



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit Committee

Thursday 21 September 2023

Session 6



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PUBLIC AUDIT COMMITTEE

23rd Meeting 2023, 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)

*Graham Simpson (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Colin Cook (Scottish Government)

Gary Cox (Transport Scotland)

Sarah Jane Hannah (Scottish Canals)

Fiona Hyslop (Minister for Transport)

Alison Irvine (Transport Scotland)

Richard Millar (Scottish Canals)

John Paterson (Scottish Canals)

Kerry Twyman (Transport Scotland)

Chris Wilcock (Transport Scotland)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament Public Audit Committee

Thursday 21 September 2023

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Richard Leonard): Good morning. I welcome everyone to the 23rd meeting in 2023 of the Public Audit Committee.

The first item on our agenda is a decision whether to take agenda items 4 and 5 in private. Do members of the committee agree to do so?

Members *indicated agreement.*

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

09:00

The Convener: Agenda item 2 is consideration of the Scottish Government’s response to the report that the committee produced in spring of this year, “New vessels for the Clyde and Hebrides: Arrangements to deliver vessels 801 and 802”.

I welcome to the meeting Fiona Hyslop, Minister for Transport, who is joined by Colin Cook, director for economic development, Scottish Government and, from Transport Scotland, Alison Irvine, interim chief executive, and Chris Wilcock, head of ferries unit.

We have a number of questions to ask, minister, but first I invite you to make a short opening statement.

The Minister for Transport (Fiona Hyslop): Good morning. I thank the committee for its invitation to address further its report on arrangements to deliver new vessels 801 and 802 and the Scottish Government’s response to it, which was sent to the committee in May 2023.

As the committee will be aware, I was appointed as Minister for Transport in June 2023. I am aware that the committee felt that the Scottish Government did not respond as fully to the report as had been expected, and I want to address that issue in my opening remarks.

First, as confirmed in the then minister’s response, the Scottish Government fully welcomed the committee’s report, which built on work already undertaken by Audit Scotland and the earlier report by the Rural Economy and Connectivity Committee. The report contained a number of observations and recommendations throughout. Although the Government’s response was not a point-by-point one to all of the committee’s stated views, observations and conclusions, it nevertheless extracted for the Government the key recommendations that could be identified in the report and responded to those. The approach taken was to group those recommendations where we felt that there was a common theme.

On recommendations for other parties, such as the Auditor General, the Government did not comment in detail, but it noted that we could engage fully with any further audit work that was identified. As the response came from the previous transport minister, I am keen to identify—either today or in writing, if that would be helpful—

which specific areas the committee considers warrant a further response to that already given.

I recently reread the report in great detail and, in scrutinising what had been requested of the Government, I identified two areas that were not fully responded to, both of which relate to wider cross-Government areas and process improvements. I will ensure that the committee receives a response to those. Having spent two years up to June as deputy convener of the Net Zero, Energy and Transport Committee and as member of the Economy and Fair Work Committee, I take the work of all parliamentary committees very seriously, and I am committed to making sure that the committee has what it needs to conclude its work on this important matter.

I would also highlight that my colleague Neil Gray has given evidence to the Net Zero, Energy and Transport Committee on the current issues, as did I earlier this week. The committee might also be aware that a further update on delivery progress from the chief executive officer of the shipyard is due to be given to the Net Zero, Energy and Transport Committee at the end of the month. Ministers will continue to work with the Net Zero, Energy and Transport Committee in its scrutiny of that element.

The Convener: Thank you very much indeed. We of course note the point that your appointment came after the report had been published and the response from the Government received, but it is fair to say that our sense was that, of the 13 overall conclusions that we produced, six were responded to, one was partly responded to and six were not responded to at all. We were keen to have this session to explore a bit more those areas where we felt as though the response had been insufficient, given the weightiness of the conclusions that we had reached.

I will begin my questioning by highlighting a fairly fundamental point, which is the conclusion that we reached that island communities, taxpayers and the workforce have been badly let down. First of all, do you want to take the opportunity this morning to comment on that? Secondly, where do you consider that responsibility lies for the procurement of these two vessels having a six-year delay and being three times—and counting—over budget?

Fiona Hyslop: Obviously, those were the committee's conclusions, and it is for the committee to come up with its own opinions, views and conclusions. It is self-evident that islands have been let down—I understand that. As the new transport minister, I have spent the summer meeting a number of island communities and their ferry communities.

Resilience in the fleet is really important. There are other issues in relation to ferries that are more to do with operational management issues, which are not the core function of this committee and which the Net Zero, Energy and Transport Committee has been dealing with, but I say again that resilience in the fleet is really important. That is why having the six ferries delivered before 2026 will make a big difference. Because resilience is what underpins all of this, those replacements are essential.

Clearly we know of the current delays. We will hear more about that, which is why I referred to the chief executive officer's regular updates to the Net Zero, Energy and Transport Committee in relation to where they are with progress on 801 and 802, now known as Glen Sannox and Glen Rosa. Another four ferries are being built in Cemre, Turkey, and are progressing well.

Going back to the first question, I acknowledge the point—it is self-evident. A number of ministers have apologised for what has happened, particularly to island communities. That is self-evident, too. I should say that no recommendation came from the committee's conclusion in that sense, but what I have said will give the committee reassurance that we take this seriously and continue to take it seriously. As the new transport minister, ferries are definitely one of my main focuses.

I keep having to say this, but I was deputy convener of the Net Zero, Energy and Transport Committee, which spent well over a year taking evidence on ferries and then produced a report. I should make it clear that I was not a member of that committee when the report was finally concluded. Clearly, as minister, I will need to deliver on the cabinet secretary's response. Perhaps that will give the committee an indication of one of the reasons for my being in this post—to focus on that, if that reassures the committee.

On the point about responsibility, the problems that occurred, particularly in the initial stages of the design process, have been comprehensively set out. As this committee and others have identified, there were relationship issues between the two contracting parties that also led to challenges and difficulties. I refer back to the RECC report, which set those out comprehensively. It made uncomfortable reading for a lot of people, but it really set those issues out, and this committee's report also reflects what the issues and problem areas were in that respect.

I know from its report that the committee has visited the yard—I, too, have had the opportunity to visit on one occasion—and anybody who has done so will have seen the disconnect between the design and the build. The retrofitting that had to take place was not very helpful.

There were other issues along the way. Sometimes it is easier to reflect on things separately. David Tydeman's response, which this committee will be interested in with regard to spend, identified what he saw as the difficult areas. Latterly, the pandemic was an element that stopped progress, but that was not fundamental to the initial issues. Later in his remarks, Mr Tydeman talks through what he sees as the key areas; a lot of them were design-build issues that arose right at the beginning, with things not being done properly at that stage. That is well documented.

The issue, then, is that we know that improvements are made. That is where your committee's recommendations and—perhaps more important—some of the commentary in the report come in, along with, quite clearly, the recommendations from RECC in relation to what happens with milestones and so on. I think that this committee's purpose is to make sure that the improvements have been made and will be made. I reassure the committee that improvements have been made. Some were made even in advance of this committee's report, and they have certainly been made after it.

Some of what we want to do, particularly in relation to lessons learned, is to pull all that together and identify things. Some of those changes have been made, for example, with regard to the Scottish public finance manual, and we need to make sure that you can identify where some of those issues are. Some of them are for Caledonian Maritime Assets Ltd and some are for Transport Scotland.

That was a wide response but I hope that it gives you some reassurance.

The Convener: As I have mentioned the workforce, I refer members to my entry in the register of members' interests and my membership of the GMB union.

Do you have any reflections on the role of the workforce and the extent to which it has been involved or, conversely, sidelined in some decisions? Our sense has been, certainly when we visited the yard, that it was absolutely underlined that the workforce had a clear view of how the construction project should have been undertaken, in relation to the configuration and reconfiguration of the yard, but that was ignored. Do you now have a view on the weight that should be attached to that voice?

Fiona Hyslop: Again, that was in your report, not as a recommendation to Government but as a conclusion and view of the committee. You are asking for reflections rather than an official response to what we will do as a result of that.

I suppose that we should delineate the responsibilities clearly from the point of view of Transport Scotland and Scottish ministers. The Minister for Transport's responsibilities are for procurement, including of the four new ferries in Turkey and realising the six that will be delivered by 2026.

As for the running of the company and the organisation post-nationalisation, you are talking about Ferguson Marine Port Glasgow, and that responsibility currently lies with the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy. Pre-nationalisation, there were issues with the private company Ferguson Marine Engineering Ltd. There are issues involving two separate companies at different times.

If you are asking for my reflections on the role of the workforce, I certainly think that the strength of any organisation lies in how it can involve its workforce in decision making and advice, because the people who are doing the work are the experts in that. At different times, that has been specifically requested and delivered by the board. In the nationalised Ferguson Marine Port Glasgow, it is all to do with the role of the board and impressing on the board the importance of regularly involving the workforce and, particularly, trade union representatives. My understanding is that that does happen.

Your question is whether the workforce should have been listened to earlier and sooner, and I think that you are going back to the 2015 to 2017 period. I cannot really comment because, first, I was not there and, secondly, it was a private company at that time.

You are asking about the principle of that and whether a lesson has been learned about the active participation of the workforce in key deliverables and operational matters, and that is part of the fair work approach that the Government is committed to. You needed to reflect on that and you did. You have taken evidence from the workforce on where that has happened in the past. Under the new First Minister, there is a focus on that, and you have clearly seen that in the approach of the cabinet secretary, Neil Gray, too. That is my view.

The Convener: For the record, there were serious concerns about the performance of the turnaround director, who was a part of the post-nationalisation project.

Again, my understanding of the demarcation here is that Neil Gray is the cabinet secretary who is responsible for the yard.

Fiona Hyslop: Yes.

The Convener: Let me move on, because time is running away with us already. What is the

Scottish Government's response—because we did not get this from the previous Minister for Transport—to our conclusion that

“There has been a significant lack of transparency and accountability throughout the project”?

We drew attention in particular to the fact that

“FMEL was not open about its inability to provide a full builder's refund guarantee”.

We also think that, for example, it was “inappropriate”, during the course of a live procurement process, for the then transport minister to respond to a regional list MSP—that is a correction that we need to make to the report—that there had been occasions previously when a full builders refund guarantee had not been necessary. That was then taken as the green light by Jim McColl and the FMEL leadership to continue with their bid in the tendering process.

09:15

Fiona Hyslop: You are reflecting not on the transparency of the Government—although I am sure that you will do that at some point—but on the transparency of a private company: Ferguson Marine Engineering Ltd. You are also asking about whether the exchange of those letters was material to the company's decision. You quite rightly say in your conclusions that that would not, in and of itself, have been the green light, and nor should it have been, because neither of the two individuals concerned were party to the contract. The private company, FMEL, would have wanted to abide by the procurement requirements of the contracting party, CMAL, which set out what was required for procurement.

You will be aware that the former First Minister, in her evidence, referred to Transport Scotland's provision of the exchange of letters. The understanding is that she knew of that correspondence and its contents, but that the formatting meant that a paragraph was missing. Also, that correspondence was sent to the committee during a week when you were about to finalise your report. Officials would not have known that, which was remiss and has been recognised, but that would not necessarily have had an impact on your report, because the correspondence was made available. Regarding whether it should have been taken as approval, no one who deals with contracts and legal authority would have taken that as an indication of Government approval.

What the correspondence did say, which was reasonable, was that there had been instances, including involving previous work at Ferguson's on hybrid vessels, when there was a different operating method.

The committee's criticism of how a private company gave evidence was a fair one, but you are asking me to comment on something that I was not party to.

The Convener: We have a particular question on that. Before I bring in the deputy convener to go down that line of questioning, I note that you have mentioned the fact that your CV includes deputy convenership of the Net Zero, Energy and Transport Committee and membership of the Economy and Fair Work Committee. However, it also includes Cabinet-level ministerial responsibility between 2009 and 2020, which covers a large part of the time span that we have looked at in our evidence collection. As someone who was a member of the Cabinet during that time, can you tell us which issues around Ferguson Marine Port Glasgow and which issues around Ferguson Marine as it is now constituted came to the Cabinet?

Fiona Hyslop: I think that it is a bit unfair to expect me to have on tap knowledge about the different times when that was discussed in Cabinet during a period that was both extensive and some time ago. I am not really in a position to answer. I do not have recall of that.

The issue will have come up at different times and progress will have been reported to Cabinet. Those issues were not part of my lead responsibility at that time, but the decisions that had to be taken would have been taken. A lot of that would have come to Parliament in the form of ministerial statements by the relevant cabinet secretaries at different times, as happens now, but I cannot give you instant recall of what happened during that 11-year period. With respect, I am not sure that that is something that you can ask me about now, in my capacity as Minister for Transport, when I am meant to be responding to a report that was published only recently.

The Convener: You mentioned the former First Minister's evidence to us. She told us that

“no formal decisions were taken by Cabinet on these matters.”

Was the decision to nationalise the yard, for example, not a Cabinet-level decision?

Fiona Hyslop: There are different issues. I think that the committee has had the evidence on the roles and responsibilities of ministers and cabinet secretaries—including what needs to come to Cabinet and what does not—but I would need to check that. The committee's report went into quite a bit of detail on the authorisation for the approval of the award of tender and at what level the decision should have been made—whether it was appropriate for a minister to make that decision or whether it should have been a Cabinet-level decision. The committee went through that in the

report. Certain decisions will be made at certain times.

I honestly do not want to mislead the committee by saying something that is not true. I do not have instant recall as to when those decisions were made. I am focusing in my evidence today on what I was asked to do, which was not even to give evidence on what happened leading up to your report; it was to respond to your request for a response following the Scottish Government's existing response, which was given in May 2023.

The Convener: It is a question of transparency and openness about how the Government dealt with this. I think that it is a legitimate question. For example, we were told by the now director general for net zero, Mr Brannen, that decisions of the "gravity and size"—that was his expression—of ScotRail being nationalised would go to Cabinet. I am just trying to understand whether the decision to nationalise the yard at Port Glasgow would have been a Cabinet-level decision.

Fiona Hyslop: I do not know whether whichever of the officials is most familiar with that can recall.

Chris Wilcock (Transport Scotland): As far as I understand it, that was not a Cabinet decision. It may have been a ministerial decision at the time.

The Convener: Okay. That is fine.

Fiona Hyslop: I do not think that that is new information. I think that it was in your report as well.

The Convener: Okay. I will bring in the deputy convener now.

Sharon Dowe (South Scotland) (Con): A majority of the committee concluded that the former Minister for Transport and Islands showed poor judgment in responding to an MSP about alternatives to builders refund guarantees during a live procurement process. Are there any lessons for the Scottish Government to learn from that?

Fiona Hyslop: Clearly, there are lots of lessons to be learned from the process and from the conclusions of not just your committee's report, but the Auditor General's report and the REC Committee's report.

I think that, reading that exchange now, it is quite clear that the then minister for transport was reflecting factually on what had happened before. There had been instances at the yard, which FMEL would have known about, where things had developed without a builders refund guarantee. That was a reflection. It was not advice as to what would happen in another procurement; instead, it was reflecting on the past.

Sharon Dowe: Do you think that it was appropriate for him to communicate at all, considering that he was the minister?

Fiona Hyslop: So many things are judgment calls. With hindsight, there might be a lot of things that people would not want to do or that they would want to rethink.

I try to avoid communicating during live procurements, although I have not had many in recent times. There is the "safety first" thing, but there are also MSPs who demand responses to their letters, and if they do not get them they will stand up in Parliament and ask why a minister has not responded to their letter. That is the call that we have to make. We want transparency and openness—that is what the committee is asking for—but it is a judgment call. He made that judgment. Looking back on that, knowing what he does now, would he have done the same thing? I do not know.

The content was a factual reflection on what had happened, as opposed to an opinion on a procurement, and he probably saw it in that way. I do not want to second guess how somebody decided on things or judged them, but that is my reflection. I think that the committee is looking for some reflections on your conclusions, as opposed to asking us to respond on what we are being asked to do as a Government now.

Sharon Dowe: Is it fair to say that we have not learned lessons, then? If such a question is asked in Parliament, the response will normally be that there is a live case or a live procurement exercise so the Government cannot comment. From your answer, I guess that no instruction has been given to any minister that they cannot comment on anything like that.

Fiona Hyslop: Normally, the advice is not to do anything that would cause an issue with the procurement. That is what you would normally get when the letter comes in.

Colin Cook might want to comment, as he has dealt with this on the economy side of things.

Colin Cook (Scottish Government): I reaffirm what the minister said. For obvious reasons, we would not typically issue any public statements in the middle of a procurement exercise. I do not think that it was a case of us having to reaffirm that guidance to anybody, but I can look into that.

Sharon Dowe: Would you reaffirm the guidance to Scottish Government officials or to ministers?

Colin Cook: I can talk from an official's point of view. We would not typically make any public statements about a procurement when it is live, because it is important that the process is followed appropriately.

Fiona Hyslop: As the minister, I will get advice from officials saying, "This MSP has written in, but we're in a live situation." For example, there are a

number of public service obligations—not in the area that we are discussing, but for air services—about which MSPs have wanted to speak or write to me. We are not party to some of those issues. They are other parties' responsibilities, and we do not want to interfere in procurements that are for other parties. It is not just about the Government.

Normally, ministers will accept the advice that is given to them in terms of the drafting of the letter.

Sharon Dowey: A majority of the committee also concluded that it was unclear why the former minister told us that he had no knowledge of the preferred bidder before going on annual leave when evidence from the former Cabinet Secretary for Infrastructure, Investment and Cities stated that he was aware. Correspondence from Transport Scotland that was issued after the committee's report was agreed appears to support the former cabinet secretary's position. Is the Scottish Government any clearer about whether the former minister was aware of who the preferred bidder was before he went on annual leave?

Fiona Hyslop: I will need to reflect on the chain of events and the evidence that you have on that. It was not a recommendation to me, as the current Minister for Transport, for action. I do not know whether officials have better recall of it.

Alison Irvine (Transport Scotland): The only thing that I would say in response is that you have heard from the former minister about his position, Ms Dowey. You have the evidence that was put in front of you about that exchange. It is not for us to make a judgment on what you have been told.

Sharon Dowey: Why was the correspondence received late? It took a freedom of information request before the committee saw it.

Fiona Hyslop: I will ask my officials to comment, but I will provide an answer based on my understanding. As a minister, I expect my officials—in whatever portfolio, and certainly in this one—to respect Parliament and committees' requests for information. I think that what happened related to the approval of a press line for the minister. The request was identified through an FOI request that came from another route and, as soon as it was identified, the correspondence was given to your committee. There was no intent not to provide it. The issue was that it came in at the same time as you were concluding your report. Because officials would have no idea when you were concluding your report, they would not know that it was late.

I hope that that makes sense. I know that you have taken a long time over the matter. That is my understanding of the explanation. I do not think that it was acceptable. We need to try to identify improvements in record keeping. That has happened as part of the Government's response

and it has tried to locate things. However, Transport Scotland provided a huge amount of information not just for your committee but for the REC Committee.

Is my recollection of that process correct?

Chris Wilcock: I think so, minister. I echo the point that it is regrettable that we did not find the material the first time round. We provided significant bundles of information to the committee, particularly following the First Minister's appearance. That related to one of the questions that you asked, Ms Dowey.

As you would expect, there is a huge volume of material on the matter, a lot of which has been published. It was only when we had a separate FOI request that this piece was identified. As soon as it was identified, I asked the team to send it on to the committee. Regrettably, that was, as we now know, at a point when you had concluded your report.

Sharon Dowey: I have another question that concerns accountability. There was a verbal briefing from Transport Scotland. Our paper says:

"the former Minister had received a verbal briefing before he went on annual leave".

We will ask more questions about record keeping later, but have you improved your procedures? Are all verbal briefings now recorded somewhere so that there is accountability and we know who said what to whom and when?

09:30

Fiona Hyslop: I can usefully comment on that, having come back into Government after two years. On verbal briefings, there will be a note that says, "I've met such and such and we've briefed on such and such." It is evident that there is more record keeping and an improved record-keeping process. Again, we say that in the response to the committee. The new permanent secretary has made it clear that, not just in this area but across Government, there needs to be improved record keeping on everything. I spend a lot of time clearing minutes of meetings—I assure you of that.

Sharon Dowey: I might come back in later with some more questions on record keeping.

The Convener: Given Mr Cook's response, I note that the evidence that we took from Mr Mackay was that the letter that he signed to Mr McMillan had been prepared by his officials.

Given Mr Wilcock's point, I note that the request for that information from Transport Scotland was made by the committee in November 2022. It finally saw the light of day in March 2023 following an FOI trawl, not because the department had

been sufficiently adept at finding it for us when we first asked for it back in November. That was not a one-off. There was a pattern, which Mr Beattie will speak about shortly.

Fiona Hyslop: Draft press lines are not necessarily the same as meetings or decisions. I can see how that might have happened, but I think that records were kept of everything significant. That is the point. It is about what is significant in terms of decision making and who knew what and when, et cetera. There is far more acute awareness of that now than there would have been previously.

The Convener: These things we shall return to. Graham Simpson has some questions.

Graham Simpson (Central Scotland) (Con): Good morning. I will briefly follow up on Sharon Dowey's line of questioning on the builders refund guarantee and Kevin Stewart's response. At the time that he wrote the response in May, the UK Government was planning to introduce a home shipbuilding credit guarantee scheme, and Mr Stewart said in his letter to the committee that he awaited the final details and that he would

"work with industry to establish how best to utilise the scheme and maximise its potential".

The scheme was launched two months after he wrote the letter, so my question is this: has the Scottish Government engaged with the UK Government on its shipbuilding credit guarantee scheme?

Fiona Hyslop: I might refer to officials on what sort of official engagement there has been. You mention Mr Stewart's letter of 23 May and say that we should have engaged with the UK Government in the past few weeks on the shipbuilding guarantee. I have not, but I expect that my officials either will do that very promptly or will have already done that. It is quite a helpful intervention, depending on how it is used. I think that those issues will tie in.

Colin Beattie and you will be aware from your time on the economy committee that subsidy control issues have developed in relation to what can and cannot happen, particularly post-Brexit, and how we can have support for procurement and support for domestic entities. It is therefore a welcome intervention, but it will have taken some time to develop. We need to work out what we should do on the operation and the underpinning, because it is an underwriting issue, so a lot of that will depend on where we have capacity as a Government to do underwriting and what the source of the funding is.

We have had improvement in borrowing for revenue purposes. Some of those issues might relate to capital spending, which has different

challenges for us than for the UK Government. That is the sort of thing that we need to explore.

I will ask the officials to say whether they have had those discussions or intend to have those discussions with the UK Government.

Chris Wilcock: I am sorry; it would not be my part of Transport Scotland that would do that. I suspect that the yard or economy colleagues may have had those discussions.

Fiona Hyslop: Those issues would relate to future procurement, depending on who had that. Therefore, you would be looking at the people who are bidding for the work having that underpinning and guarantee, in which case it would relate to a yard.

Graham Simpson: The scheme was launched in July, so the Government had a bit of time to engage with its UK counterparts, at least to find out the details and how it could help in the future.

Fiona Hyslop: That is why I thought that that was a good recommendation. We want the Government to respond to it. In my detailed examination of your report, as I went through what the conclusions and recommendations were and what we have to act on, that is something that, in my new position—obviously, at the time that you produced the report, prior to my being in post, I would not have looked at it in that level of detail—I feel is a good and useful recommendation, and my officials will act on it.

Graham Simpson: Okay. That is good to know. Now that I have alerted them to the scheme being in existence, we can make contact.

I want to move on—

Fiona Hyslop: That is really for the shipyards to know, as I said.

Graham Simpson: I am sure that you watched, as I did, the BBC "Disclosure" programme on the issue, which I think was broadcast a year and a day ago. In that programme, the allegation was that the whole procurement process was "rigged". That is the word that was used in the programme.

Then, Barry Smith KC was appointed to look into the allegations that were made in the programme. However, it has been reported that Mr Smith has not been asked to look at whether the contract was rigged but instead has been asked to look at whether there was fraud. That is not what I am saying but what is being reported in the press. Is that accurate? What has he been asked to do?

Fiona Hyslop: I cannot comment on what has been reported in the press. However, I can tell you that, quite rightly and appropriately, the CMAL board appointed Mr Smith to carry out that investigation. It has a responsibility to do that, and my understanding is that CMAL was looking at all

the allegations that were made in that programme by the BBC. The review must be presented to CMAL, which will need to review and publish it. It has committed to doing that, and it is the appropriate thing to do.

Graham Simpson: Has Mr Smith been asked to look at whether there was fraud? Nobody has alleged fraud.

Fiona Hyslop: Again, it comes back to the issue of what the allegations are. That is an issue for the CMAL board and what it has asked Mr Smith to look at. It is perfectly entitled to commission that investigation, which it has done. I think that it was the board's responsibility to do that and, like you, I will be interested to see the report when it is published.

Graham Simpson: Do you or your officials know what his remit is?

Alison Irvine: CMAL has asked Barry Smith to undertake a review of all the allegations that were made in the BBC "Disclosure" programme, and the focus is on whether the process was arranged or influenced in a way that was dishonest or fraudulent. To my mind, although it is a matter for CMAL, that sounds like an all-encompassing review of the important issues that were raised in the BBC programme.

Graham Simpson: When are we going to see that report?

Fiona Hyslop: That is a matter for the CMAL board. I think that it will be fairly soon, but I am not responsible for the timescale for that.

Graham Simpson: CMAL reports to you or your colleague Neil Gray—it reports to the Government.

Alison Irvine: It is a CMAL report to the CMAL board, and then—

Graham Simpson: Do we know when we are going to see the report? The minister says "soon", but that could mean anything.

Alison Irvine: We are not party to that information. We know that the KC has undertaken the interviews, but we have not seen any formal findings from those. That is right and proper, because the report will be directed to the CMAL board. What actions are taken next will depend on the findings of that work.

Graham Simpson: Will the report be made public?

Alison Irvine: I think that the intention is that the report will be published in some form.

Chris Wilcock: The chief executive of CMAL was pretty clear that it intends to publish as much of it as it possibly can. Obviously, it will need to take into account any relevant personal

information or elements, but Kevin Hobbs has been pretty clear that CMAL is keen to publish as full an account as it can.

To make another relevant point, I understand that the Auditor General has said that he will review that report and its findings when it has been completed, to identify whether any further audit work is required. If further work is identified, we, CMAL and the wider Government are absolutely committed to engaging with it.

Graham Simpson: Once the report is published, will there be a ministerial statement?

Fiona Hyslop: It is up to the board to publish the content of the report. We need to review that content, and then there will be a judgment as to what is merited. I cannot prejudge the content, so I cannot tell you what happens after it is produced.

The Convener: I underscore the committee's recommendation that that investigation should be carried out "thoroughly" but also "urgently". As Graham Simpson said, it is a year since the programme was broadcast.

I will ask another question, which was identified in our report but not really responded to by your predecessor. Will you respond now to the concerns that the committee expressed about the decision to publicly announce the preferred bidder on 31 August 2015, when

"there were still significant negotiations to be concluded"?

Fiona Hyslop: Again, that is the committee's conclusion and position. Obviously, it is part of your responsibility to set out your position and your view. You went into some detail about the appropriateness of that with the former First Minister, and you have good evidence as to where things were, which has been laid out a number of times.

The Convener: But what is the Government's response to it? We did not get a response from Kevin Stewart, so we are asking you this morning.

Fiona Hyslop: It was appropriate for the Government to make an announcement because that would have happened in previous contexts and, for example, in relation to the allocation of contracts elsewhere. CalMac received its allocation of that tender, so it would have been appropriate for the Government to make that announcement once the process had gone through.

Your report sets out the idea that either everything had concluded or the announcement was premature. The announcement was appropriate at the time. However, the evidence that you have had includes different views and different opinions on that, which were formed in hindsight.

The Convener: Is it the Government's position that you would just do the same all over again?

Fiona Hyslop: No, that is not what I am saying. It has to be judged at the point in time when the work that has been carried out has been assessed and the procurement process has gone through.

Again, this is about looking back to something that took place a significant time ago. The changes that have taken place since then to improve procurement processes—prior even to the recommendations of the REC Committee and to your own recommendations—also mean that the process of decision making on investment is different. It is difficult to view something retrospectively through the lens as to what is appropriate that we as a Government currently have .

What I am saying is that, looking back, the types of processes that we have now should have been in place at that point—but, obviously, they were not. We have learned from that and have improved those processes. We have been open about that.

The Convener: We will come on to the business investment framework shortly. I will ask you about the issue of transparency. On 31 May, a meeting took place between the former First Minister and Jim McColl at which no permanent civil servant was present. Does the Scottish Government have a view on that?

Fiona Hyslop: Evidence about that was responded to by the Government and by the witnesses that you had at the time. In our response in May, we also said that it is important to keep minutes and records of all meetings. That is what happens—as is appropriate.

The Convener: Do you accept that no minute of that was produced or found?

Fiona Hyslop: There was a record of the decision. My understanding from the evidence that was set out, which you have in your report and which you heard in the evidence sessions that you held, is that, following that meeting, there was an email exchange that made it clear what the result was. Therefore, there was a record of it but not in the normal form of a minute of the meeting. It was an exchange afterwards.

09:45

The Convener: Does the Scottish Government have a view on a meeting between a minister and a private contractor at which no permanent civil servants are present?

Fiona Hyslop: Well, as you know, an official was there.

The Convener: I think that we were told that it was a special adviser.

Fiona Hyslop: It was a special adviser.

The Convener: But not a permanent civil servant.

Fiona Hyslop: In terms of how we would normally operate and, to be fair, as was set out in the evidence sessions, the Scottish Government has been as accessible and approachable to interests as it can be, but in an appropriate way as long as things are documented. Clearly, the meeting was documented but not in the form that it would currently be done, which would be an official minute.

The Convener: The former First Minister said to us:

“Officials have been unable to locate a note of this meeting”.

Fiona Hyslop: My understanding is that, as given to the committee in the extensive documentation, there was an email exchange that reported the meeting. You have it in the evidence that you have but, if you want to refresh the committee's memory of it, we can provide you with it again.

The Convener: That would be helpful, but it sounds a bit like you are saying that you would do the same again.

Fiona Hyslop: I do not think that I have said that. I have been at pains to say that part of the response has been improvements in record keeping. I am clear about that. There have been recommendations from the new permanent secretary about how decisions should be made and how things are recorded. I have observed that improvement in minute taking in the recent weeks after coming back into government.

The Convener: I will move on to another area in which there has been public interest, and that is who, in the end, was responsible for signing off the contract. Mr Wilcock alluded to the 200-odd documents that the Government has released, which included email exchanges in which John Swinney's officials spoke about banana skins, for example. There seemed to be, and still appears to be, some confusion over who, in the end, signed the contract off. Was it Derek Mackay, Keith Brown or John Swinney? Has the Government drawn any lessons from that observation of the committee?

Fiona Hyslop: I will provide an initial response, particularly about what happens now but also reflecting on what happened, and then I will bring in Alison Irvine.

It is important to set out that the contract is between CMAL as the procuring authority and the

private company Ferguson Marine Engineering Ltd. It was a use of public funds, so the decision to approve it would need to be provided by the relevant ministers. Obviously, the transport minister would exercise a degree of authorisation or approval but would not be party to the contract.

Particularly in tight fiscal circumstances, the authorising officer has a key role on any major spend but, clearly, the finance secretary has to identify whether we have resources to do it. That is based not on the merits of the individual case but on whether the Government can afford it in its wider spend.

I hope that that gives you the shape of the situation, but I ask Alison Irvine to reflect on anything in the process then or now.

Alison Irvine: If I take what happened then, convener, I am aware that you heard extensive evidence from Mr Brannen when he appeared in front of the committee about the ministers' decision-making role and the difference in the relationships with Mr Mackay, Mr Brown and Mr Swinney. I am happy to clarify anything specific on which you seek further clarification.

To reiterate the position as it would be now on the decision associated with the procurement of a new vessel, CMAL would present a business case to Transport Scotland. We would consider that business case as a senior management team and, off the back of that, put advice to the Minister for Transport, who would give the authorisation for the procurement to proceed subject to sufficient budgetary cover. That information would be passed to CMAL, which would remain the contracting authority.

The Convener: Okay. I know that Mr Brannen was absolutely clear about pinning responsibility on Mr Mackay. As a committee, our observation was that, at the time of the decision, there appeared to be more hands on the tiller than just Mr Mackay's. As you say, minister, we know that it was not a ministerial name on the contract, but it did require ministerial authorisation, which makes it important to us to understand who was responsible.

As I say, we are interested to find out what lessons have been learned from that and how we can get more clarity on what was actually a very important decision and one that has become more important with hindsight, as things have progressed.

Alison Irvine: I was trying to provide that clarity that, with regard to the process that is followed, the responsibility for the decision on the procurement of vessels is for the Minister for Transport, subject to the financial provisions being in place. I just wanted to check that you are comfortable with that.

The Convener: Yes, but it is not even clear, Ms Irvine, whether Mr Mackay was on holiday and therefore Mr Brown signed the authorisation, for example. All that I am saying is that there continues to be a degree of confusion about that process and where the authorisation lay.

I will bring in Mr Beattie, who has some questions that develop the theme of Transport Scotland's role.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Good morning. It is clear that the role of Transport Scotland was seriously called into question in the report. I will mention a couple of things. The project steering group that Transport Scotland led was seen to be weak and ineffectual, and Transport Scotland officials failed to communicate some quite important information to the Scottish ministers on CMAL's behalf. In the Scottish Government's response, no reference is made to those concerns. Are you able to take the opportunity now to respond to those concerns about Transport Scotland?

Fiona Hyslop: Again, I note that there are clear recommendations and asks of Government in the report, and that is what Kevin Stewart's response of 23 May identified. Throughout the report, the committee—quite rightly—makes statements with regard to your views and conclusions on certain situations, and the committee has taken a view on Transport Scotland.

Clarity and understanding are sought with regard to Transport Scotland's role then and now. On that work, Transport Scotland advises Government and provides information. I think that information was being provided previously, but we have now formalised that process far more. For example, in relation to CMAL's advice and information to us about what is happening in Turkey with the four vessels, I hear that directly. I have regular direct conversations with CMAL, and I work with Transport Scotland on that.

However, with regard to the management of the contract and the parties to that contract, that was private to Ferguson Marine Engineering Ltd and CMAL, as I have said previously.

Therefore, information does flow and that process is far more formalised, and probably far more direct, than it was previously.

On the project steering group, the issue is what its role was then and is now. Again, to unpick that in detail, you can have criticisms of what has happened before, which the committee does and has set out in its report. The Government was not asked to comment on that, so I have given you a view just now.

Alison Irvine or Chris Wilcock—whoever is more appropriate—please can you set out the role of the

project steering group then and now in relation to that type of work.

Chris Wilcock: I start with the reflection that we have a very different process now with regard to how we alert ministers to issues. The observations and criticisms that were picked up in the Rural Economy and Connectivity Committee report and alluded to here were that the network strategy programme steering group was receiving reports and not passing those timeously to ministers. We would probably dispute that we did not share information with ministers. There is a question about how that was recorded, the timing of it and the point at which we formally escalated it. I think that it was December 2017. I cannot remember the exact date, so forgive me for that.

However, there is now a very different process for sharing information with ministers, so, along with Mr Gray, the minister will get quarterly reports—or reports of whatever frequency, as they come in—for vessels 801 and 802. Also, as we receive reports from CMAL on the Cemre vessels, we share those immediately. Again, those go directly to ministers, whether things are going well or otherwise, so that they can see how things are progressing.

We are still working on the reform of NSPSG, but it is fair to say that we have made significant changes since the 2015 period to move that to being a more functional, focused decision-making space rather than an information-sharing space, and there will perhaps be some other groups below it. It is a work in progress, but we are looking at that.

I would reflect on some of the more recent strategic decisions that the group has taken around the recommendations to ministers to split the Skye triangle route, retain a resilience vessel and have vessels 801 and 802 working on the Arran route. That is how we would like to shape that group and see it working in the future—as a group that makes strategic high-level recommendations to ministers.

Colin Beattie: I am pleased to hear that we have learned lessons and that improvements have been put in place, but we are looking back to see what happened. Do you agree—I guess that this is a question for Transport Scotland—that ministers were left somewhat blind as to what was going on in the initial stages because of the lack of reporting from Transport Scotland?

Fiona Hyslop: I will ask Transport Scotland to review that, but, having looked again and read this committee's report and the REC Committee report, I think that information was shared. Have improvements been made? Yes. However, I think that you wanted to direct your question to Transport Scotland.

Chris Wilcock: I am not sure that I agree with Mr Beattie's characterisation. I think that, in evidence to the committee, when we appeared before it previously, we reflected on some of the reports that were going to NSPSG suggesting that there were challenges with the project but also setting out, certainly at the earlier stages, that the yard and CMAL were working on solutions and that there was the point of recovery. Again, on reflection, on whether we would share more details with ministers now, yes, we absolutely do that, regardless of whether things are going well or challenges are appearing.

Colin Beattie: Do you agree that the project steering group, which was led by Transport Scotland, was, in fact, ineffectual?

Chris Wilcock: It was not—

Fiona Hyslop: I think that that could be answered in different ways, depending on what you think that its role should have been.

Chris Wilcock: Yes, and I think that we were clear that the group was not party to the contract. It did not have the opportunity to intervene when things went wrong. Again, I think that we set that out in some of our evidence. It was never intended to be a conduit to manage those difficulties.

The observations about and the issues with the role of NSPSG were about that escalation point to ministers and whether that could have been more formalised or improved. That is almost a moot point, given that we now directly report, as we go along, the issues to ministers and the progress, good or bad.

Colin Beattie: Do you think that there was an expectation among the participating stakeholders that the project steering group had a strong role in this, when that did not exist?

Fiona Hyslop: There might have been an expectation on the part of the contracting parties, because there was clearly a breakdown in how the contract was working between the two parties. However, on the point about Transport Scotland not being party to the contract, what it was looking at was in terms of support for a process that needed support.

Colin Beattie: During the process, Transport Scotland had a member on the CMAL board or attending the board meetings. How did the reporting line work, from that individual back to Transport Scotland, and then feed back to the Scottish Government?

Fiona Hyslop: Chris Wilcock, are you happy to answer that?

Chris Wilcock: Yes, absolutely. It is important to note that that individual was on the board in the sponsor role rather than directly discussing any

issues with the vessels. There would have been instances when someone was attending the board meetings and such matters were discussed. However—I know this because I was in that role at one point—that person would have been very clear that, if there were issues, they had to be formally discussed with Transport Scotland. Indeed, that is where those discussions were taking place with my predecessor, in my current role, and the director of ferries—or the director of aviation, maritime, freight and canals, as it would have been then.

The Transport Scotland member attended the board in the sponsor role to engage on that basis; they would not be directly discussing those issues. The board papers would also be shared with other members in the team but, as is evident, there were focused discussions and the CMAL-Transport Scotland liaison space was where those issues were being taken forward.

10:00

Colin Beattie: Was Transport Scotland's role in providing the sponsor team support successful?

Alison Irvine: I will pick that up and take it into the territory of how we have learned the lessons from that.

Transport Scotland is the sponsoring authority of a number of bodies. I became interim chief executive in March. Subsequent to my taking up post, I have tried to bring all the sponsorship and liaison work together so that, as part of the sponsorship process, I am hearing directly from the sponsors monthly about the issues that are raised as a way of driving improvements in how information is shared within the organisation and in relation to the point at which the level of risk is shared with ministers.

That is not to take away from the criticisms and comments that have been made about the performance of Transport Scotland and the different structures that we had in place, but I hope that the committee will take that as a degree of assurance that we continue to improve the way in which we manage valuable and important assets for the country.

Colin Beattie: It is encouraging to see that improvements are being made and that lessons have been learned, but we are looking at the historical situation and the role of, for example, Transport Scotland as the sponsor in this particular instance. Do you think that it was successful in that role?

Fiona Hyslop: The sponsorship is of CMAL, as the organisation, so the issue is the sponsorship of CMAL.

Colin Beattie: Surely, in the sponsorship role, you would be picking up on the issues around CMAL and, where necessary, feeding that back to ministers.

Chris Wilcock: As Alison Irvine pointed out, we now have clearly distinct and separate roles there. The sponsorship and policy functions now sit in two different directorates in Transport Scotland. Previously, those sat together within the same team; we have separated those out now.

The same issues would be raised. As we set out in our responses and in the papers that we have published, in relation to the issues that were being escalated by the policy team—either via the NSPSG or direct engagements with ministers—the same message would be communicated. Whether from the sponsorship side or the policy side, we would be reporting the same issue, which we did.

Colin Beattie: I will move on from sponsorship, over which there is clearly a question mark.

During our scrutiny, Transport Scotland came in for criticism in relation to, at times, its attendance at committee to give evidence, and late and incomplete evidence being received from it with little explanation as to why. That led the committee to question the

“level of respect and regard shown for accountability and parliamentary scrutiny.”

It also issued important evidence to the committee the day after our report was agreed, meaning that it could not be used to better inform the report's conclusions. Does that show evidence of “respect and regard” for parliamentary scrutiny?

Fiona Hyslop: In my detailed examination of the process, I took that part of the committee's report, and looking into what had happened, very seriously. I have asked what happened, and I have made it clear that I always expect—as I am sure that we do across Government—that there is co-operation and attendance when required.

The situation seems to boil down to one request for absence, which was for the then interim director general—I think that that was his title. His evidence has already been referred to, so he had already appeared before the committee. My reading of the situation is that two previous interim chief executives and other senior officials appeared before you; Chris Wilcock did as well. The committee had one extensive session and you decided to have a second one, at which point the—I am trying to remember what title he would have had at the time—

Alison Irvine: The interim director general.

Fiona Hyslop: The interim director general could not come to the second meeting as you had requested but said that he could come to another

one and tried to get alternative dates. That was one instance and that is the explanation. You have referred to some instances, but I am not sure whether there were any other instances where an official did not appear.

On the issue of not providing complete information, we have addressed that in response to Sharon Dowey's questions. There were two issues, which were the letter exchange between the former transport minister and a regional MSP, in which it was identified that, due to a formatting error, a paragraph had been left off that letter—that administrative mistake should not have happened and an apology was given—and the draft press line that was subsequently found and supplied through another route. I can understand the committee's point of view around the latter arriving the day after you finalised the report, but Transport Scotland would not have known the date on which you were doing so. I accept the explanation that that was sent to you as soon as the press line was found.

Those were the instances; I do not know whether any other instances happened. There seems to be generalisation that a number of officials had not appeared or that far more pieces of information were not given than those that have been identified and referred to. That is my understanding. However regrettable it was—and apologies were given—I do not think that it was, in any way, obfuscation or anything such as that. As minister, I would not expect that from any official at any point and I respect that officials did not do that at the time.

Colin Beattie: Thanks for that clarification, which leads me neatly to issues around record keeping. The committee concluded at paragraph 47 of the report that record and note keeping of meetings throughout the vessels project involving Scottish ministers was

“weak and fell well short of the standards of transparency and accountability we would expect.”

The Government's response noted that

“further guidance has been issued and all parties ... continue to make improvements in record keeping”

and so on.

Can you provide any detail of what those “improvements in record keeping” have involved since our report was published?

Fiona Hyslop: I think that I have already addressed that issue in other answers. Record keeping has improved. It is not that there were no records but that they did not give the level of satisfaction that they could have given. Specific meetings were identified in your report, as they were in the REC Committee report.

It is about ensuring that records—not just of meetings but, critically, of decisions that were taken—have improved. I do not know what guidance the permanent secretary has issued to civil servants, but I understand that communication has taken place, so improvements should happen, and they have happened over many years.

It is difficult because one is reflecting on what happened eight years ago in comparison with what is happening now and on improvements along the way. As I said in an answer to another question, the new permanent secretary has been quite clear as to what the expectation is with regard to the production of those records. Do any officials want to reflect on what the changes are and on how they have been communicated?

Alison Irvine: I can pick that up and add a bit more detail. The minister has already talked through the minuting of meetings and its impact on record keeping and so on.

The other important aspect is that, when officials provide advice to ministers and we get a response back from ministerial offices, there is a very clear statement at the top of that response that says something like: “This forms part of a ministerial decision, so it should be part of the official record.” It is then the responsibility of officials to store the response appropriately. That is part of a very detailed but very helpful way of ensuring that officials are clear about what should be kept as part of contemporaneous and significant record keeping for prosperity.

Fiona Hyslop: I add that I have a strong view on that, because I was the minister who brought in legislation on record management systems for public bodies, which stemmed from a very sad situation that affected children who had been in care and whose records were lost. I felt very strongly that we should always have records because of that. That was in a different circumstance, but it has implications for all public bodies. The issue is that we must have a record management system that enables retrieval. In terms of that legislation and implementation, that applies across all public bodies.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, Fiona and colleagues. I will ask a couple of questions about the written authority. The committee recommended in its report that Transport Scotland and CMAL should clarify in writing the procedure for seeking reassurances from Scottish ministers, and the Government's response to that was that it accepted it and looked forward to incorporating the process in the next revision of the framework agreement with CMAL. Can you provide an update on whether that has been done and, if it has, how it is progressing?

Fiona Hyslop: There are specific requirements for notification in the Scottish public finance manual. It is an area that I want to seek clarification on, in terms of what is shared and when. It is obviously published and it goes to the Auditor General, and my understanding is that the accountable officer wrote to the Auditor General when the latest written authority was provided.

Written authorities very rarely happen in ministerial directions—they are few and far between. I never gave a ministerial direction during the period that I was previously a Government minister. I emphasise that they can be appropriate and there is a process for issuing them. However, the issue is whether they are routinely sent to the clerk of the Public Audit Committee, which I think was one of your recommendations—I think it was in paragraph 408, on page 77 of your report. My understanding is that the last one was sent to the clerk. However, that would not necessarily happen often. Colin Cook, can you confirm that I have got that right about the process?

Colin Cook: That is the process.

A few things are tied up in that. We are working on a new framework agreement that oversees the relationship between the Scottish Government and Ferguson Marine. That is very close to being completed, and it has clarified a number of issues around the governance relationship between us and that organisation.

The written authority was prepared by the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy specifically in relation to the projected increase in costs that was reported in September 2022 in relation to vessel 802. He took a view on the value-for-money case that was presented for that particular projected increase in costs.

Willie Coffey: Is the Government's acceptance of the committee's other recommendation about the publication of written authorities on the Government's website a commitment to publishing not only that written authority but any that may have occurred in the past? The committee is interested in seeing any examples of such written authorisations that have been sought and given.

Fiona Hyslop: As you know, written authorities can happen in any area that is within ministerial control—not only this one—and they are issued very rarely. One of the questions that I have about the progress of it is whether it is in the current edition of the Scottish public finance manual or whether it will be and when. It has an impact on other areas. That is why I want to check on that. I went through your report identifying what was partially responded to and what was fully responded to. That area was partially responded

to, but was it fully responded to? It will certainly be drawn to the attention of the Auditor General.

10:15

Going forward, we accept the committee's recommendation that confirmation of written authorities should be published on the Scottish Government website. You made a specific request about the clerk to this committee automatically getting such confirmation. That information could be found on the website, but, as the Public Audit Committee, you have specific duties and responsibilities, and I just wanted to check that that will happen should there be a written authority at any time in the future.

Willie Coffey: I think that the committee was keen for that to be broadened so that we could see any governmental written authorities that have been given in the past. Is that part of what you might consider doing?

Colin Cook: I think that we have had this discussion at previous meetings. There had not been a written authority for many years, but, as the head of the team that prepared the underpinning advice for the written authority that was issued, I can say that the experience, the guidance and the knowledge of civil service colleagues in the Scottish Government enabled that to happen in an appropriate way. All of that support and expertise would be available to anyone who was preparing advice for ministers that could lead to a written authority in the future.

Willie Coffey: Thank you for that. I have a slightly broader question. From the outset of the committee's work on its ferries investigation, it has been clear to me that the key problems were probably built in from the start of the project, and you have mentioned that in your comments to the committee. Constantly changing the design specifications as the ships were built was a recipe for the cost and time overruns that we have seen.

If we look at the performance of all Governments, past and present, we see a litany of public procurement cost overruns. The public can see that, too. What is your perspective on why some—not all—public projects go wrong? Do you agree that it is absolutely vital that projects are planned carefully at the outset and that recognised quality management standards and processes are deployed, so that all projects—whether they are construction projects, information technology projects or anything else—have a fair chance of being completed on time and on budget? Can you assure the committee that that approach will be taken from now on with any procurement projects that the Government might commission?

Fiona Hyslop: I am not the minister responsible for public procurement policy, but I think that you

are inviting me to give a general response as a Government minister. Obviously, there is the specific example of the ferries. You said that there had been a litany of public procurement issues, but I make it clear that the Scottish Government has embarked on a number of major transport projects that have come in on time and on budget. Clearly, the ferries project has not, which is why the committee and others have held inquiries into it, but I make it clear that the general practice in the Scottish Government and in Transport Scotland has been good in that respect.

However, it is clear that that has not been the case in this instance, as the committee's report says. With regard to improvements, I reassure the committee that we will pull together the lessons learned and document those. Some of those lessons are about processes—mention has been made of the Scottish public finance manual—while others relate to CMAL's practices. A lot of changes to those practices have already had an effect in relation to the four vessels that are being built in Turkey.

As far as governance is concerned, you are absolutely right to say that it is important to get processes right at the beginning. Anyone who has been involved in any major project will know that, if you get things right at the beginning, there is less chance that there will be difficulties later on. I absolutely understand that.

You asked me to give you an indication of improvements that are being made. Transport Scotland has already made changes. That work was in progress even before the REC Committee's report and this committee's report. I think that it would be helpful to draw those together at the end of this project, so that we can itemise all the changes and improvements that have been made.

There is now enhanced governance around vessel projects, with dedicated project groups for projects and programmes; there is improved focus on the use of existing risk registers for each project or programme; and there is scrutiny and sign-off of all vessel and major port projects by Transport Scotland's investment decision making board, which is at chief executive and directors level. There is also greater use of independent gateway processes, and approval now requires an accountable officer template to be completed by the relevant cab sec and the cab sec for finance, which I think Alison Irvine set out in her area. In relation to lessons learned about design faults at the beginning of a project having consequences, we have seen those consequences even more latterly, in relation to some of the processes.

Although I think you are asking for an opinion as opposed to a response, I have tried to provide not only an opinion but also responses as to where the Government is already making changes in

specific areas. I also want to reinforce the fact that, when projects go well—we have seen that, for example, in relation to the M8 improvements and the Queensferry crossing—we take them for granted in many ways.

I absolutely accept that there were severe overruns in this project, which is why the committee is doing what it is doing, but the challenge when you are auditing something from a historical time—from eight years ago—is that some process changes will have taken place along the way. I want to reassure the committee that, as the minister, I will keep on top of that to make sure that that continues.

Willie Coffey: Thanks very much for that, minister. In the interests of time, I will hand back to the convener.

The Convener: One of the areas where we suggested that there could be a revision is the public recording of decisions. In this case, the CMAL board was overridden by a shareholder authorisation that has an equivalence with a written authority. I wonder whether you could respond—in writing, not right now—with the Government's position on the public recording of instances of shareholder authorisation being required.

Fiona Hyslop: There is quite a lot to that, because there is a difference between ministerial direction, shareholder authorisation and a letter of comfort. A letter of comfort is what was provided. In the interests of time, I am happy to give a written explanation of what that was and what the committee is asking for.

The Convener: Well, the Government was the only shareholder involved. Anyway, that would be helpful.

I will turn finally to Graham Simpson, who has some more questions to put.

Graham Simpson: Minister, you will be aware—because you will have read it in the committee's report—that the Auditor General has been frustrated at the lack of powers that he has to get to the bottom of where £128 million was spent by FMEL. He has asked for more powers, and the committee has written to Neil Gray about the issue. I wonder what your thoughts are on whether the Auditor General should have those extra powers.

Fiona Hyslop: Clearly, the Government—through Neil Gray—will reply to that request in the timescale within which the committee has asked for, and I do not want to second guess that reply. I understand that the Auditor General is going to give evidence to the committee on his responsibilities. I am not sure whether he has asked the Government directly for that power or

whether he has asked the committee. The request is for the power to look at the accounts of a private company—in this case, Ferguson Marine Engineering Ltd—and that is a request for the cabinet secretary, Neil Gray, to respond to.

In general, there are issues around private companies working with the Government in any shape or form being subject to the Auditor General and their being able to investigate them at any time by request of a special order. That has risks in relation to what that might mean for investment and partnership and whether companies would want to enter into any arrangement. That is a risk element that is nothing to do with this specific case, but the unintended consequences of doing that in principle, as opposed to the merits or demerits of this particular case, are worth exploring. I also reflect on my point that the committee had feedback and evidence from David Tydeman as to where he thought the spend went and where the problems were, as well as from CMAL, which the committee evidenced in its report.

I know that you want me to say either yes or no, but that is not my decision, and I will not take it on behalf of somebody else. You will know this from your experience in dealing with public bodies, but the issue is whether you can have the Auditor General investigating a private company. Technically, you probably could, but what would be the consequences for other situations with private companies in the future if there was a risk that the Auditor General could seek and secure powers of investigation? That is stating the fairly obvious to you as a committee.

Graham Simpson: Okay. So, essentially, we will have to wait and see what Neil Gray says.

Fiona Hyslop: Yes. I will not—I cannot—give you that answer.

Graham Simpson: Okay. Following on from what Willie Coffey asked about the written authority and the whole cost issue, the cost of these vessels seems to go up and up, which is why we ended up with Neil Gray giving that written authority. Is there a point, in your view, at which the Government should say, “No more”?

Fiona Hyslop: The issue is about what is in the public interest. Is it in the public interest to ensure that vessels are completed for the islanders? As transport minister, I have spoken to island communities and I want all six vessels to be completed, because we need that resilience—that is the risk element that we have just now. The issue is also about the yard and the capacity for shipbuilding jobs in the future. There is the question, too, of how we ensure that the yard can be successful, which is obviously Neil Gray’s responsibility. In this instance, there are many

different aspects to decision making around spend.

The safety approvals for the two vessels are progressing well, and that will be reported to the NZET Committee by the end of the month, in the next update. I understand that, once we have got through that process, the vessels will then go to sea trials. Then we will start on the launch of 801, which will be a great relief to the islanders. My job, as minister for transport, is to support island communities to receive their vessels.

You can make a judgment—and all MSPs will make a judgment—about our saying yes or no, but the cabinet secretary for the economy, Neil Gray, clearly set out how important it was that 802 in particular—which is obviously a challenge—should progress and be delivered.

Graham Simpson: I am not really clear what your view is on the question.

Fiona Hyslop: At any point in time, there is a question about whether the Government should stop funding something. Decisions will be taken across the piece, and sometimes the decision will be taken not to continue with something. All that I am saying is that the cabinet secretary, Neil Gray, made the position quite clear—he came straight to Parliament to report that forthrightly and openly, which is what Governments should do around such major decisions. There might be instances in which the answer is to do the reverse, which could happen in any ministry or portfolio at any time, so it depends on the circumstances at the time.

Graham Simpson: I have one more question, which is about the future of the yard, because you mentioned it—I realise that it is probably Neil Gray’s responsibility, but you are here and you did mention it. The chief executive, Mr Tydeman, has recently asked for more money for the yard—I do not know how much—in order to modernise it, which, in my view, could make the yard commercially viable. Has that request come across your desk and are you sympathetic to it?

Fiona Hyslop: Again, it is about delineating responsibilities. I understand that the First Minister, the Deputy First Minister and the cabinet secretary met with the chair and the chief executive of the nationalised Ferguson Marine Port Glasgow to discuss those issues. In relation to any investment decision, one has to identify what the processes are—as you would expect, because that is exactly what your committee has been doing. Proper processes and due diligence have to be in place to ensure that value for money, public interest and all those matters are addressed. That is what the process is.

I cannot comment. All that I can say is that there is a general and, I think, cross-party willingness for Ferguson Marine to be successful. To reflect on

the convener's point about the workforce, the evidence in your report is that they were positive about the chief executive, who had been talking about the need to get into a profitable situation, to secure more work and so on.

I am pleased that that is the agenda that is being discussed but I cannot comment on how and when the decision will be made on that matter.

10:30

Colin Cook: I confirm that we are carrying out due diligence on the request from the CEO. We have to look at it in relation to subsidy control rules, and we need to ensure that it represents value for money for the taxpayer. We will be open and transparent and will report to the Parliament when a decision is taken.

The Convener: Thank you. We have run over our time slightly. I suspect that we could go on much longer, minister, but the committee has another evidence session this morning.

I thank all of you—Fiona Hyslop, Colin Cook, Alison Irvine and Chris Wilcock—for your time and input this morning. There might be things that we want to follow up with you in writing, but I thank you for your openness in answering the questions that we have been putting to you.

I suspend the meeting to allow for a change of witnesses.

10:30

Meeting suspended.

10:36

On resuming—

Section 22 Report: “The 2021/22 audit of Scottish Canals”

The Convener: Welcome back to the second session of this morning's evidence taking by the Public Audit Committee, which will consider the section 22 report by the Auditor General for Scotland on the audit of Scottish Canals.

I welcome our witnesses, who include representatives from Transport Scotland—that is, the Government—and Scottish Canals. From Scottish Canals, we have John Paterson, chief executive; Maureen Campbell, chair of the board; Sarah Jane Hannah, director of finance and business services; and Richard Millar, chief operating officer. From Transport Scotland, we have Alison Irvine, interim chief executive—good morning, Alison; Kerry Twyman, director of finance and corporate services; and Gary Cox, interim director, aviation, maritime, freight and canals.

We have some questions to put to you about the report but, before we do that, I invite Mr Paterson to make a short opening statement.

John Paterson (Scottish Canals): On behalf of the leadership team, thank you for the opportunity to attend today. I joined Scottish Canals as accountable officer at the end of May this year. My clear priority was to continue the momentum in the project plan to address the issues raised last year at the Public Audit Committee. Significant progress has been made, which I report to you now.

First, I highlight that Grant Thornton's external audit report for both years provides an assurance that no matters of significance have been identified outwith the audit testing of property, plant and equipment. As a result, although we accept Audit Scotland's section 22 observations, we were wholly disappointed to receive a full disclaimer opinion to our accounts. The issue was and remains confined to the valuation of the canal infrastructure. We were not made aware until very late that such an extreme sanction was likely. Right up until March this year, we had expected a modified ring-fenced opinion.

I will give a reminder of how we got here. Scottish Canals has been on a 250-year journey and has existed in various forms. A series of unconnected private enterprises built and funded the canals at various times since the late 1700s. In the 1940s, the canals were nationalised and reformed as one entity, under the name British Waterways. In 2012, English and Welsh canal management organisations separated from British Waterways, leaving Scottish Canals to operate as a public corporation.

Since 1960, canal infrastructure value has, as was correct at the time, been written down to a nil value; only new additions, such as the Kelpies, Bowling harbour and the Claypits in Glasgow, were valued at depreciated historical cost, in line with international accounting reporting standards. Between 2012 and 2020, there remained no requirement to place a financial value on our 2,700 canal assets; the new additions are predominantly from 2012 and total £51 million, and they were already held on our existing financial fixed asset register. That position had been accepted by our auditors, including Grant Thornton, in the years prior to 2020.

When Scottish Canals became a non-departmental public body, there was a change in the rules on how we, as a public corporation, had to value our canal assets. From that point on, we had to comply with the “Government Financial Reporting Manual”—or FReM—which required a full valuation of the canal infrastructure. That covered more than 200 years’ and 141 miles’ worth of assets, not just the additions since 2012, so it was a huge and complex project. We had to take various steps, including analysing our canal infrastructure engineering records; benchmarking the historical costs of key components and structures against modern equivalent assets; and, for the first time, developing a methodology for our varied assets with an external team of specialists. As we reported to the committee last year, it was a substantial and multilayered project, with ambitious timescales for such a small organisation.

Having followed the approved project plan with our best endeavours, I fully agree with the Auditor General’s and external auditors’ statements, made in June of this year, that we have made significant progress. We have done so. Since June last year, our team has worked hard to provide valuations for more than 2,700 assets of canal infrastructure.

I will give the committee a flavour of the range and complexity of those assets. They include 52 aqueducts, including some of the longest in the UK; 19 large reservoirs, many of which are in remote locations; 186 bridges of all varieties, including span, swing and fixed bridges; 164 lock gates of varying sizes and materials, including those at the Falkirk wheel and the Kelpies; and an array of other items along our canals and embankments. All those assets are at varying stages in their life cycles, which makes each valuation unique and specific.

The extensive audit finished in May, since when we have continued to focus on our action plan for addressing the recommendations. Because some cost records relate to periods more than 30 years ago, and so predate our digital records, some limitations have been placed on our audit of

evidence, for obvious reasons, but we have worked to address those issues.

We have also reassessed additions and capitalisation dates for all assets completed over the past three years; reviewed and verified the classifications of all structures and waterways; and reconsidered our methodology and residual values and their useful economic lives. We have reviewed key assets and their components to ensure that there is sufficient detail in the fixed asset register, and we have also ensured that judgments and records on historical costs are clear and transparent.

In addition, we have introduced an extensive new project management procedure and associated policies for moving forward, to support the accurate recording of any future investment in our assets. We will now be able to provide the auditors with all asset information in one concise report, in time for the audit for the past financial year, which Audit Scotland has scheduled for commencement in November.

We wholly agree with the Auditor General that this is a serious issue, and we are entirely focused on resolving it. Having noted the Auditor General’s observation that we should consider alternative options for addressing the matter, we have revisited it both internally and at a recent workshop held in partnership with our sponsor, Transport Scotland. Our collective conclusion is that forming a fixed asset register with the valuation of assets remains the best and only viable option at this time.

We have full engagement with and support from our board and Transport Scotland to continue with that complex programme of work. I continue to chair our multidisciplinary project board to ensure that we achieve all stage milestones that it will be necessary to attain if we are to reach our goals.

The valuation is well under way in advance of the external audit commencing in November. However, until we understand the extent of the evidence that will be required to meet the new auditors’ bar of satisfaction, it remains possible that an additional level of evidence might be required to meet external audit approval. To date, it has been our experience that one of our main challenges is finding where that bar of audit satisfaction lies.

In summary, valuing our historic canal network is difficult, but we have made huge improvements. We remain fully focused on continuing that journey. We are committed to working positively with our new auditors, sponsors and colleagues to meet requirements and to provide a true and fair valuation in our annual reports and accounts.

I welcome any questions from the committee.

The Convener: For clarification, you talk about new auditors, but that is because there is a rotation process, is there not? It is no longer Grant Thornton but a different firm that is auditing your accounts on behalf of Audit Scotland.

I invite our deputy convener, Sharon Dowey, to put a question or two to you.

Sharon Dowey: The committee has noted the steps that Scottish Canals is taking to address the disclaimer opinion on its annual report and accounts for 2021-22. We have also noted its commitment to delivering a set of accounts free from a disclaimer opinion and to laying its annual report and accounts in the new year. However, it appears that Scottish Canals faces a significant challenge in meeting its public accountability responsibilities and complying with financial reporting manual requirements. Indeed, we heard as much in your opening statement. What contingencies do you have in place should you fail to do so?

10:45

John Paterson: Our plan A is to comply with FReM and continue with the work that we have at this point in time. We feel that it is within reach and viable, and we have aligned all our resources and priorities to achieving that goal of forming a fixed asset register, which we believe will resolve the issue.

As I said in my opening statement, it is difficult to find where the bar of satisfaction of the external auditors rests. It is a very difficult project, but we believe that it is attainable and we are fully committed to resolving the issues. That is our plan A.

Plan B will be to revisit the options assessment that we looked at for alternatives, but the conclusion of the exercise is that plan A is still the way to go, because we believe that it is achievable.

Sharon Dowey: You have talked about the new auditors and the bar that they expect you to reach. Have you managed to have any engagement with the auditors to find out where that bar will be?

John Paterson: It is still early in the process. We have touched base with Audit Scotland, which is doing the audit directly on this occasion—it is our new external auditor—and have had preliminary discussions with it. However, it has scheduled the audit process for November.

Sarah Jane Hannah might want to expand on that.

Sarah Jane Hannah (Scottish Canals): We found out early in the year that Audit Scotland was going to be doing our audit, and we look forward to

working closely with it. It has already gathered a huge amount of preparatory information on the organisation and, a couple of weeks ago, presented its plan at our audit and risk committee meeting. It has assessed Grant Thornton's external audit recommendations and, on a risk basis, what it thinks is important for this year. It will therefore be concentrating on the valuation, as that is a high-risk area. In order to address the disclaimer for the years 2020-21 and 2021-22, Audit Scotland will look at all the balances for all three of those years.

The audit will not be easy; indeed, it will be quite complex. Moreover, as Audit Scotland is auditing us during November and December, our annual report and accounts will be a bit later—the usual statutory reporting deadline is 31 December. However, we hope to have the annual report and accounts signed and sealed by the board by February.

We are working closely with Audit Scotland. It has made some preliminary inquiries over the past few weeks, but the massive part of the audit will not start until 1 November.

Sharon Dowey: Are you getting enough support from Transport Scotland—I know that its representatives are sitting in the room with us—and is there anything else that it could do to help?

Sarah Jane Hannah: I am sure that Transport Scotland would say that these are our annual report and accounts, and that John Paterson is the accountable officer with regard to that.

John Paterson: Transport Scotland has been helpful to us; it has observer status on our board and we are in regular contact with it. It funded the initial exercise and supported us financially in undertaking the massive valuation of the canal infrastructure, and it continues to play a very supportive role.

The Convener: Sarah Jane Hannah, I want to go back to something that you said about timing. One of the comments that was made to the committee when the Auditor General gave evidence on 29 June was that

"Timeliness is relevant to scrutiny".—[Official Report, Public Audit Committee, 29 June 2023; c 9.]

There was, I think, some concern about the late approval of your accounts. Are you going to be on course and on schedule for this year's accounts?

Sarah Jane Hannah: As I have already said, we will not meet the statutory deadline. A late approval of accounts does not automatically warrant a section 22 report, and a late lodging of accounts does not have any additional negative consequences. During Covid, many United Kingdom Government NDPBs registered their accounts late, so that is not our main issue. Our

main issue is getting the work done and getting it done right.

John Paterson: Sarah Jane is entirely correct. Given the timetable that Audit Scotland has given us, and its commencement in November, the work that is under way is not related to section 22.

The Convener: I go back to the substantive point that a disclaimer has been issued. Again on 29 June, when the Auditor General appeared before the committee, he emphasised that the issuing of a disclaimer is “a serious matter”.

Mr Paterson, you issued a note to accompany the papers today in which you spoke of a “demanding timeframe”—that was your expression. When I look back at the evidence that we took last year, I see that Sarah Jane Hannah confirmed that, even back in the 2012-13 audit—although she was not working in the organisation at that point—Audit Scotland had flagged up the possibility that there might be a requirement to have a fixed asset register. When I look back to November 2019, I see that Scottish Canals looked for a year’s delay at that point, but we are now nearly four years on and the work is still not completed.

Will you comment on that? Why are you still seeking an understanding of the “demanding timeframe” that you face, when it appears to me that you have faced it for quite some time?

John Paterson: Clearly, in 2012, none of us on the panel today was in the position that we are in today. My understanding, from researching the organisation’s historical records on the discussions with Transport Scotland at the time, is that the organisation was clear that it wanted to remain a public corporation and therefore did not have to comply with the FReM. That was not the sole reason: the aspirations of the organisation’s leadership at the time were to have a financial strategy that would encourage further revenue generation through the canals and associated infrastructure activities.

That remained the organisation’s firm intent. There was a lot of discussion back and forth with the Office for National Statistics about qualifying as a public corporation, and I think that, at that time, the organisation was confident that the financial strategy would still result in revenue growth that would keep us as a public corporation. I understand that, closer to 2019, the discussion became more intense, and a form of protest was put in by the organisation to ask for a delay. At that point, it became obvious that, if we had to comply with the FReM, the whole process that we are going through just now could not be done within the appropriate timeframe.

Unfortunately, that is the only explanation that I can offer the committee, as we were not in the organisation to hear that at first hand.

Sarah Jane Hannah: With regard to what happened from November 2019 onwards, the director of finance left the organisation in December 2019, and there was no director of finance until I joined the organisation in March 2021.

I think that it was in May 2021 that we first received our accounts direction from Transport Scotland. In December 2020, we had received some preliminary advice from Grant Thornton on the necessity of valuing our assets. At that time, it was about valuing the assets that were on our books and records. Exactly as John Paterson said earlier, that related to the £51 million-worth of additions of assets in the infrastructure. That is what we targeted to do as soon as I arrived—well, it was in June 2021.

It was only then that it transpired that we did not really have a choice but to value the entire infrastructure. Grant Thornton found the situation uncomfortable. For example, we had spent capital on reservoirs, but there was no underlying valuation of the existing reservoirs. How could we determine that that capital was enhancing the asset and adding value to it without the underlying infrastructure valuation?

The position that we were in from 2021, and when we spoke to the Public Audit Committee in March 2022, was very different from the position now. As we moved towards 2021-22, we had to evaluate the entire infrastructure. You are right that Audit Scotland mentioned that in its 2012-13 report, and I think that the impetus was to ensure that we would not be categorised as an NDPB and to build the portfolio of income so that we were not so reliant on grant in aid.

In the past year since March 2022, we have been on a very different journey involving the valuation of 250-year-old assets, 141 miles of canals and the complex set of assets that John Paterson articulated. That is a very different journey from just valuing £51 million-worth of additions.

The Convener: But do you accept the findings and recommendations of the Audit Scotland report?

John Paterson: Yes, we accept them. We accept that not complying with the FReM is a serious matter. On the magnitude of the implications that it could have for the public purse, I do not share the Auditor General’s view, for the simple reason that we have always had a fixed asset register—although we perhaps did not have a pound sign in front of each asset’s name at that

point, with the exception of the assets that were added from 2012.

The important thing is that there are a number of tiers of controls over how Scottish Canals invests in public infrastructure. We have an asset register and an asset management strategy that looks at the condition, the age and the serviceable life of the asset, and the cost of returning that asset to a good and serviceable standard.

Our investments have always been focused on the right places, they have always been risk assessed and they have always been targeted appropriately. On that side of things, I do not share the concerns that have been expressed about the gravity of the potential consequences of not complying with the FReM. As an organisation, we did not have to comply with the FReM until 2020. The canals have survived for 200 years. We have successfully repurposed the canals and reinvented them so that they can be used for health and wellbeing, economic regeneration and tourism, rather than being used for moving coal, which is predominantly what they used to be used for. Not complying with the FReM is a serious matter, but I think that the potential for misdirection of public funds is absolutely negligible.

Sarah Jane Hannah: It is important to reflect not only on the Auditor General's section 22 report but on the detail of Grant Thornton's external audit report. I will quote a couple of things that it said. It said that there was no evidence of management override of controls; there was no indication of fraud or inappropriate management bias in accounting estimates; there were no exceptions in relation to the occurrence or accuracy or completeness of revenue; there were no exceptions with regard to the cut-off of either income or expenditure; and investment properties were properly valued, as they always have been.

The audit options for Grant Thornton were to give an unqualified clean opinion, a qualified opinion, a disclaimer opinion or an adverse opinion. An adverse opinion is not what we have here. That is when an auditor says that what it has before it absolutely does not reflect the books and records. That is not what we are talking about.

As John Paterson said, up until March this year, we thought that we would have a qualified opinion. That usually happens when we do not have the information or we cannot get the information within a realistic timescale. We employed our expert valuation team in July, and it completed the valuation in November. We have been audited from October to May. That is eight months' worth of auditing.

In May, we spoke to the audit and risk committee about extending the audit for another two or three months. That would have involved

doing additional audit testing and trying to get Grant Thornton to get comfortable with some of our judgments and estimates. However, we are a very small team. I have one technical financial accountant, one systems accountant and two management accountants—in other words, four people—and we have not had a head of finance since February. To impose that additional two or three-month burden on a very small team when we needed to work on other aspects of the business, including business as usual, would have been quite a burden.

We believe that a qualified opinion would have been more appropriate than a disclaimer opinion, given that we did not have the necessary information and could not get it in time.

The Convener: I will quote back to you what the Auditor General's report says. Paragraph 15 includes expressions such as

“could not be supported by evidence”,

“lack of data”, “potential errors”, “There were errors”, “a lack of documentation”, “several errors” and so on. The report contains quite a catalogue of criticisms of your methodology, all of which has led to a decision not to issue approval of your accounts. As I mentioned earlier, that was described by the Auditor General as “a serious matter”.

From my point of view, I do not want us to be here again in a year's time, and I am sure that you do not want that, either, but it feels as though we are hearing the same arguments that we heard a year ago. I think that we need persuading that things are moving forward.

Graham Simpson wants to come in.

Graham Simpson: I want to follow up on that. Sarah Jane Hannah, when will this exercise be completed? Regardless of whether you think that it is worth while doing, you are doing it. When will it be finished?

Sarah Jane Hannah: We are due to receive a revised valuation for the year ended 2022 this week. We will then do additional work, and we will receive the revised valuation for 31 March 2023 in the next three weeks, so that we can meet the auditor's deadline of giving it an annual report and accounts on 1 November.

11:00

Graham Simpson: I thought that you said that it was going to be late.

Sarah Jane Hannah: The lodging of our accounts will be late; they will be lodged after 31 December. However, the audit starts in November, and we are responsible for handing over all of that information.

Graham Simpson: Will the information that you get this week be a valuation of all your assets?

Sarah Jane Hannah: We have done a significant amount of work to revise that valuation and address some of the external audit recommendations. We have reassessed all our additions and the capitalisation dates, which removes the issue in the audit report in relation to possible duplication of assets. We have reviewed and verified the classifications of all our structures and waterways, which account for 93 per cent of our £1.9 billion historical cost.

We have already reconsidered some of our methodology, in particular with regard to residual lives. The overall potential error that Grant Thornton identified in relation to residual values was somewhere in the region of £20 million. We are talking about £1.8 billion of infrastructure. There is a materiality level that audit has to abide by that does not necessarily reflect the full value of the assets.

We are looking at our judgments and estimates that Grant Thornton could not get comfortable with and trying to embolden our justifications, but it is very difficult. In a letter of representation, any accountable officer will speak to the external auditors about the judgments and estimates of any set of annual report and accounts, and there will always be judgments and estimates. It is up to us to better articulate those and to work closely with Audit Scotland to see whether that helps the process. However, it is a really complex valuation—there is no getting around that.

Graham Simpson: I completely understand that it is complex and difficult, but you need to do it. Have you discussed with Audit Scotland how you are going about that, and are you asking it at every step what the right way to do it is? You do not want to be in a position in which Audit Scotland has said, “Sorry, you’ve done that the wrong way. Go away and do it again.” and we are back here again in a year’s time.

Sarah Jane Hannah: Yes, we have given it all our planning documentation and said, “This is our approach.” We have never before produced a fixed asset register in which all the assets are in one place. We have a very detailed engineering asset register, but we have never had it on a financial basis in one place. To be fair to Grant Thornton, not having that transparency makes things very difficult to audit.

Richard Millar could probably talk more about that evidence.

Richard Millar (Scottish Canals): The process has been very challenging and, as Sarah Jane Hannah has said, we had four months to do it. We took the process very seriously. After the Public Audit Committee meeting in March last year, we

had to go through public procurement to get the right experts on board, which we did. We worked very closely with Ernst & Young during July, August and September, right through to getting the fixed asset register in place.

Some of the challenges related to rights and obligations. That comes through in the report. However, of the 109 things that were sampled by the auditor, 107 were absolutely clear and two related to partnership structures that had been built previously. In the past few months, we have been working extremely hard to refine and learn from what Grant Thornton showed us, to develop and deliver that, and to mature the fixed asset register.

We are now in a good place in that we have got the fixed asset register into a single document. That was always a challenge, because we had our plant on one side and our property on the other, and we had the task of understanding the engineering side of the business. As John Paterson said, we had an asset management strategy, so we had everything in sight, but we needed to change it from having an engineering purpose to having a financial and accountancy purpose. That is the task that we have been doing over the past few months.

We are definitely moving in the right direction. The fixed asset register will require to mature over years but, for 1 November, we are heading in the right direction to be able to put one comprehensive piece of database on the table for Audit Scotland to look at.

Graham Simpson: I want to be sure that I understand. You will have a list of all your assets. Will there be a value attached to each of those assets?

Richard Millar: Yes, every single asset. That is also a challenge because, as we have said—and as the convener said at the start of the meeting—those assets are 250 years old. The majority of them—75 to 80 per cent of them—were built between 1768 and 1822. We could have gone back to Thomas Telford’s accounts and taken a straight line from there, but we developed the register by looking at it from the point of view of a depreciated replacement cost. Scottish Canals has done a lot of work on these assets. In the past 25 years, an investment of £200 million has gone into the canals. The majority of that was third party-funded investment, and a great deal of it was European-funded investment, too, so you can imagine how audited that was.

We have that data, and we have evidence for each of those structures. The challenge is taking those and applying them to the older structures and getting the depreciated value, but we are in place to do that.

Graham Simpson: I have one more question, if that is okay, convener.

The Convener: Yes—if it is a short one.

Graham Simpson: Yes, it is a short one. Mr Paterson, you mentioned a financial strategy, and I think that you said something about the ability to earn money from the canals, which is really important. Are there any restrictions on what you can do in order for Scottish Canals to earn money?

John Paterson: The canals' potential is still untapped. We could make massive improvements. We have invested heavily to become, in effect, an active transport provider. The towpaths are now well-used cycleways and walkways, and we have attracted third-party funding from Sustrans and others to do that.

We would like to grow our revenue further. Things are very tight. Maintaining the canal network does not just involve capital to replace lock gates and the like; it involves revenue for dredging and to cut trees and weeds, for example. The revenue position is tight, and we are looking to work with other public sector organisations on the shared services agenda to reduce our overheads.

We want to develop the canals' potential further by investing money in projects that we hope will unlock that potential. I am thinking about accommodation; we could play a role in the housing side of things. Living by water is the theme of our corporate plan. We could also have a role in providing holiday accommodation. We could grow our revenue potential in a number of areas, and there will be yet-to-be-discovered opportunities across the canal network.

One of our frustrations as a public body relates to the fact that we have, quite rightly, to invest wisely, which means that we are not allowed to speculate to the same degree that a private sector organisation might. Our risk appetite needs to be low, and we need to be assured that our business cases are very robust for any investments. However, yes, there is more to come from Scottish Canals.

The Convener: Thank you very much.

We are pressed for time, but I turn to Colin Beattie to ask a series of questions.

Colin Beattie: My first question, which is on sponsorship, is for Transport Scotland. Transport Scotland is the sponsor team for Scottish Canals. Can you describe the support that you provide to it?

Alison Irvine: I was pleased to hear John Paterson confirm that Scottish Canals is content with the level of support that it has been getting

from my sponsorship team. I would like to focus on some of the key things that we have done over the past 12 months, since the last time we were at the Public Audit Committee. I will then bring in Gary Cox to say whether there is anything else that it would help the committee to be aware of.

We have supported the team by reviewing its valuation methodology and plans. We sought agreement from the cabinet secretary to bring in Ernst & Young to help with that work. We provided advice on how Transport Scotland values its assets in case there was any learning that the team could take from that. We have been party to some of the meetings between Scottish Canals and the auditors, and we have helped where we can to provide advice to the team on some of the questions that have been asked.

I hope that the committee will take from that that the sponsorship team has had quite an involved role, particularly on this really important issue, because we want to support Scottish Canals to get to a position where we do not have to come in front of your committee and answer such questions.

Would Gary Cox like to add anything?

Gary Cox (Transport Scotland): A clear role for me as AMFC director and for the sponsorship team in my directorate is set out in "Scottish Canals Framework Document". That is the basis for the relationship, which is close. I have two people who work day to day with Scottish Canals. A lot of that work involves day-to-day problem solving, financial monitoring and sharing of information that is relevant to all public bodies.

We have a good team working with a good team at Scottish Canals, and my job is to ensure that that relationship stays positive and that Scottish Canals continues to work in line with the Government's broader agenda.

Colin Beattie: Have you asked for additional support from the Scottish Government's public bodies unit and made use of any of the various tools that it provides to support you in your role as a sponsor team?

Gary Cox: Lessons are shared across all public bodies. The public bodies unit in the Scottish Government identifies common themes and problems across the public bodies, and it has a mechanism for sharing that. Part of our role as a sponsorship team is ensuring that Scottish Canals is aware of those broader initiatives or common problems and the solutions that have been identified.

That is an important point in relation to the work that Scottish Canals is going through just now. At the end of it, when it is all put to bed, there will be lessons from the process that Scottish Canals will

want to share with the wider public sector, other public bodies and, indeed, other parts of Transport Scotland. We want to try to pull that together once the heat has been taken out of it and the accounts have been settled. At that point, we will share lessons from the process with other public bodies to see whether that is useful.

Colin Beattie: To be clear, have you asked for support from the Scottish Government's public bodies unit?

Gary Cox: No, I am not aware that we have.

Colin Beattie: You have not. Do you have the skills and expertise in Transport Scotland to give that level of sponsorship support in what seems to be a specialised area?

Gary Cox: That is the role of the sponsorship team. We bring in expertise from other parts of the Scottish Government to help Scottish Canals, particularly the expertise that exists in Kerry Twyman's finance team in Transport Scotland. The support that we have given as a sponsorship team has been supplemented by support from other bits of Government, in particular finance colleagues.

Kerry Twyman (Transport Scotland): The public bodies unit does not have dedicated finance support. We have engaged closely with the relevant finance teams in the Scottish Government. We have engaged closely with the governance and risk team on the accounts direction questions, where we need to implement "The Government Financial Reporting Manual"—FReM—and not being able to ask for exemptions from FReM. We have also engaged closely with our Scottish Government finance business partner support team and looked at other instances of where public bodies have gone through similar classification changes and how they have applied valuation, for example.

That level of expertise does not rest within the public bodies unit, so we have gone straight to the source on the finance support. However, high-level governance questions would be for the public bodies unit. As Gary Cox said, we work closely with it, disseminating information and best practice across all our sponsored bodies via our sponsor units in TS, so that will have all gone to the Scottish Canals team.

Colin Beattie: However, you have gone outside to get consultant support. At least, Scottish Canals has.

Kerry Twyman: Indeed.

Colin Beattie: It has spent £500,000 on that, with another £100,000 in the past financial year.

Kerry Twyman: Indeed.

Colin Beattie: That is quite a lot of money.

Kerry Twyman: Indeed. Sarah Jane Hannah can probably say more on that.

We looked closely at the trunk road network, which was the closest infrastructure asset that we had. However, the valuation model for that is very complicated. I will not go into detail, but it is all about layers of concrete and things. When we did the comparison, we were able to share high-level principles and understanding, but that did not have direct read-across.

When we examined the hours and hours of work that it would take and the technical expertise that was needed, it was felt that that was not on hand within the Scottish Government or Transport Scotland. We did not have that level of dedicated resource and it was felt that, to get the work done quickly and with the level of expertise and dedication needed, in this instance, an outside consultant would offer value for money.

Colin Beattie: It is not as quick as you might think, is it?

11:15

John Paterson: For all the reasons that I have mentioned, Mr Beattie, the project is incredibly complex. The asset base is huge, and no one had ever valued a canal network before. There was no methodology in place, and coming up with one challenged even the experts whom we consulted. We tested the methodology with our external auditor, and it was agreed. I think that the level of comfort of evidence that was available to the external auditor proved to be the bar of satisfaction that we were to reach. That bar of satisfaction has been our biggest challenge all along.

Throughout, the process has felt akin to the teacher marking your exam paper and telling you where you got it wrong. However, we heard that it is not the job of the external auditors to teach Scottish Canals how to value a canal network, so we found ourselves unable to pass the exam question and having to teach ourselves, in effect.

Sarah Jane Hannah: With regard to the amount of money, obviously, we would rather not spend £600,000 of taxpayer's money on anything like this.

Colin Beattie: Is there going to be more this year?

Sarah Jane Hannah: No. It is just an extra £100,000.

Colin Beattie: Does that finish it?

Sarah Jane Hannah: In future years, we will have to go out to tender. Our expert valuers will provide a valuation for the year end in 2022 and for the year end in 2023, and we will provide the

fixed asset register for going forward. The valuers will provide us with enough information. It says somewhere in the Auditor General's report that we will not own the model, but we will own enough of the information to allow us to go out to tender so that, in future years, we can do a proper tender process. Because the valuation and the fixed asset register will already exist, the exercise should be much smaller.

That happens at the end of every single year. To provide an annual report and set of accounts, you have to value your investment properties, which we do already, and we will also have to do an actuarial valuation and a corporation tax computation. Those are all provided externally.

It was really only the big four accountancy firms that could provide the Royal Institution of Chartered Surveyors valuers who had enough experience. They had canal experience and experience of waterways, utilities and massive infrastructure projects, but they needed the mix of the valuation experience and the technical accounting experience.

Colin Beattie: You made an important point about ownership of the model. The current consultants own that model, so I presume that Scottish Canals will have to pay them something.

Sarah Jane Hannah: No, we will have that—

Colin Beattie: They are going to give you that for free.

Sarah Jane Hannah: —so that we can go out to tender for other organisations.

Colin Beattie: That is good news.

The Convener: Colin, I am really sorry to interrupt you but we are up against time and I know that Willie Coffey has some questions that he wants to ask. The truth of the matter is that we have been very busy this morning and maybe, rather than ask the panel lots of questions, we can write to you with some of the questions that we do not get to and you can respond. The committee can consider how best that could be prosecuted, if you will pardon the expression.

Willie Coffey: John Paterson, you covered a lot of ground in your opening statement. I have been a member of the Public Audit Committee and its predecessor committees for more years than I can remember, and I have dealt with section 22 and section 23 reports and so on from Audit Scotland.

I have to say that the response that you are giving to the committee does not appear to be consistent with your accepting the recommendations in full. You said that you do, but I do not get that impression from some of your responses. You said that you do not “share the gravity” of the situation and that the potential for

the misapplication of public funds is “negligible”. Do you accept that you are absolutely required to comply with the Treasury's guidance on this? If you do not do that, where does public assurance come from?

John Paterson: Just to be clear, we fully accept the Auditor General's recommendations but the point of disagreement is perhaps on the level of sanction that has been applied, given the fact that the matter was confined to our fixed asset register, and that there was a clear plan and it was a work in progress. It is the sanction that we perhaps disagree with, not the recommendation in the section 22 report. We felt that it could have been a ring-fenced opinion that would not have triggered the section 22 report and the adverse comments that we received. We were on track for fixing the issue. We remain on track and fully focused on fixing the issue, and we take it very seriously. We keep our board and Transport Scotland fully appraised at all times and all parties are aligned to the fact that we are fully resourcing and prioritising the matter and that we will remedy it in due course.

Just to clarify, we fully accept the auditor's opinion, but we took issue with the level of sanction; we feel that there could have been alternative ways of addressing the issue.

Willie Coffey: But do you get why I am saying this to you? If you do not comply, there is no public assurance, which, surely, is a grave matter. I know that getting there is a difficult and complex process, but your not being able to give the public assurance on the matters on which we seek that assurance has to be regarded as a grave matter.

John Paterson: It absolutely is a grave matter. Had the Auditor General used the term “potentially serious”, I would have fully aligned with the statement—it is potentially serious. However, as I have mentioned previously, there are tiers of controls around how we target and ensure that we fund our investments in assets carefully. A clear methodology exists for doing so, so the suggestion that we could be misappropriating or misdirecting funds in any way is wholly unsubstantiated. On that basis, we disagree with the level of sanction.

Willie Coffey: Okay, I will leave that point there.

One of the things that you did not mention was the amount of money that you have spent on consultant fees—I think that it is now £600,000. Is the public getting value for money from that exercise and is it helping you to understand what that bar of audit satisfaction, which was mentioned earlier, is? Is the exercise allowing you to get there? If you come back next year, that absolutely has to be sorted. Surely you accept that.

John Paterson: We accept that. To be clear, we had no choice—we had to do a crash course in

a short period of time. Our intention had been to avoid this section 22 disclaimer for a second year. There was no choice—that was the only way of doing it as no methodology was in existence. Even the experts in surveying found it a challenging exercise. There was no alternative.

As mentioned previously, most organisations would do that exercise over a sustained period—they would do a five-year rolling programme of revaluing assets. In all probability, they would cover the same ground over five years, but we had to do it in a short space of time. Therefore, once we reach the point of an agreed fixed asset register and pass the test of external audit and the bar of satisfaction, I foresee a sustained programme—over, say, a five-year cycle—of revaluing our canal assets in the way that many other public bodies do with their assets.

Willie Coffey: This is my last question. You also mentioned the separation between English and Welsh canals and Scottish canals. Was any opportunity taken to consult with the organisation there about how it went through the process? Is it in the same boat—literally—as you, or has it completed this exercise and complied fully?

John Paterson: My understanding is that the Canal and River Trust is a charity, therefore the FReM does not apply to it in the same way as it does to us. Richard Millar can explain as he has lots of contact with his former colleagues, who were fully involved in the process and are trying to assist.

Richard Millar: In 2012, Scottish Canals remained in the shell of British Waterways and we came under the Scottish Government, where in England and Wales the canals became the Canal and River Trust, which is a complete charity. We are in regular contact with it and other global organisations to talk about canals. We know that Waterways Ireland is going through a similar process as ours, but it is behind us. We have spoken to a number of European and other organisations; we cast our net wide to see whether there was a methodology out there for waterways and this sort of work. We are at the very front of the process, but it costs money and takes time.

However, as Kerry Twyman said earlier, we are convinced that the team from EY has the experience of building fixed asset registers from the ground up. They are working in the middle east and in places such as Africa, where they are starting from the ground up. Although the process is unfortunately very expensive, it will be at the core of our business. There is a connection between the fixed asset register, our asset management strategy and the ability for Government to see what is sitting on the books in heritage infrastructures. As Transport Scotland said earlier, there is a lot to be learned for other

organisations across the public sector that will probably follow us in this process.

Kerry Twyman: One of the initial things that we did was set up a meeting between the Transport Scotland and Scottish Canals finance teams and our counterparts in the English and Welsh body, during which we had a fascinating discussion on technical accounting—what they were doing and what we were doing. However, it became clear that, as Richard Millar and our colleagues have outlined, because of the way in which decisions about control were taken in 2012, the Canal and River Trust remained a charity in a completely different type of government body—there was no Office for National Statistics reclassification. Therefore, it does not need to abide by the FReM and has stuck with the historical nil valuation. It was interested in what would need to be done up here, but a completely different set of rules applies to it.

Willie Coffey: That is very helpful. I thank you all for responding to those questions.

The Convener: I do not know whether Graham Simpson has any further questions to put. I he had not, that concludes this morning's session.

I thank all the witnesses from Transport Scotland and Scottish Canals for their time and evidence. We might want to follow up on some points, and we, as a committee, will need to consider our next steps; for example, whether we need to bring you back in before next year or whether we are not going to see you again for a long time or whatever. All that is not entirely in our hands, you understand.

I thank you again for your time and patience this morning. As I said, we will consider our next steps. There are certainly some points that we might want to follow up with you in writing.

I draw the public part of this morning's committee to a close.

11:26

Meeting continued in private until 11:32.

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