

# New Vessels for the Clyde and Hebrides

## Further written submission from David Middleton, by email 24 June 2022

By email

Dear Convener

Thank you for your letter of 26 May sent by email. You have asked for my response to various questions.

You are correct in stating that I was the Chief Executive and Accountable Officer for Transport Scotland spending programmes until early November 2015, over six and half years ago. I retired from the public service in April 2016.

It is obviously a matter of regret that these vessels have not yet been completed and in service on the Clyde and Hebrides' routes. The public interest is understandable.

It is some years since I was directly involved in this issue and that was only at the early stages of the procurement. I have had only limited access to the Transport Scotland (TS) papers that I saw at the time although I appreciate many documents have been published online albeit with certain redactions. I have followed, to a degree, coverage of the Auditor General's (AGS) report and the subsequent sessions at your Committee. Given the time elapsed since my involvement I do not believe any detailed expertise on my behalf can reasonably be expected. I will, however, do my best to be helpful in responding to your questions.

I will try to answer the questions on the second page of your letter in order.

From a distance of nearly 7 years I cannot state precisely when TS became aware that FMEL was unable to offer a full Builders Refund Guarantee. The issue was covered in advice to Ministers but those with direct, current access to the papers would have to answer in terms of specific dates. The AGS's report included a timeline.

I do not recall any specific discussion with the Portfolio Accountable Officer although it is likely we may have covered the issue in passing during regular catch up discussions.

The relevant directorate in TS clearly had discussions with CMAL but I do not think there was ever any suggestion of CMAL requesting a written Ministerial authority - perhaps slightly different terminology in terms of directions to NDPBs.

I certainly did not consider seeking written authority, sometimes referred to as a 'direction'. I did not then, nor now, see this as any kind of 'decision'. Seeking a written authority is not a procedural or process point. It would be a very significant matter to seek such an authority and would have involved extensive consideration across the Scottish Government. I never sought a written authority in six and three quarter years as Accountable Officer during which I signed accounts for expenditure in excess of £14 billion. The AGS's report made comment about the absence of documented evidence of the Ministerial decision although I do not think it was ever suggested that Ministers did not decide to award the contract. The AGS's report did not state that a written authority should have been sought.

I believe CMAL's concerns were fully set out to Ministers in the advice of 8 October 2015. That advice recorded that there had been further discussions with CMAL following the chair's email of 26 September; and indeed CMAL had had further negotiations with FMEL. The advice covered CMAL's concerns and how these had been addressed. There was no mismatch in my view.

I had no direct personal engagement with Scottish Ministers on the contract award.

It follows that I did not record any decisions taken by Scottish Ministers on the contract award. I am aware of the AGS's comments in his report and of the subsequent publication of the email of 9 October recording the Transport Minister's approval of the contract award on the basis of the advice of 8 October. As I believe witnesses have made clear in oral evidence there would be nothing unusual in Ministers signing off decisions with relatively short emails from their private office. I do not believe any wider conclusions can be drawn from such a sign off email. The assumption would have been that the Minister had endorsed the advice submitted. I also believe the Minister's office were kept up to date on the timing of recommendations and the Minister would have been ready to consider advice swiftly on this important contract award.

I hope these responses are helpful. I do not think I have anything to add what is in the AGS's report, the published documents and the oral evidence your Committee has taken from various witnesses.

Yours sincerely

David Middleton