

11 May 2023

**Former Senior Management Team
of Ferguson Marine Engineering
Limited (FMEL)**

**Response to
Public Audit Committee**

**on their Report dated 23 March 2023 'New
vessels for the Clyde and
Hebrides: Arrangements to deliver
vessels 801 and 802'**

Response to Public Audit Committee Report

Appendix A –Response to the Auditor General’s Report dated April 2022

- [Submission to the Convener from Jim McColl, Founder, Chairman and CEO of Clyde Blowers Capital IM LLP, 4 April 2022](#) (see pages 1-12)
- [Submission to the Convener from Jim McColl, former Director Ferguson Marine Engineering Limited, 11 November 2022](#)

Appendix B – Response to the RECC dated June 2021

- *Please note, the Committee agreed not to accept this part of the submission as the Rural Economy and Connectivity (REC) Committee ceased to exist when Parliament was dissolved on 5 May 2021. The submission is dated June 2021 and was never received or considered by the now defunct REC Committee. The existence and contents of this submission were not drawn to the Public Audit Committee’s attention during its scrutiny work.*

Appendix C –

- [Ferry Contract 2015](#)

Response to Public Audit Committee Report

The public audit committee commented extensively on the Auditor General for Scotland's published report. The report was the outcome of an audit undertaken by Audit Scotland into the initial and more recent arrangements that are now in place to deliver the two vessels 801 and 802.

The Audit Scotland team had access to CMAL, and their version of events. Unfortunately, they were unable to have the same access to the former FMEL Senior Management team and all their records, since one of the early [REDACTED] acts of the government and their appointed manager, was to dismiss most of the FMEL management team, [REDACTED] to sign NDAs (gagging orders), to prevent them disclosing any information in relation to the catastrophic failure of the contract. They had to sign the NDAs before being paid severance payments to which they were legally entitled.

A former key member of the FMEL leadership team indicated his willingness to give evidence to Audit Scotland if he could get assurance in writing that he would not be pursued under the gagging order. Audit Scotland were unable to get this assurance from the government, so he and others were prevented from giving valuable input to Audit Scotland.

As a result of the unbalanced input, throughout the report comments from CMAL, Transport Scotland and the Scottish Government are presented as if they are factual, without any robust scrutiny of their accuracy.

Disappointingly, the Public Audit Committee have taken the Auditor General's report at face value, failing to provide more scrutiny on disputed comments made in the report.

Consequently, the AGS report and the Public Audit Committee report have failed to call out the real cause of the catastrophic failure in the construction of 801 & 802.

False statements made by the Auditor General have been repeated in the Public Audit Committee's report. (a response to the Auditor General's Report is attached)

Much has been made about the Builders Refund Guarantee which is a complete "red herring". Transport Scotland testified that on three separate occasions, CMAL had accepted alternative Builders Refund Guarantee arrangements which were not Bank backed. FMEL put in place a Builder's Refund Guarantee in a form which had been accepted previously by CMAL and in addition put in place a £25m insurance bond, (which was ultimately not claimed by CMAL). Evidence was heard that CMAL were uncomfortable with this arrangement, in response to which the Scottish Government underwrote the guarantee. The lack of a bank backed guarantee was therefore no longer an issue for CMAL.

Finlaggan which was built by Remontowa Shipyard in Poland had a guarantee which was ultimately backed by the Polish Government.

Loch Seaforth which was built by Flensburger Shipyard in Germany had a guarantee ultimately backed by the German Government.

The four new ferries ordered on Cemre shipyard in Turkey have guarantees that are ultimately backed by the Turkish Government.

The Scottish Government, by underwriting the guarantees for 801 & 802 levelled the playing field to allow FMEL to compete on equal terms with foreign yards.

There may be justifiable criticism of the process by which the Scottish Government underwrite was put in place, however, there should be no disagreement on it being the right thing to do. The refund Guarantee issue has absolutely nothing to do with the catastrophic failure of the contracts for 801 & 802. It does not matter which shipyard had won the order; the problems encountered would have been the same.

The total cost of these two vessels is likely to be in the region of £500m. The RECC, Audit Scotland, the AGS and the Public Audit Committee have under-reported the true costs to date by failing to properly scrutinise the accounting treatment used which hides a significant chunk of the true costs to date.

A Bank guarantee would have been for the original contract price of £97m.

The FMEL refund guarantee transferred all equipment purchased and work done on the two vessels to CMAL and in addition provided a £25m insurance bond which totalled more than £97m.

A full Bank Guarantee for £97m would only cover less than 20% of the ultimate cost of these two ferries. The guarantee is not the issue here.

The Public Audit Committee also referred in its report to the REC Committee Report, which it claims provided a helpful baseline from which to inform its own scrutiny of work. The former senior executives of FMEL submitted a response to the REC Committee Report which highlighted serious flaws in parts of the report. It is not evident from the Public Audit Committee Report that they reviewed this response and scrutinised some of the issues raised by FMEL Management. ¹(A copy of the response is attached). It is disappointing that the committee repeated the

¹ *The Rural Economy and Connectivity (REC) Committee ceased to exist when Parliament was dissolved on 5 May 2021. The submission is dated June 2021 and was never received or considered by the now defunct REC Committee. The existence and contents of this submission were not drawn to the Public Audit Committee's attention during its scrutiny work.*

false statement that “FMEL deliberately proceeded to construct specific sections of the vessels either out of sequence or not according to the proper specification purely as a means of triggering milestone payments on the contract”. A review of the response to the RECC report explained that there was no prescribed sequence. The sequence of construction of the sections was entirely a matter for FMEL and not specified by the buyers. The sequence adopted was chosen to take account of changes and delays caused by CMAL (detailed in the BCTQ and HKA reports), to keep work progressing on the vessels and to mitigate these delays.

This is completely misrepresented in the Public Audit Committee Report due to a lack of proper scrutiny by the committee. It is a defamatory allegation, damaging to the reputation of the previous management team, as is the false claim that sections were constructed not according to proper specification. The Public Audit Committee failed to include a proper technical review of the causes of the catastrophic failure of these two contracts, which are the root cause of the cataclysmic losses and delays. Despite this, they felt justified in making these irresponsible statements.

Under the heading “Background to the Project” in Paragraph 28, the Public Audit Committee Report, repeats a false statement by the AGS.

“Each contract was for a **fixed price** of £48.5m” This is untrue. The contract is a BIMCO standard newbuilding contract which allows for adjustments to the contract price. It is not a fixed price contract. Nowhere does it say that it is a fixed price contract.

In Section 2 – Financial, of the contract it states that “The Contract Price shall be the amount stated in Box 9(a) as may be adjusted in accordance with the terms of this contract”. Paragraph 15(b) of the contract provides for “Payment for Modifications and other items”.

Paragraph 42 Dispute Resolution, 42(b) provides for Expert Determination in the case of a dispute between the parties.

The Contract is not a Fixed Price Contract. (A copy of the Contract is attached).²

The false statement, that this was a Fixed Priced Contract, has prevented proper scrutiny of CMAL and the Contract, through an Expert Determination Process.

The problems with the contract were highly technical not legal. The technical issues are detailed in the BCTQ and the HKA reports. Further scrutiny of these issues by expert determination were blocked by CMAL and the Scottish Government, falsely claiming that there was no legal basis for CMAL to pay more than the fixed price for the contract.


Early in fulfilling the contract for CMAL, it became obvious to FMEL that variations to the original contract were resulting in significant changes and cost increases well beyond what would be expected in a Standard New Build contract. Despite repeated attempts to engage CMAL in a meaningful discussion about these changes and the serious cost implications, they repeatedly refused to discuss the issues, falsely claiming that this was a fixed price contract.


The FMEL Chairman met with the First Minister on the 31st May 2017 to emphasise the seriousness of the situation and to request her intervention to facilitate a meaningful discussion around the very significant unplanned changes and cost increases on the two ferry contracts.

FMEL commissioned a third-party review by professional Naval Architects and Marine Engineers, BCTQ, which confirmed the significant changes and cost increases. A copy was given to the Government and CMAL. Transport Scotland recommended Expert Determination, provided for in the contract for dispute

resolution. This was blocked by CMAL and the Scottish Government claiming that there was “no legal basis for CMAL to pay more than the fixed price of the contract”. This is a false statement that has been repeated by several cabinet ministers, the AGS, and is repeated in the Public Audit Committee report.

These two statements; that it was a fixed price contract and there was no legal basis for CMAL to pay more than the fixed price for the contract, are serious misrepresentations of the truth, and need to be publicly exposed as false, by the AGS.

The QC appointed by the Government to review the contract was asked on his view on the legal merits of the claim being advanced by FMEL. His answer “I consider this is an important restriction on the scope of views I express in this opinion”. “I do not consider that I usefully give a view on these disputed factual issues”. Second, he was asked for his views on FMEL’s claim as presented by HKA. His answer: “I consider that this represents a further important restriction on the scope of my views. 



Despite this opinion from the QC, the government proceeded to use it to imply justification for nationalising Ferguson, making the false statement that “there was no legal basis for CMAL to pay more than the £97m fixed price for the contract”.

The contract provides conclusive proof that both statements were false. A review of Counsel’s opinion will confirm that it **did not conclude** that there was “no legal basis for CMAL to pay more than the £97m fixed price for the contract”. The Government repeated this false statement to conceal the catastrophic failure of CMAL and their own failure to deal quickly

and effectively with the early evidence of problems confirmed by their own appointed expert Commodore Luke van Beek.

The Scottish Government should be compelled to release Counsel's Opinion to provide full transparency. They should be compelled to publicly confirm that this statement is false.

Commodore Luke van Beek was engaged by Humza Yousaf , originally to conduct a peer review, which was blocked by CMAL. They refused to take part in a peer review. He was subsequently appointed by the government on 9th November 2017 to review the progress of the two vessels. He was the only expert appointed by the government who had the technical expertise to fully understand the complex technical issues with the two vessels and to expose the real problems with the contract. He was based at FMEL for 17 months, focusing on the issues surrounding the delays and increased costs being experienced in both vessels. During this period he was shunned by CMAL. He sent regular reports and warnings to the Scottish Government during this time. Despite numerous freedom of information requests for all his reports and correspondence to be released, the Government have refused to release all documents and correspondence, and have heavily redacted those that they have released.

The AGS needs to insist on the release of all Commodore Luke van Beek's correspondence and reports to the Scottish Government, to expose the real problems surrounding the delays and increased costs.

Transport Scotland recommended an Expert Determination Process to resolve matters, this too was blocked by CMAL. Their chairman stated that the Board had taken the decision not to allow an Expert Determination process. The Government refused all requests for Expert Determination, blocking a proper

independent technical review of the contract and CMAL, which would have exposed catastrophic errors and incompetence.

The AGS should insist on an expert determination process to review the findings highlighted in the BCTQ and HKA reports, in Commadore Luke van Beek's reports and correspondence and, the detailed shortcomings in CMAL's Tender documents. The public need full transparency of this catastrophic failure, to identify the key lessons which need to be learned and to avoid a similar disaster happening again.

The AGS has stated in his correspondence that the SPFM requires CMAL to undertake a thorough investigation and to take appropriate legal and /or disciplinary action where justified. It is further required to take appropriate disciplinary action where supervisory, or management failures have occurred.

It is extremely important that a thorough **independent (technical) expert investigation is undertaken**. CMAL and the Government have consistently blocked independent technical expert involvement. To expose the real cause of the catastrophic failure, this must happen. It is extremely naïve to expect CMAL to undertake a thorough investigation of themselves when the failures and weaknesses are at the very heart of this organisation.

There was no problem with the standard of FMEL's work. There was no evidence to support the adverse statements around the quality of FMEL work. On the contrary there was plenty of evidence to support the quality of the management and systems and the quality of FMEL work.

The first ferry built under the new ownership of the yard, the MV Catriona was launched on the 11th of December 2015, six weeks

ahead of schedule and on budget. The ship was built at the same time the yard was being rebuilt. This alone is recognition of the competence of the management and the workforce at FMEL. FMEL had a highly competent management, well qualified in naval architecture, marine engineering and shipbuilding, that had been consistently strengthened since the buyout from administration by Clyde Blowers in 2014.

In late 2016 as part of the UK national shipbuilding strategy, FMEL was audited by independent shipbuilding experts contracted to the MOD to assess the capability of the facility and the workforce to be included as a named contractor alongside Camel Laird, Appledore, H&W, A&P, BAE and Babcock. Not every yard in the UK was considered viable. As well as the facility this audit also required completion of interviews and evaluation of the ability, competence and experience of the management team to build ships and deliver to plan. In addition, a presentation to Sir John Parker was required on FMEL shipbuilding strategy and capability. The feedback was extremely positive, and the work done in the yard applauded. Following this forensic examination of FMEL resources and capabilities, that the yard was included in the national shipbuilding strategy, is further confirmation of the capabilities of the management team and workforce.

Two audits carried out by CMAL on the 1st March 2016 and 1st March 2017 scored FMEL 97.5 out of 100. A score which was classed on their rating scale as excellent. These reports audited FMEL on 12 aspects of quality and they achieved the top rating in all aspects. A further report dated 23/08/18 relating to a ramp repair for CMAL rated the staff performance and quality of service as good in three out of twelve categories and excellent in nine out of twelve. (This evidence was available to the committee, to Audit Scotland and to the AGS).

On the 18th of July 2018 Ferguson received the certificate of approval from Lloyds register: "This is to certify that the

management system of Ferguson Marine Engineering limited has been approved by Lloyds Register Quality Assurance,(LRQA), to the following standards”: ISO 9001 2015.(This evidence was available to the Committee, to Audit Scotland and to the AGS).

A survey by BAe Systems dated 11/04/19 rated quality and staff performance as good in five out of ten categories and excellent in five out of ten, with an overall rating as excellent. (This evidence was available to the Committee, Audit Scotland and the AGS).

A further report by Serco on 18/06/19 rated FMEL quality and staff performance as good in three categories out of ten and excellent in seven.(This evidence was available to the Committee, Audit Scotland and the AGS).

Commodore van Beek was genuinely an expert, genuinely independent and was appointed by the government. In his evidence to the RECC he said, “I believe that the factors which have led to this position were outside FMEL's control, I repeat that I believe FMEL has the managerial and technical capability to deliver both ships”. He also gave the following statement to the committee:

“If you're going to put in place a design and build contract, you should have the specification almost complete when you let the contract. That was not what happened at all”.

Despite the plethora of compelling, independent, evidence supporting the quality of the management, workforce and work at FMEL, the committee have chosen to slavishly repeat the false narrative put forward by CMAL senior management and the government, designed to cover up the real problem. This is nothing more than government propaganda.

Nationalisation and the steps that have been taken since then have resulted in significant additional costs and delays to the completion of the two ferries. Prior to being forced into administration by CMAL and the Scottish Government, FMEL estimated the final costs of the completed ferries to be c. £200m. The reasons for the £100m overrun on the original contract price were detailed in the HKA report and were flagged up in the earlier BCTQ report. (These detailed reports were available to the Committee, Audit Scotland and the AGS).

“The conceptual design was inadequate. Many fundamental design issues were not addressed or resolved by CMAL at award of the contract and had to be resolved thereafter”.

“CMAL interfered in the design process. It involved itself in design matters in which it had no right to do so; It required alternative designs to be investigated and delayed decisions and approvals”.

The additional c. £300m costs are a consequence of the catastrophic mismanagement of Ferguson post nationalisation.

Following his appointment, Mr Tim Hair, who himself had no previous shipbuilding experience, subsequently removed the entire, vastly experienced, and talented FMEL management team. This resulted in the loss of considerable knowledge and detailed understanding of the status of construction on both vessels. No attempt was made to debrief the team prior to their removal on the status of the projects. This left a huge gap in the competence required to run the yard efficiently and complete the vessels.

Mr. Hair also scrapped the very effective planning and control system that was in place which involved twice daily meetings with the Ship Managers, Planners, Engineering, Supply Chain, Operations, Finance, Quality, Health and Safety, most of whom he dismissed.

He also sacked the design support team, Vera Navis.

This destroyed all details of the design and all knowledge of the state of construction and progress of works on both vessels.

These [REDACTED] actions resulted equipment and control panels being re-sited due to the lack of knowledge of the original design. This resulted in the need to rerun expensive cabling which had already been installed.

A further contributor to the significant additional costs was the decision to allow CMAL to continue to interfere in the yard.

An example of their interference with FMEL's right to design the two vessels, was their objection to the use of Axilock couplings on the pipework. They were insisting on flanges on all pipework not Axilocks. A considerable number of pipes had to be run in bundles in a very tightly confined area. The use of flanges on the pipes was totally impractical due to the tight space configuration. Axilocks are approved by Lloyds, DNV and the Maritime and Coastguard Agency. CMAL had no right to interfere in the design but repeatedly did causing delays and standoffs.

At significant cost and disruption post nationalisation, I believe that CMAL have insisted on stripping out pipework and replacing perfectly good and compliant Axilock fittings, with flanges due to their lack of competence in Naval Architecture, Marine and Mechanical Engineering. A serious faux pas falsely labelled "remedial work".

Most of the so-called remedial work is of this nature.

Well into Mr. Hair's time at the yard, a benchmarking exercise was carried out by a well-respected audit company, First Marine International. They have extensive shipbuilding experience.

[REDACTED]

[REDACTED] This report has been buried by the Government to avoid embarrassment. It has been withheld from various freedom of information requests by the Government, claiming that it is “commercially sensitive”. The way this yard is being run under Government ownership is absolutely of public interest. These are no longer commercial contracts. The report is politically sensitive and needs to be released.

The AGS should insist on the publication of this report

[REDACTED] **These costs are significant and need to be properly investigated. The government cannot be allowed to withhold reports which are in the public interest.**

The early signs of serious technical issues with the contracts for the two dual-fuel LNG ferries were alerted to the then FM over 6 years ago. FMEL commissioned a third-party technical expert review of the contracts which confirmed that the conceptual design was inadequate and that many fundamental design issues had not been addressed or resolved by CMAL at the award of the contract and were having to be resolved thereafter adding to the costs and causing delays.

A subsequent report by third party experts, HKA detailed the magnitude and the underlying causes of the additional costs and delays. Both reports, backed by real experts were submitted to the Scottish Government and CMAL.

Commodore Luke van Beek, the Government appointed expert confirmed much of FMEL’s concerns which supported the findings of BCTQ and HKA. In evidence to the RECC he stated “I believe that the factors which have led to this position were outside FMEL’s control, I repeat that FMEL has the managerial and technical capability to deliver both ships”. He also confirmed the findings by other third-party experts in the following statement to the RECC;

“If you're going to put in place a design and build contract you should have the specification almost complete when you let the contract. That was not what happened at all”.

Despite the overwhelming evidence of serious technical failures within CMAL, at the heart of the two contracts, none of the investigations by the RECC, Audit Scotland, the AGS or the Public Audit Committee have involved anyone with the technical expertise to properly examine the fundamental facts behind this catastrophic failure.

The problems with the contracts were highly technical in nature, not legal. The Public Audit Committee have failed to carry out a proper technical review of the contracts and as a result have failed to call out the real cause of the catastrophic waste of public funds and cataclysmic damage to our Island communities. To ensure that this failure to spend public money properly, efficiently and effectively is fully exposed and understood, the AGS needs to oversee an Independent Expert determination process.