



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit Committee

Thursday 28 April 2022

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Thursday 28 April 2022

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
SECTION 22 REPORT: "THE 2020/21 AUDIT OF NHS HIGHLAND"	2
SECTION 23 REPORT: "NEW VESSELS FOR THE CLYDE AND HEBRIDES: ARRANGEMENTS TO DELIVER VESSELS 801 AND 802"	18

PUBLIC AUDIT COMMITTEE
13th Meeting 2022, Session 6

CONVENER

*Richard Leonard (Central Scotland) (Lab)

DEPUTY CONVENER

*Sharon Dowey (South Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Craig Hoy (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stephen Boyle (Auditor General for Scotland)

Angela Canning (Audit Scotland)

Antony Clark (Audit Scotland)

Pamela Dudek (NHS Highland)

David Garden (NHS Highland)

Rhoda Grant (Highlands and Islands) (Lab)

Boyd Robertson (NHS Highland)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament Public Audit Committee

Thursday 28 April 2022

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Richard Leonard): Good morning and welcome to the 13th meeting—I hope that that is not an ominous sign—in 2022 of the Public Audit Committee.

Agenda item 1 is a decision on taking business in private. Do members agree to take items 4, 5 and 6 in private?

Members *indicated agreement.*

Section 22 Report: “The 2020/21 audit of NHS Highland”

09:00

The Convener: Our first evidence-taking session this morning is on Audit Scotland’s report “The 2020/21 audit of NHS Highland”. First of all, I welcome to the meeting Rhoda Grant, who is joining us online for this and the next item. I also welcome, via videolink, our three witnesses from NHS Highland. They are Pamela Dudek, who is its chief executive; Boyd Robertson, who is the chair of the board; and David Garden, who is its director of finance.

I remind everyone, including committee members, that we are very tight for time this morning, so I would appreciate short questions and short but incisive answers. To begin, I invite Pamela Dudek to make an opening statement.

Pamela Dudek (NHS Highland): Thank you, convener, and good morning, everyone. Our chairman will actually give the opening statement.

Boyd Robertson (NHS Highland): Madainn mhath. Good morning from Inverness. Thank you for the invitation to meet the committee to discuss NHS Highland’s annual accounts for 2020-21 and the section 22 report.

I begin by acknowledging the extraordinary efforts of our health and care teams, our managers, our patients and our council colleagues in responding so magnificently to the pandemic’s manifold challenges. The commitment, professionalism, empathy and compassion that our teams have shown over the past two years have been truly remarkable and impressive, so I place on record my sincere thanks and admiration for the work that they have done, and continue to do.

I took over as chair of the board just a year before the pandemic struck, and Pam Dudek, who took up the chief executive post in October 2020, has yet to experience a period free of Covid in her role. Despite leading the organisation in such highly unusual and demanding circumstances, I am pleased to report that NHS Highland has made huge progress in addressing the issues that led to the board’s escalation to level 4 on the Scottish Government’s ladder of escalation. That has been acknowledged in the section 22 report, and it was recognised in the board’s de-escalation to level 3 last year.

The organisation has made major advances in addressing a transformation agenda that covers culture, finance, performance, governance and leadership. Board governance has been greatly enhanced through measures including

strengthening of the board assurance framework, a revised committee structure and bimonthly integrated performance and quality reporting. Both the executive and non-executive arms of the organisation's leadership have been radically revamped, and we now have a very strong board in place.

Many positive actions have also been taken to improve the organisation's culture in the close to three years since publication of the Sturrock report. Those measures include the establishment of the culture oversight group, the appointment of an independent external adviser, a listening and learning staff survey and panel, a leadership training programme and the establishment of new employee services such as the guardian service and the employee assistance programme. One of the most significant initiatives has been the healing process, which was co-produced by whistleblowers, staff side and our human resources team.

The second major challenge that we faced was our financial performance in the years up to 2018, when a sizeable financial deficit that had accumulated resulted in the need for brokerage from the Scottish Government. A three-year recovery programme was put in place in 2019 to bring the board's finances into balance. Significant headway has been made on tackling the original deficit, and much of that progress can be ascribed to the work of the programme management office, which has been embedded to direct and drive cost improvement opportunities. A number of revised financial governance arrangements, including the formation of a financial recovery board, have also been contributory factors.

By the end of financial year 2019-20, we had fully achieved our substantial savings targets, with 56 per cent being made on a recurrent basis. Our year-end outturn exceeded our financial plan and our brokerage requirement was lower than the approved target. We had planned to deliver similar financial performance, with reduced brokerage in 2020-21, until the pandemic intervened and severely impacted on our ability to enact the full savings programme. Nonetheless, we managed to achieve significant savings when other boards struggled to do so. The financial turnaround, which has continued in 2021-22, has been a tremendous achievement and is the result of a huge amount of hard work and endeavour by our clinical and management teams, our finance staff and our programme management office.

I can say with confidence that NHS Highland is now in a much stronger position than it was and that it is well equipped to deal with whatever challenges lie ahead. Our chief executive Pam Dudek and our finance director David Garden will join me in answering the committee's questions.

The Convener: Thank you for that opening statement, Mr Robertson. It sets the scene very well for the questions that we have. I intend to direct my questions to Pam Dudek as chief executive and, therefore, accountable officer, but she might in turn refer them to Mr Garden or you.

You touched on NHS Highland's financial position, which was one of the reasons for the section 22 report being required in the first place. I think that there were three consecutive years in which the in-year financial balance was in the red. In your opening statement, you highlighted the extent to which savings are required; from my reading of the Audit Scotland report, those savings are of the order of £32.9 million.

My opening question is about the progress that has been made. Where are things now financially with NHS Highland? Do you consider the board to be on course to make the cost improvements and savings that were identified, and how have things been affected by Covid? I will come to Pam Dudek, first.

Pamela Dudek: As you will appreciate, we are having to manage our finances in what is a very volatile environment. To our credit, we have kept our PMO going throughout the pandemic; indeed, despite the pressures, the interaction in that respect has been significant. As you will see and as you have recognised, the pandemic interrupted what was a very clear and worked-out programme of savings over the past three years, so we have faced challenges in achieving the full intent.

In the here and now, the volatile environment remains a challenge for us and will, as it will for other boards, continue to be so, as we move forward. However, I believe that we have a very strong methodology, with significant buy-in across our organisation.

The cultural aspect of the matter is also important, because the message has been a bit mixed over the past year and a half. We have been dealing with the pandemic and additional funds have come in, so we have had a contradictory discussion with our teams about their needing to spend to deal with the pandemic while needing to save to help our underlying deficit and get us to the right place.

We have a fair degree of confidence that we are able to make significant savings. I have already started the process for the year to come, but we have a lot of work to do if we are to be successful in that. Like other boards, we believe that we will be challenged in that space. Dave Garden can come in and talk a bit more about that, if that is helpful.

The Convener: Yes. Mr Garden—please come in.

David Garden (NHS Highland): Good morning, everybody. As Pam Dudek said, the challenges that we have faced in the past two financial years as a result of the pandemic have meant that, like other boards, we have not been able, without financial contributions from the Scottish Government, to deliver the level of savings that we needed to break even.

As was mentioned, our target for the year that just closed was £32 million. However, we fell short of delivering those savings by about £12 million. That sounds really negative but, in fact, during the pandemic, we delivered £20 million of savings at a time when people were really busy dealing with other more important things. We need to celebrate the facts that we still delivered those benefits and that we have processes in place that allow us to continue to do that. However, we also need to recognise that it has been a really difficult couple of years for delivering savings. NHS Highland, like most boards in Scotland, faces a fairly significant financial challenge in this financial year.

The Convener: With all the savings and cost improvement programmes, there is the question of what effect that work is having on the level of patient care and the services that you deliver. Is there an adverse effect in order to achieve the challenging targets that you mentioned?

Pamela Dudek: A really important stage of the cost improvement work is to quality assure the decision making and to examine the impact that proposals for savings would have on care and treatment. We have a safeguard that sense checks that. To date, because we have that safeguard, I have not come across anything that has given me significant concern about the decisions that have been taken.

The real challenge is that, obviously, we have to balance our books and have good governance around that, but we must also consider the reform agenda. It will not be possible to keep slicing out savings. We have been trying to think about change and innovation that will help us to balance our books but will not compromise the quality of care. From my perspective, that is the key focus that we must maintain and build on if we are to be successful and not bring about that compromise. We have challenges outwith the finances in terms of maintaining the level of care and treatment that we wish to offer. That relates to the workforce.

The Convener: Thank you very much indeed. Colin Beattie has a series of questions that he wants to put to you.

Colin Beattie (Midlothian North and Musselburgh) (SNP): My questions are mainly about governance and succession, which, in the past, have been serious issues in NHS Highland. What progress have you made in your first round

of succession plans? My understanding was that your first meeting on that would take place in December 2021.

Pamela Dudek: [*Inaudible.*]—board established. However, as you will be aware, the past few months from December have become pretty hot in the system, so our ability to formalise that has been compromised somewhat and we have set a later target of October. All last year, we spent a lot of time looking at our management structures, succession and the challenges that we had from what had gone before. We have had quite a successful year in terms of bringing in new people from various parts of the country and securing some of our really important posts. We had a really good level of attraction to those posts, so we had good fields to choose from, which is clearly important.

09:15

At the moment, we are really trying to pin down the appraisal process and the personal development plans in the first three layers of leadership and management. I am talking about managers and clinical leaders and the succession framework that will take those people into the right space to be fit to lead in the future, which perhaps requires a different set of skills from those that were traditionally required. We are definitely seeing more interest in our posts. We have successfully brought in people with really good credentials to very senior posts and we will build on that from now. We have also introduced a leadership and management course that will run through the top four layers of management and leadership, with the succession plan in mind.

Colin Beattie: Moving on from that, what actions has the board taken to address the Sturrock report findings and to foster a much more open organisational culture?

Pamela Dudek: I know that we have to be succinct, but I could spend a lot of time talking about that, because we have done a huge amount of work on that, which we have reported regularly on at our board's public sessions. Many papers have been written on all the actions that have been taken forward.

That is very connected to the culture programme that was established and has consolidated the actions that were required of the board into one programme of work. We have done the requested culture survey of services in Argyll and Bute.

We have also brought in an external guardian service, which is coming to the end of its second year and going into its third year, which is the extent of its contract. That has definitely given people a safe place to go and raise concerns,

many of which are resolved on the first contact. Concerns that require further action are raised with management, or the guardian service will provide a service in a team or with an individual.

We have also implemented our whistleblowing standards, which relate very much to that agenda. Our whistleblowing champion goes out and is visible and his visits are advertised. That is another confidential and private way for people to come forward if they cannot raise their concern within the organisation.

In answer to the question about whether we have an open and transparent organisation where people can feel free to speak up, that comes down to me and the tone that I set, and to the management and leadership of the organisation. I have worked hard with my executive team and middle management to reinforce the style and approaches that we should have, so that people are encouraged to speak up and share their ideas. The health board is a people organisation, so it is always challenging to make things in that space 100 per cent bulletproof; it is a work in progress and it will continue.

Colin Beattie: On the back of what you have been saying, could you indicate where you believe the healing process is at this point?

Pamela Dudek: We are just concluding the healing process; 271 people have gone through the process and been supported through psychological therapies, a payment or a bespoke apology from me, as well as other actions that have come from their interaction with the independent panel. The healing process has also generated learning reports. There is consolidation of the learning themes. That relates to the Sturrock report and our culture programme and whether we are addressing all the issues that have been raised historically and in the here and now.

Colin Beattie: Can you briefly indicate what actions the board has taken to review and refine the board risk assurance framework? That question might be for Pamela Dudek or for the chair.

Pamela Dudek: I think that Boyd Robertson is looking to come in. I am happy to hand over to him or to continue.

Colin Beattie: Absolutely—if Boyd wants to come in, he can talk about that.

Boyd Robertson: I first want to go back to a previous question about the strengthening of the board and the executive arm. We appointed seven executives in the year in question, and we have had a further tranche of 15 senior management appointments in the year that has just ended. That is one indication of the way in which we have strengthened our operation.

We have also strengthened the board. We had four appointments of non-execs in the year in question, and a further one last year. Last year, we co-opted to the audit committee a member with particular skills, and we are extending his role on the committee in answer to points that were raised previously by your committee.

Already, 31 of the 35 recommendations in the Sturrock report have been enacted. Pam Dudek has referred to a number of the actions that have been taken. We have an important four-level leadership and management development programme, and we also have a courageous conversations training package, which has been delivered to more than 1,000 colleagues in the organisation. That is a significant number.

Risk assessment comes under the aegis of our audit committee, which has been strengthened. Our internal audit arm has created a programme of inquiry into aspects of how we handle risk, and we have taken several steps towards improving our risk assurance framework.

I ask Pam Dudek to say a little more about the precise steps.

Pamela Dudek: We have done a huge amount of work on our risk framework, but it is fair to say that, as a board, we still want to do a bit more. A framework is in place, and we are working on how we state our risk appetite and tolerance in the months to come. That will become much clearer as our strategy emerges; we are working on our longer-term strategy at the moment.

We now have a clear risk register and a much better rhythm around how that is reported and set up to go through our board committees. The register can also be added to, if anything from the board committees needs to be added in. That is reported up to our board meeting, as you would expect.

Within that framework, we have an assurance level that is reported at committee and at the board. That relates to risk and being able to draw assurance and justify the assurance level. There is a four-level framework—from substantial assurance to not being able to draw assurance—for managing risk.

We have come on significantly from when I joined the organisation, but it is fair to say that it is an improvement journey, and we spend a lot of time refining, improving, understanding and looking at other good practice to get ourselves to the optimal space.

Colin Beattie: I have one last question. An issue that did not really come up in the report was Raigmore hospital. For years, it has appeared as a sort of problem child, for which costs were significantly higher in areas such as prescriptions

and, I think, consultants. What progress has been made to reduce costs in relation to Raigmore?

Pamela Dudek: There are two big areas, one of which is prescribing, which you mentioned. Cost improvement activity has looked at high-cost drugs and has resulted in significant savings of £2.5 million in three years.

The other area is locum costs. As you know, we have had hard-to-fill posts. We still have such posts, but we have brought our decision making about locum arrangements in house and put a process around that, which has resulted in a reduction in the costs. David Garden can give you the figures on the Raigmore hospital spend.

We are operating acute services as a one-hospital, four-site arrangement, so that we can optimise our rural general hospitals. You are probably aware that staffing in our rural generals remains a challenge, which leads to high locum costs to maintain services there. That is on our reform agenda; it needs to be addressed and we are looking at it.

In the year of the section 22 report, Raigmore hospital was in a more managed space, if you like, and it will remain so but, like any acute hospital, it has on-going challenges, such as the increasing costs of new technologies. Our challenge will be to try to build those into our budget and prioritise as appropriate. The teams there have bought into the cost improvement methodology. As I said, we will reinforce that and do workshops with them to get back on track now that things feel that they may be easing.

The Convener: Sharon Dowe has a couple of questions that follow on neatly from that.

Sharon Dowe (South Scotland) (Con): I will ask about workforce challenges. Previous section 22 reports highlighted that NHS Highland needed to address its reliance on locum and agency staff to achieve long-term financial sustainability. Covid-19 pressures have increased the board's requirements for locum and supplementary staffing and have delayed plans for the development of the attraction, recruitment and retention strategy. Nonetheless, the board has made progress in recruiting permanent medical and nursing staff. It has filled 21 hard-to-fill consultant positions, including in the rural general hospitals that you just mentioned, as well as 62 newly qualified nurses and midwives. The board also took the management of locums back in-house in October 2020 to better control spending and rates.

Can you tell us a bit more about what actions the board is taking to reduce reliance on locum staff?

Pamela Dudek: The recruitment strategy is key to that issue. As you will understand, the national picture is one of a competitive market and reduced availability of what we are looking for in many quarters. We have done a bit of work on recruitment, and we have a national treatment centre to deliver, which requires additional staffing, so there are a few different things.

We are actively working to be present in a full-on way at job fairs wherever we can. We have been looking at different ways to advertise and attract people, and at how we onboard and assist people to come to the region. You will be aware of the challenges of finding accommodation and getting settled, particularly since the pandemic began. We are trying to consider all aspects of recruitment and be diligent and enthusiastic in our approach, and we have seen signs of that paying dividends.

We have been careful to consider our expansion in relation to the national treatment centre, and we have made an integrated people plan, because there could be a danger of undermining Raigmore hospital by having them as two separate centres. We have worked hard with the clinicians and teams there to make that an integrated model. For retention purposes, that gives a nice portfolio for people and a bit of diversity while keeping it a team game. We are considering all ways of attracting people; we are involving communities to try to sell areas, particularly the remote and rural ones. As I said, we have put in place a bit of a marketing strategy with regard to recruitment and retention.

09:30

Obviously, looking after the staff that we have already will be key. They have been through a tough time but, when I go out and about, I am always hugely impressed by their level of commitment, enthusiasm and keenness to get to a stable place. We need to support the staff that we have, but we are also being fairly proactive in different ways in trying to recruit new people.

We have also engaged with recruiting internationally, and we are exploring partnerships on an ethical basis with other countries.

Sharon Dowe: You have covered my next question, which was about what the board has been doing to attract, recruit and train the workforce needed in NHS Highland. Have the processes that you have put in place been enough to encourage people to stay in their positions? You have said that you have recruited 21 hard-to-fill consultant posts and taken on 62 newly qualified nurses, but have you managed to retain all of them? In our previous evidence session on this report, I asked whether the pandemic was having

an effect on keeping staff, given that people were restricted from moving around. Now that restrictions have loosened, have you seen any change in that respect?

Pamela Dudek: Yes, we have seen a bit of an increase in turnover, and we are trying to analyse and understand what lies behind that. It is not necessarily a case of people moving on; it is also about the demographic of our workforce, about 27 per cent of whom are over the age of 55. We definitely know of people who have decided to retire and return on a part-time basis with us or to retire completely as a life choice. Equally, though, there are people who have chosen to move away from the cities and to come and work in NHS Highland for a better work-life balance.

We are keeping a close eye on the matter. As you have said, turnover came down significantly during the pandemic, but it is now on the increase again. We are looking at that closely across the professions and are seeking to understand what we need to do to mitigate things.

Sharon Dowey: Thank you.

The Convener: I think that Boyd Robertson wanted to come in but, given that we are pressed for time, I will bring in Craig Hoy. If Mr Robertson still wants to say something after Craig Hoy's questions, I will see whether we have any time for that.

Craig Hoy (South Scotland) (Con): With regard to retention, can you tell us briefly about the exit interviews that you carry out? When someone leaves NHS Highland, what do they typically say is their reason for leaving?

Pamela Dudek: That is a good question. Historically, that area does not seem to have had the value placed on it that it might have had, and we have had to pick it up and put a process in place.

We do not have a high degree of formal feedback, and that is the process that we are trying to implement. What we have is anecdotal—we are trying to build up the data set so that we can be much clearer about this—but, from what people have said to me, the reasons are varied. People are definitely making life choices as a result of their experience of the pandemic; indeed, I have come across a number who have decided to go on that basis. Retire and return has offered us an opportunity to negotiate with some people and get them to stay with us to help with, say, vaccination programmes and so on. I have also had feedback that some people have left because of the historical arrangements and the difficulties that they have experienced, but those are isolated cases.

However, we need to improve significantly in this area and get a much more robust database. I am sorry that I am not able to give you good and robust data, but we are in the process of implementing that framework.

Craig Hoy: That is critical, and the issue appears to be common to other health boards, too. If we are having a recruitment and retention crisis, it is vital that we capture the reasons for people leaving the profession.

What efforts are you putting into the creation of a more sustainable workforce model and dealing with the fact that you are competing all the time with other areas of Scotland that might not have the same rurality or cost of living issues? What more could the Scottish Government and NHS Scotland do to support health boards such as NHS Highland that cannot compete equally with boards in other parts of the country?

Pamela Dudek: One issue that I have raised nationally is that we need support with international recruitment. As a nation, we are at the start of that process, and we need to go at a slightly faster pace and build it. I do not see that as the cure for all, but it is important.

Another issue relates to the wider community planning partnership agenda and how we can work much more diligently, firmly and in a connected way with our communities to support the economy and to provide careers for people and ways in which they can grow, perhaps without leaving their locality. We are doing quite a bit of work on that in the Highland Council and Argyll and Bute Council areas, although we are a bit further ahead in the Highland Council area, where we are investing with partners and strengthening the community planning approach. We have nine community planning groups, with us as an anchor organisation, and the focus is on trying to create jobs. The benefit for us is that we get local people working for us, particularly in the care sector and through routes into nursing. We see that as being as important as focusing on international recruitment.

Another important aspect is the difficulties with accommodation down the west coast. We have been working well with our council colleagues and housing associations on that, but the level of affordable and permanent stock available versus the pace at which we need to bring in people creates a challenge. We have mobilised a lot of actions on that, but we could do with anything, on a national level, that could help us.

People talk about a weighting. That does not exist at the moment but, for our rural general surgeries and some of our island ones to survive, we need an offer that brings in people and supports them from a social and welfare

perspective, and with a professional portfolio that keeps them dynamic and motivated.

Those are some of the areas that are trickier for us. We can create profiles and work with NHS Education for Scotland and the universities to try to get more local courses, but we would appreciate anything that supports us at a national level. You are right that we compete with bigger health boards that might be more attractive for someone's portfolio or easier to join than is the case with NHS Highland. That applies on the west coast, in particular, but the situation in Inverness is extremely challenging as well.

The Convener: The next questions are from Willie Coffey. Willie, over to you.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Thanks very much, convener, and madainn mhath to the panel from NHS Highland. I start by reminding everyone that when a health board comes before the Public Audit Committee it is usually because of Audit Scotland knocking on the door and this Scottish Parliament committee having a look at matters.

To your great credit, you appear to have turned your finances around. However, my question is, how can there be such a transformation on finances with no impact on healthcare, or the public's perception of it, in NHS Highland? You said that nothing of significant concern resulted from that. If you do not mind, please tell us how that can be.

Pamela Dudek: The formal decisions that we take to make savings go through a five-stage process, and one of those stages—which takes place before a decision is signed off and considered viable—is when our clinical director of nursing, medical director and other clinical leads review it and advise on the associated risks. We look to them to provide recommendations and support and set out the risks so that decisions can be taken collectively.

Over the past couple of years, the workforce challenge has presented a bigger risk than our finances. At times, the deficit in nursing in particular, and in some of our hard-to-fill consultant posts in areas such as psychiatry, will have felt precarious for the public, but that situation has resulted from workforce supply issues rather than an effort to make financial savings.

I think that we have the right diligence in place around what we are doing. Looking forward, we have to change and reform to deliver services differently. That is not news, and we need to do it not just for financial reasons but in order to be sustainable. It will be really tricky, which is why it is important that we work with communities so that we have a clear understanding of, and joint

agreement on, what is tolerable and what is not, and so that we can escalate matters if we are in a position where we have to make a difficult decision that would compromise care. I would hope that we would never get to that point, but it would involve a discussion with the public and with our workforce. We are used to clear models of operating, but we are not going to square the bottom line unless we can think of different ways of working.

Willie Coffey: Do you engage directly with the public? If you are saying, "We used to spend all this money on delivering this care and we no longer do that", does that have an impact, or are you still able to deliver the same level and quality of care through the transformation process that you have embraced as a result of the Audit Scotland report and the Public Audit Committee's interest in the work that you do?

Pamela Dudek: It is getting more difficult, which is why we have to push further on what reform looks like. We engage with the public, but we could still do that much better than we have done historically. We have engaged, or tried to engage, extensively with the public in developing our new strategy, and we will continue to do so.

As is often the case, the level of engagement is variable, unless it involves a very specific matter, but we are really going to try to improve on that because we need a shared understanding. Communities can come up with solutions—we have only to look at our experience through Covid of communities mobilising to help us through a strengths-based approach. I still believe that a lot of our improvement and answers will lie in working with communities so that changes do not come as a surprise and do not feel as if they represent a downgrade in services. We need to continue to try to do that well, but we still have a way to go in that regard.

We have to have difficult conversations about how we change while retaining quality, as that has to be at the heart of everything that we do. Our clinicians will not buy in to anything else.

Willie Coffey: Looking ahead, are you confident, and can you give the committee an assurance, that you can continue to make the savings that you are making and that, after the pandemic, you can continue to deliver the quality and level of care that the public in the NHS Highland area expects?

Pamela Dudek: We have in place every system, process and governance arrangement to ensure that that happens. I caveat that by saying that we are working in a hugely volatile world—I have been working in health and care in the NHS for 40 years, and I have never led or managed a team in a situation that is anything like the one that we have been in.

With the caveat that there are some things that are outwith my control, and the fact that we are not on a straightforward journey, I think that we have the diligence and the framework in place to do the best that we can, which will always involve trying to ensure high quality and efficiency and high performance throughout our organisations. However, we can probably only do that, and provide assurance, in respect of how we get on with our transformation agenda and strategy, which is all currently work in progress.

We are a strong organisation with some real innovators and some really good leadership. We are also a changing organisation in relation to how we connect communities, all of which gives me hope, as a leader, that I can take us to the right place.

09:45

Willie Coffey: Thank you for that, Pamela. That is very encouraging. Tapadh leat.

The Convener: We have only a couple of minutes remaining. I mentioned at the start that Rhoda Grant joins us this morning. Do you have any final thoughts or questions to put to the panel from NHS Highland, Rhoda?

Rhoda Grant (Highlands and Islands) (Lab): Thank you. I will try and be as quick as I can.

At the start of the process, the NHS Scotland resource allocation committee—NRAC—settlement was not paid in full to NHS Highland. Is that the case now? In relation to the challenges coming down the road, obviously, there is Covid recovery, but there is also the taking on of maternity services on behalf of Grampian for Moray until Dr Gray's hospital is restored. You also talked about the elective centre. How will you cope with those challenges, and are you receiving the funding that you require in order to deliver for the people of the Highlands?

Pamela Dudek: I will ask David Garden to come in to say a bit more about the NRAC settlement. However, in brief, we agree with Rhoda Grant that we were not in parity at the beginning. The committee will know that we got a significant uplift last year to bring us up to a reasonable level of parity with other boards.

In relation to maternity services, for me, the most important thing is that NHS Highland's maternity strategy is secure and clear and worked up with the mums and families of Highland. As the committee knows, we have our own challenges in house in relation to that.

In relation to the Moray maternity aspect, I have been very clear that we cannot do that without the upgrade to our unit and without the revenue costs to enhance staffing, which we would need in order

to be able to do that in line with the quality and safety agenda that would need to prevail. We are going through a planning process at the moment and doing due diligence around what that would look like. That will come. As a board and as a chief executive, I have been very clear that we will work through how we will do that and what it will take to do that. We are trying to do that between now and June.

We are also considering the concerns of our clinicians and making sure that those red flags are fully explored and that we are clear that they are not barriers—and, if they are, why they are. We are working through that well, but we are absolutely coming at it from an NHS Highland maternity strategy perspective. We have to do that. Nobody knows that more than yourselves and the Caithness mums and the mums across all our far-flung places who have a tricky choice.

The national treatment centre is funded and the staffing model is funded. Again, I feel that our biggest risk is in relation to staffing and our being able to attract and retain. That takes us back into accommodation and onboarding, which we will take ownership of and do everything that we can in relation to. That will be our biggest challenge. However, we are making reasonable progress, and the next three to six months will tell us how well we are doing.

David Garden: For a number of years, the Government commitment has been that boards that are below their target share—that is, that are getting less than what their target share is—would be maintained within 1 per cent of that share. We have been below 1 per cent for a few years now, which resulted in a fairly significant uplift in the previous year of about £14 million. In addition to that, in the year that we have just started, an additional £3 million of NRAC parity money was given to us in order to maintain us at that level. Right now, I think that we are at about 99.5 per cent of our NRAC share, which is about £3 or £4 million below.

The Convener: Rhoda, do you have any further questions?

Rhoda Grant: No. Thank you for letting me attend the meeting, convener.

The Convener: That brings the evidence session to a close. I thank Boyd Robertson for his opening statement, which was very useful in framing our session. I thank David Garden, director of finance, for his input, which has been valuable, and I particularly thank Pam Dudek, the chief executive, who has fully, comprehensively and candidly answered the questions that we put to her.

We will suspend briefly to allow for a changeover of witnesses.

09:50

Meeting suspended.

09:52

On resuming—

**Section 23 Report:
“New vessels for the Clyde and
Hebrides: Arrangements to
deliver vessels 801 and 802”**

The Convener: Item 3 is the continuation of our evidence session with the Auditor General and his team on the report into new vessels for the Clyde and Hebrides. We are pleased to welcome back the Auditor General, who is joined again by Angela Canning and Antony Clark. I thank them for coming back so quickly to help us keep the momentum of our scrutiny going.

Auditor General, you gave an opening statement last week and I will not ask you to repeat that. With your forbearance, I will move straight to questions.

Rhoda Grant is also joining us again remotely. If she wants to come in, she should indicate that via the chat function and we will attempt to bring her in.

I will begin by recapping a couple of areas from last week and seeking a bit more clarity. In the evidence that you gave last week, Auditor General, you said that we

“do not know on what basis”

ministers agreed to take the risk of placing the order for vessels 801 and 801 with Ferguson Marine Engineering Ltd on the basis of a non-standard contract. You said that

“there is no documentary evidence of how those risks were considered or how it was intended that they would be managed during the running of the contract”—[*Official Report, Public Audit Committee*, 21 April 2022; c 28, 27.]

I ask you to reflect on something that the First Minister said to Parliament on 24 March. When asked about documentary evidence, she said:

“Many of the documents that relate to the decision have been in the public domain for some time. They clearly narrate the issue of the lack of a full-refund guarantee. They also clearly narrate the mitigations that were put in place to reduce that risk.”—[*Official Report*, 24 March 2022; c 11.]

Please give your comments on the view expressed by the First Minister.

Stephen Boyle (Auditor General for Scotland): Good morning. Key message 1 in our report draws together our overall conclusion about the availability of documentary evidence for that key part of the decision. We note:

“There is insufficient documentary evidence to explain why Scottish ministers accepted these risks and were content to approve the contract award in October 2015.”

It is absolutely the case that plenty of documentary evidence surrounds the contract, the procurement arrangements and the subsequent events that have taken place. What we are pointing to in our conclusion is that final step between the highlighting by Caledonian Maritime Assets Ltd, through Transport Scotland, that there were risks in the award of the contract—that it was non-standard in respect of the unavailability of the full 100 per cent of the builders refund guarantee—and the confirmation coming back from ministers that they were content to accept those risks and to award the contract to Ferguson Marine Engineering Ltd. We are saying that there is a missing piece of evidence about that final important step—about how ministers arrived at the decision to award the overall contract to Ferguson, in the light of those unusual circumstances.

The Convener: Are you saying that that critical piece of evidence does not cover in full the ministerial decision to mitigate the risk?

Stephen Boyle: It is perhaps worth commenting that, since the evidence session last week, the Scottish Government has confirmed that it has been unable to find the relevant documentary evidence on which it made that important decision.

The Convener: I was going to turn to that next.

In the light of the questioning of the First Minister last Friday, a Scottish Government official was reported to have said:

“A thorough search has been conducted and the ... documentation cannot be located.”

On Tuesday, that was confirmed in the Parliament by the Minister for Business, Trade, Tourism and Enterprise, who said that, following “a thorough search”, the documentation could not be located.

I turn to section 24 of the Public Finance and Accountability (Scotland) Act 2000, which, I am reminded, is headed

“Access to documents and information”.

The 2000 act is fairly clear that, for a section 23 report such as this one, the examiner from Audit Scotland is entitled under section 24(3)(a)

“to ... have access at all reasonable times to any document in the possession, or under the control, of the body or office-holder in question which the examiner may reasonably require”.

It appears that that document does not exist. However, the 2000 act goes on to say under section 24(3)(b) that the examiner is entitled

“to ... require from any person holding, or accountable for, any such document any assistance, information or explanation which the examiner reasonably thinks necessary”.

Does that cover information and explanation as to why documents do not exist?

Stephen Boyle: That is a reasonable connection, convener. Through our work, we request and receive generally all relevant information in respect of important decisions. Through this process, as you would expect, we have considered a considerable amount of documentary evidence. We also note in the report the range of witnesses and conversations that we have had during the course of our evidence gathering in order to complete a picture and understanding of a chain of events that, it is fair to say, is both complex and disputed. Nonetheless, that has not led us to being able to fully piece together that very important final step, prior to the award of the contract, of the consideration of how ministers would accept the risks in the final award to Ferguson Marine.

I turn to Antony Clark to add anything that he wants to on our oversight and the report.

Antony Clark (Audit Scotland): I will be clear with the committee: we received positive and full co-operation from the Scottish Government when conducting the audit.

As the Auditor General said, we have been provided with significant amounts of information on most of the key events that transpired throughout the complicated and long chain of activities. It is just one piece of evidence that we have not been able to receive from the Scottish Government.

The Convener: Okay, Mr Clark, I will leave the redresses to you or the Auditor General. Did you get an explanation as to why that documentary evidence did not exist?

10:00

Stephen Boyle: We were advised that ministers were content to proceed cognisant of the risks that existed, so I am not sure that we are able to confirm that there was documentary evidence in place. I note the Government’s explanation that it has searched and is unable to locate it but we are unable to say whether the document existed.

The Convener: Okay, so we do not know whether the Government is searching for something that exists.

Stephen Boyle: We have probably gone as far as we are able to, convener, and the committee might wish to pursue that line of inquiry directly with the officials involved.

The Convener: Thank you very much indeed. Willie Coffey has a number of questions to put.

Willie Coffey: My questions relate to the application of quality standards in design and construction, Auditor General. As you and

members are well aware, that is a common theme at the committee over many years.

The Rural Economy and Connectivity Committee took around a year to carry out its inquiry into the matter and its findings were published in December 2020. Its report, which has more than 100 pages, is full of commentary, conclusions and recommendations. Your report came out in March this year. Did you, in your analysis of the situation, make any substantive new findings compared to what the committee reported in its inquiry?

Stephen Boyle: You are right that the Rural Economy and Connectivity Committee conducted an extensive review of the circumstances around the procurement, the design arrangements and aspects of the dispute. As we touched on last week, in designing the scope for our audit, we took a view that, in the light of the significant evidence that that committee had considered and reported on, our report was better served by picking up largely from the point of the identification of Ferguson Marine as the preferred bidder.

We note in the report that we are not shipbuilding experts and that there is considerable debate and disagreement between the contracting parties about the nature, progress and delivery of the contract. Rather, our focus is on the process that was followed, some of the use of public money that took place after the identification of Ferguson Marine as preferred bidder, the use of loan support, what happened after the yard went into administration and the future for the delivery of ferries.

We build on that report from the Rural Economy and Connectivity Committee. We have brought to bear some new evidence, particularly about the decision to award the contract to Ferguson Marine, especially in the light of the extent of the risks that CMAL highlighted to the Scottish ministers. I am happy to elaborate on that.

Willie Coffey: I will ask about the general application of quality standards. That is a recurring theme, as we all know, but in this case, they apply to the shipbuilding industry. Over many years, the committee has heard about the importance of thorough planning and design at the outset of any project, whether it be a piece of software, a bridge or vessels, as in this case.

On page 25 is your report, you say that Ferguson started building the vessels before the designs were agreed with CMAL, which led to substantial reworking being required, with

“increased costs and delays”

and

“no link to quality standards.”

Those are the words in your report.

Why was that allowed to happen at the outset? Surely nobody would start building something before they knew what they were being asked to build. Do such failures mean that there was little prospect of a successful construction outcome further down the line?

Stephen Boyle: I will ask Antony Clark to build on some of the evidence that we gave last week in which we explored the nature of risk and risk transfer in the shipbuilding industry; the nature of a contract in which control—if I can use that term—resided with the builder rather than the purchaser; what that meant for milestone payments and their connection with quality arrangements; and how that was perhaps unusual and distinct from other major infrastructure projects in Scotland. He might also see fit to touch on some of CMAL’s role during the build phase and the extent of owner observation reports, which are CMAL’s views on progress and quality arrangements and which we cover in quite a lot of detail in the report.

Antony Clark: Before I address that second point, I want to build briefly on the Auditor General’s response to your earlier question whether we found anything new beyond what the Rural Economy and Connectivity Committee found with regard to the contract and its operation. We conducted our own primary research—we interviewed people and reviewed the document ourselves—but that largely confirmed what that committee had found in its report, in that we identified in the scope of the contract deficiencies and weaknesses in how it would work in the circumstances associated with hulls 801 and 802. For example, as is well known and as was well documented by the Rural Economy and Connectivity Committee, the contract did not clearly stipulate what would happen in the event of the builder not applying general quality standards.

We highlighted in the audit report other weaknesses such as a lack of clarity on specifying what was meant by “fabrication” for the fabrication milestones, and we also said that it was not clear how fabrication was due to be assessed. Questions also arose about the lack of clarity around escalation in the event of difficulties during the build. I hope that that builds on what the Auditor General said.

As for whether it is unusual for people to start to build before all the designs are signed off, we heard during our audit that that is not unusual in shipbuilding. It happens, and people start building and fabricating in advance of all the designs being signed off, but it generally happens with standard vessels. As you will know from the RECC report and from our report, there is disagreement and perhaps a dispute about the extent to which these vessels were novel or standard, which raises

some interesting questions that the committee might wish to explore about the sequencing of events.

The Auditor General wanted me to touch on the role of CMAL and its observation reports. The report makes it pretty clear that CMAL highlighted a number of concerns during the build phase of these two vessels, which, I should add, is still on-going, but the contract was such that it had no power to intervene in or stop the on-going fabrication of the ship. That touches on the nature of the new-build contract, which is fairly standard in the shipbuilding industry, and which becomes more of an issue where there is no full builder's refund guarantee and there is more risk associated with the purchaser. That is quite important in the context of this report and the matters that the committee might be interested in.

Willie Coffey: I was just coming to that particular issue. Paragraph 50 of the report says that "CMAL could only advise" and not require Ferguson to alter its approach to design and construction. I have never heard of a quality standard worth its salt in which the customer cannot instruct the builder to carry out its wishes.

What then emerged were these owner observation reports that members will have read about in the various documents. In quality management parlance, these are change requests, which are common in any other effective quality standard. However, according to your report, there were 346 such reports, only half of which had been carried out by the time Ferguson went into administration. Was the scale of that particular outcome unusual in your experience? Was it a symptom of the failure to agree in advance the designs of this peculiar construction, effectively meaning that everyone paid the price later on in the project?

Antony Clark: I will respond to that question, if that is okay.

We are not really in a position to provide a comparator for these two vessels with regard to the number of OORs that you might see in a build. That would be difficult, and we are not naval architects—that is not our core business.

We can say that the way in which the contract was constructed put limitations on the extent to which CMAL could enforce owner observation reports; Paragraph 63 of the report touches on that. There appeared to be differences of opinion between FMEL and CMAL on the reasonableness of some of the OOR requests, which hinged on, or were at least influenced by, disagreements about the nature of what the ships, or the hulls, were meant to be, and on-going difficulties around the sign-off of the specification. Linked to that were difficulties around the relationships between FMEL

and CMAL, which obviously created difficulties at different points in the build. That is touched on in both the RECC report and our report.

Willie Coffey: This is my last question for the moment. Again, it is on the quality issue, which is crucial and goes to the heart of much of all this. In paragraph 62 of the report, you mention that

"the quality of fabrication was not acceptable"

and that

"vessel parts were not being built to the correct specification or standards."

In paragraph 138, you report that Ferguson had installed

"1,400 cables that ... were too short"

and that, following a survey by the newly appointed turnaround director, all of them will have to be replaced, which will lead to more expense and more delay. The report notes that there are more than 8,000 remaining cables still to go in.

I simply ask this: who on earth sanctioned the installation of cables that were too short to do a particular job? Why did nobody spot that early on, at the outset? Why did it take a new director to come in to suddenly discover that? In your view, Auditor General, does that not point to incompetent management and construction processes from the outset?

Stephen Boyle: I will address both those points. I go back to the point that Antony Clark made regarding the extent to which we are able to pass judgment on the quality or otherwise of shipbuilding: it is for others to do so. In paragraph 62, we set out that CMAL advised the programme steering group of the concerns that it had about quality in respect of the fabrication, with vessel parts not being built

"to the correct specification or standards."

We go on to say that FMEL disputes that. Again, that is one of the overall themes of the report: the extent of disagreement, ambiguity, dispute and resulting breakdown in relationships between the contractor and the purchaser. That is a very clear part of the report's narrative.

You mentioned paragraph 138 and some of the more recent events. For example, the—now former—turnaround director highlighted one of the newer quality issues on the ships regarding the cables, and we touch on the issue of what that will mean for further delays in the completion of the ships and the additional cost needed to rectify those issues.

In response to your specific question about who is responsible for that, quality was the responsibility of the shipbuilder during the time that they were tasked with running the contract.

Clearly, as Antony Clark mentioned, CMAL had a role, and direct oversight, during the course of construction, and that escalated at various points, following the release of additional funding and loan provision. Overall, however, the yard would be responsible for the quality of the work that was undertaken.

Antony Clark wants to say a word or two more.

Willie Coffey: Sorry, Antony—I just want to come in here. Did Ferguson dispute that the cables were too short?

Stephen Boyle: I do not think that we know the detail of that.

Angela Canning (Audit Scotland): Can I come in here? I think that the issue with the cables has just been discovered more recently by Ferguson Marine (Port Glasgow) Ltd, and Parliament was updated on the issue by the new chief executive of FMPG back in March this year. It has been a recent—

Willie Coffey: So it was not noticeable until late on the process that the cables in the vessels were too short.

Angela Canning: My understanding is that that event has more recently come to light as FMPG has been reviewing the work in the shipyards.

Willie Coffey: Okay—thank you.

Antony Clark: I will step back briefly and talk more broadly about the governance arrangements. It is clearly the responsibility of the fabricator to fabricate the ship, but there is a broader question about the overall governance and oversight of the construction of the two hulls.

10:15

Our report is pretty clear that there were weaknesses in the broader project governance arrangements. The programme steering group was meant to be providing strategic oversight of the construction, but we highlighted a number of weaknesses in the PSG arrangements, including the lack of a project initiation document, a lack of updating of risk registers, and weaknesses and shortfalls in the quality of the information that was presented to the PSG.

That is a different point from who is responsible for putting the cables in, but it highlights broader issues around the overall management of these two pieces of fabrication.

Willie Coffey: I know that none of us is an expert in building ships. Nonetheless, Auditor General, do you recognise that some of these issues are recurring themes for the Public Audit Committee? For example, proper investment and effort in design at the early stage gives every

project, no matter what it is, a fair chance of success. If you do not invest that energy at the outset, you are unlikely to be successful at the end of the process.

Stephen Boyle: I absolutely recognise the committee's long-standing interest in the successful delivery of complex infrastructure investment projects. I absolutely agree on the need for effective design, agreement on what is in the contract and clarity from both the purchaser and the provider as to the intended outcome. That is one of the key components of ensuring successful delivery. In the report, we make it clear that, although that is one of the factors, a number of other sets of circumstances have also led us to the report.

Willie Coffey: Thank you for that.

The Convener: I turn straight away to the deputy convener, Sharon Dowey.

Sharon Dowey: Good morning. I start by going over a point that was raised at last week's meeting, when I asked about the decision to continue with the contract with FMEL, rather than going back to the tendering process as was CMAL's preference at that point. Gill Miller said:

"Transport Scotland submitted a paper to ministers to say that FMEL was the preferred bidder and that the First Minister would be announcing that at a visit to the yard on 31 August 2015."

She went on to say,

"we know that the pre-qualification exercise made it clear that the provision of a 100 per cent refund guarantee was mandatory"

and

"We asked Transport Scotland and the Scottish Government for all documentation relating to the minister's decision, but we did not receive any."

At that meeting, Antony Clark said:

"one would expect the accountable officer in Transport Scotland to share their thoughts, ideas, risks and concerns, and to make proposals to the Scottish ministers, on which ministers can reflect and make a formal decision. As the Auditor General has indicated, one would expect that to be recorded and documented."

Later in the meeting, Mr Boyle, you said:

"We do not entirely know whether this is a case of there being no document to support that important decision, or of our having asked for one and of its not being provided."— [Official Report, Public Audit Committee, 21 April 2022; c 26, 28, 27 and 29.]

The whole scenario gives great cause for concern regarding transparency and secrecy issues in the Scottish Government, and the reasons behind why that critical information has not been recorded. It could appear that, after having announced FMEL as the preferred bidder on 31 August, the First Minister would not have

wanted to announce the very next month that the bid was not valid as a result of a builder's refund guarantee not being given and that the Government was going back to the tendering process. It is not good practice for the concerns of CMAL not to be taken into consideration, and for CMAL to be overruled by Transport Scotland and Scottish ministers, but it is totally unacceptable for the meetings and decisions not to have been recorded.

I have two questions. Do you think that there were political motives and pressures from the Scottish Government that led to the failings in the process and the continuation of the contract with FMEL? Would such a decision have been taken by a minister or cabinet secretary, by the First Minister or by the Cabinet as a whole, and who would have been responsible and accountable for recording all the minutes of the meetings and the decisions that came from them?

Stephen Boyle: Good morning, deputy convener. In response to your first question, I draw the committee's attention again to exhibit 2 in the report, which sets out the various roles and responsibilities of the Government parties involved. It draws attention to the roles and responsibilities of Caledonian MacBrayne, CMAL, Transport Scotland and the Scottish ministers, and—as we touched on last week and earlier this morning—the award for ferry assets rests with ministers, which means it would be a ministerial decision to award the contract. That was reflected in the chain of events: CMAL was the procuring party, then the matter went through to its sponsor division in Transport Scotland and then, ultimately, information was provided to ministers about how they would accept the risks and award the contract. We are clear that it was a ministerial decision to award the contract.

We have also touched on the fact that there is no piece of documentary evidence about the overall award and acceptance of the extent of the risks that CMAL highlighted. Most notable is the absence of a full, 100 per cent builder's refund guarantee. That makes us unable to answer the question in the way that you have asked us to. You asked which individual minister ultimately took that decision. Like everyone else, we are aware that there has been speculation and comment about that, but we do not have information that allows us to answer that question beyond making note that the award of the contract was made with ministerial confirmation.

Sharon Dowey: Who would have been responsible and accountable for recording the minutes of meetings, if they did take place?

Stephen Boyle: Apologies, I forgot to answer that part of your question. The senior civil servants advising ministers would have been responsible.

Therefore, ultimately, the accountable officer of Transport Scotland at the time would have been responsible for the formal advice, the notes and the recording of the decision. As you would expect, they would have been supported by other officials who were party to meetings. Formal, clear record keeping really matters in such circumstances, in particular during the award of large infrastructure project contracts and, most notably, where they deviate from standard contract arrangements. It is very clear that that ought to have happened, but it appears that it did not happen as we would have expected.

Sharon Dowey: So it is a systemic failure of the Government to record crucial information. Are you aware of any directive or action taken by the Scottish Government since the publication of your report to ensure that all ministers and civil servants ensure that minutes and evidence of meetings are recorded?

Stephen Boyle: I will ask the team to get involved in this and state whether they are aware of anything that I am not, but I am not aware of any further directive from senior officials or the permanent secretary in respect of the quality of record keeping or its importance. That is not to say that that has not happened or that there has not been internal communication in the Scottish Government to that effect, but it might be a line of inquiry that the committee wishes to pursue with the Government. I will check whether my colleagues know of anything.

Antony Clark: We are not aware of any particular instructions following the audit report, but we are aware that, when issues like this have occurred in the past, instructions have been issued by the appropriate permanent secretary to their staff.

Sharon Dowey: I have a question on ministerial directions. The process is that the accountable officer writes to the appropriate cabinet secretary expressing their concerns and seeking a direction. In response, the ministerial direction instructs the accountable officer to implement the decision. As a result of that direction, the minister, not the accountable officer, is now accountable for the decision. No direction has been made in relation to the new vessels for the Clyde and Hebrides—or none has been recorded. I think that it would be fair to assume that, with a decision of this importance, there would have been ministerial direction for the contract to have proceeded. If that paperwork cannot be found or does not exist, does the accountability lie with the accountable officer or the minister?

Stephen Boyle: In the absence of formal written authority under the terms of the Scottish public finance manual in Scotland—as opposed to the terminology “ministerial direction”; apologies

for making that distinction—if an accountable officer does not request such written authority, the accountability for the decision rests with the accountable officer.

Sharon Dowey: To touch on something that Mr Coffey mentioned, CMAL issued a design and build contract in November. One month after the minister said that the contract was to proceed, £24.2 million—24.9 per cent or just under a quarter of the total contract value—was given for procurement deposits. The following month, in December, £2.8 million was given for cutting of steel. On page 25 of the Audit Scotland report, key message 2 states:

“FMEL began vessel construction before it had agreed the detailed design with CMAL.”

Is it normal procedure to start building a vessel before a finalised drawing has been signed off? Who would have authorised the payments to start being given to FMEL before that had been completed?

Stephen Boyle: I will ask Antony Clark to say a bit more about the contract award arrangements and build on some of last week’s discussion about the number of project milestones in the contract and the extent to which they were not related to vessel progress or quality arrangements. Antony can also touch on—or contradict me if he knows otherwise—whether CMAL was the body that was responsible for authorising those payments at that time.

Antony Clark: The Auditor General is correct that it would have been CMAL that offered advice on the appropriateness—or otherwise—of making those payments.

Ms Dowey might remember that, in last week’s evidence session, Gill Miller explained that there were particular circumstances at the start of the project, so a decision was reached that early payments should be made to purchase material, given some of the known cost pressures associated with the building of the ship. There were particular circumstances at play around that early payment that can perhaps explain why it was made. The committee might want to follow that up.

To touch briefly on your question around whether it is unusual for fabrication to start quite so quickly, as I said in response to Mr Coffey earlier, it is not unusual for someone to start fabricating before all the vessel design has been approved and signed off. That places a risk of fabrication on the fabricator but, in the circumstances of a lack of a full builder’s refund guarantee, that could be seen as problematic.

Sharon Dowey: Paragraph 102 of the report says:

“The Turnaround report indicated that it would cost between £110.3 million and £114.3 million to complete the vessels, on top of the £83.25 million CMAL had already paid to FMEL.”

That was more than the original cost. Was any scrutiny done to see how those figures were reached?

Stephen Boyle: I will ask Angela Canning to come in a second to say more about the new arrangements in the yard and Ferguson Marine (Port Glasgow) Ltd, which is the new public body that is overseeing the delivery of the contracts.

It is our understanding that the turnaround director and team arrived at those figures following their assessment of the current state of completion of the vessels. Mr Coffey referred to the on-going challenges to rectify some of the circumstances in relation to the cables and what that meant for the delay in completion of the two ships.

In more general terms, Ferguson Marine (Port Glasgow) Ltd is subject to public audit arrangements, which are distinct from the arrangements that were in place while Ferguson Marine Engineering Ltd was a private organisation. That affords me and, ultimately, this committee and Parliament more opportunity for scrutiny of the yard’s arrangements and public reporting of the progress towards completion. I will ask Angela to say a bit more if she wishes.

Angela Canning: I do not think that I have anything to add to what the Auditor General said.

Antony Clark: Ms Dowey, I draw your attention to paragraph 99 of the report, where we highlight that, although the Scottish Government had undertaken some due diligence in advance of nationalising the yard and was able to draw on the turnaround director’s report, it did not have the opportunity to gain a detailed understanding of the operational challenges in the yard, so it was not able to look at the level of outstanding work. It is worth bringing that particular point in the report to your attention, Ms Dowey, because it is relevant to your question.

10:30

Sharon Dowey: My final question is also a long one. The former management of FMEL are critical of the report that was produced by the turnaround director following nationalisation of the Ferguson Marine shipyard. How would you characterise that report and the process by which it was completed?

Stephen Boyle: We are limited in our ability to form an assessment of the turnaround director’s report. We know that the turnaround director’s judgment was informed by his work and that of his team and what he found in the yard. We also know that considerable management changes were

made at the yard shortly after the body went into administration and became a public body. There was therefore a lack of continuity of senior officials in the yard.

Antony Clark is right in saying that the Scottish Government was not in a place where it could get a rounded picture of the risks, issues and financial implications that it was taking when it nationalised the yard. Beyond that, however, we have not done any scrutiny per se of the costs that have been included in the turnaround director's report. We have no reason to doubt them and, given the state of completion of both ships, it is clear that many months of additional work and public expenditure remain in order to complete them.

Sharon Dowey: One of the comments in the evidence from the former management of FMEL is:

"Audit Scotland did not consider vessel design or the initial tendering process, which FMEL argue is essential to understanding subsequent delays and cost increases."

What is your response to that?

Stephen Boyle: I reiterate that we did not consider vessel design in our report. We took the view that it had been fully considered in the Rural Economy and Connectivity's Committee's report. As we also note in our report, and as was heard in evidence given to the Rural Economy and Connectivity Committee, the extent of dispute and disagreement was such that both sides sought independent experts to support their position on the design, whether it was a prototype, or whether the contract suggested as much. As we have said more than once or twice, we are not shipbuilding experts, so we took the view that the design arrangements had been covered and reported on, and that there was clear dispute about them, so the scope of our work would better serve by looking at other areas of the nature of the delivery of the two ships.

The Convener: You mentioned the turnaround director. Do you, as Auditor General, have a view on the contractual arrangements and terms of engagement of the turnaround director? I do not think that that is included in your report, but I wondered whether you have had a chance to reflect on it.

Stephen Boyle: You are right, convener. We have not included that in our report. If you are referring to the rate of pay for the turnaround director, it is unusual in a public sector context and considerably beyond what we see being paid to other public sector leaders. I note that the Scottish Government commented that it was consistent with the market rate for such services. I have no benchmark one way or the other to say whether that is the case. As you said, we have not done any additional work on it.

The Convener: That might be a line of inquiry that we will pursue elsewhere. Thank you. I now invite Craig Hoy to ask a series of questions.

Craig Hoy: Thank you convener, and good morning Mr Boyle. Last week, Mr Boyle, you expressed your frustration that you cannot get to the full facts and the heart of the ferrygate scandal. We are barely a week into our inquiries and I think that some members already share that frustration. Key documents cannot be found or were not prepared. Key witnesses have been gagged. There are reports of possible fraud and corruption. Scotland's former First Minister has gone as far as saying that we should be calling in the cops. Today, Erik Østergaard, the chairman of the Government's ferries quango when the deal was done, has said that CMAL was given written confirmation to proceed with awarding the contract to Ferguson Marine, but it was not given any written confirmation of why that was the case. As with all scandals, there is perhaps now some whiff of a cover-up, with people and possibly even Government ministers covering their tracks. We are only one week into our inquiries, and I do share your sense of frustration.

However, we are not alone. Jim McColl, who we should not forget was once a pal of the Scottish National Party—he had the First Minister on speed dial and was one of the Government's favourite Scottish businessmen—is clearly frustrated; his submission to the committee is stark and points to more than just a fallout among friends in the nationalist movement. He says that the procurement process was driven by a party-political dynamic and was rushed to deliver headlines for the SNP conference; he also says that CMAL's concerns were not conveyed to him and that not enough time was given to the feasibility of the conceptual design. If that were the case, it would be very serious indeed. In fact, we would be talking about corruption of the procurement process and it would explain why things since then went badly wrong and why ministers potentially have been keen to cover their tracks.

In the absence of any documentary evidence to disprove all that, how concerned should we be about the original process being conducted along such lines? If Mr McColl's claims are true, does that explain why we have seen such resistance to full and total transparency at a critical point in this process?

Stephen Boyle: Clearly there has been much comment on this report and the committee's consideration of evidence on it.

First, on the procurement arrangements, I am at risk of repeating my frustration in noting again the absence of key documentation with regard to ministers accepting the heightened risk, in the

absence of a builder's refund guarantee, and highlighting how they would bear such risk. As we touched on last week, it is typical in the shipbuilding industry for risk to be transferred to the builder, while the purchaser is protected by the 100 per cent builder's refund guarantee. The absence of written confirmation of how those risks would be managed is clearly a significant factor in this report.

I am probably limited in how much more I would wish to comment on the extent of political factors, other than to repeat my answer to the deputy convener that, in respect of the respective roles and responsibilities, the Scottish ministers had a very clear role in the contract awards. However, I am not in a place to comment on the motivations behind such a decision.

Craig Hoy: I do not want to dwell on the original procurement process, because I recognise that that was a matter for the Rural Economy and Connectivity Committee and that your report does not go into it. That said, Parliament still has questions to ask on it and answers should be forthcoming, because there is still something suspect about the scoring of and emphasis in the tendering matrix process.

However, your report covers three critical points in the development of the vessels that I think could be revisited. They are moments when the Government could have got a grip, stemmed the spending and ensured that the ships were properly procured, but, for whatever reason—and possibly to keep covering its tracks—the Government did not go down that route. The first was when Ferguson Marine suddenly announced that it could not offer a full 100 per cent builder's refund guarantee. In the interests of transparency and fairness, which are critical to any procurement process, should the Government not at that stage through CMAL have reopened the tendering process to the other five bidders or at least informed them that the playing field had changed significantly? Do you know whether that was considered or whether other bidders were informed at that stage of that material change to the procurement contract?

Stephen Boyle: I will bring in colleagues to talk about the chain of events. We set that out in a bit of detail in the report, including the negotiations, the timing of its coming to light that Ferguson Marine Engineering Limited was not able to offer the 100 per cent builder's refund guarantee and the actions that CMAL took thereafter.

Last week, my colleague Gill Miller was asked whether Ferguson's had expressed any reservations or concerns about the 100 per cent builder's refund guarantee prior to the identification of its status as preferred bidder, and she confirmed that that was not the case. By

implication, that represented a tacit acceptance of the terms and conditions of the contract.

As would happen under other public procurement arrangements, if a provider could not meet the full terms and conditions of the contract, that would be a material event and would give the purchaser the opportunity to take a decision as to whether and how to manage those risks or whether to restart the arrangements, and I think that it would have been reasonable for CMAL to do that.

I will pass over to Anthony Clark.

Anthony Clark: We are centring on a point that has been covered a few times already this morning, which relates to the critical decision about whether to appoint FMEL to carry out the contract in circumstances in which the builder's refund guarantee was not available.

What we know, as we have set out clearly in the report, is that CMAL highlighted its concerns about that risk to Transport Scotland. We also know that Transport Scotland highlighted to the Scottish ministers CMAL's preference for the tendering process to be restarted, but that the decision was made not to go down that route. At this point, we do not know on what basis it was decided not to address CMAL's concerns.

Craig Hoy: Let us bypass some of what then happened and fast forward to June 2018. It is reported in annex B of paper 3 that FMEL asked the Scottish Government to intervene to instruct CMAL to take part in an expert determination process to resolve the growing dispute between the procurement agency and the yard. FMEL managers said that CMAL did not do that because CMAL had something over ministers—that they had forced CMAL to do the deal with Ferguson Marine in the first place.

Reflecting on your report's account of that period, FMEL's management says that you have accepted the Government's "false narrative" and "fabulous propaganda" that the failure of the project was supposedly down to FMEL and not down to flaws that flowed from the procurement and design process being rushed because ministers wanted McColl's yard to be given the contract and they wanted that to be done quickly.

In his submission, Mr McColl goes on to say that the Government did not intervene to instruct CMAL to take part in an expert determination process because that would have been "very damaging" to the Government, because CMAL's board had threatened "to resign en masse" and blow the lid off what really happened in relation to the awarding of the contract.

Have you seen any evidence of that? Rather than going down the route of an EDP, would that

not have been another point at which the Government could have revisited the procurement and delivery of the ferries?

Stephen Boyle: Before I turn to your substantive point, I should say that we considered a considerable suite of evidence in arriving at the judgment that we set out in our report. It is clear from the report and the evidence that the committee has subsequently heard that there are very conflicting interpretations of events, and that continues in the submissions that the committee has subsequently received.

I want to pick up your point about the extent of the dispute and the options that were available to resolve disputes between the contracting parties. You mentioned dispute resolution and expert determination, but what was important in the circumstances was what happened at the stage beforehand in relation to mediation. Draft mediation between the parties was progressed, but we note in the report that there was a failure to agree terms of reference. Thereafter, there was an escalation, with the Government parties suggesting to Ferguson's that it needed to pursue its claim through the Court of Session. Ultimately, that was deemed by Ferguson's to be unaffordable. At that stage, when many tens of millions of pounds had been spent, as Ferguson's has set out, its going to the Court of Session would have led to work stopping in the yard, redundancies, job losses and so forth.

Mediation, which might have led to a better outcome, was not pursued in relation to the contract, and that feels like a missed opportunity. Ultimately, the ships are still not complete—they are many years late—which has affected rural communities that rely on such boats. Mediation might have provided a better, cheaper and quicker alternative to the circumstances that we set out in the report.

10:45

Craig Hoy: There was a final point when the procurement process could have been reopened and a different decision could have been taken, which was when the Government determined that it would nationalise the yard. In your report, you say that the decision to nationalise the yard was taken

“without a full and detailed understanding of the amount of work required to complete the vessels, the likely costs, or the significant operational challenges at the shipyard.”

Again, the Government pressed on regardless. How concerned are you that the Government proceeded with nationalisation on that basis? What were the financial consequences and the consequences relating to the on-going construction of the vessels?

Stephen Boyle: You have set out the judgment that we make in the report that the decision to nationalise the yard was taken without full sight of the anticipated costs that would be necessary to complete the vessels. However, the Government's overriding aim—to complete the vessels, save the yard and protect jobs at Ferguson Marine—was clear, so the Government was consistent in its intention with regard to nationalising the yard. Given the scale of the additional costs and the time that was necessary to complete the boats, as set out in the turnaround director's report, there is a question for the Government about whether it could have had a fuller understanding of the obligations that it was assuming when it nationalised the yard.

Craig Hoy: I have a final question. Last week, you said that one material witness from FMEL who wanted to give evidence as part of your audit and investigation could not do so because they had signed a gagging order with the Scottish Government. If the Scottish Government agreed to lift the non-disclosure agreements, would you be willing to reopen your lines of inquiry and produce an annex to your report?

Stephen Boyle: We could certainly consider whether there was any additional material evidence. That is not to say that we would reopen our report, but we would clearly speak to that person, if there was the opportunity to do so. We understand the circumstances that meant that we were not able to talk to them. It was not just about the Government; the administrators of the yard were not willing or able to waive the non-disclosure agreement that the former manager of Ferguson's had signed.

The Convener: In relation to the contract arrangements after nationalisation, you highlight in paragraph 105 of the report that there was quite a fundamental shift, with the contract changing from a fixed-price tender basis to a cost-plus basis. You say that the Scottish Government agreed to

“paying the additional vessel costs, regardless of the final price.”

Do you have a view on that decision?

Stephen Boyle: That is clearly unusual. It reflects the circumstances in which the Scottish Government has found itself—it is determined to complete the outstanding vessels. We note in the report that the Government's view was that that was its cheapest and best option, rather than undertaking something more fundamental. As we say, at various points, consideration was given to options such as scrapping the contract and towing the boats to another yard.

Yes, it is unusual to have a cost-plus contract, which is distinct from the clear fixed-price contract that led to many of the decision points in the

process. Beyond that, such a contract reflects the extent of additional risk that the Government has assumed in continuing to meet the costs of the two ships.

The Convener: On a point that is related to that, a couple of paragraphs later on in the report, at paragraph 108, you inform us that CMAL, which is the purchaser, also became the technical consultant. Does that not blur the lines and even, potentially, represent a conflict of interest?

Stephen Boyle: There is no denying that the arrangements are unusual. That paragraph also notes that Transport Scotland no longer has a role in the delivery of the ships. That is quite distinct from where we were. The accountability and governance arrangements have clearly changed following the nationalisation of the yard. As we mentioned, a new public body—Ferguson Marine Port Glasgow—has been created following the nationalisation, CMAL's consultancy arrangements have changed and the Government has a more direct role.

On the extent to which there is a conflict of interest, roles and responsibilities must be clearly defined, especially because they have evolved, as is set out in the report. Angela Canning might want to talk about how the technical consultant nature of CMAL's role is operating and some of the safeguards that are in place.

Angela Canning: To support the Government, CMAL has been selected as the technical consultant for FMPG because of its involvement throughout the project and its expertise on shipbuilding. It is still heavily involved in reviewing what is going on at the shipyard. It has an on-site presence there and, as we have discussed previously, it raises owner observation reports and discusses issues with shipbuilding staff continuously.

The Convener: We have heard this morning about how people have applied to court to get settlements in disputes about payments, we have heard about mediation mechanisms being considered and then abandoned, and we are looking at a new environment in which there is a cost-plus arrangement. If you read the evidence that Jim McColl submitted to the committee, you find that a lot of it is saying that we are looking at the situation through the wrong end of the telescope, that unfair demands were placed on Ferguson Marine, and that that is why the costs and delays ended up where they did. That is all because of CMAL, which is now the technical consultant in an environment in which there is a cost-plus arrangement. In looking out for the public's money, how do we know that that is not a blank cheque for CMAL to get the highest specification and technical corrections that will

cost an inordinate amount of money on which there is no limit?

Stephen Boyle: I will be very clear. I am sure that the committee will want to be assured that that is not the case and that there is no bottomless pool of resource available to complete the two vessels. However, it is undoubtedly the case that many tens of millions of pounds remain to be spent on them, as set out in the turnaround director's report and the new chief executive's report.

The committee can perhaps have some confidence that, as set out by the new chief executive, the timeline for the completion of the vessels is noted and rigorous project management monitoring and deadlines need to be in place in a way that is distinct from some of the arrangements that we set out in the report. That might inform where you wish to go next.

Colin Beattie: My focus, which is on two areas, is partly based on some of the comments that you made last week. Some of my questions probably relate to points that fellow members have raised, but I would like to get the sequence right in my mind because it is a bit complicated.

CMAL awarded the contract to build the ferries—it was the body that signed that off. There was no ministerial direction to do so—jump in if I am telling porkies; I am trying to get it right—so there would be no piece of paper for that. Is that correct?

Stephen Boyle: You are correct, Mr Beattie. No ministerial direction or written authority was requested of ministers from civil servant accountable officers. A slight distinction is also relevant, which is that ministers were responsible for awarding the approval of the contract.

Colin Beattie: I am coming to that in due sequence, I hope.

CMAL awarded the contract in its capacity as the procuring authority. It expressed concerns about the absence of a full refund guarantee, and it put in place mitigations with regard to that. There is a question about the timing of that. FMEL did not say anything about being unable to comply with the terms of the tender until after the announcement was made, which is a bit odd. You would have thought that, at the time of responding to the tender document, it would have said, "No, we cannot comply with those bits."

Stephen Boyle: We have covered that slightly, in part with the discussion with Mr Hoy, and also during Gill Miller's response last week. It is our understanding that Ferguson Marine Engineering Ltd's concerns about the requirements to offer 100 per cent builder's refund guarantee were noted

after its identification as the preferred bidder for the contract.

Colin Beattie: [*Inaudible.*]—actual announcement.

I am looking at documents that have been in the public domain for a very long time now. I will quote three important parts from the document of 8 October 2015, which is addressed to ministers and is a communication to them asking for their confirmation that they are satisfied and support the bid. It states:

“Procurement risk can rarely be removed entirely in complex contracts and CMAL have addressed this, taking their own legal advice, and in particular by agreeing contractual terms with FMEL which are broadly comparable with the tender specification.”

It also states:

“In the case of a challenge, CMAL would robustly defend their position on the basis of the legal advice they have received and the steps they have taken to bring the final contract clauses into broad comparability with the tender specification.”

That is an important point.

It also says:

“in discussions between Transport Scotland officials and CMAL Senior executives on Tuesday 29 September and on Friday 2 October, the CMAL Senior Executives made clear that CMAL would likely be facing similar problems no matter who the preferred tenderer was. Their Senior Executives also made the point that despite receiving stronger financial assurances in previous shipbuilding contracts they still subsequently faced problems, and in one instance significant challenges, during the respective construction phase.”

If I was a Scottish minister receiving that, I would say, “Okay, it has put in place mitigation that broadly covers the contractual tender that went out”. Would it be reasonable to give the nod on that basis? Nobody is denying that they gave the nod, but would it not be reasonable to take that into account?

Stephen Boyle: What you have read out suggests some ambiguity and is perhaps distinct from what we set out in our report. I am not sure that we would arrive at the same conclusion that a 25 per cent builder’s refund guarantee, plus some of the additional safeguards, is broadly comparable with 100 per cent.

Colin Beattie: I am looking at the information that ministers were receiving. They were being told that things were broadly comparable with the tender specification. Would they have a reason to challenge that?

Stephen Boyle: I will bring in Antony Clark in a wee second—I think that he wants to highlight a section of the report.

On the advice that ministers received—forgive me, as I do not have that in front of me at the moment—I repeat that our judgment is that that guarantee is not broadly comparable. The nature of the shipbuilding contract, as distinct from some of the other large public procurement contracts that are inevitably considered by ministers more routinely, is that it relies on the 100 per cent builder’s refund guarantee to secure the transfer of risk.

If you will allow me to pause for a second, Mr Beattie, I want to bring in Antony to say a bit more.

Colin Beattie: Looking at the detail that has been put into the report and so on, we might sit round this table and agree, but ministers were receiving only those few papers, on which they were basing their decision.

Stephen Boyle: The committee might wish to explore that issue in detail with other organisations. Antony Clark will say a bit more about our response.

Antony Clark: It is worth drawing out other aspects of the email that Mr Beattie referred to. Annexe B of the email contains Erik Østergaard’s email of 26 September, which is referred to in the note. In that email, he states:

“If FMEL don’t get back with substantially improved conditions in this respect the board of CMAL have no other option than”

to

“again reject the deal. This will imply .. Shelving the project until further”

notice or reopening the contract negotiations with another of the bidders. Therefore, there are different bits in the information that was provided to ministers that offer differing views.

On the question about legal challenge, you are quite right to say that CMAL was clear that it would be able to defend the contract were it to be let. That does not mean that it said that it wanted the contract to be let. That is a slightly different point.

11:00

Colin Beattie: From looking at the documentation, there is no doubt that ministers gave approval in some way. Basically, what is missing is the piece of paper that says that they did that. I do not think that anybody is disputing that that approval was given—at least, that is what I interpret from the documents. If I was a minister seeing that coming forward, I would be reassured in giving the decision that there was some sort of comparability with the tender specification. That is what the covering document says.

Stephen Boyle: I refer to my evidence and the discussion with the convener last week. On the

extent of concern from CMAL and how it communicated that to Transport Scotland, we would typically have expected that, if there was such concern, that would have resulted in a request for written authority. However, as we know, that was absent as part of the process.

Colin Beattie: Did CMAL give a formal document with detailed concerns that got to ministers? I am asking you that question because I am not sure.

Antony Clark: The document that you are referring to, which I, too, have in front of me, Mr Beattie, is the email that went from Richard Hadfield to a number of ministers and others. Annex B contains the concerns that CMAL was raising at that point of the process.

Colin Beattie: Yes, but if you look at the annex and the covering document that went to ministers asking for their confirmation, you see that it does not seem to match up in terms of concerns.

Antony Clark: I cannot comment on the content of the advice that Transport Scotland gave to ministers. I can merely refer to the fact that annex B highlights CMAL's concerns.

Colin Beattie: The email that went to ministers contained those annexes. If I was a minister reading the covering email that asked to give confirmation that I was content, I would look at the clear indication that the terms are

"broadly comparable with the tender specification"

and at the assurance that previous

"financial assurances in previous shipbuilding contracts ... subsequently faced problems"

and so forth, and I would say that a decent job seemed to have been done in mitigating the risk.

Stephen Boyle: We would reassert the judgment that we have reached. There seems to be a mismatch in CMAL's strength of feeling about the scale of risk and the divergence from standard terms and conditions, given the absence of the builder's refund guarantee, and how that flowed through in communication to ministers. Transparency and the scale of concern that ought to have been shared—and whether that was somehow phrased in a way that suggested ambiguity—are also issues of real concern.

I apologise, as I am at the risk of repeating myself, but we clearly reached the view that the extent of risk and its management through the 25 per cent builder's refund guarantee and other arrangements are not broadly comparable with a full 100 per cent builder's refund guarantee.

Colin Beattie: On the face of it, I would agree. However, as you have said, there is ambiguity. As I said, if I was a Scottish minister receiving the

covering email, I would just have looked at the bit that said

"broadly comparable with the tender specification"

and so on, and said, "Right. They seem to have done their job." However, that is probably for a different discussion.

On FMEL, one of the concerns that I raised last week was about the destination of the money and what has happened to it. We can speculate that the £45 million, which was really for working capital, paying salaries and keeping the yard ticking over, was used for that purpose. However, tens of millions of pounds went into the yard and there is no evidence that, at the point of nationalisation, work or equipment of that value was lying there. What happened to it?

You have said that, because FMEL was a private company, Audit Scotland has been unable to carry out proper due diligence. Now that it has been nationalised, do we own that history? Can we look retrospectively at what happened to the money? There must be some record of it some place.

Stephen Boyle: Angela Canning can say a bit more about what happens with the transfer of entities, but it is the case that those are separate legal entities. Ferguson Marine Engineering Ltd entered into administration and, subsequently, was liquidated; some of the assets were transferred through the Scottish Government's security arrangements for the provision of loans as it became a secured creditor and sought to purchase the assets from FMEL's administrators.

FMEL's accounts are a matter of public record, as are those of Ferguson Marine Engineering (Holdings) Ltd, which I think is the group company. Both reported on the progress of vessels 801 and 802 while they were in construction, so there will be something of a public record in that respect; moreover, they were subject to external audit, as private companies are. However, that is not the same as our having a complete and full record of a private sector company's accounts and the transactions that flowed thereafter.

Before I bring in Angela Canning to say a bit more about what transpired, I would just say that this brings us back to our earlier conversation about the assurances that CMAL had about the progress of the vessels, the payments that they were making and what they were for. One of our overall conclusions in our report is that the milestone payments were not linked sufficiently to either quality or progress of the vessels.

You also mentioned loans. The first loan was designed as financial support to Ferguson's for working capital, the payment of invoices and so forth, while the second loan of £30 million was

expected to be more closely linked to quality and progress. However, as we set out in the report, our judgment is that that was not made sufficiently clear when the loan drawdown was made available.

I will pause there, Mr Beattie, because I am sure that Angela Canning will want to say a bit more.

Angela Canning: I have not got much more to add, but with regard to the millions of pounds mentioned that had gone to FMEL as part of the contractual payments, we refer to that in paragraph 147 of our report. We know from information that CMAL provided to the Rural Economy and Connectivity Committee that £63.5 million was spent on materials and equipment and just over £13 million was spent on labour. That is the information that we have about FMEL's high-level areas of spending.

Colin Beattie: When the yard was nationalised, the assets in it must have been valued. Was their value comparable to the money that came in to produce them?

Stephen Boyle: I think that it is safe to say that they were not. I am just checking that I am quoting the right figure, but I think that the Government was able to secure about £6 million by virtue of the administration. That does not reflect the extent of payments.

That said, I hesitate in making a definitive judgment on that, as we are not sighted on the valuation process of a work-in-progress vessel that might have a different valuation as it becomes a working asset. Again, that is not an area that we have explored in any great detail.

Colin Beattie: Is that not an area that it is important for us to look at? One of the key things that this committee does is follow the public pound; here, we have a situation in which tens of millions of pounds have been poured into a project with not that much to show, value-wise, at the end of it.

Stephen Boyle: That takes us to the point with which we conclude our report. As I mentioned last week, we need a fuller and next-stage review of what has been delivered, given the scale of public spending on the vessels, so that we have an understanding of what has been produced for vast sums of public money and what safeguards are genuinely in place to avoid a repeat of this sort of thing happening not just with ferries but with other projects. It is the case that tens of millions of pounds have been spent on the vessels and tens of millions of pounds still need to be spent to get them to be working assets.

Colin Beattie: Are you considering doing such a review?

Stephen Boyle: We will perhaps wait for the finalisation of the committee's evidence to inform where we go next and to see whether there will be other parties that will take up the next stage. It is clearly part of our forward thinking.

Colin Beattie: It seems to me that there was an awful lot of evidence in the Rural Economy and Connectivity Committee report. I would have hoped that that might have led you down that road without waiting for the Public Audit Committee.

Stephen Boyle: As I have said on a number of occasions, we are satisfied with the scope of our work. It sets out where we are now, which is that the two vessels are very much a work in progress and many millions of pounds have been spent to achieve unsatisfactory progress. We have said in evidence that the Rural Economy and Connectivity Committee considered a range of different views on the dispute, that it was supported by independent experts and that it took a clear view about the scope of our report.

Colin Beattie: Convener, do we have time for questions on accountable officers, governance and all those other things?

The Convener: I am sure that, after discussion, we will reach that point.

In the remaining few minutes, I want to give Rhoda Grant, who is joining us remotely, an opportunity to ask questions. Rhoda, is, of course, an MSP for the Highlands and Islands, and she will, I hope, be served by the ferries, if they eventually set sail.

Rhoda Grant: Obviously, there is no paper trail but, when you were doing your investigation, Auditor General, did you ask the accountable officer who, at ministerial level, told them to proceed?

Stephen Boyle: I am not sure that we are in a position to answer that today. We might need to come back to the committee in writing. As you have probably observed, our colleague who had some of those direct discussions is not with us.

Rest assured, we had extensive discussions with officials; we set out in our report the various people who we interviewed as part of the primary evidence-gathering sessions. However, with regard to which minister took the decision, we refer to that as being a collective ministerial decision. We are not sighted today—or, I suspect, entirely—as to which minister made that call.

Rhoda Grant: You have not directly asked the accountable officer whether they recall who made that decision.

Stephen Boyle: I can commit to coming back to the committee in writing if we have that information.

Rhoda Grant: Thank you—that is helpful.

I have a couple of questions about procurement. It seems that the whole procurement process was wrong. We have recently heard in the news that the Scottish Government is procuring ferries from Turkey, as is Norway. However, Norway is paying only half the price for comparable ferries. Is there something very wrong with the Scottish Government's procurement process that leads to it paying huge amounts of money for ferries and, in a way, perhaps not procuring them? Obviously, the ferries that we are talking about now have not been delivered and we have yet to see whether the others will be delivered.

Stephen Boyle: There is probably little that we can say about that. We have not done any audit work on ferry procurement arrangements in the round. I suspect that that is a question for CMAL—it is for CMAL to assure the Parliament about the overall value-for-money arrangements that it has relative to other countries, if it uses those as a benchmark.

I acknowledge that we are sighted on the recent press coverage about the relative costs that the Scottish Government is incurring compared with other countries in its ferry procurement arrangements but, beyond that, we do not have any further information.

Rhoda Grant: Will you look into that in the future, given that it is about public spending and the cost to the public purse?

Stephen Boyle: We are happy to consider that as part of where we go next with ferries. This is our second piece of work on ferries, following an earlier report three or four years ago on overall ferry arrangements. We are waiting for the Government's final decision on ferry governance arrangements in Scotland and how that will shape up. We will use that to inform our future work programme.

11:15

The Convener: That brings us to the end of the time that we have this morning. Once again, Auditor General, I thank you for your willingness to answer the wide range of questions that we have put to you. I also thank the team that has joined you. We very much appreciate the input of Antony Clark and Angela Canning, which has been illuminating.

We will have to consider what our next steps are. You have given us some suggestions on where it might be useful for us to look further. We will reflect on those and, as a committee, we will reach our own conclusions on our next steps. I thank you again for your evidence.

We now move into private session.

11:16

Meeting continued in private until 11:53.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba