

From the Chair



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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BUSINESS APPOINTMENT APPLICATION: The Rt Hon Kwasi Kwarteng MP, former Chancellor of the Exchequer at His Majesty's Treasury (HMT) & Secretary of State at the Department for Business, Energy and Industrial Strategy (BEIS). Paid appointment with Fortescue Future Industries.

1. You sought advice from the Advisory Committee on Business Appointments (the Committee) under the government's Business Appointments Rules for Former Ministers (the Rules) on an appointment you want to take up with Fortescue Future Industries (FFI).
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 made during your time in office, alongside the information and influence you may offer FFI. The material information taken into consideration by the Committee is set out in the annex.
3. Under the Rules, the Committee's remit is to consider the risks associated with the actions and decisions you made during your time in office, alongside the information and influence you may offer FFI. The Committee considered whether this appointment was unsuitable given your former role as Secretary of State for Business, Energy and Industrial Strategy, and you seek work with an energy company.
4. The Committee must also consider the information provided by you and the department. The Committee has advised that a waiting period and a number of conditions be imposed to mitigate the potential risks to the government associated with this appointment under the Rules. The Committee's advice is not an endorsement of the appointment.
5. The Ministerial Code sets out that ministers must abide by the Committee's advice. It is an applicant's personal responsibility to manage the propriety of any appointment. Former ministers of the Crown, and Members of Parliament,

are expected to uphold the highest standards of propriety and act in accordance with the 7 Principles of Public Life.

The Committee's consideration

6. FFI is a green energy company. It is committed to producing green hydrogen containing zero carbon from renewable energy sources and building a global portfolio of renewable energy, green hydrogen and green ammonia projects. It is based in Australia and operates globally, including in the UK.
7. Less than a year ago, you were the Secretary of State responsible for the UK's energy policy. You oversaw decarbonisation, net zero policy and drove the government's development of the UK's first Hydrogen Strategy to support the sector. This included the government's position on production, distribution, storage and uses of hydrogen; and securing economic opportunities and investment in the sector.
8. FFI is a stakeholder of the UK government as both a potential importer of hydrogen to the UK, and a potential investor in UK hydrogen installations. Your previous departments confirmed to the Committee that you met with FFI whilst in office:
 - At the Department for Business, Energy and Industrial Strategy (BEIS), you met the company to discuss the potential of hydrogen. Particularly around renewable hydrogen in large scale industries, which have traditionally relied on the oil and gas industry for fuel and their long term development; and
 - At HM Treasury (HMT), as Chancellor, you met with representatives of FFI and its parent group, Fortescue Metals Group. This was to discuss the US Inflation Reduction Act's impact on green investment, and the potential for a similar approach in the UK.
9. The Committee¹ considered it is significant that you and your former departments confirmed there were no policy, regulatory or funding decisions you made in office specific to FFI (nor which favoured JCB and Ryze Hydrogen who work with FFI and whom you also met with during your time at BEIS).
10. The Committee also took into consideration your strong support for the government's pro carbon capture/blue hydrogen position - as the best way to reach net zero. It is relevant that this has not changed despite lobbying from FFI to increase support for green hydrogen. Therefore, the policy you supported could be seen as not particularly advantageous to the company.
11. As the former Chancellor and Secretary of State with responsibility for Energy, you would have had access to information that could be perceived to benefit FFI. There are limitations which limit the risks here:

¹ This application for advice was considered by Jonathan Baume, Baroness Jones of Whitchurch; The Rt Hon Lord Eric Pickles; Richard Thomas and Mike Weir. Isabel Doverty and Sarah de Gay were unavailable. Andrew Cumpsty was recused.

- HMT confirmed it did not have any concerns regarding your access to sensitive information during your time as Chancellor and any information you did possess at the time was later superseded by policy changes.
- The department which now has responsibility for energy (the Department for Energy Security and Net Zero - DESNZ)² confirmed relevant information from your time in office is now in the public domain and it does not consider you have access to information that would raise a particular conflict or offer the company an unfair advantage.
- It is also significant that almost 11 months have now passed since you left your role in energy, and there have been significant changes in the administration since.

12. However, given the broad range of access to information on energy matters there remains a risk you could offer any energy company unfair access to information and insight from your time in government.

13. The Committee agreed with DESNZ's view there are real and perceived risks you could use your influence and network gained in office to provide an unfair advantage to FFI. Particularly given its interest in lobbying the government to change its approach and provide greater support for blue energy. You have confirmed you will not lobby the government and seek to ensure there can be no conflict of interest in relation to your work.

The Committee's advice

14. The Committee noted the mitigating factors above that help to reduce the risk associated with your access to information. Given the company's work in the UK will overlap directly with your access to information and responsibilities for green energy and the hydrogen energy market in the UK, the Committee has recommended you are prevented from working in any aspect of the UK energy sector. This would not prevent you carrying out the role you have described for the rest of the global market that FFI operates in.

15. You confirmed there will be no contact with government in this role, in line with the expectations set out in the Rules and you are subject to the lobbying ban. The Committee's advice is that you must also ensure you have no direct engagement with the government on behalf of FFI as any contact would raise a reasonable concern of lobbying - particularly given its interest in influencing government policy.

16. The Committee considered it was necessary for there to be a significant gap between your access to information and decision making and taking up a role with FFI. The Committee recognised the opportunity for you to offer an unfair advantage is limited, given you are prevented from advising on the UK energy sector by the conditions below. In the circumstances, it considered that 12

² Following the machinery of government changes, BEIS split into the Department for Energy Security and Net Zero, the Department for Science, Innovation and Technology and the Department for Business and Trade.

months from your last day in ministerial office would be a long enough gap to sufficiently reduce the real and perceived risks.

17. The remaining inherent risks associated with your access to information and influence gained from your time in office are appropriately mitigated by the remaining conditions below.
18. The Committee advises, under the government's Business Appointment Rules, that your role with **Fortescue Future Industries** should be subject to the following conditions:
 - a waiting period of 12 months from your last day in ministerial office;
 - you should not draw on (disclose or use for the benefit of yourself or the persons or organisations to which this advice refers) any privileged information available to you from your time in ministerial office;
 - for two years from your last day in ministerial office, you should not become personally involved in lobbying the UK government or its arms' length bodies on behalf of Fortescue Future Industries (including parent companies, subsidiaries, partners and clients); nor should she make use, directly or indirectly, of her contacts in the government to influence policy, secure business/funding or otherwise unfairly advantage Fortescue Future Industries (including parent companies, subsidiaries, partners and clients);
 - for two years from your last day in ministerial office, you should not advise Fortescue Future Industries (including parent companies, subsidiaries, partners and clients) on the UK energy sector;
 - for two years from your last day in ministerial office, you should not have any engagement on behalf of Fortescue Future Industries (including parent companies, subsidiaries, partners and clients) with the UK government or its arm's length bodies; and
 - for two years from your last day in ministerial service, you should not provide advice to Fortescue Future Industries (including parent companies, subsidiaries, partners and clients) on the terms of, or with regard to the subject matter of, a bid with, or contract relating directly to the work of the UK government or its arm's length bodies.
19. The advice and the conditions under the government's Business Appointment Rules relate to your previous role in government only; they are separate to rules administered by other bodies such as the Office of the Registrar of Consultant Lobbyists or the Parliamentary Commissioner for Standards. 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.
20. 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 Civil Service Code or otherwise.

21. 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'*.
22. You must inform us as soon as you take up employment with this organisation, or if it is announced that you will do so. You also need to inform us if you propose to extend or otherwise change the nature of your role as, depending on the circumstances, it may be necessary for you to make a fresh application.
23. Once the appointment has been publicly announced or taken up, we will publish this letter on the Committee's website, and where appropriate, refer to it in the relevant annual report.

The Rt Hon Lord Pickles

Annex - Material Information

The role

1. You stated that FFI is a global green energy business committed to producing green hydrogen containing zero carbon, from 100% renewable energy sources. You also said FFI is a global firm focused on the efforts to decarbonise heavy industries. Its website says FFI is leading the green industrial revolution, developing technology solutions for hard-to-decarbonise industries, while building a global portfolio of renewable energy, green hydrogen and green ammonia projects. It also says FFI is leading the world effort to decarbonise *'hard-to-abate'* sectors and is responsible for the proposed decarbonisation of parent company Fortescue Metals Group (an Australian iron ore company) which it describes as one of the biggest resources companies in the world.
2. Though its an Australian company, it also operates in the UK and elsewhere:
 - In November 2021 it was announced FFI would build a plant in Río Negro Province, Argentina to produce green hydrogen.
 - In March 2022, FFI acquired UK-based Williams Advanced Engineering (WAE) As part of this acquisition, FFI and WAE will jointly develop the *'..world first, zero emission electric Infinity Train that charges itself using the Earth's gravitational force'*.

- It was announced in June this year FFI is to open a new plant near Oxford. *‘The purpose-built factory in Banbury will cover 13,500 m2 and will enable automated assembly for battery modules and packs, assembly of power conversion and power systems, as well as truck and train production support’.*
3. In your paid, part-time (2 days per week) role as Senior Advisor, you stated your role will be providing strategic advice to FFI as it seeks to promote decarbonisation. Your role will include advising on:
 - macroeconomic trends;
 - geo-politics (particularly in relation to climate change and energy);
 - development of renewables in a global context, particularly Europe, Africa and the Middle East;
 - abatement of fossil fuels, and the uses of hydrogen and renewables in existing power grids; and
 - use of other technologies, such as small modular nuclear reactors and their preferential role in the production of green hydrogen.
 - you also said your role will include giving occasional keynote speeches, taking part in roundtable discussions.
 4. You said your role with FFI is a *‘continuation, in very different circumstances’*, of the work you conducted as a minister responsible for energy during your time at BEIS. You said you considered the FFI role would not represent a conflict of interests as the company is international and the parent company is based in Australia.
 5. You also confirmed you will have no contact with government in this role and are keen to comply with the Rules - noting this role is strategic in focus, rather than based on your time in office 10 months ago. You also said you have been careful to make sure during your conversations with FFI that there should be no conflict of interest in any future role you undertake with the company.
 6. You said you were offered the role as a result of conversations you had with Mark Hutchinson (CEO of FFI) and Andrew Forrest (CEO of Fortescue Metals Group) after you left office.

Dealings in office

7. You advised the Committee that you were involved in the policy around promoting the manufacture and usage of hydrogen, but did not make any decisions specific to FFI. You stated that you had general meetings with Andrew Forrest and others in the FFI team during your time at BEIS, where you discussed the potential of hydrogen, particularly renewable hydrogen in large scale industries, which have traditionally relied on the oil and gas industry for fuel and their long term development. You added that during your time at BEIS, you had meetings with many producers of hydrogen energy and other businesses engaged in renewable sources of energy, including manufacturers of offshore wind plants, solar power installations across the broad area of decarbonisation.

8. You stated that FFI has a stakeholder relationship with your former department, but said no contracts were awarded during your time at BEIS to hydrogen producing companies.

Departmental Assessment

9. DESNZ, DSIT and HMT provided their views on your application.
10. DESNZ stated you made regulatory and/or policy decisions that affected the hydrogen sector broadly, however no decisions that specifically benefited FFI.
11. All departments confirmed that no commercial or funding decisions were made that specifically impacted FFI. The Hydrogen Strategy³ committed to £240 million for government co-investment in production (not importation) capacity through the Net Zero Hydrogen Fund - *'a hydrogen business model to bring through private sector investment, and plans for a revenue mechanism to provide funding for the business model'*.
12. DESNZ stated it has a departmental relationship with FFI - the department maintains occasional contact with FFI both as a potential importer of hydrogen to the UK, and a potential investor in UK hydrogen installations.
13. DESNZ confirmed the details of your interactions with FFI as described above, with HMT also confirming that you met Andrew Forrest and Mark Hutchinson on 26 September 2022. You collectively discussed the US Inflation Reduction Act's impact on green investment, and the potential for a similar approach in the UK. The act recently passed in the US introduced a clean hydrogen production tax credit and extended the existing investment tax credit to hydrogen projects and standalone hydrogen storage technology. This is designed to lower costs and incentivise green energy. This did not lead to specific decisions made by you whilst you were Chancellor.
14. It added JCB and Ryze Hydrogen are also stakeholders in respect of business and industrial strategy (now sits with the Department for Business and Trade) and noted:
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 - Ryze Hydrogen were a member of the Hydrogen Advisory Council which you would have at times attended or chaired. Additionally you met the company on an individual basis on at least two separate occasions.
 - JCB were present at wider stakeholder events that you attended (eg roundtables or ministerial receptions). Whilst you were a minister of state (pre SoS) you would have had frequent cause to engage with JCB as a stakeholder.
15. DESNZ stated that you did not possess any sensitive information specific to FFI - the department stated whilst the broad perspectives/insights gained during your time are likely to be valuable to FFI, the UK's hydrogen policy landscape is widely publicly available and therefore not privileged. Further,

³ <https://www.gov.uk/government/publications/uk-hydrogen-strategy>

given the passage of time, it is unlikely that any UK policy information from your time as Secretary of State would offer any specific competitive advantage to the company.

16. **Importing Hydrogen** - DESNZ stated that FFI's interest in the UK hydrogen market to date has largely focused on importing hydrogen already produced overseas (and transported to the UK in the form of ammonia). In October 2021, FFI signed a MOU with JCB/Ryze (both UK businesses owned by the Bamford family). Under the partnership, FFI will lead green hydrogen production and logistics to the UK market, and JCB and Ryze will manage green hydrogen distribution and development of customer demand in the UK (purchasing 10% of its production). The UK has published its policy position in the UK Hydrogen Strategy⁴. DESNZ said that given the published position, and the passage of time, it is unlikely you would be able to draw on additional information or insights on government's perspectives on importing hydrogen from your time in office to support the company.
17. **Hydrogen Funding** - DESNZ noted FFI may have a future interest in applying for support (e.g. from the Hydrogen Production Business Model) to build hydrogen projects in the UK. While you were involved in approving the relevant policy framework during your time as Secretary of State, the policy framework (including terms, eligibility and assessment criteria) is now widely available.
18. **Blue Vs Green Hydrogen** - DESNZ stated that FFI are vocal advocates that hydrogen should be electrolytic (green) rather than carbon capture (CCUS) (blue). DESNZ said you supported a "twin track" approach of both blue and green hydrogen when in office and there is no indication you sought to change the policy framework in FFI's favour. DESNZ added that FFI is currently lobbying against the government's policy on CCUS (carbon capture usage storage), in favour of green hydrogen. Therefore, the department noted it is feasible that FFI may wish to draw on information you were privy to as SoS on weaknesses in CCUS (e.g. technical risks). However, the department said you do not have information that would be considered privileged (and it considered it unlikely you would take this position given your very vocal support for CCUS to date).
19. DESNZ said that given the published nature of its hydrogen policy, and the passage of time, it is unlikely you would be able to draw on privileged information or insights on government's perspectives from your time in office to the benefit of the company.
20. HMT confirmed that: *'[Mr Kwarteng] was Chancellor from 6 September to 14 October 2022. During that time, the only advice that he received that related to hydrogen was wider advice on the content of the Growth Plan⁵, which ultimately included five hydrogen projects, as well as two Carbon Capture and Storage clusters containing hydrogen production projects...The Growth Plan*

⁴ <https://www.gov.uk/government/publications/uk-hydrogen-strategy>

⁵ <https://www.gov.uk/government/topical-events/the-growth-plan>

has now been superseded by other policy'. The Growth Plan was in line with the Hydrogen strategy - supportive of driving the development of home-grown nuclear, including: hydrogen, Carbon Capture, Utilisation and Storage and renewable technologies.

21. DESNZ stated:

[Mr Kwarteng] was a strong supporter of hydrogen policy during his time as SOS. He was very engaged with hydrogen policy teams, and is likely to have gained broad insights during this period that will benefit FFI. In his time as SOS, [Mr Kwarteng] contributed to the development of a thriving hydrogen economy in the UK and FFI, like other hydrogen developers, will see opportunity in this. Nonetheless, there is no indication that decisions taken in [Mr Kwarteng's] time as SOS favoured FFI over other hydrogen companies (indeed, on issues such as blue vs green hydrogen [Mr Kwarteng] maintained a policy position at odds to the lobbying position of FFI). Given both the passage of time, and that the UK has published much of its hydrogen policy, we also judge it unlikely that FFI would benefit directly from any specific insights gained by [Mr Kwarteng] in his role (beyond the broader awareness of the hydrogen landscape that his role as SOS, and associated briefings/meetings afforded him).'

22. Your former departments recommended the standard conditions, with DESNZ adding that:

'...we would not recommend any special mitigations around this role. Nevertheless, given his recent time in office we would encourage the committee to reiterate the need to avoid anything that may be perceived as lobbying of current ministers or officials, and that [Mr Kwarteng] should seek to avoid anything [he does] not believe to be in the public domain to further the company's interests'.