



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 11 March 2020

Session 5



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RURAL ECONOMY AND CONNECTIVITY COMMITTEE
9th 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:

Jim Anderson (Caledonian Maritime Assets Ltd)

Kevin Hobbs (Caledonian Maritime Assets Ltd)

Dean Lockhart (Mid Scotland and Fife) (Con)

Stuart McMillan (Greenock and Inverclyde) (SNP)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 11 March 2020

[The Convener opened the meeting at 10:04]

Construction and Procurement of Ferry Vessels

The Convener (Edward Mountain): Welcome to the committee's ninth meeting in 2020. I remind everyone to ensure that their mobile phones are on silent. I welcome Stuart McMillan MSP and Dean Lockhart MSP, who are attending the meeting for agenda item 1.

Item 1 is our inquiry into the construction and procurement of ferry vessels in Scotland. Does any member wish to declare an interest at this stage? Stuart McMillan, do you have any interests to declare regarding ferries?

Stuart McMillan (Greenock and Inverclyde) (SNP): No. As I said last week, my wife works for Caledonian MacBrayne, which is obviously not Caledonian Maritime Assets Ltd.

The Convener: That is fine. We will take further evidence today from representatives of Caledonian Maritime Assets Ltd. I welcome to the committee Kevin Hobbs, who is the chief executive officer of CMAL, and Jim Anderson, who is the director of vessels at CMAL.

There are a considerable number of questions, gentlemen. To allow all of them to be asked, I ask you to glance my way occasionally if you are giving a long answer, in case I wish to encourage you to come to a close.

The first questions this morning are from John Finnie.

John Finnie (Highlands and Islands) (Green): Good morning, panel, and thank you for your written evidence.

The Convener: I am sorry. This is the second time that I have done this—it must be a stage of getting old. We had agreed that Stewart Stevenson would ask a question about experience. I am sorry for interrupting you, John, and I am sorry for forgetting you, Stewart.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am obliged, convener. I was confident that you would bring me in at some point.

I am looking for quite a brief answer from the two gentlemen at the end of the table about their personal professional experience in building vessels of the type that is under consideration, and more generally in the shipbuilding industry.

Kevin Hobbs (Caledonian Maritime Assets Ltd): I am the chief executive officer of Caledonian Maritime Assets Ltd. I have considerable relevant experience, having been involved in the shipping industry in one form or another for more than 30 years. I have generally been involved in the construction of ferries and in running ferry companies. I have also had responsibility for building and running chemical and product tankers and project cargo ships.

I was port director of Milford Haven, which is the biggest energy port in the United Kingdom.

It is worth saying that there seem to have been misunderstandings on the part of some of the people who have given evidence to the committee in relation to us as an organisation. We are a public body. We are not civil servants—we come from the private sector and have relevant experience. The team comprises civil engineers and naval architects and so on—

Stewart Stevenson: Do forgive me—I am sure that we will test much of that later. I really just want personal testimony.

Jim Anderson (Caledonian Maritime Assets Ltd): I am director of vessels at CMAL. I have been in shipbuilding and ship design since 1981. It is all that I have done. I know a lot of other things but this is what I know most about. It is more than my work; it is probably my life.

I am a chartered engineer, a fellow of the Royal Institution of Naval Architects and a fellow of the Institute of Marine Engineering, Science and Technology, so I am pretty well versed in ship design, shipbuilding, ship commissioning and so on. Throughout my life I have been involved in the design of several CalMac ferries and lots of other types of vessel.

The Convener: John, your moment of glory is back.

John Finnie: Good morning again, panel. I think that I got as far as thanking you for your written evidence, in which you say:

“Dozens of vessels of this kind have been built successfully by other shipyards across Europe.”

Can you tell us where those vessels were built, how much they cost and how long it took to build them?

Kevin Hobbs: I will hand that one over to Jim.

Jim Anderson: It says dozens; in fact there have been hundreds. The supplier of the

equipment on 801 and 802 is a company called Wärtsilä, which has supplied dual-fuel engines to about 500 vessels throughout the world, including in Japan, Scandinavia, Germany, America and Canada. BC Ferries in Canada is one example. According to the most recent figures, Wärtsilä has delivered something like 2,500 engines.

Sorry, what were the other questions?

John Finnie: I asked about the cost, and about the time taken to build the vessels.

Jim Anderson: The cost for this type and size of vessel—a large CalMac ferry—is in the range of our contract cost at Ferguson Marine Engineering. The contract cost is the normal price for this type of vessel. The duration for building these ships is 24 to 27 months. That was typically the time that the Ferguson's of old would take to deliver a standard large CalMac ferry.

A lot has been made of innovation, novel concepts and the use of liquefied natural gas—and it all being new—but we really are talking about standard engineering. Yes, LNG is something new, but for the shipyard, it is about engines, pipes, ventilation, cables and a large tank. In its simplified form, that is no different from any other system that we would find on a ship. Yes, some safety studies have to be carried out on the tank, but fundamentally, LNG is straightforward. The engines run on one fuel, which is diesel—

John Finnie: I am sorry to interrupt you, but I think that my colleagues will probably want to talk more about the technicalities. I want just some general background, if you do not mind. If that information that you outlined is not picked up later, I am sure that you will get the opportunity to say more about it.

Did you speak to the owners or builders of that kind of vessel when developing the concept?

Jim Anderson: Yes, we spoke to several owners and we visited several ships and bunkering facilities. We spoke to owners, operators and shipyards. Kevin Hobbs and I are members of Interferry and Shippax, which are worldwide forums for ship operators and owners, and we are regular attenders at their conferences. We make big contributions to the conferences and we make presentations. That is a big place for us to find out what the market is doing and to speak to suppliers. We do lots of research before we embark on any project.

John Finnie: For the avoidance of doubt, you spoke to both the owners of vessels and the builders of vessels.

Jim Anderson: The owners, the operators, those who build the vessels and those who supply the equipment.

John Finnie: At what sort of locations?

Jim Anderson: Are you asking where people build such ships?

John Finnie: I am asking about the locations that you visited.

Jim Anderson: We have been to Norway, Germany and Sweden—it is generally the Scandinavian countries that we have been to, as they are close to hand. We have not been as far as BC Ferries in British Columbia.

The Convener: John, before you go on to your next question, I want to pick up on a point that has just been made. Mr Anderson, you said that the average building time is normally 24 months.

Jim Anderson: It is 24 to 27 months. That is typically the time taken to build a ferry of the size in question.

The Convener: Ferguson's came in with a 31-month build duration. You said in your written submission that it was "granted a significant indulgence" by you in allowing it to take 31 months. If you knew that it would take longer than any other shipyard to build the vessels, why did you think that it was the best value for building ferries?

Jim Anderson: We take a lot of things into consideration when we evaluate, such as delivery, the contract cost and what the likely project costs are. We receive bids from all over the world, as there are so many companies out there.

The Convener: I understand that, but you said that Ferguson's would take significantly longer than any other shipyard. Island communities were crying out for ferries and the Scottish Government was asking for a ferry, but Ferguson's was "granted a significant indulgence" by you in allowing it an increased timeframe.

Jim Anderson: I said that a build typically takes 24 to 27 months. I would have to check what other bidders were offering by way of timescales, because it all depends on what the market is like when we go out and ask for ships and how busy shipyards are. However, the build would typically take around 27 months. The Ferguson's bid came in at 31 months. We evaluated it on that and on price and delivery.

The Convener: So your comment about "a significant indulgence" was perhaps a slip of the pen. Having raised the matter for the third time, I will now park it.

John, I apologise for interrupting you.

John Finnie: No, you are grand.

Mr Anderson, I asked about owners and builders, and in your response you also referred to

operators. You therefore seem to have had a significant level of engagement in advance. Can you outline how CMAL incorporated the views of island communities and ferry users on the specifications of the new vessels?

Jim Anderson: We meet with communities in the pre-contract stage of all the projects that we are involved in. Kevin Hobbs can come in on that as well. We met with the Arran community and with all the communities for the Skye triangle. It is a big part of what we do before we commence any project. We have question-and-answer sessions and other public engagement, which helps to inform us of what the type of vessel will be—not with regard to the fuel but in relation to requirements on passenger numbers, cars, heavy goods vehicles and facilities. We do a huge amount of engagement and we do very well with it.

10:15

John Finnie: I wonder whether you are aware of the Audit Scotland report from a couple of years back. Are you familiar with the term “co-creative process”, which is increasingly being used? There is a view that there was considerably more engagement from Audit Scotland than there was from you. Can you comment on that?

Jim Anderson: I cannot comment on Audit Scotland from my side, no.

John Finnie: Can you comment on the way in which it engaged with the island communities compared with the way in which CMAL engaged with the island communities?

Jim Anderson: I really cannot comment on that. I can talk about how we engage with the island communities.

John Finnie: I will put it another way. When you engage with the island communities, do you say, “What do you want?” or do you say, “This is what we have. What do you think of it?”

Jim Anderson: It is absolutely a two-way process. A really good example of that is the new Islay and Jura ferries project—we have another engagement in two weeks’ time.

We go and listen, but we cannot provide everything. We listen, take questions and give answers, and in relation to the Skye triangle ferry the communities are, by and large, getting the ship that they want. The ship is like the MV Hebrides and we know that they are very happy with the Hebrides. I would say that the ship will be Hebrides plus when it is finished.

John Finnie: Did anything change as a result of your engagement with the island communities? That is, you had something but they suggested something else, which was then incorporated.

Jim Anderson: One of the big things that the island communities look for as ferry users is reliability. We look at that from a point of view of station keeping and manoeuvring. It was a big part of our outline specification to all the shipyards that the vessels would be highly manoeuvrable and reliable. We looked at lots of redundancy of equipment in the ships—for example, the Loch Seaforth has lots of redundancies so that if there is a failure the ship can still operate. We incorporate those kinds of thing into our requirements.

John Finnie: Colleagues have a number of other questions, Mr Anderson. I will ask you about something that surprised me in the submission that you sent to the committee. In the executive summary, you said:

“The choice of fuel, passenger and cargo capacities, extent of on-board facilities and outfitting are questions of policy. CMAL is not a policy-maker.”

What was the point of all that engagement if CMAL is not a policy maker?

Jim Anderson: Do you want to come in on that, Kevin?

Kevin Hobbs: We are not the policy maker, but we have a tripartite arrangement whereby every month we meet with CalMac and Transport Scotland. The policy maker is Transport Scotland and there is a huge amount of engagement between the three parties.

John Finnie: I am at risk of flogging the issue, but I ask as an elected representative of the majority of those island communities: do you feel that they are getting what they want in relation to the vessels?

Kevin Hobbs: Yes.

John Finnie: Thank you very much.

Peter Chapman (North East Scotland) (Con): I want to explore that issue a wee bit more. You say that you consult widely with the island communities. The message that we get from the island communities is that you consult but you ignore what they say. On many occasions, the island communities have said that, rather than one big ship, they would like two smaller ships, which would be less expensive, less complex and more reliable. You spoke about reliability—two ships would obviously be more reliable than one, because if one went down there would still be something there. They would also be easier to dock in high-wind conditions than a big ship of the kind that is being built.

You are not listening to the island communities, and you have failed the island communities. If this is going to be your new standard design, you have got it terribly wrong. The ships are too expensive

and too complex, and they do not deliver reliability. You are being accused of building cruise liners when you should be building something more akin to a bus, because that is the nature of the service and that is what is required.

The Convener: Mr Chapman, I push you to come to your question.

Peter Chapman: My question is this: do you agree with the islanders' summation of what you are delivering for them?

Jim Anderson: I can certainly speak about the Hebrides, because I was deeply involved with that ship. We know, and you will know, that the islanders are very happy with the Hebrides, which is one of the most reliable ships that we have in the fleet. They are happy with its size and with everything about it. I do not think that anyone has a bad word to say about that ship. Aside from the dual fuel aspect, the new ship is the Hebrides—it really is. It has higher passenger numbers, but that is a requirement for resilience. The ship that is being designed is Hebrides plus. There is no doubt about it: it will be enhanced for manoeuvring, noise, emissions and all those kinds of things. It is the ship that the islanders want.

I heard that in evidence, when the good folk of the islands said that they were really happy with the Hebrides, and we are delivering the ship that is required.

Peter Chapman: Would you disagree with the assertion that a big, tall ship is more difficult to manoeuvre in high-wind situations? Your reliability in such situations is becoming poorer as time goes on. What is the reason for that?

Jim Anderson: There could be a case for having smaller ships in certain places, but everything is subject to cost. How much smaller would we make them? We would not want to make them half the size, because, in poor weather, those ships would not sail. The seakeeping of smaller vessels would not be suitable for going across the Minch, and two smaller vessels would need two crews. Also, smaller vessels are not as fuel efficient as larger vessels—that is just a fact of physics. Through the work that we are doing on the new Islay vessel, we are already demonstrating that an extra 5m on those larger vessels would give a 14 per cent reduction in fuel use. That is massive, and not just from a climate change point of view. That additional length has a huge impact on operational and fuel costs, which can run into millions and millions of pounds. You have to consider a lot when you compare one vessel against two vessels.

Emma Harper (South Scotland) (SNP): Good morning. I am interested in the issues surrounding the bids for the new vessels, which were assessed

50 per cent on prices and 50 per cent on quality. Can you explain how the cost and quality scores for the bids were calculated? Your submission says:

“the quality scoring of the tenders was concerned with each bidder's build strategy, team composition and methods rather than their offering competing designs.”

What cost and quality scores were given to each of the bids?

Jim Anderson: I would have to look back at the actual scores, but certainly, when we carry out evaluation from a quality point of view, we look at the shipyard's capability and capacity and at the subcontractors, suppliers and specialists that it would intend to use on the ship.

We look at its concept. When we go out to the market with our outline specification and requirements, we will have done a feasibility study. We then ask the shipyards to provide their concepts, and we evaluate those and their technical specification, which is a fully detailed piece of work. As we say in our job, that evaluation even goes down to the level of asking whether they have a four-slice toaster. That is the level of the specification that we get. We evaluate all that.

I have brought along the specification that was provided by Ferguson's as part of its quality offer. It is 2,000 pages long; it is a substantial and compelling proposal. Neither we, as an organisation, nor I, in my individual lifetime, have ever seen anything with that level of detail for a bid. It was well put together.

We consider all those aspects of quality, and we also look at the delivery schedules.

When it comes to the cost, we look not only at the cost—or price—that is being offered by the yard, but at whatever location in the world the ship might be at, because we put in place a site team wherever the shipyard might be. As everyone around the table probably knows, we recently had the Loch Seaforth built in the Flensburger yard in Germany, and the Finlaggan was built by Remontowa.

Therefore, there is significant cost for us and for CalMac—for us in putting our site team there, and for the CalMac crew once we start to get near the point at which the ship starts to come alive. We also have all the costs of bringing a vessel home, depending on where that is from, including the crewing costs, the fuel costs, the storing—everything. Those aspects are all factored in with the quality, and it was a 50:50 split. The way that we score it is that the lowest price overall from the project point of view will receive 100 per cent of that 50, and the person who scores the highest from the quality point of view gets 100 per cent of that 50. Everything is then obviously a ratio of that.

Emma Harper: Basically, the tender is awarded not only on the bottom line of cost. There is—as you are intimating—a very detailed process of application and quality assessment for awarding a contract.

Jim Anderson: Yes. I will also note other things that we consider not in the scoring but as part of the evaluation. When we go out to the market and receive those six different concepts, they will all be slightly different in relation to speed and powering, which is really important because of how much power the ship will need to make the timetable at 16.5 knots, and every kilowatt is pounds. We look at those things overall, but not as part of the evaluation. We consider the operational costs and the question of how much it will cost us not only to buy the concept but to run the vessel in the future. That is really important.

The Convener: If the cheapest bid gets 100 per cent of the 50, I presume that the most expensive bid gets zero.

Jim Anderson: There is a weighting—there is a ratio. We can provide the committee with the actual numbers again.

The Convener: It does not work like that.

Jim Anderson: No—it does not work like that. If someone bids, say, £97 million and someone else bids £96 million, the difference between that £96 million and £97 million will be a point or two points.

The Convener: I will definitely take up your offer of the weightings, so that we can understand those. Perhaps you could explain in the weightings which bidder got what.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): Good morning, panel. Beyond the quality scores that you have just talked about, what weight did you attach to the financial stability and shipbuilding record of the bidders in the scoring process, and can you provide the committee with those weightings?

Kevin Hobbs: We have to carry out due diligence on the financial stability of each and every yard that bids. It is fair to say that many shipyards are not as strong as they used to be post the financial crash; the shipbuilding market has changed significantly over time since 2008-09. Financial stability is part of our assessment and, fairly obviously, if we believed that a shipyard was financially unstable, we would discount it. However, that was not the case for any of the bids that we saw. That is pretty much what we do.

Rachael Hamilton: In September 2015, before Ferguson's won the contract, the CMAL chairman warned Transport Scotland that

"engagement with a newly established shipyard with no track record at all of building ferries of this size, is an

unsecured risk of ... about £60m, which is totally off track of what is normal practice for the shipping industry in respect of contracting for newbuildings ... There is no way that the board can recommend the SG through CMAL to take this level of unsecured risk on its shoulders."

What is your comment on that, given what you just said about the scoring process and financial stability?

Kevin Hobbs: This is quite a complicated matter. All the bidders said that they could provide refund guarantees. That letter is being taken in complete and utter isolation, and it should not be. I will try to put a bit of colour into it.

10:30

When we got to the preferred bidder stage, every single bidder had met the criteria with regard to bank guarantees and surety bonds, which are one and the same thing: one is an insurance-backed bond and one is a bank guarantee. However, when we started getting into detailed discussions with the shipyard, Ferguson's basically said that it could not provide 100 per cent guarantees, which is a big problem. When I say that the letter is being taken in isolation, discussions were still on-going at the time when it was written, but the board felt that it had to raise with Transport Scotland the issue that the preferred bidder, which, as you know, had been announced by the First Minister, was beginning to change its tune.

We ended up negotiating in a different way with the shipyard to get ourselves—the board and management team—comfortable with its bid. The discussions revolved around vesting all the materials, equipment and machinery, which means that, as those are delivered to the yard, we—CMAL—own them. The overall contract price of £97 million can be split broadly into two thirds for the parts of the ship and one third for the labour. That is the general split across any shipyard.

Our agreement with the shipyard in September to vest the materials, equipment and machinery closed the gap significantly in terms of the risk. The risk that our chairman was flagging up was that, without any mechanism for owning the equipment, materials and machinery, there was a £60 million gap. However, two thirds of £97 million is broadly £64 million, and, as the equipment starts arriving at the yard, we own it, which effectively closes the risk gap. That is how we enabled the contract to be signed in mid-October.

Rachael Hamilton: You have talked about bank guarantees and insurance-backed bonds. Do you have details of how the other bidders presented their current financial position? Is that all in writing?

Kevin Hobbs: I would have to look back. I was not employed at that time, although Jim Anderson was. However, detailed discussions take place only with the preferred bidder, so we would not have a view on whether any other bidder that had said that it could provide surety bonds was ultimately able to do so.

Rachael Hamilton: Are you saying that, right until the last minute, you do not take account of the financial stability of the bidders?

Kevin Hobbs: I am saying that there is an iterative process, from choosing a preferred bidder to signing the contract. We chose the preferred bidder on 20 August. Lots of discussions then took place to ensure that we could verify everything that the bidder promised—or did not promise, as the case may be.

Rachael Hamilton: So, basically, it was a risk.

Kevin Hobbs: There is always a risk with any commercial transaction.

The Convener: Can I clarify something? You said that you chose the preferred bidder on 20 August but you did not get the billing schedule until 28 August.

Kevin Hobbs: Again, that is being taken in isolation.

The Convener: I am sorry—I am getting into trouble with other members of the committee. I owe Stewart Stevenson a question, but he should not ever think of reclaiming it.

Kevin Hobbs: As I was saying, it is an iterative process. We choose a preferred bidder and then verify that it can comply with everything that it has promised. However, the bidder did a U-turn on the matter of the surety bond or bank guarantees.

The Convener: Okay. I am sorry that I interrupted Rachael Hamilton. She has a further question.

Rachael Hamilton: Does Jim Anderson want to come in before I ask my next question?

Jim Anderson: I have forgotten what I was going to say.

Rachael Hamilton: Let me move on. Ferguson's had only recently exited receivership when you awarded it the contract for the new vessels. It subsequently experienced cash flow problems, which resulted in the Scottish Government providing a £45 million commercial loan. Are CMAL's processes for assessing the financial capabilities of bidders sufficiently robust?

Kevin Hobbs: The short answer is yes. There is a longer answer, if you would like one.

Rachael Hamilton: Yes—I will have the longer answer.

Kevin Hobbs: In basic terms, shipbuilding has historically sliced everything up into 20 per cent parts: from contract award through to delivery, there are five lots of 20 per cent. In discussions with the shipyard, we came to the conclusion that smoothing out that cash flow would be better for Ferguson's, and that did not really make any difference to us, as our interest was in the final price of the ship. You have some schedules that show 15 milestone payments. We decided to slice it up in that different way in order to smooth the cash flow, which was, ultimately, a way of helping the shipyard. We would have done that for any shipyard, because it made no difference to our final payment price. You have the percentages there—we have put them in.

We were not concerned. All six compliant bids were broadly within a range. It would have rung alarm bells if only one shipyard had said that it could build the ship or that it would cost £200 million. Six shipyards having put in compliant bids, we were convinced that the shipyard could perform and that it could build the ship for the amount of money specified.

Hindsight is a wonderful thing. Ultimately, a lot of mistakes were made by the shipyard. As far as we are concerned, it was the master of its own demise—but I am sure that we will come on to that later.

Rachael Hamilton: I have one last question. Why, when Ferguson's expected £103 million, did Nicola Sturgeon announce before the negotiations were complete that it was a £96.8 million deal?

Kevin Hobbs: That chronology is not correct. We have written to the committee, and I am sure that you have access to that correspondence. The final, negotiated, stamped payment schedule came in on 27 August—you have access to it—and the First Minister made the announcement on 31 August. You have listened to evidence from other people, but I think that quite a lot of that evidence has been disingenuous.

Jim Anderson: Bank refund guarantees and how we pay in instalments and take title are what protects everything. The yard has failed—we know that it has failed—but the same could have happened in any yard in the world. As we go along, we take ownership of substantial pieces of equipment of high value, plus we have the refund guarantee in place. We always manage the financial risk very carefully, as is standard in shipbuilding contracts throughout the world.

The Convener: Stewart Stevenson wants to come in.

Stewart Stevenson: I have just checked that no one else is down to ask my question.

The subject of vesting and taking title has come up in the questions that we have been asking. Given that you are, in essence, paying the yard for something that you then own, how does that appear on your balance sheet? In other words, if you take ownership early in the process, how do you deal with that on your balance sheet—in terms of both the vesting process and other methods of transferring ownership?

Kevin Hobbs: We will write to you about that. I am not the finance director. In effect, it is treated as work in progress. However, there is a fuller answer, so I will ask our financial director to—

Stewart Stevenson: Let me assist you in doing that. I am looking to a later point, when the receivers went in. Who had ownership of the assets that were sitting on the quay? I understand that, in such circumstances, assets that are owned by others but that are within the compass of a receivership are not necessarily protected to the owner of the asset.

Jim Anderson: No, but we have something in place for that. I now understand the question.

When all the equipment comes into the store, it is formally signed over to us by both parties and there is a formal document. We have three-weekly or four-weekly meetings with the shipyard on the project and everything is formally signed over to us so that we own it. There is a formal piece of documentation that states that the equipment has been transferred to us. Every three or four weeks, that document is updated as a pump or whatever comes in. We therefore have a document that states that we now own the equipment. In simple terms, we are paying for the bricks as it goes along.

Kevin Hobbs: We also physically stamp things. If it is a piece of metal or aluminium, we will spray-paint it. Generally, though, equipment is in a box and we stick a large label on the box that states what is in the box, when it was delivered and the fact that it is ours.

Stewart Stevenson: Unusually, I was not on the visit to the yard. Did my colleagues see what you describe when they were there?

Jim Anderson: That is unlikely, because most of the equipment is protected by covers. However, everything is labelled.

Stewart Stevenson: If we went there, we could see it.

Jim Anderson: Yes. We could also send you some photographs. I could get our site team to send some photographs, because that is one of their big jobs in life.

Kevin Hobbs: That also extends to Westway, which I believe you guys visited as well. Everything there is also marked up.

The Convener: Indeed. I will now allow the deputy convener to come in, and I thank Stewart Stevenson for asking my question.

Stewart Stevenson: Oh! Sorry, convener.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Good morning, gentlemen. I want to take a bit further the issue that you have just brought up. We visited the yard, but before that we visited two of the sites where all the equipment was stored. I used to work in the oil industry and I have been in yards before. I think that the freight forwarder or somebody else confirmed what we found, which was that the material control and the documentation control in relation to all the pieces of equipment was poor. Given that you had oversight and that you owned the equipment by then, as you have just said, why were the two yards that we saw in such a mess? Everybody working there seemed to agree that there was no real layout that would indicate where stuff is. We heard that you just used a spreadsheet rather than a proper document control system. Can you explain that, please?

Jim Anderson: The documentation that you refer to will be Ferguson's documentation. Obviously, we are not responsible for how Ferguson's managed documentation, but we manage our documentation very well. We have a record of every single piece of equipment that comes into the shipyard, whether it goes to the stores, straight to the ship or to Westway. The equipment is recorded as soon as it comes in and if a piece of equipment moves around—to Westway, the store, the yard or the ship—our site team marks it up and traces it for every minute of every day so that we know exactly where it is. We have a better-quality system than the shipyard did—that is the bottom line. We are professionals, so we know where everything is—that is a fact.

Maureen Watt: Were you comfortable with the way the equipment was stored? A lot of stuff looked to me to have deteriorated significantly because it had been stored wrongly.

Jim Anderson: We made several comments on that. By and large, it looks worse than it is, because a lot of the stuff is covered. To be honest, there are pigeon droppings and that kind of stuff on the covers, but everything is protected and our team ensures that anticondensation heaters are available for the main machinery if required. We make regular audits of the stores and I would say that, by and large, conditions there are as good as they could be. However, the facilities were poor, as so many other things were poor.

The Convener: I will push Jim Anderson on that, because Tim Hair, who took us round the stores at Westway and the other stores, said that he had no idea where the stuff was in the stores and that the whole point of renting the new factory space was to move all the stuff from Westway down there so that he could work out what was there and whether all the parts that had been signed off on were there. You are saying to us that you knew exactly what was where, that you had paid for it and that it was yours. Tim Hair is therefore telling us an untruth. I am confused.

Jim Anderson: I do not think that Tim Hair would tell you an untruth. We work with Tim and know Tim.

The Convener: So when Tim Hair said to us that he did not know what was in the stores, was he factually incorrect?

Jim Anderson: I go back to my earlier comment. We have a good system, but Tim inherited the yard's system and has had to ask, "Where are the forms? Where's the documentation?"

10:45

The Convener: I understand your point. I will bring Angus MacDonald in, but I make the observation that, if it is your equipment, which you have paid for by milestone payments, you should know where it is. Presumably, you are working with Tim Hair to get these ferries out as quickly as possible.

Jim Anderson: Yes.

The Convener: So you could tell him where all the equipment was if he asked for it, because he could not tell us.

Jim Anderson: We could give that information to him.

The Convener: Well, I am delighted that we have done something on this committee.

Angus MacDonald (Falkirk East) (SNP): I do not want to get bogged down in detail, but the example of the bow doors springs to mind. Why was substandard steel stamped and approved and why have we ended up with the inferior bow doors?

Jim Anderson: Are you referring to the bulbous bow?

Angus MacDonald: No. There was also an issue with the strength of the frames of the bow doors.

The Convener: Can you answer about the doors first, because they were highlighted to us during evidence?

Angus MacDonald: Could you answer the question on the bulbous bow as well?

The Convener: You can do that second.

Jim Anderson: A lot of the drawings that were put out to the highly skilled people at the shipyard were not finalised or approved. There are rules and regulations that have been built up over hundreds of years on the structural strength of bow doors and bulbous bows, which is where the full impact of the waves is taken. They are not written by us; we understand them, but they are written by the classification societies. There is strict guidance about the calculations for those things. The yard went ahead and sent out the drawings. As reported by the workforce representative in an earlier evidence session, the workforce even told the shipyard—the bosses—that it was not right but was told to crack on. That was it.

I also heard in evidence that the bulbous bow was changed—it has been changed, but it has not been fitted yet—because it looked ugly. Have you ever heard anything as ridiculous as that in your life? Seriously? We all know all about ships in here—where is the bulbous bow? Underneath; below the water line, but we are spending thousands of pounds just because it does not look so good. I do not buy that.

Maureen Watt: I thought that it was the wrong thickness of steel.

Jim Anderson: Yes. Correct. Aye.

The Convener: We will maybe come to that issue in a minute.

Mike Rumbles (North East Scotland) (LD): I have been trying, with all the witnesses we have had so far, to focus on why Ferguson's was awarded the contract in the first place and the due diligence relating to that. A previous witness, Roy Pedersen, told the committee that he thought that it was awarded to Ferguson's through "incompetence", "vested interest" or "corruption". I will not go anywhere near vested interest or corruption, so I will focus my questions to you on competence.

In your written submission, you said:

"Ferguson were the preferred bidder because they produced the most detailed concept design. Ferguson were also the most expensive."

Houlder produced that "most detailed concept design" for Ferguson's, did it not? That was the same company that CMAL employed in drawing up the tender in the first place, so did alarm bells ring with you there?

Jim Anderson: It was not just Houlder; it was a combination. It is all here in these files. Ferguson's employed a whole array of different specialist

companies to put the concept design together, which is contained in here, not just Houlder but several other specialists that we know in the marketplace—I will not name them here. That is what gave it good weight, particularly on things such as hull form, noise, manoeuvring and vibration.

Mike Rumbles: Can I go back to your written submission? I want to be absolutely clear here. You say in paragraph 2.4:

“Notably, Ferguson employed Houlder as their designer – the company that had supported the creation of the tender design for inclusion in the ITT.”

I will repeat my question. To use Mr Hobbs’s phrase, did alarm bells ring with you?

Jim Anderson: Can you expand on that question? Do you mean alarm bells about using Houlder?

Mike Rumbles: Yes.

Jim Anderson: Houlder is a reputable, worldwide naval architecture company.

Mike Rumbles: My point is that you used Houlder in the design of the tender.

Jim Anderson: Yes.

Mike Rumbles: The company that you made the award to used the same company. Are you saying that alarm bells did not ring?

Jim Anderson: No, they did not—not at all. That is its choice.

Mike Rumbles: Well—

Kevin Hobbs: That is not unusual.

Mike Rumbles: I am asking about due diligence. I will quote again from what you said in your written submission:

“It was up to each shipyard to persuade themselves”

—I emphasise the word “themselves”—

“that they were capable of building these ships.”

You said that in paragraph 7.2. Do you not recognise that, in the four to five months that you took to assess the bids, due diligence made it your responsibility—CMAL’s responsibility for this public money—to do that yourself? Is it not the whole point of assessing the bids that the yards can do what they say they can do? Did you do that?

Jim Anderson: Yes, that is what we did. This shipyard was already building a ship for us at the time—one of the hybrid ferries. It had built another two of the hybrid ferries in the couple of years before. They were first-in-class ships—world firsts—that we should be proud of in this country. There is no doubt about that. The same shipyard delivered those vessels, which won worldwide

shipping awards in 2014 and 2016. The shipyard had a great history and a great pedigree in building CalMac ferries and many other types of ships. It had the capability to do this. Where the shipyard started to fail was that, after signing the contract, it changed its strategy—the strategy that it promised us and the one that we signed up for.

Mike Rumbles: That is what you are saying now. I am looking at your submission, which was written to us prior to this evidence session. I repeat what it says:

“It was up to each shipyard to persuade themselves that they were capable of building these ships.”

I am puzzled as to why you would say that to us. It indicates to me that you were saying, “Well, the shipyard put the bid in using the same company that designed the tender.” Ferguson’s put in the most expensive bid. You have confirmed today that it was to take the yard longer than you would normally have expected to produce the ships. It had the highest specification. It seems to me that, in your written submission, you are saying, “It is up to it to decide that”.

You were in charge of £97 million of public money. I am trying to get to the reason why you recommended approval of Ferguson’s if you had not checked that it was able to do what it said it was able to do.

Jim Anderson: We did check.

Mike Rumbles: So why did you say what you said in your written report? Are we to ignore that?

Kevin Hobbs: No—

Jim Anderson: Maybe it is not clear.

Mike Rumbles: It is very clear.

Jim Anderson: I am clearly telling you here how we go about this. It is very, very clear.

Mike Rumbles: It is the opposite of what you have said to us in written form.

Jim Anderson: I would not say that it is the opposite.

Mike Rumbles: I suppose that that is an interpretation.

I am again going to ask about why the Ferguson’s bid was awarded the contract. The Ferguson’s bid was £6 million higher than CMAL had budgeted for. Why did you recommend approval of a bid that exceeded the planned budget, particularly when lower bids had been received? You have confirmed to us that you had received three bids that met all the requirements. The Ferguson’s bid was even higher than your budget.

Jim Anderson: For any shipbuilding contract, at the time when the budget is set, it is an estimate of

the market at that time. Shipbuilding changes—it goes up and down, depending on how busy yards are and many other things—so we set the budget way before we go out to tender.

I could say the same about the new Islay vessel, for which we are working on the business case at the moment. We have already said what we think might be the cost estimate for the new Islay boat but, by the time we go to the market, it could change. That's just life.

Mike Rumbles: I would like to confirm something that I have asked other people. I will ask it of the cabinet secretary when we eventually get to him at the end of the process. The Scottish ministers received a recommendation from the ferries unit to award the contract to Ferguson's. I asked the people at the ferries unit why they made that decision and they said that they had just passed it on and that CMAL made the decision. Because we knew that it was involved in the process, CalMac appeared before the committee and pointed the finger at you, by saying, "It's nothing to do with us, guv'nor. CMAL made the recommendation for Ferguson's."

Jim Anderson: I do not think that CalMac pointed the finger at us. The three organisations work well together. Yes, we are the procurement and design specialists and we are the people that have the know-how.

Mike Rumbles: To be clear, you made the recommendation.

Jim Anderson: We make the final recommendation but, as we spoke about, there is huge input as part of the evaluation, particularly from CalMac. It is a joint exercise. We do not go ahead solely and say, "Here is your ship." As you heard, there is a lot of work with the project group and the tripartite; it is a good joint effort. The way the three organisations work is healthy, because we work together, but we can ask questions, we can challenge and we can look at the options. It continues to work well.

Mike Rumbles: I do not have much more time to ask my questions to you, so I will concentrate on getting to the bottom of what went wrong. It seems to me that it went wrong from the beginning, when you recommended Ferguson's for the contract. There were other problems down the line, and we have heard all those, but the contract was awarded to a company that could not fulfil it. Therefore, I hope that you will recognise that, logically, there must be something wrong in what happened when you examined the capability of Ferguson's to deliver the contract. You did desktop exercises, you looked at the financials and you checked all that sort of thing. When I read your written submission, it alarmed me that you seemed to say, "Well, it was up to them, guv. It

wasn't up to us to do that." It certainly is up to you to make sure that the tender that you eventually recommended to the ministers was the right one. Do you regret recommending Ferguson's? Do you realise that something went wrong in recommending Ferguson's?

Jim Anderson: No. I do not regret the recommendation.

Mike Rumbles: So you have no regrets.

Jim Anderson: Something went wrong after we signed the contract.

Mike Rumbles: It was only after you signed the contract.

Jim Anderson: Absolutely—it was after we signed the contract.

Mike Rumbles: There was nothing wrong before you signed the contract.

Jim Anderson: The shipyard was already building ships for us. It had a good history of building this type of ships. Forget the stuff about the LNG, because that is just smoke and mirrors. The shipyard had a good pedigree and it still has a good pedigree. There are 300-odd highly skilled people there and we are doing them a disservice if we say that Scotland cannot build ferries and ships.

Mike Rumbles: Nobody is saying that. I was asking you whether you felt—

Jim Anderson: This was a failure of management—the new management.

Mike Rumbles: So it was not your responsibility at all. It was nothing to do with awarding the contract to Ferguson's.

Jim Anderson: None whatsoever. We are just going about our normal business, in which we are highly skilled, and we have delivered.

Mike Rumbles: Did you do everything right?

Jim Anderson: I cannot think of one thing that we did not.

The Convener: Okay. You said that it was the fault of the new management. In the previous sentence, you said that the yard has a history of producing well. However, that is not the same new management that you are talking about now; the problem was with the new management that tendered for the contract.

Jim Anderson: No, not the new management that tendered and not the owners but the people the owners put in.

The Convener: Somebody will pick up on that.

Jim Anderson: Those people have already been mentioned when the word “bullying” came up at one of the other sessions.

Colin Smyth (South Scotland) (Lab): When you awarded the contract and carried out due diligence, certain things were in place but they have disappeared. According to the programme review board report and the evidence that this committee received from Tim Hair, Ferguson’s did not have the necessary management processes in place, such as a defect management system, a robust planning process or a project management system. When you awarded the contract, were all those things in place?

Jim Anderson: Yes, and they all fell by the wayside.

Colin Smyth: When you say “fell by the wayside”, do you mean that Ferguson’s removed all those systems?

Jim Anderson: It had them, but it did not apply them.

Colin Smyth: You say that Ferguson’s had them, but Mr Hair said that it did not. He said:

“I would have expected to find a project manager who had end-to-end responsibility for and knowledge of the project ... but that role did not exist.”—[*Official Report, Rural Economy and Connectivity Committee*, 22 January 2020; c 16.]

In response to a question from Stewart Stevenson, he went on to say:

“there were some planning tools such as those that you described, but they were badly flawed.”

Was a project manager in place, and were all those systems in place when you awarded the contract?

Jim Anderson: Yes, they were.

Colin Smyth: Those were removed.

Jim Anderson: The best way to put it would be to say that Ferguson’s had all the tools but just did not have the people who knew how to use them, or that some of the people it brought in did not know how to use them.

11:00

Colin Smyth: On planning processes specifically, Mr Hair said:

“Not only was there not a planning process producing what you have described, but there was no real prospect—given the number of people in the yard—of creating a planning process.”—[*Official Report, Rural Economy and Connectivity Committee*, 22 January 2020, c 14.]

He was very clear on that. You are saying that there was a planning process with which you were happy when you carried your due diligence, but

that that disappeared. Can you elaborate on what you mean by “disappeared”?

Jim Anderson: When we start, we have standard plans, cardinal date programmes and planning tools. Ferguson’s yard set up a fantastic war room with Gantt charts, spreadsheets and everything that you could possibly imagine. The issue was putting that information into work packages. The failure lay in not getting that information to the people working on the vessel to allow them to build the ship efficiently; that is where the gap was.

Colin Smyth: On the issue of the price, we are clear that Ferguson’s was the highest bid. We are not clear about how high it was compared to the others. You had seven bids, four of which were ruled out. What was the price on the other three bids? How far away were they from Ferguson’s? One of our questions concerns whether its bid was high enough to build the vessels within the agreed price. How far away was it from the other three bids that you received?

Kevin Hobbs: There was a range. Ferguson’s was the highest. We went through the quality matrix versus the price process, which comes up with an overall score, and Ferguson’s won that outright.

We are not able to share the actual prices with you, because there are confidentiality clauses in all the individual bids.

Colin Smyth: It is difficult then for us to assess how far away the other bids were from a price point of view. Roughly how far away were they? Are we talking about tens of millions? What percentage difference was there between FMEL’s bid and the others?

Kevin Hobbs: As we have already stated, there were six compliant bids, and in a broad sense, the range was about 15 per cent from top to bottom. A couple of bids were extremely close. That is as much as we can say.

Richard Lyle (Uddingston and Bellshill) (SNP): Jim Anderson, you have three large books beside you. You pointed out the specifications and the tender. When you build a ship, you plan and design the inside of it. After Ferguson’s won the contract, who did that planning?

Jim Anderson: Ferguson’s.

Richard Lyle: You are also telling us that the workforce was told to get on with the work, even though it was putting the wrong things in the ship. There was also supposed to be prefabrication outside the yard, after which the parts would be delivered and put together, but that did not happen.

Jim Anderson: That is one of the key reasons why things have ended up the way they have. We know the yard very well; our headquarters is across the road from the shipyard.

The Convener: It is 150m from the yard,

Jim Anderson: When we evaluated Ferguson's, we knew the size, the capacity and what it is capable of producing.

The plan that is set out in the documents that I have with me—Ferguson's detailed project management plans—was not to build the two complete ships in that shipyard, but to build the hulls for 801 and 802. When we talk about the hulls, we mean the bit from the vehicle deck to the keel—the bit that sits in the water. That was the strategy: for the hulls to be built in the shipyard, and for the superstructure—everything above the vehicle deck, such as the site casings, the accommodation and the bridge—to be built at two other locations in the UK.

Richard Lyle: So, the superstructure was to be built outside the yard at other locations and brought along and put on the ship as it was being built.

Jim Anderson: It is a familiar model and is the same one that we used for the Loch Seaforth, which was part-built in Germany. The model involved 801's hull—to the vehicle deck—being launched and brought to the outfit quay, which members will have seen when they went to the yard. The other units would be barged, taken to the outfit quay, lifted by crane and popped onto the hull. Then we would start the same sequence with 802. That was the strategy, and it was written by people who were in the shipyard at that time, and who had worked in that shipyard for many years. However, by the time that we got there, those people were gone.

Richard Lyle: We are getting to the nub. The people who were there, and who had been successful in getting the contract, left after the contract was won. Are you saying that the people who were then in charge could not tell the workforce how to do it right?

Jim Anderson: I would not say that. They were basically telling people, "Just get on with it". How these people behaved is incredible—in fact, I find it incredible that we are even having this conversation about it.

The Convener: I am going to bring in Angus MacDonald. He wanted to ask a question later, but it fits in here.

Angus MacDonald: I want to ask about the superstructures that were to be fabricated off site and shipped to the yard by barge. Ultimately, that methodology was not followed. Where were the superstructures originally due to be built, and why

was the change made? How did CMAL react to that fundamental change in the proposed construction method? What did you do when Ferguson's decided to go against the original plan?

Jim Anderson: As soon as it happened, we wrote to Ferguson's and asked it what was happening and what its strategy was. We asked it to give us its new plans. It told us that it had the situation under control. We said that it did not, and we wrote to it to say so—I have copies of the first letters that we sent to say that that was a complete change of plan and strategy, and that it would not work. We told Ferguson's that it did not have the space to do that.

There was no more that we could do. As the buyer, we could not halt or hinder what the yard did. We could not send in our site team and tell people to stop welding and fabricating. We could write letters. We took it to the highest level to say that it was not going well. We signed the contract in October 2015 and the yard continued saying, until July 2017, that it wanted us to stop writing to it about our belief that it could not deliver the ships on time and on budget. It said that it had it under control.

We had several meetings with the yard's senior management and with the owners, right up to July 2017, in which they said they had it under control. By that time, the new CEO was in place. He came in March 2017, so he had just started. The managing director who had been with the company for countless years was gone. He was replaced just before July 2017—I will come back to that date. The two senior production managers—who had been instructing the workforce to proceed and to build the ships even though the folk working on the boat did not think it was right—were suddenly gone. I do not know whether they were dismissed.

In July 2017, we went from being told that everything was fine, and that the yard was on track and on budget, to suddenly being presented—out of nowhere—with a claim for just over £17 million. I will never forget that meeting. My projects director and I went in. There was someone from the parent company that we had never met before, the CEO, the project manager and the chief naval architect. The project manager and the chief naval architect could not even look at us. They knew what was coming and they could not look me in the eye. They did not believe it themselves. They knew it was not true.

As the buyer, we highlighted the issue at the highest levels—ministers and everybody else knew about it. Ferguson's continued to say that it would build on time and that it was going to look at new strategies. Then, nearly two years into the contract, it said, "Hang on, we've got a problem."

The Convener: I need to let Angus MacDonald in, and I need to move on to some of the other questions because I want to briefly suspend the meeting in a minute.

Angus MacDonald: When you initially learned that the original plan for the superstructures was not going to be followed, could that have been classed as a breach of contract?

Jim Anderson: No. There is nothing in the contract that would allow us to terminate it because the yard changed its strategy.

Colin Smyth: Clearly, you believed that that meant that FMEL could not deliver what you were buying. You said that ministers were aware of the issue. When did you make ministers aware of it, and which ones? Obviously, you had concerns that the project was not going to be delivered on time, because of that significant change.

Jim Anderson: I made them aware as early as March 2016.

Colin Smyth: Which ministers did you make aware?

Jim Anderson: We report through Transport Scotland.

Colin Smyth: So, you believed that Transport Scotland made ministers aware.

Jim Anderson: Absolutely. I reported on that, and my reports are available to download because of what happened when the yard went into administration. It is all there and it is all very clear.

Colin Smyth: Which ministers did Transport Scotland make aware of those concerns?

Jim Anderson: I do not know. We would have to ask.

Peter Chapman: Former managers of FMEL told the committee that CMAL audited the yard annually and found it to be performing to a very high standard. Can you outline what that audit process involved and how those audit findings are compatible with the claimed substantial failures of Ferguson Marine?

Jim Anderson: What was done was not a full quality audit—not at all. Audits like that are carried out on all of our suppliers. They are done by our procurement department. The audit that was done was not a full audit of the shipyard and its systems. That type of audit looks at the wider benefits of placing a contract with a supplier, for example—training opportunities, community benefits, apprenticeships and how the supplier manages its own sub-suppliers. It was not a full quality audit, although the report suggests that that was the case. It was more about what the benefits of the contract were.

I read the FMEL submission, which was of interest to me, and some things in it are worthy of note. There are two spreadsheets that show the scores that FMEL received on the audit. We made some comments on the second one. On the sheet that was submitted to the committee in the report, the score is the same—it received a high score for benefits, not for quality, although it appears that way—but the comments are different from the ones that we gave. One of our comments asked FMEL to give us evidence that it was paying its suppliers on time. For whatever reason, that comment is not in the submission that was sent to the committee.

Peter Chapman: I am amazed by that response. Surely the auditing process of the yard should be much more robust. You awarded a £100 million contract to a yard, and you say that the audit is all superficial.

Jim Anderson: I do the more robust audit. My audit is in my monthly report, and everything is recorded at the project meetings that we have with the shipyard. However, that is a separate audit. The audit that has been submitted is not the audit of the yard's performance: it is an audit of its training, apprenticeships, charitable work and so on.

Peter Chapman: You say that there is a robust audit system. If there is, why did it not flag up the fact that—as appears to be the case—the yard was not capable of building those ships?

Jim Anderson: We started to flag up our concerns that the ships would be late in March 2016.

Peter Chapman: In your written evidence, you stated that the

“limitations of space to fabricate hulls 801 and 802 alongside one another seems the most obvious reason”

for Ferguson's predicament. You also stated—and you have already told us today—that Ferguson's was granted a longer period to build the vessels so that the yard could be reconfigured to create more space. Was that obvious lack of space not considered by CMAL before the contract was awarded? You were up front, and knew that it could not build the two ships side by side, but you awarded the contract.

Jim Anderson: Yes. However, as I said earlier, the yard's plan was not to build the two ships side by side. That changed after we signed the contract. The plan was to build hull 801 in the yard—only the hull, which does not take up a lot of space—and to build the superstructure in two other locations. We would then launch 801, and the same process would start on 802. That was the plan.

Peter Chapman: So the plan was to launch 801 long before the stage when it was finally launched—although that launch was pretty superficial as well; the windows in the superstructure were just painted on.

Jim Anderson: Yes.

Peter Chapman: The plan was to launch that hull much earlier, and then to start building 802.

Jim Anderson: Yes. The other plan was what we call advance pre-outfitting. I do not know whether, when you went to see the ships, you got the chance to have a look at the lower decks and the engine room. Above the vehicle deck, all the spaces are empty shells. The plan was, as the units were built, to start to do the pre-outfitting work—the fastenings and hot work that allows equipment to be installed throughout the ship—as the workers went along with each block. That did not happen.

The Convener: That seems to be an appropriate moment at which to suspend the committee.

11:16

Meeting suspended.

11:24

On resuming—

The Convener: I bring the committee back into session.

I have some questions about contractual payments. You have explained why you gave the 15 milestone payments as opposed to the normal five payments of 20 per cent. I understand that, but I have not been able to find out—we asked Transport Scotland about this last week—how many of those payments have actually been made. Can you tell me how many of the payments have been made?

Kevin Hobbs: Yes. We have made 14 of the original 15 payments on the Glen Sannox, which is hull 801, and we have five payments still to go on hull 802. There is a batch of payments that amount to £1.2 million times four from broadly around the time of the launch: a couple from just before the launch, one from at the launch, and one from just after the launch.

The Convener: Remind me what percentage of payments you have made on hull 802.

Kevin Hobbs: We have paid about 78 per cent.

The Convener: You have paid about 85 per cent on hull 801.

Kevin Hobbs: Yes.

The Convener: You have paid 78 per cent on hull 802.

Kevin Hobbs: No. We have paid 90 per cent on hull 801.

The Convener: Ninety per cent?

Kevin Hobbs: Yes.

The Convener: You have paid 90 per cent on hull 801 and 78 per cent on hull 802.

Kevin Hobbs: The time-stamped schedule that you have got changed later on, before the contract was signed.

The Convener: It would have been helpful to have had that. No doubt you can let us have that and—

Kevin Hobbs: Yes—absolutely. That is not a problem.

The Convener: I am struggling slightly with the issue. In a previous life, I was a surveyor and managed contracts. In making staged payments during a contract, a quantity surveyor will identify how much work has been carried out, and the payments will total no more than the value of that work. If the builder or the contractor goes wrong, the client will, as Jim Anderson has said, end up with ownership of material that equates to the money that has been paid. My maths is not quick enough for this, but it appears to me that you paid between £85 million and £90 million on the two boats.

Kevin Hobbs: No. It was £82.5 million.

The Convener: Okay. Thank you for correcting my maths.

Kevin Hobbs: There is £14.5 million still to pay.

The Convener: So you have paid £82.5 million on the contract. I do not think that any member of the committee would feel that there was that level of work on the slipway when we went there. Hull 802 was nowhere near 78 per cent complete and there was not anywhere near the value of 78 per cent of the materials in the warehouses that we saw.

Kevin Hobbs: Your first comment is correct. Do we have £82.5 million-worth of value? Absolutely not. However, I go back to a comment that we made earlier on. Through the vesting process, all the equipment, bar some very small parts, is either on site or at Westway. That amounts to about £64 million overall. We are probably £2 million shy of that at the moment. That is what we have in materials—unmade and made—and machinery and equipment. That is all on site and accounted for. We know its value. We did not know the exact value until the business went into administration

and the turnaround director, Tim Hair, turned up. He has shared that with us.

The Convener: Tim Hair could not tell the committee what equipment was or was not in the shed. Are you saying that he has confirmed to you that you have that value of equipment in the shed?

Kevin Hobbs: That is correct.

The Convener: I do not understand that. Can Jim Anderson shed light on it?

Jim Anderson: I am sure that Tim Hair's procurement department will know exactly how much it has paid for all the equipment. I am sure that it has a bottom line on how much has been spent.

The Convener: So he knows exactly what is in the shed and how much has been paid for it. That is not the evidence that he gave us.

Jim Anderson: I do not know whether he knows exactly what is in there. On his sheet, it is probably not broken down into all the subcomponents, but there are major suppliers, and he will probably have all the high-line figures—the big numbers—for the Wärtsiläs, the MacGregors, the electrical parts, and the Kongsbergs.

The Convener: Okay. Earlier in the evidence session, you said that you started to have concerns about Ferguson Marine's ability to deliver the ferries in March 2016 and that you notified those concerns up the chain of command, through Transport Scotland. However, you still appear to have been making payments against the work that it was doing. Surely a sane person would have said, "I'm worried. I am not making any more payments until I know that what I am paying for is being built." Why did you make those payments?

11:30

Kevin Hobbs: Basically, we get completion certificates. We paid only for each completion certificate, which is the point of crystallisation. The completion certificates are given to us by the yard. Our people on site—Jim Anderson's team—effectively confirm that the milestone has been reached, and a payment is then made. If the milestone—

The Convener: Who makes the payment? I am sorry—I do not want to get bogged down in this; I want to ask a specific question. Jim Anderson's team signed off that work, whether that was completion of 35 per cent of fabrication or whatever the milestone was. Jim Anderson then passes the completion certificate to CMAL, and you hold sufficient funds to pay that money off.

Kevin Hobbs: Yes.

The Convener: So the funds are in your bank account. You do not have to go to anyone in the Scottish Government to draw down funds to make that payment.

Kevin Hobbs: I believe that that will be transparent to you when you get what you asked for last week. There is a completion certificate, Jim Anderson and his team sign it off, and it goes to our accounts team. The amount could be £1 million or £12 million. We hold enough money to pay that immediately—we try to pay everybody within 10 days of an invoice. When that happens, we draw down the voted loan, but we have enough money in the bank to make the payment immediately. The voted loan usually follows within five or six working days.

The Convener: Who signs off the voted loan?

Kevin Hobbs: The Government.

The Convener: So the Government would be aware that you were making those payments, and it would sign the money back to you so that you could continue to make the payments.

Kevin Hobbs: Absolutely.

The Convener: Despite the fact that, in March 2016, you alerted that there were problems with the shipyard and a delay to the contract, the Government was still signing off payments to the tune of £82 million against a £97 million contract. I find that really hard to believe. Perhaps you could explain to me why I should not.

Kevin Hobbs: Each certificate of completion relates directly to a milestone payment or one of the 15 dates on the cardinal date programme. If that has been reached, contractually we cannot refuse to pay. It is as simple as that.

The Convener: I am sorry, but you paid off £82 million of £97 million, but you did not have £82 million-worth of construction and parts in the yard. I do not understand that.

Kevin Hobbs: We should not be massively adrift at any point in time. If we had £64 million-worth of value in the vested equipment, we should have had £33 million-worth of labour. We now know that it has cost an awful lot more than that because of the inefficiencies of the yard. However, if you look at what we have floating and add that to the vested amount of money and what we have on the slipway, you will see that there is a gap in respect of the original contract price of £97 million that still holds for us. There is a gap of somewhere in the region of £5 million or £6 million. That is all.

The Convener: If the ferries are completed on time as per Tim Hair's suggestion, which requires another £110 million, you will have paid off £82 million and the Government has given a loan of £45 million so, all things being equal and running

at a fair wind, a £97 million contract is now about £250 million. Is that right?

Kevin Hobbs: The maths works out perfectly. However—I know that this is not the answer that you want—contractually, CMAL will pay £97 million for the vessels. That is what we signed up to. When the business was brought out of administration and turned into Ferguson Marine (Port Glasgow) Ltd, we got a novated contract, which means that we still pay £97 million. I am not completely foolish; I know that the Government loaned the business £45 million. We understand what Tim Hair says regarding the £110.3 million, including all the contingencies and so on. Therefore, if you add it all up, your numbers are not incorrect. Somebody has to pay for it, but CMAL is not going to.

The Convener: No, the Scottish taxpayers are going to pay for it.

Stewart Stevenson: I want to check aspects of the numbers. We have £64 million-worth of assets vested to us and £82.5 million has been put into the yard in relation to the contract. The difference between £64 million and £82.5 million is £18.5 million, and there is £15.5 million remaining under the contract.

Therefore, in relation to what the yard would, contractually, have expected to be paid for effort—as distinct from materials—you have paid for about 55 per cent of the effort that the contract provides for. That leaves aside the issue that we no longer think that that properly reflects the effort that would be required, because of how Ferguson is working. However, I just want to check that that is where we are. When the payments were signed off, they were largely signed off for assets that you would own, and you were signing off for effort that the yard had made to the extent of £17.5 million. I am asking only about arithmetic and not beyond that.

Kevin Hobbs: Your arithmetic is correct. Our assessment is that, yes, we have paid for 55 per cent and that, in terms of value, we have probably got 40 per cent. That is where the gap is—that is the risk gap.

Stewart Stevenson: That leaves me with a little problem. If you are saying that the 55 per cent actually represents 40 per cent, the unpaid-for future effort—the remaining 60 per cent—would constitute a figure of £28 million, as distinct from the £15.5 million that the contract would provide. Therefore, it should cost only an additional £13 or £14 million to complete the contract at the efficiency rate at which the yard has been working. I am a mathematician, and not necessarily a good arithmetician, so I might be getting the numbers wrong. However, the numbers that we are getting on what is needed to complete the contract are

entirely at variance with what I just articulated. Why?

Kevin Hobbs: Because the shipyard was hopelessly inefficient.

Stewart Stevenson: Yes, but you have given a measure of the inefficiency, which I accept is your, and not its, measure. You said that you have paid for—roughly, because these are rounded numbers—55 per cent of the effort, but that you got 40 per cent of the effort that you would expect; therefore, there is 60 per cent to come. You have paid £17.5 million for that 40 per cent; therefore, it is one and half times £17.5 million to get to 100 per cent, which is about £27 million to £28 million. However, adding that figure to the £97 million takes you only a very short distance towards the numbers that we are now being told are required to complete. It simply does not compute for me. To the extent that you can give me some help in understanding that, I would welcome your doing so.

Kevin Hobbs: We will write to you on that; it is probably easier to do that.

Colin Smyth: Although I appreciate that they are not your direct payments—they were Government loans—you have something to say about that issue in your written submission. The Scottish Government appointed Luke van Beek, and your submission to the committee states:

“Mr van Beek personally sanctioned the draw-down of £30 million public funds against designated progress events that were never fulfilled by the shipyard.”

It goes on to state:

“to this day, these activities remain unfinished.”

You are alleging that £30 million of payments were made for work that was never completed. That is a serious allegation to make.

Kevin Hobbs: It is 100 per cent correct. If you look at our written evidence, you see that part of the cardinal dates programme was rescheduled in 2018. That had a whole series of delivery dates against it, and not a single one of those was achieved.

Colin Smyth: Some £30 million-worth of taxpayers' money was paid for work that you set out in your evidence—on shore power supply tests and so on—that was never completed. Was that flagged up to Government?

Jim Anderson: Those refer to major activities. We do not know how that £30 million was spent. Activities were taking place in the yard and on the 801 and the 802, but those major activities were not done. It would be unfair to say that nothing was happening in the shipyard, but we do not know how that money was spent within the shipyard.

We were not privy to those reports—we also saw them only when they were uploaded. They reported that those major activities had been achieved. Quite frankly, I was gobsmacked when I read that.

Colin Smyth: To whom did you flag up your concerns that those payments were being made for work that you were aware was not being completed?

Jim Anderson: We were not involved in any of the payments. We had no sight of any payments whatsoever.

Kevin Hobbs: Let me clarify that people might be being a bit economical with the truth. Mr van Beek indicated that he was in constant contact with us. We met him twice. We met him on 24 September, which was an introductory meeting. We had no sight of anything that he was doing in the yard—full stop; end of story. We did not even know the frequency with which he was in the yard. We then met him on 21 January. In his submission, he claims that that was a bit of a fractious meeting. That is right: it was not a nasty meeting, but it was fractious. We started asking him questions such as the ones that have been raised today. We asked: “Look, where are you with the payment schedule?”, and he said, “I’ve been signing off payments”. However, there were no details around that, so we said, “Well, the metrics that we’ve got in front of us would indicate that nothing has been done.” His answer to that was, “Oh yes it has. I’ve been told by the people in the shipyard that it has been done,” and we turned round and said, “Well, I suggest you get your overalls on and get out there and have a look, because not a single one of them has been done.”

Colin Smyth: Scottish Government officials were in the room on 21 January when you say that Mr van Beek told you that all those activities had been completed and you said that they had not been. The Government was signing off £30 million of payments, and you were saying that the work had not been completed. What was the response of those officials?

Kevin Hobbs: They looked pretty shocked. You have to understand that the £45 million never came across our door. We did not even know that that loan was happening. We found out that the £30 million was being loaned to the business the day that Derek Mackay announced it, and we found out about the previous September’s loan of £15 million when it was exposed through a freedom of information request. There is a complete and utter Chinese wall between Transport Scotland and what is, effectively, the Scottish Government economy department. We did not know what was going on.

The Convener: We will have to leave that line of questioning there, as a lot of members want to ask questions.

Richard Lyle: I will finish off what was being asked about just then. Is it normal practice to pay invoices that you receive within 10 days?

Kevin Hobbs: That is our ambition. At the moment, I think that we are running at about 11 days. We pay promptly—that is something that we are proud of.

Richard Lyle: So, if you are sent an invoice saying that some work has been done, you simply pay the person.

Kevin Hobbs: No. As we said earlier, a certificate of completion is given to us. It is then verified by Jim Anderson’s vessels team. As the accountable officer to Parliament for CMAL, I would ask whether that work had been done. If Jim Anderson and his team say that the work has been done and that the milestone for payment has been reached, and we receive a certificate and an invoice, we would pay that invoice, without doubt.

Richard Lyle: What dialogue, if any, did you have with Transport Scotland, or any part of the Scottish Government, between submitting your recommendation of the preferred bid to Transport Scotland and Transport Scotland subsequently passing that recommendation to ministers on 20 August 2015? If there was such dialogue, what was the nature of it?

Kevin Hobbs: To my knowledge, we did not have any such dialogue. We made a recommendation, which was for Transport Scotland and ministers to accept or not accept. What I can say is that, after 28 August—leading up to 31 August, when the First Minister announced the preferred bidder—we did not sign a contract until 16 October. Quite a lot of discussion went on because, in relation to what had been promised in the tender submission—for example, the bank guarantees—FMEL had started to go back on its word. Obviously, we had to highlight that, and that partially relates to the letter from our chairman that was quoted earlier.

Basically, from the time when the preferred bidder was announced on 31 August—let us say, therefore, from 1 September—until 16 October, there was quite a lot of to-ing and fro-ing. In many respects, as an organisation, we are damned if we do and damned if we don’t.

11:45

Richard Lyle: Some people have suggested that it was done the other way around, but you are saying that, on 20 August, you recommended Ferguson’s, and that the Government made the announcement at the end of the month.

Kevin Hobbs: On 31 August, yes.

Richard Lyle: I will ask the question that everybody has been asking—there has been a lot of speculation around this matter, and I am sure that you will tell me exactly what happened.

Did the Scottish Government or Transport Scotland ever put any pressure—direct or indirect—on CMAL as a corporate entity, or on any individual associated with CMAL, to award the contract to any particular bidder?

Kevin Hobbs: No.

Richard Lyle: Can you repeat that? I am getting a wee bit deaf.

Kevin Hobbs: I can shout it louder, but the answer is no.

Richard Lyle: I want to make that point clear because people have come in here and suggested that everyone was palsy-walsy, to use the word that I used last week, and that behind-the-scenes deals were done. However, you are telling us that you looked at the contract and decided that, based on your expertise and history in the shipbuilding trade, the best company to get the contract was FMEL, and that it got the contract because of its price, its quality and its past reputation. Is that correct?

Kevin Hobbs: That is 100 per cent correct.

Richard Lyle: Thank you very much.

Maureen Watt: In paragraph 2.4 of your submission, you mention that Ferguson's had few naval architects of its own. The committee has heard that a major source of the problems with the project was the development of basic and detailed designs that happened after the production of the concept design that is set out in the contract documentation.

CMAL, as the contractor, had Houlder Ltd draw up a basic design on which you based the invitation to tender. Houlder went on to develop the designs further, working with you and with Ferguson's, which had been awarded the contract. Can you outline how that process works in practice?

Jim Anderson: At the start, before the pre-qualification questionnaire and ITT phase, we carry out work on feasibility. There is a lot of discussion about the concept design, the basic design and the detailed design, and we carry out a feasibility analysis. We consider what the requirements are for the new vessel and then engage with naval architects. In this case, another company was part of the pre-ITT stage.

The feasibility work that we carry out involves finding proof that the approach will work. That does not involve issues such as LNG; it is more to

do with questions about whether the ship will float, whether it will operate at 16.5 knots, whether it can carry a certain number of cars, whether it can carry all the dead weight that is involved with trucks and so on. We carry out work on those basic elements of naval architecture so that, when we ask the yard whether it can build a ship that can go at a certain speed and carry a certain amount of weight, we know that what we are asking for is feasible—we do not want to ask for something that is impossible to deliver.

When we set out our requirements, we produce a basic specification—it is not particularly thick; it is no more than a set of requirements. I would not describe the work that we did with Houlder as concept design; it concerned feasibility. When the shipyards submit their offers—in this case, we got seven—they all come back with concept designs, based on our statement of requirements and our guidance drawing. That guidance drawing is the starting point, which sets out what we think the passenger layout should be, but it is no more than a 2D drawing—we do not design the hull or the propulsion; we simply prove the concept.

At that point—this is the ITT stage—the shipyard shows its proof of concept. That is not just a drawing or a specification; it is everything—manoeuvring plots, stability, sea-keeping and all the other things that give us reassurance that the yard knows how to build the ship.

Those are the stages of the process. I might have forgotten what the exact question was.

Maureen Watt: We would like you to give us an idea of how it works. Houlder and others did what you required of them, to your satisfaction, and then Ferguson's, with Houlder and others, took it to a further stage. At no point was Houlder, or anybody else, not doing what it was contracted to do.

Jim Anderson: Not from our point of view, no.

Kevin Hobbs: How a ship is designed depends on the shipyard. Some shipyards have a big team embedded in the yard. They are employees, and they do the detailed design. That is what happens at Flensburger, for example. Other shipyards subcontract the design, and that is what happened at Ferguson's. There is no right or wrong way, provided that, irrespective of whether you subcontract it out or have people in your own yard, you manage the people successfully. We knew that Ferguson's did not have a big team. We knew that it would use a third party, and it used Houlder and Vera Navis.

Maureen Watt: Did you agree to Ferguson Marine starting construction of the vessels before the basic and detailed designs were substantially complete?

Kevin Hobbs: No.

Maureen Watt: Did the contract allow you to take any action to halt or slow construction until the designs were signed off?

Kevin Hobbs: No.

Maureen Watt: You said earlier that drawings that had not been cleared as fit for purpose or complete were put out to the yard so that the workers could get on with the job. Why was that?

Jim Anderson: We are mainly talking about structural drawings and steel works. There are other systems in a ship, but this is primarily about steel work. The drawings have to be approved by the classification society. It looks at things such as the thickness of the plates—whether those should be 10 or 12mm thick, for example.

The yard decided to build at risk. That is not as catastrophic as everybody may be thinking. We are talking about certain areas. It was not as though Ferguson had to rebuild the hulls. The steel work was not scrapped.

However, this is not just about steelwork. Ferguson did not take care of all the other activities that should have gone along with the steelwork: the pre-outfitting and getting all the pumps in. It was just chasing steel.

Maureen Watt: Chasing steel?

Jim Anderson: Getting some steel work done.

Maureen Watt: We now know that some of the steel was not strong enough to hold the bow doors. We know that the capstans were not strong enough to hold the vessel at port.

Jim Anderson: We reported that. We wrote to the yard. The classification society wrote to the yard.

Maureen Watt: Given that you were making payments, why was Ferguson doing that?

Jim Anderson: Some of the payments were for steel work. I do not know what the figure would be, but we are not talking about the whole ship or saying that 100 per cent of the steel work was not correct. Our payments were mainly for equipment, and for what we took title of.

Maureen Watt: Is Ferguson not paid according to the dead weight that is added?

Jim Anderson: We find out what the dead weight is at a later stage, once the ship is designed and built.

Kevin Hobbs: It is worth exploring the chronology of what happens in a normal shipyard. In a 30-month build programme for example, a normal shipyard would spend a year designing the ship to the nth degree. During that period, it would

share those designs with us as the owners, with class, and with flag, which is the Maritime and Coastguard Agency. That is the normal process.

The shipyard then knows that everything is covered, and it gets going. That is not the methodology that Ferguson's took. Jim Anderson has mentioned building at risk. Ferguson's were designing as it went along. It was sending drawings on to the shipyard floor for construction without sign-off by us or by Lloyd's. That is a major part of the failure.

Effectively, it was building at risk. That means that the blocks, and ultimately the vessel, have many mistakes that have to be rectified. If a yard has to undo work it has already done and do it again, the efficiency of the yard goes down.

That probably explains £45 million of the lost money. For every hour's worth of work that you expect, you can be getting 15 minutes, at which point your labour charges are four times what they should be.

Maureen Watt: Ferguson's said that you required changes at virtually every single stage, but you were just trying to rectify faults that—

Kevin Hobbs: No, we were not.

Maureen Watt: You said that things were going out that were not classified.

Kevin Hobbs: That is not our responsibility.

Maureen Watt: Okay. So will you explain why Ferguson's said that about you?

Kevin Hobbs: Very simply, it is because it is not being truthful.

The contract has something called a change management process, which should highlight every single change, and it does so. Jim Anderson probably has the list of changes, which we can share with you. There were 111 changes, 30 of which were never progressed—we discussed them and decided that it was not worth looking at them. Of the rest, 46 were prompted by Ferguson's and 35 were prompted by us.

The net effect of all that was that we had to pay Ferguson's an extra £1.55 million across the two ships, which was 1.6 per cent of the contract value. Our normal contingency is about 3 per cent—for example, that was the case with the Loch Seaforth and the Finlaggan. Therefore, the number of changes that we asked for and discussed formally with the yard throughout the contract was probably at about half the rate that we would normally expect. What Ferguson's was describing was therefore its own mistakes. That is the issue.

Jim Anderson: I would describe the changes that the yard has talked about as iterations of the

drawings and design development. That is normal and routine. When you start designing and building a ship, you start with a blank piece of paper. When you issue the first drawing, you do not have all the information at that stage. It is not just about steelwork; it is about everything else that makes the ship, such as pipework, electrical systems and insulation. The design will go through various iterations and there will be thousands of drawings.

Actually, the yard had a reasonable quality control system with regard to the revisions to its drawings. In any good-quality system, you will see the revisions and any changes. We should remember that we are talking about changes on the drawing, not changes on the ship. That is where the changes were. Does it not strike members as a bit strange that the yard did not mention those changes until July 2017? The contract is clear: clause 24 allows the yard to ask us for more money with regard to any changes. Do members think that the yard was so naive that it did not think about that? The changes that we are talking about all relate to items in 2016. I attended every single one of the project meetings with the yard's team and at not one of them did the senior people suggest anything about changes or interference.

Mike Rumbles: I want to come in on the back of Maureen Watt's question about Houlder. As we discussed earlier, you involved Houlder in designing the tender, and Ferguson's was chosen because it used Houlder to design its system. You said that that was normal. Did any of the other bidders use Houlder, or was it just Ferguson's?

Jim Anderson: I do not think that any of the other bidders used Houlder.

Mike Rumbles: But you said that it is quite normal to use Houlder.

Jim Anderson: Yes, it is quite normal.

Mike Rumbles: But Ferguson's was the only one to use it.

Jim Anderson: It was the only one.

Mike Rumbles: So it is not that normal to use Houlder then.

Jim Anderson: It can be quite normal. Remember that the various shipyards all have their own way of doing business.

Angus MacDonald: I want to stay with the development of the vessel design. One of the key issues that FMEL raised in evidence was the level of changes that were made to the design, which we have rehearsed. In effect, FMEL and CMAL have blamed each other for the number and complexity of design changes that were required. CMAL and the former management of FMEL have

presented entirely different accounts of the number, importance and impact of changes that were made to the design of the two ferries. You referred to this earlier, but can you provide any evidence to support your version of events?

Kevin Hobbs: Yes. We have already said that we would share with the committee the change order process, which includes the 111 changes and all the details around them. Jim Anderson has that information with him.

Jim Anderson: I have Ferguson's control document for all the changes. It is not our document; it is the agreed document that registers every change that has been raised.

12:00

The Convener: If you could send that electronically to the clerks after the meeting, that would be useful. It can then be circulated.

Angus MacDonald: Indeed. That would be very helpful.

In your written evidence, you stated:

"Ferguson had, possibly from the outset, underestimated the task entrusted to them."

What assurance can you offer the committee that CMAL did not underestimate the complexity of delivering the vessels, notwithstanding your earlier comment that the original plan was not to build hulls 801 and 802 at the same time?

Jim Anderson: I am sorry, but would you repeat the question?

Angus MacDonald: You stated in your written evidence:

"Ferguson had, possibly from the outset, underestimated the task entrusted to them."

We are looking for an assurance from you that CMAL did not underestimate the complexity of delivering the vessels.

Jim Anderson: The vessels are routine ferries and are no different from any other ferries that we have in the fleet. The piping for the gas is probably the main difference. The bid was put together by a yard that had built such ferries before, and it knew what it takes. We were assured that the yard would be able to design and build the ships.

Rachael Hamilton: I want to ask about the change order process and the 111 changes. Did that have to be signed off by CMAL?

Jim Anderson: It had to be signed off by both parties.

Rachael Hamilton: So it had to be signed off by both Ferguson's and CMAL. Did the Scottish ministers have any input into that?

Jim Anderson: No. Those are routine matters.

Rachael Hamilton: I might be going over old ground, but I am new to the committee, so I need to get the facts established. Did the 111 changes come with a price tag?

Jim Anderson: Yes.

Rachael Hamilton: What was that price tag?

Kevin Hobbs: £1.55 million.

Rachael Hamilton: At the time, Derek Mackay would have known that the changes were going to be accepted.

Kevin Hobbs: I am not 100 per cent sure. In the voted loan, there is a contingency of 3 per cent. I very much doubt that that level of detail and granularity would have got to ministers.

On the way that the change order process works, Ferguson's might have said that it did not think that something was needed, and we might have agreed or disagreed. Equally, we might have said—Jim Anderson can give a couple of examples of this—that we would have liked something extra. That would usually come at a cost and with a time penalty. As it happens, there were no time penalties, but changes came at a cost. The costs of all the 81 changes—to repeat, 46 were Ferguson's and 35 were ours—accumulated at £1.55 million across the two ships. Ordinarily, we would expect the cost of changes to run at around 3 per cent of the voted loan.

The ministers would not have had that level of detail. The only time that we would flag up such additional costs would be if we were asking them to increase the voted loan. All of a sudden, the changes in cost became 6, 7, 8, 9 and 10 per cent.

The Convener: I know that Jim Anderson is itching to give us an example. It may have to wait until we get the control document, because there are a lot of questions and I do not want to impinge on other committee members.

Emma Harper: I have a couple of questions about how the relationship between CMAL and Ferguson's broke down. I raised that issue last week because there seems to have been a bit of he said, she said. We took various examples from the evidence that we have had so far.

In your submission, you said:

"We strongly refute the assertion by Mr McColl to the Committee that CMAL refused to engage with a mediation process or to negotiate mediation terms."

What do you think happened to the relationship? Why did it break down to the extent that it did? What lessons have been learned from that?

Kevin Hobbs: We do not believe that the relationship broke down to the extent that is claimed.

There were two levels of engagement. First, there were weekly and monthly meetings in the yard with its senior management team, which Jim Anderson attended. Those meetings carried on without fault up until the middle of August 2019, when the yard went into administration. There was no problem there whatsoever.

Secondly, I used to regularly meet the first managing director, and I then regularly met the second managing director, or chief executive officer, who gave evidence to the committee a few weeks ago. We kept on meeting regularly but, around the time of Easter 2017, that changed and things became a little bit difficult and fractious. Jim and I were dragged into the war room and read the riot act by the owner of the business, who said, "You keep saying that we are not performing, but we are performing and we guarantee you that we will deliver the ships in May and July 2018." We said, "In our professional opinion, bearing in mind that we have been around shipyards for years and years, there is no chance of that." We were dismissed and marched out of the office.

That is absolutely fine but, to fast forward a couple of months to 7 July, the claim for £17,535,950—to be exact—was suddenly handed across the table and we were told, "That is what you owe us." As members can imagine, our reaction was absolute horror, because everything was fine up until that point and there was nothing in the change order process that indicated that there was a problem. However, all of a sudden, there was a major problem.

We are professionals, we have legal advisers and we deal with civil engineering and shipbuilding contracts in our organisation. With that quantum of claim, we moved into a pre-litigation phase at that point. When parties are in a pre-litigation phase, it is not that they do not talk to each another; they follow up conversations with letters. I believe that the team from Ferguson's that was here giving evidence a couple of weeks ago also said that. I think that it said something like, "Kevin is quite nice face to face, but we did not like the way that he wrote to us." However, the way in which we wrote to Ferguson's had to be legalistic, because the claim of £17,535,950 had changed to £28.4 million by August, and it changed to £66 million by 20 December 2018.

In the terms of the contract, there are three mechanisms: mediation, expert determination and court—the Court of Session in Scotland. The claim went from £17 million to £28 million to £66 million, and £66 million took us only to the end of August 2018. Our projection at that stage was that the claim could be double that number by the end of

the contract. We said to the shipyard, “If you believe this, please take us to court.” We almost pleaded with it to take us to court.

The interesting thing is that the shipyard gave verbal evidence to the committee and sent it a huge package of documents from a company called HKA. The documents cost £650,000 to create, which was probably £650,000 that it did not have. Where did that end up?

Up until the point of administration, we said again and again, “If you believe that you have a valid claim, please take us to court,” but Ferguson’s never did. Clyde Blowers Capital/FMEL is probably one of the most sophisticated companies in Scotland, but it never took us to court. In effect, we rebutted the claim completely. I am prepared to use these words: that whole claim was a work of fiction. We had our own professional feelings about it, and we were advised by legal advisers and a senior Queen’s counsel in Scotland. We even went to people in London to ask whether we had got it wrong. The answer was, “No, you haven’t. There is no claim.” Despite asking the shipyard repeatedly to take us to court, it never did. Why not? That is because it knew that the claim had no validity either technically or in contractual law—end of story.

Peter Chapman: I want to follow up on the issue of the breakdown in relationships. We heard that it got so bad that CMAL and FMEL could not sit in the same room together, although you have said that it might not have been quite that bad.

We also heard evidence to the effect that Jim McColl wanted to get ministers involved in helping the negotiation procedure to carry on, and the minister was told that, if he put pressure on the CMAL board to go into mediation, there was a threat that the whole board would resign en masse. Is that correct?

Kevin Hobbs: That is completely untrue. We do not know what was said between the owner of Clyde Blowers Capital and the minister. We were not there; we have no way of knowing. I am a board member, as is Jim. We have four executive board members and four non-executive board members, including our chairman.

That absolutely did not happen. There was never any discussion about mass resignations. There was no such discussion because, as a board, we were very clear that we cannot be given a direction by the Scottish Government to do things that we do not want to do—and which, by the way, are illegal. We are the custodians of public money. As we said in our submission, we cannot make ex gratia payments or give gifts. Therefore, given that we were told professionally by our legal advisers and by a QC—and we knew from our own knowledge of the contracts—that

nothing was due, we were not going to give Ferguson’s a penny. Over my dead body. That would not happen on my watch—full stop.

Peter Chapman: You were the chairman of the board during that period—

Kevin Hobbs: No. I am not the chairman—I am the chief executive.

Peter Chapman: I am sorry—that was my mistake. As chief executive during that period, you can categorically state that no threat was made that the board would resign.

Kevin Hobbs: Absolutely not. No such threat was ever made.

The Convener: I will leave that there, because you have made that clear twice.

John Finnie: I have a question about the use of public money, which we are all concerned about. Mr McColl—who, I understand, is not resident in Scotland and is not a taxpayer here—was very concerned about the use of Scottish taxpayers’ money.

When you were summoned to the war office—

Kevin Hobbs: The war room.

John Finnie: I think that you said that you were “dragged into” it; I was trying to play it down a bit.

Richard Lyle: He said “war room”.

John Finnie: Yes—sorry. When you were summoned to the war room, Mr McColl was there.

Kevin Hobbs: Correct.

John Finnie: You described the claim as a work of fiction. Was Mr McColl the author of that fiction?

Kevin Hobbs: A professional company was brought in by Ferguson’s way after that meeting—we do not quite know when. We ended up with the full claim for £66 million. It was delivered as a Christmas present on 20 December—the day we were all breaking up. That claim was created by a professional company and it was paid for by Ferguson Marine. You can make your own judgment about that.

The Convener: I would be interested to know on what date the meeting in the war room took place.

Kevin Hobbs: It took place just before Easter, in April 2017.

Jim Anderson: It might have been March—we can double-check that.

John Finnie: I am particularly interested in the role that Mr McColl might have played in the lead-up to that. Did he have much direct personal involvement?

Kevin Hobbs: No—none whatsoever.

Emma Harper: I have a quick supplementary. Ministers are not expert shipbuilders, so they need to engage with the likes of CMAL and FMEL and look at how they conduct business. The experts need to talk to experts, so good relationships are key. What changes have been made to ensure that strong and steady relationships are maintained and that we have the experts building ships together, ministers doing what ministers do and shipbuilders doing what shipbuilders do?

Kevin Hobbs: It is fairly clear what has happened. The business went into administration. It has come out of administration and has changed its name to Ferguson Marine (Port Glasgow) Ltd. In effect, it is now owned by the Scottish ministers. CMAL is owned by the Scottish ministers and CalMac is owned by the Scottish ministers, through David MacBrayne Ltd. We are working together extremely closely to ensure that the 801 and the 802 are delivered.

I must make it clear that we did not order the ships speculatively—they were ordered for a reason. We have burned the midnight oil and had sleepless nights, long hours and a lot of grief, but we are not upset because of that; we are upset because the communities in question have been let down.

The two ships should be operating on the high seas now and we should be building more ships, because more ships are required, but that simply has not happened. Who does that affect? It probably affects us personally, because it is not very nice being under the cosh and appearing before the committee. However, that is absolutely irrelevant. It directly affects the people in those communities, whether they live on the mainland or on the islands. It also affects CalMac, because CalMac has two ships that are still operating that should not be operating. Before anybody says it, that is not a safety issue—if there were any safety issues, a ship would not be operating. However, two brand spanking new ships should have been trading for almost two years and they have not been. That is a huge disappointment to us. We wanted, and we contracted, two new ships. We will be the owner of those ships, but we are not the builder. We have been let down very badly, as has everybody in the chain.

The Convener: I am going to start being quite bossy. As convener, I try not to be, but we are running short of time.

Kevin Hobbs: That is fine.

The Convener: Other members of the committee want to get in, and I want to allow Stuart McMillan and Dean Lockhart to ask some questions. I thank Emma Harper for her questions and apologise for cutting her short.

Stewart Stevenson: I want to find out a bit more about the process of trying to mediate—I use that as a generic rather than a legal term. In section 9 of your submission, you say that the preferred candidate was not immediately available. I am interested to know why that was. More to the point, you go on to say:

“The process did not continue ... because Ferguson were unable to express legal reasons for payment to them beyond ‘unforeseen complexity’.”

We have covered that at considerable length, so I do not want to reopen that discussion, but did mediation not proceed because the mediator you wanted was not available, or is the ultimate reason the fact that there was no proper basis for mediation—in other words, it was a matter not for mediation but for the courts?

Kevin Hobbs: I have answered that previously. Very briefly, on the issue of mediation, expert determination and courts, our view was that the quantum was large. We engaged with mediation. Only one mediator was put forward. That was the responsibility of Ferguson’s. The person who was chosen was the only one with any shipbuilding experience. In our professional view, you cannot be a mediator on a subject that you know nothing about. That person was not available.

However, when it comes to—

Stewart Stevenson: Before you go on, was the mediator put forward by the shipyard?

Kevin Hobbs: Yes, and we had to agree it.

Stewart Stevenson: Right. To be blunt, that is all I need to say on that.

My other question is a tiny supplementary on issues that we have already covered. I will simplify what is in front of me. Was there any occasion on which there were circumstances that, under the contract, could have led to termination of the contract but you chose not to proceed down that road?

Kevin Hobbs: Yes, there was. There are clauses in the contract under which, if the ships are not delivered on time, we could get to a stage at which we could terminate the contract. At the time—hindsight is always a wonderful thing—our professional view was that, after speaking to the shipyard, it would be better from the point of view of timescale to carry on with that shipyard than to start all over again with another shipyard.

Stewart Stevenson: That is fine. Thank you.

Richard Lyle: I will ask my questions in reverse order. To my mind, we now have the perfect cluster: the Government, CalMac, CMAL and FMEL. Ferguson Marine is now owned by the Scottish Government. How will that impact on the future procurement of new vessels by CMAL?

Now that we are out of the European Union, we are not governed by EU rules, which people wanted to get out of, so let us use the fact that we are out of the EU and award contracts on that basis.

What is the future of Ferguson's?

Kevin Hobbs: I will park the future of Ferguson's for a minute. The issue of procurement has not gone away. We have to stick to procurement rules. Those rules, as well as the laws of Scotland and the UK that relate to European rules, have not been rescinded.

Richard Lyle: I will stop you there. You are not under World Trade Organization rules. You are under EU rules. Am I right?

Kevin Hobbs: Yes. As things stand today, unless it is proved otherwise, we will have to go out to tender in the same way that we have always done, and we will not discount anybody who wants to bid for our ships in future. Ferguson's can bid along with everybody else. That is what the law of the land currently says.

Richard Lyle: Okay. I just wanted to test you on that.

Vessels 801 and 802 represent the first of a number of standard large ferries for the Clyde and Hebrides fleet. I think that, earlier, my colleague Peter Chapman called them cruise ships. Should we not be looking at a new plan to build ferries that suit individual ports or individual runs, rather than building cruise ships?

Kevin Hobbs: For a start, we do not believe that we are building cruise ships. That view was expressed by other people. That is point number 1.

Point number 2 is that, in future, we will, where possible, make sure that we do not build identical ships but, when it comes to the way that the bridge is laid out, the equipment and the inventory that we need—the engines and all the rest of it—we will make those things as common as possible. There is a diverse range of routes. The Colintrave to Rhubodach service is at sea for three minutes, whereas the Oban to Castlebay service is at sea for five and a half hours, so the vessels cannot be identical. However, the theme that we will run from this point onwards is that we will use as much commonality as we can.

The Convener: Angus MacDonald has some questions.

Angus MacDonald: We know that the new vessels are late and over budget. You mentioned the new ferry plan for Islay. First, has the Islay ferry contract been awarded? Secondly, what changes have you made to procurement and project management processes in order to ensure

that the situation that we are discussing never happens again?

Kevin Hobbs: Jim Anderson is running that contract, so I will pass that question to him.

The Convener: Jim, the answer to that question might be long, but I encourage you not to make it too long.

Jim Anderson: Okay. Our processes are robust—there is no doubt about that. We always look to improve as we go along, but we have had success with the hybrid ferries and with the Finlaggan and the Loch Seaforth, and my core team go back to the Hebrides and the Clansman. We have a good history and things are robust, but we will always look to make improvements.

Angus MacDonald: You mentioned the Hebrides. I was on that ship recently and I was glad to see that it is still going strong. It is certainly an extremely good ferry and I look forward to the Hebrides-plus coming along.

We have discussed the EU briefly. Given that we have left or are leaving the EU, and that CMAL was created to facilitate competitive tendering as required by EU law, do you agree—I ask you to look at this objectively—that there might be a strong argument for winding up CMAL and going back to the pre-CMAL set-up?

Kevin Hobbs: Fairly obviously, we would not agree with that. We have a specialist team based in Port Glasgow who are experts in their field. We deal with vessels, shoreside infrastructure and maintenance of shoreside infrastructure. Those people have many years of experience and we are an expert procuring authority. Regardless of whether the organisation is called CMAL, that work will need to be done, for sure. If CMAL was not there, the work would have to be done by somebody else, and the type of expertise that we have does not grow on trees. We have good people who work long hours and have been under immense pressure.

To put it simply, our view is that CMAL remains fit for purpose. We have a dedicated team of people who work extremely hard to produce results, and we generally produce results. What we are discussing today is a complete anomaly in what we ordinarily do. We spend tens of millions of pounds per year and, broadly, what we do is on time and on budget. This contract is not on time or on budget—we all know that—but in CMAL's history since 2006, this is the first time that we have had such a problem, which is a result of mismanagement at the shipyard, not of us mismanaging our business.

The Convener: Stuart McMillan has a couple of questions.

Stuart McMillan: Thank you, convener. My first question is about the workforce at the yard. You have mentioned your history with the yard and the vessels that have been built there. Do you have confidence in the workforce?

Jim Anderson: Absolutely. It is a skilled workforce; the workers just need the information to do their job. It is that straightforward. Even though a lot of the steelwork was done at risk, we can say that, in the main, the quality of the welding in the steelwork is excellent; my steelwork site supervisor would say the same. There has been a lot of talk about the condition of the ships and how they look like rusting hulks, but that is just a matter of paintwork and coatings, which will be attended to. It is just a case of blast and paint. The boats are not rusting.

The quality of the workforce is fantastic. All that is needed is the right leadership. It can be done.

Stuart McMillan: Earlier in the inquiry, the committee was told that the way forward would have been to have had a different format of ship and to have had four smaller ships built in the far east and brought over. If that were to have happened, what would have happened to Ferguson's and its workforce?

Jim Anderson: I suspect that Ferguson's would have closed.

Kevin Hobbs: It is pure speculation, but I think that it is fair to say that there would not be a Ferguson's there today. It has to bid for work. Although it can bid for any work that is available worldwide, we cannot really say whether it would win it. It is difficult to believe that the business would have survived.

Stuart McMillan: In your submission, you highlight the issue of the staged payments that were requested by Ferguson's. Was that partly because the yard was going to be rebuilt while the vessels were being constructed?

Kevin Hobbs: Yes, that is partially the case. There are two parts to the issue. As I have said, smoothing the cash flow was not a problem to us as long as the overall cost did not change. Jim has mentioned that it would take 27 months to build the vessels; an extra four months was allowed in recognition of the fact that Ferguson's had an investment plan that might take some areas out of operation. We were very attuned to that.

Stuart McMillan: You have been very complimentary about the workforce. Throughout this contract or previous contracts, have you at any time had any concerns about what the workforce has done or the final product?

Jim Anderson: No. The shipyard has a first-class history in building not just ferries but a diverse range of vessels. That is how this country,

the UK or even Europe can compete against the far east. Building vessels of that type, which are not just tankers—empty spaces—takes great skill, but it takes great leadership as well.

The Convener: Dean Lockhart has a couple of questions.

Dean Lockhart (Mid Scotland and Fife) (Con): I will keep this brief. You have said that Ferguson Marine was in material breach of its contractual obligations. Under Scots law, that would usually allow you to withhold payments under the contract, regardless of completion certificates. Given that the contract was clearly broken, why did CMAL continue to make payments under the contract?

Kevin Hobbs: We have not made any payments to the yard for well over a year—in effect, we have not been paying it. That is not a result of any legal position that we wanted to take; it is simply that the yard has not reached any more milestones, because of a decrease in the amount of resource applied on the ships. We would probably have expected 250 to 300 people to be working on our ships; during the course of 2019, between the two ships, we rarely saw more than 20 people working on them. That was the reality. We did not look at the situation from a legal perspective, but we have not paid any money because the yard has not reached any more milestones.

12:30

Dean Lockhart: Right. I do not have the exact dates, but concerns over the contract and potential breaches came up very early in the process, and even after those concerns were recognised, payments were still made by CMAL.

Kevin Hobbs: Correct.

Dean Lockhart: Why was that? Did you take legal advice on whether you were legally compelled to make those payments?

Kevin Hobbs: Yes, we did, and our lawyers advised us that we had to make the payments. That was in the contract and we did not want to be in a position where we broke the contract.

Dean Lockhart: You mentioned that you were hoping that Ferguson Marine would take you to court. If Ferguson Marine was in fundamental breach of contract, why did CMAL not initiate litigation under the terms of the contract? Were you ever told by Transport Scotland or any ministers not to initiate litigation?

Kevin Hobbs: No. We were never given any instructions. As I said earlier, our articles of association state that we cannot be given instructions, so the answer is no—we were never told that.

I could give you a very long answer, but I know that I would get told off—the convener is not listening, so that is good.

Dean Lockhart: You mentioned earlier—

The Convener: This is your last question. I want to give you and Stuart McMillan parity in the number of questions that you ask.

Dean Lockhart: It is good when the convener is not listening.

You have years of experience. Normally, would a fundamental breach of contract not result in litigation, especially if you are still paying under a contract that is fundamentally broken?

Kevin Hobbs: No, not under normal circumstances. There has been mention of scrapping the ships and so on. We took what we considered was a pragmatic view that if we were to just stop the project and start all over again, instead of having ships delivered as per the programme review board, they would probably be delivered two years later than the board has indicated.

At that point in time, we had a lot of soul searching and a lot of late nights but, in reality, we want these ships to be completed, and completing them will be a better, more timely process than starting all over again.

The Convener: Dean, I am sorry, but I will stop you there—you will probably take it out on me later—because you have had the same number of questions as Stuart McMillan, and I think that that is fair. I have a final question for the witnesses before I thank them for coming here today.

From the calculations that we have made this morning, a contract of £97 million is probably going to cost £250 million to deliver. On the issue of blame, you have said that the workforce takes none because it is excellent; we saw the standard of the workforce. You have blamed a lot of the situation on Ferguson Marine's management. Do you think that CMAL has any blame in this at all? A one-word answer is fine.

Kevin Hobbs: No.

Jim Anderson: No.

The Convener: Thank you. On that note, I thank you both for coming along and giving us such detailed evidence. It has been extremely useful to the committee.

12:33

Meeting continued in private until 12:55.

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