

Flynn P (Paul)

From: [REDACTED]
Sent: 15 March 2017 17:01
To: [REDACTED]
Cc: [REDACTED]
Subject: Nicholls J (John) (TRANS)
RE: Minister meeting with Pentland Ferries

[REDACTED]

Many thanks for the very full and prompt update.

Copying in John for his information.

Thanks again

[REDACTED]

From: [REDACTED]
Sent: 15 March 2017 16:53
To: [REDACTED]
Cc: [REDACTED]
Subject: Fw: Minister meeting with Pentland Ferries

[REDACTED]

Meant to copy this to you given Procurement Policy Review discussions.

[REDACTED]

Sent from my BlackBerry 10 smartphone.

From: [REDACTED]
Sent: Wednesday, 15 March 2017 16:46
To: [REDACTED]
Subject: Minister meeting with Pentland Ferries

All

Quick readout of the Minister's meeting with Pentland Ferries ([REDACTED] and solicitor).

- Pentland Ferries happy with level of engagement with TS so far and appreciate involvement in process. Generally content.

- Minister wants to reduce fares in Jan 2018, subject to Mr Mackay agreeing funding. Noted this is not for public consumption. [REDACTED] raised concerns about the fares freeze on SNF service and application of Family and Friends Scheme.

- Needs to be legal and fair mechanism for providing reduced fares to Pentland Ferries.

- Minister noted Procurement Policy Review means NIFS contract likely delayed by at least 6 months. Committed to include Pentland Ferries in discussions. However doesn't mean fares can't be reduced before then.
- Minister wants round table stakeholder (Pentland Ferries, Tavish, Liam, etc) meeting around late Spring to present proposals (TS presentation) for reducing fares. Subject to funding, mechanism, etc.
- [REDACTED] informed Minister of new vessel and comparison of operating costs with SNF.
- Discussion on whether Teckal could apply to Pentland Firth situation where commercial op is present. Minister offered to touch base as review progresses.

The Minister asked me to stay after the meeting. He has asked Mr Mackay for share of Barnett consequential for reducing NI fares (not internal ferries). Discussed capacity issues and noted we were meeting him next Tuesday to discuss further.

Means we need to press on with mechanism for commercial ops. [REDACTED] - will discuss tomorrow.

Thanks

[REDACTED]

Sent from my BlackBerry 10 smartphone.

[REDACTED]

From: [REDACTED]
Sent: 29 August 2018 13:23
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Meeting in October

[REDACTED]

Found this note of a call on 21 September 2017 produced by Pentland Ferries for the FOI.

Thanks

[REDACTED]

From: [REDACTED]
Sent: 01 October 2017 14:18
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Meeting in October

Hi all

We thought it helpful to record matters discussed during our conference call on Thursday 21st September, so that we make sure we fully understand Transport Scotland's proposed approach to bringing RET to the Orkney Islands. We appreciate that a number of matters are still under consideration. In advance of the call, we had asked 6 questions and the responses given during our call are noted below.

QUESTION 1: Will Northlink be operating the same timetable and same ship next year?

Response on call: It was noted that the current contract is due to finish on 25th April 2018 but that Transport Scotland is considering a 6-9 month extension. It is anticipated that the same vessel and timetable will be used but mention was made of potentially requiring to alter sailings to accommodate extra demand that it is expected the new RET arrangements will result in.

QUESTION 2: Are we going to be cheaper than Northlink based on the miles?

Response on call: You noted that you would not allow a price difference as between all three operators in the proposed operation of the RET Scheme but that there could be competition on pricing of non-RET covered vehicles. It was indicated that Northlink would, separately, continue to receive its £9m annual subsidy.

QUESTION 3: Is there an update on the timescale for opening bookings?

Response on call: You mentioned that consultants are being recruited to work out the RET mechanism and once appointed, you would expect findings to be available in 8-12 weeks. We emphasised the importance of requiring to get our booking system open as booking would normally be open for the whole of next year at this point. You mentioned that Northlink is taking bookings with a note added that when RET is sorted out they will give refunds to all those who have booked at present prices. We emphasised the huge amount of admin work a similar approach would involve for Pentland Ferries.

QUESTION 4: Can you please clarify what vehicles will be eligible for RET, i.e. vans, motorhomes, coaches and artics?

Response on call: You confirmed all vehicles under 6m and all passengers. You indicated freedom to set differing tariffs for larger vehicles.

QUESTION 5: How does the reimbursement process work? What paperwork do you require in order for us to claim?

Response on call: You commented that no information is available as the system is not yet in place.

QUESTION 6: Are we able to continue to offer sponsorship / discounted travel and commission to groups and FITs?

Response on call: You confirmed that we would be able to continue to offer sponsorship/discounted travel.

Please let us know if we have misunderstood any of the above.

Regards

[REDACTED]
Pentland Ferries

[REDACTED]
Sent: Friday, 22 September 2017, 16:10
Subject: RE: Meeting in October

Hi [REDACTED]

I hope this finds you all well. Thanks for joining the call, it was good to speak to you all and I look forward to meeting you and working with you.

That's no problem at all. Edinburgh will be fine – how about we stick with 12 Oct?

I have copied my colleagues in who were on the call for awareness.

I hope you have a great holiday.

Thanks

[REDACTED]
From: [REDACTED]
Sent: Thursday September 21 2017 18:52
To: [REDACTED]
Cc: [REDACTED]
Subject: Meeting in October

Hi [REDACTED]

Thank you for taking the time to discuss things with us this afternoon.

We wondered if it would be possible for us have the October meeting in Edinburgh if you have not yet booked flights etc. We are free 10th 12th or 13th to come down.

We are away on holiday from tomorrow until the 1st October but if you reply to Jenni or Kathryn they will be keeping in touch with us.

Regards



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a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson
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Meetings With Commercial Operators – Orkney 15/16 January 2018

John O Groats Ferries (JOG) – Fred Fermor 15 January 2018 – Fred's House

We provided a general update on the NI Fares work to date.

Fred intimated some concerns around the impact of campervan/motorhome fares changing. We advised that it was passenger and car fares only, further explaining the change from 5m to 6m for commercial vehicles as per CHFS.

We then discussed the possibility of a phased introduction, with reduced fares being introduced on the Aberdeen – Kirkwall/Lerwick routes first, and then on the Pentland Firth routes as a later date once the necessary work was complete. Fred advised that for him September would be the best time for introduction, as it would allow him to prepare more fully for 2019. He said that it would be difficult if it was introduced in June, for example.

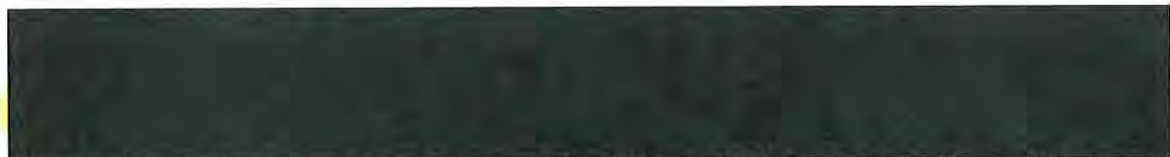
We discussed the fact that the mechanism would allow for underlying growth to be factored in, and Fred intimated that this was vitally important as they have been working hard to grow the business in recent years.

The point was made that this was only a potential contingency and that we would be continuing the work and doing everything we could in order to introduce the reduced fares for all routes on the same date.

We explained that the Minister had committed to introducing reduced fares in 'the first half of 2018', and ideally the reduced fares would be introduced as soon as the work with commercial operators allowed.

Fred explained that the uncertainty around fares was a problem. He would normally have printed circa 200k leaflets by now – marketing is vitally important to JOG. The absolute drop-dead date for printing these brochures would be March, but this may then come at an added cost as he would be giving the printers less notice.

ACTION – to discuss further these impacts on commercial operators, if they incur additional expense because of the unusual activity around fares at this time.

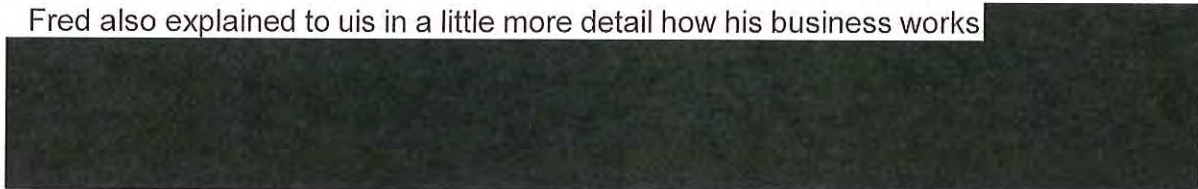


Fred advised he is happy to share carrying figures and any other information that is required by TS.

Fred also had some concerns about what would be involved with making a claim for payment once the mechanism is agreed and in practice. We advised that this would be as simple as possible, and we would not be looking to add an administrative burden onto the business which they would not be able to cope with. Advised that the grant scheme would likely be on a subsidy per passenger basis, although this would be confirmed when the work was complete. We advised that PBA would be pressing

forward with the mechanism work over the next couple of weeks, and that he will likely hear from them.

Fred also explained to us in a little more detail how his business works



Pentland Ferries – [REDACTED] 16 January

A general update on the NI Fares work was provided, to give context and background..

[REDACTED] advised that he did not have any major concerns at this point in time, so we provided a broad update on where the work was, and the likely work to come. We explained that Pentland Ferries would be free to set their prices, as they do just now, and in doing so covered the paper that their lawyers had prepared for the last meeting in VQ in December 2017.

We also provided an update on the PPPR and [REDACTED] offered his own thoughts on tendering, and on the recent Audit Scotland report.

The new Pentland Ferries vessel being built in Vietnam has slipped with regards to timings, but [REDACTED] is heading out to Vietnam later this month to visit the yard.

Pentland Ferries were also relaxed about a possible phased introduction of fares as discussed previously with Fred. He understood the issues at play and agreed that it made sense to ensure that everyone was happy and content to move forward.

The point was made again that this was only a potential contingency and that we would be continuing the work and doing everything we could in order to introduce the reduced fares for all routes on the same date.

We discussed that if this was the case, and Pentland Firth fares were to be introduced slightly later than the Aberdeen routes, then it may be prudent to consider a joint statement from all parties – TS, Pentland Ferries and JOG advising that the work was continuing that that all parties were working together collaboratively and would continue to do so.

We advised that the mechanism would allow for underlying growth to be taken into consideration.

[REDACTED] advised he was content with the level of engagement and we reiterated that they could contact us at any time if they have any concerns or questions. We advised that PBA would be pressing forward with the mechanism work over the next couple of weeks, and they will likely be in touch.

[REDACTED]

From: [REDACTED]

Sent: 22 March 2018 12:09

To: [REDACTED]

Subject: Note of Meeting with Pentland Ferries - 21 March 2018

All

I'm just sending around a short note of the meeting so you can see how the conversation went.

In short, it went as well as we could have hoped, and it was fairly amicable. We explained the PBA paper in more detail, and answered all of their questions, and seemed to make some headway. They were under the impression that they were 'locked in' to a specific market share and were surprised and interested when we explained they were not. PBA have agreed to provide an example of the model with some figures to help them to better understand it.

Note of Meeting

[REDACTED] made it clear at the outset (and at various points) that he felt it should be 'pure RET', so that PF fares would be lower than SNF (As they operate a shorter route). [REDACTED]

[REDACTED] paper then PF should also be getting '£9m subsidy, just as SNF do'. We advised that this was purely about a fares change, and a PSC is a different issue.

[REDACTED]

They felt that any model would need to take into account the new vessel coming onto the route which is currently being built in Vietnam. PBA reassured them that the current market share is not 'pegged' forever. It's only for one year and then can be reviewed – any supply side responses would be up to the Commercial Operator.

[REDACTED] misunderstood what the paper is trying to achieve; that is a compensation mechanism for the commercial operators on the Pentland Firth to compensate them for the introduction of RET on the SNF route. We also took time to explain why we required the information that had been requested and suggested that further discussion around this could take place. For instance, if they had concerns about providing information, perhaps there would be an option where it could be provided directly to SG Finance, as one potential example. We also explained that NDAs were in place and that PBA had worked on a number of highly sensitive transport projects for TS prior to this piece of work.

[REDACTED] advised that he would appreciate a meeting with both sets of legal advisors present, which we agreed we would try to arrange in Edinburgh next week.

[REDACTED]



Thanks



Ferries Unit – Aviation, Maritime, Freight & Canals

Transport Scotland | Area 2F-North | Victoria Quay | Edinburgh EH6 6QQ & Buchanan House | Glasgow | G4 0HF



Northern Isles Fares Reduction Work and Commercial Operators Mechanism

Meeting with Pentland Ferries

Wednesday 28th March 2018, 2E-01, Victoria Quay, Edinburgh

Meeting Note

Attendees and Apologies

1. Annex A.

Welcome and Overview

2. Attendees were welcomed to the meeting by [REDACTED]
3. [REDACTED] provided an overview of the policy background in relation to reducing fares on the Northern Isles, highlighting previous Ministerial visits, engagement with Pentland Ferries and announcements. [REDACTED] further explained the latest position of the financial model, as per PBA's latest paper and the concerns raised by Pentland Ferries as per the letter of 16 March 2018 from MacRoberts LLP.
4. [REDACTED] thanked Pentland Ferries for their input thus far, outlining that the draft specification represents a legal and State Aid compliant offer. Today's meeting was to address the concerns of Pentland Ferries and reach a consensus which will allow the policy objectives to be taken forward.
5. [REDACTED]
6. [REDACTED] confirmed that the fundamental objective of RET and the Financial Model is to lower fares without distorting the market, while retaining the freedom for Pentland Ferries to act commercially and grow their market. Any grant would be based on existing market share and commercial operators would be compensated for their lost revenue as a direct result of RET to that of a pre RET level with the addition of an operators return. [REDACTED] also stated that the Public Service Contract with Serco NorthLink Ferries is an entirely separate discussion and the same premise applies to their revenue stream.
7. Discussion then turned to what was deemed to be a fair level of compensation, with SL confirming that analysis of RET of other routes suggests that there will be an initial spike in patronage, followed by a market consistent revised level of passenger numbers.
8. [REDACTED] confirmed that the initial grant agreement would be until October 2019 to coincide with the end of the current NIFS contract, at which point, the scheme will be

reviewed and Pentland Ferries can, at that point, opt in or out. [REDACTED] outlined her concerns in relation to the scheme being withdrawn in October 2019, resulting in Pentland Ferries having to increase their fares to pre RET levels, something that won't be applicable to Serco NorthLink Ferries. This would result in a massive loss of market share, revenue and reputational damage. Their considerations in relation to costs as a commercial operator are vastly different to those of a publically subsidised operator.

9. [REDACTED] advised that the Minister, who has met with Pentland Ferries in the past, may be able to meet or have a call with them again to discuss their concerns.

ACTION: [REDACTED] to liaise with Minister for Transport and the Islands to facilitate a discussion with Pentland Ferries

11. [REDACTED] directed everyone to Figure 2.1.10 of the paper, *Development of a Financial Model Compensating Commercial Operators on the Pentland Firth: Pentland Ferries*, stating that it is a useful visual aid to try and explain how RET will work in practice. SL confirmed that agreement would be sought to factor in natural growth as opposed to RET growth, as well as using historical carryings as a baseline ahead of the scheme. Pentland Ferries ability to grow their business as a commercial offering will not be stifled by the introduction of reduced fares on the Pentland Firth.

12. [REDACTED] provided a level of assurance of the long term future of RET on the Pentland Firth, being mindful of the current fiscal position the Scottish Government is facing.

ACTION: Pentland Ferries to liaise with legal team and feedback their comments to Transport Scotland as soon as possible

13. [REDACTED] advised that he is speaking to the Minister tomorrow and will feedback today's discussions, as well as keeping Pentland Ferries updated of Transport Scotland's planned press releases.

14. [REDACTED] thanked everyone for their attendance and contribution, stating that today's meeting was useful and will hopefully lead to a position of consensus to allow for the rollout of RET on the Pentland Firth.

Ferries Unit - Policy
Transport Scotland
28 March 2018

ANNEX A

Present:

- Scott Leitham (SL) – Peter Brett Associates
- [REDACTED] Ferries Unit, Transport Scotland
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Duncan Osler (DO), MacRoberts, LLP
- [REDACTED] Ferries Unit, Transport Scotland
- [REDACTED], Transport Scotland

APOLOGIES:

- [REDACTED] Ferries Unit, Transport Scotland
- [REDACTED] Ferries Unit, Transport Scotland
- [REDACTED] Transport Analytical Services
- [REDACTED] Transport Scotland Finance

Note of Call with Pentland Ferries 29 March 2018

On the call

[REDACTED]

[REDACTED] Transport Scotland
[REDACTED] Transport Scotland

[REDACTED] and [REDACTED] arranged this follow up call to further discuss any concerns that Pentland Ferries had following the meeting on 28 March in VQ, and following TS discussion with the Minister on 29 March.

[REDACTED] advised that whilst the initial period of agreement would be 18 months due to a necessity of process, there were no plans to withdraw the grant support after that time. TS were happy to provide a commitment that a grant to enable Pentland Ferries to keep their fares at the reduced level would be provided after that time. The Minister would be speaking to them personally to provide this reassurance, with a call to be arranged following the Minister's Easter leave.

AB advised that Duncan Osler (MacRoberts) was in the process of firming up an official response to TS following yesterday's helpful meeting. SB advised that they would call DO following this call to chase up the response.

AB intimated that DO had found yesterday's meeting helpful and was now clearer in terms of what was being proposed and the reasons for this.

The issue of providing farebox revenue was discussed and [REDACTED] reminded AB why this was being requested and the purposes it would be used for which is for the purposes of informing the mechanism and validating grant payments. A guarantee of confidentiality was given and reassurance provided that only those who had to see this information would do so, and within an NDA environment.

JW advised that if Pentland Ferries sign up to an agreement they would require around [REDACTED] lead in time before the fares reduction implementation date in order to train staff and process refunds [REDACTED]

SB advised that DO was likely to request an updated version of the PBA paper that was 'clearer' in terms of what was being proposed and promised. [REDACTED] and [REDACTED] advised that they would provide a note of yesterday's meeting and this call so that there was a written record of what was being promised and commitments made. It may be that this is sufficient rather than a revised paper which may take more time to provide.

Agreement was reached that a further call would follow before the [REDACTED] leave for a holiday on 20 April 2018 and before their call with the Minister. The [REDACTED] are unavailable from 20 April – 29 April.

█ and █ will seek to arrange a call between the Minister and Pentland Ferries on his return from Easter leave.

**Note of Meeting and Teleconference with Pentland Ferries and MacRoberts
LLP – 8 June 2018**

In Attendance

██████████ - Pentland Ferries (by telephone) **AB**
██████████ Pentland Ferries (by telephone) **SB**

David Flint – MacRoberts **DF**

Robin Fallas – MacRoberts **RF**

John Nicholls – Transport Scotland **JN**

██████████ Transport Scotland

██████████ Transport Scotland

██████████ – Transport Scotland **MH**

██████████ – Transport Scotland

Scott Leitham – Peter Brett Associates **SL**

Note of Meeting

JN opened the meeting and gave introductions and a short background to the work.

██████████ summarised the current position and ██████████ thanked Pentland Ferries for their engagement thus far.

JN invited representatives from MacRoberts to set out their position.

RF advised that the model devised by PBA was, in their opinion, fundamentally flawed.

SL responded by providing an explanation of PBA approach and starting position of no market distortion.

DF responded that they felt that PBA had taken an incorrect approach with respect to market share and competition.

RF and DF explained that in their view, any scheme should be provided direct to travellers, not to operators, that travellers should be given a voucher or some other mechanism for the reduction or refund for their fare that would allow them to choose either operator freely. They further advised that the value (in £ and p) of reduction for both operators should be the same. In summary, that the discount per passenger is the same.

SB advised that they cannot understand the mechanism being proposed, as the 'starting position' (i.e. current market) is 'wrong' as fares are already subsidised on SNF services. SB also stated that they were deeply unhappy with some of the Minister's comments with regards to the fares reduction work and felt that Pentland Ferries were being 'blamed' for any hold up or non-introduction.

██████████ advised that this was the current market position that the work had to be started from. SB stated that they 'reject the current position'. SB also advised that they fare

freezes on SNF services for the last two years have also impacted their business, as they have not been able to raise their fares despite rising costs.

AB and SB intimated concerns that the procurement exercise for the next NIFS contract was being set up to favour a particular operator. JN advised that this very clearly was not the case.

JN left the discussion at this point as he had another meeting to attend.

RF responded that any subsidy should be a 'passenger' subsidy rather than a 'vessel' or 'operator' subsidy. He explained that they felt that there were issues with 'chapter one abuse regarding the rigidity of current fare and the fact that this was additional subsidy going to SNF – in their view this was subsidy on top of subsidy.

█ pointed out that by way of fares comparison, looking at the fares across the year, sometimes Pentland Ferries were more expensive than SNF currently.

SB explained that they were 'willing to put aside' the current subsidy if what was done from this point in was 'equal'.

RF informed the meeting that, following discussions with Pentland Ferries they have prepared State Aid complaint letters to issue today immediately following the meeting to the European Commission and to the Competition Markets Authority. They added that Pentland Ferries felt that they had been boxed into a corner.

█ advised that this was a decision for Pentland Ferries.

MH advised that today's discussion had been helpful in helping to clarify Pentland Ferries' position and that TS would reflect on what had been discussed and disclosed. █ and █ advised that they would follow up with Pentland Ferries in due course once internal discussions had taken place.

The meeting concluded.

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