

DFM

Copy: Minister for Business, Trade, Tourism & Enterprise

## **LOCHABER GUARANTEE COVERAGE**

You requested an explanation from officials of the issues raised in articles published in *Scotland on Sunday* and the *Sunday Times* (24<sup>th</sup> July) in relation to the Lochaber guarantee.

This note has taken some time to prepare as we have needed to consult the business about the central claim that Mr Gupta / GFG companies contributed less than £5 towards the acquisition of the Lochaber businesses and that none of the GFG entities involved in the Lochaber deal have contributed capital in the “shape of actual cash investment”. GFG are **[REDACTED]**

We have provided commentary below on the following key points raised in the articles:

- (i) the financial contribution of GFG to the deal – that is, the level of capital invested by GFG in the businesses;
- (ii) whether Ministers were advised that the Lochaber guarantee risked breaching state aid rules;
- (iii) whether Ministers have an option to withdraw the SG Lochaber guarantee as the British Business Bank has withdrawn its guarantee for Covid loans made by Greensill Capital UK to several GFG businesses;
- (iv) whether the key conditions of the Lochaber deal such as an upgraded grid connection are being met by GFG;
- (v) whether GFG are paying the guarantee fee to Ministers in full as planned;
- (vi) the level of economic activity supported by the guarantee.

We would of course be happy to talk this matter through with you and / or Callum if that would be helpful, particularly to expand on some of the underlying issues relating to the Group’s wider financial position.

### **(i) GFG’s financial contribution**

The articles claim GFG made a negligible financial contribution to its purchase of the Lochaber assets from Rio Tinto Alcan by referencing information from Companies House which shows the original share capital issued in the three core businesses (Alvance British Aluminium, GFG Liberty Industries UK and SIMEC Lochaber Hydropower) at the time of their incorporation totalled only £4.

Looking at share capital in a business alone is not an appropriate way to understand the investment in, value of, or price paid as consideration for any transaction. Amounts paid to acquire a business will not be reflected in the share capital of the company and funding may also be provided via loans and other capital

contributions. Accordingly, the nominal amount of equity subscribed at the time of incorporation is not relevant when considering GFG's initial or subsequent investment made in the Lochaber entities.

Under the terms of the Scottish Government guarantee, GFG's requirement was to make an equity injection of £[REDACTED] million to deliver the business plan alongside the debt arranged by Greensill Capital UK. The smelter was loss-making at the time of the transaction and some of this equity was required to fund the accumulated losses of the business until the planned investment in new production facilities reached its payback period.

Since 2016, GFG have been funding trading losses at the smelter through the provision of Group support. We believe these trading losses amount to approximately £[REDACTED] million in the years 2017 to 2021. Full accounts for Alvanca British Aluminium (the smelter) up to 31 March 2021, which were published at the end of July, report an operating loss of £4.3m million for the 2020/21 financial year though the smelter is now operating profitably.

In terms of investment funding, GFG are obliged under the SG guarantee to invest not less than [REDACTED] million to establish new production facilities at Fort William. The aim of GFG is to deliver this commitment by investing over £[REDACTED] million in a new aluminium recycling and billet production facility. To date, project spending in the pre-construction phase is around £[REDACTED] million and a further £[REDACTED] million of GFG funding has been [REDACTED]. Alvanca British Aluminium have achieved planning permission for the new facility and are currently progressing through detailed design work for the billet plant with construction works anticipated to commence in [REDACTED].

Clearly, the amounts already committed by GFG to the smelter through funding trading losses, project spending and cash deposits into the project investment account (totalling circa £[REDACTED]m) are far greater than the values quoted in the articles. In addition, the Scottish Government has to date received around £[REDACTED] million in guarantees fees from GFG.

Please note that most of these numbers are not in the public domain and could not therefore be quoted without GFG's consent. As GFG try to reach deals with their major creditors[REDACTED]. When we have discussed with GFG which types of financial information might be released under FOI – for example, the precise level of fees paid to SG – [REDACTED] [REDACTED] GFG's preference for tackling such queries is to quote their own analysis previously shared with *Scotland on Sunday* that quantified GFG's contribution to their Scottish businesses and the economy: [REDACTED]

**(ii) Ministers were warned about State Aid concerns**

The *Sunday Times* claimed that the Scottish Government was warned that its role in the deal to save the Lochaber smelter could be in breach of state aid rules though no source for this is referenced in the article. We are very clear that this is not the case.

In fact, as part of the transaction due diligence, EY provided a specific state aid assessment of the particular terms of 2016 Lochaber deal and concluded that:

- The guarantee fee works on a market basis;
- There is the basis of a robust security and undertakings package;
- Forecasts indicate a viable future for the smelter;
- The transaction is MEIP and State Aid compliant; and
- The benefit cost ratio of the economic benefit of the proposed transaction demonstrates Value for Money.

### **(iii) Can SG withdraw its guarantee?**

The British Business Bank (BBB) accredited Greensill Capital UK to make loans to business under the Coronavirus Large Business Interruption Loan Scheme (CLBILS) for medium-sized and larger businesses affected by the Coronavirus outbreak. The scheme gave the lender (in this case Greensill Capital – now in administration) a UK Government-backed partial guarantee (80%) against the outstanding balance of the facility.

Having reviewed Greensill's lending practices, the BBB has recommended that each guarantee provided by UKG to Greensill Capital under the CLBILS scheme be cancelled. The Bank informed GCUK's administrators on 1 April 2022 that the CLBILS guarantees were terminated ([Letter from Catherine Lewis La Torre to Meg Hillier - 18072022 - Greensill CLBILS guarantee termination \(british-business-bank.co.uk\)](#)).

The accreditation process undertaken by the BBB appears to have been **[REDACTED]**

The UKG guarantee was in place to protect the lender (Greensill Capital) from default by the borrower (GFG) and does not affect directly GFG's responsibility to repay the debt to the administrators of Greensill Capital.

The Lochaber guarantee represents an irrevocable undertaking that cannot be cancelled in the same way as the UKG's Covid underwriting. Non-performance by GFG of their obligations under the Lochaber guarantee would be an instance of default that would trigger remedies for Ministers such as calling on the securities but the guarantee itself, which protects the providers of the debt arranged by Greensill (the so-called "bondholders"), cannot be cancelled.

### **(iv) Whether GFG is meeting conditions of the Lochaber guarantee**

The articles cast doubt on whether GFG is meeting key conditions of the Lochaber guarantee including the installation of an enhanced grid connection. The articles –

drawing on recent FOI releases – point to Mr McKee asking Mr Gupta for assurance that GFG can meet its obligations while progressing its global refinancing and restructuring efforts.

The first point to note is that GFG is meeting the conditions of the SG guarantee in respect to the payment of the guarantee fee to SG and the power purchase agreement (PPA) payments to bondholders. All such payments are up-to-date therefore no payment default has arisen.

**[REDACTED]**

On the grid connection, **[REDACTED]** **[REDACTED]**

**(v) Whether GFG is paying the guarantee fee**

The articles claim that SG refuses to provide more granular detail on guarantee fee payments received by GFG.

As noted above all guarantee fee payments due to SG are up to date, and SG has received in excess of £**[REDACTED]**m in guarantee fee payments from GFG to date. This is set to reach £**[REDACTED]**m over the full duration of the Guarantee.

**[REDACTED]**

**(vi) The level of economic benefit in terms of jobs or private investment**

Without Ministers' intervention the aluminium smelter would have closed.

The local business is performing well at present and is benefitting from strong order books and high aluminium prices. Profits are stronger than anticipated for both the hydro and smelter for the year to December 2021.

GFG is at the "FEL3" feasibility study stage for its plans to construct the billet plant and has awarded a design contract to its preferred contractor. The billet plant when completed will more than double the aluminium output of the smelter. The independent project **[REDACTED]** has advised officials that it expects construction on the billet plant to commence by **[REDACTED]**

GFG provides regular cashflow updates and the cashflow information shows that the local business is performing well and making all of its required payments. The Lochaber businesses are supporting around 200 jobs in the smelter, estate lands and hydro power plant combined.

[REDACTED]

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**From:** [REDACTED] on behalf of Minister for Business, Trade, Tourism & Enterprise  
**Sent:** 04 April 2022 11:16  
**To:** Deputy First Minister and Cabinet Secretary for Covid Recovery  
**Cc:** First Minister; [REDACTED] McAllister C (Colin); McCaig C (Callum); Dobson L (Leanne); Permanent Secretary; DG Economy; Communications Finance & Economy; [REDACTED]; Director of Economic Development; [REDACTED] Minister for Business, Trade, Tourism & Enterprise

**Subject:** [REDACTED]  
**Attachments:** Off Sen: Commercial - [REDACTED] - submission [urgent]

PO/DFM,

Cc, as above.

Please see below note from Mr McKee :

*I have resolved [REDACTED]*

*In an attempt to [REDACTED] I spoke with Sanjeev Gupta last week on Tuesday and encouraged him to consider alternative substantive proposals – [REDACTED]*

*I held a further call with GFG's Chief Transformation Officer (Jeff Kabel) on Friday to understand GFG's position, signal our strong commitment to the business and reiterate the duty of Ministers to act in the best interests of taxpayers by [REDACTED] I also indicated our willingness to continue to work with Mr Gupta for the long term benefit of the GFG businesses in Scotland, and that, notwithstanding the current challenges, we wished to maintain a good working relationship to that end.*

*The key action we are taking now is [REDACTED]*

[REDACTED]

[REDACTED] via [REDACTED] or [REDACTED]

*And if Ministers are [REDACTED]*

[REDACTED] *If there is anything further you need from me or officials on this please let me know.*

**IM**

Kind regards,

**[REDACTED]** (she/her)

Deputy Private Secretary to Minister for Business, Trade, Tourism & Enterprise – Ivan McKee  
The Scottish Government | St Andrew's House, Regent Road, Edinburgh, EH1 3DG  
T: 0131 244 [REDACTED] | E: [MinisterBTTE@gov.scot](mailto:MinisterBTTE@gov.scot)

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**Deputy First Minister and Cabinet Secretary for Covid Recovery- GFG Alliance  
10 March 2022 – 13:30– 14:45**

<b>What</b>	Ministerial meeting with officials to update on GFG Alliance's Scottish based business (Alvance Aluminium Lochaber and Liberty Steel Dalzell) and the wider GFG Group.
<b>Where</b>	Via Microsoft Teams Microsoft Teams meeting <b>Join on your computer or mobile app</b> <a href="#">Click here to join the meeting</a> <b>Or call in (audio only)</b> <b>[REDACTED]</b> <a href="#">Find a local number</a>   <a href="#">Reset PIN</a> SCOTS Connect <a href="#">Learn More</a>   <a href="#">Help</a>   <a href="#">Meeting options</a>
<b>When</b>	Thursday 10 March 2022, 13:30 – 14:45
<b>Key Message(s)</b>	The Scottish Government and its key partners have a shared desire to work together to secure the best possible future for the sites and its workforce.
<b>Who</b>	See <b>Annex A</b>
<b>Why</b>	Ministers have asked for an update on GFG Alliance business in Scotland.
<b>Expected outcome</b>	This meeting is to: <ul style="list-style-type: none"> <li>• Provide Ministers with an update from the lead Director (Colin Cook) and officials as to the GFG Alliance businesses in Scotland including an overview of the current situation for the wider Group alongside the individual businesses and their current risks (financial and otherwise) and how these impact Scottish Minister's exposure to the Group.</li> </ul>
<b>Speech details</b>	N/A
<b>Supporting official</b>	<b>[REDACTED] ([REDACTED])</b> <b>[REDACTED] ([REDACTED])</b>
<b>Briefing contents</b>	<b>Briefing contents</b> <b>Annex A:</b> Agenda and Attendees <b>Annex B:</b> GFG Alliance <b>Annex C:</b> Alvance Aluminium Lochaber <b>Annex D:</b> Liberty Steel Dalzell <b>Annex E :</b> Dalzell Historic Transaction
<b>Media Handling</b>	N/A

## AGENDA/ATTENDEES

### Chair

Colin Cook Director of Economic Development (DED)

### Officials

[REDACTED] DED

Hillary Pearce DED

[REDACTED] DED

[REDACTED] DED

[REDACTED] DED

[REDACTED] COBRAS

[REDACTED] COBRAS

[REDACTED] COBRAS

## AGENDA

- 1) GFG macro overview ([REDACTED])
  - Overall context
  - Global refinancing/restructuring
  - Winding-up petitions (HMRC and Credit Suisse)
  - [REDACTED]Russia/Ukraine
- (2) Lochaber Guarantee ([REDACTED])
  - Fort William summary (inc. operations, Project [REDACTED] progress, and grid connection)
  - [REDACTED]SG engagement
- (3) Liberty Steel Dalzell ([REDACTED])
  - Current position
  - Overview of Dalzell [REDACTED]
  - Next steps
- (4) Dalzell Historic Transaction ([REDACTED])
  - Current position
  - State Aid

## GFG ALLIANCE

- GFG Alliance's global refinancing and restructuring continues. [REDACTED].
- In February 2022, HMRC petitioned to wind up four Liberty Steel UK businesses (based in England, owned by the GFG Alliance) due to unpaid VAT and PAYE totalling c[REDACTED]. No petition has been lodged against Liberty Steel Dalzell.
- GFG Alliance officials have confirmed [REDACTED] the court proceedings have been withdrawn. In addition, there remains outstanding winding-up petitions by Credit Suisse.
- [REDACTED]Liberty Capital, the vehicle used to make payments, was originally set-up to refinance the UK steel businesses and restart operations after COVID restrictions had eased.
- [REDACTED]Ongoing Serious Fraud Office investigation in the UK, and French prosecutors continue to investigate GFG Alliance and Sanjeev Gupta.
- In Europe, GFG Alliance continue to legally challenge American Industrial Partner's acquisition of the smelter in Dunkerque.

Continued high level of political and public interest in the Guarantee. Reflected in recent coverage at Scottish Parliament committees, in Parliamentary Questions, and via a large number of FOIs.

- On Friday the Scottish Government notified GFG Alliance that Scottish Ministers have refused consent for their proposed development of a wind farm at Glenshero (Lochaber estate). GFG have the option to challenge the decision via a Judicial Review in the Court of Session.

## Russian Sanctions / Ukraine Conflict

### Lochaber

- Alumina supply contract is with [REDACTED]Previous sanctions regime (Trump administration), which affected [REDACTED], affected the Lochaber alumina supply contract chain and resulted in an additional [REDACTED] (in year) cost to the Lochaber operations.
- Lochaber hydro power export sales are managed through [REDACTED] [REDACTED]
- As of 2nd March, [REDACTED] in place for Lochaber energy sales going forward.

### Liberty Steel Dalzell

- Liberty Steel UK has no direct trade with Russian entities and not currently experiencing any materials supply disruption.
- Liberty Steel Dalzell do not have any Russian suppliers in their supply chain and no orders with Russian customers. Dalzell did note that they expect energy prices may continue to rise due to the conflict, but they do not make use of any Russian energy suppliers.

[REDACTED]

## ALVANCE ALUMINIUM LOCHABER

## ANNEX C

### Current Trading

- The Lochaber businesses continue to trade well, supported by high LME aluminium prices. This is reflected in increased VAT payments.
- However high and volatile energy prices are [REDACTED] of the Lochaber operation. LME aluminium price is at a record high which is mitigating the high energy prices. The business does not see any short term risk of alumina supply as a result of current Russian sanctions.
- Once their grid connection update is complete [REDACTED].
- [REDACTED] However the Lochaber businesses continues to [REDACTED]

Work on Project [REDACTED] (Billet plant) continues at Lochaber, and the project team are progressing with procurement [REDACTED]

### Project [REDACTED]

- **Monitoring:** Officials and advisers continue to monitor the evolving situation closely. Regular contact at Board, Group, and local management levels. Regular engagement between Mr McKee and Mr Gupta. Frequent contact with BEIS.
- [REDACTED] **planning:** Deloitte has now finished their phase of [REDACTED] work.
- [REDACTED] **Financial work:** forthcoming work on ([REDACTED] and (2) IFRS9 credit analysis (future SG accounts provision).

### Main Risks: Financial, Economic, and Political

- [REDACTED] GFG Alliance [REDACTED] Project [REDACTED].
- [REDACTED] [REDACTED]. [REDACTED] [REDACTED] Officials are progressing with Phase 1 of the process following approval by Mr McKee.
- The letter request [REDACTED] **Global refinancing:** Continued uncertainty about the likelihood of refinancing and the immediate impact [REDACTED].
- **Insolvency:** Continued risk in relation to winding-up petitions and other creditors.

### Key Future Dates

[REDACTED] Guarantee fee to SG

31<sup>st</sup> March Longstop Date

[REDACTED] PPA payment to Bondholders [REDACTED]

## LIBERTY STEEL DALZELL

### Current Trading Position

- The plant remains operational with w/c 28 February a rolling campaign week for business.
- [REDACTED] Officials and external advisors believe [REDACTED] may [REDACTED].
- [REDACTED] Cash flow continues to be managed carefully at Dalzell by local management and [REDACTED] has made good on their outstanding payments.
- Whilst not related to the HMRC winding up petitions, [REDACTED] [REDACTED]

### Main Risks: Financial, Economic, and Political

- There is no direct Scottish Government financial exposure to Liberty Steel Dalzell (however there is a loan of c.[REDACTED] from Scottish Enterprise).
- [REDACTED] At this stage the HMRC action has not materially impacted customer confidence with LSDL, as customers have been aware of wider group financial issues for some time.
- [REDACTED].

### [REDACTED]

#### Scottish Enterprise (SE) Loan

- In 2017, following the sale of Dalzell and Clydebridge steelworks from Tata Steel UK to GFG, SE provided LSDL with a loan of c. £7m. Currently this loan including interest outstanding payments stands at c. [REDACTED].

SE has received interest over the term of the loan of [REDACTED] [REDACTED] [REDACTED]

Officials and advisors have been working on [REDACTED] looking at outcomes that, where possible, support the c.140 jobs, a future for the Dalzell site, and [REDACTED]

- Advice put to Ministers [REDACTED] [REDACTED]
- We are now in a position where [REDACTED] While the recent [REDACTED] [REDACTED] route as the preferred option it is worth noting that no option, such as the [REDACTED]
- Alongside Scottish Enterprise colleagues and external advisors, officials have now moved into a business monitoring/engagement position and will stand up if/when required.

**HISTORIC TRANSACTION**

The historic transaction in 2016 placed Scottish Ministers in a back-to-back sale and purchase transaction with both Tata Steel and Liberty House that whilst appeared identical, were not.

**[REDACTED]**

- **[REDACTED] [REDACTED]**

[REDACTED]  
5 October 2022

PS/DFM

## LOCHABER GUARANTEE: RECENT PARLIAMENTARY QUESTIONS

1. Following questions from Daniel Johnson and Jamie Halcro Johnston in Parliament on 28 September, DFM has sought (a) further detail from officials in respect of the answer provided to Mr Johnson and (b) a written response to Mr Halcro Johnston.

### a) Question from Daniel Johnson

2. Following Alex Cole-Hamilton's PQ, Mr Johnson asked: *"With everything that has happened recently, there is a clear risk that GFG and Gupta's financial empire will collapse. What is the total liability to the public purse if that were to come to pass?"*

3. **DFM's answer was entirely accurate.** He said *"That is a difficult factor to calculate, given the various scenarios that could take place, but I reassure Mr Johnson that the Government has in place arrangements that ensure that all of the payments that are required to be made to the Government are up to date and the asset value of the Lochaber venture is in excess of any liability that could be created in the scenario that Mr Johnson raises in relation to that individual site."*

*Lochaber*

4. The Lochaber guarantee has not been called therefore there is no actual SG liability presently. In fact the Lochaber guarantee is a *financial asset* that generates income for the Scottish Government. To date, the guarantee has generated circa £[REDACTED] million in guarantee fees from the GFG Alliance to SG.

5. The Lochaber guarantee has given rise to a contingent liability – as approved by the Finance Committee in 2016 – that is, if certain adverse scenarios play out Ministers could potentially be exposed to a financial liability in the future. In such an event, taxpayers would be protected by (a) cross-guarantees (ie GFG corporate entities would be obliged to reimburse SG) and (b) by a comprehensive suite of securities covering the smelter, the hydro-electric power station at Fort William and extensive land holdings valued at more than the net present value of the sums guaranteed.

We have strong evidence to support our view that the contingent liability is more than covered by secured assets. [REDACTED] [REDACTED]

6. To compare the scale of the Lochaber contingent liability with SG's asset cover we use net present value figures. Adding the HydroCo and estates security values (and attributing [REDACTED] to the smelter) we can value Ministers' Lochaber security in the range £[REDACTED] million whereas the NPV of the remaining guaranteed amount is [REDACTED] million.

*Liberty Steel*

7. In terms of direct Scottish Government exposure on either the Liberty Steel Dalzell or the Clydebridge sites there are no direct liabilities.

8. Scottish Enterprise provided a working capital loan of £7 million to Liberty Steel Dalzell in 2017. To date there have been interest payments of £[REDACTED]m received. With accrued interest the liability owed to SE at the March 2022 was £[REDACTED]m. As above, in accounting terms, the *SE loan is a financial asset for SE* while liability to repay it belongs to Liberty Steel. SE has in place its own mitigations to this exposure.

*Summary*

9. DFM was right to say that the task of calculating now the likely scale of any potential future SG liabilities arising from a collapse of the GFG Alliance – which might affect only certain parts of the businesses and different times – would be difficult.

10. As we show above the value of SG's Lochaber security has risen substantially as renewable energy generating assets have appreciated. [REDACTED]

**b) Question from Jamie Halcro Johnston**

11. Mr Halcro Johnston asked DFM *“Has the Scottish Government had any contact with the Serious Fraud Office regarding the SFO's investigation into GFG's activities?”* DFM responded as follows: *“I do not think that I am at liberty to respond in detail to that question, but I will take advice and, if I am at liberty to do so, I will respond further to Mr Halcro Johnston in writing.”*

12. **DFM responded appropriately to this question. [REDACTED]** A draft letter in response to Mr Halcro Johnston has been prepared with assistance from [REDACTED] and has been approved by Callum McCaig, Special Advisor, and this is noted at Annex A.

**Industrial Sectors and Projects  
Manufacturing and Industries Division**

**DRAFT LETTER TO JAMIE HALCRO JOHNSTON MSP**

Dear Mr Halcro Johnston,

**SFO AND GFG ALLIANCE**

You will recall that on 28<sup>th</sup> September you asked me if the Scottish Government had been contacted by the Serious Fraud Office in relation to its investigation of GFG Alliance.

I advised you that I did not think I was at liberty to respond to that question and would take advice on that point. **[REDACTED]**

I can of course address our rationale for the Lochaber intervention. Our priority in granting the Lochaber guarantee was to ensure the continued employment of the people working at the smelter and to create a foundation for investment. Since 2016, GFG has created 40 new jobs in Lochaber, increasing direct employment to 200 jobs and supporting a valuable supply chain. Our intervention has improved the prospects for those employees as the business continues to perform well.

While many energy-intensive businesses face the enormous challenge posed by the huge rise in global energy prices caused by the Ukraine war, the Fort William smelter is substantially shielded from these pressures. Under the power purchase agreement guaranteed by Scottish Ministers the smelter has locked-in low renewable electricity prices for the next 20 years. Moreover, the flexibility of the hydro-electric plant at Fort William offers the business the ability to flex aluminium or power production to generate additional income by either taking or selling surplus power to the grid.

Similarly, with regard to Liberty Steel, the Scottish Government was absolutely right to intervene to secure the continued operation of the Dalzell and Clydebridge steel works. The sites continue to trade, and directly support 140 households – underlining just how important our intervention was.

Yours sincerely,

**Deputy First Minister**