

New Vessels for the Clyde and Hebrides
Written submission from Graeme Dickson, by email 23 June 2022

23rd June 2022

By email only.

Dear Convener,

New vessels for the Clyde and Hebrides: Arrangements to deliver vessels 801 and 802

Thank you for your letter of 26th May asking for written evidence on your scrutiny of the Auditor General's report on the above subject. I am very happy to assist the committee on a matter of such public importance.

I can confirm that you are correct in terms of my role and dates in post as Director General Enterprise, Environment and Innovation.

Your letter contains two short extracts from the Transport Scotland Framework Document from which it could be understood that I was routinely involved with Transport Scotland's operational delivery. The full document shows that the emphasis of that role is on the overall performance of the Agency and in binding it into the Scottish Government's overall structure. In my experience, Transport Scotland was "a high-performing and continuously improving organisation". It was led by a highly respected and experienced Chief Executive supported by a strong team of Directors and staff. I believed it had strong appraisal and management systems in place. That was evidenced by the number of large and complex projects it delivered successfully during that time.

I am happy to respond to your questions in terms of my involvement in the ferries procurement between August and October 2015. That is almost seven years ago so my answers are largely guided by re-reading the key papers (copies of which have been published).

I was a copy recipient of the advice to ministers dated 20 August seeking approval to award the contract for the ferries to Ferguson Marine Engineering Ltd. (FMEL). However, I could see nothing contentious in this advice and it did not highlight any issues of concern.

The award may have come up at my regular meeting with the Chief Executive, but I cannot recall that. I assume that, as is normally the case, officials kept the Minister of Transport informed of the contract discussions between CMAL and FMEL. I was, however, copied into an email recording that an update briefing had taken place, and that CMAL were likely to ask for a "letter of comfort" to proceed with their preferred bidder. The minister asked to see such a letter.

I do not recall seeing anything further until I was a copy recipient of the email dated 8th October which set out the position reached between CMAL and FMEL. That was the first time that I saw the issue set out together the letter of comfort. I assumed that the negotiations between CMAL and FMEL had only just concluded at that point with the CMAL board reaching a position.

I did not need to seek clarification since I believed that the position was being made clear to the Minister for Transport in an open and transparent way. To help the committee, I am offering a full explanation of my reading of that email since the advice is much more comprehensive than the necessarily limited extracts in the Auditor General's report.

The email set out a clear view in Annex A of the risk mitigation that CMAL had undertaken in reaching a final negotiated position with its preferred bidder. The issue was primarily financial. In that section, the financial risks were set out clearly. It stated that while there was a theoretical risk of £24.25m per ship, in practice that reduced to an estimated £11.875m per ship. It also set out further mitigation measures that CMAL would put in place to reduce that financial risk. (The Auditor General's report only mentions the higher figure, the maximum risk.)

Annex A also set out the technical risks as seen by CMAL. None of these raised concerns with me (albeit as a layperson). The conclusion appeared to be that the vessels failing to perform as required was "unlikely". There was no hint in my reading that CMAL had doubts as to the competence of their preferred bidder.

The final risk identified was around a procurement challenge. The advice set out how that would be dealt with, and that legal advice had been taken.

The email was transparent in including (in Annex B) the CMAL Chair's email of 26th September. While it may have expressed his frustration, the email makes clear that it dated from two weeks earlier and before the latest round of negotiations. (The Auditor General's report does not make that fact clear, and it could be taken to read as a final position.)

The email also made clear to the minister that CMAL senior executives' view was that they "would likely be facing similar problems no matter who the preferred tenderer was". It also made clear that "despite receiving stronger financial assurances in previous shipbuilding contracts, they still subsequently faced problems and in once [sic] instance significant challenges." (None of these points are mentioned in the Auditor General's report.)

The nub of the email to me was that the CMAL Board had concerns that the financial risk they would take was larger than the company's appetite. They wanted to transfer part of the residual to the Scottish Government in order to proceed with their preferred bidder. They asked for a side letter to give them comfort. A draft of that "letter of comfort" (in addition to the Voted Loan letter) was attached for the minister to agree. (I do not know whether the Minister had seen a draft in advance as he requested.) I also assumed that, as is normally the practice, CMAL would have seen those drafts and agreed them.

Transport Scotland would have been unable to issue a letter offering possible future financing without consulting the Scottish Government. The email, however, makes clear that the Scottish Government Legal Directorate and the Scottish Government Finance Directorate (which includes procurement) had been consulted and agreed the letter. The additional financial risk may have

been high for CMAL. However, it was very modest for the Scottish Government and well within the normal risk bounds that an Agency the size and range of Transport Scotland would manage. It did not raise any concerns with me for that reason.

In terms of the second question, it would go beyond “managing oversight of the relationship” between Ministers and Transport Scotland had I engaged with the Minister of Transport to discuss the financial risk raised by CMAL. It was a clear operational matter for the Agency and there were no issues in my mind to override that. In any event, the Minister decided based on the advice offered and without requesting a meeting with the CMAL board.

In answering your final question, in the vast majority of cases advice to ministers is provided by officials, normally Senior Civil Servants, who are well versed and expert in their subject. That was true in this case. Based on my reading of the advice, they did not require either my support or challenge. The issues were clearly set out and dealt with appropriately. I would have been happy to discuss any concerns that the Chief Executive had about this issue and provide him with support had he required it. But he did not.

There are no other matters that I am aware of that I wish to bring to the Committee’s attention.

Yours sincerely,

Graeme Dickson