



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit Committee

Thursday 16 June 2022

Session 6



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PUBLIC AUDIT COMMITTEE

18th Meeting 2022, Session 6

CONVENER

*Richard Leonard (Central Scotland) (Lab)

DEPUTY CONVENER

*Sharon Dowey (South Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Craig Hoy (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jim McColl (Former Director, Ferguson Marine Engineering Ltd)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament
Public Audit Committee

Thursday 16 June 2022

[The Convener opened the meeting at 09:15]

Decision on Taking Business in Private

The Convener (Richard Leonard): Good morning. I welcome everyone to the 18th meeting of the Public Audit Committee in 2022. Under item 1, does the committee agree to take agenda items 3 and 4 in private?

Members *indicated agreement.*

The Convener: Thank you.

Section 23 Report:
“New vessels for the Clyde and Hebrides: Arrangements to deliver vessels 801 and 802”

09:15

The Convener: Our principal agenda item this morning is continued consideration of the Auditor General for Scotland’s report, “New Vessels for the Clyde and Hebrides: Arrangements to deliver vessels 801 and 802”.

Our witness this morning is Jim McColl, the former director of Ferguson Marine Engineering Ltd. You are welcome, Mr McColl. We had also hoped to take evidence from the former chief executive officer of FMEL, Gerry Marshall. Unfortunately, he is not now available but, as always, the option remains open to the committee to consider whether we wish to seek further evidence at a future date.

Mr McColl, we have a written submission from you, so thank you for that. I invite you to make a short opening statement of about two minutes before we get into questions.

Jim McColl (Former Director, Ferguson Marine Engineering Ltd): First, thank you for the opportunity to be here today and to participate in the process. I was also happy to participate in the Rural Economy and Connectivity Committee inquiry and the recent Audit Scotland review. The former senior management team and I submitted a lot of factual evidence to assist the processes, but in both cases, we felt that it was necessary to submit responses to the reports because of our concern that important issues were not addressed, were factually inaccurate or had been presented in a misleading way.

In our view, four main factors have caused the massive cost overruns and extensive delays. First, the wrong type of vessel was selected. The second was the insufficient development of the specification prior to the placing of the order. The third factor was the shutting down of all opportunities for dispute resolution during the build process. The fourth was that nationalisation and the steps that have been taken since then have been catastrophic. I would be happy to expand on those later if you would allow that.

What has happened has been damaging to the reputation of the leadership team, our team, and the workforce. Many false allegations have been made about the quality of those people. With the right design and the proper specification, that shipyard and the workforce are more than capable of building all the ferries that are needed for the future of Scottish ferries.

The Convener: Thank you. You are right to say that we will return to the themes that you outlined in your opening statement in the next hour or so, so thank you very much for that.

You will be aware that the Scottish Government has released a large number of emails that give us some sense of things that were going on from 2015 onwards. Can I take you back to August 2015? We have published correspondence from Transport Scotland to Keith Brown, who was the Cabinet Secretary for Infrastructure, Investment and Cities at the time. On 20 August 2015, correspondence seeks his approval for Caledonian Maritime Assets Ltd to award FMEL shipbuilding contracts of a total cost of £96 million—I think that it went up to £97 million in the next few days—for two new major ferries. Towards the end of that correspondence, reference is made to the potential for a legal challenge from one of the unsuccessful shipyards. The correspondence goes on to state that CMAL was confident that it could defend any challenges in those circumstances, but it also uses the interesting phrase:

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

For the benefit of the committee, can you define the terms of that relationship at that time?

Jim McColl: Yes. I was on a number of entities and non-paying organisations such as welfare to work, and I got involved in campaigns to get people into work, working with Skills Development Scotland and so on, so I had a lot of interaction with the Government. Whenever any issues came up with businesses that were in trouble, I always got a phone call from Alex Salmond asking me whether I would have a look at it or whether I would be interested in it. I would have a look at it and say that I was not interested. I saw my role as a businessman to support whoever was in power and to do my best to support the Government. That was the relationship that I had with the Government. When Alex Salmond asked about the shipyard, we had a further look at it, did diligence on it and decided to go ahead with it. It was very much a working relationship.

For the record, I have never given money to any political party. I try not to be a supporter. At the time of the independence referendum, I supported the idea of more powers for Scotland. I thought that the independence referendum might result in more powers being given to Scotland. That was the main reason why I backed that. Other than that, there was no closer relationship, although there were lots of photo opportunities at the time because of events that I was involved in. I was also on the Council of Economic Advisers, along with a number of other people.

The Convener: In evidence that you gave to the Rural Economy and Connectivity Committee a bit later on, you said that you raised your concerns with the First Minister, the Cabinet Secretary for Finance, Economy and Fair Work, the Deputy First Minister, the Minister for Business, Fair Work and Skills, plus all three transport ministers. I think that you said that with an air of frustration, but you clearly had a very close relationship with a range of Government ministers.

Jim McColl: Yes—I think that that was because of the various bodies that I was on, such as the Council of Economic Advisers and the energy advisory board. Through those, I was fortunate to be able to have access to the ministers.

Because of what was happening in the yard, some of the frustrations that were going on and the costs and delays that I could see rolling up, I felt that the situation had to be raised at a high level in the Government. I first flagged it up five years ago. I was fortunate to have access to the minister because of my relationship with various organisations.

The Convener: Do you think that you had preferential access to ministers?

Jim McColl: No. You only need to look at the history to see that I did not. I know many businesspeople, university principals and so on who had the same access because the Government tended to talk to a lot of people to get input.

The Convener: Okay. Obviously, there is a financial relationship between the Government, Caledonian Maritime Assets Ltd and the company that you were the owner of. Again, I want to go back to August 2015. I mentioned the email that was sent to Keith Brown on 20 August. Come 31 August, the First Minister went to the yard to announce that FMEL was the preferred bidder for the contract. That must have strengthened your hand in any negotiations that were taking place.

Jim McColl: It did not. Having been named the preferred bidder, you would normally expect—and we did expect—the order to be signed by September. We did not sign the order until 16 October because we were holding out for some changes that we wanted to be made to the contract. It was not acceptable to us in the form that we had seen it.

The Convener: However, from the perspective of the negotiating position, the First Minister—the head of the Government and the leader of the Scottish National Party—comes along and announces Ferguson Marine as the preferred bidder. She would have been made to look pretty foolish, would she not, if five-and-a-half weeks later it was decided to put the contract back out to tender? That must have strengthened any

negotiations that you were having with CMAL about the builders refund guarantee.

Jim McColl: We had already agreed that before she made the announcement.

The Convener: You had agreed the builders refund guarantee.

Jim McColl: Yes.

The Convener: What was the agreement?

Jim McColl: The final agreement was that we would put up a cash deposit of £25 million initially and then all materials and all work and the ownership of everything that went into the vessels would be the property of CMAL. We had no work in progress. We had no value in all the work that we did or equipment that we bought. It transferred to CMAL's ownership.

At the time, our argument was that CMAL got a better-than-100 per cent refund guarantee because it had everything that was going into the vessels and £25 million on deposit that could be called on. That was changed later into a £15 million deposit and a £25 million insurance bond, which in the end it did not claim—it forfeited claiming that £25 million bond. We also offered up a parent company guarantee.

We offered an alternative to the idea of a cash refund guarantee. A cash refund guarantee means that, for a £100 million contract, you have to deposit £100 million in the bank. We addressed that before we put a lot of work into the tender. I think that you have papers that show that we brought that up with the local member of Parliament, who I think had approached the Scottish Government. I do not know who he approached, but the response came back from Derek Mackay saying that Stuart had raised the issue of the guarantees with him. He explained to Stuart how the cash refund guarantee worked. I have here the document from Derek Mackay, who was the transport minister at the time, that says all of that. The response also says that, although CMAL preferred to have a cash refund guarantee, in the past, it had waived that for an alternative.

That gave us the green light to go ahead and put the resources in to put in the tender. There is a lot of work that goes into tenders and we were not going to go ahead and do all of that if we were not going to be allowed to negotiate a different form of guarantee.

I will tell you why we cannot do that—indeed, many companies in the United Kingdom cannot do it against foreign competition. In Germany, the national investment bank put up the bonds for the Flensburg shipyard. In Poland, shipyards get backed. In Finland and in Holland, and in most European countries, the burden is not put on the company that receives the order—the Government

stands behind it. My first approach to the Government was to ask whether it could stand behind the bond in the same way as Governments overseas do, and its response was that it could not as it was the buyer as well, so there was a conflict. We had lots of discussion about how we might be able to do this and we put forward various options. They are on record and they were agreed before the First Minister announced that we were the preferred bidder.

The Convener: That appears to be at odds with the email correspondence of 8 and 9 October that has fairly recently come to light, in which serious misgivings were expressed by the board of CMAL about the awarding of the contract without a builders refund guarantee.

09:30

Jim McColl: I can only show you what we have. We have evidence. We have emails showing what was offered to CMAL and what it accepted.

The Convener: Was that by 31 August 2015?

Jim McColl: Yes.

The Convener: You mentioned a parent company guarantee, which has also been the subject of some interest. Some people have said that they were under the impression that Clyde Blowers Capital would underwrite the work, but you said later that that was never the case.

Jim McColl: No, that was never the case.

The Convener: What do you mean, then, by a parent company guarantee?

Jim McColl: There was a parent company at the top of Ferguson. There was a holding company and we said that we would stand behind that, but we were not giving a Clyde Blowers Capital guarantee. We are invested in a number of companies and if we gave guarantees for everyone, we would have to have backing to come through with that. We could not just put up a guarantee if we did not have the wherewithal to meet it. Again, it was £100 million. No one in their right mind will put up a guarantee like that. That is why foreign competitors get the backing of a mechanism that is put in place by their Governments.

The Convener: Okay. I want to move us on to another area. You talked in your opening statement about why you feel that the contract has gone in the way that it has. If I take you again to the Rural Economy and Connectivity Committee's inquiry, one of the conclusions that it made was that

“... FMEL lacked the appropriate level of design capabilities ... failed to manage the design ... process

effectively ... and proceeded to build the vessels before the design had been suitably developed and signed off.”

How do you respond to that conclusion?

Jim McColl: It is not something that I recognise and it is not something that the Government’s appointed expert recognises. In fact, he is on record—

The Convener: This is Mr van Beek?

Jim McColl: Yes. All that you need to do is read van Beek’s evidence to the RECC and he will tell you that what he saw was quite different from what CMAL was saying. He also says that it appears that what was reported was just what CMAL was saying.

I do not know whether you are aware of Mr van Beek’s background, but he is a serious expert in this and is the only person who has been involved who knows in detail, technically, what he was talking about. He is an ex-Royal Navy procurement expert. He worked in defence procurement for a long time and he was the person who worked on the two aircraft carriers. He was brought in because they were running over, and in two years he saved £800 million. He has fabulous credentials and he has overseen the build of a lot of these naval vessels.

He has backed our story all the way through. If you read what he has to say about CMAL—

The Convener: I have read it, Mr McColl. I have read it in the Rural Economy and Connectivity Committee minutes.

Jim McColl: Why is no one paying attention to it?

The Convener: I think that they are, but we are also paying attention to the outcomes here. Here we are, all this time later, and there are still no ferries. This guy may have been the world expert on naval procurement and ferry procurement, but the fact of the matter remains that this contract is two and a half times over budget and five years late.

Jim McColl: Yes. That is because he was not heeded in the advice that he gave. He gave advice that was not taken. It was ignored. He tried to engage with CMAL. He says it all the way through. It blocked him. It would not listen to him. It would not engage in any of the dispute resolution.

Many people have had a go at this with CMAL. When Humza Yousaf was Minister for Transport and the Islands, he put out a paper—I have an email—suggesting a peer review with us, Clyde Blowers, Ferguson, CMAL and Caledonian MacBrayne. We accepted it. CMAL did not.

Transport Scotland then proposed—I have the proposal from it—an expert determination process,

which was again blocked by CMAL. Every time some way was brought up to bring in experts to look at this, it was blocked by CMAL. Why was it allowed to do that? I do not know, but ministers have tried and Transport Scotland has—

The Convener: Can I stop you there, Mr McColl? You have said, I think, in your evidence to the Rural Economy and Connectivity Committee and in the written submission that you have given us that you were concerned about the relationship between the Scottish Government and CMAL.

Jim McColl: Yes.

The Convener: You said:

“We could not understand why the Government did not take a stronger stance with CMAL. We now know why.”

What do you mean by that?

Jim McColl: What came out of the Audit Scotland report, which I was not aware of at the time, was the evidence about the chairman of CMAL’s quite strong opposition to Ferguson getting the job. We did not know at the time that there was strong opposition from CMAL. We would not have taken the job if we had known how strong the opposition was to us getting it.

It looked as if CMAL had been pushed into accepting Ferguson. That is what it looked like to me with the benefit of seeing the evidence coming out. That is why I said that I think that we know that there was something that the chairman was forced to do that he did not want to do, and he has put it in writing. However, I think that there is more that he has against some members of the Government, because—

The Convener: Where is your evidence for that?

Jim McColl: It is just the circumstances. My evidence is that, at every turn when the natural thing was to have a dispute resolution process, which would be normal commercial practice, it was blocked by CMAL. If I was in a situation like this with one of the companies that I own, I would tell them, “We’re having an independent expert determination here.”

I would say that we were right and CMAL was wrong but, early on, we brought in a company called Burness Corlett Three Quays Group, which is an expert in naval architecture, to give us, Clyde Blowers, comfort that what FMEL was telling us was accurate. It wrote quite a damning report, which we have submitted. We commissioned that, so you could say, “They would say that, wouldn’t they?” However, these are professional people and they are not going to write a story that I want them to write. HKA is the same, and it wrote the same.

We then had Luke van Beek, who was independent of all of this, confirming what they were all saying. The evidence was all there, but no action was taken.

The Convener: Okay. I am going to move on. I ask Willie Coffey to ask a couple of questions that he has, and I will bring other people in if they want to come in.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, Mr McColl. I will begin by following on from the convener's question about the Rural Economy and Connectivity Committee's report, its comment on the

"appropriate level of design capabilities"

and so on. Clearly, you contest that finding. Did you get an opportunity to give evidence to that committee? Subsequently, when you saw the report, were you able to challenge those findings and set that out in detail?

Jim McColl: Yes. I was able to give evidence to the committee. The senior management team of FMEL and I submitted a report to it after its report was printed, highlighting some of the inconsistencies in what was put forward. We said:

"Whilst acknowledging many of the conclusions in the report, we are concerned that most significantly important issues have either not been addressed, are factually inaccurate or have been presented in a way that is grossly misleading."

We detailed them all. We said what was in the report and what our counter to it is, and we have evidence to back up what we have said. That is all in there and it can be fact checked.

Willie Coffey: Thank you for that comment. There was clearly a disagreement with the committee's findings in its report. You have made that pretty clear.

In the Auditor General's report, there is an issue about cables in the vessel being too short. The turnaround director, when he was appointed, unearthed that issue. I want to ask you for your views on that. The report says:

"This process identified that some of the 1,400 cables that FMEL had installed at the end of 2018 were too short to reach required equipment."

What do you say to that? How could that possibly come about if design and construction were proceeding correctly?

Jim McColl: I know exactly how it came about. It is part 4 of what I said about the way that this was managed when the yard was nationalised.

When the yard was nationalised, they put in Tim Hair; in fact, it was on the day when it went into administration. Tim Hair was managing it on behalf of the Government. He immediately dismissed most of the senior management team, and many

of the key managers below that level left. They were wiped out. They had to sign non-disclosure agreements, which is why I do not have more people with me today. They are gagged and they cannot get freedom from that, so they cannot speak. Those were the people who were intimately involved with every part of the ship construction.

We also had a very effective management system in place. We have evidence of Lloyds, CMAL, CalMac and BAE Systems giving us excellent marks for our systems. Tim Hair wiped out all the systems that we had, because there was no big enterprise planning system or integrated enterprise planning. Each individual had their element of the system that they ran. There were meetings twice a day in what we called a war room, where everyone was together and they updated every aspect of the progress on the ship, day by day. All those systems were wiped out. I am told that no planning meeting was held for six months after Tim Hair went in. He also sacked the design consultants that we had engaged—Vera Navis, which was working on all the design work in the background, supporting our design team.

What was wiped out was all the people who knew what was going on, all the systems that controlled it and the design people who were behind it. There was a black hole there, and for six months nobody knew what was going on in the yard. A new design team was then brought in, and I think that it has been changed twice since then. The design team had nothing to go on, so it had to go into the ships and say, "What do we have here?" It had to start building them up from where they were, saying, "What's the next thing that we should do?" We know that they have moved control panels, pumps and equipment. If cables were already in place to go to those things, they might not reach to where they have been moved to.

Those are the facts of what has happened. You will notice that Tim Hair left it until a week before he left to announce that problem. The cables were installed by Kongsberg earlier on. It is a very professional outfit. It had the design-and-install contract to put the cables in based on the design that we had for where equipment was and where the control panels were, and that is what it did. These are not people who make such mistakes.

09:45

Willie Coffey: For the avoidance of doubt, you are saying that the cables that were installed were not short. It is because equipment was moved around.

Jim McColl: They were short for where the equipment was moved to. This is the crux of something that has been happening all along:

design changes. You can read what van Beek said. He was in and he was observing. He tried to freeze the changes. He said that he had never seen such a level of changes before. If you keep making changes and moving things, it has consequences for stuff that has already been done, but that has continued to happen.

You will read that, since the Government took over, there has been lots of remedial work, but it is not all remedial work. In such contracts, people are allowed owner observation reports. An owner observation report is the owner—that is, CMAL—coming back and saying, “We would like to change this”. We said no to, probably, 70 per cent of what it asked for, because it was not necessary. We were designing the vessel and we knocked CMAL back.

It is now getting a free hand in the yard to make all the changes that it wants—the “nice to have” things—and they are being called remedial work. That is not remedial work. If the project was being managed properly, you would assess whether those changes should be made. Is a change a necessity or a nice to have? Will it have an impact on other things that have already been done? You would examine all of that. We did that, and there will be a record of the owner observation reports, as they were called at the time. It is now called remedial work. The crux of the problem is the constant changes, and they are still happening.

Willie Coffey: Let me finish this, if I may, Mr McColl. You have said quite clearly that the cables were not short. Equipment was moved around, which caused the cables not to reach it.

Jim McColl: They were not short for the design and the placing that we had for the control panels and other equipment. We know that equipment has been moved about and we know that control panels have been moved.

Willie Coffey: You mentioned the owner observation reports. The information that we have is that there were about 346 of them and that 180 were carried out while 166 were rejected or are still outstanding. Does that fall within normal quality management procedures where the customer requests changes and the person who is delivering the contract either agrees or disagrees that they can be made? Is that where the dispute resolution issue fell? Was there a failure to agree about changes or rejected change requests? How did that work?

Jim McColl: When we got a request, we would review it and see whether it was something that would affect the performance of the ship or would be a safety issue or whatever, and we would then decide whether to reject it or accept it. The number of—

Willie Coffey: Was that process agreed in advance? If you build anything—it does not matter what it is—you are bound to get change requests as you go along.

Jim McColl: Yes.

Willie Coffey: Was there an agreement about how to approach that issue? It is at the heart of any—

Jim McColl: There is a process. When requests are put up, we look at them. We say no to some and we accept others.

Willie Coffey: That is at the heart of any quality control or quality management process. However, the Auditor General's report says that there were no quality processes in place to manage such issues.

Jim McColl: Where do you think he got that? We have evidence of people who have done audits, including CMAL, giving us 97 out of 100 per cent—“excellent” is the term that is used in the form that they fill in—for our procedures and so on.

Willie Coffey: I am just talking about quality processes that give an agreed framework between a client and a contractor about what to do to resolve issues. Were they in place?

Jim McColl: We had all of that in place. We were audited by the people who were looking at the British shipbuilding strategy. Sir John Parker did a review of the shipyards in the UK, and we got a glowing report. It went into all the control processes that we had. We got to the stage where we were nominated as a consortium partner with Babcock. Indeed, we had started work on agreeing with Babcock the elements of the hull that we would build. The company was nationalised. I think that it was just weeks after that that it was announced that the Babcock consortium—including Ferguson—had won that, but that has all gone. We were heavily audited for all of that. We did not get through those audits by having the type of systems that you read about in that report.

Willie Coffey: I will move on to my final question on the issue. The Rural Economy and Connectivity Committee report also comments that there was

“evidence that the contractor deliberately proceeded to construct specific sections of the vessel either out of sequence or not according to the proper specification”.

What is your response to that and how does that fit in a quality process?

Jim McColl: That again goes back to the same four basic problems that I mentioned at the start. When we got the order, we expected to start the construction and work on the vessels. The order

was signed on 16 October 2015. By April 2016, CMAL had to concede that the specified deadweight capacity could not be met without a change to the draught of the vessels. That is a key part of the specification. It tells you the deadweight—the cargo that the vessels have to carry and the number of people—and the draught. A vessel needs to have the right draught to get into the ports that it will go to.

That had to be changed, and it took six months to get to the decision on how it was to be changed. That should have been nailed down in the spec. That work should be done by the buyer and it should be in the tender document before an order is placed. The decision came six months after the contract award and 20 per cent into the contract period.

CMAL also did not select an engine until 27 April 2016, which was six months in. The engine selection was also made 20 per cent into the contract period. Once CMAL had decided on an engine, Ferguson then had to progress with the detailed propeller design, because that is dependent on the engine. Then a model had to be constructed and tank tests carried out to prove that it all worked. CMAL then decided that it was considering two different propellers. The spec started off as being for two identical ships but then CMAL said, “We want you to look at two different propeller designs.” That was done by Wärtsilä, which is the engine supplier that was specified by CMAL.

If you are specifying an engine supplier, you should have gone through what you are looking for with that supplier. We had no option but to go to Wärtsilä—they were the right people to go to, but you would normally have all that bedded down before you issue an order. You would know that you were getting Wärtsilä engines, and it is the specialist in the design of the propellers as well, because it is all the same system.

CMAL wanted two instead of having one, or the same in both vessels. That rather belied the concept that hulls 801 and 802 were to be identical. The propeller specification was of fundamental importance and, until CMAL selected it, the final lines of the hull could not be designed. The two most important ones would be the sternmost block, which is block number 1, and then the block at the very front at the bow of the ship. Once the sternmost block—

The Convener: Mr McColl, you are going into a great deal of detail here and it might be more—

Jim McColl: Can I summarise it then?

The Convener: Yes.

Jim McColl: Before we could start with block 1, which is the last one, it was April 2017, and we

were 50 per cent through the time of the project. That is why we started to build the blocks in the middle, where we had the design nailed down. They were signed off by Lloyds, so we were not taking any risks. The whole design was not signed off by CMAL because, as you will see in the report by Luke van Beek, it delayed on signing off on anything—it would not agree to sign off anything. The delay was in the signing off rather than in the approval by Lloyds. We started to build the middle blocks.

I have one more point on this. There is no prescribed sequence for how the shipyard builds—it can build a vessel in whatever sequence it wants. There is no rule. The way that we did it was out of the sequence that we wanted, because we wanted to build two ships side by side on the slipway, starting with the sternmost blocks and building them out, so that we could always get the equipment past until we had the last block on. We could not do that, so the vessels were built out of our planned sequence, which contributed to the delays, but that approach allowed us to continue with work and minimise the delay, as we were already 50 per cent through the life of the project.

Willie Coffey: Thank you for all that detail. The committee has been trying to get feedback on those issues, and your input today on the record is helping the committee to understand.

Jim McColl: I am sorry that it is taking so long for me to get it out, but it is important to understand why it was done in the way that it was done.

Willie Coffey: That is why we asked you the question. Thank you.

The Convener: Mr McColl, if there are any points that you want to address in writing to us after the committee, please do not hesitate to do that. We welcome further written submissions.

Jim McColl: I think that my pen is out of ink from all the writing that I have done.

The Convener: For those who are interested in the landscape of the yard and how it works, I point people to the evidence that Alex Logan, the GMB convener at the yard, gave on 22 January 2020 to the Rural Economy and Connectivity Committee.

Sharon Dowe has some questions.

Sharon Dowe (South Scotland) (Con): Good morning. Why did CBC purchase the shipyard in 2014? You mentioned to Richard Leonard that Alex Salmond would phone you if businesses were in difficulty. Did you have any discussions with the Scottish Government or Scottish ministers prior to purchasing the shipyard? If so, what was the nature of those discussions?

Jim McColl: Obviously, we met with Alex Salmond and, I think, John Swinney, who were pushing us to have a look at the yard and see if we could come up with a plan to save it. We had discussions with them, but they were the only people we had discussions with. It was their initiative to approach us to see whether we would have a look at the yard.

Sharon Dowey: Was that the extent of the discussion? Was it just about having a look, or was there any detailed discussion?

Jim McColl: No, they were quite aggressive in saying, "We need to get something done here if you're going to do it." We went ahead. We had some market studies done to consider the opportunity. We did diligence and decided that there was a great opportunity and that we would negotiate with the administrator, which I think was KPMG. We negotiated with the administrator and had contact from time to time from Alex Salmond or John Swinney to see whether we were progressing. It was just to check whether there was anything else that we needed, and we did not. We just wanted to get on and complete our diligence.

10:00

Sharon Dowey: Were there any incentives from the Scottish Government or from ministers for you to buy the company?

Jim McColl: No, there were no incentives, but I had a request for them, which I put once we had finished our diligence. I found out that the Scottish Government had responded to a bid for four hybrid ferries, which were all similar. Two of them had already been built and I asked whether the Government intended to build the remaining two. The Government said that it intended to build one more but had not committed to another two. I said that I wanted the right to that order. The bid was put in by Ferguson, so I wanted the ownership of that bid in what we bought.

The yard had gone through the European procurement process and had been awarded the order for four ferries, although only two had been released by the Scottish Government. I wanted to be assured that the order would be honoured if the Government placed the order for the third one. That was the only thing that I insisted on to complete the deal. That ferry was built. We agreed to do it at cost, because we were just getting into the yard. It was built on budget and delivered six weeks early.

Sharon Dowey: So that contract went ahead.

Jim McColl: Yes. We eventually got that, built the ship and launched it. I am told that it is

operating very effectively now and is of good quality.

Sharon Dowey: You mentioned FMEL's inability to provide the full refund guarantee even though that was in the invitation to tender. Why did you bid for the contract for 801 and 802 when the invitation to tender said that you had to provide a BRG?

Jim McColl: As I said to you, we approached the local MP—

The Convener: MSP, I think.

Jim McColl: Sorry—the local MSP.

Sharon Dowey: Who was the local MSP?

Jim McColl: I think that he is the local MP, is he not? It is Stuart—

The Convener: The local MSP is Stuart McMillan.

Jim McColl: That is right. He came along to the yard and we said, "We have the chance to bid for the two vessels but we can't, because we can't put up a cash refund guarantee." He took that up with the Scottish Government. I am not sure who he took it up with, but the email that came back from Derek Mackay effectively gave us the green light and said that we did not necessarily need to put up a cash refund guarantee, as something else could be negotiated. That is the message that we got back.

I do not know whether you have that email from Derek Mackay, but I am happy to give you a copy of it. That was done well before we submitted the tender, because we were not going to put in all the work if we were going to have to put up a cash refund guarantee.

Sharon Dowey: You had confirmation that you did not need to supply the BRG before you put in your bid?

Jim McColl: We had made it clear all along, and we had had confirmation in the terms of that email that an alternative would be acceptable.

Sharon Dowey: The audit report said that, because you had not mentioned the BRG in your bid, it was assumed that you could provide one, and it was not until the negotiation stage that CMAL realised that. At what point did CMAL or Transport Scotland know? Was it just the minister at the time or Stuart McMillan who knew?

Jim McColl: No. We were working with CMAL all the way through the bidding process, so it knew all the way through the bidding process.

Sharon Dowey: So CMAL was aware of the issue before it was announced that you had the contract.

Jim McColl: Yes—absolutely.

Sharon Dowey: You mentioned the spec to Willie Coffey. Was the spec that CMAL issued at the start of the contract adequate or not?

Jim McColl: No. You will see that there are comments from BCTQ and HKA, and more importantly, because of his independence, Commodore Luke van Beek, that the spec fell way short of what would be expected. After it was issued, CMAL started to ask for things. I have gone through the changes in the draught, the deadweight, the engines and the propellers. All those things were developed by CMAL after it issued the order.

Sharon Dowey: So, in the invitation to tender, the specification from CMAL was not adequate for any of the people who were putting in bids.

Jim McColl: No—absolutely. That has been confirmed by three lots of professionals who are experts, and no experts are countering that. I do not class Tim Hair or Kevin Hobbs as experts, because they do not have a background in naval architecture. You really need to understand the technicalities here.

Sharon Dowey: Had you not taken the contract for the two vessels, did you have enough work at the yard to make it viable? Would you have survived if you had not taken that contract?

Jim McColl: Absolutely. I could show you lists of orders that we had. I can give you a list of those, if you do not have them. We had plenty of work out there. From day 1, we looked to diversify away from dependence just on Scottish ferries, because we knew that that could be bumpy and that an order might not be placed, as there might not be funding for it. We had a whole load of activities going on, and we had a lot of other work. We had some fabrication work. We had a squad that went out to different yards and did repairs at yards down south. We had quite a bit of work going on and we were also still working on MV Catriona, which is the small ferry that I mentioned earlier.

There was plenty going on in the yard and at that time about 130 people were employed. There was an exciting future. I do not know whether you have this evidence, but we have an investment paper that was prepared and approved to put a further £8.7 million into the yard. That was approved one month before we knew that we were the preferred bidder. Would we have gone ahead with investing £8.7 million in the yard if it was totally reliant on that order? No. We would have waited to see whether we got the order.

It is just absolute nonsense that anything negative would have happened to the yard if it had not got the order. I wish that we had not got it,

because we would be flying high just now with a whole load of different orders, including for the type 31 destroyers, working with Babcock.

The Convener: We are rapidly running out of time, but I know that there are substantive questions that Craig Hoy and Colin Beattie want to ask. I turn first to Colin Beattie.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Mr McColl, my main interest here is obviously in following the public pound. A lot of public money has been invested and I am keen to understand how it has been dealt with. At the point of nationalisation, the vessels were largely incomplete.

Jim McColl: Yes.

Colin Beattie: How was the £128.25 million of public money that was invested in the yard and in the construction of the ships spent?

Jim McColl: It was spent on the ships. What happened is—

Colin Beattie: That is not evidenced by the value at the point of nationalisation.

Jim McColl: Yes, it is. Every penny that was forwarded went into those ships. The ownership transferred to CMAL. I have mentioned some of the issues that caused additional costs and additional things to happen. Changes were made, which led to further costs and delays. If there is a six-month delay, the workforce that has been built up will be needed for another six months, so there will be costs. The costs were running way ahead, but all those costs were to do with the ships. All the money went into those ships and it was—

Colin Beattie: Is there any—

Jim McColl: I am sorry to interrupt, but that had to be signed off by Luke van Beek and PwC. The process was all well controlled and that money went into the ships.

Colin Beattie: You are saying that the money was absorbed by changes and so on to the specifications. Is there any document that lays that out and puts cost against that?

Jim McColl: PwC audited what costs had gone in and advised the Government on what further costs would have to go in. That is the work that was required to build the ships. They were not going to be built for £97 million. They were the first of their type to be built in the United Kingdom—it had not been done before in the UK. Lloyds had no processes for it. It built its processes for liquefied natural gas ships as it went. The ships were prototypes that were costing more to build than was in the budget. It was variations to what was asked for and delays that caused the increase in costs.

Colin Beattie: How can the committee identify those variations and understand the costs against them?

Jim McColl: It can do that because they have all been audited. Ask for the PwC audits and look at the accounts—the invoices are there. The time that people spent on the ships is there. That is what the costs went on. It is self-evident that that is what it cost. The process whereby £45 million was put in—£15 million and then £30 million—was very strictly controlled. Before that money was released, PwC and Luke van Beek had to sign off and say, “Yes, that work was done and that’s what it cost.” The process was well documented and controlled by the Government.

Colin Beattie: So you are saying that the Government has this information.

Jim McColl: Yes. The process was well controlled. It is all there in the records of the company.

Colin Beattie: What I am saying is that, from the committee’s point of view, we can only look at evidence that we receive that we are able to scrutinise.

Jim McColl: The money came in and it went towards building the ships. It went into the ships. Was there leakage anywhere else? Do you have any suggestions as to where else it might have gone?

Colin Beattie: No. We do not know. We are not experts in this. We are trying to find evidence.

Jim McColl: We did our monthly management accounts. We have graphs. PwC worked on it quite a bit and has graphs of the costs. It has graphs of the cash that was coming in, and there was a big gap. The process was well monitored all the way through.

Colin Beattie: I want to turn to a specific area—that of the milestone payments that totalled about £83.25 million. Paragraph 160 of the report that the Rural Economy and Connectivity Committee published back in December 2020 says:

“there is strong evidence that the contractor deliberately proceeded to construct specific sections of the vessel either out of sequence or not according to the proper specification purely as a means of triggering milestone payments on the contract.”

Paragraph 157 talks about

“the contractor progressing certain work on the vessels either incorrectly or out of sequence purely in order to trigger payments against the contract”.

10:15

Commodore Luke van Beek also gave evidence to the committee that Ferguson’s deliberately slowed down some of the subcontracting. I am a

layman, so I do not understand naval contracts, but if there are milestones at A, B and C, and the work between A and B has not been carried out and only the work at the milestone has been done in order to trigger a payment, that does not seem to me to be right.

Jim McColl: No—that is a misunderstanding. Maybe I can explain. The milestones were based on the fabrication. One of the big milestones was percentage of fabrication. I have already said that there was no prescribed sequence, so for the REC Committee to say that the work was done out of sequence is not accurate, because there was no sequence. I went over the delay on the engines, the propellers and the draught. Because of that, we had to build sections that were not the sections that we had intended to start with and not in the sequence that we had intended, but that was our choice. It was our decision—it was up to us how we built those sections.

The idea was to keep the work going, to keep people employed and to do as much as we could with the information that we had and which had been approved by Lloyds. That is why we built the centre sections. That triggered milestone payments for the fabrication, because we had done the fabrication. The client was legally obliged to pay us for what had been done. There was no skulduggery or manipulation of what should have been done in order to trigger anything, and it is insulting to insinuate that we would do that.

The milestones were laid out according to the percentage of fabrication. We did the fabrication in a different order from the one that we had intended to do it in, but that was valid. We did it for a very good reason, which was to keep the work going and the project progressing. Otherwise, we would have had people sitting about, twiddling their thumbs, and we would have had a big delay until the information had been sorted out.

Colin Beattie: The committee really needs to understand that. From looking at what the REC Committee produced, its view seemed to be that the way in which the milestone payments had been done was extraordinary, because the sections were constructed out of sequence and so on. That implies to me that what I have read out was the case. Did the work between A and B take place to allow the milestone payment at B to be triggered?

Jim McColl: No, it was not a case of, “If you do all these blocks, that will trigger it,” and we did the last one to trigger it. The milestones were based on percentage of fabrication and on certain items of equipment being bought. There was evidence that we had bought equipment, which triggered a payment. If big payments were made for engines and other big items, there would be a payment that we could call on once we had bought that.

When we bought such an item, it went into CMAL's ownership and that triggered a payment. Those payments were payments to us to buy those items, but they were immediately transferred to CMAL.

There was no triggering of payments to us. Whatever was triggered went to CMAL. The payments were based on equipment that was bought and percentage of fabrication. The management team's job was to keep as much as we could on programme by fabricating what we had cleared with Lloyds at the time and not stand about waiting for decisions to be made that should have been made before the specification was given out.

Colin Beattie: Certain statements in the RECC report seem to raise a question. For example, in paragraph 157, the report states:

"the profile of milestone payments may have resulted in the contractor progressing certain work on the vessels either incorrectly or out of sequence purely in order to trigger payments against the contract".

Jim McColl: I do not know what I need to do to get this point over, but it is really important that the committee gets it. The payments were triggered by equipment being purchased or the percentage of fabrication. Our fabricating centre sections of the ship because we had them all cleared and signed off by Lloyds was valid—it was the right thing to do. I do not know how I can make that clearer. That is the factual truth. That is how the contract was set up.

In his submission to the committee, Luke van Beek commented that he thought that the payments were wrongly put in place because they did not match the cash outflow and there was a mistake in the way that they were done. He said that they should have matched the cash outflow. However, they would never have matched the cash outflow, because additional work was having to be done, changes were being made, and it was always going to cost a lot more. Early on, we were pushing for mediation in order to agree on who was at fault. I was not expecting FMEL to get off with it; I was expecting it to be responsible for some of it. However, for sure, CMAL should not have got off with it, but it has done.

Colin Beattie: Given your statement that the milestone payments were payments for large equipment and so on, for example—

Jim McColl: And percentage of fabrication.

Colin Beattie: —and percentage of fabrication, that takes us back full circle to the value that was in the yard, which I believe, although I am talking from memory here, so this is open to correction, was something over £8 million, yet £128 million—

Jim McColl: Where did you get the £8 million from?

Colin Beattie: I am talking from memory. I think that it was the valuation at the point of nationalisation.

Jim McColl: That is wrong. We had invested £28 million in the yard. That infrastructure was all there and that was value. Also, the ships had all the value in them that we had been paid for, plus more, because we had lost some money out of the process, too. All that value was there. To me, it is nonsense to write off the value of the ships. I do not know where the £8 million figure came up. The value in the yard when the Government took it over was in the infrastructure and the vessels, if it was going to continue with them as a going concern, which it has done. There was a lot of equipment in the yard that had been paid for and a lot of fabrication that had been paid for, and that value was there.

Colin Beattie: What would your estimated value be?

Jim McColl: Of what was there?

Colin Beattie: Yes.

Jim McColl: I think that we had called down around £82 million at the time, then there was the £45 million that the Government had forwarded and a further £3 million that we lost. If you add £45 million plus £3 million—£48 million—to the £82 million, that is what I think the value was. You mentioned the figure of £130-odd million.

Colin Beattie: Yes, I mentioned the figure of £128.25 million.

FMEL accepted £45 million from the Scottish Government, but it said that it did not want the loans.

Jim McColl: No.

Colin Beattie: So why did you accept them?

Jim McColl: Because, all the way through—I have evidence that suggests this—the Government was working towards a dispute resolution process. It was very keen on that. I have internal emails and emails to the Government saying that unless we could get a dispute resolution that drew a line under who was responsible for what, we could not continue paying 250 people in the yard—or however many were there—plus all the subcontractors.

You mentioned us delaying or slowing down the subcontractors. We had to do that. We did not have the money to pay them; you cannot invite people in and then not be able to pay them. That is why there was a lot of urgency in trying to get a dispute resolution, which required independent expert determination. That was pushed by

Transport Scotland but was refused by the chairman of CMAL. He said that the board of CMAL had taken a decision that it was not going to enter into independent expert determination. My question is, if CMAL was so sure of its position, why would it be afraid to enter into a process of independent expert determination? CMAL has not wanted an expert to get near this, and it would not speak to Luke van Beek. He said in his evidence to the REC Committee that those at CMAL were quite belligerent with him—they just would not talk to him.

That is what we have had all the way through. I think that the committee needs to realise that, in order to get to the bottom of the very valid questions that it is asking, independent technical experts need to look at it. Independent experts have never been involved. The only one who has been is Luke van Beek. I urge the committee to read his whole narrative—the submission that he made to the REC Committee—again, and to read it closely.

Colin Beattie: Obviously, the dispute between FMEL and CMAL was significant. Was FMEL advised by the CMAL board at any point that it would resign if there was any intervention in the dispute? If so, who advised that?

Jim McColl: No. That was a story. In again trying to push the independent expert determination, I went to meet Derek Mackay, who was the finance secretary at that time. I met him in Holyrood, and I begged him to force CMAL to accept an independent expert determination because, if he did not, things were going to get out of hand, and they needed to be brought to a head. He asked the officials in the room to leave, and he told me that he could not force CMAL to do that because the CMAL board had sent a legal letter to Government ministers that threatened that, if they interfered or continued to interfere with it as an independent board, the board would resign en masse and would say why.

That is why, when I read that the chairman of CMAL was staunchly against that at the beginning, and it looked as though he was forced into accepting placing the order with Ferguson, I took that to be what Derek Mackay was referring to when he told me that. There was no one else in the room, so no one else can corroborate that, but perhaps the officials who were in the meeting can tell you that they were asked to leave and to leave me in the room with Derek Mackay.

Colin Beattie: Why did FMEL never pursue its claim in court?

Jim McColl: All along, we were led to believe that there was going to be dispute resolution and that the Government was working with both of us to try to get that to happen. Every time that was

put up, the Government was told no by CMAL. The Government was also told by Luke van Beek at the end to have arbitration, not to nationalise the yard because the costs would escalate, and the cheapest way to do it. In his evidence, Luke van Beek said that he advised the Government that it should deal directly with CalMac Ferries, cut out CMAL, and get in an independent expert to get things sorted out. He was so frustrated with CMAL that he recommended cutting it out. Members need to understand the technical things that went wrong, which were not of FMEL's making.

The Convener: Okay. Thank you. On that last point, you said in your written evidence that Mr Mackay said that he had got "a legal letter". What do you understand by that terminology? What is "a legal letter"?

10:30

Jim McColl: I do not know. Every time that CMAL was challenged, it immediately threatened legal action. I know that it even turned up to the RECC with its lawyers, and the lawyers were told to leave. That is the type of people those people were.

On the reason why we did not go for it, we were told by the Government that there was going to be a resolution. We were aware that that might not all be in our favour, but we needed the resolution. The Government's solution to keeping things going—it was very clear that it did not want people in the workforce to be laid off and work to stop; it wanted work to continue—was to put in £15 million to start with. When the £15 million was put in, we had £15 million of our own money on deposit, and my approach was to ask whether we could have our own money back to keep things going until we got to some sort of process to resolve the matter. The Government said that it could not do that and that it needed to make that a commercial loan, but we saw that as a bridging loan until we got to the point at which we had dispute resolution.

That is what should have happened, and that is what we were being led to believe would happen. It then became clear that we needed more money. Again, Gerry Marshall suggested all the people who would have to be laid off—the subcontractors and everyone else—and PwC was put in. It was told that we needed the £30 million, and it said that that would last only until a certain date—I think that it was at the end of June. PwC told the Government how long the money would last before it would need to put in more money. PwC was able to say that because it was analysing the costs, and it knew how much it was costing to continue doing the work on the two vessels.

When we got to the end of that period, the Government's whole approach changed.

Obviously, it had a plan to nationalise the yard then, because to keep putting in additional loans was not feasible, and we did not want loans. We wanted a settlement, even if part of that settlement was a cost to us.

The Convener: To go back to the point about the legal letter, the committee was told in evidence last week by Chris Wilcock, who is head of the ferries unit at Transport Scotland, that his understanding from the chief executive officer of CMAL was that no such threat existed. We will get CMAL in in a fortnight's time, so we will put some of those questions to it then.

Jim McColl: I know that Kevin Hobbs had said that in the past.

The Convener: What did he say? I am sorry. Does he deny that or accede to it?

Jim McColl: He said that no such letter existed, but he would not know what happened at the time, would he?

The Convener: He is the chief executive, and this is about the board.

Jim McColl: He was not appointed until just after the order was placed.

The Convener: I am sorry, but your meeting with Mr Mackay was on 5 June 2018.

Jim McColl: Yes, but he was referring to something that had happened earlier.

The Convener: Who was? Derek Mackay?

Jim McColl: Yes—Derek Mackay. He said that—

The Convener: So he said that, three years ago, he got a threat that people would resign.

Jim McColl: No, he did not say that term. He said, "We have had this letter." There have been—

The Convener: I am trying to understand this. Are you saying that he had just received a legal letter—

Jim McColl: No, he did not say that he had just received it.

The Convener: —on 5 June 2018 or that it was a three-year-old legal letter?

Jim McColl: No. He did not say when he got one. He just referred to the fact that the Government had, in the past, at some time, received a letter that threatened it. I do not know when that happened or who it came from, but I would swear under oath that that is what Derek Mackay said to me. That is why I have asked for some kind of investigation under oath. People need to tell the truth.

The Convener: We work on the basis that people before us are telling the truth.

Jim McColl: I do, too.

The Convener: Craig Hoy wants to come in with a number of questions.

Craig Hoy (South Scotland) (Con): Mr McColl, you mentioned in your opening statement that some of your former colleagues could not attend because they are subject to gagging orders. I am not sure that we need to go into their names, but can you say to what kinds of roles those gagging orders applied? Were you involved in a gagging order at any stage and have you been released from one?

Jim McColl: No. The gagging orders were issued by Tim Hair, who was working on behalf of the Government as the managing agent in the yard. If I give you the job titles, you will know who the people are, but it is fair to say that most of the senior management—finance, operations, naval architecture, purchasing, supply chain and safety—were involved. A few of them have suffered depression as a result of what happened to them. Their reputations have been sullied by the false statements that have been made about the quality of work prior to the Government taking over. Those statements are absolutely false. Those were good people who we recruited. We had a fabulous workforce there. There is a very strong workforce there, of high-quality, skilled people. When they were working for us they did not do bad welds or bad-quality work and then were all of a sudden told how to do good welds and good-quality work by people who had come in.

Craig Hoy: The First Minister said to the Parliament that if a Government gagging order applied to any of those individuals it would be lifted so that they could fully participate in an inquiry. Is it your understanding that those gagging orders are Government-imposed gagging orders?

Jim McColl: Of course they were imposed by the Government. I know that Audit Scotland approached the Government because we gave Audit Scotland the names and copies of the gagging orders, so that it could see that they were not normal employment contract confidentiality agreements. They were gagging orders. Audit Scotland has them.

One key individual was prepared to come up to the committee, but others are not. They are employed just now and their reputations are being damaged by false accusations about what they were previously involved in and they are worried about that damaging their current employment; I understand that.

Craig Hoy: I will go back over several of the issues that have been raised this morning. You said that you were encouraged to engage in the purchase of the yard. Were you encouraged to bid for the two vessels?

Jim McColl: Yes, but we wanted to bid, so I would not say that we were put under pressure to bid. We believed that the yard could build the vessels and I still believe that we could have done it if they had been properly specified or even managed in a different way early on.

Craig Hoy: Okay. The First Minister says that, all the way through, the major consideration for awarding the contract to FMEL, particularly when it hit troubled times, was the preservation of jobs. Can you say, hand on heart, to this committee that, if the contract had not been awarded to FMEL, there would still be jobs and a thriving yard there?

Jim McColl: We had 135 people at the time and, because we had done all the work on the Type 31 destroyers and a number of other vessels that we had bid for, we did a forecast and predicted that 700 people would be employed in the yard by today.

Craig Hoy: Would you say that the Government's intervention has undermined jobs on the yard?

Jim McColl: It has damaged the yard, yes.

Craig Hoy: Okay, thank you. You met with the First Minister at Bute house where you say you raised a red flag about the project. Was that another one of the meetings where the officials were asked to leave the room?

Jim McColl: No, there were officials in the room—at least one, I think.

Craig Hoy: Can you tell us a bit about the nature of that meeting? What did you ask the First Minister to do and what did she undertake to do?

Jim McColl: I asked for the meeting. I went along and explained some of the delays. It was April 2017, as I told you, before we could start work on block 1. That was 50 per cent through the planned project life. I contacted the First Minister when I realised that that was a problem. The management in FMEL had asked CMAL to sit down and discuss that and CMAL refused. Management could not get CMAL to discuss the changes and the delays and that we were 50 per cent through the contract period and were just getting the information to start on block 1. Out of desperation I contacted the First Minister to force some discussion on the issue. I met her on 31 May and told her that we had started the blocks in April and had had some meetings in the yard with the management team, who had tried to engage with CMAL but were getting blanked out. My

appeal to the First Minister was, "You need to get involved because this is going to get out of hand. We need them to engage with us".

The First Minister appointed Liz Ditchburn to oversee, or to try to get the two parties together to resolve the issues. All through that summer and into the next year, there was no progress. It was just talking—

Craig Hoy: Okay, just on that point, you said that the meeting was on 31 May 2017. In November 2017, the First Minister came to the yard to launch MV Glen Sannox. That launch was as fake as the painted-on windows, was it not?

Jim McColl: It was not fake, no. That was a proper launch and, again, Luke van Beek will confirm that it was the right thing to do; he confirmed that in his evidence.

As I explained, because we could not build from block 1 up, we could not build both vessels side by side. To progress with all the work that we had to do on 802, we had to be able to free up the slipway. We had completed all the work on 801 so that the hull was watertight—there was a lot of work done in the hull. There was work that we would have liked to finish on the slipway, but we could finish it on the quayside, and that would give us plenty of room on the slipway to accelerate work on 802. Had we not launched 801, it would have impaired the work on 802, so it was the proper logistical thing to do.

We could build 801 on the quayside. The work could be done by putting the staging up to go on the ship and do the work in the same way as you go up when a ship is on the slipway. The workforce painted the windows, and I think it was out of pride in launching the ship. The windows were not cut out because they were not put in yet, but all that they did was paint the bits that were in the windows black, because they wanted it to look as nice as it could to be launched. That is a red herring. It is irrelevant to the progress of the ship.

Craig Hoy: Whose idea was it for the First Minister to come along and have a great razzmatazz photo call around that?

Jim McColl: That would be the Government and its PR people. They knew that we were putting 801 in the water to make way for 802 and the First Minister wanted to come out and be part of the launch, just like she wanted to come out on 31 August to stand with the workforce and have a picture taken and just like they wanted the order to be signed on 16 August, the day of the SNP conference.

Craig Hoy: I was going to turn to that because it strikes me that, alongside all the technical issues here, there has been a political dynamic to rush

this at various points for different reasons. You said in your submission:

“There was clearly a great pressure on the timing of the announcement that it was going to FMEL and there was a high probability the pressure was also on CMAL to rush the invitation to tender.”

Has there been a political driving force throughout this as well, do you think?

Jim McColl: That is the impression that I have when I look back at all the evidence and at the timing of events. Luke van Beek gave evidence to the RECC Committee that the tender was placed before sufficient work was done to put it out. Now, why would they put it out quickly? We heard in some of the evidence from Audit Scotland that the chairman of CMAL wanted to re-tender it. Well, they could have done that, but that would not have been a good story. The timing would not have worked.

10:45

Craig Hoy: It could be implied that politics were also at play in the nationalisation of the yard. At any point, did you suggest anything different that might have meant that the amount of money and the risk that taxpayers have now been exposed to could somehow have been shared? At any point, did you say, “Maybe there is wrong on both sides here. Let us sit down and arbitrate for a different solution here”?

Jim McColl: Yes.

Craig Hoy: Like Mr Beattie, I am concerned about the public purse and, post-nationalisation, things have become significantly worse. Was there an alternative route to getting the ships built?

Jim McColl: Yes. We came to the 11th hour and I realised that we were not going to get a dispute resolution process and that we did not have enough money to finish the vessels. The Government was saying, “You committed to put in additional money and you are not doing it”. We were putting in additional money for an acquisition that they were wanting to make in order to add on to the yard. That is what it was highlighted for. We were not going to put money in to subsidise a Government project, in our view.

I did, however, put in a proposal for a financial restructuring. Our estimate at the time, which came out of the HKA report, was that the total cost would be £194 million or £195 million. I did not bring them up, but I have in my car four big volumes of detailed work done on the project by HKA, who are naval architecture and marine engineering experts. HKA spent four months on the report and a lot of money was put in to get them to do it. HKA told us what we would have to do. I said that we would bear half of the upside,

which is to say half of the additional—say £100 million.

Our view was that if there were an arbitration, someone would split the cake and say, “You are responsible for half,” so I put the proposal to Derek Mackay. I also said that, to protect them from going above the £195 million, we would bear the cost of anything above that amount, because that gave us an incentive to make sure that the project came in for that price. Derek Mackay came back and said that the proposal did not meet European rules, that it breached—is it MEOP?—I do not know what the term is.

The Convener: Do you mean state aid rules?

Jim McColl: State aid rules, yes. So, I went and got a QC’s report and it could not have been clearer that there was no breach of state aid rules. The report, by a respected QC with good knowledge of state aid rules, covered that in great detail.

Craig Hoy: Just to be certain, you say that you proposed a solution that could potentially have saved the taxpayer about £50 million?

Jim McColl: No, £100 million because you were going to have to pay probably £100 million more than that.

Craig Hoy: And the Government said what?

Jim McColl: The Government said, “No.” I gave Derek Mackay the QC’s report but he said, “We don’t agree with it.” I then went back to him—I have the email trail—and said, “Look, I have identified a second QC in Brussels who you could go to to check it because I think we need to move forward with this and complete these ships.” He said, “No, we disagree.” I do not think he got an independent QC’s opinion. I know that he did not, because if he had, it would have been clear cut that it did not breach EU rules, but the proposal was turned down.

Craig Hoy: I come back to the flagrant disregard for the public purse. Do you think that the Government had taken the decision to nationalise and was not intent on proceeding with any proposal, even though it was in the better interests of the taxpayer? Was nationalisation the only objective at that point?

Jim McColl: Yes, it was. Again, there seems to have been an attempt to protect CMAL from any downside to this, all the way through. If we had restructured, would CMAL have had to pay the £194 million for the ship? That is what it costs. If the Government had put forward half the money, as we would have, well, it would have had to pay £194 million for the ship. CMAL has said repeatedly, “We are not paying a penny more than £97 million” and the Government has taken the contract off CMAL, so it has not been held to

account. That is a Government organisation that is avoiding being held to account.

Craig Hoy: My last question is whether you think that CMAL has something over on the Government?

Jim McColl: Yes. The selection of LNG vessels. CalMac did not want them. Luke van Beek gave evidence about speaking to the then chief executive of CalMac, who said that CalMac did not want LNG. There are no bunkering arrangements in place for LNG and it will cost a lot of money to put that in place. Calmac would have to ship tankers up from the Isle of Grain and it cannot do that. Also, LNG vessels are now obsolete technology. There have been a couple of recent papers, one from a Norwegian minister saying that Norway will not be buying any more LNG-fuelled vessels, and an industry report saying that the emissions from LNG vessels are 80 per cent more toxic than diesel fumes and that they all have to be eliminated.

You are now completing two vessels that are obsolete and you will not run them on LNG anyway, because the infrastructure is not there. If you did, you would be putting out poisonous gases between Brodick and Ardrossan and on the other routes, too. These are not green vessels. They were wrongly specified. The Government was advised by its ferry advisory committee. Before that committee was wound up, the two experts on it wrote a final report, which I am sure that you have seen. If you have not seen it, it would be worth your while to get hold of it, because it will tell you that the vessels are wrongly specified.

The Convener: Okay. We are in the final few minutes of our meeting time. If Willie Coffey does not want to come back in—no, he is okay—Colin Beattie will make a final point or ask a question.

Colin Beattie: I want to come back in on a couple of points that you touched on earlier. First, I have managed to dig out the cost of purchasing FMEL's assets. I realise that there are all sorts of offset figures involved, so this is a crude figure, but it is £7.5 million. That was the valuation put on all the assets in the yard, which is very far short of the money that went in there.

Secondly, the milestone payments were £83.25 million. In fact, £82.5 million was for milestone payments, but £0.75 million was for contract variations. That seems a very small figure, after listening to what you have been saying—

Jim McColl: Yes, because CMAL refused to agree to any of the changes. It would not sign off on them, so we could not bill them.

Colin Beattie: So there are large discrepancies—

Jim McColl: Large discrepancies, yes.

The Convener: Thank you. The final point that I would like to put to Mr McColl is that you have at times described this contract as “catastrophic” and you have called it “a fiasco”. Do you share any responsibility for that catastrophe?

Jim McColl: I do not believe so, because we pushed hard about the way to do it. We tried to work early on with the CMAL people on developing the specification, although it was underdeveloped when we got it. We tried as hard as we could. We tried very hard to get dispute resolution. We could not have done any more on dispute resolution. On nationalisation, we did offer an alternative and Luke van Beek recommended that the Government did not nationalise. I do not know what else we could have done.

These two ferries inherently cost more than the bid that was put in. If we do share some responsibility, it is perhaps in not realising the extent to which this might overrun and the extent of the shortcomings in the specification. However, the HKA report and the BCTQ report say things were emerging that could not have been foreseen, so we had to deal with them as they arose. I am sure we have some responsibility—absolutely—but compared with the big issue here, it is very, very small.

The Convener: Thank you very much indeed, Mr McColl. Thank you for giving up so much of your time this morning and furnishing us with some detailed and wide-ranging answers to our questions.

If, on reflection, you have any other material that you think would be useful to the inquiry that we are running and would help to inform it, we would be very happy to receive it.

Thank you once again for your time this morning. It has been much appreciated.

Jim McColl: If there is anything else that you think of that you did not ask, I am happy to either come back or answer any questions.

The Convener: Thank you very much indeed.

10:55

Meeting continued in private until 11:33.

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