



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit Committee

Thursday 9 June 2022

Session 6



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PUBLIC AUDIT COMMITTEE

17th 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:

Colin Cook (Scottish Government)

Hugh Gillies (Transport Scotland)

Fran Pacitti (Transport Scotland)

Dermot Rhatigan (Scottish Government)

Mo Rooney (Scottish Government)

Chris Wilcock (Transport Scotland)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Public Audit Committee

Thursday 9 June 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 17th meeting in 2022 of the Public Audit Committee. Willie Coffey, one of the members of the committee, is not able to join us in the committee room, but I am pleased to say—and see—that he is joining us via videolink. Willie knows that he just needs to indicate in the chat function if he wants to come in.

Item 1 is consideration of a decision to take in private agenda items 3 and 4. Does the committee agree to take those items in private?

Members indicated agreement.

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

09:00

The Convener: The principal item on our agenda is continued consideration of the Auditor General for Scotland’s report, “New vessels for the Clyde and Hebrides: Arrangements to deliver vessels 801 and 802”, which is a continuation of the evidence session that we held on 26 May.

I welcome back our witnesses. Colin Cook is the director of economic development in the Scottish Government, and Dermot Rhatigan is the deputy director for manufacturing and industries. Mo Rooney joins us in the committee room today. She is the deputy director of the Scottish Government’s strategic commercial interventions division. From Transport Scotland, we have Hugh Gillies, interim chief executive; Fran Pacitti, director of aviation, maritime freight and canals; and Chris Wilcock, head of the ferries unit.

Before moving to questions, I want to place on the record the committee’s disappointment that we are not joined today by the portfolio accountable officer for transport—the director general for net zero. Section 9 of the Scottish public finance manual is pretty clear about the expectations that are placed on designated accountable officers to give evidence to the committee. We retain the option of calling back the interim DG for net zero at some point in the future.

I remind members and witnesses that, as always, we are up against the clock, so I ask that we try to keep questions and answers as short and concise as possible.

I invite Colin Cook to make an opening statement.

Colin Cook (Scottish Government): Thank you for the invitation to follow on from our previous evidence session on 26 May, which covered vessels 801 and 802 and the Scottish Government’s support for Ferguson Marine. I appreciate that the Audit Scotland report covered a lot of ground. In our previous session, we focused largely on the initial procurement of the vessels and the period prior to the Scottish Government taking control of the shipyard. We are, of course, happy to answer any further questions on that topic and address other areas that might be of interest to the committee.

I should note, as we did previously, that people who were involved in the original decisions have moved on in their careers since the project began

back in 2014. Some have moved to other roles in the Government and some have left the Scottish Government altogether. However, the witnesses whom the convener introduced will aim to cover all relevant areas.

As the convener said, I am the director of economic development, and I am joined by two colleagues from economy, Mo Rooney and Dermot Rhatigan. We will be able to speak to issues around Scottish Government support to Ferguson Marine as a business, progress with the vessels, and the loan funding that was provided to Ferguson Marine Engineering Ltd prior to public ownership. From Transport Scotland, we are joined by Hugh Gillies, Fran Pacitti and Chris Wilcock, who will be able to cover issues that relate to the delivery of the vessels prior to public ownership and the contractual matters that we focused on in the previous session. With your permission, convener, I will try to direct questions to the panel member who can give the best possible response and information.

Again, as we said in the previous session, I underline that we welcome the Audit Scotland report and we have accepted all its recommendations. We recognise that there is still work to be done to deliver the benefits that the new vessels will bring. We are determined to achieve that, and we see this process as a vital part of our efforts. We welcome the scrutiny and the opportunity to reflect on lessons. We will be happy to answer any questions that we can.

The Convener: Thank you, Mr Cook. I am conscious of the fact that Mr Gillies is an accountable officer. It might be that we will go directly to Mr Gillies on some of our areas of questioning.

First of all, I invite the deputy convener, Sharon Dowey, to put some questions to you.

Sharon Dowey (South Scotland) (Con): Good morning. Paragraphs 104 to 109 of the report, starting on page 45, outline how the Scottish Government has fundamentally changed the arrangements to complete the vessels since the shipyard was brought into public ownership in December 2019. That includes the appointment of Caledonian Maritime Assets Ltd as its technical consultant.

During the Public Audit Committee's evidence session with the Auditor General for Scotland on 28 April 2022, he commented on the new arrangements, stating:

"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."—[*Official Report, Public Audit Committee*, 28 April 2022; c 37.]

Under the new arrangements to complete the vessels, CMAL has been appointed as the Scottish Government's technical consultant and Transport Scotland no longer has a role in the delivery of the ships. Why were those decisions taken? What work was undertaken to assess the risks associated with the change in roles?

Colin Cook: I will ask Mo Rooney to comment on that but, as you said, the new financial arrangements that came into being on 1 April saw the Scottish Government taking ownership of the vessels and entering into a new contract with Ferguson Marine to complete delivery. For the avoidance of doubt, I note that the original Ferguson Marine Engineering Ltd contracts have therefore been terminated, and the expectation is that CMAL will purchase the vessels via voted loan structures.

That did indeed change the financial arrangement from one in which the Scottish Government directly funded the operating costs of the shipyard so that work could be undertaken on vessels 801 and 802—which were, in turn, owned by CMAL, of course. We think that that was inefficient financially because payments were from the Scottish Government's resource budget rather than the capital budget, and it did not reflect the true role of the Scottish Government as the primary funder of the vessels.

On the introduction of the new arrangements, I think that it is worth saying that, internally, we did a lot of consideration of what the best structure would be, and the decision was fully supported by the accountable officer, the director general economy, the chief executive of Transport Scotland at the time, and, indeed, the Scottish Government's chief financial officer.

Mo, is there anything that you would like to add?

Mo Rooney (Scottish Government): Yes. Thank you, Colin. You covered a lot of the ground there.

It is an unusual situation. I think that it is fair to recognise that. It is unusual for the Scottish Government to be in ownership of a commercial shipyard. The arrangements that we put in place were, as Colin Cook says, to reflect the actual delivery arrangements that were then in place.

I will clarify a few points. Transport Scotland was the funder of the vessels under the previous arrangement, so it was not contractually involved. It is still not contractually involved, but we keep it in close touch with progress on the vessels and it has a keen interest in their entry into service, so there is a close partnership.

On the assessment of the arrangements, there was a very thoughtful and rigorous process that involved considering all the options to ensure that

we were able to fund the delivery of the vessels in an appropriate way. Part of that included consideration of the role of CMAL, which is an integral part of the process for us. It provides us with the professional shipbuilding advice that is invaluable to our understanding of the progress on the vessels and allows us to challenge the business appropriately. Its role was considered and I do not believe that there should be any concerns around that. Our interests are very aligned with those of CMAL and Ferguson. They are about getting the vessels delivered as quickly and efficiently as possible, and we certainly find CMAL's support in that very valuable indeed.

Sharon Dowey: Okay. You do not think that there is any conflict of interest in CMAL's revised role.

Mo Rooney: I do not. That was considered as part of our consideration of the best approach to structuring the arrangements going forward, and no material risk of conflict was identified. As I said, we have a shared interest as opposed to a conflict of interest. Ferguson's, CMAL and the Scottish Government have the shared obligation of ensuring efficiency and economy and delivery of the vessels as soon as possible and at as low a cost as possible.

In the joint work between Ferguson's and CMAL, we are seeing some really heartening and pragmatic discussions about pragmatic solutions. We see no cause for concern there, and there was certainly no cause for concern in our initial analysis.

Sharon Dowey: Paragraph 105 on page 45 of the report states:

"in March 2021 the Scottish Government finalised the arrangements to fund and manage the vessels ... This included replacing the existing fixed-price contract between CMAL and FMPG with a new contract (for each vessel) between itself and FMPG. The Scottish Government is committed to paying the additional vessel costs, regardless of the final price."

You have just said that you are looking for something at as low a cost as possible. Is it normal for the Scottish Government to hand a contractor a blank cheque?

Mo Rooney: This is certainly not a blank cheque, if that is what is being suggested. Ministers have been really clear with the board, the management team and the workforce that these vessels need to be delivered within the budget that has been allocated. Each organisation—Ferguson's and CMAL—and each part of the Scottish Government that is involved in this all share the obligation to deliver as efficiently as possible, with an eye to value for money. There is no blank cheque.

Sharon Dowey: In your opening statement, you said that you accepted all the recommendations in the Audit Scotland report. Can I double check that that is the case? Are there any recommendations in that report that you have any reservations about?

Colin Cook: No. We are working to implement all the recommendations, and we are actually getting great support from Audit Scotland to do so.

Sharon Dowey: Finally, at what stage in the procurement process did the Scottish Government, Transport Scotland and Scottish ministers first become aware that FMEL was unable to offer a full builders refund guarantee?

Hugh Gillies (Transport Scotland): That question lies with us, I think, and if I may, I will ask Fran Pacitti to take it.

Fran Pacitti (Transport Scotland): I think that this issue was discussed at the previous evidence session when we talked about the requirement for a BRG to be included in the invitation to tender. When Ferguson's responded with its bid, it did not raise any issue with the standard BIMCO terms, of which the BRG formed part, and that was taken as tacit acceptance.

Ferguson's was identified as the preferred bidder in August 2015—is that right?

Chris Wilcock (Transport Scotland): Yes.

Fran Pacitti: I am sorry, convener—that should be indelibly ingrained on my mind.

Following its identification as preferred bidder, Ferguson's and CMAL had a discussion during which Ferguson's indicated some concern about the provision of the BRG. There was then a period of negotiation to put alternative arrangements in place before the contracts were signed in October 2015.

Sharon Dowey: At what point did ministers become aware that the BRG was not in place?

Fran Pacitti: You must forgive me, because I am struggling to recall the precise date, but ministers would have been aware of a discussion and negotiation between CMAL and Ferguson's following the announcement of the preferred bidder.

Sharon Dowey: Can you come back to us with the actual dates?

Fran Pacitti: I am happy to do so.

Sharon Dowey: We just want to know when everybody actually knew this. Last week, I was sitting here saying that all this might have been rushed, but obviously there is a question about whether they were trying to rush it because an announcement was going to be made at the yard

at the end of August when CMAL was still in negotiations. I just want to try to clarify the point at which each—

Fran Pacitti: Forgive me—I am happy to do so. However, I should say that the announcement at the end of August was about the identification of the preferred bidder, not that the contracts had been entered into.

Sharon Dowe: Okay. Thank you.

The Convener: I just wanted to follow up Sharon Dowe's question, which, I think, Mo Rooney answered, on the changing role of CMAL and its having the role of overseeing the work in the yard. When the question was asked, legitimately, whether you thought that that represented a conflict of interest, you said that you had given consideration to the matter, presumably concluding that there was no such conflict. Can you provide us with any documentary evidence of those considerations?

Mo Rooney: I will certainly take that away and see what we can do.

The Convener: While we are on the subject of documentary evidence, at our meeting on 26 May, there was some discussion about what Mr Brannen kept referring to as "the bit of paper". In his evidence, he said:

"with further investigation by Fran Pacitti and the records team it"—

the paperwork—

"turned up ... I accept that, on that occasion, that one bit of paper was not easy to find, but we did find it ... Now that we have the bit of paper that explains that the minister accepted that, that is the totality of that exchange."—
[*Official Report, Public Audit Committee, 26 May 2022; c 7, 8.*]

Fran Pacitti, what were you asked to look for and who asked you to look for it?

09:15

Fran Pacitti: I will take this in stages, if I may.

In 2019, we took a decision to proactively publish information that was relevant to all matters in relation to vessels 801 and 802, including the original procurement of the vessels and the run-up to nationalisation of the yard.

As part of that, I asked my team to undertake searches through our records management system to identify all the relevant correspondence. That was done. We did that thoroughly. Due diligence was undertaken on it. Multiple people were involved in it and we asked our information technology colleagues to support us in it to ensure that we had a comprehensive review. At that point, we did not find the response to the submission dated 8 October.

In advance of our appearance at the Rural Economy and Connectivity Committee in 2020, we did a similar exercise. Not so much focus was put on the absence of the ministerial response to the submission of 8 October at that point. We undertook the same review and it was not found.

In advance of discussion with Audit Scotland on the preparation of its most recent report, we did the same exercise.

I was not asked or instructed by anyone to continue to look for the document but, accepting the interest that there is in it and understanding our obligations to be as transparent as we can, we did a further search in advance of preparation for appearing before this committee. This time, engaging with IT colleagues, some new software that allows forensic searches was used. That is not typically done because of the resource intensity of it. It identified the submission of 9 October, which you have.

The Convener: When did you find the thing that Mr Brannen referred to as "the bit of paper"?

Fran Pacitti: I cannot remember the date, but it was the morning of the day that it was published on the Scottish Government website.

The Convener: I think that that was the same day that the Conservative party called a debate on ferries in the Parliament. Is that correct?

Fran Pacitti: Yes.

The Convener: That is 11 May. You found that document on the morning of 11 May.

Fran Pacitti: Yes.

The Convener: And the minister was able to wave that bit of paper in Parliament in the afternoon of 11 May.

Fran Pacitti: There was nothing choreographed about it. As soon as we found the document, we alerted ministers to it and put it in the public domain at the earliest opportunity.

The Convener: Okay. I am sure that people will draw their own conclusions from that.

I will ask about the bit of paper. The reason I asked you what you were asked to look for, Fran Pacitti, is that there is simply a dispute about what the bit of paper constitutes. The Audit Scotland report clearly said in its key messages:

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

In paragraph 28 of the report, Audit Scotland says:

"We consider that there should have been a proper record of this important decision."

Do you think that that is what you found?

Fran Pacitti: There are a couple of aspects to that. First—

The Convener: Do you think that that is what you found?

Fran Pacitti: Yes, I do.

There are two aspects of the Audit Scotland findings. The first is on the adequacy of the record keeping. It is plain that, in this instance, the record keeping was not what it ought to have been. We ought to have been able to find the document with greater ease than we did. That is a significant exception to the record keeping in relation to the rest of the project. We have proactively published hundreds of documents that give a reasonable account of the decision making.

The submission dated 8 October, to which the email of 9 October responds, sets out a full account by John Nicholls, my predecessor, of the assessment of the risks associated with progressing the contract. On 9 October, the minister accepted that advice and indicated that he was content to proceed. As Mr Brennan outlined in the previous evidence session, it is not unusual to have something from the minister that succinctly accepts a recommendation where that recommendation has been found to be thorough. Therefore, yes, that is the complete record that I would have expected to see.

The Convener: That is not the view of Audit Scotland. Even after the discovery of 11 May and the publication that you were able to make, Audit Scotland said:

“The email confirms that ministers approved the award of the FMEL contract. But there remains insufficient documentary evidence to explain why the decision was made to proceed with the contract, given the significant risks and concerns raised by CMAL.”

Notwithstanding what you have said, Audit Scotland’s view is quite different, is it not?

Fran Pacitti: That is Audit Scotland’s view, to which it is, of course, entitled. To my mind, the submission of 8 October provides a comprehensive assessment of the issues that were under consideration, and the response from 9 October is clear that they had been taken into account and is clear on the minister’s position in relation to them.

The Convener: Mr Gillies, you are free to come in at any point in this exchange. I have to say that Transport Scotland’s view is different from that of Audit Scotland.

Another point to consider is that paragraph 5.1.9 of annex 1 to the Scottish public finance manual says that it is the duty of an accountable officer to “ensure that risks, whether to achievement of business objectives, regularity, propriety or value for money, are identified, that their significance is assessed and that

systems appropriate to the risks are place in all relevant areas to manage them”.

Does such a document exist?

Hugh Gillies: I concur with Fran Pacitti and Roy Brannen on the documentary evidence that they have described.

On the way in which we were able to present evidence to the Auditor General and how we could do that now for the Islay vessels, we have said from the get-go that we will learn lessons and accept what Audit Scotland said. Being able to present that to the auditors at the outset of their review of this would have been better—I absolutely accept that. We have attempted and will continue to attempt to improve on that. As I said, when it comes to the Islay vessels, if the Auditor General wishes to look at that type of evidence, I hope that we can lay it out in a much more chronological and straightforward manner than we were able to do in the case that we are talking about.

The Convener: Okay. In his evidence, Roy Brannen made clear that he felt that the gap had been filled, but Audit Scotland’s position is that it was not filled—and that is not just a matter of record keeping or a bit of paper; it is about the whole approach and it is about transparency.

Let me pick up on another issue. Fran Pacitti, the documents that you found on 11 May tell us a little about who was involved in the decision-making process. Mr Brannen told us on 26 May that it was

“entirely a decision for the transport minister.”—[*Official Report, Public Audit Committee, 26 May 2022; c 6.*]

However, we can see from the correspondence of 8 and 9 October that you unearthed that the Cabinet Secretary for Infrastructure, Investment and Cities, Keith Brown, was copied into emails. The last word in that series of emails belongs to the Deputy First Minister, who was clearly an active player in the decision; a report of his comments was in an email that was sent at a quarter past 5 on 9 October. How do you reconcile that with the comment that the decision was entirely for the transport minister? Perhaps Hugh Gillies will answer that.

Hugh Gillies: Having read the transcript of Roy Brannen’s evidence last night, I see that he laid out his view on that. I concur that it was for the Minister for Transport and the Islands to make the decision—and he made that decision. The email of 9 October that was sent at a quarter past 5 says that the minister “cleared the proposal.”

The Convener: Okay, but other people in ministerial positions were copied into the emails. They were part of the email conversation. What do you say to that?

Hugh Gillies: As Mr Brannen said in his evidence to the committee—

The Convener: But what do you say, Mr Gillies?

Hugh Gillies: I concur with his view. In terms of the decision that was being presented to Mr Mackay, it was within his gift, as minister, to make that decision on the magnitude of the project that we were taking forward.

The Convener: Fran Pacitti, can you tell me who Alexander Anderson is—or was in October 2015?

Fran Pacitti: I do not know Mr Anderson. I understand from colleagues that he was a special adviser in post at the time.

The Convener: Special adviser to whom? Mr Rhatigan, do you know the answer to that?

Dermot Rhatigan (Scottish Government): I do not recall. Special advisers sometimes support multiple ministers.

The Convener: Nobody knows who Alexander Anderson was, even though he is on those email trails that you unearthed on 11 May.

My understanding is that Alexander Anderson was a senior special adviser to the First Minister of Scotland, and he was copied in on those emails. Again, I ask the question: if you are saying that the decision was entirely for the transport minister, why was the Cabinet Secretary for Infrastructure, Investment and Cities copied in, why was the Deputy First Minister and Cabinet Secretary for Finance, Constitution and the Economy copied in, and why was a senior special adviser to the First Minister of Scotland copied in?

Fran Pacitti: I am happy to answer that again, but I have nothing to add beyond the evidence that has already been given by Mr Brannen and Mr Gillies.

When addressing ministerial submissions, it is good practice to address them to the minister who is responsible for taking the decision and to copy in other ministers or other members of the Cabinet who might have either a portfolio or constituency interest. Copying them into a submission for awareness does not then mean that they are taking a decision on it.

Similarly, all special advisers are appointed as special advisers to the First Minister and the working practice is that they will have a particular affiliation to a minister or a cabinet secretary. Forgive me, but I do not know who Mr Alexander worked with at that point in time. However, to my knowledge, all special advisers are designated as special advisers to the First Minister, and nothing should be inferred from that.

Colin Cook: It is also worth saying that the standard template that we use in Government for such exchanges makes absolutely clear the basis upon which other ministers are copied into any submission. There is a section in our minutes that says that they are copied in for portfolio or constituency interests, and one ticks those boxes to make that clear.

The Convener: Okay. Thank you.

I turn to 31 August, which was the day when the First Minister went to the Ferguson Marine shipyard to announce that Ferguson's was the preferred bidder. We have discovered that the negotiations had not been concluded at that point, and the bone of contention—the builder's refund guarantee—was still under active negotiation. We later see CMAL's view of what that meant and the risks that it thought it involved.

Do you think that making a high-profile announcement at the shipyard would have prejudiced the negotiating position?

Hugh Gillies: I do not. At the end of the day, the negotiations were between CMAL and FMEL. They were in the room together.

The Convener: The Rural Economy and Connectivity Committee's report shows that the first of the summary of conclusions and recommendations is:

"Transport Scotland and CMAL applied inadequate due diligence in scrutinising and signing off the procurement process".

Do you accept that?

Fran Pacitti: No. Again, for clarity, Transport Scotland was not party to the procurement. We did not assess the bids that came in. CMAL was the procuring authority, so the assessment of the bids would have been for CMAL rather than Transport Scotland. However, as part of our assurance processes, we asked an independent team within the Scottish Government to undertake a review of the procurement process. That was in response to complaints from Mr McColl that the process had been unfair, and that team found no material issue with the procurement process.

The Convener: Again, that seems to be rather at odds with the conclusion that was drawn by Audit Scotland that Transport Scotland had some oversight responsibility for the procurement process. Last time, we heard the mantra from Mr Brannen that it was all about buyer and builder, but this is public money. As an accountable officer, do you not have some accountability for how that money is spent?

09:30

Hugh Gillies: CMAL was the sponsor body, and it was through the sponsor body relationship with CMAL that we would have kept oversight of that.

The Convener: I will put to you a final point, which relates to whether the First Minister was involved, whether through a special adviser or directly or indirectly. In his evidence last time, Mr Brannen was quite clear—it is a pity that he is not here today—that there was no involvement whatsoever of the First Minister, and we accept him at his word. If that is the case, will you give us your understanding of why, when the First Minister was questioned on 29 March by Glenn Campbell of the BBC about whether it was on her say so, and he asked her,

“Did you say ‘go ahead’?”,

her reply was,

“I didn’t say don’t go ahead”?

Why would she not just give an unequivocal Roy Brannen answer and say, “No, I was not involved”?

Hugh Gillies: I will ask Fran to answer that.

Fran Pacitti: Before responding to the question, Mr Leonard, you have twice expressed concern that Mr Brannen has been unable to attend this morning. To put it on record, Mr Brannen is willing to come back to the committee. He was unable to attend this morning, but he has offered alternative dates to your clerk.

In relation to the First Minister’s involvement, it is clear that the transport minister took the decision. The First Minister has been clear in her statements in the chamber—again, this is consistent and was covered by Mr Brannen when he gave evidence at the previous session—that the cabinet operates under the principle of collective responsibility.

The Convener: I think that we understand that; we are trying to get to the bottom of who was involved in the decision.

I will move things along and ask Colin Beattie to put some questions to the witnesses.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I will move on to different ground. As you might be aware, throughout these evidence sessions, the one thing that has concerned me is the money—we need to follow the money. I have two questions to ask, but I will come back to that principle.

Looking at the way in which the project was set up, I think that there were clearly weaknesses in the project governance. For example, the programme steering group, which was chaired by Transport Scotland, did not really have a clear

role, yet CMAL was bringing issues to it, although we do not know where they went. What improvements have been made since then? The issues with governance clearly led to failures in the relationships and possibly in the project itself.

What improvements have you made for future new vessels to ensure that the process is much more tightly controlled and managed, and that the governance issues do not recur?

Fran Pacitti: I will answer that question. We accept the Audit Scotland recommendations in relation to project governance, which I say without any implied criticism of colleagues who worked before me. There was undoubtedly some departure from best practice, and some examples of that were highlighted in the Audit Scotland report. Having said that, and not to diminish the significance of that, to my mind, there was still good evidence of risk management and escalation throughout the project, albeit that that was not documented in the manner that we might have liked.

To answer the specific questions about what improvements we have made for the future, we have enhanced the project groups for defined projects and programmes going forward. We have increased the emphasis on the discipline around recording all decisions, particularly our approach to recording risks. We now take all projects to the investment decision-making board at Transport Scotland, as discussed in the previous session, which provides the additional challenge function and the additional assurance for the accountable officer in taking investment decisions on how to proceed. In all our projects, we have introduced greater use of gateway review at appropriate stages in project development, and we also have clearer mechanisms for reporting to ministers with project status updates throughout the life of any project.

On the point about the role of the programme steering group, I think that we accept that the group evolved over time. We are continuing to work to get the approach right; it is an active process. It is one of the things that we are looking at through project Neptune in the context of our review of our sponsorship arrangements with CMAL and David MacBrayne and our project management arrangements.

I would say that we have substantially improved. However, we are not complacent about that: we are still looking at the matter and we always consider whether there is room for improvement.

Colin Beattie: Did the fact that there was no formal escalation process contribute to the failure? I have said that the programme steering group did not seem to have a clear role, and when issues

were raised, Transport Scotland passed them up the line to Scottish ministers on an ad hoc basis.

Fran Pacitti: When we speak about escalation, it is important to understand the purpose of escalation and the different forms of it that might have taken place. There would have been escalation to the project steering group of project risks or issues that might be mitigated or resolved through a collaborative approach, without the group necessarily owning the risks. That is the area in which we should improve the lines of accountability and responsibility.

Ministers were made aware of risks when they were material. They were not made aware on an ad hoc basis but when it was appropriate to do so or when they would have been able to intervene and take action—

Colin Beattie: In the Auditor General's report, it says that ministers were advised on an "ad hoc" basis.

Fran Pacitti: Let me complete my answer by saying that there was, separately, escalation under the contract itself. That was the subject of evidence in your previous meeting. Under the contract, the PSG would have had no contractual role: the contract was between CMAL and Ferguson's, so escalation of contractual disputes to the PSG or ministers would have been inappropriate. Contract disputes are governed by the contract between the contracting parties—

Colin Beattie: So what was the point of the PSG?

Fran Pacitti: Again, as you heard in the previous meeting, the PSG is the programme steering group. It intends to bring together all the projects and programmes within the ferries investment strategy, to make sure that interactions, where they exist, are managed well. It is a profile, or programme, approach, rather than a project-specific approach; the PSG has no role in the management of the contract.

Colin Beattie: It sounds pretty wishy-washy, to be honest. It does not sound like the PSG was of much effective use at all.

Fran Pacitti: The PSG was not intended to be a contracting party or to offer a remedy in the event of contractual dispute. It is about the programme of Transport Scotland investment and making sure that the profile of investments that we have and the interactions between projects are effectively managed and understood by all the parties on whom they impact.

Colin Beattie: When CMAL escalated an issue to the PSG, was that a bit of a waste of time, then?

Chris Wilcock: It would not have been escalated just to PSG; it would also have been escalated to TS officials, with direct engagement. As is clear in the Audit Scotland report, there were points at which issues were reported but it looked like the programme might be recoverable. At such points, we would not necessarily have escalated things directly to ministers. Later, when it looked like dates would not be made and things would slip, that was the point at which we would formally advise ministers.

On improvements that have been made and your comment about updating ministers on an ad hoc basis, when we look to the Islay vessels, I think that the approach that we would adopt now would be to advise ministers when we get the monthly or quarterly reports from CMAL, even if the project is going well, in a very similar vein to the approach that we take to 801 and 802.

Colin Beattie: The PSG was chaired by Transport Scotland—in effect, Transport Scotland owned that group. It is unclear to me how Transport Scotland's responsibility to advise ministers in any formal way is established—between the PSG, which it chairs, and the Scottish ministers. I say again that the Auditor General indicated that ministers were updated on issues only on an ad hoc basis. When Transport Scotland formally advised Scottish ministers in February 2017, target dates and milestones had already been missed.

Fran Pacitti: The respective roles are set out quite clearly in exhibit 2 in the Auditor General's report.

Colin Beattie: Did they work?

Fran Pacitti: We have already said that there is room for improvement. Transport Scotland would have been escalating issues to ministers in relation to its voted loan obligations, and CMAL had obligations to report to Transport Scotland in its capacity as the lender of those loans.

I do not think that anything untoward should be inferred from the first written update to ministers in December 2017, because, as Chris Wilcock has outlined, the previous updates related to delays that were reported as recoverable. Ministers were notified when the delays were first reported as irrecoverable or leading to slippage on cardinal dates.

Colin Beattie: It seems that there was some conflict in the information that CMAL and FMEL were producing—one was rather more optimistic than the other. How were the issues dealt with when they were escalated up the line to the PSG, Transport Scotland and so on? What interventions were made to try to resolve what had become a contract dispute?

Fran Pacitti: Transport Scotland and Scottish ministers had no formal role in intervening in the contract dispute. We were not a quasi-judicial authority or an arbitrator.

I might invite Chris Wilcock to expand on what I say if I miss anything, but when there were disputes, we sought to engage with both parties to understand the accurate position. We considered what information we could use to take assurance and the weight that we should attach to certain positions. We encouraged the parties to look at dispute resolution mechanisms when there appeared to be an impasse, although, as is set out in the contract, we could not direct or mandate that. When Mr McColl and Ferguson's indicated that there was a claim to be made, we encouraged them to take the claim to court to allow matters to progress, but they did not do that.

Colin Beattie: Given the different claims that were being made, it is clear that dispute management or resolution—whatever we want to call it—should have been used. I think that there was an option for that in the contract, but it was never exercised. Why?

Fran Pacitti: There was discussion between the parties about mediation, but they did not agree to a mediator. There was a question of reference of the dispute to expert determination, but the consensus was that expert determination was not the appropriate dispute resolution mechanism for a dispute of that nature and quantum, given the binding nature of that process. It was decided that the appropriate dispute resolution mechanism would be reference to the Court of Session. It would have been for Ferguson's to raise that claim, but it did not do that. I cannot speak to the reasons why it did not do that.

Colin Beattie: Was the belief that the alternative methods of dispute resolution were inappropriate and could not be implemented?

Fran Pacitti: There is always a choice between alternative dispute resolution mechanisms, and the one that is appropriate to the quantum or nature of the dispute is selected. In this case, although best practice is to seek to avoid litigation, litigation would have been the appropriate remedy, but Ferguson's did not take that forward. Again, I cannot speak to its motivation or rationale for not doing so.

Colin Beattie: That sounds a bit odd to me, but let us move to the interesting stuff: the money. The Scottish Government gave loan support to FMEL outside of the payments under the contract. What was the rationale for and purpose of those loans? Were any conditions of note attached to the loans? If so, were they adhered to? How was the success or otherwise of the loans assessed?

Dermot Rhatigan: Two loans were given to the business. The purpose of the loan is set out in clause 2.2 of both loans.

The first loan was more clearly linked to the contract for vessels 801 and 802. Its purpose was to provide working capital. As has been talked about, the business was dealing with some delays and had funding issues, so it was looking for additional funding.

The purpose of the second loan was to be working capital, but it also had a broader purpose: the directors were looking further ahead to support the long-term viability of the business and to make certain investments in the business that would enhance its competitiveness and ability to bid for a broader range of work—diversification.

09:45

Colin Beattie: Did FMEL's parent company contribute anything at all to supporting FMEL?

Dermot Rhatigan: It did initially: it capitalised the business at the beginning and various investments were made in Ferguson's after Clyde Blowers Capital took ownership of the business. It invested in capital equipment, a fabrication hall and new offices. It had put a substantial amount of capital into the business when it bought it. At the time of the first loan, there was no additional capital going into the business from CBC, but when we negotiated the second loan, CBC committed to a further £8.5 million of capital. In the end, it only put in £3 million of additional debt to the business.

Colin Beattie: That was the purpose of the loans, although I assume that the unspoken argument is that the intention was to keep the business running as a going concern and keep people employed. Where there any conditions attached to the loans and were they adhered to? What measures were put in place to ensure that the loans achieved the intended impact?

Dermot Rhatigan: From the Government's point of view, the rationale for the loans was to achieve a commercial return. The business wanted to use that working capital to complete the orders that it had and then bid for additional work and invest in the yard. Monitoring for both loans was carried out by independent experts—PwC—which monitored the business performance, cash flows and payments that were going in and out and so on.

There was a second layer of monitoring that related to the resource plan that the business had developed in May 2018 to check whether that was being put in place and whether it could support the intended progress of the contracts for 801 and 802. We received regular information from the

business, which was analysed by PwC and by our operational expert. Those reports came to the Government.

There were other conditions set out in the loans; for example, the business was not allowed to pay dividends to its shareholder and so on. One condition was that it would provide information to allow the Government to monitor the performance of the business.

Colin Beattie: So the Government should have received financial information from FMEL. Did it receive that information?

Dermot Rhatigan: The information would have been provided regularly to PwC, which would have analysed that information. PwC had regular access to the chief executive and the financial director. At some points, PwC would have been speaking to the business almost daily.

Colin Beattie: Is that information available?

Dermot Rhatigan: That information belonged to the company that went into administration. It would have been received by PwC and, under the contract that we had with PwC at the time, PwC would have delivered outputs to us. Many of those outputs have been published on the Scottish Government's website. I do not know whether PwC retained all the financial information that it received because it does not have a contract with us at the moment. It is not under any obligation to retain all that information, although I am sure that it will have retained some of it.

Colin Beattie: Perhaps that is something that can be followed up.

Let us get to the interesting bit: £128.25 million of public money was paid into FMEL, in one way or another. When FMEL went into administration and was nationalised, there was basically nothing there—a few million quid's worth of unfinished ships and some bits of metal about the yard. What happened to all that money?

Dermot Rhatigan: There are two types of money: there is the money that went to the business under procurement—my colleagues can talk about that—and there is the other money that went to the business from the Scottish Government loans, which was an investment in the business rather than a payment for goods or services. The directors of the business took on that loan money knowing that they would have an obligation to repay the Scottish Government; in essence, they were saying that future profits made at the yard would come back to the Scottish Government. There are two types of payment. The first is payment for the goods—essentially, the vessels. The other is for the business taking on a liability to the Government, which it would have to repay with interest.

Colin Beattie: I accept the differential between the two types of payment. However, it is fair to conflate them as money that went into the company. It received tens of millions of pounds of public money. What was that spent on, given the fact that the vessels were so incomplete? Where did the money go? At times, apparently—according to some of the bits and pieces of the Auditor General's report that I have been looking at—only a handful of people were working on the ships, so, for much of the time, it certainly did not go on payroll. Where did the money go?

Dermot Rhatigan: I will talk about the loan money. My colleagues might pick up on the contractual payments that CMAL made.

Colin Beattie: Sorry to interrupt. At the point of nationalisation, some due diligence and assessment of the vessels must have been done. Did that include looking at what had happened to the huge amount of public money that had been put into the business?

Dermot Rhatigan: I will cover the loan, and will pass back to Colin Cook to direct an answer to the other part of your question.

Loan money was going into the business, and the use of it was monitored by PwC, which produced reports to us, all of which have been published under the FMEL documents on the Scottish Government's website. They would show how that money was going into the business and being used.

A lot of the money went into labour resource. Prior to the second loan, the labour resource was lower than was needed to keep up with the cardinal date programme. The business used that money—in particular, the second loan—to bring back contractors and more staff. PwC would have reported to us how many labour hours were contracted, and that can be seen in many of the reports; they might say that, in a certain month, 25,000 labour hours had gone into several projects that FMEL was undertaking. Most of the labour resource would have gone into hulls 801 and 802, but some labour hours were going into other projects—in particular, the air-cushioned barge, and contracts for Inverlussa Marine Services—and some would have gone into things such as overheads, bidding for additional work and payments to suppliers.

Colin Beattie: All that information would have come to PwC from the same company that was optimistically saying that everything was going to be okay.

Dermot Rhatigan: Do you mean the business?

Colin Beattie: I mean FMEL.

Dermot Rhatigan: It was not saying that. It knew that its financial position was challenging.

The discussions that we had with its financial director and the chief executive at the time indicated that, to get through it, it needed to get the labour resource up into hulls 801 and 802, get those finished, and keep bidding for additional work.

We were seeing some signs that the business was winning additional work at that point. It had joined a consortium with other firms to bid for Ministry of Defence work and it was starting to build up a ship repair and maintenance business, for which it was taking people to other locations in Scotland and delivering some additional services away from the shipyard. At that time, the business was working very hard to complete its orders and to prospect for new work. That was its focus.

Colin Beattie: Yet, at the point of nationalisation, there was no sign of any results from that money—not just the loans, but the staged payments. The Rural Economy and Connectivity Committee’s report “Construction and procurement of ferry vessels in Scotland” makes it clear that those staged payments seemed odd, because some were done out of sequence just in order to hit a target, but bore no relation to the progression that should have been in place for constructing those vessels. That is more than evident from their state when nationalisation took place. Given the concerns that were raised by that committee, what happened at nationalisation? You took over hugely incomplete vessels—a few million pounds of steel here and there—but £128.25 million in total has been poured into the yard, and there is nothing to show for it.

Dermot Rhatigan: I will pass to one of my colleagues on what was there at the point of nationalisation.

Colin Cook: We can talk about progress, and we have described the progress that is being made on the vessels. I do not think that anyone was under any illusions at the point of nationalisation that the yard had difficulties.

We may want to come back to the due diligence that was possible prior to the decision to nationalise the yard, because it was a distressed asset that had issues. It is true that we could not undertake the level of technical diligence that we would have wanted until the yard had gone into administration, so there were some challenges around that. I do not think that anybody is under any illusions about that or has pretended otherwise.

Colin Beattie: Did the nationalisation allow you to take over the historical books of FMEL?

Mo Rooney: We as the Scottish Government certainly do not have access to those. I do not know what the business has access to; that is a question that we can pose to it.

Colin Beattie: In taking over the business, you did not take over its books.

Mo Rooney: We do not have access to the books of FMEL, no.

Colin Beattie: Okay, so—

The Convener: I am sorry, Colin; Willie Coffey is anxious to get in on the nationalisation question.

Colin Beattie: Okay.

The Convener: Willie Coffey, as I mentioned at the start of the meeting, joins us via videolink. He has a number of questions on nationalisation.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning. I want to open up discussion on the nationalisation issue, which Colin Beattie led questions on that Colin Cook tried to answer. That was a huge decision to have made without a technical appraisal or some kind of technical diligence check being carried out. Colin Cook, will you explain why that was not, or could not, be done at that point to give us the fullest possible picture of whether the nationalisation process was the best course of action to take?

Colin Cook: In answering that, I will restate what I hope is apparent, which is that anybody at the time will have been driven by, and anybody who is representing the Scottish Government here today is driven by, a determination to spend public money wisely. Any option that we considered for the future of the yard would have had to have satisfied the accountable officer tests.

The team that considered the options around the future of the yard, and which ultimately prepared the advice for ministers that led to the final decision, took due diligence that included external legal and commercial advice. We are aware that Audit Scotland said in its report that the scale and nature of the turnaround that was required was far greater than we could have anticipated, given the level of due diligence that we were able to undertake.

As I said before, that is not unusual in the case of decisions that are taken on a distressed asset. Those decisions sometimes need to be taken quickly, because there is a balance to be struck between the extent of the due diligence that one can undertake and the need to preserve as much of the value of the business as possible. A business with limited cash resources is not able to trade in a manner that would preserve its value; it cannot pay its suppliers or necessarily provide assurance to its customers. That is particularly the case in a situation such as the one in which the decision was made to take over the ownership of FMEL, because the acquisition and the administration were not being driven by the management of the business, which adds to the complexity.

In that sense, access to the information and to the yard at the time that we were making the decision was limited, which undoubtedly constrained the level of due diligence—particularly the operational and structural due diligence—that we were able and would have wished to undertake.

As I said previously, we were under no illusions that there were problems with the yard, because we had worked for two years and more to address some of those issues. As Audit Scotland pointed out, the level of complexity was not clear because of the level of diligence that we undertook, and the work of the turnaround director identified an awful lot of those complexities in the immediate aftermath of bringing the yard into public ownership.

10:00

Willie Coffey: Moving on from that point, did anyone get an opportunity to challenge the revised costings that were tabled? The information that we have in front of us is that the programme review board did not have the opportunity to scrutinise the revised costings in any great detail. How are we to be assured that the revised costings for the project were believable, viable, deliverable and so on?

Colin Cook: I might ask Mo Rooney to refer to some of the work that the turnaround director undertook. He was appointed in August with a specific role to understand the challenges that the business was facing. He was able to do so and to provide much more detail and information about the kind of things that Mr Beattie talked about—the progress of the vessels, the level of work that would be required to take the project forward and the costs that we expected to incur in the future.

Mo Rooney: I might defer to Transport Scotland colleagues on the point about the programme review board, which Transport Scotland chaired. The turnaround director came into the business and set about establishing the best possible understanding of the state of the vessels as early as possible. The report that he submitted to ministers in December 2019, which was then put to Parliament, set out the scale of the challenge in relation to the turnaround that would be required of the business, the state of the vessels and the remedial work that might be required. That remedial work took quite some time.

From memory, I think that the Audit Scotland report reflected the view that there was no cause to question those costs—they appeared to be valid from Audit Scotland's perspective, because it was clear that a lot of work was required. I do not think that Audit Scotland called those costs into question.

I will defer to Transport Scotland colleagues on the point about the programme review board.

Fran Pacitti: The programme review board—evidence on which was provided to the Rural Economy and Connectivity Committee in 2020—was part of the assurance and diligence process that was undertaken to understand the costs of completing the vessels, but it did not have a role in scrutinising the costs themselves; it would not have had access to the information to do that.

The programme review board was put in place for the period from August to December 2019 with the intention of ensuring that the methodology was appropriate, that the correct questions were being addressed and that a sensible approach was being adopted. It was intended to be a support to the turnaround director when he was preparing that assessment and to the Scottish ministers when they were assessing that information.

Willie Coffey: Could you clarify for my benefit whether, in effect, the turnaround director did the technical appraisal and diligence check from that point on, which led to the revised costs? Is that what you are saying here? We have heard previously that the appointment of the turnaround director was quite an expensive one. Was the purpose of the turnaround director's role to do the technical diligence check at that point and to put the revised costings in place?

Mo Rooney: Yes. The turnaround director was charged with putting in motion the turnaround of the business and with establishing the costing plan to complete the vessels. He undertook an assessment of the position as he found it and put in place a plan to take things forward from there.

Willie Coffey: Mo, would you say that that was a value-for-money appointment? We understand that it was very expensive to make.

Mo Rooney: Yes, it was an expensive appointment. It is probably worth flagging up that we sometimes hear him referred to as the chief executive or that he was in some way comparable with the head of another public sector organisation, but he was the turnaround director of the business, which is a role that involves very specialist expertise. It is a different thing—it is not a permanent role and it is paid on a day rate for that particular specialism. His contracted pay was well within a benchmark, which I accept was at a high level.

Did that represent value? It was a challenging role in a very challenging context. It is important not to understate the depth and scale of the turnaround that was required in the business. Through the period, some quite uncommon challenges were faced as a result of Covid, which was obviously disruptive to businesses across Scotland, but it was very disruptive to the

turnaround process, as was reflected in the Audit Scotland report.

The business was faced with labour shortages and invested time and energy in trying to recruit locally, which had an impact as well. A succession of legacy issues have been dealt with. There were certainly real successes in the period of the turnaround director's role. Smaller vessels were delivered out of the yard, and he put in place a strong senior team that had a gender balance, which is incredibly uncommon in the sector. He improved processes. There is a sort of arc of continuing improvement that has been handed on to the new chief executive. Importantly, the business was also out and about and active in the market, restoring its reputation and looking to secure new work.

Willie Coffey: My colleague Craig Hoy will probably wish to come in on the nationalisation issues, but I have one last question. Given the current position and revised estimates for completion, is the project now on track and on budget? How often is there a report on progress on the project and who is reported to? How can the public be assured, in relation to the revisions that were made to the estimates surrounding the project, that it will remain on track and on budget from this point onwards?

Colin Cook: The chief executive, in his letter of 23 March, set out the new timetable and the costs for the vessels. That is where some of the more recent delays were clarified and identified, and the announcement was made setting out the increase in costs that has been reported. The cabinet secretary has been clear with the management of the yard—we work to reinforce this—that she expects, and we expect, that the yard will deliver the vessels on time and to budget.

There is a process by which the chief executive and the board of the yard report quarterly on the progress that they are making and their assumptions about future delivery. I think that the next report is due at the end of June. There is a process in place that will keep Parliament up to speed and fully engaged in the progress that is being made on the vessels.

I ask Mo Rooney whether she wants to come in.

The Convener: I thank Willie Coffey for his questions. I turn to Craig Hoy, who will pick up on the same theme, so Mo Rooney might be able to come in in response to his questions.

Craig Hoy (South Scotland) (Con): Good morning, everyone. I want to go back to a question that I would have asked Roy Brannen had he been here. When you were last before us, I asked Mr Brannen whether CMAL had been overruled or whether there was a threat to overrule it, and he said explicitly that that was not the case. However,

in a submission from the senior management team at FMEL, they suggest that some degree of overruling took place.

I will quote from that submission at some length, just for context. It states:

“Our chairman met with the cabinet secretary for finance Derek Mackay on the 5th of June 2018 to insist that the Scottish Government intervene to instruct CMAL to take part in an Expert Determination Process”.

The chairman was told explicitly that the Government would not do so. The submission continues:

“Derek Mackay told him that he could not do this because ministers had received a legal letter from the CMAL Board, threatening to resign en masse, if the government interfered with them, as an independent board. Derek Mackay said that this would be politically very damaging for the government, and he could not intervene.”

Mr McColl says that the reason that the Government was not prepared to intervene at that stage was that

“The government had forced CMAL to place the order with Ferguson against their will. We were not aware at the time of the strength of opposition from CMAL to placing the order with Ferguson. Had we known this at the time it would have caused us to seriously question accepting the order.”

Why does Mr McColl believe that CMAL was overruled? Is he misrepresenting, misrecollecting or providing a misleading account of the situation?

Fran Pacitti: I will answer that question in two parts. As I said, I cannot speak to why Mr McColl would have offered that opinion or the information on which he has drawn to form that view. To repeat the evidence that we provided the last time we appeared before the committee, based on the evidence available to us, it is clear that CMAL and the board had addressed concerns about the absence of a refund guarantee, but between that being done and the contracts being entered into, mitigation had been put in place that had overcome those concerns. There was no ministerial direction to Transport Scotland, nor did ministers give a direction to CMAL to enter into the contract in the first instance.

Forgive me, Mr Hoy, but I am not familiar with the quote that you read out. However, you referred to Mr McColl speaking about a direction to CMAL to enter into expert determination. We touched on that point earlier; I do not know whether Chris Wilcock has further information on that. It would not be for ministers to direct the contracting parties, as the dispute resolution mechanisms are contained within the contracts themselves.

Chris Wilcock: I do not have anything to add on that. However, on the point about the threat of a mass resignation, the chief executive of CMAL addressed that point at the Rural Economy and

Connectivity Committee and said that there was no such threat.

Craig Hoy: Various conversations took place throughout the process, but we start from the premise that the project was bungled at the point of procurement, bungled at the point when the refund guarantee came into question, bungled at the design phase, and bungled at the point at which requests were made for some degree of arbitration between the parties.

In the submission from FMEL's management, Mr McColl states that, in February 2017, the shipyard

"informed Scottish ministers that it was highly probable that the vessels would be late."

It is clear that alarm bells were being rung at that point.

The submission from Mr McColl and his colleagues goes on to say:

"Our chairman met with the First Minister on the 31st of May 2017 at Bute house to request her intervention to facilitate a meaningful discussion around the very significant unplanned changes and cost increases being experienced on the two ferry contracts."

What readout did Transport Scotland or the Scottish Government get from that meeting? Who else would have been present?

Fran Pacitti: Forgive me, but I cannot answer that today. I would need to go away and look at records to understand that. I was not in post at the time, but I can certainly look into it to see what records might have been taken.

However, I do not start from the premise that the procurement was bungled. We undertook a review of the procurement exercise, which concluded that both parties had a good understanding of what was expected from the procurement. There does not seem to have been anything untoward about the procurement process itself: two sophisticated commercial actors willingly entered into a contract, with neither party being directed to do so, both understanding the contractual obligations that they were entering into and dispute resolution mechanisms being clearly set out in the contract.

Craig Hoy: If the procurement process was not bungled, would you concede that it was rushed? One of the suggestions from the FMEL side is that it was rushed because the First Minister, Nicola Sturgeon, was preparing for her first party conference and that the Government wanted to get the announcement out

"just before George Osborne announced a £500m investment in Faslane."

Did anyone in the Government or Transport Scotland question why the timetable was being so rushed?

Fran Pacitti: I cannot speak to the wider political context. Again, in the previous evidence session, in response to questions from Ms Dowey on whether the procurement process was rushed, we answered no. Based on the evidence that I have seen, I do not believe that it was rushed. There is a clear framework for the timing and issuing of Alcatel letters, and the contract was not awarded until after the First Minister had made the announcement that FMEL had been identified as the preferred bidder.

Forgive me for repeating the answers that we have previously provided, but we have not seen any evidence of the procurement process having been rushed or of any deficiency in the procurement process itself.

10:15

Craig Hoy: I would disagree with you on the issue of whether it was bungled. It could be alleged that it was bungled at the point of nationalisation. Could you flesh out for the committee why the Scottish Government decided to proceed with nationalisation without a full understanding of the costs and challenges that were faced in relation to the vessels?

Colin Cook: The decision to take the yard into public ownership was driven by the objectives that we have always referred to in these sessions, which ministers have also referred to. First, we need to deliver the ferries because of their value and importance to our island communities. Secondly, we want to provide fulfilling, meaningful work for a workforce that is incredibly important to the local economy and has valuable skills. Further, we want to safeguard the future of the yard, which is the last one on the Clyde and, as far as I understand it, the only one in Scotland that is capable of producing the bigger vessels in the CalMac fleet. It is a really important asset for the country.

The decision to take the yard into public ownership would have been based on those objectives, which have been maintained throughout the process.

Craig Hoy: Perhaps Mo Rooney might want to come in on this point. A big contractual change took place in terms of where the risks for the project lay. Earlier in the meeting, in an exchange with Sharon Dowey, Ms Rooney said:

"This is certainly not a blank cheque, if that is what is being suggested. Ministers have been really clear with the board, the management team and the workforce that these vessels need to be delivered within the budget that has been allocated. Each organisation—Ferguson's and CMAL—and each part of the Scottish Government that is involved in this all share the obligation to deliver as efficiently as possible, with an eye to value for money. There is no blank cheque."

That is the account that you gave the committee earlier, Ms Rooney. However, paragraph 105 of the Auditor General's report says that, as part of the new contract arrangements,

"The Scottish Government is committed to paying"

—in full—FMPG's additional vessel costs,

"regardless of the final price."

That is a blank cheque, is it not?

Mo Rooney: I restate what I said earlier: all parts of Government are working together, with an eye to efficiency and economy. The cabinet secretary has been very clear with the yard, the board and the workforce that she expects the vessels to be delivered on budget. That will also be key to the reputation of the yard in the future. The workforce and the management are not just looking to build out the ferries; they are also looking to the future of the yard, so they are very mindful of their reputation.

Craig Hoy: I accept all that but, at the point of nationalisation, there was a material change in where the risk for future cost overruns would lie. It was shifted on to the taxpayer. You are the deputy director of the Scottish Government's strategic commercial interventions division, so you should be able to read a contract. The way in which the contract is now laid out is such that, in effect, it is writing a blank cheque, is it not? The taxpayer will continue to fund the vessels until they are completed or some other decision is taken.

Mo Rooney: We would continue to continually assess value for money, so there is no blank cheque. Were there to be a suggestion of an increase, we would certainly advise ministers on the value for money position, so I say again that there is no blank cheque.

As regards the new contracts that were put in place, a lot of thought went into finding the most appropriate contractual mechanisms. That involved reflecting the accountability structures as they were and the different roles of the organisations in a new and quite unusual environment. It was also about finding the most financially efficient way of doing so. The contracts as configured therefore allow the vessels to be appropriately funded out of capital budgets, as opposed to resource budgets.

Craig Hoy: But it is still taxpayers' money. The vessels are currently five and a half years late and at least £250 million over budget. Where might this end up?

Mo Rooney: Our most current advice from Ferguson's and CMAL is that the vessels are progressing in line with the new schedule. We all look forward to seeing them in service on lifeline routes as soon as possible.

Craig Hoy: And if they should be, for example, another £50 million over budget, who will pay for that? Where will that money come from?

Mo Rooney: As I have said, we would continually assess value for money, so there is no blank cheque here. We would assess the position, should any suggestion of that nature arise.

Colin Cook: May I come in, convener, given that I undertook the functions of the accountable officer when the report came in, in March, that the cost of the vessels would increase?

At that stage, a process takes place and the accountable officer applies the accountable officer tests. Considerations that I would have had—and the accountable officer in any future iterations around the cost of the vessels would have—include whether the contract continues to represent best value, whether it is still the best opportunity to get the ferries delivered to a reasonable timetable, and whether it continues to deliver value for money compared with the alternative, which would be to stop and reprocur, with all the timetable increases and issues for the yard and workforce that that would bring.

Those decisions are looked at and taken very seriously. We do not write blank cheques with public money.

Craig Hoy: Is there still the possibility that you could pull the plug on the two vessels?

Colin Cook: Every time any decisions are taken about the financing and the allocation of public money to the vessels, the appropriate tests and assessments are applied. That will always happen.

Craig Hoy: Yes or no. Is there still the possibility that you could pull the plug on the two vessels?

Colin Cook: We are determined to deliver the vessels. We understand that they are vital for communities and that will be our focus.

Craig Hoy: The question is looking for a yes or no answer.

Colin Cook: Well, unfortunately, it is trying to draw me into the realms of speculation; decisions on such things are taken by ministers and I do not think that I am able to add anything, other than to say that our team is monitoring progress on the vessels and working closely with Ferguson's. We are responsible, as accountable officers in the organisation, for applying the right tests and making the right recommendations to ministers, and we will continue to do that.

Craig Hoy: You still reserve the right to recommend to ministers that they pull the plug, then.

Colin Cook: The decisions on all matters that relate to those things are taken by ministers.

The Convener: I have a couple of final questions before the evidence session ends, which go back to our previous evidence session with Transport Scotland. I think that Fran Pacitti addressed the issue at the time, and I am interested in hearing Hugh Gillies's view. We were told that all port, harbour and ferry infrastructure projects now go through the investment decision-making board at Transport Scotland. Back in 2015, what was the value threshold that meant that the two vessels did not go through that process?

Hugh Gillies: I think that, when he gave evidence most recently, Mr Brannen said that big projects such as the Queensferry crossing and the Aberdeen western peripheral route were subject to IDM. At that point, we had not put the ferry contracts through the IDM process. However, as part of the learning that Mr Brannen put in place and I have carried on with, such projects will be put through the IDM process. Indeed, such projects have been put through the IDM process—I have cited the Islay project as a case in point.

The Convener: I know that Mr Brannen is a roads and highways man—civil engineering and all that. Did he have something against ferries? If big road contracts were put through that process of scrutiny, why would a ferries contract to the value of £97 million of public money—we now know that it is likely to be of the value of £0.25 billion—not have been put through that process?

Hugh Gillies: That is correct, but as Mr Brannen said—I am repeating myself—we have changed the processes since then. Indeed, the Islay vessels project—which I think is £100,000—was put through that process when I came into post in mid-November last year.

The Convener: Sorry, what is the value of the Islay ferries?

Chris Wilcock: The overall contract is about 106.

The Convener: Not £106,000.

Chris Wilcock: It is £106 million.

The Convener: Okay—£106 million.

Chris Wilcock: That is the total cost, not the individual contract costs.

The Convener: That is fine.

The other tidying-up point that I have is about the emails that Fran Pacitti found on 11 May. At 15:45 on 9 October, Gordon Wales, the director of financial management, sent an email to your predecessor Transport Scotland official John Nicholls and copied in Ainslie McLaughlin. In that

email, he referred to “banana skins”. What were the banana skins?

Fran Pacitti: I cannot speak to what was in Mr Wales's mind when he drafted that email. My expectation would be that he was referring to any procedural issues. I cannot speak to what was in the mind of the author of that email.

The Convener: Do you expect that he was talking about financial issues, procurement issues, things that might have been subject to challenge or political issues? What do you think?

Fran Pacitti: If he was reporting to the Deputy First Minister in his capacity as cabinet secretary for finance, it would have been a financial issue, or he might just have been checking that the financial authority was there. Again, I cannot speculate as to what the language was intended to mean, as I did not draft that email.

The Convener: We understand that. We might return to the point when we hear from other witnesses.

I draw this morning's session to a close. I thank Mo Rooney, Colin Cook, Dermot Rhatigan, Hugh Gillies, Fran Pacitti and Chris Wilcock for joining us. We appreciate the time that you have given us. We have mentioned a couple of times the committee's disappointment that the interim director general for net zero was not able to be with us. We might have a further session to explore the issue a bit more, or we might turn to written evidence, but that is for the committee to consider. For the time being, however, I thank you for your input this morning.

10:26

Meeting continued in private until 11:26.

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