

Dear Rachel Kent

Financial Regulators Complaints Commissioner – Conflicts of Interest

At Positive Money, we have noted the recent announcement that you have been appointed as Financial Regulators Complaints Commissioner with effect from 1 January 2024.

Background

Positive Money is a not-for profit organisation which pursues a vision for a money and banking system that enables a fair, democratic and sustainable economy¹. We have researched and published extensively on the risks to this vision presented by the relationships between the financial services industry and legislators, regulators and others as set out in our 2022 Report, “The Power of Big Finance”².

You are currently a senior partner in the financial services regulatory team at the law firm Hogan Lovells LLP, advising a range of financial services businesses. We understand from sources in the media that you plan to remain on the payroll at Hogan Lovells alongside your role as Complaints Commissioner, although we have not been able to confirm whether this is the case.

If this were the case, it would give rise to significant risks of both actual and apparent conflicts of interest, as set out below. No details of how you might be able to manage these actual and apparent conflicts have been given, either in the announcement of your appointment or on the Commissioner’s website.

We are therefore writing to you now to ascertain whether you do indeed intend to remain on the payroll of Hogan Lovells and, if so, to seek your response to the points made below.

Actual and apparent conflicts of interest

A complaint may be brought to the Commissioner by a business within the financial sector which is not satisfied with the relevant regulator. This business may be former, current, or prospective client of Hogan Lovells; and, even where it is not, the business may be a member of an industry lobby group to which Hogan Lovells contributes and/or may be bringing a complaint where your decision could benefit clients of Hogan Lovells.

A complaint may be brought to the Commissioner by a consumer who has suffered detriment after dealing with a financial services business and is not satisfied with the relevant regulator’s response. The determination of that complaint is likely to affect the way the regulator deals with that financial services business in the future and with other similar financial services businesses. Any of these may be a former, current or prospective client of Hogan Lovells.

¹ <https://positivemoney.org>

² <https://positivemoney.org/wp-content/uploads/2022/06/Positive-Money-The-Power-of-Big-Finance-Report-June-2022.pdf>

Whether a complaint is brought by a financial services business or by a consumer or non-financial business, therefore, there are risks of actual or apparent conflict of interest if you have a direct financial connection to a professional services firm which caters to the interests of the financial services sector.

Relevant principles

Your appointment as Commissioner is a public appointment and, as noted in the advertisement for the role³, you are required to adhere to and uphold the Seven Principles of Public Life. These include requirements to avoid placing yourself under any obligation to people or organisations that might try inappropriately to influence you in your work; to take decisions without discrimination or bias; to be accountable and submit yourself to scrutiny; and to be open and transparent.

For this reason, none of your predecessors (so far as we are aware) has had a continuing financial relationship with financial sector businesses or their professional advisers.

If it is true that you intend to remain on the payroll of Hogan Lovells, there will inevitably be a perception that there are serious conflicts of interest surrounding your work as Commissioner and there will be numerous situations in which actual and direct conflicts of interest arise. We doubt that you would be able to discharge the role effectively in these circumstances.

FRCC conflict of interest management

The above concerns raise the question of what policies the Complaints Commissioner has in place for managing conflict of interest risks. Unlike many other important public appointments, it appears the Commissioner is not required to disclose a register of interests, as far as we can gather. Is this the case or will we be able to find such information on the FRCC website?

Response requested

We would be grateful for your reply addressing whether you do intend to remain on the payroll of Hogan Lovells and, if so, how you will avoid both the appearance and fact of conflicts of interest.

If we do not hear from you within two weeks (by 26 January), we may pursue answers to these questions through other channels.

Yours sincerely

Simon Youel,
Head of Policy and Advocacy, Positive Money

³<https://apply-for-public-appointment.service.gov.uk/roles/7640?back=%2Froles%3FtitleSearch%3D%26bodySearch%3D%26department%3D1020%26regulated%3D%26remunerated%3D%26status%3Dopen%26sort%3DcreatedAt%253Adesc>