



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 5 December 2018

Session 5



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RURAL ECONOMY AND CONNECTIVITY COMMITTEE

32nd Meeting 2018, Session 5

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

COMMITTEE MEMBERS

*Peter Chapman (North East Scotland) (Con)

*John Finnie (Highlands and Islands) (Green)

*Jamie Greene (West Scotland) (Con)

*Richard Lyle (Uddingston and Bellshill) (SNP)

*John Mason (Glasgow Shettleston) (SNP)

*Mike Rumbles (North East Scotland) (LD)

*Colin Smyth (South Scotland) (Lab)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Bill Hocking (Galliford Try)

Graham Laidlaw (Scottish Government)

Brian Love (Aberdeen Roads Ltd)

Lewis Macdonald (North East Scotland) (Lab)

Michael Matheson (Cabinet Secretary for Transport, Infrastructure and Connectivity)

Mark McDonald (Aberdeen Donside) (Ind)

Bill Reeve (Scottish Government)

Michelle Rennie (Scottish Government)

Stephen Tarr (Balfour Beatty)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 5 December 2018

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Edward Mountain): Good morning, and welcome to the Rural Economy and Connectivity Committee's 32nd meeting in 2018. I ask everyone to ensure that their mobile phone is on silent. No apologies have been received.

The first item on the agenda is a decision on taking business in private. The committee is asked to consider whether to take in private item 5, which is to review the evidence that we hear today. Do members agree?

Members indicated agreement.

Aberdeen Western Peripheral Route

09:01

The Convener: Item 2 is the Aberdeen western peripheral route. I welcome to the committee Lewis Macdonald MSP and Mark MacDonald MSP, who are attending for this item. This evidence session follows an announcement that the opening of the Aberdeen western peripheral route will be delayed. The committee will take evidence from the principal contractors on the project. Written evidence from the contractors was received on Monday and has been published on the committee's webpages.

I welcome Stephen Tarr, managing director of the major projects division at Balfour Beatty; Bill Hocking, chief executive officer for construction and investments at Galliford Try; and Brian Love, director of Aberdeen Roads Ltd.

I am not sure whether you have been to a committee before, so I will explain how it works. You do not need to push the buttons in front of you; I will indicate when it is your turn to speak. If you want to speak, try to catch my eye and I will bring you in. We need to get through a lot of questions, so if I think that your question is running on I will discreetly waggle my pen. The more frenetic that gets, the longer it means you have gone on and I am encouraging you to come to an end so that we can move on to the next question. It is purely a method of time management; I will not do it if I do not need to.

The first question is from Richard Lyle.

Richard Lyle (Uddingston and Bellshill) (SNP): Good morning, gentlemen. Paragraph 22 of your written statement to the committee states:

"With regard to the final completion of the project, the remedial and finishing works to the River Don Crossing are progressing as quickly as possible, seven days a week. It is essential that they are carried out correctly and comprehensively, with safety being the utmost concern."

I agree with that, but how did the defects in the River Don crossing occur?

Stephen Tarr (Balfour Beatty): I will answer that, Mr Lyle, but before I do I will update the committee, as we said we would, on the current situation with the road, which the convener referred to. We can confirm that, within the past 24 hours, we have secured lender consent to the contract variation, which paves the way for the road between Stonehaven, Charleston and Craibstone to be opened to traffic next week, and we are working to complete the works at the Don crossing—I will come back to that, but we hope to

open those works later this month. That is a quick update to our written statement.

On the Don crossing, it is fair to say that the issue was unexpected and arose for the first time in May. To put it in context, we are talking about a complex structure. It is 300m long, crosses the River Don and has a surface area of about 5,000m², which is the size of a typical football pitch, so we are talking about a significant structure.

The crossing is a post-tensioned balanced cantilever structure, and the bridge is being constructed incrementally upwards by cantilevering out formwork on both sides, to balance the structure—about 75 segments have been cast to create the structure. The segments are post-tensioned, and longitudinal ducts are cast into the concrete structure through which steel tendons are installed. Those tendons are then stressed and grouted, which gives the structure rigidity.

To again put the size of the bridge into context, it is 25m across. Each segment is about 3.5m long and 3m high. You can stand up inside the structure—I am 6 feet tall and I can stand up inside it.

After we had cast all the segments and we started the stressing work, minor cracks appeared underneath the deck. On observing that, we stopped the stressing operation to closely inspect it. We were high up and we needed to get access, which we got. That led to a series of investigations. We then destressed the bridge. We got our designer to assess what he thought had gone wrong and to provide a diagnosis for repair. That led to intensive investigations to ascertain the alignment of the ducts.

I do not want to go on too long—I can see you looking at me, convener.

The Convener: I have not picked up my pen yet—you are quite safe.

Stephen Tarr: The alignment of the ducts through the structure is important. It became apparent that the alignment of the ducts had become displaced in some locations. Consequently, when we stressed it, unexpected pressure was placed on the concrete around the ducts.

We had to undertake a sequence of repair work. We literally broke out sections of the deck in those areas, to realign the ducts, recast them and then, ultimately, restressed the structure. That was quite painstaking, because of the sequence that was required, and took quite some time.

I hope that that explains in a nutshell the difficulties that we have had with the structure and in trying to predict precisely when the works will be

complete. Although we thought that we had completed all those works, when we were stressing some of the final tendons in late October, we found another, similar issue where we had not repaired the ducts, because we had not thought it necessary to do so, and we had to go in and conclude those repairs.

I am pleased to say that, last Sunday, we completed the grouting. As of today, all the stressing and grouting is complete. That gives us greater confidence about completing the Don crossing, which is the one area of the site that is holding up the final opening of the road.

Richard Lyle: Thank you for your full explanation. You have answered my third question and I will tie up my other two questions together. Who is—or was—responsible for the defective work? What works are required to rectify the defects that you have mentioned?

Stephen Tarr: I will take your last question first. The defects have been corrected. The issue was to do with the alignment of the ducts and we believe that why they became displaced probably comes down to inadequate provision in the structure to restrain the ducts. The problem with concrete is that, with ducts being a void, they can move. We probably did not tie down the ducts sufficiently in the concrete pouring operations, which necessitated the works.

As I have said, we are the design and build contractor. We accept that that is work that we have to do as part of our obligations.

Richard Lyle: Is this a new type of bridge? Have you done this type of bridge before?

Stephen Tarr: No, it is not, and we have done this type of bridge before. In fact, for those who are familiar with the area, we have a similar bridge that crosses the River Dee further south. It is a similar construction, and it went without any issues.

One of the problems and complexities at the Don crossing is that there is vertical curvature and horizontal curvature, so it moves in three dimensions, which complicates the alignment and the geospacial characteristics of the structure.

The Convener: Can you help me before we move on to the next question? Can you give me the timescale? When was the problem first identified?

Stephen Tarr: The problem was first identified in mid-May.

The Convener: When did the solution to the problem become apparent?

Stephen Tarr: That probably took us about six to eight weeks after which, because the investigation work involved drilling holes to identify

the location of the ducts, there was a rolling sequence of investigations, repairs and liaison with the designer. We also needed to satisfy ourselves that the repairs would in no way inhibit the integrity of the structure when it was complete, which is why we had to do it in that incremental way.

The Convener: In effect, it has taken you five months to repair it—that is roughly what you are saying. When did you notify the Government that there was a problem—so that I understand? We did not hear about massive delays.

Stephen Tarr: The nature of the governance on the contract and the oversight by the contracting authority means that it has engineers on site. It would have been aware of the emerging issue almost in real time, but it would not necessarily have had the same understanding that we were building up, as we were actually involved in the rectification process.

The Convener: We can move on, but we are saying that, in May, a problem was identified that we knew was not going to need a two-minute fix; it would take a bit of time and there would be a substantial delay.

Stephen Tarr: In fairness, at the time, we did not quite know the impact. We stopped the stressing operation and we knew that we had an issue in one particular area that we needed to address, but then we needed to ascertain whether the issue was more widespread with issues elsewhere. We did not want to continue the stressing and unnecessarily induce stresses in the concrete. That is why the diagnosis took some months. The true impact of the work was emerging as we were building a better understanding of the situation.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I have a brief question. Aberdeen City Council has oversight of this. Did you tell the council, or were you also communicating with Transport Scotland, and hence the Government?

Stephen Tarr: We were liaising with the contracting authority, which is Transport Scotland, and with its engineer, Jacobs, so you are absolutely right, Mr Stevenson.

Brian Love (Aberdeen Roads Ltd): I will step in here. The contract is actually placed with Aberdeen City Council, which is acting as agent for the Scottish ministers, and Transport Scotland is heavily involved. Transport Scotland has individuals on site, supported by its engineering consultant, Jacobs.

Stewart Stevenson: That is fine. I just wanted to make sure who knew what when, and I think that that is now clear.

The Convener: That adds a confusion, in that on 23 May we heard the Cabinet Secretary for Economy, Jobs and Fair Work say:

“Although I fully appreciate the contractor’s continued ambition to target a summer 2018 opening, Transport Scotland’s technical advisers on site remain of the view that a late autumn 2018 opening may be more realistic.”—*[Official Report, Rural Economy and Connectivity Committee, 23 May 2018; c 2.]*

Therefore, at that stage, we knew that there was a problem but we did not know how big the problem was.

Mike Rumbles (North East Scotland) (LD): I am interested in the contract and I want to follow the money, as it were. We were told that this was a fixed-price contract, costing the taxpayer £745 million in 2012 prices; the contract was signed in 2014. We were also told by the Government that there would be no further cost to the taxpayer because of all the delays.

Mr Tarr mentioned the contract variation. To a layman, such as myself, a contract variation means that more money will be exchanged. I am also aware that Galliford Try has told its shareholders that its costs have increased by £20 million, which is more than was expected, and that Balfour Beatty, in presenting its half-yearly results to its shareholders, has said that its costs have gone up by £15 million. If there is a fixed-price contract, what is the contract variation? How much more money are you receiving from the taxpayer?

09:15

Stephen Tarr: If I can—

The Convener: Hold on. I see that you all want to answer, which is great. I will let Brian Love come in, then I will come back to Stephen Tarr.

Brian Love: It is worth explaining the financial structure of the contracts that are in place. There is a revenue finance structure, which means that the Government pays for the road once it has been built and is complete, so the Government will pay an annual unitary charge on a monthly basis; it does not pay Aberdeen Roads Ltd any money until sections of the road are open. The road is opening in four phases. Three of the phases have been completed and those sections of the road are open, so money is flowing for those phases.

The variation contract will become live next week. The section from Stonehaven up to Craibstone and, on the southern leg, to Charleston will become live, and the Government will pay a proportional unitary charge for the section of the road that will be open.

Under the fixed-price contract, the Government pays annually for the 30-year concession period. Aberdeen Roads Ltd enters into contracts with

lenders to fund the construction works, and we enter into a fixed-price contract with the construction joint venture. That contract is financed by our debt, which is funded from markets.

Mike Rumbles: I am concentrating on the cost to the taxpayer. Ministers have told the committee that the cost to the taxpayer of building the road is fixed at £745 million. I am interested in the contract variation. The contract has been signed, with a fixed price—we all know what the situation is. What is the contract variation? Are you receiving any more taxpayers' money over and above the £745 million in the contract? I am not talking about the 30-year maintenance; I am talking about the build contract.

Brian Love: I apologise. The Government pays Aberdeen Roads Ltd only when sections of the road are open. We all predicted that the road would be open earlier than it will be, so there is a saving because the Government has paid less to date than was projected when we entered into the contract.

Mike Rumbles: Yes, but—

Stephen Tarr: Could I make an observation? The 30km section of road that will open next week was not contemplated at the time when the contract was structured. There were four sectional completions, three of which have been open to traffic since last summer, as we know; and the fourth section was the one across the Don. The contract variation is with regard to a fifth sectional completion, which is termed PTU2B in our written statement. That section required a legal change in order to bring it into effect, because it was not part of the original contract. We had to negotiate the terms of that with Transport Scotland because it involved, as Brian Love said, an earlier step-up in the unitary charge, which was not contemplated originally. When we talk about the variation, that is what we mean.

Mike Rumbles: I am with you; I understand entirely what you are saying. I know that the money is released only as each section is opened, but my question is whether any more taxpayers' money, over and above the £745 million, is going to your companies as a result of your opening the road early.

Stephen Tarr: No.

The Convener: I want to make sure that I fully understand this, because I am not sure that I do. The contract involved £745 million, which was for all the works on the project. You are saying that an extra bit was added into the contract. Are you getting extra money for that?

Bill Hocking (Galliford Try): No. A subset has been added to the contract, which means that we

get a proportion of the unitary charge a little earlier than we might otherwise have received it. That is what has happened.

Mike Rumbles: I think that I understand what is going on here, but I want to make sure that we all fully understand the situation.

The road from Stonehaven to Westhill and Kingswells has been ready for traffic for two to three months, apart from the final sign-off and police sign-off and so on. It was part of the section that included the bridge over the Don. The reason why it has not been handed over and you have not had your money is the bridge. The contract variation is about the road from Stonehaven to Westhill and Kingswells. You had to have the contract variation so that you could hand the road over to the Government and the Government could pay its due to you for that road. The Government still owes you money for the bridge, which you will get when you finish the bridge. You have made it clear that there is no extra money over and above the £745 million of taxpayers' money, and that you are taking the loss yourselves. Is that correct?

Bill Hocking: I think that there might be confusion with terminology here. With regard to that proportion of the road that will open next week, we get paid a proportional unitary charge as a percentage of the whole charge. That is the variation.

It is no secret that we have faced some significant challenges on this project: extremely inclement weather, which was the worst weather since records began; the demise of Carillion; and delays to utility diversions. In his statement, Mr Matheson mentioned that we have some commercial issues to discuss with Transport Scotland. That is not unusual for a project of this nature and size, and we will continue with those discussions. Does that address the point of your question?

Mike Rumbles: I have one further question, now that you have confirmed that there will be no extra money. I am puzzled because, as I understand it, you have put in a claim to the Scottish Government for extra money even though you are telling us that there is no extra money over and above the taxpayer contribution of £745 million for a fixed-price contract—as a layman, I know what a fixed-price contract is. I keep going back to the same question, because what you were saying does not follow logically.

I understand what you are saying when you say that there is no money over and above the £745 million contract, but you have also put in a claim to the Scottish Government for more money. What is the explanation for that?

Bill Hocking: There is no change to the unitary charge over the 30 years. That is the first thing that we need to get secured. The second thing is that, yes, we have put forward a claim to Transport Scotland in respect of some of the issues that we faced in the project, where we believe that the risk lies with Transport Scotland. That is what we will be discussing with Transport Scotland. Those risks relate to relief events for weather and for delays in statutory utility diversions.

Mike Rumbles: That is not a fixed-price contract, then.

The Convener: Stewart Stevenson wants to ask a specific question about the claims. I want to see whether people want to ask some questions, and then we will come back to you.

Stewart Stevenson: I have dealt with a lot of contracts in my life, and I would like to understand the structure of the contract that we are talking about today. I am not asking you to open up the detail, because there are issues of commercial sensitivity.

Most contracts of this character that I have had to deal with have been structured in such a way that the works are described in a schedule. In any project, both sides of the contract will inevitably discover that there is a need for variation in the works that are described in the schedule. Is that the case with the contract that we are discussing? Is there a process whereby, if the parties agree that the works that are described in the schedule will change, there is an associated repricing? I see that Bill Hocking is nodding his head, so I think that my understanding, based on my experience, is correct in this context.

Have there been changes to the description of works? I would be astonished if the answer was no. I have never run a project in which there have not been changes to the schedule.

Brian Love: I can answer that. There have been a number of change orders and variations through the contract period, as you would expect and as you have outlined. I would say, though, that the value of those changes in the context of the project has been modest.

Stewart Stevenson: Indeed, it is perfectly possible for such changes to reduce the price.

Brian Love: That can happen, yes.

Stewart Stevenson: Have any changes done that in the case of this contract?

Brian Love: Yes, there have been changes both ways.

Stewart Stevenson: So there have been changes that have reduced the price and changes that have increased the price.

Are the commercial discussions that you are having with the Government related solely and in total to the changes to the schedule, or do they concern other matters in other parts of the contract?

Brian Love: The claim is on other matters.

Stewart Stevenson: Are you able to open up for us what those “other matters” are, to an extent that does not compromise your discussions, which I understand that you necessarily want to protect at this stage?

Stephen Tarr: Let me pick up on something that Bill Hocking said about the issues that have frustrated the progress of the works. One of the most significant of those issues has been the early work with the utility providers. This contract is quite extreme in the number of utilities that criss-cross the scheme; something like 300 utility paths cross the scheme throughout its 58km length. You will understand that the diversion of those utilities, in concert with the sequence of our works, is a critical element in the efficient progress of the works.

The claim that we have with the contracting authority, that is, with Transport Scotland, stems from delays and underperformance in relation to the utility providers—in relation to electrics, underground and overground communications, water and so forth. It is those delays that have disrupted the progress of the works. Those issues lie at the heart of our claim against Transport Scotland.

Stewart Stevenson: I know that other members have questions, so I will make this my final one. Is the dispute, therefore, about how the contract allocates responsibility for utilities diversions? I have not seen the contract, which of course is a matter of negotiation, but I would have expected it to be the responsibility of the contractor to obtain permissions in that regard. Is the dispute about who carries the risk that is associated with the utilities diversions? Although the complexity might not have been known at the start, and indeed you could not commit on the timetable to which utility providers work, the contract ought to have made clear who had the responsibility. Whose responsibility was it?

Stephen Tarr: I think that the nature of the contract has been characterised as broadly transferring significant risk to the private sector. Utilities are paid for by the public sector, and there are discussions with the utility companies that predate our involvement in the scheme—so there is this transfer, and obligations are placed on the contractor to manage the utility companies’ work and how their apparatus is co-ordinated with the design of the work that we do. We are getting into slightly finer points of risk allocation as to whether

there are gaps for which others—in this case, Transport Scotland—carry some liability. It is those issues that lie at the heart of our commercial claim.

The Convener: I am interested in the timelines. Can you confirm that March 2017, when the cabinet secretary came to the committee, was the time when you were having major problems with the utilities?

Stephen Tarr: The issues with the utilities began before that. I think that what—

The Convener: But that was when they were in a crescendo—

Stephen Tarr: This is a little bit like the issue with the Don. We had the emerging impacts of those utilities issues. Some works were completed on time and others were almost 18 months late, so there was quite a spectrum of disruption.

The Convener: In March 2017, the cabinet secretary came to the committee, and it was my understanding at that stage that there were major problems with the utilities that could cause the road to be delayed. March 2017 was the critical period. However, at that meeting, the cabinet secretary said that the road was still going to open on time, which suggested that the problem with the utilities had disappeared. Are you telling me that the utilities problem had not disappeared in March 2017, and that there were on-going problems that were going to delay the opening, about which we should have known?

09:30

Bill Hocking: We were working hard to mitigate the effects of those utility diversion delays, which had been exacerbated by the extreme weather. The two remaining partners in the joint venture had been working tirelessly to mitigate those delays.

The Convener: The cabinet secretary came to us on 14 December to tell us that there was a problem with the extreme weather conditions, and that it had been a very wet autumn in Aberdeenshire. Work was still going on on the A9 but not on the peripheral road. Digging had had to stop.

In March, he came to tell us that there was a problem, which everyone had heard about on the ground, but at that stage he still said that the road would open on time. That indicated to the committee and me that the road problems with the utilities had been resolved. You are saying that that is not the case.

Bill Hocking: The impact of the utilities has been far reaching. We had a programme that had us finishing round about the same time as the Don

crossing. I forget the date off the top of my head, but I can look it up and write to the committee later, if you wish. Delays with the Don crossing pushed the end date out further.

Brian Love: It is worth putting context round the utilities in the project. In excess of 300 utility diversions were required to put the road in place. That is an average of one utility every 200m across a 58km stretch. To generalise and summarise all that enormous activity into a simple and concise statement is extremely difficult.

The Convener: I understand that. Some of the utilities will be major, and some will be relatively minor, from individual telephone connections to possibly massive telephone connections.

We do not have time to push this, because I want to take other questions.

Peter Chapman (North East Scotland) (Con): I am still interested in the delay to opening the Craibstone to Stonehaven part of the road. You have told us that you do not get paid any money until a section of road is open. We know that the Craibstone to Stonehaven stretch has been finished for several weeks if not months.

You have told us today that you have lender consent to open that piece of road. It seems to have taken many weeks to get lender consent. I cannot understand why that would be the case, given that, if the road had opened two months ago, you would have had the money in your pocket two months ago. Why has lender consent been so difficult to achieve? It seems to me that it would be easy to get lender consent, because you would get money into your bank account. Can you explain why it has taken several weeks or months?

Bill Hocking: As Stephen Tarr and Brian Love have mentioned, there was no contractual mechanism to open that section. It did not exist, and we could not have opened that section without wilfully breaching the contract. That is just a fact of the contract. That is why we needed the variation to the contract that we spoke about earlier to enable us to insert a new sectional completion, for want of a better description, and allow us to open that stretch. Along with the stretches that are already open, that constitutes about 90 per cent of the road by length.

There was no contractual mechanism to allow us to open the road until we had agreed how to go about that with the lender and Transport Scotland. Bear in mind that the contract is a huge complex document, with dozens of interrelated parties and different advisers. It takes a frustrating amount of time for all of us to get things done to amend it.

Peter Chapman: I hear what you say. My devious mind makes me think that perhaps you

were holding off opening that part of the road as some sort of lever to try to get, for instance, some extra funds from the Scottish Government. You could say, “No, minister. We will not open that section until you agree to refund some of the extra costs for the bridge.”

Bill Hocking: That is definitely not the case. We had a strong vested interest in opening the road whenever we could. The delays in opening the stretch between Stonehaven, Charleston and Craibstone that will open next week will have cost us about £4 million. We have a strong interest in opening the road as soon as possible.

Mike Rumbles: On that, can I ask—

The Convener: No, you cannot. I am sorry—there are other people on the committee and I need to get round them. I will try to bring you in.

Jamie Greene (West Scotland) (Con): I am sorry to press you on the issue that Mr Rumbles raised, but it is an important point. I am still not 100 per cent clear on the numbers.

I will question the two organisations that are represented here separately, beginning with Galliford Try. In the statement to investors on the AWPR that was made a few weeks ago, it said that,

“owing to increased complexity and weather delays”

and

“higher than anticipated direct costs”,

its estimate of the final cost had increased by £20 million. Is it your presumption that you will absorb that increase or that Transport Scotland will do so? After Mr Hocking has answered, I will put a similar question to Balfour Beatty.

Bill Hocking: Galliford Try has raised £150 million in the market to cover the issues relating to the project. That is a statement of fact, which is in the public domain. That is the scale of the issues on this contract for Galliford Try.

The £20 million is cost, which will be paid by us as our share of the joint venture. It is totally separate from the commercial leases that we have with Transport Scotland. On one side, there is cost and, on the other, there is the claim or entitlement.

Jamie Greene: Will you seek to recover any of that from Transport Scotland?

Bill Hocking: There is a claim. The issue is whether it directly applies. If the additional costs were for the Don bridge, it will not apply—that is our cost. However, separately from that, there might be other costs as part of our claim, which we will seek to recover.

Jamie Greene: So you will seek to recover some of those losses.

Bill Hocking: If they are related to elements of our claim.

Jamie Greene: Do you know how much that will amount to?

Bill Hocking: No. Those discussions are commercially sensitive.

Jamie Greene: In August, Balfour Beatty made a statement on the AWPR in which it said:

“In the first six months of the year, Balfour Beatty recognised an additional £23 million loss on the AWPR project.”

My first question is what that £23 million loss comes on top of—in other words, what is the total loss? Given that that was in August and it is now December, could you give us an update on your estimated total loss on the AWPR project?

More worryingly, you went on to say:

“The AWPR loss represents a net charge made up of cost increases on the project partially offset by recovery positions that the Group believe are highly probable to be agreed.”

What are the “recovery positions” that your group believes it is highly probable will be agreed? Will you seek to recover any of that loss from Transport Scotland and, if so, how much of it?

Stephen Tarr: The “highly probable” issue relates to an accounting standard. It is a test that a company has to satisfy in order to back the judgments that it is making.

If I may, I would like to unwind slightly, before coming back to Mr Greene’s question. There is no doubt—this is on record—that we have incurred significant additional costs on the contract in trying to mitigate the delays that have been caused. Although we recognise how important the route is to the people of north-east Scotland, if we had not taken some of the mitigation measures, the road would have been delayed for longer than it currently is. We have incurred significant costs that run into hundreds of millions of pounds. They are not small sums; they are material. They were not exclusively responsible for Carillion’s insolvency, but they contributed to it. An additional burden has been placed on Galliford Try and Balfour Beatty because of the joint and several obligations that we carry under the contract.

We have had to trade losses, as we foresaw them, within our financial statements. In the same way that Galliford Try had to go to the market to raise finance to fund its share of the losses, we have had to dispose of assets to fund our share of the losses on the contract. As of today, we are in a situation in which the joint venture partners are hundreds of millions of pounds out of pocket as a consequence of the work that we have done on the Aberdeen western peripheral route.

Separately from that, we have a claim for a not insignificant sum, over which we are in discussions with Transport Scotland. Those discussions are progressing in a consensual way in an effort to find a way of resolving the issues between us. Those discussions continue. We make judgments about where we think those discussions will finally sit. As you will understand, those judgments are commercially sensitive. I hope that that contextualises the situation.

Jamie Greene: It does, and I appreciate your forthcomingness, the situation that you are in and the fact that you are committed to opening the road as quickly as possible for the benefit of the people who will use it, which is welcome, but the committee has a duty as well. We were told that the project would cost £745 million. The panel is telling us that there are hundreds of millions of pounds-worth of overruns, but it is entirely unclear where the liability for those overruns lies and how much of it will rest with the public purse. It is a simple question, but I am afraid that we have not got any closer to concluding it.

Stephen Tarr: We have not but, regrettably, I cannot answer the question in the way that you might like. All that I can say is that we are in a serious financial situation. There will be some things that are to our account. As we discussed earlier, we carry risks under the contract and, if we get those judgments wrong, that is to our account. Where there are legitimate risks that we believe are retained by the public sector, the contract provides for how those issues are addressed, which is done through various hierarchies. The situation is uncertain for us at the moment, because we do not know the outcome of the commercial discussions that we are in with Transport Scotland. I can tell you that it is not a very comfortable feeling on this side of the table.

Lewis Macdonald (North East Scotland) (Lab): Mr Tarr, can you simply indicate whether your claim against Transport Scotland is in the tens of millions or the hundreds of millions?

Stephen Tarr: I would not want to answer that here, because of the commercial nature of the discussions that we are having.

Lewis Macdonald: If I put it to you that the total cost of the project will be over £1 billion, would you accept that that is broadly correct?

Stephen Tarr: Yes. From what we have said, you could deduce that that is the area of the cost.

Lewis Macdonald: To follow on from points that colleagues have made, when the minister made a statement in Parliament on 1 November, he was very critical of Peter Truscott and said that ARL, or Mr Truscott, had indicated that the contract variation was with the lenders, but that a couple of days later he—the minister—received a letter

saying that no such conversations had taken place. Since then, the contractors have been accused of holding the Government to ransom. Will you comment on those points, Mr Hocking?

Bill Hocking: The first thing to say is that Peter Truscott is an honourable and decent man, and he spoke in good faith when he spoke to the minister on, I think, 29 October. However, Peter was unaware that, over the weekend, we had had some issues again with the Don bridge, which meant that there was an undefined delay to that and, until we could understand the nature of that and assess the impact, we could not send anything off to the funders.

Peter then reported back to the joint venture and, as soon as we realised that that was the issue, we wrote to the minister the same day, or possibly the next day—I cannot remember—to set the record straight. Those are the facts of the matter.

Lewis Macdonald: Nonetheless, it has still taken a further month to agree a contract variation that, in principle, had been accepted before the end of October.

Bill Hocking: It had not been accepted at the end of October. We had got pretty close, to be fair, but there were small i's to dot and t's to cross. As I said, it is a hugely complex and interrelated document and every time anything small changes, it goes off in all directions to all sorts of advisers for their viewpoints and comeback. Regrettably, it takes longer than we all would like. As I said, we have a strong vested interest in getting the road open at the earliest opportunity, so we were going full steam to try to achieve that.

Lewis Macdonald: Can you say what concession the Government made that enabled you to reach that agreement?

Bill Hocking: I do not think that it was a concession. In fact, the Government held firm on some of the issues that we wanted to insert regarding various mechanisms. I have the dates here somewhere. On 19 November, we received the minister's final stance on the documents; on 20 November, our legal advisers reviewed the documents; and, in a conference call at half past 8 on 21 November, we resolved to send the documents to the lenders.

The Convener: So you are saying that Michael Matheson's comment that the contractors have not been entirely straight on this matter is completely untrue. You have been entirely straight on this.

Bill Hocking: Absolutely. Peter Truscott spoke in good faith.

The Convener: Okay. Mark McDonald has a question.

09:45

Mark McDonald (Aberdeen Donside) (Ind): I just want to get my head round the timelines. When was the contract variation that has now been agreed to enable the section to be opened first discussed? Was it in October?

Brian Love: It was prior to that. It is worth pointing out that the contract variation that has now been agreed—and which will be put into action today following the lenders' consent last night—was proposed by the contractors when the delays in the Don crossing properly manifested themselves in the summer.

We are talking about a really complex contractual structure with a huge number of parties. For example, there are three shareholders in ARL; there are two parties in the construction joint venture and, on the other side of the contract, there is the Government, which comprises a number of parties. There are also five lenders, all of which must give their consent, the lenders' technical adviser and so on. The suite of contracts runs to thousands of pages and many schedules—it is not straightforward. The first part of the process, which was completed in October, is a negotiation between the key parties—ARL, the contractors and the Government—and the last piece of the jigsaw is the consent of the lenders. Although we have been in continual dialogue with them, we cannot send the formal contracts until we reach commercial agreement at the top level. We are talking about a spider's web of contracts and a very complex arrangement.

Mark McDonald: That leads nicely on to my next question, which is directed at Mr Tarr. In announcing Balfour Beatty's half-yearly results to the end of June, the group chief executive's review stated:

"Part of AWPR is already open to the public"—

the Balmedie to Parkhill section—

"with the majority of the route scheduled to open by the end of August. Completion of the one remaining bridge is expected in the autumn."

In June, Balfour Beatty's chief executive was advising shareholders that the piece of work that necessitated a contract variation was expected to be open in August. Therefore, my question is: if Mr Love's point about the complexity of seeking a variation to the contract is widely accepted, why were Balfour Beatty shareholders advised to anticipate that this section would be open at the end of August when the likelihood was—and the reality is—that it would take three and a half months longer?

Stephen Tarr: At the time, we anticipated reaching an agreement to allow PTU2B, as we term it, to be opened at, I think, the end of August.

In fact, the certificate for the actual physical construction of the road was submitted on 16 August, so the road itself was physically complete in August. As Brian Love has described, the issue has been reaching a formal agreement with Transport Scotland on the terms of the variation.

As for the bridge, we did not know that we would face the further problems in October that I have described and which served to push the completion from November into this month. As I have said, we are still pushing to try to get this finished by the end of this month.

Mark McDonald: But you will understand that, when those comments were reported, it led to—

Stephen Tarr: Expectation.

Mark McDonald: Yes, expectation. Do you regret that your expectation management has not been better—for example, through highlighting the issues that the project faced? I think that, as a result, we have had unhelpful speculation and a suggestion of major problems with the Don bridge—things that you have not successfully countered in your responses prior to today.

The Convener: That was perhaps a statement more than a question.

Stephen Tarr: That is how I interpreted it.

Mark McDonald: I was asking whether you feel that you could have done more to share information in advance of today's meeting about the issues that you have been facing.

The Convener: Before you answer that, I have to do some expectation management as well. We are still on question 1 and there may be more than one question. People are queueing up, so let us park that question and I will bring in Mike Rumbles with a question requiring a binary answer.

Mike Rumbles: I would like a yes or no answer to this simple question. Have you been given any indication that your claims for more taxpayers' money, over and above the fixed-term contract, would be looked on favourably if you would just open the road between Stonehaven and Westhill? Yes or no?

Bill Hocking: No.

Stephen Tarr: No.

John Mason (Glasgow Shettleston) (SNP): We have concentrated on the technical side so far, but you have also mentioned Carillion, so can you explain how much impact the collapse of Carillion had? Was it a minor hiccup or was it more major than that?

Bill Hocking: From a practical perspective it disrupted our operations, in so far as Carillion was one third of the joint venture and provided one

third of the working capital to finance the joint venture and, broadly, one third of the staff. That is not an exact split, but it is broadly right. Since Carillion became insolvent, the remaining two parties, as Stephen Tarr said, are jointly and severally bound, so we have an obligation to continue the contract. We employed the vast majority of the Carillion staff to ensure continuity, and we took on the obligations to pay subcontractors between the two of us, as opposed to between the three of us, so we believe that we mitigated the effect of Carillion's insolvency as best we could. There is inevitably some disruption when half the staff are suddenly concerned about their futures, but I think that we did a reasonable job of that.

John Mason: Was it an unusual model to be jointly and severally liable for one another?

Bill Hocking: No, it is normal for joint ventures.

John Mason: We got the impression that, down south, there were projects that just stopped when Carillion collapsed, but perhaps it was on its own with those projects.

Bill Hocking: Yes, it was on its own with those projects.

Stephen Tarr: In all situations where Carillion was operating in joint ventures, the joint venture partners stepped in, just as we and Galliford Try stepped in to take on the staff. You will understand that it was quite a stressful time for the employees of Carillion, so our ability to offer them continued employment on the scheme served our purpose and resolved their uncertainty.

John Mason: How does it work? Once a section is opened and the money starts flowing, does some of that money go to Carillion's liquidators for the work that it did?

Bill Hocking: No, under the joint venture agreement, Carillion is excluded from the joint venture on insolvency. At that point in time, it just ceased to be a part of the joint venture, which regrettably means that it does not take its share of the losses.

Stephen Tarr: Beyond that point.

John Mason: Yes, I assumed that it would not take its share of the losses, but does anyone get paid for the work that it did?

Stephen Tarr: It is an integrated team, so the way the joint venture works means that there is not work that Carillion does, that Balfour Beatty does and that Galliford Try does. It is one team delivering the whole of the works, and all the parties have a financial interest in the outcome of the project, which is a financial percentage interest in the outcome of the project. That is how the model works.

John Mason: Sorry, but I do not understand that. Carillion had paid its staff up till whenever the date was and had not had any money for that, because it was only when the road section opened that money started flowing.

Brian Love: It was a non-profit distributing model, so the contract that the construction joint venture is undertaking is with Aberdeen Roads Ltd. ARL pays the construction joint venture and those payments are made monthly on milestones of works completed, and they are funded by debt that we raise. Once the road is opened, the unitary charge flows to ARL, which uses that money to repay the debt that it has borrowed to fund the construction.

John Mason: Okay, I get that. Therefore, Carillion was paid for the work that it did up to the time of closure.

Brian Love: That is correct.

The Convener: Can you confirm that, when Carillion went out of business, no delay was foreseen as a result of that? When Carillion ceased trading, were you happy that you would still open on time?

Bill Hocking: As I said, there was some disruption around Carillion's insolvency. The second biggest contractor in the UK disappearing was not a small event, but I would not specifically pin that to any delay. It was a reality that we dealt with at the time.

The Convener: So Carillion going bankrupt did not affect the opening time.

Bill Hocking: No, not significantly, because we took on most of its staff within a few weeks of it going bust.

Stephen Tarr: The issue was more the uncertainty that was created in the supply chain, because there were firms that were owed money by Carillion, which was disrupting. The timing of Carillion's insolvency was in the winter months of January and February when the project was not in full flow—as it would have been during the summer months—so we were able to mitigate the impact.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): My constituency runs from Muchalls through Netherley, Maryculter and Peterculter, virtually right up to the Lang Stracht and right round to Wellington Road and the Dee. You can see that the majority of the road is in my constituency.

We have talked about the effect of Carillion and utility companies. I want to turn to storm Frank, because there was widespread flooding on the Dee around where the bridge is, and residents of Peterculter have continued concerns about how

the bridge and its foundations have affected and will affect river flow. Did storm Frank make you revisit the issue of drainage on any of the works on the AWPR?

Bill Hocking: No, not that I am aware of. The bridge over the Dee would have been designed for a 100-year storm event, and the foundations are set well back from the river banks on very deep piles. The short answer is that the design stands as it is. I can check that, but I am pretty sure that that is the case.

Stephen Tarr: The piles go into the rock in that area so whatever happens with the water level, they are not impacted. It was a very severe storm, as Maureen Watt's constituents know, so it impacted our works, but we do not anticipate it impacting the design of the permanent works once constructed.

Maureen Watt: There is still some concern in those communities that they have not seen what the flood management system will be around that part of the Dee. As I understand it, all of you are feeding into this, and it would be helpful if we could reassure residents about that in the near future. Could you see to that?

A large number of my constituents have been affected by the road. Where you have taken over pieces of land and no longer require them, I urge you to ensure that they are handed back in the proper condition as quickly as possible, as the circumstances of many residents have changed and they might want to sell their houses. Will you give me a guarantee that that will be done as quickly as possible?

Bill Hocking: Certainly. We will take that back to the site team and make sure that that is done as soon as possible.

Stephen Tarr: We are in the process of reinstating a lot of the areas that we have used as temporary standings and that sort of thing. If you have been made aware of any circumstances where you think that we have not delivered what you would expect us to deliver, we would be happy to hear about them.

Maureen Watt: I have written to you on umpteen occasions and I have had a good response when I have raised issues on behalf of constituents.

I understand that, once the whole road is open, anybody who is affected by noise or something that was not foreseen can put in a claim within a year and a day of the road opening. Is that correct?

The Convener: I may be able to help with that. I think that that is a compensation claim, which is dealt with by Transport Scotland and not the contractor. You are entirely right—I am talking

from my days as a surveyor—that there are statutory timescales, which are very important. Perhaps we can take that up with the cabinet secretary at our next evidence session.

10:00

Maureen Watt: Okay, that is fine.

The Convener: Colin Smyth has a brief question.

Colin Smyth (South Scotland) (Lab): To be fair, it has probably been answered. However, so that we can put it on the record, you said that in the past 24 hours you have received permission from funders to open the last stretch of the road; are you giving a cast-iron guarantee to the committee that the road will be fully functioning by Christmas?

Bill Hocking: We cannot be categorical about the wording. We have received consent to it from the funders, which allows the process; in other words, there are no further issues with the drafting. All that remains, as Brian Love can confirm, is to append a covering letter to the agreed drafting and to get everybody to sign it. On that basis, we have a high degree of confidence—yes. We have already started conversations with Transport Scotland about the logistics of opening that section of the road.

Brian Love: To be quite clear about the Christmas date, the phase that we are talking about is from Stonehaven to Craibstone and Charleston; it is the sub-phase that is required through the variation. The lenders' consent in principle has been achieved. We need to obtain a legal opinion around enforceability, which will be done this week—it is being done as we sit here—and then we will move into discussions with Transport Scotland and Police Scotland about the road opening.

The Christmas date relates to the Don bridge. Stephen Tarr has already covered the fact that the contractor is targeting a date prior to Christmas to open that. The construction programme is subject to many things, notably weather, and adverse weather could throw it out, so the date is not cast in stone, yet.

Colin Smyth: So you are not able to give a specific date by which the full road will be functioning.

Bill Hocking: What we are saying is that the section from Stonehaven to Craibstone and Charleston will be done by the end of next week. We are targeting before Christmas for the Don bridge and the rest of the road, which is from Craibstone to Goval. As Brian Love said, the final parts of the bridge construction are weather

susceptible, so the date may be impacted by weather.

Colin Smyth: You indicated in previous questioning that you have not received anything from the Scottish Government to open part of the road next week, so what were your meetings with ministers about? What did you discuss?

Bill Hocking: I do not understand. We have been discussing opening part of that road next week.

Colin Smyth: In response to Mike Rumbles's question, you indicated that you have not received anything from the Government to open that part of the road next week, but you have had discussions with Scottish Government ministers. What, specifically, were those discussions about?

Bill Hocking: My interpretation of Mr Rumbles's question was that he was asking whether we had received any favourable view of our claim, on the back of opening the road, and the answer to that was no. However, next week, as soon as the road is open, we will start to get the unitary charge that Brian Love mentioned earlier—we will start to be paid for that section of the road.

Jamie Greene: Mr Love, does Aberdeen Roads Ltd currently have or plan to issue any claims against the Scottish Government?

Brian Love: The way that the claims structure works under the contracts is that we have the lead contract with the Government and the subcontract with the construction joint venture. The claim is what is referred to as a common-ground claim. It comes from the construction joint venture, through ARL, and on to the Government. It is all wrapped up in one claim process.

Jamie Greene: So the claims of the other two organisations represented here will go through your organisation.

Brian Love: That is correct.

Jamie Greene: Is it fair to say that all three members of the panel will have a claim against the Scottish Government?

Brian Love: Technically, the claim against the Scottish Government comes from ARL. The construction joint venture has a claim against ARL, but the way the contracts work is that it is a common-ground claim for equivalent project relief and it is wrapped up in one process.

Jamie Greene: Okay, and for commercial reasons we do not know the value of those claims at the moment. We can only estimate, given the conversations that we have had, that it is somewhere between £10 million and £300 million. How would you characterise your relationship with the Scottish Government at the moment?

Brian Love: The relationship with the Scottish Government has been professional throughout the process. I was involved in the project during the bid phase and have been involved in the construction phase. It is no secret that there have been some challenges and frank exchanges of view, as you would expect; both parties have protected their commercial positions, as far as they could do so. However, dialogue has continued throughout and the relationship has remained professional throughout.

Jamie Greene: A professional relationship is helpful, but we have a transport minister who has made serious comments in the public domain about some of the stakeholders who are represented here today, and there is the potential for legal cases in relation to cost recovery and overruns. The project is delayed by an undefined period and it is overbudget by an undefined amount. "Professional" is one word to describe the relationship, but realistically, how much comfort can the public take from your ability to have a 30-year management and maintenance relationship with the Scottish Government, given the current state of affairs?

Bill Hocking: The remaining two parties in the joint venture have diligently, professionally and honourably executed the project, under the very difficult circumstances that we have described, and next week we will hand over 37-odd kilometres of road to the people of the north-east. All the feedback that we have had so far on the stretches that are open is that the road is very good quality and people are delighted with the impact that it has on journey times, reliability and so on. We are therefore proud of what we have achieved in the face of such adversity. I know that there are difficulties, but I want to thank all the women and men—almost 15,000 of them—who have worked on the AWPR over the past few years for their tenacity and resilience in getting this job finished.

Jamie Greene: That is very welcome, and, at the end of the day, I think that many of us share that view of the people on the ground who are delivering the project. Equally, the employment opportunities are welcome.

The transport minister will give evidence to the committee after our evidence session with you has finished. When questions have been asked in the Parliament about the project, the blame has been put fairly and squarely on the three gentlemen who are in front of us today. What would you say to the transport minister in that regard, if you had the opportunity?

Bill Hocking: We cannot speak for Mr Matheson or his predecessor. All that I can do is echo Brian Love's comment that our exchanges with the Government and with Transport Scotland

have been professional. Yes, they have been robust at times, but they have been professional.

Stephen Tarr: And I would—

The Convener: I am sorry, but Mr Hocking's comment is probably a good one on which to end that line of questioning, because other members have questions.

Stewart Stevenson: Will the witnesses confirm that the overruns in the construction are a matter for them and that the claims relate solely to utilities?

Stephen Tarr: Yes, but the two are inextricably linked, because the issues with the utilities have led to delays and disruption to the execution of the works.

Stewart Stevenson: Let us be clear. If laying a kilometre of tarmac cost you—this is just an arbitrary figure—20 per cent more than you put in your original budget, that cost is for you to pay. However, if that increase was caused by utility diversion, that can be part of the discussion that you are having.

Bill Hocking: Yes.

Stewart Stevenson: I just want to be clear. The word “overruns” has the danger of suggesting something more comprehensive than is actually the case.

Stephen Tarr: Let me take your example of the kilometre of tarmac. If we have to build that kilometre in three sections at different times, you will understand that that is more disruptive than doing one kilometre in one go. That probably characterises some of the issues that we are trying to resolve with Transport Scotland.

Stewart Stevenson: But it is solely about utilities.

Stephen Tarr: The only claim that we have is related to the utilities and our ability to demonstrate the consequential impacts of that issue, and not to those things for which we carry and retain responsibility.

Stewart Stevenson: Thank you.

Mike Rumbles: When I asked the witnesses whether they had been given any indication that their claim for more taxpayers' money would be looked on favourably if they just opened the road, I heard Mr Hocking and Mr Tarr say no, but I did not hear what Mr Love said. Mr Love, will you answer the question for the record?

Brian Love: Yes. My answer to that question is also no.

Peter Chapman: Based on your experience of the AWPR project, do you have concerns about the Scottish Government's non-profit-distributing

model for financing projects? Would you be content to enter into a new contract under a similar regime?

The Convener: Because Bill Hocking was smiling so profusely at that, he will have to answer first.

Bill Hocking: We will have to lick our wounds for a bit. The model is fundamentally sound and is used for schools and hospitals, for example, without any issues. That is because those projects are smaller, more defined and more manageable. That does not mean that the model is not the correct one for an AWPR type of scheme, but my personal view is that the model's risk-reward balance is out of kilter. The model works, provided that risk versus reward is balanced.

Peter Chapman: Basically, you are saying that too much of the risk falls on your shoulders rather than on those of the Scottish Government. Is that what you mean?

Bill Hocking: It is up to every contractor to decide the amount of risk that it is prepared to stomach. I am not laying blame anywhere; I am saying that the contractors went into the contract willingly and no one forced them. However, I personally believe that the risk-reward balance is wrong. To put it simply, I would be much more risk averse for another scheme like the AWPR, which would mean that I would be unlikely to win the bid for the project in the first place.

Peter Chapman: You might put in a slightly higher bid in the first place and your costings might show that you were not very keen.

Bill Hocking: Absolutely.

Peter Chapman: We hope that the road will open before Christmas, but there will still be remedial works to carry out. Drainage works are among the main ones that farmers along the route regularly bring up with me, because a lot of them are still to be completed. Can my farmer friends have confidence that you will be around long enough to ensure that all drainage issues are sorted satisfactorily?

The Convener: I am sorry, but before you answer that, Peter Chapman must declare an interest when he is talking about farming.

Peter Chapman: I declare an interest as a partner in a farming business in Aberdeenshire. However, it is not connected to the AWPR.

Many farmers have contacted me about many issues around the road, but one that is still very much outstanding is drainage, which is why I have asked a specific question about it.

Brian Love: The projected December date that we are working to is for the main road section to open. Some ancillary works will go on beyond that

date, but they are not on the main road. We project a finish date of March 2019 for that work. As Mr Greene pointed out, Aberdeen Roads Ltd has a 30-year concession to operate the road. Our contractual structure means that, if a defect manifests, whether in drainage or ancillary works, we can seek the construction joint venture to make those corrections. I can therefore provide the assurance that Aberdeen Roads Ltd will be around for the foreseeable future.

The Convener: I will park that issue there, because I want to get in two more questions from members before my final one.

Richard Lyle: I have experience of work in my constituency area that was similar to that on the AWPR. The work on the M8, M73 and M74 involved the same type of bundle. I found that the contract was too tight and that there was not enough flexibility. Have you had the same problem? Has there not been enough flexibility to amend some of the contracts, which has meant that you have had to go through a lot of people?

Bill Hocking: It is a very rigid form of contract—that is for sure. I was pleased to see a publication a couple of weeks ago that said that the Government was considering different forms of procurement for infrastructure schemes and building schemes, and having a slightly different form of contract, which would be good.

Richard Lyle: On the subject of upgrades or restoration, the company that is running the work will be there for the next 30 years anyway.

Bill Hocking: Yes.

Brian Love: Yes.

Richard Lyle: And it will be responsible for any problems. Is that correct?

Bill Hocking: Yes.

Brian Love: Yes.

The Convener: Maureen Watt can ask a short question.

Maureen Watt: I, too, thank everybody who has worked on the project. I think that the road looks fantastic. What lessons have you learned from the project for future projects? Is it the case that you grossly underbid for the contract?

Bill Hocking: As Stephen Tarr said, where we have underpriced, that is for our account to bear. We have focused on finishing the job in its entirety—on finishing the section next week and the whole job, we hope, by Christmas. We will then review our shortcomings and the lessons to learn. I suggest that we also sit down with Transport Scotland and have a debate about the joint lessons that could be learned for future projects.

10:15

Stephen Tarr: On Maureen Watt's question about whether we underbid, my understanding is that two bidders that went to what is called the best and final stage were quite close.

The Convener: This question, which will be the final one, relates to the subcontractors that you have used. The problem is that the contract is programmed to cost £745 million but, from Stephen Tarr's comment, it may well have cost over £1 billion by the time that it is complete. I have evidence of subcontractors not having been paid for the Dalraddy to Kincaig section of the A9 because the joint venture has said: "We're not paying you the full amount. We will just pay you what we think it is worth." A couple of cases are at arbitration. Can you give the committee a guarantee that the subcontractors that have done work in good faith and completed the work up to the required standard will be paid in full, despite the claims that you have against the Government?

Bill Hocking: Absolutely.

Stephen Tarr: Our supply chain is important to us, and we treat it in the way that we expect to be treated by Transport Scotland. We have closed out over 60 per cent by value of the subcontract orders that we have placed. Those negotiations are consensual. We do not envisage any material issues with our supply chain in resolving our differences. Our issues with Transport Scotland are separate from the way in which we have contracted with our supply chain.

The Convener: It is good to hear that. Often, the bigger organisation squeezes the smaller organisation. It is the smaller organisations that really feel the pinch.

Thank you very much for giving evidence. It has been very interesting for us to hear more pieces of the story.

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

10:17

Meeting suspended.

10:23

On resuming—

Transport (Update)

The Convener: Item 3 is a transport update. This is one of the regular updates from the Scottish Government to the committee as part of its scrutiny of transport policy, and this is the first such session with the new Cabinet Secretary for Transport, Infrastructure and Connectivity. An update on the national transport strategy was provided by the cabinet secretary via correspondence on Monday.

Lewis Macdonald and Mark McDonald will stay with us for the first part of this item.

I welcome the cabinet secretary, Michael Matheson, who is accompanied by officials from Transport Scotland: Bill Reeve, the director of rail; Michelle Rennie, the director of major transport infrastructure projects; Graham Laidlaw, the head of ferries; and Gary Cox, the head of aviation.

Cabinet secretary, I invite you to make a brief opening statement of up to three minutes.

The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson): I thank the committee for inviting me to provide my first general transport update as Cabinet Secretary for Transport, Infrastructure and Connectivity.

Sunday will see a huge step towards promised changes to ScotRail's timetable across the country, with peak-time capacity being improved. The first phase of the revolution in rail will also deliver enhanced rail connectivity across the country and improve passenger journey choice. The changes bring to fruition many tangible benefits of our significant investment in improving rail connectivity and journey times across most Scottish routes.

We are taking a strategic approach to our islands and international connectivity. I have commissioned an aviation strategy to articulate better our commitment to supporting the economic growth that the aviation sector can help to deliver. I am also taking stock of our approach to how we fund and procure ferry infrastructure. Our current ferries plan is under review. On the whole, ferry and aviation services perform well, but I acknowledge the frustration of customers during recent periods of disruption. Lifeline ferry services and islands aviation routes play a key role in supporting the economic, social and cultural development of islands and remote mainland communities. The Scottish Government remains committed to those services.

Let me turn to the AWPR, following the earlier session that the committee held with the contractors for the project. The only reason why the AWPR is not open today is that there have been technical issues on the Don crossing. ARL aims to finish the bridge before Christmas, but it has warned that remedial works are complex, very weather sensitive and subject to safety and quality tests. We should therefore treat that programme with some caution.

Following an intensive period of dialogue with ARL, I am delighted to say that it has finally provided a timescale for opening the next 31.5km. I made clear to ARL my strong desire to get the road open as soon as possible, but that cannot be at any cost. The Scottish ministers are simply not willing to pay over the odds for the road on account of mistakes or miscalculations of the contractors' making. I am pleased that ARL now appears to have recognised that. Having said that, it is disappointing that my personal intervention was required to move the matter forward. I question why it has taken ARL this long to release those benefits to the north-east when the road was ready to open on 5 October.

I will end my comments there, convener. I am more than happy to answer questions from committee members.

The Convener: Thank you, cabinet secretary. The first question will be from Richard Lyle.

Richard Lyle: Good morning, cabinet secretary. When a new road is being built, the first question is always when it will be opened. My view has always been that the road will be open when it is open, but most people want a date. Can you provide an update on the completion and opening dates of the AWPR, including for the opening of the completed Craibstone to Stonehaven section? We want a date; we do not to be told that that will be in the spring or by Christmas.

Michael Matheson: The committee has just heard from the contractors that are responsible for completing the outstanding works on the AWPR. They expect to have section 2B open by the end of next week, and they anticipate having the sections on the bridge over the River Don completed by Christmas. They were not able to give the committee a specific date for when the works on the River Don will be completed for the reasons that they explained, which are to do with weather sensitivity and technical issues relating to that work. However, they intend to have them completed by Christmas.

Mike Rumbles: Good morning, cabinet secretary. Your predecessor told us that the fixed price in the contract for the road was £745 million. This morning, the contractors have told us that it could cost up to £1 billion. How much do you think

that this fixed-price contract is going to cost the taxpayer?

Michael Matheson: As is set out in the contract, any claim over and above the fixed price would have to be substantiated and demonstrated before additional payment could be made. However, as things stand, the price will be within the costs that are set out in the contract.

10:30

Mike Rumbles: Thank you for that.

The contractors talked about the claims, which will come to you. They claimed commercial confidentiality, of course, but I have looked at the losses to their shareholders that have been published and I see that a figure of at least £35 million is in the public domain in relation to the road.

The fixed price is £745 million, and the contractors have said this morning that the whole build could cost up to £1 billion. How much do you expect them to claim? Will it be in the tens of millions of pounds? Will it be in the hundreds of millions of pounds?

Michael Matheson: It should be recognised that, in any major infrastructure project with a contract of this nature, it is not unusual for contractors to make claims. A contractor must substantiate its claim by demonstrating, with evidence, that it has incurred a legitimate, additional cost. The process for addressing such issues is through a facilitated dialogue.

It is the contractors' responsibility to produce the evidence to substantiate any additional claim. Whether any claim is settled is dependent on the evidence that is submitted. If the taxpayer incurs any final additional costs, that would have to be substantiated by evidence and data provided by the contractors that satisfies us that those additional costs are necessary.

Mike Rumbles: Have the contractors put in any claims to date?

Michael Matheson: They have indicated that they have incurred additional costs. That forms part of their claim. They have already been involved in a facilitated dialogue—that is in the contract; it is how such issues are dealt with—with Transport Scotland and our legal advisers. They have not been able to produce the data and evidence to substantiate their claim as yet.

Mike Rumbles: I understand that you cannot possibly give us the exact figure, but part of the committee's job is to press you on spending taxpayers' money. We need to understand how much taxpayers' money the road will cost us.

Michael Matheson: The cost will be within what is set out in the fixed-price contract. Any additional costs will be dependent on the evidence that the contractors present, so—

Mike Rumbles: They have submitted claims to you. What I am trying to get from you—

Michael Matheson: What they have not been able to do is submit data to support those claims sufficiently.

If you are asking me what the end figure will be, that is dependent on the contractors presenting sufficient evidence.

Mike Rumbles: I will change my question then. Are the claims that have been submitted to you in the tens of millions of pounds or in the hundreds of millions of pounds?

Michael Matheson: I am not going to give you a figure, because that is commercially confidential. In addition, although they may state a claim, it might not necessarily be one that we find acceptable or for an amount that we are prepared to pay. They—

Mike Rumbles: Who would adjudicate between the two parties?

Michael Matheson: A facilitated discussion process is undertaken. An independent person is appointed to manage those discussions, which are on-going. Ultimately, the courts would determine such matters—

Mike Rumbles: They would sue you, basically.

Michael Matheson: It could be dealt with through a legal process, if the facilitated discussion is not able to resolve the matter.

From my perspective, and from a taxpayer's point of view, any additional claim has to be substantiated—there has to be data to support any claim. The taxpayer cannot simply accept a claim that is lodged by the contractors on the basis of additional costs that they think that they have incurred.

I am not saying that they may not have a claim; I am saying that they need to substantiate it and produce the evidence to demonstrate it. That is extremely important from a taxpayer's point of view.

The onus is on the contractors to make sure that they can substantiate any claim. There is a process set out in the contract for considering such matters. If it cannot be dealt with through that process, it may have to be dealt with through the courts.

I will not give you a figure, because the matter could ultimately end up in the courts. As I have

said, the onus is on the contractors to substantiate their claims.

Mike Rumbles: Finally, assuming that it does not go to the courts, which could take an awful long time, and that the facilitated discussion reaches an amicable solution, when will the committee find out how much the road has cost the taxpayer?

Michael Matheson: That is dependent on the contractors being able to substantiate their claim. The sooner that the contractors provide that data and information, the quicker the assessment can be made.

The Convener: Just so that we do not have to push that point too far, can you confirm that, when you are aware of the final price of the contract, you will inform the committee and Parliament of the final amount, over and above the £745 million that the contract was supposed to cost?

Michael Matheson: If there is any additional cost over and above the fixed-price contract, Parliament will be notified. That process is open to scrutiny by Audit Scotland.

The Convener: We have a few more questions, cabinet secretary. I have one that I pushed the contractors on. We were very aware that there were problems with utilities in March 2017. In March 2017, Keith Brown came to the committee and advised us that all the problems had been resolved, everything was moving forward and the contract was on time. I assume that, knowing that there was a problem with the utilities and therefore that there would be a cost overrun, the Scottish Government started negotiating almost immediately with the contractors. Am I right to say that? A yes or no answer would be fine.

Michael Matheson: I will ask Michelle Rennie to answer that because her involvement in the contract predates mine and she can give the committee more insight on that.

The Convener: I was convinced that Michelle Rennie would answer that question.

Michelle Rennie (Scottish Government): Just to clarify, my recollection is not that the committee was told that everything had been resolved with the utilities at that point; rather, the committee was told the target completion date. I will not play out the detail of the contract, but the contractors have an obligation to manage utilities. Our view is that the contractors' programme is for them to design, manage, resource and then deliver. That is the nature of such contracts. The committee heard earlier about risk transfer, and that is part of the risk transfer as far as we are concerned.

The Convener: What does the contract say about the timescale within which the contractors must warn the Government or Transport Scotland

that there will be a cost overrun that could result in a claim? That would form part of most contracts.

Michelle Rennie: A contractor has no obligation to notify the Government of a cost overrun, because of the risk-transfer mechanism—just because a contractor incurs a cost, it does not necessarily mean that the Government incurs a cost. In certain circumstances, a contractor may be entitled to additional costs. In that situation, the contractor would need to evidence the entitlement and substantiate the costs.

The Convener: Is there a timescale for that?

Michelle Rennie: There is a timescale.

The Convener: What is the timescale?

Michelle Rennie: I cannot tell you off the top of my head. There is a prescribed timescale within which a contractor needs to make a notification that there is a claim of that nature.

The Convener: The problem was identified in March 2017 and we are now in December 2018. The contractors would have had to identify the problem and notify Transport Scotland of the outline of the claim, as laid out in the contract.

Michelle Rennie: That is correct. It has been some time since we were notified.

The Convener: Can I push you for a date?

Michelle Rennie: I can write to the committee with the date.

The Convener: That would be very helpful, because we were told earlier this year that there would be no cost overrun, yet I believe that, by the time that we were given that evidence, the contractors must have informed the Government that there would be a cost overrun.

Michelle Rennie: The contractors have identified that they have a claim. The fact that there is a claim does not mean that there is a cost to the Government.

The Convener: Michelle, you and I both understand that point, but if there is a claim, there is a likelihood that it will have to be considered. Whether the claim is rejected or accepted is not a matter for either side to prejudge. We will leave that there and move on.

Jamie Greene: I am quite perplexed, cabinet secretary, by the stance that you and the Government are taking. You have just told the committee that if there is a claim by the contractors, what is important to the taxpayer is that the claim is substantiated by data and evidence and that the onus is on the contractors to provide that. Would you not agree that what is important to taxpayers is that they should not have to foot the bill for cost overruns on the project?

The onus is not on the contractors but on you and the Scottish Government to ensure that the Scottish taxpayer does not have to foot the bill for the overruns, which could run into the hundreds of millions of pounds, as we have just heard.

Michael Matheson: I am surprised at the question. A contractor has said that they have a claim, and Mr Greene appears to be taking the view that the Scottish Government should just accept that—that it is our responsibility.

Jamie Greene: They seem very confident in their claim. That was the evidence that we took this morning.

Michael Matheson: They may be confident; they are entitled to be. I am confident about our position in acting in the taxpayers' interests. If a contractor says that they have a claim, there is a legitimate process for them to go through to deal with that claim. That process will determine any entitlement. The onus is on the contractor to demonstrate the claim.

I am not going to say on behalf of the taxpayer that we will accept any claim and will settle it on the basis of what has been lodged without the necessary evidence and data to support it. Do you think that that would wash with Audit Scotland or the committee, if additional costs were involved? I am clear with the contractors that, if they have additional cost overruns on which they believe that they have a claim, they have to substantiate that. If they substantiate it, there is a process for considering it.

Jamie Greene: Do you accept that there is a substantial risk to the taxpayer? There is a claim, elements of which may or may not be valid, that could cost anything between £10 million and £300 million. There is an existing risk to the taxpayer. I do not see how you can ignore that fact.

Michael Matheson: The committee has already heard from the contractors this morning about risk transfer. The risk sits with them, because they have entered into a fixed-price contract. Anything over and above that has to go through the substantiating process that I have already set out. I am not prepared to say that the taxpayer will take on that risk without the contractor first being able to substantiate the claim. It would be reckless to suggest that.

Jamie Greene: I have made my point.

The Convener: I am sure that the committee is not suggesting that you will be reckless, cabinet secretary.

Stewart Stevenson: In the previous evidence session, the contractors confirmed that their claims are limited to utilities diversion. They also said that part of the substance of their claims relates to Transport Scotland having been

involved in discussions with the utilities prior to the signing of the contract that ARL is party to. They were therefore leading us to conclude that some residual risk lay with Transport Scotland in relation to the work that was done prior to the signing of the contract with ARL. Do you share the understanding described to us by ARL and the other contractors, or do you have a different view of the basis of the claims?

Michael Matheson: I will bring in Michelle Rennie on that issue, given her history with the project, but first I want to make this point. Almost two years was spent developing the contract. The contractors who entered the contract are multinational, multimillion-pound organisations that wanted the contract. They bid for it competitively and wanted to undertake the work. They signed a contract in full knowledge of where the risks lay within that contract. They had legal and technical advisers available to them in their respective organisations. This is not a new process for them. It is a process that has been used in other major construction projects, including for roads and facilities such as schools and hospitals. The contractors went into it with their eyes wide open and with all their knowledge of previous contracts.

I ask Michelle Rennie to give more detail of the utilities element and some of the risks associated with that.

Michelle Rennie: It is important to give a little background. As the cabinet secretary said, what we are doing is not new. It is not new in privately financed projects, in NPD projects or in design and build projects for Transport Scotland. We have treated utilities in this project exactly the same as we treat utilities across all our projects. Morrison Construction and Balfour Beatty have been involved in those projects and have successfully delivered them across Scotland for a number of years.

10:45

Throughout the bidding process, there is a period of competitive dialogue. Depending on the nature of the utility, some utility companies need longer lead times than others to be ready. We engage with the utility companies early on in the designing of a scheme so that we know which utilities we are likely to encounter and the challenges that we will face. We continue that involvement right through the tendering and dialogue process, and we make the process transparent to contractors. In fact, we are happy to facilitate meetings between utility companies and contractors so that they can better understand the nature of the risks that they are taking on. Because any utility diversion is inextricably linked with the contractors' programme, it is important that that is well understood, and we want to

ensure that any bids that we get for projects are robust and that everybody understands the risk-transfer mechanism.

On a related point, it was suggested that the number of utility diversions on this 58km project is exceptional, at 300. I will let you draw your own conclusions, but there were 170 utility diversions on an 11km section of the M8 contract. You may well draw the conclusion that 300 diversions over 58km does not seem exceptional.

Stewart Stevenson: Some diversions, or at least potential diversions, related to things such as gas pipelines, which perhaps would not have applied to the M8. There are some complexities that are specific to the environment.

Michelle Rennie: Every project brings its own bespoke complexities. However, the nature of the diversions and the utilities protections on this project were not any different from those on other recent projects in Scotland, which some of the contractors were involved in. It is not unusual in that respect.

The Convener: Just to clarify, so that I understand the issue, am I correct in thinking that, before the contract was awarded in 2014, Transport Scotland would have been in contact with utility companies that may have been affected by the project and would have warned them of potential timescales, with the road opening in 2018?

Michelle Rennie: That is correct, and we will have made those communications clear to the contractors. In the contract document, we will have given the contractors the information that we had from the utility companies at that point.

The Convener: So the contractors would have had every expectation that there had been dialogue with the utility companies and that those companies were aware of the project and were prepared to move on with it within the timescales that the Government had set.

Michelle Rennie: The contractors would have had every expectation that the utility companies were aware of the project, and there was every opportunity for the contractors to meet the utility companies and discuss their programmes with them.

The Convener: That is interesting.

Lewis Macdonald: Cabinet secretary, I listened with great interest to what you said. I think that you said that it is now two months since the stretch of road from Stonehaven to Craibstone was ready to use, and you still question why it has taken the contractors so long to get to this point. I take it that you heard the evidence that the contractors presented to us earlier this morning. They said that the issue is all terribly complicated and they

had to ask permission from all sorts of people. Is a failure of internal communication among the contractors an acceptable explanation for why the most modern stretch of road in the country has been lying unused for two whole months?

Michael Matheson: In short, no. I have expressed my frustration on a couple of occasions when I have been questioned on the matter in the chamber.

I will put the issue in context. When I discussed the matter on 29 October with Peter Truscott, who is the chief executive of Galliford Try, he informed me that the contract variation that had been worked on for several weeks between the lawyers of the different parties was with the lenders. As I pointed out in my statement to Parliament, within 24 hours of that conversation I got a letter telling me that that was not the case.

We were then in a situation in which it appeared that the contractors were not able to make progress on the contract variation with their lenders. That is why I asked for a meeting with ARL, which took place on the Thursday of that week, 8 November, and was attended by the chief executive of Balfour Beatty and other representatives of ARL, in order to try to identify the barriers to their sharing the variation with their lenders.

They identified a few issues that they believed could be potential barriers for their lenders. I asked my officials to take those issues away to see whether they could be addressed. A new contract variation was presented to the lenders on 12 November—the following Monday, which was within two working days—for the lenders and their lawyers to agree.

I point out that the contractors said that the contract variation for the lenders was agreed on 21 November. I can tell the committee that in that intervening period they sought to renegotiate the contract variation, which I was not prepared to do, because I thought that the terms that had been put to them were perfectly reasonable and addressed the concerns that they had raised with me. That variation was the final offer, and that had been made clear to them. It was then for the contractors to progress the matter with their lenders, which they subsequently did, and which has resulted in their announcement today that they intend to open the section that can be opened by the end of next week.

Lewis Macdonald: Is it your view that that change of heart by the contractors after 21 November was simply a recognition that there would be no financial benefit to them from maintaining the position that they had held up to that point?

Michael Matheson: I suspect that the penny had dropped. I was not prepared to get into a situation in which they were seeking to connect negotiations to open phase 2B—which can be opened—with their wider claim. They are two entirely separate issues, and I was not prepared to be held to ransom by the companies on how to negotiate the process. My view is that they had taken a misguided commercial approach to dealing with the parallel phase 2B claim: I was not prepared to accept that, or for the taxpayer to be exposed to that type of risk. I suspect that they eventually realised that I was not prepared to move on the matter.

Lewis Macdonald: The evidence that the contractors gave this morning was that they recognised and asserted that there was no link between the agreement to open phase 2B and commercial benefits that they might accrue from that.

Michael Matheson: I heard that evidence. From the discussions that I had with ARL, including the chief executive of Balfour Beatty, I quickly came to the conclusion that they wanted the two issues to be dealt with in parallel.

Lewis Macdonald: Are you finally confident that legal signing of the contract variation will occur in the next few days.

Michael Matheson: The contractors have given us assurances that that will be the case. You have heard the assurances that they also gave to the committee on that. I hope that they will stay true to that commitment. The situation could have been resolved much earlier, had they not taken what I believe was a misguided commercial approach to dealing with their claim and with the issue of phase 2B.

The Convener: I will bring in Richard Lyle, briefly.

Richard Lyle: Do you intend to look at any future contracts like this one? My experience of a similar contract—the M8, M73, M74 project—was that it was too tight: a set contract could not be amended. Those were officials' words, not mine. It was not possible to open sections of road due to contractual problems. Whenever there is another major contract such as this, do you intend to ensure—

Michael Matheson: What do you mean when you say that the contract was “too tight”?

Richard Lyle: I mean that the contract could not be amended. For instance—I am sorry, convener—I wanted extra fencing to be put on the M8, but that was not allowed. I was giving an example, convener.

The Convener: Mr Lyle.

Richard Lyle: You asked for an example. You got it.

The Convener: I am sorry. I have not allowed that in the past and I am not going to allow it now.

Cabinet secretary, will you please answer the specific question on whether you will review the contract terms for future contracts to make it easier for parties to understand them?

Michael Matheson: We need to be careful here. I understand that contractors that go into a contract and then face challenges will say that the contract is at fault. However, we also have a responsibility to protect the taxpayers' interest. Companies enter such contracts with a lot of technical and legal advice, and with their eyes wide open. We always look back on how a major infrastructure project has been carried out and ask whether there are lessons to be learned. For example, we saw from Audit Scotland's report that the contract for the Queensferry crossing was very effective and that it was managed. However, if the intention is to make it easier for contractors to lodge claims against the Government and to get additional payments from it, the answer will be no.

The Convener: We can leave that there. Mr Lyle has had his answer.

Peter Chapman: Good morning, cabinet secretary. We have discussed the extra costs, so I do not want you to go into them. Given your and the Scottish Government's responsibility, what outstanding issues are still to be resolved in order to allow the AWPR to open? The Queensferry crossing has been open for a considerable time, but there are still snagging issues. What issues are still to be resolved on the AWPR?

Michael Matheson: The remedial work that has to be carried out on the bridge over the River Don is clearly the most outstanding issue.

It should be said that there will always be snagging work on major infrastructure projects: it might be that although the construction can be used, there will be snagging work for an extended period. The builders remain liable for dealing with issues for an extended period even in a house-building project, never mind in major road-building projects. There is always snagging work to be done once a project is largely completed and can be used for what it was designed for. The AWPR will be no different.

The contract is such that ARL will be responsible for maintenance of the road for the next 30 years, so it will be responsible for snagging. I heard Peter Chapman's point about drainage matters and farmers: ARL should be addressing such issues of concern. Maintenance issues will also fall to it in the future, given the nature of the contract.

As I said, the most outstanding issues are clearly the technical issues to do with the bridge over the River Don.

Peter Chapman: Thank you for that answer, which gives people who live alongside the road some confidence that concerns that might not come to light for a considerable time—drainage being one—will be addressed.

Mark McDonald: I asked the cabinet secretary, following his statement, what will happen if the section to Craibstone opens before the Don crossing is finished. If traffic wants to connect further north using the AWPR, it will need to divert off through the Dyce industrial estates and, potentially, the village of Dyce itself. You said that work was under way to ensure that appropriate traffic management would be in place to reduce disruption. We now have a date for opening that section, but there will be a lag before the full route is complete. Is that work complete? When will it be notified? Will it be you who notifies or will that be the responsibility of the local authority? Businesses and residents are seeking reassurance on that.

Michael Matheson: I recall you raising that following my statement. I have been very clear during my involvement that, should any contract variation be agreed to, we must be ready to move as quickly as possible. Transport Scotland has advanced its plans in order to ensure that we will have arrangements in place to allow the road to open, as soon as we have the date on which it can open. That means that additional works will have to be put in place to manage traffic in the area that Mark McDonald mentioned, including with Police Scotland, so that we get its sign-off.

Michelle Rennie can give you a bit more technical detail on the plans.

The Convener: Michelle, I will be delighted if you can give an overview. If you want to write to Mark McDonald and the committee to explain what you are doing in detail, I will be happy to receive that information at a later date.

Michelle Rennie: I am happy to do that, convener.

It might be worth my while to say that we have, as the cabinet secretary mentioned, been for a time undertaking some work to understand the impact on the surrounding communities of opening that section of road. It has been a collaborative piece of work involving our technical advisers, both local authorities and the contractor. As a result of it, we now understand the impacts.

The traffic management that will be associated with rerouting traffic will also involve collaboration among all those organisations, because they will understand best the impacts on their own network.

All the signage and everything else has been agreed. There is now a plan in place that just has to be implemented. The hope is that it will be in place for only a short period until such time as the Don crossing is open.

11:00

Mark McDonald: The run-up to Christmas is a busy time. I note that the Craibstone junction feeds traffic to Aberdeen airport. On top of the increased flow to the airport around Christmas time, there will also be traffic connecting to go north. Have you had conversations with Aberdeen International Airport Ltd to ensure that it takes whatever steps are necessary to notify travellers, and that it makes appropriate arrangements for people going to the airport around Christmas?

Michelle Rennie: We will put out whatever notifications are required in conjunction with Traffic Scotland and the local authorities. I will write to you in detail on that.

The Convener: If you write to the committee, we will make sure that the information is passed on. It is relevant to all of us.

We will move on to the next subject, on which deputy convener Gail Ross will begin the questioning.

Gail Ross (Caithness, Sutherland and Ross) (SNP): Good morning. I will move from the AWPR to two other roads: the 80 miles of the A9 between Perth and Inverness that are being dualled by 2025 at a cost of £3 billion, and the 86 miles of the A96 between Aberdeen and Inverness that are being dualled by 2030 at a cost of £3 billion. Can you update us on those projects?

Michael Matheson: Gail Ross is right about the cost of dualling of the A9 between Perth and Inverness: at £3 billion, it is the biggest infrastructure project that has ever been undertaken in Scotland. It is due to be completed by 2025. The programme continues to be on target.

The first part of the road to be dualled—the section between Kinraig and Dalraddy—opened in September, and the construction contract for the second section to be dualled, between Luncarty and Birnam, was awarded on 21 September to Balfour Beatty, which is undertaking preparatory work on temporary access roads, access work areas and ground-works offices—the site offices—between now and early next year. That work sits alongside some design work that is being carried out.

The A9 project is being taken forward in eleven sections. The orders for eight of the other nine sections—in other words, about 95 per cent of the orders—have been issued, and the one that is

outstanding relates to a section that is being taken forward under a co-production model with the local community in the Perthshire area. Once that process is complete, the draft orders will be issued for that section, too. As I said, the work is being phased, and 95 per cent of the draft orders for the dualling programme have been issued. We will just have to wait and see whether there are any public local inquiries into those orders.

As for the A96, the first PLI, dealing with the section from Inverness to Nairn, was completed last month. The reporter is finalising the representations that have been received in the course of the inquiry, and we will have to wait for the reporter's submission to Scottish ministers on the matter.

We have also completed route options assessment work on the section between Hardmuir and Fochabers. The preferred route options were announced just yesterday, with a public exhibition taking place between today and Friday to allow local residents and interested parties to look at the detail.

The route options assessment work is also under way on the 26-mile section between east of Huntly and Aberdeen. Initial options are under consideration and, in October, there was a series of exhibitions at which people could provide feedback. The committee might be interested to note that, so far, 13,500 people have been engaged in the process of providing feedback on the proposed programme of work along the A96.

Gail Ross: The timescales up to 2025 and 2030 are long. Would a number of PLIs being held knock out the timetable?

Michael Matheson: There is that potential. It would depend on how long the PLIs take and how long it then takes the reporter to submit a report to ministers. You will be aware that such inquiries, which led to extensive legal challenges, delayed completion of the Aberdeen western peripheral route. The current schedule of work will allow us to reach the end point at the expected time, but there could be delays if there are extensive PLIs.

Gail Ross: You mentioned the AWPR. What comfort can you give the committee that a situation such as happened with that project will not happen again with the A9 and A96—the two major infrastructure projects that we are talking about?

Michael Matheson: A different type of contract has been used: a capital build contract has been put in place.

Michelle Rennie: The Luncarty to Birnam contract is a standard design and build contract, which we have used successfully throughout the country.

John Finnie (Highlands and Islands) (Green):

I was delighted to hear the cabinet secretary mention the co-production model. I know that the Deputy First Minister is an enthusiastic supporter of that approach, and that assessment is on-going. Why will that facility not be made available to individuals who have an interest in applying the approach to decision making around the Hardmuir east section of the A96? There is a feeling that Transport Scotland officials are positively frustrating any prospect of the approach being adopted.

Michael Matheson: I hope that that is not the case. The reality is that the co-production model has been used in that way for the first time, so there has been a learning process for Transport Scotland and for the community that has been involved. We want to evaluate the process.

Co-production is also a longer process—it takes longer for decisions to be reached, which can impact on the timeline for taking forward projects. We want to learn from our experience and look at how the model could be utilised in the future; we want to look at how we can build on that learning experience.

John Finnie: You will understand the frustration of some groups that the assessment process will, as I understand it, conclude shortly, but decisions on preferred options might already have been made without communities having had the opportunity to engage in the process. I understand that you want to speed things up, but you will understand that some people might want to slow things down, so that we have informed decisions.

On another aspect, I have a simple request. I understand that, in the Dunkeld area, drone footage might have been used to provide an additional means by which people could look at a route. Drone footage is often used by engineers. Is there any reason why such footage could not be used in the Forres area, for example?

Michelle Rennie: In order to use drone footage, we would be required to get the consent of all the landowners who would be involved. We will certainly look to get that consent in the future. To date, we have used some aerial footage, which has been quite helpful in presenting visualisations.

John Finnie: Could you say when such footage has been used? As I said, the Deputy First Minister is enthusiastic about the process that was used in his constituency. We obviously want the same high level of consultation and engagement elsewhere.

Michelle Rennie: As I said, we are happy to look at that for the future.

John Finnie: Is it possible that such footage could be used on the A96?

Michelle Rennie: Yes—we will look into that.

John Finnie: What is the timeframe for the work?

Michael Matheson: The project is to be completed by 2030.

John Finnie: Forgive me, but I am trying to understand the timeframe under which you will consider using the co-production model and using drone footage to inform decision making. Clearly, everyone wants the most informed decision making, as opposed to something that has been drawn up in an office in the central belt.

Michael Matheson: I cannot give you a timeframe, but I am more than happy to take your question away and consider it with the A96 project team, to see where and when what you suggest might fit into the process, given the schedule of works and the consultation process.

John Finnie: I am grateful to you, cabinet secretary.

The Convener: Cabinet secretary, you will have heard me ask the witnesses in the previous part of the meeting about the payment of subcontractors in joint ventures. There is evidence that some subcontractors in the A9 project have not been paid, because the joint venture is squeezing them. Is that acceptable, if the Scottish Government has paid the joint venture in full?

Michael Matheson: I am not aware of that and I would be concerned if it were the case. As you will be aware, from the Scottish Government's point of view, Transport Scotland has a contract with the main contractor, who is then responsible for paying subcontractors. We expect that to be done appropriately. If there is evidence that the issue that you describe is arising for contractors, I will be more than happy for us to look into it, to see whether it can be addressed.

The Convener: In principle, you would not find that acceptable.

Michael Matheson: No, I would not find it acceptable if payment were being withheld.

Richard Lyle: Transport Scotland officials wrote to the committee on 8 January 2018, setting out details of minor works that are still to be completed on the Queensferry crossing, which were expected to be complete by September 2018. We have now heard that, principally because of the painting of the underside of the bridge deck—surely that should have happened before the bridge opened—the works will not be completed until the end of 2019.

Why has the deadline for completion of works on the Queensferry crossing been extended from September 2018 until the end of 2019? That is a year, I think. Do you anticipate further delays? Are

there works still to be done? Will the work all be done by the end of 2019? Can we be confident that what happens will match what has been said?

Michael Matheson: The under-deck painting did not have to be complete for the road to open for people to use. That is why it is part of the snagging work that is being completed after the road has been opened to users. The reason for the challenges in that regard is that the contractor who is responsible for doing the work needs a deck area that they can utilise so that they can get under the bridge, and they have had technical issues with the subcontractor who was working with them to deliver that. That has resulted in a delay in getting that deck in place.

The work is also weather sensitive. There are periods during the winter, with certain temperatures, when it would not be appropriate to do that painting work. The delay in getting the below-deck platform that the contractor needs to work from has had an impact on their ability to do the work, and weather conditions limit how they can do the work. However, the contractor expects to complete the work by the end of next year.

A second issue relates to the concrete finishing on the pillars that needs to take place. The contractors have had some issues to do with safe working arrangements for the people who do that work. The issue is being progressed and, once it has been resolved, contractors should be in a position to complete the work next year. Again, the work is weather sensitive, and given the nature of the environment in which people are working—for example, the winds to which they might be exposed—work is more restricted than it would be in other circumstances. You will appreciate that.

A combination of technical issues and weather-related issues has had an impact on the completion of the work.

Richard Lyle: I think that the bridge is excellent and I am quite pleased to go over it. However, I am amazed that the underside was not painted before the bridge opened, because that work could have been done without affecting the work above. Anyway, I will leave that to one side.

Will there be on-going maintenance on the bridge over its period of use—hopefully 100 years?

11:15

Michael Matheson: The situation is quite like that on the rail bridge, where, by the time they finish painting it at one end, it is time to start painting it at the other end.

Richard Lyle: I think that they stopped doing that. That does not happen now.

Michael Matheson: There is a team of about 200 contractors working on the bridge to deal with some of the snagging work. There is also a dedicated Transport Scotland team that works alongside the contractors, and there is the project team that meets them to examine the progress that they are making on that snagging work.

Richard Lyle: So, basically, in 2019, will everything that was outstanding at the time that the bridge was constructed be finished?

Michael Matheson: It should be, yes.

The Convener: It might help the committee if we could see a list of all the outstanding works. Either you or Transport Scotland have given us such a list in the past. We have heard various stories about lifts malfunctioning and so on, and you have mentioned the issue of the painting. It would be useful if that list also said when those works will be completed. It would also be useful to have an explanation of the construction work around the hawsers that came down into the bridge, which I think are now being removed.

Michael Matheson: I am more than happy to look at doing that. I am not entirely sure whether there is anything in addition to what was in the previous update that you received. However, if there are any additional items, I am more than happy to bring them to your attention.

The Convener: If you could give us a full list, we could check it against the original list.

Colin Smyth: I would like to turn our attention to issues on our railways. In September, ScotRail's performance fell below the breach level that was set out in the franchise agreement. Why did you not take enforcement action against Abellio for its failure to meet the contractual obligations, and why did you instead grant a waiver against enforcement of those obligations?

Michael Matheson: As I and others have previously stated in Parliament, the reason for providing the waiver was that a number of factors that were outwith ScotRail's control had had an impact on ScotRail's performance. There were weather-related incidents, such as storm Ali, which had a significant impact. There were also infrastructure problems that had an impact on performance, and delays in rolling stock being provided to ScotRail by Hitachi. Those factors were outwith ScotRail's direct control.

The franchise is designed in such a way that that can be taken account of. Given ScotRail's undertaking following the Donovan review to see how it can take forward further improvements and the progress that it has made on the recommendations that were set out in the Donovan review, as well as the factors that were outwith its control that impacted on its

performance, there was a reasonable case for considering a waiver of the performance breach level to allow ScotRail to make progress on the programmes of work that it is taking forward to address the issues.

That said, there is a threshold of 1 per cent below that performance level, which ScotRail should not drop below. Should performance further decrease, a remedial plan will have to be put in place to address the issue.

Colin Smyth: An email that was sent on 19 September by your private secretary to Transport Scotland's ScotRail franchise manager in response to a request by ScotRail for a waiver stated:

"Mr Matheson is now content but wants to be very clear with ScotRail that any further drop in performance will be unacceptable".

In the two reporting periods since then, performance has got worse. Do you therefore think that it was a mistake for you to grant the waiver without an explicit condition around improving performance?

Michael Matheson: No, because there is a condition. If performance drops 1 per cent below that base level, ScotRail will have to produce a remedial plan.

It is worth making the point that all the other conditions in the franchise continue to be applied.

Colin Smyth: The email was very clear. You said that any further drop in performance would be unacceptable, and there has been a further drop. You touched on where we are at the moment, and you are right to say that, in the most recent reporting period, ScotRail is just 0.03 per cent away from failing the 1 per cent below breach level that you mentioned; obviously, that is prohibited by the waiver. Given that ScotRail has not hit a franchise public performance measure since 2015, when do you think that it will rise above that breach level? Specifically, do you think that the franchise will ever hit the 92.5 per cent overall franchise target that has been set?

Michael Matheson: I am aware that an extensive amount of work has been done to try to achieve that; that includes new rolling stock, infrastructure investments, changes in personnel and certain arrangements within ScotRail to address some of those matters. I am satisfied that a significant amount of work is being done to address the issues and to help achieve the franchise target, but I recognise that there are issues that are completely outwith ScotRail's control and which have a direct impact on performance.

As I mentioned in the chamber yesterday, in the past quarter 59.5 per cent of all delays were

caused by Network Rail. By and large, over the course of last year, the figure for all the delays caused by Network Rail has been in excess of 50 per cent. It is outwith ScotRail's control to address those issues readily. That is why there is a need for Network Rail to have much more robust project management in place and to be much more customer focused in how it takes forward its infrastructure improvement programme, to minimise the disruption that is caused to those who provide rail services and, ultimately, services to the travelling public. In my view, the present arrangements for how Network Rail is managed and operated are not adequate to address that, and something more fundamental needs to take place to change that arrangement if we are to address the issues more effectively.

The Convener: When you talk about Network Rail delays, does that include things that Network Rail cannot affect, such as the weather and regrettable events such as suicides on tracks that lead to closures and delays? There are quite a lot of things that Network Rail cannot affect. Am I right in saying that?

Michael Matheson: Yes, you are. The concern is that they are increasing.

The Convener: Do you mean the adverse effects that Network Rail cannot affect?

Michael Matheson: No. The impact that Network Rail is having on rail performance is increasing proportionately, and that is why the Office of Rail and Road announced last week that it is taking enforcement action against Network Rail because of its poor performance and the impact that that is having on performance levels and therefore on the travelling public.

The Convener: The committee had a useful briefing from the Office of Rail and Road last week.

Colin Smyth: Those arrangements were obviously known about when the ScotRail franchise was awarded to Abellio. Will the current franchise ever meet the 92.5 per cent overall franchise target? If so, when?

Michael Matheson: It will be challenging to meet the target, but I am confident that a course of action is being taken to give us every opportunity to ensure that that target is achieved. I cannot provide you with an answer on when it will be achieved, for the very reasons that I have just outlined. There are a range of factors that are outwith the franchise holder's control and which can have a direct impact on that target being achieved, most notably Network Rail and the deterioration in its performance.

Jamie Greene: I will continue that line of questioning. I know that there are a lot of politics

at play when we talk about Scotland's railway, but the percentage of delays that is attributed to Network Rail is often used as a top-line figure, while the reality, by your own admission, is that a substantial amount of that is caused by elements that are outside Network Rail's control, including the weather. I am sure that the cabinet secretary appreciates that that is beyond the control of any Government agency or public body.

The cabinet secretary said in the chamber yesterday that he was meeting ScotRail to discuss the issue; I think that he accepts that performance is not what it should be. Are those meetings minuted? Are you willing to share with us what was said at that meeting?

Michael Matheson: There will be a note of the meeting.

Jamie Greene: What was said?

Michael Matheson: At the meeting yesterday?

Jamie Greene: Yes.

Michael Matheson: The meeting was about the unacceptable level of cancellations over the weekend and into the beginning of this week, which ScotRail explained the reasons for. It was a combination of factors, the first of which was the late arrival of the new 385s. Hitachi let down ScotRail by not delivering the trains according to the planned schedule, and that has meant that the training programme for the crews on the new trains is now behind schedule. It has been trying to accelerate the process of getting more of the trains accepted into the ScotRail network, which has meant that ScotRail has had to accelerate its training programme. With the timetable changing on 9 December—in other words, this Sunday—and with the new rolling stock becoming available over the period of the timetable changes, ScotRail had to get as much of that training completed as it could.

Alongside that, the industrial action over rest day working arrangements has directly impacted on the number of staff and crew available both to undertake training and to maintain the existing rail network. ScotRail was able to confirm that it would be having discussions yesterday with the trade unions with a view to trying, again, to resolve the dispute. I have encouraged it to do everything it can to resolve it as soon as possible, and I hope that that will be achieved in the not-too-distant future.

I made it clear that the communication of the significant impact of the cancellations on the public was not to the standard that I would expect. I understand that ScotRail has had to manage and deal with a convergence of challenging issues as best it can, but the travelling public deserve better and things should have been communicated much

more clearly and much earlier to allow the public to understand the potential impact on the services that they wanted to use.

Jamie Greene: I know that there will be other questions on this matter, but I must go back to your comment that the public deserve better. They do indeed, but you have also said that it will be quite challenging for ScotRail to meet the targets in the current contract. That does not sound overly positive.

Michael Matheson: The changes that will be made as a result of the new rolling stock, the additional electrification that is taking place and the seven cities programme with its high-speed trains will make a massive difference, and with the full implementation of the timetable change by December 2019, the capacity, fleet and number of services on our rail network will have increased. There is absolutely no doubt that there will be significant improvements.

When I say that the target in the franchise is challenging, I mean that it is challenging because of the range of factors outwith ScotRail's control that can have an impact on achieving that level of performance. The existing structural arrangements compromise the ability to deliver better passenger services because of the challenges arising between the infrastructure delivery body and the rolling stock service provider.

The Convener: Given that rolling stock has been mentioned, I will bring in Peter Chapman and then come back to Colin Smyth.

Peter Chapman: Cabinet secretary, you mentioned significant delays in the introduction of new rolling stock, including the class 385s, which you have already referred to, and in the refurbishment of high-speed trains on the Aberdeen to Edinburgh route, with only one of 10 trains on that route having been refurbished. Is Transport Scotland taking enforcement action against any of the organisations involved in those projects for the failure to deliver on time?

Michael Matheson: There are three areas of delay with regard to rolling stock. First, on the Hitachi 385s, the reason for the delay has been Hitachi. Secondly, on the new Caledonian sleeper, the reason for the delay has been CAF, the company that is manufacturing the new trains. Also, the reason for the delay in the refurbishment of the high-speed trains is Wabtec, the private sector company that is responsible for carrying out those works.

11:30

As much pressure as possible has been applied to those organisations, to try to make progress. I had a call with the global head of Hitachi in Japan,

in which I made it very clear that it is unacceptable that we are facing these delays, because they are having a marked impact on performance in Scotland. I have also made it clear to Serco, which has the Caledonian sleeper programme, that it is unacceptable that new rolling stock for the sleeper service has been delayed.

Next week, I have a call with the global head of Wabtec in the States to make it clear that its failure to deliver the refurbishment programme on the timeline that we agreed when we entered the contract is unacceptable. It is having a direct impact on the quality of passenger services that can be delivered.

We are doing as much as we can to apply pressure to the companies that are responsible for doing the work, but I accept that their failure to keep to the timelines that were agreed when we entered the contracts is having a direct impact on passenger services and their quality.

Peter Chapman: That is fine, but will there be financial consequences for those companies? Will some sort of compensation come back to ScotRail, or whoever, as a result?

Michael Matheson: Within the franchise arrangement, there are penalty provisions if ScotRail is not able to deliver on its performance commitments, which involve the Hitachis and the high-speed trains. You will be aware that some of that money has already been used and recycled into the improvements in rail infrastructure and services. There are also penalty provisions in the contract with Serco for the sleeper service, for its failure to deliver on the commitments set out in the contract that it will provide new rolling stock on time.

Stewart Stevenson: Who is paying for the 365s that have been hired to cover the gap?

Michael Matheson: Part of the money for that is coming from the penalties that have been applied to the franchisee.

Stewart Stevenson: Thank you.

Colin Smyth: Can you explain why Transport Scotland decided to make early contractual payments to Abellio?

Michael Matheson: I will ask Bill Reeve to give a bit more detail on that, but part of the reason was the financial challenges that ScotRail Abellio was facing as a result of the lack of growth in the patronage level, which was having a direct impact on its financial standing. That came about largely as a result of a couple of significant issues: the closure of the Queen Street tunnel and the delay in completing the Edinburgh to Glasgow improvement programme. Those had an impact on ScotRail Abellio's ability to grow its service, with financial implications.

The reprogramming that allowed ScotRail Abellio to draw money down early was in recognition of that. It was simply about drawing money forward to meet some of the financial challenges arising as result of the lack of growth compared with its projections when it went into the franchise, but there is no additional cost to the taxpayer. Bill Reeve can say a bit more about the technical aspects of that.

Bill Reeve (Scottish Government): I do not have much to add, but I will just say that it is using the provisions in the contract. When the contract is signed, a forecast revenue line is included in it. Revenue growth was held back by the delays to the electrification of the Edinburgh to Glasgow route and the impact of the Queen Street tunnel closure, which was not known about by the franchisee at the time of entering into the contract. In the light of that change, we considered it appropriate to use the revenue support mechanism. However, there is no increase in the total amount of money that is being paid by the Scottish Government to ScotRail.

Colin Smyth: So Abellio will not be out of pocket because of the current delays. Do you think that it is fair that passengers will be out of pocket when they face yet another fare hike in January, at a time when performance is way below what everyone here thinks is acceptable?

Michael Matheson: Let me be clear in response to your previous question. There is no additional cost to the taxpayer from drawing forward those payments. There is no linkage to the fare increases in January, which is when fare increases take place across the whole of the UK rail network. That increase is not linked to the drawing down of some of the early payments from next year into this year.

Colin Smyth: We are clear that the payments are being paid in advance because of delays. In effect, compensation is being given to Abellio through advance payments because of delays, but nothing is being given to the passengers. Cabinet secretary, you said that passengers deserve better. If passengers deserve better, why are the fare increases in January going ahead?

Michael Matheson: I emphasise that there is no additional cost to the taxpayer in drawing forward the payments. ScotRail would be entitled to them in the next financial year, but they are being drawn forward to this financial year, which means that they will not be there for the next financial year, as they will already have been paid. There is no additional cost.

I also emphasise that the fare increase is not related to that in any way. The retail price index increase takes place every year across the whole of the UK network. However, in Scotland, in

recognition of that, we cap the increase: for regulated off-peak fares, the rise is 1 per cent below the RPI and for peak fares the increase is at the RPI. That is the lowest increase in any part of the UK. It is one of the lowest fare increases since 2005 or 2007—possibly since we started to have responsibility for franchising the rail network in Scotland.

I recognise that any increase in fares is unfortunate. However, it is worth keeping in mind that two thirds of the cost of rail in Scotland is met by the Scottish Government. The proportion that is met in Scotland is significantly greater than the proportion that is met in England and Wales, which is 50 per cent. We do our best to cap the increase. We must also recognise the significant investment that the Scottish Government makes in rail by meeting two thirds of the cost on an annual basis.

Colin Smyth: Given how poor performance is and the fact that it has been plummeting, do you not accept that you should reconsider the fare increase?

Michael Matheson: As I said, performance is not where it should be, but a course of action is being taken to address those matters through the Donovan review, the current investments in new rolling stock and the additional infrastructure enhancements that are being carried out, all of which are about improving future performance. I am very clear that we need to ensure that they deliver and improve performance, particularly as we move into the new timetable change that begins this weekend and that will be completed in a year's time.

The Convener: We must move on.

John Finnie: As you are aware, cabinet secretary, the Scottish Green Party supports the devolution of Network Rail. However, that is not some magic get-out-of-jail card when it comes to accountability—I know that you are not necessarily presenting it as such. We are going to see increasing episodes of extreme weather, which will contribute to the problems. We might come back to that later. As a general principle, do you believe that any organisation that relies on the goodwill of its staff to work on their days off has sufficient staff?

Michael Matheson: The reality is that it does not if the organisation depends on that. That is why I welcome the fact that ScotRail is in the process of employing in the region of 140 extra staff, which will remove the need for rest-day working.

John Finnie: We have had Mr Hynes and his team here, as well as Transport Scotland and you, cabinet secretary. Do you not think that the accountability in the system is quite cluttered?

Michael Matheson: Do you mean between the infrastructure, the rolling stock, the franchisee and so on?

John Finnie: No, I mean between the franchisee, Transport Scotland and the political accountability.

Michael Matheson: Yes, in some ways it is.

John Finnie: Given the current performance, do you have any plans to end the ScotRail franchise when the first expiry date of 31 March 2022 comes around?

Michael Matheson: Not at present. The focus is on how the franchise is working and on improving performance, particularly with the timetable change that will take place this weekend and the additional rolling stock that will come into use between now and May 2019.

John Finnie: What do you think the franchisee's attitude would have been if you had said, "We are giving consideration to ending the franchise"? Are you considering that, given the worst performance figures in a long time? I will not repeat them, because customers are not interested in percentages; they just want to know that the train will turn up. Increasingly, however, the train is not turning up, is turning up late or is arriving late at its destination.

Michael Matheson: Let us consider the scenario in which we chose to end the contract early. We would be legally obliged to put the contract back out to tender for another franchisee to take it over. The challenges that ScotRail faces would still be there—60 per cent of the delays to the services have been caused by Network Rail—for the next party that took over the franchise to deal with. They will not magically go away if the contract is ended.

The existing structural arrangements for rail do not meet the needs of passengers adequately, because of the way in which both the infrastructure and the franchise arrangements are presently structured, so the focus has to be on how we make the existing arrangements work in the best interests of the travelling public. That is about delivering changes that will help to improve the passenger experience, from new rolling stock right through to major projects such as electrification programmes, which Network Rail needs to get much better at managing.

There are no plans to end the franchise on the basis of the challenges that the existing franchise holder faces, as those challenges will still be there no matter who has the franchise.

John Finnie: You are entirely right to say that. That gets down to the raw politics. I do not want to intrude on another question that I know is coming up, but comments such as those you have just

made give the impression that the Scottish Government has gone soft on the notion of having rail run publicly and exclusively in the interests of the Scottish public.

Michael Matheson: No, we have not. It is wrong to characterise our approach in that way.

John Finnie: That is the perception of the personnel.

Michael Matheson: If it is the perception, it is a misperception.

John Finnie: You have just ruled out the option of ending the franchise.

Michael Matheson: That is because the structural arrangements for rail would be the same if we ended the existing franchise. We would have to put the contract back out to tender for another franchisee to take over, and we would have the same problems.

John Finnie: So, regardless of performance, you will not consider ending the franchise.

Michael Matheson: Just for the sake of ending the franchise?

John Finnie: No, for the sake of making efforts to improve performance. We hold the individuals in charge of the franchise accountable. They, in turn, are accountable to you, and you, as the cabinet secretary, are accountable to us.

Michael Matheson: I am not going to end the franchise purely on the basis that that would be the answer to the challenges in performance, as many of those challenges come about as a result of things that the franchisee does not have control over.

The review of rail that is being carried out by Keith Williams is an opportunity to look at the existing structural arrangements for how rail is provided across the whole of the UK. We want a much more passenger-focused approach to the delivery of rail services in Scotland, and one that is accountable to this Parliament. I will pursue that, as it will address the performance issues more effectively for the travelling public in Scotland if we use a model that delivers better for the public.

John Finnie: A model may be suggested in future questions.

11:45

Jamie Greene: I have two questions on the public sector bid that the Scottish Government wants to pursue, which Mr Finnie has touched on. How much does the Government estimate that bidding will cost? If it is successful in the bid, does Scottish Government modelling show how much it would cost the taxpayer to run the franchise?

Michael Matheson: On your second question, do you mean if it was a public sector company?

Jamie Greene: The Scottish Government wants to put in a public sector bid to the franchise tender. What is the cost of that bid and, if it is successful, what will be the cost of running the service?

Michael Matheson: We have secured the right for a public sector organisation to bid for any franchise that we are required, under the existing legislation, to put out to tender. However, the process is outwith our gift, as it is controlled by the UK Government's Department for Transport.

On average, the cost of putting in a bid for a franchise is in the region of £10 million. If a public sector body—or bodies, as there could be more than one—in Scotland was looking to lodge a bid, we would have to provide it with financial resource to support it to make that bid.

Jamie Greene: That is the answer to my first question. The cost to the taxpayer of making a bid, regardless of whether it is won, is £10 million—is that correct?

Michael Matheson: That seems to be the average industry cost for putting together a bid for a franchise.

Jamie Greene: The more important question is about what the cost would be if the bid was successful. What estimates has the Government undertaken on the cost to the taxpayer of running a publicly owned service?

Michael Matheson: The cost would be the overall cost of the franchise that was taken on. Perhaps Bill Reeves can give you a specific figure.

Bill Reeve: Last year, we paid ScotRail £394 million, of which £260 million went to Network Rail for track access charges. The net cost is about £134 million, if I have done my maths right. The big amount gets passed on to Network Rail for infrastructure costs and the net subsidy is £134 million.

Jamie Greene: So £394 million is given to ScotRail each year.

Bill Reeve: Yes, and £260 million of that is paid by ScotRail to Network Rail.

Jamie Greene: I understand that, but is that the cost of running the service? The subsidy that is given to the operator is different from how much it costs to run the service.

Bill Reeve: Indeed. The other source of funding for ScotRail is the fare box from the passenger.

Jamie Greene: In the current system, Abellio is the operator of the service, so the associated risk of involvement and any cost liabilities are for Abellio. If Abellio was removed from the equation

and, instead, the operator was a Government or public body, what would be the potential risk to that party? Telling me what the subsidy is is not the same as telling me how much it would cost to run the franchise.

Michael Matheson: Whoever holds the franchise takes on the liabilities and risks that go with it. You are asking for a figure for the risk, but I do not know that we can give you a figure. There could be costs for a variety of different things at different times. For example, delays or performance issues could have an impact through any penalties that would have to be paid. The risk is carried by those who hold the franchise.

Jamie Greene: Indeed, but you do not know what the risk might be. In effect, you are spending £10 million to bid for something but you have no idea how much it will cost the public.

Michael Matheson: No, the £10 million figure is the cost of putting together and submitting a bid. It will not necessarily be successful—the bid could cost £10 million and not be successful. There is a cost associated with the franchising process, which is inherent in the existing legislation for the rail network in the whole of the UK.

I cannot give you a figure for how the risk would crystallise with regard to penalty payments for poor performance, because that would depend on a range of different factors. As I said, the risk is carried by those who have the franchise, which will be won by those who put in the best bid that is in the taxpayers' interests.

Jamie Greene: Ten million pounds sounds like a lot of money to lose if you are not successful, especially if that is public money.

Michael Matheson: Maybe the answer is to get rid of franchising.

The Convener: Just before Jamie Greene moves on, I will bring in John Finnie because he has a supplementary on that point.

John Finnie: Jamie Greene has a smile on his face, having heard the cabinet secretary, because the nub of the issue is franchising. I know that Mr Greene wants to use the word "risks", but tremendous benefit was accrued to the UK Treasury by the failure, twice, of the private franchise of the east coast main line, which generated £800 million profit. I wonder whether the Scottish Government is looking at that model. Once again, that franchise is back in public ownership.

Michael Matheson: Yesterday, I had a meeting with the chair of London North Eastern Railway to discuss its performance. It would be fair to say that he is not at all pleased with the performance, given where it is. The public performance measure is down to 72 per cent, which is very poor. A big

part of that is challenges around rolling stock providers and infrastructure.

My point is that the issue may be about getting rid of franchises. The problem of just saying, "End this franchise and do another franchise," is that a lot of inherent problems are still ingrained in the system. Until that issue is addressed and the system is more travelling-public focused, we will not overcome some of those challenges sufficiently.

The Convener: I am now incredibly conscious of time and the need for short questions and short answers. I will bring in Jamie Greene, briefly, and the next question will be from John Mason.

Jamie Greene: I want to clarify something that you said in your answer to that supplementary. Is the Scottish Government's official position that it would abolish franchising on the Scottish rail network? Is that correct?

Michael Matheson: As a result of the UK rail review, I am considering what would be a more optimal model for delivering rail services in Scotland. That could include not having a system that requires franchising.

Jamie Greene: Okay—

The Convener: I am sorry, but I said one question.

Jamie Greene: There was a substantive issue.

The Convener: I am going to have to move on. I apologise, but I have to try to keep things moving along.

John Mason: I will move on to a completely different subject: the plans for two ferries that are being built. I understand that some committee members have visited Ferguson Marine and we have had evidence from Caledonian Maritime Assets Ltd. There appear to be delays and cost overruns are alleged. What is your view of the situation and what can you do about it? Are there potential penalties for CMAL or Ferguson Marine? Where are we with the situation?

Michael Matheson: There is a delay. Ferguson indicates that it expects to deliver the MV Glen Sannox in summer 2019 and deliver the second vessel, 802, in spring 2020. Members may be aware, from the evidence that they have heard, that CMAL is heavily engaged with Ferguson on the delay in the contract and the completion of the ferries. CMAL has staff working with Ferguson to try to address the issues, and someone has been appointed independently to assess the progress that is being made by Ferguson with regard to the two ferries and report directly to CMAL and Transport Scotland about that progress.

Graham Laidlaw (Scottish Government): He is reporting back to Scottish Government colleagues.

Michael Matheson: The delays are unfortunate, because the two new vessels are critical to providing greater resilience on the ferry network in Scotland, given the increasing demand that it faces.

With regard to Ferguson's wider claim, the ferries were a design and build fixed-price contract. Any change to that would have to be negotiated through discussions about any additional costs that it has incurred. It could ultimately end up in the courts.

John Mason: You said that the contract is design and build; we have not seen the contract, so I do not know what it says. I understand that Ferguson understood that it was to work jointly with CMAL on the final design and build for the ferries. Ferguson Marine claims that because it did not get enough information from CMAL, it had to start building the ferries from the middle rather than from the stern, which inevitably has cost extra money. CMAL is claiming an amount that we do not know yet. So, in the CMAL accounts that we got recently, I was taken aback to read:

"We have reviewed all potential claims with the benefit of legal and expert advice, and have concluded that there are no contingent liabilities to be noted in the accounts."

Given the discussion that we had on the Aberdeen western peripheral route, where it is accepted on both sides that there could be a bit of extra cost, I am gobsmacked that CMAL thinks that there will no extra costs for the ferries.

Michael Matheson: CMAL's accounts have to be returned on what it believes is true and accurate at that point. If there is no substantiated claim at that point, CMAL cannot report that it has one. You have used the term "claim" several times, but any claim would have to be assessed and have evidence and data to support it. Ultimately, if a claim could not be resolved between CMAL and Ferguson Marine directly, it might have to be resolved in another place. However, at this stage, any claims would have to be substantiated.

John Mason: I accept that, but my parallel is with the Aberdeen western peripheral route project. I thought that your answers were balanced on the point that there could be claims and that they would work their way through. However, my understanding is that that involves the difference between a liability, which there is not at the moment, and a contingent liability, which is something that could arise in certain circumstances. I find it somewhat surprising that CMAL claims that there is not even a contingent liability, let alone a real liability.

Michael Matheson: CMAL would have to be able to substantiate that and how it had arrived at that position. For any subsequent claim, CMAL would have to say whether the information that it provided in its accounts was accurate at that time.

The Convener: I am concerned because CMAL comes within your remit and Ferguson Marine has not lodged accounts since 2015—there are no accounts for 2016 or 2017. Most people would view it as very suspicious that the company is two years in arrears for lodging its accounts and would be concerned that Companies House could strike the company off for that reason. We cannot check whether there are liabilities or potential liabilities in the accounts and we have no way of verifying whether there is an outstanding claim. Does not that cause you concern, especially as the Government has loaned the company £45 million?

Michael Matheson: I cannot be responsible for what Ferguson Marine does with its accounts.

The Convener: No, but you are responsible for taxpayers' money.

Michael Matheson: Exactly. That is why any claim has to be substantiated and evidence based.

The Convener: But we have a company that has not lodged accounts.

Michael Matheson: That company is responsible for issuing its accounts. I cannot make it issue its accounts. However, any claim has to go through the proper process to be substantiated, as with something like the AWPR.

The Convener: I understand that. However, if I had a contract with a company for £97 million and had loaned it £45 million on top of that, I can tell you that I would be very worried if it had not lodged accounts for two years—and I believe that you should be worried.

John Mason: Is it the case that the claim is so horrendous that when the company publishes its accounts, that claim will be in the public domain?

Michael Matheson: Ferguson Marine would have to explain that.

John Mason: Has the Government no responsibility or some kind of more direct control? CMAL is a separate legal entity. Is the Government's position that it does not know where the fault is in all this? Is it taking CMAL's side, Ferguson Marine's side or neither side? What is the Government's position?

Michael Matheson: Our view is that both CMAL and Ferguson Marine need to resolve any dispute that they have around any potential claims and that there is a process for that. It is for them to engage in that process in order to resolve any outstanding claims that they have.

John Mason: If CMAL had to settle for a higher amount, would the Government automatically have to write that cheque?

Michael Matheson: That would have to be substantiated.

John Mason: I accept that.

Michael Matheson: I have absolutely no doubt that, when Audit Scotland and the committee look at the issue, they will want to be satisfied that the taxpayers' interest has been taken into account.

12:00

Jamie Greene: That takes us back to the AWPR issue. You are talking about protecting the taxpayers' interest, but it is not protecting the taxpayers' interest for projects to go over budget in the first place, regardless of who has the liability. We hear that the delay with the carriages for ScotRail is Hitachi's fault, the issues with high-speed trains are Wabtec Rail's fault, the issue with the sleeper trains is the manufacturer's fault, the issue with the new ferries is the manufacturer's fault and the issues with the AWPR are the contractors' fault. It is always somebody else's fault. At which point do you take responsibility for any of that?

Michael Matheson: But it is their fault.

Jamie Greene: It is never your fault.

Michael Matheson: You have just given a list of companies that are running over time—

Jamie Greene: What does that say about how you manage those projects?

Michael Matheson: That is a good question, which you might want to ask Hitachi, as I asked its global president just last week. Hitachi has failed to meet several of the targets that it set for delivering carriages. Wabtec—

The Convener: You have been through all those issues, so let us not go through them all again.

Michael Matheson: With due respect, convener, Mr Greene has made specific allegations.

Wabtec has failed time and again to meet the targets that it was set. CAF has failed to meet the targets that were set for it in delivering the new rolling stock for the sleeper service. On the AWPR, if the contractors have a claim, they need to substantiate that. They have incurred that cost, but they entered into a fixed-cost contract with their eyes wide open. I am simply pointing out that the responsibility lies with them. They need to take responsibility for their failure to deliver things that they agreed that they would do when they entered into the contract.

Jamie Greene: Does Transport Scotland take no responsibility at all for any of those failures?

Michael Matheson: From some of the questions, the member appears to be saying that the taxpayer should just accept the errors of private sector companies in failing to deliver on contracts that they enter into. The companies go into contracts with their eyes wide open and, if they fail to deliver, that is their responsibility. We then try to ensure that any issues that arise that have an impact on the travelling public or the use of roads are minimised and that we progress matters. However, I am not prepared to accept responsibility for the failures of organisations in the private sector that have not delivered on commitments that they gave.

The Convener: We will move on to the next question, which is a brief one from Colin Smyth.

Colin Smyth: I want to go back to the ferry contract. Two organisations are involved, one of which is publicly owned. Given that taxpayers' money is involved and that we are talking about lifeline public services, what is the Government doing to show leadership and to bring people together to try to resolve the dispute instead of simply saying that it is for others to sort out?

Michael Matheson: A range of meetings have taken place between the Scottish Government, CMAL and Ferguson Marine to try to find a resolution to some of the challenges. I have been involved in that, as has the Cabinet Secretary for Finance, Economy and Fair Work, because he has lead responsibility for the loan arrangements for Ferguson Marine. Alongside that, given the delay with the two vessels that the company is constructing, we are reviewing our existing ferry plan to see how it can be improved and enhanced. A ferry action plan is also being taken forward to improve communications with the travelling public and to consider how CalMac deals with adverse weather incidents. A range of work is being done to try to improve the arrangements for ferry services overall, and at the same time work is being undertaken by the Government with the different parties to try to get a resolution to some of those matters.

My primary focus, which is from a transport perspective, is to get the vessels completed as soon as possible so that they can get into the network and provide us with additional resilience, given the challenges that we face.

John Finnie: Will you provide an update on the review of ferry services procurement?

Michael Matheson: Last December, we published details on that, which set out how we have been engaging with the European Commission on the possibility of direct awards. The feedback from the Commission has been that

the threshold for offering such awards is very high and will be challenging for us to meet. Officials from Transport Scotland's ferries division have been working on that and could perhaps say a bit more about the work that we are undertaking. I can tell the committee that we have been engaging with the Commission on making progress with that, but it will be complex. Any decision on the matter would be taken around 2022, when the contracts are due to be reconsidered.

Graham Laidlaw: The cabinet secretary has fully summarised the situation. Colleagues have been over at the European Commission, and I was there again three weeks ago to speak to the Commission about other matters. As the cabinet secretary has said, that work is pretty challenging, but we are continuing to pursue it.

In the meantime, we are procuring the northern isles ferry service, which is progressing satisfactorily with a view to putting a new contract in place by autumn next year. On timescale, CalMac is currently running the contract until 2024, so a couple of years in advance of that we will need to make a decision about the way forward and whether we can make direct awards, as is the Government's preference, or whether we need to continue to tender the services.

John Finnie: The Teckal exemption and the Altmark criteria are being talked about a lot, and we might wonder to what extent they will continue to have any relevance if, in a few months' time, the UK is to be outside the European Union—I said "if", cabinet secretary. Presumably that is a contingency that you will have to look at, and it could be a game changer in respect of this particular issue.

Michael Matheson: Who knows where we will be on that issue in the coming days and weeks? However, whatever happens could clearly have an impact on this matter, given that it is a state aid issue and one in which the Commission has a clear interest. Depending on the outcome, we will have to factor that into our planning and thinking as we move forward.

John Finnie: Okay, I will leave that there. Thank you very much.

The Convener: Richard Lyle has a very brief question.

Richard Lyle: In the coming budget, will you be building in the cost of replacing ageing ferries each year?

Michael Matheson: We have invested in the region of £1.4 billion in our ferries since 2007, and we have added eight ferries to the network over the same period. The two ferries that are in construction at present are critical to providing us

with greater resilience. As part of the review of the ferry plan, we will look at others that we may have to consider replacing in the years ahead and how those might fit into our programme of procurement work.

The Convener: As you know, we wrote to you extensively about that. We look forward to receiving a detailed response after 12 December, which I know you will look forward to producing.

Gail Ross: The cycling action plan for Scotland, which was published in January 2017, aimed for 10 per cent of everyday journeys to be made by bike by 2020. However, there has been only a slight increase, from 2.3 per cent in 2010 to 3 per cent in 2017. The figure also varies from region to region, ranging from 0.4 per cent in Stirling to 9.8 per cent in Edinburgh. Do you believe that that target will be reached, and what are you doing to get us there?

Michael Matheson: Reaching the target now will be a challenge. The key issues in increasing the number of people who choose to cycle are education and infrastructure. Doubling the active travel budget to £80 million in the past year has allowed us to put additional investment into supporting infrastructure improvements, which help to encourage people to engage more in active travel options, including cycling, and to offer greater education provision. Given the regional variations that you have mentioned, I have also been very clear with my officials about the potential social variations. We are reaching out to people in our more deprived communities to ensure that they do not lose out on the opportunity to take active travel options, including cycling.

I want to look at how we can help to support the planning and design of social housing provision that helps to deliver greater cycling infrastructure. We are hardwiring that into the thinking that we do when we develop such programmes. We have had discussions with our counterparts on the planning side in the Scottish Government on how we can help that to be embedded in the designs that we do in the future.

It is worth recording the fact that the number of people who are choosing to cycle for short distances—that last couple of miles—is increasing. The figure is at around 4 per cent, which is the highest that it has ever been, but it is still way off where we want it to be.

In summary, it will be challenging to reach that target, but we have a number of things in stream that will support us in continuing to move in the right direction. The significant increase in the active travel budget is one of the key factors that will help to deliver the infrastructure, which will be one of the most important elements in supporting people to take the option of more active travel.

Gail Ross: You mentioned deprivation. That issue featured heavily in the second-last edition of *Holyrood* magazine, which I was interested to read. What about rural areas? It can be very difficult, especially in the winter time, to undertake a long journey on a bicycle. What infrastructure can the Government provide in more rural areas, as opposed to urban areas?

Michael Matheson: That is a challenge. I do not know whether heated gloves would be the answer. There are many things that ministers can have an influence on, but the weather—as I know, as transport secretary—is not one of them.

A new cycling hub has been created at Dundee train station, which is a heated facility for storing bikes; I think that people can also store some of their kit there. That allows people to choose to cycle even though the weather might not be that great.

Given that we cannot build tunnels for cyclists to use to keep them out of the elements, we need to look at end points or other locations where we could create infrastructure that might make it more attractive for people to cycle, knowing that there is somewhere for them to dry their bike and their kit. Employers, too, could provide such facilities to encourage their staff to take that option. However, cyclists will always face the challenge of the weather, which often gets the better of people, one way or the other.

The Convener: I have a question about your letter to the committee about the new national transport strategy, which was to be out for consultation in early 2019 and published in the summer of 2019. What does

“Officials have advised that those timescales are under review”

mean, other than that you have kicked the strategy into the long grass?

Michael Matheson: It has not been kicked into the long grass. The strategy will be published by the end of next year. Transport Scotland is facing significant challenges with resource management because of the need to plan for Brexit. We have had to reassign staff to our unit that is planning for the implications that Brexit could have, which means that we do not have the same resource available to deploy to other areas of work that we want to proceed with. As a result, we have had to consider delaying some of the work on the national transport strategy. However, the intention is that the strategy will be published by the end of next year.

Work on the NTS is already under way. We have had engagement with a range of different stakeholders and organisations that have an

interest in the future shape of our transport strategy, which will cover the next 20 to 30 years.

We intend to publish a draft in the latter part of spring next year, which will allow for greater engagement, and a completed strategy at the end of the year, but “under review” in that regard is largely about our having to reallocate staff to deal with Brexit issues.

12:15

The Convener: I am always nervous when people talk about when seasons start and end, because the period seems to stretch. Can you say in which month the consultation on the national transport strategy will start?

Michael Matheson: I hope that by the end of May next year we will be in a position in which that can happen.

Maureen Watt: During consideration of the Transport (Scotland) Bill we have tried to reconcile the fact that bus patronage has been declining for decades and is continuing to decline with the need to meet our climate change and decarbonisation targets by increasing active travel and travel by public transport. How do you reconcile those things, to ensure that we meet our targets?

Michael Matheson: Transport is a big contributor to our overall climate change figures. We are doubling the active travel budget, a key part of which is about supporting the delivery of more infrastructure and more programmes that encourage people to take active travel options. It is about designing the public realm in a way that encourages people to do that.

Alongside that, we are doing work on decarbonisation. For example, we are setting a target so that people will no longer have to purchase a diesel or petrol vehicle by 2032, which is eight years ahead of the UK Government target, to reduce the number of vehicles that contribute to our climate change challenge.

Low-emission zones will be introduced in our four big cities, to improve air quality in those areas and encourage people to consider active travel and greener options, whether we are talking about electric, hybrid or low-emission vehicles.

There is no single solution. We need to take forward a multitude of measures, from active travel development and investment in public transport to support for the transition to low-carbon vehicles and the introduction of low-emission zones, to help people to make choices about more active travel and vehicles that cause less pollution.

Maureen Watt: Bus operators tell us that people do not use the bus because it gets stuck in traffic, along with everyone else. Is there anything

that you can do to help local authorities to introduce more bus lanes?

Michael Matheson: We talked about this when I gave evidence on the Transport (Scotland) Bill. The success of low-emission zones will depend partly on the actions that local authorities take to prioritise buses. The figure that I have heard is that the average speed of a bus in Glasgow is 3mph; if we can get the speed up to 6mph we can decrease journey times and increase the reliability of services for passengers. Councils have the power to take bus prioritisation forward, and the introduction of low-emission zones can support such an approach, because more reliable journey time is key in encouraging people to use the bus.

The Convener: I am conscious that I should have brought John Finnie in earlier—sorry, John.

John Finnie: That is okay, convener. Thank you.

The Scottish Government says that the national transport strategy

“sets the long term vision”.

I want to give half a dozen statistics from “Transport Forecasts 2018: Results from Transport Scotland’s Land-use and Transport Models”, which paints quite a bleak picture. Starting from a 2014 baseline, Transport Scotland predicts that by 2037 there will have been

“an increase of 25% in person trips by car and a 44% increase in Goods Vehicle trips”,

and

“a 37% increase in vehicle miles”.

It is no surprise that Transport Scotland says that that will increase journey times and add to congestion. Transport Scotland also makes the damning prediction of a

“decline in urban bus passenger miles of 7%”.

What measures are there to try to deal with those figures? Changing the fuel that is used and having low-emission zones will not be sufficient to tackle the congestion issues that Maureen Watt referred to. More goods being conveyed by road will not help, either. Is it not time to change the approach and the answer, which I repeatedly get, that the carriage of freight by rail is a commercial private sector matter that is not to do with the Government? Given the damning prediction of a 44 per cent increase in goods vehicle trips, surely we should look at better ways of conveying goods.

Michael Matheson: How freight is transported is not just a commercial decision. The Scottish Government provides funding to support freight programmes—as a practical example, the work that is being carried out in Blackford, which is just outside Dunblane, will allow a rail freight link to

Highland Spring's plant, which will have a massive impact on the number of vehicles that Highland Spring uses to carry its products to market. We are investing to facilitate that work.

I do not want you to think that my view is that the decision is purely commercial; the Government has a role to play in supporting and promoting rail freight, and I have given a practical example of that. However, companies can choose to transport freight by rail rather than by road, which is a commercial decision.

John Finnie: The decision might be commercial, but it can be heavily influenced by the Government. The Government should not provide significant sums of money to an industrial venture that is beside a rail track, for instance, without setting a condition that the carriage of goods by rail should be at least considered.

Michael Matheson: You raise a fair point, but commercial operators can always look at using rail to distribute their goods. I read a report on the whisky train that operated a number of years ago, which the Government at the time heavily supported. The challenge was getting companies to use the train, as opposed to the road. When we had the ferry link between Rosyth and Zeebrugge, the challenge was to get road users to use that sea link, as opposed to the ports in south-east England, to cross over to mainland Europe.

There are challenges, but I do not want you to think for a minute that we have no interest in encouraging more use of rail freight. We are taking actions to support and encourage more of that.

Mike Rumbles: I will ask about Prestwick airport and taxpayers' money. In the past five financial years, the Scottish Government has loaned Glasgow Prestwick Airport Ltd £40 million, and the company's profit and loss accounts for the past nine years show operating losses each year and a cumulative loss of £57 million. You must have looked at that and wondered when we will ever get our taxpayers' money back. Do you have any idea of when?

Michael Matheson: Prestwick airport is a major piece of national infrastructure and is extremely important to the Ayrshire economy, given the businesses that are associated with it. It has had about £38.5 million from the Scottish Government to date. In this financial year, it can draw down just under £8 million for its continuing work.

I recently met the airport's chief executive and its chair, who assured me that they are pursuing every possible avenue to reduce the cost base and increase revenue. They also engage with parties that might be interested in taking over Prestwick as a commercial concern.

However, the environment in the aviation sector is challenging and there is overcapacity. Recently, we saw the impact that fuel prices have had on Flybe. It is going to remain challenging to get more passenger flights in there, but the wider industries that are supported by Prestwick are extremely important to the Ayrshire economy, which is why the Scottish Government stepped in to take on ownership of the airport. We will continue to see whether there are private sector parties that are interested in taking over responsibility for Prestwick. There is a cost to the taxpayer, but I also recognise the value that the airport has to the local economy, which should not be underestimated.

Mike Rumbles: We are giving the company another loan in the current financial year, are we?

Michael Matheson: A loan is available to it under which it may draw down up to, I think, about £7.9 million. I know from the discussions that I have had with the chair and the chief executive that, in the current financial year, they feel that they have made more progress in reducing the cost base and increasing the revenue into the business.

Mike Rumbles: The previous nine years' operating losses are similar. The loss in the most recent year for which we have figures was £6.4 million. In the previous years, the losses were £6.5 million, £6 million and £5 million, and if we look back to 2008, the loss was £5 million. It is pretty standard stuff. On the basis of that past record, there does not seem to be much prospect of the Scottish taxpayer ever getting their money back. Are you confident that we will actually get any money back?

Michael Matheson: You should keep it in mind that the loans have been provided on the basis that they are commercial loans at commercial rates. Any party that was coming in to look at taking ownership of or purchasing Prestwick would feature as part of any negotiations, given that the cost loans are directly linked to Prestwick.

You asked me directly whether we are going to get that money back. I wish that I could give you a clear answer, but I cannot at present because it depends on whether another party wants to come in and take ownership of Prestwick, and it would then depend on what was in the negotiations.

I make the point that the reason why the Government has stepped in and made the loans available to Prestwick is the critical nature of the airport to the wider industry that is supported by it.

The Convener: This should be your last question, Mike.

Mike Rumbles: In the two and a half years for which I have been on the committee and we have

been looking at the issue, those have been the responses from ministers and the company, yet we do not see any evidence of new operators at the airport. There is one scheduled airline, Ryanair, and two scheduled freight customers, Cargolux and Air France. Is there any real prospect of getting any more operators to use the airport?

Michael Matheson: Given the environment in the aviation sector, particularly on the passenger side with scheduled flights, that will remain challenging. We have seen the changes with Ryanair moving a significant number of flights from Glasgow to Edinburgh. It is always going to be challenging.

There are bespoke services that Prestwick provides that are unique not just in Scotland but in the UK, and to some extent in Europe, which is why it still attracts some of the services that it provides, particularly around unusual freight. I am told that it can cope with abnormal types of freight that other airports do not deal with because of the equipment and infrastructure that it has.

Of course, Prestwick operates at arm's length from the Government for state aid purposes. However, I got the clear impression from both the chair and the chief executive last week that they are in a position where they believe that they are making progress on reducing their cost base and increasing their revenue by trying to pursue some of the bespoke services that they offer more effectively, and they hope to make better progress with that in the current financial year.

On the issue of another buyer or operator, you will appreciate that that information is not going to be in the public domain for reasons of commercial sensitivity, but the opportunity remains for other operators to come in and look at purchasing the airport if they wish to do so.

12:30

The Convener: We have a list of questions and members will get to ask only one question each. Cabinet secretary, please keep your answers as brief as possible.

Colin Smyth: Last week, at First Minister's questions, the First Minister said that all Government agencies should pay the living wage. Given that Prestwick airport is owned by the Government, is it acceptable that the company still does not pay the living wage? What representations have you made to Prestwick airport to ensure that it starts to pay the living wage?

The Convener: Hold on, that is two questions.

Michael Matheson: Which one do you want me to answer?

The Convener: Please answer both questions, briefly. If other members ask two questions, I will pick just one for the cabinet secretary to answer.

Michael Matheson: Yes, I do make representations and I understand that Prestwick is making progress to ensure that its employees are covered by the living wage.

John Mason: One option that has been suggested is that, if the passenger services are losing lots of money, but freight and other things are making money, we could drop the passenger business altogether and carry on as a freight-only or special airport. Is that an option?

Michael Matheson: Not at the moment. Freight is a specialist service that Prestwick offers. However, if Prestwick were to lose its passenger services that would be a loss of revenue, which it would not want. That option is not set out in Prestwick's five-year business plan, which it is already working on.

Jamie Greene: I am not convinced that the passenger business is profit-making, but perhaps we can check the numbers.

Does a price tag that includes all that historic debt that the Government has loaned to the business make the sale appealing to potential private investors? This is a single question, convener. Has the Government considered drawing a line under those loans or is it keen to get as much back as it can?

Michael Matheson: Mr Greene seems to be keen for me to give a lot of money to private sector companies. I am not going to get into a negotiation about what would be on or off the table for any particular deal for Prestwick because that would be completely inappropriate.

The Convener: I have a simple question. Based on the fact that £40 million has been loaned to Prestwick airport, can you confirm whether a valuation of the airport's assets by an independent valuer has given a value in excess of £40 million?

Michael Matheson: That is part of the work that is currently being carried out.

The Convener: When that work is available, will you be able to answer that question?

Michael Matheson: Yes.

The Convener: I am sorry, that was two questions. I chastise myself.

Stewart Stevenson: We have touched on greenhouse gas emissions, which are going up in the transport sector. I will ask a tightly focused question. The transfer of many train services from diesel to electricity is an opportunity to reduce emissions. Given that Network Rail is the biggest purchaser of electricity anywhere in the UK, would

it be possible to persuade Network Rail to transfer its electricity contract to a renewable electricity only contract and thus reduce the figures, given that it is a significant area of rising carbon emissions?

Michael Matheson: That is a very reasonable point. I know that ScotRail has made significant progress on reducing its own carbon footprint. If Network Rail can make a contribution to that, it would be the right thing to do.

The Convener: Thank you, cabinet secretary. That has been a long session. I would normally suspend the meeting to allow you to leave, but I will continue the meeting so that I do not lose committee members at the same time.

European Union (Withdrawal) Act 2018

Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2018

Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc) (EU Exit) Regulations 2018

Common Provisions (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018

Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2018

Agriculture (Zootechnics) (UK) (EU Exit) (Miscellaneous Amendments) Regulations 2019

Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residue Limits) (Amendment etc) (EU Exit) Regulations 2018

Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019

12:34

The Convener: Item 4 is on seven statutory instrument notifications, as detailed on the agenda, covering genetically modified organisms, the common agricultural policy and animal health. All the instruments are being laid in the UK Parliament in relation to the European Union (Withdrawal) Act 2018.

All seven instruments have been categorised in general by the Scottish Government as category A, meaning that they make minor or technical amendments. Two of the proposed statutory instruments on common agricultural policy could also be considered as category B, to the extent that the transition from an EU to a UK framework would be a major and significant development.

Do members of the committee have any comments?

John Finnie: Can I say at the outset, cab—I was going to call you cabinet secretary, convener.

The Convener: Thank you.

John Finnie: I have no issue with the instruments and I will support them, but I would

like to comment on the genetic modification instrument. The question is whether the law as it stands goes far enough to protect Scotland from GM crops and products. The basis for that is the statement by Michael Gove. A recent headline in *The Times* said "Michael Gove pledges genetic food revolution", and there was a suggestion that Mr Gove may plan to overrule a European Court of Justice decision made in the summer that classed gene editing as genetic modification. We could end up in a position in which we nominally have a ban or very tight controls on GM, but the definition of what is GM is very narrow and may mean that GM procedures are allowed. Can we ask the Scottish Government to ask for clarification on that? I am particularly interested in whether there will be a joint process for deciding the definition of GM and GM processes in the future, or whether that matter will be left to the UK Government. It would be a concern if that were so.

The Convener: Thank you for that.

Stewart Stevenson: Convener, you point out that some of the measures might be category B. I would ask the Government to notify us if, in its view, the category moves from A to B, so that we can give any necessary further consideration.

The Convener: That is a good point, although I do not think that they will be viewed as category B in due course.

Does anyone have anything to add?

From what I have heard, and provided that we add Mr Finnie's questions to the other points that we want to make, I think that the committee should confirm that it is content for consent to be given for the UK SIs referred to in the notifications. The committee should also note, and request a response from the Scottish Government on, the wider policy matters that are identified in the committee's papers. Do members agree?

Members indicated agreement.

12:37

Meeting continued in private until 12:50.

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