



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 26 August 2020

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 26 August 2020

CONTENTS

	Col.
INTERESTS.....	1
AGRICULTURE BILL.....	2
CONSTRUCTION AND PROCUREMENT OF FERRY VESSELS.....	12

RURAL ECONOMY AND CONNECTIVITY COMMITTEE

18th 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)

*Emma Harper (South Scotland) (SNP)

*Richard Lyle (Uddingston and Bellshill) (SNP)

*Angus MacDonald (Falkirk East) (SNP)

Oliver Mundell (Dumfriesshire) (Con)

Mike Rumbles (North East Scotland) (LD)

*Colin Smyth (South Scotland) (Lab)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr George Burgess (Scottish Government)

Fergus Ewing (Cabinet Secretary for Rural Economy and Tourism)

Tim Hair (Ferguson Marine (Port Glasgow) Ltd)

Fiona Hyslop (Cabinet Secretary for Economy, Fair Work and Culture)

Stuart McMillan (Greenock and Inverclyde) (SNP)

Fran Pacitti (Scottish Government)

Dermot Rhatigan (Scottish Government)

Graham Simpson (Central Scotland) (Con)

Paul Wheelhouse (Minister for Energy, Connectivity and the Islands)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 26 August 2020

[The Convener opened the meeting at 08:30]

Interests

The Convener (Edward Mountain): Welcome to the 18th meeting in 2020 of the Rural Economy and Connectivity Committee. This is our first hybrid meeting—some members are in committee room 1 and others are attending remotely. We have received apologies from Mike Rumbles and from our new member, Oliver Mundell.

Agenda item 1 is a declaration of interests. We have a new committee substitute, Graham Simpson, who is attending as a substitute for Oliver Mundell. I welcome Graham and ask him whether he has any interests that he wishes to declare.

Graham Simpson (Central Scotland) (Con): I have no interests to declare.

The Convener: Thank you.

Agriculture Bill

08:31

The Convener: Under agenda item 2, we will take evidence on the Agriculture Bill, which is United Kingdom Parliament legislation, specifically in relation to legislative consent memorandum LCM-S5-38a. I welcome the witnesses, who are giving evidence remotely. Fergus Ewing is the Cabinet Secretary for Rural Economy and Tourism, and George Burgess is deputy director of food and drink for the Scottish Government.

Before we move on, I ask whether any members wish to declare an interest. I will start. I have an interest in a farming partnership.

Peter Chapman (North East Scotland) (Con): Likewise, I declare an interest in a farming business in Aberdeenshire.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am the owner of a very small registered agricultural holding, but I derive no income from it.

The Convener: I ask the cabinet secretary to provide a short opening statement of up to three minutes.

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): Good morning. Thank you for the opportunity to appear before the committee today. I am to give evidence on the supplementary legislative consent memorandum on the UK Agriculture Bill.

On 13 May, I gave evidence to the committee on the initial legislative consent memorandum for the bill, which was lodged on 4 May 2020. The initial memorandum identified a number of provisions contained in the UK Agriculture Bill that alter the executive competence of the Scottish ministers, that fall within the legislative competence of the Scottish Parliament and for which the Scottish Government recommended consent. Provisions relating to food security, fertilisers and the red meat levy were consented to because they appropriately respected devolution and, in the case of the red meat levy, had been promoted by the Scottish Government.

The initial memorandum confirmed that the Scottish Government could not, at that point, recommend consent for provisions relating to organic products and the identification and traceability of animals, and that we would pursue further discussions with the UK Government there anent. Scottish Government officials have worked hard with their counterparts in the Department for Environment, Food and Rural Affairs. Following that work, the addition of statutory consent locks to the provisions on organic products and the

identification and traceability of animals means that the Scottish Government is now in a position to recommend that the Scottish Parliament grant consent to those provisions. I am pleased that that good work has taken place between officials and ministers.

However, the committee should note that the Scottish Government is not content with three parts of the bill: the provisions relating to the World Trade Organization, fair dealing in the supply chain and producer organisations. Although the UK Government has tabled amendments to the WTO provisions in the bill, the Scottish Government's intention remains to recommend that Parliament withhold consent to the amended provisions. The UK amendments remove clauses 42(4) and 42(5), which would have allowed the secretary of state to impose requirements on the Scottish ministers to provide information. Those were the provisions that the UK Government conceded required the consent of the Scottish Parliament.

Although the Scottish Government is content with the amendment to clause 42, it does not affect the need for the Scottish Parliament's consent to part 6 of the bill as a whole. As no further amendments to that part of the bill have been proposed, the Scottish Government's position remains unchanged. The draft LCM set out in our supplementary memorandum clearly identifies the specific provisions that the Scottish Parliament is being asked to consent to, and it confirms that we are not consenting to the whole bill. I felt it useful to outline those facts for your benefit, convener, and for the benefit of members.

Given the limited time available, I will conclude my remarks there. My senior official, George Burgess, and I are happy to take questions from members.

The Convener: Thank you, cabinet secretary. Quite a lot of members want to ask questions. We will start with Peter Chapman.

Peter Chapman: Cabinet secretary, as you rightly said in your introduction, one of the previous issues of contention was livestock traceability. I am interested to see how traceability systems will work in practice and whether the new livestock information service and any border that is established under clause 32, with the consent of the Scottish ministers, will be practically co-ordinated with the existing ScotEID system that is in place. It is very important that any system here is compatible with systems across the UK, so I am keen that that is thought about as we go forward.

Fergus Ewing: Each livestock system in the UK will work independently and will gather cattle identification, registration and movement data in its area, as well as the movement data of other

livestock species such as sheep, goats and pigs. It is expected that the systems will exchange data electronically when an animal or animals move across a border—for example, from Scotland to Wales. For cattle, the data would include the animal's full history: its date of birth, the identity of the mother and the identity of the sire—the father—along with every holding that the animal was moved to in Scotland. As Mr Chapman says, and as we know from past experience, that information is necessary to prevent disease or, if disease occurs, to be able to deal with it effectively and trace where animals have been throughout their whole lives.

It is absolutely essential that the systems, albeit different in each devolved Administration, speak to one another and exchange information. I am satisfied that they do, and I hope that that answer is satisfactory to Mr Chapman.

The Convener: We will move on to the next question, from Angus MacDonald.

Angus MacDonald (Falkirk East) (SNP): With regard to the WTO agreement on agriculture, and further to your reference to it in your opening remarks, will you update the committee on discussions between the UK and Scottish Governments on the provisions regarding the WTO agreement on agriculture and on whether the Scottish Government feels that the provisions as drafted will directly or indirectly affect Scottish competence in agricultural policy?

Fergus Ewing: It has been a long-running show. I am mindful of the fact that I have discussed those matters in person with both Michael Gove and George Eustice over a number of years. The Agriculture Bill has quite a long provenance, and it was clear from the outset that the WTO rules were a sticking point. Initially, we argued that the way in which they were originally drafted in the Agriculture Bill impinged on devolution. Mr Gove resisted that argument, but I am pleased to say that common sense prevailed and it has been accepted that one part of the WTO provisions in the bill did impinge on devolution. That part has been corrected, and I welcome that. However, as I pointed out in my introduction, some clauses still allow the UK secretary of state to carve up the UK's allowance of overall financial support for farmers—for farming support and rural policy—under the WTO agreements without the need for the agreement of the devolved Administrations.

During the Brexit referendum campaign, pledges were made that, post-Brexit, the total sum of support to rural Scotland and rural Britain would be at least matched. However, the WTO provision, at least in theory, gives the UK Government unilateral power, without consulting the Scottish Parliament at all, despite the fact that farming has

been a devolved policy for 21 years, from the outset of devolution. The provision drives a coach and horses through that. It is somewhat worrying and very disappointing that, having gone so far as to admit that it was wrong initially, the UK Government has not gone further to respect the Scottish Parliament and devolution.

Angus MacDonald: That is, indeed, disappointing.

The Convener: Cabinet secretary, can you clarify a point that you made about the funding being matched? Were you expecting it to be matched for the length of that parliamentary session or for ever?

Fergus Ewing: Those statements were made by Michael Gove and George Eustice in the course of the referendum campaign, and the promises were not restricted in any way or time; they were open ended. People were asked to vote in the referendum on European Union membership on the basis of pledges that, if Brexit happened, the UK Government would provide at least the same level of support for rural Britain in perpetuity.

I am not saying that the UK Government will necessarily depart from that pledge but that the provision gives the UK Government the power to exercise WTO powers without reference to us, if it so chooses.

The UK Government has clearly said that it wants to scrap the basic payments by 2027. That means a radical departure whereby the direct income support payments that were enjoyed by farmers and crofters in Scotland could be at an end, and the UK Government has not said what would replace direct basic payments.

Bear in mind the fact that, without the basic payment and other payments that they get, most farms and crofts in Scotland would make a loss. A majority of farmers and crofters in Scotland rely on that money to survive; I think that it is nearly two thirds of them, although I can check that. The issue could not be more serious, because it goes to the heart of the future funding for the poor in Scotland and Britain.

The Convener: Thank you for clarifying that, cabinet secretary. I note that, at the same time as that process is going on, an EU review of farm payments will be carrying on in the background, so EU payments might be cut as well.

Colin Smyth (South Scotland) (Lab): Good morning, cabinet secretary. I am looking for an update on where we are with the development of common frameworks and the working arrangements on the clauses in the bill that apply to areas that are reserved to Scotland, such as organics, animal health and fertilisers. I am also

looking for an update on an issue that you have talked about already—agricultural support and how the changes in the UK bill will impact on Scotland, what that will mean for agricultural support in Scotland and the policy direction that we are likely to take. Obviously, there is still a lack of detail on that.

Fergus Ewing: On the contrary, “Stability and Simplicity: proposals for a rural funding transition period” gives more clarity in Scotland than anywhere else in the UK—up to 2024. I have made that point before, so I will not labour it. In legislative terms, organics policy is mostly devolved, although an agreement has existed that allows the secretary of state to act on a UK-wide basis as the competent authority on organics with the consent of the devolved Administrations—that is the key point and the concession that we won. Of course, it is a point of principle for us.

The framework is a mechanism to manage future UK-wide organics policy and sets out joint decision-making mechanisms between DEFRA and the devolved Administrations. Our officials, led by Mr Burgess, will complete a light-touch review to allow the framework to move into phase 3, which will allow for further policy development specifically regarding the internal market and the Northern Irish protocol, as well as stakeholder consultation and parliamentary scrutiny.

On animal health and welfare, it is the intention that the framework will respect devolution while being able to manage any divergence that might impact on the internal market. The framework will also allow for a dispute mechanism when no agreement can be reached between the Administrations. Those are positive developments.

08:45

The third part of Mr Smyth’s question was about financial support. The bill does not prescribe financial support, and, as I understand it, that is not the purpose of the bill. The UK Government will make executive decisions on those matters. In my answer to a previous question, I explained the risk that exists in theory. I will not overstate the risk, because it might not happen in practice, but it could. As I understand it, the bill does not provide clarity about how money will be deployed in the future, post-Brexit; it is designed to set out a framework and legal mechanisms to deal with all the various matters.

The Convener: I would normally go to Emma Harper next, but Stewart Stevenson has asked to come in on the back of Colin Smyth’s questions.

Stewart Stevenson: I am looking for a brief answer or a long written response. Is what the cabinet secretary has described the common framework that covers the agriculture policy area?

We now understand that, as we leave the EU, common frameworks will not necessarily have a big badge on the front saying that they are the common frameworks in different policy areas. Is other work still to be done to develop a common framework on agriculture?

Fergus Ewing: I will ask George Burgess to answer the technical flavour of that question. Mr Stevenson is always ready to surprise us, and he has not let me down this morning. Suffice it to say that, as you would expect, the work on the frameworks is at a fairly early stage, because we have not passed the bill that would formally create the mechanism. The horse should come before the cart, and the cart has not left the shed. I ask George Burgess to add to that.

The Convener: If George Burgess wants to help the cabinet secretary with Mr Stevenson's ambush question, he should go for it, but I ask him to keep his answer short, please.

Dr George Burgess (Scottish Government): I think that the suggestion of a long written answer is a very good one. I will give a brief—[Inaudible.] There is a mixture. As the cabinet secretary has said, work is on-going on frameworks on organics, animal health and welfare and fertilisers. That work is fairly well advanced.

In relation to the WTO agreement on agriculture and the limit that that imposes on agriculture support, the UK Agriculture Bill and the regulations that will be made under the bill are a statutory framework. There will be associated agreements between the Administrations on the administrative practices with which we will support that. I understand that DEFRA has been working on a draft, but we are yet to see it. Despite the difference of view on the WTO clauses, we have nevertheless been working hard and closely with DEFRA and the other devolved Administrations. As a result, we are getting the draft regulations into a rather better space than they might otherwise have been in.

The Convener: I think that your answer has just excused you from providing the long written answer that Stewart Stevenson suggested.

Emma Harper (South Scotland) (SNP): Cabinet secretary, you commented on fair-dealing obligations and producer organisations in your opening remarks. Are discussions on those issues continuing with the UK Government? Where do you want the provisions on producer organisations and fair-dealing obligations to end up? I am sure that we need to ensure that the Scottish Parliament consents to those processes, rather than their being imposed on us.

Fergus Ewing: We simply want to have the same principle enshrined in relation to fair dealing and POs as has been enshrined in relation to

organics, animal health and welfare and other issues—namely, that nothing will happen without the consent of the Scottish Parliament. That is the golden thread that runs through all these discussions. It is a matter of principle.

I think that this supplementary LCM shows that the two Administrations have worked constructively, ministerially and with officials. We have made progress, thanks to a lot of elbow grease, but we have not quite got there. I am a bit baffled about why not. I have perfectly amicable exchanges with Michael Gove and George Eustice, so it is baffling why the UK Government will not go the extra mile to deal with these matters.

Producer organisations have been devolved for 21 years. I think that their role in how we support future rural development will be key, not least because they can bring together services for farmers, such as provision of machinery; provision of labour; Ringlink, which is a great scheme that provides training, and one that would not happen without the involvement of producer organisations; and getting a better deal for farmers for their grain, which happens with Highland Grain, for example. Producer organisations are absolutely at the heart of future policy, not least with regard to how we support farming financially as a whole. Therefore, this is an issue that could be of practical importance.

The answer is yes, we are still working with the UK. I can say to Emma Harper that we are still trying to persuade them. As an optimist, I hope that we will succeed. However, for the moment, we have not succeeded.

I very much welcome the opportunity to highlight these issues this morning.

Richard Lyle (Uddingston and Bellshill) (SNP): Does the Scottish Government see a risk of a race to the bottom in agriculture as a result of the UK Government's proposals for an internal market?

Fergus Ewing: There is a risk to the protections that are afforded to consumers and the general public in relation to, for example, high-quality food produce, the humane way in which animals farm animals are cared for and for how abattoirs are regulated. Those high standards exist for a purpose, and it is increasingly important to consumers that those standards are maintained.

There are concerns about the diminution of those standards leading to unfortunate results, and we are worried that the UK will perhaps engage in trade deals that might jeopardise those high standards, particularly in respect of various aspects relating to farming in the Americas, and the importation of cheap meat that does not meet the high standards that we have here.

It is no exaggeration to say that we are not discussing a theoretical issue. Increasingly, the farming community is apprehensive—at least, and very worried, in some cases—about what might happen with regard to the undermining of the commercial market. Of course, the cost of meeting those high standards means that there are higher unit costs here than might be applicable in various other countries. This is not a matter for textbook debate; it is very much a practical concern, and I think that Mr Lyle is quite right to raise it.

Graham Simpson: I have a brief question. I have been listening with great interest to what you have said. Is there still time left to sort out your disagreements with the UK Government?

Fergus Ewing: The answer to that question depends on the parliamentary procedure in Westminster, but I think that the answer is yes. If it is not, George Burgess should contradict me right now. However, I think that it is not too late to sort this out. The bill has not completed its passage through Westminster. Simple changes are all that is required. I understand—although I have not researched this—that there is still time to correct those issues before the completion of the passage of the bill. If I have got that completely wrong, George Burgess will come to my rescue—not for the first time.

The Convener: It does not sound like you need rescuing, cabinet secretary, unless George Burgess wants to come in.

Graham Simpson: It would be useful if we could have the answer on that point.

Dr Burgess: I will be brief. The bill has completed the committee stage at the House of Lords, so it has two more amending stages: the report stage and the third reading in the House of Lords. There are still opportunities for the bill to be amended. The Scottish Government has already prepared the necessary amendments—they were published at an earlier stage. It would be a relatively easy exercise to take those off the shelf and lodge them as amendments at the next stages of the bill.

Emma Harper: The cabinet secretary talked about US food standards. I know that there is a difference between production and processing and that the US has started to deregulate meat processing. The US also has a higher use of antibiotics, which can lead to antimicrobial resistance, and uses hormones in rearing its beef and pigs. I am interested in promoting standards and protecting the provenance of Scottish products. In the UK internal market proposals, does Scotland have a say in the future trade deals or negotiations? Do we have the ability to say what we want?

Fergus Ewing: We can make representations, but we are not in the room and we are not involved in the discussions. The UK has been very bullish—particularly in my exchanges with Michael Gove and George Eustice—about those matters. We do not really have a voice in those issues. Emma Harper is articulating the concern felt by many that things will be done to us and without our consent. That is a real risk.

It is important to put on record that, during our fairly amicable conversations, Michael Gove, when asked by me whether the UK would legislate in the Agriculture Bill to prevent our standards being undermined by any trade deals and whether it would require, for example, any imported meat suppliers to demonstrate by provision of evidence that the meat had been produced in accordance with standards that are at least equivalent to those applicable in the UK, he said, “We won’t do it in the Ag Bill, but we will do it in the Trade Bill.”

Michael Gove stated categorically in the formal meetings of the interministerial group that I attended that he would prevent such a scenario from arising by law, through the UK Government introducing a trade bill to ensure that there would be no undermining and to guarantee equivalence. As far as I know, convener, that promise has not been implemented as yet—as far as I understand it, there is no intention to implement it.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Emma Harper mentioned the possibility of a lowering of standards in relation to US trade. We are led to believe that the EU is sticking strictly to the principle that standards must continue to be met when trading with the EU. From your contacts with the EU, are you concerned that the EU might reduce that, or will standards continue to be strict in relation to EU trade?

09:00

Fergus Ewing: I am not a constitutional legal expert and I cannot say that I have studied the matter closely, but I understand that the EU will insist that there will be no importation of produce from the UK unless it meets EU standards. In other words, the EU will insist on equivalence to its standards, which are the ones that we presently support and implement. Therefore, were we to go down the route of deregulation, in theory, it could jeopardise the export markets to the EU.

As members will know, the export markets to the EU for farming are critical. A substantial proportion of lamb exports go to France, for example. We are worried that no deal at the end of the transition period will lead to the imposition of tariffs of 40 or 50 per cent on lamb. The UK has promised that a compensation scheme will be

prepared. I raised that issue at the previous two IMGs. I hope that the Treasury will sign up to that, as Michael Gove promised that it would.

The risk that Maureen Watt identifies is real and she is right to raise the matter. It is another question in the Brexit debate to which there has been no answer as yet from the UK Government. It would be helpful, for the sake of farming across the UK, if that particular matter were clarified.

The Convener: Thank you, cabinet secretary. Before we move on, I record the committee's thanks to the Delegated Powers and Law Reform Committee for producing its report so quickly after its consideration of the LCM yesterday. Its report was circulated to members late last night. It is always helpful to have the DPLR Committee's comments in advance of our meeting, and I want to acknowledge the work of the committee and its clerks in ensuring that we had that information.

Are members content to recommend in the committee's report that the Parliament agrees to the draft motion set out in the LCM?

Members indicated agreement.

The Convener: There are one or two questions that still remain unanswered. I suggest that, as with previous LCMs, the clerks submit those questions to the cabinet secretary so that we can get the answers on record. Is the committee content with that approach?

Members indicated agreement.

The Convener: I thank the cabinet secretary and George Burgess for attending the meeting.

09:02

Meeting suspended.

09:04

On resuming—

Construction and Procurement of Ferry Vessels

The Convener: Item 3 is to take evidence for our inquiry on the construction and procurement of ferry vessels. This is our last scheduled evidence session, and we have two panels with Scottish Government ministers.

I welcome the first panel, which comprises Paul Wheelhouse, the Minister for Energy, Connectivity and the Islands, and Fran Pacitti, the director of aviation, maritime, freight, canals and digital connectivity, Scottish Government. That is a long title.

I also welcome Stuart McMillan, who is joining the meeting remotely. Richard Lyle is connected remotely, too.

Do you want to make a short opening statement, minister?

The Minister for Energy, Connectivity and the Islands (Paul Wheelhouse): Yes, thank you, convener. Good morning to colleagues here and online. I welcome the opportunity to address the committee in my capacity as Minister for Energy, Connectivity and the Islands.

Since August 2018, following the allocation of portfolio responsibilities, I have assumed responsibility for ferries policy and, in that capacity, I reiterate the Scottish Government's commitment to our lifeline ferries and the many communities that they serve. I am proud of the ferry services that operators deliver to support and develop our island communities, and I am proud of the staff and crews who deliver them. Their work was brought into sharp focus in the response to the Covid pandemic, with crews and staff connecting and protecting island communities. They have been doing an excellent job in handling enormous pressures.

Scotland's ferries are playing a pivotal role in supporting the easing of lockdown and the economic recovery. We will continue to work with local authorities to balance the requirements of restarting tourism and reviving the islands' economies with the need to act safely to protect the health of our island communities and ensure provision for key workers to access key services on the mainland, and for health services and social contacts, for example, to be maintained.

My colleagues and I fully support this inquiry and are keen to ensure that we present the facts to the committee. We share the committee's ambition to identify and address current and future challenges and opportunities in the procurement

and operation of vessels in order to support Scotland's ferries network and to ensure that future arrangements are optimised as we seek to modernise the fleet.

The committee has heard a range of complex evidence and views throughout its inquiry. In order to collate and, in some cases, correct inaccuracies in what has been put forward, we have submitted a detailed written statement for your consideration. I appreciate that you may not have had the chance to consider that statement fully, but I am happy to clarify any of it, and I hope that the statement and my evidence today are of assistance to the committee and to Parliament as a whole.

I welcome the opportunity to engage with the inquiry and will answer any questions that the committee may want to raise in relation to ferries procurement or policy, including the vessel replacement and deployment plan and our work to update the ferries plan through our proposed islands connectivity plan.

The Convener: Are you happy that all the costs relating to the ferries were identified in yesterday's statement?

Paul Wheelhouse: I am certainly happy that the statement that Fiona Hyslop gave to Parliament yesterday set out our latest understanding of the delivery timetable and the revised costings for both ferries. Fortunately, there is no increase in the costs for their delivery, but there are additional costs of just over £3 million that Ferguson Marine has faced as a result of the Covid pandemic. Ferguson's turnaround director, Tim Hair, has indicated that the cost to complete the vessels remains in the range of £110.3 million to £114.3 million.

If there are additional questions about that, I am happy to try to answer them, but I think that yesterday's statement set out very well the latest position.

The Convener: You said that there has been no increase in costs. When the committee started its inquiry, we were looking at costs of around £97 million. So far, we have spent £82 million on payments to the contractor, £110 million on extra costs and £90 million on infrastructure costs, which takes us to £282 million. In addition, we have made loans of £45 million, and extra costs of £3.3 million were highlighted yesterday. By my swift mathematics, that takes us up to £330 million-odd. That is slightly different to the original cost estimate of £97 million, is it not?

Paul Wheelhouse: I think that we have to be clear about the position, convener. I appreciate that you are trying to get to the truth and present an accurate picture to Parliament, which I very much respect. However, it would be wrong to conflate, for example, the infrastructure costs and

the costs of the vessels. The vessels still have a fixed price of £97 million, with the £1.5 million of contractual variations that have been agreed between Caledonian Maritime Assets Ltd and Ferguson Marine (Port Glasgow) Ltd. That is the revised cost of £98.5 million that CMAL will pay for the two vessels.

You are correct, convener that, as was announced yesterday by Fiona Hyslop and previously by Mr Mackay, based on the analysis that Tim Hair and the team at Ferguson Marine (Port Glasgow) made, we anticipate a £110 million to £114 million additional cost to complete the vessels.

However, the infrastructure itself should be borne in mind. Harbours such as Ardrossan, Brodick, Tarbert, Uig and so on have facilities that are, in many cases, either life expired, or are approaching being life expired. For example, Ardrossan harbour has a difficult approach and it is in poor condition, but CMAL does not own that harbour.

Lots of these facilities would have faced additional costs irrespective of whether we commissioned the two new vessels 801 and 802. That is important. I therefore urge the committee not to consider the costs that would have been required for the renewal of harbour infrastructure as being linked to the ferries. Vessels 801 and 802 can fit into Ardrossan as things stand; that has already been verified. The upgrade to Ardrossan harbour is to improve the facility, the passenger experience, and the approach to the harbour, and it would have had to happen anyway.

The Convener: The figure of £90 million that I have was supplied by the Scottish Parliament information centre, and it was for improvements to the harbour facility to allow the bigger boats 801 and 802 to enter. I will double check that with SPICe.

Paul Wheelhouse: It is really important for me to make the point that we do not require to enlarge the harbour to allow vessels 801 and 802 to enter. My understanding is that both vessels can fit in to the Arran berth as it stands.

The Convener: But they cannot berth.

Paul Wheelhouse: However, as the communities that are served by that service know to their cost, we need to upgrade those facilities. The Ardrossan task force, in engagement with North Ayrshire Council and Peel Port, is trying to take that forward.

The Convener: Just finally on costs, before I bring in some other members, I thank you for the detailed update report that has been submitted to the committee. I always look at the paragraph headed "Risks". Risk 9 says that the

"Vessel cannot meet contract deadweight".

Are there costs involved in that?

More concerning, minister, is something that I do not doubt that you will have picked up immediately and worked out potential cost implications for. Risk 10 says:

"Hull vibration analysis indicates that there may be an inherent design problem",

which might mean that the ferries need to go back to be rebuilt. Do you have a cost for that? As the report was issued some time ago, I assume that you will have seen it and you will have asked your officials to put a price on that, if it is what it says it is.

Paul Wheelhouse: That goes to the heart of the work of International Contract Engineering, the contractors, and their design team employed by Tim Hair and the turnaround team at Ferguson's. They have been going through the stages that should have been completed by now in terms of reaching a detailed and finalised design for the vessel. We are really encouraged by the work that has been going on during the Covid pandemic. As Ms Hyslop outlined yesterday, a considerable amount of work has been done in people's homes and remotely in Romania where the ICE team is located. They were not affected in the same way as we were here by some of the changes that we have had to make to working practice.

They have been trying to get through from the concept to a basic design and then ultimately the finalised design to minimise exactly those risks. All vessels go through sea trials to explore whether there are any mechanical issues that were not picked up during the design stage; that is what sea trials ultimately try to do. They are also for making sure that those issues are addressed before the vessel goes into service.

If I may, convener, I will ask my colleague Fran Pacitti to talk about where the liability lies for faults that were discovered at that stage, and who would be responsible for fixing them. Given that it is flagged up in the top 10 risks that Mr Hair and his team have identified, I am sure that it is heartening that it has been thought of and addressed in the design changes that the team is making.

The Convener: Fran Pacitti, do you have a value for the potential cost of this significant problem that has been identified?

Fran Pacitti (Scottish Government): I would defer on the detail of that to Tim Hair, to whom you will speak later today. You will wish to correct this with Mr Hair, but my understanding is that these risks have each been assessed in terms of the probability of their arising and their financial impact in the event that they do. The report highlights a range of costs of between £110 million and £114

million, and my understanding is that the risks are reflected within that range.

09:15

The Convener: So, the £110 million, which might go up to £114 million—which might go up a bit more yet—covers the potential risk to the hull. The committee was not given that information earlier; we were told that the figure that was given was the cost of finishing the vessel. The risk that you mention is a new one, which I have never seen mentioned in any of the papers that we have received previously.

Fran Pacitti: The risk register will be kept under review. I am not surprised that it has been updated, as the team at Ferguson's have been able to spend more time and investigate more thoroughly conditions at the yard and the condition of the vessel, which was taken into dry dock this month. My understanding is that each of those risks are known and quantified, and they are reflected in the range of costs that have been presented.

The Convener: So there will be no extra costs if the hull is faulty.

Paul Wheelhouse: There is still £5.5 million of contingency remaining in the figures that Fran Pacitti and I have quoted this morning, so there is still scope for additional costs to be absorbed up to that amount without additional funding being required. Obviously, if the additional costs were to exceed that figure, we would be in new territory. It is normal, for project management purposes, to have a contingency in a complex design project such as this one to allow for any additional costs.

In respect of the 10 risks that have been identified, that point might be best addressed—as Fran Pacitti said—to Mr Hair himself. That list has changed from the previous list, and items have dropped out, so it may well be that a particular risk has been identified all along but this is the first time that it has appeared in the top 10 list. Other risks may have dropped out of the list as they have been addressed by Tim Hair and the team at Ferguson Marine (Port Glasgow) Ltd.

The Convener: John Finnie wants to come in, followed by Graham Simpson.

John Finnie (Highlands and Islands) (Green): Thank you, convener—my question relates to your exchange with the minister about the harbour design.

I know that you want to be upbeat, minister, and I am very supportive of the workforce at Ferguson's; they are doing a very fine job. The "however" in all this is that we have been here before with ferry and harbour design. I am thinking, for example, of the upgrade at Ullapool. If

we are going forward, we need to understand that the ferry design in itself is not the only factor. In the case of the Ullapool link, local communities were ignored in relation to the crossing to Lewis, and a vessel that many thought was unsuitable subsequently required significant upgrades.

How does this all come together going forward? How do we ensure that the infrastructure that supports ferry movement is factored in? Paragraph 2.6 of the update report states:

"Previous procurement systems were exceptionally weak and contained inappropriate controls".

I know that that may relate to the specific design of the vessels, but we cannot do things in isolation—we would not build roads that cars could not drive on. There must be a relationship, and I want to understand who is actually in control. The system seems very fragmented: there is the operator, CMAL, Transport Scotland and Scottish ministers. Who is in charge?

Paul Wheelhouse: Mr Finnie is absolutely correct to identify that that is an issue. Although we have confidence in the system, it is clear that, as far as communities and wider stakeholders are concerned, there is a lack—or an apparent lack—of accountability in the process. We are very conscious of that—it is one of our takeaways from this exercise.

I appreciate that Mr Finnie may not have had a chance to see our written statement, in which we reference some of the actions that we are taking forward as a result of the committee's inquiry. Those will include a review of the tripartite arrangement between CMAL, CalMac Ferries and Transport Scotland/Scottish ministers, to try to ensure that we look at how the governance is arranged. That will have a bearing on procurement.

We are obviously keen to hear the committee's thoughts on that before we take action. We are not prejudging what the outcome will look like; we will be interested in the findings of the committee's inquiry, and your work in listening to all stakeholders will help to inform our work. Nonetheless, we recognise that there is an issue, in that there is at the very least a perception that something needs to change around accountability and transparency.

As we indicated in the written statement, we are also looking at how we engage with the communities that we serve through the ferry committees and various stakeholder groups, including the CalMac community board. We will review that engagement and ensure that we continue to engage in the most effective way possible.

There are some issues about the design of both vessels and infrastructure. We want to take the views of the communities that we serve, plus that of CalMac as the operator—or NorthLink Ferries, if it came to it.

One of the things that is harder to get across is the fact that vessels 801 and 802, for example, will have a wider role within the network. We are trying to improve the resilience of the network as a whole, which means that the vessels are not tailored specifically to the communities that they serve but are tailored in a way that provides a wider role. A community might question why it needs a vessel with a capacity of up to 1,000 passengers, but that is to give us the maximum flexibility that we need so as to ensure resilience in the fleet.

I fully accept that we have a resilience issue in the fleet at the moment. We are desperate to get vessels 801 and 802 in place, and that is one of the reasons why we have supported Ferguson's, to ensure that those vessels are delivered.

The Convener: Graham Simpson wishes to come in; I will then move to the next questions, from Angus MacDonald.

Graham Simpson: This question follows on from the mention of Ardrrossan and the work that is required there. You are familiar with the issues there, minister, particularly in bad weather. Have you considered alternatives to Ardrrossan, such as Troon, which may be a better port to use? Have you looked at other options?

Paul Wheelhouse: It has been suggested, including by your colleague, John Scott, that Troon would be an alternative to Ardrrossan. In his capacity, championing his local area, I am not surprised that he has done that.

We have made a commitment to the communities on Arran and in North Ayrshire that we will stick with Ardrrossan. The task force that is considering the infrastructure requirements at Ardrrossan is well developed. Things are taking longer than anyone would like. The harbour is not owned by the Scottish ministers—it is owned by Peel Ports, and North Ayrshire Council has a key role. We have made a commitment through the task force to use Ardrrossan for the long term.

There may be a role for Troon during the construction period, as we have been exploring during the development of the plans for Ardrrossan. For those who are not familiar with Ardrrossan, there are two berths there: the Arran berth and the Irish berth. The Irish berth is not set up for the prevailing wind conditions that occur at Ardrrossan. As I have said, Ardrrossan is a difficult harbour on its approach at the best of times—and that is with the Arran berth, which is set up for the prevailing wind conditions.

During the construction period, when a pretty invasive exercise will be going on in the Arran berth, moving a lot of earth to create a more open and accessible harbour, the Irish berth will be relied upon. That may not be a fully reliable solution if the weather conditions work against it. Troon would be the obvious place to establish as an alternate during bad weather, and we have had discussions with Associated British Ports, the operator of Troon, to do that. It will involve considerable effort to ensure that Troon is an accessible option for passengers arriving by foot to use the ferry at Ardrossan, so that they have access to the ferry at Troon if required during bad weather. However, we are not planning to use Troon in the longer term as the main port to access Arran. It may have a role in future as a refuge port, and that is something that we will discuss with the operator.

The Convener: Minister, could I ask you to look in my direction occasionally, please, so that I can keep things moving along among committee members. There are a lot of questions, as you can imagine.

Paul Wheelhouse: Apologies, convener.

Angus MacDonald: Good morning, minister and Ms Pacitti. First, I thank you and your officials for the detailed written submission to which you referred in your opening remarks. It is very helpful.

Regarding the procurement process, could you provide a brief chronology of ministerial involvement in the specification of the new ferries and the procurement exercise, highlighting, in particular, which decisions were taken by ministers?

Paul Wheelhouse: Thank you for your kind remarks about the written statement. I appreciate that it is a lot of material for the committee to read, but I hope that it is of assistance. Fran Pacitti and the team of officials also hope that it addresses a lot of the questions that the committee has raised.

As regards the chronology of ministerial involvement, we have proactively published everything that we have been aware of from December onwards, and we continue to do so.

Ministers were aware of all the key decisions on the specification and procurement of vessels 801 and 802, and CalMac had its role in informing that prior to the tender being issued. Ministers were aware of the award of the two shipbuilding contracts to CMAL and Ferguson Marine Engineering Ltd and approved their funding by way of a voted loan through Transport Scotland on behalf of the Scottish ministers.

Ministers were informed of progress on the vessels throughout the period of the contract and received quarterly reports from CMAL on its

perception of progress, as Ms Hyslop mentioned yesterday in the chamber. Given that the voted loan had been given through Transport Scotland to CMAL to fund the project, there was a requirement for quarterly reports to ministers. Those helped to inform ministers of progress—and of problems as they arose.

Copies of relevant submissions containing advice to ministers have been published on our website, and key decision points have been highlighted in the written submission that we have provided for the committee. We tried to draw the attention of the committee to the key points—as we see them—of the process, and to the points at which ministers were involved. However, if the committee finds any gaps in that information and wants to address them, please come back to us. I hope that that is helpful.

Angus MacDonald: It is, thanks. We will certainly come back to you, if required.

You mentioned a review of the tripartite arrangements. It is probably fair to say—although I do not want to put words into your mouth—that the tripartite arrangements are not fit for purpose, given your earlier statement. Is there still a need for CMAL?

Paul Wheelhouse: I am keen to emphasise that we have confidence in the procurement process. That is irrespective of the fact that the committee and wider stakeholders have huge concerns about how the outturn—the delivery of the ferries—has appeared, because that goes without saying. However, as I said earlier, I fully acknowledge that the perception among the communities that we serve and stakeholders—including Parliament—is that that confidence is not shared. Therefore, we have a responsibility to look at the tripartite arrangement as it stands and see whether it should continue to be our approach and whether there are things that we can improve on.

I should say that all parties to that, including the Scottish ministers and our officials, are collaborating very positively. CMAL is engaging in the process, as is CalMac. I hope that we can have a good look at the arrangement and take on board any points and detail that the committee offers from your perceptions of how it works. Recommendations from the committee will be taken very seriously. I do not want to give any impression that we think that there is something fundamentally wrong. However, we recognise the need to try and address the concerns of stakeholders and ensure that we are not ignoring those concerns. The review might reveal things that we want to fix ourselves, but I would rather not prejudge it, if that is okay with Mr MacDonald and the committee. We will keep the committee posted on any progress in that area.

Peter Chapman: There is a feeling on the islands that the needs and wishes of the people there are being ignored in this process. We heard from many groups that the preferred option of the islanders was for two smaller vessels, which would have given increased capacity, flexibility and frequency for less cost. It would also have meant that the huge upgrading costs to the various ports did not need to happen. However, that option was totally and utterly ignored in the process. I wonder why.

Paul Wheelhouse: I fully accept that that is Mr Chapman's perception. The committee has spoken to a lot of witnesses, and it is clear that members are reporting back to us what they have said. It is a concern to us that people have that perception. The last thing I want is for communities to feel that they have been ignored in the process.

We are looking, through the vessel replacement and deployment plan, which we are developing, and our future islands connectivity plan, to try and engage better with ferry users, and with operators, because they have a key role in this too. I hope that we can address the concerns about how it all works through the tripartite arrangements review that we discussed. We are already taking on board some of the messages that have come out, through the inquiry and before it, about how we engage with ferry committees and local stakeholders in developing our plans for vessels.

09:30

For example, as Ms Hyslop indicated yesterday in the Parliament, we hope to put out the tender for the future Islay vessel in the first quarter of next year, and we have been very keen to engage with communities on that. Unfortunately, because of Covid-19, a public stakeholder event was delayed, but I think that it will happen in the near future. Through that, we will revisit the community and make sure that it is up to speed on what we are trying to do with regard to the vessel.

Can we do better? I imagine that, as with most things in life, we could improve on what we are doing. I am not blind to the fact that there have been criticisms. We take on board the community's concerns.

As I said to Mr Finnie, we have to bear in mind—especially if we are trying to build resilience into the fleet—that vessels cannot be designed and built for just one port and one harbour. We have to have vessels that are deployable to create resilience in the network. That means that a vessel might not be designed and tailor made for an individual community but will be able to accommodate the needs of that community and,

potentially, other communities. We will continue to take that view.

Stewart Stevenson: I want to explore how we arrived at the decisions about who should get the work, under the headings of the capability and track record of the bidders and the planned approach that they might take, and then I want to consider whether changes to how we do things are needed.

I do so from the point of view of someone who—I think it is fair to say—has extensive project management experience. I did a quick tot-up over the weekend, and I have been responsible for projects worth several hundred million pounds. My first multimillion-pound project was 40 years ago, and after my first retirement I lectured postgraduate students on project management. That is the context and experience that I bring to my questions.

When you looked at the bidders for the new ferries, to what extent did their financial situations play a role? To what extent were you satisfied that they had looked at the experience of other manufacturers around the world who had built hybrid ferries? It is not brand-new technology. To what extent did you explore the project-management approach that bidders were going to take? I have a pretty strong view that project management was one of the primary issues to cause us problems, although it was not the only issue.

Paul Wheelhouse: One of the most important questions, in addressing the concerns of the committee and some of the stakeholders who have given evidence to you, as far as I can see, is about the process. How did we get to where we were?

I would like to say a couple of things about that. Mr Stevenson is right to raise the issue, and I respect his experience in managing projects in both the public and private sectors in the past.

It is important to stress that the Scottish ministers were not involved in the evaluation of bids that were submitted to CMAL, because CMAL is the procuring authority. CMAL obviously assessed the tenders that were returned, which included considering evidence of the experience, expertise and financial and physical capacity of the bidders to deliver at the time of the contract award. CMAL's chief executive, Kevin Hobbs, has given evidence to the inquiry on that issue.

I stress that what is quite important about Ferguson, which we sometimes forget in the context of the recent difficulties, is that, of the 33 vessels that are in use in the network today—admittedly, all of them are pre-2000—11 were fabricated by Ferguson in Port Glasgow. Of the 10

major vessels that are now in the network, five were built by Ferguson.

Although it did not build any ferries for our networks between 2000 and now, MV Hebrides, MV Isle of Arran, MV Isle of Lewis, MV Isle of Mull and MV Lord of the Isles—five of our major vessels—were built by Ferguson. Therefore, it had a track record. As Ms Hyslop said yesterday, the skills of the workforce are well recognised and have never been in doubt. I hope that the committee can take some confidence from that.

As we set out in the written submission, the Scottish Government's procurement directorate undertook a focused review of CMAL's procurement process for both vessels in May 2018. Alongside other papers, the findings of the review were published on the Government's website in 2019. The review concluded that there was no evidence of

"any problems or areas of concern arising from the procurement process".

As one of the ministers involved, I am comfortable that the procurement exercise was conducted appropriately. As we say in the submission:

"The Scottish Ministers have confidence in CMAL's competence as a procurement authority and are satisfied that the processes adopted in the procurement of vessels 801 and 802 was robust."

As I said to other members, I recognise that that is not the perception of the wider community, which is something that we have to address in the review of the tripartite arrangements that I have discussed; we have to make sure that that feeds through to any recommendations about how procurement is managed in future.

I hope that that addresses Mr Stevenson's question about my confidence in the process. As I understand it, the procurement directorate's review of the process found that adequate account had been taken of the factors that Mr Stevenson listed—the experience, track record and financial viability of the business—before the contract was awarded.

Stewart Stevenson: I will push a bit more on one aspect. Clearly, we could see that there were project management issues. There was no Gantt chart. Henry Gantt, who produced the Gantt chart, died more than 100 years ago—it is not new technology. There was no work breakdown structure and no change register. Those are basics of project management for even quite small projects, far less big ones such as this.

Did CMAL perhaps not have the necessary focus on processes that would have seen whether the contractor was making the required progress, or have the objective recording systems that would

have enabled it to extract information ad lib from those processes? The biggest contract that I have ever signed had 3,500 pages. Contracts always say that there needs to be a specific identified project management system through which everyone can see what is going on. Are there remaining issues in that area, and can we learn from the project management failures of the project and apply the lessons to future projects?

Paul Wheelhouse: In responding to that question, I have to acknowledge that clearly there have been project management issues throughout the delivery of the vessels. That is obvious to all of us in this meeting. Mr Stevenson is right to indicate some of the areas in which there have been concerns.

With regard to CMAL's involvement, I stress that—as Fiona Hyslop indicated yesterday—through the quarterly reporting process, and from as early as February 2016, CMAL had been raising its concerns about the assurances around delivery timescales that it was getting from the contractor, and about those timescales being met in practice. Ministers were first made aware of the emerging difficulties through CMALs' reporting under the requirements of the voted loan. At that point, as I understand it—I was not the minister at the time—colleagues were satisfied that appropriate mitigation strategies were being applied by CMAL in its role as the client under the contract.

I think that the principal reason why we are in the difficulties that we are in today is what is termed "contractor failure". I appreciate that that would be challenged and debated by Mr McColl and the team at Ferguson—they clearly dispute it—but independent reviews of the process have concluded that contractor failure has been the cause of the difficulties. The committee will have the opportunity to discuss the cause with Mr Hair later, but he has indicated that from his involvement with the initial turnaround of the business. In his report, he highlighted that significant improvements to internal processes in the yard have been made. That issue is more within Ms Hyslop's purview, but I took that point away from the report that was published recently.

Colin Smyth: When did ministers first become aware of problems during the early stages of the contract's delivery? When were ministers given specific evidence that there would be delays and potential increased costs? Which ministers were made aware of the delays and increased costs? What specific actions did ministers take to resolve the situation?

Paul Wheelhouse: I have touched on this already but, to answer Mr Smyth's question directly, ministers first became aware of delays to the project following the February 2016 report,

which was the first report that identified that delays were looking likely. There was routine reporting. At that stage, ministers were satisfied that appropriate mitigation strategies were being applied by CMAL in its role as the client.

If Mr Smyth will forgive me, I will check my records to see which ministers were involved at that time, because that predates my taking this role. I imagine that Keith Brown, the then Cabinet Secretary for Economy, Jobs and Fair Work and, I presume, the transport minister at the time would have been notified.

Colin Smyth: You have not covered the detailed actions that ministers took, so it might be helpful to set those out. Given that we know that, even excluding infrastructure costs, the bill for the construction of the ferries has doubled, are you satisfied that the specific action that ministers took was successful?

Paul Wheelhouse: I am sure that the inquiry is trying to get to that matter. It is clear that we have not ended up with a satisfactory situation in relation to the cost overruns. I do not want in any way to present the outturns that we have now as something that we sought.

Mitigation approaches were taken by CMAL. I understand that all the actions that were taken are contained in the written statement. Ministers convened a meeting with Mr McColl, following which FMEL established a “war room”—that was FMEL’s term, not ours—to refocus efforts. At that time, CMAL reported to us that there was a pick-up in FMEL’s urgency and effectiveness. From the point of view of the client, CMAL said that there was a response to the concerns following the meeting that was held.

Ministers brought parties together and encouraged them to work constructively. Ministerial colleagues sought assurances from CMAL that it was acting responsibly and flexibly to assist FMEL’s cashflow pressures, when it was possible and appropriate to do so. Revised payment milestones were put in place at the request of the yard in order to help. We encouraged FMEL to bring its purported contractual claim in order to allow the impasse between parties to be addressed.

The situation has evolved over time. Initially, there was an indication of some slippage in delays. The situation became more serious as time went on and as the business’s cash flow problems became more serious. As is set out in the written statement to the committee, the Government took a number of steps to try to assist with those cash flow problems and to encourage the parties to work together to resolve design issues.

Colin Smyth: You have carried out a review of the Government’s actions. Are you satisfied, and can you say categorically, that ministers took absolutely every action possible to get the construction back on track and on budget, given the fact that the cost had doubled and the project was five years late?

09:45

Paul Wheelhouse: As I have tried to acknowledge, I took on responsibility for the project in August 2018, so I was not present during the earlier discussions. From what I can gather from colleagues, every reasonable step was taken to try to resolve the situation and to encourage the parties to work together to try to get the project back on track.

The outcome has obviously been very disappointing, although I am heartened by the fact that Mr Hair and the team at Ferguson Marine (Port Glasgow), working in partnership with the trade unions, are making so much progress to turn the business around. As Fiona Hyslop said yesterday, the atmosphere in the yard is much improved.

In that respect, we are in a better place than we were a year ago, but we have encountered significant difficulties throughout, so it is not satisfactory to have reached this point. However, I am satisfied that the Government is doing everything that it can to ensure that we deliver the vessels as quickly as possible while also protecting the jobs in the yard and the economy of Inverclyde, which has been very important to us throughout the process.

I believe that we have acted appropriately to achieve those aims. Has everything been perfect between then and now? Clearly, problems have arisen, and it is for the committee—for you all, as committee members—to make recommendations to us, on behalf of wider stakeholders, on what you want to see improved.

Colin Smyth: You highlight an important point, minister—it is difficult to do that when we cannot actually hear from the ministers who made the decisions.

The committee has heard conflicting evidence on who is responsible for the increased costs and delays. In your view, who is ultimately to blame? Who has primary responsibility for this fiasco?

Paul Wheelhouse: I would not necessarily want to characterise the situation in the way that Mr Smyth has set out, but I certainly appreciate the committee’s view that it is not a good situation. It is not our role to attribute blame or to act as some form of extrajudicial dispute resolution mechanism

for the contracting parties; we have been careful to avoid that.

Having said that, it is of course correct—as I mentioned earlier—that we reflect on the experience to learn for future projects. As I said to Mr Stevenson, there was undoubtedly contractor failure on the project, as our advisers have confirmed; a PWC report that was produced for us indicated as much.

The reasons for that are complex and several, so I will not point the finger of blame in respect of how that came about. It was very difficult for ministers, in the midst of competing advice from the contracting parties, to fully understand the underlying causes of the delay. We continued to have projected delivery dates that were not met, and to receive feedback from CMAL about concerns.

I appreciate the time, convener—I will try to keep my answer brief.

We attach weight to the independent assessment of FMEL's claim against CMAL, which was undertaken on behalf of the Scottish ministers, and which concluded that there was no basis on which CMAL could have advanced further funds to FMEL. We also attach weight to the evidence of Tim Hair at Ferguson's, and his findings on working practices at the yard generally and in relation to 801 and 802 specifically. Finally, we attach weight to the feedback that was provided by the workforce, who are important players in this. They told us about inefficient working practices that were evident at the yard. As I said, we encouraged FMEL to use the contractual routes that it had available to it, and if necessary to go to court to resolve those matters.

Colin Smyth: Does the Government take any responsibility whatsoever for the position in which we find ourselves?

Paul Wheelhouse: As a Government, we are ultimately accountable to the Parliament. That is what this inquiry is about. We are co-operating fully with the inquiry and we have tried to make available every bit of information that we can for scrutiny both by the committee and by the public more generally.

We will listen carefully to any recommendations that the committee makes to the Government. I will not prejudge the outcome of the inquiry, nor will I judge the actions of my predecessors or indeed myself. If Parliament makes recommendations and raises concerns with us, we will take those very seriously.

Richard Lyle: As we all know, minister, shipbuilding is an art. You talk about contractor failure. Previous witnesses have suggested that part of the problem in building the ships was that,

although different sections were to be built along from the yard and then transported by barge and fitted to the ships in the yard, the construction was in fact done in the yard, contrary to what had been proposed. Do you believe that that contributed to the delay in any way?

Paul Wheelhouse: Mr Lyle raises an important point. I understand that many committee members have had the opportunity to visit the warehousing facilities and to see the yard. You will probably have a better picture than I do; I have been to the yard, but not to the warehouse.

The site presents logistical issues for the team at Ferguson's. As I said, we are aware of the workforce's concerns about the inefficiencies on the site. Tim Hair is trying to resolve those issues, but that has been disrupted by the impact of Covid-19. The work at the yard was not regarded as an essential activity at the beginning of the pandemic and the yard reopened only after the economic lockdown was eased.

Mr Hair and his team are now addressing the inventory. Maureen Watt asked Fiona Hyslop a question about that in the chamber yesterday. There is on-going work to ensure that as efficient an arrangement as possible is in place for Tim Hair and the team at Ferguson's. The committee might want to follow that up with Mr Hair and Ms Hyslop. Working inefficiencies have been part of the problem that the yard has faced, but they have not been the entire problem.

Stuart McMillan (Greenock and Inverclyde) (SNP): The cabinet secretary, Fiona Hyslop, made a statement in the chamber yesterday and highlighted the update report produced by the yard. Section 2 of that update report states:

"The initial report highlighted the need for a period of remedial work at Ferguson Marine. This included significant rework on the vessels; re-evaluation and correction of problems with the design work carried out by FMEL; and extensive changes to business processes especially in engineering, project management and planning and controls."

Do you agree that that highlights how the previous ownership of the yard was failing and why it was necessary for the yard to be brought into public control in order to move the yard forward, protect jobs, deliver the ships and protect the Inverclyde economy?

Paul Wheelhouse: Mr McMillan raises some good points. There were financial triggers for the takeover of the yard, although that was not necessarily the driver for the Scottish Government taking ownership of the yard.

As Ms Hyslop explained yesterday, there are now positive developments in the outcomes that we are seeking and in the work that Tim Hair is doing. There a better relationship between

management and the workforce and trade unions than there was before the change of ownership.

Tim Hair has addressed significant gaps in the management team. Some posts are still to be filled, and there are difficulties in recruiting people with certain specific skills, but the yard has passed some milestones in getting the right people in place. It will be better managed and more efficient and it will be set up along some of the lines suggested to me by the trade unions when I met them at the yard and they voiced their concerns about inefficiencies at the site.

Great progress is being made. We have lifted the bonnet; we have seen, through an open process, what was going on there. Mr Hair's fresh eyes and his expertise are critical. He is telling us about the improvements that should be made, and we must listen to him. I am heartened by how many changes are either under way or have already been made.

Graham Simpson: I want to go back to issues that were raised in previous questions. Angus MacDonald asked about the tripartite arrangement. I am new to this inquiry, so I have looked at it with a fresh eye, and the governance of ferries seems completely bizarre to me. There are all kinds of operators: CMAL, CalMac, Transport Scotland and you—you are all part of it. From reading through the evidence in the inquiry, CMAL seemed to me to be a big part of the problem. There have been a lot of criticisms of it.

You are going to produce a new ferry plan in 2022. Does that provide you with an opportunity to take another look at that governance arrangement, if you are going to do anything?

Paul Wheelhouse: I would not necessarily start from the point of view of agreeing with Mr Simpson that CMAL is a big part of the problem. I agree that CMAL plays a big and important role in the arrangements.

I appreciate that, given that many colleagues around the table are from Opposition parties, not everyone here will want to take what I say at face value—I respect that—but I can say that we have had procurement reviews of the process of CMAL's involvement and, although it would be wrong to characterise those reviews as resulting in a clean bill of health in all respects, because there are always issues that arise in such reports, they have said that there are no significant issues with the procurement process and that there is nothing wrong with it, in that sense.

CMAL has played an important role throughout. My personal view is that, in many cases, it has been vindicated in terms of some of the points that it has raised about the management of the contract. I believe that that was confirmed by what Mr Hair revealed about some of the inefficiencies

at the site. Mr Simpson will understand that I want to defend CMAL in that respect. I believe that it has done what it was charged with doing and that it has done a good job of it. However, we will see what the committee recommends with regard to improvements in that process.

The written statement sets out in some depth the process in which all three parties are engaged.

I should have done this sooner, but I formally welcome Mr Simpson to his new role.

I urge the committee to look at the process and, if any issues jump out that you want more clarity on, I would be happy to try to provide that clarity. I believe that CMAL has been effective in its role, but I appreciate that the committee might take a different view.

Graham Simpson: That did not quite answer the question.

Paul Wheelhouse: Apologies if I have missed anything. Please come back to me now.

Graham Simpson: I just suggested that 2022 might be the time to do something about the situation.

Paul Wheelhouse: Obviously, we want to have the island connectivity plan, which takes account of aviation and fixed links as well as ferries, in place for 2022. It is important that we do the tripartite review now so that we have early sight of any recommendations about how to take forward the successor to the ferries plan and so that it can inform the vessel replacement and deployment plan that is being worked on at present. That is important because we have ferry procurement decisions to make on the Islay vessel and the replacements for the Gourock to Dunoon ferries, in relation to which we are engaging with communities there, because that is an important route, too. I have to get these matters right. There are decisions that must be taken between now and 2022 that the tripartite review could have an influence on.

Fran Pacitti is leading on that work, so she might want to come in.

The Convener: Briefly, please.

Fran Pacitti: The relationships between Transport Scotland, CalMac and CMAL are complex—and necessarily so. The approach is not unique to Scotland; the committee heard from CalMac that a similar distinction between the owners of vessels and those who charter the vessels is common practice globally. However, I am mindful of the perception that there is a lack of transparency or accountability around the decision making, so I am not defensive about that, and I echo Mr Wheelhouse's comments that we are receptive to any comments that the committee

might make in that regard. However, we all act on behalf of and with the authority of ministers, and we all have the common purpose of serving the island communities that rely on the ferry services that we deliver.

Graham Simpson: That is a helpful answer. Thank you.

The previous ferry plan has not been delivered, because we are still waiting for two ferries, and we will continue to wait for them for at least two years. What confidence can we have that the next ferry plan, which must surely deliver more than two ferries, because we have an ageing fleet—we have to get started on that soon—will be delivered?

10:00

Paul Wheelhouse: I certainly want to acknowledge, for the record, the point that Mr Simpson has made and which the committee has made previously. We recognise the demographics of the fleet. A number of vessels are either already at the end of their economic life or slightly beyond it, but they have been able to be maintained.

We want to renew the fleet. The next island connectivity plan or ferry replacement plan will be very important in that respect. We are also looking at how we can decarbonise our fleet, as part of the green recovery. There will be important lessons around that.

It is vital that we get this right. We are working on it already, and we will take into account the consultation on the national islands plan and the plan itself—obviously, there are a number of recommendations in the plan regarding our ferry networks. We know how important ferries are to island communities.

I am aware that there are consultation fatigue issues in island communities, particularly around transport. We have learned a lot about communities' needs through national transport strategy 2.

The island connectivity plan looks at future demands and the configuration of our networks. I do not want to overplay this—there will be maybe only a few sites where this is suitable—but there is the potential for fixed links to replace ferry links, and we can take into account the role of aviation to provide regional connectivity in Scotland.

We want a more rounded approach to considering all those factors in delivering the island connectivity plan.

Graham Simpson: The issue of mediation has come up in the evidence to this inquiry. Clearly, there was a dispute, and mediation was suggested. My understanding—you will correct me

if I am wrong—is that CMAL refused that mediation. Would it not have been better for ministers to have stepped in and insisted that both parties, which were in disagreement, go down the mediation route?

The Convener: I appreciate that you have not been at the committee before, Graham, but members indicate that they want to ask questions, and another member wants to ask a specific question on that topic. I do not like to wrap your knuckles on your first welcome to the committee, but please consider them wrapped, because somebody else was looking to ask a question on that.

Minister, please answer that question. I will bring in the member who wanted to follow up on the topic straight after that.

Paul Wheelhouse: Throughout the process, all options in the contract were explored to try to resolve the dispute and potential claim. Ultimately, the most appropriate mechanism to test the claim has been for FMEL to have formally lodged it in the courts.

I suppose that there are a number of challenges with mediation. We cannot compel parties to take part in it—that would undermine the whole purpose of mediation, as it must be voluntary and done in an agreed way. Unfortunately, given the size of FMEL's claim, which was in the region of £61 million, CMAL did not feel—I cannot speak for CMAL, but I think that Mr Hobbs might have made this point—that mediation was the appropriate means of dealing with it.

We tried to encourage FMEL to consider using the courts to resolve the issue. That is not ideal for anyone; obviously, it is costly and time consuming, and it is a potentially frustrating experience—I fully acknowledge all that—but it would have been a way of finding a resolution to the claim. It is not for me to second guess why FMEL did not do that, but it did not do that. That would have been one way of resolving the issue. I cannot answer for FMEL to say why that was the case.

The Convener: I am now going to bring in Peter Chapman, because I think that he wanted to follow up on the former line of questioning.

Peter Chapman: I wanted to get into this a wee bit. It is well known—we had lots of evidence on this—that the relationship between CMAL and FMEL basically collapsed. In the latter stages, people from CMAL and FMEL were almost unable to be in the same room. However, we heard that Jim McColl in particular asked ministers on many occasions to get involved in the dispute to try to mediate between the two parties and find a way forward. His evidence suggested that that never happened. Would you like to comment on that, minister?

Paul Wheelhouse: I understand why Mr Chapman raises that question today. I was not the minister throughout the process but, given my understanding, I would challenge that view of what happened. I note that ministers—Mr Yousaf, Mr Mackay and, latterly, me—have tried to encourage the parties to work together to try to find a resolution. Many of us made the point to FMEL that, if it felt that its claim was sufficiently strong, it could go to the courts and resolve the issue in that way. There were also mechanisms in the contract to resolve design issues. Those provisions had time limits so that, if either party did not give an answer, the result could be taken as being given. I do not know why those contractual mechanisms were not deployed to resolve some of the matters.

My ministerial colleagues are not here today to answer for themselves, but I know that they encouraged mediation and encouraged FMEL and CMAL to work together. I recognise Mr Chapman's point that the relationship broke down. I am not ducking that issue, but I am heartened that things now appear to be a little easier, perhaps because Ferguson Marine (Port Glasgow) Ltd and CMAL are both effectively owned by the Government. Those companies are now working very well together. It is heartening that a corner has been turned and that there is a real change in the mood music at the yards and in the work relationship with CMAL. However, for whatever reason, the relationship was not healthy at that point, and that was clearly far from ideal.

I reassure the committee that my fellow ministers did encourage the parties to work together. I appreciate that, in correspondence and when we answer parliamentary questions in the chamber, we say that it is a contractual matter for the two parties. However, we encouraged them to work together to try to resolve the dispute through whatever means possible.

Peter Chapman: You have commented on the cost differences, which is fine. However, there was also an opportunity to mediate before the decision was made to nationalise the yard. There could have been another solution, and mediation could have taken place even at that late stage to allow FMEL to carry on the construction of the two ships. That would have been a far less costly operation than what happened when you nationalised the yard.

Paul Wheelhouse: Again, I understand why Mr Chapman makes that point. I know that it has been put to the committee.

We had independent advisers, and there are various parts of advice that I cannot go into for reasons that I am sure that members will understand. However, based on the information that was available to us, that was the best approach from a public interest perspective, to

deliver the ferries, and to ensure that costs to the Government were minimised. We went down that route for many reasons. There were contractual mechanisms that Mr McColl and his team at Ferguson Marine were very much aware of and, ultimately, we had to exercise those contract provisions to protect the public interest.

I reassure Peter Chapman that we took a sincere look at everything that we could do to avoid that situation. It was not ideal for us to have to take over ownership of the yard. We would far rather have seen the yard succeed and continue to operate as a private business—I am sure that colleagues would agree with that. However, we are where we are, and we have done what we have done to protect the interests of communities that rely on the two ferries by ensuring that they are delivered as early as possible, and to protect jobs and the economy of Inverclyde. Mr Mackay made that very clear when we took that decision.

The Convener: Can I clarify something, minister? Mediation is about relationships and how people get on together. It would be remiss if I did not mention that, when the CMAL representatives came to the committee inquiry meetings, they brought their lawyers. CMAL had its legal hat on and demanded that one of the witnesses in the inquiry withdraw some of the evidence that he had given. That seemed to be a very aggressive approach.

The whole issue of mediation goes back some way. I have had a look through the 60-plus emails that have been released to the committee and the various meetings that were held, and it seems that the matter arose way back in June 2017, when the First Minister and Jim McColl were meeting because there was a disagreement with CMAL over costs. It appeared that Jim McColl was having to appeal directly to the First Minister, who had to get directly involved and instruct things to happen. There is a series of events to consider at various times right the way through the inquiry. Bizarrely, they happened just before loans were made. There is another period when Derek Mackay and Jim McColl were meeting, because Jim McColl could not get on with CMAL.

Do you think that there was a fundamental problem with the relationship between CMAL and FMEL from day 1 of the contract? Should there have been mediation almost immediately?

Paul Wheelhouse: Like the convener, I am speaking on the basis of the information that has been presented to me. Much of this predates my current position. I just want to qualify this, as I was not present in person.

From what I can understand, the engagement with ministers involved FMEL reaching out to them to try to resolve the situation. It is clear that there

were emerging problems with cash flow. It is not a surprise to me that meetings proceeded, with the Government taking action and loans being facilitated to improve the cash flow of the business. I do not think that that was illogical in the way that it happened.

I agree that there was a strained relationship between the contracting parties. That is why, from quite early on, as I understand it, we were encouraging mediation as a route for resolving that. That was obviously not playing out in the public domain, with engagement on the matter in the Parliament, but I know that ministerial colleagues were trying to encourage that and were trying to ensure that the issues were resolved.

As we indicated earlier, from February 2016, it was already being flagged up by CMAL that Ferguson's was straying from the delivery deadlines—the fundamental dates that had been suggested for delivery of vessels. Concerns were being raised, and tensions were perhaps beginning to emerge at that point, but I was not present, so it is difficult to—

The Convener: I am sure that you will have briefed yourself on what happened.

The written submission on behalf of the Scottish ministers, which I believe is Fran Pacitti's document, describes the arm's-length relationship between ministers and the contractor, Ferguson Marine. The problem is that every single email that I look at is between Jim McColl and Humza Yousaf or the First Minister, or a combination of the two, asking them for help.

In a contract world, it is a question of where the two parties to the contract touch. In this case, that was the builder, Ferguson, and CMAL, which ordered the vessels. However, it appears that it did not work like that in this case—when that relationship broke down, which it clearly did, the parties went directly to the First Minister or to Derek Mackay to get what they wanted. That is from the evidence that you have submitted to the inquiry.

Paul Wheelhouse: I will invite Fran Pacitti to comment on this, given her knowledge of how the civil service works in its delivery. There were two things going on. First, there was the client relationship, with CMAL as the client and ministers, in terms of ferry procurement. The second issue was the financial difficulties that FMEL got itself into as a business.

It is important to stress that, throughout the process, where it has been required, there has been a separation between, on the one hand, colleagues working on the support to FMEL as a business—a very important business for the Inverclyde economy—and our desire to support shipbuilding and ensure that economic

development issues and the liquidity of the business were addressed and, on the other hand, a discrete process involving looking at things from a purely client perspective, which is perhaps a selfish perspective. As ferries minister, I am determined to see the vessels delivered, so that I can use them as ferries. However, I am not blind to the concerns about the business. Colleagues were trying to address those two things.

It is important to mention that there was not an approach from ministers to FMEL; it was FMEL approaching ministers, as any business can do. I appreciate that that might be a difficult distinction to make in people's minds. Obviously, businesses come to us with concerns about their future viability or liquidity and we are duty bound to try to help them. We do what we can within all the appropriate constraints that ministers face around state aid and other matters.

The Convener: I will bring in Fran Pacitti briefly, as Emma Harper has been waiting patiently to ask some questions.

10:15

Fran Pacitti: There was undoubtedly a change in the tone of the relationship between CMAL and Ferguson's. I am not surprised by that, because all the discussions were happening in the context of a pre-litigation situation whereby Ferguson's had intimated that it intended to bring a substantial claim against CMAL and the quantum of that was increasing over time. The detail of the claim was not provided to CMAL until December 2018, but that was the context for that relationship.

Ministers were approached to act as informal mediators or to broker some kind of commonsense or pragmatic solution. In doing that, we were mindful of the contracting parties' concern about the perception of a conflict of interest, which is why in the written statement to the inquiry we set out clearly to distinguish the distinct departments. We all act for and on behalf of ministers and have one common set of interests, but in doing that we clearly recognise the perception of a conflict of interest regarding the potential for a breach relating to confidential information.

The Convener: If I was CMAL caught in the middle, I might find it difficult to understand if the contractor went straight to the Scottish Government. However, I will go to Emma Harper now.

Emma Harper: It has been interesting to hear the discussion and questions so far. The committee has seen examples of private business doing well in building ferries in, for example, Vietnam. However, we heard that the Ferguson business did not do well and needed the Scottish

Government to intervene to support it and bail it out. We have also seen the example of Prestwick airport, where the Scottish Government had to intervene seven years ago and take over Prestwick, but it is now showing a significant turnaround in financial performance, which is good news.

Looking to the future, what needs to be done to continue to support shipbuilding, keep jobs on the Clyde and have replacement ferries? Ultimately, we need to ensure that the Ferguson business succeeds and that we can hand it back over down the line. However, it has taken seven years for Prestwick to become successful, so do we need to consider that for Ferguson's to succeed?

Paul Wheelhouse: I whole-heartedly agree with that objective. There are not only 355 people now working at Ferguson's as permanent employees or contractors but about 350 in the supply chain, so 700-odd people's jobs and livelihoods depend on the business. As Ms Hyslop set out yesterday, there are encouraging signs that Ferguson's is now being approached by businesses wishing to commission vessels, which is positive after all the very public difficulties that the business had through being exposed in an inquiry and through other means. That process was legitimate—I am not criticising it—but it is a difficult space for a business to be in when it is trying to come out of difficulties. However, it is encouraging that there are signs of interest in commissioning Ferguson's to do some work or at least give it the opportunity to tender.

As Ms Hyslop said yesterday in the chamber, the Government is thinking about what it can potentially—I stress that it is potentially—do around considering options for the direct award of contracts to Ferguson's. Clearly, there is a lot of work to be done on state-aid competition policy and other matters. We need to understand what kind of structures are best placed to enable that and whether it is a desirable and feasible route to go down. We are considering not only the future of Ferguson's but the wider health of the shipbuilding and ship maintenance sector, given that we rely on other yards for the maintenance of ferries.

There is a lot of work to be done on that, but it is important to mention the issue. We are looking at replacement vessels for the renewal of the fleet, which has been raised by Mr Simpson and others, and we clearly want to get that right and learn from what has happened. We are learning from the work that we are doing on the Islay vessel, which I can say more on if it would be helpful. As I said, we are also starting the exercise to look at the Gourock-Dunoon ferry replacements.

Ferguson's is pitched into that as a potential contractor, although it has two important vessels to build, which will present capacity issues for it in

the build-up to 2022 and early 2023. There will be constraints and, as Ms Hyslop revealed yesterday, we are considering putting the first of the vessels out to tender in quarter 1 next year. Obviously, Ferguson's is entitled to bid for the Islay vessel, but I imagine that it will have capacity issues in the yard while vessels 801 and 802 are being finished.

Emma Harper: I have a final wee question. Part of the Scottish Government's intervention was to look at potentially standardising the approach to ferry building and to tackle inefficiencies and modernise the workplace. Some of the costs of that were related to port infrastructure, but is that not part of securing the future? If ports are modernised, you can build ships that can be deployed wherever they are needed.

Paul Wheelhouse: Yes. Standardisation is important, as I have mentioned before at committee. There are a number of benefits of standardisation. For example, if a smaller number of components need to be stored in inventory, that saves money, and having standardised facilities on vessels, including the wheelhouse and the steering mechanisms and so on, makes training easier for staff, which means that there is more interoperability of staff and crew from vessel to vessel.

Standardisation helps in other respects. For example, we have a problem where the parts for a number of vessels that were built many years ago are now obsolete, so they have to be ordered on a bespoke basis. As Ms Harper may know, we have provided resilience funding to both networks to try to ensure that there is a stock of high-risk parts available for maintenance.

Excuse me—I will just take a wee sip of water.

More generally, we are trying to achieve standardisation. That is not necessarily around 801 or 802, although they will be valued vessels for the fleet. However, we are learning a lot in the Islay vessel procurement process and the process of reaching a conceptual design for the tender specification. CalMac and CMAL are working together to consider how standard design features can help the efficiency of the vessels.

The member is also right to raise the issue of ports and harbours. It is important to stress that 801 and 802 can operate from more than just Ardrossan and on the triangle routes. I think that our statement makes clear what those other harbours are but, if not, we can provide that information to the committee. Once the vessels are in service, they could provide a resilience role on a number of routes, but as we look to standardise major vessels and other vessels—there is already potential for quite a lot of standardisation in our smaller vessels—we can start to use the vessels in other harbours. We can

bear that in mind as we look to renew our harbours.

As I said, I understand why the committee has linked the investment in the harbours and the cost of the ferries and has come up with a composite number but, strictly speaking, the costs of harbour renewal are not linked to the two vessels that are currently going through procurement. We have linkspans and harbours that will be approaching life expiry and will need to be renewed for safety reasons and for on-going use. When we are designing the replacements, we need to ensure that they can facilitate that standardisation. That might require dredging in some places because, with standardised vessels the draught of the vessel might otherwise be too deep for the harbour that it will serve. A number of issues need to be factored in, and that drives the cost.

I apologise for the length of the answer, convener.

The Convener: Emma Harper has indicated that she is happy with the answer, and you probably need a drink of water, which you can have as Angus MacDonald comes in with a follow-up question.

Angus MacDonald: I want to follow up on the first part of the minister's response to Emma Harper's question. Evidence that the committee took prior to lockdown highlighted the existence of an Australian company that could grant a licence to Ferguson's or whoever to build ferries at—I think that it was suggested—a quarter of the price of the current traditional-type vessels. Do you know whether CMAL has looked at that option rather than the route of a standardised design based on the older type of traditional vessel?

Paul Wheelhouse: I will perhaps bring in Fran Pacitti on the specifics of the particular yard and project to which Mr MacDonald refers. In general, we are open to looking at different vessel designs; I know that it has been suggested that we are not. Most, if not all, of our ferries are currently monohulls, but we are open to looking at catamarans and other types of vessel.

I have often had members of the public, in good faith and a sense of public spiritedness, sending me details of vessels—I am sure that they do the same with CMAL all the time—that operate in various theatres around the world in totally different conditions. I can understand why people look at a vessel and think that it would work in Scotland, but the depth of the water is different here, and the weather conditions are quite often very different from those in Australia.

Norway is often cited as somewhere from which vessels could easily be lifted across to Scotland. That may be true; I would not rule it out. However, I am quite often sent details of vessels that

operate in fjords and relatively sheltered—and very deep—waters. I know that Mr MacDonald is a bit of an expert on Norway and has strong links to the country, having lived there for a while. He will know that many of the fjords are very deep, and the conditions are entirely different from those in some of our island harbours. Difficulty of approach is an issue, as is manoeuvrability.

We can learn from other designs elsewhere in respect of propulsion systems and the fuels that are used, and we will certainly keep an open mind on that. We continue to search the second-hand market for vessels as well.

The Convener: John Finnie wants to come in—briefly, I hope, because I need to bring in Maureen Watt.

John Finnie: As you highlighted, minister, we all receive intimations of wonderful schemes that would save the Government money, as we would all wish to do. However, I for one applaud the security that has been provided for jobs in Scotland. The figures from elsewhere that are quoted are often set against a background of extremely poor and unsafe working conditions. Can you give us an assurance that you will look first and foremost to putting out future ferry contracts to providers in Scotland?

Paul Wheelhouse: Mr Finnie raises an extremely important point: we are not often comparing like with like. I suggest that fair working practices and the fair work agenda are not necessarily a priority for many businesses in other parts of the world. We obviously take fair work matters very seriously indeed; Mr Finnie is right to identify that, in taking over ownership of the yard, we are protecting jobs and ensuring that working conditions for staff are improved. I know that there have been some initial issues, but I hope that there will be improvements in engagement with the trade unions and genuine collaboration between the workers and management.

I cannot speak for the experience in other yards around the world, but I think that Mr Finnie is absolutely right. I appreciate that I am taking up time to respond to his point, convener, but it is an important issue that we have to bear in mind. There is a responsibility on Government, and on CMAL as our agency, to ensure, in delivering the vessels, that they are procured responsibly with appropriate regard given to the rights of workers, including their working conditions and ensuring that they are properly paid.

We can give a reassurance to the unions in Scotland—I know that the GMB and other unions have warmly welcomed the Government's actions in taking over the yard to ensure the safety and longevity of the workforce on the Clyde, and to ensure that there is a shipbuilding industry in this

country. I give an assurance to Mr Finnie that that is very much at the heart of our thinking as we move forward.

The Convener: We come to the deputy convener, Maureen Watt—I am sorry for the delay, Maureen.

10:30

Maureen Watt: It is all right—I have been well teed up by others with regard to the standardisation of vessels and propulsion technologies. Although not new worldwide, the specification, design and construction of ferries powered by a combination of liquefied natural gas and marine gas oil propulsion was new to CMAL and FMEL. Was that an issue? Did you feel that there was sufficient expertise to deliver that innovative—to Scotland—propulsion system? Were the design engineers and people who would drive forward the project sufficiently au fait with the new technology?

Paul Wheelhouse: I recognise that that is an important factor. Witnesses have previously raised the question of whether LNG has been a driver of the project going off the rails, so I understand why Ms Watt is asking that on behalf of the committee.

Fran Pacitti might have indicated earlier, as we did in our written statement, that the use of LNG was not seen as a particularly complex area that, had it been abandoned, would have contributed to any saving in time or cost. Had there been a change in tack, perhaps other complications would have arisen. As a design component, did it cause the problems? I do not believe so, but I am mindful of comments from Mr McColl and others—although I do not necessarily agree with them—that, in their words, it was a challenging project from that point of view.

Perhaps that indicates that they were less comfortable with the technology than we would have hoped. However, I do not think that there was any concern for the delivery of the project relating to their experience or track record, because the review of the procurement process would have picked that up. From a technical point of view, I can judge only that the review by the procurement directorate did not reveal fundamental reasons why the yard was not capable of doing the work. As the member might know, Mr McColl was exploring other areas, such as hydrogen and other propulsion systems, in relation to other work that the yard was taking forward, so there was an appetite on the part of the business to engage in those areas of innovation.

I do not think that there was any reason to believe that LNG, which, as Ms Watt has indicated, is used elsewhere in the world, was a

fundamental issue. I hope that that has answered Ms Watt's question, although I may have misunderstood. I do not think that LNG was the primary driver of the problems.

Maureen Watt: Maybe it was not the primary driver, but I wonder whether, as delays, costs and overruns began to emerge, consideration was given to dropping the LNG element of the project. Although others were maybe not aware of it at the time, that might have been the situation because, when we visited the yard and went over the ship, we found that there was no pipework linking the LNG tanks to the propulsion system—in other words, to the engines. Therefore, as I am sure you are aware, all that has to be retrofitted instead of being in in the first place. Do you think that FMEL did that deliberately?

Paul Wheelhouse: I genuinely do not know the answer to that. We can rely on appraisals from the likes of Tim Hair with regard to what he and his colleagues saw when they entered the vessels; it would be speculation on my part to say that.

From our point of view, I do not think that there was any point at which we were planning to remove the LNG component of the project. Ironically, despite all the criticism, there is strength and resilience in having the dual propulsion systems because, if one system fails, the alternative propulsion system assists the vessel and makes sure that it can get back to harbour. Therefore, there is a logic to having that system, as well as the environmental benefits of using a lower-carbon fuel.

There would have been significant complications and cost in changing the design of the vessel midstream to address that and remove the LNG element, and that would have added to the existing difficulties and delays. It therefore probably would have been unattractive to approve that measure, both from our perspective and from CMAL's, as the client. The issue is one to pick up with Tim Hair to ask for his assessment of the lack of pipework and the other issues that Ms Watt fairly raises.

Maureen Watt: In relation to our climate change commitments, will we consider a variety of technologies? There is battery technology and a huge prospect for green hydrogen exportation from Scotland, but we should also use it as much as we can ourselves. Will that be at the top of your agenda for Ferguson Marine and for other yards, if contracts for ferries are given to them?

Paul Wheelhouse: Ms Watt raises a really important issue. We are open to looking at all sorts of alternative technologies to deliver newer and cleaner ferries. We want to take forward those issues in relation to the development of our islands connectivity plan and the VRDP.

We believe that battery technology might have a particular role in the replacement of smaller vessels in the fleet, as it might be a relatively efficient technology for short sailings. The weight parameters on smaller vessels will not be such an issue. We will build on our experience with the three diesel hybrids that we have, but we will also explore the option of full battery power where that is appropriate.

I identify with the remarks that Ms Watt made about hydrogen. As the member might know, the Scottish Government is undertaking a hydrogen assessment project. That is led by the energy team, but colleagues in Transport Scotland are looking at the potential for hydrogen or ammonia as drop-in fuels to replace diesel. Based on hydrogen production, that might be a more suitable alternative for the larger fleet in the long term.

There are other things that we can do to improve efficiency. For example, CMAL is looking to incorporate new hull forms and designs into the new Islay vessel. The hull form can potentially save up to 30 per cent in fuel costs, which would be a significant benefit for us, as it would give more latitude to accommodate timetable changes that are suggested by communities, if the budget remains unchanged. It could also address some of the issues with frequency of services.

Those are important issues. Vessels are designed with a long lifespan, so vessels that are built today will potentially still be in service by 2045 or 2050. Therefore, I am very mindful that every vessel that we build from now on will have a bearing on the delivery of our climate targets.

I can say something about the relative efficiency of LNG, if the member wants, although I appreciate that time is constrained.

The Convener: Richard Lyle has indicated that he wants to come in on the subject. It may tie into that issue, although I do not know what his question is.

Richard Lyle: Were you or any other minister ever given a report on what was wrong with these ships when we started to investigate links?

When we went to see the ships—and we went on one of them—the bow doors had to be replaced because the metal could not support the hinges, hatches were constructed but the work had to be reversed and there were other items that had to be fixed. Before we go any further, will you tell us whether you were ever given a list of what was wrong with those ships?

Paul Wheelhouse: I might check with Fran Pacitti on whether anything happened prior to my becoming minister. I certainly made my own visit to Ferguson Marine and saw some of the issues

that you raised for myself. I asked questions as to how that happened, and I got competing perspectives on it from FMEL and CMAL. That is why we got independent advice on design issues.

Some significant issues have been addressed. The bulbous bow issue was known about for a long time. As I understand it, the regulator—Lloyd's Register—would not sign off on the bow because, in its view, the manufacturing of it was not quite right. That issue has now been fixed in dry dock in the past week or so. Those are important issues that Mr Hair and the team are trying to pick off.

I am not an expert in the design of ferries, but there have clearly been some missteps in the design of the vessel. We would normally progress from the initial tender specification to conceptual design, to a basic design, and then to a finalised design. Mr Hair is dealing with the finalised design now. Arguably, that should have been in place a long time ago, but there were contractual mechanisms that, for whatever reason, did not seem to be used to agree the final design and address any disputes over components and their configuration. It is disappointing that it was not resolved earlier. Thankfully, Mr Hair and the team at Ferguson Marine (Port Glasgow) Ltd are now doing exactly that, and with some success, I believe.

Richard Lyle: Thank you.

The Convener: Stewart Stevenson indicated that he wanted to talk about the ferries plan, but the minister has already answered questions on that, so I will come to Stuart McMillan next.

Stuart McMillan: I have one final short question.

This committee has heard evidence, and it has also been reported in the media, that the two ships at the yard should be scrapped and started again. If that was to happen, what would happen to the yard and the workforce?

Paul Wheelhouse: The question is obviously pertinent to Mr McMillan and his constituents in Inverclyde. As I understand it, if we were to scrap the vessels, we would have to go through a procurement exercise and retender the work. Potentially, we would be looking at a significant delay due to the procurement itself—I guess that there would be a gap in production at the yard of about a year. It is an obvious point to make, but it is extremely unlikely that the 355 jobs in the yard, and the 350 jobs in the wider local economy, would be sustained. All 700 of those jobs would potentially be affected and put at risk by such a decision. I am not saying that all the jobs would be lost—I would hope that there would still be core staff there to go through the procurement exercise—but it would be devastating for the

business, the people of Inverclyde and the wider economy of the Clyde.

Retendering the work is not something that we would consider unless it was absolutely our only option. To accentuate the positives, I believe that the action that we have taken has secured the future of the yard with the delivery of the vessels. We are already beginning to see positive signs that the commercial market is showing an interest in commissioning work from Ferguson and giving it opportunities to tender. There has been a significant change in management. It is not for me to point the finger of blame at the previous management, but the new management team has meant a fresh start. There is a good atmosphere in the business, the workforce is working with management and there is an opportunity in finishing off the ferries for Ferguson to show exactly what it can do, to allow it to get back into the commercial market and have a much more positive future.

As I said earlier, the business has a strong track record of building ferries, although that is not to say that building ferries is all that it can do. The business has had success recently with vessels for the aquaculture industry and barges for the export market. It can do more than just ferries, but seeing out the ferry contracts and finishing them strongly would be a great way of advertising just how good the business is.

The Convener: Stuart, are you happy with that? Do you want to ask any further questions?

Stewart Stevenson: Looking at the questions—

The Convener: Hold on, Stewart—I was after the other Stuart.

Stewart Stevenson: I am sorry, convener.

The Convener: We will go to Stuart McMillan—the remote Stuart. Do you have any further questions, or are you happy with the minister's answer?

Stuart McMillan: I am fine, thank you. It was very helpful.

The Convener: We now go to Stewart Stevenson—the actual Stewart.

Stewart Stevenson: I think that we will not have Stewarts bidding against each other for authenticity, convener—we are both authentic.

I was simply going to say that all the questions that I had intended to ask have been pretty much fully covered.

10:45

The Convener: If there are no other questions, I have one for you, minister. There is something that I want to understand a bit better. I understand

totally how the payment system works: there are staged payments, depending on how the ship is progressing. You mentioned the bulbous bow, which needed to go on, whether it was right or wrong, in order to get the payment for that stage to allow the money to be released to the contractor. It could have been changed at a later date, which is I think what we heard might happen when we visited the yard.

I am concerned about this. For hull 801—the Glen Sannox—88.6 per cent of the payments have been made. For hull 802, which we went to see, 80 per cent of the payments have been made. I understand that there is a need to get equipment to the site. However, when we went to look at the equipment on site, it was quite difficult to work out what was there, because some of it was in one hangar and some of it was in another, and most of it was covered in bird excrement. We had no idea what was there, and it was clear that no one else did either, but the equipment had to be rationalised into a warehouse.

As a minister in the Government, are you happy that so much money was released to the contractor when it was quite clear that 80 per cent of vessel 802 had not been built, nor had the equipment been sourced to build it? That was on top of loans that equated to the entire value of another ferry. It seems that that was an odd scenario for you to be in.

Paul Wheelhouse: I totally understand those points—they also occurred to me when I came into post and looked at the project with fresh eyes. As I indicated earlier, the relationship between CMAL and Ferguson Marine, which is one of the areas that the committee has been probing, is a good example of that. The matters that you raise are being looked at through an independent review, and we are satisfied that the steps that were taken were reasonable. There is nothing inappropriate about what was done.

There was a negotiation regarding a reduction in the retention payments, going down to about 25 per cent—or rather, a reduction in the invoicing timescale, going down to about 10 per cent for the final stages. That is why the figure for vessel 801 is 88.6 per cent rather than the lower figure of below 75 per cent that would have been in the original schedule. Perhaps Ms Pacitti can confirm that.

Certainly, CMAL made every effort, while maintaining scrutiny of the contract, to try to help with the cash-flow difficulties that the business faced and to ensure that the vessels were delivered. There was obviously a risk that, if the business failed, those vessels would not be delivered, and CMAL was trying to manage that situation as effectively as possible.

Is the situation satisfactory? Absolutely not. I am not sitting here pretending that we are in an ideal position. A substantial amount of work still has to be done to the vessels and, as I said, there have been issues of contractor failure as well as the issues that have been raised around the quality and completion of the work. When he took over the business, Mr Hair raised the issue of storage of parts, which I know has been a concern, as something that needed to be addressed with some urgency. There was also a lack of transparency around the inventory, and so forth. Those are all examples of things that were not working well under the previous management.

The Convener: Minister, with the greatest respect, I will set out the position. We have paid £126 million against a contract that is worth £97 million. The ferries have not been completed. One of them is floating, but there was not much inside it when we looked at it—as Maureen Watt highlighted earlier, it did not even contain the pipes to connect the engine with the LNG tank. The other vessel was just a basic hull.

The contract value is £97 million, but we have paid £126 million. I struggle to understand how that has happened. Can you explain that to me?

Paul Wheelhouse: On a point of detail, I can understand why you are quoting a figure of £120 million-plus, but that is not the case. The yard has been paid £83 million for the vessels. I am well aware that funding to support the business has been provided through loans—that is absolutely true—but only £83 million has been paid to the yards for the work to date. I say that simply to avoid any—

The Convener: But the loans were given only because the labour profile in the yard had gone down and dropped off before those loans were paid. Ferguson Marine could not pay its staff and therefore had to, in effect, allow them to stop working. There must have been alarm bells ringing. On 20 February 2018, your predecessor met Jim McColl and discussed the cash-flow problems, and it was not long after that that a loan was made. I am struggling to understand, as a businessman who has spent a lot of his life dealing with contracts, why I would give a contractor £126 million against a project that was worth £97 million when it was not even half complete.

Paul Wheelhouse: I appreciate and fully take on board Mr Mountain's experience as a businessman. I know that what was done looks unusual, to say the least, to those of us who are not involved in shipbuilding, but I understand that that is a standard approach to milestones and to how invoicing is paid in accordance with those milestones. I have made the point a couple of times already that there have been changes in the

lifetime of the project to try to be helpful to the yard. For example, there was a reduction in the amount that was going to be paid at the end from 25 per cent down to 10 per cent. Perhaps Ms Pacitti can say more on the scheduling of payments, but my understanding is that it is a standard approach for commissioning vessels and not unusual. As I said, the procurement approach has been looked at by the procurement directorate. All the milestones would have been set out in the contracts and nothing untoward has been identified by the procurement directorate. With your permission, convener, I will bring in Ms Pacitti now.

The Convener: Just to explain, when we went to the yard, we looked at one of the lifts between the floors. If I have got this right, the lift space was not big enough for the lift that had been purchased, but it was put in anyway to allow a staged payment to be made against the construction of the ferry. If a tube was put in that did not take the lift in order just to get a payment, surely somebody should have been checking that and raising concerns. I was concerned about it.

Paul Wheelhouse: We have not talked much about this, but there was an important relationship between the yard and the regulators. The Maritime and Coastguard Agency and Lloyd's Register, depending on the class and type of vessel—

The Convener: With the greatest respect, this is to do with money being released by a Government agency; it is not to do with Lloyd's Register. If the lift that was ordered did not fit in the tube that was built in the ferry, that has nothing to do with Lloyd's Register but is to do with the fact that the contractor will have to rebuild it to get the lift in.

Paul Wheelhouse: With respect, convener, I am trying to make the point that the regulators obviously have an important role in signing off design elements of the vessels. Design is one of the areas on which there has been significant dispute between CMAL and FMEL. CMAL raised issues about design and delivery against timetables from February 2016. Mr Finnie and others hit on the fact earlier, as did Mr McMillan from a local perspective, that if there had not been some support to the business, it would have gone under and we would have faced having to restart the process, with significant delays in delivering the vessels.

As I said, our view is that the main reason for the failures was contractor failure. I do not mean to cast aspersions on anyone involved in Ferguson Marine as a business, but that is our view as to where the problems arose. We tried to find appropriate mechanisms to help both the client, CMAL, and the engineering business, FMEL, resolve disputes over design. I am not a naval

designer and do not have expertise in that area, but we have the agency CMAL do that work for us, with expert input. Clearly, there have been milestone points where CMAL has raised concerns about the delivery of the vessels. However, in terms of the payments issue specifically, I want to ensure that the committee has the most accurate information to work on. I know that some of it is covered in detail in the written statement, but I will take this opportunity to bring Ms Pacitti in on what is standard practice and whether there has been any variance from that.

The Convener: It was laid out in the contract documents that were shown to the committee as part of the inquiry. I would be happy for Fran Pacitti to add something.

Fran Pacitti: Following my appearance before the committee in March, I wrote to the committee with a breakdown of each of the milestone payments and how those were revised over time. I hope that that has been helpful and has allowed for ease of comparison. I understand the point that you are making and I have also reflected on the specificity of each of the milestone events on which payment falls due. The specificity included here is not unusual. There is an inherent risk that the contractor, as has been described, would be “chasing steel” rather than performing against the contract. The consequence of that is recognised universally as having acute cash-flow pressures on the contractor so that it would be highly unusual for that circumstance to arise. We have reflected on that and discussed with CMAL whether there should be greater specificity on drawdown dates in the future.

There is a balance to be struck. It is a highly unusual set of circumstances in what is a standard form of contract, about tailoring the contract such that it might increase the contract price. We understand the point and have taken it away to reflect on it; we are already looking at what we do in the future.

The Convener: John Finnie will ask the last question before we move to the next witness.

John Finnie: My question is connected with the issues that you refer to, minister. Paragraph 74 of the lengthy statement that we received says:

“Some invoices presented were rejected on the basis they related to other projects and not hulls 801 and 802.”

I take that to refer to the period that we are talking about. I will be generous in my question. What does that say about the efficiency of the people sending you those invoices?

Paul Wheelhouse: I am grateful to Mr Finnie for raising that point. It indicates that there was clearly an issue around proper controls in Ferguson

Marine. It is an indicator of the contractor failure issue that we have addressed. It may provide some degree of confidence to Mr Mountain and others that CMAL was acting appropriately and not just signing off everything that came through from Ferguson Marine. Appropriate diligence was given to invoices to check whether they were relevant to the project and to refuse to pay ones that were not. As Fran Pacitti has said, there are areas where there are lessons that we can learn from. Mr Hair may have views on the internal controls and the lack of oversight and supervision of the project.

The Convener: That brings us to the end of our questions. I thank the minister and Fran Pacitti for attending the meeting and for the submissions that were made prior to the meeting that gave some insight into the questions that we asked today.

10:58

Meeting suspended.

11:04

On resuming—

The Convener: We move to the second panel of witnesses on our ferries inquiry. I welcome Fiona Hyslop, the Cabinet Secretary for Economy, Fair Work and Culture; Dermot Rhatigan, the deputy director of the Scottish Government’s manufacturing and industries economic development directorate; Derek Glover, a finance business partner at the Scottish Government, who is taking part remotely; and Tim Hair, the turnaround director of Ferguson Marine (Port Glasgow) Ltd.

I invite the cabinet secretary to make a short opening statement of up to three minutes.

The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop): Thank you, and good morning. I welcome the opportunity to address the committee in my capacity as the Cabinet Secretary for Economy, Fair Work and Culture. I have held the economy brief since February 2020. As the minister with responsibility for Ferguson Marine, I stand firm on the Scottish Government’s commitment to the vessels, the workforce and the yard. I am proud of the progress that has been made at the yard since the Scottish Government took control.

As a member of an open, transparent and accountable Government, I fully support the parliamentary inquiry, which I have followed closely and with great interest. Covid-19 is not only a health emergency but an economic one, during which our ambition for a wealthier and fairer Scotland has not wavered. In pursuit of that ambition, our focus has been, and continues to be,

on the people who have been impacted by the delays to the delivery of the vessels.

I take pride in Scotland's strong, fair and inclusive national identity, which has driven the decisive action that supports ship building in Scotland. The Scottish people and economy are at the heart of all that we do. That is why we simply could not turn our back on the skilled workforce and our local and island communities when an acceptable commercial solution could not be reached.

We continue to work tirelessly to ensure that the vessels enter service as quickly as possible in order to deliver the service improvements on which our island communities depend. That is being done in tandem with a programme of work to turn around the yard and deliver a sustainable future for ship building at the site. I have confidence in the robust plans that the turnaround director and his senior team have outlined and are implemented.

I am committed to ensuring that lessons are learned from the far-from-ideal circumstances that have led us to where we are today. We have been reflecting on the breadth of evidence that has been presented, and we will give detailed consideration to the committee's recommendations, once its inquiry has been concluded, in pursuit of our joint ambition to identify and address current and future challenges and opportunities in the procurement of vessels to support Scotland's ferries network.

I welcome the invitation to engage with the inquiry, and I will answer the questions that committee members wish to raise in relation to Ferguson Marine.

The Convener: Thank you, cabinet secretary. Will you explain the rationale for the two significant loans that the Government made to Ferguson Marine Engineering Ltd?

Fiona Hyslop: There were two loans. The first loan of £15 million, which was unsecured, was intended to support the firm's cash-flow issues relating to the vessels. The second loan of £30 million, which was secured, was to help the sustainability of the business and to ensure diversification in seeking markets.

We considered Ferguson Marine's approach in seeking assistance. Ministers and officials considered a wide range of options to respond to FMEL's financial situation, including the option to let commercial events take their course without Government loan funding. We concluded that the loan agreements were the most deliverable commercial option that was available to ministers at the time. The loans were made in 2017 and 2018 to deliver the ferries, secure the business,

save the workforce and secure the yard for the future.

The Convener: Why was there a nine-month delay in the Scottish Parliament being made aware of the first of the loans?

Fiona Hyslop: There is a written agreement between the Scottish ministers and the Finance and Constitution Committee that requires ministers to seek the approval of the committee when the Government's proposed transaction gives a contingent liability—a guarantee. The loans did not give a contingent liability, so there was no requirement to let the Finance and Constitution Committee know.

However, in the interests of transparency, the then cabinet secretary wrote in confidence to the Finance and Constitution Committee on 24 April 2018 to highlight the £15 million loan to FMEL, and the committee respected the confidential nature of the information that was provided. Therefore, there was not a delay—the fact that there was no requirement meant that there was no delay in providing the information. The notification to the Finance and Constitution Committee in April 2018 was seven months after the first loan facility and four months after the loan facility was fully drawn down. There was no requirement to provide the information, but in the interests of transparency, the Government informed the Finance and Constitution Committee of the loans, which I think was the right thing to do.

The Convener: On 7 July, the First Minister met Jim McColl to discuss the cash flow. Was it at that meeting that the First Minister approved the payment of the first loan?

Fiona Hyslop: I might refer to my officials with regard to the timing of that. What I can say is that the loans addressed some of the cash-flow issues of the vessel at the time. I am not sure about the interconnection with the First Minister in relation to loans.

Dermot Rhatigan (Scottish Government): To be clear, are you asking about July 2017?

The Convener: Yes.

Dermot Rhatigan: In that case, the answer is no. The first loan had not been negotiated at that point. It was not concluded until September.

The Convener: Indeed. However, that meeting in July was when the detailed breakdown of costs was submitted to the First Minister by CMAL, which had been requested to do that by Ferguson Marine. I am trying to work out whether that is what prompted the loan.

Was the loan prompted by those meetings between the First Minister, Jim McColl and CMAL?

Fiona Hyslop: At that time, Ferguson Marine Engineering Ltd was an account managed company, which means that, as is usual with account managed companies, the information about the company's cash flow was known to us. As an account managed company, it could raise concerns at any time.

The Convener: I was asking about the meeting with the First Minister. I am trying to work out whether the First Minister agreed to sign off the first loan.

Fiona Hyslop: The First Minister would not be in a position to do that; that would be for the relevant officials or ministers at the time.

The Convener: So, the First Minister would not have had an input into that.

Fiona Hyslop: Not that I am aware of, but I am happy to be corrected.

The Convener: I am just trying to work out why that meeting happened, if it did not result in the loan.

Fiona Hyslop: Obviously, it was an important company working on an important project. The First Minister meets business people all the time. There is no reason why she would not have had that meeting, which was conducted at the request of Mr McColl.

The Convener: The second question concerns the £30 million loan to support the long-term development of the shipyard. You might not be able to answer this question now, but I am happy to accept an answer in writing. Can you explain how that money was spent for the long-term development of the shipyard? Was it actually spent on building the ferries? We have heard mixed messages in that regard.

Fiona Hyslop: It is important to distinguish the spend on the vessels, and the loans that were granted in relation to ensuring the sustainability of the company. Obviously, the sustainability of the company has an impact on the ferries, but it is important to recognise that the loans were about the company itself.

The Convener: I thought that the £30 million loan was for the long-term development of the shipyard and to assist diversification.

Fiona Hyslop: Yes.

The Convener: Was any of that £30 million spent on the ferry?

Fiona Hyslop: How the money was spent and accounted for is a matter for FMEL.

The Convener: I am not being difficult. If I was ever in a position to give someone £30 million—I am not—I might ask them if they had spent it in

the way that they said that they were going to when I gave it to them.

Fiona Hyslop: In terms of the expenditure, part of the process was to appoint somebody to assess independently that Ferguson's was delivering what it said it would in relation to the milestones that were set for the loan aspects that were to do with the company. Progress on the vessels would be part of the sustainability of the company, and making sure that the vessels could be delivered. It is fairly clear that the company issues were to do with cash flow, but those cash-flow issues also related to the company's experience with the vessel, which you have seen in the evidence that you have already been provided with.

11:15

The Convener: Are you able to say how that £30 million loan was spent?

Fiona Hyslop: Yes, because that is part of our arrangement with the yard. I am happy for Dermot Rhatigan to give you more information if you would like more detail about that.

The Convener: It would be useful if the committee could receive correspondence on how the £30 million was spent. There are many questions other questions to ask today, cabinet secretary.

Fiona Hyslop: You said that you are happy to receive a written account of that. I am trying to give you—perhaps not to your satisfaction—an overall view of how it was spent and what the purpose of the loan was.

Maureen Watt: I will follow on from the convener's question about the £30 million loan. We know that a spanking-new office block was constructed, although we do not know how much it cost.

You said that FMEL was an account managed company. That is, the account would have been managed by Scottish Enterprise.

Are you satisfied that none of the loans or monies were spent outwith the company? We heard earlier that some of the loans were to make sure that other work—not the work on 801 and 802—was completed. Are you satisfied that none of the money went outside the company?

Fiona Hyslop: The money was for the company, for its sustainability and diversification and to support the business to ensure that it could continue. There had to be enough cash flow for the entirety of the business. The work on 801 and 802 was not the only business that was being developed. The money was for the whole company.

Maureen Watt: That is not what I asked. Perhaps we can have the answer in writing.

Graham Simpson: The loan followed another meeting between Jim McColl and the First Minister, in April 2018, at which Mr McColl again expressed concerns about cash flow. The loan had nothing to do with diversification, did it? It was about rescuing the business and keeping it going.

Fiona Hyslop: That is an opinion.

Graham Simpson: I am asking whether the loan was about rescuing the business. You have been asked what the money was spent on. We have not heard a clear answer.

Fiona Hyslop: I think that I have given an answer. I was not the cabinet secretary at the time, so I can explain based only on what I have been told and what information I have received. The loan addressed the obvious cash-flow issues that the company was facing.

That was the case with the £15 million loan. The £30 million loan was for the sustainability of the business—for the business to be sustainable, it had to be able to continue in business. It is not unusual for the Government to support businesses to ensure that they can continue in business. The alternative would have been to have mass redundancies or for the company to have closed. The loan was not unusual.

In order to survive and to make sure that the business could continue profitably, it had not only to be sustainable but also to diversify into new markets. To be a sustainable business, the company needed a pipeline of continuing activity. That would not all have been to build the same types of ferries or to do the same kind of business as the company had done before. The company was looking to diversify, for example into off-shore activity or into a specialism such as fishing vessels. There are different markets that the yard could have looked into and should look at in the future.

There is nothing contradictory about diversification also being part of the sustainability of the business. You can express your opinion, but I have given you as much explanation as I can about what the loans were for at that time.

Graham Simpson: I must jump in there. Diversification takes some time. The yard had an immediate problem. The explanation that was given to Parliament by the then Finance Secretary was wrong, was it not? That money was needed immediately.

Fiona Hyslop: In order to be sustainable, a business needs to address its immediate issues as well as make sure that it has a plan for the future. Giving business support to a company to ensure that it can continue to be in business and

also that it is fit for purpose is not an unusual situation.

I reflect to Graham Simpson that this is not just retrospective in this individual situation. Many MSPs will have businesses in their constituencies that, because of the current economic crisis, will need support—possibly through a loan or a secured loan, who knows?—to ensure that they can be sustainable. Part of ensuring that sustainability is addressing immediate cash-flow issues, but another part is helping them diversify into new markets.

I gently say to the member that, if he comes to me at any time when we are facing economic pressures on businesses, requesting any Government loans or support for businesses to aid their sustainability and diversification, he might have difficulty in trying to argue for those if he is critical of the previous decision.

Graham Simpson: Convener, I do not have another question, but I want to say that I have not criticised anything.

The Convener: I will let Stewart Stevenson come in. In fairness, it is a question of trying to find out detail. Stewart, would you like to try to get the detail?

Stewart Stevenson: I will address a very small point and not the whole issue. Has the Government at any time received any evidence from any source that a single pound of either the £15 million that was provided unsecured for cash flow purposes, or the £30 million secured loan that was provided for diversification of the business, has been spent for any purpose that is not associated with the company?

Fiona Hyslop: The answer is no.

Stewart Stevenson: That's it—thank you.

The Convener: We love short answers, cabinet secretary. I am sure that Stewart is happy with that answer, which allows me to move to the next questioner, Peter Chapman.

Peter Chapman: Thank you, convener. I am still on the loans. Cabinet secretary, you have tried to suggest that you have been transparent as far as those loans are concerned. Why then did CMAL not know that the loans had been given to FMEL?

Fiona Hyslop: CMAL would not necessarily be expected to know. Given its role, it was not necessarily required to know about that. It is the procurer and it obviously had a particular relationship with FMEL but, quite properly, it was not involved in that decision-making process. It was not involved in any commercial dialogue between the Scottish Government and FMEL around the options for commercial funding for the

business. CMAL became aware of the loans only when they entered the public domain. The loans were not part of the ship-building contracts, but, as we discussed, they supported the business to fulfil its contractual obligations as part of—I will repeat this—a broader business strategy that included plans for capability and diversification.

There needed to be a clear separation of the roles; that was essential to avoid conflicts of interest and to maintain our duty of confidentiality to FMEL and our responsibility. Aspects of FMEL's business plan were clearly sensitive and confidential to it, and we did not have permission from FMEL to discuss any of its financial information or the loans with CMAL.

Peter Chapman: I thought you might say that, cabinet secretary, but in his evidence Kevin Hobbs was less than appreciative of the fact that CMAL had no idea that the loans were being given, considering that it was the procurer of the vessels. I will move on.

Was FMEL unable to secure funding from commercial lenders? If so, why?

Fiona Hyslop: The question whether it pursued or was unable to secure funding from commercial lenders is probably best addressed by FMEL. Certainly, the second loan package was supported by additional private funding from Clyde Blowers Capital, which was willing to invest £3 million as additional working capital for FMEL and £5.5 million for capital expenditure to enhance the yard's capabilities, although I am not sure whether that was on a commercial basis. However, where FMEL secured its funding is probably a question for FMEL—it is a matter for them, not for us.

Peter Chapman: What due diligence was carried out prior to the two loans being made to FMEL?

Fiona Hyslop: Clearly, as you would expect, due diligence was carried out in respect of both loans. PricewaterhouseCoopers was our independent commercial adviser on the loan transaction. As part of the due diligence in respect of both loans, there was commercial, financial and legal scrutiny, accountable officer sign-off and ministerial approval.

Peter Chapman: You are content that the due diligence was done correctly, properly and extensively.

Fiona Hyslop: Yes.

Peter Chapman: What guarantees of security, if any, did the Scottish ministers obtain prior to releasing the two loans to FMEL?

Fiona Hyslop: The first loan of £15 million was initially unsecured but, when the second loan was made, that was done on a secure basis against

company assets. The consolidation of both loans then meant that they were both secured. That is not an unusual situation with a Government loan or Government support for companies. To return to remarks that I made to Graham Simpson, that is a major issue that the UK Government or the Scottish Government may have to consider in future, given the current economic climate.

The Convener: Before I come to John Finnie, I say to Peter Chapman that he should be careful about asking questions that other members have indicated that they want to ask. You may have to apologise after the meeting, too, Mr Chapman. That is two members who have been pulled up for that now.

John Finnie can ask his question now.

John Finnie: Thank you, convener. I am furiously checking to make sure that my question does not intrude on someone else's.

I, for one, applaud the Scottish Government's intervention, which I think was appropriate. I have a question on one aspect of the commercial loans. In your written submission to the committee, paragraph 77, which is in the section on commercial loans, states:

"FMEL is a Scottish Enterprise account managed business."

That is in the present tense. Is it still the case?

Fiona Hyslop: Dermot Rhatigan might want to answer that. Obviously, there is a different arrangement under public ownership.

Dermot Rhatigan: Scottish Enterprise was account managing the business prior to nationalisation, and I believe that it still works with the business. I do not know whether the term that is used is "account management", as that is used with private companies. It is sponsored by a directorate of the Scottish Government.

John Finnie: The cabinet secretary alluded to the independent review by PricewaterhouseCoopers. I presume that Scottish Enterprise was actively involved at that time, too, and would have been advising. Is that correct?

Fiona Hyslop: Yes. That is what I was trying to reflect. As an account managed company, it would be treated in the way that other account managed companies would be treated. For example, issues such as cash flow on projects would be looked at to ensure sustainability for the business and that it could deliver.

John Finnie: That is basically mainstream business for Scottish Enterprise. It would happen with any sort of intervention in a business of such scale.

Fiona Hyslop: Yes, which is why I am reflecting that, in the current economic crisis, that is a regular part of Scottish Enterprise's business.

The Convener: I see that Stewart Stevenson wants to come in. Because he has no other questions, he can do so, as long as it is brief.

Stewart Stevenson: I simply want to inform colleagues that, if you go to Companies House, you will find four registrations of charges related to 2014. That shows that, for example, funding came from HCC International Insurance Company. It is clear that FMEL was looking for money from a variety of sources. I think that we might include that in our consideration of evidence. That is a matter of public record that I was able to look up immediately.

Fiona Hyslop: It is normal practice to ensure that companies pursue different funding avenues and not just the Scottish Government. It is for FMEL to tell you what it was doing, and the committee now has that evidence from Stewart Stevenson.

Angus MacDonald: Staying on the issue of the loans, what were the key terms of the two loans? In particular, what were the interest rates and repayment periods?

Fiona Hyslop: With the £15 million loan, there was a fixed 15 per cent interest rate with a two-year repayment term initially. That was later changed, during negotiation of the second loan, to 2021. As I have mentioned previously, that facility was unsecured.

11:30

The £30 million loan secured all sums that were due to ministers. The terms were: a fixed rate of 13 per cent; interest accrued until share warrants or share options were issued to the Scottish Government; a 10-year repayment term with scope for the loan to be converted to equity; and a full review negotiation of the key terms, scheduled to take place after three years.

PriceWaterhouseCoopers believed that there was a commercial rationale for agreeing that the interest ceased to accrue when warrants were issued during that 36 month period—I think that that is important.

That is the detail that I can provide you with today.

Colin Smyth: I will stick with the issue of the loans. Cabinet secretary, you accepted that CMAL was unaware that the loans were being provided to FMEL. CMAL told the committee that, despite the work that was done by Luke van Beek, the loan instalments were released to FMEL even

though delivery milestones were not being met. How did that happen?

Fiona Hyslop: There are two issues: the milestones for CMAL's payments for the work that was done on the vessels and the milestones for the loans relating to what the business was doing generally, but also for the vessels in particular.

On your question about the release of the loans, that comes back to the point about what work had been done on the vessels at that time. Clearly, Luke van Beek was appointed to make sure that the payment of the loans and the schedules and milestones were meeting what the requirements were. Dermot Rhatigan may want to add more detail on what was happening at the time, as he has more long-standing experience of the matter than I do.

Dermot Rhatigan: I will be brief, but it is very important to remember that there are two separate domains: first, that of the contract that Paul Wheelhouse spoke about during the previous session; and secondly, the loans, which we are focusing on now and are in a different commercial sphere. Although the two things are related to each other, they are distinct and separate.

As the cabinet secretary has said, any payments that were due on the vessels were the responsibility of CMAL and sign-off was handled by it. There were conditions precedent relating to the drawdown of the loan, so the business had to make sure that there was no event of default. It also had to show that the drawdown of the loan was not proceeding at a rate faster than that which had been agreed to in the business plan—both loans were predicated on a business plan, as that was what they were funding. Lastly, the third condition precedent for the drawdown of the loan was that Luke van Beek would provide satisfactory assurance that the build's progress was achieving the milestones. Clearly, that was also related to the resource plan.

Ensuring that enough resource was going into the yard was driving those milestones. When we looked at the business plan, our key concern was to make sure that the business would hire enough staff. In Luke van Beek's early report, particularly the report of October 2018, he was quite focused on whether subcontractors were engaged and employees had come into the yard.

Those were some of the milestones, but they relate to the loans and are not CMAL milestones.

Colin Smyth: I am a bit confused. Are you acknowledging that the loans were still linked to milestones in the development of the two ferries, but at the same time, that those milestones were not being met?

Fiona Hyslop: It is important to distinguish between the two: there are the milestones for the relationship between CMAL and FMEL relating to the construction of the vessels, and then there are milestones in relation to the business plan. Remember that the loans at that time were in relation to the sustainability of the business, predicated on the business plan. Obviously, there was an interrelationship between those two things, but we need to distinguish between them. The drawdown of the loan was from the Scottish Government, as opposed to CMAL.

Colin Smyth: It is probably not an issue for today, but I find it curious that the loans were being drawn down, but you are consistently saying that the ships were not being built and those milestones were not being delivered upon. I am not entirely sure how that ties in with a successful business plan. On that basis, what amount of the loans has been written off as bad debt? Is that figure included in the £200 million cost of those vessels?

Fiona Hyslop: Part of the £45 million loan that the Scottish Government made to FMEL was used for the Government's purchase of the business and the yard's assets under the sale and purchase agreement. Around £7.5 million was set off against the money that was owed to Scottish ministers. The balance of the loans remains outstanding, and forms part of the Scottish Government's secured creditor claim in the administration of Ferguson Marine Engineering Ltd. Any distributions to Scottish ministers from that administration will be offset against the outstanding balance, and the carrying value of the loans has been revalued to nil in the Scottish Government's accounts.

I reiterate that the loan agreements were designed to support the business plan of FMEL—the old company—and that they are distinct from the shipbuilding contracts. We have just had that discussion. Expenditure that relates to the loans is therefore not included in the total cost of the two ferries. That reflects the difference between support for the business and support and funding for the contract with CMAL in relation to the ferries.

Colin Smyth: Before colleagues raise their questions on the new structure and on nationalisation, I have a question about that new structure.

In your opening comments, you said that you stand firm with the workforce, and that you could not turn your back on that workforce—yet that is exactly what the GMB union has accused you of doing, by failing to have a member of the workforce on the new board. GMB organiser Gary Cook said last night:

"Fiona Hyslop has taken the one consistently supportive stakeholder that the Scottish Government had, the workforce, and turned her back on them. Her preferred workforce representation structures have not been negotiated with the ... unions, who supported the ... Government in saving the yard."

He also said that there is no getting away from the fact that the minister

"has imposed a cut on the level of workforce participation concerning the decisions affecting their yard and livelihoods."

He continued:

"We've gone from having a workers' representative on the project board to the Cabinet Secretary creating a 'workforce liaison committee' which can make representations to the new board.

There is nothing progressive about this whatsoever, it makes a mockery of the Scottish Government's own fair work policies and dilutes the effectiveness of the workers' voice."

Will you listen to the GMB union and have a workforce representative on the board of the shipyard?

Fiona Hyslop: I met the local representatives of the GMB in February, when I visited the yard. I had a meeting with the national management of the GMB on 9 July—the local representatives were also on that call—at which we discussed workforce representation, and the role of the trade unions. That role is very important, as I have re-emphasised every time I have spoken to the representatives.

The trade union representatives will be able to attend every board meeting, and will be able to bring forward their views on the things that they want to be addressed. That is fairly unprecedented. In addition, a workforce liaison committee will embrace not just union representation in the yard, but the wider workforce.

We also have to reflect that the situation is unlike that in other countries, where board membership may have trade union representation as part of the supervising of operations. That was the case with the project review board, to which you have referred, which was set up when the Government took ownership of the yard, in order to make sure that there was input and direction when it came to the unions' understanding of the work that was needed to turn around the company.

In the United Kingdom, however, we have unitary boards, on which each member is responsible to the board, not to a trade union. If a trade union representative was put on the board, they would be responsible not to their trade union but to the board. I do not know whether Gary Cook or other members of GMB senior management, would want to take that responsibility, or whether

they are suggesting that one of the local members would want to do that.

I notice that the convener is pointing his pen at me. I am sorry; the introduction to Mr Smyth's question was quite long, but I thought that it needed to be addressed.

The Convener: It was far too long an introduction by Colin Smyth, but he got away with it, and you got away with a very long answer. However, lots of other members have questions, and I do not want to upset anyone, so I call the deputy convener, Maureen Watt.

Maureen Watt: At the stage at which it was obvious that FMEL was no longer in a position to take the yard forward, what effort was made to secure private sector bids for the yard?

Fiona Hyslop: That is an important question. Paragraph 158 of the written statement that we sent to you covers the acquisition of Ferguson Marine. PricewaterhouseCoopers was appointed in January 2019 to undertake the work of looking at what might be required in future, using three main criteria: the delivery of the vessels; the safeguarding of the workforce; and supporting the future of the site against the background of the Scottish ministers acting on a commercial basis, as we understand that we need to do.

Initially, 29 scenarios on a long list were tested against a range of procurement. Retendering was one of the final three shortlisted options, and it was assessed as a higher cost option. FMEL or, indeed, somebody else could have secured that. The second option involved a build-out under administration without ownership, and the third option—which is what was decided on—involved public ownership. There was a wide range of options following investigation of all the different options, including the commercial options that the member referred to.

Maureen Watt: Are you therefore satisfied that nationalisation, which I realise gives some political parties the heebie-jeebies, was the only way forward to secure the future of the yard?

Fiona Hyslop: Yes, indeed, and it was on the basis of those three criteria: securing the future of the workforce, securing the future of the yard and delivering the vessels. Those things would have been compromised by other options in a way that I do not think would have satisfied the public, the Government, or indeed the workforce or the local community.

Maureen Watt: On the future of the shipyard, what estimate has the Government made about the loans and the subsidies that it will need in the shorter and, perhaps, in the longer term?

Fiona Hyslop: Funding is there to support the yard. We expect the yard to deliver the vessels as

per Tim Hair's report that I updated Parliament on yesterday. In the future, we want to make sure that the yard is successful in securing business on a commercial basis. However, that is part of our on-going discussion. The most important thing just now is to turn around the business and to deliver the vessels. I cannot say what will happen in the long term but we are accountable to Parliament in terms of what might be needed in the future.

There will be pressing needs from across business because of economic situation that we find ourselves in now is different from what it was six months ago when the committee probably last met to look at this issue.

Maureen Watt: Are there any state-aid rules that might limit the amount that the Scottish Government can give to support the yard? Will that be affected by our exit from the European Union?

Fiona Hyslop: State aid affected the previous arrangements that we had with FMEL, as well as public ownership. We have to comply with state-aid rules in a variety of different situations. They are part of European Commission competition law. The rules exist to ensure that there is no distortion of competition between private and public companies, so, in all the Government's decisions about supporting not just this businesses but others, we have to look at the state-aid rules.

We are looking at whether direct awards can be given. There may be different circumstances depending on what the UK Government does in relation to the negotiations. There is a real lack of detail. I am not going to get into Brexit—I am sure that the convener will appreciate that—but the fact is that we do not what know what the situation will be in terms of alignment with EU rules on compliance. That is the situation that we are operating under currently.

We are also conscious that we have to behave responsibly about what we can do in relation to support for any business, whether it be this one or others. Whether we can do direct awards is an issue that I know is coming up, and we need to make sure that we are fully compliant with whatever regulations are in place at that time. That might be something that we can come back to once we know whether there is going to be a deal with the EU and what that deal might be.

11:45

John Finnie: Cabinet secretary, can you advise what impact the nationalisation of the Ferguson Marine shipyard has had on its ability to bid for contracts tendered by organisations that are owned by Scottish ministers or, indeed, tendered by the UK Government?

Fiona Hyslop: The yard can still bid for public and private sector contracts that are put out to competitive tender. As I just said, we are also exploring whether the direct award of contracts for Scottish-funded vessels to Ferguson Marine is possible, although no policy decisions have been taken on that yet. In the meantime, the yard is seeking to secure work to follow on from the completion of vessels 801 and 802 and we continue to support the yard in improving its efficiency and competitiveness so that it can secure sustainable work, irrespective of whether that involves private or public sector vessels. Again, what is going to be important—I do not know whether Tim Hair wants to comment on this—is playing to the business's strengths in terms of the specialism of the workforce and its skills, as the yard will not necessarily be able to compete in certain areas.

I do not know whether that is the answer that you are looking for.

John Finnie: It is. We heard from Paul Wheelhouse in the previous evidence session about the number of vessels in the existing fleet that Ferguson Marine built, so the yard clearly has a history in that regard. However, that history might have to be offset against reputational damage because of what has happened. What steps have been taken to build on that history and the workforce's strength in terms of the quality of the craft that Ferguson can build?

Fiona Hyslop: Tim Hair is happy to take that one.

Tim Hair (Ferguson Marine (Port Glasgow) Ltd): The shipyard's reputation has undoubtedly taken a hit as a result of the problems with 801 and 802. We are focused on doing a good job on the two ferries and demonstrating the yard's capabilities and on the Inverlussa aquaculture vessel—hull 805—that is going through the yard.

On the broader point about the type of vessels that we think that Ferguson can compete for, the simple low-complexity vessels are never going to be something that Ferguson can compete for, but we think that there is a market niche for complex commercial vessels, typically ferries but also others that have a significant level of complexity. We are actively pursuing those. As we speak, our head of sales is finalising a response to an invitation to tender on a vessel that inevitably has other competitors, but it is a commercial vessel that we think fits very nicely with the strengths of Ferguson and the future that we are trying to create for the yard.

John Finnie: That is reassuring and I wish you every success with that tender.

Maureen Watt: We spoke in the earlier evidence session about new technologies. Is the

yard gearing up for using newer technologies such as hydrogen and battery-powered vessels?

Tim Hair: As far as hydrogen is concerned, FMEL was involved in a hydrogen ferry consortium, but the turnaround was incompatible and we would not have been able to support it. However, that project is continuing with support from other Government agencies. We have involvement in a hydrogen-based retrofit generation project, which Ferguson is continuing to support. The business built three battery-hybrid smaller ferries in the past, so the knowledge is there. It is not our first area of focus—that is to deliver the current vessels and safeguard the future of the yard—but it is on the agenda.

Emma Harper: Good morning—it is still morning.

I had questions about the future of the yard, but I will move on to the future of Ferguson Marine. Will the Scottish Government return it to the private sector? We have seen the success of Prestwick airport, which has had a significant turnaround in financial performance, as I raised with Paul Wheelhouse in our previous evidence session. What is the plan for the future? If we are going to return Ferguson Marine to the private sector, what is the timeframe for that?

Fiona Hyslop: As we have heard from Tim Hair, our immediate focus is on ensuring the turnaround of the yard and the business. The update that Tim Hair produced yesterday and that I reported on to Parliament shows extensive progress, even during the lockdown period. There was the continuation of contracts for project management, and design work was done by those working from home. We should put on record our appreciation of the workforce returning and our appreciation for those who continued to work from home, in what were trying circumstances for everybody. The work that has taken place is remarkable and is to be commended.

The focus has to be on delivering the major vessels, including the 805, and on securing the jobs in the workforce in the immediate future. Obviously, we will consider issues and options, as we do for other companies, such as Prestwick airport. On the long-term future of the yard, the possibility of a return to private ownership always remains open, but any decision would have to be in the interests of the workforce and the local community. In our decision making, our priority has to be the immediate future, but we will keep everything under review, as would be expected.

Peter Chapman: Paragraph 128 of the written submission from ministers says:

"Ministers have committed to exploring options for a sustainable future for the yard. Consideration of a possible pipeline of future work is ... a key element of this. As part of

this work, officials are considering whether a legally compliant route exists to allow for contracts for the delivery of vessels required by Scottish Government to be directly awarded to Ferguson Marine."

Are you seriously saying that there will be no tendering process, no transparency and no idea of value for money, and that you will just award contracts to build vessels in future?

Fiona Hyslop: Seriously, that is not an unusual thing to happen in lots of other countries in other parts of the world. However, we should remember the issues that I talked about to do with competition and ensuring that public awards are equitable and state-aid compliant. Obviously, that would have to be considered if we were to give a direct award. I am not saying that we could do that now, because we have to ensure that whatever we do is compliant with state-aid rules and does not give or appear to give any advantage to a directly owned company as opposed to a privately owned one.

You can give an opinion on what is serious or not, but the approach that we mention in that paragraph is not unusual. However, if it was done, it would have to be done responsibly and looked at seriously to ensure that the investment was state-aid compliant. You are right to address our role in accountability for public funds. We would need to ensure that we got best value for our funds, although the Government can take a broader view as to what best value is. For example, we could get best value by sending any contracts off to Vietnam or Korea, but we might also want to ensure best value in terms of securing the yard and the workforce through that pipeline of activity. There are a lot of questions on that, but our role and responsibility are to ensure that we get best value, whether or not there is a direct award.

We have not made any decision on that. You can have your opinions and you can say to me that you do not think that it is the right thing to do, but other people will have other views as to whether it is the right thing to do. Whatever we do, we need to make sure that we are accountable to Parliament. We will ensure that we report any change in our position. Our position just now is that we have not made a decision on the issue.

The Convener: I will bring in Stuart McMillan. I hope that I will be able to see him on the screen, as we had a technical hiccup earlier. Are you there, Stuart?

Stuart McMillan: Yes. Thank you.

The Convener: Go for it.

Stuart McMillan: This question is for Tim Hair. On page 5 of the report that you presented to the Scottish Government, Tim, the final paragraph of section 3 says:

"I remain concerned that we will find a major problem with a long-leadtime item, but hope that we will be able to manage problems found in the remaining inventory without further impact on the project."

Do you have a particular item in mind, or are you just alerting the Government and the public to something that may or may not happen in the future?

Tim Hair: It is more of a general observation. That paragraph relates to the inventory that was held at Westway, the condition of which committee members saw for themselves, with the lack of identification and the storage conditions.

We have moved the inventory from the Westway site into a rented warehouse a few miles down the road, in Greenock. We have people working through it to find out what we have got, where it should fit on the ships, whether it is still compatible with the design, and what condition it is in. We have not yet found anything that is a grave cause for concern, but we still have half a warehouseful to get through.

Stuart McMillan: The first paragraph of section 2 of the report, which is headed "Update", is clear about the challenges that the yard has faced, but it is important to highlight the job that has been done over the past year, with two vessels being launched, substantial progress being made on hull 801, work recommencing on 802, and more people being employed. Do you think that the work that has been undertaken over the past year shows that substantial progress is being made with the yard, which will put the yard on a firm footing for the future?

Tim Hair: Inevitably, I agree with that. A year of my life has gone into the yard, and a year of more than 300 other people's lives. There has been a huge amount of effort in all parts of the organisation to deal with the problems and to create a sound footing for the business. I agree that substantial progress has been made, but there is still a considerable challenge ahead of us.

The Convener: I have two quick-fire questions. Your update report says:

"Full recovery of input VAT will be achieved".

Why would full recovery of VAT be achieved?

Tim Hair: It is listed as a risk on the basis that there are some nuances to the funding structure, which mean that it is conceivable that VAT may not be fully recovered. We have no reason to believe that that will be the case but, until those nuances are finally pinned down, that has to be listed as a risk.

The Convener: Could you also explain risk 10? You were probably listening earlier—I got seriously worried when I read:

"Hull vibration analysis indicates that there may be an inherent design problem".

Is there a cost analysis of such design problems?

Tim Hair: I will briefly explain the issue. The interaction between the machinery—the hull and, in particular, the turning of the propellers—can generate resonance, and therefore vibration, in a vessel. The vibration analysis indicates that there is a point in the operating range where that resonance might occur. If it did, techniques could be applied to mitigate it. I think that you suggested earlier that we might have to start again, but we would not have to start again. The likelihood of that vibration happening is considered to be low, but it is in there as a risk that we need to be aware of.

The Convener: I do not think that I suggested that you start again; I suggested that I might like to know the cost if there is a risk, because if you put a risk in, you will have worked out a potential cost.

12:00

Tim Hair: In this case, because of the complexity of the vibration, it is very difficult to understand how it might occur or what might generate it, and we would not know from trials, so we do not have a cost. However, we believe the likelihood to be low.

The Convener: If the deadweight does not come up to the deadweight given in the contract, surely CMAL could turn around and say that it does not want the ferries anyway.

Tim Hair: In the contract, there is the potential for a deadweight penalty of up to £250,000 if it is too heavy. That has been provided for in the cost estimate. As we stand, against a deadweight of 878 tonnes in the contract, we are 12 tonnes favourable on 801 and 0 tonnes favourable on 802. Now that we have a comprehensive 3D model produced by ICE that we can really get to grips with in forecasting the weight, a lot of work is being done to make sure that we are within the contract weight for the two vessels.

The Convener: Thank you—that explains that. Obviously, if it is overweight, I suspect that it will cost more to run in the long term.

Graham, you have the last question.

Graham Simpson: Mr Hair, my question relates to your report's section 2.2, which covers the ability to attract the right talent. In the final paragraph, you suggest that issues might be coming up. You say that

"Trades recruitment to date has been adequate for the workload levels",

but you go on to say that

"we are unlikely to be able to directly recruit the resources required for the major work on the ferries".

Can you explain that a bit further?

Tim Hair: Yes. The market for skilled shipyard workers on the Clyde is quite tight. There are other shipyards that employ the skillset that Ferguson needs. We need to increase employment quite significantly to finish the vessels.

It is a factor that we are very aware of. It is possible to use contract labour—in other words, skilled people who are employed through contract organisations rather than being employed directly. We are putting in place framework agreements to be able to do that.

Although we have moved a large number of workers from temporary contracts to permanent contracts since the Government took ownership of the yard, we will always need temporary workers and contract workers to top up the core workforce, simply to deal with the peaks and troughs of the workload.

Graham Simpson: I have one more question. Why is there an interim human resources director?

Tim Hair: I found it necessary to bring some additional skills and experience to the business, in order to deal with some legacy HR matters that we are in the process of sorting out.

Graham Simpson: A human resources director that is—

The Convener: No, Graham—sorry, you have pushed it as far as you could, and I have given you as much leeway as I am prepared to. I am sure that there are other questions that members would have liked to ask, and we are up against the time.

That completes our questions and concludes the evidence taking. I thank all the witnesses who have taken part in the committee meeting. I am afraid that Derek Glover was unable to join the meeting remotely; I apologise to him.

The committee will now go through the process of considering all the evidence that has been provided, and we will produce our report to the inquiry in due course.

Meeting closed at 12:04.

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