying.
10. The Committee determined the risks identified in this application can be appropriately mitigated by conditions below. These make it clear she cannot make use of any privileged access to information, contacts or influence gained from her time in government service to the unfair advantage of the NHBC.
11. The Committee's advice in accordance with the government's Business Appointment Rules is that Dame Bernadette's appointment with the **National House Building Council** be subject to the below conditions:
- a waiting period of three months from her last day in Crown service;
 - she should not draw on (disclose or use for the benefit of herself or the persons or organisations to which this advice refers) any privileged information available to her from her time in Crown service;
 - for two years from her last day in Crown service, she is permitted to report to government and its arm's length bodies on the activities of the National House Building Council; and enter into discussions/meetings with the UK government or its arm's length bodies where it is at their request or using existing engagement channels. However, she should not become personally involved in lobbying the UK government or any of its arm's length bodies, on behalf of the National House Building Council (including parent companies, subsidiaries, partners and clients); nor should she make use, directly or indirectly, of her contacts in the government and/or Crown service contacts to influence policy, secure business/funding or otherwise unfairly advantage the National House Building Council (including parent companies, subsidiaries, partners and clients); and
 - for two years from her last day in Crown service, she can draw on her skills and experience to advise the National House Building Council on its internal strategy and proposals relating to already agreed government funding. However, she should not undertake any work with the National House Building Council (including parent companies, subsidiaries,

partners and clients) that involves advising on the terms of bids to secure governmental funding/contracts.

12. The advice and the conditions under the government's Business Appointment Rules relate to Dame Bernadette's previous role in government only; they are separate from rules administered by other bodies such as the Office of the Registrar of Consultant Lobbyists, the Parliamentary Commissioner for Standards and the Registrar of Lords' Interests³. It is an applicant's personal responsibility to understand any other rules and regulations they may be subject to in parallel with this Committee's advice.
13. By 'privileged information' we mean official information to which a minister or Crown servant has had access as a consequence of his or her office or employment and which has not been made publicly available. Applicants are also reminded that they may be subject to other duties of confidentiality, whether under the Official Secrets Act, the Ministerial Code/Civil Service Code or otherwise.
14. The Business Appointment Rules explain that the restriction on lobbying means that the former Crown servant/minister *"should not engage in communication with government (ministers, civil servants, including special advisers, and other relevant officials/public office holders) – wherever it takes place – with a view to influencing a government decision, policy or contract award/grant in relation to their own interests or the interests of the organisation by which they are employed, or to whom they are contracted or with which they hold office."*
15. Dame Bernadette must inform us as soon as she takes up this work or if it is announced that she will do so. Similarly, she must seek advice if she proposes to extend or otherwise change her role with the organisation.
16. Once this appointment has been publicly announced or taken up, the advice letter will be published.

Yours sincerely,

Madeleine Crowther
Committee Secretariat

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

Annex - Material Information

The role

1. According to its website, the NHBC is the UK's leading provider of warranty and insurance for new homes. It is also an approved Inspector for Building Regulations and its main purpose is to improve the quality of new homes and protect homeowners. It is a non-profit company limited by guarantee, with no shareholders, and is independent of government and the construction industry. Any profits that it generates are reinvested in the business to support its core purpose of building confidence in the construction quality of new homes. It works with key stakeholders, including government, to contribute to all aspects of the housing agenda.
2. Dame Bernadette wishes to take up a paid, part-time role as Non Executive Director of the NHBC. Her responsibilities will include providing independent support, guidance and constructive challenge to the executive leadership team in relation to strategy, delivery and performance. She will also provide guidance and insight on government policy relevant to the housebuilding sector and the NHBC's role, which is to provide warranties for new build houses and to ensure appropriate standards in relation to the build of new houses.
3. In respect of her contact with government, she said:
 - She would not lobby government.
 - As the NHBC has regular dealings with government and regulators (MHCLG, PRA, FCA), primarily led by the Chair and Chief Executive, she may be asked to provide guidance and support to the Chair and Chief Executive in how these relationships should be managed and may be asked to participate in or attend events at which officials, ministers or regulators are present.
 - She does not expect to deal with the Department for Transport (DfT).

Dealings in office

4. Dame Bernadette said she had no involvement in the housebuilding sector in recent years including no involvement in recent policy impacting the NHBC's role.
5. She said that she knows, and had dealings on other issues with, senior colleagues within the Ministry of Housing, Communities & Local Government (MHCLG) who are, or may be, involved in decisions relating to housebuilding.

6. As the Permanent Secretary of the Department for Transport, Dame Bernadette said she would have seen some information in relation to and participated in, wider cross-government discussions about the Government's objectives for housebuilding and response to the Grenfell Tower Inquiry, however nothing which is particularly confidential or commercially sensitive in nature.
7. She noted she was Executive Director of Housing in the period 2008 to 2010, which means that she had some direct experience of working on government policy on housebuilding.

Confirmation from the employer

8. NHBC confirmed in writing its understanding of, and agreement to, comply with the Committee's advice – stating that Dame Bernadette 'will not represent NHBC in any dealings with government, nor will she engage in lobbying activities, either directly or indirectly.'

Departmental assessment

9. DfT confirmed that Dame Bernadette did not make any policy, regulatory or commercial decisions specific to the NHBC.
10. DfT said that as Dame Bernadette was Executive Director of Housing in the period 2008 to 2010, she may have some direct experience of working on government policy on housebuilding. The department believed the passage of time means that there is unlikely to be any perceived conflicts of interest.
11. DfT said that Dame Bernadette would have seen some information in relation to, and participated in, wider cross-government discussions about the Government's objectives for housebuilding and response to the Grenfell Inquiry. DfT said this is unlikely to have been confidential or commercially sensitive enough to give an unfair advantage, but it is possible that the latent knowledge gained on broad thinking and strategy could be helpful to the prospective employer.
12. DfT also recognised Dame Bernadette said that she likely has absorbed information via discussions across the most senior civil servants about strategic issues relating to housebuilding, and has contacts with senior colleagues within MHCLG who are or may be involved in decisions relating to housebuilding.
13. DfT recommended standard conditions were appropriate to mitigate the risks in her case.

