

T: 0300 244 4000
E: scottish.ministers@gov.scot

Richard Leonard MSP
Convener
Public Audit Committee
Scottish Parliament
By email: publicaudit.committee@parliament.scot

23 May 2023

Dear Convener

NEW VESSELS FOR THE CLYDE AND HEBRIDES: ARRANGEMENTS TO DELIVER VESSELS 801 AND 802

Thank you for the copy of your report into the above. I want to take this opportunity to thank the committee for its work on this matter, further to the detailed inquiry undertaken, and report produced, by Audit Scotland.

I welcome the opportunity to respond to the recommendations in some detail below but, at the outset, I also want to welcome the report's recognition that there has already been significant improvements in procedures and processes by Transport Scotland and Caledonian Maritime Assets Limited (CMAL) since the procurement of these vessels almost 8 years ago.

Both organisations, along with CalMac Ferries Ltd, are committed to continuing to build on these improvements and, in particular, how the views of communities and stakeholders are embedded in the process – and that value for money for taxpayers underpins investment decisions.

Response to Recommendations

The report contains a number of observations and recommendations throughout. Whilst we have not responded on a point by point basis to all of the observations, we have set out below the key recommendations and Scottish Ministers' response to these. In some instances we have grouped these together where there is a common theme or restated recommendation.

We believe that the serious allegations raised about the procurement procedure for vessels 801 and 802 highlighted during the BBC Disclosure programme in September 2022 must now be thoroughly and urgently investigated by CMAL. As a matter of transparency, we expect an update of progress from both CMAL and the AGS, whom we urge to undertake a comprehensive audit of the entire procurement procedure for the vessels at the earliest opportunity.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

We note this recommendation. As the Committee will be aware, CMAL has commissioned an independent investigation by Barry Smith KC, and will carefully consider its findings and consider what can be shared with Parliament and the Committee including any actions that may arise from this.

Any decision on further audit work is for the AGS but all parties will fully engage in any work identified.

The Committee has concerns regarding the disposal of public funds in relation to payments made to FMEL and therefore strongly encourages the AGS to undertake a comprehensive audit of the entire procurement procedure for vessels 801 and 802 in a timeous manner. This should include how any lessons learned have been implemented.

As above, all parties will fully engage in any further work identified by the AGS.

It is encouraging that the Permanent Secretary has issued new guidance on the recording of decisions. We expect the Scottish Government to further review and refine its record-keeping procedures to facilitate scrutiny and improved transparency.

As the Committee has noted, further guidance has been issued and all parties, including Transport Scotland, continue to make improvements in record keeping and recording of decisions. These processes continue to be reviewed and improvements made where necessary.

Indeed, the Committee invites the Scottish Government to consider adopting a similar approach to that of the UK Government in proactively publishing on its website a list of occasions when written authority was sought, to improve openness and transparency in this area.

The Committee notes that the Scottish Government does not have a dedicated area on its website where all occurrences of written authority sought by civil service accountable officers can be found. This differs from the approach taken by the UK Government, where all Ministerial Directions since 2015 have been brought together and published on its website. The Committee invites the Scottish Government to consider adopting a similar approach to the publication of written authority, to improve openness and transparency in this area.

As the committee is aware, the Scottish Public Finance Manual has specific requirements for the notification of any instance of Written Authority being issued to be drawn to the attention of the Auditor General. Going forward, we accept the committee's recommendation to publish confirmation of Written Authorisations on the Scottish Government website.

The Accountable Officer wrote to the Auditor General when the latest Written Authority was provided by Scottish Government Ministers and this is a process that would be followed if any new Written Authority is issued.

The Scottish Government should consider how more information can be routinely shared with Parliament and published about its decisions to invest in private companies and the performance of those companies.

We further believe that the Scottish Government should strengthen its business investment framework to better outline intentions over risk tolerance, risk appetite and the expected public benefit of future interventions.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Significant additional financial support was provided to FMEL by CMAL and the Scottish Government to maintain momentum on the construction and delivery of vessels 801 and 802. The fact that these investments had limited impact on the progress of the vessels is extremely worrying to the Committee in terms of the cost to the public purse. The Committee supports the AGS's call for the Scottish Government to strengthen its framework for its investment in private businesses to better outline intentions over risk tolerance, risk appetite and the expected public benefit of future interventions and to improve transparency and disclosure.

The Committee notes the action taken by the Scottish Government to publish a business investment framework to strengthen its approach to investment in private businesses. Based on the evidence we have received, particularly in the case of bringing Ferguson Marine shipyard into public ownership, more work is required to ensure the framework is sufficiently robust and transparent and is underpinned by a clear strategy. We therefore take this opportunity to reassert our earlier conclusion that the Scottish Government needs to strengthen its framework for its investment in private businesses to better outline intentions over risk tolerance, risk appetite and the expected public benefit of future interventions.

The Scottish Government has already made amendments to the Scottish Public Finance Manual to strengthen the guidance around investments and interventions in relation to private companies. We will continue to keep this under review to ensure it remains appropriate in relation to the issues the Committee notes above.

It is regrettable that the AGS's report did not focus on how the significant amount of public money paid to FMEL for the vessels was spent. Despite the Committee's efforts, it has not been possible to establish this information in any detail. The Committee therefore strongly encourages the AGS to use his powers to undertake a forensic analysis of this information to shed more light on how this money was spent by FMEL.

The AGS may wish to consider undertaking future work to audit the full cost of this project from start to finish once the vessels have been completed.

Any decision on further audit work will be for the AGS but all parties will fully engage in any work identified.

While Project Neptune provides an opportunity for much needed reform of the governance arrangements around ferries, we believe that a formal review of the entire project on completion of the vessels is essential in learning important lessons for the future and preventing a similar situation from happening again

The Committee welcomes the improvements made by CMAL and Transport Scotland in response to the significant failures associated with this project. Nevertheless, we support the AGS's recommendation that upon completion of vessels 801 and 802, Transport Scotland and CMAL should undertake a formal project review to learn vital lessons for future vessel projects. The Committee considers that this review would benefit from the involvement of independent maritime expertise, to restore public confidence in future maritime procurement exercises.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

The Committee is firmly of the view that stronger governance arrangements from the outset to the conclusion of a project is required, not least to ensure that the capability of a bidding yard undergoes full and proper assessment prior to the awarding of a contract. We note that Project Neptune provides the opportunity for much needed reform of the governance arrangements for ferries. However, it should not be seen as a silver bullet in preventing a similar situation from occurring again. We reiterate our view that a formal review of the project upon completion of the vessels is essential in learning lessons for the future.

As the former First Minister made clear to Parliament, we are committed to undertaking a full “lessons learned” exercise on the completion of these vessels. We will consider what necessary additional or external support may be required to ensure the robustness of this work and I welcome the suggestion from the committee in that regard.

We also welcome the recognition by the Committee of the improvements already made by CMAL and Transport Scotland. We also agree that the reform of governance arrangements through Project Neptune does not represent a ‘silver bullet’ and would give assurance that the improvements to processes already underway (and in many cases already in place) will continue to be a key focus of the bodies involved in vessel procurement.

The Committee expects CMAL to continue to pursue a thorough investigation of the allegations put forward by the BBC, with the appropriate support from Transport Scotland as CMAL’s sponsor, and to take action as required. The Committee seeks an update on progress with this investigation.

Please see comments at first response above.

Different and conflicting perspectives also appear to exist regarding the extent to which Scottish Ministers were asked to authorise and approve the contract. Indeed, the Committee notes that CMAL considered it necessary to receive shareholder authorisation, otherwise known as a “letter of comfort” before it awarded the contract to FMEL. We suggest that there is scope for Transport Scotland and CMAL to work together to clarify in writing the procedure for seeking reassurances from Scottish Ministers, including how and when either written authority, as set out in the Public Finance and Accountability (Scotland) Act 2000 or shareholder authorisation should be sought.

We note this point, but would highlight that a Shareholder Authorisation and a letter of comfort are quite separate. Scottish Ministers are clear that no formal Shareholder Authorisation was issued, but accept that the language used in the correspondence to CMAL could have been clearer in that regard.

We welcome the committee’s suggestion on clarifying the procedures and will look to incorporate this in the next revision of the Framework Agreement with CMAL.

The Committee recommends that where the board of a company wholly owned by Scottish Ministers considers it necessary to seek and receive shareholder authorisation, this should be a matter of public record. This could be achieved by the Scottish Government proactively publishing this information on its website as well as providing a written copy for information of the shareholder authorisation to the AGS and the Clerk to the Public Audit Committee.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

As noted above, Scottish Ministers did not issue a Shareholder Authorisation in this instance. We note and will consider the recommendation by the Committee on wider procedures in relation to future Shareholder Authorisations.

Serious challenges still require to be overcome by FMPG before the vessels can be delivered. The Committee encourages the new chairman of FMPG to work with senior managers at the yard to address these challenges as a matter of urgency.

Scottish Ministers and the full Board of FMPG remain committed to the future of the business and addressing the challenges and opportunities laid out.

The Committee notes that FMPG provides quarterly updates to the NZET Committee. It is essential that these updates to the Scottish Parliament provide good quality, balanced and transparent information about the progress of the vessels, particularly in light of the further public expenditure required to deliver the vessels. The Committee echoes the AGS's views that the Scottish Government ensures the Scottish Parliament receives a full account of progress, including any challenges that emerge in future updates.

The Scottish Government is committed to transparency and that is why Scottish Ministers provide updates to Parliament in an open and transparent way. The recent Ministerial Statement on the conclusions of the Ferguson Marine Due Diligence highlight this.

I hope the committee accepts that the quarterly updates from the CEO of Ferguson Marine provide good quality, balanced and transparent information. I understand that these quarterly updates are supplemented as appropriate.

The Scottish Government continues to proactively publish key documents on the Scottish Government website and we have co-operated at every stage of the committee's inquiry, as well as those previously undertaken by the Rural Economy and Connectivity Committee and by Audit Scotland.

The Scottish Government should also consider how more information can be routinely shared with Parliament and published about its decisions to invest in private companies. While we recognise that some of this information will at times be commercially sensitive, we believe there is a public interest in providing information on these investment decisions, to provide the transparency necessary for public scrutiny, including the determination of whether the intended objectives have been met and that value has been provided for the taxpayer.

The Scottish Government is committed to openness and transparency, whilst being mindful of the need to protect sensitive commercial information where necessary. We continue to work with all those assets within the Scottish Government's portfolio to maximise value for money for the public purse and to ensure public benefits are realised.

We are in active engagement with Audit Scotland on strengthening the Business Investment Framework within the Scottish Public Finance Manual and will agree an action plan with them to increase transparency and further enhance this Framework to ensure a consistent approach to future investment, whilst ensuring ministers have appropriate flexibility to intervene to support industries and communities.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

During oral evidence, the former director of FMEL stated that in some other European countries, the government provides the financial security for a shipbuilding contract, rather than there being a requirement for the shipbuilder to provide a full BRG. If it has not already done so, we ask the Scottish Government to consider whether any learning can be taken from this approach for the procurement of future vessels in Scotland, as well as from the UK Government's proposal to develop a model for a Home Shipbuilding Credit Guarantee Scheme, intended to "level the playing field for domestic shipbuilders". The Committee also asks the Scottish Government to explore how this can be addressed, including whether there is a role for the Scottish National Investment Bank

The Scottish Government supports the growth of commercial shipbuilding in Scotland and has welcomed the UK Government's intention to introduce a Home Shipbuilding Credit Guarantee Scheme (HSCGS) as part of the National Shipbuilding Strategy Refresh. We look forward to the launch of the HSCGS and, once the final details are known, we will work with industry to establish how best to utilise the scheme and maximise its potential to support the growth of commercial shipbuilding in Scotland.

The Committee agrees with the REC Committee that the decision-making structure for the procurement and construction of new vessels to serve the Clyde and Hebrides ferries network is cluttered and lacks transparency. The Committee therefore welcomes the publication of the Project Neptune governance review in September 2022. The Committee considers it vital that local community voices are considered at various stages of the procurement process. The work that is currently underway to consult with island communities on its next steps and how best to implement the future new vessels programme is therefore also welcome.

We note that the committee welcomes the work being undertaken on Project Neptune and the related engagement seeking views of island communities as part of the decision making on the next steps.

Scottish Ministers fully share the views of the committee that the voices of communities should be considered in the procurement process for new vessels (and port infrastructure) and were pleased by the positive feedback from the Ferries Community Board on the process for the Islay vessels. CMAL, CalMac and Transport Scotland continue to build on these processes to ensure this engagement continues and is meaningful in the decision making process.

We recognise that the findings of the CMAL investigation in response to the BBC Disclosure investigation have not yet concluded. However, we expect that these findings, alongside the NZET Committee's own conclusions regarding the current tri-partite arrangement for managing ferry service provision provide an opportunity for the Scottish Government, and its agencies, to learn fundamental lessons that improve procurement processes and ensure that ferries are delivered on time and on budget in the future.

We note the points raised by the committee above and would again highlight that all parties involved in the procurement and delivery of ferry services continue to improve and develop processes in this regard.

Observations on the Final Report

As demonstrated in our responses to the recommendations above, we welcome the report from the committee and will continue to work to improve process and transparency around vessel procurement.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

There are areas in the report where no conclusion is reached, leaving statements as observations. We feel there may have been an opportunity to be more definitive at these points where evidence had been provided to the committee.

In particular the comments at paragraph 518 in relation to the alternative proposals put forward by CBC prior to nationalisation make no reference to the conclusion drawn in the Audit Scotland Report that highlighted that the proposal would see no further monies invested by CBC as part of the proposals.

We would also highlight the points made at Paragraph 8 around lack of availability of civil service witnesses. Whilst there was one scheduling issue for one official for the continued evidence session, alternative dates were offered and not taken up by the committee.

Throughout its work, the committee had the full participation of a range of senior officials across a number of departments all of whom had full respect and regard for the parliamentary scrutiny led by the committee.

This includes Transport Scotland that endeavoured to provide all information to the committee in a timely manner, although we note there was a formatting error in providing material to the committee at one point – although noting that the committee was already in possession of the required material through a separate source.

Summary

I would again like to thank the committee for its work and the final report on this important matter. As set out above we will continue to make improvements in processes around vessel procurement and in particular the role of communities in shaping the future investment in the lifeline ferry network.

Yours sincerely

KEVIN STEWART

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

