



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit Committee

Thursday 1 June 2023

Session 6



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PUBLIC AUDIT COMMITTEE

16th Meeting 2023, Session 6

CONVENER

*Richard Leonard (Central Scotland) (Lab)

DEPUTY CONVENER

*Sharon Dowey (South Scotland) (Con)

COMMITTEE MEMBERS

Colin Beattie (Midlothian North and Musselburgh) (SNP)

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

*Craig Hoy (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Colin Cook (Scottish Government)

Gregor Irwin (Scottish Government)

Bill Kidd (Glasgow Anniesland) (SNP) (Committee Substitute)

Andrew Miller (Ferguson Marine Port Glasgow (Holdings) Ltd)

David Tydeman (Ferguson Marine Port Glasgow (Holdings) Ltd)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Public Audit Committee

Thursday 1 June 2023

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Richard Leonard): Good morning. I welcome everyone to the 16th meeting of the Public Audit Committee in 2023. We have apologies from Colin Beattie and I am pleased to welcome Bill Kidd as his substitute.

The first item on our agenda is for the committee to consider whether to agree to take agenda items 3, 4, 5 and 6 in private. Are we agreed?

Members *indicated agreement.*

Section 22 Report: “The 2021/22 audit of Ferguson Marine Port Glasgow (Holdings) Limited”

09:00

The Convener: We turn to our main item of business. Agenda item 2 is consideration of “The 2021/22 audit of Ferguson Marine Port Glasgow (Holdings) Limited”. We are joined by four witnesses, who will give us evidence on their perspectives on the report and will answer the questions that we have about it.

I am very pleased to welcome our witnesses. David Tydeman is the chief executive officer of FMPG and Andrew Miller is the chair of the board. From the Scottish Government, we are joined by Gregor Irwin, who is the director-general economy, and Colin Cook, who is the director of economic development.

We have quite a number of questions to put to you but, before we get to our questions, I will give you the opportunity to make short opening statements. First, I invite David Tydeman to make a short statement.

David Tydeman (Ferguson Marine Port Glasgow (Holdings) Ltd): Good morning, convener and committee. Thank you for the opportunity to come here today to bring you up to date on the activity at Ferguson Marine and to take any questions that you have for me or our chairman, Andrew Miller.

Andrew and I are both aware that, since your invitation, Audit Scotland has issued an amendment to its section 22 report, correcting timings of decisions that the FMPG remuneration committee made in 2021, which we welcome.

When I started with Ferguson Marine in February 2022, the board tasked me with three issues: restoring confidence, delivering the Glen Sannox and hull 802, and securing a future for the yard. It was very clear to me that the delivery dates in 2022 and 2023 for the Glen Sannox and hull 802 were not achievable and that relationships with Caledonian Maritime Assets Ltd had broken down.

I am sure that you will remember your committee’s visit to the yard last autumn. I confirm for the record that the views that I set out to you just before Christmas on the reasons for the delays and cost increases for the two vessels remain the same. I remain firmly of the view that management mistakes were made in the recovery from administration by Ferguson Marine Engineering Ltd in 2015-16 and by FMPG in 2019-20. Between them, those mistakes, which related mainly to design management, build sequencing

and contracting strategies, embedded unrecoverable delays into the programmes.

I also set out to you that the rest of the overall increase had come from pricing, inflation, design and specification costs and from time-related costs, recognising that the ferries budget will, by the handover of 802, have covered the yard's overhead costs across a 10-year programme.

In summary, my view remains that the increases came from four almost equal parts: mistakes by FMEL, mistakes by FMPG, and pricing and time impacts.

As we discussed during your visit, CMAL and Ferguson are now working well together, with a senior member of CMAL's management having been seconded into my leadership team at my request since March last year. As you know, the announcement by the cabinet secretary two weeks ago finally closed the due diligence process that the Scottish Government has run on the costs that we presented to it last September and the delivery dates that we set out in March this year. To confirm, we remain firmly targeted on delivering the Glen Sannox before the end of this year and 802 before the end of next year.

I began my career in the Govan shipyards more than 40 years ago, and the current United Kingdom shipbuilding market is the most buoyant that I have ever seen—demand is exceeding capacity. There is more than £250 million of suitable work for Ferguson over the next five years from BAE Systems and the CMAL small ferry programme, and that combination creates a really positive opportunity for us to get back on track and be competitive. I am pleased to advise that work has started with BAE at the Ferguson shipyard, which is making a big difference to morale on site.

We are happy to take questions.

The Convener: Thank you very much indeed. We will come to questions shortly, but before that I invite Gregor Irwin to give us a short opening statement as well.

Gregor Irwin (Scottish Government): Thank you for the opportunity to give evidence to the committee. I joined the Scottish Government as DG economy relatively recently, but I am very clear about the significance of my role as the accountable officer for the Scottish Government's investment in Ferguson Marine Port Glasgow.

Since the yard was taken into public ownership, the objectives of Scottish ministers have been clear and consistent—to provide two high-quality ferries to support our island communities, to support a highly skilled workforce and to retain commercial shipbuilding on the Clyde, with all its historical significance and the future opportunities for employment and skills that that provides.

That requires my team to ensure robust governance and to act in an open and transparent way that welcomes and responds positively to scrutiny and challenge. In that respect, I thank the external auditors for their work with FMPG and the unqualified opinion that they were able to provide on the company's accounts for the financial year 2021-22. I also thank the Auditor General for the clarity and the constructive nature of the recent section 22 report and the constructive way in which he and his team have worked—and continue to work—with FMPG and us.

In his report and the evidence that he recently gave to this committee, the Auditor General raised questions about the future costs of the vessels and the funding provided by the Scottish Government. Since that time, we have completed an extensive process of due diligence on the cost estimates that FMPG provided and we have been able to provide advice to Scottish ministers based on both value for money and the wider social and economic benefits of the proposals. That work enabled the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy to make a statement in Parliament on 16 May, in which he set out his reasons for issuing a written authority to complete vessel 802 and reaffirmed the Government's continuing commitment to delivering lifeline ferries and ensuring a sustainable future for the yard.

The committee has spent some time examining the history of the Scottish Government's involvement with Ferguson's. I recognise that we have made mistakes in the past. With the support of the committee, Audit Scotland and others, we have learned and continue to learn lessons, which we are building into the way in which we ensure good governance and provide robust challenge and assurance in our relationship with the yard. That work is now being led by the strategic commercial assets division, which was established last summer in order to pool our expertise; make best use of external commercial, legal and technical advice; and maintain an active, challenging and constructive relationship with FMPG and its leadership team.

I am accompanied by Colin Cook, director of economic development, whose directorate includes the strategic commercial assets division. We will look to answer any questions that you have about our approach to the sponsorship of FMPG.

The Convener: Thank you very much. You mentioned written authority and the recent statement to Parliament. We will start with questions around that from the deputy convener, Sharon Dowey.

Sharon Dowey (South Scotland) (Con): Good morning. Will you set out the sequence of events

that led to your decision to request a written authority, following receipt of the due diligence work?

Gregor Irwin: Yes. Due diligence was undertaken on the revised cost estimates that the chief executive officer announced in September last year. As accountable officer for the relationship with the investment in Ferguson Marine, I am required under the Public Finance and Accountability (Scotland) Act 2000 to assess the “regularity”, “propriety” and “value for money” of any such funding proposal as was implied by the revised cost increases at that time. We commissioned due diligence on those cost increases. It is a complex piece of work. We commissioned an external adviser, Teneo, to produce that due diligence.

That process took a number of months. As members would expect, we were careful to ensure that there was a full and proper interrogation of that analysis and that we conducted that due diligence rigorously and systematically. By the end of that process, and in advance of the funding payment that was made in the middle of this month, I undertook an accounting officer assessment based on the due diligence that was produced by Teneo and the analysis by my team in the Scottish Government. On the basis of that assessment, we concluded that I could not gain sufficient assurance that continuing with vessel 802 offered value for money.

You will see that, in the letter that I wrote seeking the written authority, I refer to that being a narrow value-for-money assessment. Ministers should quite legitimately take wider strategic and economic considerations into account when deciding whether to continue with funding, and those considerations are set out in the response from the cabinet secretary granting written authority.

Sharon Dowey: Paragraph 3 of the letter that Neil Gray sent you talks about the duties that you mentioned, which are set out in the Public Finance and Accountability (Scotland) Act 2000, particularly in section 15 of that act, and are further covered in the Scottish public finance manual. Given the high-profile issues with the ferries, why has it taken so long for scrutiny work to be carried out on the projected costs?

Gregor Irwin: The role of the accountable officer is to conduct scrutiny of any significant funding request in order to ensure regularity, propriety and value for money and the feasibility of the funding proposal. In this case, back in September, there was a very substantial increase in the cost estimate, so it was appropriate for external, independent, expert due diligence to be commissioned at that time. It is, by its nature, a complex calculation. We wanted to differentiate

between the completion costs for vessels 801 and 802.

Inflation was very high in September last year and there was considerable economic uncertainty. There were also international supply chain challenges, which added to the uncertainty. We wanted to ensure that the estimates that formed part of the value for money calculation included adequate contingencies and that we were making the best possible and most informed decision. It is my duty as a senior civil servant and as accountable officer to satisfy myself that the analysis that we get—even when that is independent, external analysis—is robust and to test the assumptions that it contains.

I reassure the committee that we took the matter to its logical conclusion and reached a decision in advance of the payment that was made in the middle of this month. A judgment required to be made and written authority sought in good time before that occurred.

Sharon Dowey: The committee has been talking for quite a while about whether a blank cheque was issued. Should the scrutiny work not have taken place much earlier?

Gregor Irwin: Scrutiny is a continuous process. There must be scrutiny at every stage. The increased cost estimate that was provided in September last year was the trigger for more detailed scrutiny, but the scrutiny process is continuous. There was no decrease in the level of cost scrutiny for the completion of either vessel. The letter from the cabinet secretary that grants written authority is very explicit about the need for Scottish Government officials to double down on our scrutiny of costs and of progress on the vessels against the delivery milestones.

Scrutiny is continuous. We will intensify it when that is necessary, and there is no let-up in the scrutiny of either costs or delivery against milestones.

Sharon Dowey: Mr Gray has accepted your judgment on the narrow value-for-money case for continuing to build vessel 802 at FMPG. I have not seen the report. Was your advice to continue to build vessel 802 or to go immediately to reprocure?

09:15

Gregor Irwin: I will explain what is meant by that narrow value-for-money case and what I was seeking authority for.

As I mentioned, the Public Finance and Accountability (Scotland) Act 2000 sets out clearly that I need to be assured of the value for money of any funding proposal. The Scottish public finance manual and the green book provide some

guidance on that. It is clear in some areas and perhaps less so in others. For example, when doing that calculation, you can take into account direct economic benefits, but it is a bit ambiguous as to whether you can take into account indirect and induced economic benefits. Indeed, we did not do that in this case. That is one reason why we refer to it as a narrow value-for-money calculation.

There is a second reason. To make that calculation tractable, our advisers compared a stark choice between completing vessel 802 and the alternative of reprocurement, which meant being neutral or silent on the yard's future. However, ensuring a sustainable, vibrant commercial future for the yard has been a long-standing objective of ministers and completing vessel 802 is the only feasible path to that outcome. We spent quite a bit of time with our advisers working that through and deciding what the best way to do the analysis was. In the end, we decided that the only way in which we could do it was to be silent or neutral on the yard's future, so the calculation is narrow in that second sense as well.

In my letter seeking written authority, I noted that it was a narrow value-for-money calculation and that the PFA act and the SPFM recognise that ministers can take into account wider social and economic benefits and the wider strategic case for continuing with a particular proposal. Indeed, when the cabinet secretary replied, he made that case, and that is the basis on which the written authority was given.

My role was to assess value for money and the language that I used was deliberate. I could not be sufficiently assured of value for money in this case based on the analysis that we did.

Sharon Dowey: The value-for-money assessment concludes that it would be cheaper to procure a new vessel. Did you come up with a new, updated figure for the cost of the two ships? If so, are you able to share it with us?

Gregor Irwin: As part of the analysis, we asked our external commercial adviser, Teneo, to interrogate each cost line and ensure that we have built adequate contingencies into our forecast. They have done that. We are satisfied that we have a good external, independent opinion on what those costs are likely to be.

On the question of who provides evidence and a formal opinion to Parliament on costs for completing the vessel, if I remember correctly, the CEO does that each quarter to the Net Zero, Energy and Transport Committee. The relevant findings of the exercise will be shared with the senior leadership team at Ferguson's. The CEO will have the opportunity to inform Parliament at the usual time and in the usual way if, based on

that, he judges that any changes are required to the estimated cost to complete.

Sharon Dowey: You do not have a figure that you can share with the committee.

Gregor Irwin: I am suggesting that it would be appropriate for the CEO to inform the Net Zero, Energy and Transport Committee in the usual way of any changes that he would make to the estimated cost to complete the vessels.

Sharon Dowey: Mr Gray's letter refers to

"the forecast total costs to complete vessels 801 and 802 since the point of public ownership".

Is there a final figure for the cost of the vessels prior to public ownership?

Gregor Irwin: The CEO may have better information or a better recollection of that information than I do. However, my understanding is that the cost of the build of the vessels prior to public ownership was £83.25 million.

Sharon Dowey: Okay. I have a question for David Tydeman. Do you agree with the current cost projection—not that the committee knows what the current cost projection is, because it has not been shared—and the delivery date for vessel 802? Can you confirm the date on which you currently expect to deliver vessel 802?

David Tydeman: We are working for late summer 2024, with a fallback date of the end of December 2024. That is the delivery date for the second ship—vessel 802—that we are committed to. The budget that the cabinet secretary published was, I think, £105.1 million, including the small contingency. That is the figure that we set out last September, and we are still working to it.

Sharon Dowey: The Cabinet Secretary for Wellbeing Economy, Fair Work and Energy is responsible for Government investments, including Ferguson investments. The Cabinet Secretary for Finance is responsible for the Scottish budget, which includes public sector productivity. The Minister for Transport is responsible for ferry services and maritime policy, and supports the Cabinet Secretary for Net Zero and Just Transition. Why was written authority sought from the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy rather than the Cabinet Secretary for Finance, the Minister for Transport or the Cabinet Secretary for Net Zero and Just Transition?

Gregor Irwin: I presume that that question is directed at me.

Sharon Dowey: Yes.

Gregor Irwin: Cabinet procedures on seeking written authority require that any written authority from ministers must be provided by the relevant

cabinet secretary, but must also be cleared by the Deputy First Minister and the First Minister. The Deputy First Minister, who is also the Cabinet Secretary for Finance, and the First Minister are therefore also involved in the process.

In this case, given that sponsorship of the yard sits within the portfolio of the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy, Mr Gray was the appropriate cabinet secretary from whom to seek written authority.

Sharon Dowey: Okay. Thanks.

We were pleased to see the written authority coming through. The Scottish Government has also confirmed that it is going to publish confirmation of any written authorisations on its website. Can you confirm whether the intention is that the Scottish Government will publish all instances of written authority provided to date in one place on its website, so that that information is transparent for anyone who wishes to access it?

Gregor Irwin: The PFA act is quite clear on that point. If written authority has been sought and granted, that information needs to be disclosed to this committee. If I remember correctly, that should be done in good time, relatively early in the process, and the requirement is that we inform the Auditor General for Scotland of any requests for written authority at the earliest opportunity. We did that in this case. If a request for written authority is made under the PFA act, that information has to be made known and made public very soon after the request.

The Convener: Thank you. I want to pick up on that issue. We are very interested in written authority, because we have not seen any since 2007. Therefore, you will understand why we are interrogating the procedure, who was involved, and what steps were taken. You have confirmed that the First Minister and the Deputy First Minister and Cabinet Secretary for Finance were involved. Do you speak to the permanent secretary about those decisions?

Gregor Irwin: Yes. The permanent secretary is the principal accountable officer. He is very much part of the process and is involved in ensuring that the process is signed off, that we are following our obligations as accountable officers, that we are following the terms of the PFA act and that we are complying with the Scottish public finance manual. The permanent secretary was involved in giving advice and would have seen relevant communication.

The Convener: Again, under the Scottish public finance manual, you are obliged to speak up if you think that something is not value for money, which you did. Do you not think that you blurred the lines a little bit in your role as an impartial civil servant in the justification that appears in your letter to Neil

Gray, which we have seen, around Government policy objectives and ministerial decisions? You stray into the policy territory. Why did you feel that it was necessary to do that?

Gregor Irwin: I am very clear about my obligations under the PFA act. I am required to take a view on value for money: if I judge that I cannot be assured of value for money in a funding proposal, I need to seek written authority. I am also directly accountable to Parliament in respect of my role as an accountable officer.

Equally, the PFA act recognises that ministers might wish to take into account wider considerations. As senior officials, we provide advice to ministers to help them to implement their policies. Ministers' objectives with regard to FMPG have been clearly stated. They are long-standing objectives; they have not altered significantly over the course of time. The civil service also has an obligation to provide Scottish Government ministers with advice that allows them to implement their policies.

The Convener: Forgive me. Those are steps that were taken by a minister that we have not seen for a very long time. However, rather than simply saying that you do not think that something represents value for money, full stop, in the letter you go on to elaborate about there being

"entirely legitimate and important factors that Ministers can take into account".

Do you not think that that was straying into territory that is about Government policy? Is it not your job simply to say whether something meets the test of propriety, regularity and value for money?

Gregor Irwin: It is certainly essential that I do what you have just described; the letter seeking written authority is clear on points about regularity, propriety and value for money. As I have said, as an accountable officer I am accountable to Parliament for the exercise of my obligations under the PFA act. At the same time, civil servants are accountable to our ministers and we provide them with advice that allows them to implement their policies. The letter therefore recognises, as the PFA act does, that there might be wider considerations that ministers would wish to take into account in deciding whether to proceed with a particular funding proposal. That is what was done in this case.

The Convener: It was, however, very much a "On the one hand ... and on the other" piece of advice that you gave, which I think is an interesting approach.

I will move on to something else to do with the written authority decision. In your answers to Sharon Dowey, you mentioned external

commercial advisers. Are you prepared to share the workings of those commercial advisers with the committee?

Gregor Irwin: The Government absolutely remains committed to an open and transparent approach to our decision making.

The Convener: So, is that is a yes?

Gregor Irwin: It has already been discussed with the Auditor General and his team what we will be able to share in terms of AO assessments and what additional information we can provide to Parliament. The commercial sensitivities in such assessments place constraints on what we can put into the public domain, but our commitment is to be as transparent as we can be, and we will work that through. As I have said, we are in discussions with the Auditor General and his team, but the commercial sensitivities will place limits on what we can share.

09:30

The Convener: We understand that and have, as a committee, stated on numerous occasions that we are fully behind FMPG and the yard winning more work and being successful.

Mr Irwin, you have mentioned the Scottish public finance manual a few times now. I point out that it contains a section on this committee and your accountability not just to Parliament but to the committee, in particular. The advice in the manual, to you as the accountable officer, is that

“You may also be called on to satisfy the Committee that all relevant financial considerations were brought to the attention of Ministers”.

With that in mind, are you prepared to share that information with us?

Gregor Irwin: I can provide you with the assurance that “all relevant financial” matters have been

“brought to the attention of Ministers”.

That is the nature of the process that we have gone through in commissioning due diligence, interrogating it, producing a detailed value for money assessment and reaching the conclusion that I could not gain sufficient assurance that value for money for the completion of 802 was sufficiently assured. It was on that basis that I sought written authority. We have absolutely provided ministers with the information that they require and the assurance that they need.

The Convener: I go back to my earlier question, which was this: are you prepared to share that information with the committee? We understand entirely that some elements of the work that you do in relation to FMPG are commercially sensitive, but I presume that the information could be

supplied to us in a way such that it would not compromise commercial and confidential information.

Gregor Irwin: As you have acknowledged, we all have a shared interest in ensuring the commercial success of the yard. As the yard’s competitive position is absolutely central to that, we need to be careful that we do not share commercially sensitive information or put it into the public domain.

What we are doing—and what we will work through with the Auditor General and his team—is seeing what we can do to share additional information. That process is on-going and is not yet complete, but we absolutely need to get it right, because we are committed to transparency. We want to show our working as much as possible, while respecting the constraint that arises from the fact that there is commercially sensitive information. We need to be careful to ensure that that information is not placed in the public domain either intentionally or inadvertently. We need to get that right, and we will take advice from the Auditor General and his team in that regard.

The Convener: Can you give us, this morning, a timescale for when you will make decisions on what can or cannot be released?

Gregor Irwin: I do not have a firm timescale for that—

The Convener: Just roughly.

Gregor Irwin: I imagine that it would be a matter of weeks rather than months. It is important that we get this right. On all matters of sharing information that potentially impacts on the commercial viability of the yard, we must absolutely ensure that we make those judgments in the right way and that we do our best to be as transparent as we can be. We will work through that process as diligently and as promptly as we can while ensuring that we make those judgments in the right way.

The Convener: Let me turn to something else that will put under scrutiny your commitment to openness and transparency—the First Marine International report. Can you explain to us why you are not prepared to release that into the public domain?

Gregor Irwin: As I have said already, we remain committed to transparency. The First Marine International report is an important piece of work, which was commissioned in summer last year and produced in January this year. It provides a detailed assessment of what it would take to bring the productivity of the yards up to the standards that are required of a typical northern European shipyard, so that the yard is fully able to

seize the opportunities to which the CEO has already alluded, and so that we can do everything possible to ensure that it enjoys a strong commercial future.

That report, by its very nature, goes into detail about where the yard is currently performing well, where the productivity challenges are greatest and what needs to be done in order to address them. That information is inherently commercially sensitive, which is an area where freedom of information legislation provides exemptions. Legislation provides a basis on which the commercial sensitivity of some information—which, if released into the public domain, could impact on the ability to compete for and win new business—can be protected, which is appropriate in this case.

The Convener: According to your letter to me, however, when I add in the VAT, a quarter of a million pounds of public money has been spent on commissioning that FMI report. Are you saying that nothing about it can be published?

Gregor Irwin: It is a very important piece of work. It is absolutely right that we commissioned first-class external independent technical advice that allows us to understand in detail what it would take to bring the productivity of the yards up to the average standards for a northern European shipyard, so that FMPG is well placed to win new orders and get on that path to a sustainable commercial future.

Although that sort of advice might not come cheap, it is very important and absolutely integral to the work that is under way in the yard to develop a long-term business plan. This is what it takes—that advice is one of the things that are necessary to ensure that the right decisions are taken to put the yard on the path to a sustainable future.

The Convener: Why is the report covered by a non-disclosure agreement?

Gregor Irwin: No non-disclosure agreement is in place between the Scottish Government and FMI. I should add that an open procurement exercise and competition took place before FMI was appointed to do the work and that, when it was appointed, a discussion took place about whether a non-disclosure agreement between the Scottish Government and FMI was needed. The view of officials at that point was that it was not needed, because the freedom of information legislation provided adequate protection for commercially sensitive information. In that case, it would clearly be commercially sensitive information, so we felt that adequate protection was provided.

The yards entered a non-disclosure agreement with FMI separately—the CEO might wish to

speak to this point, so I will pass to David Tydeman.

David Tydeman: The contract was directly between FMI and the Scottish Government, and there were terms of confidentiality between the two parties in it. It is entirely appropriate that we needed an NDA before FMI released information to us and FMPG released information to FMI, because we were not party to the actual contract terms of the engagement.

The Convener: So, whose name is at the bottom of that contract with FMI? Is it the Scottish Government's or FMPG's?

David Tydeman: The contract is directly between FMI and the Scottish Government. FMPG had to share information with FMI. FMI has intellectual property in respect of the way in which it compares shipyards across the world. It was important to it to protect that IP—how it develops algorithms—in its terms and conditions.

The Convener: But the FMI website says:

“We act with integrity and transparency, holding ourselves to the highest standards”.

According to my reading of the reports, the contractor FMI—not the client that was buying its services—instigated the non-disclosure agreement.

David Tydeman: The agreement was mutual between the senior director in FMI and me, given that we were about to share sensitive information. As I said, that was outside the contract between FMI and the Scottish Government, so it was entirely appropriate to have a commercial NDA in those circumstances of sharing information.

The Convener: Again, Mr Tydeman, you understand that a quarter of a million pounds of public money has been spent on that piece of work, and we are told that we can have no sight of it whatsoever.

David Tydeman: I understand that. The document is the property of the Scottish Government. It has been made available to me. However, the decision is for the Scottish Government.

The Convener: So we should knock on Gregor Irwin's door.

Finally on this subject, one of the principal recommendations was, I presume, about productivity. You mentioned comparisons with other northern European yards. However, part of the minute of the FMPG board meeting on 2 February 2023, which Andrew Miller chaired and which Colin Cook attended, I think, says that “CM”, which I understand to mean Chris Mackay, who is a non-executive director, noted that the FMI report—it says “reports”, so we will come to

whether there was one report or two—said that the yard needs to be three times as productive as it is. That means that some of the information in the FMI report is out in the public domain.

David Tydeman: There are two reports. The first FMI report was done nearly two years ago—18 months ago—directly between FMPG and FMI. That was, in effect, an audit at that time—post-recovery from administration and during Covid times—of where the yard was. The FMI study covered 10 or 11 areas, from how we handle steel work to how we handle systems and management processes. It was a snapshot in time—an audit—18 months ago.

The Convener: Okay.

I will come back to Gregor Irwin. In your letter to me of 19 May, you say that the reason why you were not prepared to disclose any of the FMI report was that you needed to protect FMI's methodologies and intellectual property. However, I presume that any consultant that is hired by the Government has a methodology and relies to a certain extent on intellectual property rights. Why on earth would any report by any consultant ever be published, if such are the criteria to be applied?

Gregor Irwin: David Tydeman has alluded to the fact that particular elements of the technical approach that FMI takes to doing that type of work mean that it has intellectual property that it wants to protect, which is exposed if detailed reports are published subsequently. Essentially, its competitors could take and adapt its intellectual property if that were done.

That is as I understand it; that is what we, as Government officials, have heard. We have to respect what we have heard from FMI. That might be one of the reasons why the yard had a conversation about an NDA. We concluded that we could provide sufficient protection for commercially sensitive information—whether that was the intellectual property of FMI or information that would potentially put the yard at a disadvantage if it went into the public domain—without an NDA, using FOI exemptions instead.

The Convener: Okay. We need to move on. We understand that there are commercially sensitive pieces of information that would almost certainly be contained in that report, but I am not sure that we accept your argument, Mr Irwin, that the methodology of the consultants needs to be protected.

09:45

I will turn to another area that we spoke to the Auditor General about, when he was before the committee—the overall framework agreement for pay. The yard was nationalised towards the end of

2019, so why did it take until March 2022 before a framework agreement on pay and remuneration was agreed?

Gregor Irwin: The framework agreement is quite a broad document that sets out a range of expectations in the relationship between the Scottish Government and the yards. It certainly covers pay, but it also covers all aspects of the application of the Scottish public finance manual. The production of that agreement took time because it is an important document; it was important that we got it right.

As the Auditor General noted in his evidence to the committee a few weeks ago, FMPG has an unusual status. On one hand, it is a non-departmental public body, with all the obligations that that entails to apply the Scottish public finance manual, and with the CEO as an accountable officer with responsibility to this Parliament and this committee for the funding that is provided. On the other hand, the yard is required to act in a commercial manner and to be commercially competitive. That creates an unusual status and, to some extent, some tensions that need to be addressed. The framework agreement attempts to do that.

Right from the start, at the point of nationalisation, when the yard was brought into public ownership, the sponsorship team in the Scottish Government told the yard that, at that point, it was obligated to comply with the terms of the Scottish public finance manual. At that time, advice was provided to the yard about what that implied. Of course, there was a flow of advice over time, until the point when the framework agreement was concluded in March last year. In a sense, that attempted to consolidate that advice in a single place.

That framework agreement has now been in operation for 15 months, and during that time we have continued to offer updates to the yard, including specifically on questions to do with public sector pay. For example, the sponsor team within the strategic commercial assets division told FMPG in a letter on 9 February that Scottish Government officials would work with pay policy colleagues to provide advice to FMPG on pay proposals and to ensure that it complies with the terms of the Scottish public finance manual.

The agreement itself says that, although FMPG is not required to comply with public sector pay policy, there is an expectation that remuneration policies and decisions will be broadly consistent and that any significant deviations would require further approval. That is recognised within the framework agreement. We can also see—it has been commented on in the committee—that there is some ambiguity about what that means in practice. This is an example of one of those areas

where, now, given that we are in the process of revising that framework agreement, we absolutely want to ensure that we do everything that we can to provide the clarity that we all need in this relationship about what that should mean in practice.

The Convener: Okay. Mr Tydeman or Mr Miller, do you have any reflections on the bonus payments? We are talking about the report that was produced by Audit Scotland, which drew particular attention to £87,000 that was paid out, based on a 17.5 per cent bonus payment that was made to certain senior members of the team.

Andrew Miller (Ferguson Marine Port Glasgow (Holdings) Ltd): The Auditor General's report has been useful in giving us a checklist to use internally with the board for some of the issues to do with the framework that need to be reviewed by the board at FMPG.

FMPG is a commercial enterprise that works in a highly competitive market, so it is important that we find talent for the senior management. It is also important that we retain that talent within the senior management in order to complete our journey towards the eventual profitability that is set out in our five-year plan. That is all-important. We must be competitive. As David Tydeman said, there is £250 million of available work that is suitable for the yard, and we must ensure that we have the right talent in place to achieve that.

I do not understand the narrative around the term "bonus". The payments are retention payments that are made because some of the senior staff have parts of their remuneration at risk, and they have to achieve certain targets that are controlled by the remuneration committee of the board with regard to our key performance indicators, which are reviewed regularly, before any payments are made.

Some of the payments are contractual, from employee contracts that go way back over 10 years, and they are personal to the individuals. Any changes to those contracts will follow the review that the board is undertaking now, through the remuneration committee, to ensure that the terms and conditions of the contracts are correct and proper, as we try to maintain a competitive position in the market.

We have to show that we have had good regard to employment contracts and employment law. As I said, some of the employment contracts go way back, to prior to the first administration, and those contracts must be observed. It would take individual negotiations with the people who qualify to remove those elements. However, if those elements are removed, the future of the Ferguson Marine yard is at risk, without its being competitive.

The Convener: That is an interesting analysis, Mr Miller. What about having good regard to public accountability? In the end, we are talking about a project—a procurement for two vessels that are five years late, and counting, and three and a half times over budget. In that environment—as, I think, Mr Coffey said when the Auditor General was here—it beggars belief that bonus payments have been made.

Andrew Miller: They are incentive payments for performance. I have due regard—

The Convener: If the payment is for performance—

Andrew Miller: I have due regard to the public money that has been invested in the yard, and so does the board. We hold the management to account. The incentive payments are paid across a wide range of issues, and 801 and 802 were an important component of those issues. David Tydeman's ability to access the market for new work beyond completion of those vessels is very important, and, quite correctly, new business is a component part of the overall programme of key result areas, which David and his team have delivered—there is new work from BAE Systems, for instance.

Therefore, against the KPIs and KRAs that were set, certain elements trigger performance payments, because those salary elements are at risk, for the senior management.

The Convener: Hang on a minute, Mr Miller. This is not just an enterprise in which public money has been invested. It is owned by the Scottish Government. There is one shareholder, which is the Scottish Government—

Andrew Miller: I understand that.

The Convener: —so, as the chair of the board of that organisation, do you not see there being any need for public accountability and public interest in the remuneration structure—not of the people who are building the ships but of the people at the top of the organisation?

Andrew Miller: I understand that, and we are accountable, but at the same time, as I have said, the business must remain competitive in the open market, and being competitive means having the right people who can deliver the future growth of the business.

The Convener: Well, I think that the people who are watching this will have a view about what has been delivered, what the performance has been like, what the outturns have been and whether those match up to people getting a 17.5 per cent "incentive payment", or bonus—as you wish, because that will be something that people make up their own minds about.

I have a final question for Mr Irwin about something that was drawn out in the evidence session with the Auditor General but which is also contained in the report.

Earlier, you mentioned the sponsorship team arrangement. The Auditor General's view is that there is a good deal of "ambiguity" about the relationship between the sponsorship team and FMPG and about how oversight worked. Actually, one of the catalysts for his drawing that conclusion was the fact that there was no advance clearance of the remuneration system.

Gregor Irwin: The remuneration committee at FMPG decided on KPIs in November last year—

David Tydeman: It was 28 October.

Gregor Irwin: I stand corrected: that happened in October last year. The information about KPIs was communicated with the sponsorship team in February this year. By that stage, a contractual commitment to pay bonuses—contingent on performance—had been made. Therefore, when the sponsorship team was informed about those KPIs, that was not a request for them to be approved; it was just for our information. We recognise that that is not how the process should work.

I have already read to you the relevant section of the framework agreement so, if it is acceptable, I will not read it again, but there is some ambiguity in the language that is used in that section of the framework agreement. That is an area where we need to provide clarity. We need to ensure that, when anything to do with pay policy is proposed by the remuneration committee at FMPG, the Scottish Government is consulted on that and is asked to approve it before any contractual obligations are made. As part of the review of the framework agreement that is under way and that we hope will be concluded by the end of this month, we will seek to provide clarity in that specific area, as well as in other areas.

The Convener: Thank you. We will move on now, and I invite Willie Coffey to put some questions to you.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Briefly, with regard to the beggaring of belief issue that was mentioned earlier, the point that the committee—and, perhaps, the public—were making, Mr Miller, is that there is a reasonable expectation that bonuses or incentives would somehow be connected to performance and delivery, rather than to competitiveness and retention of staff. We—and the Government—were genuinely surprised to learn that that system was not connected to performance and delivery. Clearly, the project is five years late and well over budget, so it is difficult for us—and, I am sure, the public—to understand how that situation could

continue to be maintained. However, we dwelled on that a moment ago, so I will probably leave it at that, if that is okay, convener and Mr Miller.

I will start with a couple of questions to Mr Tydeman. It is good to see you here again in front of the committee, with a chance to give us your view on how the project has fared since the beginning. In your opening remarks, you outlined that a number of reasons lay behind the delays and cost overruns. You specifically mentioned events in 2015 and 2019, which ultimately meant that timely completion of the vessel was "unrecoverable". You talked about design and build sequencing and contractual strategies. Since the public are so interested in the project, will you expand a little on what you meant by that and what the issues were that, in your opinion, meant that the project, even at that stage, was unrecoverable?

David Tydeman: It is important to reflect on the circumstances of Ferguson's in 2014. It went into administration with only 70 staff, and the Glen Sannox and vessel 802 are the most complex and largest vessels that the yard has ever built. To place those contracts in 2015 needed a careful start, to make sure that there was a robust design and a robust plan.

From what I have been able to read back on, over the first year, there was quite a lot of debate with CMAL and FMEL on finalising the design as they started construction. As I showed committee members when you came on site, they chose a build strategy at that time that was unconventional in not putting as much outfitting into the steelwork blocks before they were welded together and, largely, building an empty ship. That meant that installing pipework and other internal components was more expensive than if it had been done in the blocks in the shed.

10:00

Therefore, some embedded costs were caused by the decisions in 2015 to build the steelwork fast and build a largely empty ship. Similarly, after the recovery from administration in 2019-20, the principal electrical contractors had terminated their contract, which they had the right to do, and the design contractors also had termination clauses, so my predecessor had to renegotiate the main electrical contracts and start again with design contractors. That learning curve also embedded time and costs.

Willie Coffey: Over many years, the committee has examined a number of projects. I think that it would be reasonable to say that, in our view, if mistakes are made at the outset, usually, there is no successful conclusion at the end, either with regard to time or budget. We have seen a number

of examples that fit that category. If the project leaders do not get it right at the beginning, they are hardly likely to get it right at the end. Would you say that that is a fair description of the entire process?

David Tydeman: Yes, I think that that is a fair description. The embedded decisions that I talked about a moment ago caused extra man hours and time delays and, as I said in my opening statement, time costs money. Because we have gone over a 10-year programme rather than the original four-year programme, we have had inflation and other pricing impacts as well.

Willie Coffey: To run forward to the present and follow up on questions on costs from my colleague Sharon Dowey, what is the biggest contributory factor to the cost overrun for vessel 802?

David Tydeman: I think that there are two aspects: first, the strategy of building an empty ship, which I mentioned, when vessel 802 was put together. The majority of that was done before FMPG was set up, so FMPG inherited that build strategy. The change of design contractor was probably the other major contributing factor.

Willie Coffey: The convener did his level best to glean more detail from everyone on the analysis of the decisions that were reached. Inflation of the cost of materials was mentioned. Has that been a significant issue in the final cost estimate for vessel 802?

David Tydeman: As I set out in my opening statement, I think that a quarter of the impact comes from that, and another quarter comes from time-related costs.

Willie Coffey: I will ask the same question of Gregor Irwin. What does the Scottish Government feel that the biggest elements have been in the cost overrun of vessel 802?

Gregor Irwin: I defer to the CEO's analysis on that point. We also use CMAL as technical advisers on those questions so, rather than just taking FMPG's analysis of those points uncritically, we cross-check them. The CEO has absolutely summarised the position that we would recognise as well.

Willie Coffey: Do both the Scottish Government and Ferguson's accept the findings of the section 22 report?

Gregor Irwin: Yes, we accept the findings of the section 22 report. As I said in my opening statement, we are grateful to the Auditor General and his team for the constructive way in which they have engaged with us and continue to do so. We welcome scrutiny and advice on how we should improve the way in which we provide oversight and assurance on the relationship with FMPG.

Andrew Miller: The group board of Ferguson Marine accepts the report and we have used it as the basis of a package of work. The board is working with the management on tightening up certain things, such as the framework and employment contracts. We are working towards a resolution of all the issues that the Auditor General prepared.

Willie Coffey: That covers the second question that I was going to ask about progress on the recommendations.

I will ask a final question of the Scottish Government officials. Mr Irwin, if the cabinet secretary had accepted your conclusion on the value-for-money assessment for 802, what would have been the practical consequences of not completing it? What would have happened to the yard and the jobs? What would have happened to 802 had he accepted your advice?

Gregor Irwin: I would need to look for the exact language that he used, but I think that there is nothing in the cabinet secretary's response that suggests that he did not recognise that, based on a narrow VFM calculation, my conclusions were in any way incorrect. I think the letter acknowledged and accepted those conclusions.

The cabinet secretary was able to take into account the wider economic and social benefits from completing vessel 802, and we can all see that, if vessel 802 was not completed, securing the path to a sustainable commercial future for the yard would become much harder. It is difficult to see that path, so there would have been considerable implications of that decision. The cabinet secretary concluded that he accepted my analysis but recognised the wider economic and social benefits of completing vessel 802, and therefore provided written authority to continue funding its completion.

Colin Cook (Scottish Government): The other implication that I know the cabinet secretary will have taken into account is the delay that would have occurred from having to seek a replacement for 802 from another yard, which could have taken two and a half years. As you know, and as has been repeatedly stated, the Scottish Government's objective is to put those vessels, including vessel 802, into service in Arran and to provide services to our island communities.

Willie Coffey: My question was quite specific. What would have happened to the yard and the jobs, and what would have happened to the 802 hull that is in the yard if we had not completed it?

Andrew Miller: I would say that 70 per cent of the people who work at Ferguson Marine live within a 10-mile radius of the yard, so it would have had devastating consequences for the local community, which has suffered long term, in terms

of competitiveness and the ability to retain skills. One key element in the acquisition in the first place was retaining key skills so that Ferguson Marine could be a player in the broader opportunities of the Scottish economy.

Willie Coffey: What would have happened to the hull?

David Tydeman: There is machinery inside the hull's main engines that has a value, and the steelwork has a value, so I guess that that would have been put to the market.

The Convener: Bill Kidd has some questions.

Bill Kidd (Glasgow Anniesland) (SNP): I will start with Mr Tydeman and Mr Miller. As far as we know, and as far as the public is concerned, there remain uncertainties and risks about the future viability of the yard. At this time, it seems that Ferguson Marine's only other commercial income is from a contract with BAE relating to the secondment of 18 employees.

As a yard that has to maintain and grow people's confidence, what potential other commercial income is there other than those 18 seconded people in your future plans, and how has that changed over time? Ferguson Marine was previously a very well-known yard; it had a lot of work and drew in potential contracts because of that. How are you looking forward for future potential commercial success?

David Tydeman: When I first joined, it was obvious to me that the delivery dates and budgets for the two ferries needed to change, but it was also obvious that the scheduling of work on those ferries meant that, by the end of 2022 and into early 2023, we would have people with skills who were not required on either ship. In fact, today, we finished the last module for 802 and, on Monday, that wheelhouse unit gets lifted on to the bow of the vessel. That means that the scope of work on the two ferries for the team that has been building the modules in the manufacturing sheds has finished. Progressively, as we finish both ships during the next 12 to 18 months, more and more skilled people will start to become available whom I cannot keep fully occupied on 801 and 802.

We have been planning for that for some time, and I am delighted that we were able to sign a framework agreement with BAE Systems, and that we have also had conversations with Babcock over at Rosyth. Both those yards have more work than they can do on their sites—as I said, this is a buoyant time in the shipbuilding market—and they need supporting contractors.

We have had dialogue with Babcock about the type 31 frigates programme, but the proximity to Govan and BAE—which is running the type 26 programme—makes that an obvious first choice.

The framework agreement that we set up last autumn said that we will have empty sheds and spare key resources and we can work together on a pipeline of work that gradually builds up enough to keep people busy. We have started that, and have two contracts within that at the moment, involving not only the secondment of labour but a small project to build three units for type 26 number 3. The steelwork for that project has arrived on site and the fabrication work, which is just starting, will be completed by October. That has been called the pilot project, because it is starting to take seconded labour into physical work at the Ferguson yard, and we will probably pull back the seconded labour from Govan soon, as that work builds up.

My hope is that we can get significant work out of the type 26 programme for ships 4 to 8. The accelerated programme that BAE is working on means that it has to have partners around the whole of the United Kingdom, just as the carriers were built with components being put together all around the country and then assembled in final locations. That is the preferred strategy of BAE and Babcock for both of those frigate programmes, so we hope to be a strategic partner in the type 26 programme.

To put it into some scale, hull 802 will be about 3,000 tonnes of weight when she launches down the slipway later this year, and a bow block unit for type 26 ship 4—which we hope to do with BAE—will be about 900 tonnes, so each of those components represents almost a third of a ferry. A programme of work with BAE can use more than half the capacity of the yard, and I hope that we can complement that with the CMAL small ferry programme.

Bill Kidd: That sounds positive. The Auditor General's report says that the members of your workforce are skilled and, therefore, of course, they will be sought out by others in the meantime, but it also says that, in general, they are ageing. What work is being done on apprenticeships and building—if you will pardon the pun—a future for the yard and the area, which, as Mr Miller mentioned, has had problems of decline? Is the idea of young people coming on board—that is another pun; forgive me—being looked at?

David Tydeman: Very much so. We have had three years of apprentices with, I think 62 or 63 apprentices across those years. The third year of apprentices is just graduating, and I know a couple of them have just got their higher national diploma and higher national certificate qualifications. They will become part of the normal workforce as they graduate this summer.

We have had more than 500 applicants for 15 places for this September, and we are in the process of narrowing down that number to find the

final 15. We are down to a short list of 30 at the moment and we will then select the 15 candidates to start at the end of August. That is a really positive indication that people want to join the industry and want to join Ferguson.

10:15

Bill Kidd: Obviously, you want to continue growing that and taking on board even more young people and others who are already skilled, but what further investment will be needed to maintain a competitive building programme so that you can look forward to a future at the yard?

David Tydeman: We are working on the road map that the FMI report that we talked about earlier helps to guide us through. It sets out areas where we need to improve, such as the way that we handle plating, the way that we burn plate as it arrives, the flow of the yard and some of the crange. We are working on that plan at the moment, and we will make it public once it is approved.

Bill Kidd: The two vessels that we have been talking about will obviously provide a positive aspect to build on once they are completed. Are you seeing anyone at the moment? You will be going out looking for contracts at some point anyway, but are people coming to you to say that they would like you to be involved in future projects?

David Tydeman: Yes, indeed. We have a small commercial team that is tracking the market and we have been putting in proposals to the patrol craft market. The most significant development, which will create 10 to 15 years of work in Scotland, is the commitment by two major operators in the wind farm market that want to build some of their ships in Scotland. We are having discussions and are working on preliminary designs with one operator. The first of those ships could be built in 2027. That does not fill the immediate gap, but the other operator, which has placed some contracts in Vietnam and in Spain, also wants to build a few ships in Scotland to support the Scottish and UK wind farm markets. That is a very significant opportunity for us in the future.

Bill Kidd: That is a future route, obviously—thank you for that.

Mr Irwin, the Scottish Government and Ferguson Marine are working together to agree on longer-term plans. How about future investment by the Scottish Government? According to the cabinet secretary, the yard aims to be privatised again, I believe.

Gregor Irwin: As Mr Tydeman has already noted, the FMI study is one of the pieces of

evidence that we are using to work with FMPG as it develops its long-term business plan. Capital expenditure investment will be needed, as part of that process is still on-going. We will ensure that there is rigorous due diligence of any capex proposal—indeed, we have already commissioned our external advisers to help us in that process.

Once we have got a finalised version of that long-term business plan and a clear investment case is made, we will ensure that that is examined carefully. It is clear that, to raise the productivity of the yard and ensure that we can take advantage of all the commercial opportunities, further investment will be required.

On the ownership question, when the yard was in the process of being brought into public ownership in September 2019, the Scottish Government said that, at all times, it would remain open to discussions with any parties that were interested in securing a viable commercial future for the yard. Indeed, on 10 May, the cabinet secretary noted—I am paraphrasing somewhat—that the better Ferguson's performs, the more likely it is to return to private ownership and, if interested parties come forward, we will do what we can to ensure that the yard is returned to private ownership as a going concern.

Essentially, we have an open mind. The key objective for the yard has always been to secure shipbuilding on the Clyde, to ensure that we retain shipbuilding skills and to ensure that there is a strong, sustainable future for the yard. Investment, winning orders and taking advantage of the commercial opportunities that Mr Tydeman has identified are all part of that. The questions about future ownership structures all follow from that. The key is to secure commercial success for the yard.

Bill Kidd: Thank you very much.

The Convener: Does the First Marine International report contain any opinion on public ownership versus private ownership?

Gregor Irwin: Not that I am aware of.

The Convener: Ah—so we have a little bit more information about the FMI report.

I invite Craig Hoy to ask a round of questions.

Craig Hoy (South Scotland) (Con): Good morning, gentlemen. Mr Tydeman, when we visited the yard, you kindly gave us a tour and a briefing. We also got a briefing from some of the trade unionists and some of the front-line staff who have been there for a considerable time. One of the issues that you identified was a potential cash-flow issue as you were bringing in potential new work. You said that you would make a cash call to the Scottish Government. Will you give us an updated snapshot of the yard's cash-flow position

and whether you expect to make any further cash calls to the Scottish Government for the yard rather than the vessels?

David Tydeman: The situation breaks down into three parts. The construction of the two ferries is proceeding on a monthly reimbursement basis, so we do not have a cash-flow issue there. There are two parts to future work. There is the capex programme that we need to rely on to upgrade the facilities. That is work in progress and we will not commit expenditure until we have approval to do so. Therefore, we will not have a cash issue in that respect. Similarly, the way in which we have funded the BAE work, for example, has been to agree appropriate payment terms with the client so that we do not have a cash-flow issue. We will do that with each contract, as appropriate.

Craig Hoy: So there are no concerns about cash flow at the moment.

David Tydeman: No. We do not manage the business with a cash-flow issue.

Craig Hoy: Good. When we spoke to some of the staff, they reflected negatively on the period prior to your appointment. The impression was given of a gravy train—I will not try to find the maritime equivalent of that—running through the yard, with people on big salaries and, potentially, big bonuses coming in and not necessarily contributing to the yard's health and wellbeing. Can you say, hand on heart, that that gravy train culture has come to an end?

David Tydeman: Yes, I am very determined that it comes to an end, and I have reduced the payroll costs by about £3 million in the past 12 months.

Craig Hoy: Mr Irwin, the Auditor General's section 22 report said that the size of the bonus payments that were made in 2021-22 and 2022-23 was unacceptable. Do you recognise that comment? In what way was it unacceptable?

Gregor Irwin: The former and the current Deputy First Minister have both made statements on that. On 16 March, the former Deputy First Minister addressed bonus payments directly in Parliament and said then that the Scottish Government was working to ensure that such an eventuality did not occur again. On 27 April, the current Deputy First Minister wrote to the Net Zero, Energy and Transport Committee and noted that Mr Miller, as chair, had started work to reform the remuneration arrangements. Mr Miller has already referred to that work.

We can all recognise that what happened is not what we wanted, for a number of different reasons, including in relation to the flow of information between the leadership team at FMPG and the Scottish Government. There is work under

way to ensure that we address that, and we will capture that in the revised framework agreement. With regard to the work that is under way to reassess remuneration arrangements, we can all see that that is difficult, because those arrangements reflect personal contracts, some of which were inherited from the former ownership structure of the yard and were transferred across under the Transfer of Undertakings (Protection of Employment) Regulations. As Mr Miller noted, we also need to ensure that the yard remains commercially competitive.

Our ministers have set very clear expectations. It is right to incentivise good work, but it is not appropriate to reward work that has not met agreed standards. We have listened carefully to the advice of the Auditor General in that regard, and we absolutely want to make sure that we get the balance right and address concerns around the current remuneration structure, and that we capture that in the framework agreement.

Craig Hoy: The procurement and much of the build has been botched and bungled, and yet in the past two financial years, £135,000 of taxpayers' money has been spent in the form of bonuses—£87,000 in 2021-22 and £47,000 in 2022-23. Mr Miller, do you have an indication as to what that figure might be for the 2023-24 financial year?

Andrew Miller: Not at the moment, because we are revising and reviewing, through the remuneration committee, a modified approach to remuneration. Bearing in mind the need for us to be competitive and to be able to retain staff, it is clearly not in the best interests of the yard to use public money to remunerate poor performance—not that we have done so in the past, because the KPIs and KRAs are stated and reviewed every six months by the remuneration committee, with David Tydeman's input. Personal performance reviews are conducted with the individuals who qualify under some of those historical contracts.

It is a work in progress, and we understand the environmental tension around the issue. We hope to reach a conclusion, with the support of the Scottish Government, around the end of July this year.

Craig Hoy: But it is perfectly reasonable to accept that performance-related payments could be made in the present financial year.

Andrew Miller: Yes, it is, because those payments are contractual, and they are points of law. They exist, so it is very difficult to say to somebody, "We're pulling that from your contract."

Craig Hoy: I want to draw your attention to what the First Minister said on 27 April in response to my colleague Douglas Ross. He said that

“those bonuses should not have been paid.”

He agreed with Douglas Ross on that and said:

“I have made it clear that bonuses should not be paid in relation to vessels 801 and 802.”

He went on to say:

“It is my expectation and the Government’s expectation—the chair of Ferguson Marine knows this very well—that there should not be bonuses in the current financial year, 2023-24, in relation to vessels 801 and 802.”—[*Official Report*, 27 April 2023; c 11-12.]

Was the First Minister forcing your hand and asking you to break employment contracts?

Andrew Miller: No, he was making a statement, but we have to pay due regard to the contractual obligations under employment contracts that, in some instances, were set many years ago. As I said, we are reviewing the situation, with input from the senior management team, in an attempt to come to a conclusion that is acceptable to both parties.

Craig Hoy: So the First Minister and the Scottish Government are of the expectation that no bonuses will be paid but, unfortunately, they have not looked into the contracts sufficiently to realise that you are obligated to continue making bonus payments now and into the future.

Andrew Miller: We have. The Auditor General made a comment in his section 22 report, although, prior to that, we were looking at the issue. When I joined the board four or five months ago, I realised that the situation had to be dealt with and reviewed.

Craig Hoy: Do you feel that you are coming under some political pressure to go and renegotiate those contracts?

Andrew Miller: No—the board is independent. The people who are appointed on behalf of the minister to govern the business, organise strategy and come to a fiscally sound break-even position are not affected by the politics of the day, nor should they be.

Craig Hoy: Mr Tydeman, forgive me for focusing on your individual position, but we are talking about taxpayers’ money. I noted from a response to a freedom of information request that was made on 20 January 2022 that your salary was £205,000 and that your predecessor’s salary was in the order of £790,000. Referring back to the issue of the gravy train, it is reassuring that things have perhaps been reined in.

However, what the yard would not co-operate on in relation to that FOI request was information on any bonus or performance-related payments for you personally. I noted that, earlier this year, you said that Ferguson Marine had already instituted greater transparency in governance in

relation to other issues. On the basis of transparency and good governance, are you able to tell the committee what your personal bonus and performance-related payments have been and might be in the future—if you hit any of your personal KPIs?

10:30

David Tydeman: I think that some of my on-target package is already in the public domain, so I am prepared to make some answer here. The way that I look at the contract that was offered to me is that 30 per cent of my package is at risk, subject to performance, and the rest is drawn as a salary. That is appropriate at senior levels. It is not appropriate at lower levels to ask people to put a percentage of their package at risk; it is appropriate as you move up to senior levels, and it reduces the salary level. That is the package that I accepted 15 months ago, when I took this job.

As Andrew Miller has just alluded to, the KPIs, the measurement and the process that the remuneration committee needs to go through must be rigorous. The Auditor General added some good points on how that framework needs to work, and although the package is at risk, it also has to be earned.

Andrew Miller: If I may add, David, because I know that it is difficult for you to talk about your personal circumstances—

Craig Hoy: I accept that.

Andrew Miller: I feel a degree of anxiety on David’s behalf, but—

Craig Hoy: I fully understand.

Andrew Miller: —in terms of process and clarity of process, David’s contract of employment was approved through the relevant departments at the time, 14 months ago, and there is complete clarity around that.

Craig Hoy: That is fine. When would ministers have been made aware of the fact that these bonus packages were in place and that bonuses were paid in the two years that were identified?

Andrew Miller: In David’s case, when his contract was approved.

Craig Hoy: That is fine.

Andrew Miller: It was quite rightly approved, given David’s ability to work with enterprise, reduce costs and secure future work. David is a great asset to the enterprise, and he has the full board’s support in that regard.

Craig Hoy: That is very good to hear, but we must compare and contrast that with the First Minister’s assertion that there would be no further bonus payments made in relation to 801 and 802.

Andrew Miller: I go back to my original point, which is the fact that these are issues under personal contracts. They are data protected. There is no way that you can amend people's contracts without their permission, and that is the process that we are going through just now.

Craig Hoy: Perhaps Mr Irwin would like to come in on that briefly.

Gregor Irwin: I will add a few points. It is absolutely correct that the CEO's package was agreed following quite a robust market analysis to ensure that it was reasonable for a commercial appointment. That happened before the appointment was made and David joined as CEO of FMPG.

When it comes to the question of the KPIs, the Scottish Government was not consulted when those were set in October 2022. We were informed in February this year, after the events. In future, we need to ensure that the Scottish Government will be consulted on, and asked to agree to, KPIs, and that will be captured in the revised framework agreement.

Craig Hoy: However, it is safe to say that you cannot prevent payments being made under historical arrangements, so the expectation is that there will be further bonus payments made to senior management at the yard.

Colin Cook: As Andrew Miller said, there is a review process going on. The chair and the chief executive are fully aware of the views expressed by the Scottish ministers and in the Scottish Parliament about bonuses that are related to 801 and 802. That review process will take into account all the factors that the chair has talked about with regard to the competitiveness of the yard. It will also involve the staff who currently have those bonuses in their packages, and we expect the chair and the chief executive to have those discussions with staff about the way in which their remuneration will be structured going forward.

We are waiting to see the outcome of those proposals. Mr Miller said that he hoped to get to that stage by the end of July. When we get that information, we will discuss it with the Scottish ministers, and we will be able to come to a conclusion. We will deal with those in the open and transparent way that Mr Irwin has talked about.

Craig Hoy: Thank you very much.

The Convener: In the interests of transparency, I should draw people's attention to my entry in the register of members' interests and my trade union affiliations.

I have one final question, as we have all four of you here. I go back to the point about the sponsor

team arrangements. My question is first and foremost to David Tydeman. How well supported do you think you are by the sponsorship team in the Scottish Government?

David Tydeman: I feel well supported, and we have a good working relationship with Colin Cook's team and Gregor Irwin's team. It has been good to have them arrive in the past couple of months and add value to that process. We have regular dialogue through weekly calls with some of Colin's team, and Colin attends the board meetings in an observer role. It is a good dialogue.

The Convener: Mr Cook, do you have any reflections?

Colin Cook: I think I enjoy very positive relationships with the new chair and the chief executive. As David said, I attend the board, or a member of my team attends the board, in an observer capacity, and we get a lot of value from that. There is a programme of formal meetings, but there are also informal contacts, which is absolutely right and proper in order to get a real feel for what is happening in the yard.

The Convener: Thank you. On that positive note, I thank our witnesses for giving us their time and for their contributions. It has been very useful to us. I thank Colin Cook, Gregor Irwin, David Tydeman and Andrew Miller for joining us.

I now move the meeting into private session.

10:36

Meeting continued in private until 11:11.

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