



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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By email

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Dear Mr McNeil

Thank you for your detailed response to my letter as Chair of the Advisory Committee on Business Appointments (ACOBA), dated 30 May. The exchange of correspondence is annexed to this letter. You have provided additional context regarding your contact with a number of ministers and officials in April 2023 on behalf of Storm Energia (and Lincoln Storm Group more widely).

You contend that your correspondence was not seeking to influence a government decision. You describe your contact as neither '*...lobbying or seeking to influence a governmental decision or policy*'. Rather, you said its purpose was to:

- draw the attention of the Environment Agency to it having '*...made a decision affecting Storm Energia and Lincoln Storm Limited without engaging with the detailed submissions made on behalf of Storm Energia and Lincoln Storm Group Limited*';
- suggest an approach to resolve the issue;
- '*...invite the Environment Agency to reach its own decision in a way that was procedurally and analytically correct*'; and
- point out to the Secretary of State of the Department for Environment Food and Rural Affairs (DEFRA) a mistake the department made and the consequences if it was not corrected.

You quote the government's Business Appointment Rules (the Rules) stating ACOBA may recommend that the lobbying ban need not prevent communications with government on matters that are an integral part of the normal course of business. It was on this basis that you informed ACOBA, in your application form and in further email correspondence, that you sought to have contact with government on behalf of your employer.

I have seen emails sent to ACOBA's secretariat to explain the type of contact you wished to have. You said contact would be appropriate - because it was part of the

normal course of business for the company, and contact would not be with your former department - for example contact with the Environment Agency, HMRC or DIT.

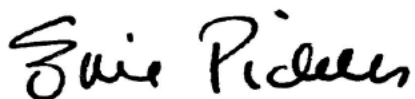
During this exchange of correspondence you were informed that whilst some of the contact described was routine, it could be construed as lobbying. ACOBA confirmed that it would likely fall foul of the lobbying ban for you to contact government to, for example, help secure a licence or solve regulatory issues. You confirmed you understood, had been grateful for the 'counsel' offered, and would abide by the conditions imposed. On this basis the letter specifically set out at paragraph 7 that:

'[You] informed the Committee [your] role may involve contact with government regarding operational matters such as logistics, licences and permits. The Committee considered that any such contact which sought to influence a government decision, regardless of which department, would not be in keeping with the lobbying ban which applies under the Rules.'

Your correspondence sought to impact decisions made within the department and one of its agencies. I cannot see how else the correspondence or the description you have provided above could be interpreted. Moreover, as a former senior official with a knowledge across the Civil Service and therefore all departments it was inappropriate to directly contact senior government officials and a minister to seek to influence decisions and actions on behalf of the company paying you to do so. Given that you were specifically advised against this kind of contact you have no reasonable excuse for your conduct.

Your actions were a clear disregard for ACOBA's advice and are unacceptable.

In line with the Committee's policy of transparency, correspondence on this matter will be published on our website; and this letter will be reported to the Cabinet Office, as the owner of the Rules.

A handwritten signature in black ink that reads "Sir Pickles". The signature is written in a cursive, slightly stylized font.

The Rt Hon Lord Pickles

Correspondence from Rupert McNeil to Lord Pickles, 30 May 2022

Dear Lord Pickles

Thank you for your letter of 22nd May on behalf of the Advisory Committee on Business Appointments (ACOBA).

I take my obligations and commitments very seriously and I have taken care to ensure compliance with the Committee's advice in relation to my role as Chairman of Storm Energia, a Licensor of my previous employer, Lincoln Storm Group Limited. In your letter you state that there have been 'breaches' and 'multiple breaches'. This is incorrect. This letter sets out an account of my interactions and the compliance with my obligations.

I have contacted the offices named in your letter as follows.

21 April 2023 letter to the Environment Agency

The first occasion, on 21 April 2023, I wrote a letter to Mark Bowhay of the Environment Agency's illegal waste export team. This was part of a continuum of communication concerning a prohibition notice that the Environment Agency had placed on a shipping container containing a Lincoln Storm Limited product. In particular I was responding to a suggestion from the Environment Agency that I would have to contact its "Definition of Waste Service" for the reasons why it stopped the container, and that only the Definition of Waste Service department of the Environment Agency was able to provide reasons why a material is either a "waste" or has "end-of-waste" status. The Definition of Waste Service is an optional service that companies may choose to use to gain a non-binding opinion from the Environment Agency on the waste classification of a material. Companies pay a commercial rate for this opinion. Companies also have a right to self-declare a material as having reached "end-of-waste" status having conducted their own detailed analysis. Such an analysis had been produced and submitted in this case.

Where the Environment Agency brings enforcement action on the basis that it has reasonable grounds to suspect that a material is waste, the Environment Agency has to provide reasons for its decision. I am not of the view that if the Environment Agency wishes to bring enforcement action against a company on its classification of a material as a non-waste, that the respondent to that enforcement action should pay a commercial rate to the Environment Agency for an advisory opinion on why the Environment Agency suspects that material to be a waste. That is a position I believe to be incorrect in law and not the function of the Definition of Waste Service.

The letter from the Environment Agency confirmed to me that it was not considering these business-critical issues through the proper channels, and I sought to raise that issue with the relevant offices of government to clarify that position and avoid resorting to the courts. I sought to clarify (a) the interpretation of the law and procedure and (b) the nature of material with the relevant offices of government. This communication formed an integral part of the normal course of this business and my duty as Chairman of Storm Energia.

Storm Energia, through its licensee Lincoln Storm Group Limited, is the UK's leading Lithium-Ion battery recycling operator and will form part of the UK's critical national infrastructure. The result of the Environment Agency's stance, which I believe has arisen out of an incorrect application of the law, threatened Storm Energia's commercial operations in the UK and posed a threat to the UK's energy security and net zero policy. As leaders in the development of this technology, Storm Energia's withdrawal from the UK would have direct consequences for the UK's leadership in Science and Technology; and Business and Trade.

The Committee states that my correspondence sought to 'influence' decisions of, specifically, the Environment Agency and DEFRA. I was not seeking to influence a decision of the Environment Agency or DEFRA. I was writing to draw the attention of the Environment Agency to the fact that it had made a decision affecting Storm Energia and Lincoln Storm Limited without engaging with the detailed submissions made on behalf of Storm Energia and Lincoln Storm Group Limited; and to suggest an approach that Storm Energia and Lincoln Storm Group Limited could take with the Environment Agency to resolve the issue. The effect of the correspondence was to invite the Environment Agency to reach its own decision in a way that was procedurally and analytically correct.

25 April 2023 letter to the Secretary of State for DEFRA

The second occasion was on 25 April 2023 after the Environment Agency informed Storm Energia that it would be restricting its imports and repatriating its shipping containers. This was based on a mistake of fact, seemingly because the relevant enforcement department of the Environment Agency had not communicated with the local Area Team that has oversight of Storm Energia's operations. I wrote to the office of the Secretary of State for DEFRA, who bears governmental responsibility for the Environment Agency, to inform them of the position and the urgent commercial consequences for Storm Energia should the mistake not be corrected promptly; namely, that Storm Energia's UK operations would become imminently commercially unviable and Storm Energia would have to close its UK operations. I do not interpret the Business Appointment Rules to have the effect that the act of writing a letter to draw attention to a mistake and the consequences of it not being corrected would amount to lobbying or seeking to influence a governmental decision or policy. Such a construction would be absurd.

Communications with the Chief Executive of the Environment Agency

The Business Appointment Rules state that ACOBA may recommend that the lobbying ban need not prevent communications with Government on matters that are an integral part of the normal course of business for the organisation concerned; and they go on to state that the application form prompts applicants to provide the relevant details about the proposed employment or appointment that will assist with the formulation of an appropriate lobbying condition. (They thereby contemplate that, following such disclosure by the applicant, ACOBA will give adequate advice in the advice letter, and in particular, though the conditions stated within it, to guide the senior official on the ambit of permissible ordinary business communications free of the lobbying prohibition, a point that I return to below in commenting on the advice letter.) On any occasion that I have written to, or copied in, the Chief Executive of the

Environment Agency, it is because that office bears direct responsibility for the actions of the Environment Agency, which regulate the operations of Storm Energia. Given the proximity of Storm Energia's business to Environment Agency regulation, this falls squarely within the definition of "an integral part of the normal course of business" within the meaning of the Business Appointment Rules. If I were prohibited from contacting that office in my capacity as chairman of Storm Energia because I had previously held a senior civil service post, Storm Energia would be put at a distinct disadvantage. It would not be improper for anyone in an equivalent position who did not have my career history to contact the chief executive of their regulator.

ACOBA's Advice Letter to me

ACOBA's Advice Letter to me of October 2022 specifically alludes to the reservation that I made in stating that the position for which advice was sought involved direct contact with officials, including officials of the Environment Agency, in relation to such matters as licences or permits. I note that those examples are not exhaustive and are within the general operational function of my role. If "government decision" is defined so broadly as to mean decisions made by the Environment Agency concerning Storm Energia's operations, then these may also be captured by the term "lobbying". Given that such communication is contemplated in the advice letter, it is unclear what communication would be considered to be "lobbying", and what communications would be "an integral part of the normal course of business". My job responsibilities are cited in my advice letter, ACOBA being aware of the remit of my role. If ACOBA contemplated that the lobbying prohibition should apply to ordinary business communications, made with a view to correcting errors by Government decision-makers, it could have said so with clarity in the advice letter or the conditions stated in it. By recording in the advice letter both my reservation and my understanding that I would abide by the lobbying prohibition and the conditions imposed, ACOBA effectively acknowledged that the two were not incompatible, but left me to do the best I could to make sense of their compatibility. I believe that I have done so in a sensible and reasonable fashion.

The Purpose of the Business Appointment Rules

Reserving for present purposes the vexed question of the proper construction of the term "lobbying", what is unquestionably clear in the Appointment Rules is that the stated purpose of the Business Appointment Rules is to avoid:

- any suspicion that an appointment might be a reward for past favours
 - the risk that an employer might gain an improper advantage by appointing a former official who holds information about its competitors, or about impending government policy
 - the risk of a former official improperly exploiting privileged access to contacts in government
 - unfair questioning or criticism of the integrity of former civil servants
- Those clearly articulated purposes are a guide to the construction of the term "lobbying",

particularly where it is otherwise obscure. It is therefore instructive to consider how they apply to these facts.

I do not believe that there is a risk or perceived risk that any of these consequences would have resulted from my actions detailed above. For the avoidance of doubt, my contact has made use of neither direct nor indirect contacts or ministerial contacts. All communication has been through offices and officials, and through official channels. I had neither met nor worked with any of these individuals. Addressing the risk that I may draw on privileged access to contacts from my former governmental department, my ACOBA advice letter approving my appointment to Lincoln Storm stated:

“The Cabinet Office had no concerns and recommended the standard conditions and said Mr McNeil may draw on his skills and experience gained in office to advise Lincoln on its strategic initiatives provided he does not draw on any privileged information or contacts from his time in office when:

- expanding and deepening the company’s relationships with national and local governments;*
- bringing the benefit of the Company’s experience into local, national and global standard-setting and regulatory affairs; and*
- on critical issues related to Government relationships and strategic alliances”*

The particular advice on this issue in my advice letter was *“for two years from his last day in Crown service, he should not become personally involved in lobbying the UK government on behalf of Lincoln Storm Group Limited (including parent companies, subsidiaries, partners and clients); nor should he make use, directly or indirectly, of his contacts in the government and/or ministerial contacts to influence policy, secure business/funding or otherwise unfairly advantage the Lincoln Storm Group Limited (including parent companies, subsidiaries, partners and clients)”*

By virtue of my former position, I have access to contacts within the departments mentioned in your letter. For example, I know the Permanent Secretaries of the relevant departments. I have never contacted them concerning any business of Storm Energia or other companies. This is for two reasons: first and foremost, I do not think it would be an honourable way of conducting business; second, I consider that were I to do so, it is likely that I would be in breach of the Business Appointment Rules. On the contrary, the letters I have written are not private communications with contacts to whom I have privileged access: they are letters that are open and shared to government offices. By writing to the offices of government departments, I have not drawn on any privileged information or contacts from my time in office. As stated above, I have not sought to influence policy; nor have I sought to secure business/funding or otherwise unfairly to seek advantage for the Lincoln Storm Group Limited (including parent companies, subsidiaries, partners and clients). I do not consider that I have made use of any contacts within Government to which competitors do not have access and thereby risked obtaining an unfair commercial advantage on behalf of any of these companies.

My actions detailed above were in line with the Business Appointment Rules and the particular advice given to me on my appointment. I believe I have behaved honourably in all of my dealings as chairman of Storm Energia and any other companies and would be very happy to speak with the Committee in person on any aspect of the above. I have sought advice from senior counsel and confidently maintain my position that I have acted with integrity, honour and within the letter and spirit of the ACOBA advice and rules under which ACOBA operates.

With kind regards

Rupert McNeil

Correspondence from Lord Pickles to Rupert McNeil, 22 May



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Dear Mr McNeil

I am writing to you in my capacity as Chair of the Advisory Committee on Business Appointments (the Committee). It was brought to our attention by the Department for Environment Food and Rural Affairs (DEFRA) that you contacted a number of ministers and officials in April 2023 on behalf of Storm Energia (and Lincoln Storm Group more widely) - including:

- the Secretary of State of DEFRA
- the Secretary of State for Department for Business and Trade
- Secretary of State for Department for Energy Security and Net Zero
- Secretary of State for Department for Science, Innovation and Technology
- the Government Chief Scientific Officer and the Chief Executive of the Environment Agency

This correspondence seeks to influence decisions of the Environment Agency and DEFRA.

You sought and received advice under the government's Business Appointment Rules (the Rules) on your role with Lincoln Storm Group (which includes Storm Energia) and took up the role in October 2022.

The government's Rules exist to protect the integrity of government. The Rules seek to consider and mitigate various risks associated with movement out of government service. A major consideration is the risk a former Crown servant could offer an advantage or unfair access to an organisation through privileged access to contacts and influence gained from government service. To help mitigate this particular risk there is a ban on former Crown servants at your seniority lobbying the government for two years on leaving office.

You informed the Committee that in the course of your duties you might contact government and its agencies on matters relating to licences and permits. You were advised that contact with the government to influence a decision would be incompatible with the lobbying ban. You appear to have disregarded that advice on multiple occasions. The Committee therefore requires an explanation in respect of your contact with government on behalf of Lincoln Storm Group Limited/Storm Energia as it appears incompatible with the Rules and the advice you accepted to abide by. It is the Committee's intention to report your apparent multiple breaches of the Business Appointment Rules to the Government.

In line with the Committee's policy of transparency, we will be publishing correspondence on this matter. If you wish your explanation to be published alongside this, please reply to this letter before Monday 29 May 2023. Any failure to respond will be included in our publication.

A handwritten signature in black ink that reads "Sir Pickles". The signature is written in a cursive, slightly slanted style.

The Rt Hon Lord Pickles