



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 4 March 2020

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 4 March 2020

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RURAL ECONOMY AND CONNECTIVITY COMMITTEE

8th Meeting 2020, Session 5

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

COMMITTEE MEMBERS

*Peter Chapman (North East Scotland) (Con)

John Finnie (Highlands and Islands) (Green)

*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

*Emma Harper (South Scotland) (SNP)

*Richard Lyle (Uddingston and Bellshill) (SNP)

*Angus MacDonald (Falkirk East) (SNP)

*Mike Rumbles (North East Scotland) (LD)

*Colin Smyth (South Scotland) (Lab)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Robbie Drummond (CalMac Ferries Ltd)

Dean Lockhart (Mid Scotland and Fife) (Con)

Duncan Mackison (David MacBrayne Ltd)

Stuart McMillan (Greenock and Inverclyde) (SNP)

Fran Pacitti (Transport Scotland)

Chris Wilcock (Transport Scotland)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 4 March 2020

[The Convener opened the meeting at 09:30]

Interests

The Convener (Edward Mountain): Good morning, and welcome to the Rural Economy and Connectivity Committee's eighth meeting in 2020. I remind everyone to put their mobile phones on silent. John Finnie has submitted his apologies.

The first item on our agenda is a declaration of interests. We have a new committee member, Rachael Hamilton, who is taking over from Jamie Greene. I formally welcome her to the committee and ask her to make a declaration of any interests, so that the committee knows what they are.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): Thank you, convener. I draw members' attention to my entry in the register of interests. I have a share in a small hotel in the Scottish Borders.

The Convener: Thank you.

In the same breath as welcoming Rachael Hamilton, I pay tribute to Jamie Greene, who has left the committee. He has been a member of the committee since the start of the current session; he has worked extremely hard and has sometimes made my life extremely difficult by asking very long questions. He wrote me a very nice letter to say how much he had enjoyed being on the committee—I will not read it out, because in places it is as long as the questions that he asks, but it is fair to say that he worked extremely hard, and I thank him on behalf of the committee for all the effort that he has put in.

Construction and Procurement of Ferry Vessels

09:33

The Convener: Item 2 is our inquiry into the construction and procurement of ferry vessels in Scotland. There are two panels today. Before I introduce the first panel, I welcome to the committee Stuart McMillan and Dean Lockhart, who are attending for this item. Do either of you want to make a declaration of interests before we begin?

Stuart McMillan (Greenock and Inverclyde) (SNP): As I have declared in the past in the chamber, my wife works part time for CalMac Ferries Ltd.

The Convener: I welcome our first panel: Duncan Mackison, who is chief executive officer of David MacBrayne Ltd, and Robbie Drummond, who is managing director of CalMac Ferries Ltd.

There are a series of questions from members—I think that you have both been to the committee before, so you will know what happens. The committee members will ask you questions directly, but I ask you to keep your eye on me as well so that, if you are giving a long and detailed answer and we are running out of time, I can encourage you to reduce the length of your answer, although I hope that I will not need to do so. The first question is from Emma Harper.

Emma Harper (South Scotland) (SNP): Throughout our inquiry, we have heard varying evidence on the procurement of vessels 801 and 802. Some people have said that they are not the right vessels. We know from the documentation that,

“Although CMAL are responsible for vessel procurement, under the tripartite arrangements in place CalMac have been consulted extensively at technical level to achieve their endorsement of the detailed specification and designs which ... form part of the shipbuilding contract.”

I refer you to other evidence that we have heard, which suggests that vessels 801 and 802 are the size of ship that would be needed to carry 127 cars and lorries and 1,000 passengers, and that the required capacity is there. Can you explain what impact CalMac had on developing the specifications for hulls 801 and 802?

Duncan Mackison (David MacBrayne Ltd): I can say a little about the process, but I will defer to Robbie Drummond to talk about the specifics of the specifications. The process was a standard process that related to the development of a design and build contract for those vessels. Our involvement at the start of the process was to create an outline specification. We then passed

that on to Caledonian Maritime Assets Ltd, which started the procurement process. The outline specification was created by us at the start of the process and informed by previous discussions at meetings of the network strategy group, which included ourselves, CMAL and Transport Scotland. We contributed in detail at the start point, and the procurement process took place thereafter. We had some involvement in the procurement process, in that we contributed individuals with specific technical expertise who were part of our team, but they operated within that process as part of the CMAL process.

I will answer your specific question about the outline specification in simple terms. As long as the vessels that are produced at the end of the day are consistent with the initial specification, we will be content to receive them. Our understanding at present is that that is likely to be the case. I do not know whether Robbie Drummond wants to add anything.

Robbie Drummond (CalMac Ferries Ltd): Emma Harper touched on the size of the vessels. The specification was set broadly on the basis of a 100m-sized vessel, given the resilience that the vessels needed to be able to operate. That formed the basis of the specification that was taken forward to meet the requirements of the routes.

Emma Harper: How did you engage with CMAL, Transport Scotland and the Scottish ministers in order to develop the process and ensure that the specifications that you were asking for were being met?

Robbie Drummond: The broad specifications for the vessel were set by the tripartite group, which included Transport Scotland, CMAL and CalMac. It was that group which agreed the broad scale and size of the vessels, and it was then CalMac's responsibility to define the operator specification that was provided to CMAL, which then went out to procurement.

The Convener: The next question is from Angus MacDonald.

Angus MacDonald (Falkirk East) (SNP): There have been claims that vessels 801 and 802 were not the ships that CalMac wanted. I am keen to explore in a bit more detail, and the committee would like to know, how CMAL incorporated your desired specifications into the agreed basic design of the new vessels. Was everything that you stipulated taken on board?

Robbie Drummond: I can respond to that; it is referred to in our written submission. We presented a detailed outcome specification to CMAL, which took that specification and prepared a high-level specification with the objective of allowing the yards the ability to create some

innovation around that. The yards then submitted their bids, based on that high-level specification.

As we say in our submission, if those vessels come in and they meet the specifications, and they are authorised by the Maritime and Coastguard Agency and registered by class, we would be delighted to have them in our fleet and operate them for the benefit of our communities.

Angus MacDonald: Was CalMac involved in developing the detailed design for the vessels? If so, can you outline how the process operated and highlight where you think that problems arose?

Duncan Mackison: As is usual in a design and build contract process, in my experience, the end user—which is us, in this case—states, in output terms, what they would like the vessels to look like. The procurement authority, which in this case is CMAL, takes that specification and turns it into a more condensed document that is sent out to organisations and companies that want to tender as part of the bid process. As part of the process by which those companies play back their bids, they will interpret the output specification.

At the start of that process, we set out in broad terms, roughly speaking, the requirements for length, the type of vessel, the number of vehicles and passenger capacity—that sort of thing—and those specifications are developed through the process. Once the procurement exercise has started, we step back from the process, other than—as I said earlier—supplying individuals who can provide technical expertise within the procurement function that is run by CMAL.

Rachael Hamilton: Mr Drummond, you said that, beyond the basic design and the desired specification, there was some innovation created. Can you describe what that innovation looks like?

Robbie Drummond: The intention in putting a high-level specification out to tender is that the yards can come back with their views on what that innovation might look like in order to meet the specifications. It is then up to CMAL to judge which yard has produced the best tender and to take that forward into a contract.

Rachael Hamilton: How do you judge, looking at what is desired beyond the basic specification, what constitutes further innovation or a creative approach in a tender bid?

Robbie Drummond: There is an outcome-based specification, and yards set out different ways of meeting it using different types of innovation, technology, equipment and layout. It is then up to the body that is judging the bids to say which of them best meets the criteria in the most efficient way.

Duncan Mackison: The procurement process will define the scoring mechanism for the various

elements of the bid, and those elements will be scored based on quality and price. A view is formed by adding up the scores of all the different packages to decide which bid is the most economically advantageous.

The Convener: There are a few follow-up questions, but first I would like some clarification as I am not sure about something. Last night, the committee was given a letter from CalMac's solicitors. As an annex to the letter, there is a "Basic statement of requirements", which covers a page and a half—

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): It is from CMAL's solicitors.

The Convener: Sorry—the letter is from CMAL's solicitors.

Can you confirm something? The statement of requirements covers literally a page and a half, and mentions aspects such as dimensions, classification notation and operating conditions. Is that the kind of thing that you are talking about? Is it as simple as what is in that one-and-a-half-page document?

Robbie Drummond: No—the specification that we provided to CMAL had much more detail than that. The specification in the tender document that CMAL produced was much more detailed than that document.

The Convener: So the document that I have quoted is just an abbreviated version.

Duncan Mackison: It sounds as though it is a summary of key points from a more detailed document.

The Convener: It is called "Basic statement of requirements".

Robbie Drummond: That is not a document that we produced.

The Convener: It is not a document that you produced, so—

Robbie Drummond: The document that we produced was very detailed, as we said in our written submission.

The Convener: We must ask some more questions on that. Richard Lyle wants to come in, followed by Peter Chapman.

Richard Lyle (Uddingston and Bellshill) (SNP): I have a quick question. Who was responsible for designing the interior of the ships? Was the design agreed, and were blueprints for the ships drawn up, before the work started?

09:45

Duncan Mackison: Ultimately, the design is to a large extent the responsibility of the bidders,

who react to the specification that is provided in the tender documentation. When the process gets to the preferred-bidder stage, those designs are discussed in more detail. Our responsibility is to set out—in large handfolds, if you like—what the overall specification is, and then the bidders play back their specific designs.

On your point around where that currently sits—

Richard Lyle: Were the designs agreed and then changed?

Duncan Mackison: We do not have visibility of that aspect, because thereafter it is CMAL that is running the procurement process, and we are not directly involved at that level of detail in the interplay between CMAL and Ferguson Marine Engineering Ltd.

Robbie Drummond: As part of a design and build contract, it is the responsibility of the yard and the procuring body between them to get the designs agreed and approved by the MCA and by class.

Peter Chapman (North East Scotland) (Con): You said that you agreed the basic specification for the two ships. Did you agree that they needed 1,000 seats?

Robbie Drummond: The scale of the vessels was agreed in the tripartite group to meet the needs of the particular routes. Vessels 801 and 802 currently have a passenger capacity of 950. The real constraint in designing a ferry involves maximising the space on the car deck; that is where the design expertise comes in.

The reason why the figure of 950 was selected as the required passenger capacity was to meet the needs of the Ardrossan route. As with all CalMac ferries, we can operate those vessels with different passenger certifications, which means that we can operate them with different crew numbers. To give an example, the MV Isle of Mull has a summer passenger certification of 951, but in winter we operate that vessel with a requirement of 530 and a different crewing level. Having a higher passenger level offers a degree of flexibility, which means that the vessel can operate across different routes, and we can vary down the passenger certification level to meet the requirements of particular routes and seasons.

Peter Chapman: So you are saying that, at some point in the yearly timetable, you require that number of seats on those two ferries. We have heard in evidence that on neither of those two routes has the number of passengers ever been anywhere near 1,000, so why build a ship to that specification?

Robbie Drummond: First, the prime design parameters relate to maximising the car deck; the difference in the passenger certification is a much

smaller element. Secondly, the level of passenger capacity to which you refer is required for the Ardrossan route at certain points in the timetable. In addition, it made sense to build those vessels as the start of a standardised class. That gives them the flexibility of being able to carry higher passenger numbers, but the capacity can be varied down to meet the requirements of different routes with lower passenger numbers, and crew numbers can be reduced accordingly.

Colin Smyth (South Scotland) (Lab): I want to follow up on the point that was made about CalMac's involvement. You have been clear that you were involved at the start in setting out your preferred design based on what you need, and it was then up to CMAL to go forward. However, with a design and build contract, a huge amount of design work takes place—or rather, in this case, it does not seem to have taken place—throughout the term of the contract. Are you saying that CalMac has no role in that process going forward, and that it is entirely up to CMAL? That seems to contradict the evidence that we have heard previously that you were involved all the way through the process.

Duncan Mackison: As an organisation, we are involved at the start—exactly as you say—in defining the output specification. Thereafter, the process is managed by CMAL. In that context, some members of our team are seconded, if you like, into CMAL's team to help with the assessment of the various work packages. Those people will be involved with that work and, if there are specific technical questions or issues as the design develops, they can come back to us. The distinction is that, although we are not running that process, we have certain individuals with technical expertise who will augment the CMAL team and be part of it.

The Convener: Luke van Beek told the committee that the previous CalMac chief executive had stated

“that ... ships 801 and 802 were not the ships that CalMac wanted.”—[*Official Report, Rural Economy and Connectivity Committee*, 5 February 2020, c. 17.]

Is that correct? If it is correct, why did CalMac not want those ships?

Duncan Mackison: As a statement, that is not correct. I have not met Luke van Beek, and I am not aware of my predecessor having met him. I think that Robbie Drummond has met him.

Robbie Drummond: Yes, I have. We have said clearly in our written submission to the committee that we welcome the ships and we want them in our fleet so that we can operate them. I met Mr van Beek, and we had a discussion about liquefied natural gas—

The Convener: I will come to LNG in a minute. We are talking about the overall specification for the ships, which is capacity for 1,000 passengers—if I have got that right—and something like 83 cars on the lower deck and 40 on the top deck, with 16 heavy goods vehicles.

Robbie Drummond: We specified the vessels, so we want them. I discussed with Mr van Beek some of the complexities in training and regulation around LNG and the connection with the MCA. That was the extent of our discussion.

The Convener: We will come on to LNG in a moment. You are saying that the specification, which is effectively the “Basic statement of requirements” that has been submitted to the committee, is exactly what you wanted to meet your needs across all the harbours, although the infrastructure in the harbours is not suitable. That is my question.

Robbie Drummond: Correct.

Duncan Mackison: Yes.

The Convener: So you accepted at the outset that the ships would not fit into, or work in, some of the harbours on the routes for which you were supposed to be taking them on.

Duncan Mackison: They were selected to be operated in certain harbours, and there was an understanding that, in some of those harbours, works would be required to enable them to fit. Nonetheless, there was a clear connection between the design of the vessels and the locations and routes where we intended to use them. That is still the case.

The Convener: Let us move on to the issue of LNG. Luke van Beek stated that the previous CFL chief executive had said that CFL

“did not want LNG ships.”—[*Official Report, Rural Economy and Connectivity Committee*, 5 February 2020, c 17.]

Is that right or wrong?

Robbie Drummond: Our specification required dual fuel. We put that in our specification—that is what we wanted.

The Convener: So—for absolute clarity—you definitely wanted LNG ships.

Duncan Mackison: Yes.

Robbie Drummond: Yes. That was the agreement that was reached. At the tripartite group, it was agreed that, at that time, if we wanted to reduce emissions, LNG was the sensible choice. LNG is a fuel that is used widely throughout the Scandinavian ferry fleet—it is a normal technology that is used widely in the shipping industry, and its use will increase into the future until alternative technologies become closer.

The Convener: Without meaning to take over any questions that might be coming later, I want to look back at your submission to the committee, because I am struggling a wee bit. In your submission, you accept that LNG is not widely available in Scotland, and that the vessels were designed

“to stimulate the availability of LNG in Scotland”.

Was that your ulterior motive for wanting LNG?

Robbie Drummond: That was agreed by the tripartite group. The real driver was to reduce environmental emissions—there are very challenging targets to reduce emissions in the ferry industry—but it was also about trying to stimulate the use of LNG as an economic development. That was part of the policy agreement that was reached at the tripartite group; it was agreed that that was the right thing to do.

The Convener: So you absolutely wanted the ships to be designed in the way that they have been, with LNG as a fuel, and Luke van Beek is wrong.

Duncan Mackison: Correct.

The Convener: That is interesting.

Peter Chapman: I have a small follow-up question on the LNG story. We have been told that the ferries cannot run on LNG when they are coming into or going out of harbour. Is that correct?

Robbie Drummond: That is not correct: they can run on LNG when they come in and out of harbour. Operationally, it is more efficient to run them on marine gas oil at that point, and that is the way that we would adopt them, but that is a relatively small part of their operation.

Peter Chapman: On a short route with only a half-hour crossing, it is not a small part of the trip. Coming in and out of harbour is quite a big part of a 30-minute crossing, which the ships will undoubtedly be making at times. In those circumstances, is the ability to use LNG worth the extra expense? For a fair part of the journey, the ships will not be using LNG.

Robbie Drummond: For the majority of the journey, they will be using LNG. It is very easy to switch between MGO and LNG—it is not a complex process to switch between fuels. The ship moves out of harbour, and when it is fully under way it can move straight to using LNG. It is a very normal and common practice to use LNG in that way.

Duncan Mackison: There is also a broader point, which we touched on earlier, about resilience within the fleet, especially in the current circumstances. We have an ageing fleet, and it is therefore not unusual that, for various reasons,

vessels have to be moved from one route to another.

In designing vessels, we have to conceive that some of them will sometimes be used on longer routes and sometimes on shorter routes, but we have to take a view of what is relevant to introduce to the fleet as a whole.

The Convener: The only comment that I would make in response to that is that the right infrastructure needs to be in place in the port to which you want to move the ship. If it is not there, that will not work.

We will move on with a question from Maureen Watt.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Good morning. I want to ask about the costs—

The Convener: No, I am sorry—I apologise to Maureen Watt. I am cutting her off because I promised that I would bring in Mike Rumbles at this point.

Mike Rumbles (North East Scotland) (LD): Thank you, convener. I want to drill down to the awarding of the contract as a result of the tender documentation. To be fair, I will predicate my question on a document that the committee received yesterday, which the witnesses might not be aware of. It is a letter from CMAL’s lawyers.

Duncan Mackison: We are not aware of that.

Mike Rumbles: You are not aware of it. I will read it out, so that you are aware of it. It says:

“In the evaluation”

of the tender documents,

“the names of the bidders were anonymised”—

quite rightly—

“and the 7 designs were identified as Ship A ... B ... C ... D ... E ... F and ... G.”

It goes on to say:

“On the day when the tenders were received and opened CMAL and CalMac checked the tender documents for completeness, following which both CMAL and CalMac representatives reviewed the tender documents over a 2 month period in CMAL offices. Further clarifications took a further 2 months.”

The process therefore took four months in total.

The letter then gives reasons for why vessels

“A, C, E and G were judged not to be”

appropriate for the contract. Finally, it states:

“Shipyard B was identified as the leading bid.”

It does not even mention ships D and F; there were three contenders that met the specification.

A letter of 2015, which recommends Ferguson Marine Engineering Ltd to the relevant minister, points out that the Ferguson's bid was the most expensive bid with the highest specification, and—what is more—was over budget, in that it exceeded the amount that had been budgeted for.

I am trying to find out why Ferguson's was chosen by CMAL and CalMac and recommended to the minister for award of the contract when the bid involved the greatest cost and the highest specification, and the other two bids were lower in both respects. When Roy Pedersen gave evidence to the committee, I asked him that very question: why was that bid chosen? He said that it was either "incompetence", "vested interest" or "corruption". Can you tell us why the Ferguson's bid was recommended over and above the other two bids?

Duncan Mackison: We have not seen the document to which you refer but, as I said earlier, we would have had individuals working as part of the CMAL team and as part of the assessment process. CalMac, or DML, as an organisation was not formally involved in that assessment. It would have had people involved in the scoring mechanism, or contributing—

Mike Rumbles: In their letter to the committee, CMAL's lawyers say that you were involved. I will read it again. It states:

"On the day when the tenders were received and opened CMAL and CalMac checked the tender documents for completeness, following which both CMAL and CalMac representatives"—

it says "CalMac"—

"reviewed the tender documents over a 2 month period in CMAL offices. Further clarifications took a further 2 months."

For four months, CalMac was involved in the process.

Robbie Drummond: I will build on that, if I may. Our involvement was in working with CMAL and assessing the operational impacts of those bids with regard to whether they met our specification. We were supporting the evaluation process. Responsibility for evaluating the price, the yard, whether the yard could meet the bid, and the quality aspects was down to CMAL. We provided support in relation to whether those bids met our operational requirements and how we would score those in terms of meeting the specifications.

Mike Rumbles: CMAL, through the letter from its lawyers, is obviously involving you in this, and you are saying to us, "No, no—it's not us."

Robbie Drummond: No—we are saying that we were involved in assessing the operational specifications for the bids—

Mike Rumbles: So you did not make a recommendation. You are saying that you were not involved in making the recommendation.

10:00

Duncan Mackison: What we are saying is that we would have had individuals involved in the assessment of the various different packages, and there would have been technical discussions, but thereafter those would have contributed to a broader decision and we were not involved in that broader decision.

Mike Rumbles: Right. So you have just said that you were not involved in the recommendation for the awarding of the contract.

Robbie Drummond: The final recommendation has to come from CMAL, which is the procurer and the body that then awards the contract.

Mike Rumbles: I understand that, but CMAL is trying to say that you were involved. The letter from its lawyers fingers you.

Duncan Mackison: It comes down to the point that we would have had people involved in that process, but the issue is at what level.

Mike Rumbles: We are not getting anywhere, are we?

The Convener: Well, Richard Lyle wants to come in on the back of that, so let us see if he can get anywhere.

Richard Lyle: I was previously a councillor. In the council, when a contract came in, the two factors in contention were price and quality. If the price was a bit higher but the quality was better, the council might have accepted the bid. Is that what happened in this case?

Duncan Mackison: We do not know, because we do not have a record of that process. We could take the question away, convener, and have a look at what individuals might have said, but the aggregation process, in which all the scores are taken together and the choices are made—

Richard Lyle: You would agree that it would be possible for a bid for a contract to be accepted because the quality was better—even though the price was a wee bit higher, you would be getting a better-quality ship.

Robbie Drummond: Yes. That is our understanding of the tender. It involved a judgment of price and quality, and of the yards' capability to produce the vessels. That would all have been part of the wider assessment.

The Convener: You obviously know the people who were involved. At what level of management were the people whom you sent to give advice to CMAL?

Robbie Drummond: They were senior employees in the company.

The Convener: Were they board members?

Robbie Drummond: No, they were not board members. I think that one was an executive member and one was a senior manager.

Mike Rumbles: I know that you have not seen the lawyers' letter, but I have read out the relevant parts to you. It fingers you as actually taking part.

The evidence that you are giving us now, in which you say that you were not involved at all in the recommendation of the Ferguson's bid, directly contradicts what CMAL's lawyers are saying. If I have got this right—I just want to make it absolutely clear where we are—you are saying that, despite four months' involvement in the process of examining the tender documents, you were not party to the recommendation to award the contract to Ferguson's.

Duncan Mackison: What we are saying is that we would have had individuals involved in contributing to that process, but ultimately that choice was not something that we contributed to—

Mike Rumbles: You did not have a view on the best bid.

The Convener: Mike—

Mike Rumbles: I just cannot understand it. Four months' involvement, and you did not have a view on the tender documents.

Robbie Drummond: We did have a view—we assessed and provided an operational view of the different bids, but the overall assessment was a matter for CMAL.

Mike Rumbles: What was your assessment? You are before the committee. I am asking what your senior management, after four months' examination of the tender documents, recommended as the best tender.

Duncan Mackison: As I understand it, those individuals would have contributed to the technical assessment, but the broader appreciation of what the best tender was would have been done at a different level within CMAL.

Robbie Drummond: It would have been done at an anonymised level, so the individuals were assessing information that referred simply to yards A, B, C, D and E.

The Convener: Does Richard Lyle want to come in?

Richard Lyle: No.

The Convener: In that case, I will bring in Stewart Stevenson.

Stewart Stevenson: My interpretation is different from the view that Mr Rumbles is expressing. I am going to read out the relevant part of the letter from CMAL's lawyers in its totality. It says:

"On the day ... the tenders were received and opened CMAL and CalMac checked the tender documents for completeness"—

the witnesses will confirm that that is a technical process—

"following which both CMAL and CalMac representatives reviewed the tender documents over a 2 month period in CMAL offices. Further clarifications took a further 2 months."

Is there anything in that—

Mike Rumbles: I have just read that out.

The Convener: Mike—

Stewart Stevenson: Is there anything in that to infer that CalMac went any further than simply doing the technical health check on the tenders? Is there any reference in the letter that has been put before the committee that you believe suggests that you were part of the decision-making process as to who to recommend to the ministers?

Duncan Mackison: No, I do not think that there is.

Maureen Watt: I want to ask about the dual-fuel vessels that are now being built. Do dual-fuel ships necessarily cost more than diesel-powered ships, given that you would probably have had to fit scrubbers on diesel-powered ships?

Robbie Drummond: No—we would not fit scrubbers, because the saving in emissions comes from using the LNG. It is a very straightforward matter to switch between the different fuel types, so there is no additional operational impact from using different fuels. An element of extra infrastructure is required at the ports, but that is relatively small: it is pumping infrastructure to speed up the pumping process. The vessels can be loaded direct from trucks, but if we want to speed up the process, we need some infrastructure to make it faster. There is some investment required there, but otherwise there is no increase in operational requirements.

Maureen Watt: So there is no increase in cost for the running of the ships.

Do you have a view on the best way to minimise the environmental impact of the new ferries? I am thinking, for example, of the use of battery or electric technology, and hydrogen-powered vessels are also a possibility.

Robbie Drummond: I can comment on that. I am a member of the operational policy committee of Interferry, which is the body that represents

ferries, so I have wide exposure to what is happening—

Maureen Watt: That is an international body.

Robbie Drummond: Yes, it is international. I have wide exposure to the views of chief executives of other ferry companies and what is happening internationally. The environmental impact is something that all ferry companies and shipping companies are wrestling with. At the time the decision was made, LNG was the only sensible choice to reduce emissions. If we were making the decision again today, it would remain the only choice to enable ferries of that size and duration to deliver reduced emissions.

Looking further into the future, we see that battery technology is becoming better and a lot of vessels are using that technology, but it is not yet suitable for larger vessels on journeys of more than 30 minutes' duration. The expectation in the industry is that battery technology will become more prevalent on larger ferries, in addition to the potential development of hydrogen. However, it will be a number of years before that scenario becomes real. LNG is currently the primary choice for ferry companies for use in larger vessels that make longer crossings.

Maureen Watt: So, to be clear, in order for us to meet our climate change targets as a country, LNG was judged to be the best fuel system.

Robbie Drummond: If we want to reduce emissions, LNG is now the only choice for a vessel of that scale that operates on those particular routes. We have in our fleet three diesel-electric hybrids that work very effectively, but they are smaller vessels and they operate on shorter routes. There are many examples of such vessels throughout Europe—that is where the technology is developing, but it has not yet developed enough for use in vessels of the size that we require.

Duncan Mackison: LNG is sometimes referred to as a transition fuel because of the delta between needing to move in the direction of making savings on emissions and not knowing exactly what the future technology will be. Internationally, different companies are embracing that choice in different ways. Some companies are building ships that give them the express ability to take out the propulsion unit that they are putting in at this stage, because they anticipate that the ship will change to a different mode in the future. We are at a time of uncertainty, but at the time when the choices that we are discussing were made, it was an entirely logical choice—we believe that it still is today—to step in that direction and use LNG.

Maureen Watt: In the process of renewing an ageing fleet, it was the best option at the time, and it still is.

Duncan Mackison: Yes. There is possibly a broader point in respect of the fleet. If we were starting with a blank sheet of paper today and designing CalMac's future fleet, we would have the luxury of being able to design in the best solution for groups of vessels. We would probably end up with clutches of electric vessels on some routes. However, we are not in that position, because we are moving incrementally, so we have to go with solutions that give us flexibility.

That shines a light on the need for a longer-term strategy to replace the fleet that would give us the bandwidth to consider those options—it would perhaps be good to think about that. However, for the purposes of these vessels, which are specifically for two routes, the choice of LNG was logical.

Stewart Stevenson: I want to ask you both about something in which I suspect you are spectators rather than participants: the clear breakdown that took place in the relationship between CMAL and the supplier, Ferguson Marine. I know from contracts in which I have been involved in the past that when you have to get the contract out of the drawer, you are in trouble. The process should be based on good day-to-day relationships. Did you see evidence of that breakdown? If you did, how did you respond to it?

Duncan Mackison: We have a good relationship with CMAL, and I meet frequently—every two or three weeks—with its chief executive. We operate alongside each other in a world of large contracts, and there are sometimes tensions, but the relationship is sound. We were clearly aware of issues—we could not really not be aware—but we were not part of the detail of the issues that were obviously taking place at the yard.

Stewart Stevenson: Do forgive me—that is what I would expect to hear, but my question was specifically about how you responded to the clear emerging difficulties between the two key partners. You are ultimately getting vessels that you are going to operate. How did you respond to that situation—apart from by being a passive observer, because I am sure that you were more than that?

Duncan Mackison: We are engaged with CMAL and we speak to it over time. To state the obvious, we desperately want these vessels and we are interested in getting them into our fleet as soon as possible to serve the communities. Outwith the procurement process, we would have discussions on various points and possibly to understand how the generalities were taking place, but we were not involved in that specific discussion. As I said, it was very concerning for us to watch those delays because we are the ones who have to live with the consequences of not

having vessels and having a fleet that is lacking in resilience.

Peter Chapman: In your written evidence, you state:

“In 2012 ... Transport Scotland agreed an investment plan to build two new vessels, one to replace MV Isle of Arran and one to replace MV Isle of Mull.”

What input did you and CMAL have in the decision to build two large ferries? Were other options considered? We have often heard from the island communities themselves that they would prefer two smaller vessels. That would be much more flexible and would give them a better service, and two boats could be built for less money—certainly less than the two current vessels are going to cost us. What other options were considered before you decided to go down the road of building two large vessels?

Robbie Drummond: There are two questions there. First, the need for two large vessels was identified as part of the ferries plan. That was then built into the vessel replacement and deployment plan, which said that two large vessels were required to meet the needs of the route. That was agreed as part of the tripartite. There was a process to meet the strategy that was agreed at the time, and we went on to develop the detailed specification.

On your broader question about the right vessels for particular routes, I refer you back to Duncan Mackison’s point about deciding on the larger strategy that we need to start with and the service that we want on a particular route, which includes timetable, frequency, resilience and capacity. When we have addressed those questions, we can look at designing the right vessels to provide the right capacity for the route. Different vessels have different characteristics and provide different aspects of resilience. It depends on what we want from the service, and then we go on to talk about what the right vessels are.

Peter Chapman: You speak about frequency and resilience. To my mind, two smaller ships would give you better frequency and better resilience. Why was that option not taken forward? We know now that it would have been much cheaper—maybe you did not know that then, but you certainly know it now.

Robbie Drummond: It was a decision that was made to meet the strategy that was set out in the ferries plan, which required two large vessels. As we go forward, it is good to ask what the right vessel design is, but the decision needs to be part of a longer-term strategy to meet the needs of the service.

10:15

Peter Chapman: We have heard—as I alluded to—that, although you consult the island communities, you basically ignore their wishes once you have done the consultation. We have often heard that their wishes are for two smaller vessels rather than one large vessel. What cognisance do you take of that consultation procedure? Do you just consult and then ignore the results?

Robbie Drummond: We should remember that the ultimate funding decisions rest with Transport Scotland. To give an example, a Scottish transport appraisal guidance process was undertaken for the Ullapool route, and various options were set out, which included a single vessel and two vessels. The right decision, based on the funding that was available, was to go for one larger vessel. In that case, the communities would have preferred two vessels, but funding determined that the right solution was a larger vessel that could operate for 24 hours. Funding has to be taken into account in looking at these questions.

Duncan Mackison: The broader point around the need for a longer-term strategy surfaces again here. From our perspective, we are ultimately not the owners of that strategy. Of course we have a view, because we deliver the service, but our time horizon for delivering the service is limited to the length of the contract. We would welcome the ability to contribute to a longer-term debate that sets the strategy and gives us an opportunity to get into the details of those questions. In the absence of that, we can have a view, but ultimately it is Transport Scotland that owns the strategy, which flows back down to us. It would be good to develop the context for that discussion.

Maureen Watt: Peter Chapman said that it would be cheaper to run two vessels. However, you would presumably need double the crew—perhaps not quite double, but more or less that number—and you would be using more fuel, so how would it be cheaper? Would it be cheaper to run two vessels instead of one?

Robbie Drummond: It would depend on the one-vessel and two-vessel services that we were going to run, as well as on the specific vessels and the timetables, and the hours of rest that would be adopted, which would be driven by the timetable. It is a complicated question, as we would need to address all those different parameters. It is not a question that can be answered straight away.

Richard Lyle: Given your answers so far, do you think that we need to sit down and develop an overall plan for Scotland’s ferries? We have different harbours, routes and timescales, and islands of differing sizes. There are questions about whether crews should live on board or

offshore; there would perhaps be opportunities for people to live on the islands and send their kids to school there. We need more ferries. In the long term, should we set out a better plan than what we have had in place so far?

Duncan Mackison: Yes—in fact, the chief executive of CMAL and I have made that proposal to Transport Scotland, and we are pushing to try to set the agenda and open up that debate.

Richard Lyle: Can you send us a copy of that proposal, please?

The Convener: The committee made a proposal for a long-term plan last year—I am sure that you have read it—when we undertook our inquiry into the budget.

Emma Harper: I have a quick question. My understanding is that vessels 801 and 802 are intended to be highly manoeuvrable so that they can navigate the different harbours and ports around the west coast of Scotland—those in the Skye triangle, for example. Is that correct?

Robbie Drummond: That is absolutely the intention, but you raise a good point in that we need to look at infrastructure improvements in addition to the vessels. The berthing interface is the most important aspect in thinking about the resilience of vessels.

Emma Harper: Our weather on the west coast might be a bit wilder sometimes too.

Robbie Drummond: Yes, absolutely.

Peter Chapman: I want to come in on that point. The bigger ships are much taller and take a much bigger hold of the wind, so they are more difficult to dock in windy conditions than two smaller vessels would be. The figures tell us that the resilience of your services in poor weather is decreasing. Part of the problem is that those big ships, which take hold of the wind, are unable to sail, whereas two smaller ships would be able to sail. I would argue again that you are designing the wrong ships right now.

The Convener: I think that there was a question there.

Robbie Drummond: Peter Chapman raises two points. On the point about whether certain vessels are more resilient, vessels can be designed to be more resilient. There is always a trade-off between different priorities such as capacity, fuel utilisation and manoeuvrability. The characteristics of bigger vessels will be different from those of smaller vessels, but that does not mean to say that they are better—they are just different, depending on which of the priorities are taken up.

Colin Smyth: To be clear, the decision on whether we have one big vessel or two small ones

is made not by you—you do not have a significant role in that regard—but by Transport Scotland.

Duncan Mackison: That is correct. We can make a contribution to the decision process as the operators but, ultimately, that is where the decision is made as part of the broader strategy.

Colin Smyth: In your written evidence, you state,

“The build for 801 and 802 was intended to be the start of this standardised approach”,

so you obviously have a view. To what extent can these two vessels, which are in effect designed as a one-off, constitute a standardised approach?

Robbie Drummond: It was agreed by the tripartite that these vessels would be the start of a class of vessels that would be standardised around a design. Of course, with any class, the first vessel is always going to be a new design, but the second, third and fourth vessels will match that design. That is common to any such process. I go back to my point that nothing on these vessels is new or innovative; they use standard technologies that are used throughout the world. All that we are doing is bringing those technologies together into a design.

Colin Smyth: So the designs that are currently being developed—slowly—for vessels 801 and 802 will in effect be a standard format for the next two or three vessels that are produced.

Robbie Drummond: That would be a matter for the plan that we talked about. When the subject was discussed back in 2014, which is now six or seven years ago, the intention was that the design for the vessels would form part of a standardised design. That view now needs to be taken forward in the context of a long-term strategy and plan, as we discussed earlier.

Colin Smyth: It seem to be a perfectly logical proposition. The ships are being designed on a day-to-day basis, but the concern is that that design will be cast aside and we will have another new, different design going forward. A standardised approach is certainly very desirable because, although the routes will vary, the conditions do not vary massively from one route to another. Why has that standardised approach not happened prior to the design of these two vessels? Why are we constantly reinventing the wheel every single time a new vessel is built?

Duncan Mackison: That goes back to the ability to take a longer-term view. If you look at our fleet of 33, you could say in very general terms that we should have some large ships, some medium-sized ships and some small ships. However, with a fleet of that size, you need to take a long-term view to be able to move towards that kind of standardisation.

My suggestion would be similar to one of my previous answers. Taking a longer-term view, with the ability to look beyond the short term and develop an asset replacement plan on a timescale that matches the age of some of the vessels—perhaps a 20 to 25-year plan—in addition to the ability to think about and slot in replacements, would enable us to take a standardised approach.

Colin Smyth: What are the barriers that have prevented a standardised approach from being taken previously? Why are we talking about it now? You have indicated that you guys are not round the table when it comes to those matters—your job is purely to deliver a service during the short-term contract that you have been awarded, which seems to be a weakness. Apart from the fact that the people who run the ferries day to day are not round the table when such plans are developed, what are the barriers to the delivery of a long-term strategy?

Robbie Drummond: It is difficult for us to comment on that. We have to operate the vessels that we are provided with as best we can. I talk to chief executives of other ferry companies who are taking a 25-year or 30-year view of their fleets and designing ships with a view to where they want those fleets to be in 30 years' time.

Your points about class are very well made. It is not only much more efficient to procure a class of vessel, because the design is done at the start so the second, third and fourth vessels are much cheaper; it is far more efficient for an operator to operate the same vessels, because there is a commonality of equipment, including safety equipment, and crews are able to operate between different vessels. It is much more efficient for us to operate common classes.

Colin Smyth: We know the legal reasons for the establishment of the tripartite structure, but is it a barrier? You said that you speak to other operators that procure their ferries directly based on what they want in order to run a service. You do not have that luxury, because of the tripartite structure. Is that a weakness?

Duncan Mackison: You could certainly make the current model work. The bit that you need to sit alongside that model is the long-term view, because that would enable you to start lining up vessel replacements and take a strategic approach. You could make the current model work, but it would require a longer-term position. It is perhaps the need to make choices on asset replacement on a short-term horizon that has led to some of the current challenges.

Angus MacDonald: I want to expand on one of the points that Richard Lyle raised earlier. We know that, historically, greater passenger accommodation on vessels has necessitated a

larger crew as a result of safety requirements. That requires the crew to live on board, which in turn requires the provision of significant crew accommodation.

Why do crew live on board the larger vessels that are operated by CalMac? I ask that question because the committee has heard evidence that that is an archaic arrangement for island ferries. If we cross the North Sea and look at the situation in Norway, where crews live at home rather than on board, it appears that we have a curious situation in Scotland. I am aware that I am perhaps comparing apples with oranges.

Robbie Drummond: I will tackle that. On our small vessels—19 out of our fleet of 33—the crews live locally onshore—

Angus MacDonald: On 19 vessels?

Robbie Drummond: That applies to the 19 smaller vessels. For the larger and medium-sized vessels—14 vessels in total—the crews live on board, for reasons of resilience. Our vessels operate across different routes, and if the crews live in the home port, we have to be sure that the vessel is going to be able to return to that port. In the event of any technical or weather issues, resilience across the wider network would be reduced because that vessel would not be able to support other islands or other routes—it would have to return home so that the crew could get back to their accommodation. Accommodation on board is provided for the purposes of wider resilience.

We also need to think about recruitment. We would have to assume that we would be able to recruit highly qualified mariners at a local location within commuting distance of a home port, which would be a significant challenge. I will give an example. Angus MacDonald mentioned Norway. I am currently in discussion with a large ferry business that is looking at changing its 25-year strategy from an onshore strategy to a living-on-board strategy because it is struggling to recruit crews who are able to live locally and get on a vessel. There is a wider network resilience point, and there is also the point about the ability to recruit. That is why the model has been put in place.

Angus MacDonald: I get that, and it is good to have that on record.

We have also been looking at the passenger-to-vehicle ratio, which you mentioned earlier. Why do the ferries that are used on the Clyde and Hebrides routes have a higher passenger-to-vehicle ratio than similar ferries that are run by international operators? Does that result in a need for higher on-going subsidies?

Robbie Drummond: I can address that point—I think that I covered it earlier. The major constraint for passenger ferries is the car deck; we want to maximise car deck capacity. Increasing the amount of passenger accommodation does not affect the material cost, and in any case all our ferries operate on a flexible passenger certification basis. Although a vessel may be able to accommodate 950 passengers, for which a certain number of crew would be required, we would operate that vessel in different ways, depending on the route and the season. We can operate it at a much lower level of passenger capacity, which would require lower crew numbers and a lower level of subsidy.

Earlier, I gave the example of the MV Isle of Mull, which operates in the summer with a certification level of 951. At other times, it operates with a certification level of 530. We have the flexibility to meet different requirements. The vessel can move between different routes and provide the peak capacity that is required during the summer months.

10:30

Rachael Hamilton: You mentioned that the Scandinavian shipping fleet uses LNG, and you referred to the design of the vessels as standard around the world. How do you stay informed of international examples of best practice in service provision?

Duncan Mackison: We are members of a number of international bodies. Robbie Drummond has already mentioned Interferry, which is the organisation that brings together all the international operators of major ferry services. We have been an active member of that organisation for many years; Robbie Drummond and I both attend its events, as do members of our senior team. We have on-going relationships through bodies such as Interferry with regard to what is taking place. Below our level of the organisation, there are a range of people at the functional and technical expert level who sit on various technical boards and groups that discuss various different subjects of interest to the industry.

Those are the sorts of organisations with which we engage. Earlier, Robbie Drummond gave the example of another ferry operator, which happens to be in Canada. That is the kind of information that we get from being involved in those groups.

Rachael Hamilton: Did you use any of the learnings that you took away from your engagement with groups of operators from around the world or replicate any international examples in your provision of ferry services in the west of Scotland?

Duncan Mackison: We bear those things in mind. We have a team that looks for best practice and seeks to create solutions, so those aspects are borne in mind, to the extent that we are involved in making some of the choices on assets.

Rachael Hamilton: Can you give me some examples?

Duncan Mackison: Robbie Drummond mentioned our hybrid vessels, which are now well settled in the fleet. That is an example—there are many such examples—of where other organisations come to us to understand how we have learned to operate that sort of vessel, because that is viewed as best practice. Similarly, on health and safety or professional standards, we often take part in groups from which we bring best practice and ideas back into how we operate the fleet.

Robbie Drummond: We are involved in a number of European projects with partners that are pushing the boundaries of where innovation might sit. CalMac has done a number of very innovative things around bridge management and the use of data that the rest of the ferry industry is picking up as examples. We also go outside the ferry industry—we are currently looking at how the airline industry operates safely and what sort of tools and techniques it uses. We are looking broadly not just at vessel design but at how we can operate the vessels in the most efficient and effective way.

Rachael Hamilton: Does that take into account the technology around using hydrogen and other innovative and environmentally friendly solutions?

Robbie Drummond: We are connected with Interferry and Shippax, and we regularly attend their forums. At those meetings, which run over two or three days, there are presentations from operators and ports, and from suppliers that supply the technology that goes into the designs and which are looking towards the future. Duncan Mackison and I have both taken part in the expert panels—we have given evidence and talked about the future.

Rachael Hamilton: What have other countries taken away from your best practice?

Robbie Drummond: We have introduced a number of things, as we have mentioned. We operate best practice in bridge management in particular, and in how we manage our crews—for example, we have introduced new ways of managing fatigue, which have been looked at by the MCA and other bodies. We have done some genuinely innovative things, a number of which have been pulled from the airline industry. We are now presenting those examples of best practice back to the ferry companies and saying, “Look—this is something that you might want to adopt.”

Rachael Hamilton: Moving on, the committee has heard calls for a rethink of the type of vessels that are used on the Clyde and Hebrides routes to allow for greater frequency and flexibility. Do you have any response on how you could better meet the needs of the community? What is your view on those suggestions? Do you foresee any barriers to delivery in that regard?

Duncan Mackison: We undertake a significant amount of community engagement, which operates at a number of levels, and we hold a number of our board meetings on the islands. I am describing a context in which we actively engage with communities. Engagement is not always a straightforward exercise, but I would describe the experience as courteous, professional and friendly, and I think that we all share the same aims in trying to work towards a good and well-functioning service. That relationship works well. In that context, we listen to and understand much of what communities require. We are aware of the variety of views and opinions, and we welcome them.

We should be trying to use the totality of that information and input to focus on a strategic planning exercise to develop a longer-term view, so that all those various factors can be seen to have been considered, and choices and decisions can be made on the back of that.

Rachael Hamilton: How often do you engage with communities?

Duncan Mackison: Perhaps Robbie Drummond can say something about the numbers.

Robbie Drummond: Last year, we engaged in hundreds of local community meetings. Each local community has a ferry committee that meets either monthly or every two months. We attend all those committees—there are multiple ferry committees across the region. We also engage with the three ferry stakeholder groups and attend their meetings, which are held twice a year. Outwith the formal structures that are put in place to enable communities to feed back their views to us, we go out and talk to stakeholders all the time about how they feel about the service that they are getting, their views on CalMac, and what we can do to improve the service. We listen intently to views on what we can do to change things.

Angus MacDonald: On the point about consultation with communities, we heard in evidence from Angus Campbell a few weeks ago that communities in the Outer Hebrides in particular are fatigued with consultations with CalMac and that some of them feel that they are never listened to. You must have some sympathy with that view, considering what you said earlier about the Stornoway to Ullapool route. The local community requested two ferries, but Transport

Scotland eventually overruled that view, and the community ended up with the larger Loch Seaforth vessel. Surely you can understand why people may now be reluctant to engage, given that they did not have their way—for want of a better term—with regard to the Loch Seaforth on the Stornoway-Ullapool route.

Robbie Drummond: I will pick up on what I think that Angus Campbell was saying when he referred to fatigue. There are two different levels of consultation. There is the consultation that we do at the local level, which is about timetables, the service and customers, and what we can do to improve in those areas. That involves active engagement through the ferry committees and ferry stakeholder groups. The consultation to which Angus Campbell referred in his evidence was part of the STAG process, which is a formal process that Transport Scotland runs to look at different options for infrastructure and for vessels. That is where the community is perhaps showing some degree of frustration with how things are progressing.

Angus MacDonald: Nonetheless, communities do not always differentiate between a STAG appraisal and a general consultation.

Robbie Drummond: I am picking up your point, but it was not a CalMac consultation on what the future of ferries should look like—it was a Transport Scotland-led exercise.

Rachael Hamilton: I want to mention one point. The committee heard evidence from Roy Pedersen and Alf Baird and a number of others from island community groups. They made the interesting point that, in comparison with international averages, the passenger-to-vehicle ratio in the carrying capacity of ferries in Scotland is considered to be quite high. You have talked about international examples of best practice. If you are using such comparisons, can you tell us why that ratio might be so high?

Robbie Drummond: The ratios are set to meet the needs of the route. As I said, there is a danger that people will look only at what the vessel can carry. Just because it can carry a certain number of passengers, that is not necessarily the ratio with which we would operate. We operate with different ratios depending on the needs of the route and the season, and we will vary the ratio down to meet those needs, which has an impact on the crewing requirements.

We should remember that a lot of those decisions were taken in the past. As Duncan Mackison said, the vessels in our fleet now average 23 years old, and eight vessels are over 30 years old. If we were to think about the strategy going forward and look at the needs of those routes, we might make different decisions. That

would be part of the overall assessment of the real need going forward, which might lead us to a different view of what those ratios should be.

Rachael Hamilton: Can you confirm that the voice of communities will absolutely be heard in any future discussion? I know that you are talking about consultations.

Robbie Drummond: Absolutely. The communities should be a key part of consultations on what the future service design should look like.

The Convener: Rachael Hamilton almost fell foul of me at her first meeting of the committee, looking away from me as she slipped in another question.

We will move on to questions from Peter Chapman.

Peter Chapman: Gentlemen, the addition of the two new ferries will require significant upgrades to port infrastructure. Do you reckon that that represents good value for money? How could the requirement for such port upgrades be avoided when vessels are procured in future?

Duncan Mackison: A lot of our ports and the port infrastructure require to be upgraded. The specific infrastructure that relates to the routes that we are talking about needs attention—money is having to be spent all the time.

The question is whether the ferries are a significant addition, and the decision has to be taken in the round. Some upgrades will be required, but those harbours require significant investment anyway. The understanding has always been that those facilities will have to be upgraded for the new vessels—that work is being planned already, and CMAL is responsible for it. The LNG element involves a relatively modest increase in operating costs and the creation of new capacity, which would be done anyway as part of the redevelopment of those facilities.

Peter Chapman: If you had invested in smaller ships—to go back to my previous point—the existing infrastructure would be quite suitable.

Robbie Drummond: The point is that, in looking at the overall investment, we need to look at the whole-life costs, which would, as you said, include infrastructure and the costs of operating the vessel across a longer period. As Duncan Mackison said, whether the whole level of investment would be needed is up for debate, but our port infrastructure requires investment.

The Convener: For clarification, am I right in saying that £30 million has been spent on the infrastructure for the two ferries, or have I got the figure wrong?

Robbie Drummond: You should probably put that question to Transport Scotland. The amount is

broadly in that ball park, but I do not have the exact figure.

The Convener: Okay—thank you.

Stewart Stevenson: The contract requires that you get your vessels from CMAL, although there is an exception relating to David MacBrayne on the Gourock to Dunoon route, by which you can acquire your own vessels. How do you assess the relative merits of being tied into a vessel fleet that comes from a single supplier and being able to go to the market and source vessels yourselves?

Duncan Mackison: The model in the shipping industry is that there tends to be an asset owner and an operator—that is a standard relationship. To be frank, we would be fairly agnostic about where our vessels come from. We could operate them from different locations and from different providers.

The existing model was created back in 2006, when there was seen to be a need to create an asset owner so that we did not end up with stranded assets belonging to Scottish ministers. In general terms, we could accept and lease vessels from other owners on different routes. There would be a degree of complexity around that because of CMAL's role in relation to infrastructure, but in principle it could work.

10:45

Stewart Stevenson: There are a number of suppliers in the rail industry, although I am not sure that that is a good advert for multiple suppliers. Would you welcome greater flexibility, in respect of your core fleet, to be able to distance yourselves from the problem of stranded assets owned by Scottish ministers? Would that make any real difference in practice or is it simply a fact that the vessels that CMAL owns are those that were designed and are suitable—age apart—for the routes that you operate?

Duncan Mackison: At the point at which that decision was made in 2006, the vessels—the assets—still had a significant lifetime ahead of them. For the majority of those vessels, that is no longer the case. We could arguably look at a different model, but the requirements of operating on the west coast with regard to the weather, sea conditions and the draught suggest that there is logic in pulling these things together under one entity from which the vessels are leased. However, you could look at other options.

Stewart Stevenson: Finally, I turn to a question on a slightly different subject that is, in a sense, not really for you. For some years, there has been discussion of the option of breaking a contract into smaller parts for which other operators could bid. As an operator who has won the bid, you will have

a view in relation to what you are doing. Nonetheless, would you have a view as to whether smaller lots would be advantageous to public policy and the provision of ferry services for our communities?

Robbie Drummond: I can answer that. That question was addressed five years ago. At the time, the policy determined that, although a contract could be broken into smaller lots, it would have an impact on resilience throughout the network. A smaller lot would have only a certain number of vessels attached to it, and would therefore not provide resilience by enabling vessels to operate on different routes in the event of technical or weather disruption. It would also be more expensive, because operating five or six—or however many—different lots is more expensive than operating one, given that multiple asset-management teams, head-office teams and safety teams would be required. In our view, it would be more expensive and less efficient. However, it is a policy decision, and either way we would want to operate those vessels.

The Convener: I ask Richard Lyle and Angus MacDonald to be brief.

Richard Lyle: How long does your present contract run for? Are you saying that you cannot plan ahead because your contract does not extend for the length of time that you would require? We are now out of the European Union, so perhaps we can just say, “Let’s give the contract to you.”

Robbie Drummond: That would be fine—thank you. *[Laughter.]*

The Convener: That was a comment from Richard Lyle; I am not sure that it was a question.

Robbie Drummond: I can answer on the factual point. We have a six-year contract that ends in two years—

Richard Lyle: So you cannot plan 20-odd years ahead, because you do not know whether you will be the chosen bidder.

Robbie Drummond: At present, we can plan two years ahead, although there is potential for a two-year extension. That goes back to the issue of short-term contracts. There are other models in the industry in which operators have much longer contracts of up to 25 or 30 years, which allows them to engage in genuine planning.

The Convener: We will park that issue there, because it relates to operation rather than procurement. Angus MacDonald has a question, and then I will bring in Stuart McMillan and Dean Lockhart.

Angus MacDonald: I will keep my question brief, as it may be a question for CMAL. Can you enlighten us as to why it has proved impossible to

lease a replacement vessel to stand by for any breakdowns? That has had a significant impact on services.

Robbie Drummond: You can ask CMAL, but I can answer that. It is because of the peculiarities of the routes that we operate—it is primarily a result of the draught requirements. Our vessels have to operate in very shallow draughts, and such ferries are simply not available on the open market. CalMac and CMAL have both been scouring the market for six or seven years and nothing has emerged that would meet the requirements of the MCA and the UK flag, or the requirements as a result of the very shallow draughts.

Stuart McMillan: You mentioned the three hybrid vessels, which brings us back to the question of a standardised approach. Are those three vessels the same?

Robbie Drummond: Yes. They are standard vessels of the same class and they operate very effectively for us.

Stuart McMillan: Undertaking a standardised approach is not a new thing for CMAL or CalMac. It has already happened.

Robbie Drummond: That is correct.

Stuart McMillan: When you found out—or rather, when you were made aware—that the contract to build the ships had been awarded to Ferguson’s, did you have any concerns about that choice?

Duncan Mackison: To put it simply, we trust the procurement process to ensure that the correct decisions are made and the evidence in the respective bids is weighed up, and we would support the decision as a result of that process. Outwith that, our view would be subjective. We have to rely on the process being able to ask the right questions and come up with the correct answer.

Stuart McMillan: Ferguson’s has built a number of ships for the fleet and has a vast amount of experience in that regard, so you had no concerns as to whether it could undertake the work. Is that correct?

Robbie Drummond: I refer to our earlier conversation about our role in the procurement, which was to assess the quality of the bids that came forward. It would be for CMAL, as the procurer, to take responsibility for assessing the quality of the yards, their financial standing and whether they could build the vessels.

The Convener: Your questions were very brief, Stuart, so if you want to follow up on that point, I am happy for you to do so.

Stuart McMillan: Okay. Did you have any issues regarding the quality of the work that Ferguson's had undertaken for the fleet in the past?

Duncan Mackison: No. The vessels that we have that were built by Ferguson's are still in service and they operate satisfactorily.

Robbie Drummond: We would refer you to the recent history. The three hybrids operate effectively. I know that the crews like operating them, they provide good service for our customers and they have proved very reliable.

Stuart McMillan: In CalMac's view, the yard's workmanship and the vessels that it has built have been satisfactory.

Robbie Drummond: Yes.

Duncan Mackison: Yes.

Dean Lockhart (Mid Scotland and Fife) (Con): I have a couple of follow-up questions. The first is on existing capacity. Given the delays to vessels 801 and 802, what is your current capacity to meet the existing demand? I am thinking about the need to use older vessels that are subject to outage and your capacity over the next two or three years.

Robbie Drummond: Some of the information is contained in our submission. Over the past five years, demand has grown by 37 per cent, so the volumes that we are carrying are 37 per cent bigger. On some routes, the growth has been even higher. In the summer, our fleet is 100 per cent deployed. There are no spare vessels and there is no space in the timetable to operate any additional sailings, and we operate at the maximum hours of rest. The same applies in winter, when we have to go through the overhaul process. There is no spare capacity at all in the network to operate new sailings or vessels. That is what we have to operate with, and we will have to operate in that way over the next few years.

As you are aware, there are significant capacity constraints on particular routes that are causing a challenge for our communities and for us. Vessels 801 and 802 were designed to address some of those capacity issues, and they would have allowed us to cascade capacity through the fleet. In that way, they would have benefited routes other than simply the two routes in question, because we would have cascaded the vessels down and produced more capacity across routes to other islands. The delay is a significant concern that we share with our communities.

Dean Lockhart: Am I right in saying that a knock-on effect is that you are having to rely on older ferries that are unreliable and more prone to outage?

Duncan Mackison: Yes. Those ferries are already getting towards the end of their service lives, if not moving beyond that, which causes issues with the supply chain for repairs and parts. They often require equipment that is no longer in supply, so we have to bring it in from abroad or get spares made specifically for vessels of that age. There are significant ramifications of maintaining those vessels as they get older, and that maintenance gets harder all the time.

Robbie Drummond: The challenge of obsolescence is real. It is not just that vessels are more likely to break down as they get older. As the parts become obsolete, they are no longer available, and the lead time in getting them constructed and sent to us increases.

Dean Lockhart: I have a final question on that point. How would you characterise where you are in terms of capacity? You say that you are operating at 100 per cent capacity. Are you now at a critical stage where you might not be able to meet further demand? If you are not yet at that stage, when do you think you will get there?

Robbie Drummond: That is a difficult question to answer. When I said that we are at maximum capacity, I was talking about the maximum deployment of vessels. There is capacity on all our routes, although not at peak times. There are particular challenges around particular sailings and particular seasons, and that is challenging.

Dean Lockhart: I will ask a follow-up question, if I may.

The Convener: Please be brief. I am afraid that Rachael Hamilton might lose her follow-up question.

Dean Lockhart: You said earlier that no new technology is involved in the design and construction of the vessels and that the technology has been used elsewhere. If that is the case, why have things gone so badly wrong in the design and construction of the two vessels? What is the issue, if it is not new technology?

Duncan Mackison: In our view, the technology is standard. It is obvious that something has happened. We do not have direct sight of the discussions between CMAL and Ferguson's, but something has happened that has delayed the production of the vessels.

The Convener: Rachael, please be brief.

Rachael Hamilton: I have a technical question. Is there a difference between a design change and a modification? If so, how many design changes and how many modifications were made?

Duncan Mackison: Those are elements of the contract management of the construction of the vessels. We are not involved in that process. The

interface is between CMAL and Ferguson's with regard to the nature of the transactions involved in the changes.

The Convener: I have a couple of quick questions, for clarity. The letters from the solicitors for CMAL are on the committee's website, but I would like some clarification so that I can understand the situation. A proposed billing schedule for both ferries is attached to the first letter that was sent to us. Did you have any feedback in assessing the milestones or was that done purely by CMAL?

Robbie Drummond: That was done purely by CMAL.

The Convener: My next question goes back to the letter to which Mike Rumbles referred and the point about the process of making the bids anonymous so that you did not know which bids came from which shipyard. My brain is struggling with that. As a businessman, if I go out and buy something, I like to know what the whole process is and that the person will be able to deliver on the project. If a supplier simply says that they promise to deliver something, it gives me some concern.

I could say to you that two of the other bidders had already built ferries for you. One of them built the MV Loch Seaforth and one built the MV Finlaggan, the MV Argyle and the MV Bute. Of the other two, one had recently built a ferry of 130m in length with capacity for 290 cars and 1,500 passengers, and one had recently built a slightly bigger boat with capacity for 5,000 passengers, and it also had a history of producing ferries. Would that have affected your view at all or are you still happy that a blind process was the best way of selecting a contractor to build the boats?

Robbie Drummond: I come back to the fact that our role in the process was to undertake an objective assessment of the quality of the bids that were submitted and whether they met the specifications. It is fairly normal to anonymise the procurement process so that an objective view is taken of the quality of the bids. It is when you come to look at the assessment of the financial security of the yard, whether it could build a vessel and its track record that you would need to identify who the bids were from. It would have been for CMAL to make those assessments of the capabilities of the yard. We were reviewing the bids based purely on whether they met the specifications and our requirements.

The Convener: As the eventual operator of the boats, you were happy to look purely at the paper that was produced on the production of the vessels, and not at the capabilities of the yard that was going to build them. You think that that is entirely right and proper.

Duncan Mackison: We are comfortable to go with a vessel that meets the specifications that we

set out at the start of the process. We trust the procurement process to take into account the broader factors at a technical level. The people that we had involved in the process would not have been privy to those broader considerations.

Within a procurement, there will be a series of packages that are assessed, and different people will be involved in different elements of those packages. A relatively small number of people can see across the whole span and make those broader choices, so we have to be comfortable that the system is capable of making those choices and taking those factors into account.

The Convener: You were happy to rely on others to make that choice.

Duncan Mackison: Yes.

11:00

Mike Rumbles: I have a follow-up to that very question. The lawyers' letter makes it clear that four of the seven bids were ruled out, so you would have been involved in that process because the technicalities of those bids did not meet the tender specifications. Can you confirm that CalMac was involved in the decision to remove those four bids from the tender? The top three bids that met the specifications did go through, and you were part of that process. At that point, you would be finished with it.

Duncan Mackison: We would need to see the letter and respond to it specifically. We have described our position in terms of the technical role—

Mike Rumbles: It has been read out to you three times—twice by me and once by Stewart Stevenson.

The Convener: I understand the point that the letter was put on our website only either late last night or early this morning—we only got it late last night. You can by all means have a look at that letter, and you can make a comment if you want. However, the letter regarding the payment schedule has been on the website for some time.

Mike Rumbles: Could the witnesses let us know? Can they write to us with that information?

The Convener: I encourage them to respond in writing to those comments.

Duncan Mackison: I hear that.

The Convener: I thank you both very much for coming along this morning and giving evidence.

11:01

Meeting suspended.

11:10

On resuming—

The Convener: We continue with item 2. I welcome back anyone who is viewing the meeting, and I welcome our second panel. Fran Pacitti is Transport Scotland's director of aviation, maritime, freight and canals, and Chris Wilcock is head of the ferries unit.

The first question is from Stewart Stevenson.

Stewart Stevenson: I will ask a few questions about relationships but, in doing so, I want to be clear about what I am not asking, because others, in particular Mr Rumbles, will ask about things related to due diligence. That is an issue that I am not seeking to ask about.

Could you concisely describe the way in which the relationships between Transport Scotland, CMAL and CalMac Ferries Ltd operate? There are policy makers, infrastructure owners and augmenters, and there are the people who actually deliver the service. If we have formed any view so far, it is that that is quite a complex arrangement. This is your opportunity to tell us that it is simple, straightforward and natural—or otherwise.

Fran Pacitti (Transport Scotland): Setting this out as concisely as I possibly can, it is important that I emphasise at the outset that the three parties in the tripartite relationship share a common objective, which is serving the communities who rely on our lifeline ferry services. That underpins everything that we do.

Multiple interests are engaged within the tripartite relationship. There are shareholder interests, creditor interests under voted loans and contractual interests in relation to the ferry operating contracts. There are general policy perspectives and procurement roles within that.

I will try to keep this response as focused and brief as I can. I think that your interest relates specifically to vessel procurement. Within that context, we have clearly defined and distinct roles. Transport Scotland is responsible for setting the overall policy context for the delivery of ferries in Scotland. At the moment, that is done through the ferries plan, which sets our outcomes. The vessel replacement and deployment plan, or VRDP, is intended to provide the framework for investment decisions and infrastructure priorities.

Within the context of vessel design and procurement, CalMac Ferries Ltd is responsible for providing a statement of operator requirements. CMAL is responsible for taking those policy guidelines—the operator requirements—and developing them into a high-level tender design requirement that goes out to the market. CMAL is responsible for running the procurement process

in its entirety, and it manages the contracts. Once CMAL takes ownership of the vessels, it charts those vessels, and CalMac is the current contractor for the Clyde and Hebrides contract.

Stewart Stevenson: You have referred to shareholder interests. Whereas CMAL, CFL and indeed David MacBrayne are public companies registered under the Companies Act 2006 and so on, all the shares are ultimately the Scottish Government's shares. It is normal, is it not, that directors often represent shareholders' interests, because they serve at the discretion and invitation of the shareholder? You would therefore expect there to be communication between the shareholder and the directors—and ultimately the policies of the companies. You alluded to fiduciary duty, but that simply relates to implementation and to operating within the companies' articles of association, which are in the gift of the respective boards and are subject to motions that they might adopt to change or not change them. Is that all a fair representation?

11:15

Fran Pacitti: Yes. My team is structured such that each of the myriad interests is managed separately. As regards the shareholder, the function of the assessor is to examine the corporate arrangements and governance processes that are in place. That includes the publication of corporate plans and public appointments to the board, as well as considering whether shareholder interests are being represented at board discussions. That is quite distinct from the project role that we have, with our tripartite engagement with CFL and CMAL in relation to vessel design and delivery. The shareholder interest and the project roles are deliberately kept distinct, and we would not rely on our understanding of what was happening at board level, for instance, to know what was happening on a project-specific basis.

Stewart Stevenson: Nonetheless, it would be impossible for the board of CMAL, as the procuring body, to progress a design that would bankrupt the company. Therefore, the money that is available from the Government and the investment that is made in CMAL, as shown on its balance sheet, influence the design. Again, that is a fair comment, is it not?

Fran Pacitti: Correct. We are interested in the financial management of CMAL. New vessels are funded by way of a voted loan arrangement, the loan being to CMAL from Transport Scotland on behalf of the Scottish ministers. Typically, new vessels would not be funded from CMAL's balance sheet. I am aware of examples of that having happened, but vessels 801 and 802, specifically,

were funded by way of voted loan from Transport Scotland to CMAL.

Stewart Stevenson: Whose asset do the vessels become?

Fran Pacitti: They become CMAL's asset.

Stewart Stevenson: So, there is a voted loan.

More substantially, to what extent does Transport Scotland influence and have input into the parameters of the design, and to what extent does it review the bids in relation to design? I am talking about a technical process here, rather than a management process.

Fran Pacitti: There are two separate questions there. The first is on how we influenced the design; the second is on what input we had into the bids.

Stewart Stevenson: Yes—or rather, into the review of the bids.

Fran Pacitti: Regarding influence of the design, we set the overall policy context. Through VRDP, we would have identified the need for two large vessels, rather than smaller vessels, for instance. Beyond that, we rely on the statement of operator requirements and CMAL's expertise as a procuring authority to refine the design. That is done collaboratively and as part of a discussion. There are distinct responsibilities, but there is an opportunity for us to come together through the network strategy group, so that there is a point of constructive challenge, just to test the parameters and talk things through, rather than the work happening in isolation. Our responsibility is to set the policy context, it is that of CFL to provide the operating requirements, and it is for CMAL to finalise the tender specification that goes out to the market.

Stewart Stevenson: This will probably be my final point here, because others will develop it. We have just heard representatives of CFL and David MacBrayne talking about the dual-fuel decision and seeking to persuade us that that is becoming standard in the industry. Did they come to that decision as a result of a policy input from Transport Scotland that related to the Government's view on climate change and other factors?

Fran Pacitti: Our policy steer in relation to new vessels is that they ought to be safe and reliable—among other factors. We are of course interested in fuel efficiency and emissions reduction. We did not specify LNG or dual fuel, which came out of CFL's operator requirements. We are comfortable with that choice, however, and we understand the rationale for it. We endorse the view that the technology is well established. We are talking about a transition fuel and, in the context of our

climate change reductions, continuing to use marine diesel as the status quo is not an option.

The Convener: Before we move on to the next question, I wish to clarify something that I am a little bit confused about. The basic statement of requirements that was attached to the letter of 3 March—which you have probably not seen—

Fran Pacitti: The clerk gave us a copy.

The Convener: You have seen the letter. That is great. You would have agreed with the basic statement of requirements that it contains, would you?

Fran Pacitti: Yes.

The Convener: Seven designs were put forward for the ferries but three were rejected because they did not meet the design parameters. I am struggling to understand that. Would it not worry you that three people had submitted bids that did not meet your bid requirements? Why would they do that?

Fran Pacitti: I cannot answer that. Transport Scotland has no role in evaluating tender returns, and we have not been sighted on the tender returns.

The Convener: Let me ask the question a different way round. How many contracts have you been involved with where the bidders have submitted tenders to do something that you have not asked them to do, to the extent that 50 per cent of those who have tendered are trying to make something that you do not want?

Fran Pacitti: I took confidence in the assurances that we were provided by CMAL, in coming out of the procurement process, that it had received compliant bids from the market, that there were a sufficient number of bidders returning positively with their concept designs in response to the high-level tender design requirement, and that the tender could be delivered.

The Convener: Fifty per cent of the yards had not submitted compliant bids. That worries me, but it does not seem to worry you.

Fran Pacitti: I would like to examine the information again in detail; we have only seen it very briefly. My understanding had been that six of the yards had returned six bids, which indicated that their concept designs could meet the specifications that were set out in the tender requirement. I do not know the basis of that, because I have not had the opportunity to look at the letter in detail. I do not know the basis on which it is now being identified that only three of the yards submitted compliant bids.

The Convener: It would be helpful if you could clarify that, because the letter before us seems to indicate that 50 per cent of the yards had

produced bids that were not compliant with the original specification. Perhaps you could enlighten me on that later.

Rachael Hamilton: I would like to go back to Stewart Stevenson's original question about the roles and responsibilities of Transport Scotland.

I understand that Transport Scotland is there to set the context in terms of the overall policy and framework. However, did you or do you have a role or responsibility for overall oversight of the project? Also, did you ever think that CMAL should perhaps have had a presence at the yard?

Fran Pacitti: We have oversight throughout the process, from the point of vessel design to vessel delivery. We will be involved in that. There are structures through the network strategy group meeting—a meeting of the three parties, which have come together regularly to discuss progress against our programme of assets and investments across Scotland. Vessels 801 and 802 have been a regular and recurring feature of discussions at those meetings. We have that oversight throughout the project.

We are not a contracting party, so it is for CMAL, as the client, to manage its contract with Ferguson's. We have engaged with CMAL throughout the contract process to monitor what is happening and in order to have confidence that it is acting as a responsible client in that context.

Chris Wilcock (Transport Scotland): The second question was about CMAL having a presence in the yard.

Fran Pacitti: Yes—it did.

Chris Wilcock: It has a team based in the yard.

Rachael Hamilton: I want to ask you about the Scottish Government documents that have been released, relating to the procurement and the delivery of the two ferries. Jim McColl said that he believed that some parts of those documents were missing. I want to get your opinion on whether you believe that is correct and, if so, when the missing documents will be published and whether the Scottish Government was selective in what it published.

Fran Pacitti: We are, of course, aware of the significant public interest in this matter. We took the view that, in the interests of transparency, we would proactively release the key documents that informed people involved in the key decision making throughout the process. That is not a comprehensive set of documents, and we have made redactions, reflecting our legal obligations in relation to data protection, legal privilege and commercial confidentiality. I do not know which documents Mr McColl thinks have been omitted but, in my view, we have published a comprehensive set of information that allows

people to understand what the key decisions have been at each stage.

Maureen Watt: If Mr McColl thinks that documents are missing, is there any reason why he should not or could not publish them in the large dossier that he gave us?

Fran Pacitti: Not that I am aware of. It is difficult to answer that fully, because I am speculating as to which documents he feels may have been omitted. We are of course subject to freedom of information legislation, and there is no intention here to avoid transparency or withhold information. As I say, I do not know which documents he feels have been missing. We have sought to be transparent and to be proactive. We feel that what has been published is a comprehensive set of information.

Rachael Hamilton: I understand the reasons for which you redacted some of the documentation. Are you able to answer the question whether 100 per cent of the procurement documents were published—with redactions?

Fran Pacitti: I would not expect that to have been the case in relation to all of the procurement documents, because that information is not held by the Scottish Government. The information that has been published has consisted of Scottish Government and Transport Scotland documents. Transport Scotland was not a party to the procurement exercise. We did not have access to the bid submissions that were received, for example.

The Convener: We will move on to the next question. You said that you have seen the legal letters. At the back of the first of them, there is a proposed billing schedule for vessels 801 and 802, as they became known. What role did Transport Scotland have in paying the stage payments? Did you sign them off?

Fran Pacitti: Are you asking what role we had in paying the stage payments?

The Convener: Did you sign them off? A sum of £48.5 million was to be paid when certain milestones were met. For example, £4.8 million was to be paid for the cutting of steel. Did you sign that off?

Fran Pacitti: Transport Scotland is not a party to the contract, and we will not have signed off on individual payments under the contract, nor did we inform the milestone payment schedule.

We had sight of the milestone payment schedule at the point of contract award, which was in the context of our interest as the voted loan provider to CMAL for funding the vessels. We were given sight of the milestone schedule not to scrutinise those milestones or to offer any approval of them; that was done for our interest

and so that we understood the cash-flow profile in terms of the voted loan payments.

The Convener: Okay, but the voted loan is completely different from the payment schedule for the work as it was progressed. For example, 5 per cent of the contract was paid when the order was placed. I am trying to find out who signed off that payment. Did Transport Scotland sign it off? If not, do you know when each payment was made? If so, can you release that information to the committee, please?

Fran Pacitti: The payments are made from CMAL directly to Ferguson's. We are not a contracting party, so we have no role in signing off individual payments. We were aware of the schedule, because the payments correlate to payments from Transport Scotland to CMAL under the loan, but we are not directly signing off on those contract payments—that is for CMAL.

The Convener: That was a good answer. You know exactly when the payments were made, but you were not a party to the contracts. Can you give us a list of what payments have been made against the payment schedule and the dates on which they were made, please?

Fran Pacitti: Yes.

The Convener: Thank you.

Mike Rumbles: According to the letter from CMAL's lawyers, only three of the seven bids satisfied the tender. My questions are about the three bids that satisfied the tender. What, if any, due diligence did Transport Scotland carry out on the Ferguson Marine bid for the construction of the two ferries? Did you carry out similar due diligence for the other two yards that also satisfied the tender? Was it your role to do due diligence on those three yards, or is that not your responsibility? Is it CMAL's responsibility?

11:30

Fran Pacitti: Transport Scotland has no role in the procurement process. We did not assess any of the bids that were received. The procurement was run entirely by CMAL as the procuring authority.

I will expand on that, as I can see that it does not appear to be a satisfactory answer for you, convener.

The Convener: No—I am frowning because I am trying to understand why, if you were lending somebody money, you would not do any due diligence on the person to whom you were lending the money or on where it was going. It would be helpful if you could cover that.

Fran Pacitti: Procurement is one of CMAL's core functions. Under the financial memorandum

that sets out its purpose, that is one of the functions that it performs on behalf of the Scottish ministers. CMAL is an experienced and competent procurement authority that is subject to independent audit and to the same Scottish public finance manual considerations as Transport Scotland would be.

There is no requirement for us to second-guess the substantive judgements that CMAL makes in relation to its procurement exercises. We do not routinely check CMAL or look over its shoulder when it is running procurement exercises but, in this particular context, I am comfortable that the procurement exercise was run competently. I can say that because, in 2018, we asked the Scottish Government's procurement directorate to do an independent health check of the procurement process that had been undertaken. Its staff did that at arm's length, without any kind of influence, and came back to say that they were comfortable that the process had been robust and that there had been no material issues with it. I am satisfied that CMAL is the correct procurement authority, in general and specifically in this case.

Mike Rumbles: At the time, before that health check took place—I am talking about 2015—Transport Scotland was happy to sign the cheques to CMAL, on the understanding that it was CMAL's role and not yours.

Fran Pacitti: Yes.

Mike Rumbles: Right. I have further questions to ask later, if I may, convener.

The Convener: Okay.

Richard Lyle: Basically, Fran, you are saying that you need to buy an item, but you have to get—I am sorry to use this word—a middleman to buy it for you. You do not know what happens from the time when you ask the person to buy the item until you get it, but you pay the money. Is that correct?

Fran Pacitti: I would not describe CMAL as a "middleman".

Richard Lyle: I am sorry—that is only terminology.

Fran Pacitti: I appreciate that.

Richard Lyle: Suppose that I wanted Emma Harper to buy me a computer, for instance. Basically, that is what I am trying to say.

Anyway, we will get away from that question. Somebody does not like the way that I put it.

The Convener: No—you can push the question.

Richard Lyle: With the greatest respect, Fran, we cannot understand what you are saying.

Basically, you are saying that you wanted a ferry and you got somebody to go and buy one, but you did not know what happened from the time when you asked them to go and buy it.

Fran Pacitti: We asked CMAL to procure the vessel on our behalf, because that is CMAL's principal function, as a wholly owned—

Richard Lyle: Yes, so it is nothing to do with you; it is CMAL.

Fran Pacitti: We have distinct areas of responsibility. I do not wish that to sound as though I am abdicating responsibility for the project, but we have distinct functions in the process.

Richard Lyle: Well, that is the way it was coming out. That question was born out of the answer that you gave to one of my colleagues.

What oversight did Transport Scotland have of the due diligence that CMAL carried out in assessing the bids that were received to build the new ferries? How did you satisfy yourself that CMAL was carrying out rigorous assessments of the ability of the bidders to deliver the bids? Did the price and quality play a part in the contract being awarded to Ferguson's?

Fran Pacitti: Those are substantive judgments and are properly for CMAL, as the procuring authority. Transport Scotland did not have a role in the procurement process.

Richard Lyle: Based on what you have just told me and based on the agreed tender specs, was Ferguson's or CMAL responsible for designing the interior of the ship or ships? To your knowledge, has CMAL constantly changed the design requirements? That is what is being suggested.

Fran Pacitti: I am aware that that is the suggestion. According to my understanding of the various stages in the design process, CMAL will produce a tender-level design—a high-level design specification that it puts out to the market—which is informed by the tripartite discussions. That involves Transport Scotland's policy input and CalMac's operational requirements, and CMAL finalises that design—

Richard Lyle: Is that on specification, but not based on a drawing?

Fran Pacitti: When that goes out, it can include general arrangement drawings, but it is a high-level tender specification. In responding to the invitation to tender, bidding contractors will put forward their concept design, and CMAL will look at that design to satisfy itself that the high-level tender specification is capable of delivery.

Post contract award, there is an iterative process of changing the concept design, which is compliant with the high-level tender specification,

from a basic design. Forgive me, as I do not purport to have any expertise in naval architecture—CMAL will be able to provide greater detail—but the basic design broadly shows the hull form and the machinery within it. That is developed through an iterative process, with flag, class and CMAL, as the client under the contract, in order to produce a final detailed design.

You asked whether the accusation that multiple changes were made is correct. I will deal with that point in two parts, as there are two categories of changes. Transport Scotland was closely involved in monitoring performance of the contract throughout the process. Changes to the high-level tender specification, which is attached to the letter that the committee received yesterday evening, are governed by change control processes under the contract. There are clear change control mechanisms there. The design iteration process, from the basic design to the detailed design, is also governed by clear contractual provisions under the contract.

When we became aware of difficulties on the part of Ferguson's in performing under the contract, we were keen to understand the nature of the suggestion from Ferguson's that a number of changes had been requested. We obtained evidence from CMAL of a number of changes to the first high-level specification. I do not have the exact figures to hand, but there were perhaps between 80 and 100 changes of that character.

Richard Lyle: Were those made by CMAL?

Fran Pacitti: They were made by CMAL and Ferguson's. I think that about 40 per cent of them came from CMAL, and 60 per cent from Ferguson's. To keep that in context, the total quantum or value of those changes was about £1.5 million.

Richard Lyle: My final question—

Fran Pacitti: I am sorry to interrupt but, to answer that point fully, I should add that, separately, we are less clear about the changes that arose through the iterative design process. Our role was not to second-guess that design process but to ensure that CMAL was acting as a responsible client throughout it. We engaged with CMAL to ensure that, where changes were put forward, they were approved timeously. We received assurances from CMAL that that was being done. We engaged with CMAL to ensure that, where changes were arising as a consequence of work having been undertaken by Ferguson's in advance of approvals, CMAL was being flexible, where appropriate, rather than adopting an intransigent approach. There is not absolute clarity around the number of changes.

Richard Lyle: Other members will ask you about that in a minute.

We are led to believe that the Scottish ministers appoint an assessor, who can attend but not vote at any meeting of the CMAL board. Who is or was the assessor, how do they report back to the Scottish ministers and what has their role been in scrutinising the delivery of any new ferries?

Fran Pacitti: The assessor is a member of my team.

Richard Lyle: Please do not name them.

Fran Pacitti: I will not.

The assessor attends the board, and their role relates to governance arrangements around our shareholding in CMAL. As I mentioned, that involves considering compliance with accounting processes, the public appointments process and publication of the corporate plan—it is around governance. The assessor has no direct role in relation to project-specific matters, so they would have had no direct role in monitoring progress on vessels 801 and 802. That was done through separate channels.

Richard Lyle: Your assessor surely knew that something was wrong.

Fran Pacitti: Yes.

Richard Lyle: How soon did they come back to you and say, “There’s something wrong”?

Fran Pacitti: Regrettably, my team is not so big that the assessor does not have contact with or awareness of what is happening in other areas of the team. When going into meetings, the assessor would already have been aware from the project updates about progress on the vessels and issues associated with them. That information would not have been news to anyone at the board meetings.

Chris Wilcock: This was touched on in an earlier question, but it is worth noting that there are conditions in the voted loan arrangement that require us to get regular updates from CMAL, including in written form. We agreed with CMAL that those would be the submissions to the network strategy group. I think that we have published all of those on our website. There are also CMAL-Transport Scotland liaison meetings on broader and more general issues, and the issue that is before has very much been a focus at those meetings. Of course, there have also been specific meetings on the delays with vessels 801 and 802. The issues were well versed and rehearsed between ourselves and CMAL, and were understood at all levels.

Richard Lyle: I have one final quick question. Based on what you have experienced in the past couple of years, do you think that you should change the way that we procure ferries?

The Convener: That could be a short answer, if you like.

Richard Lyle: It could be a yes or a no.

Fran Pacitti: There is always room for improvement, and we should be open to constructive challenge in that regard, but I am satisfied that the procurement process for 801 and 802 was robust.

The Convener: If the assessor is a member of your team, I presume that they come back to you and say, for instance, that the situation is hunky-dory, and you feed that back up the chain.

Fran Pacitti: Yes.

The Convener: Who do you feed that information to?

Fran Pacitti: We report directly to ministers to give them project updates.

The Convener: So you would have told the minister if you or your assessor were concerned regarding how the board was interacting.

Fran Pacitti: Yes. Specifically on 801 and 802, we would have been aware of progress independently of the role of the assessor.

The Convener: Were the reports written reports?

Fran Pacitti: There was a combination of written reports and regular updates.

The Convener: Are those available to the committee?

Fran Pacitti: I think that they have already been proactively published on our website.

The Convener: We might not be able to see them through the black lines.

Fran Pacitti: Okay.

Colin Smyth: The committee has heard about the breakdown in the relationship between CMAL and Ferguson Marine, and about the impact of that on the project. What did Transport Scotland do to try to repair that relationship and keep the project on track?

Fran Pacitti: There was undoubtedly a breakdown in the relationship between the contracting parties. If I may, I will resist the temptation to categorise the breakdown in the relationship as the cause of the delays; I think that it was more a symptom of the delays.

What did we do? Initially, we received regular updates from CMAL on progress, which was a condition of the voted loan. CMAL initially indicated that it had some concerns and that there was some slippage to the programme, but we were initially confident that the mitigation that CMAL had in place to manage those concerns was adequate. That is described in the network strategy group updates that have been published

on our website. The mitigation included regular escalation meetings with the contractor and its own on-site monitoring.

Around February 2017, CMAL wrote to us indicating that it had concerns that the delays to delivery were beyond those that would be permissible under the contract. CMAL wrote directly to ministers on that occasion. At that point, we convened a meeting of the parties to understand what the underlying issues were. Those are well rehearsed, but I can go into them if that would be helpful.

Transport Scotland sought to bring the parties together to incentivise them to work constructively. In that context, we were not acting as an extrajudicial dispute resolution mechanism or decision maker; we were seeking to encourage the parties to work constructively in their client-contractor relationship. Both parties had obtained independent advice in relation to the cause of the delays, and we encouraged them to share that advice with each other, which they did, but there was no reconciled view on the cause or on proposals to move matters forward.

11:45

As I have indicated to Mr Lyle, we sought assurances from CMAL that it was acting as a responsible client to the extent that it could, exercising flexibility in relation to its approvals and ensuring that approvals through the iterative design process were happening timeously. We saw no evidence at that point of Ferguson's engaging the contract mechanisms that existed in the event that that was not happening.

We encouraged CMAL to consider what flexibility it had as a responsible client in relation to milestones under the contract to assist with Ferguson's cash-flow issues to the extent that it could. That was undertaken in the summer of 2017—I am sorry to be vague about it, but I can confirm the date. There was a revised milestone payment schedule, which was tied to clear performance delivery mechanisms, to assist with Ferguson's cash flow. We were unable to accede to all of Ferguson's requests in that respect, but I am satisfied that CMAL did what it could to achieve the right balance between flexibility and risk.

I am sorry that this is not a concise answer. We encouraged the parties to consider alternative dispute resolution mechanisms, which are clearly set out in the contract. There was the option of mediation, but the parties could not agree on an appropriate mediator or on the process to be applied.

There is a process for expert determination. CMAL took the view that the quantum of the claim,

which at that point was around £66 million, exceeded that which would be appropriate for reference to expert determination. I think that that was a reasonable view, and I know that it was informed by CMAL's independent legal advice. We encouraged—that is the wrong word—but we were clear that the next stage, if there was a contract dispute, would be through the contractual mechanisms in the Court of Session. However, that was not forthcoming from Ferguson's, as the contractor.

What else did we do? In the absence of a formal dispute resolution mechanism, we sought to shift the focus from what had gone wrong to a more forward-looking approach, which involved asking, "How do we get this back on track? Are there reasonable steps that we can take to bring this back on programme while minimising delay?" Commodore Luke van Beek was engaged in the context of a commercial loan to Ferguson's, independently of us. We sought his input and asked whether he had any feedback. He made some proposals, none of which was appropriate to take forward, but that was still useful in that we could satisfy ourselves that we had done everything that we could to incentivise and facilitate Ferguson's performance under the contract.

I am sorry that that was not a brief answer.

The Convener: No—it was an interesting answer.

Colin Smyth: There was a lot of encouraging going on, but given the catastrophic failure that we are dealing with, was encouragement enough? Given that hundreds of millions of pounds of taxpayers' money is going into resolving the situation, and knowing what we know now about the turnaround work that has been done, were you satisfied by the measures that were taken, given the scale of the failure, which you were aware of from reports by CMAL? Is there a need for more direct intervention when it comes to such contracts, given that it is taxpayers' money that is being used, rather than just encouragement?

Fran Pacitti: We did not have perfect knowledge throughout the process. We were relying on information from CMAL and contradictory evidence from Ferguson's. In those circumstances, where there is a contract dispute and a legitimate claim, we would expect the contractor to bring that through judicial processes, but that did not happen.

Colin Smyth: Knowing what we know now about the turnaround work, was the information that you got from CMAL comprehensive? Did it reveal the scale of the problems that we know about now?

Fran Pacitti: Yes. I think that CMAL has been consistent in its view about the cause of delay. With the benefit of hindsight, we can now see clearly that CMAL has been correct in its reporting to us. We did not second-guess that at the time, but we were in receipt of contradictory information. It was challenging for CMAL to present evidence to prove a negative—that it had not been requesting changes. In the absence of a clear change control mechanism at the yard, it was very difficult for CMAL to evidence what it had not been doing.

Colin Smyth: It seems remarkable that mediation did not take place because people could not agree on who would do it.

Fran Pacitti: There is a clear contract provision for that, and it would have had to have been undertaken under the terms of the contract. We are not an extrajudicial decision maker, so we could not have forced the issue. That was for the contracting parties.

Colin Smyth: Is that a flaw in the contract?

Fran Pacitti: I think that it is a standard BIMCO contract, which is used internationally. It includes a standard ADR provision that you would see in commercial contracts of any nature. There is always scope for refinement, but I think that the ADR provisions in the contract were probably adequate.

Emma Harper: I would like to pick up on the issue of conflict resolution. In evidence to the committee on 22 January, Alex Logan mentioned issues around the morale of the workforce. The dossier from Ferguson Marine says:

“CMAL prevented any negotiated resolution by refusing to engage. It prevented any normal dispute resolution process to resolve the impasse by refusing to agree”.

In his evidence, Luke van Beek used the word “adversarial” and said that he knew that the relationship had broken down.

In her evidence, Michelle Rennie said that when she

“started in the summer ... It was widely known that the relationship between CMAL and FMEL had broken down—that was not a particular secret. Once that emerged, ministers and Transport Scotland sought to engage constructively and get the two parties to engage constructively.”—[*Official Report, Rural Economy and Connectivity Committee*, 22 January 2020; c 23.]

It seems that there have been perceptions of one person saying one thing and one person saying another. What are your thoughts on the fact that those seem to be opposing statements?

Fran Pacitti: That is very much the challenge that we have experienced throughout the process—when we have received opposing

feedback and information, we have tried to navigate a constructive way forward through that.

I cannot second-guess Mr Logan’s experience in the yard—I would not wish to do that. I would agree that it is clear and well understood that there was a breakdown in the relationship, but reference to that being an adversarial relationship or otherwise detracts from the fact that we are talking about two very competent and experienced commercial actors. There were underlying commercial tensions; it is not about a breakdown in the relationship.

Emma Harper: When we visited the Ferguson’s yard a couple of Mondays ago, it seemed that relationships had improved, that there was a better attitude and that people were being more objective. It looks as though there has been a turnaround. Would you agree with that?

Fran Pacitti: Yes, that is our understanding in Transport Scotland. I, too, have been down to the yard and have engaged directly with Tim Hair to understand what the progress on the vessel is going to be. However, we are deliberately trying to stay in the client space and to think about CMAL’s interests under the contract. Others within the Scottish Government are more closely sighted on the detail of the turnaround programme at Ferguson’s.

Peter Chapman: Until last night, the committee had no idea who the other bidders were. We now know the names of the unsuccessful bidders. That is useful. However, there are no figures attached to those bids. We have no idea, for instance, who made the cheapest bid. We know that the dearest bid was that of FMEL, which was the bid that you accepted. It would be very useful for the committee to know the costs that were attached to the three bids that were deemed to be satisfactory—that met the specification, in other words. Can you enlighten the committee on the price of the bids?

Chris Wilcock: That would be an issue for CMAL. I suspect that there would be an issue of commercial confidentiality around the releasing of that information now, even with the passage of time. That is something that CMAL would have to consider, as the owner of that information.

Peter Chapman: So you do not have that information.

Chris Wilcock: Not as far as I am aware. We would not have received that information.

Peter Chapman: Obviously, CMAL would have it.

I will go a wee bit off track, just for a second. Some of the other information that we have received indicates that it would be best for at least one of the ships—probably 802, as it is further

from completion—to be scrapped and work on it started again. Do you have any thoughts on whether that would be the correct way forward?

Chris Wilcock: Throughout the process, we have looked at all the options for resolving the difficulties. Earlier, the committee heard CalMac talk about its real need to get the vessels on the network. In effect, the option of scrapping and starting again would take us back to square 1 in terms of our procurement process, which would take at least 12 months or so. Again, CMAL will be able to outline this in greater detail, but there would be a number of years of delay in getting vessels on to the network and into service. From our perspective, that is not an option that we would countenance, given the impact that it would have on bringing a new vessel into the fleet.

Peter Chapman: Does Fran Pacitti have any thoughts on that?

Fran Pacitti: I endorse what Chris Wilcock has said. We have looked carefully at a number of options on how best to proceed. Ministers' clear objectives have involved securing an outcome that works for delivering the vessels, for jobs and for the yard. From a narrow Transport Scotland perspective, our priority is to get the vessels into service as quickly as we can, because of the demonstrable need of the communities that are waiting to receive them. Scrapping either of the vessels and starting again would not deliver that as quickly as we need it to happen.

Peter Chapman: Are you sure that that is correct? Having seen 802, I am aware that it is a long way from being completed. We have heard evidence that it would be possible to scrap it and to build a standard vessel of a proven design that has been built many times before just as quickly as finishing 802, for sure.

The Convener: You can answer that quickly, Fran; I want to drag Peter Chapman back on track before moving on.

Fran Pacitti: The answer is yes, I am sure that that is correct.

The Convener: The next question comes from the deputy convener, Maureen Watt.

Maureen Watt: When the contract was awarded, Ferguson's had recently been bought out of administration. Was extra due diligence carried out regarding the financial and managerial capabilities of Ferguson's to deliver on the quality and price that were agreed? In effect, it was a new company.

Chris Wilcock: Yes. Without wanting to labour the point, it would have been CMAL that undertook that level of assessment, not only on the bid that we are discussing but on all the bids. We are confident that it would have undertaken those

assessments at the time and that those assessments would have given CMAL confidence that the company and its ownership structure at the time would have been able to deliver.

Mike Rumbles: Mr Wilcock, you are head of the Transport Scotland ferries unit. I am not sure whether you were head of the unit when the Scottish Government's letter of 20 August 2015, headed "Vessel replacement—procurement of 2 new major vessels", was written. Was that your letter or your predecessor's letter?

Chris Wilcock: That certainly precedes my appointment.

Mike Rumbles: Okay—but you will be aware of the letter.

Chris Wilcock: Indeed.

Mike Rumbles: The letter is addressed to the Cabinet Secretary for Infrastructure, Investment and Cities,

"In the absence of the Minister for Transport and Islands on leave,"

and it says, under the heading "Recommendation":

"We recommend that you approve the award of the two shipbuilding contracts by CMAL to Ferguson Marine Engineering Ltd."

However, we have just heard you both giving evidence on behalf of Transport Scotland that you had nothing to do with the procurement process, that it is not your business and that it is entirely CMAL's business. If it is nothing to do with you, why were you recommending that the Scottish Government approve the contract?

12:00

Chris Wilcock: The detail of the procurement process would have been undertaken by CMAL, which would have passed a recommendation to Transport Scotland to inform ministers. That would be the basis of that submission.

Mike Rumbles: So you are just a postbox, really. You do not have any influence over the matter.

Chris Wilcock: I would not categorise it as a postbox exercise. We worked closely with CMAL in preparing that advice to ministers.

Mike Rumbles: But you have just said that you had nothing to do with the procurement process. I am trying to get to the bottom of why Ferguson was awarded the contract. We are told that four of the bids did not meet the procurement requirement. That is fair enough if that is the case, but there were three companies and three yards involved, and I am trying to find out why the most expensive bid with the highest specification was accepted. Who recommended to ministers that

they approve it? We have a letter from your predecessor doing just that.

I am trying to square how a letter from the head of the ferries unit could possibly recommend Ferguson's to the minister for approval, given that you said that you had nothing to do with ensuring that the procurement service was right and had nothing to do with due diligence. How could you possibly recommend Ferguson's bid to the minister?

Chris Wilcock: Going back to the point around that bid being the most expensive, it was a quality and price exercise that was undertaken, so it was not necessarily the case that the lowest-priced bid would be awarded the tender.

CMAL is a Scottish Government-owned company, which is charged with, tasked with, responsible for and capable of undertaking that exercise. It would pass that recommendation back to us, and we would share it with ministers.

Mike Rumbles: So, you would post it on to the minister. You would be a postbox.

Chris Wilcock: I would not agree with that characterisation.

Mike Rumbles: What was your job, then? What do you do?

Chris Wilcock: At that point, we would also consider the available resources, and we would have been engaging with CMAL around issues such as the stage payments, cash flow, whether or not the—

Mike Rumbles: Ah—so, you have done due diligence.

Chris Wilcock: In relation to ensuring that the cash flow and cost that came back were affordable.

Mike Rumbles: But you have just said that you were not responsible for due diligence.

Chris Wilcock: On the analysis of the bids—that was for CMAL.

Mike Rumbles: I am still confused.

The Convener: When Mr Lyle comes to his question, that may clarify the matter.

Mike Rumbles: I will ask a final question. I put this point to other witnesses—I am trying to give people an opportunity to counteract the evidence that we got from Roy Pedersen when I asked him specifically why he thought that Ferguson Marine was awarded the contract. He said that it was because of either "incompetence", "vested interest" or "corruption". When I asked Mr McColl about that, he would not answer—he said that it was not for him. I asked others this morning, and

they did not answer the question. I am asking you: could you comment on what Mr Pedersen said?

Fran Pacitti: I would like to address that in as unequivocal a manner as I am able to. I strongly resist that description of the process. I appreciate your concern around the ambiguity of who the decision makers are, noting some of the language that was used in the submission dated 20 August.

To be clear, CMAL is the procuring authority, and Transport Scotland does not second-guess the substantive judgments that are made by CMAL. That is one of CMAL's core functions and purposes, and there is nothing to be gained from a duplication of effort there.

We are comfortable that CMAL undertakes that process rigorously. In this instance, we had asked for an independent health check of the procurement process, and we were satisfied that that had been the case. I strenuously refute Mr Pedersen's description of the procurement process.

The Convener: I am now totally confused about the timescales. I love following dates, because they give me a clue. Addleshaw Goddard's letter said that the contract costs had been agreed. It had held as undelivered a document that was delivered to the firm at 10:58 on 28 August 2015, which contained the actual pricing of the contract. However, you wrote to the Scottish ministers on 20 August of that year, recommending a contract—even though you had not got the final offer on pricing from the contractor. I am totally confused. Why did you do that?

Fran Pacitti: I do not see. Are you referring to the letter dated 3 March?

The Convener: I have in front of me the letter from the solicitors, Addleshaw Goddard—I do not know whether I am pronouncing that right—dated 24 February 2020, saying that the proposed billings schedule, which I presume is the tender document, was delivered to it on 28 August 2015 at 10:58, as date stamped at the bottom of the page.

You, or Transport Scotland, wrote on 20 August 2015, saying that you agreed the procurement of the vessels—but you did not have the payment schedule or the final price, which was in the letter that was not delivered to the solicitors until eight days later. I am sorry, but I want to understand the process.

Fran Pacitti: I am sorry, but I do not have the letter of 24 February before me. However, I understand—

The Convener: You said that you had read it.

Fran Pacitti: I have the letter of 3 March.

The Convener: The later one—okay. You can look at the letter and you can explain, in a quick answer to me or to the committee, how you can approve a contract before the price has been delivered.

Fran Pacitti: My understanding is that the contract price had been agreed. That formed part of the bid that came in, and it had been agreed at the point at which we wrote to the Scottish ministers to make a recommendation on the award of the contract. That is described in paragraph 2 of our letter of 20 August 2015, where we explained that the purpose of seeking an urgent approval was to allow us to issue the “Alcatel” letters, or standstill letters, to the preferred bidder.

The Convener: With the greatest respect, you will need to have a look at the letter of 24 February.

Mike Rumbles: I need to pick up on that point. I am genuinely trying to focus on whose responsibility it actually was, at first, to recommend Ferguson’s. I am not trying to put words in your mouth, and correct me if I am wrong but, as I understand it, the procurement process has proceeded, CalMac has said that it was not its responsibility and you are saying that it was not your responsibility. Was there a responsibility? Clearly, it was CMAL’s responsibility to make the recommendation for Ferguson’s to the ferries unit, and the ferries unit just passed that on to the minister. Is that correct?

Fran Pacitti: Yes. We were not second-guessing the substantive judgments of CMAL in that procurement process.

Mike Rumbles: It was definitely down to CMAL.

Fran Pacitti: CMAL is the procuring authority.

Mike Rumbles: Right—thank you. We can interrogate CMAL when it comes back to us.

The Convener: Thank you, Mike and Fran, for bottoming that out.

Richard Lyle: I return to my earlier comment. You say that you want a ferry, but you get somebody else to buy it for you. I will just park that for a minute.

Chris, the unit of which you are head is the Transport Scotland ferries unit—yes?

Chris Wilcock: Correct.

Richard Lyle: You are a civil servant—yes?

Chris Wilcock: Indeed.

Richard Lyle: You said that it was your predecessor who made a submission to the Cabinet Secretary for Infrastructure, Investment and Cities on 20 August 2015, recommending that Ferguson be awarded the contract to build the two

ferries. They confirmed that tenders were assessed on a 50:50 quality to price ratio, and that Ferguson submitted the highest-cost bid but also the highest-quality bid. It was stated that CFL raised concerns about the ability of the proposed vessels to access ports, and that

“LNG brings some logistics challenges”.

That really confuses me, as the previous panel said that they wanted dual fuel. We are getting a bit of “he said, she said” here.

I am going to ask this question before anybody else does. Your official—the guy or the lady before you—wrote:

“As with any procurement, a legal challenge from one of the unsuccessful shipyards cannot be discounted. CMAL have not identified any particular risks in this regard and, in any case, are confident that any challenge can be defended.”

Here is the rub, however. I want to know why an official would say this:

“That said, the relationship between Scottish Ministers and Ferguson’s owner is well known.”

Why would any official say that? Tell me.

Chris Wilcock: In all our submissions to ministers around such things, it is standard practice to reflect any risks—

Richard Lyle: Sorry. Maybe my hearing is going, but I cannot hear you too well.

Chris Wilcock: Sorry. It is our standard practice in any submission to ministers around these types of issues to flag up any potential risk of challenge. As we set out, we felt that the risk of challenge was low. In addition, we set out that point around the fact that there was indeed a public or known perception of a relationship. The second part of that paragraph highlights the fact that we did not think that that was likely to lead to more risk of a successful challenge.

Richard Lyle: Is it usual to say that in a letter?

Chris Wilcock: We would usually highlight anything that was likely to heighten a risk of a challenge, no matter how low we felt the likelihood of a successful challenge was. In that case, it was merely to indicate a potential additional factor that might have brought a challenge.

Fran Pacitti: The risk there was a presentational risk, concerning the perception of a conflict of interest. I am quite clear in my own mind that there was no conflict of interest in relation to this procurement and that it was undertaken in an open and impartial manner.

Richard Lyle: I, too, am quite clear that there was no risk, and there was no perception that everybody was palsy-walsy. It annoys me to see such a statement in a letter, however. Is it usual to

say that? You do contracts more than I do. Has that been said before?

Fran Pacitti: Yes, it would be usual to highlight any presentational risk to ministers.

Richard Lyle: So, it is standard. Right—that is what I wanted you to say. It is a standard situation: “Here you go: we’re awarding a contract to Joe Bloggs. We might have met Joe Bloggs at a conference or on some other occasion, but there is no impropriety.” So—

Fran Pacitti: None.

Richard Lyle: Let me finish. So, you totally refute the suggestion that there was impropriety.

Fran Pacitti: Entirely.

Richard Lyle: Thank you.

Rachael Hamilton: There were two commercial loans, one in 2017 of £15 million and the other, of £30 million, in 2018. What was the purpose of those commercial loans?

Chris Wilcock: In the first instance, those loans did not come from Transport Scotland. It was another part of the Scottish Government—colleagues at the department of economic development—that led on that side of things. This information is in the public domain, and I think it is also in the narrative and in some of the material that we have released: my understanding was that the loans involved cash flow and diversification of the business.

Rachael Hamilton: Just to get a picture of why those loans were necessary, were there delays in the project that necessitated a loan? Were you aware of what the loans were secured for? You are telling me that it was the Scottish Government that dealt with the loans, but were you aware of what those loans were actually requested for? Were they requested initially for modernising the yard, or were they requested because the project had been knocked off, subcontractors subsequently left and there was not the expertise, which meant that the whole project slipped?

Fran Pacitti: We were not sighted on the request or on the discussions between Ferguson’s and the Scottish Government in relation to the reasons for the loan, nor were we sighted on the diligence that was undertaken in relation to it. Without wishing to sound evasive, I am unable to answer any questions on the detail of that. That was quite deliberate, to avoid any perception or potential conflict of interest regarding our role as CMAL’s sponsor—CMAL being the client—and Ferguson’s interest as the contractor for the contracts for vessels 801 and 802.

Rachael Hamilton: Am I not right in saying that you directed conversations on behalf of the

Scottish Government to ease the pressure on the timetable, and that the timetable then slipped?

Fran Pacitti: Yes, we did. We sought to bring the parties together to encourage discussion about progress on the vessels.

Rachael Hamilton: Who did you bring in to have those conversations?

Fran Pacitti: They were not undertaken solely by Transport Scotland. We spoke regularly with CMAL, including independently. There were discussions with the management team at Ferguson’s. We brought the parties together to have those discussions on a conjoined basis at the official level and with ministers.

12:15

The Convener: Rachael, that is probably as far as I can let you proceed.

Rachael Hamilton: Would you like me to ask questions about the state aid rules?

The Convener: You have had a series of questions and I have to allow other members to come in, I am afraid. I encourage brevity with your questions, Emma. You have two, I think.

Emma Harper: Okay. I will be quick. Transport Scotland approached Luke van Beek to conduct a gateway review of the project, but it did not happen. Can you tell us why a review was not carried out?

Chris Wilcock: Following an engagement in November 2017, I think it was, the transport minister at the time, Humza Yousaf, met representatives of FMEL and CMAL. At that point, he agreed that we would undertake a peer review. I think that was the language that we used, although “gateway review” may have entered some of the parlance and exchanges. We in Transport Scotland then sought to identify someone, through various government frameworks, who could undertake that peer review, examine the programme and investigate the delays and how they could be recovered.

I understand that, at the time, we interviewed a number of potential candidates from those frameworks, and we identified Commodore van Beek. However, the passage of time had taken us to a point at which the discussions were about the loans that Ms Hamilton was asking about, and there was a pressing need for someone to engage with economic development colleagues in relation to the loan certifications and the drawdown in that space. At that point, the decision was taken that that was a more pressing need, and Commodore van Beek was engaged by economic development colleagues to do that work. Effectively, things had moved on over that period of time.

Emma Harper: Luke van Beek highlighted in his reports that limited cash flow was affecting the ability of Ferguson Marine to build the new ferries. Did Transport Scotland take any action to alleviate that? Commodore van Beek highlighted that in his report.

Chris Wilcock: I am not sure about that exact point in time but, as Fran Pacitti mentioned earlier, we engaged with CMAL on the contractual payments and the flexibilities, and also on the wider space of being a responsible client, taking into account all the things that it could do, such as seeking assurances about there being no changes to the vessel and on the specifications, points of design and various other issues that were being raised at the time.

Fran Pacitti: Specifically on cash flow, we indeed engaged in May or June 2017, when we asked CMAL to consider what flexibility it had regarding the payment milestones so as to alleviate some of Ferguson's cash-flow issues. There was a revision to some of the payment milestones whereby final delivery payments were reduced from about 25 per cent to about 10 per cent, to allow some payments to be brought forward in accordance with an accelerated, closely monitored delivery programme. The details of that have been published on the website.

Colin Smyth: What is the difference between a peer review and a gateway review? Is the peer review that was carried out more comprehensive than the gateway review that was recommended?

Fran Pacitti: There was no recommendation for a gateway review. The genesis of the phrase "gateway review" lay in loose language when we were engaging, within our framework documents, to identify appropriate candidates.

The peer review that was agreed or requested by ministers in 2017 related to the programme milestones. Commodore van Beek was engaged with quite a narrow remit relating to the voted loans, examining performance against the programme delivery milestones by Ferguson's. We did not undertake a gateway review, which is a distinct project management standard.

Colin Smyth: Why not?

Fran Pacitti: Because we are not the procuring authority. If there were to be a gateway review, it would be undertaken by the procuring authority.

Colin Smyth: CMAL did not carry that out, however.

Fran Pacitti: I am not aware of CMAL doing one, but Transport Scotland certainly did not commission one on its behalf.

Chris Wilcock: Just to reiterate this for clarity, Luke van Beek was engaged in relation to the commercial loans.

Peter Chapman: Luke van Beek stated that arbitration was the most cost-effective way to deliver the ferries and secure the future of the Ferguson Marine shipyard. Do you agree with his view?

Chris Wilcock: No. We did not agree with that view at the time and, as has been borne out, we are not of the view that that would have resolved our difficulties regarding the quantum of work that is still to be done. Clearly, arbitration could have led to some level of settlement, and FMEL also had the option of bringing forward a claim to be tested in the courts—which did not happen. Indeed, CMAL has refuted that claim in full. I am sure that its representatives will speak to that in detail when they meet you next week.

We considered all the other potential options to resolve the issue. In January or February 2019, when it was becoming evident that the cash-flow issues were likely to come a head, and in the absence of the contract price increase—CPI—claim being brought forward, we engaged with PricewaterhouseCoopers and legal advisers to consider a wide range of options that could have offered us a way forward so as to save the jobs, deliver the vessels and protect the business. They carried out a wide-ranging piece of work, with a pretty free remit to examine any option that could be considered. They started with a long list of 29 options, I think, which they tested against the relevant criteria and against the range of procurement and state aid tests that we would have to satisfy.

In the absence of the CPI claim or some other commercial agreement, or an injection of cash from some other area, that effectively led us to three options: to build out and effectively retender the vessels, with the potential that the business would win the work; to work with the administrators, had the business gone into administration, in order to complete the vessels; or to have public ownership. That was in relation to arbitration and the Luke van Beek advice, but I assure you that wider advice was being considered around all the options to resolve the dispute.

The Convener: I am afraid that we will have to move on, as we are short of time and I would like to get at least three other members in.

Angus MacDonald: Earlier, Richard Lyle helpfully touched on future ferry procurement, and I would like to expand on that a wee bit. The committee has heard evidence from several stakeholders that a radically different approach to vessel replacement and deployment is needed.

How do you intend to incorporate those views, the findings of this inquiry and wider concerns raised by island communities regarding the revised versions of the vessel replacement and deployment plan and the Scottish ferries plan?

Fran Pacitti: I have followed the evidence being submitted to this inquiry, and I have listened with interest to some of the recommendations that have been made. When it was introduced, the ferries plan was intended to be quite radical in setting out its outcomes, and the VRDP that followed it was to set out a longer-term investment strategy.

I accept the feedback and I agree that the plans could go further. I am keen for the next iteration of the ferries plan, which we are developing now, to take a more holistic approach and to consider island connectivity in the round, rather than thinking about ferries on a mode-specific basis. That must encompass how we best serve communities, thinking about the demand that is there and what the connectivity can deliver, as opposed to just being an end in itself. That will require a lot of engagement.

I am mindful of the feedback on stakeholder fatigue. I think that Transport Scotland and the ferries unit are pretty good at speaking to and listening to people, although we could undoubtedly improve when it comes to articulating how we have understood what we have heard and reflecting that back to people. We could perhaps be clearer on how we reach balanced decisions.

As regards the radical approaches that we have heard about, I am absolutely receptive to constructive challenge and to getting people's feedback. The points that have been raised are arguably fairly well rehearsed. In his evidence, Robbie Drummond described the approach as being an exercise in prioritisation and balancing competing interests.

The idea of standardisation of vessels is not new, and ministers are working towards that already. For instance, the two vessels that we are discussing are intended to be interoperable so as to provide resilience across 15 routes. That will require infrastructure upgrades to our ports and harbours. We are in the invidious position of not having a blank sheet of paper, and we do not have the luxury of interoperability at the moment—we have to deliver that in a phased manner—but we are absolutely committed to doing that, while balancing the other demands for one vessel versus two vessels.

A huge amount of evidence-based analysis informs decisions about whether to have one vessel or two, and I am happy to provide as much information on that as you may or may not wish to receive. I accept that the challenge for us lies in

articulating where the balance is between the needs of an individual community versus interoperability, resilience and standardisation across the network as a whole. We need to get better at articulating that.

To bring this to a close and to put it briefly, yes—we will very much reflect on the findings of this inquiry and the evidence that has been given.

Angus MacDonald: That is certainly good to hear, and we look forward to progress on that.

I have one further specific point to raise. We have heard in evidence that an Australian shipbuilder has approached Ferguson's with a view to building Australian-designed ships under licence in Port Glasgow. Is it possible for you to give any insight into why those approaches—two of them, I believe—were rejected, given that the firms presumably also approached Transport Scotland?

Fran Pacitti: I am not sighted on any specific approaches to Ferguson's, so I am afraid that I am unable to answer that. I am aware that Transport Scotland was contacted by an Australian company with an interest in developing catamarans, and Transport Scotland referred that enquiry to CMAL, as the procuring authority.

I do not have a closed mind to what technology we deploy, but it has to work. We have looked at catamarans in general and on a route-specific basis, and there are challenges, on the west coast in particular, around those vessels not being suitable. However, we do not have a closed mind as to what the technology should be.

Angus MacDonald: They could well be suitable on the shorter routes, but that is an issue for CMAL.

The Ferguson's yard is now in the ownership of the Scottish Government. How will that impact on the future procurement of new vessels?

Chris Wilcock: We mentioned earlier that the Ferguson Marine directorate has been set up within the Scottish Government to support Ferguson in public ownership. That team, along with the business, is considering the future structure. Having a pipeline of work is clearly going to be important for the business. That is a work in progress, and it will take some time. From a Transport Scotland perspective, however—referring back to the points that we made earlier and to the points made by CalMac about needing to get vessels in services as quickly and efficiently as we can—that will form the focus of our strategy. In the immediate term, we will still have to tender for vessels, so the next vessel that we go for is likely to go out to the open market for tender.

The Convener: I had warned Dean Lockhart and Stuart McMillan that they would get only brief questions. I am sorry, but time is pressing.

Dean Lockhart: The witnesses said earlier that, during the course of the contract, you flagged various concerns to ministers about how it was progressing. Which ministers were made aware of those concerns during the course of the contract?

Fran Pacitti: I will struggle to provide a comprehensive answer to that: I will need to look back to double-check. At the time, submissions would routinely go to the then Minister for Transport and the Islands, Humza Yousaf. I am aware that, in his capacity as cabinet secretary with responsibility for cities and investment at the time, Derek Mackay would also have been aware, but I would need to double-check that.

The Convener: I will make a suggestion. I have read the papers that you have published—I have looked at them carefully—and it is extremely difficult to see reports to ministers in there, because a lot of the text is darkened out. If you were able to give a list of dates on which you reported to the relevant ministers with those concerns, that would be extremely helpful to the committee.

Fran Pacitti: I am happy to do that.

The Convener: Does that answer your question, Dean?

Dean Lockhart: Yes, that is fine—thank you.

12:30

Stuart McMillan: Mike Rumbles asked a number of questions earlier regarding price, in particular the price of the Ferguson's tender. We are aware that the process involved a 50:50 split between quality and price. As we are all aware—and I am sure you will agree to this—Audit Scotland's recommendations on tenders refer to the issue of best value. It is not always about the cheapest—it is about the best. Would you agree with that?

Fran Pacitti: I do agree with that, yes.

Stuart McMillan: Are you aware that Ferguson's had lost out on some contracts in the past? In 2005, the Ferguson's tender for the Scottish fishery protection vessel was more expensive, and the then Scottish Executive took the decision to award the contract to Remontowa, because it was the cheapest.

Fran Pacitti: I am aware of that, yes.

The Convener: I have one final question, to get clarity on something. There were 15 stage payments for each of the ferries. I am told that stage payments for ships usually come in groups

of five. Was there a reason why you went for 15? Was there concern about cash flow? Is that why 15 payments were proposed, rather than five?

Fran Pacitti: In the interests of clarity, I should state that we did not go for 15 payments; it would have been CMAL that set those payment milestones.

The Convener: But would you have been concerned?

Fran Pacitti: No, I was not concerned at that point. There is a balance in all of this. Those payments can be structured in whatever manner you think provides the appropriate balance of cash flow and risk. That would have been a judgment for CMAL.

The Convener: I absolutely understand that. If I was a businessman who was worried about a higher risk in ordering something, I would have reduced the payments and made them much more sequential—in other words, 15 rather than five. I am just asking if that featured in your thought process, or did you just think it was okay?

Fran Pacitti: We did address our minds to it, and it did not cause us particular alarm. I think that the balance was correct. Alongside the milestone payments, there were security provisions in place, with title vesting in CMAL at various points, so the appropriate mechanisms were in place to counteract that increased frequency of milestone.

The Convener: Thank you. We have rather exceeded our time, for which I apologise, but thank you very much for the evidence that you have given, which has been extremely detailed. There are one or two issues on which you have agreed to come back to the committee, and we look forward to receiving those responses as soon as possible, because we have another evidence session next week.

12:32

Meeting continued in private until 12:46.

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