



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Public Audit Committee

**Thursday 21 April 2022**

**Session 6**



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Pàrlamaid na h-Alba

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**PUBLIC AUDIT COMMITTEE**  
**12<sup>th</sup> Meeting 2022, Session 6**

**CONVENER**

\*Richard Leonard (Central Scotland) (Lab)

**DEPUTY CONVENER**

\*Sharon Dowey (South Scotland) (Con)

**COMMITTEE MEMBERS**

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

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

\*Craig Hoy (South Scotland) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Donna Bell (Scottish Government)

Stephen Boyle (Auditor General for Scotland)

Antony Clark (Audit Scotland)

Nicola Dickie (Convention of Scottish Local Authorities)

Rhoda Grant (Highlands and Islands) (Lab)

Caroline Lamb (Scottish Government)

Gill Miller (Audit Scotland)

Sarah Watters (Convention of Scottish Local Authorities)

**CLERK TO THE COMMITTEE**

Lynn Russell

**LOCATION**

The James Clerk Maxwell Room (CR4)



## Scottish Parliament

### Public Audit Committee

Thursday 21 April 2022

*[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 12th meeting of the Public Audit Committee in 2022.

The first item on the agenda is consideration of whether to take items 4 and 5 in private. Does the committee agree to take those items in private?

**Members** *indicated agreement.*

## “Social care briefing”

09:00

**The Convener:** We have two evidence sessions this morning. The second is with the Auditor General for Scotland on the report on the new vessels for the Clyde and Hebrides. However, before that, we will take evidence on the Audit Scotland briefing on social care that came out recently.

I am delighted to welcome our four witnesses, who join us online. We are joined by Caroline Lamb, who is the chief executive of NHS Scotland and the Scottish Government’s director general for health and social care, and Donna Bell, who is the director of social care and national care service development in the Scottish Government. We are also joined by two representatives from the Convention of Scottish Local Authorities: Nicola Dickie, who is the director of people and policy, and Sarah Watters, who is the director of membership and resources.

We have a series of questions to put to the witnesses after we hear short opening statements from Caroline Lamb and Nicola Dickie. Given that the witnesses are online, they should use the chat function to indicate if any of them wants to come in and we will do our level best to bring them in. If Caroline Lamb or Nicola Dickie wants to bring in Donna Bell or Sarah Watters, they should let us know and we will ensure that they are called in.

I invite Caroline Lamb to give us a short opening statement.

**Caroline Lamb (Scottish Government):** Thank you very much, convener.

The Audit Scotland briefing acknowledges that our commitment to a national care service indicates our recognition of the significant challenge in social care in Scotland. Indeed, the findings of the briefing were largely in line with those of the independent review of adult social care, led by Derek Feeley, which is precisely why we are acting to further increase investment in social care and deliver a national care service by the end of this parliamentary session.

Ministers are clear that we should not wait to establish the national care service in order to take action where it is needed. Therefore, we will increase public investment in social care by 25 per cent over this parliamentary session so that, by the end of the session, we will have budgeted more than £800 million of increased annual support for social care compared with current spending. In the latest programme for government, ministers restated their commitment to transformative social care reform, including

developing options for the removal of charging for non-residential adult social care.

Importantly, we also agreed a joint statement of intent with COSLA in March 2020, in which we agreed to work together to advance the key foundation principles of the independent review. That commitment included work on many of the areas that Audit Scotland identified as requiring improvement.

Along with my colleagues, I am happy to answer questions on any of those areas and, in particular, to expand on the action that we have taken, and continue to take, to support the attraction, recruitment and retention of the workforce, on data improvement, on self-directed support and on the development and implementation of the healthcare framework for adults living in care homes in Scotland.

Throughout that work, we are committed to listening to the voices of people with lived experience. Those conversations are already influencing our review of self-directed support. Keeping people with lived experience at the heart of our decision making will help us to shape a system that will improve future services and make things better for everyone.

**The Convener:** Thank you very much for that opening statement. It covers many of the areas that we want to probe in our questions.

I invite Nicola Dickie to make her opening statement.

**Nicola Dickie (Convention of Scottish Local Authorities):** Thank you for inviting us to discuss Audit Scotland's "Social care briefing" and the stark but important issues that it highlights.

We know that the pandemic has put exceptional pressure on the whole system—the entire workforce, unpaid carers and those with lived experience of accessing social care support. We also know that many of the issues highlighted by Audit Scotland are not new; they are in many ways issues that we have consistently highlighted for many years as requiring meaningful attention and whole-system preventative investment.

As COSLA has stated for many years, there is a pressing need for national and local government, as well as our partners in the social care sector and trade unions, to work in partnership at pace, given current pressures, to address those challenges. Local government recognises that we cannot stand still if we want to create meaningful change and improve outcomes for people in the communities that we serve. We also know that we cannot wait for the creation of a national care service, nor can we be distracted by the challenges that come with the proposed structural reform.

We are committed to acting now and implementing much of the change that is called for in the briefing. As Caroline Lamb alluded to, in March 2021 COSLA and the Scottish Government committed to a joint statement of intent, which set out the ways that we will work together to deliver on the key foundation pillars that were set out by the independent review of adult social care. Fundamental to the statement of intent was the recognition of the importance of empowering people, valuing our workforce and embedding a human rights-based approach to social care.

We have continued to work jointly to deliver on that through progressing the recommendations of the Fair Work Convention's report on social care and working to ensure that the commissioned social care workforce gets improved pay and conditions and a career that fosters continuous learning and development. Ensuring a stable, skilled and valued social care workforce is a key priority that COSLA and the Scottish Government share.

However, many of the issues that require reform are not simple and have been challenged by the on-going and significant pressure caused by the pandemic, as well as on-going pressures on core local government funding. Progress has not happened at the pace that we would wish to see, and there is now a shared sense of urgency across the system to address that. Put simply, local government is trying to deliver more with less.

However, I urge committee members not to consider the social care sector in isolation from the whole system. Many of the services and supports in our local communities that keep people healthy, connected, engaged and happier are the wider determinants of health that prevent individuals and carers from reaching crisis point.

Investment in local government is investment in prevention and wellbeing, which is why we share the ambition with the Scottish Government that everyone in Scotland can live well locally; that is reflected in COSLA's local government blueprint and the recent programme for government, which Caroline Lamb mentioned. Local government is at the heart of that ambition, but we need fair funding to achieve it, and I am sure that we will pick up some of those issues in more detail. I look forward to discussing some of those points in more detail with members.

**The Convener:** Thank you for that opening statement. I will invite committee members to come in with questions, but I will begin by reflecting on what the Auditor General told the committee when he appeared on 3 March to talk about the social care briefing that he produced. In his opening statement, he said that

“The Scottish Government needs to take a pragmatic approach and set out what can be improved now, without legislation, while taking time to determine where the national care service can add most value.”—[*Official Report, Public Audit Committee*, 3 March 2022; c 3.]

You have both spoken about the statement of intent and joint partnership proposals, but what is happening right now? What is your action plan and what steps are you taking at the moment?

**Caroline Lamb:** The joint statement of intent that was published in March 2020 had a number of key aspects, which Nicola Dickie outlined. In his evidence, the Auditor General had a clear focus on workforce, data and collaboration. We have worked with the fair work in social care group to develop minimum standards frameworks for terms and conditions. Those have been fully agreed and identified and we are working with COSLA and other partners on the most efficient and effective mechanism for enabling them to be delivered. Part but not all of that is about rates of pay, and the committee will be aware that the Scottish Government has provided funding to increase the minimum hourly rate from April. That is pegged for social care workers to £10.50, which is an increase of 12.9 per cent from £9.30. It stood at £9.30 then went up to £10.02 in December, and it will go up to £10.50 from April. That represents real progress.

We have been taking a whole load of other actions on top of that in relation to the workforce, and I would be happy to talk through those now, although I am conscious that it might take a wee while to get through them all. There has been a lot of activity around attraction, including national recruitment campaigns; waiving the costs of the myjobscotland recruitment portal, which has had more than 40,000 clicks on the apply button since that happened; waiving the costs of registration with the Scottish Social Services Council and checks under the protecting vulnerable groups scheme; and accelerating PVG checks so that we can get people who are applying through that process into social care faster. We have also set up a round table with employers to discuss how best to use recruitment fairs, and we are currently running a series of recruitment fairs, supported by the Department for Work and Pensions.

We have considered the impact of the changes to freedom of movement, and we note that care workers have been added to the shortage occupations lists. There are challenges around that, however, as many people in the workforce are employed part time.

We have considered what we can do to improve the valuing of the workforce, with good, strong opportunities for development and career progression. We have worked with NHS Education for Scotland and the SSSC to establish an

induction package, which went live earlier this year, and we are continuing to work around routes into social care, including flexible routes that will enable people to develop their careers within the sector up to the levels of advanced practice.

A huge amount of work has been delivered in partnership in that area in relation to some of the issues that the Auditor General identified around workforce. We have also made progress on data, which is one of the areas that he highlighted. I can come back to that. I am sure that you have questions on a number of other areas, and I do not want to pre-empt all of those. I will therefore pause there, although Nicola Dickie may wish to pick up on some other areas.

**The Convener:** Thank you. I will bring Nicola Dickie in. We view the briefing as focusing, quite rightly, on the value of the workforce, and we have some questions on that. The briefing addresses other areas, too, such as the voice of service users, how the whole commissioning model is working and whether it is delivering what we want to see.

We are under some time constraints, and we will come to those areas in time, but I want to give Nicola Dickie an opportunity to answer the question that I put, on the pragmatic approach and on what practical steps are being taken now.

**Nicola Dickie:** I will not go back over what Caroline Lamb said. As she rightly mentioned, the work on increasing the hourly rate and so on was all done in partnership: local government and the Scottish Government worked in partnership to deliver that.

There are two things that I want to bring in on top of that. We had a critical period with omicron just before Christmas time, which involved local government redeploying and shuffling in staff from the wider local government workforce to support the social care workforce. That involved keeping staff within our own services, but also moving them into commissioned services where that was required. That was a practical way in which the rest of the local government workforce, and local government as a whole, has supported social care—although I appreciate that that was specific to omicron.

I also want to mention working in partnership at the start of this year. We have published the “National Workforce Strategy for Health and Social Care in Scotland”, which is an integrated strategy.

Those were the two things that came to mind after Caroline Lamb gave the list of things that we have done jointly.

**The Convener:** Thank you very much. My next question is whether you both accept the recommendations in paragraphs 35 to 38 of the

Audit Scotland briefing. Do you accept the recommendations that are set out there?

**Caroline Lamb:** Yes, I think that the Scottish Government accepts the recommendations and has already taken forward action with partners in many of those areas.

09:15

**Nicola Dickie:** There is nothing in the general report that COSLA would disagree with and, as Caroline Lamb has alluded to, we were already actively working to address many of those issues. Donna Bell might want to come in on the specifics.

**The Convener:** Donna, do you want to add to that?

**Donna Bell (Scottish Government):** All that I would add is that all the themes that Audit Scotland identified are very much on our radar, so I agree with Caroline Lamb that there is nothing in the report that we are not already aware of or are not already working on.

**The Convener:** We will return to some of those themes as we go on. The concern that we have—and one of the threads that runs through the Audit Scotland report—is the need for a sense of urgency and an understanding not just that the matter is on your agenda but that there is an action plan with force behind it, which is leading to change.

I invite Craig Hoy to ask a series of questions.

**Craig Hoy (South Scotland) (Con):** Good morning, everyone. Through its plans for a national care service, the Scottish Government is planning significant reforms to social care, which will extend beyond residential social care. The commitment to proceed with reform seems absolute, but the planning for that reform is still at an early stage, and the ink is barely dry on the consultation. However, while we move towards those reforms which include wide-scale structural reform, it is clear that there are significant urgent needs now. What levels of investment are required, in the short term, to meet today's needs and, in the long term, to implement future social care reform? Given that, over the past decade, local government in Scotland has been chronically underfunded by the Government, do you have confidence that the funds will be forthcoming to meet the short-term needs and the long-term structural requirements? That question goes first to Caroline Lamb.

**Caroline Lamb:** Thank you for the question. As you said, the national care service is a really ambitious and important reform, and the pandemic has made the case for change even more urgent, in shining a light on some of the issues in social care. Therefore, we are committed to establishing

a functioning national care service by the end of this parliamentary session.

As you said, the ink is barely dry on the consultation, and ministers are considering the wealth of information that came in through that consultation. As we think about the next steps, we continue to engage with people who access and deliver services.

As I have already indicated, we are committed to increasing by 25 per cent the level of investment in social care over this parliamentary session. As part of our work around planning the detail of a national care service, we will, of course, assess exactly what will be required, not just in relation to funding but by looking at the service across the whole health and social care system. For example, we will look at where there are opportunities to shift expenditure towards community services, so that we can get into a more preventative, proactive space.

I do not know whether Donna Bell wants to add anything to that. [*Interruption.*]

**The Convener:** Donna, do you want to supplement Caroline's comments?

**Craig Hoy:** I think that we might have lost the connection with Donna.

**The Convener:** We will go back to you, Craig.

**Craig Hoy:** From a COSLA perspective, Nicola Dickie might want to reflect on the financial pressures that local government has experienced recently and what might happen during the interim period, when we might see a significant hollowing out of local government, as social care is moved under ministerial control.

**Nicola Dickie:** I will give you my opinion from a social care perspective and I will bring Sarah Watters in on the wider finance point. We have to think about what we want the current system to achieve. Caroline Lamb has already mentioned that Scottish ministers have made a commitment to increase spending by the end of the parliamentary session. From the perspective of local government and the perspective of people who access services, it is about whether we are comfortable that the existing social care system will continue to deliver what it is delivering now.

The Auditor General's briefing recognises that thresholds and access to services are at a high level, so a 25 per cent increase in funding by the end of the parliamentary session is welcome. However, I am not sure that we are comfortable that that will achieve more than we are achieving within the existing system.

COSLA discussed the finances associated with the national care service extensively with Derek Feeley when he did his independent review of



adult social care. We discussed both the funding in the current system and the wider local government funding that supports social care. If you asked me to describe it, I would say that local government funding is the branch of a tree, and that social care, health and public health hang from the branch of core services provided by local government. Many of the services that are provided by local government do much to improve the lives of those who access social care.

We need to ask whether we are comfortable that there is enough money in the system for the current social care system—we recognise that improvements need to be made—and whether the 25 per cent increase is enough to help us deliver what we are delivering at the moment. There is a question mark over that.

It is difficult to say whether the associated funding that Government ministers have suggested will be required for the national care service will be adequate, because Derek Feeley only costed adult social care, and now we have proposals on the table that bring in other things. It is difficult to give a figure for what would be adequate, because I do not know exactly what will be included. As Mr Hoy said, that is, quite rightly, because the consultation has only just finished. The bill will have a financial memorandum, which COSLA is very keen to see, as you would expect.

I will bring in Sarah Watters to talk about local government financing more generally.

**Sarah Watters (Convention of Scottish Local Authorities):** Thanks, Nicola. I am happy to come in on that.

One of the fundamental points that COSLA has continued to make—we made it quite clearly in our submission to the resource spending review a couple of weeks ago—is that, although we accept that more cash has gone into local government over recent years, and we cannot argue with that, general revenue and core grant funding from the Scottish budget has flatlined since 2013-14.

The problem is that, if there is inadequate policy funding for the commitments that are already in the system, to which we add the new funding on top, we have to take money from core funding to prop up commitments that have not been funded and or when demand or cost increases. The real pressure point is that flatlining of core funding. Audit Scotland highlighted in its local government finance overview that there has been a significant real-terms cut, although increases have actually been passed to the Scottish Government and other parts of the wider system.

The whole thrust of COSLA's campaign this year was about saying that other services in communities are what keep people out of the national health service and what could, ultimately,

keep them out of the national care service or keep them at the lowest level of care required. Instead of costly complex interventions, we need to look at some of the simpler things that we can do upstream in services such as lunch clubs, community learning, mental health support and transport. That is where core funding is the issue.

The wider issue of extracting social care from local government is an extremely complex one. Some services, such as catering and cleaning services, are inextricably linked to other council services. A catering service might cater for adult social care, schools and other local government services. A whole range of council services, such as transport services and support services, are back-office functions, which—as the Auditor General pointed out when he provided evidence on the local government benchmarking framework—have taken a hit over the years. It will be really complex to unwind some of that and extract those services from local government without there being a detrimental impact on local government.

**Craig Hoy:** The Auditor General draws attention to that in his briefing. Stakeholders raised concerns not only about extracting adult social care but about the wider scale of the reforms and the impact that they could have on local government.

The financial tension is significant. The other tension is that, during the structural reform process over the next three to five years, the urgent need in social care that the Auditor General identifies in his briefing might somehow be pushed out because of the process that will need to be undertaken.

Caroline Lamb, what assurance can you give the committee that there will be a clear timescale for developing a plan to address the urgent issues in the system? How will it be possible to implement longer-term reform, for example when councils allocate capital budgets or in relation to the re-provisioning of care services? Is there not a real risk that, because of the longer-term structural review, those issues will be pushed off the table even though, in many respects, they are urgent?

**Caroline Lamb:** We are absolutely focused on the immediate and urgent pressures. In our winter response plan, we announced £300 million of additional funding, of which £170 million went into social care in recognition of the absolute interdependence between health and social care. We need all bits of the system to deliver the best value that they possibly can.

Although I understand the focus on budgets, budget management and resources, it is also important that we look at the outcomes and quality that we deliver for people. We need to ensure that

we spend the money that we have in the best possible way to achieve the best outcomes for people. As long as all of us across the system remain focused on achieving the best outcomes for people, we will continue to improve the system as we move towards reform.

**Craig Hoy:** Reform of the scale that is necessary will involve significant changes to governance, accountability and collaboration, and will require some degree of new leadership. To what extent can the Scottish Government learn from previous wide-scale reforms and avoid having a Police Scotland mark 2 as the product?

**Caroline Lamb:** We are mindful of the way in which policy has not been implemented as well as we might have liked in the past and of the need to learn the lessons from previous large-scale reforms—the establishment of not only Police Scotland but Social Security Scotland, for example. We need to learn the lessons not only from what has gone well but from the things that have not gone so well.

I ask Donna Bell whether she wants to come in on those points.

**Donna Bell:** We have discussed urgency and the need for a coherent plan for improvement. As Caroline Lamb has described, a number of actions are under way around self-directed support reform. We have a really good collaborative group of people working on that to develop an improvement programme. We have already covered many of the recruitment and retention challenges and the actions that we are taking on those. A range of other work is focusing on residential settings for adults, particularly those in care homes, and the healthcare framework that we propose to implement in such settings.

We are also working on a different practice model to support an holistic approach to people. The work on multidisciplinary teams that will support that has been moving forward at pace over the past year or so.

Next week, we will meet local government colleagues to discuss wider improvements. Nicola Dickie might want to comment on this, but the commitment from the Scottish Government and local government to draw together that coherent improvement programme and implement it at pace post the local government election is absolutely at the top of our agenda.

09:30

On learning from previous reform or change, we have done a significant amount of work to learn from the integration of health and social care thus far. We also engage regularly with the people who undertook police and fire reform and the setting up

of the social security agency and with others to understand what has worked really well for them, as well as the things that they might want to do differently in the future. We have a good cohort of colleagues and are getting advice on major reform programmes and change management.

We are drawing all of that into our discussions about not just the future national care service but the reform that we want to undertake now and the improvements that we want to make.

**Craig Hoy:** I have a brief final question about how data gaps are going to be addressed. It is clear that there are data gaps in relation to demand and unmet need, for example. How do you intend to plug those gaps now and as you move forward to a more integrated system with social care and the NHS? How will you align and integrate the data so that you get a better product in the end?

**Caroline Lamb:** Data is an area that I have a particular interest in. In the NCS consultation we set out a plan for a nationally consistent, integrated and accessible health and social care record, with the intention to use legislation to ensure appropriate sharing of data—and data standards, which make it so much easier to share data. That is another thing that we cannot wait for—indeed, we have not been waiting.

We have made important progress during the pandemic and through the pressures that we faced. To give one example, we implemented the Turas care management safety huddle tool in care homes, which provided information that was absolutely critical to our pandemic response. It provided a timely standardised data set for each adult care home across Scotland, which has been incredibly useful to providers, oversight groups, health and social care partnerships and us nationally.

That sort of work has made and continues to make a difference. There is also a big focus on taking the work out of data collection. The system is a very simple one—it does not consist of lots of complex spreadsheets.

We have implemented a data improvement programme and we are working with partners to identify the barriers to achieving improvements in the short term and as quickly as possible.

You referred to data gaps across the health and social care system, and the focus on management information is critical. I have already mentioned the interdependencies across health and social care. In understanding how we can best make the system work for people, we absolutely need to understand what the pressures are and what the demand is at each point in the system. Particularly in relation to the pressures that the system has been under, our adult social care gold group has

worked in partnership to develop key sets of management information, which is helping our understanding of how the system is working end to end. There is still work to do to improve the quality, timeliness and consistency of data—I do not underestimate the challenge—but that is something that all partners are committed to working on.

I do not want to use up too much time now, but I hope that I will have the opportunity later in this evidence session to talk about what the data is starting to mean in real life for people working in the system.

**The Convener:** Donna Bell also wishes to come in on that point.

**Donna Bell:** I will pick up on the point that Caroline Lamb made about the gold group, which is a multi-agency group that was brought together during the pandemic so that we could gain a better understanding of the issues that are emerging and that are live for us all.

There has been a significant focus on data, as Caroline Lamb said, specifically around outbreaks in care homes, pressures in the system, unmet need, workforce absence, workforce supply and so on. Nicola Dickie might wish to come on this, too, but that focus has certainly given us a better shared understanding of the pressures in the system over the past year.

As Caroline Lamb said, there is a lot more work to do on quality and to significantly expand that data set, because at the moment it captures known unmet need at a management information level—people who are waiting for assessments or packages of care—but it does not cover wider unmet need in the community at a more preventative or early intervention level. There is a significant amount of work to do, but we have made a lot of progress over the past year.

**The Convener:** As I mentioned at the beginning of the meeting, we are pressed for time, so it would be helpful if our witnesses could keep their answers concise.

Willie Coffey has some questions in this area, so I invite him to come in.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** I want to follow up on Craig Hoy's question about funding and sustainability.

If you look at the figures that the Auditor General presented to us on adult social care spend, you can see significant increases in the spend over the past 10 years—in fact, it has gone up by 22 per cent. Caroline Lamb said a moment ago that we plan to spend another 25 per cent more. The bottom-line question for me is whether the additional funding and the whole-service redesign that is coming through the national care

service will be adequate to address the concerns that the Auditor General expressed about the future sustainability of the service. Could you give us your view on that, Caroline, and some reassurance, if you can?

**Caroline Lamb:** The additional funding that we have already made available in the system is making a difference, and the commitment over this parliamentary session is important. We still have more work to do to understand the nature of the demand and whether we are addressing that demand at the most appropriate point. Are we providing support to people early enough to prevent them from needing more support because they were unable to access the support that they needed earlier?

We are still understanding the impact of the pandemic on some parts of society—for example, the extent to which the inability of the elderly population to get out and do the things that they would normally do has had a detrimental impact. We need to understand how we can assess that and meet that demand in future.

The answer to your question is that we still have work to do to bottom out what we expect in terms of demand and to start to do scenario planning on that.

**Willie Coffey:** That will do for now, convener. I know that we are pressed for time.

**Sharon Dowey (South Scotland) (Con):** Service users and carers do not always have a say in or choice about what support works best for them. Self-directed support was designed to give people choice and control over their care, including personalised options for carers to take short breaks from caring. SDS has not yet been fully implemented. People using social care support have described the hurdles that they encounter in accessing services and support as a battle, difficult, overcomplicated and bureaucratic. The pandemic has highlighted the precarious situation of many vulnerable people who rely on social care or support, and it had a negative impact on people who require support. The Scottish Human Rights Commission has expressed deep concern about the level of social care support that is likely to be available in future to people whose packages were reduced or withdrawn during the pandemic. How is the Scottish Government involving service users and carers in reforming social care services?

**Caroline Lamb:** In my opening remarks, I talked about how conversations with people with lived experience are already influencing our review of self-directed support. I will ask Donna Bell to say a bit more on that, and Nicola Dickie might want to say something about consistency of implementation.

**Donna Bell:** Earlier, I mentioned the work that we are doing to revisit the self-directed support guidance. We are clear that, although it is necessary, guidance alone is not sufficient for making the change that we need to see in self-directed support. There is an implementation gap—we are all clear about that. We are working with a fairly broad group that includes people with lived experience and people who have caring responsibilities to agree a way forward for improvement.

We have had two short-life working groups meeting as part of that review, and a number of key themes have been identified that are concurrent with what the member has highlighted. There is work to do on effective and consistent decision making, and on considering whether there is any conflict in the legislation and policies. We also support the support in the right direction programme, which provides support and advocacy. We are keen to draw all that together and put in place a set of improvement actions to ensure that there is much more consistency, that access is more streamlined and that people can get what they need from self-directed support.

**Nicola Dickie:** I concur absolutely with what Donna Bell just said about the voice of lived experience coming through. The minister has also established a social covenant group, in which service users provide their opinions directly on current social care provision and on the reforms that are coming. COSLA's health and social care spokesperson, Councillor Stuart Currie, sits on that group, so, at a political level, he is hearing directly from service users, which is good.

During the pandemic, Donna Bell and I chaired the pandemic response in adult social care group. On that group, we had unpaid carers' representatives and carers associations and other people who represented service users. We are getting better, but there is always more to do.

I also point out that local government hears from users of social care every single day, in every community the length and breadth of the country. I am sure that if there were a local councillor here today, they would tell you that they get a lot of experience and feedback, as I am sure members of the committee do.

I come back to the point about localisation and unmet need. We have to be absolutely clear about the difference between outcomes and what people actually access and experience. COSLA is an avid believer that, although the access to support that someone gets in Shetland and the process should be the same as they are elsewhere, the actual outcome might be different, because the way in which people get support with social care needs in Shetland might well be very different from how people are supported in the centre of Glasgow. I

think that we can agree that that is true, because people are individuals.

That goes back to the point that I made in my opening remarks. We need to ensure that we are seeing person-centred outcomes, and we need to get away from the idea that a national model will support individualised outcomes. Such a model might well support similar outcomes, and we have worked hard through the process of—*[Inaudible.]*—one size fits all.

I will not sit here and say that it is all perfect, because it is not. We have already alluded to the demographic and financial challenges that we face in Scotland. We also need to think about the fact that the pandemic did not hit all our communities equally at the same time. During the pandemic, we heard comments such as, "Why are day services still closed in X authority when they are open in Y authority?" The pandemic was not being felt in the same way across our cities as it was in some of our rural areas.

We need to be careful that we do not strive for a one-size-fits-all approach and move away from what we have been talking about for a very long time, since Campbell Christie's commission, which is prevention and person-centred outcomes. From a local government perspective, COSLA has approached the independent review and the Scottish Government consultation by saying not that everyone should get the same outcomes, but that, while everyone should get the same support and go through the same journey, ultimately the outcomes might not be the same—*[Inaudible.]*.

**Sharon Dowey:** The pandemic also put additional pressures on unpaid carers, because of the closure of day centres and respite services, and that resulted in increased feelings of anxiety, depression and mental exhaustion. Have all those facilities opened up again since the pandemic? If they have not, what is the Scottish Government doing to ensure that they are opened to give people the support that they need?

Nicola Dickie might want to come in on that.

09:45

**Nicola Dickie:** I cannot speak for the Scottish Government, but from a local government perspective we recognise that the closure of the centres at the very height of the pandemic, in the early days, was done on the basis of public health guidance. We did not want people who were vulnerable or—to use the term that was coined at the time—shielding to be put into centres where they might have increased exposure to the virus.

We have to remember that there was a public health reason for day centres being closed. From a local government and a health and social care

partnership perspective, we absolutely recognise the importance of getting those day centres back up and running for people if they want them. To go back to my earlier point, when the day centres were closed, local government, along with our partners, tried to step into the space and take a person-centred approach to what might work for those individuals who had previously been in day centres.

For obvious reasons, there was some nervousness about a service worker coming in and people accessing support in their own homes when they were shielding, instead of going to a day centre. When the day centres closed, there was an element of trying to step in and provide support, but there was a bit of reticence in some respects and there were also workforce challenges for local government. During the pandemic, the way that we approached the issue of day centres changed, not always for the same reasons. Very early on, some of the changes were based on public health advice that day centres were high-risk settings and should not necessarily be operating.

As we have come through the pandemic, those day services, where there is still a requirement for them and where that is what local service users want, have reopened. In some areas, local government has taken the opportunity to reform the services. We have moved a wee—*[Inaudible.]*—as people have moved in to other things.

To go back to my point about localisation, it is difficult when we say that a service that dealt with 150 people before the pandemic deals with only 140 now. That might not always be a bad thing, because people might have gone elsewhere or started to access different support. That might be exactly where we want them to be. To go back to the point about choice and responsibility in personal support, that might be a good thing.

Donna Bell might want to talk about the Scottish Government's approach to day services.

**Donna Bell:** Nicola Dickie has covered most of it. I simply say that we have worked closely with Public Health Scotland and others to ensure that the guidance is right and that folk are supported to open up services as and when they can. Last year, Kevin Stewart, the Minister for Mental Wellbeing and Social Care, wrote to encourage day centres to reopen. I think that Nicola Dickie has covered the primary points on localisation.

**The Convener:** Sharon Dowe asked about commissioning. I would like to ask Caroline Lamb, who is the chief executive of NHS Scotland as well as the director general of health and social care, about the commissioning model, which is not the model for the national health service, is it?

Arguably, there would be an outcry if we went down that route as the model for delivering NHS services.

As part of your discussions with COSLA, and looking to the national care service of the future, are you looking at alternatives to a competitive tendering model, which is how the commissioning model has developed?

**Caroline Lamb:** A key point is that, among the independent review recommendations, there was a recommendation, which is also part of the joint statement of intent with COSLA, to move towards ethical commissioning. That is much more about a partnership approach to commissioning and a focus on the outcomes and what is important to people. We have started the process of engaging in draft ethical standards. Donna Bell can say more on that.

In preparation for moving towards the recommendations from the independent review, we also issued a Scottish procurement policy notice in December. It was designed with key stakeholders and advised people of the actions that they can already take in commissioning and procurement, as well as how we can make improvements on that.

I ask Donna Bell to comment on some of the detail of the work on ethical commissioning.

**Donna Bell:** The procurement guidance that was issued in December is an important starting point, because a lot can be done to bring current activity in line with the principles of ethical commissioning.

There is a lot of work to do. We have had some great input from the Coalition of Care and Support Providers in Scotland and others on where we might go with it. It is not straightforward, so there is a significant amount of work to do, which will take a bit of time. However, a focus on what can be done now is important. Colleagues in local government have been working closely with us on what can be done now, so it might also be worth asking them to comment on it.

**The Convener:** Sarah Watters wants to come in, so I invite her to comment on that.

**Sarah Watters:** My comment is not specifically about Donna Bell's point but about ethical commissioning.

Local government takes its commissioning across a range of services seriously. As well as ethical commissioning, there is sustainable commissioning and local commissioning. Many councils are working on community wealth building strategies.

Ethical commissioning is only one part of what local government does. We try to ensure that we

get the best value for local communities right through the commissioning process. However, as the Auditor General said, with single-year budgets, that is really challenging because you always have to have one eye on what you will need to do next year and the year after.

Ethical commissioning is just one of a range of commissioning approaches that councils are trying to take.

**The Convener:** In those answers, I did not hear anybody talk about going beyond commissioning or about conversion to more of a national health service model for the national care service. However, we are pressed for time, so I will move on.

We have covered a lot on the workforce, but I have a parting question on that. Caroline Lamb, you mentioned the uprating of the hourly rate of pay from April this year. Do you have a timetable showing where you expect rates of pay to go in the next five years? That is the time horizon that you spoke about for the 25 per cent uplift in resources.

**Caroline Lamb:** No. Pay will be one factor of the 25 per cent uplift, but we have not yet modelled exactly what that will look like.

**The Convener:** That is fine. That is clear.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** Leadership in the public sector is a concern that has been raised depressingly often. In this case, I draw the witnesses' attention to paragraph 20 of the Auditor General's briefing, which says:

"The health and social care sector needs stable and collaborative leadership to address the ... challenges".

There is also reference to the local government overview of 2020, which

"emphasised the critical need for effective leadership",

which was absent. Also, the "NHS in Scotland 2020" report

"highlighted the continuing lack of stable NHS senior leadership, with high turnover and short-term posts."

Those are serious issues. Leadership is vital but we often find that it is absent. We are considering the challenges that face social care, which seems to face exactly the same issues with leadership. Perhaps Caroline Lamb might comment on that and how it is being tackled.

**Caroline Lamb:** Yes, I am happy to respond to that, and I am sure that colleagues will also wish to contribute.

I agree that the health and social care sector needs stable and collaborative leadership. That is not necessarily always about everybody staying in the same job. We see real benefits from people

moving between health and social care, and we have examples of chief officers who have become chief executives of NHS boards. That helps to break down some of the barriers and can enhance the collective understanding of some of the challenges across the end-to-end system.

However, the pandemic put the workforce and our senior leaders under extreme pressure during the past couple of years. People have worked incredibly hard in the face of some extraordinary challenges. That said, the pandemic was also a unifying factor: it brought people together. Most of the people whom I have spoken to around the country commented positively on how the experience of Covid and of working together with clear priorities brought them together into a collaborative space, building relationships that are stronger than they were before, and I think that that will endure.

We need to remember, however, that collaborative leadership becomes more complex as priorities become more complex. *[Interruption.]* Excuse me. There is a risk of the focus and the single mission that we had throughout Covid getting a bit diluted.

I am sorry, but I am choking a bit, so I will pass to Donna Bell now, and she can perhaps talk you through some of the things that we are doing to support leaders and leadership across the system.

**Donna Bell:** We work very closely with chief officers in particular. Support is offered to them, although they are a very good self-supporting network, which has led to some great connections and practice sharing. There is a good leadership cadre there, and they support one another. There is activity in place to support wellbeing, leadership coaching and various other aspects.

Caroline Lamb made an important point about collaboration and people learning together and addressing joint challenges. As Caroline says, learning and collaborating on the job during the past few years has brought people much more closely together in understanding their common challenges.

The focus on wellbeing is important. As Caroline Lamb says, it has been a very difficult time for much of the leadership in health and social care; it has challenged people and helped them to grow in their roles. As we come out of the current period, there will be more to do, but there is a fair amount of support in place already.

Nicola Dickie might want to talk a wee bit about local government and any specific measures that are in place there.

**Colin Beattie:** There is something I wish to point out before Nicola Dickie comes in. The Auditor General's briefing is dated January 2022. I

applaud the optimism in everything that the witnesses are expressing about collaborative work, but that is not being evidenced in what is coming before the committee. It will obviously take time before that work feeds through but, based on the evidence that the committee has seen, it is substandard, to be honest.

**Nicola Dickie:** I absolutely agree with what Caroline Lamb and Donna Bell have said about Covid bringing leaders together. COSLA's submission, and indeed that from the Society of Local Authority Chief Executives and Senior Managers, the chief execs' core submission to the Scottish Government consultation on the national care service, flagged up the risk of destabilising the senior leadership within health and social care and the wider public sector. That is a risk, and it is one that people are aware of.

There is an awful lot of support going to all Scotland's public sector leaders for leading through change. There is not a single part of the public sector in Scotland—social care included—that will not be going through some form of change as we come out of the pandemic.

The Scottish Leaders Forum has been set up and we have the various support networks there, but chief executives in local government and, I am sure, although I do not speak for them, chief executives in the NHS are mindful of that. Do we have the silver bullet at the moment? I do not know, but it is certainly on the risk list from a local government perspective to ensure that senior leadership across local government and the wider public sector are supported regardless of whatever the form of the national care service might be.

10:00

**Colin Beattie:** Very briefly, because I am conscious of time, paragraph 21 of the briefing refers to the issues between partner organisations and the model of governance being overcomplicated. That is not new; those integration authorities have been in place for some time. Donna Bell said that we have been learning from other integration initiatives by the police and so on. Again, I say that there seems to be very little evidence of that coming through in the Auditor General's briefing as at January 2022, when the briefing was produced. I am hearing a lot of good words, but I do not see the evidence, although I hope that we will see it in the future. Does anyone want to say anything further on the integration authorities?

**Caroline Lamb:** I think that Donna Bell wanted to come in and I would like to give a specific example of collaboration.

**Donna Bell:** The first reference that I made to understanding change and the need for change

was to integration authorities. We know that Audit Scotland has published a number of reports on learning from integration and we have a range of our own learning. I absolutely recognise what the member says about the need for change, and that has come to fruition through the independent review of adult social care and the proposals for the national care service. Those things and all the other work that is under way are a direct response to the points that the member makes. It is absolutely the case that we are learning from where we are now, and we are putting plans in place to address the issues that have been identified.

**The Convener:** That ends the committee's questions. I thank Caroline Lamb and Donna Bell from the Scottish Government and Nicola Dickie, who may have dropped off—if she can hear us, I hope that she takes our thanks for her evidence—and Sarah Watters from COSLA. We will reflect on the evidence that we have taken and decide on our next steps. Thank you for your co-operation and I hope to see you again soon.

I now suspend the meeting to allow for a changeover of witnesses.

10:03

*Meeting suspended.*

10:04

*On resuming—*

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

**The Convener:** Welcome back to the second half of this morning’s meeting. Agenda item 3 is our first consideration of the Audit Scotland report into arrangements for the delivery of vessels 801 and 802. I welcome to the meeting the Auditor General for Scotland, Stephen Boyle, who is joined by a team of three people from Audit Scotland: Antony Clark, interim director of performance audit and best value; Angela Canning, audit director; and Gill Miller, audit manager, performance audit and best value.

In addition, I welcome Rhoda Grant, who is an MSP for the Highlands and Islands and who is taking part in the evidence session remotely. Rhoda, if you want to come in at any point, please indicate that by typing R in the chat function and we will do our best to bring you in.

To begin, I invite the Auditor General to make an opening statement. After his statement, members will ask a series of questions. If we do not cover all the ground that we need to this morning, we might need to have a second evidence session on this report with the Auditor General.

**Stephen Boyle (Auditor General for Scotland):** Good morning. Under section 23 of the Public Finance and Accountability (Scotland) Act 2000, I bring to the committee my performance audit report on the project to deliver two new ferries for the Clyde and Hebrides. The main headlines surrounding the two vessels are well known—they are significantly late and considerably over budget. My report sets out the reasons for the delays and cost overruns and the remaining challenges in completing the vessels. It highlights a multitude of failings over the past six years.

In particular, my report highlights that Scottish ministers approved the contract award to Ferguson Marine Engineering Ltd in October 2015 without the standard financial guarantees being in place and contrary to the advice of Caledonian Maritime Assets Ltd—CMAL—which is the public body that owns most of the vessels on the network. There is insufficient documentary evidence to explain why those risks were accepted, and I consider that there should have been a proper record of that important decision.

Only two months after the contract was awarded, CMAL identified concerns with the project and, over time, problems, delays and costs escalated. Scottish ministers approved several financial and non-financial interventions to try to get the project back on track, but those had little impact. FMEL entered administration in August 2019, following unresolved financial disputes with CMAL. By that point, the Scottish Government and CMAL had paid FMEL more than £128 million, but the vessels remained far from complete.

In December 2019, the Scottish Government nationalised the shipyard, with the stated intention of helping to get the vessels completed as quickly as possible, protecting jobs and sustaining shipbuilding on the Clyde. Now operated by a public body, Ferguson Marine Port Glasgow, major operational issues at the yard remain unresolved, and remedial work on the vessels, which should have been completed within seven months, continues to be uncovered.

Since my report was published, the new accountable officer of Ferguson Marine Port Glasgow has updated Parliament to report that vessel 801 is now expected to be delivered between March and May 2023, five years later than promised, and that vessel 802 is expected to be delivered between October and December 2023.

The new vessels were intended to create more capacity and improve reliability across the Clyde and Hebrides network. They were also meant to bring social, economic and environmental benefits. That those aims have not yet been achieved, more than six years on, is a source of frustration for island communities, which rely on lifeline ferries.

Therefore, it is imperative that Ferguson Marine Port Glasgow delivers the vessels within the new timescales. Closer collaboration with CMAL is a positive step but, as I set out in my report, several operational and workforce challenges still need to be addressed if the vessels are to be delivered. I make recommendations to help support that. After the vessels are completed, all public sector bodies involved must turn their attention to fully considering what went wrong with the project, learning lessons and, crucially, preventing a repeat of problems in future.

As ever, my colleagues and I will do our utmost to answer the committee’s questions.

**The Convener:** Thank you for that concise and clear opening statement.

**Sharon Dowey:** Good morning, Mr Boyle. Your team has provided a report that, in your words, shows “a multitude of failings”. It is a comprehensive report, even with the lack of available documentary evidence, and has raised an awful lot of concerns and a lot more questions.



Once again, the issue of transparency in the Scottish Government has been raised.

The report makes it clear that the project has been riddled with problems and delays over six years. The vessels are four years late and it now looks like they will be five years late. Currently, the cost is two and a half times the original budget. Worryingly, paragraph 105 states:

“The Scottish Government is committed to paying the additional vessel costs, regardless of the final price.”

All of that is at taxpayers’ expense and, seemingly, with no accountability from ministers.

Paragraph 141 states:

“Because engines and equipment were purchased several years in advance, warranties have expired, and any repairs required before vessel 801 enters service could be expensive and time-consuming.”

We now know that there will be delays due to cabling being too short for the vessels and, to add another layer to the saga, once the vessels eventually come into service, there is now talk that they are 40m too long for the harbours that they will serve and that the masters of the boats who have been practising using simulators have been unable to dock them safely.

It seems that the story will continue, the costs will continue to rise and there might well be further delays. That is before we start talking about flawed decision-making processes, a lack of documentary evidence and the Scottish Government ignoring alarm bells that have gone off repeatedly. Therefore, it is understandable that there is a lot of interest in the report.

Exhibit 1 shows that, in August 2015, ministers announced Ferguson Marine Engineering Ltd—FMEL—as the preferred bidder. Will you tell me more about the decision making on that? I believe that there were seven bids from six companies. Who took the decision to award the contract to FMEL, taking into account the fact that the report says that FMEL’s bid was the most expensive?

**Stephen Boyle:** In exhibit 1, we set out the significant chain of events up to the current day. At the start of that exhibit, we note the identification of FMEL as the preferred bidder. I will bring in my colleague Gill Miller to talk the committee through the procurement process but, before I do so, it might be helpful to set out the scope of our work for the report.

We did not review the detail of the procurement and design arrangements of the ferry contract. Based on the considerable evidence that the Rural Economy and Connectivity Committee considered in the previous session of Parliament in its investigation into the design arrangements and procurement circumstances, we took a judgment that our work would be best served by picking up

from the point of the identification of FMEL as the preferred bidder through to the present day and some of the circumstances and challenges that have unfolded. Nonetheless, in the report, we give some of the history of the procurement circumstances.

I invite Gill Miller to update the committee on some of the decisions that various parties arrived at and the use of cost quality indicators.

**Gill Miller (Audit Scotland):** In March 2015, CMAL received seven bids from six shipbuilders. I emphasise that those bids were all anonymised when the evaluation panel considered them over the period March to August. They were evaluated on a 50:50 price quality score, and the panel assessed FMEL’s anonymised bid as achieving the top score overall.

As I said, the decision was made over the period from March to August. We understand that the CMAL board had to review the evaluation panel’s assessment; FMEL had been identified as its leading bidder at that point. However, we are aware that, on 20 August 2015, Transport Scotland submitted a paper to ministers to say that FMEL was the preferred bidder and that the First Minister would be announcing that at a visit to the yard on 31 August 2015.

10:15

We understand that, at that stage, CMAL and FMEL had still not negotiated the point about the builder’s refund guarantee. Indeed, it was not until after the announcement on 31 August that FMEL stated that it was unable to provide the 100 per cent refund guarantee and that its best offer was a 25 per cent refund guarantee.

**Sharon Dowey:** Do you know who was on the evaluation panel?

**Gill Miller:** I do not know the exact membership, but I know that CMAL and CaMac were involved.

**Sharon Dowey:** In September, FMEL confirmed that it was unable to provide a builder’s refund guarantee, which was a mandatory requirement. Did FMEL give a reason why it could not give that guarantee, and why that had not been mentioned in its bid?

**Gill Miller:** The actual procurement process was outwith the scope of the audit, so we do not have the details of FMEL’s bid. However, we know that the pre-qualification exercise made it clear that the provision of a 100 per cent refund guarantee was mandatory. We know that FMEL passed that qualification stage, because it was given the invitation to tender.

The draft contract, which was part of the invitation to tender, made it clear that the builder’s

refund guarantee was mandatory. All bidders had the opportunity to provide comments on the draft contract, and FMEL did not do so, thereby implying that it was willing to offer the builder's refund guarantee.

**Sharon Dowey:** In September, CMAL advised Transport Scotland of the risks and stated its preference to start the procurement process again. The report states:

"Transport Scotland fully appraised Scottish ministers of the significant financial and procurement risks".

In October, Transport Scotland advised CMAL that Scottish ministers were aware of the risk and were content for CMAL to award the contract to FMEL. Is there any documentation to show that, and to explain the reasons why the contract still went ahead?

**Stephen Boyle:** That is undoubtedly one of the key findings in our report, with CMAL highlighting the extent of the risks. As Gill Miller rightly points out, the provision of a 100 per cent guarantee is particularly significant in the context of a shipbuilding contract, because the nature of the contract allows the work to progress, and the risk rests with the shipbuilder. The buyer is insulated by the 100 per cent guarantee. However, in circumstances where that does not occur, as was the case here, risk flows back to the buyer, albeit that in this case there was a 25 per cent offsetting and an additional provision on final payment that offset some of the risk.

Antony Clark might want to comment on the point about transparency. We are in effect saying that Transport Scotland advised ministers of the nature of the risks, allowing for CMAL's significant concerns and its position that the contract should be retendered, but that ministers took a view that they wished to proceed with the contract, cognisant of those risks.

As we set out in the report, there is no documentary evidence of how those risks were considered or how it was intended that they would be managed during the running of the contract. Transparency is hugely important; it matters that important decisions of this nature are set out and recorded. However, through our audit work, we have not been provided with any evidence that sets out how those risks would be managed.

I will bring in Antony Clark, who will want to say a bit more about how these circumstances normally work.

**Antony Clark (Audit Scotland):** In such circumstances, one would expect the accountable officer in Transport Scotland to share their thoughts, ideas, risks and concerns, and to make proposals to the Scottish ministers, on which ministers can reflect and make a formal decision.

As the Auditor General has indicated, one would expect that to be recorded and documented.

In the circumstances of this audit, we requested the documentary evidence but, as the Auditor General has said, none was forthcoming to us. We are therefore not in a position to offer advice to the committee on what thought processes took place, what advice Transport Scotland gave to ministers, or on what basis the transport minister—as I think it was—determined that they should recommend that the contract should proceed. As the Auditor General has said, that is a significant finding, and I suspect that the committee may wish to take evidence on it in due course.

**Sharon Dowey:** So there was no documentation at all to show the communication between CMAL, Transport Scotland and the ministers, or who had actually been spoken to. Nothing at all came out when the audit was being done.

**Antony Clark:** We made several requests to the Scottish Government and to Transport Scotland to receive information on that matter—none was forthcoming.

I do not know whether Gill Miller has anything to add.

**Gill Miller:** We had the submission that went to ministers, which set out CMAL's concerns and the clear risks. It also set out some of the amendments that CMAL had agreed with FMEL to mitigate some of those risks, and some of the assurances that Transport Scotland was putting in place to mitigate CMAL's concerns. Those assurances were along the lines of CMAL not having to pay back the vessel loan until the vessels were completed and Scottish ministers looking favourably on CMAL's requests for additional funds if any of those risks came to pass. We saw that documentation. However, as part of it, Transport Scotland had offered to the minister to have a discussion with the CMAL board to discuss its concerns, and we do not know whether that went ahead.

We asked Transport Scotland and the Scottish Government for all documentation relating to the minister's decision, but we did not receive any. We are therefore not clear whether there were any discussions, and we are not sure what discussions took place to decide what assurances Transport Scotland would give CMAL, so we do not know on what basis ministers decided to accept the risks and proceed with the contract award.

**Sharon Dowey:** Thank you.

**The Convener:** I think that other members want to come in on that point. On the point that Gill Miller made, I direct this first to the Auditor General: why is there no documentary evidence?

Is it hidden, is it missing or does it simply not exist?

**Stephen Boyle:** We can only speculate on that point, convener. As Gill Miller and Antony Clark have set out, through our audit work, we request all relevant documentary evidence from public bodies.

Section 24 of the Public Finance and Accountability (Scotland) Act 2000 gives us rights of access and makes provision for circumstances in which we know of the existence of a document that has not been provided; we can cite that provision—and have done so, on occasion—to secure access. However, if there is no relevant documentation to support a decision, that becomes harder.

We do not entirely know whether this is a case of there being no document to support that important decision, or of our having asked for one and of its not being provided. I suspect that it is the former rather than the latter, but we can only speculate, and it would probably be unhelpful to do so.

**The Convener:** Okay, but could there have been a breach of the act?

**Stephen Boyle:** As I said, through our audit work, we ask for all relevant documentation. Especially given the significance of the issue, which we have highlighted in the report, our understanding, and the position that we have reached, is that there is no documentary evidence to support that decision, which was of such significance. That led us, clearly, to the conclusion that there really ought to have been a level of documentation to give an understanding of why the scale of the risks in the contract, which were so unusual in their extent, was acceptable.

**Willie Coffey:** On the point about the builders refund guarantee at the very beginning of the process, my understanding, having read the papers, is that, within a standard shipping model contract, such a guarantee is assumed and embedded as part of the contract agreement—so it was assumed by default that FMEL had consented to provide that 100 per cent guarantee. However, only a month later, it said that it could not do so. Is that potentially a clear case of FMEL misleading the client at the outset of the contract?

**Stephen Boyle:** As we have touched on, our report picks up at a certain point. We have not reviewed the detail of the tender evaluation and procurement exercise, but we note the significance of the builders refund guarantee in a shipbuilding contract and the extent to which it isolates the buyer from risk.

CMAL's position—I am sure that it will have the opportunity to restate this for itself—is that, if a

buyer does not raise an objection about the builders refund guarantee or any other aspect of the contract, it tacitly accepts the terms and conditions of the contract. It became known shortly after the identification of the preferred bidder that FMEL was not in a position to offer the full 100 per cent builders refund guarantee, which presented the buyer, the Scottish Government and Transport Scotland, with the decision whether to proceed. The position is a tacit acceptance of the terms and conditions unless otherwise stated.

**Willie Coffey:** Did you investigate why that guarantee was withdrawn within a month, or did the parties just proceed to make the best of the circumstances in which they found themselves?

**Stephen Boyle:** There were undoubtedly discussions between FMEL and CMAL in respect of the builders guarantee in order to reach a position. We set out some of the detail of that in the report. Instead of the 100 per cent builders refund guarantee being offered, a 25 per cent guarantee was eventually offered along with some of the other mitigations at which Transport Scotland was able to arrive. However, those do not equate to a 100 per cent builders refund guarantee. Most importantly, the overall substance concerns the scale of the transfer of risk back to the buyer. That is opposed to how we would expect matters to operate with a standard shipbuilding contract, in which the 100 per cent guarantee provides the buyer with surety in the event that circumstances go awry.

Gill Miller might want to say a bit more about how those events unfolded.

**Gill Miller:** As we all know, FMEL was a relatively new company—it was formed in October 2014. CMAL was aware that, as a new company with very little financial history, FMEL might struggle to get a bank to provide it with a 100 per cent guarantee. However, CMAL had assumed that Clyde Blowers Capital, as FMEL's parent entity, would provide a parent guarantee for FMEL. We have had discussions with CBC, which has said that that was never the case.

As the Auditor General said, the requirement for the full BRG was stated clearly in the contract and FMEL did not make any comments on that contract. Therefore, when CMAL evaluated its bid, there was no indication that FMEL was not going to provide the 100 per cent guarantee.

**The Convener:** Craig Hoy has some questions on that matter.

**Craig Hoy:** Good morning, Mr Boyle. Normally, when you come before us, you provide reports that give us the complete picture. You put the pieces of the jigsaw together on how much money has been spent and the best value that has been achieved through that. There is generally also an

audit trail that underpins that. However, on two lifeline ferries for our island communities, we do not have that. Your report clearly identifies multiple failings, but key pieces of the jigsaw are missing. As the convener said, they have gone missing, they were not produced or they were withheld from you.

My first question is wider than my other ones. When all is told, close to £500 million could end up having been spent, first, by a company that was owned by someone with close links to the party of government—the Scottish National Party—and, latterly, by a company owned by the Government itself. How concerned should the Parliament and the public be that you have been unable to publish a report that tells the full story of how that money has been spent and why?

10:30

**Stephen Boyle:** There is clearly a frustration on our part that we were not able to review all of what we would consider to be the relevant evidence. As I mentioned to the convener, our judgment is not that evidence has been withheld from us during the course of our audit work but, rather, that an important piece of documentary evidence was not prepared in relation to the judgment that ministers arrived at to accept the unusual scale of risk in the contract, which was contrary to the advice of the public body—CMAL—that oversees the contract.

I am sure that the civil service will want to reflect on how it best documents the process around the making of important decisions that significantly influence not only the use of public money but the provision of extremely important aspects of public services.

**Craig Hoy:** Paragraph 27 of your report says that, on 8 October 2015, Transport Scotland advised the Scottish ministers of CMAL's considerable concerns about awarding the contract to FMEL. We would expect any discussions to have been minuted in the company of civil servants from the Government and, perhaps, Transport Scotland. No doubt, there should have been note takers, but you say that you have no insight into the discussions that took place on that day. However, we find out from the report that, on the day after Transport Scotland advised ministers of CMAL's concerns, ministers said that they were "content to proceed". Therefore, there must have been some discussion on that day.

The report implies that ministers were aware of the risks and chose to ignore them when they awarded the contract. Is that correct?

**Stephen Boyle:** Our understanding is not that there were no communications but that they have not been adequately documented and that

CMAL's position, the extent of the risks, the variation from the standard builders guarantee in the contract and the risk flowing back to the buyers—the public bodies—were part of those discussions.

**Craig Hoy:** You would normally expect that, when there is a division between the civil service and ministers, a ministerial direction would be issued. To your knowledge, was that done? If not, do you believe that it would have been far better if such a document had been produced?

**Stephen Boyle:** The Scottish public finance manual, which sets out the provisions for such circumstances in Scotland, uses the term "written authority" as opposed to "ministerial direction" when setting out the circumstances around a situation in which an accountable officer considers that they would be unable to achieve value for money in respect of the implementation of a policy request from ministers. We do not believe that, in the circumstances that we are discussing, civil servants requested a written authority or a ministerial direction. I would be entering into the territory of speculation if I were to suggest reasons why that was the case. It is clear that, had a civil servant considered that they would not be achieving value for money, they had the option of asking for a written authority, but it remains our understanding that no such request was made.

**Craig Hoy:** Earlier, Gill Miller said something about the awarding of the contract and the tender process, which is another missing part of the jigsaw puzzle. I note what you said previously about the scope of your report, but it has been suggested that, although FMEL was the most expensive option and would not be able to give a refund guarantee, there was a view that it could potentially deliver the highest quality and that significant additional points were awarded for quality at some stage in the process. Have you had any sight of the tender scoring, and do you think that it should now be published if it has not been published already?

**Stephen Boyle:** I invite Gill Miller to answer that question.

**Gill Miller:** We did not look at that. However, we reviewed the information that was given to the former Rural Economy and Connectivity Committee's inquiry into the procurement of the two vessels, and I understand that CMAL has provided the scores for each of the bids.

**Craig Hoy:** There might also be some missing pieces of the jigsaw puzzle in relation to payments and milestones. Having spoken to people in the industry, it appears that it is quite common for contracts for ships to include a schedule for five payments. However, the contracts for 801 and 802 both had 15 scheduled payments. Did you explore

why that happened and who agreed to it? Do you think that, alongside the failure to provide a refund guarantee and the plea for accelerated payments, that is further evidence of the financial fragility of FMEL?

**Stephen Boyle:** I will bring in Gill Miller in a minute to say a bit more about how the use of milestone payments in the contract varied from the industry norm. Mr Hoy mentioned FMEL's financial circumstances, which are noted at various points in our report, and the additional financial support that was provided to the yard and the variation in the use of milestone payments were matters of public record before our audit work began. In our report, at exhibit 3, we set out the extent of milestone events and payments.

During our audit work, it became clear that the use of milestone payments in the contract did not necessarily relate directly to quality or progress. That is the industry norm for shipbuilding contracts, but it is perhaps at odds with other large public sector infrastructure contracts.

I am sure that Gill Miller will want to say a bit more to add to the committee's understanding.

**Gill Miller:** Mr Hoy is correct in saying that, typically, the payment schedule is five equal payments of 20 per cent. However, it is not unusual for the buyer and the shipbuilder to agree to a payment schedule that best suits the project. It is our understanding that, during discussions in the period between FMEL being announced as the preferred bidder and the contract being awarded in October, seven iterations of the milestone payment schedule were suggested by FMEL, to ease its cashflow issues during the project. We discussed the matter with CMAL, which said that how the funding was distributed and when was not a concern because, ultimately, more than the £97 million would not be paid.

**Craig Hoy:** I have a question about the Scottish Government's loan payments. It appears that the accelerated payments and loans were a significant cause for concern in relation to FMEL's cashflow. Through the first loan, the Scottish Government, in effect, secretly loaned the company up to £15 million, and, latterly, a further £30 million was given to keep the company afloat, in positive cashflow terms, so that it could continue to service another part of the Government's work. There was almost a sort of Ponzi scheme at the heart of this.

The Government claimed that the original £15 million loan was commercially confidential, but that reasoning was dropped when the further £30 million loan was made available. Do you have any understanding of why the Government changed its tune in relation to the commercial confidentiality of the loans?

**Stephen Boyle:** That issue was subject to consideration by the predecessor committee following receipt of my predecessor's section 22 reports on the Scottish Government. If memory serves me correctly, when a loan is given on a commercial basis, as was the case in these circumstances, the Government does not have an obligation to immediately inform the Scottish Parliament. Bringing to the Parliament's attention the £30 million loan, alongside details of the £15 million loan that had been made earlier, was a matter for the Government. We have set out our views on that and have said that there is a need for transparency in such circumstances.

In more general terms, that links to a theme that I know the committee is interested in: how financial interventions in private companies are made, the supporting framework, the exit strategy, the financial terms and so on. None of that detracts from the fact that, when interventions of such scale are made—particularly in these circumstances—there ought to be as much transparency as possible.

**Craig Hoy:** I have a quick final question. It appears that a significant number of those in FMEL's senior management were covered by non-disclosure agreements when they left. In your view, when significant sums of public money are involved, is it acceptable for such agreements to be in place? Has that hampered your audit work in any respects?

**Stephen Boyle:** In gathering evidence to support our report, we spoke to a wide range of people who were involved in the project, including current and former officials. However, we were not able to speak to all of FMEL's former directors, because of the non-disclosure agreement and the circumstances of the contract rather than because of the individuals' willingness. Under those circumstances, it fell to the willingness of FMEL's administrators to give assurance that there would be no follow-through should somebody be seen to breach the terms of that agreement.

I do not think that it hampered our evidence gathering or the conclusions that we reached. We set out clearly the events that followed. However, Mr Hoy, there are many differing views about the events that took place at Ferguson Marine and the progress of the vessels. A number of times in the report, we note that there is no consensus between the former owners of FMEL, CMAL and Transport Scotland on why the events unfolded. When we undertake audit work, we look to speak to as many people as possible, but we were not able to speak to one of the individuals who wished to participate in the audit work.

I will briefly bring in Gill Miller. I am sure that she will want to say a bit more about that.

**Gill Miller:** For the audit, we reviewed an extensive amount of evidence that covered a number of events over six years. We went through substantial evidence—a lot of documentation—and spoke to a lot of people.

As public sector auditors, we were focused on the roles of the public sector organisations that were involved, their arrangements for setting up and managing the contract and how they responded when it went wrong. It was right that we focused our evidence on those matters. However, as the Auditor General said, there were conflicting views about what had gone wrong and it was important for us to understand FMEL's view of events.

FMEL's former management submitted a lot of information to the former Rural Economy and Connectivity Committee's inquiry into the project, and we reviewed all of that. We also spoke to one of FMEL's former chief executives and one of its former directors. Two of FMPG's current directors also worked at FMEL, and we spoke to them about their experiences pre and post nationalisation. We also spoke to the workforce representatives at FMPG who formerly worked for FMEL. In the round, we were able to get a good understanding of FMEL's point of view.

**The Convener:** Auditor General, I will take you back to the question that Craig Hoy put to you on written authority and ministerial direction. It is central to the debate about transparency, accountability and when decisions were made.

When I review the correspondence from 8 October and 9 October, I discern that written authority might have been at work. The email from Transport Scotland that reflects CMAL's concerns about the risks associated with the contract says:

"The Board would wish the Minister to be apprised of these risks and to acknowledge to the Board that he fully understood the potential risk of assigning a contract to FMEL under these circumstances. The Board feel it is their absolute duty to point out the risk to their shareholder and in that respect would expect approval, should"

the Scottish Government

"wish this project to proceed, and to receive direction to that effect".

The expression "direction" is explicitly used in that correspondence.

The next day, the reply is submitted. That letter to Erik Østergaard from the director of aviation, maritime, freight and canals at Transport Scotland, dated 9 October, says:

"The Scottish Ministers, both in their capacity as CMAL's sole shareholder and more generally, also confirm that CMAL is authorised"—

Transport Scotland uses the word "authorised"—

"to enter into the Contracts and any associated documentation."

Paragraph 10 of the letter says:

"I confirm that the Scottish Ministers"—

plural—

"have considered and approved the contents of this letter."

It looks very much as though there was written authorisation and ministerial direction, but it does not appear to have been recorded, as is required under the legislation. Do you have any comment on that?

10:45

**Stephen Boyle:** That is a fair assessment. The substance of the discussions was consistent with what I understand to be ministerial direction or written authority, but the application of that was inconsistent with the requirements of the Scottish public finance manual. One of those requirements is that the Auditor General for Scotland should be informed in writing if there is an event that is identified as a request for written authority. No such information came to the office of the Auditor General for Scotland during those discussions. Although there was an exchange of correspondence and a clear setting out of views, we did not see that translate into the formality—the record keeping—that we would say is clearly consistent with a request for written authority.

**The Convener:** Again, if there was written authorisation or ministerial direction and it was not recorded with you or the clerk of this committee, which is one of the requirements of the act, that could also represent a breach of the Public Finance and Accountability (Scotland) Act 2000.

**Stephen Boyle:** We are probably pushing up against some of the boundaries of our analysis and perhaps into the realms of legal judgment on whether the events that took place are consistent with the act. I am clear that no Government officials have identified that written authority was requested from ministers and approved as such, and, on that basis, we have not been able to say that that happened, and we are clear in our judgment that there was no formal written authority.

**The Convener:** The committee will have to consider how we can best seek to get to the bottom of that.

We are limited for time and I am conscious that Colin Beattie has a series of questions that he wants to put, so I invite him to do so now.

**Colin Beattie:** The ferries issues first came about as a result of the Rural Economy and Connectivity Committee's report of 9 December 2020, in which it asked you to carry out your

investigation. I presume that that is what triggered your investigation at that time. Is that correct?

**Stephen Boyle:** The Rural Economy and Connectivity Committee's report references its request for Audit Scotland to undertake further work. As the committee will be aware, I am independent and am not directed by any particular committee of the Scottish Parliament in forming our work programme, so, although we are cognisant of the work of the committee, as I mentioned to Mr Coffey a few minutes ago, our interest in ferries and the use of public finance and loans had been consistent for a number of years. Fundamentally, it is an issue of public interest and public expenditure. In drawing together all those sources, we felt that it was appropriate for us to undertake further work, hence today's report.

**Colin Beattie:** That is in line with your letter to the committee. I assume that you would have reviewed the report as part of your audit process. Is that correct?

**Stephen Boyle:** Yes, of course.

**Colin Beattie:** Some very strong statements are made in the report, most particularly in paragraph 160, which says that

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

Evidence is given in paragraph 157 that work was carried out

"either incorrectly or out of sequence purely in order to trigger payments against the contract".

Interestingly, too, paragraph 158 cites evidence that

"invoices presented were rejected on the basis they related to other projects".

Given the committee's evidence, it seems clear that it had great concerns about the contractor.

Paragraph 153 also highlights evidence that CMAL's lawyers "advised" that it

"had to make the payments"—[*Official Report, Rural Economy and Connectivity Committee*, 11 March 2020; c 50.]

that were called for, because that was in the contract and it did not want to break the contract. Moreover, on subcontractors, paragraph 154 cites the statement that

"Ferguson's deliberately slowed down some of that subcontracting."—[*Official Report, Rural Economy and Connectivity Committee*, 5 February 2020; c 11.]

Maybe I have missed something, but I do not see anything in your report that addresses that issue directly. After all, this is very serious indeed. If the Rural Economy and Connectivity

Committee's conclusion is correct, the question, then, is: what action needs to be taken?

**Stephen Boyle:** You have just referenced some very significant sections of the Rural Economy and Connectivity Committee's report that highlight work being undertaken out of sequence, allegations that the process for triggering payments was not done correctly, invoices relating to other projects and so forth. As I mentioned at the start of the session, we took a view on the scope of our work, as we do with any audit, and decided that our work would be best served by picking up what happened after the Rural Economy and Connectivity Committee's report and looking at the circumstances after FMEL's identification as preferred bidder instead of repeating much of that committee's extensive evidence gathering on the nature of the procurement, the design, the contract and so on.

Clearly, we are not shipbuilding experts, and I would note that, in arriving at our judgment about the scope of our work, we saw that there were conflicting expert views on the best way of operating this contract. Indeed, these were independent experts who were disagreeing, and we therefore arrived at the judgment that it would be better to look at how public money was used after the identification of the preferred bidder.

None of that detracts from what you have highlighted; clearly significant events happened during the course of the contract. However, we reasonably judged—and this is consistent with the Rural Economy and Connectivity Committee's position—that there was a significant disagreement between FMEL and CMAL about the running of the contract. Mediation and arbitration were explored with the parties and eventually, as we have set out in our report, CMAL and the Government recommended that FMEL pursue the matter through the Court of Session. FMEL took this view that that was not possible and, as we know, subsequently entered into administration.

**Colin Beattie:** But the Rural Economy and Connectivity Committee's conclusions have serious implications and surely need to be addressed. If there has been such contractor failure, it has contributed massively to the costs and delays in the project.

**Stephen Boyle:** In finalising the report, we have recommended a fuller review of what happened. It feels too glib to use phrases such as "lessons learned", given the circumstances surrounding the contract for a project that is now many years late and two-and-a-half times the original budget, and we need a fuller review to establish how such things ought to be delivered in future. We have not done that in its entirety in this report, given the work of the Rural Economy and Connectivity

Committee and the fact that the project is still being undertaken, but we share the substance of your concern that there must be a fuller review. We are pleased that CMAL has acknowledged some of our recommendations on the adequacy of the contract and the need for milestone payments to be reviewed to ensure that they are more closely aligned with quality and progress, but I am also quite sure that more reviews will follow the consideration of our report.

**Colin Beattie:** In effect, your report has not addressed the impact of contractor failure—I do not see that in your report. The Rural Economy and Connectivity Committee certainly raised the flag, so I would have thought that it would have been a priority to look at that issue. It is our public money that has been paid out to the company and, according to the evidence that has been given to this committee, it has not been paid out in the manner that it should have been. It has been paid out by CMAL, on the advice of its lawyers, according to the contract.

**Stephen Boyle:** I will bring in Antony Clark in a moment. I am not sure that I agree entirely with your assessment that our report does not identify concerns or problems relating to the running of the contract or the work of the contractor. I point to the reference in our report to the scale of operational failures in the yard when the turnaround director entered his role and the extent of the issues. In her questions, the deputy convener mentioned the management of assets, warranties and so on, and further information about the quality of cabling and so on has been uncovered very recently. There have been, to use the words of the former turnaround director, “significant operational failures” at the yard, and there is no doubt that those will have contributed to the late running of the contract.

In our report, we say that there are many accountabilities and many reasons why we are in the circumstances that we are in today. The performance of the contractor is one of those reasons.

I will bring in Antony Clark to make a further comment.

**Antony Clark:** I was going to highlight the points that the Auditor General has already made about the deficiencies in the management of the shipyard—before and, to an extent, after nationalisation—that were highlighted in the turnaround director’s report.

I will draw out another point. In our report, there is a clear reference to the weaknesses in the contract arrangements. The absence of a builders refund guarantee created a real risk to the Scottish Government and others in relation to the use of public money. From paragraph 33 onwards, we

highlight the deficiencies in the contract relating to setting out CMAL’s and FMEL’s responsibilities for managing the project. It is clear that milestones were not clearly defined and were not linked to quality standards. Mr Beattie has acknowledged the fact that CMAL took legal advice and found that it was obliged to make the payments, even if there were concerns about aspects of the ships’ quality and delivery.

**Colin Beattie:** There just seems to be such a big and fundamental gap in the overall picture. I am relying on the good work of the Rural Economy and Connectivity Committee, but I do not see where its work on the issue has been built on in Audit Scotland’s report in order to bring out that critical part of the picture. We can all argue about the contract—a huge amount of documentation has been online for some time in connection to that—but how will we address the issue of the failure of the contractor? That question mark is still sitting there.

In response to the Rural Economy and Connectivity Committee’s report, the Minister for Energy, Connectivity and the Islands highlighted that he felt that even that report did not reflect in full the

“contribution of the contractor’s non-performance, contract management and financial management, described in independent evidence”.

Why are we being so precious about this? If there is evidence that points to non-performance by the contractor that has contributed to charges on the public purse, and that applications for funding have not been made in the correct way, that should all be brought out and highlighted.

11:00

**Stephen Boyle:** We recognise that the work of the contractor is part of the story and how we got to where we are today, and that is set out clearly in the Rural Economy and Connectivity Committee’s report. As we touched on already, building on the work of the Rural Economy and Connectivity Committee, we arrived at a judgment on where our work was best focused, having recognised that there are many differing views about the circumstances that we are in today.

I repeat a point that Antony Clark has made: public sector contracts can fail, and the Ferguson shipbuilding situation is not the first example of that. When a contract is used properly, it provides insulation to a public body to end the contract should it so wish. The unique circumstances with this contract are that the transfer of risk element of a typical shipbuilding contract was not applied properly; therefore, the risk came back to the public sector body rather than resting with the



shipbuilder as it typically would. We sought to reference those points, among others.

On the work of the contractor, I am sure that that will be subject to further consideration, and we make that recommendation. I apologise for repeating myself, but we recognise that that is part of the story. We reference in particular the judgment that was arrived at by the turnaround director about the extent of operational challenges and failures in the shipyards once they were subject to review.

**Colin Beattie:** We have talked a lot about the contract and we can argue about its different aspects. However, contracts are only really there for when things go wrong, so that there is something to refer to. In this situation—again, I refer to the Rural Economy and Connectivity Committee report—it is alleged that the company did not act in the proper way in order to receive the correct payments.

As I say, contracts are there for when things go wrong, but, generally speaking, we do not expect things to go wrong. Generally speaking, delivery is made, there is good will and parties work together, but that has not taken place. There are a lot of questions around that, and the questions will get bigger and bigger. If you carry out an investigation to ensure that the contractor's apparent failures are highlighted or explained—who knows, they might be explainable—that is where the big questions are.

**Stephen Boyle:** You made a number of points, which I will try to address. We agree that contracts are there to be enforced in good times and in bad. They provide the provider and the purchaser with safeguards. The application of traditional shipbuilding contracts—the industry standards—is not, as we have mentioned already, what we expect to see in a public sector context. Nonetheless, those are the industry standards. The absence of the 100 per cent builders refund guarantee meant that the risk grew for the public sector body and, when the circumstances went awry, the risk and additional payments flew to the Scottish public sector.

Gill Miller might want to come in again on the payment schedule and the fact that it was not aligned to the quality of the work, which is clearly a significant part of the story. As we have set out in the report, CMAL has already responded to the recommendation that the payment schedule and work quality be much more closely connected in the future.

Before Gill Miller is brought in, I note that we will reflect on what further work we can undertake to add. We will not arrive at a judgment on that today, Mr Beattie. We will reflect after any further evidence sessions and, in particular, CMAL and

other public bodies undertake a full review of the lessons they have learned from the events that took place, which is the recommendation on which we end the report.

**Colin Beattie:** My simple question to you is: where did all the money that was paid in go? What was it spent on? It was not in the yard when the yard was nationalised.

**Stephen Boyle:** There is a combination of things. Gill Miller might want to cover both these points and some of the detail, and set out the analysis of the £240 million. We included the amounts paid to the contractor and the loans that the Scottish Government provided to it, some of which it was able to recover through the administration process and the valuation of the assets that were in the yard at the time of nationalisation. However, it is clear that the scale of money that was invested did not bear any resemblance to what was initially anticipated would be delivered for such a size of public sector investment. Gill, are you able to cover those points?

**Gill Miller:** Yes. On Mr Beattie's point about contractor failure, I want to make it clear that what we could say about Ferguson Marine was very limited, because it was a private sector organisation. Although we spoke to it and reviewed a lot of documentation, we could not report any issues that we found with its spending and decision making, for example. We could report what CMAL was reporting to Transport Scotland and the programme steering group. I think that we have said in several places that it started to highlight that there were issues with FMEL's performance as early as December 2015, which was only two months after the contract was awarded. We were not able to say whether we found those, because Ferguson Marine no longer existed, so we could not go in and see for ourselves and, as I have said, we did not have the remit to make those judgments about a private sector organisation.

We have made the point very clearly that CMAL consistently reported issues with the contractor, but it is very clear that FMEL completely disagrees and that it has a different point of view. It firmly believes that CMAL was responsible for the delays to the project.

We mentioned the out-of-sequence working in the report. FMEL admitted in evidence to the Rural Economy and Connectivity Committee that it engaged in out-of-sequence working to try to keep the project moving and that that was due to delays with CMAL approving the designs. We have spoken to independent shipbuilders, which have said that out-of-sequence working is not necessarily an issue and that that can take place to keep the project moving and to make for more

efficient working. However, CMAL reported that FMEL's approach in out-of-sequence working was an issue and caused problems with the project.

On the £14.5 million that was mentioned and the invoices that were submitted that were not related to the project, ministers had made an agreement with FMEL for CMAL to accelerate the £14.5 million before the CMAL board had made that decision. Ministers had agreed with FMEL that that would take place, and CMAL agreed to it only subject to very tight controls. FMEL had to submit all the invoices related to the project, and CMAL would review them and ensure that all the money that it was accelerating to FMEL was being spent on the suppliers, equipment for the vessels and so on. Our understanding is that some invoices were submitted by FMEL that were not directly linked, but CMAL refused them, so none of the £14.5 million was given to FMEL to spend on anything else.

We asked several times where the money went. CMAL paid out £83.25 million. However, as we set out in exhibit 6 in the report, a significant amount of work was outstanding. In a typical project with a 100 per cent refund guarantee, that guarantee provides a significant financial incentive for the builder to build a quality product. Because that guarantee was not in place, there was not the same level of incentive, and that placed more importance on there being a very clear link between the payments that CMAL was making and the quality of the build. As we have said, there was not that link.

CMAL was legally required to make the payments, but the fact that the milestones were not clearly defined was what caused the issues to arise. The money was being paid out, but the vessels were not being constructed as we would have expected.

With regard to the £45 million loan from the Scottish Government, the first loan of £15 million, which was made specifically on the basis of vessel progress, was very quickly drawn down by FMEL—the other £30 million was drawn down within two months—because it had a substantial number of outstanding invoices, employers threatening to withhold equipment and materials and subcontractors threatening to walk off site. That money was very quickly drawn down, but it made very little difference to the project.

As for the second loan of £30 million, although PricewaterhouseCoopers was providing the Scottish Government with reports on FMEL spending, they did not go into detail on where the money went, so we were unable to trace exactly how that money was spent and what progress was made on the vessels as a result. However, we were told that suppliers and the workforce were

paid, which stopped legal action against FMEL and allowed progress to continue on the vessels.

**Colin Beattie:** Just—

**The Convener:** We are really running short of time, Mr Beattie.

**Colin Beattie:** Okay. I have lots more questions, but I am happy to—

**The Convener:** Well, we all have lots more questions, which I think demonstrates the need for at least another evidence-taking session on this matter. I know that there are committee members who want to come back in, myself included; however, as I mentioned at the start of the session, Rhoda Grant is joining us remotely, and I invite her, in these last couple of minutes, to put her questions to the team.

**Rhoda Grant (Highlands and Islands) (Lab):** Thank you, convener—I appreciate that. I know that others have a lot more questions, so I will keep my questions quite short.

I am just seeking some clarification. Having listened to the discussion, I think that it is clear that communication between CMAL and Transport Scotland was documented. It was Transport Scotland that came back to CMAL with ministerial decisions, but is there any paperwork on Transport Scotland's discussions with ministers to show how it put these things to ministers and which ministers responded?

**Stephen Boyle:** I will ask Gill Miller to talk you through the chain of events.

**Gill Miller:** There is no documentation on any of the discussions that were had or the assurances that Transport Scotland agreed with ministers and put in place to allow CMAL's board to approve the contract. We asked for all documentation in relation to ministerial decisions, but we did not get any.

**Rhoda Grant:** So, there is no documentation on ministers' decisions and how they were carried out.

I understand that this particular decision was taken within a day. Is that normal? How would you expect a decision of such magnitude to be taken within Government?

**Stephen Boyle:** I am not sure that we are able to give you a precise or reasonable comparator for this decision. Some decisions will be taken at pace, and others will be more considered, depending, I am sure, on the availability of ministerial diaries and so forth. However, as we have sought to set out clearly in the report, decisions of significance that involve risks coming back to the public sector ought to be documented for public record.

**Rhoda Grant:** That, and the level at which such decisions are taken. At what level would you expect a decision of such magnitude to be taken?

**Stephen Boyle:** It varies. What we sought to do in exhibit 2 of the report was to set out the range of accountabilities and responsibilities and to show that, in the awarding of the ferries contract, those rested with ministers. We would expect that to be documented, but the circumstances in this case were unusual, in that the contracting body CMAL identified additional risk outside of the standard terms and conditions of the contract—for example, the builders guarantee issue that we have already discussed this morning. Given that context, the acceptance of those risks and how they would be managed needed to be well documented.

**Rhoda Grant:** Thank you.

**The Convener:** As we are literally out of time, I draw the evidence session to a close. I thank the Auditor General, Antony Clark, Angela Canning and Gill Miller for joining us this morning, and I invite them to return at the earliest opportunity.

I also thank them for their evidence. We have a whole load more questions that we need to ask and we need to consider what our next steps might be, but I must thank the witnesses for their openness and willingness to answer our questions this morning.

With that, we move into private session.

11:15

*Meeting continued in private until 11:46.*



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