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10 DOWNING STREET

THE PRIME MINISTER

17 December, 1984.

Dear Lord Diamond,

Thank you for your letter of 13 December and for letting me have the views of the Advisory Committee on Business Appointments about the recommendations contained in the Eighth Report from the Treasury and Civil Service Committee on the Acceptance of Outside Appointments by Crown Servants. It is very helpful to have the Advisory Committee's comments and the Government will take them carefully into account in considering its response to the recommendations of the Select Committee.

Yours sincerely
Margaret Thatcher

The Rt. Hon. Lord Diamond

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10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

The Prime Minister has received from Lord Diamond the comments of the Advisory Committee on Business Appointments on the Eighth Report from the Treasury and Civil Service Committee on the Acceptance of Outside Appointments by Crown Servants. I enclose a copy of Lord Diamond's letter, and of the Prime Minister's letter of acknowledgment.

14 December, 1984

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"Aynhoe"
Doggett's Wood Lane
Chalfont St Giles
Buckinghamshire

0100
The Rt Hon Mrs Margaret Thatcher MP
10 Downing Street
London SW1

13th December 1984

Dear Prime Minister

ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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The Advisory Committee on Business Appointments understand that you would welcome their views on the recommendations contained in the Eighth Report from the Treasury and Civil Service Committee on the Acceptance of Outside Appointments by Crown Servants, which are of direct relevance to their work. The Committee have now carefully considered that Report and they hope the following comments will be helpful to the Government in formulating its response.

Extension of the Maximum two year period to five years

Recommendation (ii)

On no occasion since it was set up in 1975 has the Advisory Committee felt that it would have been appropriate to recommend a waiting period longer than two years, had such a sanction been available to them. Indeed, it has only been considered necessary to recommend the full two year period, available under the existing rules, in two cases. Furthermore, the Committee believe that any period in excess of two years would effectively constitute a bar to employment, rather than a postponement, since a prospective employer would almost certainly lose interest in the applicant; and after such a long delay, the applicant is unlikely still to be suitable for the appointment.

The Committee consider that the existing waiting period of two years provides a sufficient safeguard against any possible charges of impropriety.

Extension of the Advisory Committee's Role

Recommendation (xv) and (xvii)

The Select Committee have proposed that our remit be extended to cover all cases at under secretary level and above. They further recommend that the Advisory Committee should become

a source of advice for departments and ensure consistency by reviewing, periodically, the handling of cases at lower levels. Taken together, these two proposals would represent a considerable increase in the workload of what is essentially a very senior Committee whose Members, by definition, are extremely busy and have many other commitments.

The Advisory Committee understand the Select Committee's concern to secure consistency between the decisions taken on the basis of recommendations from them and those taken by Departments. We see no evidence, however, to suggest that the present rules are not being applied consistently and it remains the case, as it was at the time of the previous Select Committee enquiry into this subject, that the Management and Personnel Office (MPO) provides a means of ensuring consistency at all levels of the public service. Nevertheless, we feel that it is important to be able to demonstrate that consistency is, in fact, being actively encouraged and we therefore suggest that the MPO should be asked to provide us retrospectively with regular statistical reports on all the cases that have been referred to them. From these reports, the Chairman would select for detailed examination a sample of cases to ensure that their handling was consistent with the principles adopted by the Advisory Committee.

As to the proposal that all applications from under secretary level applicants and above should be considered by the Committee, we feel that the introduction of the type of retrospective check suggested in the previous paragraph should go some way to reduce the need for such a measure. But if the Government thought it appropriate, we would be ready and, indeed, we would see value in having all cases at deputy secretary level and above being sent to us for consideration together with such cases at lower levels which, in the view of the MPO raise new points of principle or special considerations.

We hope that this would not impose an excessive burden of additional work on the Members of the Advisory Committee; but we think it prudent to envisage that it may become desirable to enlarge our Membership to some extent if the extra volume of cases requires us to meet more often in panels.

More Use of Conditions Governing Behaviour

Recommendation (iii)

The Advisory Committee have made very little use of conditions which seek to preclude certain types of activity, preferring to rely almost exclusively on the use of waiting periods; they believe this is the most effective way of preventing an

individual, and especially a very senior officer, from undertaking work which, under the rules, should not be permitted. They consider it would be wholly impracticable, as well as inappropriate, for them to impose behavioural conditions and subsequently to check that these were being complied with. Furthermore, independent checks would be quite impossible without the type of powers given to an Ombudsman. We think, therefore, that having recommended a waiting period which takes account of likely future events, there is no need to do other than rely on the sense of honour and the professionalism of former Crown servants.

Membership

Recommendations (xx) and (xxi)

The Select Committee have recommended adding to the Advisory Committee's Membership two senior Members of the House of Commons. We recognise that questions of membership are entirely for you, but, having said that, we would deprecate any change which might introduce an element of current political partisanship into our proceedings. We also recognise, however, the advantage of having on the Committee (as has been the case since the Committee was formed) two former members of the House of Commons who can add a political dimension to the discussion, while at the same time being immune from present party political pressures.

The Select Committee also recommended that Members should be appointed for three years with two being replaced each year. Again, this is entirely a matter for you, but you may like to know that, in our experience, three years is rather too short a time. We would prefer to see a more flexible system, perhaps for three years in the first instance, but capable of renewal. Without such continuity, it might be difficult to achieve the greater consistency that the Select Committee themselves are seeking.

Publishing Decisions

Recommendation (xxii)

To announce decisions at the time they are taken, together with supporting details, would represent a significant departure from existing practice and would call into question the whole basis of confidentiality upon which the Advisory Committee works. We feel that our work would be severely hindered if this proposal were to be accepted, since applicants might be less likely to be ready to co-operate fully with us by providing detailed and sometimes confidential information.

Publishing Periodic Reports on the Workings of the System

Recommendation (xxiii)

It can be argued that there might be benefit in publishing statistical analyses, perhaps at three yearly intervals. There would, however, be a danger that purely statistical reports would not satisfy the Select Committee and they might well give rise to further pressure for additional information which we would wish to resist on the grounds of protecting confidentiality.

Applicants should always be interviewed

Recommendation (xii)

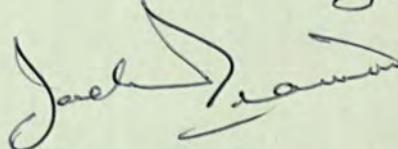
We believe that our present practice on this is right, ie we normally invite applicants to an interview where conditions (other than the minimum waiting period) are being contemplated. We would therefore be content with the proposal that applicants should have the right to be seen if conditions were imposed, if they so choose, but there should continue to be a measure of discretion and flexibility.

Meetings in Private

Recommendation (xxiv)

We would like to record our satisfaction that the Select Committee have recognised the necessity for the Advisory Committee's proceedings to be conducted in private. We also welcome the recommendation not to turn the Committee into a decision making body, though we believe this is dependent upon the Government not making announcements when they decide not to accept the Advisory Committee's advice. Such announcements could easily give rise to a breach of confidentiality.

While the Advisory Committee have agreed their views upon some of the other recommendations made in the Select Committee's Report, they doubt whether those recommendations would be regarded as "of direct relevance" to the Committee's work. If, however, any further comments are desired, the Committee would be glad to respond.

Yours sincerely,


DIAMOND



Prime Minister

Content with the

way Sir R. Armstrong proposes to handle this?

Ref. A084/2638

MR BUTLER

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FERB

4.10.

Treasury and Civil Service Select Committee Report:
Outside Appointments of Crown Servants

attached

Mr Hatfield sent you on 19 September a summary of the Select Committee's recommendations.

2. These recommendations are now being considered by a Working Group of the Departments principally affected, and I shall submit a draft response when that work is done. I will then make proposals for Ministerial consideration; I presume the Prime Minister will think that the response should be considered by Ministers collectively.

3. Some of the Committee's recommendations relate to the terms of reference and composition of the Advisory Committee. I propose, if the Prime Minister agrees, to ask the Advisory Committee to consider those recommendations and let us have their comments, so that these can be taken into account in preparing the Government's response.

Handwritten signature: RA

ROBERT ARMSTRONG

3 October 1984

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10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

Treasury and Civil Service Select Committee Report:
Outside Appointments of Crown Servants

The Prime Minister has seen your minute of 3 October (A084/2638) and is content with the way in which you propose to handle consideration of the recommendations of the Select Committee and the preparation of a Government response.

5 October 1984

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Prime Minister ²

Ref. A084/2517

MR BUTLER

Treasury and Civil Service Select Committee:
Outside Appointments of Crown Servants

The Prime Minister will wish to know that the Eighth Report from the Treasury and Civil Service Select Committee entitled "Acceptance of Outside Appointments by Crown Servants" will be published on Thursday 20 September.

- 2. The attached summary of recommendations is drawn from the Confidential Final Revise of the Report.
3. Sir Robert Armstrong is arranging for urgent consideration to be given to the Government's response.

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MS

R P HATFIELD

19 September 1984

CHAPTER 7

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

- (i) We recommend that the rules should be redrafted following the sequence of subjects in this report (paragraph 3.2).
- (ii) We recommend for under secretaries and above an extension of the maximum two year period of delay to five years (paragraph 3.13).
- (iii) We recommend the more extended use by the Advisory Committee and by Government Departments, particularly the Ministry of Defence, of conditions governing behaviour after leaving the public service. Enquiries relating to the adherence to the conditions should be made after one year to ensure that all such conditions are being complied with and this should be continued during the period to which the conditions relate (paragraph 3.17).
- (iv) We recommend that officials of the rank of under secretary and above leaving the public service should be required to give a written undertaking to abide by a code of conduct under which they would be prohibited for a period of five years from representing their new employer on specific and significant matters for which they were responsible in their official capacity. Contracts of employment would provide a useful further safeguard and, if they are introduced for civil servants, such a prohibition for senior officials could be included in them (paragraph 3.21).
- (v) In general we think our own system is based upon the correct approach. We would not want to replace it by a system relying exclusively on a statutory code of conduct (paragraph 3.22).
- (vi) We believe that sanctions may be needed if and when evidence becomes available of abuses of the present rules and the proposed code of conduct. If our recommendations on policing the rules and code of conduct are adopted, abuse should be effectively reported, so alerting Parliament to the need for review of suitable sanctions. We are impressed with the difficulties of introducing specific legislation and the problems of definition which would be involved and, therefore, recommend that, if sanctions become necessary, the Government should make it clear that it is prepared to take steps to abate automatically the pension of any civil servants who act in defiance of the rules on business appointments (paragraph 3.26).
- (vii) We recommend that the rules should state specifically that all under secretaries and above need to apply for approval to take up business appointments, and other civil servants need to when there has been contact with the prospective employer or they have been responsible for anyone having such contact or the employer concerned has extensive dealings with the civil servant's Department. Contact is to be understood as meaning not only face-to-face dealings but also involvement in such dealings behind the scenes (paragraph 4.6).
- (viii) We recommend that the rules should state explicitly and fully and in one place what the criteria are for deciding whether or not to give

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should state explicitly and fully and e for deciding whether or not to

approval to a proposed business appointment. The criteria should deal with the following points which we regard as essential:

- (i) if a civil servant has had contact with a prospective employer in the course of his official duties, the nature of his dealings with the employer is the crucial consideration. Contact is to be understood as meaning not only face-to-face dealings with the employer but also behind the scenes involvement in such dealings. It is relevant to know whether or not, in those dealings, the civil servant exercised a significant amount of discretion in determining the outcome or, if he was acting as a member of a team, the extent to which he was able to influence the outcome. It is important to know whether or not the employer would have benefited substantially from a favourable outcome. It is also relevant to know the nature of the job to which the civil servant proposes to go and the extent of the connection between it and his official job. The question is whether there has been or will be any potential for improper behaviour before or after the move;
 - (ii) if a civil servant has not had previous contact with his prospective employer or has had contact but of an insignificant kind as judged by the criteria in (i), the question of whether or not the prospective employer has extensive dealings with the civil servant's Department needs to be taken into account. If the employer has, it is important to establish, having regard to the nature of the work being offered, if the civil servant is being recruited because of his knowledge of the working of the government machine or his professional knowledge of some area of government activity and can be expected to have dealings with his old Department. If the answer is in the affirmative the question to be weighed is whether, following a move, any potential damage to the Department's interests is outweighed by any potential public benefit;
 - (iii) if the prospective employer is operating in a competitive field, it is necessary to establish that competing firms do not object to the appointment. If competition is restricted it is necessary to look at the recruitment pattern to put the situation in perspective (paragraph 4.19).
- (ix) We recommend that the rules should lay down the following principles in the light of which applications should be judged:
- (i) those in authority over those directly involved in dealings with a firm should be deemed to be involved;
 - (ii) in considering the nature of the job to be taken, it should be borne in mind that any civil servant taking up an appointment to the board of a company will share with the rest of the board a collective responsibility for all the activities of the company including its dealings with his old Department (paragraph 4.29).
- (x) On balance, we do not think a case has been made for a complete ban on the movement of permanent secretaries into the private sector. We believe greater openness in implementing the rules is the most effective way of removing the suspicion of impropriety (paragraph 4.35).

- (xi) We recommend that Departments review their arrangements for ensuring that all staff who, judged by the criteria we set out in paragraph 4.6, might possibly be within the scope of the rules are specifically informed of this fact before resignation or retirement (paragraph 5.1).
- (xii) We recommend that applications for approval to take up a business appointment should be made in writing in a standard form along the lines of that used by the Ministry of Defence. Applicants should always be interviewed if a refusal or the imposition of conditions is being contemplated. In other cases applicants should have the right to be interviewed (paragraph 5.4).
- (xiii) We recommend that prospective employers should be consulted about applications and informed of the outcome and any conditions imposed (paragraph 5.5).
- (xiv) We recommend that the rules should require that officials of the rank of under secretary and above do not discuss offers of post-retirement employment with prospective employers within the last year of service prior to retirement. If offers are made to such officials in mid career or to more junior officials in any circumstances, they may be discussed with prospective employers but the offers should first be reported to those in authority and appropriate permissions sought (paragraph 5.6).
- (xv) We recommend that the Advisory Committee should consider all applications from under secretaries and above (paragraph 5.8).
- (xvi) We recommend that the rules should state explicitly that the MPO should be consulted before a decision is taken in cases which raise substantial doubts and for which no precedents exist. The MPO should periodically review a selection of cases where Departments have taken the decisions without consultation (paragraph 5.11).
- (xvii) We recommend that the MPO should take the initiative in sending to the Advisory Committee before a decision is taken Departmental cases on which it has been consulted and which raise issues of importance. The Advisory Committee should take the initiative in periodically calling for and reviewing a selection of the decisions taken by Departments after consulting the MPO. In these ways, the Advisory Committee would become a source of advice for Departmental Ministers as well as the Prime Minister (paragraph 5.12).
- (xviii) We recommend that the sections of the MPO dealing with business appointments and standards of conduct should be merged, as a contribution towards securing more effective leadership in this field (paragraph 5.13).
- (xix) We do not recommend turning the Advisory Committee into a decision-making body, provided the Government always make an announcement when they decide not to follow the Committee's advice (paragraph 5.14).
- (xx) We recommend that the Government should add two senior back bench Members of the House of Commons to the Advisory Committee
- (xxi) We recommend that those appointed for 1
- (xxii) We recommend that the advice of the public bodies they are taken into account an indication of whether they have been accepted
- (xxiii) We recommend that the reports on the
- (xxiv) We have read the Committee on
- (xxv) We recommend that the movement of public bodies and other public bodies in the MPO (
- (xxvi) We would wish to see a result of the public bodies appointments
- (xxvii) We believe that the taking up of public sector appointments should take ap

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- (xxi) We recommend that members of the Advisory Committee should be appointed for three years and two replaced each year (paragraph 5.17).
- (xxii) We recommend that the decisions taken by the Government on the advice of the Advisory Committee should be announced at the time they are taken, together with the terms of any conditions imposed and an indication of the occasions when the Committee's advice has not been accepted (paragraph 5.18).
- (xxiii) We recommend that the Government should publish periodically reports on the working of the system (paragraph 5.19).
- (xxiv) We have reached the conclusion that the hearings of the Advisory Committee ought not to be in public (paragraph 5.20).
- (xxv) We recommend that information about the levels and patterns of movement of board members and senior staff of nationalised industries and other public bodies should be collected by the new unified section in the MPO ((xviii) above) (paragraph 6.3).
- (xxvi) We would wish to be informed, in due course, of the extent to which, as a result of the approaches made by Departments, non-departmental public bodies have adopted rules to govern the taking up of outside appointments (paragraph 6.5).
- (xxvii) We believe that it would be appropriate, in principle, for rules governing the taking up of outside appointments to be adopted throughout the public sector and we recommend that the Departments concerned should take appropriate action to that end (paragraph 6.6).